

BOOK REVIEWS.

GENERAL DIGEST OF THE DECISIONS OF THE PRINCIPAL COURTS IN THE UNITED STATES, ENGLAND AND CANADA: REFERS TO ALL REPORTS, OFFICIAL AND UNOFFICIAL, FIRST PUBLISHED DURING THE YEAR ENDING SEPTEMBER, 1893. Annual. Being Vol. VIII, of the Series. Prepared and Published by the Lawyers' Co-operative Publishing Company, Rochester, N. Y., 1893.

So far as we have been able to test this work, we find that the citations are correct and the statements of the principles of law clear. It is not a complete digest in the sense of containing every decision or every point involved in every decision, but it probably contains all the decisions that are worth anything and a good many more besides. The notes to principle cases, which are interspersed throughout the book, add value to the work, though we think they would be of more value if they related to the specific question involved in the cases digested, rather than to the general subject under which the cases fall. As, for instance, on page 240, § 3223, we read that "a verdict depending only on the determination of the question, whether or not defendants signed a written contract justifiably relying upon the representations of plaintiff's agent as to its contents, and whether or not such representations are false, will not be disturbed on appeal where there is evidence to support it." The note to this case is "A verdict that a marriage be dissolved because entered into under duress and fraudulent conspiracy, which does not appear full and satisfactory to the reviewing court, will be set aside, as the rule applicable in other civil actions, that a verdict, supported by some evidence, will not be disturbed, does not apply in divorce cases."

Now it is true that the note deals with the same general subject as the case, and yet we doubt if a person would cite one case in support of the other. He might be appealing a

divorce case or he might be appealing a case depending upon a contract of agency. If the first, he would probably know of the decision, the case given not being a recent one. If it was the contract of agency which was involved in his case, the divorce case would do him no good. While, therefore, these notes are of considerable value, and are evidently done with great care, it is a question whether they are as valuable as they might be made, or worth the space which they take in the work.

The printing throughout is good and the arrangement of the whole convenient and satisfactory. W. D. L.

A TREATISE ON TRUSTS AND MONOPOLIES, CONTAINING AN EXPOSITION OF THE RULE OF PUBLIC POLICY AGAINST CONTRACTS AND COMBINATIONS IN RESTRAINT OF TRADE, AND A REVIEW OF THE CASES, ANCIENT AND MODERN. By THOMAS CARL SPELLING, of the San Francisco Bar. Boston: Little, Brown & Co., 1893.

This book is a compact treatise of 274 pages, which comes forth boldly to clear a way through forests of perplexing decisions. We do not recollect a work which gives to the legal profession a more masterly, concise and satisfactory treatment of the whole subject of trusts and monopolies than that of Mr. SPELEING. The author seems to be thoroughly competent to discuss the intricate problems which abound in this branch of the law and to deal intelligently with broad questions of public policy.

This book is of great practical value, for the author has not yielded to the temptation (which, in the discussion of such a theme, must have continually assailed him) of indulging in abstract theories or intellectual vagaries upon problems yet unsolved. In a work of this sort it is, of course, necessary to expand the fundamental principles by the narration of facts of particular cases, and we feel justified in admiring the succinct and clear manner in which the cases have been placed before us. Chapter I contains an interesting historical condensation of the principles governing the subject, and, as an introduction

to the real theme of the book, the author devotes three chapters to the discussion of the kindred doctrines of the legality of agreements not to practice professions or trades, engage in business or accept employment.

It is from the beginning of Chapter V that Mr. SPELLING treads an almost unbeaten path, applying in that chapter in an original manner an old principle to the modern methods of suppressing competition, known as "cornering markets" and "tying up stocks."

Chapter VI treats of combinations among artisans and workingmen—a timely discussion only, though a brief one.

Chapter VIII gives the application of the rule of public policy to contracts for the suppression of competition in public service, agreements, says the author, fraught with serious import to the community.

This is aptly followed up in the next chapter by a discussion upon municipal grants and privileges until, in Chapter XII, monopolies in the form of "trusts" are dealt with, succeeded by a history of anti-monopoly legislation in the United States,—a species of law-making, which the author laments as a futile and almost abortive attempt to curb the power of such combinations.

As a work of more than ordinary merit, Mr. SPELLING'S book deserves a place upon the desk of every progressive lawyer.

A. D. L.

SHARP & ALLEMAN'S LAWYERS' AND BANKERS' DIRECTORY
FOR 1894, JANUARY EDITION, PUBLISHED SEMI-ANNUALLY
IN JANUARY AND JULY. Philadelphia: Sharp & Alleman,
1894.

The utility of this work, and the care with which it is prepared, are well known to the profession. The volume before us is divided into five parts: The first is a lawyer's directory, containing the names of over 7,500 lawyers throughout the United States and Canada and the principal cities of Europe. These lawyers, who have been, as far as we can ascertain, selected with a good deal of care, will

collect debts, etc., for the terms mentioned on one of the front pages of the book. Part two, is a full list of the banks and bankers, together with their capital, surplus and names of officers and correspondents. The list includes all the national, State, savings and private banks, safe deposit, trust and guarantee companies in the United States. Part three is a complete court calender giving the dates, times and places for holding all State and Federal Courts throughout the country. Part four is a synopsis arranged according to the laws of all the States and Territories relative to the collection of debts. Part five is a list of forms for the acknowledgment of deeds, affidavits for proving public accounts, and instructions for taking depositions in all the States and Territories. Part six is a "Telegraph Code," a system by which one can send a long message at very small cost. It is divided into three parts: Part one, being for the use of merchants and the commercial traveller. Part two, for the use of attorney and client. Part three, for general use.

This outline statement of what the work contains is sufficient to prove its value to the profession.

The value of all such publications depends upon the care and accuracy with which they are done. As we have said, so far as we have had occasion to use the directory, we have found it satisfactory.

W. D. L.

MANUEL FOR INSPECTORS OF ELECTION, POLL CLERKS, BALLOT CLERKS AND VOTERS OF THE STATE OF NEW YORK (EXCEPT IN THE CITIES OF NEW YORK AND BROOKLYN) FOR USE AT ELECTIONS AND ON REGISTRATION DAYS. Compiled from Existing Laws of the State of New York and the United States with Amendments to Date, with Notes, Forms and Instructions. By F. G. JEWETT. Albany: Matthew Bender, 1893.

This work, of course, is not useful outside of New York. For the voters in that State, who are inflicted with the caricature of a Ballot Reform Act, it must be very useful, as it contains the qualifications of election officers, registration

laws, forms of the ballot used, together with a synopsis of what is meant by citizenship. The index seems to be very complete.

W. D. L.

LAWYERS' REPORTS ANNOTATED. BOOKS XIX AND XX.
Rochester, N. Y.: The Lawyers' Co-operative Publishing
Company, 1893.

XIX and XX L. R. A., are lying upon the reviewer's table and have been subjected to a careful examination. The general plan of this excellent periodical is too well known to the profession to make necessary an extended comment in this place. Whether or not there is a real need for a periodical which, like the L. R. A., publishes not only annotations and a synopsis of the briefs of counsel, but also the full text of the decisions of the courts, is a question about which lawyers differ. In view of the admirable system of Reports of the West Publishing Company, it should seem that the L. R. A. would be more acceptable to the profession if the cases and opinions were summarized or digested, instead of being reported at length, and the periodical were to confine itself to the publication of briefs and annotations. Under present conditions no publication of selected cases can ever be what the L. R. A. claims to be, namely: "A complete working library of text work and reports." A lawyer, with an important brief to write, will look up the cases which he is citing and read the opinions, not resting satisfied with the summary statement of the decision as contained in an annotation or digest. He is accordingly saved but little trouble by the circumstance that one case out of, say, fifty cited is reported in full in the L. R. A.

However, this may be, the plan of the work is certainly well carried out. The cases are carefully selected; many of the briefs are extremely valuable and the annotations are often replete with learning and suggestion. In Book XIX the reader will find a valuable collection of authorities in the briefs of counsel in *Genet v. Delaware & Hudson Canal Co.*, an interesting decision by the New York Court of Appeals in regard to the effect of a mining lease containing stipulations

with respect to merchantable coal and the mining of a minimum number of tons. In the same volume *Kelly v. Nichols* (p. 413), a decision of the Supreme Court of Rhode Island, is of more than usual interest. It deals with the subject of trusts for charitable uses, and discusses, *inter alia*, whether a trust to repair the grave of the testator and to keep the testator's house open for the entertainment of ministers are or are not charitable uses.

In Book XX there are two interesting cases which deal with the *ultra vires* contracts of private corporations. The first is *Leinkauf v. Lombard* (p. 48; 137 N. Y. 417), in which the Court of Appeals of New York decide that a corporation cannot successfully set up the defence of *ultra vires* to avoid responsibility upon a contract growing out of a business in which it is actually engaged. The second case is *Miller v. American Mutual Accident Insurance Company* (p. 765), in which the Supreme Court of Tennessee seem to give their adherence to the older and less practical rule that a contract of a corporation in the exercise of its powers cannot be enforced merely because the corporation has received a benefit under it which, in fairness, it ought not to retain. To this latter case an annotation is appended, in the course of which the writer, "A. P. W.," examines a large number of decisions which bear upon the subject-matter of the principal case. The note is a valuable note, although, in so far as it treats of the English authorities, it is not an improvement upon POLLOCK'S note upon the same subject in the appendix to his work on Contracts—a note, which, by the way, A. P. W. might have cited, as it seems not unlikely that he made use of it in preparing his annotation. The American cases upon *ultra vires* contracts are satisfactorily digested, but the order in which they are discussed seems to be neither the historical order nor an order founded upon an exhaustive analysis of the subject in hand. The collection, however, is upon the whole a valuable one, although it should have contained a statement of the decision of the Supreme Court of the United States in *Central Transportation Company v. Pullman Palace Car Company*, in 130 U. S. 24 (1890).

In the same volume is the case of *Saxton v. Webber*, decided by the Supreme Court of Wisconsin (p. 509; 83 Wis. 617). This case gives occasion to a useful annotation upon the effect upon prior takers of the failure of a gift because it violates the rule against perpetuities. A large number of authorities are classified and arranged under a series of propositions representing generalizations from the decisions. It must be observed, however, that an annotation upon such a subject, no matter how carefully it is prepared, furnishes a proof of the impossibility of carrying out the plan of the L. R. A. in its completeness. It is said that "the annotations are intended to furnish a reference to all former decisions on subjects discussed in the cases reported," but the reader of this annotation (if he happens to be especially familiar with the subject-matter of it) will notice that many important cases are not even cited. Thus, there is a failure to cite *Odell v. Odell* (10 Allen, 1), and *Martin v. Margham* (14 Sim., 230), in support of the proposition that "That annexation to a valid devise of an invalid direction as to accumulations of income will not of itself defeat the gift."

It is impossible to comment at length upon all the decisions and annotations contained in these two volumes which are worthy of remark, and the reviewer is constrained to dismiss them with the general comment that the books represent useful additions to the working library of the practitioner.

G. W. P.

THE RELATION OF ETHICS TO JURISPRUDENCE.

The current number of the "INTERNATIONAL JOURNAL OF ETHICS" cannot fail to attract the attention of members of the legal profession. Among the articles of interest are those on "The Social Ministry of Wealth," by Prof. HENRY C. ADAMS, of the University of Michigan; "State Creation of Old Age Distress in England," by Dr. M. J. FARRELLY, of London; and book reviews of WATT's "An Outline of Legal Philosophy," by SIDNEY BALL, of Oxford University, and of the Report of the New York State Reformatory, by ROLAND P. FALKNER, of the University of Pennsylvania.

REV. JOHN GRIER HIBBEN, of Princeton College, contributes a scholarly paper on "The Relation of Ethics to Jurisprudence," which must command notice from all jurists and political philosophers. We think it was Sir Henry Sumner Maine, who somewhere said that "No man can hope to have clear ideas either of law or of jurisprudence who has not mastered the elementary analysis of legal conceptions effected by Bentham and Austin." Recognizing the importance of strict definition, and with a laudable desire to give every possible advantage to those whom he regards as his opponents in the argument, the author takes the definitions of jurisprudence and of ethics as framed by Holland in the spirit of the analytical jurists, and then proceeds to refute the propositions laid down by many learned writers as to the complete separation of these two sciences. Among the authors cited as insisting upon the complete separateness of the two spheres of ethics and jurisprudence is Matthew Arnold, in these words: "If it is sound English doctrine that all rights are created by law, and are based on expediency, and are alterable as the public advantage may require, certainly that orthodox doctrine is mine." Now Prof. Hibben himself insists that "the necessity of strict definition should be recognized by the moral philosopher," and we would respectfully submit that we should know in what sense Arnold uses the word "rights" before concluding that these words of his necessarily place him among those who insist upon the separation of ethics and jurisprudence. We confess, however, that the quotation awakened a curiosity as to the book of Arnold's in which it might be found, and, as the foot-note cited, not Arnold but William Samuel Lilly, we referred to that author's recent work "On Right and Wrong," and found that, although quoting Arnold in the exact words of Prof. Hibben's article, Lilly also fails to state where those words are to be found in Arnold's writings. This is most unsatisfying to any one wishing the best evidence on this point, and our dissatisfaction is increased when, continuing to read Lilly, we find these words: "The apostle of culture is here the mouthpiece of the vulgar belief, that material power, the force of numbers, furnishes the last reason

of things, and the sole organ of justice; a belief which finds practical expression in the political dogma that any 'damned error' becomes right, if a numerical majority of the male adult inhabitants in any country can be induced, by rhetoric and rigmarole, to bless it and approve it with their votes." Of all English philosophers, Matthew Arnold would be one of the last whom we should expect to be the proponent of any such doctrine as that. His lecture on "Numbers," delivered in this country only a few years ago—to cite no other work—would seem sufficient to justify a contrary conclusion. We do not say that Arnold did not hold that position. It may be that the words quoted in the article under review are to be found in some work of his with which we ought to be familiar, but we shall not be fully satisfied that he did until we read the words in his own writings and find their meaning in connection with their context. If, however, Prof. Hibben will pardon us for quoting (without giving the reference), words which we *think* are those of Maine, we shall be glad to pardon him for a like slip in reference to Arnold.

Having defined the spheres of the two sciences of jurisprudence and ethics, our author proceeds to consider the derivation of law, and criticises the analytical jurists because, after stating that all law proceeds from sovereignty, they fail to carry their investigation of origins beyond that point. That the genesis of law discloses natural limitations of sovereign power, ethical in their character, is maintained by Prof. Hibben, who, after indicating briefly the indirect and impalpable influence of ethical sentiment in creating, annulling and reforming law, considers what contribution to the solution of the problem has been made by "the vanishing point of jurisprudence"—international law. In this connection he quotes approvingly the position assumed before the Behring Sea Commission by Mr. James C. Carter that, where there are no treaty rights and no precedents, disputes between nations are often arbitrated by appeal to the principles of national equity. In opposition to this contention of the United States counsel was the proposition of England's counsel, Sir Charles Russell, who insisted that international law is for all practical

purposes a code, and ethics and equity have nothing to do with it. While we doubt whether our author can find much support for his view from the decision in the Behring Sea case, we are in thorough sympathy with him in his conclusion as to the influence of ethics on jurisprudence, and are glad he can say: "The time has come in the history of mankind when it is generally recognized that a State possesses certain moral responsibilities. There is a civic as well as an individual conscience"

G. G. M.

ELEMENTS OF ECCLESIASTICAL LAW. By the REV. S. B. SMITH, D.D. Vol. I. Ninth Edition. New York: Benziger Bros., 1893.

With the presence of the Papal Alegate among us, a popular interest has been aroused through discussions in the public prints, as to the nature and extent of the organization of the Roman Church. The perfect symmetry of this organization has been but little understood by us in America, simply because the American people at such a distance from Rome and under such different social conditions from those present when the Church was organized, have cared nothing or but very little, for its powers or rule. At this time, therefore, it is very fortunate to receive a new edition of Dr. Smith's work, stamped with the approval of many distinguished prelates of the United States, living and dead.

Dr. Smith divides his first volume, which treats entirely of Ecclesiastical Persons, into four parts: 1. The principles of the canon law with a discussion of the value and weight to be attached to the various sources of that law. 2. Treats of persons pertaining to the hierarchy; of ecclesiastical jurisdiction; how it is acquired, how exercised, and those who are subject to it. Chapters six and seven present to the reader an extremely interesting and accurate description of the mode of electing the Pope; and the succeeding pages of this part are devoted to a discussion of the rule regulating the appointment, the removal and qualifications for the lesser dignitaries of the church from cardinal to parish priest. 3. Treats of particular

instances of ecclesiastical jurisdiction wherein we find elaborately discussed such well-worn headings as the infallibility of the Pope: the relation of Church to State, etc. 4. Treats of the duties of those who are the legally constituted advisers of bishops in the government of the diocese in the United States.

That there is a necessity for a more popular understanding of this complex organization is evidenced by the fact that it required two solemn arguments before a full bench in the Supreme Court of Pennsylvania, to maintain the right of a bishop to remove a priest from the charge of a congregation without specifying the nature or the cause of the removal: *O'Hara v. Stack*, 90 Pa. 477; *Stack v. O'Hara*, 98 Pa. 213.

Of Dr. Smith's work enough praise cannot be bestowed upon it. The citations show profound study and research, and while feeling thankful that the conditions in this country, social and religious, do not require a universal knowledge of the refinements pertaining to the jurisdiction and power of the church, such as is necessary to the daily life upon the Continent, yet we cannot help pitying those whose attention is not drawn to Dr. Smith's book. Here and there throughout the work we find statements that remind us very forcibly of our own common law. Thus, in speaking of the rules for the interpretation and construction of canon laws, we find them classified into "1. Declaratory, *i. e.*, explanatory of the words of the law. 2. Corrective, that is favorably. 3. Restrictive—thus penal laws must be construed strictly. 4. Extensible, by which laws are extended to similar cases."

Through the work we find traces of the sources from which Blackstone and Kent derived many of their most subtle refinements. Much of that scholastic learning which influenced our own law is also to be found. Thus, in speaking of the qualifications required of persons who are to be promoted to ecclesiastical dignities and offices, we find this remarkable classification as to the degrees of learning. "A person may possess learning in three-fold degrees: 1. In an eminent degree, when without the aid of books he can readily explain even difficult questions. 2. In a middling degree, if, with the

aid of books and upon deliberation, he is able to clear up difficult questions. 3. In a sufficient degree, *i. e.*, in a manner that enables him to discharge the duties of his office."

While, as the author tells us in his preface, the work was designed for the use of students in the seminary, we can imagine no book more truly invaluable either to the churchman or the layman than Dr. Smith's, and cheerfully recommend it to the careful study of all those who desire to comprehend the principles, the policy and aim of the Roman Church.

J. A. McC.

THE LAW OF PUBLIC HEALTH AND SAFETY, AND THE POWERS AND DUTIES OF BOARDS OF HEALTH. By LEROY PARKER and ROBERT H. WORTHINGTON. Albany, N. Y.: Matthew Bender, 1892.

The scope of this book and its method of treatment, one of the authors having had a practical experience in one of the best State Boards of Health in the United States, are such as to commend it to the professions, both of law and medicine.

As a manual for health officers, in our opinion, it is invaluable.

Every physician in general practice is confronted at times with important questions involving the public health which must be answered promptly and accurately; and we know of no single book wherein he will find so safe a guide as in this book.

About 2500 cases are cited, and, so far as we can see with the limited time at our disposal, the work appears to have been carefully done. The book deserves a much more extended notice, but we can conscientiously commend it as a valuable addition to legal literature.

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A TREATISE ON THE NEGLIGENCE OF MUNICIPAL CORPORATIONS. By DWIGHT ORVEN JONES, author of "The Construction of Contracts." New York: Baker, Voorhis & Co., 1892.

A new work on the Law of Negligence is always acceptable. As long as courts of justice sit for the purpose of righting wrongs and settling disputes a large portion of the cases submitted for their decision will arise out of carelessness or neglect of some duty imposed which human fallibility will ever supply. A breach of individual duty is more readily detected and more quickly corrected than that of a powerful municipality, yet it is with instances of the latter that lawyers, especially city lawyers, have frequently to deal. It is only through an energetic and rigid application of the law on the part of the courts that municipal governments can be made to live up to the special duties which they owe the individuals who claim membership therein with all its accompanying responsibilities.

The initial chapter of Mr. Jones's book reviews briefly the "General principle of the Law of Negligence." The chapters succeeding treats the question of "Municipal Liability" from an historical point of view, and then proceed to show the distinction between the "Duties of a Solely Governmental Kind," and those of a "Solely Municipal Kind." The principal cases in which questions of negligence in municipalities are likely to arise then follow, such as "Highways," "Sidewalks," "Snow and Ice on Streets and Sidewalks," "Negligent Construction of Bridges and Failure to Repair," "Negligence in Making Public Improvements," and "Negligence in Connection with Municipal Ownership or Management of Property."

To the doctrine of "Respondent Superior," and the questions of "Notice," "Proximate Cause," "Contributory Negligence," and "Evidence," each, a chapter is devoted. The work concludes with a chapter on "Damages."

Negligence from a statutory point of view is carefully considered, especially as regards the construction and care of highways.

A large number of cases are cited, in which the author is to be commended for his discretion in selecting such parts of the court's opinion as sufficiently explain the facts, a particularly necessary thing to the proper understanding of the principle of law laid down in negligence cases.

The arrangement of the matter is admirable and an unusually elaborate index guides the reader to any looked for point.

The volume does credit to the publisher as well as to the author, being of convenient size, substantial binding and large clear type, with conspicuous headings.

W. S. E.

A TREATISE ON THE MEDICAL JURISPRUDENCE OF INSANITY.

By EDWARD C. MANN, M.D. Albany, N. Y.: Matthew Bender, 1893.

The first thing that impressed us in opening this book was the peculiarity of its title, for we find in it chapters on "Personal Identity in Murder Cases," "Inhalation of Poisons," etc., the relation of which to the jurisprudence of insanity is somewhat difficult to see.

The book, in our opinion, shows evidence of insufficient study of the subjects discussed and is full of inaccuracies and loose statements.

To the lawyer we regard it as absolutely worthless, and the physician who relies upon its statements of alleged legal principles will have reason to regret it. It has no table of cases, which, perhaps, is unnecessary, for being struck by the worthlessness of the legal (?) principles stated, we consulted some of the authorities cited and found, as we supposed, they did not support the text.

As a sample of the lack of scientific classification of the work and the tendency of the writer to ramble, the reader is referred to page 24 in the chapter on "Morbid Sexual Perversions as related to Insanity," where the author describes the case of a patient suffering epileptic vertigo accompanying menstruation, with suicidal impulses, whom he described as refined and virtuous and apparently normal in every respect, after which he wanders into a wordy discussion of the right and wrong theory, closing with the admonition that "it is time for the medical profession to come to the point and voice science in this matter, etc." The author seems not to know that there

is a work entitled "Pscopathia Sexualis" by Kroft-Elming, and the chapter is conspicuous for its non-treatment of this important topic.

But not to consume more valuable space, we may say, in conclusion, that the author evidently has no conception of legal principles and his work is a mere hotch-pot to read which, would, in this short life, be a waste of valuable time.

This book should not be confounded with the Treatise on Forensic Medicine by J. Dixon Mann, of Worcester, England, which has only recently appeared, and which appears to be a very creditable performance.

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