

## BOOK REVIEWS.

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BERING SEA TRIBUNAL OF ARBITRATION. Opinions of Mr. Justice HARLAN at the Conference in Paris. Washington, D. C.: Government Printing Office, 1893.

When the Bering Sea Tribunal of Arbitration rendered its final decision at Paris on the fourteenth of last August, a resolution was adopted permitting each individual Arbitrator to file with the Secretary of the Tribunal a separate opinion upon the matters submitted to it for determination, and a period of several months was allotted for this purpose. One of the opinions filed under this resolution was written by Justice HARLAN of the Supreme Court of the United States, who was one of the two Arbitrators representing our Government in the Tribunal of Arbitration, and this opinion has been recently published by the Government Printing Office at Washington. The earlier part of the volume contains some remarks which Justice HARLAN made in private conference with the other Arbitrators, in support of the two propositions that the Tribunal was invested with authority under the Treaty of February 29, 1892, between Great Britain and the United States, first, to adopt regulations which, for a certain period in each year, should *entirely prohibit* pelagic sealing and not merely restrict it; and second, to extend these regulations not only to Bering Sea, but also to the North Pacific. It is of interest to note that Justice HARLAN'S views on both of these points were adopted unanimously by the Tribunal of Arbitration, and subsequently were embodied in their decision.

The second of the two parts into which this volume is divided contains a formal opinion by Justice HARLAN upon the merits of the entire controversy. Of the five questions of law submitted to the Tribunal of Arbitration for determination, the first four related to certain extraordinary rights of marine

jurisdiction which, it was alleged, the United States derived from Russia at the time of the purchase of Alaska. It is a noteworthy fact that the opinion of Justice HARLAN upon these four points was in accordance with that of the majority of the Arbitrators (Senator Morgan only dissenting), and was *adverse* to the claims of the United States. Justice HARLAN held in substance that by the Ukase of 1821 Russia did *not* assert any jurisdiction over Bering Sea except for a distance of 100 miles from the coast, and that this jurisdictional claim was never enforced in practice, but on the contrary was withdrawn as to the United States by the Treaty of 1824, and as to Great Britain by the Treaty of 1825. He held further, in answer to the second point, that Great Britain never recognized or conceded any claim by Russia of exclusive jurisdiction in Bering Sea, or over the seal fisheries, outside of territorial waters; and, in answer to the third point, that when in the Treaty of 1825 Russia conceded to the citizens of Great Britain full rights of fishing and of navigation in the "Pacific Ocean," this phrase included Bering Sea, and the Ukase of 1821 was thereby rescinded so far as it might be regarded as affecting the present question. The fact that Justice HARLAN felt constrained to concur with the foreign members of the Tribunal in deciding these questions adversely to the United States may be regarded as a proof of the most positive kind that the decision reached by the Arbitrators upon these points was correct.

With respect, however, to the fifth and last of the points submitted to the Tribunal of Arbitration, Justice HARLAN did *not* concur with a majority of the Arbitrators, and the present volume contains his dissenting opinion upon this question. A majority of the Tribunal decided that the United States had *not* a right of property in the fur seals when found beyond territorial limits, and that it could not lawfully protect the seals in the open sea. Justice HARLAN in his dissenting opinion maintains the opposite of both of these propositions. He contends that in international law, just as in the development of the common law, new cases which are lacking in direct precedents should be determined in accordance with

our sense of natural justice; and he quotes Kent and numerous other text writers in support of the view that there is an international morality underlying the principles of international law as they are being developed with the advance of civilization. He thinks that these principles can be deduced in many instances from analogies to be found in the municipal law of particular nations, and he traces a similarity between seals on the one hand, and such animals as bees, pigeons and deer, on the other hand, all of which were protected as private property by the Roman law and the common law of England, because of their having an *animus revertendi*. He asserts that the United States by maintaining and protecting the extensive breeding grounds of the seals on the Pribyloff Islands, at great expense, and for the purpose of making these animals subserve the interests of commerce and manufacture, has thereby exercised such control over them as would give to our Government a permanent right of property in the seal herd, even while temporarily absent from our territory upon the high seas. Justice HARLAN then discusses the question as to whether, assuming that the United States does not have a right of property in the seals, it can lawfully protect them from attack beyond its territorial limits, and reaches the conclusion that such protection is lawful upon the theory that it is an act of national self-preservation. He contends that a nation so protecting its lawful industries does not thereby appropriate to itself any part of the ocean, or interfere with the innocent use of the high seas for other purposes. It only prevents a form of wrong doing and preserves what no one has a right to destroy. He concludes his opinion by citing several striking precedents from the decisions of the United States Supreme Court, foreign treaties and other sources, which tend to establish the right of a nation to assert its sovereignty and defend its interests upon the high seas outside of the three-mile limit.

It is to be regretted on many accounts that the opinion of Justice HARLAN upon these points did not obtain the concurrence of a majority of the Tribunal, for it is almost impossible to read his able and lucid discussion of this question without

sharing his conviction that the United States does possess a right of property in the seals, and that it can lawfully protect that right. However, the contrary decision of the Arbitrators is of less importance than it otherwise would be for the reason that they established a set of regulations for the protection of the seals, which there is every reason to believe will fulfill the objects sought by the United States when the Treaty of Arbitration was signed. To these regulations Justice HARLAN gave his hearty concurrence.

R. D.

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A TREATISE ON EXTRAORDINARY RELIEF, IN EQUITY AND AT LAW. By THOMAS CARL SPELLING. Covering Injunctions, Habeas Corpus, Mandamus, Prohibition, Quo Warranto, Certiorari. Containing an exposition of the principles governing these several forms of relief, and of their practical use, with citations of all the authorities up to date. In two volumes. Boston, Mass.: Little, Brown & Co., 1893.

If well done the practical use of such a treatise as this before us goes without saying. The work is no modern digest in text book form. It presents the law on each subject in a clear and entertaining manner. Every principal is critically explained. The notes are complete and render the book of great practical value as a reference to pertinent cases. The principle merit of the work is found in the text. Ordinarily, modern text books seem to have been written by persons who consider that all that is necessary to write a law book was to take the sylabi of all the cases, which, by any possibility could be said to relate to the subject, and arrange them in some sort of logical or illogical order, putting in a word here and there to prevent the whole from appearing too strikingly what it really is—nothing but a digest. Digests on any subject are valuable, and have their place, but the class of work, like the one before us, which carefully explains the principles of the law which the cases illustrate, and makes a careful selection of the illustrations used, have infinitely more use, and are works of a great deal higher order.

The first volume is entirely devoted to injunctions. On

examining the index to this subject, which is printed separately from the index to the rest of the book, we could not find anything relative to injunctions to restrain strikes and property in the hands of receivers. This seems to us to be rather an important omission, if it has been omitted, and not overlooked by us. We would be interested to know how one, who seems to have so closely studied the general principles of injunctions, would regard this their new application. We also think Mr. SPELLING has lost an opportunity when he failed, critically, to discuss the question of injunctions to restrain libel. The discussion on this subject, which we find on page 710, Volume I, is good, but evinces a certain amount of timidity on the part of the writer in that he fails to point out irreconcilable cases. For instance, how can we reconcile the case of *Mauger v. Dick*, 55 How. N. Y., Pr. 132, in which it was said that an injunction does not lie to restrain a manufacturer of goods from issuing circulars to dealers in such goods charging that the plaintiff is offering for sale imitations of the goods and threatening prosecutions, with the case of *Springhead Spinning Company v. Riley*, L. R. 6 Eq., 551, where workmen were restrained from placarding notices advising their fellow workmen not to hire themselves to the plaintiff because there was a strike on in the plaintiff's shop. Again, how can we reconcile the former case with that of *Emack v. Kane*, 34 Fed. Rep. 46, where the defendants were restrained from issuing a circular in which they threatened to bring suit against the plaintiff for an infringement of patent. We point out these examples because we believe that they illustrate a very serious defect in a good work. What a lawyer wants, when he turns to a text book to aid him in preparing a brief, is either merely a digest to refer him to all the cases or a critical discussion of those cases. It does not seem to us that the half-way text book meets any real need. The text book, for instance, which merely states principles. A good digest does this, and illustrates those principles by more copious examples than we can hope to find in a text book which pretends to state principles and use cases as illustrations. We do not mean to say that Mr. SPELLING'S work is in a position of being half way between

a digest and a critical discussion. It is much nearer a complete critical discussion of the subject with which he deals. Our only complaint is that in this critical discussion and development of the different subjects he has not gone quite far enough. He seems to have tried to reconcile authorities rather than to point out their irreconcilable elements. With all, however, it is an excellent book—far, very far, above the average text book which we have to review. Especially welcome is the discussion of the writ of *certiorari*, this being the only scientific discussion of this writ which we know of, a certain work labeled “*Certiorari*,” which was noticed in our columns some months ago, not being worth speaking of.

Volume II, besides containing *certiorari*, has a discussion of *habeas corpus*, *mandamus*, and *quo warranto*. This volume, from its very nature, is more interesting than Volume I. We have other good works on injunctions, but for the other subjects, Mr. SPELLING has probably written a work which is more useful than any other which we know of.

The paper and typography, like all other volumes, from the same press, are above criticism. W. D. L.

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HOW TO USE THE FORCEPS. With an introductory account of the Female Pelvis and the Mechanism of Delivery. By HENRY G. LANDIS, A. M., M. D. Revised and enlarged by CHARLES H. BUSHONG, M. D. Illustrated. New York: E. B. Treat, Publisher, 5 Cooper Union.

Lord COKE has justly observed that in the ashes of the law lie buried the sparks of all sciences. The subject of malpractice must ever be one of interest and importance to practitioners of the law; and from this aspect the above entitled work will prove useful to lawyers, though, of course, its especial field of usefulness lies in the domain of medicine.

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A PRACTICAL TREATISE ON NERVOUS EXHAUSTION (Neurasthenia), Its Symptoms, Nature, Sequences, Treatment. By

GEORGE M. BEARD, A. M., M. D., Edited with Notes and Additions by A. D. ROCKWELL, A. M., M. D. Third Edition—Enlarged. New York: E. B. Treat, Publisher, 5 Cooper-Union. 1894.

This book is one which every brain-worker, and especially every lawyer, should read; not with the idea of becoming his own medical adviser, or of self treatment, but for the purpose of becoming acquainted with the symptoms of nervous exhaustion, so common among lawyers, and thereby avoiding danger.

Having been obliged almost entirely to suspend professional work for nearly three years we speak feelingly on this subject when we say that an ounce of prevention is better than a pound of cure. The greater part of the evil effects of nervous exhaustion are due to ignorance and might, with a very small amount of knowledge correctly applied, be easily obviated.

We can cordially commend this book.

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A TREATISE ON THE LAW OF LIENS, COMMON LAW, STATUTORY, EQUITABLE AND MARITIME. By LEONARD A. JONES. Second Edition. Revised and Enlarged. In Two Volumes. Boston and New York: Houghton, Mifflin & Company. The Riverside Press, Cambridge. 1894.

Prior to the first edition of this work it is a question whether any other branch of the law could lay claim to an equal lack of clear comprehension. A "lien" has always represented to the mind of the average man (and to only too many lawyers), the idea of a charge upon property, of any and all kinds and descriptions, even as to the newspaper omniscient "defalcation" is a dignified species of embezzlement. Accordingly, side by side with the liens of attorneys, etc., we hear men speak of the lien of a mortgage, an assignment, a judgment, etc., etc. Even in that great fountain of law, the Acts of Assembly, such confusion of terms is the invariable rule. It would be difficult to find a statute that speaks of the "encum-

brance" of a mortgage, or of a judgment. And yet, as Mr. Jones clearly shows, this general, popular nomenclature is, as it is very apt to be, wholly in the wrong. The so-called "liens" of this kind find, therefore, no place in this work; and the unsuspecting lawyer who turns to it for information on those subjects will be disappointed, even though his mental horizon may be enlightened in another direction.

What, then, is a "lien," within the scope of this work? It must be confessed that, though the several species of liens are defined with great clearness, the broad line of distinction between a "lien" in general and a charge on property is left in a hazy state. But probably this was inevitable. It is hard to find a definition which will include common law, statutory and equitable, to say nothing of maritime liens. "A lien at law," says the author, "is an implied obligation whereby property is bound for the discharge of some debt or engagement. It is not the result of an express contract; it is given by implication of law." Now it is clear that this definition cannot be applied to a statutory lien, which is given by the express words of a statute, unless we regard the statute as implied in the agreement between the parties. So, too, an equitable lien, which arises from express words in a contract, cannot be classed under this definition. An example will make this clearer. At common law an innkeeper has a lien on the goods of his guest until his charges are paid. The guest may contract with him that he shall retain a special part of his baggage. This discharges the lien on the rest, and creates an equitable lien on the part so retained. Again, a lien on the property of a guest may be declared by statute, which will supersede the common-law lien. In each case the result is the same, but the three liens are totally different in their origin.

The most general definition of a lien that Mr. Jones gives is, that it is a right of detainer. This, however, only applies to personal property, and not to a mechanic's, or other lien on real estate. A lien on personal property can in general only attach to property in the possession of the lien-holder, and which he can detain; but the mechanic is not in possession of the real estate to which his claim attaches.

Without going into the subject farther it may suffice to say that the most satisfactory definition of a "lien" in the strict sense is, that it is a fixed charge upon specific property, not coupled with an interest. This Mr. Jones clearly implies, though he does not state it in so many words.

There is very little that has escaped the author's research; and he has fortunately not felt himself tied down to a bare statement of the express decisions on any subject, but has gone in most cases into a more or less detailed discussion of collateral points, tending to elucidate questions not yet decided, but which may arise. The chapter on the Lien of a Finder of Lost Goods is a clear illustration of this. After stating that at common law the finder has no lien, he does not merely add that if a reward has been offered the finder has a lien for the reward; but goes on to discuss the incidents of the offer, when it becomes a contract, what constitutes a performance of its terms, when the offer may be withdrawn, etc., until he has covered almost every conceivable question that can be raised.

And yet, there are some matters which Mr. Jones has either failed to notice, or considered as beneath his notice. It is rather depressing to local pride to find no mention of *Cadwalader v. Dilworth*, 26 W. N. C., 32, the sole case in which a court has decided that an *agistor* has a lien at common law upon a horse which he has taken to board. However, opposed as that case is to an overwhelming array of authorities, its citation would have served no good purpose, except as showing the presumable opinion on that subject in Pennsylvania.

There are some slight inaccuracies and deficiencies of statement to be found here and there. In discussing lumbermen's liens the author states (§ 722), that "the contractor is not in general an agent of the owner to employ men and bind the owner or his property." But he omits to state that this rule depends wholly on the nature and terms of the contract (in other words, whether or not the contractor is to be regarded as independent). If he is not independent, but under the control of the owner, authority to employ men on behalf of the latter will, in the absence of express restrictions, be

inferred from the contract. It is clear, therefore, that no general rule can be predicated where it depends on the circumstances of the particular case.

So, he states in § 1033 that the lien-holder who sells the property subject to the lien may set up the lien as a defence to any action which the owner may bring against him for a conversion. But this, as shown by §§ 523 and 525, is only partially true. In any case the lien could only serve as a defence *pro tanto*; that is, as a set-off. And he does not state the fact, decided in one of the very cases he cites, that the purchaser of the property may set up the lien as a defence to an action of replevin brought by the owner, he being in this regard substituted to the rights of the lien-holder.

Again, in discussing the vendor's lien upon real estate for unpaid purchase money, while rightly omitting Pennsylvania from the list of States in which that lien is recognized, the author also omits to state that it was nevertheless decided in *Stokely v. Trout*, 3 Watts, 163, that whenever the agreement between the vendor and vendee contemplates another deed, though in the words of a present conveyance, the vendor has a lien for the unpaid purchase money.

And again, in treating of the effect which an agreement by the principal contractor not to file a mechanic's lien has upon the right of a sub-contractor, though correctly stating the law to be that a covenant to that effect by the contractor will bind the sub-contractor, he overlooks the decision in *Evans v. Grogan*, 153 Pa., 121, that to have that effect, it must be a covenant in the strict sense, not a mere promise that liens shall not be filed.

All these errors, however, are but of minor importance compared with the value of the work as a whole, and are such only as are inevitable in any human performance. No other work on the subject can compare with this in logical arrangement, clear style, or accurate statement. The chapters on Mechanics' Liens, which form over two-thirds of the text of the second volume, contain a presentment of the law on that vexed subject that is without a rival. After their perusal, one can say with confidence that he knows something about the

subject, a statement which would have been rash, indeed, before Mr. Jones gave us the fruit of his labors. The same might be said of other portions of the work.

A very valuable feature is the abundant presentment of statute law, a feature which was really rendered essential by the nature of the subjects treated; but it is matter for regret that the references are too often made to compilations only, and not to the annual volumes of laws. An index of statutory law, though involving much additional labor, would have been an important adjunct to the work.

The index, too, might have been fuller. As it is, it savors too much of the logical arrangement of the work, and not enough of the alphabetical nature of an index proper. You will find the titles "contractor" and "sub-contractor" safe and sound under the shelter of "Mechanics' Liens," but will look for them in vain in their alphabetical place. So with many other subjects.

It is also disappointing to find the subject of municipal liens dismissed with a cursory reference to the liens of taxes and water rents. These are certainly matters of great importance, and fall as legitimately within the scope of the work as do Mechanics' Liens. It may be, however, that the author felt himself restrained within the bounds of the property relations between private individuals, in which case the liens of the public would not strictly belong to the subject in hand. Yet, treated as Mechanics' Liens have been, it would have greatly enhanced the value of the work; and we may be permitted to express the hope that in the future the author may turn his hand to this subject also.

R. D. S.

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FORMS IN CONVEYANCING AND GENERAL LEGAL FORMS, Comprising Precedents for Ordinary Use, and Clauses Adapted to Special and Unusual Cases. With Practical Notes, by LEONARD A. JONES. Fourth Edition. Boston and New York. Houghton, Mifflin & Co., 1894.

The first edition of Mr. JONES's work made its appearance about seven years ago. Only last year we expressed our

admiration for the book on the publication of the third edition. That the fourth is already before us is sufficient evidence of its success.

A book of legal forms is perhaps not *essential* to the library of an old practitioner, but to any law library it is a convenient addition, and to a young and inexperienced member of the profession an invaluable aid, for it saves him much time and may save him many mistakes. Of course, it is upon its being practical and absolutely accurate that the value of any book of forms depend. It must contain models of all documents included in its subject that a lawyer finds himself called upon to draft. The field of conveyancing is a broad one, extending, as it does, from the simplest deed or argument to the most involved will or complicated mortgage.

Mr. JONES'S work fulfils its mission. It gives us the forms of conveyance of every kind which the various states prescribe, or their courts sanction. These are well suited to the practitioner's needs. The precedents are skilfully and carefully prepared.

The general arrangement is admirable. Foot notes call attention to variations in the different states from the forms given, with references to the state laws. W. S. E.

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We owe an apology to the publishers of the General Digest of the United States, the Lawyers Co-Operative Publishing Company, Limited, for a misstatement of fact in our review of that work, which appeared in the February number of the AMERICAN LAW REGISTER AND REVIEW. We stated that the cases which were printed in small type, which were apparently notes to the other reported cases, were not, as notes, very useful. We mistook the character of these small cases, which were printed in small type. They are bye-report cases. Our criticism, therefore, to these cases as notes was a criticism on an entire misconception of the nature of the cases. Undoubtedly bye-reports are useful in a Digest. It is also a good idea to print them in small type, so that one can immediately discern whether the principle announced is one which has the authority of a court of the last resort.