BOOK REVIEWS.

A TREATISE ON THE LAW OF QUASI CONTRACTS. By W. A. KEENER, Dean of the Law Faculty of Columbia College. New York: Baker, Voorhis & Co. 1893.

Professor KEENER has made a very valuable addition to the list of really scientific text books. The subject of which he treats is obscure, not so much from its inherent difficulties, but from the manner in which the subject has been treated from the earliest times by every court which administers the English system of law. Professor KEENER has endeavored to bring order out of chaos and has been most successful.

His first chapter dealing with the nature and scope of the obligation cannot but impress the reader at the outset with this idea. In all the cases he fails to find more than two opinions—one in Pennsylvania by LOWRIE, C. J., the other an English opinion by Mr. Lord Justice LINDLEY, in which the obligation of Quasi Contract is regarded as deriving its original from anything like the same source to which he himself attributes it. The accepted legal name for such obligations, contracts implied by law, he rejects, and not only rejects but proves to be utterly erroneous. All such so-called implied contracts and many which scarcely fall under that head he groups together within that class of obligation now recognized as those of Quasi Contracts, which, as he shows, differ from contracts in that the obligation is imposed by the law entirely regardless of that consent of the parties, which is the very vital principle and essence of the true contract and from torts, in that the obligation is positive, not negative; to do ustice and right, not merely to refrain from wrong.

To bring the myriad of cases, all decided upon the fiction of a contract implied by law, often in the very teeth of the true state of affairs, within the broad and scientific principles which govern the true Quasi Contract is no light task, but Professor KEENER accomplishes it in a clear and convincing manner.

There is often, of course, the difficulty arising from the mode of thought pursued by the courts, often Professor KEENER'S principles are fully borne out by the decision of the cases but not by the reasoning upon which the decision is based.

It will excite surprise that the result of the cases decided upon so different a principle, a mere legal fiction, should coincide so nearly with the author's conclusions based upon a rational following out of the Quasi Contractual relation.

Naturally, in some of the cases difficulities arise, but in the main the book is not only an admirable treatise of what the law should be but also a clear exposition of what the law is, however bad the author may sometimes consider the foundation.

The book is an admirable specimen and product of modern legal thought, the tendency of which is to systematize and reconcile the conflicting and often fanciful theories of the ancient law upon a broad, scientific and rational basis, and it is impossible to doubt that it will have a great influence upon the mind of all those who may read it, and will serve to clarify the obscurities of a hitherto difficult subject.

The remaining chapters treat of the various separate divisions of the subject, as follows:

Chapter II. Recovery of money paid under mistake. III. Waiver of tort, which chapter is perhaps the best illustration of the author's methods. Nothing could be more logical, clear and convincing than the manner in which the law is stated, the cases in the main bear out his position, and yet but very few show any recognition of the underlying principles which he so clearly states. IV. Rights of a plaintiff in default under a contract. V. Obligations of a defendant in default under a contract. VI and VII. Recovery for benefits conferred. (VI.) By request in absence of contract. (VII.) Without request. VIII. Recovery for improvements made upon land without request. IX. Money paid to use of defendant. X. Money paid under compulsion of law. XI. Money paid to defendant under duress.

The form of the book is capital, the marginal headings are

most useful and the index is really a guide and not, as it too often is, a hindrance. The book is very well and clearly printed and should be read by all who are interested in the scientific development of the law. F. H. B.

A TREATISE ON THE LAW AND PRACTICE OF VOLUNTARY ASSIGNMENTS FOR THE BENEFIT OF CREDITORS, adapted to the Laws of the various States with an Appendix of Forms. By ALEXANDER M. BURRILL. Sixth Edition, Revised and Enlarged, and an Appendix of State Statutes added by JAMES AVERY WEBB. New York: Baker, Voorhis & Co., 66 Nassau Street. 1894.

A new edition of this standard work is opportunely timed to supply a demand for information on a subject which at present must necessarily occupy the thought and attention of many attorneys. Mr. Burrill's work, originally published in 1853, has in the course of its six editions been through the hands of several editors, and in its present shape is a practical and satisfactory statement of the law on a subject which is necessarily complicated by the variety of statutes upon which it is based. The present editor, Mr. Webb, has removed from the text all quotations from state statutes, and has added as an appendix a synopsis of the statutes of the several states and territories relating to assignments for the benefit of creditors. While an attempt to paraphrase a statute is always to be deprecated, it may perhaps be justified in a text book on a subject involving a large amount of statutory law.

One of the most interesting chapters of the book relates to the subject of Preferences. The rule at common law was well established that a debtor in failing circumstances has a right in an assignment to prefer one creditor to another. The tendency of recent legislation, however, has been to restrict this privilege. Many of the older states have in recent years passed laws restricting it, and the new states, such as Okalahama, North Dakota, South Dakota and others, have forbidden it. The subject of preference has given rise to litigation in many cases where there has been a conflict

between the laws of a state permitting preferences, and one which forbids them. A large portion of the chapter headed "The *lex loci* in its application to assignments," is given up to a discussion of this subject.

The general powers of the assignee are fully and clearly treated, but somewhat more might have been said on the question of the extent to which the assignee may conduct the business of the assignor.

While much new matter has been added to this edition the size of the book has been decreased by using smaller type and by increasing the size of the type page. It cannot be said, however, that the appearance of the page has been improved by the process. ALBERT B. WEIMER.

SYPHILIS IN THE INNOCENT (Syphilis Insontium). Clinically and Historically Considered, with Plan for the Legal Control of the Disease. By D. DUNCAN BULKLEY, A.M., M.D. New York: Bailey & Fairchild. 1893.

The scope and character of this work are well stated in the following extracts from the introduction:

"Syphilis is not essentially a venereal disease. It has been too frequently regarded as being only such, and consequently some of its important features have been overlooked. Many able writers described well its clinical history, pathology and treatment, as also its connection with prostitution; but the element of its non-venereal character, in many instances, has been relatively little considered, and no full presentation of the subject has ever been made. In the present essay the attempt is made to consider only this single aspect of the malady, namely its innocent occurrence and the modes of infection whereby it is innocently acquired by means wholly unconnected with the venereal act."

"Clinical records, more or less complete, are given of one hundred and sixteen original personal cases of extra-genital chancres, a greater number than has ever before been reported by any observer in the United States."

"A table has been prepared exhibiting the location of over

9000 extra-genital chancres, which have been collected from the items given in the Analytical Bibliography."

"Another table, as complete as possible, gives the epidemics of syphilis which have occurred from the year 1577 to the present time; this contains data relating to over 100 epidemics, great and small, affecting over 3000 victims, in addition to the many instances where no definite statistics were given."

Not the least important chapter of this work is that entitled: "Prophylaxis—Hygiene and Medico-legal Considerations—Plan for the legal control of syphilis."

After showing from statistics the dangerous and far-reaching effects of this disease which counts its victims by thousands, more deaths being ultimately caused by syphilis than by small-pox, while the injury to health and interference with life-work are much greater in the former than in the latter, the conclusion is reached, which, as it seems to us, cannot successfully be contradicted, that syphilis should be placed, like other contagious diseases, under the control of the health authorities. The need of this seems certainly as urgent as in the case of consumption, which, we believe, has recently been made the subject of legal regulations in the State of Michigan. The author's argument upon this question seems to us most forcible and will repay a careful perusal. We should be in favor of proceeding even further than our author in this matter of restrictive regulation and make it a felony knowingly to transmit syphilis.

We commend the work to all who are interested in the subject of the public health as a valuable contribution to the literature upon this important subject.

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PARLIAMENTARY TACTICS OR RULES OF DEBATE. Arranged by HARRY W. HOOT. New York: The Scientific Publishing Company.

This is a concise and handy little treatise which is so arranged that the chairman of any meeting holding the same in his

hands, could, by reading the side indices, place his hand at an instant on the rule which he desired to settle, and a question which came before him for decision. For instance, supposing a member of an assembly appeals from the decision of the chair. In an instant the chairman could turn to page 17 of this work and learn by a glance that any member may appeal from the decision of the chair; that the appeal must be seconded, that it cannot be amended and that it is not debatable, if the previous question is pending. This handy little book has been compiled from such authorities as ROBERTS, CUSHING, MATTHIAS, JEFFERSON and ROCKER.

So far as we have examined it, one placed in position of chairman, can safely rely on the rules given. W. D. L.