

BOOK REVIEWS.

PLEADING AND PRACTICE OF THE HIGH COURT OF CHANCERY.

By the late EDMUND ROBERT DANIELL, Barrister-at-Law. Sixth American Edition, with Notes and References to American Decisions, &c., adapting the work to the demands of American Practice in Chancery. By JOHN M. GOULD, Ph. D., author of the "LAW OF WATERS," &c. In three volumes. Boston: Little, Brown, & Co. 1894.

It is a work of supererogation at this day to say anything in praise of a book that has so thoroughly commended itself to the legal profession, and been the recipient of such eulogy from the most learned members of the bench and bar, as DANIELL'S CHANCERY PRACTICE. At its first appearance, it took precedence of all other text books on the subject, and has retained that position, without a rival. Other works, of greater or less value as brief epitomes of the principles and practice of equity, have from time to time appeared, and by their less cost obtained a considerable clientele; but DANIELL has always been, and still is, the most exhaustive and masterly work on "Chancery Practice," in its fullness and accuracy of detail, comprehensiveness of plan, and logical arrangement. All these features are enhanced by the skilful editing of the present edition, which has been enriched with a vast number of additional citations, bringing the cases down to a very recent date.

In particular, the equity rules of the Supreme Court of the United States have now been annotated for the first time, with all the federal decisions relating to their construction—a feature of the work, which alone will render the book even more indispensable to the equity lawyer than it has previously been (if the grammarians will permit the expression). But in addition, all the recent cases on Equity Practice in the Code States, as well as in the common law States, have been added, with

copious citations referring to and elucidating the many peculiar developments of the English Chancery system; thus giving a complete view of the history and present condition of Equity Procedure. The results of this fulness of treatment may be seen everywhere throughout the book.

There are some minor points in which this present edition might have been improved upon. The notes, during the years that have elapsed since the first issue of the book, have been loaded with such a plethora of additional cases, as to necessitate their being printed in very small, and therefore trying type. It might have been better if the work had been printed in four volumes, though this would, perhaps, have hindered its sale. The notes are also in a somewhat chaotic state, owing to the last editor having printed many of his notes as addenda to the original ones, though also incorporating a large number of cases in the text of the old notes. It would have been far better, though of course a great addition to the labor required, if the notes had been wholly recast, and all the new matter worked into them.

The general use of the West Co. Reporters, also, renders a double citation of cases almost essential now-a-days in any text book that aspires to a general audience; but this will be found to be rarely the case in this book. These blemishes, however, are but trifling compared with the real value of the work that Mr. GOULD has done in this edition; and DANIELL'S CHANCERY PRACTICE may be safely affirmed to be more than ever the one essential book, both for study and for practical use, in reference to the practice in Courts of Equity; indispensable alike to the student, the practitioner and the judge.

X.

THE LAW OF EMINENT DOMAIN IN THE UNITED STATES. By
CARMAN F. RANDOLPH. Boston: Little, Brown & Co.
1894.

The importance of this work can hardly be overrated. If there is one subject in the field of law, which is more misunderstood than another, it is the right of eminent domain.

On the one hand, the law-abiding citizen, who wishes to enjoy the fruits of his own labor, denounces it as an unwarrantable invasion of the right of the individual; on the other, the socialist, who prefers to board at some one else's expense, denounces it as ineffectual to compass his grand end, the confiscation of the property of the industrious for the benefit of the lazy. Yet, if it did not exist, there could be no progress; if it were not limited, there could be no stability, and, therefore, equally no progress.

But the tendency is to overlook the limitations, and lay too great stress upon the power. Mr. RANDOLPH, in his preface, states the cardinal principle, that: "Private property exists; if it is taken for public use, it must be paid for." But in his investigations he has, doubtless, found that courts do not always remember that fact, especially if they are interested in the stock of the corporations which exercise the power, or are the happy possessors of passes therefrom. And it is to be regretted that he has not more sharply criticised the shameful injustice that has been repeatedly imposed upon the owners of land, paid for by their own labor, for the benefit of speculators, who never did an honest day's work in their lives. This omission robs his work of much of the value that his thorough, painstaking investigation of the subject has otherwise earned for it.

As a statement of what has been decided on the subject, the book leaves nothing to be desired. From the historical outline of the doctrine down to the brief general conclusions at the end of some of the chapters, there is scarcely an important case omitted, or a judge-made principle of law disregarded. But he has not given enough space to the reconciliation of the conflicting decisions. True, the task would be Augean; but, however, imperfectly performed, it would have earned our lasting gratitude. A full, dispassionate review of the cases, which assert that a trolley road is no additional burden to the fee; that a corporation may poison the water of a running stream to the lasting injury of perhaps a hundred land-owners, without bearing an iota of the burden; that a man is presumed to anticipate the building of a cable road,

with the same amount of prescience as the psalmist, when he wrote: "Their line is gone out into all the earth;" and that a railroad may fill a man's house with the smoke of bituminous coal, with dust and cinders, and rock him to sleep with the gentle vibrations and dulcet notes of sixty-ton engines; would have gone far to create a healthier sentiment on the part of the rising generation, though the elder, like Ephraim, is so far joined to its idols, that it is better to let it alone—to save costs and vexation of spirit.

The work, however, is admirably planned and executed, and contains a very fair presentment of general principles, though defective in censure of the misapplication of these principles; and gives a clearer view of the law of eminent domain than any work hitherto published on that subject. Even, as it is, it will furnish an excellent instrument to open the eyes of a purblind court; and it cannot be too highly praised as a text-book for study.

One excellent feature, which might be adopted with advantage by other writers, is the appendix of recent cases, decided since the writing of the text, thus bringing the decisions down to the time of going to press. There is also an appendix of constitutional provisions, which, when compared with the decisions, serves to strongly emphasize the futility of human hopes and efforts.

R. D. S.

CHAPTERS ON THE PRINCIPLES OF INTERNATIONAL LAW. By JOHN WESTLAKE, Q. C., LL.D. Cambridge, England: University Press; New York: MacMillan & Co., Publishers. 1894. Price, \$2.60.

The author of this latest work upon the subject of international law is at present the Whewell Professor of International Law in the University of Cambridge. Although not intended primarily for use as a text-book in the class room, it is evidently the outcome of investigations engaged in for the purpose of teaching international law to students. It is not a book which could be of much use to a practitioner when called upon to deal with an actual case involving the subject

in question. It was obviously not written with that end in view. Its object is, well stated by the author himself in the preface when he says that the book is not a detailed treatise on international law, but an attempt to stimulate and assist reflection on its principles. The author has disclosed the same purpose in the selection of his topics, which are rather subjects for abstract study of a general character than of direct practical application. Of the eleven chapters into which the work is divided one treats of international law in its relation to law in general; three chapters include brief biographies of seven of the more prominent among the early writers on this subject; still another discusses the elements of international law, which are traceable in the histories of Greece and Rome. One of the most valuable passages in the book occurs where the author points out the distinction between modern international law and the *jus gentium* of the Romans; and another where he explains that this science was prevented from reaching any great development at that time by the fact that such development requires the existence of a considerable number of States on an equal footing; whereas, at that period the Roman and Parthian empires divided the entire known world. Other chapters of the work, such as that upon the Empire of India, are of more interest to British readers than to our own students, as they contain nothing of general application. The chapter upon international rights of self-preservation, to which the reader naturally turns among the first, because of the prominence of that subject in recent diplomatic negotiations, is much too brief and discursive to give much satisfaction. To a lecturer upon international law in a college, or to a writer about to prepare a paper upon certain branches of the science, there is much in the present volume which would prove interesting and helpful. It can also be recommended to any one desirous of becoming a student of the subject from the historical standpoint, or to investigate a little more deeply than most writers go into the sources from which international law springs. Among other classes of readers the book is not likely to have a very wide circulation.

RUSSELL DUANE.

A TREATISE UPON THE LAW OF PLEADING UNDER THE CODES OF CIVIL PROCEDURE. By PHILEMON BLISS, LL.D., Professor of Law in the Missouri State University, and late Judge of the Supreme Court of Missouri. Third Edition. Revised and Annotated by E. F. JOHNSON, B.S., LL.M., Instructor of Law in the University of Michigan. St. Paul, Minn.: West Publishing Company. 1894.

The first edition of this work appeared in 1878, the second in 1887, and, as the learned editor says, the flattering reception given it by the Bench and Bar of the Code States, has called for a third edition in 1894.

As a working tool it, of course, appeals particularly to the practitioners of the Code States, now numbering twenty-six, but to those of the profession who desire to keep abreast with the progress of the law, to those who recognize that the law is a progressive science, it is entitled to careful study, even in States where special pleading and common law practice still hold their disciples in feudal tenure.

The author has perceived the distinction between the two classes of text books—digest and commentaries, and has the wisdom to elect for his subject the latter, and to discuss principles, although always with deference to judicial opinions. His book is not only a treatise but an apology, in the best etymological sense, on and of the system of Code Pleading. He indicates the reasons for its slow evolution, the want of harmony, the harsh discord due to the hostile conservatism of the Bench, and to the fact that it had to be worked out by legal minds inspired with a reverence for the old artificial forms of the common law which amounts to fetish worship. The learned author says on this point: "To this conservatism, as well as the disfavor or timidity with which the new system was received, we owe the fact that some of the rules peculiar to the common law, and opposed to the spirit of the new, are still cherished."

The point which a study of this book has forced upon the conviction of the reviewer, is that it exposes in terms the fallacious and shallow theory that it needs no acumen or learning

to be a good pleader under the code practice, but that the ignorant and learned, the charlatan and the lawyer are on a footing. The author has expressed this thought, to which we wish to lend the weight of our conversion and conviction, with such felicity in his preface that we venture to quote from it again: "It is more necessary than before for the pleader to be a good and careful lawyer; also, that he should be able to write good English. His knowledge must be substantial and in studying his statement he studies his case. He must know what issuable facts will constitute a cause of action and must put there nothing else. One who becomes thoroughly familiar with the principles illustrated in this work cannot but become a good pleader—that is, if he understands his case."

We have addressed ourselves principally to the scientific import of the book for the consideration of the profession in "common law States" as a working tool in "Code States." The book is a good one.

The subject-matter is well marshalled, the broad underlying principles are sought for, explained, demonstrated. Sufficient authorities are cited. The writer evidences that his learning on the subject and science of pleading is broad and deep. The style is clear and forcible. Due attention has been paid to table of contents, table of cases and index, all of which are always of commanding importance. The make-up of the book is good; so also are its matter, method and manner, and we believe it must continue to command respect and attention.

E. P. ALLINSON.

HANDBOOK OF THE LAW OF CONTRACTS. By WM. L. CLARK, Jr. Hornbook Series. St. Paul, Minn.: West Publishing Co., pp. 923. Price, \$3.75.

This is one of the new series of attractive text-books issued by the West Publishing Co., under the name of the "Hornbook Series." The reason for the name of the series lies in the fact that the well established general propositions of law are printed at the head of each section in bold black-letter type. The present volume contains three hundred and

eighteen propositions of hornbook law printed in bold type. Following the introductory statement in each section is a full and adequate discussion of the law, printed in more modest type. The general propositions are stated with great conciseness and clearness. An illegal combination among dealers is thus admirably described: "A combination between dealers in a necessary commodity to control and enhance the price by preventing competition in the sale thereof, or by decreasing the production, or by withholding it from the market, or by other illegitimate means, is contrary to public policy."

Not only is the "hornbook" law well and clearly stated, but the literary style of the general discussion under each proposition is much above the average of the ordinary legal text-book. The author has well digested his material and in consequence is able to write with great freedom and grace. The book is an interesting one to read, which is more than can be said of most of the modern legal mosaics, which the practitioner is obliged to use in his daily work.

The author amply supports his propositions of law by appropriate citations. He states that 10,000 cases have been cited, and that every one of them has been personally examined, and cited because in point—"not because it has been cited by some other writer, or in some other case, or because it is found in the digests." This, of course, is the proper spirit in which to cite cases, and is worthy of all emulation. The book is well printed and well made, and is a worthy addition to the series of which it forms a part.

A. B. WEIMER.

A REVIEW IN LAW AND EQUITY FOR LAW STUDENTS. By GEORGE E. GARDNER, of the Massachusetts Bar. New York: Baker, Voorhis & Co. 1895. 299 pages.

This little book is primarily designed for students who are making their final preparations for admission to the Bar. It contains the time honored definitions which it is proper for every student to master, no difference how well he may be grounded in principles, and able to frame definitions for him-

self. The book also contains a concise statement of the leading principles in all departments of the law, and numbered classifications very helpful to the memory. The references are to the latest and best text-books. An appendix contains the rules regulating admission to the Bar in all the States and Territories.

A. B. WEIMER.

COURTS AND THEIR JURISDICTION. By JOHN D. WORKS, formerly one of the Justices of the Supreme Court of California. Cincinnati: The Robert Clarke Company. 1894. 908 pages.

This work runs into many branches of the law, and is concerned largely with questions of jurisdiction. The titles of the chapters are: 1. Courts. 2. General Principles Affecting Jurisdiction. 3. Means of Acquiring Jurisdiction. 4. Venue. 5. Judges. 6. Common Law, Equity and Statutory Jurisdiction. The first five chapters contain a very complete and careful statement of the general principles of jurisdiction and a description of the organization of courts. In the last chapter which constitutes considerably over a third of the entire book, special subjects are considered, such as Probate, Garnishment, Crimes, Divorce, Sales of Real Estate, Injunctions, etc. These subjects are, of course, treated from their purely jurisdictional side, and while the author's discussion of each of them is necessarily general in character, much practical information is conveyed to the reader.

The chief defect of the work is the failure to give a separate discussion of the specific jurisdiction of the Federal Courts. There is no jurisdictional question which a lawyer has to consider so frequently as to the scope of the jurisdiction of the United States Courts. It may be to the advantage of a client to bring a suit in a Federal rather than a State Court, either to avoid local prejudice or to obtain the advantage of a ruling of the Federal Court contrary to that which prevails in a State Court. Innumerable questions involving rights to the enjoyment of property, immunities, commerce, "due process of law," are constantly arising, and in all such cases the first

question which confronts the practitioner is the question of the selection of his forum. In view of the importance of the subject, it is to be regretted that the author of this work did not include in it a separate, full and complete discussion of Federal jurisdiction. He has, of course, discussed many subjects relating to the Federal Courts, but only in an incidental and subordinate way.

Apart from the above criticism the author is entitled to all praise for the manner in which he has performed his work. His book is a model text-book, clear, logical, concise and accurate. It is admirably printed, and a credit to both author and publisher.

A. B. WEIMER.

A PRACTICAL MANUAL OF MENTAL MEDICINE. By DR. E. RÉGIS, formerly Chief of Clinique of Mental Diseases, Faculty of Medicine, Paris. Formerly Assistant Physician of the Sainte-Anne Asylum. Physician of the Maison de Sante de Castel d' Andorte; Laureate of the Medico-Psychological Society and of the Faculty of Medicine of Paris. Professor of Mental Diseases, Faculty of Medicine, Bordeaux. With a Preface by M. BENJAMIN BALL, Clinical Professor of Mental Diseases, Faculty of Medicine, Paris. A work crowned by the Faculty of Medicine of Paris, Chateaufillard Prize, 1886. Second Edition. Thoroughly revised and largely re-written. Authorized translation by H. M. BANNISTER, A.M., M.D. With Introduction by the Author. Utica, N. Y.: Press of American Journal of Insanity. 1894.

This book is unique in that, so far as we know, it is the only book on the subject of insanity written by an alienist, translated by an alienist, printed and published at an insane asylum; the mechanical work being done entirely by the patients. We have read it through with much interest. Within the moderate compass of 660 pages it gives a complete, historical, pathological, clinical and practical view of the subject of insanity. The translation is an admirable one and the book is well calculated for the use of students. It is especially valua-

ble in its treatment of degeneracies of evolution, a subject which, so far as we know, is not found so well treated in any book in the English language. We cordially recommend it to the profession.

M. D. EWELL.

The Kent Law School, Chicago.
October 30, 1894.

COMMENTARIES ON THE LAW OF PERSONS AND PERSONAL PROPERTY, being an Introduction to the Study of Contracts. By THEODORE W. DWIGHT, late Professor of Law at Columbia College, New York. Edited by EDWARD F. DWIGHT, of the New York Bar. Boston: Little, Brown & Co. 1894.

This work is confined in its scope to those topics included in the learned author's lectures at Columbia Law School immediately preceding the course on contracts. The first book deals with the law of personal rights and personal relations, and chapters are devoted to citizens, aliens, infancy, and finally to corporations. The important part of the second book treats of the method of acquiring ownership.

The book, while intended primarily for students, recommends itself not only to neophytes but to the young hierophants in the temple of justice, and may well be read by those who care to refresh their memory and understanding by reviewing the fundamental principles on which the law must ever rest. While neglecting none of the masters who have preceded him, nor forgetting the judicial declarations germane to his subjects, the work is not a mere digest nor a compilation of excerpts loosely thrown together as so many text-books are, which bear the impress of being written to order. The author has stamped his individuality on his work; his plan or scheme is well defined and sustained. The subject-matter is marshalled with intelligence and in natural sequence. The style is simple and terse but interesting and attractive.

The tables and index are full and complete, and both suggestive and responsive. It is sufficient to have named the publishers to give assurance of all the superior excellences of

the bookmakers' art, which always delight us in the productions of Little, Brown & Co. Even in these days of multitudinous productions this work may be said to shew cause.

E. P. ALLINSON.

CASES ON CRIMINAL LAW. By JOSEPH HENRY BEALE, Jr., Assistant Professor of Law in Harvard University. Harvard Law Review Publishing Association.

Professor BEALE, in his recent work upon selected cases from the Criminal Law, has placed before the profession a work which is entitled to the highest appreciation. In the arrangement of the cases, Professor BEALE has brought into accessible form, and disencumbered of text, what has been heretofore involved in text and note and almost concealed in the accretion of years of legal literature.

In the reported cases, the Bench, speaking, give the reason "for the faith." The cases present the Criminal Law in clear, concise and forcible terms, that are easily apprehensible.

The work evinces thoughtful care in the selection of the cases and an intelligent appreciation of the principles of the law concerned in the arrangement.

The range of the cases is from the early times of reported cases to the more recent English and American periods. The author, in presenting a principle of the Criminal Law, selects a case which elucidates it so clearly that the reason therefor stands forth as a model of perspicuity.

Professor BEALE, with great modesty, announces that the "collection of cases is chiefly intended for the use of classes in the schools." As a method of enabling the student to grasp the legal principle contained in the discussion of the case by the paths of thought, the syllabus has been dispensed with. An index, however, with the case in point, is attached to the work.

To the lawyer, the case involving the principle is readily ascertained, and to the student, the cases being grouped under the appropriate headings, the defined purpose of Professor BEALE is accomplished, the development of the mind by its

exercise and the acquirement of a legal principle through the continuity of thought. The system thus adopted has its decided advantages. The lawyer is quickly recompensed in finding his case, and the student receives the mental impulse in mastering the principle in the discussion.

The work of Professor BEALE is well worthy the lawyer's perusal, and to the seeker after legal principles, careful study.

JOHN A. Siner.