

## BOOK REVIEWS.

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A TREATISE ON THE LAW OF RES JUDICATA. Including the Doctrines of Jurisdiction, Bar by Suit, and Lis Pendens. By HUKM CHAND, M.A. London: William Clowes & Sons. Edinburgh: William Green & Sons. 1894. Printed at the Education Society's Steam Press, Byculla, Bombay.

Judge Dillon has given us but recently a vivid pen-picture of the marvellous growth of our law. How it has followed the flag of England wherever it has been planted throughout the globe. How, in Westminster Hall, or where, beneath the dome of the Capitol at Washington, sits the most august of earthly tribunals, in local courts on the Atlantic seaboard or at the base of the Rocky Mountains;

“By the long wash of Australasian seas  
Far off,”

or on the shores of the Pacific Ocean, or beneath Indian skies, the eyes of all—judge, lawyer and student—are couched to the same gladsome light of jurisprudence. This formidable work of 800 pages, which lies before us for review, is a tribute and further recognition of this grand triumphal march which has circled the world and tells us anew how in these great Anglo-Saxon Empires, over which float the Cross of St. George and the Stars and Stripes, there is a still greater force than the British Oak at work to protect against trespass *vi et armis*. In a thousand courts the scales of justice are held with even hand. Thousands of jurists and judges are applying the same principles, drinking from the same fountains, solving the same problems, working out the evolution of law and equity along the same lines, with the same underlying aim and thought in view, and obedient to the same jurisprudence. Recognizing this common ancestry and common foundation of our common law, this learned

Indian jurist expresses in his preface the conviction "That courts, and, to some extent, even the Legislature of one country, do not derive that assistance from the deliberations and declarations of eminent jurists and judges in other countries to which their high judicial value entitles them; and lawyers in every country often devote their time and energies to the discussion and determination of questions that have been already most fully debated and elucidated in others. Enactments are thus sometimes made and cases frequently disposed of in one country, in accordance with principles which are there regarded as indisputable, but which are not only in direct conflict with those recognized and acted upon elsewhere, but have themselves, in some instances, after a long trial, been found inconsistent with the proper administration of justice, and deliberately abrogated or tacitly relinquished as unsound."

It has been thought proper to quote freely from these two great writers who seem to clasp hands across the seas, because they indicate and vindicate the broad spirit of philosophy with which our friend, writing "under Indian skies," has approached a branch of the law which is to-day of equal import at the base of the Rocky and Himalaya Mountains. I find it in my heart to wish that the LAW REGISTER would give the space necessary for a reprint of the entire preface, so much does it commend itself as a convincing monograph illustrating "the great advantage accruing to the municipal law of every country, both in regard to its development and practical application, by a familiar acquaintance on the part of those concerned in its administration with the corresponding principles recognized and acted upon in other countries, an advantage not restricted to any particular branch of law, and extending even to the codified branches of it." Such a spirit, coupled with an infinite capacity of research, reinforced by a truly judicial ability to co-ordinate, marshal and weigh painfully acquired *knowledge*, so that the resulting evolution may be entitled to be christened *wisdom*, may be fairly attributed as the endowment which our learned author has brought to the consideration of the doctrine of *res judicata* in its applica-

tion to civil proceedings, and which, as he says, he has selected "to form the subject of his work on account of its practical importance and unusual difficulty."

Starting from a maxim couched in half a dozen words, he considers the elaborate rules "developed out of the multiplicity of controversies coming before the courts with a thousand minute shades of difference." The decisions of England, India and America are all laid under tribute to elucidate the principles laid down, and the French and Roman jurists have not been overlooked in tracing these principles to their source.

A fairly full index contributes to the utility of the book as a work of reference. The style is clear, concise and attractive, so far as it belongs to the author, although the enunciation of principles often has been left to the *ipsissima verba* of the judges or lawyers from whom he cites constantly and copiously. While the book is not likely to be thumbed over by the every-day case-law practitioner, it is one that commends itself to the lawyer who believes that law should be studied as science as well as practised as an art. It is certainly a most valuable contribution to legal literature.

EDWARD P. ALLINSON.

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PRACTICE IN ATTACHMENT OF PROPERTY FOR THE STATE OF NEW YORK. By GEORGE W. BREEDNER. Albany, N. Y.: Matthew Bender, Publisher. 1895.

It is somewhat surprising to find that proceedings in attachment under the New York Civil Code are attended with so many pitfalls for the unwary as to call for a separate treatise upon the rules and practice governing such measures. An examination, however, of the code and of the decisions in the voluminous practice reports, justifies the author's contention that a book upon this subject, covering the latest amendments to the code and reported cases, is a necessity. So far as can be judged, the work has been thoroughly and conscientiously done. There are about six hundred citations, most of them from the New York Reports of the last ten years. The

arrangement is simple and consistent. There is also an appendix containing eighty-eight forms. The book should be of service to that busy class of commercial lawyers who are invariably called upon to decide the most difficult points of practice at a moment's notice.

W. H. L.

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SYNOPSIS OF THE LAW OF CRIMES AND PUNISHMENTS. By JOHN B. MINOR, LL.D., Professor of Common and Statute Law in the University of Virginia. Richmond: Printed for the Author. 1894.

The object of this book, as stated in the preface, is to prepare the student "to *enter upon* the practice of the law in the criminal courts." Perhaps this is rather a large claim to be made for any single volume, particularly one of only three hundred odd pages.

But if, as he is advised to do, the student uses it only in connection with a careful reading of the standard text-writers and of the leading cases; if, in short, he regards it simply as an outline to be filled in, he will doubtless find it a very useful adjunct to his studies—a guiding thread through the labyrinths of the more voluminous treatises.

The seven chapters treat, respectively, of: the general nature of crimes and punishments; persons capable of committing crimes and amenable to punishment; the several degrees of guilt; the several crimes, with their respective punishments; certain general principles touching crimes and punishments; the means of preventing offences; and the method of punishing offences.

The idea of a synopsis is followed throughout; and, though the system of divisions and sub-divisions is a trifle confusing, the book is, upon the whole, to be commended, not only for clearness and condensation, but for careful and scientific arrangement. The time-honored and indispensable definitions are set forth, with frequent citations to the fountain-heads of the law; but the illustrative cases are fewer than might be

desired, and are found, almost without exception, in British or Virginian Reports.

And although, as a practical working tool for students in that State, its utility is thereby enhanced, the general interest of the book is limited by the fact that, from first to last, it deals primarily, and often exclusively, with Virginia law.

S. D. M.

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AMERICAN PROBATE LAW AND PRACTICE. A Complete and Practical Treatise, Expository of Probate Law as it Stands To-day, Including a Discussion of the General Principles Governing the Execution and Proof of Wills, &c. Applicable to all the States. By FRANK S. RICE, Counsellor-at-Law, Albany, N. Y. Albany, N. Y.: Matthew Bender, Law Publisher, 511-513 Broadway. 1894.

This is the first attempt to unite in one homogeneous work the principles that underlie the varying practice in matters of probate in the several states of the Union, and while necessarily subject to all the drawbacks which attend a pioneer excursion into an unknown region, without the marks of former explorers as a guide, the author has been very fortunate in his accomplishment of the task he has set himself. The arrangement of the work, and the development of the subject, while not precisely scientific, are probably as nearly so as one has a right to expect from the subject-matter.

The author's statements of the law are sometimes too vague, rather than stated in the clear, unmistakable manner that becomes the author of a text-book. When the cases on a subject are conflicting, it is the duty of the writer to state what the courts should have decided. What they did decide can be learned from the digests of cases; and without a definite opinion to which to pin our faith, we are left to flounder hopelessly. And even when the decisions are plain enough, the same fault appears. In speaking of the status of an adopted child in regard to extra-territorial inheritance (p. 553), a mere reference is made to the case of *Ross v. Ross*, 129 Mass. 243,

instead of a *résumé* of the principles laid down therein; and, in passing, we may remark the absence of any reference to a recent Illinois case, *Keegan v. Geraghty*, 101 Ill. 26, which is fully as important as *Ross v. Ross*.

Some mistakes are so patent that they would seem to be due to careless typography and proof-reading, as, for instance, when the author is made to say, on p. 109, in substance, that a holographic will is synonymous with holographic.

But in most matters the author's judgment is singularly sound. He repudiates the rule of the Massachusetts courts, that a stock dividend represents capital in all cases, and follows the opinion of Judge Redfield, which makes the decision of the question whether such a dividend is capital or income depend on the circumstances of the case, and whether it represents earnings or increased capital, without regard to the form in which it is declared.

It was, of course, impossible to refer, in a work like the present, to even every important case on the subject under discussion. But while, of course, no exception can justly be taken to the fact that the author's estimate of what are the most important cases should differ from ours, one cannot help feeling slightly aggrieved that some seemingly noteworthy cases have been omitted without the least reference. Such, for instance, on the subject of undue influence by means of spiritualism, is *Middleditch v. Williams*, 45 N. J. Eq. 726, which is the most important recent case on that question.

Among other minor omissions, may be noted the fact that there is no reference to the cases in which the word "relatives" or "relations" has been construed to include or exclude certain classes of persons—*e. g.*, illegitimates—as *In re Jordell*, 44 Ch. D. 590.

But, in spite of these imperfections, which, as was said before, are almost essential in a pioneer work, Mr. Rice has conferred a substantial benefit upon the profession by this volume, which we are sure it will not be slow to recognize.