BOOK REVIEWS.

A HANDBOOK OF THE LAW OF DEFAMATION AND VERBAL INJURY. By F. T. COOPER, M. A., LL. B. Advocate. Edinburgh: William Green & Sons. 1894. Pages, 319.

This is a Scotch book on slander and libel. The law contained in it is Scotch, and almost all of the citations are from the Scotch reports. The merit of the book is in its arrangement, and the extent to which the alphabetical classification of slanderous and libellous words and phrases is carried. All of the various crimes of which a person may be charged are alphabetically arranged. Various accusations of misbehavior are treated in the same way. Under the letter "T" in one group we find the following, "Treacherous fellow, to call a man a: *Grierson* v. *Harvey*, 43 Scot. Jur. 190;" "Two faced man, to call a person a, *Cunningham* v. *Duncan*, 16 R. 383."

The Scotch law seems to be painfully sensitive of personal reputation, and, in vindicating it, goes to lengths which cannot be justified, and which certainly are not paralleled in America and England. Thus it is defamatory to say that a man is a "bad lot," "contemptible," "disgraceful," "infidel," "ignorant of religion," "insolent dogmatist," "irreligious," "a Judas," "Satanic agent," "scoffer at religion," "serpent." You cannot say that your enemy is a "scamp," or a "scoundrel," or that he has "skedaddled;" but you may find some relief in calling him a "puppy," for that is permitted without damages.

Public men are protected to an unusual extent. While sarcasm and ridicule may be used in a mild way, a continued use of these weapons in controversy is actionable. In one case a parliamentary candidate was allowed an issue against the proprietor of a newspaper, who likened him to a "viper" and a "snake in the grass;" and another newspaper was punished for saying of certain public men that they "were sturdy, bold and unblushing repudiators," that "they acted like thimble-riggers—heads I win; tails you lose." When contrasted with the amenities of our press in the treatment of political opponents, these expressions seem mild, and the severity with which they were punished suggests that Scotch

editors have not much chance to cultivate any extensive vituperative vocabulary.

Although Mr. Cooper's book may not be a necessity to the American practitioner, to the student of Scotch life and character and to the student of law in the broad sense, it is a mine of curious and interesting information. A. B. WEIMER.

THE LAW OF VOLUNTARY SOCIETIES, MUTUAL BENEFIT INSURANCE AND ACCIDENT INSURANCE. By WILLIAM C. NIBLACK. Chicago: Callaghan & Co. Second Edition. 1894.

This edition is, in many respects, a great improvement on the first, which, as the author himself confesses in the preface to this, was necessarily imperfect, on account of its hurried preparation. The main outlines, however, have been followed; but they have been very much enlarged in detail, as well as enriched by the addition of the numerous cases decided since the first edition. These have been so abundant, as of themselves to authorize the publication of a new edition, even if the work had not stood in need of improvement.

The most valuable feature of the book is its full treatment of the principles of law governing unincorporated associations —a subject generally either disregarded, pushed out of sight in a corner of Insurance, or grudgingly given standing-room under Corporations, where it does not belong. Yet the growth of such societies has been so rapid, and some of them have attained such numerical, social, and even political strength, that they deserve a separate department of legal literature. But so long as this is denied them, (Stevick on Unincorporated Associations, a mere essay, being the only independent work thereon that has come to the writer's notice,) they can nowhere be treated of so well as in a work on this subject. Realizing that fact, the author has stated the general principles governing their formation and management, though, in many respects, these are but the merest incidents of the subject of insurance.

The author's statements of the law are clear, precise and positive,—a most excellent feature in a text-book, the proper

province of which is to state what the law is, not what it ought to be, which belongs to the essayist, nor why it is as it is, which belongs to the elementary writer. His judgment, also, on disputed points, is remarkably sound; and his reverence for *obiter dicta*, which are generally sops to Cerberus, less than little. In a few words, he dissipates the cloud of uncertainty cast around the question of the binding effect of the by-laws of an unincorporated association by the *dicta* that the courts will not interfere with their execution, *unless they are manifestly harsh and unconscionable;* and declares, with convincing energy, that "while a society remains unincorporated it may make regulations, *ad libitum*, for the discipline of its members, including, of course, expulsion, so long as they are not in conflict with the law. But the moment it obtains a charter it parts with the powers it before possessed, and comes under the law which governs corporate bodies." This, of course, does not apply to an illegal or wanton abuse of the by-laws.

Especially valuable portions of the work are, the chapter on "Suits against Unincorporated Societies," which contains the most complete and able discussion of that subject known to the writer, if not the only one of any substantial value; and that on the "Construction of the Designation of the Beneficiary," which is one of the most important questions in benefit insurance, and one of the most disturbed by conflicting decisions. The author's treatment of this latter is very full and satisfactory; but it may be permitted to note that he has omitted to include the question, whether or not illegitimates, when not expressly named, may take as "children" or "relatives." It has been decided that they may take as "children," under a will, in a proper case: *Hill* v. *Crook*, 6 L. R. H. L. 265; *contra*, *Dorin* v. *Dorin*, 7 L. R. H. L. 568; but not as "relatives:" *In re Saville's Trusts*, 14 W. R. 603; unless under special circumstances, as in the recent case of *In re Deakin*, [1894] 3 Ch. 565. By analogy, they should take as beneficiaries or not, under similar circumstances. He does, however, state that an adopted child will, under some circumstances, take as a "child."

There has been added to the work a discussion of the subject of "Accident Insurance," which the author earnestly hopes "may not be found to be without value." He may console himself on this score. Though brief, the chapters on this subject contain an admirable compendium of the law thereon, which lack of space forbids longer comment upon. It may not be altogether idle, however, to refer to the interesting discussion on the subject of "Voluntary Exposure to Danger;" and to that on the subject of total disability, where will be found the sound decision of the Supreme Court of Pennsylvania, that when a man, blind in one eye, before taking out a policy, loses the sight of the other, it is "a loss of the sight of both eyes," within the meaning of the policy: *Humphreys* v. *Assn.*, 139 Pa. 264. The rule, as is correctly stated by Mr. Niblack, is, that such policies are to be liberally construed, a rule that should be commended to the notice of the New York court, which recently decided that the loss of all the fingers and part of the palm, leaving only the second joint of the thumb, was not a loss of "one entire hand," within the meaning of the policy: *Sneck* v. *Travellers' Ins. Co. of Hartford*, 30 N. Y. Suppl. 881. The Supreme Court of Wisconsin, however, has since held that such a question is for the jury alone: *Lord* v. *American Mut. Acc. Assn.*, 61 N. W. Rep. 293.

The whole book bears evidence of very careful preparation; and while, on account of its restricted scope, it cannot fairly be compared with more comprehensive and extensive works, it may be safely affirmed to be, within its own sphere, the equal of any, and, in some respects, as has been said, superior to all.

ARDEMUS STEWART.

RULES OF EVIDENCE, AS PRESCRIBED BY THE COMMON LAW, FOR THE TRIAL OF ACTIONS AND PROCEEDINGS. By GEORGE W. BRADNER. Chicago: Callaghan & Co. 1895.

Recent works on Evidence have been more distinguished by their bulk than by any other feature. They have endeavored to present the subject in all its relations, forgetting that it is so intimately connected with pleading that it requires very

careful attention to keep the two separate. This is especially true of the bulky volumes of Rice on Evidence, which really amount to but little more than a digest of reported cases. The older works on the subject, such as Greenleaf, have been so patched by the necessary addition of new matter, often contradictory of the original text, as to be ill-adapted to present needs and conditions; other works, such as Stephen, have been little more than a bald statement of rules and principles, with too few citations to make it possible to satisfactorily substantiate therefrom the doctrines of the text; and yet others, such as Wood, have aimed chiefly at furnishing a practical statement of the rules that govern the admissibility of evidence in a form ready for easy use. There is, therefore, still room for a work such as this, which, while striving to present its matter in a convenient form, also aims at giving, as far as is possible, a logical statement of the rules of evidence, and their underlying principles. It therefore occupies, as the author states in his preface, a position intermediate between Greenleaf, Taylor, and the others of that ilk, on the one hand, and Wood, Stephen, and their congeners, on the other.

This makes it of especial value, for in its pages one may find not only the necessary rules that govern the admissibility of evidence, but also very many of the instances in which those rules have been applied to special circumstances. All obsolete law has, however, been carefully eliminated, for it was no part of the author's purpose to give a history of the development of the law of evidence. In fact, the citations are almost entirely confined to the latest decided cases, especially on controverted points.

In regard to questions still unsettled, the author has not permitted himself the amusement of airing his knowledge in critical dissertations. He states the rule, as he conceives it, cites his authorities, and leaves the reader to verify his conclusions, if he chooses, a method that not only saves space, but pays a delicate compliment to the sagacity of his audience.

One point that strikes the attention is, the almost entire absence of the discussion with regard to the disqualification of a witness by interest, which occupies so large a portion of

other works. This is a notable improvement. Interest, as a disqualification, has been almost wholly wiped out in this country, save in the case of suits in which the estate of a deceased person is interested, and a discussion of it is therefore a useless encumbrance. The exception noted is, of course, fully treated.

The underlying principle of the law of evidence is, as Mr. BRADNER justly states, the relevancy of the evidence offered. On this its admissibility depends. The proposition is so simple, and so self-evident, that it is a wonder that greater stress has not been previously laid upon it. And yet, as we all know, Greenleaf fails to state that doctrine clearly, although he demonstrates it plainly enough in his discussion; and others have been equally remiss. But there are some branches of evidence, which, though, strictly speaking, they do not belong to evidence at all, are yet so inseparably connected with it as to form a necessary part of any work on that subject, in spite of the fact that relevancy cannot be properly predicated of them. Such is the subject of judicial notice; which accordingly is given place in this book, and receives a full discussion.

One of the best features of this work is its completeness in matters of detail; which, from its size and scope, one would hardly have expected. But some minor matters are mentioned, that are omitted in more pretentious volumes. Such are the statements that the courts will take judicial notice of the enumeration of the inhabitants of a state, (though there is no mention of the fact that the Court of New York, in the notorious apportionment case, declined to accept that doctrine;) that an attorney is compellable to disclose the name of the person who has retained him; and that an attorney can be compelled to disclose communications made to him by a client, conveying information of an intent to commit fraud or crime.

On the whole the book is a valuable one not only from the fact that it is new, and contains the latest cases, but that it presents the *law* in a compact form, and one eminently convenient for ready reference. Q.

THE STATUTE RAILROAD LAWS OF NEW YORK, containing the General Railroad Law, the General Corporation Law, the Stock Corporation Law, the Statutory Construction Law, the Rapid Transit Act, the Condemnation Law, &c., with Numerous Citations, &c. By GEORGE A. BENHAM, of the Troy Bar. Albany, N. Y.: W. C. Little & Co. 1894.

One of the most striking evidences of the growth and development of our country is the number of books that has appeared of recent years, dealing with the laws peculiar to the larger and wealthier states. In the early years of the century, and, indeed, until a quite recent date, such works would have gone begging for a publisher, for they could only have commanded a very limited *clientele*. But now they are a necessity, since development along different and sometimes contradictory lines has rendered the law of one state often wholly inapplicable to another; and the accumulated mass renders a general work too bulky for handy reference.

In this volume, however, the author has not wholly confined himself to the law of his own state; he has also included the Interstate Commerce Act, and has referred to numerous decisions from other states, as well as from England, tending to explain the construction of the New York Statutes. This, of course, lends much additional value to the book, and redeems it from the accusation of mere provincialism, which might be successfully urged against some works of a similar scope, notably one published some years ago, that professed to treat of the subject of mandamus under the laws of the same state.

In scope and execution this book proves an excellent development of its author's idea, and compares very favorably with other works on the same lines, such as Weimer on Railroads, to quote the most recent example. Of course, its usefulness is limited by its scope to the state with whose laws it deals; but to the lawyers of that state it is indispensable.

R. D. S.

THE FEDERAL INCOME TAX EXPLAINED. By JOHN M. GOULD AND GEORGE L. TUCKER, Authors of "Notes on the United States Statutes." Boston: Little, Brown & Co. 1894.

Whatever may be the outcome of the present contest before

the Supreme Court over the constitutionality of the new Income Tax, this little book will be widely read. It is simply a clear and concise account of the construction put by the courts and by the Department of Internal Revenue upon the various clauses of the former Acts of this character, and a well drawn comparison between the provisions of the earlier laws and those of the Act of 1894, which, if it withstands the present assault upon its general constitutionality, will doubtless prove a fruitful field for future contests in which the interpretation of its separate clauses will figure.

The book is thoroughly well arranged in the form of an annotation, the decisions upon each point of the previous Acts being grouped under a brief statement of the point itself. The authors have wisely abstained from entering upon any discussion of the wisdom or folly, constitutionality or unconstitutionality of the law. They have merely offered, in a practical and convenient form, the data which every lawyer, in whose hands is placed a case, under this law, will refer to. The exhaustive index adds materially to the value of the book.

W.

LICENSE LAWS. ALL LICENSE LAWS RESTRICTING INTERSTATE COMMERCE ARE UNCONSTITUTIONAL. Chicago: J. A. SHEPARD, Publisher.

The defendant in the case of *City of Titusville, Pennsylvania,* v. *J. W. Brennan,* 153 U. S. 193, was an employé of the publisher of this little pamphlet, which contains a history of the case, and a copy of the decision of the court of last resort. Accompanying it is a leaflet in which are set forth what the author considers the steps advisable to be taken by "drummers" for their protection in case they are arrested for selling without a license when engaged in interstate commerce.

The Collector Publisher Company (Detroit) has issued two more of the excellent quizzers, or series of questions and answers, for students preparing for examination for admission to the bar, etc., No. 12, on Agency, and No. 13, on Partnership. Mr. WM. C. SPRAGUE is the author and compiler of these little books, and much credit is due his thoroughness in covering the ground of his subjects, and the order in which he has arranged the questions and answers. Quizzers on Blackstone, on Domestic Relations, Criminal Law, Torts, Real Property, Constitutional Law, Contracts, and on Negotiable Instruments, have already made their appearance, and others are to follow.