

BOOK REVIEWS.

HANDBOOK OF EQUITY JURISPRUDENCE. By NORMAN FETTER.
Hornbook Series. St. Paul, Minn.: West Publishing Co.
1895. 463 pages.

In this volume we have the sixth in order of publication of the Hornbook Series, that series of elementary treatises which has already attracted the favorable attention of the profession. The plan of the work is uniform with that of the preceding volumes and offers an admirable method of training for the student, for it gives him an analytical view of the subject under discussion, which is very apt to make a fixed impression upon his mind. The treatment of equity jurisprudence in this particular work presents a fresh appearance in the following arrangement :

Nature and Definition; Doctrines; Grounds for Relief; Property in Equity; Remedies; Reformation, Cancellation and Quieting Title; Ancillary Remedies.

This arrangement, it may be said, while lending itself readily to the treatment of elementary equity is somewhat forced. It puzzles one a little, for instance, to understand why "Reformation, Cancellation and Quieting Title" should form a general division of the work.

The author has made free use of the works of others upon his subject, though full credit seems to have been given for that use, the arrangement of "Maxims," for example, being expressly credited to Judge Phelps. There is, however, plenty of original work manifest throughout, and the relation between the text and notes is especially well balanced.

The reviewer is obliged, however, to dissent from the author upon one very important particular, and that is in his definition of equity. He defines equity as "that portion of natural justice susceptible of judicial enforcement, which was either not recognized at all by the common law or inadequately enforced by reason of its cramped procedure." Now,

"natural justice" is a very misleading term, and only tends to confuse the student. The justice, which is administered in courts of law and equity, is founded almost, if not entirely, upon the rights and obligations of individuals as members of society, and is more exactly defined as "civil" justice. The definition given would also lead the student to suppose that the common law and equity divided between them definitely and enforced the whole field of natural justice, which cannot, of course, be possible. The author has followed the later rather than the earlier writers in this portion of his work and in the writer's opinion has gone astray. The Pennsylvania lawyer misses also in the chapter on the "Jurisdiction of Equity over Crimes," a reference to the article on "Equity Jurisdiction as Applied to Crimes and Misdemeanors," by the late Richard C. McMurtrie, Esq., which was published in Vol. 31 of the REGISTER AND REVIEW, page 1.

After carefully scanning the work as a whole, however, one realizes with a feeling of pleasure and satisfaction that a progressive and practical, if not profound, work has been added to the literature on this subject.

R. P. BRADFORD.

COMMENTARIES ON THE LAW OF INJUNCTIONS, as Determined by the Courts and Statutes of England and of the United States. By CHARLES FISK BEACH, Jr., of the New York Bar. Author of "Modern Equity Jurisprudence," "Modern Equity Practice," &c., &c. In Two Volumes. Albany: H. B. Parsons, Law Publisher. 1895.

The author of this work is so well and so favorably known to the profession, that his name on the title-page of a book is a sufficient guaranty of its value; and the present volume will be found in no wise to detract from his past reputation. One can but admire, also, the contrast which his brief, modest preface bears to the verbose introduction and magniloquent promises of some far less valuable if more pretentious works. The very modesty of the author is itself an assurance of the successful execution of his task.

As was to have been expected, the arrangement of the work is logical, the statements of law clear and positive, the discussion of principles carried out in full detail; but there is but little time spent in argument over controverted points. The author is content to state the law as he finds it, leaving it to the parties more closely interested to prove to the courts what it should be. This is the safer plan for the text-book writer. Theoretical discussions belong rather to the province of the essayist.

The introductory chapter, which treats of the definition and nature of injunctions, gives a very clear insight into the powers of this "strong arm of equity," and shows very plainly, by comparing it with other legal remedies, such as specific performance and mandamus, its peculiar breadth of scope and efficiency of operation, as well as its adaptability to changing and novel conditions. In this chapter the broad lines of equity jurisdiction in regard to the issuing of an injunction are plainly marked out, and the causes which will warrant the application of such a remedy concisely stated. It forms, in fact, an excellent epitome of the work.

A great deal of the matter in these two volumes is of course not new; and yet it seems new, in many instances, from the vigor of treatment. There is much, however, that is really new, arising from the peculiar conditions, social and otherwise, of the past few years. The chapter on Strikes is the most notable example of this. The application of the remedy by injunction to this phase of our social relations is of very recent date, and, it would seem, from some of the utterances of legal theorists, of still doubtful legality. But, whether theoretically proper or not, it has come to stay, and so Mr. BEACH treats it. It is not entirely clear, however, why, in an otherwise logical arrangement, monopolies should have been included under the same head as strikes, unless the author considered the former the parent of the latter, (as indeed they often seem to be.) But then it should rather have preceded than followed the other.

It is perhaps unfortunate that this work was issued so soon. If it had been delayed for a few months, it might have contained references to some very important cases, recently decided,

as to which it is now silent, and the necessary omission of which to some degree impairs its completeness. Such is the famous injunction against Debs and his followers, which broke the back-bone of the Chicago strike, and which is now before the Supreme Court of the United States on appeal from sentence for contempt for disobedience thereof; and the notorious decision in the Sugar Trust Case, which left the people of this country at the mercy of any and every monopoly. It also would have decidedly enhanced the value of the work, if the author had been able to qualify the decision of Judge Jenkins in the case of the *Farmers' Loan and Trust Co. v. N. Pac. Ry. Co.*, 60 Fed. Rep. 803, by the decision of the Circuit Court of Appeals, in the same case, on appeal from the order of the lower court, which very materially modified the latter: *Arthur v. Oakes*, 63 Fed. Rep. 310.

It is also matter of regret, in view of the number and importance of the public contracts that are annually let in this country, and of the vast opportunities for favoritism and fraud in the letting of them, that Mr. BEACH has not devoted some space to a discussion of the injunction as a remedy in such cases. There is no reference to this subject in the index; and but one case on the subject is to be found, so far at least as a cursory examination goes to show, in the work, and that crowded into a note under the head of Parties. Yet it would seem hardly controvertible, that not only may a taxpayer bring suit to enjoin a contract void on its face or illegally let, but a disappointed bidder, if also a taxpayer, may do so. The case of *Mazet v. Pittsburgh*, 137 Pa. 548, which substantiates the first of these propositions, is not even referred to.

In spite of these, and other minor defects, which lack of space forbids mentioning, the work is an extremely valuable one, fully worthy, as has been said, of the reputation of its author; and no one who uses it will find it to disappoint his expectations.

ARDEMUS STEWART.

THE LAW OF MUNICIPAL CORPORATIONS IN THE STATE OF OHIO, embracing the Statutes in force, with Forms, and Notes of the Decisions of the Supreme and other Courts of the

State relating thereto. By HIRAM D. PECK. Fourth Edition. Cincinnati: The Robert Clarke Co. 1894.

This is another of the local text-books, which the peculiar idiosyncrasies of our different state legislatures and courts have rendered necessary, to the great benefit of the book publishers and writers, but likewise to the despair of the practitioner who would keep his library reasonably complete. No question, however, can exist as to the utility of such works, under present conditions. They are absolutely essential, if the reader is to be given anything but a bare outline of the general principles of the subject; for it is impossible nowadays to present anything like a detailed statement of all the different statutes and judicial rulings of the forty-four states of the Union in any reasonable and manageable compass.

This being the case, it is evident that the prime requisite of such a work, dealing with local laws and decisions, is completeness within its limited sphere; and this Mr. PECK seems to have attained. How difficult it is to keep it complete, however, may be realized from the rapidity with which it has been found necessary to issue new editions, in order to keep pace with legislative tinkering, this being the fourth within the space of twenty years. There is a good deal of unconscious humor in the remarks of the author in his preface, that "This makes the revision complete to January 1, 1896, unless the legislature should be convened in special session."

The arrangement of the work is an excellent one for its purpose, being simply a digest of the statutes, annotated with the cases decided under them, and with forms necessary for practice thereunder. One notable innovation is to be found in the arrangement of the notes, which, instead of being numbered 1, 2, 3, &c., or a, b, c, &c., are headed with the number of the section to which they belong. This, of course, would not be practicable where, as in Pennsylvania, the statutes of each session are independent of each other, but is far preferable to any other mode of numbering, where, as in Ohio and other code states, the laws of each session are numbered according to the sections of the code. Yet a better plan

would seem to be that adopted by many annotators, of placing the notes immediately after the section to which they refer, instead of at the bottom of the page.

The audience which this work commands is of course limited by its scope; but within its sphere, it possesses great value, and is indispensable to any one who wishes to gain a clear idea of the laws governing municipal corporations in Ohio. X.

COMMENTARIES ON THE LAW OF INSURANCE, including Life, Fire, Marine, Accident and Casualty, and Guaranty Insurance in every form, as Determined by the Courts and Statutes of England and the United States. By CHARLES FISK BEACH, Jr., of the New York Bar, Author of "Modern Equity Jurisprudence," &c. In Two Volumes. Boston and New York: Houghton, Mifflin & Co., The Riverside Press, Cambridge. 1895.

This work is in some respects different from those which Mr. BEACH has previously published. The peculiar condition of the law of insurance has made it necessary for him to depart somewhat from his usual practice, and, instead of simply stating the law as he finds it expressed in the better authorities, to give some space to the discussion of questions as yet unsettled, and to attempt to reconcile cases apparently in hopeless conflict. This has been done, as he informs us in the preface, in the precise language of the judges, whenever possible. Perhaps the most prominent examples of this are to be found in the chapters on Insurable Interest and Premiums. The work is rather enhanced in value by this circumstance; and yet one could wish that he had given his own opinions with a little more freedom and less modesty. They would in many cases be fully as valuable as the declarations of the bench.

The text is written with the author's usual clearness and directness, and presents the principles of the law on the subject in a terse and perspicuous manner. The details are not so well worked out as might have been the case if he had

devoted himself to one branch of his subject, for it is a manifest impossibility to present a complete view of the law of insurance, in all its departments, with its endless ramifications and myriad inconsistencies, within the compass of two volumes. But, with a few slight exceptions, this work contains all that is needed by the practitioner, save those minor points that are so rarely met with, but so badly needed on unexpected occasions. This is no blemish, however, and cannot be justly laid at the author's door.

Yet there are one or two matters which might have been presented with a little more fullness, and one or two more that have been omitted altogether. For instance, Mr. BEACH might have favored us with a more extended discussion of the meaning of the words "total loss" and "wholly destroyed," in reference to fire insurance; for, although stating the ruling of one court thereon, in § 1291, he omits several other important cases, that have also construed these same words.

It would also have been well, if, in treating of the law of beneficial associations, he had devoted some space to a discussion of the status of railroad relief associations, and the validity of the by-laws of such organizations, which require the dues of the members to be deducted from their pay, and make it necessary for them, before receiving benefits, to give a release to the company of all claims for damages for injuries caused by its negligence. This is fast coming to be a question of much importance, and there are a number of interesting cases on the subject.

On the other hand, Mr. BEACH has devoted a section to the discussion of the effect of what is known as a "binding slip," given by insurance brokers to the person applying, while the policy is in process of execution; has stated the rule as to the individual liability of the members of an unincorporated association for contracts of insurance made in the name of the association; has noted what is included in the term "household furniture;" and has, besides citing the Pennsylvania case, which decided that when a person at the time of being insured was already blind in one eye, the loss of the other was a total loss of sight within the meaning of the policy, discov-

ered an English case to precisely the same effect, which latter escaped Mr. Niblack's search.

On the whole, therefore, Mr. BEACH's work is a reasonably complete one, and will prove eminently useful to the profession; while the method of citing the very words of the court in doubtful and conflicting cases, will save much annoyance and waste of time in consulting the reports. Q.

MR. JOHN A. GLENN, of Philadelphia, has prepared an edition of the UNITED STATES INCOME TAX LAW OF 1894, paraphrased, explained and digested, giving the complete text of the act paraphrased for ready reference, with an index-digest, arranged alphabetically according to subject, which will be found very useful for reference. It is published by T. and J. W. Johnson & Co., 535 Chestnut Street, Philadelphia.

INSURANCE DIGEST, 1894. By JOHN A. FINCH, Indianapolis; The Rough Notes Co. 1894.

THE INSURANCE AGENT; HIS RIGHTS, DUTIES AND LIABILITIES. By JOHN A. FINCH, Indianapolis. The Bowen-Merrill Co. 1894.

The first of these two works is a continuation of Mr. FINCH's now familiar digest, former volumes of which have been reviewed in the pages of this magazine. This (Vol. VII) brings the cases down to October 31, 1894. That the annual crop of insurance cases is constantly growing is shown by the circumstance mentioned in the preface, that, while Volume I contained two hundred and seventy-nine cases, there has been a constant increase in the number of annual decisions until the number as shown by the present volume reaches four hundred and forty-nine. The necessity for some such digest as that with which Mr. FINCH supplies the profession is, therefore, becoming more pressing every year. His work is careful and complete. The arrangement is good, and the index is all that could be desired.

The second of the two works is a little monograph of some thirty-six pages, reprinted from the pages of "Rough Notes." In it the leading cases which deal with the rights and liabilities of the insurance agent are set forth with comments and criticisms, and a successful effort seems to have been made to collect and arrange the statutory enactments of the several states, which bear upon the subject in hand. The author discusses the following questions: (1) Who is an agent of the company? (2) Classes of agents and their powers; (3) The broker as agent; (4) Of the adjuster; (5) Personal liability of the agent to the company; (6) Personal liability of the agent to the insured; (7) Unlawful discharge of the agent; (8) Ownership of agency, and (9) Statutory penalties. The little book is written in a simple and intelligible style, and will doubtless be found useful, not only to the profession, but to the insurance companies and the agents themselves.

G. W. P.

HALF A CENTURY WITH JUDGES AND LAWYERS. By JOSEPH A. WILLARD, Clerk of the Superior Court of Massachusetts. Boston & New York: Houghton, Mifflin & Co. 1895.

Mr. WILLARD has undertaken to give to the public a more or less connected account of the striking incidents of which he has been a witness during his long term of service in the Massachusetts Courts. He begins his book with a short account of himself and his family. He writes in a pleasant vein, with now and then a touch of acerbity. His own experience as a sailor when a young man leads him to speak thus of RICHARD H. DANA: "Dana went 'Two Years before the Mast,' which was sufficient for him. From my experience I think his work somewhat exaggerated; and from my acquaintance with him and his surroundings in boyhood, I am not surprised, for there could not have been any greater contrast than existed between his life, up to the time he shipped, and the two years he had spent in the fore-castle. I admit his great ability as an orator, but I think that his manners were rather frigid, and he could not let himself down

to the level even of some of those of his own rank of life." Perhaps this is the balancing of an account opened on some occasion in the past when Mr. DANA so far forgot himself as to treat the Clerk with less deference than that which he showed to the court.

As to the rest of the book, suffice it to say that there is in it (as is usually the case in collections of anecdotes) a mixture of the good and the bad, the new and the trite. Of course the author has several times fallen into the error—from which no writer of such a book can be secure—of crediting to a particular judge or lawyer of his acquaintance a witticism which in fact was the repetition of a witticism of the more distant past. But what he tells he tells well, and his pages will doubtless afford entertainment to those who have themselves seen and known the men of whom he writes—and who have, perhaps, themselves been actors in some of the scenes which he describes.

G. W. P.

AMERICAN ELECTRICAL CASES. Edited by WILLIAM W. MORRILL. Vol. II. Albany, N. Y. : Matthew Bender. 1895.

The second volume of American Electrical Cases contains over one hundred and fifty complete reports of cases decided between the years 1886–1889. In a "general note" there are memoranda of about twenty-five additional cases, which, for various reasons, were not selected for reprinting in full.

Several very excellent changes have been made in the arrangement of this volume. The cases are grouped together, as far as possible, with reference to their subject-matter, and are not arranged in chronological order as in volume one; and at the end of each syllabus is a list of the cases cited in the following opinion, which are reported in this series, with a reference to the volume and page where each may be found.

The very excellent form of index of volume one, which was in the nature of a short collection of annotations under appropriate headings, has been retained.

EDWARD BROOKS, JR.