

BOOK REVIEWS.

A PRACTICAL TREATISE UPON THE LAW OF JUDICIAL WRITS AND PROCESS IN CIVIL AND CRIMINAL CASES. By WILLIAM A. ALDERSON, of the New York Bar. New York: Baker, Voorhis & Co. 1895.

This most interesting volume is, we believe, the first complete survey that has been made of the law of process. Other writers have entered the field from one or more directions, but Mr. ALDERSON has traversed the entire territory, and, as the result of his investigations, has given us a philosophical treatise covering all that is included in his subject.

After a brief historical review of process at the Roman and early English law, he states his definition of the word "writ." He says, it is "an instrument in writing, in an epistolary form, running in the name of the sovereign of a State, issued out of a court of justice or by a judge thereof at the commencement of an action or at any time during its progress, or incident thereto, usually under the seal of the court, duly attested, and directed to some ministerial officer or to the party to be bound by it, commanding the commission of some act at or within a time specified, or prohibiting the doing of some act." If space permitted we could dissect this carefully considered definition, and show how wonderfully Mr. ALDERSON'S entire subject is bound up in embryo, as it were, within its terms.

In discussing the validity of process, he contributes a valuable commentary on the term "void" and "voidable," showing the frequency with which, in this connection, the words have been abused. He treats with liberality and common sense the questions of whether the imperfect styling, and the absence of signature or seal, should be allowed to invalidate a writ, and he uses as his text the words of Judge Jenkins in *Wolf v. Cook*, 40 Fed. Rep. 432, to the effect that though a certain amount of ceremonial may be necessary to assist the human mind, "formality should never be permitted to work injustice or deny substantial right."

In treating of "Service on Corporations," the author repudiates the doctrine of his native State (New York) to the effect that a foreign corporation may be served by serving an officer thereof who is inside the jurisdiction solely on his own account, the cause of action not having arisen and the corporation doing no business, within the limits of the jurisdiction. The Federal authorities, and indeed the majority of the State decisions, favor the view taken by the author, and it is to be observed that the Supreme Court of the United States has lately, and since the publication of his book, fortified its former position on the question: *Goldney v. Morning News*, 15 Sup. Ct. Rep. 559.

His discussion of the rule exempting parties and witnesses from service will be found particularly interesting. He heartily approves the position early taken by the Circuit Court of the United States for the Eastern District of Pennsylvania, in *Parker v. Hotchkiss*, 1 Wall. Jr. 269. That decision, it will be remembered, extended the privilege of exemption to the case of a service by summons, as well as to the case of an arrest by *cazias*, and though the decision was rendered in the teeth of an opinion by Judge Washington who, forty years before, had followed the practice of the English courts, it has to-day in its support the weight of American authority.

Finally,—for we have not space to give even an outline of the book, we would call attention to the author's valuable chapters on the Rights and Liabilities of Officers in the Execution of Process, Property Subject to Process, and the Return of Process. His exhaustive treatment of the first of these subjects is enough in itself to recommend the book to all Sheriff's and Marshall's Solicitors throughout the country, while his collation and criticism of the authorities under the two other heads, give ample proof of his industry as a student and ability as a lawyer.

While Mr. ALDERSON'S research is thorough and profound, he never allows himself to wander out of the straight path before him. His sense of relevancy is always unerring and acute. His style is lucid and direct, and his statement of a case, while it is always succinct, is never so succinct as to be

obscure. Like a skilful draughtsman, he is seldom mistaken in his outline; he sees clearly the principle that underlies a given precedent, and, as in his mind's eye he strips the case of unnecessary clothing, he is able to present it with boldness and precision.

We cannot too much commend the rigid separation which he always observes between the results of the cases and his own opinions. Whenever he approaches a subject as to which there is a conflict of authorities, he is careful to lay both sides before the reader, first one side and then the other, and then in a paragraph headed "*Same subject—Author's views,*" he restates the problem boldly and gives his own conclusions. We can say truthfully, and without fear of contradiction, that in these paragraphs headed "Author's Views" is to be found the most valuable portion of his work.

We hope that we have dwelt long enough on the philosophical side of Mr. ALDERSON'S book to make the student wish to read it. The theoretical knowledge of the law of process, which, as we have been told, enabled Judge Cadwalader, while at the bar, to dispense, if he chose, with the printed forms and to draw a writ off hand on a piece of blank foolscap paper, was, after all, part of that profound knowledge of the law which made him subsequently one of the most distinguished of our jurists. Such a theoretical knowledge of the law of process is apparent on every leaf of this most valuable treatise. We should not, however, do the author justice, did we not equally extol the practical aspect of his work. The every-day importance of the subject and the practical handling which it has received, will, we believe, secure to the book a place in the library of every active lawyer.

FRANCIS FISHER KANE.

HANDBOOK OF CRIMINAL PROCEDURE. By WM. T. CLARK, Jr.,
Author of Clark's Handbook of Criminal Law, Etc. St. Paul,
Minn.: West Publishing Co. 1895.

This admirable little volume forms an excellent companion to the Handbook of Criminal Law, issued some months ago by the same author; and what was said in praise of that book

applies equally to this. Here the practitioner may find in compact form all that is really necessary for practice in the trial of criminal cases: and he will find it decidedly to his advantage to have it always at his hand.

The author is very clear and positive, as usual, in his statements of the law, and less bound by authority than by the dictates of his own reason. For example, in speaking of extradition, after having mentioned the fact that there is a conflict on the question whether or not a person illegally arrested in a foreign country can be legally tried in the country to which he is brought, he very wisely adds, that in reason, it would appear that the person arrested should not be allowed to raise any objection, though an objection coming from the authorities of the country from which he was abducted should be regarded:—a distinction which does not seem to be stated, at least in such a concise manner, in any reported case.

There are, however, a few slight inaccuracies, or rather deficiencies, to be found in this volume. Such is the omission, in the discussion of the admissibility of dying declarations, to state that a declaration, made when not in fear of impending death, and therefore inadmissible, becomes admissible afterward, if reaffirmed when in expectation of death: this is so, whether the former declaration is first reread or repeated to the deceased, and then reaffirmed or assented to by him: *Rey v. Stull*, 12 Cox C. C. 168; or if simply reaffirmed, though not repeated or reread: *Johnson v. State*, (Ala.) 16 So. Rep. 99.

But these flaws are too trifling to impair the value of the work as a whole; and the Bar may feel assured that in this, as in the other volumes of this series, they will have a most useful volume for the table, to be kept at hand for constant reference,—and one that will rarely, if ever, disappoint them when they consult it.

X.

HISTORY OF THE LAW OF REAL PROPERTY IN NEW YORK.

By ROBERT LUDLOW FOWLER. New York: Baker, Voorhis & Co. 1895.

The subtitle of this work, "An Essay Introductory to the Study of the New York Revised Statutes," explains the purpose of the author as he would have it understood. The nine chapters of the book may be roughly divided into two parts, the first four are historical in character, while the last five are devoted to a concise discussion of some of the technical questions arising in modern conveyancing under the New York code. The work, therefore, is of local rather than general interest, but in the historical portions there are several discussions which are of importance upon questions of Colonial Law. Prior to 1664 the States General of Holland, through the Dutch West India Company, had exercised sovereign powers over that portion of the country then known as New Netherland, hence a view of the land law of New York involves a consideration of the grants of the Dutch West India Company. With the English occupation under the Duke of York's patent a number of questions arise, for example, as to whether England's title to New York was derived through the right of discovery and occupation, or by means of conquest and cession. The author treats, at some length, the Common Socage tenure by which the lands were held of the Crown, leading up to a discussion of the recent important case of *De Lancey v. Prepgras*, 138 N. Y. 26, where one of the questions before the court was as to what was formerly the remedy for nonpayment of the quit rent reserved to the Crown. Mr. FOWLER criticises rather sharply the opinion of the court that the King might, by inquisition, have the estate of the tenant declared at an end, resume his possession, and his original seizin would be restored unaffected by the previous demise, and further distinguishing a fee farm grant from the Sovereign and one from a private person after the statute *Quia Emptores*. It is obvious that a consideration of this subject must be technical and intricate. It would be interesting to contrast the views of Mr. FOWLER and Justice MANYARD with those of the Supreme Court of Pennsylvania in *Ingersoll v. Sargeant*, 1 Whart. 337, in which the statute of *Quia Emptores* was declared never to have been in force in Pennsylvania. In the collection of authorities Mr. FOWLER

shows great fidelity and industry in research, and the work will undoubtedly be valuable to those who are required to investigate the early land law of New York. A work of this character indicates with startling clearness how close, after all, we are to the Middle Ages.

W. H. L.

CASES ON CONSTITUTIONAL LAW, WITH NOTES. By JAMES BRADLEY THAYER, LL.D. In two volumes. Cambridge: Charles W. Sever. 1895.

The last parts of this work do not disappoint the expectation arising from the perusal of the first part, which was reviewed in 33 AM. LAW REG. & REV. 410. Part III deals with cases on the right of Eminent Domain and Taxation, and Part IV with *Ex post facto* laws, State laws impairing the obligation of contracts, the regulation of commerce, money, war, insurrection and military law. With Part IV is published a very good index of the entire work. It goes without saying that the cases are excellently selected, and that one who possesses this work of Prof. THAYER'S has, in a small compass, all the principal cases dealing with the Constitution of the United States, besides a collection of valuable notes, references and excerpts from the principal text books and historical documents. There is little, indeed, that is left to be desired, except that one would have wished the editor to have sometimes given his own views, at least so far as to call the reader's attention to the discrepancy, if any, or the real conflict between many of the reported decisions. Outside the law school, only those who are fond of Constitutional Law will possess this book or read the cases there referred to, and to them it would have been a matter of great interest to know what one, who has given the time and attention to the subject, thinks concerning the various doctrines of Constitutional Law laid down by the cases reported. For instance, in looking at Dartmouth College Case, we would not have objected to have the editor give his own opinion on the different points of Marshall's argument. Again, we would like to have heard what Prof. THAYER would have to say on the opinion in *Weston v. City*

of *Charlestown*, that a state tax on incomes from personal property, in so far as they fall on the income from United States bonds, is unconstitutional. The case, perhaps, did not seem of such vital importance when decided, and yet, to-day it has a special interest, not only because of its important bearing on the recent income tax decision, but from the fact that in other countries, such as Germany, where a state tax on the operations of the Federal government would be void, it has been decided that a general tax, which includes investments in the funds of the Federal government, is objectionable.

We must remember, however, that this collection of cases is primarily for the students of the Harvard Law School, and that the theory of the case system adopted by that school is to have the students read the original cases and think out the points involved for themselves, without too great reliance on the aid of text books or suggestive editorial notes. To any one who is doing any work on Constitutional Law, these cases will be invaluable, as they will enable him to carry around with him two-thirds of the material which he needs in a small and convenient compass.

W. D. L.

THE UNITED STATES INCOME TAX LAW SIMPLIFIED FOR BUSINESS MEN. 3d Ed. Enlarged and Revised. By FREDERICK A. WYMAN. 1895.

THE INCOME TAX LAW. Arranged with Annotations. By FRANCIS B. BRACKEN, assisted by EUSTACE GRIMES. Philadelphia: Kay & Bro. 1895.

The fact that the Income Tax Law no longer graces (?) the Statute Books of this country, is no reason why the very excellent, and had the law been allowed to stand, practical little books of Mr. FREDERICK A. WYMAN and of Messrs. FRANCIS B. BRACKEN and EUSTACE GRIMES, should be regarded as valueless. Both these books, like the others upon the same subject, which have already been noticed in these pages, are exceedingly well done, and lawyers would do well to put them away on their shelves for a possible future use. Their

references are very complete and the variety of arrangement makes it difficult to decide which is the best.

It is interesting to note that Dr. PERSIFOR FRAZER'S valuable work, "A Manual of the Study of Documents," is already recognized and cited as an authority by the courts. In a careful opinion in disposing of a rule for a new trial in *Vanderslice v. Snyder*, (Common Pleas of Luzerne County), RICE, J., quotes from Dr. FRAZER'S work at length and adopts the author's conclusions as the basis of his decision. This is only another illustration of a fact well-known to those who have had the pleasure of practicing before him, that Judge RICE is always abreast of the times and is constantly adding to his unusually large store of legal knowledge. It will be remembered that the work referred to was reviewed in these pages when it first made its appearance.

We have read with much interest Mr. J. J. H. HAMILTON'S pamphlet on "National Corporations," which is reprinted from the "University Law Review."

We have received the following communication from a subscriber :

Editor American Law Register and Review :

Can any of the readers of the REGISTER give me any information as to the whereabouts, within several years past, of William Cortland? He had large business interests in different cities of Pennsylvania, and in the oil fields, several years ago. Any such information will be important to his relatives.

CARL H. BECKHAM, Attorney,
Toledo, Ohio.