

BOOK REVIEWS.

THE CONSTITUTION OF THE UNITED STATES AT THE END OF THE FIRST CENTURY. By GEORGE S. BOUTWELL. Boston : D. C. Heath & Co. 1895.

The Constitution of the United States may be likened unto a highway much travelled by many men of many minds, each intent to expound what he sees or thinks he sees as he passeth by.

Each new commentator may well be challenged to show cause for his claim to have contributed any new light on the subject, which, however, is obviously of such grave importance that any valuable contribution must always receive a warm welcome. Let us see what the distinguished author says for himself in his preface :

“ It has been my purpose in the preparation of this volume to set forth in a concise form the substance of the leading decisions of the Supreme Court, in which the several articles, sections and clauses of the Constitution of the United States have been examined, explained and interpreted. The inquiry covers a full period of one hundred years. In that time the more important and the most important provisions of that instrument have been discussed at the Bar, and the questions arising from business transactions, from the relations of the States to the National Government, and questions growing out of our treaties with Indian tribes and with foreign nations, have been adjudicated by the court.”

Such an undertaking requires rare experience, sound legal knowledge, patient research and infinite labor. The result shows that these requirements have been met with the added reinforcement that the undertaking has been one in which the author has found pleasure and unfailing interest.

To the readers of this REVIEW it would be absurd to urge that such a work is worth doing, they will only ask has it been well done, and from a somewhat critical examination of

the sixty-four chapters, this question may be answered very positively in the affirmative. The text is succinct, covering only 412 pages, but without sacrifice of clearness, but full explanation is given of every constitutional question which has been the subject of judicial construction.

We have first the Declaration of Independence, with a concise historical note next; then the Articles of Confederation of 1777, with another valuable note; the Ordinance for the Northwest Territorial Government of 1787. The Text of the Constitution is annotated and admirably indexed, and is followed by two most interesting chapters, one on "The Progress of American Independence and its Basis in the Law of England," the other on "The Confederation." The remaining chapters take up the Constitution, article by article, and consider each article in the light of the judicial decisions.

The distinguishing features for which especial advantage may be claimed for this work are; that the decisions of the Supreme Court, are cited under the sections and clauses to which the decisions relate; the leading decisions are examined and the conclusions reached set forth specifically; the lines between State sovereignty and the supremacy of the National Government is marked distinctly; the Declaration of Independence is demonstrated to have had a legal basis in the colonial charters and through them in the underlying bulwarks of English liberty.

The book is therefore to be welcomed as presenting within the compass of a concise single volume, at once comprehensive and minute, a view of the Constitution, as it has been interpreted by the Supreme Court. E. P. ALLINSON.

THE PRINCIPLES OF EQUITY AND EQUITY PLEADING. By ELIAS MERWIN, late of the Boston Bar and Professor in the Law School of Boston University. Edited by H. C. MERWIN. One Volume. Houghton, Mifflin & Co. 1895.

To the student or to the active practitioner this volume is of very great value. The former by a careful attention to the text may lay the foundation of a useful knowledge of the

subject, which shall serve him well in future days after his admission to the Bar.

But perhaps even to a greater degree can this book supply a need in the library of a busy lawyer.

Thirty-five chapters—exclusive of a very interesting “Introductory”—classify the subjects of equitable jurisprudence in an accurate manner, and some five thousand citations, including decisions of comparatively recent dates, tend to render a study less laborious.

Chapters X. and XI., devoted to implied trusts (the former to resulting and the latter to constructive trusts) treat a subject, which to all students is one of greater or less difficulty, in a particularly lucid and happy vein. It must be borne in mind that this work is the collated and edited course of lecture delivered by the late Professor Merwin to his classes at the Boston Law School, and, therefore, although in the body of the text, the work is essentially adopted to the needs and uses of a student at law, yet the copious citations of cases and generous notes afford features of great usefulness to the practising lawyer. It is possibly to be regretted that the annotations and citations of authorities in works of so high a standard are not brought down to a period nearer the date of publication than they generally are, because the sooner comes the necessity of a new edition, and hence the sooner another expensive work must be purchased. WM. D. NEILSON.

A TREATISE ON LAND TITLES IN THE UNITED STATES. By LEWIS N. DEMBITZ, of the Louisville Bar. St. Paul, Minn. West Publishing Co. 1895.

In the two stout volumes of this work the author has endeavored to present a complete view of the basis of all titles to land recognized by the jurisprudence of the several states of the Union, whether created by act of the parties or by act of law—a task which, in view of the diversity of the sources of title, the necessarily different development of the law affecting titles sprung from those sources, and the unnecessary but too actual variants engrafted on the jurisprudence of even those states which had similar sources, seems almost

herculean, and might well have deterred one from attempting it.

Such a work, however, was sadly needed by the profession. There are several excellent general works on real estate and land titles, but they are either too general to be of any special use in defining the differences which exist in the several states, or too local to be of any value beyond the boundaries of their own territory; and now that the whole country is bound together in the most intimate commercial relations, and the farthest east is dealing in real estate in the farthest west, it is a prime necessity that each should know what he is getting for his money, whether a valid title, an equity of redemption, or a defeasible tax title. Any one who has had even a slight experience with western land and mortgages will appreciate this necessity, and estimate this work at its true value.

Being, therefore, indispensable, and occupying a province peculiarly its own, it only remains to notice the efficiency with which the author has discharged the task he set himself. In his preface he calls attention to the overwhelming mass and diversity of the material with which he was forced to deal, and modestly disclaims completeness in every detail, pointing out the absurdity of the continual statutory changes in the law, and the indefensibly erratic nature of the judicial decisions, both those under the statutes, and those under the principles of the common law. These rendered it impossible that some statutes might not have been overlooked, and necessitated the rejection of a vast deal of irreconcilable matter which would like to pass for authority. But any blemish such as this is certainly pardonable, in view of the service that the author has rendered in presenting the material which he has collected and used; and it will be found not to detract from the value of the book in any appreciable degree.

So far as was possible, Mr. Dembitz has treated his subject historically; but it was impossible for him to do what he wished to do, to give the basis of titles as they existed at different periods along the line of development. Such a method would not only have made the work an encyclopedia, requiring as many or more volumes than the Thomson pub-

lications, but would also have made it the work of a life-time ; and further, would have buried under the mass of detail the most valuable features of the work. We cannot, therefore, altogether sympathize with the author in his regret that he was obliged to forego that plan.

It is difficult to select the portions of a work which deserve especial mention, where all seem equally worthy of notice ; but it may perhaps be worth while to call special attention to the discussion of the Rule in Shelley's Case, (§ 21,) that of the Half and Whole Blood, (§ 37,) that of the Absolute Deed as Mortgage, (§ 96,) which contains a clear statement of the effect of the Act of Pennsylvania of 1881, requiring all defeasances to be written, sealed, delivered, acknowledged and recorded, that of the Modification of Dower, (§ 108,) and that of the Rights of Creditors against a Recorded Deed, (§ 134.)

There are, however, two chapters to which a more particular attention should be called ; those on Judgments affecting Land, and on Title by Prescription, (Chapters XIII. and XV.) In the former he discusses chiefly the question as to when a judgment or decree will be held void on a collateral attack, not referring to cases of direct attack except when they border closely on the collateral. The subject is treated in all its different aspects with a fullness of detail that leaves but little to be desired. Incidentally, he criticises Mr. Van Fleet's work on Collateral Attack, on the score that it denounces as wrong almost every case in which the collateral attack on a judgment is successful, a fact which constitutes the chief blemish of that otherwise most valuable book.

But it is in the chapter on Title by Prescription that the author gives the most valuable portion of his work. The question of the effect of the statutes of limitation on titles to land has never before received a complete critical discussion, in spite of its extreme importance as a muniment of title ; but that lack is well supplied by this chapter. In it will be found not only the general principles of the subject, such as most text-books present, but a careful, thorough statement of all the variants, statutory and otherwise, developed from or engrafted in those principles during the growth of the country. This alone would com-

mend the book, if it were not worthy of special notice in any other respect.

It may be permitted to suggest that the work would have gained in value by a fuller citation of authorities on some points. It is quite true that if an absentee turns up after a seven years' absence, and a distribution of his effects under the statute, that the proceedings will be set aside, and his land restored to him ; but, considering the fact that there are but a few cases which directly adjudicate that point, it would not have been amiss to cite them. So, too, although, as the author justly says, it would be impossible to fully treat the subject of tax titles within the scope of his work, yet he might have given a rather more detailed statement of the general principles of the subject than is contained in his note thereon. Yet, these minor imperfections are scarcely worth considering, in view, as has been said before, of the importance of the subject, the unique position of the work, and the general accuracy and excellence of the author's treatment. One cannot but hope that Mr. Dembitz's prognostication that this work may be his last will prove nugatory.

ARDEMUS STEWART.

RES JUDICATA. A Treatise on the Law of Former Adjudication, containing a Complete Analysis of all the Precedents and Principles concerning the Effect of Judicial Decrees, Judgments, Orders and Sentences upon the Rights of Parties, Privies and Strangers in other Judicial Proceedings, either Civil, Criminal or Ecclesiastical, including a Discussion of the Rules for Determining when Judgments at Law and Decrees in Equity are Final and Conclusive Adjudications. By JOHN M. VAN FLEET, Author of "Collateral Attack on Judicial Proceedings." In Two Volumes. Indianapolis and Kansas City: The Bowen-Merrill Co. 1895.

In this work Mr. VAN FLEET supplements his former work upon "Collateral Attack" by dealing with the closely-connected question as to the force and effect of a judicial decree

as evidence to establish or defeat a cause of action in another suit. This question is of very frequent occurrence, and a thorough knowledge of the principles that govern it are of prime importance. Therefore, in devoting to it the careful consideration which we find in these two volumes, the author has conferred a decided benefit upon the legal fraternity.

Of course, the broad outlines of the subject have been repeatedly marked out, and every one is, or ought to be, aware of the general principles that govern the decision of the question in any given case. But the variety of aspects under which it may arise is so great, and the circumstances which may affect its decision are so numerous, that only the most detailed presentation of the subject-matter can lay claim to either newness or completeness. This work, however, is justly entitled to commendation on both these points.

It is naturally difficult and unsatisfactory to point out in a brief review the particular points of detail that seem worthy of special attention, because that which may seem important to the reviewer may not seem so to the reader, and that which the former passes by as indifferent might seem to the latter of great importance. But, at the risk of being impaled on this dilemma, there are several matters of minor importance which will be mentioned, because they show more clearly than any general language can possibly do the accuracy and completeness of detail in the author's discussion of legal principles and doctrines. For instance, he notices the fact that the judgment of a justice of the peace bars a new suit in a foreign jurisdiction upon the same cause of action (§ 13); that the rejection of a set-off pleaded and urged on the trial bars it from being used as a cause of action (§ 25); that the rejection of a set-off when no evidence is urged in support of it on the trial will not bar an action on it (§§ 58, 171); that when a widow has a cause of action against a person who wrongfully assaults and kills her husband, her cause of action will not be barred by the settlement of an action for the same assault by the husband in his lifetime (§ 158); that the recovery of a judgment in favor of a member of a trades union, for damages for expulsion from the union, is conclusive, in a mandamus proceeding for

reinstatement, that the expulsion was illegal (§ 329); and that an affirmance by an equally divided court is as effective as a *res judicata* as a unanimous affirmance (§ 669).

The author's method of treatment is also deserving of high commendation. He does not confine himself to a mere statement of principles and decided cases, with citation of authorities, but comments freely and fully upon whatever seems to him to call for special attention. His criticisms are frequently very acute—*e. g.*, that in § 169, on the New York rule that a recovery against a surgeon for malpractice will bar an action by him for the value of his professional services: "There was an old rule at law, that, if a person engaged to work for a year, and fell a day short; or failed to perform any other contract or duty completely, he could recover nothing. But the courts do not now tolerate such injustice. And if a surgeon should perform an operation worth a hundred dollars, and, by a negligent slip of the knife, should cause damage of a dollar, I do not suppose the New York courts would turn him away with nothing." These comments add greatly to the value of the work.

The completeness with which Mr. VAN FLEET has covered the ground is also shown by the number of citations from reports rarely seen and yet more rarely referred to, though they contain many valuable decisions, such as the Australian, Canadian and Irish Reports; but this feature of the work seems a little gone to seed when we find whole pages taken up with quotations from a work on the subject of *Res Judicata*, by a gentleman of India, styled Hukm Chand, and numerous citations of Indian authorities, culled from its pages. Most lawyers would prefer references to German, French or other European decisions, rather than these, which, to the reviewer's mind, are rather a blemish than a beauty, though the author seems greatly impressed with their exceeding value.

The work is also tinged throughout with a superstitious reverence for the inviolability of judicial decrees, which seems almost like a mania. Yet Mr. VAN FLEET is so far superior to the run of theorists, that his theory does not color his facts, but only his conclusions; and the book is therefore thor-

oughly trustworthy in all respects, except the author's opinions on this one point. These must be taken with an allowance due to the fact just stated.

On the whole, it can be said with assurance that Mr. VAN FLEET has thoroughly and satisfactorily performed the task he set himself at the outset, with one exception. It was his aim, he tells us in the preface, to make the consideration of the decisions so exhaustive that there would be no occasion to read the cases themselves. This no text-book can ever do. The gap between the judge and the reader is too wide for the latter to be sure that it has been properly bridged, until he has tested the bridging; and as long as men are fallible, and author, compositor and proof-reader stand between the lawyer and the original decision, just so long will the accurate and painstaking practitioner refer to the originals, if for nothing else, to verify the accuracy of the text-book statements. But it does not detract from the value of Mr. VAN FLEET's services that he has failed to do that which no man can accomplish.

X.

THE RELIGION OF THE REPUBLIC AND LAWS OF RELIGIOUS CORPORATIONS. By ALPHA J. KYNETT. Cincinnati and New York: Cranston & Curts and Hunt & Eaton. 1895.

This work consists of two parts—the first being entitled, "Religion and the National Life," and the second, "Laws Relating to Religious Societies." In Part I. the chapter-headings are as follows: "The Universality of Religion;" "The American Civil Structure—the Republic;" "Religion in the Republic;" "Classes of Organizations;" "Church Property;" "Corporations Creatures of Law;" "Wills;" "Forms." When it is observed that these eight chapters are contained in one hundred and thirty pages, it becomes clear that the work cannot be more than an outline, or summary statement, of some of the more important principles underlying the subjects of which the author treats. The style of the author is clear. In his efforts at condensation he sometimes falls into the common error of combining in a single

sentence thoughts, which might have been expressed more satisfactorily in distinct sentences. The following sentence occurs in the chapter on the "Universality of Religion:" "China, now claiming to be the most ancient of nations, from the remotest times to the present day, from the Emperor—the highest dignitary and earthly authority—to the peasant—the lowest in social grade—has always, according to Hon. Pung Kwang Yu, First Secretary of the Chinese Legation and Special Commissioner to the World's Parliament of Religions, paid highest reverence to heaven and spirits, and their religious nature is manifest in ancestral worship." It is, of course, difficult to do justice to a great religious system in the short space which Dr Kynett devotes to the discussion of each; but this is an age in which the world moves so fast that we are not apt to object to summary statements of important subjects, merely because the view which we obtain is a superficial one. Dr. Kynett waxes eloquent over the Parliament of Religions, which was one of the features of the Columbian Exposition. It is to be hoped that he is right in anticipating that the final triumph of Christianity has been hastened by the attendance at the Parliament of the cultured representatives of other religions, who there put themselves on record as abundantly satisfied with the systems to which they owed allegiance.

The summary statement of the relation between the people of the United States, the State and Federal Governments is clear and concise, and in the main accurate, while the chapter on "Religion in the Republic" contains a somewhat indiscriminate collection of authorities in support of the view that Christianity is a part of the American Common Law. The remaining chapters of the first part—except the chapter on "Forms"—contain notes or memoranda of points of importance connected with the subjects to which the chapter relates. The forms for incorporation, deeds, etc., are well selected, and will doubtless be found useful.

Part II. consists of fifty-one chapters, which are summaries of the statutory law relating to religious societies in as many States and territories of the Union. This will probably be found to be the most useful part of the book, although we

doubt whether it will be possible to republish the work often enough to enable the author to keep pace with the changes which so constantly occur in the legislation of the different jurisdictions. The laws relating to religious corporations are changed less frequently, however, than those which relate to business corporations, and Dr. Kynett's book will accordingly continue to be a reliable hand-book for some time to come.

G. W. P.

AMERICAN RAILROADS AND CORPORATE REPORTS. Edited and Annotated by JOHN LEWIS. Volumes X. and XI. Chicago: E. B. Myers & Co. 1895.

These volumes attain to the standard of excellence which Mr. LEWIS has set before himself from the time that the series began. The selection of cases is good, and the annotations are careful and well written. In Volume X. the editor appends to *Richards v. American Desk and Seating Company* (S. C. of Wisconsin; reported page 99) an annotation upon "contracts in restraint of trade considered with reference to the bearing of the principles involved upon the validity of pools and trusts." All the important cases upon the subject, both English and American, have been collected and classified, and the learning upon this important topic has been condensed into a remarkably small space. The somewhat unsatisfactory decision of the Supreme Court of Pennsylvania in *Nester v. Continental Brewing Company* is followed by a note upon trusts and combinations, in the nature of partnership, in which there is a substantial unification of the property and interests of the several constituents. The cases are collected in groups according to States, but extended examination of them is deferred to Volume XI., where an annotation appears in full at page 388, *et seq.*, following the decision of the Supreme Court of Illinois in *Distilling and Cattle Feeding Company v. People*. Volume X. contains the important decision of the Supreme Court of the United States, in *N. Y., L. E. & W. R. Co. v. Pennsylvania*, upon the validity of the statute requiring foreign railway corporations to deduct from the interest on its

bonds owned by residents the tax payable on the bonds. Mr. LEWIS did well to print the dissenting opinion of Mr. Justice HARLAN, in *United States v. E. C. Knight Co.*, for there seems to be a tendency upon the part of the profession to accept the dissent as a sounder statement of the effect of the Federal-Anti-Trust Act than that contained in the opinion of the Chief Justice. In Volume XI., the cases which deal with the "Trust Fund Doctrine" add but little to the learning upon the subject. The several cases on Carriers, however, are more valuable, and the notes which follow them contain convenient citations of authority. Among these cases is *Southard v. Minneapolis, etc., Ry. Co.* and *Willock v. Pennsylvania R. R. Co.* The latter case, decided by the Supreme Court of Pennsylvania, is the result of a vigorous effort upon the part of the railroad company to escape liability by enforcing a clause in the bill of lading imposing upon the shipper the duty of insuring the goods—with a stipulation that in case of loss the carrier should have the benefit of the insurance. The court, however, adhered to its settled policy and declared the contract void, permitting the shipper, who had failed to effect insurance, to recover from the carrier.

A careful examination of the several volumes of this series leads to the conclusion that it is the best series of collected cases upon a single title of the law to which the profession has access.

G. W. P.

CASES ON TORTS. To accompany the Editor's work on that Subject. Edited by MELVILLE M. BIGELOW. Boston and New York: Little, Brown & Co. 1895.

Hardly any other review of this book seems necessary than a statement that it fulfils the claim made on the title-page. Only omniscience could select a hundred cases, covering all branches of the law of torts, without leaving room for occasional differences of opinion, both as to inclusion and exclusion; and no one will deny that the editor has exercised great discrimination. The cases are grouped in accordance with the scheme of the well-known text-book, and are in logical,