

BOOK REVIEWS.

A TREATISE ON THE LAW RELATING TO ELECTRICITY. By SIMON G. CROSWELL. Boston : Little, Brown & Company, 1895.

The rapid growth of electricity as a factor in the commercial world has given rise to such a number of decisions and statutes, that there now exists in a more or less advanced stage of development a distinct branch of jurisprudence, which will be known as Electrical Law.

There is, therefore, a demand among the profession for a work which shall set forth this branch of the law, in its present development, in a clear and concise manner, and in a form easy and convenient for reference by the active practitioner.

Mr. Croswell's connection with various prominent electric companies has especially fitted him for this, by no means simple, task, as his very excellent work will testify.

The treatise contains about 700 pages of text and is divided into three books. Book I. is devoted to the subject of the Incorporation and Franchises of various electrical companies, including telegraph, telephone, electric light and electric railway companies. Book II. treats of the Construction and Maintenance of these companies, while Book III. discusses the operation of these companies under such headings as Discrimination, Duties, Measure of Damages and the like, and also contains a chapter on Taxation.

A feature of the book is a very complete and comprehensive index of nearly 100 pages, which adds much to its utility and helps materially in the accomplishment of its purpose, which is said to be to relieve the profession in their arduous labors, in the matters of which the book treats.

EDWARD BROOKS, JR.

ANARCHY OR GOVERNMENT? AN INQUIRY IN FUNDAMENTAL POLITICS. By WILLIAM MACKINTYRE SALTER. New York and Boston : Thomas Y. Crowell & Co. 1895.

The central idea of this little volume seems to be the incon-

sistency of modern society and government, in securing to its members, weak and strong, the equal protection of their lives and property, while leaving them, wise or foolish, skilful or unskilful, to get such reward, such compensation, for their labor as they can, unprotected and unrestrained by legal regulations.

If it be the proper duty of government to prevent the strong from robbing and killing the weak, why is it not equally the proper duty of government to prevent the industrially capable, the intellectually strong, from compelling the industrially less capable to work for less than a just wage, a due reward for their labors?

The author handles the subject in a suggestive way that affords some food for thought, but his style is slovenly and little befitting the dignity of his theme. Indeed, the whole treatment is superficial, and, therefore, apart from the suggestiveness alluded to, unsatisfactory.

For example, we are told that the free play of the law of supply and demand as often works injustice as justice, that it is only by accident, if at all, that it works justly, in rewarding men for their industrial services—a remark worthy of consideration, if the author would follow it out logically, by telling us what the just reward of labor is, and how we are to know it. Thus he skims over the deep places of his subject, and leaves the real underlying difficulties unsolved.

It might be very well said, how are we to know what the just reward of labor is, except by its actual reward? or how are we to attach the idea of justice or injustice to the results of natural laws? The just reward of the tiller of the soil is the crop, large or small, which he reaps; or if a storm destroy his crop, the just reward may be simply nothing at all. And would the author condemn the last reward, or want of reward, as unjust; and if so, on what ground?

The truth is, the notion of justice or injustice, in the rewards of labor, has no place: it is as incongruous as the applying of the notion of weight to music or thought; we have no standard which is capable of measuring it. What reward labor is entitled to, can only be known by what it actually receives

And this is true not only of the primitive agricultural labor of the solitary farmer, but of the most complicated labor of modern industrial society. It is, of course, always competent to show that, by artificial regulations, one man takes the reward of another man's labor, and then the notion of justice does apply to the acts of such a man, as it does to all the acts of men, and forbid the taking. But the burden of proving that there is such a taking of the rewards of one man's labor by another is on the person asserting it. That burden is not met by simply showing that the rewards of a day's labor differ very largely among the various laborers, as the writer seems to assert (page 111). The labor of a leader of industry, like Carnegie, is worth more than the labor of one of his employees, and deserves a larger reward. His superior prowess, courage, intellect—whatever you please to call the qualities by which he succeeds—are worth more, because in a system of free industrial competition, unfettered by any laws except those against violence, they have earned him that larger reward, and this is the only test which we have it in our power to apply.

In all probability, laboring alone as a farmer, Carnegie's superior ability would raise a crop of potatoes larger than that of his fellow-farmers. To deprive him of the excess of his crop, on the principle that the rewards of all labor should be the same, would not be justice, but gross injustice.

It seems like fighting with shadows to soberly set down such commonplaces of political economy, but the author's book is our excuse.

T. B. STORK.

HAND-BOOK OF THE LAW OF TORTS. By EDWIN A. JAGGARD, A.M., LL.B., Professor of the Law of Torts in the Law School of the University of Minnesota. (Hornbook Series.) Two Volumes. St. Paul: West Publishing Co. 1895.

It is interesting to a Philadelphian to note that Professor Jaggard studied law in the office of the late E. Coppée Mitchell. The thoroughness of study which distinguished

Mr. Mitchell and made him so valued a member of the Bar is noticeable in the work before us.

Professor Jaggard naturally adopts the division of the subject followed in Sir Frederick Pollock's classic on the law of torts. About two-fifths of the book—it is in two volumes—are given to the principles underlying all, or at least the majority, of torts, and the remaining three-fifths are devoted to the discussion in detail of the various wrongs known to the common law. Mr. Jaggard also adopts Sir Frederick Pollock's definition, and shows by analysis and citation how immeasurably superior this definition is to any others that have been suggested. "A tort is an act or omission giving rise, by virtue of the common law jurisdiction of the court, to a civil remedy which is not an action on a contract."¹ That the definition should contain a negative is unfortunate, but probably unavoidable.

The author heads his second chapter, "Variations of the Normal Right to Sue." In it, he discusses, carefully and conscientiously, the variations based on privilege, as, for instance, the immunity of judicial officers; the variations based on status, for example, insanity and infancy; and, lastly, those based on the conduct of the plaintiff, for example, his own wrong-doing or consent.

In his next chapter—"Liability for Torts Committed By or With Others"—one could wish that the section on "Independent Contractor" was a little more extended. The paramount duty of a city to keep its streets in a reasonably safe condition deserves, we think, more than a few passing references in the notes. It is stated (page 237) that this duty of the city "cannot be delegated," and that "where it lets a contractor for improving its streets, and the contractor makes excavations in the streets and fails to supply proper guards or lights, and a traveler is injured in consequence of such failure, the city is liable, and it is immaterial that the city had no notice that the ditch was not guarded or lighted." Four or five cases are cited as authorities for this, the last of the list being *Hepburn v. City*, 149 Pa. St. 335. The Pennsylvania

¹ Poll. Torts, *4.

lawyer will, however, remember that in *Hepburn v. City* there was no legally executed contract in existence at the time the accident happened, and that the Supreme Court, for that reason, held the city liable. Had there been a legally executed contract in existence, the court would undoubtedly have come to a different conclusion. The case is, therefore, to be regarded only as an affirmation of the Pennsylvania rule, which, since the decision of *Painter v. Pittsburgh*, 46 Pa. St. 213, has been the contrary of the author's proposition. The latter is, however, a faithful expression of the doctrine in force in the majority of jurisdictions.

We wish we had space to give the chapter headings of the author's second part. In it, as we have said, he discusses separately and in detail the several torts known to the common law. To the more frequent and important ones, he devotes entire chapters. His black-letter analyses are admirable, and his notes are fairly bursting with authorities. His chapter on negligence is particularly full. He quotes, on page 83, the well-known remark of Chief Justice Earle as to the abuse of the word "negligence," and "the pernicious effects of its undefined latitude of meaning." He calls attention to the more modern view of negligence, which, as he says, is based on practical distinctions of the law substantive. On the one hand are the cases in which a man acts on his peril—the doctrine of *Rylands v. Fletcher*—and on the other are the cases in which the plaintiff's motives determine his liability. Between the two, separated necessarily in thought, though unfortunately not always separated in the decisions of the courts, is negligence—the failure under certain conditions to exercise due care.

At the end of his second volume the author fulfils a promise in his preface, and devotes two chapters to working out in detail the thread of relationship "always existing," as he says, "between contract and tort." This he does under two heads, "Master and Servant" and "Common Carriers," under which, as he tells us, he has grouped the cases especially illustrating the various violations of duty arising "from contract or from the state of facts of which a contract forms a necessary part."

The author's style might be a little smoother. It is sometimes a little careless, and one wishes that he had given more time to the final work of polishing off rough edges. The book, however, will be valuable to the practitioner. Its blemishes are always those of form, its merits those of substance. The latter, we believe, are quite sufficient to ensure it a long and useful life.

F. F. KANE.

RECOLLECTIONS OF LORD COLERIDGE. By W. P. FISHBACK.
Indianapolis and Kansas City: The Bowen-Merrill Co.,
1895.

This is a dainty little volume, handsomely printed on good paper, with uncut edges. Mr. Fishback, the author, is a member of the Bar of Indianapolis of high standing, formerly a law partner of ex-President Harrison, and now Dean of the Indiana Law School. He was also, at one time, editor of the Indianapolis *Daily Journal*, wrote the sketch of General Harrison for the New York *Evening Post* in 1888, and also the sketch of the same gentleman in *Appleton's Encyclopedia of American Biography*. When visiting England, he carried letters to the best litterateurs of that kingdom, and was accredited to the Chief Justice by letters from so high a source as Mr. Justice Harlan. That he justified the introduction is evidenced by the exceeding and continued cordiality extended him by Lord Coleridge, which was evidently more pronounced than even a courteous perfunctory recognition demanded. He was entertained by the eminent English jurist at his house and on the circuit, sat by him on the Bench, and had an opportunity of seeing the administration of justice in English courts by a most distinguished judge, such as falls to the lot of but few traveling American lawyers. Mr. Fishback seems to have been equipped with an acute and discerning mind, and, appreciating the exceptional privileges afforded him, he has recorded his experiences and conversations with a regard for details, which speaks well for his memory.

The little book is, as it purports to be, simply recollections.

of Lord Coleridge, and loses nothing from its desultory, rambling style. The incidents recorded are all worthy of note; the remarks and letters selected for record all commend themselves, as good in themselves and of added value, as coming from so high a source. Our recollector not infrequently departs from his recollecting, to make some remark on the Chief Justice or incident connected with him, the text for rather didactic and commonplace homilies of his own as to things which "be, but hadn't ought to be;" and whether the reader agrees with him or not, he cannot altogether repress the wish that there was more of Coleridge and less of Fishback. It is a difficult art, indeed, to tell a story in the first person and at the same time avoid undue prominence of the *ego* while doing justice to the subject. Such a feat is charming when accomplished, as evidenced in Mr. Weyman's "A Gentleman of France," and the almost inimitable way in which John Ridd tells the story of himself and Lorna Doone.

The book, however, is readable and, better still, suggestive. It throws into strong relief the picturesque color, which surrounds the Bench and Bar of England, and contrasts many strong points to be found there which are lacking here. Were it not that we have complained of Mr. Fishback's didactics, we would be tempted to moralize ourselves. This is evidence, however, that our book is a suggestive one—one which will make its readers ponder on our own professional situation. It may, perhaps, make us more jealous for our own betterment, realizing that the history and traditions of England's Bench and Bar present much (outside of the Reports) that we of America might study and emulate with advantage, while still remembering the difficulty of putting old wine into new bottles.

Many of us still recollect Lord Coleridge's visit to America, and those who were fortunate enough to meet or hear him, will be disposed to concur with the estimate put upon him by his successor, Lord Russell, who has said, speaking of Lord Coleridge: "No one will gainsay that, by his death, a great figure has passed away. He was intellectually, as he was physically, head and shoulders above the average of his con-

temporaries. He had a high sense of the dignity of his great office and of its importance. For above twenty years he sat upon the Bench, and during that long period he did honestly strive to do right to all manner of people, after the laws and usages of the realm, without fear or favor, affection or ill-will."

Without being an Anglo-maniac, one can but envy a system of legal administration which concentrates its judicial force, makes the honors and emoluments of the Bench a prize sufficient to tempt the leaders of the Bar, which divorces elevation thereto from the control of factional or party politics, and secures a tenure of office which places the Ermine far beyond the reach of malign influences which menace our system.

EDWARD P. ALLINSON.

AMERICAN AND ENGLISH DECISIONS IN EQUITY. Volume I., First Series. (Annual.) Notes by HENRY BUDD. Philadelphia: M. Murphy. 1895.

Mr. Budd's modest preface to this volume gives but little hint of the magnitude and value of the work. It is difficult to overestimate its usefulness to the profession on either side of the Bar. Reports of fifty-eight cases are printed, and to each one a treatise on the subject is appended in the form of "notes." It is as comprehensive as could be needed or should be expected in a work of this kind. All of the cases are recent ones, being of no earlier date than 1894, and each one singularly well-known in its particular branch. More than seven thousand citations are given by the annotator, but these are all carefully indexed. The system adopted is most excellent; the subject treated heads the case, printed in bold-faced type; the name of the case follows, after which is given the date of the decision and a reference to the official report of the case. At the conclusion of the report the annotation will be found, where concise statement and lavish citation combine to give a brief of argument to the lawyer almost "readymade."

A word in recognition of the publisher's success in making up the book should not be omitted; the type, the paper and binding are of the best, making the publication a credit to

Mr. Murphy, and his efforts to make the work ornamental must be conceded to have been as successful as Mr. Budd's labor to make it useful. W. D. NEILSON.

ILLUSTRATIVE CASES UPON EQUITY JURISPRUDENCE. By NORMAN FETTER. Paper. St. Paul: West Publishing Company. 1895.

Mr. Fetter has made an excellent choice of cases illustrating the several heads of Equity Jurisprudence embraced in the collection. It is, perhaps, sufficient for the purpose of this publication that the cases are not more fully reported, and that the syllabus of each case is omitted. These would be sources of regret, but for the fact that the index and table of contents afford such reference which, in most instances, will answer all practical purposes. We do not recall a similar publication, and for this reason alone, the book is apt to receive a welcome from the Bench and the Bar. The plan of the work is simple, and the gleanings are of a very wide field.

W. D. NEILSON.