

party, to impair the obligation of the particular contract in question : *R. R. Co. v. Rock*, 4 Wall. 177, 181 ; *R. R. Co. v. McClure*, 10 Wall. 511, 515 ; *Knox v. Exchange Bank*, 12 Wall. 379, 383 ; *Delmas v. Ins. Co.*, 14 Wall. 661, 665 ; *University v. People*, 99 U. S. 309, 319 ; *Chicago Life Co. v. Needles*, 113 U. S. 574, 582.

To the same effect is a *resume* of the authorities by Mr. Justice Gray, in *N. O. Waterworks v. La. Sugar Co.*, 125 U. S., 33 (1888) ; by Mr. Chief Justice Fuller, in *St. Paul, etc. R. R. Co. v. Todd Co.*, 142 U. S. 285 (1892) ; and again, by Mr. Justice Gray, in *Central Land Co. v. Laidley*, 159 U. S. 109 (1895).

---

## BOOK REVIEWS.

---

THE LAW OF CHARITABLE USES, TRUSTS AND DONATIONS, IN NEW YORK. By ROBERT LUDLOW FOWLER, of the New York Bar. New York: The Diossy Law Book Company. 1896.

This treatise, as the title indicates, is of especial interest to the New York practitioner, dealing particularly with the New York law of Trusts, but it also contains much that is of value to lawyers in other States. The first two chapters are devoted to an historical review of the English law of Charitable Uses and Trusts, from the time of the earliest records to the present day. Mr. Fowler has, in this survey, shown great diligence and research. He has devoted some space to the consideration of the controversy as to whether the jurisdiction of the Chancellor does or does not depend upon the Statute of Charitable Uses (43 Eliz., c. 4), and has collected all the authorities. Pursuing the historical method, Mr. Fowler has then shown how much of the English law was in force in the Province of New York, how much was retained by the State of New York, and to what extent that law has been modified by legislation and judicial interpretation. There is added a number of carefully prepared forms for the disposition in trust and otherwise of property to charity, which forms should prove very useful. The volume closes with appendices setting forth the full text of the Statute of Charitable Uses, together with the titles and dates of the principal New York Statutes. A. G. D.

THE DETECTIVE FACULTY. By W. H. BAILEY, Sr., LL.D. Cincinnati: The Robert Clarke Company. 1896.

This volume is intended as an aid to the prompt discovery of all violations of law, and the speedy apprehension of the wrongdoer, and is the result more of the actual practice of an attorney engaged largely in criminal law than of any mere empty theories on the subject. While elementary, and at places containing assertions which rather transcend the bounds of our credulity, it

abounds, nevertheless, in common sense. It suggests, also, thoughts well worth remembering when one sets out to perform the often difficult task of uncovering the commission of crime by means of circumstantial evidence. Among the more important and most interesting chapters are those on *The Tout Ensemble*, Character, Abnormality, Decoys, The Surroundings of Crime, Insanity, Genealogy, Hypnotism, and Rape. While some of these subjects necessarily are briefly treated, yet in all there is to be found information which is both helpful and new to the young practitioner. This appendix contains many concise statements of *causes celebres*, which are referred to in the text, and are striking confirmations of the statements therein contained. While the little book is not calculated to make a name for its author, it can, nevertheless, be read with interest and profit by the legal profession.

*Benjamin F. Perkins.*

---

HAND-BOOK ON THE LAW OF DAMAGES. By WILLIAM B. HALE, LL.B. St. Paul: West Publishing Company. 1896.

Mr. Hale has undertaken to give to the public a treatise upon the rules and principles governing the award of damages in civil cases compressed into a one volume work. "In view of the limitations of space," says the author in the preface, "it has been thought best to give the greater prominence to the discussion of the general principles underlying the whole subject, letting the application of those principles to special classes of cases fall into a subsidiary place." This system has been maintained throughout the work, and, as a result, an entirely satisfactory text-book has been given to the profession, containing references to about five thousand cases. The author has not attempted to treat the subject historically, nor has he indulged in much criticism of the decisions; he has seemingly bent every effort to gather all the important cases, and to extract from them the general principles. He divides the book into fourteen chapters, which cover the subject as follows: First, definition and general principles; second, nominal damages; third, compensatory damages; fourth, bonds, liquidated damages and alternative contracts; fifth, interest; sixth, value; seventh, exemplary damages; eighth, pleading and practice; ninth, breach of contracts for sale of goods; tenth, damages in actions against carriers; eleventh, damages in actions against telegraph companies; twelfth, damages for death by wrongful act; thirteenth, wrongs affecting real property; fourteenth, breach of marriage promise. The chapter relating to the law of damages in the case of wrongs affecting real property is especially interesting and worthy of particular mention, as is also the treatment of the subject of damages for death by wrongful act. The book is written in an intelligible style, and will, doubtless, be found useful, not only to the practitioner, but also to the student. Like the other books of the "Hornbook" series, the index, typography and general form are all that could be desired.

*Thomas S. Gates.*

A PRELIMINARY TREATISE ON EVIDENCE AT THE COMMON LAW.  
Part I. DEVELOPMENT OF TRIAL BY JURY. By JAMES BRADLEY  
THAYER. Boston: Little, Brown & Co. 1896.

This little book of one hundred and eighty pages has been printed before the rest of the volume, of which it forms the beginning, because the author is advised that it is needed presently in certain universities and law schools where the history of institutions is taught, and because it may be interesting to a class of readers who will not care for the remainder of the volume.

Professor Thayer displays a characteristic fortunately general among the professors of Harvard—the faculty of treating subjects thoroughly, especially their history and development. This work on Evidence deals principally with the development of the jury, but certain earlier and some collateral matters are considered, which should be understood in order that the growth of the law of evidence, which follows, can be fully comprehended.

The older modes of trial are described carefully, “to set a historical background for this ancient tribunal,” the jury, the history of which has been traced through the early judicial records and the Year-Books. The reader is led to see that the law of evidence is the outcome of, and its growth indissolubly bound up with, the jury. The reasons are shown, as they presented themselves, why the English peoples exclude from consideration a great mass of evidential matter which is admitted by other nations. We see that this law of evidence grew not by legislation, but “by the slowly accumulated rulings of judges, made in the trying of causes, during the last two or three centuries.”

Chapter I. is devoted to “The Older Modes of Trial.” The Normans introduced into England at the time of the Conquest the parent of the jury, the inquisition. This was “the practice of ascertaining, by summoning together by public authority, a number of people most likely and most competent, as being neighbors, to know and tell the truth, and calling for their answer under oath.” The Normans also took the judicial duel into England. The English modes of determining questions of fact when the jury came in are described and quotations are given directly from the old cases.

The popular courts are first noted, as that out of which all else grew. There the judges were the whole public assembly, as though the courts were carried on by a New England town-meeting. The complaint-witness and *secta* there played an important part, the *secta*, which is referred to in the old pleadings, “*et inde producit sectam*,” and which survives to this day in the form of, “and therefore he brings his suit.” The old forms of trial, although the word *trial* was seldom, if ever, used, are clearly described, and the conceptions of proof in connection with these proceedings are carefully given with accounts of their gradual disappearance.

The remaining chapters, which include three-fourths of the book, are devoted to the subject proper, the development of the

jury, or court of facts. The inquisition in France is traced from the Carolingian period. This procedure later became a part of the laws of the Normans, who conquered Neustria in 912. The royal power was strong among the Franks, and the important cases were those which related to the revenues. The kings saw that a safer way of settling matters could be had than that followed in the public courts. Inquiries were to be made of "those in the neighborhood who were known to be the better and more truthful men." Taxes were laid, services enacted, and personal status fixed, on the sworn answers of persons chosen from a certain neighborhood. This mode afterwards extended to and became a part of the judicature.

It was a type of this royal power, which was brought into England by the Normans. From the beginning of the thirteenth century the inquisition seemed slowly to die out in France, but to make a wonderful development in England. In 1099, during the reign of William Rufus, is found what Bigelow has called "the earliest record of anything like a modern judicial *iter* by the royal justiciars." Throughout the time of Henry II. (1154-1189) the inquisition began to take permanent shape.

After the reformed method of proof, that by jury, is seen fairly established in England, the author deals with the two important subjects: 1. The methods of informing the jury, and of securing and improving that quality in them which made them a fit body to "try" the facts in issue; 2. The methods of controlling the jury, of preventing the access of improper influence, of punishing them, and of reviewing their action.

Great pains have been taken in the consideration of these subjects, and a study of them may be not only of historical interest, but may tend to fix one's mind in respect to the value of the jury system now that in many places much dissatisfaction is found with it.

*D. P. H.*