

## BOOK REVIEWS.

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DOMESDAY BOOK AND BEYOND ; THREE ESSAYS IN THE EARLY HISTORY OF ENGLAND. By FREDERIC WILLIAM MAITLAND, LL.D. Cambridge, University Press. Boston : Little, Brown and Company. 1897.

The importance of this book could have been almost as well predicted before as it can now be acknowledged after its appearance. Prof. Maitland's work in his *Introductions* to the Selden Society's Publications, in his *Pleas of the County of Gloucester*, in his edition of Bracton's *Note-book*, and above all in his great work, in collaboration with Professor Pollock, on the History of English Law before Edward I., has accustomed the whole scholarly world to the expectation that everything which he writes will be of the utmost significance and interest. He has brought to bear upon the history of the law and of those institutions which lie in the borderland between the law and more strictly political, economic, and social institutions, a combination of learning, of ingenious inference and of vivacious presentation which bids fair to revolutionize not only the traditional views upon many points but the usual methods of treatment of the whole field. The task of the reviewer may therefore be reduced to the effort to point out the relations of Mr. Maitland's conclusions, in some of their main points, to the body of previous knowledge and opinion on the same subjects. It may be said in a preliminary word that his whole argument looks toward the greater early freedom of the body of the population, the essentially Teutonic and tribal basis of early institutions, and to the enormous influence of political powers and occurrences on the fabric of society. Then we shall select some two or three salient points as being sufficiently typical of the whole work and as reaching results to a large extent new.

First, we shall examine his theory of the Domesday manor. Mr. Maitland has in this case, to a certain extent, created the difficulty he proceeds to solve. In the somewhat superficial study that Domesday book has so far obtained, it is probable that the *Maneria*, which are mentioned everywhere, have been generally conceived of as being the same as those of the thirteenth century, and pictured as judicial or agricultural units, according as the student was a lawyer or an economist. But it is here pointed out that the manor was by no means synonymous with the vill, and the later definitions will not by any means always apply. Some manors are so extensive as to include twenty or thirty villages, with a population of perhaps five hundred families ; others are merely the single farms of peasant proprietors. These cannot have courts of their own, often they have no freehold tenants, sometimes no customary tenants, fre-

quently no demesne land ; so one after another the later tests of a manor fail us. Yet the word manor, in Domesday book, is undoubtedly used as a technical term,—it had some generally recognized and intended meaning. What was meant by a manor in 1086? Professor Maitland finds his answer, the definition of manor, in the sphere of finance. He considers the Domesday manor as simply the house or tenement against which the geld or land tax was charged, the unit of royal taxation, or rather of the collection of the tax. It may be a certain principal centre of a whole group of vills or the principal message of a single vill, in both of which cases the lord would be responsible for the payment of the geld of all the tenants. In the latter of the cases the manor would probably be coincident with the village. On the other hand, in the case of small tenements held “as manors,” they can make up only a small part of a village, so that in one village several *Maneria* are represented. And correspondingly the lands making up one manor may be scattered in several vills. The government simply held certain persons, lords or holders of manors, responsible for the geld. Such persons paid for all those fiscally dependent upon them, whether these persons were concentrated in one or in several villages, or scattered among other persons in various villages. The connection between these manors of the eleventh century and those of the thirteenth, which we know so well and which were so generally identical with the vills or townships, has not been worked out ; but the lines of its development are perhaps already traceable in the changes between the first and last dates given in the survey itself, the time of King Edward and 1086.

Lastly, we wish to give Mr. Maitland's views on the rise of the boroughs. In this matter he is most original and will probably meet with the greatest amount of antagonism from those who have held a different theory. His belief as to the origin of the boroughs is that it was distinctly legal, military, intentional ; that the boroughs were created by the King, from above, so to speak ; that they did not grow up from below by the mere gradually increasing concourse of traders, based on and responding to economic necessities and processes. He supposes that the boroughs were originally fortified county strongholds, one or perhaps more in each shire ; that they were occupied by men placed there by the various thanes or landholders of the shire, in fulfilment of their duty of providing a certain number of military servants, always armed and equipped. Subsequently the rigid King's peace guarding the borough, the meeting of its court three times a year, as provided for in the laws, its possession of an established market, all these things combined to make the boroughs, by the time the Domesday survey was taken, more populous, more varied in their interests, more commercial and more free ; showing the traces of their military and royal origin only in indications that are already obscure and ambiguous. This analysis does not seem to us conclusive. Under this theory it will be necessary to explain how it is that in later centuries such a con-

siderable number of towns are on the demesne of other lords than the king ; that the "customs," where these chance to have been recorded, have such a slight suggestion of anything military or royal, and that when the towns come to receive charters, it is the customs, franchises, gild merchant, and exemptions from jurisdiction that are legalized, no mention being made of royal rights or military interests. And yet his line of demonstration is such that an entirely new form of defense will have to be provided by those who hold a different view.

After all, it is not perhaps wise to try to estimate Professor Maitland's book by its definite teaching on individual questions. Different opinions will continue to be held on single points. What is of vastly more importance is his method. No subsequent study of these matters can fail to partake in some degree of the broad, comparative examination, the acuteness, the moderation, even of the brilliancy of Prof. Maitland's method of work. He has placed the study of Domesday and of the English institutions, for which it stands, upon an entirely different and a far higher plane.

*E. P. C.*

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A TREATISE ON THE LAW AND PRACTICE OF FORECLOSING MORTGAGES ON REAL PROPERTY, AND OF REMEDIES COLLATERAL THERETO. With Forms. By CHARLES HASTINGS WILTSIE, of the Rochester Bar. With a Supplement, bringing the work down to March, 1897, and Additional Chapters on Mortgage Redemptions, by JAMES M. KERR, of the New York Bar. In Two Volumes. Vol. II. Rochester, N. Y.: Williamson Law Book Company. 1897.

The work by Mr. Wiltzie appeared in 1889, and now Mr. Kerr has undertaken to "bring it down to March, 1897," and has added ten chapters on "Mortgage Redemptions."

The law and practice respecting foreclosure vary greatly in the several states, inasmuch as they have been continuously the subject of statutory enactment. Any text-book, therefore, must necessarily have been largely a convenient digest of statutes and decisions rather than a study of principles. And this was the case with Mr. Wiltzie's work, which was an extremely intelligent and useful book for practical reference. The present supplement, entitled Volume II, digests the decisions since 1889 under various sections corresponding to those of the original work and does nothing more. There is the initial objection to this method that it is inconvenient in looking up a point, to be compelled in each case to look in two places, but there is a more fundamental objection. The law is not a dead thing with accretions from time to time, but it is an organic growth. Consequently, the presentation of the law as it was in 1889 with an estimate of its tendencies, followed by a digest of decisions since, simply leaves it to the practitioner to determine

the present law. Such a method of editing is, therefore, at once inconvenient and unscientific.

It is difficult to understand the principle upon which is based the supplementary portion upon what are termed "Mortgage Redemptions." It is apparent, that in any comprehensive survey of mortgage law, there is involved the consideration of the development from the common law conception of a mortgage as a sale upon condition strictly enforced, to the equitable doctrine "once a mortgage, always a mortgage." And mortgage foreclosure is simply the method of vesting in the mortgagee a title freed from the equity thus created. There can properly be no place for any supplemental chapters upon "Mortgage Redemptions," since a knowledge of the right of the mortgagor to redeem underlies the whole subject. However, the author has under this head considered the subject from the point of view of the mortgagor rather than that of the mortgagee, and has included a survey of the various statutes giving rights to a mortgagor to redeem after a so-called foreclosure.

On the whole, however, Mr. Wiltsie's work was of the greatest practical service to the practitioner, and Mr. Kerr's supplement will be indispensable to those who have used the former work.

*C. H. B., Jr.*

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A TREATISE ON THE LAW OF BAILMENTS, INCLUDING CARRIERS, INNKEEPERS AND PLEDGE. By JAMES SCHOULER, LL.D. Boston: Little, Brown & Co. 1897. Third Edition.

Professor Schouler's works are well-known to the profession and his readers turn to his books with the confidence that they will there find the result of painstaking research and accurate scholarship. This is especially true of his text-book on Bailments, the third edition of which is before us. It will be remembered that the author's treatment of the subject includes a general discussion of the nature of bailment, of the various kinds of "ordinary bailments" and of what he designates as "Exceptional bailments." Under the third head appears Prof. Schouler's concise and accurate summary of the law of common carriers. In preparing the third edition, the author has added to this branch of his work a useful chapter on the Interstate Commerce Act and the judicial decisions which have been rendered in connection with it. This chapter makes the survey of the subject a complete one. After passing it in review before his mind's eye, the reader is led to ask whether the special development of bailment in the case of the carrier has not, in modern times, attained proportions which demand for its treatment a work separate and distinct from such a general treatise as this. In other words, can the law relating to carriers be advantageously discussed within such limits as Professor Schouler has been compelled to set for himself? He cannot be criticised for answering the question in the affirmative, inasmuch as he has succeeded so well in his efforts at condensed statement. At the same

time, the question keeps recurring to one's mind, and one is almost led to wish that the author had made a more searching and extended historical investigation of the general topic and had reserved his discussion of carriers for a separate work. The author in the concluding paragraph of his book, has called attention to the contrast between the fixed principles which underlie the general law of bailment and the shifting rules of decision which characterize the rapid development of the law of carriers. He very properly observes that those who compare his text with the decisions of the courts will conclude that his guarded and modified statements in dealing with the latter subject are due, not so much to "a confusion of thought in the writer himself, as actual uncertainty among the courts." In this he is doubtless right; but the conclusion gives point to the query whether the two developments should not receive separate treatment. Whatever may be our feeling upon this point, we welcome the appearance of the third revised edition. It contains the latest cases and (as far as externals are concerned) is published in Little, Brown and Company's best style.

*G. W. P.*

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A MANUAL FOR NOTARIES PUBLIC, GENERAL CONVEYANCERS, COMMISSIONERS, JUSTICES, MAYORS, CONSULS, ETC., AS TO ACKNOWLEDGMENT, AFFIDAVITS, DEPOSITIONS, OATHS, PROOFS, PROTESTS, ETC., for each State and Territory, with Forms and Instructions. Second Revised Edition. By FLORIEN GIAUQUE, A. M., of the Cincinnati, O., Bar. Cincinnati: The Robert Clarke Co. 1897.

The chief purpose of this work, which seems to occupy a unique position in legal literature of a purely practical character, is to supply notaries and others with the means of learning, not only what they are authorized to do under the laws of their own states, but also the extent of their authority under the laws of other states, and the manner in which they must act in accordance with such authority. Thus it is that the book, in addition to being an excellent form manual, partakes, in a measure, of the character of an elementary treatise on the law of conveyancers and notaries public. In addition to a preliminary chapter on "General Provisions," embracing the general and statutory powers of notaries, their fees, etc., and a chapter on Affidavits, Oaths, and Affirmations, there is an excellent treatment of the subject of Depositions, and a general survey of notaries' duties in the field of negotiable instruments, which deserves special mention. In this chapter, Presentment for Acceptance, Presentment for Payment, Protest, Notice of Dishonor, When Demand, Presentment, Protest, and Notice are unnecessary, and Statutory Provisions, as to Days of Grace, etc., are treated in an admirable manner, and the whole subject carefully annotated with reference to the illustrative cases. In the closing chapters the subject of notaries' duties in connection with

real estate, receives attention. In general, it may be said that the definitions are accurate, the arrangement convenient, and the typography good. It is hoped that the work will meet with the success the perseverance of the author merits for it. *J. A. M.*

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GENERAL DIGEST. AMERICAN AND ENGLISH, ANNOTATED. New Series. Vol. III. 1897. Rochester, N. Y. : The Lawyers' Co-operative Publishing Co.

In this volume of the General Digest, the excellent features of the former numbers are retained, and the whole work improved and amplified by a system of annotation which partakes of a double character. First, the authorities relied upon in the opinion of the court in the cases digested, and the cases there criticized, distinguished or overruled, are cited ; secondly, there is an independent compilation of the whole line of decisions involved, so that the law is traced through its various stages of development back to its starting point. The value of this addition to the Digest is apparent, for with its aid the busy practitioner can see at a glance whether a case is simply an isolated decision of no value, as a precedent, outside the particular jurisdiction of the court making it, or whether it is fortified by a sufficient number of precedents to make it authoritative elsewhere. It is worthy of note that the General Digest contains all officially reported cases, as well as those not to be officially reported, and that this difference is clearly marked in the citations. When the annotation has sufficiently matured, there is no doubt that the Digest will be all that its publishers claim, "a complete encyclopædia of the law based on the current cases."

*J. A. M.*