

the Appellate Court, and, if the decision contains separate findings of fact and conclusions of law, proper exceptions will enable the court to review every question which may be presented." The *Evening Post* presents the other case in the following form:

"PRACTICE—BOTH SIDES REQUEST DIRECTION OF A VERDICT—EFFECT.

"Appellate Division, Second Department.—At the close of the testimony each party moved for a direction of a verdict in his favor. Neither requested the submission of any question of fact to the jury.

"Cullen, J. : 'It is settled law that in such a case all disputed questions of fact are submitted to the court for determination, and they must be considered as resolved in favor of the party for whom the verdict is directed; *Clason v. Baldwin*, 152 N. Y. 204.'

"George V. Brower for appellant; James C. Church for respondent.

"*Cowenhoven v. Pfluger*, 22 App. Div. 463, November Term, 1897.

"NOTE.—It is a singular commentary upon our judicial system that the courts are continually called upon to lay down rules of practice which ought to be considered elementary. Possibly some day a code of practice, which shall contain all of such rules, may be adopted. Many of them are now scattered in reports of cases. It is singular also that so few lawyers are fully conversant with trial practice. Valuable correspondence upon this subject appeared in the *New York Law Journal* recently. Few lawyers seem to know at what time certain motions should be made, or what the effect of very usual motions really is. The subject of trial practice appears more intricate than it really is, and only codification will relieve it of its terrors to the majority—although codes have their own bogies."

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## BOOK REVIEWS.

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THE LAW OF PROMOTERS AND THE PROMOTION OF CORPORATIONS.

By ARTHUR M. ALGER. Boston: Little, Brown & Co. 1897.

This work, dealing with a modern and little written of portion of the law, treats of the promotion of corporations, and primarily with the rights acquired and liabilities incurred by promoters. The author devotes separate chapters to a consideration of the remedies of shareholders and subscribers, as well as to the rights and liabilities of the corporation, and he considers at some length the position of a corporation, with respect to contracts made for it by its promoters, before its corporate existence commenced. The work concludes with a discussion of the question arising in cases of *de facto* organization. The whole subject is practical and of ever increasing importance in view of the very apparent tendency to carry on business under a corporation organization, and in view of the somewhat conflicting state of the authorities.

The characteristics of the work itself may be said to be its clear and simple diction, its plain statement of the rules of law involved and its free use of cases, which the author cites at length and in considerable number by way of illustration. It is, perhaps, to be regretted that more attention is not devoted to theoretical discussion of principles, many of which, it must be remembered, are still in process of formation. The law, as to part of the ground covered, is not yet crystalized, and it would seem a mistake to lay down as a final conclusion a rule which, in view of the wavering decisions, may to-morrow be reversed. In such cases the author has most frequently adopted the view as presented supported by the weight of authority, and has referred to the conflict without discussion. This, of course, gives a very practical and a very useful tone to the work, the more so as the book is well indexed, the head-notes expressive, and the typography excellent.

One feels, however, in reading it that, though he is doubtless seeing an accurate picture of the decisions as they are to-day, he is not greatly helped in understanding what the future of the law on the subject ought to be, or what it will be, eventually.

*M. L., Jr.*

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LAW LATIN. A Treatise in Latin, with Legal Maxims and Phrases.

By E. HILTON JACKSON. Washington, D. C. : John Byrne & Co. 1897.

This little work comprises an elementary course in Latin, having for its main object the benefit of law students and younger members of the profession who have not a working knowledge of the language.

The materials used for instruction are those maxims and phrases which one constantly meets in the text-books and in practice. Three hundred and eighty-five legal maxims are cited and fully explained. We are glad to see that Mr. Jackson marks accent throughout and not quantity. Nobody strictly observes quantity in Latin, or has done so these several centuries, and, of course, it is useless to mark as a quantity what really is only a stress. There has been of late years, among the younger members of the Bar, a tendency, as it were "to Continentalize" the vowels in Latin pronunciation. This is due, we believe, to the influence of college training in the Roman method. This tendency meets with no encouragement at Mr. Jackson's hands. "The English method is suggested," he says, "as being of the greatest service to members of the profession in the United States." We regret that no statement of the more rational pronunciation is given. The universal practice of the courts is not a conclusive argument against teaching the better method. Similar argument would have established the English pronunciation permanently in the English and American schools and colleges.

The brevity of this treatise necessarily makes its presentation of the grammar of the language somewhat bald and abrupt. We think the work would scarcely be available to the ordinary student for

study without a teacher, but with some teaching help, the wants of those for whom it is written could doubtless be satisfied better by this book than by the current text-books which deal with literary Latin only.

R. W. W.

COMMENTARIES ON THE LAW OF TRUSTS AND TRUSTEES, AS ADMINISTERED IN ENGLAND AND THE UNITED STATES OF AMERICA.

By CHARLES FISK BEACH, Counsellor-at-Law. Two Volumes.

St. Louis: Central Law Journal Company. 1897.

It is fair to say, at least, that no author has ever treated the vast and difficult topic of trusts and trustees more thoroughly or gone more carefully into all the ramifications of that nebulous subject, implied trusts, than has Mr. Beach in the above work. The book belongs to the class of commentaries rather than to that of treatises dealing with a single title of the law. Thus Mr. Beach's plan draws him into a discussion of that form of trusts known as assignments for the benefit of creditors, of perpetuities, of advancements, of trusts arising from equitable liens, etc. Of necessity his treatment of such topics must be general rather than minute. Indeed, his chapter on "Perpetuities" may be said to be an outline rather than an exposition or discussion of the subject. The chapter on assignments for creditors is quite full and satisfactory.

Mr. Beach first presents the subject of express trusts and this very completely. Then follow implied trusts. The two further divisions of the commentaries deal with trustees, their powers, capacities, rights, etc., and *cestui que* trusts and their rights and remedies.

The book is scholarly and seems to bear out its author's claim that no topic of importance bearing on the general subject has been omitted. There is certainly room on the shelves for a work such as this which seeks to present in an orderly manner all the learning of a given legal subject, to co-ordinate it and to reduce it to a symmetrical, systematic branch of legal science. Such attempts are rather unusual at the present time, the tendency being to legal monographs, and to objective classification with a view to what the law is aimed at and not to its principles as applied generally to all forms of rights and property. Thus we have treatises on mines, on railways, on mortgages, and but few general works dealing with the law subjectively. Mr. Beach's book belongs to the latter class.

Not the least valuable feature of the commentaries is the quotation verbatim of the language of famous chancellors of England and great equity jurists of America as used by them in the exposition of leading equitable doctrines, thus giving an interest, life and vividness to the work which it might otherwise lack. These statements are the law of to-day and are worthy the attention of any jurist or advocate.

Only time and use can tell whether Mr. Beach's book is to be of great practical value, but it can safely be said that it is a scholarly, clear exposition of an intricate and important subject, and that it deserves to be well received by the profession.

O. J. R.

A TREATISE ON THE LAW OF EVIDENCE. By the late Judge PITT TAYLOR. Ninth Edition (in part rewritten), by G. PITT LEWIS, Q. C.; with Notes as to American Law, by CHARLES F. CHAMBERLAYNE. Three Volumes. Boston: The Boston Book Company. 1897.

It is hardly necessary to mention the position and standing which Taylor on Evidence has acquired, both in England and America. The edition now before us is the ninth of that admirable work, and, as presented to us by Mr. Chamberlayne, is unquestionably the best that has yet appeared. The book is planned by the editor, "to give to the profession, so far as conveniently possible within the limitations imposed by the form of notes, such a statement of the modern law of evidence as might be practically useful to the active practitioner, and yet possess value to those who were desirous of acquainting themselves with the fundamental principles of the subject."

The analysis of the book is similar to that of previous editions, but at the end of each chapter is an American note containing the decisions of the various States and Canada. The most elaborately and exhaustively prepared notes appear to be those on Presumptions, fifty-two pages in length; *Res Inter Alias Acta*, twenty-six pages; Best Evidence, twenty-four pages; *Res Gestæ*, twenty-eight pages; Hearsay and Exceptions, ninety-three pages; Admissions and Confessions, thirty-eight pages, and Examination of Witnesses, fifty-six pages. In the three volumes the sum total of the notes amounts to about seven hundred pages. The American and Canadian cases, of which there are over forty-five hundred cited, are indexed separately from the English decisions.

We have had occasion to test the exhaustiveness of Mr. Chamberlayne's work in a special instance involving an attack on the credibility of a witness by showing bias or hostility. The question was, whether this bias could be brought out on cross-examination of the witness himself, without having previously laid a foundation by independent evidence. We searched indexes and texts of the books without result until we examined this work, which had just come to hand, and found the subject discussed and authorities cited on page 978<sup>32</sup> of Volume III.

We notice that the editor has adopted the recent and commendable practice of dating his cited cases. In this country, where the rules are so often variously decided, it is of the utmost importance to have the year in which the decision was rendered.

While the editor has accomplished his purpose of giving, "within the limitations imposed by the form of notes, such a statement of the modern law of evidence as might be practically useful to the active practitioner," nevertheless we feel that we cannot extend to this work that high commendation which, we are sure, would be deserved by an entirely new work on this subject, of which Mr. Chamberlayne is fully capable. It is the plan of taking some standard work, written years ago, of unquestioned value, no

doubt, and then adding to it piece by piece, to which we object. Let us have a complete survey of the whole field at a given period, rather than the addition of features presented by new developments to a work which, by lapse of time, has lost a part of its usefulness.

THE LAW OF RAILWAY BONDS AND MORTGAGES IN THE UNITED STATES OF AMERICA, with Illustrative Cases from English and Colonial Courts. By EDWARD LYMAN SHORT, of the New York Bar, General Solicitor of the Mutual Life Insurance Company of New York. Boston: Little, Brown & Company. 1897.

The author, in his preface, has given a very clear idea of the purpose which he wished to accomplish in this volume. "What the lawyer mainly wants," he says, "is a case, or cases, on the particular points involved in the matter before him." Again: "No practicing lawyer can do the work required to produce an entirely satisfactory treatise on the case law of the average subject." Again: "Legal opinions are largely mere predictions of what courts would more or less certainly decide. In the application of the principles and rules of law to the business life of the world, it is safer for clients that advice given should rest wherever possible on known decisions of controlling courts rather than on the clever guesses of able counsel." Again: "It has always been my view that the chief value of the text-book to the practitioner lies in the fact that, when properly compiled, it will enable him to find any point in the law of his subject which has either been decided, discussed, or even referred to incidentally. *Ordinary digests are incapable of such detail owing to lack of space.*"

It will be seen, therefore, that he has not, in this work, attempted to realize a very high ideal. While admitting that certain text-books (such as Benjamin on Sales) do accomplish a purpose unattempted by him, he distinctly disavows any effort to imitate them, and purposely confines his efforts to a book which shall differ from an ordinary digest, only in the fact that it is larger and, therefore, more complete. We admit the cogency of the argument that is well nigh impossible for a busy lawyer to accomplish more than this, and yet so well has Mr. Short done what he tried to do, that we cannot but regret that he was not more ambitious in his efforts.

Within the limitations thus indicated he certainly has produced a very useful reference book. The practitioner cannot fail to find useful the very complete reference to authorities (including all the recent authorities), and the, on the whole, admirable arrangement of the subject-matter. What the busy lawyer wants to know is the nature of bonds and the rights of bondholders, the nature of mortgages and the rights of mortgage holders and trustees, and particularly the remedies on both the original and the collateral obligation. This, in the main, Mr. Short has furnished him, and very clearly. Some criticism may certainly be made of the arrangement, or even of the propriety of certain chapters—such, for ex-

ample, as Chapter V., on "Definitions of Words and Phrases," and Chapter VI., on "Construction Contracts," which are placed between the chapters on bonds and those on mortgages—the reason for which is not by any means obvious. There are some few mistakes in punctuation which are, perhaps, unavoidable in a work of this size, and yet which ought not to occur in a digest. On page 19 the classification indicated by the figure "5" should probably be indicated by letter "d," and in the note the word "interpose" is used instead of "interfere." Again, on page 20, the name of the case is omitted, when the citation is given—an alleged virtue, according to some authorities, but a defect in a book where the authorities are, on the whole, so fully and carefully cited as in Mr. Short's. The occasional slips in the punctuation, however, only serve to emphasize the great care which must have been taken in the reading of the proof.

We are disposed to think that Mr. Short forgot his theory in writing certain of the chapters; for example, Chapter XIV., on "Rolling Stock and Car Trusts," and Chapter XXVIII., on "Preferred Debts," are more than usually good discussions of very interesting topics, and the author has gone so far in some cases as actually to take exception to certain rulings of the courts and to express an opinion to the contrary. We repeat that we wish he had applied the same good judgment by a criticism of the large number of cases where the courts were in direct conflict, as we cannot but feel that the lawyer's debt to his profession is not fully paid unless he has given, for what it is worth, his own judgment as to what the law should be, as well as his recital of what the law is.

R. D. B.

MINERAL LAW DIGEST. Callaghan & Co., Chicago. 1897.

Mr. Clark, one of the compilers of the Mineral Law Digest, calls our attention to the fact that no claim to exhaustive treatment of Mineral Law in general is made for this book, but only of the Mineral Public Land Law, as found in the Statutes of the United States and applying to the states and territories where such lands still exist. In our review of last month we recognized the limitations of the treatment, but mistook the extent of the claims made for the work. *Pa. Coal Co. v. Sanderson*, however, the absence of which from the Digest we noted, certainly was a case of "mineral land law," as the question was what constitutes a "natural use" of the mineral lands. The claim of exhaustiveness we quoted contained no limitation to Federal land law; but if that was the intention we are glad to remark it, and to absolve Mr. Clark and his able companions from the imputation of not doing all they set out to do.

REPORT OF THE TWENTIETH ANNUAL MEETING OF THE AMERICAN BAR ASSOCIATION; held at Cleveland, Ohio, August, 1897. Philadelphia: Dando Printing and Publishing Co. 1897.

This book is valuable to the profession in general, because of the

papers it contains which were read before the American Bar Association. Especially interesting, though perhaps not actually more valuable than the others, is the address of the President, James H. Woolworth. He first summarizes the important legislation in the States of the Union during the previous year; and proceeds to comment upon the tendencies discernible therein. He observes that "there is a singular uniformity in the statutory enactments of the states. . . . The same subjects occupy the attention of the legislatures in all the states, excite the same feelings, sentiments and passions everywhere, and are dealt with by all in substantially the same manner. . . . The fact is significant. It teaches us that we are one people,—one nation; all the parts having a consistent form of organization, common methods of political and social action, common instincts, aspirations and destiny;" in spite of our vast territory, the fifty states and territories among which we are distributed and the diversified industries in which we are engaged. This observation, by one so competent to speak upon the subject, is certainly reassuring and gratifying to us as a people. Mr. Woolworth also notes "the increasing vigor of the police power; nine-tenths or more of the statutes were passed in its exercise. The activity of that power must necessarily increase as society becomes more and more highly organized; but with us it seems to outrun necessity. . . . But there is more than that. There is a disposition . . . to make use of government in aid of one class of citizens, or one kind of interests, at the expense of others, to intrude into the affairs of individuals, and to encourage them to rely on what can be done for them, rather than on what they do for themselves." He shows that the system, political, industrial and social, which our Fathers founded, is being more and more affected by new forces, theories, maxims and dogmas, alien and hostile to those heretofore unquestioned; a wide-spread dissatisfaction with existing social conditions has for a generation past shown itself in legislation directed to strengthening the lower and weaker classes against the higher and stronger, and equipping the former against the latter for the struggle of life; and more and more encroaching upon private rights of property. These alien and hostile forces tend to the sweeping away of the whole order of industrial society as now organized. Mr. Woolworth, properly, is not content to rest here, without suggesting a remedy for the evils which he discerns threatening the nation. The remedy suggested, "as that which our profession is competent to administer, is the application of the mechanism of the law to the education of all in the rights and duties of citizens, to the end that they apprehend justice;" as by improving and defining the jury system and making the service interesting to jurors, in the popular as well as the superior courts; by committing the assessment of property for taxation to boards composed chiefly of wage-earners having the qualifications of jurors; and by reviving the old-fashioned town-meetings, in which each citizen should make himself heard and felt, in which the interests of the neighborhood should be discussed and

dealt with, and great public movements initiated. This remedy would undoubtedly be entirely efficient, if found practicable; but it seems to us somewhat visionary. Other valuable papers are those by Chas. Noble Gregory on "The Wage of Law Teachers;" and Henry E. Davis on "Primitive Legal Conceptions in Relation to Modern Law."

M. H.

BOUVIER'S LAW DICTIONARY: FRANCIS RAWLE'S REVISION. Vol. I.  
Boston: The Boston Book Company. 1897.

Since Judge Bouvier published the first edition of his now famous book, almost sixty years ago, Bouvier's Law Dictionary has steadily gained in popularity, and (through successive revisions) in usefulness, until it is now justly regarded by the profession as the best work of its kind. The last edition was published in 1883, and the development of the law since then has made a further edition necessary, in order to state the law as it now is. This would not be so if the work were merely a dictionary of legal words and phrases, as it originally was; but the present edition aims at being more a legal encyclopedia as well. "The present edition contains a large number of words which did not appear in the earlier editions, as well as very many words and titles which have come into the law in late years." The present volume is the first of the new edition and contains over eleven hundred words. We shall note the work more at length when the second volume appears.

M. H.

ENGINEERING AND ARCHITECTURAL JURISPRUDENCE. A Presentation of the Law of Construction for Engineers, Architects, Contractors, Builders, Public Officers, and Attorneys at Law. By JOHN CASSAN WATT, M.C.E., LL.B., Attorney and Counselor at Law and Consulting Engineer; Member of the American Society of Civil Engineers: Sometime Assistant Professor of Engineering. Harvard University. New York: John Wiley & Sons. 1898.

Increased complexity of modern business operations has given rise to special legal developments along innumerable technical lines. This technical diversity breeds separate law books for every kind of industry, and such books are a necessity, too, but they are appalling as showing the vastness of the existing field of law.

Architectural Jurisprudence, however, as the author of the present work notes on page iv of his preface, is a term found in English law at least as early as 1827; but no very elaborate exposition of building or architectural law had been made until comparatively recent times, when Emden and Hudson wrote in England, and Liens and Mechanics' Liens received treatment by Jones and Phillips in America. More recently still, Boisot on Mechanics' Liens has appeared. Lloyd's book on "The Law of Building and Buildings" came out in 1888, and Clark's "Architect, Owner, and Builder Before the Law" in 1894.

Mr. Wait's book treats its subject much more elaborately than do any of the others. Nearly 4800 cases are cited, about six times as

many as are found in the last previous work on architectural law. The author writes for three classes, laymen, architects and lawyers, and in view of the wants of the first two, has put in a great deal of elementary explanation. Part I., comprising 119 pages, is a discussion of the Law of Contracts; and in Part IV., Engineers' and Architects' Employment, there is a good deal of space devoted to ordinary master and servant law. Sometimes this solicitude for the non-legal reader becomes ludicrous. In § 815, we read "Alabama affords a case where an architect who took the plans and specifications away from an unfinished building was prosecuted by the builder for larceny [stealing]." The translation in brackets is delicious.

Mr. T. M. Clark gives a good reason for a distinct book on this subject. He says that no controversies are tried before the courts with so little satisfaction to the litigants and their counsel, as building cases, for the reason that the extremely technical points involved require for their mastery more study than the busy lawyer can give them. Mr. Wait's work will do much to take away this cause for dissatisfaction, if exhaustive collocation of authorities can do it. Few, if any, of the cases are missing, we believe. Such tests as we have applied since the book has been in our possession lead us very positively to this conviction.

The text of a work like Mr. Wait's, from its technicality and the fact that its author is somewhat more familiar with architecture than with law, will almost necessarily be prepared directly from judicial determinations, giving the statements of the law in the very words of the judges rather than on the author's own authority. When we consider, however, how many "commentaries" so-called, written by men eminent for their legal attainments, have been prepared in the same way, we need throw no stones at Mr. Wait for his method. The most approved modern plan, as judged by the out-put of the publishers, rigidly excludes independent discussion of principles, reduces authors to compilers, and treatises to digests. We will have no "theory." All must be "practical"—the best calculated to help a busy grubbing *casidicum*, whose brief must now be in. This prevalent notion is not adhered to by Mr. Wait all the way through. He shows a refreshing disposition to express a mind of his own when he treats of the special duties of the architect. See in particular Chapter XXXIV., "Employment of an Engineer or Architect as an Expert Witness." R. W. W.

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A TREATISE ON THE LAW OF CARRIERS OF PASSENGERS. Two Volumes. By NORMAN FETTER. St. Paul, Minn.: West Publishing Co. 1897.

This work possesses in a large measure that quality of practical utility for which the West Publishing Company's publications are now well known. To it, as well as to the other works of the same firm, the criticism applies, that while a most excellent and well arranged digest of the existing law, and while filling a want which all books of ready reference fill, yet it can neither be said to

exhaust the existing knowledge of the subject, nor to add anything to the theoretical discussion of the principles on which the law of carriers is based. The avowed purpose of the work is "to state the law," to set forth in an orderly manner the living law on this subject as it exists to-day. This it does, and in doing it some thirty-six hundred cases are either cited or quoted. The authorities have been carefully searched and analyzed, and we are convinced that the work contains a clear and, in the main, accurate statement of the law on this subject as it now exists.

The fifteen hundred and fifty-four pages (exclusive of table of cases and index) contained in the two volumes are divided into forty-two chapters, of which eight are devoted to what might be called the carriers' general duty of care; four more to particular duties of care; four to contributory negligence; six to procedure generally; one to procedure in regard to baggage; and three to damages. At the end of the first chapter there is a discussion of the views relating to the province of court and jury on the question of negligence, and appended is an exhaustive note containing the language used by numerous courts on this subject. In Chapter XV., on the question of "Who are Passengers?" the author, under § 217, in speaking of employes, devotes a short note (p. 566) to *O'Donnell v. R. R.*, 59 Pa. 239 (1869), and should have stated that the carpenter, who was there held a passenger, was employed by an independent bridge contractor and not directly by the railway company. Chapter XVII. contains a very thorough discussion of the duty to carry punctually and to the destination, but seems misplaced, its natural position being with the other chapters, on the duty to passengers.

A chapter on "Receivers and Mortgage Trustees as Carriers" is very acceptable and, we feel, deserving of more extended discussion. The subject treated most at length and which will undoubtedly be the most appreciated by active practitioners, is that on procedure, covering forms of action, parties, pleading, evidence and practice. Damages, also, are given a prominence not far short of that awarded to procedure, and it is with no desire to detract from the importance of this part of Mr. Fetter's work, that we take exception to a statement made on p. 1380, where it is said that the Supreme Court of Pennsylvania has not the power to interfere with a verdict, because the damages awarded are excessive. This was perhaps true before the Act of May 20, 1891, P. L. 101, which declared that "The Supreme Court shall have power in all cases to affirm, reverse or modify, a judgment, order or decree appealed from . . . and may order a verdict of judgment set aside and a new trial had." In the libel case of *Smith v. Times Pub. Co.*, 178 Pa. 482, the Supreme Court set aside a verdict for \$45,000 as excessive.

In conclusion, stress should be laid on the admirable arrangement, division and sub-division of this great mass of law, by which the lawyer is brought into easy and quick contact with the law on any point arising out of the carriage of passengers, whether by land or by sea.