

morals and a sound public policy. It is also supported by the great weight of authority, both English and American: *Sussex Peerage Case*, 11 Clarke & Fin, 85 (1844); *Brook v. Brook*, 9 H. of L. Cases, 212 (1862); *LeBreton v. Nouchet*, 3 Mart. (La.) 60 (1813); *Williams v. Oates*, 5 Ire. (N. C.) 535 (1845); *Dupre v. Executor of Boulard*, 10 La. 411 (1855); *State v. Kennedy*, 76 N. C. 251 (1877); *Kinney v. Commonwealth*, 30 Grat. (Va.) 858 (1878); *Pennegar and Haney v. State*, 87 Tenn. 244 (1889). The leading text-book writers on the conflict of laws concur with the above cases: *Story's Conf. of Laws*, secs. 86 and 87; *Wharton's Conf. of Laws*, sec. 159.

Contrary ideas are held, however, in a few of the states: *Medway v. Needham*, 16 Mass. 157 (1819); *Putman v. Putman*, 8 Pick. (Mass.) 433 (1829); *Stevenson v. Gray*, 17 B. Mon. (Ky.) 193 (1856); *VanVoorhis v. Brintall*, 86 N. Y. 18 (1881); overruling *Marshall v. Marshall*, 2 Hun. (N. Y.) 238 (1874); *Moore v. Hegeman*, 92 N. Y. 521 (1883).

INNKEEPER; LIEN ON DRUMMER'S SAMPLES. In *Torrey et al. v. McClellan et al.*, 43 S. W. 641 (Court of Civil Appeals of Texas, Nov. 13, 1897), it was held that the innkeeper's lien did not extend to drummer's samples, when it appeared that the innkeeper knew all along that the goods were the property not of the drummer, but of his employer.

Before the decision in the present case this question had arisen only twice. In *Covington v. Newberger*, 99 N. C. 523 (1888), the same conclusion as in the principal case was reached. See also *Broadwood v. Granaray*, 10 Exch. 417 (1854). The next question arose in *Robins & Co. v. Gray* (1865), 2 Q. B. 501, and the result is in open conflict with *Covington v. Newberger*, *supra*. In that case Lord Esher held that the question of the innkeeper's knowledge as to the ownership of the samples is immaterial. It is obviously impossible to harmonize these two lines of cases. It is respectfully submitted, however, that as the innkeeper is bound to receive the goods of a guest without inquiries as to his title [*Gordon v. Silber*, 25 Q. B. D. 491 (1890)], the innkeeper should not be deprived of his lien even if he knows the goods to belong to a third party.

BOOK REVIEWS.

INTRODUCTION TO THE STUDY OF LAW. By EDWIN H. WOODRUFF, Professor of Law in Cornell University, College of Law. New York: Baker, Voorhis & Co. 1898.

This is a most excellent little book filling a long felt want. It begins with a description of the Scope of the Law. There is a chapter on "How and Where to Find the Law," which describes the different classes of legal books and their uses. Chapter III, on "The Operation of the Law," is a very carefully prepared and simple account of how law grows. The last chapter on Courts

and Procedure is good, but one would wish that Mr. Woodruff could have made it somewhat fuller.

We sympathize with the writer's view, shown in first chapter, on what law is, but must take a slight exception to the definition given, which is "The sum of rules administered by Courts of Justice." This definition is correct but hardly leads the student anywhere. The whole chapter leads to a definite conclusion which might have been given as a definition of law. Namely, that law, as the lawyer uses the term, is a rule of human conduct, the penalty for the disobedience of which is enforced by the Government.

A few other matters occur to us. On page 16, in describing the books which should be in a lawyer's library, would it not have been well to add some of the more noted collections of cases on particular subjects. The collections of cases by Professor Ames of Harvard, for instance, are of great use to lawyers, who, knowing the theory on which the cases have been gathered, can use, as mines of reference, the very complete citations of cases in the notes.

There is one point in the chapter dealing with the growth of the common law which is worthy of comment. We do not quite see why the writer uses as his illustration of the way in which the law grows, the case of *Munn v. Illinois*, 94 U. S. 113. The propriety of selecting a case as much criticised as *Munn v. Illinois* may be questioned, but certainly, as Mr. Woodruff uses the case, he should have noted the fact that it may be doubtful whether it is longer law. Another use of an illustration of a somewhat similar kind occurs on page 46, where, in illustrating a legal fiction, he gives the rule of a master's liability for the actions of his servant as being explained by the fact that the master and servant are "feigned to be one person." This is all right but should he give to the young student as explaining this anomaly in our law, the sentence from Chief Justice Shaw's opinion in *Farwell v. B. & W. R. R.*, 4 Met. 56: "This rule is obviously founded on the great principle of social duty that every man in the management of his own affairs, whether by himself or by his agents or servants, shall so conduct them as not to injure another." This may be an explanation of the rule, just as *Munn v. Illinois* may be a correct development of the law, but both are to-day examples of live controverted questions, and if given to the young student at all, should be given with a statement of the existence of a controversy.

Another matter of controversy in which there is an expression of one opinion as an uncontroverted fact is found on page 60, where the writer says: "The common law of England had its foundation in the customs of the Germanic tribes that accomplished the Anglo-Saxon conquest in Briton." This is rather hard on a certain class of modern historical inquirers who hold that Saxon England prior to the Norman conquest, derived the great majority of its laws and customs from the Roman occupation of Britain.

These incidental matters, however, in no wise detract from the general excellence of Mr. Woodruff's work. W. D. L.

MEMOIRS AND LETTERS OF JAMES KENT. By his great-grandson, WILLIAM KENT of the New York Bar. Boston: Little, Brown & Co. 1898.

Talleyrand's scornful adage about letter writers, which Kent must have heard—for he let wonderfully little pass him of what was printed in French or English—should have held him closer to his lectures and commentaries. Crabbedly conservative and disliked, therefore, by the growing nation, he became embittered, and in his later correspondence scored others for a biased egotism that he himself betrayed. Although chilled by this trait, we find much to atone for it in the loving dread he showed for his country's happiness. He believed John Adams hopeful of setting up an hereditary monarchy, and he looked askant at J. Q. Adams' election.

The book is enlivened by such glimpses into his private views. The biographer, being a great-grandson, has been able happily to relieve the otherwise stern countenance with kindly and even humorous lines, and to soften the cold, judicial gaze with indications of a love for the Muses. Anecdotes of his meetings with the foremost statesmen and writers help prove that all saw in him the framer of our legal policy. As chancellor, during the nine years ending in 1823, he had not a single decision, opinion or dictum of his predecessors from 1777 onwards even suggested to him, which, he said, "gave me grand scope; and I took the court as if it had never been known in the United States."

In 1781 he left Yale College, its professor and its three tutors; its lessons he never forsook. More stress, indeed, is laid on his classical than on his legal lore. It would amuse modern business-like lawyers to find a judge's journal teeming with such entries as, "Pinkney's speech in the Nereide case ranks with Cicero's best." This notion of Kent's was quite odd in one who had listened to so many orators of note at his own bar. Again he states, "Mrs. Radcliffe's productions and the keen observations of my wife make me bow to the equal talents and genius of female minds." On the same page we read that "Twelfth Night" and several others of Shakespeare's plays are "very indifferent" or "barely tolerable!" "Hamilton, had he lived, would have rivalled Socrates!" This last we can forgive, in view of his friendship with that lofty spirit. His account of Hamilton forms a valuable appendix to the book, revealing the simple, old-fashioned patriotism which pervaded both men, and was, perhaps, their chief bond of union.

S.

THE AMERICAN LAW OF REAL PROPERTY, By CHRISTOPHER G. TIEDEMAN. Second Edition. St. Louis: The F. H. Thomas Law Book Co. 1892.

In the preface to the first edition of this book, the author states that one of his objects in writing it was to show a logical or historical reason for every principle of the law of Real Property.

It is not necessary to state that this commendable and difficult task has been successfully completed, for all who have read the book will testify to its clear and comprehensive statement, and logical and rational treatment of the subject. In this, the second edition, valuable revisions and additions have been made, including practically all the cases decided by the American courts of last resort in the intervening years, in relation to the limitations of estates by deed, or by will, and the rights of parties therein; and the leading cases on other branches of the subject.

The author has, unfortunately, appended no table of English Statutes such as Mr. Washburn included in the index to his work; and has failed to arrange the cases in his voluminous notes in the alphabetical order of their states. In discussing the subject of estates-tail, Pennsylvania is omitted from the list of states which have converted such estates into fee-simple or otherwise modified the common-law rule; and included among those which have "not expressly abolished" them; yet the Act of April 27, 1855, provides that thereafter such estates shall be construed as fee-simple. And no mention whatever is made of the subject of ground-rents, which surely deserves some notice.

On the whole, however, the treatment of topics is comprehensive and accurate, considering that the author does not profess to enter into "all the ramifications of the subject," but merely to give an elementary text-book and book of reference. Especially valuable are the chapters on Mortgages, Uses and Trusts, Title by Deed, and by Devise.

M. H.

THE SCIENCE OF LAW AND LAWMAKING. By R. FLOYD CLARKE, A. B., LL. B., of the New York Bar. New York City: The Macmillan Co.

The importance of the question considered by the author, and the growing interest in it, insure something more than passing attention to the book under review. Codification, with its advantages and drawbacks, and a theory for the solution of the problem, are presented in a manner intended by the writer to be equally intelligible to the lawyer and the layman. Whether the layman, however intelligent, will find the subject sufficiently accessible to be enlightened, is a question that can be answered after experiment only. It may be pointed out that so much digression is rendered necessary by the terminology that the legal reader, perhaps, feels hampered. Thus, a code is defined to be a statute of a certain kind. This necessitates definition of a statute, *i. e.*, a law enacted, etc. Then law is defined and cases cited which involve the interpretation of such hieroglyphics as 1 Stra. 504; 4 L. J. R. N. S., etc. The writer, however, has wisely made reference to the reports unnecessary by frequently setting out at large the facts of the cases. After a historical *resumé*, and the statement of the case *pro* and *con*, codification is introduced. The method of adducing concrete

examples of case, statute and code law is very effective, often rendering argument on a given point almost unnecessary. Under the title "The English Law as It Is" contracts in restraint of trade *inter alia* form the basis of discussion, and Mr. Clarke does something towards inculcating a salutary principle into the minds of laymen, viz., concerning the true nature of trusts. A note informs the reader that "the writer looks upon trusts as a further evolution of the laws of trade, which produced corporations—aggregations of wealth, under the guidance of one hand and head—without which our present civilization could never have reached its present industrial development" (p. 162). Unfortunately the author carries his argument on this point no further. The code provisions against such contracts occupy a prominent place in the illustrations. On the general question as to the practicability of exclusive code law the author takes the negative position, and shows that the lesson of experience has taught the impracticability of one code successfully coping with the manifold problems that may arise. He cites, further, the success that has met more flexible code laws, as *ex. gr.*, the English Judicature Act of 1875, in which "no serious attempt was made to codify procedure, but it was provided that the courts might make rules to complete the system." The comment on the effect of the Rules is as follows: "This much, however, may be said, that to all appearances they have worked satisfactorily to the Bench and Bar. At any rate, no such condemnation has been passed upon them by friends and foes alike, as has overtaken the New York Code of Civil Procedure."

To the lawyer, the book will commend itself as one in which a vital problem is impartially treated. None of the advantages of codification are underestimated nor are its disadvantages slighted. The conclusions reached by the author are evidently the result of careful thought and, in so far as a cursory examination can show, valid. From the layman's point of view, however, it appears to the present writer, that the contents of the book will be "Greek," in spite of the perspicacity with which the author has stated his case. But as aforementioned, judgment before trial is premature.

G. F. D.

MANDAMUS CASES DECIDED IN THE SUPREME COURT OF MICHIGAN.

By JOHN W. MCGRATH. Detroit: John F. Eby & Co. 1898.

This work contains the mandamus cases reported in the State of Michigan down to January 1, 1898. The editor has so arranged and reported his cases as to be able to cover all questions of jurisdiction and practice, and to include sufficient data from each case to indicate when the writ will and when it will not issue.

The volume contains 1730 cases, with both tabular and topical indexes. The work is so arranged as to amount practically to a digest of the mandamus law in the State, and no doubt will prove very valuable as a book of reference to the practitioner.