

## BOOK REVIEWS.

**EQUITY PRACTICE IN THE UNITED STATES CIRCUIT COURTS.** A Compilation of the Provisions governing the same as found in the Statutes of the United States, Rules in Equity and Decisions of the Supreme Court. By OLIVER P. SHIRAS, District Judge for the Northern District of Iowa. Second Edition. Revised and Enlarged. One Volume, pp. 226. Chicago: Callaghan & Company. 1898.

No author could come better fitted to the task of writing a book having to do with the important subject of Practice, than one whose experience has been both at the bar and on the bench. Such a combination leads one to expect from the hands of the author a work of value, and we are not disappointed when we pick up this book of Judge Shiras. It is true that the book is small—there are only two hundred and twenty-six pages in all—but within that space the author has compressed much information and many valuable hints. Its conciseness is a feature of the work which is not to be lightly passed by, especially in these days when that all important quality is so often missing in the arguments that are made and in the opinions that are handed down.

As is explained in the preface, the second edition, the issuance of which was caused by the creation of the Circuit Court of Appeals and the radical change occasioned thereby in the matter of appeals, is like the first edition in not attempting "to present a treatise on equity jurisdiction and practice at large, but only to bring together in compact form the provisions found in the Rules in Equity, in the Statutes of the United States and in the decisions of the Supreme Court which define and limit Federal Jurisdictions in Equity, and which prescribe and explain the steps required to be taken in bringing, preparing for hearing and submitting suits in equity, in taking appeals therein, and in enforcing decrees by direct or auxiliary process." The above quotation sufficiently explains the scope of the book, and it is necessary but to add that the first one hundred and forty-two pages form what the author calls "the manual," which is a statement in paragraphs of its Equity Rules, substantially in the words of the rules, and this statement is supplemented by explanation and suggestion. Under each paragraph the statutes and cases having to do with the rule are chronologically cited. Chapter II. on Federal Jurisdiction in Equity, Chapter III. on Place of Bringing Suit, Chapter XII. on Preparation for Hearing and Chapters XVI. and XIX. on Appeals and Appealable Decrees are especially noteworthy for the clearness with which they are written and arranged and for the valuable suggestions they contain. The remainder of the book is devoted to the Rules of Practice for the

Courts of Equity of the United States and the Rules of the Supreme Court of the United States given *in haec verba*. The index, so important a part of a book of this kind, is fairly full and complete. *F. C. N., Jr.*

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PROBATE REPORTS ANNOTATED. By FRANK S. RICE. Vol. II. New York: Baker, Voorhis & Company. 1898.

The second volume of these reports comes to us well recommended by the first which, however, was not without some defects, as was shown in our review of that volume. The present number contains the reports of over a hundred well selected cases and some very valuable notes by the editor—only a few of which need be mentioned—“The Distinction Between Annuities and Legacies;” “Gifts Causa Mortis,” a note of six pages. On page 143 of this note, in citing the definition of a gift causa mortis as laid down by the Supreme Court of Pennsylvania in *Perry's Appeal*, the number of the report and the page are omitted. While this may be a small matter, yet, in a manner, it mars a work of this kind, which is on the whole so valuable. This is only one instance of other slight defects of this character. Other notes of value are “Administration on the Estates of Living Persons;” “The Doctrine of Spendthrift Trusts,” etc.

The work is a meritorious one and we trust that the slight omissions already pointed out may be supplied in the succeeding volumes.

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A TREATISE ON THE LAW OF EASEMENTS. By LEONARD A. JONES, A. B., LL. B. New York: Baker, Voorhis & Company. 1898.

Mr. Leonard A. Jones, in his latest work, entitled “A Treatise on the Law of Easements,” which is in continuation of his series of works upon the law of real property, has shown the same care and thoroughness which mark his other legal publications.

The author has wisely devoted a large portion of his book, comprising nearly 300 pages, to a thorough consideration of rights of way, properly conceiving that this branch of his subject is the most important as the one most frequently in litigation and involving the most valuable property rights. Other subjects are treated at a greater or less extent, according to their practical importance. Indeed, the whole scheme of the work, as the author intimates in his preface, is to treat fully those portions of the subject which are of “general and every day use,” rather than to give undue attention to theoretical questions.

It is to be noted that Mr. Jones classes rights in gross, other than profits *a prendre*, as easements, and, in justification of his classification, says: “It has sometimes been said that there is no such thing as an easement in gross; that a privilege not appurtenant to land is not an easement. The term ‘easement in gross’ is used because

it is a term in general use by legal writers, by judges and by the profession; and, as against such usage of the general term, it is useless to attempt to establish a refinement of definition intended to do away with the term."

If it is true that there is properly no such thing as an easement in gross—and the better opinion seems to incline to this view—the author's reason for following the other classification does not commend itself to the reader, for it is peculiarly the function of a text writer to call attention to and correct such error. The same criticism applies to the consideration of public rights of way as easements in gross, notwithstanding the able opinion of Lord Cairns in *Rangeley v. Midland Railway Company*, L. R. 3 ch. 306, 311, which points out the impropriety of such classification, and which the author notices in section 422 of his work. These faults, however, if they may be called by so serious a name, are of form rather than of substance, and do not seriously detract from the general excellence of the work.

The subject is arranged in a convenient form, each paragraph having a heavy headline to catch the eye, and the citation of authorities is full and thorough.

C. C. T.

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THE TRIAL OF EMILE ZOLA. A Detailed Report of the Fifteen Days' Proceedings in the Assize Court at Paris. New York: Benj. R. Tucker, 24 Gold St. 1898.

This "full report, from original sources," of the Zola Trial, makes most interesting reading, as may be imagined. The fugitive sketches appearing in the newspapers have already given us some idea of the way they do things in France, but the detailed account makes a much more vivid impression.

The most curious things to an Anglo-Saxon mind are the windy speeches the witnesses are allowed to make on everything but the subject at issue, the threats to the jury of the consequences if a certain verdict shall be brought in, and the continual interruptions and uproar from the audience. For example, on page 210 of the book under review appears the testimony of M. Meyer, an expert for the defence, to the effect that Major Esterhazy wrote the *bordereau*. M. Labori, of counsel for the defence, has remarked: "It is a great pity that M. Couard (an expert on the other side) is not here. It would be a pleasure to witness a discussion between him and M. Meyer, his former professor in the Ecole des Chartes."

"I ask nothing better," cried a stentorian voice from the middle of the auditorium, and through the crowd pushed M. Couard, carrying a large package. "I do not wish it to be said," he shouted, "that I have not the profoundest respect for my old teacher. But what is the Ecole des Chartes? The Ecole des Chartes, I know it; I have been through it. Do they teach anything there about the handwriting of the nineteenth century? . . . I revere M. Meyer as a professor of Roman philology but as an expert in handwriting he is like a child just born," etc., etc.

On page 238 begins the examination of Major Esterhazy. M. Labori requested the court to ask the witness what he thought of the *bordereau*.

“The judge:— . . . ‘You are asked what you think of the writing of the *bordereau*?’”

“Major Esterhazy:—‘Although you do me the honor to convey to me this question, *Monsieur le President*, it is still the question of M. Labori. Consequently I will not answer.’”

Following are six pages of questions asked by M. Clemenceau, to each of which is appended the one word “[silence].”

After all, some people are asking themselves, why this fuss about a court-martialed captain? Many others had been sentenced by court martial, and on secret evidence too, but never before has so much been made of it. “Perhaps,” as one of the wondering ones has said, “if the others had been Jews, it would have been different.” But the fact remains that Dreyfus was convicted either on illegal evidence (that is, a document or documents not produced for the inspection of the accused or his counsel), or else on evidence outrageously insufficient. All of which shows the advantages of militarism.

A curious thing about this book is the fact that the lines are not justified, the right margin being left uneven, as though printed by a typewriter. The publisher claims this as a gain both in economy (twenty to forty per cent.) and in æsthetics.

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L'ETAT FEDERATIF, LEGISLATION COMPAREE ET SOCIOLOGIE. Par  
RAOUL DE LA GRASSERIE. Paris: A. Fontemoing, Editeur.  
1897.

This paper volume purports to be an inquiry into the different forms of union between states which are at present in existence in the civilized world, with the purpose of showing their comparative value. The title seems rather to refer to one particular form of union, but in the text three different systems are discussed. The author tells us in his preface that we are to investigate: First, the natural and logical foundation sociologically of the three systems— isolation, federalism and centralization; second, what part they have played and are still playing in the history and geography of nations; and third, what their respective value is, relatively and absolutely, to society at large.

The work is divided into three parts—theoretical, experimental and practical. The second part treats of European and American federations. When the United States is under treatment some customary European ignorance crops out. For instance, on page 51 the author credits us with but thirty-eight States, and on page 52 he says the Senate forms, in addition to its other functions, the High Court of Justice. These are, of course, minor errors; yet, after discovering them, we are not so inclined to give our whole faith to the rest of the book. Many facts are given which it is impossible for the average reader to verify, and, in consequence,

everything about the book should be like Cæsar's wife. It may be, however, that this matters but little to the ordinary European student, who seems to take small interest in being accurately informed about America.

The author's conclusion is that a centralized and unified government like that of France is to be preferred to the federalized governments of the United States or Switzerland. He places his chief reliance on the theory of evolution, by which, he claims, people began with isolation, passed through the different degrees of union, and have at last arrived at the point where merger into one takes place. The book is very readable throughout, and, to one of a speculative turn of mind, is very interesting. *W. P. B.*

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GENERAL DIGEST. American and English Quarterly Advance Sheets, No. 6 to January, 1898. Rochester, N. Y.: Lawyers' Co-operative Publishing Company.

This installment of the General Digest is in its usual complete and accurate form. The publishers deserve great credit for the thorough and comprehensive manner in which this digest is compiled.