

“belonging to any person who shall abscond” applies strictly, is a fair interpretation of the meaning of the code. Would not a common sense interpretation of this expression be that “goods belonging to any person who shall abscond” is merely a general designation of the goods brought into the hotel by such person. The old common law rule seems to be a fair one, all things considered; it has stood the test of time, and it is difficult to understand why a court should strive to construe a statute as antagonistic to it rather than in harmony with it, especially in view of the extraordinary liability to which innkeepers are subjected. It would seem that the court, in its anxiety to protect the rights of the owner of the goods, had rather overlooked the rights of the unfortunate innkeeper.

BOOK REVIEWS.

ORIGIN AND GROWTH OF THE ENGLISH CONSTITUTION. By HANNIS TAYLOR. Boston and New York: Houghton, Mifflin & Co. 1898.

We find comprised in these two volumes a clear and comprehensive history of that Constitution of England, which certainly had a strong and direct influence upon the Constitution of the United States, through having moulded the minds of the men who were its makers, even though the former may not have been so exclusively the model of the latter, as Mr. Taylor contends.

In reading the first volume we seem to be listening to a chorus of familiar voices. The powerful accents of Maine, Stubbs, Vinogradoff and Fiske, unmistakable—each in his own way phrasing his own new thought of the old facts, and mingled always with the cadenced English of Green—meet us everywhere. Mr. Taylor has used his authorities copiously, yet he has used them well; and the pleasure of hearing the old voices is not marred by the presence of the new host, who has gathered them about him. That he asks them to do much of the talking cannot but be excused to the listener, by the fact that they talk so very well. Mr. Taylor himself speaks clearly, simply, and carries his theme on steadily to its appointed end. He has written a valuable work, but the ground has been so well covered before, that perhaps the chief advantage of the present work will be found in its simplicity of method and arrangement, which makes a reference to any specific period a very quick and easy matter.

That he is right in his idea that the original binding element of the Teutons was a national and not a geographical one, seems indisputable. In our new idea of an Anglo-Saxon domination of the earth we seem to be undoing, in some degree, the work of the years between ourselves and those ancient Teutonic peoples. again we come to the idea of a tie of race, rather than of physical

propinquity. It is a question if this gradual yielding to subserviency to the land, to a thing in the place of an idea, was not a stepping aside from the straight path of progress toward civilization, upon which our ancestors had entered.

In his interesting exposition of the "brand-new idea" of giving the Federal Government the power to execute its laws on the individual directly, not on the states in their corporate capacity, Mr. Taylor is emphasizing a most interesting element of the situation at the formative period of our Constitution. But, perhaps, it is still more interesting to consider that this federal head, which was so to act, was not a physical fact at all. The states in their union did not, as was the case with other headships of federated states, grant such headship to the largest or more powerful state among them all. This "head" of the makers of our Constitution was not a head at all, but an animating soul, through whose influence all members were controlled and brought to act as one body, without any one being set above or below another.

In view of the immensity of the work undertaken, the long translations from Cæsar and Tacitus of passages more than familiar seems hardly justified, while the profound suggestions of Seebohm and De Coulanges are not allowed to influence the text, but are passed over in a foot note.

To the rather peculiar repetitions of the words and phrases of his authorities, without any apparent fusing or transmutation through his own thought, is added a still more peculiar repetition of the author's own phrases in different portions of the book. As instances, we note a repetition of a portion of page 276 on page 282, paragraph 2, and of a portion of page 392 on page 426. It indicates the method of composition, perhaps, a little too clearly to be wholly pleasant.

In selecting the more individual portions of the work we should turn to the introduction and to the last chapter. We think that very few will dissent from the statement in the introduction that our Constitution is a growth and not a creation. If anyone appears to controvert this fact, it is rather because of an inadequate statement of the idea of the almost miraculous crystallization of contemporary thought in that instrument, than to an idea that the thought itself was wholly new. Gladstone was not so shallow as to intend to give to the words "struck off," which are here quoted, the meaning of instantaneously created. That the instrument was "struck off" in a marvellously short time is an undisputed fact. But that no more implies that it was a creation of hitherto non-existent ideas, than the fact that by its formation the new nation of Americans at once sprang into existence implies the creation of a new race of human beings.

The last chapter is very valuable, setting forth, as it does, the last results of constitutional government in England, especially in relation to local self-government and the extension of the franchise. Between these two chapters lie those which set forth the result of

evidently long and unremitting labor and research. And while they add nothing to the reach of our thought or the knowledge of fact on the subject, yet they do give us a clear, interesting and intelligible view of the road over which the English people have passed, in their long pilgrimage of nearly a thousand years, from William of Normandy to Victoria of England. *M. C. K.*

SHORT STUDIES IN EVIDENCE. By IRVING BROWNE. Albany, N. Y. : Banks & Brothers. 1897.

Mr. Irving Browne has collected into a single volume a number of papers on various topics under the law of evidence, which he has contributed at various times to the legal periodicals. No attempt has been made to produce a new work on the law of evidence; the twelve papers are entirely disconnected and are not even arranged in logical order of sequence. The title gives no idea of the contents and we can do no better than give the separate headings of the essays: Practical Tests in Evidence; Theology on the Witness-Stand; Evidence of Declarations and Reputations as to Private Boundaries; Parol Evidence to Add a Warranty to a Written Sale; Parol Admission of Contents of a Writing; Degrees of Secondary Evidence; Unofficial Entries by Third Persons; The "Excess and Deficiency Clause" in Bills of Lading; Of the Disqualification of Parties as Witnesses; Testimony of Parties on Criminal Prosecution; Parol Evidence in Respect to Writings Under the Statute of Frauds; Self-Serving Declarations. Many of these articles were written years ago, one as early as 1857, and great improvement could have been made in the practical value of the volume had some notes been added containing recent cases. Some of the "studies" are very entertaining, notably the first: Practical Tests in Evidence, and the eight hundred cases cited are of use as pointing to certain line of cases. The volume is ordinary size, containing 250 pages, and has appended a table of cases and index.

J. F. B. A.

SELECTED CASES ON THE LAW OF PROPERTY IN LAND. By W. A. FINCH, Professor of Law in Cornell University College of Law. New York: Baker, Voorhis & Co. 1898.

This work, as the preface informs us, "contains a classified selection of cases on the topics usually taught in our law schools in the course on "Real Property," and, as evidenced by the omission of head notes from the cases, is intended for use in those schools.

The analysis of the subject, and the classification of the cases are both excellent, though Chapter 3, of Part III. would seem to be superfluous in view of Chapters 3 and 4 of Part IV., which contain the same titles, illustrated by the same cases. The system of cross references by which one report of a case is utilized to illustrate several different topics seems a good one in view of the space limitation imposed by the author upon himself, though it may be that in

practice it will confuse the young student, and tend to foster his natural propensity to stray off into the by-paths of dicta. It is this very space limitation, however, which detracts most from the value of the work; four hundred and twenty cases being manifestly inadequate to a proper development of the subject, even taking into account the cross references; while the nicely balanced proportions of the several parts, and the symmetry of the work as a whole, negatives the idea that it was not intended to be complete in itself.

Perhaps the most striking feature of the book, the subject considered, is the paucity of English cases; the author might almost have entitled his work "Selected *American Cases*," etc., for a close count reveals only twelve cases from the English reports. In vain one looks for the old landmarks, which for generations have guided the student through the mazes of the common law—for those "Leading Cases" which hold in solution whole epochs of legal learning; in place of *Fletcher v. Ashburner* is *Craig v. Leslie*; and even the presence of *Vane v. Lord Barnard* hardly reconciles one to the absence of the Countess of Shrewsbury's case. This is a real fault in the work, for it destroys the historical prospective so necessary to a proper contemplation of the subject. No reason is given for this omission, but we think it is due to the initial fault of attempting to confine so broad a subject within such narrow limits.

Though the author does not say so, it would appear from internal evidence that the work is intended primarily for the use of those students who expect to practice their profession in the state of New York, for more than one-third of the cases are taken from the reports of that state, and the notes contain copious references to the New York Code and Statutes, even when, as on page 711, the note is appended to a case from another state. The very compactness of the treatment, however, which, to the reviewer's mind, is responsible for the faults noticed, will render the work useful, in the hands of a competent instructor, to those who have only a limited amount of time to devote to the subject.

W. E. M.

TAXATION FOR STATE PURPOSES IN PENNSYLVANIA. By FRANK MARSHALL EASTMAN. Philadelphia: Kay & Brother. 1898.

The subject of taxation—always of interest, at least, to those upon whose shoulders the taxes fall as an unwelcome burden—has again become a subject-matter for fresh study and investigation as a war revenue becomes necessary, and new and untried adventures in government call for increased expenditures in many branches of the administration. Each state has its own system of raising funds to meet the local needs, and thus furnishes an object lesson to all its sister states as to the means and methods of so doing. In this way each state adds its quota to the general knowledge, and, therefore, every such book as this is valuable, inasmuch as it shows how the

legislation upon this subject has developed, from the time when the sale of state lands and the income derived from investments of the state itself were sufficient for the needs of the government, to the present time, when a most elaborate system is necessary. In the development of this system wars have played an important part. The necessity for a greater revenue, which comes with every war, leads to the invention of new methods of getting at the pockets of the people, and legislatures have shown much ingenuity in originating such methods. Pennsylvania is no exception to the rule, and the modern system of taxation in this state dates from the increased expenditures imposed upon the state by the demands of the civil war. Many of the war taxes, it is true, were abolished after the extraordinary expenses of the war itself had ceased, but they had given a model upon which to form new enactments when the expenditures again outran the income of the state.

Whether or not we agree with the author of the treatise—that the system of taxation in Pennsylvania should be retained in its entirety until any change which may be proposed has been shown, by absolute demonstration to be its superior—we think we may safely assert that the system is well set forth by him. The arrangement and classification are those with which we are all familiar. There is no attempt at treatise making—rather we have a compilation, which performs the office of such a work in a simple and clear manner. The experience of the author in connection with his official duties has led him to the use of a somewhat peculiar manner of stating his own conclusions in some of the passages where he ceases to be the mere compiler and becomes the author. The sensation given is that of an inaudible interlocutor, with an audible voice in answer. This manner, however, has its advantages, as one often seeks a book of this sort in order to find an answer to some definite question, and the book which answers it clearly is only too rarely found. As a compendium of our tax laws and an answer to many such questions, this book appears to have a very definite value and place of its own.

SELECTED CASES ON THE LAW OF PARTNERSHIP. By FRANCIS M. BURDICK. Boston: Little, Brown & Co. 1898.

The ever-growing list of "selected cases" has received a valuable addition on the subject of Partnership, through the efforts of Professor Burdick, of the Columbia Law School. The success of his Cases on Sales has paved the way for the favorable reception of the Partnership cases, and the latter is fully deserved.

The cases selected are in the vast majority American and of very recent date, the collection, in the former respect, being in striking contrast to that of Professor Ames, of Harvard, in which more than three-quarters of the cases are from the English courts. While the historical perspective of the law is not so strikingly exhibited to the student by the modern cases, yet the more desirable

object, perhaps, of presenting the law in its present working attitude is attained.

The book is divided into nine chapters, as follows: I., The Formation of a Partnership; II., Partnership as to Third Persons; III., The Nature of a Partnership; IV., Powers of Partners; V., Rights and Remedies of Creditors; VI., Duties and Liabilities of Partners *Inter Se*; VII., Dissolution of Partnership; VIII., Accounting and Distribution; IX., Limited Partnership.

These chapters are divided into very minute sections, and it might be objected that the work of subdivision is overdone. Some of the sections could easily be joined with others without damage to the arrangement. In fact, it is difficult for the student to remember, some time after he has read a case, anything more than the general division under which it came, and an attempt at too great a subdivision of a subject is apt to lead the student to believe that each particular subsection is governed by a separate rule of law, and that each of these rules must be learned separately instead of being deduced from the general principles of the law on the subject.

The absence of notes to the cases, showing to what extent they have been followed, is to be remarked, but may be explained by the extremely recent date of many of them. The practice of adding short foot notes to cases in these collections cannot be too strongly commended. Some of the cases are too greatly condensed, however, and all the opinions in *Cox v. Hickman*, 8 H. L. C. 268 (1868), with the exception of Lord Cranworth's, have been omitted. But on the whole the cases are well selected and interesting, and would form the basis of a valuable course in a law school.