

BOOK REVIEWS.

JOHN SELDEN AND HIS TABLE-TALK. By ROBERT WATERS.
New York: Eaton & Mains, 1899.

John Selden—the famous contemporary of Ben Jonson and Sir Francis Bacon—needs no introduction to our readers; but it gives us great pleasure to recommend to their attention this pleasing edition of his famous table-talk. It would be a waste of time to speak of the wit, the charm and the sound wisdom of those familiar discourses after they have been so highly spoken of by such eminent critics as Coleridge and Hallam. The editor has heightened their interest and strengthened the allusions by the insertion of apt notes. The work also contains an account of famous bygone table-talks, the career of John Selden, and a chapter telling of the origin of Selden's table-talk, and its popularity.
E. W. K.

BIRDSEYE'S ABBOTT'S CLERKS' AND CONVEYANCERS' ASSISTANT. By C. F. BIRDSEYE. New York: Baker, Vorhis & Co., 1899.

The original edition of this work, by Austin and Benjamin V. Abbott, has been so long before the profession, and has always been so favorably regarded, that it scarcely needs any new commendation at this late day. In preparing the present edition Mr. Birdseye has retained as many of the old forms as are not obsolete and has added new ones, which almost double the size and consequently the value of the book. The 1,500 forms which the book embraces range from the simpler kinds of contracts to the most intricate corporate agreements, such as Railroad Leases, Railroad Mortgages, Car Trust Agreements. The index, too, is an exceedingly comprehensive one, in that it covers not only the titles to the forms, but their more important covenants and agreements as well. No lawyer can afford to be without it.
O. S.

A TREATISE ON THE LAW OF BILLS OF EXCHANGE, PROMISSORY NOTES, BANK NOTES AND CHEQUES. By the Right Honorable Sir JOHN BARNARD BYLES. Sixteenth Edition. Edited by Maurice Barnard Byles and Walter John Barnard Byles. London: Sweet & Maxwell, Limited, 1899.

A work which has passed through sixteen English and eight American editions in seventy years needs no word of comment

upon its established usefulness to student and practitioner. Chief Justice Sharswood has well said in the prefaces to his American editions: "This treatise has won its way so entirely into public confidence as an accurate and practical compendium of the Law of Bills of Exchange and Promissory Notes, as evidenced by the demand constantly recurring for new editions both in England and this country, that nothing further need be said in its favor."

In his preface to the First Edition (1829) the author expressed the purpose of his "little book" to be to "supply a want, felt by many, of a plain and brief summary of the principal practical points relating to bills and notes, supported by a reference to the leading or latest authorities." Subsequent cases and statutes have been included in the later editions, and the authorities on the subject are so numerous that it has always been the difficulty of the editors to avoid destroying the symmetry and usefulness of the book by crowded references. These editions have each been successful, and Byles on Bills is more extensively cited than any other work on that subject, and is preeminently the leading authority on Bills and Notes. The crystallization of the law relating to the vexed topics treated in this work into such a small compass has excited both the wonder and admiration of the profession and the courts in this country and in England.

In the Sixteenth London Edition is still preserved that same succinctness of text and judicious selection of leading points and cases so remarkable in the First Edition. The arrangement, however, of the latest edition, is somewhat changed. The more recent editions follow the chronological order: the first ten chapters are devoted to a description of the instrument, the next two to the title of the holder, the following six to his duties, and the remaining seven to his rights, how they may be lost or qualified, or enforced by action or proof in bankruptcy. The American Editions (the Eighth, appearing (1891) have so far followed the older arrangement. It is to be hoped that a new American edition will soon be forthcoming, including the more recent statutes and cases.

The work includes, as some of the earlier editions have done, an appendix containing all the English statutes in force upon the subject of Bills and Notes. In 1882 there came into force the "Act to Codify the Law relating to Bills of Exchange, Cheques and Promissory Notes" (45 and 46 Vict. c. 61). This appears among the other statutes. This Act is constantly referred to in the text as "The Code," and the present Sixteenth Edition contains an Index showing the "Sections of Code, where referred to in Text,"—of the greatest value to the English attorney.

An edition so carefully prepared will serve to sustain and strengthen the reputation which Byles on Bills has established as a standard work, and we commend it for its accuracy

and compendiousness to every student of law, and as a work without which the library of every legal and business man is necessarily incomplete.

J. S. K.

PRINCIPLES OF PLEADING. By JAMES GOULD, LL. D.
 Edited by FRANKLIN FISKE HEARD. Fifth Edition. New
 York: Banks & Brothers, 1892.

An old friend is none the less welcome because he wears a new dress, and we are well pleased to see that Mr. Justice Gould's book has been receiving the attention it so richly merits. It has been so long before the public and is so well known to the profession that we shall say nothing of its general features. To the student we say that it is a conscientious and comprehensive work, than which few can be found better adapted to his requirements.

The present edition is the fifth since the book was originally published in 1832, but we see that the editor, Mr. Heard, has been both wise and reverent enough to preserve the text intact, placing his additional comments and remarks in the last pages of the book. It speaks well for the original value of the work, that after the lapse of such a period of time so little addition was necessary to modernize it. Mr. Heard has given us only seventy pages of addenda in a book of nearly six hundred, but apparently they are amply sufficient. Mr. Gould's work has now received what alone it needed—the attention of a careful and competent man in bringing it up-to-date—and there is no reason why it should not now be as valuable to the law-students of the present generation as it has been to those of the past.

P. M. R.

A TREATISE ON CRIMINAL PLEADING AND PRACTICE. By
 JOSEPH HENRY BEALE, JR., Professor of Law in Harvard
 University. Boston: Little, Brown & Co., 1899.

In this work, which appears in the Student's Series, Professor Beale has made a contribution to legal literature valuable alike to the practicing lawyer and the student, and has demonstrated that it is possible in the compass of four hundred pages to treat fully and luminously of the principles of an important legal topic.

The work is divided into four parts. Part I deals with Matters Before Trial, Part II with the Accusation, Part III the Trial, and Part IV with Matters of the Trial, Arrest of Judgment, Appeal, Sentence, etc.

Heretofore students and lawyers have been obliged to make their choice between "handbooks" containing mere bald and

unconnected statements of well known principles, which did little more than put the lawyer "on the track" of what he was seeking, through the medium of citations in the foot-notes and cumbersome works which, however useful to the lawyer, were impossible to the young student engaged in covering the whole field of law. Mr. Beale presents the *via media*, and offers to the lawyer a work which contains practically all that is of value to him in the larger works on the subject, and to the student a text-book which is a marvel of lucidity.

W. E. M.

THE EXECUTIVE POWER IN THE UNITED STATES: A Study in Constitutional Law. By M. ADOLPHE DE CHAMBRUN. Paris: Thorin & Sons. 1896. (Written in French).

Among the many books which deal with the questions arising under the Constitution of the United States, one of special interest is M. de Chambrun's treatise on the Executive Power. As the author's name imports, he was a Frenchman and attached to the French Embassy as its legal adviser. Before writing his book he had been in America for seven years, and had become a member of the bar in Washington. M. de Chambrun was, therefore, well qualified to handle the subject on which he has written. The author's purpose in penning his book is thus set forth by his son in his preface to the second edition: "My father, who . . . was intimately associated with several men whose parts in the political crisis of the period of Secession had been considerable, commenced to write this volume about 1872, when the third Republic was being established in France. A correspondence carried on with M. Thiers had made him consider the utility which would perhaps exist in explaining to the French public the theory of the American executive power, at a time when the presidential power, such as it was among us, was about to make its first appearance. He did not desire the French constitution to imitate exactly that of the American Union—according to him certain inherent factors in the political and social conditions were opposed to it—but he desired, if possible, to familiarize the French public with the liberal parliamentary theories of which he was always a pronounced partisan, even though at that time family traditions made him still hope for the return for our ancient hereditary monarchy."

It is of course impossible here to give even the briefest synopsis of M. de Chambrun's book. Suffice it to say that he has shown himself a very well informed, intelligent and kindly critic of our governmental system. It is a pity that no translation is available for readers in this country, as his work is most thoughtful and instructive and should be read with care not only by lawyers, public men and students, but also by those who have our national welfare at heart. The book is far from

tedious, though of course some elementary matters have been introduced to make it understood by a foreign audience. Its style is plain and its reasoning easily followed.

In view of the present position of our country the following quotation will furnish food for thought. The extract is made from the last chapter entitled "Causes which might modify the Constitution of the United States," and is as follows: "We have seen elsewhere in what way President Washington was made the faithful interpreter of the thought of the members of the Constitutional assembly at Philadelphia. The administration which he organized proposed to avoid, as much as possible, foreign complications. We have read in another chapter of this book how, upon retiring from power, Washington insisted upon the continuance of his policy of neutrality. It is because his successors have not deviated from it that the republic has been maintained. An active and energetic foreign policy presumes in effect in the executive power which directs it, both permanence and a force proportional to the vigor of the action. At the same time the alliances formed with other powers have only value, as far as they are supported by a display of strength; in other words, they cannot be brought about without armies and navies strongly organized. If then the spirit of conquest and the lust for new territorial acquisitions should develop itself in the United States, they would soon bring about an inevitable augmentation in the powers of the President. At this point let us glance at the map of North America; we see that the United States could expand themselves either by annexing Canada or by making a conquest of Mexico, or finally by attaching to the Union the Greater and the Lesser Antilles. The populations of Canada are almost like those which make part of the republic; almost all speak the English language, and are accustomed to the practice of a free government. Should they become part of the Union that they could mould themselves easily to its institutions is certain. But it would certainly not be the same in the case of the Mexicans or of the men of the so greatly-diverse races which are established in the Antilles. The day on which the United States annex these countries they will be obliged to govern them; they must provide for the needs of these populations: in a word, establish among them a great public service. Then they themselves will enter upon an entirely new way; the national government will take up a preponderating importance, and the Executive Power will be led to interfere constantly and in a most vigorous manner in the affairs of the annexed territories. The day on which its attributes will be thus extended, the American Constitution will have submitted to such a transformation that it will no longer be what we see it now (1873). There will have been developed in the United States a very strong government, much more like that which Hamilton wished to create than that which was evolved from the deliberations at Philadelphia. If then the sovereignty of the people should cease to be exercised as it has

been for more than eighty years, and if the organization of the States should lose its existing vigor, the central government, and especially the Executive Power, would be proportionately augmented. It is entirely true, also, to say that a change in the foreign policy of the United States and great territorial expansion would lead, by different reasons, to an analogous transformation. In a word, the political machine of the United States was constructed in such a way that should one of its principal springs change it would break down."

E. B. S., Jr.

POWELL'S PRINCIPLES AND PRACTICE OF THE LAW OF EVIDENCE. Edited by JOHN CUTLER and CHARLES F. CAGNEY, Barristers-at-Law. London: Butterworth & Co., 1898.

The seventh edition of this excellent English treatise on Evidence presents an admirable example of the work of its famous editors. While they hesitate to extend unduly the length of the volume, they still retain the greater part of the principles discussed by the author and refrain from turning the work into a mere digest. The plan adopted by them resembles very much the general plan of the Hornbooks published by the West Company, namely, a general rule in large type at the head of each chapter and division, which rule is discussed at length in the text. Their method of confining the foot-notes to the citation of cases only is welcome to one who reads the book through and who does not use it as a digest in searching for a single point.

Turning to the text, we find that the author adopts Taylor's definition of Evidence in preference to the illogical and clumsy one of Stephen, and he makes the rather curious divisions of the subject as follows: (1) primary and secondary, (2) sufficient and satisfactory, (3) direct and inferential, (4) original and second-hand, or hearsay, (5) oral, documentary and real. These divisions are not carried out with any great degree of regularity; in fact, one of the few faults of the work is the lack of some definite plan of arrangement, such as is adopted by Stephen in his Digest of the Law of Evidence, although perhaps carried to an extreme by him.

In the second chapter, "The Functions of the Judge and Jury," we find an interesting discussion of the *scintilla* rule, which seems to have been repudiated by the English courts before it was declared exploded in Pennsylvania. Under "The Competency of Witnesses," in the third chapter, we are reminded that in England the fact that the defendant in a criminal case refuses to testify may be made the legitimate source of comment by counsel and court. On page 88, under "Presumptive Evidence," the case of *Wing v. Angrave*, 8 H. L. C. 183, is cited under the proposition that where two persons have perished in the same disaster, a presumption arises that they have

died at the same moment. It would seem that the case goes no further than to apply the modern rule that under such circumstances the burden of proving survivorship is upon the party alleging it.

Chap. 7, § 2, on "Privilege of Counsel," pp. 107-124, contains a most exhaustive discussion of the subject, in length almost disproportionate to the scope of the work. In opposition to this, the important subject of *Res Gestæ* is disposed of in the utterly inadequate space of two and one-half pages (pp. 136-139). No mention whatever is made of the famous case of *R. v. Bedingfield*, 14 C. C. C. 341, although it has always been regarded as leading, even by those who have dissented from the decision. The discussion of the Conspiracy rule is also meagre (pp. 141, 473), and no distinction is made between evidence of the acts of the conspirators and that of declarations by them after the execution of their common purpose. See *R. v. Blake*, 6 Q. B. 137, a case not cited.

The chapters on Admissions and Confessions are excellent, while the subject of Relevancy is contracted into a single chapter (Chap. 5), which is devoted to a discussion of the effect of the pleadings upon the evidence. The work closes with a reprint of all the English statutes which have any bearing, however remote, upon the subject. Upon the whole, the book being devoted to discussion, rather than to bald statements of the law, furnishes most interesting and instructive reading, and, it would seem, might repay the trouble and expense of an American edition.

A. E. W.