

BOOK REVIEWS.

CASES ON CONSTITUTIONAL LAW, by EMLIN MCCLAIN, A. M., LL. D. Boston: Little, Brown & Co., 1900.

This collection of cases, compiled by the Chancellor of the Law Department of the State University of Iowa, will, we believe, meet with a warm welcome. We are only surprised that such a book has not appeared before this. The work is based upon the universally popular book of the late Judge Cooley—the “Principles of Constitutional Law”—and follows the arrangement of that book strictly, with the exception of the first couple of chapters therein, which are too general and partake too much of a historical character to admit of illustration by the case system.

It is true that there are case books on Constitutional Law which contain the great majority of the cases included in Dr. McClain's work; but the arrangement is so different from Judge Cooley's that there cannot fail to be confusion. For example, in the usual arrangement, the case of *Gelpcke v. Dubuque*, 1 Wall. 175, is placed under the head of the IMPAIRMENT of the OBLIGATION of CONTRACTS; but in this work, following the idea of Judge Cooley, it comes under the head of “Following the Law of the State.”

It is to be hoped that this volume may induce many institutions which have hitherto used only the text-book to adopt to a greater extent the case system. Indeed, in many colleges where CONSTITUTIONAL LAW is taken up, there are no reports accessible; but with this volume the difficulty is removed, and greater interest is added to the course.

The work consists of only one volume. This brevity has been attained without the loss of completeness by omitting such cases as are thoroughly discussed in other cases contained in the book. They are, however, noted in the index. We think that by this method one of the great objections to courses on this subject has been removed, namely, the endless repetition involved in reading all the leading cases.

E. W. K.

THE LAW OF EXPERT AND OPINION EVIDENCE. By JOHN D. LAWSON, LL. D. Chicago: T. H. Flood & Co. 1900.

That the law of evidence is one of the most important branches of legal study may easily be ascertained by a glance at reported cases. In looking over the state or federal reports we see that a large majority of appeals are brought up on matters of the admission or exclusion of evidence, and all the nonsuits, of course, depend for their existence mainly on grounds of evidence. Remembering this, we are not surprised to find a large volume devoted to “The

Law of Expert and Opinion Evidence," which is to-day the most important sub-head of the law of evidence itself. Following the example of Stephen, the author has arranged the subject by rules; but the work is by no means a digest, for the rules are explained and many cases and citations added to each and every one of them. The work before us is the second edition, a noteworthy feature of which is the number of recent cases in which the rules laid down here were followed, a gratifying tribute to the excellence of the volume and the labor of the author.

We note with regret that the case of *Travis v. Brown*, 43 Pa. 12, (1862), is cited as the Pennsylvania law on the subject of comparison by witnesses. The Act of Assembly of May 15, 1895, P. L. 69, allows experts to make comparison of handwritings, overruling *Travis v. Brown*. Aside from this, the only error we have seen in this work of over 600 pages, the work commends itself to every practitioner because of its practical utility.

J. M. D.

STUDIES IN INTERNATIONAL LAW. By E. STOCQUART, D. C. L. Brussels: Veuve Ferdinand Largier. 1900.

To the student of law comparative jurisprudence is always of peculiar interest. Any contribution to that subject is, therefore, to be especially welcomed. There has just appeared a pamphlet of seventy pages, entitled "Studies in Private International Law," which is both interesting to the theoretical and valuable to the practicing lawyer. Dr. Stocquart, who has written much on kindred topics, presents to our consideration three essays. The first on "Domicile" is very short—too short in fact, since clearness has, in a measure, been sacrificed to brevity. It is to be hoped that at some future time Dr. Stocquart will amplify his ideas on this subject. He does, however, make clear the difference between the American and English point of view in reference to personal capacity, as affected by domicile and the point of view held in Civil Law countries, to wit, France, Belgium, Italy, Spain and Germany. The difference is this: that generally speaking, in the latter countries, a person's civil rights and the legal effects of his conduct, are determined by citizenship or allegiance, while under the Common Law the law of the domicile of the person whose rights or conduct is in question, determines that question. A single example will make this clear. "D., an American citizen, and M., a Spanish lady, age 19, without her father's due consent [absolutely necessary in Spain until 20 years of age in females, and 23 in males], are legally married in the United States. The marriage nevertheless is null in Spain, where M., on her return, will be liable to an imprisonment for a period not less than six months and a day, and not exceeding six years."¹

Bearing this fundamental distinction in mind we are better pre-

¹ "Studies," p. 28.

pared to understand the second essay on "Marriage," which forms the *pièce de resistance* of the pamphlet.

Our author points out the two legal ways of viewing marriage; that is, either as a sacrament and consequently indissoluble, or as a contract simply, to be broken on occasion in conformity with the rules of positive law. He shows how one or the other of these views has prevailed at all times in Europe, according to the predominance of the church or commonwealth in the various nations. At the present day the latter view prevails in France, Belgium, Holland, Italy, Germany, Hungary, Switzerland and in Austria also, but not, it seems, to its full extent. Only Spain clings to the canon law as enunciated by the Council of Trent, although civil marriages were legalized during the existence in power of the Liberal party from 1870-75. After that time Roman Catholics could only be married according to the rites of the Church of Rome. Civil marriage was, however, preserved for the benefit of those outside that sect. Since this law applies also to the Philippines we can readily understand the state of concubinage so prevalent in that group of islands. The natives being all Roman Catholics could be legally married only by a priest. Being too poor to pay the required fee, usually exorbitant, considering their means, they could not be married at all. The folly of such a policy is self-evident.

Dr. Stocquart treats at length the laws of marriage in the countries above mentioned, and this essay will be found to be of much practical value in case of foreign successions. We cite one case which is fundamental and—we take it—law in all the countries under the Civil Law. "D., . . . a French domiciled citizen, in order to evade the opposition of his father, goes to Italy and marries an Italian woman without publication in France of banns required by . . . [the] Code Napoleon. The Italian Code leaves it to the French law to decide whether such a marriage is valid or invalid."¹

The third and concluding essay is on the subject of "Divorce in France and Germany."

Passing by our author's discussion of the vexed question of jurisdiction of the French courts in cases of divorce between foreigners, we come to the ever recurring principle in the Civil Law that the laws of a man's nation pursue him everywhere. Dr. Stocquart says on this point, "The *right of* and *causes for* divorce of a foreigner residing in France are ruled by the laws of his own country, and not by the laws of his actual domicile." Farther on we note this statement: "The American doctrine appears to be the following: Jurisdiction to grant divorces is, in all cases, statutory, and no court, though having jurisdiction, can grant the decree of divorce, except for causes provided by the statute under which they act." This is inaccurate as in some states, certainly the Common Law rules as to divorce still exist.

Turning to the German Law under the new Code, we find that divorce can be had only by judgment of a court and for "causes

¹ "Studies," p. 38.

specified by law."¹ This statement is ambiguous; whether it means that legislative divorces are not valid or that the *lex patriæ* is not to be regarded is uncertain. Probably in view of the supremacy of the legislature in Germany over the courts the latter is meant.

Altogether Dr. Stocquart's pamphlet is interesting and valuable. In spite of the fact that he is writing in a foreign language which differs in idiom so much from his own (presumably French) there are very few *gaucheries* of expression and only one or two real errors which may fairly be attributed to the Belgian printer. It is to be hoped that our author will at some time expand these essays, as the first and third of them are mere skeletons, a fact due no doubt to the "constant pressure of professional duties" of which he speaks in his preface.

E. B. S., Jr.

¹ "Studies," p. 69.