

BOOK REVIEWS.

BANKS AND BANKING. BY JOHN M. ZANE: T. H. Flood & Co., Chicago. 1900.

This work, we can safely assert, is more than a restatement of the law of banking. It is a very thorough treatise upon the theory underlying that law. The author is a forceful and original thinker; and, while he admits that not all his doctrines are in accord with authority, they are well defended in the text. He shows a decided tendency to cling to the common law, and it is upon that basis that he thinks the solution of the undesirable inconsistencies in our law rests. At one place he remarks: "It is the idea of bailment which, properly carried out, will render banking law symmetrical and uniform the world over."

The author strenuously upholds the United States rule that the holder of a check cannot sue the bank for failure to pay (§147). He devotes a whole section to the refutation of the arguments of Daniel and of Morse, who hold, with the Illinois and other State Courts, the opposite view.

The view of Morse is that it is the duty of the bank, if it have unencumbered funds to the amount of the check, to pay; *i. e.*, there is a quasi-contract between the holder and the bank. Again, he argues that presentment works an actual assignment of the fund. Finally, he says there is a contract between the bank and the depositor that the former will pay any one whom the latter orders it to pay (Morse, *Banks and Banking*, § 499).

Zanes' answer to the first contention is that the weight of authority shows that there is no customary duty upon the part of the bank to pay the holder of the check, which could give rise to an action founded on quasi-contract. He disagrees entirely with the second ground. To the last he replies that there is no contract, expressed or implied, from the circumstances of the deposit in favor of the holder. He says the duty of the bank to pay whomsoever the depositor directs is enforceable by the depositor, not upon the grounds of contract, but of quasi-contract. Again, even if there were such a contract, there is no privity between the bank and the holder.

We do not believe that the author's contention that there is only a quasi-contract between the bank and the depositor, is tenable. There is clearly a benefit derived by the bank from the use of the money, and, in return for this, it promises to pay to whomsoever the depositor directs. Here we have all the essentials of a contract.

The author frequently, in his book, calls things quasi-contracts that are usually considered implied or expressed contracts. For instance (§ 62) he maintains that the obligation of a stockholder to pay an assessment of one hundred per cent on his stock is not a contract created by his subscription for stock, but a quasi-contract

arising from the customary duty of stockholders to answer for the debts of an insolvent corporation. This question has just been argued in the case of *Woodworth v. Bowles*, 60 Pac. (Kas.), 331, 1900, where the question of the impairment of the obligation of contract hinged on the point whether the stockholder's liability arose in contract or quasi-contract. The court held that it was clearly a contract.

To return to the question of a bank's duties to the holder of a check, it seems that the lack of privity between the holder and the bank does, under the weight of authority, deprive the former of his action. Daniel (*Negotiable Instrum.* § 1638), attempts to supply this lacking element on the theory, that by the act of presentment, priority is created. It does not seem that this doctrine has yet been adopted.

We cannot approve of the author's caustic criticism of the Illinois Court. They are certainly not to be despised for holding an opinion adopted by two such eminent writers as Morse and Daniel. It is true that uniformity is desirable in our banking law; but we cannot expect a court to decide in favor of that to which they cannot agree. That we should have these discordant opinions is one of the disadvantages of our political system, which are more than offset by its advantages. Furthermore, the objection to the Illinois rule is purely a technical one, and, if the banking interests of this country should in the future demand a different rule in this respect, should not stand in the way of the alteration.

The author, throughout the work, seems very much dissatisfied with the banking law of Illinois. This state comes in for more adverse criticism than any other. The author is a member of the Chicago bar, and it may be that this fact leads him to see more defects in the law of that state than in that of others.

The value of the work is much increased by the appendix which contains all the Federal laws in relation to National Banks. The work, while containing the legal discussions to which we have referred, still commends itself to the practical banker. We can recommend it to all our readers.

E. W. K.

THE CIVIL LAW IN SPAIN AND SPANISH AMERICA, INCLUDING CUBA, PUERTO RICO, AND PHILIPPINE ISLANDS, ETC. By C. S. WALTON, Washington, D. C. W. H. Lowdermilk & Co. 1900.

Undoubtedly the question of most general interest to Americans, be they publicists or private persons, is at the present time concerning our new rights and duties growing out of the acquisition of territory from Spain in consequence of the late war. Whether we regard the acquirement of any or all of our new island possessions as a stupendous blunder, or whether we regard it as simply a fulfillment of our national destiny, or whether we take the middle ground—and probably the true one—that it was neither an unbounded blessing

nor an unmixed misfortune, the subject is of peculiar interest. By consequence, therefore, anything bearing even remotely on this topic is interesting and it is to lawyers especially that Mr. Walton's book will appeal. It is not our purpose here to enter into an elaborate discussion of this valuable work, since space forbids. Suffice it to say that the book contains, besides an elaborate historical introduction and a translation of the Spanish Civil Code of 1889 (extended to Cuba, Puerto Rico and the Philippines), much supplementary matter of importance as well as the Spanish, Mexican, Cuban and Puerto Rican autonomic constitutions. Mr. Walton would seem peculiarly fitted for this work, being a Doctor of the University of Madrid, Licenciante (Bachelor) of the University of Havana and member of the bar of the District of Columbia and of that of the Supreme Court.

Passing by the historical introduction, which is exceedingly interesting as an illumination of comparative jurisprudence, we come to this statement on page 112: "If the conflicting differences between the local and common law, peculiar to Spain and which have little force in Cuba, Puerto Rico, and the Philippines, are eliminated from the Spanish Civil Code, and a few amendments in harmony with United States institutions are substituted for the provisions which relate to monarchical institutions, there would result, in the opinions of those familiar with the subject, a most excellent code suitable for the people of Puerto Rico and the Philippines." This is also the opinion of former Judge Howe, of Louisiana, writing in the *Yale Law Journal* for July. Manifestly such an arrangement would be advantageous even though the laws are not indigenous to the islands, if only because it would avoid the confusion which would necessarily ensue upon introducing our own common law in its entirety into them. It is to be noted, however, that neither our author nor Mr. Howe advocates the retention of the criminal code.

We are sure that Mr. Walton's book will be welcomed by students of law everywhere, involving as it does much new and hitherto generally inaccessible matter, and containing the fruits of much laborious research.

E. B. S., Jr.

THE AMERICAN LAW OF REPLEVIN AND KINDRED ACTIONS.
By ROSWELL SHINN, LL.D. Illinois College of Law, Chicago :
T. H. Flood & Co. 1899.

Probably no book on this subject shows traces of greater industry and research than this work by Professor Shinn. Not content with a statement of the common law principles of replevin and the statutory modifications generally followed throughout the United States, the author makes in many instances a detailed analysis of the peculiarities of statute and code provisions. His aim throughout is to present in a comprehensive way the whole body of American adjudications bearing on this important remedy. The experience derived in the production of his "American Law of Attachment

and Garnishment" was evidently of great assistance to him in collecting and arranging the materials embodied in this later publication. It is a book of large size, and contains three general divisions: 1. The Remedy, including a description of its nature, the parties thereto, and the property subject to it. 2. The Procedure, being an extensive treatment of the practice. 3. Actions arising from replevins, including the liability of sureties on either party's bond, review of replevin, action against the officer serving the writ, etc. It is entirely free from theoretical discussion and consists in great part of concise statements of points taken from a vast number of cases, each point being referred to by paragraph at the chapter heading, and in the body of the chapter emphasized by heavy type. This, in addition to a compendious index, makes it a valuable reference work. The author has wisely avoided the repetitions frequently incident to a treatise of this character by making many cross-references. He has also used the alphabetical order of arrangement. Thus, in considering the persons by and against whom the action may be sustained, he begins with the acceptor of a bill of exchange, and takes up in order administrator, assignee, attachment creditor, and all the legal relations which give the rights and impose the liabilities of the action. The same principle is applied in discussing the various kinds of personal property reached by replevin.

In opening his chapter on "The Proceedings" the author says, "It is my purpose to show the adjudication of the courts upon the different statutory requirements, as well as the requirements of the common law, and thereby to indicate, not only to the local practitioner, but to the general lawyer, the present state of the adjudications upon any particular statutory requirement, in whatever state or states such requirement may now be, or may have heretofore been enforced." Then follows a voluminous note in which the jurisdictional requirements as to the form and substance of the affidavit is given with encyclopedic completeness.

While in parts the book bears an analogy to a digest of cases, it possesses merit as a text-book for the student as well as for the practicing lawyer. It is written in a lucid and scholarly style. The general principles underlying the action of replevin are frequently restated to insure a thorough understanding of their application to new facts and legal relations. The history of the action is carefully traced from its original, crude and limited form in the old English law to its modern statutory development. Present-day differences between the English and American doctrine are pointed out. The author has not blindly followed the cases, but has made pointed criticisms where peculiar state decisions demanded criticism.

F. K. S.