

BOOK REVIEWS.

THE LAW OF REAL PROPERTY, Vol. VI. Edited by E. E. BALLARD. Logansport, Ind.: The Ballard Publishing Company, 1900.

This is the sixth of a series of volumes on the Law of Real Property which is being issued annually by the Ballard Publishing Company. Each volume is intended to show the entire progress of this branch of the law throughout all the states during the preceding year, and the general purpose of the series, as expressed in the first volume, is "to furnish a reliable medium that shall keep . . . the profession familiar with all the growth and change of the law of real property affected by current legislative enactments and judicial opinions; make them acquainted with the different systems of statute law on the subject, as created by the several states in the Union; keep before them the common law which yet remains in force, pointing out wherever it has been confounded with statutes or mutilated by careless judges; and as far as possible relieve both counsel and courts of the wearing drudgery of hunting for things which are hard to find, and save them from the embarrassment of following blind guides. . . ."

The reading, page by page, of the reports of the United States Supreme Court, and of all the reports of the courts of last resort of all the states, that are issued during each year, seems a stupendous task; yet such is the actual method adopted by the compilers of this work, and it is only by a careful process of exclusion that those cases which concern the law of real property are finally selected. From among these especial attention is paid to re-reporting in full or in substance those cases, which overrule other cases upon material points, which construe important statutes not before construed, or which make some application of legal principles to circumstances arising out of new inventions or changes in social conditions. The remaining cases are then either reported as especially noteworthy and supported by annotations from the authorities, or are epitomized and cited together as supporting the same legal principle.

From this mere outline of the method employed in compiling these volumes in furtherance of the purpose as stated, it must be evident that they constitute a most complete and concise compendium of the law of real property and one possessing the great advantage of containing all the recent decisions and statutes by reason of its being brought "up-to-date" year by year.

The practical value of each volume and of the series for the busy lawyer, is further enhanced by the most complete system of indexing used. Not only each volume indexed in such concise detail that the substance of each page can be seen at a glance by merely look-

ing at the index, but with each new volume a new and revised index of the subject-matter of all the volumes is issued. This index is at once simple to understand and most complete in detail.

C. T. B.

HAND-BOOK OF THE LAW OF BILLS AND NOTES. Third edition. CHARLES P. NORTON. St. Paul, Minn.: West Publishing Company, 1900.

The value of the Horn-book series to the student and practitioner cannot be disputed. The plan of stating leading principles in bold-face type, enlarging upon the principles in the text saves much labor, and in addition fixes them firmly in the mind. This edition, according to the editor, Francis B. Tiffany, has been made necessary by the passage of the New York Negotiable Instruments Law (1897). The complete text of the statute is given in the appendix, and many references are made to it, changes from the existing law being pointed out. The industry of the author is proved by a large collection of cases. One ground of criticism may be stated to be that the book is too much like a mere digest of cases, and does not aim at presenting a judgment of decisions, as they do or do not conflict with the well established principles controlling the law of negotiable instruments. The foot-notes are very comprehensive. All cases which appear in case-books now in common use in law schools are cited in large type.

F. K. S.

THE LAW OF BILLS, NOTES AND CHEQUES. Second edition. By MELVILLE M. BIGELOW, Ph. D. Boston: Little, Brown & Company, 1900.

The first edition of this work, published in 1893, was well received by the public, and renders unnecessary an extended criticism of the second edition. The former was written with special reference to the English Bills of Exchange Act, 1882. Suggestions were made wherein the provisions of the act could be well used as a basis for the reform of the American law. The same plan, more thoroughly carried out, with the Negotiable Instruments Law of New York (1897) as the basic code, has been followed by the author in the second edition. Since the New York law was enacted a number of states have codified the law of negotiable paper as applied within their limits. Some important differences in legislation have therefore been pointed out. The full text of the act is given, and the Colorado statute is compared in some detail.

In general this edition is a marked improvement over the former. Several chapters are added, embodying the law that regulates the contracts of the certifier and vendor of negotiable paper. The text, owing to frequent references to the New York law, is generally revised, and its contents suggested by pointed *side notes*. At times, state doctrines are subjected by the author to severe criticism. He

clearly points out the fallacy of the New York rule which holds that an endorsement without recourse operates as a conditional delivery. His aim is to ascertain the reason of rules and make their just or unjust application evident to the reader. Subjects, like absolute defences, equities and notice of dishonor are treated with special care and thoroughness. The list of cases has been made more comprehensive. They are contained, in large part, in the author's "Cases on Bills, Notes and Cheques," students' series.

F. K. S.

ESTOPPEL BY MISREPRESENTATION. By J. S. EWART. Chicago: Callaghan & Co. 1900.

To take a principle of limited application and by patient research and scholarly speculation to widen it into a general and far-reaching theory is to achieve a distinct professional triumph. Such a triumph, we believe, has been attained by Mr. John S. Ewart. In this book our author attempts to show that estoppel is not a subordinate, but an underlying, principle of law, and that many cases heretofore regarded as exceptions to the law may be explained consistently on the theory of estoppel.

Mr. Ewart only professes to deal with estoppel by misrepresentation, omitting from his consideration estoppel by contract, the only other important kind of modern estoppel. In accordance with his plan the author gives a valuable scientific classification of misrepresentation as follows: "Misrepresentation may be (1) personal or (2) assisted; (1) direct or (2) indirect; (1) active or (2) passive; (1) expressed or (2) implied."

That portion of Mr. Ewart's analysis which divides estoppel by misrepresentation into "personal" and "assisted," we consider especially logical and useful, since it emphasizes an obvious distinction in the subject, and one which has remained too long without definite recognition.

In Chapter XIV of his book, our author discusses the much quoted rule in *Lickbarrow v. Mason*, 2 T. R. 63, in a very interesting manner and at some length. Briefly the facts of the case were these: A., an unpaid vendor, shipped certain goods to B., sending him at the same time an indorsed bill of lading for them, which B. received before he got the goods. B. immediately sold the bill of lading for value to C. Before the arrival of said goods B. failed, and A. asserted a right to stop the goods *in transitu*. This, however, the court denied, holding that C., the innocent purchaser for value of the bill of lading, had a prior claim. C.'s right, however, was held not to be based upon the estoppel of A.; but upon the following equitable principle, namely, "We may lay it down as a broad general principle, that whenever one of two innocent persons must suffer by the acts of a third, he who enables such third person to occasion the loss must sustain it." Mr. Ewart ably contends that this rule is on all fours with his definition of estoppel by assisted misrepresentation, and he meets possible objections to this view in a manner which convinces one of the strength of his theory.

It seems strange indeed that Mr. Ewart should be the first man to realize the possibility of reconciling the many anomalous cases in the law of bills and notes, sales, priorities of real estate, void and voidable instruments, partnership and agency, along the lines of estoppel by misrepresentation. However, the author is, of course, deserving of all the more credit from the fact that his axe has fallen in a virgin forest, and when we remember that he must have hewed his way forward, with no blazed path to guide him, his performance seems admirable. The theory he champions may be too inclusive; but that is a fault of all experimental plans, and doubtless it will be moderated in time. Taken as a whole, the book appears to us a clear and terse exposition of a novel and interesting design.

T. J. G.

ELEMENTS OF AMERICAN JURISPRUDENCE. By WILLIAM C. ROBINSON, LL. D. Boston, Mass.: Little, Brown & Company, Publishers.

No one who examines this work can help being impressed at the outset by the masterful analysis which Mr. Robinson has made of his subject. He shows a thorough grasp of every portion of the vast field and presents a thorough outline of it as he intends to deal with it. The analysis appears to be arranged very much like that of Kent's Commentaries, but, of course, our author has dealt with it in a very different manner owing to his wishing to attain a far different object and reach quite another class of readers.

Our author's aim was, as he tells us in his preface, "to enlighten every educated citizen who aspires to the intelligent discharge of his political duties," "to assist the various grades of students in their preparation for the different positions in political life;" and "he has had in view the needs of those who are pursuing courses in political science in our universities and colleges."

Thus we see that his aim has been to aid every citizen and have his book serve as an introduction to deeper studies for those who propose making the study of law their life work.

As to his success in carrying out his plan hardly enough can be said in commendation. It is one of the most difficult of tasks for an author to give to his readers a clear and complete idea of so vast a subject within the compass of a few pages; nevertheless this is what Mr. Robinson has undertaken and his success has been almost beyond belief. His style is clear and elegant. He has given just enough under each head to furnish a beginner with a comprehensive idea of it and prepare the minds of young law students for their more difficult future work.

The name of the book, "Elements of American Jurisprudence," gives us an idea of the scope of the work and how much the author had to contend with in condensing so much legal learning into the small compass of one book. Although but a limited space could be given to each branch of the different subjects, still, throughout the work we are supplied with references to standard works, should we desire to pursue our inquiries farther upon any particular subject.

It is our opinion that Mr. Robinson has made a most valuable addition to the literature of our country, and one which will be of almost incalculable value to young law students, who may now at the very outset of their career get a comprehensive idea of the work before them, instead of floundering around for months, and perhaps years, before they see to what end their labors tend.

M. H.

AMERICAN LAW. A TREATISE ON THE JURISPRUDENCE, CONSTITUTION, AND LAWS OF THE UNITED STATES. By JAMES DE WITT ANDREWS. Chicago: Callaghan & Co. 1900.

In the preparation of this treatise the author has carefully borne in mind Lord Bacon's statement that "institutes ought to have two properties: the one a perspicuous and clear order or method; and the other a universal latitude or comprehension, that the student may have a little pre-notion of everything, like a model toward a great building." The Introduction treats of the development of the law, briefly tracing its growth from the system of government in Ancient Greece. The subject is then divided into four parts: First, The Law of Persons—Status, under which is considered in a thoroughly practical manner, the various rights, duties, capacities and privileges of public and private persons; second, The Law of Things, the word "thing" comprehending whatever may, according to our law, become the object of a right, and including, therefore, the treatment of contracts; third, The Law of Actions, which deals with procedure, courts and remedies; and fourth, The Law of Crimes, occupying but a few pages.

The work would not be less valuable if the author's censure of Blackstone's methods were curtailed; yet it should be welcomed, not only by students and lawyers, but also by those who aim to possess a general knowledge of the law. Well planned and carefully executed, it is clear, concise, and modern—the latter attribute a most valuable one in our ever-changing science.

The table of cases is well arranged, and the volume is thoroughly indexed.

H. J. S.

THE POLICE POWER OF THE STATE AND DECISIONS THEREON AS ILLUSTRATING THE DEVELOPMENT AND VALUE OF CASE LAW. By ALFRED RUSSELL, LL. D. Chicago: Callaghan & Co. 1900.

Mr. Russell's book, dealing with the "Police Power," is a useful addition to our abundant crop of learning on the general subject of Constitutional law.

Our author, in postponing the definition of police power to the very end of his book, says with much force:¹ "Definition is always perilous in the law, and no definition of our topic need now be attempted. What the police power is, and what its extent and

¹ p. 25.

limitations are, can only be ascertained by the gradual process of judicial inclusion and exclusion as the cases presented for decision require, with the reasoning upon which such decisions may be found." (*sic*). He then proceeds to take up the leading cases as showing the outlines of that Protean subject which seems to be all kinds of a rule at the same time. After considering its general features he goes on to show how it is modified by the Federal Constitution in criminal cases (Chap. III); in respect to the Eleventh Amendment (Chap. IV); with regard to the Fourteenth Amendment (Chap. V); as to the public health and safety (Chap. VI); as to corporations (Chap. VII); as to the Commerce clause (Chap. VIII); and as to "property in business" (Chap. IX). In this last chapter our author sums up his general conclusions in eleven propositions, which seem to be as sound as generalities ever are. The first of these propositions states in a concise way the elementary learning on the subject.

"1. The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by a legislature of a State essential to the safety, health, peace, good order, morals and convenience of the people of the State."

The remaining ten propositions are corollaries of the first one and tend to elucidate the general subject.

We note one or two small inaccuracies, *e. g.*, p. 4, "The development of our law began during the long period of the Roman occupation [of England], which left an indelible impress [on the law of that country]." This last statement must surely have been a slip of the pen.¹ Altogether, however, Mr. Russell's "Police Power" is a useful book for study preparatory to taking up the subject more exhaustively for one's self by an examination of the cases, which are, on this subject, more than any other in law, the best exponents of the law.

E. B. S., Jr.

WASHBURN'S MANUAL OF CRIMINAL LAW, third edition, with notes by MARSHALL D. EWELL, M. D., LL. D. Chicago: Callaghan & Co. 1900.

Students of law will welcome the appearance of this new edition of a popular book. The ever-growing tendency in the law toward bulky volumes entails many disadvantages for the beginner; and for a text-book a work that aims at simplicity and conciseness is certainly preferable to one aiming rather to be comprehensive and complete. This third edition of Washburn, while adding new references which bring the criminal law in the United States down to the present time, has not so multiplied the old notes as to increase unduly the size of the volume.

Not only is Washburn's "Criminal Law" concise, but it has the added merit of being eminently practical. Discussions of the theory and philosophy of the law have no place; the law is stated as a fact,

¹See Pollock and Maitland's "History of English Law," Introd. xxxi, and Sir Walter Besant's "London."

and without editorial comment. More than half of the book is given over to an account of criminal procedure, much in the manner of the latter half of the fourth book of Blackstone.

Although the object of the book is to set forth merely the common law of crimes, yet numerous references in the notes to state codes and statutes furnish information of changes in the common law made by acts of the state legislatures. By far the greater number of citations are, in the text, from the Massachusetts reports, and, in the editor's notes, from the Illinois reports. But criminal law does not admit of as many variations as does the purely private law, and consequently the principles of the law set forth in the book may safely be accepted, in a general way, in any jurisdiction. There are, it is true, some statements made that would not apply to Pennsylvania law, but these are of minor importance, and not sufficient to render the book either inaccurate or, for its purpose, incomplete.

To universities and schools of law which do not follow the case system, this book may safely be recommended for class-room use.

H. S.