

BOOK REVIEWS.

COMMENTARIES ON THE LAW OF STATUTORY CRIMES, including the Written Laws and their Interpretation in General; What is Special to the Criminal Law, and the Specific Statutory Offences as to both Law and Procedure. By JOEL PRENTISS BISHOP. Third edition, revised and enlarged, by Marion C. Early, of the St. Louis Bar. Chicago: T. H. Flood & Co., 1901.

The addition of about four thousand citations, some few additions to the text itself, and the explanation of the text by copious notes, represent the contributions made to Mr. Bishop's work by the editor of the present edition.

Bishop's "Law of Statutory Crimes," supplementing the "Criminal Law" and "Criminal Procedure" of the same author, completes a series covering the whole field of criminal law, evidence, pleading and practice. The "Law of Statutory Crimes" treats of the interpretation of statutes in general, of special interpretations pertaining to the criminal law, of statutory extensions of common-law offences, and of specific offences more purely statutory. Under the last-mentioned head are included discussions on the statutes relating to polygamy, seduction, adultery, fornication, incest, abortion, carrying weapons, election offences, gaming, lotteries, drunkenness, selling intoxicating liquor, hawkers and peddlers, cruelty to animals, and the selling of adulterated food. Mr. Bishop's method is to treat each statutory offence as an entirety, telling first what the law on the subject is and how the statutes pertaining to the subject are generally interpreted, and then describing the procedure—that is, the essential averments of the indictment, and the quantity and nature of the evidence necessary to convict.

The best features of the book are its clearness, conciseness and accuracy. Although of a necessarily technical character, the style is lucid and vigorous; and the scope of the text is so comprehensive that it is to be doubted whether the notes of the editor add much to the reader's knowledge of the law. Perhaps it was a realization of the completeness of the original work that led Mr. Early to confine the subject-matter of his notes to excerpts from the opinions of the court in cases cited in the body of the work or in the notes themselves. It is somewhat to be regretted that the great majority of the American cases cited in the notes are from Western and Southern jurisdictions; perhaps Mr. Early found more copious illustrations of the principles of criminal law in the newer communities than the more settled jurisdictions of the East could have presented.

It seems almost superfluous to add that the book is one which any lawyer whose practice lies in the criminal courts can use to advantage.

H. S.

A SELECTION OF CASES AND STATUTES ON THE PRINCIPLES OF CODE PLEADING WITH NOTES. By CHARLES M. HEPBURN, of the Cincinnati Bar. Cincinnati, O.: W. H. Anderson & Co.

The author has compiled an elaborate collection of cases covering over six hundred pages and embracing decisions on pleading from every state in the union having a code, as well as England.

In Chapter I the origin, nature and extent of Code Pleading is treated of, showing that since the adoption of the first code by New York in 1848 it has now spread to twenty-seven states of the United States, and has been adopted as well, in essentials if not in the very letter, by England, India, Australia, Canada, and the British colonies generally. In still other states of the Union, while codes have not been adopted, the statutory modifications on common-law pleading have been such that the practical results have been to make them "Code States" in effect, and in no state does the old common-law pleading obtain without statutory modifications.

The author points out, as the impelling cause for the adoption of a code, the growing desire to escape from the elaborate system of pleading that had grown up with the common law, containing many causes of action, and to reduce all to a "single form of action."

In Chapter II, A, Section II, the author cites Sir Henry Maine, Pollock and Maitland and Sir Frederick Pollock showing the unbending character of the different causes of action at common law, and the narrow and rigid way in which the judges administered the same. Every suitor had to elect his cause of action at his peril, for if he mistook it he was thrown out of court and saddled with the costs. Moreover, if the injury sustained did not fit any existing writ or cause of action, he was without remedy at law. As Sir Frederick Pollock well says, "Our modern maxim, 'No right without a remedy,' assumes the benevolent and irresistible power of the modern law-giver. Under early forms of law 'No remedy no right' would be nearer the truth: a man who could not fit his case exactly to an appropriate remedy among a strictly limited number of formulas had practically no right." This had two results. It greatly extended chancery jurisdiction and it caused the invention of the writ of Trespass on the Case and the manifold applications of this writ by means of legal fictions, nearly all of a highly artificial character. Thus the old common-law pleading became highly technical, artificial and pedantic. To escape from this mediaeval scholasticism and to remold legal procedure to suit modern practical life and relationships the codes have been adopted, the central and controlling feature being the reduction of all forms of action at law or suits in equity, to a "single form of action."

And yet as the author points out in Chapter II, B, Section II, the codifiers have been inconsistent in making an exception to the "one cause of action" by introducing "the Special Proceeding." As the author says, "In more than one instance, it is as if the reformers have grown weary in well doing, and had left unfinished their task of establishing uniformity in our judicial procedure." This distinction often results, as the cases show, in many fine-drawn, highly

technical decisions denying a right of action in the form employed by the plaintiff. In other words, the very evil sought to be eliminated has been retained, though in a lesser degree. The tendency however, of late years, is toward an assimilation in special proceedings and civil action, both in code legislation and code decisions. In Section C, Chapter II, the cases show that while the code affects the procedure it does not alter the substantive rights of the parties, which remain the same as at common law.

Chapter III discusses the question in whose name the civil action should be brought. And the general answer is that the action should be brought by the "real party in interest." And yet, as shown by the cases, this is not always an easy matter to determine. While the answer is usually to be found in the substantive law, yet there are many cases where the question stands in special relation to the law of procedure. The cases in this chapter deal with Agents, Assignees of Choses in Action, and Trustees, and also with the real parties in interest under special statutory relations. This is by far the largest subject treated, embracing about two-thirds of the volume, the cases being numerous and covering all possible phases of the question, and gathered from all the jurisdictions governed by codes.

On pages 30 and 31 it is pointed out that the federal courts, both supreme and inferior, refuse to re-examine a case brought before them from a code state until the case is restated according to the forms of common-law pleading, since under the seventh amendment to the Constitution their proceedings must be under the rules of the common law.

The book is a valuable contribution to the case system of teaching law, and the subject has been handled in an intelligent and interesting manner and cannot fail to be of the greatest assistance to both teachers and students in a course upon the subject of code pleading.

T. R. W.

LAWYERS AND THEIR CLIENTS. (Anonymous.) *Effingham Wilson*, London, 1901.

The *raison d'être* of this booklet is intimated by its author to be the ignorance of Englishmen as to how they can best have their legal affairs conducted. He begins his introductory chapter in an apologetic strain, thus: "Without any doubt lawyers are a much abused race of men. Probably a larger number of opprobrious remarks are devoted to them than to the members of any other class of human beings; and yet it is probable that, despite the temptations to which many of them are exposed—temptations to which the bulk of mankind are utter strangers—the proportion of black sheep among the legal fraternity is not greater than in many another fold." He then proceeds to show the necessity of lawyers as evidenced by their existence in earliest times, and continues: "Surely there is a charm in the idea of any profession going on in its dull routine of work almost wholly unaffected by the often convulsive changes that have come over the world around it."

Coming back to earth our author tells us that in England, to-day, there are two kinds of lawyers, to wit, solicitors and barristers, and that in no case can a solicitor be a barrister at the same time, or a barrister be a solicitor. He then speaks of the ignorance of laymen, and even lawyers, as to the relative positions of the two kinds of legal advisers, and shows us that the popular delusion that a barrister can only be reached through a solicitor has no foundation in fact. Most of the rest of the book is concerned with the development of this idea, and we are given to understand that in most if not in all cases the client would have his business done more cheaply and expeditiously if he were to consult a barrister first. We now perceive the real reason for the existence of the booklet. It is to open the eyes of a stupid public to the fact that in a characteristically English fashion they have been proceeding for years and years, merely because their ancestors did so, in a cumbrous and useless manner, as far as their legal affairs were concerned. "Go to the barrister," is the cry of our author. "The solicitor is a worthy fellow, but you had best go to his highly honorable brother, who will give you the same service more cheaply." This, then, is the reason why our author is anonymous. Clearly, he is a barrister, and so would naturally like to see much of the solicitor's business directed to his own branch.

This naturally leads to the question why there should ever have been two classes of lawyers in England. On this point our author says: "If any one were arranging the constitution for a new state, it is very probable that he might not consider it advisable to have two kinds of a lawyer; but it is by no means certain that he would be wise in combining the functions of the two branches in a single individual." What has the great American nation done to you, O barrister, that you should charge them with unwisdom, in this respect? Do you not know that, in practice, such a system has been found to work better than your own fossilized system whose distinctions are the outgrowth of an innate national craze for titles?

In short, the booklet is more of interest than of value—to an American, at least—as showing what curious results flow from an ultra-conservative habit of national thought, when directed into legal channels.

E. B. S., Jr.