

## BOOK REVIEWS.

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THE LEGAL PROCEDURE OF CICERO'S TIMES. BY A. H. J. GREENIDGE. Oxford: The Clarendon Press. 1901.

It is a well known fact that Cicero furnished more material for the reconstruction of the Roman municipal law of his time than any other litterateur of the period. Hence it is a particularly happy thought of Mr. Greenidge to render available to English readers some part of Cicero's wealth of legal allusion and illustration. Of the value to the philologist, it is enough to say that some of Cicero's text is absolutely incomprehensible except in the light of Roman law. The present work is admirably adapted to the needs of such a reader, particularly in its commentary on four legal pleas of Cicero.

When one considers the question of its value to the student of law, one is struck at once by the fact that the subject of the work is not substantive law but procedure. Chief Justice O. W. Holmes, Jr., in his learned work, "The Common Law," has emphasized a subject too often unappreciated, the effect of procedure on substantive law. And Sohm's "Institute" brings out in a very striking way a similar influence in the history of Roman law.

Cicero, too, was far more eminent as pleader (*patronus*) than as counsel (*advocatus*) and naturally makes much of adjective law.

But in a very important sense Cicero stands at the parting of the ways. He tells us (in his *De Legibus*) that in boyhood he was compelled to memorize the Twelve Tables (*ut carmen necessarium*), while, in his maturity, men were coming to draw all law from the Praetor's Edict. It is then a germinal period rich in transitions from statute to "magistrate-made" law, and we could wish that Mr. Greenidge would add another volume of equal thoroughness on the subject of substantive law in Cicero's time. Yet the very consideration of procedure involves incidental treatment of many points in the substantive law.

The book considers the Roman theory of civil procedure, the magistrate and the *judex*, bringing out clearly the distinction between the two, the function of the latter, and the part of the process which took place before the magistrate.

Under the *Action* are treated, in part two, preliminaries, summons, proceedings *in jure*, formula, dangers of the formulary system, different kinds of actions, interdict, defence, *exceptio*, representation in court, *litis contestatio*, confession, neglect of defence, use of the oath, *judicium*, execution, appeal and reversal. This part forms an exceedingly interesting and valuable treatise in itself. Attention should be called to a very mystifying

blunder, the confusion of the terms "creditor" and "debtor" on page 73: "The protest" (*i. e.*, against the debts being due) . . . could not be made by the *creditor*," for which read "debtor." Still worse is the confusion of the two terms on page 74: "The *creditor* was still arrested, led to his *debtor's* house, even put in bonds." (!)

Part three deals with criminal procedure for the treatment of which Mr. Greenidge has an especial qualification, having already published a valuable treatise on *Infamia*. In an appendix he gives a detailed legal commentary on four great legal pleas of Cicero, with reference to the systematic portion of the book. All in all, the treatise reflects great credit on the author, and on the growing Oxford School of Civil Law, and shows that the seed planted by Maine fifty years ago is producing a fair tree, that in the home of the Common Law, the value of the Roman jurisprudence is better and better understood.

*E. S. S.*

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THE DIGEST OF THE CAPE LAW JOURNAL. By W. H. SOMERSET BELL, Esq. London: Witherby & Co., 326 High Holborn St.

For the past three years the world has thought of South Africa as a land engrossed in the movements of armies, the capture of prisoners and supplies, the devastation of a country. About the last thing one expects to see emerging from the smoke of battle is—a law book.

Yet that is what has happened. W. H. Somerset Bell, Esq., attorney of the Supreme Court of the Cape of Good Hope, and of the High Court of the Transvaal, has taken advantage of the spare time given lawyers in South Africa by the almost total suspension of practice due to the war, to compile and edit a case digest of South African law. It comprises nearly all the decisions of the Superior Courts of South Africa for the past seventeen years, *i. e.*, from 1884 to 1900, cases arising in Cape Colony, Natal, Orange Free State, Griqualand and the Transvaal. The compiler has done his work well. The facts of each case digested are clearly and compactly stated, and the care exercised in the cross references enables the reader to find the sought-for decision at a minimum of trouble.

To the American lawyer such a work can of course be of little practical value, at least for the present. But it is well worth the inspection of those who desire a more vivid realization of the great and ever-extending influence of the common law. To see the principles deduced at Westminster and the writs penned in Bracton's day as firmly rooted in South Africa as they are in the United States, Canada and Australia, teaches an impressive lesson of the influence of England's empire.

*C. L. M.*