

BOOK REVIEWS.

HANDBOOK OF EQUITY JURISPRUDENCE. By JAMES W. EATON, of the Albany Bar, Professor of Law in the Albany Law School and Lecturer in the Boston University School of Law. St. Paul, Minn.: West Publishing Company. 1901.

The development of new fields of equity jurisprudence and the expansion of equitable principles and doctrines to fit the cases arising therein would seem to require that a satisfactory text-book on the subject should be a general discussion, necessarily lengthy, of the basic principles and the leading cases with the various phases and qualifications produced by modern decisions and legislation. But to the active practitioner who lacks the time to pursue such an exhaustive course of reading, such a summary as this handbook presents will be invaluable.

There is no need to describe the dress of one of the Hornbook Series; nor is it possible to give an outline of what is itself but an outline of the whole subject. At first thought, it would seem impracticable to state and explain the leading principles of equity, within the usual limits of this series. But in fact, the subject is admirably adapted to the treatment of the Hornbook method. After all what we really want from a text-book is a statement of the very latest principles, and in this volume we find them concisely and conveniently arranged at the beginning of each section, supplemented with brief commentary and explanation. If it is desired to go beyond this and to trace the development of modern doctrines, their meaning and application, it is only necessary to turn to the foot-notes, which are more copious than in the other books of this series and contain citations of the latest leading cases.

Comparatively little space has been devoted to such important and well-known instances of the exercise of equity jurisdiction as Specific Performance; Trust Property, and Grounds of Equitable Relief, Fraud, etc. In treating these subjects, there is given a concise statement of the elementary principles illustrated by citation of authorities. To the "Maxims," however, there is devoted a rather larger space than seems necessary in such a work, especially in view of the fact that in these days a maxim itself or its application is denied to be, or at best is considered not so much as a cause of, equitable doctrine or decision, as it is a convenient way of expressing broad principles of equity which may give way in any particular case to others of more importance.

But it is dealing with those subjects of less frequent occurrence on the border lines of equity that this book is extremely helpful. A lawyer's knowledge along these lines is often limited. Short sections of this book clear up in a brief and convincing manner the obscurity which surrounds this subject in the minds of many practitioners and in not a few text-books. To the student who desires to know the principles by which modern courts are governed in the decision of cases arising in a most important and yet volatile subject of the law, we unreservedly commend Mr. Eaton's work. It is a valuable legacy to the profession, and crowns the achievements of an honored and useful life.

T. I. P.

FEDERAL EQUITY PROCEDURE. By C. L. BATES. Two Volumes. Chicago: T. H. Flood & Co. 1901.

We walk through a completed building, and admire its plan and the arrangement and decoration of its hall and rooms, but we fail to consider the hours of thought and labor of its architect, the careful calculations and patient oversight of its builder, and the steady work and skill of the mechanics who have laid the stones and the bricks, one by one, and have fitted the lumber, piece by piece, and driven the nails, each by itself.

With similar lack of appreciation we open a book which is, as the author of the above volumes tells us, "the result of ten years unremitting labor," and praise it as a whole or consult separate chapters at our ease without due regard to the thought and study expended upon its composition.

In practice, pleading and forms and modes of proceeding the circuit and district courts of the United States in civil causes conform to the procedure in the courts of record of the state in which such Federal Courts are held; but the remedies in equity are not administered according to state procedure, being governed by the established practice of England as modified by acts of Congress, and by rules prescribed by the courts, primarily by the Supreme Court.

This jurisdiction in equity "is derived from and defined by the Constitution and laws of the United States." Uniformity in all the courts is intended.

It is, therefore, interesting to examine a system that so far has escaped the clippers of the modern legal tonsorial person, on the one hand, and of the crude makers of code millinery, on the other, and to study rules and forms of practice which have stood so long a test, and which prevail over so large a

territory and have been followed in countless suits. While modern improvements have been of benefit in the blotting out of useless and foolish forms and pleadings at common law and the changes (when wisely made), have resulted in the trial cases upon their merits, instead of slips of the mind or of the pen, yet this federal procedure in equity moves with stately step, its vigor not abated by its dignity. Although this is impressive and true, yet a lover of ancient usages, and one whose patriotic heart rejoices in a system prevailing uniformly in the many judicial districts of our country, may desire more simplicity in the means of conducting a suit. An instance will be found in the rules, adopted by the Supreme Court of Pennsylvania, which went into effect in 1866, and the amendments thereto of January, 1894, which have been proved by actual trial, to facilitate the progress of causes.

Wise pruning and clipping are to be desired, but "short cuts" often result in injustice and delay. There is a keen truth in Judge Howland's conclusion to his article on "The Practice of Law in New York" (*Century Magazine*, October, 1901), which is worthy of quotation:

"Of legislative sciolists constantly tampering with our fundamental ancient doctrines as well as with our forms of practice, grown comfortable by long use, we never shall be free. We may rejoice in them as a chastening rod."

We may say with Horace, "*Est modus in rebus, sunt certi denique fines.*"

To return to the concrete, Mr. Bates classifies and explains his subject in orderly divisions and with clearness of statement. The references to decided cases are numerous and apposite.

He treats, in chapters of proper sequence, the basis of the equity jurisdiction of the United States Courts, and the system of procedure therein administered with such essential topics as Parties, Place, Jurisdiction, Original Bills, Decrees, Exceptions, Demurrers, Pleas, Answers, Inquisitions, Receivers,—and "all down the line." Even in the consideration of a particular step in the conduct of a case, or the action of the court, or the functions of an officer of the court, wherein, because of limitation of space, there cannot be exhaustive treatment, there is a satisfactory account, valuable for reference and an aid to further investigation.

In appendices to the second volume the author prints in full, in useful collocation, the Constitution of the United States, annotated Federal Judiciary Acts, Court Rules, Equity Forms, British Orders in Chancery. The book as a whole is of value both to the lawyer engaged in active litigation, and to the student who is in search of a well-written guide to the Equity Procedure of the Courts of the United States.

TWO CENTURIES' GROWTH OF AMERICAN LAW, 1701-1901. By Members of the Faculty of the Yale Law School. New York: Charles Scribner's Sons. 1901. \$4. Pp. xviii and 538.

The Yale Bicentennial publications cover all of the fields of knowledge, and furnish a complete survey of the progress of the human mind. No more worthy memorial could be designed to celebrate the two hundredth anniversary of this great university. It is especially fitting that the Faculty of the Law School, whose particular tradition has required that the study of the theory of the law should be emphasized, should have united to send forth this admirable account of the progress of the law in its various departments. Nowadays one finds little that deals with so broad a theme. Practitioners have become specialists, and even the best can take little time to study the general lines of development in legal theory. We believe that the thinking lawyer could find no reading more helpful than that which would enable him to understand the sequence in the decisions in each branch of the law.

This volume is divided into eighteen chapters, contributed by such well-known writers as Hon. Simeon E. Baldwin, Professor Theodore S. Woolsey, Professor Henry Wade Rogers, William K. Townsend, George E. Beers, William Frederic Foster, George D. Watrous, Edwin B. Gager, Leonard M. Daggett, David Torrance and James H. Webb. The subjects include Constitutional Law, Real Property, Torts, Evidence, International Law, Municipal Corporations, etc. In each chapter the object is to trace the tendencies that have operated since 1701 in influencing the development of the legal conceptions. The tremendous material advance during this period, the change in the political relations and organization of the American people, the growth of new interests and the assertion of new needs,—all of these forces have influenced the great body of legal decisions and so have reacted upon the development of American law. These forces are traced in a clear and logical way, that comes naturally from the scientific training. While there are references to cases in sufficient number to satisfy the most critical, yet this volume has not the appearance of a law-book. It is a contribution to the philosophy of the law, and as such it has a certain value for the general reader, for whom, in a measure, it has been designed.

It would be difficult to measure adequately the debt of the nation to Yale. Her graduates are found in every avenue of work, living useful, hopeful lives. In the legal profession some of the most illustrious names are to be found on Yale's alumni roll. In the development of American law, in the determination of those judgments which, although "the slow fruit of controversies between opposing interests," are nevertheless based upon "principles of right," the graduates of Yale have borne a distinguished part. We congratulate the University upon its illustrious

record. We congratulate the Faculty of the Law School upon a volume which worthily maintains the traditions of their great institution, and which is, in aim and in execution, a most useful contribution to the lawyer's library.

AN EPITOME OF THE LAW AFFECTING MARINE INSURANCE. By LAWRENCE DUCKWORTH, of the Middle Temple, Barrister at Law. London: Effingham Wilson, Royal Exchange. 1901.

This book is the latest addition to a small series from the pen of Mr. Duckworth on kindred subjects, including: "The Law Relating to General and Particular Average" and "An Epitome of the Law Relating to Charter Parties and Bills of Lading." These latter books will, no doubt, serve as a good introduction for the one just published.

This volume is just what the title claims for it: a short review and summary of the Law of Marine Insurance. It is written in the style of so many modern text-books. The tendency of decisions and the resulting rule of law to be discussed are stated in the first paragraph of the chapter, to be then illustrated by well chosen cases shortly reviewed. The book is not an exhaustive treatise on the subject; but by giving a good summary of the whole, it naturally suggests where a study of the parts may be further pursued.

The author expresses the wish that his work may be useful to business men. He has therefore designed it as a book of ready reference,—devoid of technicality and intelligible to the layman throughout. There is a careful index and chapter analysis, and glossary of terms. The latest English cases are cited and compared with American decisions. The appendix is especially useful, including the common forms of a Marine Insurance policy, as well as rules for the construction thereof. The provisions of the Marine Insurance Bill, 1898, will also be found there.

Accompanying the book is a pamphlet, issued by the International Law Association, containing a body of rules adopted at a conference held in Glasgow, August, 1901, "as a scheme for making Marine Insurance Law international. The hope is that by the adoption of these rules, policies made in the same terms in different countries may have the same effects, and not as now different effects, according to the law of the place in which they are made."

It will be seen then that this handbook recommends itself to all those who wish ready access to this branch of the law. To keep the book down to the desired size must have been no small task, for the Law of Marine Insurance offers for classification much judge-made law and an ever-increasing wealth of litigation.

W. L.