

BOOK REVIEWS.

CASES ON CRIMINAL LAW: A SELECTION OF REPORTED CASES ON THE CRIMINAL LAW. By WILLIAM E. MIKELL, Professor of Law in the University of Pennsylvania. Philadelphia: 1902.

What effect the introduction and spread of the case system of teaching law will have upon the publication of law books, will be a question of interest to all law writers and publishers. That it will be considerable, there can be little doubt. Already the composition of libraries at universities where the system is in use shows that publishers have not fallen behind in an effort to supply the new demand. Already, we hear, it is being remarked upon in England what a prolific writer is the American "Cases," the author of "Cases on Damages," "Cases on Contracts," "Cases on Trusts," etc.!

Certainly one who has used this system throughout a course in law school will be inclined to continue his future study by the same method. This is taken to mean that systematically arranged collections of cases will be more and more used in office study and reference.

It is believed that the collections of cases heretofore published have been compiled mainly by law professors to meet the immediate needs of their classes in adopting this system of study. Too often the sole object has seemed to be to get the law of the decisions into the hands of the students in convenient form, regardless of logical arrangement and scientific classification. While the compiler may in most instances be supposed to have some plan, it is often as difficult to find as the hidden face in a puzzle picture. Without a perfectly clear plan in mind the student's work runs in danger of being devoid of that consciousness of purpose which is half the value of study.

We have before us the first part (being a complete volume) of a collection of cases on the criminal law compiled by Professor William E. Mikell of the Department of Law of the University of Pennsylvania. This first part deals with the general principles of that branch of jurisprudence. The second part, which will be published during the academic year, will contain cases treating of specific crimes.

In this instance the compiler has evidently had in mind the value of presenting to the student the problems which the various cases offer for solution. In no sense is the merit of the inductive method impaired by substituting a solution in words other than those of the decision, as is the case where a text-book is

employed; but by careful chapter, section and sub-section headings the *wherefore* of the presence of each case is pointed out,—a chart for the student, of the course which he, himself, must steer.

This topical arrangement has resulted subjectively from a keen analysis of the criminal law; it has resulted objectively in a symmetrical framework about which, it is believed, the course of study can be satisfactorily and permanently built. The majority of the topics are necessarily old, but their arrangement and connection is, in the main, new. The headings of two of the sub-sections, however, seem original; the reference is to those on "Consent of the State" and "Condonation of the State." The particular value of these headings appears in drawing the distinction between a crime and a tort.

Nothing is found in this first part upon matters of mere criminal procedure. It seems that this is as it should be in view of the variances in different jurisdictions upon such matters, and their relative unimportance compared to the vast field of general legal principles to be covered in the allotted time. No doubt peculiar procedural rules in relation to particular crimes will receive attention in the second part of the work.

Another governing idea evident in the compilation is the historical view-point. It is being more and more realized by the profession, both pedagogically and practically, that the law is unknown to him who knoweth not the *history* thereof, as well as "to him who knoweth not the *reason* thereof." The explanation is simple, for the *history* is so often the *reason*. Certainly the reason is blindly applied unless it be in the light of its history.

In a work having the purpose of the present subject of review this historical treatment could undoubtedly be carried to excess, but in this instance an admirable balance is displayed in that the practical is never subordinated to the purely historical. A long settled doctrine is illustrated and presented by an early case in point; a change, by decisions discussing the old law, the development and the culmination; and an unsettled rule, by judicial opinions in which the tendencies are indicated. By this method the practical rules of criminal law as they now exist are given to the student in a thoroughly comprehensible and reasonably applicable condition.

This collection of cases like many others was prepared by a professor of law primarily to meet the demands of class-room use, but it differs from many others in its careful analysis and its happy combination of the historical and practical view-points. The result is that it should not only prove itself better adapted to its primary purpose, but it should also have a broader field of usefulness than the ordinary case-book, *i. e.*, that it should prove of great value to students of the law (and this term should certainly include practicing lawyers), for reference, wherever or

however they may be situated. To increase its value along this reference line, cases agreeing and disagreeing with the conclusions reached in the cases in the text have been quite copiously and judiciously cited in foot-notes.

It is usual to dismiss a book in review with a word as to its mechanical execution. A word is not sufficient in the present case to do justice to the clear type and excellent press-work exhibited. The writer doubts the advisability of publishing a bound volume for *use* with uncut edges, but this is perhaps more a matter of taste than of judgment.

T. M. P.

A TREATISE ON THE LAW OF MASTER AND SERVANT, INCLUDING THEREIN MASTERS AND WORKMEN IN EVERY DESCRIPTION OF TRADE AND OCCUPATION; WITH AN APPENDIX OF STATUTES. By CHARLES MANLEY SMITH, Esq., of the Inner Temple, Barrister-at-law, formerly one of the Masters of the Supreme Court of Judicature. The Fifth Edition. By ERNEST MANLEY SMITH, of the Inner Temple and Midland Circuit, Barrister-at-law. London: Sweet & Maxwell, Limited. 1902.

The motive that inspired the publication of this revised edition of a standard English text-book is not that which prompted the author in the inception of his work, viz: to act as a pioneer "upon a path hitherto, if not altogether untrodden, at least but imperfectly explored"; but is rather that engendered by the need of modernizing thoroughly in respect to statutes and cases, a work of which there has been no new edition for seventeen years.

Naturally, therefore, one turns to a comparison of this book with the edition of 1885, to see what changes have occurred. So much of the law in England pertaining to master and servant has received the attention of legislative enactments, that the present edition as well as those which precede it, savors much of summaries of, and annotations on, such acts. As far as possible, and to a greater extent than formerly, the author of this edition has relegated these to the Appendix.

The plan adopted in the discussion of the subject matter is identical with that of its immediate predecessor, save that two chapters in the older edition, to wit,—“Jurisdiction of Justices in Disputes between Masters and Servants,” and “Councils of Conciliation” have been omitted from the text, the act upon which the former was based having been here put in the Appendix, and that upon which the latter depended having since been repealed: the repealing act, however, appears in the Appendix of the more recent publication.

The chapter on “Combinations Amongst Masters and Workmen” was dismissed in the fourth edition with a summary and analysis of the acts pertaining thereto. In the present edition,

however, after setting forth those acts briefly, the author proceeds to a discussion of the recent cases in England on the subject. This is characteristic of the whole of the present edition, numerous recent statutes and decisions of the courts having modified, and as before pointed out in respect to the specific treatment of the subject, "Councils of Conciliation," even changed the law as laid down in the older text.

The lapse of seventeen years has wrought a decided change and development in the law in many subjects considered in this treatise. Take for example the law of "Agreements in restraint of Trade contained in Contracts of Hiring and Service." In 1885, the author laid down the rule as inflexible that "All agreements in general restraint of trade are illegal and void and cannot be enforced either at law or in equity." But such has been the trend of the more recent opinions that now he remarks that "the distinction formerly drawn between agreements in general restraint of trade and agreements in partial restraint is not now of much consequence" having given place to the more modern test of what is reasonable and necessary for the protection of the covenantee.

To the practicing attorney in this country the text will be valuable only as disclosing the English law pertaining to the subject, though it is true that there are a few instances where, in the notes to the present edition, the American doctrines are considered in the light of their similarity or dissimilarity to the principles set forth in the text. To the English barrister, however, it must indeed, with its copious Appendix of statutes chronologically arranged and its full list of cases down to and including the earlier reports of 1902, prove to be invaluable.

B. H. L.