

CURRENT LEGAL PERIODICALS AND BOOK REVIEWS.

A TREATISE ON THE POWER OF TAXATION, STATE AND FEDERAL, IN THE UNITED STATES. By FREDERICK N. JUDSON, of the St. Louis Bar. Pp. xxiii + 868. Price, \$6.00. Net. St. Louis: The F. H. Thomas Law Book Company. 1903.

The writer of this volume is the author of "The Law and Practice of Taxation in Missouri," and is well known to lawyers and economists as the chairman of the National Conference on Taxation, held in Buffalo in 1901.

"It is the aim of this work to show the limitations of the taxing power of the state and federal government."

One is compelled to look upon the subject of taxation from two viewpoints: First, what ought the state to tax? Second, what can the state tax? The former is an economic question and is treated in such works as Professor Adams' book on "Finance." The latter is a legal question and it is with this phase of the problem that Mr. Judson's work deals. There are books which treat of taxation in the individual states, and others which discuss parts of the subject, but the time seems ripe for a general exhaustive work upon the whole subject. How far the state can interfere, through taxation, with matters under the federal jurisdiction, is a live question. Under this heading is discussed, what constitutes an interference with interstate and foreign commerce by the exercise of the state taxing power.

The author cites the authorities for propositions advanced by him and many of the leading cases are discussed at length. The book is well paragraphed, with headings in black type, and has a good index. These mechanical features of construction make the book valuable for quick reference. J. H. R. A.

A FORMULARY OF CIVIL PROCEDURE CONTAINING THE FORMS USED IN CIVIL PROCEEDINGS BEFORE THE SUPREME COURT, THE COURT OF APPEAL AND THE DISTRICT COURTS OF THE STATE OF LOUISIANA. Compiled by ALFRED HOWELL FLEMMING, A. M., LL. B. Pp. 478. New Orleans. 1903.

The above work by Mr. Flemming is not confined in its usefulness to the field occupied by most local form books. Beyond being a source of information as to Louisiana practice, this work affords to the student of Comparative Law a source of information most unique; for in Louisiana we have the border land between the two great law systems of the world. The practice of the

law as developed in the Commonwealth of Louisiana is the evolution during one hundred years of the civil law under common law environment. What self-government has here evolved may well be a guide for the government of our islands so recently come from under civil law jurisdiction. For the practitioner in Louisiana this work will be an invaluable aid. The forms presented are carefully selected. The field of civil practice is thoroughly covered. In addition to the forms the work contains the rules of the Supreme Court of Louisiana, the rules of the Civil District Court for the parish of Orleans, a list of fees and costs in the several courts, a list of legal holidays in Louisiana, and the acts relating to the duties and powers of clerks of the District Courts. The arrangement of the various forms is such that for ready reference the practitioner is dependent on the index. The lack of thorough alphabetic arrangement in the index is therefore a matter which calls for criticism.

J. G. K.

THE TREATISE ON SPECIFIC PERFORMANCE OF CONTRACTS. By RT. HON. SIR EDWARD FRY. Fourth Edition by WILLIAM DONALDSON RAWLINS, K. C. Pp. 685. London: Stephens & Sons. 1893.

The name of W. D. Rawlins, K. C., has been connected with Fry's Specific Performance since the appearance of the second edition in 1881. In that edition several chapters and parts of the work were practically rewritten by Mr. Rawlins, although of course in consultation with Justice Fry. For the present edition Mr. Rawlins is alone responsible. All the English cases of the last ten years have been inserted, the number of newly cited cases being upwards of three hundred. The fact of Mr. Rawlins' intimate association with the prior editions of the work has enabled him to place the new cases in their proper connection with the text. Therefore this edition is of greater value than the last edition with which Mr. Justice Fry had anything to do. This is perhaps the greatest praise which can be given to a new edition of an old work where the new edition has not been carefully prepared by the original author. Usually, when one who has not written a law book attempts to put in new cases, he inserts them in places where they have just enough connection with the text to confuse the person who refers to them for the purpose of illustrating the author's meaning.

The Voluntary Conveyance Act, 1893, the Married Women Property Act of the same year, and in some degree the Trustees Act, 1893, the Merchants' Shipping Act, 1894, and the Land Transfer Act, 1897, have necessitated modifications of the text. These modifications are written by the editor solely from the point of view of an Englishman writing for English lawyers.

This may be thought by some to detract from its value in this country. But we do not believe that the work would be more valuable to American readers if it contained so-called "American Notes." The use of a work like Mr. Justice Fry's to the profession in this country, is not as a ready reference to American decisions. It is alone profitably used by one who turns to it to ascertain the principles of the law and desires to study the development of those principles by the courts of a jurisdiction of recognized learning and authority.

The writer of this review has often wished that Mr. Justice Fry had discussed the Specific Performance of negative contracts as a separate subject, and had treated of the Specific Performance of different classes of contracts, before treating of defences to the action. He has also believed that the "defences" should have been confined to defences to the specific performance of a contract, the defence not being applicable to a suit at law. It was, however, no part of Mr. Rawlin's task to change the arrangement or general scope of Fry's work, and he has not done so. He has also wisely resisted the temptation to which most thorough editors of the works of others are subject, namely, the elaboration of the author's original discussion of important topics. The book, therefore, though brought down to date, remains the work of Mr. Justice Fry himself.

In these days of poor printing and worse paper, it is a distinct pleasure to handle a work, the mechanical execution of which, comports with the dignity of the law. *W. D. L.*

CASES ON EQUITY PLEADING AND PRACTICE. By BRADLEY M. THOMPSON, M. S., LL. B., Professor of Law, University of Michigan. Pp. 331. Callaghan & Co. 1903.

This collection of cases is probably selected and arranged with care. As the writer has not given in the preface any statement of the scholastic results he had in his mind when he was making his selections, it is somewhat difficult to judge whether he has or has not accomplished his purpose. The book will be unquestionably useful to the person who collected the cases and the students studying under him, but we believe that it is practically impossible for an instructor in another school to take hold of a collection such as this and use it in his own work unless he is personally acquainted with the author and knows him to be in sympathy with the point of view from which the cases have been selected.

We would like, for instance, to know why the author has selected quite a number of Illinois cases, while there are no cases from many of the states of the United States, including such jurisdictions as Pennsylvania, Ohio and Massachusetts. There may be and doubtless is a good reason for this, but the facts stated are somewhat striking.

The author has very properly excluded all matter from his report of a case not bearing on the subject for which it was selected. The book, therefore, is in no sense padded. There are, except possibly on page 243, no notes by the author. This we believe to be unfortunate, as it gives the impression, which may be erroneous that the author has merely looked at a line of cases and has found one to suit his purpose and then put that in without having made an exhaustive study of the subject. The printing is fair, but the paper and general appearance of the book is wretched. From the point of view of the author's convenience, something may be said in following the original reporter in placing the notes of one case in the text and of the next case in the foot-notes; but it does not tend to give the idea that care has been expended in the preparation of the manuscript for the printer.

H. A.

THE LAW OF SURETYSHIP. By ARTHUR A. STEARNS. Pp. 553. Cincinnati, Ohio: W. H. Anderson Company. 1903.

Suretyship and Guaranty is no new subject, but it is still a growing branch of the law. In the last decade and ever since the advent of surety companies its growth has been most marked. The relations between the parties to a surety contract have been more clearly defined than ever before. In the present work the author has endeavored to give to the profession a treatise which would present the law as it is to-day. He has not wasted words. Long disquisitions on doubtful points have been avoided and in their place a brief statement of the opposing theories has been given with an indication of the weight of authority on the subject. There are copious citations from all jurisdictions in support of the various legal propositions, those from the Western states being particularly abundant. The book is so arranged and indexed that it must prove a ready help to any lawyer, and especially to the busiest who has little time for extended study.

A. L. D.

UNITED STATES v. MEXICO. Report in the matter of the Case of the Pius Fund of the Californias, heard before a tribunal of the permanent Court of Arbitration, under the Hague Convention of 1899, sitting at the Hague, September 18, 1902, to October 14, 1902, with Pleadings, Appendix, Exhibits, Briefs and Records of the entire proceedings. By JACKSON H. RALSTON, agent of the United States and of Counsel. Pp. 891. Washington: Government Printing Office. 1902.

Dating back to the latter days of the seventeenth century, the history of the Pius Fund of the Californias has been most interesting. The Senate document under review prepared by

Mr. Ralston, sets forth the complete history of this great Catholic charity and its international vicissitudes, finally reaching adjudication in the decree by the Hague tribunal, establishing the obligation on the Republic of Mexico to pay \$1,420,682.67, Mexican, in extinguishment of annuities accrued and not paid and an annuity of \$43,050.99, Mexican, in the month of February, 1903, and each year following, perpetually.

The report is full and readable. It is not only a source for the student of the history of the Pius Fund and a source for the student of the practice in the Court of Arbitration, but the case furnishes to the student of international law a most interesting application of the doctrine of *Res Judicata*.

J. G. K.

ALBANY LAW JOURNAL.—May.

The Right of a Negro Litigant to a Trial by a Mixed Jury Under the "Equal Protection of the Laws." Glenda Burke Slaymaker.

The review of the cases here given shows that in the selection of jurors to try a colored man there should be no exclusion of those of his race or discrimination against him or them on account of race or color, but that the equal protection of the laws is not a guarantee to him of the right to a jury composed either in whole or in part of persons of his own race or color.

The Foolishness of the Wise. Willis B. Dowd.

This paper passes with apparent unconsciousness from the foolishness of the wise, who are, of course, lawyers, to the wickedness of the foolish. The author does not spare either.

AMERICAN LAW REVIEW.—March-April.

The Present Position of Japanese Law and Jurisprudence. Rokuichiro Masujima.

An exposition of the legal position of a country with a code which is not an evolution but the outcome of a revolution.

The Right of the American Citizen to Expatriate. Glenda Burke Slaymaker.

In the opinion of the writer a still unsettled question with the force of authority in favor of the right.

Our Archaic Copyright Laws. Samuel J. Elder.

An article to interest all who desire the protection of these laws. The strongest point made is that in regard to the length of the protection extended. The argument is that the author should have a property interest in the product of his brain as long as he lives.

Veneral Disease in the Law of Marriage and Divorce. Charles Henry Huberich.

A discussion of American and English decisions on the subject.

National Incorporation and the Control of Corporations. Walter S. Logan.

An enthusiastic exposition of a rather original view of the subject. All lawyers will doubtless agree with the author's opinion that the lawyers are to be saviours of an endangered nation.

THE AMERICAN LAWYER.—April.

The Law as a Career. John Dewitt Warner.

Excellent in tone, and full of good advice, especially on the ethical side.

Justice Fuller. A Sketch.

The anonymous author has written a short and whimsical account of the Chief Justice of the United States, dwelling chiefly on a few eccentricities hardly worthy of such special mention.

Great Trials in Fiction. 1. *The Yatton Estates.* ("Ten Thousand a Year.")

This is the first of a series. The editorial page furnishes a key to the characters supposed to have been caricatured by Samuel Warren, which may render a re-reading of the sketch interesting to those who had long ago read "Ten Thousand a Year."

The Effect which the United States Courts Will Give to the Decisions of State Courts. Robert C. Alston.

The subject is one which requires a much greater breadth of treatment than that here accorded it. The writer gives a number of cases under separate heads, but the limits of the article itself forbid a thorough examination of the subject of any one of the subdivisions.

THE BRIEF. (Phi Delta Phi) First Quarter, 1903.

The Powers of Majority Stockholders. William H. Fain.

A well-considered article, showing the tendency to allow a corporation to "change the very basis of its existence at the whim of the majority."

Federal Protection of Domiciled Aliens. Fritz V. Briesen.

A forcible argument in favor of giving the Federal courts power to punish acts which violate the treaty rights of aliens.

Law and Liberty. Alfred Steckler. (Address delivered before the New York City Phi Delta Phi Club, October 20, 1902.)

The author simply accomplishes his expressed desire to "recall, as it were, a few of the cardinals of our faith."

CANADA LAW JOURNAL.—May.

Employer's Liability Act.

This is the concluding article of a series on the subject, giving the cases which determine the extent of the servant's right of action under those provisions of the employer's Liability Act, not previously treated, and also including some points of pleading and practice under the act.

CANADIAN LAW REVIEW.—April.

Newfoundland Legislation in 1902.

A continuation of the monthly commentary upon the legislation for the year.

An Imperial Court of Appeal. George S. Holmestead.

A vigorous statement of the advantages which accrue to the people of Canada from the existence of the right of appeal to the sovereign as "the fountain of justice." A suggestion is made that the two courts of appeal for England and the colonies be united in one, which should be for England what the Supreme Court is for the United States.

Foreign Corporations and Partnerships in the Province of Quebec. Ed. Fabre Surveyer.

A classified and apparently thorough summary of the law on the subject.

Prison Reform in Ontario. James Massie.

The effect of the probation and parole systems and of the indeterminate sentence in other states is discussed, and it is contended that similar reforms would be of great benefit in Ontario.

The Supreme Court of the United States. David J. Brewer.

(First printed in *Scribner's*.)

An impartial, instructive and most interesting review of the power and work of the Supreme Court of the United States, which every one, not already having had that pleasure, will wish to read.

THE CANADIAN LAW TIMES.—May.

When "Common Employment" Exonerates Employer. Simon Alward.

The English Employer's Liability Act of 1880 restricted the very fully developed doctrine of common employment. The tendency of the English judges to give a very broad application to the rule which absolved the master from liability for injuries sustained by one servant through the negligence of another engaged in the same employment, has been met by modern legislation which safeguards as much as possible the safety of the workmen. This article gives a clear view of the legislation and decisions.

THE CENTRAL LAW JOURNAL.—May 1.

The Application of the Common Law to Lands Held by the United States in the Former Territory of the United States Northwest of the River Ohio and Especially in Respect to Private Waters as Distinguished from Public Waters. Thomas Dent.

An article supplementary to two articles on "Title to Lands Under Fresh-Water Lakes and Ponds," contributed by the author to former numbers of the *Central Law Journal*. An adherence to the common law on the subject is advocated as a means of avoiding confusion and perplexity.

Life Insurance Policies as Assets to Pass to Trustees for Bankrupt Estate. Alonzo Huff.

The point is made that debtors should not retain endowment policies in the nature of an investment, at the expense of creditors, and it is stated that it is now well settled that such policies are assets and do pass to the trustee for the bankrupt's estate.

COLUMBIA LAW REVIEW.—May.

Novel Partition Procedure. Robert Ludlow Fowler.

The procedure in question is "A judicial sale which is not an execution, but an expedient to resettle estates in land." The law on this point as it now stands in the State of New York is discussed.

The Northern Securities Cases. Carman F. Randolph. Part III. The Minnesota Suit.

The special case is examined with much care and the results of all the cases is summarized at the end. Mr. Randolph answers those who dissent from his conclusions by an appeal to the "persistent eccentricities" of the law, but he states clearly his ultimate proposition that a corporation chartered by a state, like a natural person therein, is entitled to acquire property, free from interference by the United States or another state.

Kent's Introductory Lecture. (Delivered November 17, 1794.)

It is a great refreshment to read every now and then such a piece of literature as this, or that companion lecture delivered a few years before this in Philadelphia, by James Wilson, on the opening of the Law School there. The quiet dignity of the style and the measured sentences certainly do not at all detract from the force of the opinions which are stated firmly, forcibly and with authority, but also persuasively.

THE GREEN BAG.—May.

James Rood Doolittle. Duane Mowry.

A most appreciative sketch of the life of one of the men whose most active period of life came at the time of the Civil War. To change from belief in and support of one party to activity in the ranks of another, to return to the old faith when that again voiced his belief, to support the impeached President when to so support him was most unpopular, called for great courage and conscientiousness. Mr. Doolittle, in doing all this, was one of a class of Americans who for many years suffered a sort of martyrdom for their convictions, but he, at least, seems to have been at last understood.

The Law as to the Boycott. Bruce Wyman.

A statement as to the rise of the "Boycott" and a resumé of the more important cases. It is shown that the courts look with disfavor upon the boycott, although the reasons given for their position are somewhat confused and contradictory.

The Educational Status of the Legal Profession. Edwin G. Dexter.

The statistics here given have evidently been carefully compiled. They show, as would be expected, that the "legal fraternity as a whole is better educated than it was."

A Century of Federal Judicature. Van Veechten Veeder.

This paper (No. 5 of the series) notices Justices Davis, Hunt, Woods, Matthews, Lamar and Jackson, in one group, but very briefly, as only a few lines are given to each. Justices Chase, Swayne, Strong, Waite and Blatchford form a second group, to whom more space is given. Especial praise is accorded to Justices Chase and Waite.

Wrong Without a Remedy. A Legal Satire. Wallace McCamant.

A paper which purports to have been written to expose the injury which the author claims is being done through allowing unlimited inspection of the books and papers of a corporation. The article takes the form of fiction, but hardly fulfills its claim to be satire.

HARVARD LAW REVIEW.—May.

Rescission for Breach of Warranty. Samuel Williston.

The difference between the law of Massachusetts and that of England is clearly stated, and the determination of the question as to which opinion is supported by the better reason is in favor of the Massachusetts law, which allows a rescission of the contract if the warranty is broken.

Government Ownership of Public Utilities. Christopher G. Tiedeman.

Mr. Tiedeman, whose knowledge upon such questions is well known, states that in this thesis he has endeavored to establish: "First, that the grant of any more or less exclusive or special franchise to a private corporation or individual is a violation of the constitutional guaranty of equal privileges and immunities; and, secondly, that there is no constitutional prohibition of the establishment as government monopolies of any business or enterprise which private capitalists cannot undertake without the legislative grant of such a special or exclusive franchise." He has presented his argument clearly and supported it ably, and in a way to interest even those whose decision has already been made against him.

Criminal Attempts. J. H. Beale, Jr.

A very complete summary of the matter. Some of the older stock arguments are answered under the second head (Adaptation of means to result) in a manner as amusing as it is effective. The old ground is gone over, necessarily, but gains a fresh interest from the new treatment.

LAW MAGAZINE AND REVIEW.—May.

Legal Etymology. James Williams.

An article of great interest, giving much valuable information. It is to be regretted that the author thought it necessary to be so exceedingly condensed in his statements. A fuller treatment would have been of much value.

The Criminal Responsibility of the Insane. Arthur Rickett.

A continuation of an able article in which the "knowledge test" for criminal responsibility is criticised and condemned.

Surviving Absurdities and Curiosities of the Law. J. M. Lely.

It is shown in this article that not only many curiosities and absurdities have survived in the law of England, but also more serious defects in regard to the law of marriage, distress for rent, and absolute testamentary power.

Industrial Trusts. D. F. Pennant.

The article is written from the point of view of an Englishman writing for his countrymen who have little or no knowledge of the subject matter. England, owing to her free trade policy, is thought to be free from the dangers which confront the United States from the power of the "Trusts."

Criminal Statistics.

A summary of the criminal statistics of the year for England.

The Marriage Laws of Scotland. Emile Stocquart.

A short historical introduction succeeded by a statement of the Scotch law of marriage. A "Community of Law" in regard to marriage, among the nations, is regarded as absolutely necessary.

LAW QUARTERLY REVIEW.—April.

War Sub Modo. T. E. Holland.

In opening this short article the author acknowledges that the steps recently taken against Venezuela were "from the point of view of international law, anomalous," which acknowledgment his summary review of the proceedings amply justifies.

Studies in Criminal Sentencing. (Answers to four questions submitted by the International Congress of Comparative Law, to members of the Bar.)

1. By a Judge of the Native Egyptian Court of Appeal. E. W. Coghlan.

The preliminary remarks and the answers to the questions propounded have a remarkable quality. The matter has been deeply considered and the manner is certainly the outcome of wide culture and an unusually original mind.

2. By Two Danish Judges. C. Thomsen and C. Ussing.

The existence of a penal code with very definite provisions has evidently withdrawn from the judges much of the discretion presupposed by the questions; therefore the answers of the Danish judges afford comparatively little information upon the subject.

The Limits of the Rule in Want v. Stallibrass.

An able discussion of the question whether a purchaser of land can recover his deposit where the vendor has an absolutely bad title and the purchaser does not make objection to the title within the time limited by the contract. The discussion is conducted by Frederick Edward Farrer and T. Cyprian Williams.

Labour Competition and the Law. Con. D. R. Chalmers-Hunt.

This is a continuation of the paper on the same subject in the *January Quarterly*. The author upholds his side of the argument with much earnestness.

Specially Admissible Evidence.—Res Gestæ. N. W. Sibley.

The "Mysterious doctrine of the *Res Gestæ*" is once more brought forward to be examined and defined, without, it would seem, depriving it of the right to the adjective awarded to it by Judge Bucknill.

The Case of Sutton v. Johnstone (1786).

A case in which a captain of the navy (English) brought suit against his commander for malicious prosecution. The commander had sent the captain to England for court-martial and the captain was acquitted. The development of the law, subsequent to this case, is traced and the right to bring such a suit is stated to be still doubted.

MICHIGAN LAW REVIEW.—April.

The Power to Appoint to Office: its Location and Limits.

Floyd R. Mechem.

Here the question of the power of appointment as between the executive and legislative, or as being elective is discussed. The weight of modern opinion is conceived to be away from the Jeffersonian idea that nomination to office is an executive function, and toward the idea that it is a function of the legislature.

The Liability of the Custodian of Public Funds Lost Without His Fault. Gustav Stein.

The author shows that there has been a tendency to hold a person in charge of public funds responsible, not only for loss through his default or negligence, but also by "Act of God" robbery, theft or fire, but holds that there is now a "marked tendency toward the more lenient view" that the honest and faithful officer is not responsible in such cases.

YALE LAW JOURNAL.—May.

The Exercise of the Pardoning Power in the Philippines.

Charles E. Meagoon.

The paper deduces from given authorities the rule as to the exercise of the pardoning power, and makes the test the character of the offence and jurisdiction of the person of the offender. The facts given in the process of tracing the growth of the law on the question are well stated.

Must the Rejection of an Offer be Communicated to the Offeror? Clarence D. Ashley.

This question has a practical interest and many cases which might easily arise are here taken up and considered with a view to the enunciation of a principle by which they may be determined. The conclusion is that communication of the rejection of an offer to the offeror is requisite.

A Plea for a Modern Definition and Classification of Real Property. George P. Costigan, Jr.

An attempt to simplify the classification and definition of the word "property" from the standpoint of a teacher of the subject. The definition and classification arrived at by a careful process seem at first sight more simple than those they are intended to supplant. It is doubtful if they will prove so after being tested by experience.

The Decadence of Law as a Profession and Its Growth as a Business. Robert Treat Platt.

The incorporated company appears here as the enemy of the individual lawyer, much as a "trust" or the big department store appears as the enemy of the small business or shop in the business world. The author seems to look upon the condition as one to be accepted with philosophy.