CURRENT LEGAL PERIODICALS AND BOOK REVIEWS.

REPORTS OF MINING CASES DECIDED BY THE COURTS OF BRITISH COLUMBIA AND THE COURTS OF APPEAL THEREFROM TO THE FIRST OF OCTOBER, 1902; with an Appendix of Mining Statutes from 1853 to 1902, and a Glossary of Mining Terms. By THE HONORABLE ARCHER MARTIN, one of the Justices of the Supreme Court of British Columbia, and the Judge in Admiralty of that Province. Pp. xxviii + 898. Toronto, Canada: The Carswell Company, Limited. 1903.

The above volume, containing about two hundred cases, will be welcomed by those lawyers and laymen interested in mines, and mining law. It brings into convenient form for ready reference the mining law of British Columbia, both case and statute. It is a valuable publication, presenting, as it does, not only cases previously published, but also cases never published before. The cases are published with excellent head-notes and the editor has added copious foot-notes wherever needed. The binding, which is full Russia divinity circuit, with flap, is a feature which will be welcomed by the lawyer whose field of activity carries him to the mining camp of the Canadian Northwest, where books receive many a rough handling. A supplement, bound in the same volume, contains notes of cases down to February, 1903.

J. G. K.

BUDD ON CIVIL REMEDIES UNDER THE CODE SYSTEM WITH FORMS APPLICABLE TO CIVIL ACTIONS. By JOSEPH H. BUDD. Pp. xl + 763. Los Angeles, Cal.: Chas. W. Palm Co. 1902.

The above work aims to be a complete guide to any one seeking civil remedy in a code state. The opening chapters on "Remedies for the redress of Private Wrongs by the Mere Act of the Parties," "Courts of Justice," "Attorneys-at-Law," and "Actions at Law and Suits in Equity," are followed by chapters on the various steps in bringing and pursuing an action, and enforcing the remedy. Of the four hundred or more pages of text over one hundred are devoted to rules of evidence, nearly a hundred to administration of decedents' estates.

Both title and author's preface lead one to anticipate a work of value in all code states. The treatment of the subject is, however, distinctly local. The code references are exclusively

Californian, the civil procedure code of that state forming the basis for the work. The references to reported cases are almost exclusively Californian.

The value of the work, therefore, will be to the California practitioner. To him it should be of value as a careful and exhaustive digest for quick reference of case and code law as to civil remedies and for its three hundred and sixty-six forms covering the field of civil practice, which have been added by the author in an appendix. *J. G. K.*

LEGAL MASTERPIECES: SPECIMENS OF ARGUMENTATION AND EXPOSITION BY EMINENT LAWYERS. Edited by VAN VECHTEN VEEDER. In two volumes. Pp. xxiv + 1324. St. Paul, Minn.: Keefe Davidson Company. 1903.

These volumes are a contribution to the literature of the law. Each one of the forty-three selections which helps to make up the contents of this work, is, in its way, a model of the highest form of argument or judicial opinion.

The great lawyers and judges of England and the United States, whose efforts are here reproduced, were more than lawyers, in the narrow sense of the word, they were men of breadth and culture. They not only knew what they wished to say, but said it in the best possible manner.

The editor has chosen the selections partly because of the interest and importance of the subject matter, but chiefly because of the elegance of style. They are literary masterpieces as well as legal disquisitions.

We find, as might well be expected in the volumes, opinions of Lord Mansfield, Hamilton's Opinion on the Constitutionality of the United States Bank, Marshall's opinion in McCulloch against Maryland, and Webster's argument in the Dartmouth College case.

A sketch of the life of each lawyer whose work is produced is given, together with a discussion of his characteristics, and the facts involved in each case are briefly stated.

J. H. R. A.

NEW PRACTICE IN SUPPLEMENTARY PROCEEDINGS, WITH ALL THE STATUTES ON THE SUBJECT AND NEW FORMS FOR EVERY CASE. By GEORGE W. BRADNER. Pp. xl + 396. Second Edition. Albany, N. Y.: W. C. Little & Co. 1902.

In 1895, Mr. Bradner published the first edition of this work. The object of the author was to give, in concise form, the law governing the attachment of property under the New York Code of Civil Procedure, based upon statute and judicial interpretation.

The changes in the statutes and the decisions of the courts during the past eight years have made a new edition of the work desirable.

The second edition contains the New Procedure and retains the desirable features of the earlier work, which made it popular with the practitioner.

The book is intended primarily for the use of those who intend to practice in the State of New York.

J. H. R. A.

NOTES ON RECENT LEADING ARTICLES IN LEGAL PUBLICATIONS.

ALBANY LAW JOURNAL.—August.

Rights and Duties of Receivers of Insolvent Corporations. B. Frank Dake. An interesting discussion of a number of important points decided by the Supreme Court, speaking through Chief Justice Fuller (*In re* Watts, 28 Sup. Ct. Rep. 718). Using this case as a text, the article gives a good deal of information regarding the working of the Bankruptcy Act in cases where there is a conflict of authority between the state courts and the Bankruptcy Court. The author states a great many points upon which difficulties have arisen or are likely to arise, and suggests some methods for solving these difficulties.

The Hague Court in the Pious Fund Arbitration. Wm. L. Penfield. As an historical event this first meeting of the Hague Court of Permanent Arbitration is full of interest. The author of this article does not fail to appreciate this, and he brings out clearly the points in which benefit is likely to accrue to all civilized nations from the mere submitting of this case to the Arbitration Court.

The Employers' Liability Act. John Brooks Leavitt. Exception is here taken to the recent opinion in the case of *Johnson* v. *Roach* (N. Y.). The point is made that the court, in its decision, holds that "all actions at common law by employees against employers to recover damages for negligence have been abolished, and that the only remedy now is under the statute." A forcible argument is then made against such a view of the present New York law.

An Important Copyright Decision. The text of the decision in the case of the *Edward Thompson Company* v. *The American Law Book Company* is here given, as also a very good résumé of the points involved. Incidentally the methods of compilation of both complainant and defendant were found to be very much the same, the manufacturing of this type of book having been reduced to a merely mechanical performance. Unfortunately the method has been extended until the manufacturing of so-called treatises has also become a trade. The decision of the court may be interpreted as meaning that there can be no piracy of ideas where there are no ideas to become the subject of piracy.

AMERICAN LAW REVIEW.—July-August.

The Quarter Century in American Jurisprudence. Frederick N. Judson. This review of the legal changes of the last twenty-five years takes up the simplification of procedure, criminal procedure, evidence, prerogative writs and preventive relief, the Fourteenth Amendment, culmination of case law, the doctrine of judicial precedent, tendency to codification, and the study of comparative jurisprudence. Of course no exhaustive treatment could be given to any one of so many divisions of

the law, but the "Culmination of case law" and "Doctrine of judicial precedent" are especially effective.

Three Constitutional Questions Decided by the Federal Supreme Court During the Last Four Months. Alfred Russel. The first of these three questions came up in the lottery ticket case of *Champion* v. *Ames,* and was, "Does the power to regulate interstate commerce include the power to prohibit?" This question was answered in the affirmative. Mr. Russel says as to this, "It would seem to result that Congress may prohibit the transportation between states of goods manufactured in violation of the anti-trust laws. This would be an effectual method of killing the trusts."

The second question remains unformulated by Mr. Russel, but arose in the case of *Giles* v. *Harris* and was upon the right of the State of Alabama to disfranchise a certain class of citizens. The Supreme Court refused relief, the opinion being delivered by Mr. Justice Holmes, whom Mr. Russel believes to be best known as the son of his father, the poet. Most lawyers, it seems, would take exception to this, as Judge Holmes has long occupied a most distinguished position on the Bench, and has an international reputation as an original thinker and jurist.

The third case (*Hawaii* v. *Mankichi*) "concerns the question whether in any place in the United States a man can be tried for taking the life of another, without conforming to the guarantees of life and liberty contained in the Constitution of the United States" or, "Whether the Constitution follows the flag?" Mr. Justice Day, then very recently appointed to his position on the Supreme Bench, delivered the opinion that it does not. This opinion Mr. Russel condemns as "monstrous," and believes that the doctrine must ultimately be abandoned.

Law and Human Progress. Walter Clark. The gentleman who writes this article considers the Constitution of the United States to be "a misfit," but does not think the matter to be of such great importance as to detain him long from the consideration of the progress recently made in common and statutory law, the criminal law, civil procedure, labor legislation, the law of married women, and of private corporations. There are other things beside the Constitution of which he does not approve, some of which may better merit disapproval.

The Japanese Civil Code Regarding the Law of the Family. Rokuichiro Masujima. This explanation by a Japanese, of the law of his own country, is naturally more sympathetic and at the same time clearer than any given by a foreigner could be. At times it has the sound of the voice of one come back from Roman times to elucidate the civil law of his time. He says "it is" instead of "it was" and the old family law lives again. But the civil code is the outgrowth of the later years of Japanese life, and "The modern art of legislation has chiseled the edges of fictions and theories conceived by primitive minds and turned them into the rigid rules of law." Japan has lived under this code for five years and finds it well suited to the present conditions of the national life.

An Inquiry into the Power of the State to Afford Relief in a Certain Exigency. Thomas A. Sherwood. (This article has received notice in a prior issue of the LAW REGISTER.)

The Passing of the Oath. Benjamin P. Moore. The author regards the "passing of the oath" as a thing to be desired and gives very good reasons for his so regarding it. The history of the custom is touched upon, and the gradual change in this custom is regarded as a sure forerunner of the end.

THE AMERICAN LAWYER.—July.

Federal Incorporation for Companies Engaged in Interstate Commerce. Hon. Henry W. Palmer. Mr. Palmer's first inquiry is whether Congress has the right to charter business corporations for the purpose of manu-

facturing and selling goods which enter interstate and foreign commerce; the second inquiry is, Would the exercise of such a power be expedient and beneficial to the people? After an examination into the powers of Congress to regulate commerce and the acts which have been held legal under this power, Mr. Palmer answers the first question in the affirmative. He then goes on to consider the objections to the expediency and beneficence of the plan and answers them quite fully, concluding that the experience of other peoples and an examination of the work of similar systems would lead to the belief that the exercise of such a power would be for the benefit of the people of this country.

Great Trials in Fiction. (IV) The Belcher Patents. ("*Sevenoaks.*") J. G. Holland. This is the fourth of the series of Great Trials in Fiction. Mr. Holland at the time "Sevenoaks" was published was a very popular author, but it may be doubted if the majority of the readers of the *American Lawyer* have ever read the volume from which this trial is taken.

THE AMERICAN LAWYER.—August.

Due Process of Law. Hon. Alton B. Parker. This very valuable article traces the growth of the subject of the title phrase and its application from Magna Charta to the time of the making of our own great Constitution, and then takes up the slow working out of the idea of federal control over the states through judicial interpretation of legislative action. The conditions prevailing at the time of the passing of the Fourteenth Amendment, and the consequent extension of the federal power through the liberal interpretation of that amendment are treated forcibly and well. The article is to be continued.

The Criminal's Last Haven of Refuge. Cuba is here presented to the man fleeing from the justice of the United States as an ideal place of refuge, this country having no extradition treaty with that island.

Legislation Adverse to Railroad Corporations. Chauncy G. Austin, Jr. "How far are courts justified in sustaining statutes imposing new and additional burdens upon railroad corporations under the so-called police powers of the states?" is the question with which this short article deals. The answer is "that within the limits of that which secures to all protection in their rights, the equal use and enjoyment of their property and whatever affects the peace, good order, morals and health of the community, courts are justified in sustaining legislation adverse to railroads, and that beyond these limits courts should be very reluctant in holding valid any legislative act of precarious foundation which does not come clearly within the scope of the above powers." This seems to leave the matter very much where it was before the query and its answer.

The Defects in the Case System of Teaching Law. Darius H. Pingrey. Mr. Pingrey writes this short article to show "the absurdity of this system." He impliedly confesses that the theory of teaching law by this system is correct, but claims that it is impracticable. He advocates teaching through the use of text-books. "Teaching law from text-books is like building a symmetrical and beautiful structure," he says. He also says that the case students fail to pass the examinations of the Illinois State Board, and that students from Wesleyan (the law school in which he is professor) all pass. He does not state where the "case students" acquired this lack of knowledge of the law. The test would be of more value if he had selected students from some well-known school where the system is used. Mr. Pingrey's arguments, if somewhat heated, are worth attention from those who are interested in either system.

Dogs as Witnesses. The use of bloodhounds to track a criminal in Nebraska and the case resulting serve as the text for this article. In

such cases it is insisted that the dog is the witness, and the argument is against his use for such a purpose. The use of the dog in trailing a known criminal is contended to be the proper use, and not the tracing of a crime to an unknown criminal.

Great Trials in Fiction. (*V*) *"Sevenoaks."* J. G. Holland. "The Belcher Patents." This is a continuation of No. IV in the July number.

CENTRAL LAW JOURNAL.—August 7.

Taxation of Telephone and Telegraph Companies. G. C. Hamilton. The article goes into the matter with some elaboration, and is abundantly annotated. In ascertaining the limits within which the state can exercise its power of taxation, it is asserted that the most careful distinction must be made. Where the effect of the tax is a matter of purely local interest, the state may tax, but it must not interfere with the power of Congress to regulate and control interstate commerce.

CENTRAL LAW JOURNAL.—August 14.

Recovery of Damages for Negligence by Third Persons in Cases Where There is No Privity of Relation or Contract. P. L. Edwards. The history of the decisions on this point begins with the English case of *Winterbottom* v. *Wright,* in which it was decided that the driver of a mail coach who was injured through an accident to the coach could not recover from the owner of the coach because there was no privity of contract between the driver and the defendants, who had entered into a contract with the government to keep the coach in proper repair, therefore no basis for a claim of damages. The author of this article characterizes this rule as being as "simple and comprehensible as it was unreasonable and vicious," and goes on to show how, following the New York courts, this illiberal view has been changed "to the more liberal and reasonable rule that where one is charged with a duty, or the performance of a contract, and he fails in whole or in part to perform the same in such a manner and time as to avoid as far as possible injury to others, he will be held liable also to those not of privity to the agreement or contract.

CENTRAL LAW JOURNAL.—August 21.

State Laws in Federal Courts. Needham C. Collier. A discussion of the relation between the federal and state courts, in which the question as to the co-ordination or subordination of the two courts is brought up. Certain evils of the present position of the federal court are instanced and remedies suggested.

CENTRAL LAW JOURNAL.—August 28.

When Does an Action Accrue for the Breach of the Implied Warranty of Title in the Sale of Chattels? Again, in tracing the history of the law in a certain matter, the person tracing the law finds "the injustice and absurdity of the results following" the rule of law laid down in the older cases which had been followed for many years. The sanctity of precedent fails somewhat before such constant arrangement, for such remarks are of very frequent occurrence. In the present article it is not shown that any very definite rules have taken the place of the older ones here criticised. The decisions are not uniform, and the principles upon which the decisions are made are not always clear.

CANADA LAW JOURNAL.—August.

Origin of Contract in Roman Law. Charles Morse. In searching for the origin of contract in Roman law Mr. Morse rejects the Greeks as a people to whom the Romans could owe the idea on account of "Their curious, not to say stupid, failure to apprehend the true function of money." It is not possible that the Greeks might not have been absolutely "stupid" in their failure to agree with the modern English view of the "true function of money," so we are passed over at once to the Romans themselves, whom we find a trifle slow in arriving at a proper conception of the idea, and the article being limited in space, we succeed in getting little but an elementary sketch of the matter.

Damages for Mental Suffering. An article in the *Central Law Journal,* on this subject and mentioned in these notes, offers an opportunity for a further examination of the subject here, although extracts from the former article form the substance of this one.

CANADIAN LAW REVIEW.—July-August.

The Appeal to England. W. E. Raney. This subject was treated in an article entitled "An Imperial Court of Appeal," by George S. Holmested, in this Review for for April. Mr. Raney does not agree with Mr. Holmested as to the felicity of the "right of appeal to the sovereign, the fountain of justice," and it is not to be wondered at that he resents "the attitude of the English courts, the least of which will not permit the citation in argument of a Canadian judicial decision." An American cannot but sympathize with him in his desire for "a home-made constitution," and his sentences are short and vigorous. "A century of ideal government would send the world back close to barbarism." "Civilization does not come from without; like every other thing worth having it must be worked for." "Eternal conflict is the price of progress." His vigorous argument makes most interesting reading.

Law French and French Law. David R. Keys. (Concluded from June number.) The first portion of the article was devoted to Law French, this to French Law. Only one case is given; that between Boileau and Racine in regard to the purchase of a house called "Le Chat," but it is a quaint and curious case.

The Gaynor and Greene Extradition Proceedings. Very liberal extracts from the proceedings are given, with some slight commentary upon them.

Proposed Amendment to the Supreme Court Act. (Continued from June number.) This is a verbatim report of the proceedings in regard to that act.

THE CANADIAN LAW TIMES.—August.

The Laborer and the Law. N. W. Hoyles. In this discussion we start with the Statute of Laborers, but arrive at *Lumley* v. *Gye* in the compass of a page and a half, then continue through *Bowen* v. *Hall, Mogul Steamship Co.* v. *McGregor, Temperton* v. *Russell* and the analogous cases. These cases are weighed, compared and discussed; principles are deduced from each and the principles compared; extracts from the opinions are given and remarks upon the opinions. The result is to show an absolute confusion in the cases, an irreconcilable diversity in the opinions, and a great variety of sentiment in the remarks. It would seem that we might end, as we began, with the Statute of Laborers, to the great satisfaction of certain of the minds which have involved the law in this labyrinth.

Mr. Justice Darling. W. N. Ponton. An admirer of Justice Darling has here collected many of his wise and witty sayings in the compass of a short article.

CHICAGO LAW JOURNAL.—August 14.

Supreme Power of the State. Hon. B. F. Milton. The general trend of this article, which is both interesting and well written, is expressed in its closing sentence, "Back of courts and legislatures are the sovereign people—at first, and still, the supreme source of authority, but of the powers actively manifested in the operation of this magnificent scheme of government, the greatest is that of the Supreme Court of the United States."

CHICAGO LAW JOURNAL.August 21.

Legal Maxims. Hon. Murray F. Tuley. The maxims are first considered in general and then are taken up in order. Only the maxim *"Agere in personam"* is treated in this installment, as the article is to be continued.

CHICAGO LAW JOURNAL.—August 28.

Legal Maxims. Hon. Murray F. Tuley. Continued. The maxims considered in this installment are: Equity looks to intent rather than to form; Equity regards that as done which should be done; He who comes into equity must come with clean hands." Interesting illustrations are given of the application of these maxims to concrete cases.

GREEN BAG.—August.

Andrew Jackson as a Lawyer. Eugene L. Didier. "Lawyer, district attorney, judge, member of Congress and United States Senator before he was thirty-one," is the record recited here. It sounds like a startlingly swift progress, and the account of it all agrees with the sound. It is picturesque, romantic, full of adventure, for a lawyer who has hairbreadth escapes from Indians, duels with backwoodsmen, encounters with mobs, and who comes out triumphant from them all, seems rather a hero of the modern romantic novel than a student and follower of the law. Mr. Didier calls Mr. Jackson, in spite of his achievements, "an ignorant man." This seems to be the usual mistake of considering the unlettered man ignorant. A man may be, as Jackson was, profoundly unlettered, if such a phrase is permissible, yet intelligent in every fibre, as Jackson seems also to have been. He neither inherited or acquired culture, yet the higher, unpurchasable gift of intelligence was his.

A Solution of the Labor Problem. Harry Earle Montgomery. The suggestion is here made that labor disputes be submitted to a board of mediation composed of three members appointed by the governor of the state. "This commission should represent the public in all controversies." The office of the commission should be solely that of offering suggestions." An industrial court is a part of the plan and the scheme is quite fully worked out, with many good suggestions. Like all other plans of the kind it might be very good if all the parties to be consulted could be brought to agree to adopt it and stand by it.

The Election and Coronation of a Pope. John De Morgan. A detailed description of the ceremony of inducting a pope into the papal chair. Very well illustrated.

Wrong without Remedy: A Legal Satire. IV. The Freeze-Out. Wallace McCamant. Another scheme of the author's hero is here exploited, and more wrongs without remedy indicated. The manner and matter are similar to those of the former papers.

A Century of Federal Judicature. Viii. Van Vechten Veeder. To Mr. Justice Bradley is devoted the entire eighth paper of this series. The praise and criticism are as usual well distributed and intelligently apportioned. After reading the paper one cannot but feel the value of the services rendered by Judge Bradley.

LAW MAGAZINE AND REVIEW.—August.

General School of Law. Montague Crackenthorpe. England at last is able to afford a school of law! But it is only by means of what Mr. Crackenthorpe calls "a lucky windfall." However, it has got its windfall and is now planning methods and means. It is evident that Mr. Crackenthorpe desires that the school shall be united with London University, and form a "school which shall be both academic and professional."

Specific Performance. W. Donaldson Rawlins. (To be continued.) The foreign law of specific performance is first touched upon; then the manner of the introduction of this action into the English law; then the classes of cases in which it is, and is not, allowed. The treatment of the subject is good and is not without that touch of the amusing which seems indispensable now, even in a legal treatise.

Crimes and Punishments. Appellant. The writer has evidently considered his subject and is thoroughly and deeply interested in it. He is moved by evils that he finds in the present system of punishment in England to the use of some apparently well justified sarcasm, and to give some very good advice to those in authority. The article, as a whole, is a strong one, and the argument for fewer and milder punishments where possible is well put and reasonable.

Should the Two Branches of the Legal Profession Be Amalgamated? H. J. Randall. This question, of course, has a local application to England merely, but it is interesting as a presentation of the present state of the legal profession there.

The Marriage Laws of Scotland. Emile Stocquart. (Continued.) This installment examines into the Scotch marriage laws in a very painstaking and learned manner, and treats under sub-heads the subjects of Irregular Marriages; Marriage per *verba de præsenti;* Marriage by promise *subsequenta copula;* Marriage by habite and repute; Lord Brougham's Act, 1856, and Clandestine Marriage.

Some Decisions under the Companies Acts 1862-1900. N. W. Sibley. These Companies Acts have been the cause of much printing of small books and pamphlets. Litigation under them has been very extensive and the interpretation of them has not always been uniform. This article goes quite thoroughly into the cases, with a running commentary upon them, but as yet (the article is to be continued) does not show any particular continuity of thought, or bring to light the value of these acts.