

## NOTES ON RECENT LEADING ARTICLES IN LEGAL PUBLICATIONS.

## ALBANY LAW JOURNAL.—November.

*The Duty of the State to Arbitrate or Adjudicate Civil as well as Criminal Causes.* Donald McPherson. The writer of this article is confessedly inspired by a chapter in Mr. Herbert Spencer's Synthetic Philosophy on "The Duties of the State," and while he remains under the influence of that inspiration and keeps his argument on the lines there laid down, he is readable and reasonable. When he leaves Mr. Spencer behind and starts out on his own unguided way, he hurts his cause by the violence and unreason with which he puts his case.

*Can Lawyers be Honest?* Joseph M. Sullivan. Mr. Sullivan has here used all his well-known eloquence in defence of the often maligned members of the legal profession. He shows how naturally an unjust prejudice has grown up in the public mind against those very persons to whom the public are the most indebted, and he goes on to earnestly and vigorously protest against the continuation of this prejudice in the minds of the people.

*The Law's Delay no Excuse for Lynching.* Henry Bischoff. Presented in the form of a brief for the "*People of the United States v. The Spirit of Mob Rule.*" A very able and earnest presentation of the subject, in a spirit to be commended for its fairness and avoidance of some of the errors into which writers on this subject usually fall. He does not go into the question as to whether, if the law's delay is not the cause, the law may not be otherwise in fault.

## CANADIAN LAW REVIEW.—November.

This issue of the Review is given up to a review of the Statutes of Ontario for 1903, making a running commentary on the legislation for that period.

## CANADA LAW JOURNAL.—November 1.

*The Alaska Boundary.* "Alverstone." With exception of two paragraphs in which it is said that in the absence of information on various points the writer deems it best to withhold comment (although some very caustic comment slips in), this paper is merely a copy of the protest of the Canadian Commissioners, and of Lord Alverstone's reasons for his decision in reference to the Portland Channel.

*Mens Rea.* Silas Alward. A discussion of some leading cases in which this doctrine is examined, from which discussion some ten rules are deduced. It does not seem that these rules clear the subject in a very great degree, since Mr. Alward confesses that "In general, the whole difficulty arises in the proper application of these rules and leading principles to particular offences, and in determining whether the penalty, imposed for the infraction of the act, is intended to be imposed at all events, or whether there is to be read into it the common law qualification of *mens rea.*"

## CENTRAL LAW JOURNAL.—November 6.

*The Liability of a Bank on a Certified Check.* Glenda Burke Slaymaker. The article points out the fact that the courts have commonly failed to observe the distinction between the certification and the acceptance of a check by a bank, and goes on to point out the effect that certification of a check has upon the relations between the bank and the depositor or holder. It also treats generally of the liability of a certifying bank.

**CENTRAL LAW JOURNAL.**—November 13.

*Rights of Beneficiaries Erroneously or Falsely Described in Benefit Society Certificates.* Cyrus J. Wood. The general conclusion to which an examination of the cases cited leads seems to be well expressed by Judge Taylor in a Wisconsin case. Judge Taylor is quoted as saying: "In determining who is entitled to receive the benefits of the provisions made by a society of this kind, it is the duty of the court to construe its rules and regulations liberally to effect the benevolent purposes of the organization, and in no case so to construe them as to defeat such purpose, unless the meaning of such rules and regulations is so clear and certain as to admit of no other reasonable construction."

**CENTRAL LAW JOURNAL.**—November 20.

*Verbal Alterations of Written Contracts in Material Parts.* Walter J. Lotz. The writer holds that the doctrine that written contracts may be altered verbally is founded in reason and justice. After the usual examination of case law, he concludes with an interesting paragraph showing the manner of the rise of the evidence of the contract into a place where it became of as much importance as the contract itself, and soon became denominated the contract, "and this fiction is now firmly embedded in the whole body of the law."

**COLUMBIA LAW REVIEW.**—November.

*New Trials for Erroneous Rulings upon Evidence; a Practical Problem for American Justice.* It is hardly necessary to say that Mr. Wigmore brings expert knowledge to support his view of the question, and that to that knowledge he adds great vigor and force of presentment. He gives us what he calls "The Orthodox English Rule," and he shows how far we have departed from it, owing to a decision in the English Court of Exchequer in 1835. Mr. Wigmore considers the practical working of this rule lamentable in its results, and it is doubtful if many of his readers will disagree with him. England has reformed her procedure upon this point and Mr. Wigmore calls upon us to follow her example.

*Tubwomen v. The Brewers of London.* The case of the "Tubwomen" is supposed to have furnished us with the "first enunciation of the broad rule that an agreement is an indictable conspiracy at common law, although only to do that which the parties thereto might, as individuals, lawfully do." Therefore the Tubwomen become of great interest at the present time, although their case is not to be found in the reports, and the foundation of our rule has, as a consequence, no visible means of support. When we leave the Tubwomen and come to the threadbare conspiracy cases of the present time we have the same arguments and the same conclusions with which every one is now familiar.

*The Steel Corporation Cases.* James F. Tracey. Mr. Tracey here makes an examination into the Steel Corporation Cases and gives a clear statement of the cases and the points determined by them.

**THE GREEN BAG.**—November.

*Timothy Otis Howe.* Duane Mowry. Born in Maine, member of the Maine Legislature, judge of the Circuit Court of Wisconsin, United States Senator from Wisconsin, and holder of other honorable appointments, the subject of this sketch was a type of the New Englander emigrating to the West and there building up a new country as his fathers had built up the New England states. Mr. Mowry has given us a very readable account of the life and achievements of Mr. Howe.

*Criminality in Children.* Gino Carlo Speranza. This writer looks his subject very squarely in the face and with a certain sternness. He

does not wholly approve of recent tendencies in the treatment of the child criminal, and he gives good reasons for his disapproval. His remedy is "legalized social and physical ostracism" for the child whose nature is shown to be criminal.

*Wrong Without Remedy: A Legal Satire. VII. The Railway Lease.* Wallace McCamant. The hero in this paper makes an excursion into Pennsylvania and returns to his St. Louis home with seventy-five thousand dollars secured through another "wrong without remedy."

*The Circuit Rider.* Reminiscences of Judge Fred. J. Russell, of Michigan. Interview by Douglas Malloch. Amusing stories of a circuit judge whose experience began when Michigan was "an almost unbroken wilderness."

*A Bungled Affair.* H. Gerald Chapin. A résumé of the famous Parkman-Webster murder case, in which the author seeks whimsically to prove that Professor Webster had not sufficient intelligence to make a "successful murderer."

*Taxation in the Philippines.* W. F. Norris. A not very exhaustive account of the system, but one hopes that the final sentence may be at least in some degree accurate, "What could be done has been done to establish a system of taxation in conformity with the newly introduced civil government."

*The Singhalese Police.* Andrew T. Sibbald. Interesting as a record of one traveler's point of view of a foreign people, but it is so evident that the point of view is foreign that it seems doubtful if justice has been done to the people described.

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HARVARD LAW REVIEW.—November.

*The Supremacy of the Judiciary Under the Constitutions of the United States and of Australia.* A. Inglis Clark. This well-considered article is written by an Australian, and it is interesting to students of Pennsylvania law to find Chief Justice Gibson's opinions so largely quoted, although the ultimate decision is not with the opinions quoted. The argument is in favor of the supremacy of the judiciary, and is the more valuable in that it does not proceed entirely on the usual well-worn lines.

*The Origin of the Right to Engage in Interstate Commerce.* E. Parmelee Prentice. The paper goes thoroughly into the subject, and concludes: "It appears that although there is a conflict in the decisions which relate to the liability of a common carrier in interstate commerce, nevertheless the weight of authority indicates that his fundamental duties, together with the right to engage in commerce, arise from and are to be judged by the law of the state in which the transportation originates."

*The Northern Securities Case Under a New Aspect.* C. C. Langdell. This is a short review of Mr. J. L. Thorndike's review of the decision of the United States Circuit Court of Appeals in the Northern Securities case. Mr. Langdell declares that Mr. Thorndike's review merits the most careful study, and he goes over the points made, apparently with approval, but also with some reservations which would indicate that he intended to say more upon the matter at some future time.

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THE LAW MAGAZINE AND REVIEW.—November.

*The Attitude of the British Government Towards Legal Conferences.* Hon. Sir Walter G. F. Phillimore. This short paper was read at the Antwerp conference of the International Law Association, and after enumerating the benefits which have come from such conferences, deplores and does not attempt to excuse the attitude of Great Britain

in not being represented at such conferences and acceding to the conventions which have been framed at them.

*Laws and Law-Making.* Henry Hilton Brown. After a few preliminary paragraphs we have here a new attempt to formulate a satisfactory definition of the word "law." During the formation of the attempt we are introduced to a new vocabulary of terms to express certain old relations, and on the whole the introduction seems wise, as it has the effect of changing the too familiar lines of the well-known path through which the argument leads. Having got our definition of law, we are taken through the process of its making, but this is done rather succinctly and with the aid of illustration intended to aid the "average reader" to an understanding that might not otherwise be attainable.

*The Working of the Registration of Title Act in Ireland.* Richard J. Kelly. This act was passed in 1891, and is said by the author of this article to have worked with relative economy and efficiency. One of its chief merits seems to be the freeing of the land from "that curse of feudalism known as primogeniture." The deficiencies in the act are spoken of, but on the whole the benefits are said to greatly outweigh the drawbacks.

*Specific Performance.* W. Donaldson Rawlins. (Continued.) The article treats of the classes of contracts with regard to which the remedy of specific performance is not obtainable; the grounds of defence to an action for specific performance—the number is said to be "bewildering"; and the principle of compensation in connection with specific performance.

*Lord Chancellor Loughborough.* J. A. Lovat-Fraser. The subject of this sketch is no hero to his biographer, but the paper itself is bright, entertaining and well written. The character of Lord Loughborough is probably pretty well summed up in one phrase of Mr. Lovat-Fraser's: "The fatal defect that vitiated his character and career was his complete lack of principle and public virtue."

*Some Decisions Under the Companies Acts, 1862-1900.* N. W. Sibley. (Continued.) A large number of cases are brought under consideration in this paper, which is completed with this number.

*Civil Judicial Statistics.* 1901. "These annual tables, which give the statistics of the civil courts, deal with all the civil business of the courts, including that portion of the magistrates' work which, whatever its form is, is really civil."

*Current Notes on International Law.* The topics treated are: The Anglo-French Arbitration Treaty; Great Britain and The Hague Marriage Law Convention, 1902; Foreign Judgments; and General Average.

#### LAW STUDENT'S HELPER.

*Claims Against the United States Government.* Wm. E. Richardson. The paper sets forth clearly the various causes for claim and the acts under which the claims may be made. It also shows that the citizens of the United States have less protection for private rights than other countries grant to their citizens, and a suggestion of remedial legislation is made.

*Success at the Bar.* (Part of address by Professor H. S. Redfield, of Columbia.) That portion of the address given here is of a character to encourage and inspire the student to live up to the best that is in him.

#### MICHIGAN LAW REVIEW.—November.

*The Fellow-Servant Doctrine in the United States Supreme Court.* Albert Martin Kales. The rather uncertain state in which the decisions of the Supreme Court of the United States have left this question

has not only led to the writing of this article, which examines the decisions and comments upon the lack of definite principle afforded by the cases, but has also led Mr. Kales into propounding a principle of his own, which he considers would reconcile the present difficulties and result in a greater certainty of result in such cases. The principle he proposes is this: "It is the legal duty of the master to his servant to use due care to provide all permanent conditions of safety for such servants." It will easily be seen that it is in the idea of permanency that Mr. Kales trusts to find the solution of the question.

*Covenants as Quasi-Contracts.* Louis L. Hammon. Possibly interesting as a discussion of what covenants may be considered as quasi-contracts, yet too indefinite in result to be altogether satisfying.

*Foreign Voluntary Assignments for the Benefit of Creditors. Part I.* Edson R. Sunderland. The purpose of this article is stated to be "to analyze the views taken by the courts of the various American states toward voluntary assignments for the benefit of creditors made in other states, with special references to these differences in assignment laws, and to the question of the citizenship of the creditors who question the title of foreign assignees." The chief topic of this part of the paper is "Where the creditor is a citizen of the state of the forum."

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VIRGINIA LAW REGISTER.—November.

*Subsequent Birth of Children as a Revocation of Will.* (Concluded.) Marvin H. Altizer. This paper continues the survey of the decisions interpreting the statutes of the various states on this point, and also contains a concluding survey, summing up the rights of the after-born child.

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YALE LAW JOURNAL.—November.

*The Study of Elementary Law the Proper Beginning of a Legal Education.* Simeon E. Baldwin. (This paper has been noticed in a prior issue.)

*The Monroe Doctrine; The Polk Doctrine; Anarchism.* Whitelaw Reid. A characteristic article, the main interest centering in that portion relating to the Monroe and "Polk Doctrine," which is earnest if not unbiased.

