

CURRENT LEGAL PERIODICALS AND BOOK REVIEWS.

COMMENTARIES ON THE LAW OF TORTS. By EDGAR B. KINKEAD, of the Columbus (Ohio) Bar. Two volumes, pp. xxx + 1739. San Francisco: Bancroft-Whitney Company, 1903.

The purpose of the author of these two volumes is so high and his research and thought have been so extensive and earnest that the reader is disposed to praise rather than to criticize. Brief reflection upon the works, treatises, legions of decided cases, relating to so important a branch of the law shows the difficulty of the task assumed in producing this new work on torts.

The title-page designates these commentaries as "A Philosophic Discussion of the General Principles underlying Civil Wrongs Ex Delicto," but this description hardly seems felicitous. The introductory chapter, on "The General Nature of Torts," is thoughtful and analytical, with a consideration of principles. Further, in the division of the subject into, so to speak, its numerous *genera* and more numerous *differentia* the evidence of scientific analysis is clear. Only actual examination of the plan in outline and the separate classifications (with the law under each) can adequately prove how well ordered has been the study of which these are the product.

It may be questioned, however, whether the body of the book consists of statements of elementary rules, of reasoning, of logical solutions of problems, and, in brief, of "discussion." For example only, let the question be taken, is one who voluntarily incurs peril caused by the negligence of another, in order to save the life of one imperilled by the same negligence, debarred from recovery upon the ground of his own contributory negligence? This was decided by the Supreme Court of Pennsylvania by a divided bench in *Corbin v. Phila.*, 195 Pa. 461. While the opinion of Justice Brown sustaining the right to recover cites authorities in New York, Massachusetts, Maryland, and other states in full support of the decision, the terse dissent of Justice Mitchell, concurred in by two colleagues, makes the question worthy of notice; it does not appear to be referred to in the present Commentaries. Another illustration may be found in the doctrine of the independent contract—*i.e.*, when it is maintained that by stipulation

of the contract the responsibility rests on the contractor and not on the owner. Statements as to the law are given (Vol. I, Sec. 49) and citations, but there is no discussion.

These are, however, merely instances. The development of a subject so comprehensive and containing so many topics and sub-topics had to be limited. Innumerable applications of law to facts are growing with the increasing number and complexity of human affairs and must be condensed. Thus only thirty-nine pages are given to the Liability of Public and Private Corporations, with important subdivisions—*e.g.*, the State, Counties, Townships, Municipal Corporations, Private Corporations, etc.

It is better to regard the merits of these volumes and to commend their value as to plan, arrangement, citations, statements of conclusions of law, and especially for the facilities they offer of ready reference to the points covered in the several chapters.

There is much in them that relates to the interests, the business, the inventions, the mechanics, and the progress of modern life—*e.g.*, chapters on Injury to Right of Personal Security by Negligence in the Use of Dangerous Agencies, including liability for injuries from blasting, electricity, explosions, firearms, fireworks.

In appropriate places there are cases in regard to Automobiles, their use in streets and roads; Bicycles, their legal status. Also in chapter XXIV will be found interesting and available citations as to Sleeping-Car Companies, Boats and Ships, Elevators. In chapter XXV is a Digest upon the Neglect of Physicians, Surgeons, and Apothecaries. There is probably no other book in which so much useful law, for present-day use, can be readily acquired; but in this reference to the practical side, the greater worth of the author's analysis is not to be overlooked or minimized.

COMMENTARIES ON THE LAW OF MASTER AND SERVANT. By C. B. LABATT. Vols. I and II, Employer's Liability. Rochester: The Lawyers' Co-operative Publishing Company, 1903.

In 1852, in his preface to the first edition of his work on "Master and Servant," the author, Mr. E. M. Smith, claimed to be a pioneer on a "path hitherto, if not altogether, untrodden, at least but imperfectly explored." About ten years before this Chief Justice Shaw, of Massachusetts, had delivered the decision which has since been regarded as the "principal fountain of the law" on the subject of the master's liability in

the United States. In the years since Judge Shaw dealt with this question, and Mr. Smith wrote his preface, this branch of the law has grown with the growth of commerce and manufacture, industrial conditions have greatly changed, and the statement of the law has become involved, and is often found to be contradictory and very unsatisfactory. Books on the subject have multiplied, and the text-writer can no longer call himself a pioneer, though he may still be needed as a guide.

It is as a guide through the confused paths of the modern law on the subject of the employer's liability that we are offered these two very cumbersome volumes, all the remaining divisions of the complete subject having been relegated to the third and last volume, which has not yet been published. In his preface Mr. Labatt touches upon the evil which he claims has caused the "deplorably chaotic condition" of the law respecting the employer's liability; namely, the arrogation to themselves by the courts of too large a measure of authority in overriding the verdicts of juries, which has, as he says, "produced an infinity of uncertainties and inconsistencies," though done, as it is claimed, with the purpose of conserving the "certitude of the law." For this increasing evil Mr. Labatt prescribes further legislation.

The rather repellent size of the two volumes devoted to this one subdivision of the subject may deter many from making an examination of them, but it has the advantage of allowing space for elaborate analysis, thorough treatment, and copious annotation. Indeed, it is to the manner in which the annotation is done that we owe the size of the book, for the cases are not only cited, but a digest, quite extensive in many cases, is given of these cases, so much space being allowed to them that it is evident the treatise itself might easily be comprehended within the limits of one of the two volumes.

The studies of the author have led him to entertain certain conclusions which are more especially set forth in chapters VII and XX of the treatise. These opinions and the arguments by which they are supported may very probably lead to some criticism of Mr. Labatt's own work, but it would seem that the majority of those whose labors have led them over the same ground will already have discovered for themselves many of the evils here noted, and they will not only heartily concur with Mr. Labatt's conclusions, but will hope that the reforms he has outlined may become accomplished facts in the near future. The increasing severity of judicial decision has already led to legislation in England and in many of our own states, and the Workmen's Compensation Act of England, that "remarkable statute," considered so radical in its terms,

may be regarded as a legislative protest against so harsh a construction of the law.

After an examination of the common law on the subject, following a carefully outlined plan, which, while giving a very minute treatment, does not eliminate breadth in handling, we have a number of chapters on these employer's liability acts, giving the text of the acts which have been passed in this country and in England and her colonies. Some of our acts follow that of England very closely; others vary considerably. The larger number of the states have legislation of some sort affecting the employer's liability, and a very good table of these acts is given at the end of the second volume.

Whether we agree with the theories which Mr. Labatt propounds or not, and even admitting that the work may be defective in concentration, it seems not too much to say that he has given us a thorough, clear, and comprehensive treatise of the law of the employer's liability.

M. C. K.

THE ART OF CROSS-EXAMINATION; WITH THE CROSS-EXAMINATIONS OF IMPORTANT WITNESSES IN SOME CELEBRATED CASES. By FRANCIS L. WELLMAN. Pp. 283. New York: The Macmillan Company, 1903.

We have in this book a noteworthy addition to the literature of the law. Although ostensibly intended as a guide to students and young lawyers in the acquisition of "the rarest, the most useful, and the most difficult to be acquired of all the accomplishments of the advocate," the art of cross-examination, its appeal is in no sense restricted to the legal profession. It is a book that may be read with profit by the lawyer and interest by the layman. It is a happy combination of the instructive and the entertaining. Writing with an easy and engaging style, and with an enthusiasm for the subject at times bordering almost on hero worship, the author has produced rather an interesting and entertaining collection of courtroom anecdotes and episodes than an exhaustive technical treatise on his subject.

The early chapters are devoted to general suggestions as to the manner of handling different types of witnesses and kinds of testimony, with anecdotes illustrating the methods used by masters of the art of cross-examination in Great Britain and America. This is followed by a chapter entitled "Golden Rules for Examining Witnesses," a recapitulation of the golden rules of David Paul Brown, and another on "Some Famous Cross-Examiners and Their Methods," this

latter containing many interesting anecdotes and appreciations of such men as Sir Charles Russell, Rufus and Joseph H. Choate, Benjamin F. Butler, Abraham Lincoln, and others. The latter part of the book contains verbatim copies of portions of the stenographers' notes of cross-examinations of important witnesses in several famous cases, selected with reference to their bearing upon the suggestions offered in the early chapters.

For the young lawyer the book contains many valuable suggestions, aptly illustrated by interesting and entertaining examples taken from famous cases. In selecting these illustrations the author has intentionally chosen as far as possible those that are striking and dramatic. As a rule, this has been done to good purpose and with telling effect. A notable example is the cross-examination of Sovine by Abraham Lincoln. The incident is full of dramatic possibilities, which are fully brought out by the author's clever handling, with the twofold result of holding the attention of the casual reader and creating such a vivid picture of the scene that it, with the lesson it is intended to teach, is indelibly impressed on the student's mind.

On the other hand, Mr. Wellman has at times allowed himself to be carried away by his love for the dramatic, and in his enthusiasm seems to have lost sight of the ostensible purpose of the book. For example, the soliloquy of Robert Ingersoll over the tomb of Napoleon at the close of the chapter on "Some Famous Cross-Examiners," although undoubtedly a fine dramatic effort, has no logical connection with the subject of discussion, and its introduction seems a bit forced.

On the whole, however, the book is well-written, instructive, and entertaining, and almost universal in its appeal. To any one interested in this most fascinating phase of court-room life it will well repay a careful reading.

R. B. E.

THE LAW OF MINES AND MINING INJURIES. By EDWARD J. WHITE, LL.B. One volume, pp. xxviii+966. St. Louis: The F. H. Thomas Law Book Company, 1903.

While the subject of mines and mining is by no means a new one in the law, its constantly increasing importance in this country and its new phases, which are continually arising, make a book like this of much value to the active practitioner.

The work is divided into two parts. The first treats of the "Different Relations Arising from the Ownership of Mines

and Minerals." This part contains considerable technical information as to current terms used to designate different mineral deposits and formations, with the distinctive characteristics of each, together with a full discussion as to the property rights appertaining to the same. One chapter is devoted to mining rules and customs, discussing their relation to, and the extent to which they are incorporated in, the state and Federal statutes. Another chapter is devoted to the comparatively new subject of oil and gas leases, and the law relating thereto is well summarized.

The rights and liabilities arising from the relations of lessor and lessee of mines, water rights, mining easements, the relation of employer and employee, are all fully considered, likewise the situations arising when mines are owned and controlled by the various sorts of common-law and statutory associations.

The second part of the book deals with "Actions for Injuries to Mining Rights and Persons," discussing at length the various personal actions and their effect as applied to the general subject.

On the whole, the work is decidedly good, and the subject is clearly and logically set forth. Our only adverse criticism would be that the author goes rather largely into detail in applying familiar common-law principles to the subject in hand. Particularly in the second part of the work, a great deal of space is devoted to setting forth principles which apply equally well and in the same manner to all other branches of business and trade where the same relations exist; and the fact that the same questions also arise with regard to mining rights hardly justifies the lengthy repetition of such familiar propositions in a work of this nature.

J. B. C.

A REVIEW OF THE DECISION OF THE UNITED STATES CIRCUIT COURT AT ST. PAUL IN THE CASE OF UNITED STATES V. NORTHERN SECURITIES COMPANY. By J. L. THORNDIKE, of the Boston Bar. Pp. 36. Boston: Little, Brown & Co., 1903.

Although one may not be inclined to agree with the views here expressed by Mr. Thorndike in criticising the Circuit Court's decision against the Northern Securities Company, the pamphlet is one which deserves careful reading by any one who is reviewing that case and the questions there involved. The plan pursued by Mr. Thorndike has been to analyze the mode of reasoning upon which the decision is based, and at each

successive step to ascertain the basis for the decision and its force. His conclusions are: that "there is no authority for saying that such a union would constitute a monopoly or be contrary to any rule of law;" that "whatever conclusion may be reached regarding the propriety of the acquisition of the shares by the Northern Securities Company, the provisions of the decree seem to go far beyond the authority of the statute;" that if the court had limited itself to the making of a decree properly within its power, then "it would have appeared that there was no ground for making any decree whatever against the Northern Securities Company." The paper is short, easily obtainable, and, in view of the logical, careful, reasonable, and scholarly analysis made by the writer, it cannot be disregarded by anyone who shall take up the study of this widely interesting and vastly important case.

E. H. B.

TRIBAL CUSTOM IN ANGLO-SAXON LAW. By FREDERIC SEEBOHM, LL.D., F.S.A. Pp. ix+538. Longmans, Green & Co., London, New York, and Bombay, 1902.

We have an essay here of some five hundred pages, supplemental to two other essays from the same author, (1) "The English Village Community," (2) "The Tribal System in Wales." Neither of these latter two have we had the pleasure of examining, but we trust they prove more generally valuable than the work in hand. The Preface reads: "In the first essay an attempt was made to approach the early Anglo-Saxon evidence from the point of view of the manorial system, and mainly by tracing back its connection with the open field system of agriculture—the shell, so to speak, in which it had all along apparently lived." It seems that the object of this third essay in the trilogy is to approach the Anglo-Saxon laws from the point of view of tribal custom. The author frankly acknowledges that the present essay cannot be wholly appreciated without an acquaintance with the intermediate essay, but we doubt not but that the value of this last essay is seriously handicapped by the abruptness of its beginning, the author presuming that the reader has followed his preceding essays. Each of the essays could be of value if independent and complete in itself, but unless the reader of the "Tribal Custom" book comes prepared with a good general knowledge of Anglo-Saxon language and customs, he is in no wise ready to begin reading this last of the three essays. For the general reader it is too technical; for the student of English history, bent upon gaining the most minute knowledge of the details

of Anglo-Saxon customs, the work would be valuable. And suffice it to say that but few lawyers would ever read beyond the first chapter; and the historian of jurisprudence would count the book wholly too long for his perusal.

As a test of the position of classes in tribal society, the death-fine, or "wergeld," forms, naturally, a most important part, and in the first chapter it is deemed necessary to explain through twenty pages the currencies in which these wergelds were stated and paid. Rather than an explanatory treatise, this chapter suggests a careful compilation of pertinent facts. After chapters on Cymric Evidence, Tribal Customs among the Ancient Irish, Burgundian, Wisigothic, Franks, and other Continental tribes, during which discussion we are reminded of Anglo-Saxon in the single chapter concerning some evidence from *Beowulf* (the ancient Anglo-Saxon poem) on tribal custom regulating feuds, etc., we are introduced at last to Anglo-Saxon customs regarding the wergelds (fines imposable for murder) during the last third of the whole book, from chapters XI to XV. The author's reason for the long introduction is for the sake of approaching these customs, which afford the real interest of the book, from the tribal point of view and the vantage ground afforded by the previous study of the tribal customs of the Continental tribes. Considering the relation of the included tribes, the contrast between such evidence is indeed of some "permanent value" to the close historical student, but the title of the essay is misleading.

The student of law or historical jurisprudence can gain a better idea of the Anglo-Saxon customs from the works of Sir Henry Maine or Professor Maitland, and he will obtain the kernel free from the intricate shell. As for the student of English history, or, we should preferably say, the student of ancient English customs, he must find here all that he could desire about the fines and currencies of ancient Western European and Anglo-Saxon tribes; and there are copious notes and references, and a half-satisfactory index to aid him in his researches. The book is valuable to him. Anyone would commend its beautiful workmanship; and anyone who has long valued the prizes of Anglo-Saxon literature and history will welcome the book as a scholarly addition to his library and works of reference. It is a scholar's book, and for the scholar it completes a *Trilogy of Essays*, a knowledge of which is indispensable if he would count himself fully informed, for there is no other set of books so easily obtainable exactly covering the same field of research. The subject is one with which the student of early English customs and institutions must needs be widely acquainted.

E. H. B.