NOTES ON RECENT LEADING ARTICLES IN LEGAL PERIODICALS.

ALBANY LAW JOURNAL.—December.

Non-Suits, Old and New. Theodore F. C. Demorest. In examining the question of non-suits the author finds a statement (*Bratt* v. *Hall*, 13 Johns. 334) that "a plaintiff cannot be non-suited against his consent," and enters into a thorough examination of the point, deciding against the statement upon the authorities examined. The latter part of the article shows the fluctuations of the New York law upon the subject under the code.

AMERICAN LAWYER.—December.

Does the Power of the Federal Government to Regulate Navigation Justify any Interference with Irrigation in Colorado? L. C. Carpenter. At the time of the moulding of the constitution the commerce of the country was already developing and was, therefore, provided for in that instrument. But irrigation on any large scale had not been thought of. Therefore to-day when the claims of the two come in conflict the interests of irrigation are set aside and the old decisions proclaiming the paramount importance of commerce are followed. In the days of the introduction of steam as a motive power upon the roads and rivers of the country there were jurists wise enough to shape the law to the changed conditions. Such men are needed to-day to adapt the law to the changed conditions of our time. The author of the article is not a lawyer and expresses a fear that no one but a layman would expect a material change in our doctrines. He might be more hopeful if he were a lawyer and had he followed the law through its innumerable changes, as it has fitted itself to the conditions of the people and the times.

The Comedy of History. Neal Brown. Nevada as a "rotten borough" furnishes our first glimpse of comedy, and if there is some slight bitterness in the smile raised it seems scarcely worth noting in the face of the bitter scorn in the scathing arraignment of the reconstruction period. The truth, showing through the turgid and declamatory style adopted by Mr. Brown, deprives his statements of all comedy. The comedy becomes a tragedy and so ends.

Some Considerations upon the Constitution of the United States. Hon. Walter Clark. This is the article to which Mr. Bausman, writing in the December *American Law Review*, refers as approving of the election of Federal judges, and to which he so energetically responds. The article leaves the consideration of the constitution and is mainly given up to an examination of the progress of the law in general.

Great Trials in Fiction. VI. In Defence of His Client. (*The Right of Way.* Parker.) This trial is taken from so recent a work of fiction that the scene is probably familiar to nearly all readers of the passing fiction of the day. As yet it hardly seems wise to class it with the "great trials of fiction," although sufficiently impressive in its way.

THE AMERICAN LAW REVIEW.—December.

Due Process of Law. (Concluded.) Hon. Alton B. Parker. The Fourteenth Amendment is discussed and the growth of the theories as to its interpretation shown. Judge Parker believes that the danger of so extending the meaning of the amendment as to "fetter and

degrade the state governments" has been avoided, while a broader scope has been given to the amendment than was contemplated at the time it was passed. It seems now that in the heat and passion of the time of its passage very little "contemplation" was possible. The time for thought came later, and it is these later thoughts that have found expression in the interpretation of the amendment.

Commercial Law and Modern Commercial Combinations. (Report of Committee of the American Bar Association.) The "Modern Commercial Combination," here spoken of, is the familiar "Trust" of common parlance. The speech of the people may have been avoided in the title, but the feeling of the people finds voice in the body of the report. And not an inarticulate, confused, or uncertain voice do we find it. A number of remedies are proposed for the present unsatisfactory state of affairs, and, failing these, the proposition is made that "the citizens, if they must have a master, should be the masters of themselves."

A Dangerous Tendency of Legislation. William A. Glasgow. (Address before the American Bar Association, August, 1903.) In this article the "Trust" is thought possibly to be "a messenger of peace and order" necessary to silence the "cry of the commune." The author seems to be badly frightened by the idea of paternalism in government, instancing a New York law prohibiting the manufacture of cigars in tenement houses as a vicious instance of such paternalism. The instance speaks for the article.

The Negotiable Instruments Law. George W. Bates. (Address delivered before the Michigan Bar Association, June 18, 1903.) The Negotiable Instruments Law, framed by the American Bar Association, and drafted by Mr. John J. Crawford in 1895, has been adopted by twenty-two states and the District of Columbia, but has not yet been accepted by Michigan. Mr. Bates considers the act very beneficial and desires its universal adoption, though his argument is directed specially towards its adoption by Michigan.

Election of Federal Judges. Frederick Bausman. The argument is that the elected judge is not an independent judge, and that he is also a less learned judge because he is elected by the "unskilled." The Federal judge, being an appointed judge, is therefore a more learned judge. If the appointed judge were always an independent judge, and if the Federal judges would not, under a free ballot, be more learned than the average state judge, the argument would be stronger. In those states where the judges are practically appointed by the political power which rules the state, and the election mechanically ratifies the appointment, without exercise of choice either skilled or unskilled, it cannot be said that the appointed judges exceed in wisdom those really elected by the people in those states where the people still have freedom of choice.

The Effect of the Imitative Instinct on the Common Law. William M. Blatt. The very obvious fact that imitation has had an effect on the common law is shown, but there is no attempt to more than touch the surface of the subject. Habit and custom have always been strong, and in the cases cited by Mr. Blatt as absurd or harmful imitation, it would seem as if it were one of these rather than imitation which was to blame.

CENTRAL LAW JOURNAL.—December 11.

Ratification in the Law of Agency. Arthur Gwin. An examination of the law in the form of a running commentary upon the decisions.

It brings the various points clearly before the reader and digests the authorities briefly.

Can a Married Woman Acquire Title to Land by Disseissin—Adverse Possession—The Running of the Statute of Limitations? Joseph H. Blair. The arguments which Mr. Blair uses to uphold the negative of the question which he propounds are the familiar ones applied to all questions of the sort before the passage of the Married Women's Property Acts. The decisions cited are nearly all of a period prior to the passing of those acts, and reflect the sentiment of the time. But Mr. Bates has seemingly found a point where it is probably safe to quote them once more.

COLUMBIA LAW REVIEW.—December.

Expansion of the Common Law. I. The Foundations of Justice. Sir Frederick Pollock. The admirers of the common law will find much satisfaction in the treatment it is accorded here. It is conceded a more completely continuous antiquity than the civil law, not having been subjected to the breaks and catastrophes which have interrupted the continuous life of the latter. The foundations as noted are, publicity, the "rule of neutrality," and the interpretation of the law as a judicial function, from which arose the power of the judicial precedent. The power acquired by the latter is supposed to have come from the fact of the absence of any other source capable of competing with them.

Homicide in Self-Defence. Joseph H. Beale, Jr. There is no attempt here to theorize or even to elaborate on the subject. The statements are simply made, and the authorities upon which they are based cited. The abundance of authority, however, for statements which are not now in dispute is such as to appear to overweight the article.

The History and Theory of the Law of Defamation. Van Vechten Veeder. I. The manner in which the distinction between spoken defamation or slander, and written defamation or libel, arose, is first commented on; later the process is more clearly shown. In tracing this history we are introduced to the statutory offence, "De Scandalis Magnatum," by which statute the politicians of the day sought to silence the voice of the people as heard in the "plain speaking and homely wit of the Lollard rhymes." History repeats itself, and we seem to see as in a mirror our statute De Scandalis Magnatum of 1903 reflected in that of the year 1275.

GREEN BAG.—December.

Logan E. Bleckley. H. B. Ellis. Judge Bleckley, so well known as a jurist, and so venerable a figure for many years, in Georgia, is probably best known elsewhere for the quaintnesses and witticisms embodied in many of his decisions. The man as he is known in his own state is well sketched here.

The Jury Fetish. Enoch Johnson. If, as Mr. Johnson argues, trial by jury is only a fetish; there should be better arguments against it than are used by him. His arguments tell rather against legal delays in general than delays in jury trials in particular, and the causes for these delays do not lay at the door of the jury, at least as these causes are here stated.

Brief Notes on the Northern Securities Case. Francis R. Jones. These notes set forth very briefly the views of a man extremely an-

tagonistic to the Sherman Anti-Trust Act. They present in a condensed form the arguments usually put forth by the opposition.

The British House of Lords in its Judicial Capacity. Lawrence Irwell. An interesting account in detail of the procedure upon appeal to the House of Lords. The article is well illustrated.

Wrong without Remedy. VIII. The Nominal Director's Misfortune. Wallace McCamant. We hear of one more utterly dishonorable transaction with no remedy for the unfortunate victim, and the hero of these adventures then retires with his stolen wealth, feeling "that he has declined in manhood." Mr. McCamant has shown that there are many wrongs without a legal remedy, which proposition scarcely needed demonstrating. He seems also to desire to show that the doer of the wrongs in question can escape with but a very slight "decline" in moral standing, which seems impossible of demonstration.

Reminiscences of a Reporter of Decisions. George Fox Tucker. The importance of the law reporter is very often underestimated. Mr. Tucker gives a very good account of the labors and duties of a court reporter, and also gives some very good views of the practising attorney as seen from the point of view of one thoroughly familiar with the profession and the court-room, but not a member of the bar.

HARVARD LAW REVIEW.—December.

Notes on Consideration. Joseph H. Beale, Jr. A difference of opinion between two such "masters of the subject" as Mr. Ames and Mr. Williston has led Mr. Beall into this examination of the subject of consideration. In working out their theories Mr. Williston is led to hold that doing what one is bound to do is not a good consideration, while Mr. Ames (in conformity with his doctrine of public policy) holds that it is not against public policy to hold one to his promise made on such consideration. Mr. Beale endeavors to show that there is middle ground where the two theories may meet and be in practical accord. In the *Juridical Review* of December Mr. Richard Brown remarks on the doctrines here debated, and says that "Professor Williston and Mr. Langdell have expatiated with dialectic subtlety on opposite sides of the question," but has no patience with the doctrine itself. His view is that of one accustomed to the civil law or that form of its development peculiar to Scotland.

The Power of Congress over Combinations affecting Inter-State Commerce. Augustine L. Humes. The denial of the power of Congress to deal with the "Trusts," and a suggestion that an amendment to the constitution might be necessary to enable it to do so, has led Mr. Humes to attempt to demonstrate that Congress has already "a large and extensive power" to deal with such questions.

The limitations of the scope of the Sherman Act are first clearly shown: then that Congress did not exhaust its power of control over the subject matter of the act, for it is contended that Congress under the commerce clause, "'in dealing with contracts, combinations, and conspiracies in restraint of trade among the states, is not limited to regulations of direct restraints of trade and commerce among the states, but also extends to any indirect restraints, no matter to what extent removed, which might reasonably be considered by Congress to affect that commerce." The Sherman Act has been held not to restrain a monopoly of manufacture, but the power of Congress is considered to extend far enough to cover such monopolies. The usual doubt of the correctness of the decision in the Northern Securi-

ties case is expressed, but it is believed that Congress can enact a law to prevent such a merger as was attempted in that case. The author disclaims any intention to advocate a full use of the power claimed, his wish being merely to define the extent of the power.

Death of the Drawer of a Check. John Maxcy Zane. That an unaccepted check is revoked by the death of the drawer seems to be established, as a rule, in most jurisdictions. There are objections to this theory, and, after showing quite fully how the rule became established, this article goes on to refute these objections. If the writer does not wholly succeed, his arguments are well put. The position of a bank which has accepted after the drawer is dead is last considered.

JURIDICAL REVIEW.—December.

Observations on the Art of Advocacy. David Dundas. (Paper read before the Scots Law Society, November, 1903.) The paper is, of course, written for Scotch lawyers, and in many ways only for them, but it is wise and witty and entertaining enough to be read with enjoyment and advantage by any one not of that country.

The Working of the Companies Act, 1900. Edward Manson. Very carefully and clearly explained. It is considered that the act of 1900, though open to criticism, is "a very satisfactory measure of reform in the direction of regulating and controlling the operations of trading companies."

The Juridical System of France. Charles Gans. This system is so different from our own juridical system as to seem at first, as the author says, very complex, but in reality is probably not more so than that of other countries. All cases are first brought before the justices of the peace, who endeavor to bring about a settlement. This justice of the peace has many and peculiar powers, but they appear to be of a very benevolent kind. The criminal law is administered by the same courts, except that there is a Court of Assizes which is special to the criminal law, and here alone French law employs a jury. The Commercial Court differs greatly from anything known to us. It has jurisdiction only over commercial matters and the judges are elected by the merchants themselves. No one can be elected but a merchant or a retired merchant. The procedure is simple and appeals lie to the same Courts of Appeal as those to which judgments of the civil courts are taken. The article is very pleasantly written

Interdiction of Arbitration Proceedings. R. D. Melville. As a rule, parties having agreed to submit to arbitration are obliged to accept the decision of the judges whom they have selected. There are cases, however, where an "Interdiction" will be granted, and these cases are here examined. It is shown by a resumé of the cases that such interdictions are not lightly granted.

The Law of Contract in England and Scotland. Richard Brown. The paper is devoted to a consideration of the obstacles in the way of an assimilation of the mercantile laws of England and Scotland. These obstacles are said to be three in number. These three are, "transfer of property by the contract, dualism, or separation of sale and warranty, and consideration." The first has been partially admitted, however; the second the author considers merely an accident of form; while of the third he says, "It is difficult for a Scottish or Continental lawyer, or, indeed, for any one not reared in an atmosphere of English legal tradition, to view this doctrine with favor or even with complacency," and he, very naturally, does not desire the assimilation of this doctrine with the law of Scotland.

MICHIGAN LAW REVIEW.—December.

The Law of Reason. Sir Frederick Pollock. (Two lectures delivered at the University of Michigan, October 8 and 9, 1903.) The Law of Nature and of Nations is the topic of the first lecture. The Law of Nature is traced back to the Greek theories of ethics, and in the tracing we get very interesting views of the feelings of the Middle Ages, which feelings controlled their views. Since the Middle Ages the law of nature or of reason is stated to have been a principal or influential factor in developing these branches of jurisprudence: "Equity, the Law Merchant, the Law of Nations, the general application, within the sphere of municipal law, of the principles of natural justice and reasonableness, and the body of rules for the choice of law and jurisdiction, and the application of foreign law, which we sum up under the head of Conflict of Laws or Private International Law." These different branches of the law are touched upon briefly, in turn, and with very skilful treatment.

The second lecture takes up Natural Justice in the Common Law. The statement is made that "the nineteenth century, after the thirteenth, has been the most vital period of the common law." The growth of the law of contract and of that of negligence is shown, but while the Law of Nature is exalted as a "living embodiment of the collective reason of civilized mankind," it is shown that it has its limits which must not be overstepped. The lecture concludes with an eloquent eulogy of the common law.

The Administrative Powers of the President. Part I. John A. Fairlie. The appointing power of the president, presenting apparently so large a field of power, is shown to have been greatly curtailed by the influence of the Senate through what is known as "Senatorial courtesy," practically leaving to the president the power to reject only. The paper does not go into the history of the growth of the power, or the reasons for its rise, but does show some of the evils which have grown out of a custom which gives to the members of Congress so much control over the administration. The remedy is the recognition by the people and the politicians—two distinct classes, it seems—of the non-political character of the administrative offices. Appointment for indefinite terms instead of the customary four years is also suggested, and would seem to be feasible.

VIRGINIA LAW REGISTER.—December.

The Modification of the Supply-Lien Act as against Mining and Manufacturing Companies. A very radical bill was passed in Virginia in 1892, which gave supply creditors "more than was given to them in any state of the Union," and was unsatisfactory to all others than the favored creditors. The modification meets the view of the writer as undoing a most objectionable piece of class legislation.

Mr. Jefferson v. *Chief Justice Marshall. Cohens* v. *Virginia. Marbury* v. *Madison.* (Letter of Jefferson expressing his views of these two decisions.) This letter was written by Jefferson to his friend Judge William Johnson, of Charleston, S. C., June 12, 1823. It expresses the opinion of Jefferson in regard to these two cases, familiar to all students of constitutional law, and they will regret that the entire letter was not here published, unless so habituated to regarding Marshall as impeccable that they cannot appreciate the fact that at that time, at least, there was much to be said against his decisions, and so cannot enjoy the intelligent criticisms of a contemporary.

YALE LAW JOURNAL.—December.

The Northern Securities Company Case. A Reply to Professor Langdell. Mr. Chamberlain is one of the few legal writers who have approved wholly and heartily of the decision in the Northern Securities Case on legal grounds alone. But his chief intent was to refute Mr. Langdell's contention in regard to the decision in that case.

Mr. Chamberlain gives due honor to Mr. Langdell, to his well-known "abilities as teacher, dialectician, and polemist," but he does not hesitate in pressing the point in reply,—he takes firm ground and stands firmly upon it. He sets aside Mr. Langdell's somewhat academic point in regard to the court entertaining a suit of equity under a criminal statute; answers very clearly his points that the Sherman Act does not apply to railroads; that the carriage of goods and passengers is not trade or commerce; that the Sherman Act does not forbid such a combination as that of the Northern Securities Company, and also the last point that there was but one person concerned in this case and therefore there can be no conspiracy. Mr. Chamberlain has strong authority for his points and holds his ground well against his distinguished opponent.

The Equitable Liability of Stockholders: the Grounds upon which it Rests. George B. Barrows. The two grounds given here are: first, that the assets of the corporation constitute a trust fund for the payment of its debts which the creditors seek to have applied to the payment of the entire corporate indebtedness; in other words, that the bills are brought to compel the execution of a trust; second, that the corporate assets are by reason of their nature incapable of being taken in execution, so that the creditors have no remedy at law; in other words, that the bills are ordinary creditors' bills."

Legal Aspects of the Panama Situation. Edwin Maxcy. Mr. Maxcy so soon exhausts the legal arguments upon which he depends to justify the attitude of the United States in the question at issue, that it may, perhaps, be permitted to wonder why he found it necessary to advance them. He seems forced to use such heretical arguments as "Political unity is but a means to an end,—the promotion of human welfare,—and when it fails to meet this end it has outlived its usefulness," which sounds like an echo of things not approved for something like a generation. For some reason Mr. Maxcy has failed to give authority for his opinions and statements in most cases, and where he does state them they seem a little unfortunate, as the parallel between the recognition of the United States by France and Holland in 1778, two years after we had declared our independence, and the recognition of the state of Panama when it was a few days old. Mr. Maxcy has done well in view of the materials which he appears to have had at hand, and while the view of the question "in the light of international law," as he professes to give it to us, may be a little obscure, it is doubtless owing to the imperfections of international law itself, for Mr. Maxcy's intentions are doubtless excellent.