NOTES ON RECENT LEADING ARTICLES IN LEGAL PERIODICALS.

AMERICAN LAW REVIEW.—January-February.

The Electoral Commission of 1877. Hon. John Goode. (Part of a paper read August, 1893, before the Virginia State Bar Association.) This paper is written by "one of the participants in the legislation of Congress which resulted in the creation of the famous Electoral Commission of 1877," who writes as an eye-witness of the proceedings of that tribunal. The article, however, does not need this fact to give it value. The second portion of the paper is to appear in the next number of the *Review*, and will doubtless be at least equal in interest.

Acts of Congress Declared Unconstitutional by the Supreme Court of the United States. Blackburn Esterline. Contains a very good outline of the acts which have been declared unconstitutional, and in so far is a very good paper.

James Wilson as a Jurist. James Oscar Pierce. If we have had to wait long for a true appreciation of the place of James Wilson "in the development of the jurisprudence of the Republic," and of his services in the explanation of the constitution and its interpretation, we are rewarded for our patience in these latter days when such an article as this, without fulsome praise and the unmeasured eulogy which repel, gives us the true mental measure of the man. Simply, yet very clearly, Mr. Pierce traces the growth of Wilson's argument—legal rather than political—for the separation of the states from the mother country; shows the strong logical and legal grounds upon which all his arguments were based and how they became finally a part of the constitution itself. Mr. Pierce gives us a very remarkable extract from the lectures delivered by Wilson before the Law School of the University of Pennsylvania in 1790, in which he announced the doctrine of constitutional jurisprudence in regard to the office of the Federal courts in enforcing the constitution, which has since been regarded as its corner-stone. It has also been regarded as the doctrine of Marshall, and is usually credited to him as its author and announcer. It is to be feared that not all the admirers of Marshall have read the scholarly and delightful lectures delivered by Mr. Wilson before the Law School of the University of Pennsylvania, and it is to be hoped that Mr. Pierce's article will be the means of introducing to them a new pleasure.

The Rules of the United States Senate. Edwin Maxcy. The "talking to death" of bills in the Senate, and the abuses to which this custom leads, cause the author to ask if there can not be a reasonable cloture rule adopted by the Senate. While favoring full liberty of speech, he asks if there cannot be less license. He gives some very pointed reasons why the Senate may not care to adopt such a rule, but his reasons will hardly be serenely accepted as its own by the Senate.

On the Nature of Jurisprudence and of the Law. (A study in applied logic.) George H. Smith. Mr. Smith believes that the theory of Austin as to the nature of jurisprudence is "hopelessly irreconcilable" with common-sense and the fundamental convictions of mankind. This is not the first paper in which he has combated Mr. Austin's theories, but he does not lose vigor as he continues the conflict. This article is an exercise in logic, and not a light exercise at that, but cannot fail to interest all who, like Mr. Smith, are in revolt against the slavery of the mind which seems have resulted from the too complete absorption of the Austinian theories.

COLUMBIA LAW REVIEW.—January.

Rescission for Breach of Warranty. Francis M. Burdick. Recently Professor Williston wrote an article with this title. In that article he made the statement that, "though the text-writers have not generally recognized the fact, nearly as many courts have followed the Massachusetts rule as have followed the English law." Mr. Burdick confesses surprise at this statement, and combats Professor Williston's position on the matter. Where two such doctors disagree, the controversy is always interesting; it seems probable also that it may be prolonged beyond the limits of these two articles.

The Expansion of the Common Law. Sir Frederick Pollock. *II. The Scales of Justice* (January). *III. The Sword of Justice* (February). Article two is largely given up to the rise and growth of the Chancery jurisdiction, article three is devoted to the criminal courts. Both are of importance and value.

The History and Theory of the Law of Defamation. Van Veechten Veeder. II. This article deals with the law of slander: what it is, and in what respects it is deficient. It concludes by suggesting a remedy for the present defects by the abolishment of the distinction between libel and slander, and the assimilation of the law of slander to that of libel.

(February.)

The New York Anti-Trust Act. Thaddeus D. Kenneson. The act which is here referred to was finally approved June 7, 1899. It is similar in its provisions and effect to the Sherman Anti-Trust Act, and confers upon equity the jurisdiction to restrain the class of "crimes" to which its penalties attach. An analysis of the act is given, and the author defines the classes and the character of the combinations which he considers come under the terms of the act.

What is the Common Law? John S. Ewart. Mr. Ewart thinks he finds himself at issue with Mr. Burdick on this point and in a number of pages filled with whimsical language endeavors to show that Mr. Burdick is wrong in his theory of the common law. The plain fabric of the argument is so completely concealed by the elaborate embroidery of the language and mannerisms employed as to apparently defeat the ends of the author.

GREEN BAG.—January.

Sir Frederick Pollock. Francis R. Jones. This short article presents within its limited compass not only a very complete view of the attainments and accomplishments of its subject, but also gives an analysis of his mental qualities which is of much interest. If a physical limitation is suggested in some of Sir Frederick Pollock's work, it is only a recognition of the fact that all men are human.

The Recognition of Panama and its Results. Theodore S. Woolsey. Mr. Woolsey is an acknowledged authority on International Law, and his view of the latest point which has arisen for discussion and decision in that branch of the law must have much weight. The history of the secession of Panama is briefly reviewed, showing the declaration of independence by Panama of November 3 and the recognition of its independence by the government of the United States on the sixth of the same month; then the signing of a new canal treaty five days later. He shows that our government by its own standard adopted in 1898, by recognizing the new state of Panama "as possessed of sovereignty, although sans a constitution, sans a government, sans a definite status, sans everything, gave to Colombia cause for war." In discussing the New Granada

treaty he shows how in "the president's *apologia*" by a complete confusion of ideas a duty has changed into a property right," thus striking the key-note of the whole transaction. The arguments of the president are summarized and the comment is "Translated into every-day speech . . . we gave Colombia fair terms, she tried to 'hold us up,' we set up a state which we could manage, and now Colombia pays the penalty of overreaching herself." Mr. Woolsey touches on the political side of the question, and the specious reasons given for our "indecent and unnecessary haste," and speaks of those, of whom he seems to be one, who "have regard still for national honor, patience, obedience to law; who fear dangerous precedents; who would keep faith even with weak and treacherous neighbors." He answers those who uphold the action taken with "National reputation is more valuable than national progress. From a purely material stand-point what our country may gain in ease of communication it may more than offset by awakening political mistrust." The second answer is "that no such choice as is contended was forced; that the president's way was bad diplomacy." Mr. Woolsey in his final summing up finds that the recognition of Panama was not in accordance with the law of nations; it can only be justified by the treaty of 1846 by a forced construction; to prevent Colombia's coercion of Panama is an act of war; that our "smart politics" detract from national dignity; our duty was and *is* to let Colombia recover Panama if she can and get favorable action on the canal from the rightful owner, and that the treaty is of doubtful validity.

The Advisability of Registering Negotiable Coupon Bonds. John Philip Hill. After showing the many changes to which the holders of these bonds are liable and the slight amount of protection which can be afforded them without registration, the author goes on to consider what registration is and how it is effected. Various methods are shown to be in vogue from that in use by the United States Government to that of the private corporation. Registration has the effect of subjecting the bonds to the claims of third parties, and they are also subject to the doctrine of *lis pendens*. If registered bonds are destroyed, a duplicate is usually issued. In case of loss or theft the holder of the bond is fully protected, as it is of no value in the hands of the thief or finder, and he cannot sell it. After citing these actual benefits, Mr. Hill brings forward some "speculative advantages" which seem liable to also become actual.

GREEN BAG.—February.

Patrick Henry as a Lawyer. Eugene L. Didier. Although the career of Patrick Henry as a lawyer is faithfully traced by a picturesque pen, the impression left is almost wholly that of Patrick Henry the orator, so strongly does the predominant trait of his character prevail over any other that may be brought forward. At the bar as elsewhere it was his marvellous power over his hearers which brought him all his triumphs.

Schemes to Control the Market. Bruce Wyman. In stating that "judges have the same social imagination as other men," Mr. Wyman concedes much. In apparently meaning that this imagination colors their decisions he concedes much more. He shows this sympathy of the judges with the social feelings of their times by a series of illustrations beginning with a case as early as 1415, supposed to be the earliest decision that an agreement not to exercise an employment for a stated time is a restraint of trade. A very interesting line of cases follows, all showing the persistence of the courts in their policy of outlawing the intended monopoly. Mr. Wyman evidently holds to the opinion that

"consolidation" is the inevitable end, although the "Law against the combination stands unaltered."

The Judicial History of Individual Liberty. Van Vechten Veeder: These articles of Mr. Veeder's are profusely illustrated, and form a series of sketches which seem more like notes for such a history as the title calls for rather than the history itself. The notes, however, are of much interest, and well selected.

HARVARD LAW REVIEW.—January-February.

(January.)

The Merger Case and Restraint of Trade. Sir Frederick Pollock. Three questions are stated as raised by the Northern Securities Case: 1. Do the facts disclose anything amounting to a misdemeanor under the Sherman Anti-Trust Act? 2. If so, was the procedure appropriate? 3. If both the foregoing questions are answered in the affirmative, was the decree made by the United States Circuit Court the proper decree?

The author declines to discuss two of these questions, as questions of the equity practice of the Federal court with which he, as an Englishman, is not familiar. In answer to the first question he gives us a short opinion, but one in which is condensed a good deal of clear commonsense.

The Law of the Public Callings as a Solution of the Trust Problem. Bruce Wyman. (January and February.) In these papers Mr. Wyman calls upon the common law to help us out of the difficulties in which our giant combinations have placed us. In his first paper he makes a good argument for his contention. He relies upon the law of the public callings to reach certain classes of these combinations, and in his second paper he takes up the question of what are public service companies, deciding that all virtual monopolies are to be considered as such. In this way all the great combinations may be reached. The outcome of the able argument is that public service companies and business affected by a public calling can be controlled without further legislation or radical action of any kind. Mr. Wyman's articles are thoughtful, well reasoned, original in conception, and conservative in execution. The idea is presented as open to criticism and subject to modification.

Specific Performance for and against Strangers to the Contract. J. B. Ames. Mr. Ames speaks on this subject with authority. He begins by defining the position of the parties to an agreement for the sale and purchase of land. He considers the real relation of buyer and seller not as a trust relation, but rather that of mortgagor and mortgagee under the modern English practice, where the mortgage is created by an absolute conveyance on the part of the mortgagor and an agreement to reconvey, on payment of the loan, on the part of the mortgagee. Affirmative agreements to transfer property and to require the grantee to build are then considered; then negative agreements, which Mr. Ames divides into two classes, which are discussed in the latter part of the article.

(February.)

The Taxation of Foreign Corporations. Joseph H. Beale, Jr. As a matter of course, the tangible property of a foreign corporation is liable to taxation in any state; to intangible property—commercial securities, privileges, franchises, etc.—it is less easy to assign a definite location for taxing purposes. Mr. Beale takes up the question of this sort of property and examines the rulings of the courts concerning it, giving us a very full and complete discussion of the subject.