

CURRENT LEGAL PERIODICALS AND BOOK REVIEWS.

THE CONVEYANCE OF ESTATES IN FEE BY DEED, BEING A STATEMENT OF THE PRINCIPLES OF LAW INVOLVED IN THE DRAFTING AND INTERPRETATION OF DEEDS OF CONVEYANCE AND IN THE EXAMINATION OF TITLE TO REAL PROPERTY. By JAMES H. BREWSTER. Pp. v-lxxvii+1-607. Indianapolis: The Bobbs-Merrill Company, Publishers, 1904.

With the continual growth of this country the subject of conveyancing is becoming of greater and greater importance, not only to the conveyancer, but also to the land-holder and land-purchaser. Any book that tends to help render investigation of titles more certain is of great value to those who are proprietors of real estate in any form.

The arrangement of the book is simple and natural. The first pages are devoted to a discussion of the history and development of conveyancing, the various means employed in the transfer of real property, following the growth to the time when the deed became the instrument most extensively used for conveyance. This point having been reached, the author devotes more than half the book to a close and fairly exhaustive study of the deed, treating its parts in chapters in the order in which they follow each other in the form of instrument that may be used in any state, and all other requisites to make the transfer of title perfect. The remainder of the volume treats of the capacity of parties to convey and to take real property, also the investigation and registration of titles.

In all fairness to the author his apology should be made part of the review of his book, "Those most familiar with this important part of the law of real property will most readily conceive the difficulties involved in treating it within the compass of a single volume." The book, it must be said, is by no means complete. The important consideration of taxation is wholly omitted. The statutes given are those generally adopted in most jurisdictions but not complete as to any one jurisdiction. The practical conveyancer needs a book that will contain all the law he must use to enable him to make a deed perfect and all that pertains thereto until its final delivery to the grantee, and not an exposition of elementary principles.

We are not attempting to question the author's wisdom in having for his object, in giving the world his book, that of enabling one to construe instruments which have been drawn

up by others unaware of the questions that arise, or are likely to arise, in the construction rather than in the proper drawing up of the deed, but we fail to see how a general discussion of the law appertaining to the problems of real property can do this.

There can be more than one good book treating of the same subject, but a duplicate cannot be. It is essential that a new book possess some peculiarity of its own, so that, though similar to the rest, it should be so different as to stand in a class of its own. This we cannot say of the book before us, and as there are many books treating the same subject the profession is in a position to wait patiently.

S. G. S.

NON-MAILABLE MATTER; THE LAW OF LOTTERIES, FRAUDS, AND OBSCENITY IN THE MAILS. By JOHN L. THOMAS, ex-Judge of the Supreme Court of Missouri and ex-Assistant Attorney-General for the Post-Office Department. Pp. 358+xviii. St. Louis: The F. H. Thomas Law Book Co., 1903.

It is remarkable that such a subject as this, questions of which have recurrence daily in the work of the Post-Office Department, has heretofore been wholly ignored by the vast array of writers in legal research. The matter is purely statutory, and the fact that the law has been largely codified and settled by practically recent legislation may in some measure account for the lack of treatises, there being no work on the subject, as the author asserts, in this or in any other country.

The question of lotteries is probably the most important of the subjects treated and has received considerably more attention than the others. A historical sketch of lotteries is followed by the acts of Congress now in force relating to them. The essential elements of a lottery, the wager, consideration, the prize-element, and the lot, or chance, are fully discussed, as are gambling transactions other than lotteries, such as horse-racing, games of chance as distinguished from those of skill, and many other schemes too numerous to mention, but with which we are all familiar. The magnetic healer, bucket-shop brokers, C. O. D. medicine men, and similar schemes to defraud the public have not escaped the notice of the author, while non-mailable matter upon postal cards, wrappers, envelopes, etc., not in the nature of frauds or obscenity conclude this chapter. Obscene matter in the mails, the administration of the law by the Post-Office Department under the acts of Congress governing these and subjects akin, and the constitutionality thereof, form the closing chapters of this work.

The author has not only cited abundant authority, but has in most instances given a brief summary of the facts, and in the leading cases the pith of the judges' decisions. Though the arrangement of the book is not all that could be desired, it contains the law and is written by one who, by his familiarity with the work of the Post-Office Department, is best fitted to undertake such a work.

M. B. S.

THE LIFE OF JOHN MARSHALL. By HENRY FLANDERS, of the Philadelphia Bar, Author of "An Exposition of the Constitution of the United States," "The Lives and Times of the Chief Justices of the United States," etc. Pp. x+278. Philadelphia: T. & J. W. Johnson & Co., 1904.

This work was originally published as one of a series of "The Lives and Times of the Chief Justices of the United States," by the same author, and is now presented in separate form as a commentary on the life of "our greatest Chief Justice."

The subject is necessarily one of great interest, both because of the character of Chief Justice Marshall and the effect of his intellect on that most important and critical period in which he lived. Bryce, in his standard work on "The American Commonwealth," in speaking of the establishment and development of the constitution, observes: "But the most important work was that done during the first half century, and especially by Chief Justice Marshall during his long tenure of the presidency of the Supreme Court (1801-1835). It is scarcely an exaggeration to call him, as an eminent American jurist has done, a second maker of the constitution. I will not borrow the phrase which said of Augustus that he found Rome of brick and left it of marble, because Marshall's function was not to change but to develop. . . . Marshall was, of course, only one of seven judges, but his majestic intellect and the elevation of his character gave him such an ascendancy that he found himself only once in a minority on any constitutional question.¹ His work of building up and working out the constitution was accomplished not so much by the decisions he gave as by the judgments in which he expounded the principles of their decision, judgments which for their philosophical breath, the luminous exactness of their reasoning, and the fine political

¹ "In that case (*Ogden v. Sanders*), there was a bare majority against him, and professional opinion now approves the view which he took. When Marshall became Chief Justice only two decisions on Constitutional Law had been pronounced by the court. Between that time and his death fifty-one were given."

sense which pervades them, have never been surpassed, and rarely equalled, by the most famous jurists of modern Europe or of ancient Rome. . . . That admirable flexibility and capacity for growth which characterizes it beyond all other rigid or supreme constitutions is largely due to him, yet not more to his courage than to his caution."

Marshall's opinions were marked more by close and logical original reasoning than by application of established law. As the author says, "he was more familiar with principles than cases, and more 'knowing' than 'learned.'" He expounded principles with exceptional force and clearness, and laid down a comprehensive framework on which succeeding judges have largely built their opinions. The volumes containing the reports of his decisions are standard references on questions of constitutional law.

His life is a striking example of the superiority of clear reasoning and quick perception over a more minute knowledge of settled law. His knowledge of the law was very limited when he was admitted to the bar, but he more than made up the deficiency by a quick and sure detection of the point in controversy, and an almost intuitive recognition of the underlying principle of law involved. His participation in the debates in the Virginia Convention and his staunch championship of the constitution gave him a thorough insight into that instrument, and formed principles which he later enunciated with so much cogency and effect. It was Marshall who first conceived and applied the controlling doctrines now recognized in interpreting the constitution; briefly: 1. Every power alleged to be vested in the national government or any organ thereof must be affirmatively shown to have been granted. 2. When once the grant of a power by the people to the national government has been established, that power will be construed broadly.

The delineation of a character, as a biography necessarily is, when extended through a volume is very apt to produce repetition and degenerate into monotony devoid of any interest, but the author has to a great extent avoided this by including frequent and copious extracts from letters, opinions, documents, and excerpts from other sources which make the book more of a compilation than an original work. There is thus given expression the thoughts of many of Marshall's contemporaries, and the character of Marshall is so deep and strong, and his talents so varied, that the reading of the book can hardly fail to inspire emulation of many of his virtues.

The style is free and the thoughts connected, and the arrangement of the subject-matter is excellent. The author treats first, with a brief survey, of Marshall's ancestry, then of his birth and education, and then takes up his military career, his practice at

the bar, as a member of the Virginia Legislature, and of the Virginia Convention. He is shown next as a member of Congress, Secretary of State, and finally as Chief Justice. There is also an account of his participation in the revision of the Constitution of Virginia, and, finally, a view of Marshall in private life.

The treatment of topics thus follows as nearly as possible the chronological order, and gives one a connected view of each part of his career. The book possesses the merit of dealing with those important times when was born the strength which the Union now possesses, and throws light on one of the most important characters concerned in its development.

E. S. R.

THE AMERICAN LAW OF LANDLORD AND TENANT. By JOHN N. TAYLOR. Ninth Edition. Edited by HENRY F. BUSWELL. Two volumes. Boston: Little, Brown & Co., 1904.

The high standard of this work is maintained in this latest edition. While the general arrangement of subjects is similar to that of previous editions, many subjects are treated more fully than formerly or discussed in original paragraphs, among them being the principal covenants of the lessor and lessee; rights to fixtures, as between landlord and tenant; mining leases; rights of mortgagors and mortgagees under leases; railways and receivers as lessors and lessees, and the equity jurisdiction as applied to the relation of landlord and tenant.

About twelve hundred recent cases, chiefly from the Eastern states, have been inserted in the notes, but by the elimination of irrelevant and obsolete matter an increase in size of the volumes has been avoided.

The relative importance of each subject is generally observed in the discussion, except possibly in the treatment of the mutual liabilities of landlord and tenant for negligence, to which only fifteen pages are devoted.

M. G. R.