

NOTES ON RECENT LEADING ARTICLES IN LEGAL PERIODICALS.

AMERICAN LAW REVIEW.—June.

*National Control of the Pollution of Public Waterways.* Charles Claffin Allen. The decision of the Supreme Court of the United States in the case of the "Chicago Drainage Canal" (*State of New York v. The State of Illinois*, 180 U. S. 208, 1901) forms the text for the discussion in this paper. The decision that an injunction would lie against pollution of the Mississippi River "opens the door to a recognition of the principle that the national government has jurisdiction of the great interstate rivers in respect of the 'quality' of the water for drinking purposes, and the right to prevent the pollution of that water, as well as the uses for navigation or other commercial purposes." The article gives an interesting review of the decisions of the several states and of the United States on the question of rivers' pollution.

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CENTRAL LAW JOURNAL.—June 3.

*Acts in Emergencies as Constituting Contributory Negligence.* Glenda Burke Slaymaker. Mr. Slaymaker reviews the case law on the subject and shows that if one who is placed in a situation of great danger does an act also dangerous and hazardous, from which injury results, if the act is one which a person of reasonable prudence might have committed, under the circumstances, he is not guilty of contributory negligence. The article discusses the test of contributory negligence, the character and immanency of the danger, degree of expected injury, perilous situation negligently assumed, and attempts to rescue others in a perilous situation, and under all these heads shows that "the standard for determining the negligence or contributory negligence of the parties is that of the probable action of a man of reasonable prudence under the circumstances of the particular case."

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HARVARD LAW REVIEW.—June.

*The Combination Laws as Illustrating the Relation between Law and Opinion in England during the Nineteenth Century.* A. V. Dicey. We are told that "The term 'combination law' has, to an English lawyer, a peculiar and somewhat narrow significance." "The combination law, as the expression is used in this article, and generally by the English judges and lawyers, means the body of legal rules and principles which from time to time regulate the right of workmen on the one side to combine among themselves for the purpose of determining by agreement the terms on which, and especially the rate of wages at which, they will work, or, in other words, sell their labor; and the right of masters, on the other side, to combine among themselves for the purpose of deter-

mining by agreement the terms on which, and especially the rate of wages at which, they will engage workmen, or, in other words, purchase labor." This law is known on the Continent as the right of association, and Mr. Dicey goes on to define this right, and to show the different shape it has taken upon itself in different countries. "In France it appears as a question of religious freedom. In the United States it excites and complicates the agitation against trusts. In Ireland it disturbs the whole relation between landlord and tenant, and compels the inquiry how far a boycott is a criminal conspiracy, or whether boycotting can be defended under the specious alias of exclusive dealing. In England the limits of the right of association have hitherto been considered mainly, and indeed too exclusively, in reference to trade combinations either among workmen or employers; the alterations in the combination law will be found to be a series of attempts to solve the problem raised by the right of association and to adjust a conflict of rights—namely, the right of X, Y, and Z to combine freely together for any purpose not definitely illegal, and the right, on the other hand, of every individual A not to be deprived by the concerted action of X, Y, and Z of that right to manage his own affairs in his own way which English law treats as the very essence of personal freedom." Mr. Bryce then gives us an historical view of the combination acts, beginning with the Act of 1800, which he says represented the public opinion of that date, and which embodied the idea that workmen could act as they pleased individually, but by no means bring the pressure of numbers to bear on their employers or each other. After a most interesting review of the later legislation Mr. Dicey sums up as follows:

"The Combination Act, 1800, represents the panic-stricken but paternal Toryism of that date.

"The Combination Acts, 1824, 1825, even in their singular fluctuation, precisely correspond with the Benthamite ideal of free trade in labor.

"The compromise of 1875 represents in the main the combined influence of democracy and collectivism.

"The interpretation of that compromise by the courts represents the belief, still strong in England, in the sacredness of individual liberty and the sense of the peril to which personal liberty is exposed by an unrestricted right of combination.

"The very confusion of the present state of the law corresponds with and illustrates a confused state of opinion. We all of us in England still fancy at least that we believe in the blessings of freedom, yet, to quote an expression which has become proverbial, 'to-day we are all of us socialists.' The confusion reaches much deeper than a mere opposition between the beliefs of different classes. Let each man, according to the advice of preachers, look within. He will find that inconsistent social theories are battling in his own mind for victory. Lord Bramwell, the most convinced of individualists, became before his death an impressing and interesting survival of the beliefs of a past age; yet Lord Bramwell himself writes to a friend, 'I am something of a socialist.' If, then, the law be confused, it all the more accurately reflects the spirit of the time."

*The Anti-Trust Act and the Merger Case.* Victor Morawetz. Mr. Morawetz adds to the accumulating profusion of articles on this case a well-balanced and reasonable paper, which, while it does not add anything of striking originality to the mass we already have, is at least completely sane and devoid of the vagaries which mark so many of the recent dissertations on this subject.