in the precise language of the courts), or by the well-established practice of the government."

It is a matter of mystery why such a helpful little addition as a table of cases and statutes fails to appear in this fifth edition.

Several changes are to be noted: under the chapter on the "Powers of Congress" a paragraph has been necessarily added on the "Income Tax" of 1894; a very clear digest of the recent decisions dealing with "Taxation as Respects Acquired Property" is also a new addition; likewise two paragraphs concerning "Monopolies" and "Restraint of Trade," which, however, really add nothing more than references to the Act of July 2, 1890, and the "Establishment of the Interstate Commerce Commission," with a brief note on the *Northern Securities Case;* a paragraph headed "Injunction," made necessary by the case of *In re Debs;* three paragraphs concerning the creation of the Circuit Court of Appeals in 1891, "Appeals or Writs of Error to the Supreme Court," and the same to the Circuit Court of Appeals; and a few changes and rearrangements which were imperative on account of the great hiatus between this and the last edition, which was published nearly twenty years ago.

It is said that the book will be used as the text-book for instruction at the West Point Military Academy, and in the schools for officers throughout the United States. That fact is a well-deserved sign of appreciation. *E. H. B.*

NOTES ON RECENT LEADING ARTICLES IN LEGAL PERIODICALS.

ALBANY LAW JOURNAL.—August.

The Negro before the Supreme Court. Frank B. Dake. The cases which make up "a national jurisprudence relating to the negro" are here collected and intelligently reported and commented upon. The general summing up is most fairly done, and the article is one of great value as bringing together the scattered decisions upon an important subject and showing that through them all "one increasing purpose runs," though that purpose be rather sub-conscious than conscious.

AMERICAN LAWYER.—August.

The Civil Code of Louisiana as a Democratic Institution. Hon. Chas. E. Fenner. A most enthusiastic eulogy of the Civil Code, not only of Louisiana, but of the Code Napoleon. Judge Fenner sees no fault or flaw in the Code or in its operation: he believes that if all the states of the Union had adopted its provisions the country would now be at least comparatively free from "some of the greatest perils which now menace its existence;" he also claims that it is the most purely democratic system of law under which any people has ever lived. Some-

what less of unadulterated praise, something more of practical exposition of the actual effect of the Code upon the progress of Louisiana, would have been more convincing. The Code being all that it is represented to be by Judge Fenner, Louisiana should now be in the foremost position, in the front rank, among the states of the Union, even though other things have been unequal. She should now stand after a hundred years of perfect legal existence a recognized exemplar and teacher for all the states of the Union which have lived under the confessedly imperfect system of the common law. No one would claim that she occupies a position of such acknowledged supremacy, or that she is looked to as a leader among the states. It is true, however, that the principles of the Code have permeated the legal systems of the contiguous states and have in some slight measure modified the rules of the common law among them, and it may be conceded that this fact shows at least that whenever it is found that the principles of the Code are practically superior to those of the common law, that fact will be recognized even by those who are attached to the English system.

AMERICAN LAW REVIEW.—July–August.

The Virginia State Corporation Commission. A. Caperton Braxton. This "novel institution" is a railroad commission with many new features and powers which have never before been granted to a commission of the sort, although railroad commissions have been successful in many states, notably Iowa, Georgia, and North Carolina. The author considers that regulation and control of the railroads is an absolute necessity, they being "invaluable servants but destructive masters." The three theories for the protection of the public from railroad abuse are said to be "Competition among the railroads, government ownership, and government ownership and control. The first is declared to have been found utterly delusive, the second to be on its trial in Europe, the third to be undergoing its probation in America, and, so far, with rather unsatisfactory results. This Commission of Virginia, however, has adopted new machinery which it is hoped may be more successful. The Virginia Commission whenever it is about to prescribe any rate, regulation, or requirement must first summon the railroads to be affected to appear before it and show cause, if they can, why the rule or regulation should not be prescribed. They are given the fullest opportunity and protection, in order to secure to them the due process of law as guaranteed in any regular court of justice. The affirmative decision of the Commission is then made conclusively binding upon all parties. Appeal is given to the Supreme Court of Appeals, but when a rate fixed upon by the Commission is found unreasonable by the Supreme Court, that court makes the order necessary to bring it within the bounds of reasonableness. The Commission has power to enforce its own orders by a proceeding similar to a rule in Chancery, by which any offending company may be brought before it and fined, within the limits fixed by law, for disobedience to any of its orders.

"Within the limits of those matters which pertain to such regulation and control, this Commission is a miniature government, complete within itself, and is not obliged to call, or depend, upon any other department or instrumentality of government for aid in the performance of its duty to regulate and control the railroads."

As the Commission is so new, it is still within the experimental stage, but it may well be hoped that it has at least some of the virtues which are claimed for it, and that this new step in the control of the overpowerful railroad interests has been taken in the right direction.

Succession of Vice-President under the Constitution—An Interrogation. Lewis R. Works. This interrogation is a very interesting one. The short paper in which it is embodied propounds not one but several interrogatories of the following nature: When a President dies is the office vacant for the remainder of the term, or does the Vice-President become President and leave the Vice-Presidency vacant for the remainder of the term, or, anomalous as it may seem, does the Vice-President hold both offices? When a President becomes temporarily unable to perform the duties of his office, and the Vice-President is called upon to act, does he become President? If he does become President, what does the late President become, and how does he come back to his own after the removal of disability? If he does not become President in such a case, how does he become President when the latter dies, as he comes into power under the same provision in each instance? Has the United States had twenty-five Presidents or only twenty? Is Theodore Roosevelt President or only Vice-President performing executive duty? There is no attempt to answer these and the other questions propounded, but a very short examination into the interpretation of the phrases of the constitution which bear upon the problem is made, and that short examination produces a great deal of evidence to show that it was not in the minds of the framers of the constitution that the Vice-President should succeed to the Presidency upon the death or disability of the Presidential incumbent.

The Rule Forbidding Suits against Receivers without Leave, as Applied to Receivers Managing Railroad and Like Corporations. W. A. Coutts. Once more we are presented with a situation which has become complicated because a rule of law which was made and applied in the old days of simple business conditions has come to be applied to the business conducted by vast corporations and aggregations of corporations. The author says: "An examination of the cases will show how large an element of paternalism and despotism is, notwithstanding written constitutions to the contrary, being insidiously instilled into the law of the land through the medium of railroad receiverships." The cases which follow, as stated, support the contention, but even more convincing than an array of cases, which, like the proverbial texts from Holy Writ, can be paralleled by an equal number on the other side, is the position in which the court is placed towards the receiver, which alone would give rise to suspicions of partiality. "The very nature of the trust, administered by the court through its receiver, is calculated to prejudice the judge against the employees in all disputes where they claim adversely to the receivership property. It is the duty of the court through its receiver to preserve the property for the beneficiaries; namely, the company and its creditors." The evils which such a state of things give rise to are ably stated, but a rather more hopeful tone pervades the latter portion of the article, where the attitude of such judges as Caldwell and Miller is shown to have been helpful and upright. The author promises to consider in a later paper the act of Congress which has qualified the "ancient Chancery rule forbidding suits against receivers."

CENTRAL LAW JOURNAL.—August 5.

Suicidal Declarations in Homicide Cases. G. M. Dahl. This paper does not attempt to reconcile the conflicting decisions upon the point in question. The cases are clearly outlined and the points in each well stated. The danger in admitting such declarations is conceded, yet to exclude them is to exclude the most important testimony as to the state of mind of the deceased. The delicacy of the question is undoubtedly

responsible for the fluctuating decisions; and it may very well be that justice is better served by the fact that no positive lines can be laid down as to admitting or not admitting evidence of such a character.

THE GREEN BAG.—August.

Some Questions of International Law Arising from the Russo-Japanese War. IV. *The Construction, Sale, and Exportation by Neutral States and Individuals of War Ships, Submarine Boats, and other Vessels Adapted to Warlike Use and Intended for Belligerent Service.* Amos S. Hershey. The questions discussed by this fourth paper in the series are of especial interest at this time in view of the newspaper accusations which are so frequently made in regard to one or another state which is said to be furnishing aid in the form of ships armed or unarmed to one or the other of the combatants. As the newspaper views upon international law are so clearly colored by the sympathy of the particular state or nation in which the newspaper is published, with that nation with which it is most closely allied, we cannot depend for impartial information upon them. That they can make out a fairly good case for the side for which they hold a brief in any case is shown by the still unsettled state of the law and the failure of any two nations to wholly agree upon any settled basis of action. An article in the *Law Magazine and Review* for August upon "The Neutrality of Great Britain; the Foreign Enlistment Act of 1870," by N. W. Sibley, LL.M., is directly in line with Mr. Hershey's article, and is interesting as giving a review of some of the same questions from a different point of view.

LAW MAGAZINE AND REVIEW.—August.

The Congo State; A Review of the International Position. G. G. Phillimore. Those who are interested in the dispute between Belgium and Great Britain in regard to the administration of the Congo Free State will find here an able discussion of the technical points in dispute between the two nations. That the points are extremely technical and are very ably contested by the Belgian authorities seems to show rather convincingly that the outburst of indignation upon the part of the English people in regard to the alleged abuses in the Congo Free State was scarcely justified by the situation in that country. The English are much interested in making out a case against the government of Belgium, but the facts do not seem to sustain their assertions.

The Legal Tie with the Colonies. Erasmus Dawson Parker. After the loss of the American colonies England is here credited with the principle of "retaining colonies by letting them govern themselves." Practically this may be so within certain limits, but the limits are well defined, and as here stated seem incompatible with any theory of self-government. The ties as they exist at present are thus summarized by the author:

"The Governors are appointed by the Crown; diplomatic intercourse, as regards foreign countries, is carried on by the Imperial Government; the Judicial Committee of the Privy Council is a supreme court of appeal from all Indian and colonial tribunals; the power of making treaties resides in the Crown, unless an Imperial Act authorizes a colonial government to do so; and the will of the Imperial Parliament is supreme in all things."

Canadian feelings were roused to a very high pitch in the recent boundary proceedings, and at that time much was said in regard to the Imperial treaty-making power. The delays caused by the appeals to the Privy

Council, and the fact that they are practically only available to the very wealthy litigant, have also been fruitful causes of dissatisfaction. The colonies would appear to only be self-governing so long as they desire to govern themselves in the way the Imperial Government desires that they should be governed.

VIRGINIA LAW REGISTER.—August.

Christian Science and the Law. Irving E. Campbell. After an examination into the fundamental principles of Christian Science, in which those principles are stated very fairly, the paper takes up the question whether Christian Science comes within the province of legislative and judicial consideration. "Since its votaries, by the treatment of disease, commit overt acts which affect the physical welfare of the people, the question is answered in the affirmative. The next question is whether it is embraced within the usual statutes regulating the practice of medicine and surgery. Several states have decided that it is not, some states having expressly excluded from the operation of their statutes "persons who minister to or cure the sick by prayer to Almighty God, without the use of drugs or material means."

The inquiry whether the state has power to force a person to submit to a surgical operation or medical treatment solely for his personal benefit leads to an opinion in the negative, although the point has had no direct decision as yet. Whether persons in charge of minors or others must invoke medical aid has been pretty clearly decided in the affirmative by the weight of authority at the common law, with some negative decisions of less weight. England had a statute providing that medical aid should be furnished to a sick child. This statute was repealed, and the Act for the Prevention of Cruelty provided that wilful neglect of a child should be a misdemeanor. Neglect has been construed to include failure to provide proper medical aid, the charge being manslaughter.

The question of policy is next taken up, and the action of Massachusetts in granting a charter to a Christian Science college as a medical institution is contrasted with that of Pennsylvania, which has refused a charter to a Christian Science church on the ground of public policy.

The author, while certainly not a believer in the tenets of Christian Science, argues that they should be allowed to practise their system "under reasonable and proper regulations." This seems to leave the whole question open for a reargument.

"*Last Clear Chance.*" Thos. W. Skelton. The doctrine that "the one having the last clear chance to avoid an injury is liable for it" is here discussed in a very clear and interesting, if at times unconventional, manner. The fact that the negligence of a trespasser or other person is condoned by this doctrine is considered not to be in conflict with the well-established rule of contributory negligence, but it is assuredly a softening of a rule usually adhered to with a rigid inflexibility.