

NOTES ON RECENT LEADING ARTICLES IN LEGAL PERIODICALS.

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The Territorial Expansion of the Common Law Ideal. John F. Simmons. Mr. Simmons is an expansionist; he believes, most evidently, not only in the expansion of the ideals of the common law, but expansion at all events. So great is his enthusiasm for the common law that he would have its benefits extended to all countries, even though in the process of extension the country as a country should cease to exist, and its inhabitants vanish from the face of the earth. The article is a paean of triumph for the all-conquering Saxon and that law which he calls his. Much that Mr. Simmons says is very true, much is extremely well said; some of his phrases are wise, some witty, and some both. These are possibly the best: "The Roman Law with its codifications is, when compared with Common Law, a manufactured product as against a natural growth;—the one is a set of rules illustrated by specific cases; the other a set of rules deduced from specific cases." "The one makes man to fit it; the other is fitted to man. The one is what man thinks man should be; the other is what God has made man to be. The one would be; the other is. The one is man-made law, the other is God-made law." "The lawyer does not define it; he knows it and to him it is what it is for what it comprehends, and he tells you the Common Law is Common Sense." Yet one cannot but feel that Mr. Simmons has missed something in his broad appreciation of the common law; that, much as he admires it, he has in a measure misunderstood it. That common law that is stamped by the nailed heel and forced upon reluctant peoples by the mailed hand has lost in the process its very essence. The only common law that ever has existed, that ever can exist, has grown out of the life of the peoples who live under it. "Destiny" is a word that has been used to excuse much. Whatever is, is well because it was destined to be so. The historian is not always so sure that every cause that conquers was foreordained to victory; that every man who wins is a "man of destiny," though he seems so to his followers. Mr. Simmons, believing in the destiny of the common law to conquer all mankind, is not willing to wait for it to do its own work, to win in the only way it can win and not die in the winning; he forgets that he cannot aid in the expansion of the common law by deserting its ideals.

Consideration v. Causa in Roman-American Law. Joseph H. Drake. A case in Roman-Dutch Law, in which it appears that the *causa* of the Roman-Dutch Law has become the "valuable consideration" of the Common Law, has led Mr. Drake to draw a parallel between that law and the contact of Spanish-Roman Law with the Common Law of America, and to ask if the victory of consideration over *causa* in South Africa will be duplicated in our Porto Rican courts. In answering this question he takes up the cases of consideration which have occurred in the courts of Louisiana. These cases begin about 1832, and the growth is shown to be toward the decision of the cases upon the English theory. The discussion of the separate cases is elaborate and interesting, and in the end we return to the South African cases, Mr. Drake saying: "The situation then, in Louisiana, where English Common Law has come in contact with Spanish-Roman Law, may be summed up in the exact words of the

South African judge in his statement as to the influence of English Common Law on Roman-Dutch Law. 'I cannot find that in practice any gratuitous promises except donations—as to which there are special rules—were ever enforced by law.' Mr. Drake then asks—"What are the Porto Rican courts going to do about it?" "The Porto Rican Code repeats the essential provisions of the Louisiana Code in regard to the distinctions between gifts and contracts, but it also copies the very definite statement of the Spanish Civil Code in regard to the contract of pure beneficence." It seems likely to him that further legislation may be necessary in order to solve the difficulty.

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The Administration of Criminal Law. William H. Taft. Mr. Taft is glad to have made the acquaintance of the Civil Law and is surprised to find it good. He has found that, in spite of the virtues of the common law, it is not best to force it upon a people. He has found, as it has been said before, that the common law must be the outgrowth of the life of a people; that the law which does not so grow is not the common law. Mr. Taft makes an elaborate argument to show why he thinks we must not be too swift in forcing the common law on the Philipinos, but apparently without any broad view of the reason why this is. The point, however, which has attracted the most attention from the public—as represented by the press—has been his statement in regard to the right of appeal in criminal cases. He thinks we should be better off if the right of appeal were limited as it is in England, but for months before he published this opinion the newspapers of England had been full of the most indignant articles, showing that the denial of the right of appeal in such cases works a most grievous wrong to hundreds of innocent persons. A case of mistaken identity had roused the British conscience to the state of their law, and they found that state a very bad one. They were demanding that the right of appeal should be given, in order that such flagrant cases of wrong to innocent persons should cease. In view of these facts it can hardly be thought wise to rush into the unpleasant situation from which they are so anxious to extricate themselves.