it bears witness. While this may in a measure be determined by the method of analysis and skill in selection, yet, since the typical cases selected can only be given to define the basic principles of the law, it seems that there should be some more or less elaborate system of notes, by which the finer distinctions could be indicated, with a reference to cases which while upholding the point of the authoritative case, yet support it with a difference in reasoning. This system is almost entirely lacking in Mr. Woodruff's book; the individual touch is wanting. There has been a great increase in the production of case books since the case system was taken up by the greater law schools, but a mere collection of cases under a commonplace analysis does not seem to add anything of value to our knowledge of the law. It can only be regarded as a possibly helpful tool for a professor in class when he has not yet created for himself a working system.

NOTES ON RECENT LEADING ARTICLES IN LEGAL PERIODICALS.

AMERICAN LAW REVIEW.—June.

The Right of Jury Trial in the Dependencies. James Wilford Garner. Recent decisions of the Supreme Court of the United States seem to decide that the right of trial by jury in the "outlying possessions" of the United States is not a fundamental right but a matter "which concerns merely a method of procedure." Mr. Garner does not think this view coincides with those of the early American or English commentators, or with the earlier opinions of the Supreme Court itself. It is only since 1900 that the opinion of the courts seems to have indicated a change of view. This change, however, has not been consistent, and when enunciated has been accompanied by an expression of vigorous dissenting views. Mr. Garner sums up in the concluding paragraph of his article the views apparently now held by the justices of the Supreme Court:

"Thus, according to Justice Brown's theory, the right of jury trial is carried to the Territories only by formal act of extension; according to Justice White, the same result is accomplished by incorporation, and, according to his opinion, extension is evidence of incorporation. In the Hawaiian Case the two justices stood together, denying the right of jury trial; in the Alaska Case they united in affirming the existence of the right; but in both cases they reached their conclusions by different lines of reasoning. In the former case Justice Brown, who gave the opinion of the court, in reality stood with the minority in holding that Hawaii was an incorporated territory, but he differed with them in holding that incorporation is not the test of the applicability of the Constitution. In the Alaska Case, those who had concurred in the Hawaiian Case, with the exception of Justice Brown, united with those who had dissented, in upholding the doctrine of extension by incorporation. Apparently, Justice Brown stands alone in holding that Congress may deal with the Territories as it pleases, even after incorporation, until it has seen fit to extend by formal act the provisions of the Constitution to them."

The Great Usurpation. William Trickett. Mr. Trickett's argument that the power of the Supreme Court to declare a statute void after it has passed both houses of Congress and received the approval of the President is a power which causes a good deal of inconvenience to persons who have to act on the assumption that such acts are valid, only to find that the court declares them void, is a reasonable one. There is a certain amount of inconvenience, perhaps a certain amount of injustice, arising from such a state of affairs. It may be questioned whether the evil does not come chiefly because the court, as it seems inevitably, partakes of the political opinions of the individual members, and therefore is not always consistent with itself or the law, rather than from the power itself. Mr. Trickett's contention that the assumption of this power by the Supreme Court is a "usurpation" originated by Chief Justice Marshall, and accepted by the justices of the Supreme Court who have succeeded him, is not borne out by the history of the subject. Chief Justice Marshall did not originate the theory, and it was one which was familiar to the minds of those who framed the Constitution of 1787, as a reference to their spoken opinions will show. James Wilson, in his lectures, and in his speeches before the Pennsylvania ratifying convention, spoke of the theory as one accepted, and a part of the system which the Constitution would put in force. As he was a leading member of the committee on detail; as the Constitution as submitted to the members of the convention was drawn up in his handwriting; as he was considered to be the best Constitutional lawyer in the convention, and one of its best debaters, it is probable that he thoroughly understood that document. There is abundant other evidence to show that this was the American doctrine before the adoption of the Constitution. The Editor of the *Law Review* refers to this fact in his note to Mr. Trickett's article.

THE GREEN BAG.—June.

The Closed-Shop Controversy. Charles R. Darling. It is unusual to meet with an article on this subject which is written in a spirit of calm and quiet investigation, apparently ignoring the extreme sentiments which have been aroused upon one side or the other. Mr. Darling asks: "What objection is there, then, to a contract for the exclusive employment of certain men or a certain class of men?" He finds, after a short examination, "that if ordinary analogies hold, the contract for exclusive employment is unobjectionable." He notes that the principal objections to the validity of the contract are that "by means of it men are driven out of employment or forced to join the unions; that the purpose is to prevent competition by forcing men into the unions, and to obtain a monopoly of the labor market." The author thinks that there would never have been any claim that these objections rendered the contract invalid if it had not been for the increasing power of the unions, and that it is a subject rather to be dealt with by legislation than by the courts of their own initiative. He shows that the coercion argument is put in different ways; at one time it is said that independent workers are forced to join the union; men are forced to do something against their will; this is coercion and is unlawful. Another time it is said that they are driven out of employment and deprived of an opportunity to make a living because they will not join the unions; this is not lawful because they have a right to earn their living unmolested. In a very few words, Mr. Darling shows that if the union has a right to compete for business, the charge of coercion of any kind has no force. "When the conduct of the union is described as an attempt to force men to join the union, the argument

has a certain plausibility, but its force entirely disappears when we reflect that the only compulsion used is to compete with them and thus make it for their advantage to join the unions. As well might it be said that a tradesman who outstrips his competitor in business, gets his trade away from him, and then offers him a partnership, is guilty of forcing the latter into the partnership." Mr. Darling says, "It is now submitted that a careful analysis of the subject discloses no element of illegality in the contract for a closed shop." He asks, "When the courts declare against such contracts do they not simply infringe without warrant that freedom of contract which is reckoned among the fundamental rights?"

LAW MAGAZINE AND REVIEW.—May.

Responsibility in Law. Rankine Wilson. "It is one of the main purposes of this treatise to show how the law of England has, in dealing tenderly with the weak and erring, gone some way to solve the problem of Responsibility; and to show in what direction its further solution lies." This is done in an exceedingly philosophic manner, involving a résumé of psychological science. After, in this way, finding the groundwork of the mental state of a man, it is said, "It is difficult to see how the duality of the body and soul, which we have seen affected in different ways under the processes of perception and representation, can be overcome except by the working of a higher law—a higher law which cannot have its source in those factors or elements which it transcends and unifies; but so soon as we conceive man as a being endowed with lower faculties in respect of his animal nature, and with higher faculties in respect of his spiritual nature, the difficulty vanishes. It is in this fundamental distinction, this division of the human mind into lower and higher faculties, the one group having their course in the animal nature, the other in the spiritual, that we have traced out the psychological and philosophical bases of Responsibility. When we have come to see that the action of our purely animal solution of the mystery which has enveloped any definition or satisfactory explanation of the varying states of responsibility and irresponsibility. When we have come to see that the action of our purely animal faculties imposes on us no sense of moral responsibility but that of animal inclinations and instincts; and that the action of our spiritual faculties, when allowed free scope, control and govern the action of the lower; we shall come to see that in this freedom of control, by the higher faculties of the lower, is contained the essential condition of responsibility." The subject is to be continued in a later instalment.

Jury Trial and the Federal Constitution. W. C. Dennis. This is a long and close examination of the subject under discussion, examining in the course of the argument a great many of the more interesting cases of recent years, among others the case of Caleb Powers of Kentucky,—a most decisive case in favor of those who argue that politics are a factor in court decisions. The article is interesting and enlightening on many points.

The Province of the Judge and the Jury. G. Glover Alexander. This is the third part of this very interesting series of historical articles. This instalment is devoted to Lilburn's Trial in 1649, and shows John Lilburn, as a "law reformer," to whose ability and sagacity we are indebted for some very great changes in procedure.

COLUMBIA LAW REVIEW.—June

An Abused Privilege. W. A. Purrington. The privilege in question is that which allows a witness to stand mute. Among other objections to the privilege, the author says: "The privilege, designed as a shield to the innocent, has proved a handy weapon eagerly seized by unscrupulous attorneys and reluctantly availed of by their more conscientious fellows, whose sense of professional honor, as distinguished from the other kind, seems to impose upon them the obligation of utilizing every legitimate, or rather lawful, means for winning the client's cause, constraining them to raise the objection of privilege, as they plead the defences of limitation and usury. The climax of the farce-tragedy comes when murderers and ravishers invoke their victims' privilege to cover their own guilt, thus forcing courts to construe away the plain letter of the law in order that its spirit may not be thwarted. And it is probably not exaggeration to say that few cases can be found in the reports wherein a plaintiff claiming damages for personal injuries has invoked this privilege for any other purpose than to conceal what in honesty should have been made known and what, in so far as it affected his privacy, he was not at the time to a greater or less extent exhibiting in the action." Mr. Purrington thinks it desirable that the statute law on this subject should be so modified that it should not enable the unscrupulous to suppress in evidence matters which are no secret outside the courtroom.

YALE LAW JOURNAL.—June.

Conflict of Laws upon the Subject of Marriage and Divorce. Clarence D. Ashley. *The Recent Conference on Divorce.* Talcott H. Russell. *The Divorce Congress and Suggested Improvements in the Statutory Law Relating to Divorce.* C. La Rue Munson. These three articles, all devoted to the one subject of divorce, seem to show that the subject at the present time is attracting an unusual amount of attention from the legal world. Mr. Ashley's article is short and does not pretend to do more than give a slight glance at the situation, which he says "demands some settlement of these intolerable evils." The review of the recent conference on divorce is still shorter, but it also declares that the situation is becoming more and more intolerable and that uniformity of legislation is called for. Mr. Munson's article is much longer and goes into the matter with greater detail. The resolutions of the Divorce Congress are given, with a commentary upon each resolution. Mr. Munson says: "While this view of the resolutions adopted by the Congress is but cursory and perhaps confusing, enough will be gathered to indicate that when they are embodied in the statute laws of the states a long step forward will have been taken toward remedying the present divorce evil, not so much by restricting the causes as in the line of improvement on the question of jurisdiction and procedure." So at the last there is a gleam of hope in the darkness which is so deeply felt by the preceding writers.

The Law Relating to Trades Unions. W. P. W. Phillimore. The complaint that the law regarding Trade Unionism is in a chaotic state has led Mr. Phillinore to "give a brief digest of Trade-Union Law, leaving the reader to refer to the statutes and decisions for details." A Trade Union was at first decided to be unlawful. This disability is now removed, "and no member of a Trade Union is liable to criminal prosecution for conspiracy or otherwise, and no agreement or trust is void or voidable on the ground of its being in restraint of trade." This, of course, is by statute in England. The digest is clearly made and leaves the subject well defined.