CURRENT LEGAL PERIODICALS AND BOOK REVIEWS.

Assumption of Risk.

Voluntary Assumption of Risk. Francis H. Bohlen. Mr. Bohlen probably gives us the keynote of the theory which he is here presenting to us, when he says: "The maxim *Volenti non fit injuria* is a terse expression of the individualistic tendency of the common law, which proceeding from the people and asserting their liberties, naturally regards the freedom of individual action as the keystone of the whole structure." We are shown that in the early law there was little disposition to do more than afford to a person the chance to protect himself from injury; to make known to him the danger already known to another; there was no disposition to protect him when he was supposed to be in a position where the danger was known to him and he might protect himself. We are shown how the theory of the voluntary assumption of risk arose, and given a line of cases where "the voluntary encountering of a perfectly well-known and appreciated danger had been held not to involve an assumption of the risk of the resultant injury," and these are considered to be referable to the same general principle, "that one who has a legal right or legal or social duty to act as he has done under the conditions created by the defendant's wrong does not act voluntarily, his action is caused by the coercion of the circumstances which the defendant's wrong has created." The term "coercion of circumstances" will perhaps bear a wider significance than Mr. Bohlen has given it. Have not industrial conditions so changed as to make that coercion a practical slavery? The individual who was free to take up a certain employment and, finding it to be conducted in a dangerous manner, could leave it and find employment with another and a better master, has been almost eliminated from the industrial life of to-day. The workman lives in a manufacturing town where the one great industry is that by which he is employed. The conditions are dangerous. Every day one life or more is added to the list of victims who saw the danger and accepted it. Accepted it because to refuse meant the loss, not of employment in any particular shop or with any particular employer, but the total loss of all employment either there or elsewhere. Has such a man any choice? Can the alternative of working under conditions known to be excessively dangerous or of starving be considered a choice? Is he not bound by the "coercion of circumstances" to that labor? When the man dies from the accepted danger, who pays for the economic loss? Who supports the helpless children? The public, which thereby pays a debt it does not owe to a person or a corporation who by the aid of the courts has been freed from all responsibility. It is claimed that the cause of this theory as promulgated by the courts was the "intolerable and almost prohibitive burden upon the development of business and manufacture" the recognition of the master's liability for injury by a servant to his fellow-servant would impose upon such business or manufacture. It was felt that "commercial necessity" required it. The question to-day is, Was that feeling justified, and have the results been satisfactory? The Congress of the United States in their last session answered the question in the negative.

This is but the first instalment of Mr. Bohlen's paper, so that his own theory in regard to the matter is left to be more fully developed in the next number.

Harvard Law Review, November, pp. 13-24.

CORPORATIONS.

Lawyers and Corporate Capitalization. Edward M. Shepard. The loss by the Bar of its former position in popular esteem is first noted by Mr. Shepard, and the cause of this loss is then sought for. This cause seems to be found in the "vastly increased representation of corporate interests," by the legal fraternity. The people have learned to distrust the corporations and they have learned to associate the corporations with the lawyer who represents their interests whenever they come before the public. Mr. Shepard then considers the legal requirement of specific capitalization in the incorporation of companies, and the injury this requirement does corporations in public esteem. "I propose for your consideration whether it may not be wise to abolish altogether our requirement of a charter or technical capitalization of corporations." He would permit the creation by a company of as many shares of its capital stock as it sees fit, but he would not have the law require any par value for the shares. He states that this requirement that the total capitalization be prescribed, the number of shares into which it is to be divided and the par value of each share, leads very commonly to fictitious capitalization, misleading statements and dangerous efforts to justify a capitalization which was originally unjustified. In closing he returns to the duty of lawyers in their public relations, saying, "If the men of our profession make it clear to the American people that, in their public relations, they are concerned to enforce truth and publicity upon corporations and upon all who derive from our laws any sort of franchise or right, we may, I think, count it certain that the justifiable criticisms and much of the ignorant hostility and suspicion from which lawyers suffer will disappear. They will again take their fit share in public life with its burdens and its honors. This noble profession of ours will hold in the public service and esteem a rank at least as high as that it held until the American people justly became indignant at corporate abuses."

Green Bag, November, pp. 601–613.

YEAR BOOKS.

The Year Books. W. S. Holdsworth. The second of the articles upon the Year Books proves quite as valuable and interesting as the first of the series. Mr. Holdsworth takes up the "differences between the mediæval and the modern in such vital matters as the rules of process and the rules of pleading," in order to see how far such an examination will "place us at the right point of view from which to look at the Year Books." He first shows that at the early period at which the Year Books begin the law was only just emerging from that primitive stage in which it was difficult to secure the appearance of the defendant, and the difficulties of travel still made process slow. The machinery was slow and cumbersome as the means of travel, and the rules of law were fixed before they became rational. It may be that some of the cases Mr. Holdsworth thinks "not very intelligible" would prove on a closer examination by a student of the branch of the law under which the case came, less ambiguous. For many years Year Book law was held in contempt as a whole, as being too archaic for