

the use or instruction of the modern practitioner. This view has passed away with our ignorance of the Year Books, and it may be that a still closer knowledge may clear up much of the obscurity that now remains. When the pleading is examined Mr. Holdsworth says that "The question which the legal historian must answer is the question why the English mode of pleading was so different from that which we find in other systems of law. The answer will probably be found in the peculiarity of the old conception of a trial, and in the mode in which that old conception of a trial was adapted to the jury system." This involves an interesting examination into the early modes of proof and trial by jury.

The Law Quarterly Review, October, 1906, pp. 360-382.

CASE-LAW.

The Basis of Case-Law. Albert Martin Kales. In continuing his article Mr. Kales takes up the topic of "public policy and other practical considerations as primary sources of case-law," and by examples of cases decided by the leaders of the English bar, establishes the fact that "the law often sacrifices not only the convenience of individuals, but their just claims, to considerations of public convenience, and the general good; and will even sometimes let palpable dishonesty or gross negligence go free, rather than depart from a general principle which, on the whole, operates beneficially." In the end Mr. Kales claims that "we have seen that a great mass of case-law is purely judge-made law, based upon considerations of justice, morality, common sense, public policy and convenience, and other practical considerations. But these are in truth the grounds—perhaps, indeed, the only grounds—on which any law can properly be made, whether by judges or by Parliament; and it may certainly be claimed that judges make their law with a more single eye to these considerations than any parliament can be expected to do."

Law Quarterly Review, October, pp. 416-430.

BOOK REVIEWS.

INNKEEPERS AND HOTELS, THEATRES AND SLEEPING CARS. By JOSEPH HENRY BEALE, JR., Bussey Professor of Law in Harvard University. Boston: William J. Nagel. 1906.

The law relating to inns and innkeepers is of peculiar interest from a student's standpoint, for, from a close study of the principles involved and the conditions surrounding their formation, he can readily gain a very good idea of how our English Common Law was formed and assumed its more or less definite shape. The subject has a very practical interest for those interested in any phase of the development and application of public-service law at the present day, for the remarkable growth of our public-service corporations has distanced the law, and therefore to insure a correct application of settled principles to modern phases and conditions it requires a thorough understanding of the general principles and how they were formed.

In the interesting work before us for review the author has succeeded very well in his attempt to set forth the broad com-

mon law principles relating to innkeepers and kindred subjects, and to show on what ground they rest. To accomplish this successfully it is necessary of course to sketch hastily mediæval conditions as those surrounding the formulative period of this branch of the English law, and this has been done in a manner which adds much to the general interest of the work. General principles have been stated concisely, but disputed points and those on which the authority is slight have received fuller consideration.

Along with the law of innkeepers proper, the author has set forth the principles of law governing other houses of somewhat similar character, such as boarding and lodging houses, restaurants and theatres, and he has also considered at some length the subject of sleeping-car companies.

In the appendix will be found the statutes of the various states regulating inns and other public houses, and the rights of innkeepers and guests. The cases cited will be found in the American Digest; in the English Annual Digest for 1905, and the Canadian and other Colonial Digests for 1904.

C. S.

LIMITATIONS OF TAXING POWER AND PUBLIC INDEBTEDNESS.

By JAMES M. GRAY. Bancroft-Whitney Co., San Francisco. 1906.

The scope of this large volume of some 1300 pages may be indicated in the words of the title page by which the reader is informed that he has in his hand "a treatise upon the constitutional law governing taxation and the incurrence of public debt in the United States, in the several states, and in the territories." But since so short a quotation cannot adequately convey the contents of so large a work, it may not be amiss for the benefit of the prospective reader to outline briefly the method of treatment.

The material seems to fall naturally into three main divisions. The first develops along broad and general lines the idea that equality is the fundamental thought in the constitutional law of taxation; the second is an exposition of the federal taxing power and the limitations imposed upon the taxing power of the states; and in the last twelve chapters "equality in taxation is discussed concretely with reference to particular constitutional limitations and particular cases." Under the first of these three sections, which, by the way, are not visibly indicated in the book, the principles governing the sites of property, the purposes which alone make taxation lawful, and the delegation of the taxing power, are chiefly considered. The constitutional limitations of the state taxing power, including,

of course, restrictions imposed by the commerce clause, by the prohibition against the impairment of the obligation of contracts, by treaties and by the Fourteenth Amendment, are the subject of discussion in the second division; while under the third falls the consideration of the relation of the principles of equality to such questions as double taxation, the police power, the form and enactment of laws, and the debt-contracting power.

From this brief survey it will be seen that the work is an attempt to treat comprehensively and in a single volume a very large subject. Whether this can be said to be a wise or an unwise attempt depends somewhat upon the place the book is expected to fill. For the quality of conciseness in the treatment of so broad a field may be regarded as an advantage or as a disadvantage, according to the end desired. If one wishes an exhaustive discussion of the theory of the law, a logical development of principles, with full explanation of how these principles are worked out in minor questions it is a disadvantage. But as a means to a different end it may be helpful. For if one feels the need of a good book for reference, a brief but comprehensive statement of the law as it is rather than a theoretical treatise on the law as it ought to be, then the compact form and other characteristics of the present volume present distinct advantage. For by this method the author is enabled to present to his reader a large amount of material and to point out to him many roads leading to further investigation if he desires to follow them. By the citation of between five and six thousand cases and quotations from state constitutions one's attention is drawn in many instances both to the judicial and to the legislative attitude. Frequent summaries, a thorough index and cross references from section to section are other good qualities which should not be overlooked. With these characteristics the book should prove useful for reference and as a guide to authorities. For such purposes we would recommend it.

E. W. E.

