inaccessible to most persons who need them with reference to such matters." The present volume is designed to present the tables above referred to, so computed as to be readily used and understood and yet to be not so expensive as to exclude it from the average library.

The computations have been carried out with the utmost care on the basis, principally, of the Carlisle Mortality Table, though Jones's "On the Value of Annuities and Reversionary Payments," Chisholm's Commutation Table, and Lawton and Griffith's "Life Tables" have also been used for computing some of the tables. Bowditch's table, showing the present value of inchoate dower and curtesy, is given as also the expectancy of life as shown by the six leading mortality tables, with an explanation thereof and comments of courts thereon.

The fourth edition differs very little from the third edition of the book, which was published in 1894, though the notes of decisions as to the use of mortality tables have been rearranged.

B. O. F.

NOTES ON RECENT LEADING ARTICLES IN LEGAL PERIODICALS.

THE AMERICAN LAWYER.

Labor and the Law. James H. Torrey. So much that is superficial and without more foundation than is given by reiterated platitudes is written on the labor question, on strikes, lockouts, boycotts, and the open shop, that we are led to take up such an article as this in the hope of penetrating more deeply below the surface and getting at that deeper truth which must underlie any question which is capable of so deeply engaging the public attention. Mr. Torrey takes up all these questions one after another under their specific heads and gives us very much what we have so often had before. In the cases cited we are shown, no doubt, the general trend of the law as declared by the courts of the English-speaking countries, even though Mr. Torrey's first citation might lead us to suppose that we are getting encyclopædic law, and that in its latest and not most attractive form. The bitterness that the author deprecates in the conduct of the labor unions is so large an ingredient in his own article that he is scarcely consistent in his wholesale condemnation of it in the labor unions.

Sovereignty. Judge Robert G. Street. (Address before the Texas Bar Association.) This is a sufficiently deep subject even for so learned a body as the Bar Association of a sovereign state, and it is approached in a serious spirit. The author has not that light touch so characteristic of the modern public speaker; his sentences are almost ponderous in their effect upon the reader; yet, as the subject treated involves the most serious problems of our national life, our most vital constitutional questions, it is well that they should meet with no flippancy, no half-jesting treatment. Perhaps there is no better way of indicating the matter and manner of the paper than by quoting from the closing portion the following extract:

"I have rapidly sketched the rise and development of the doctrine of sovereignty; have noted the various phases assumed by the social con-

tract theory and its correlative, the consent of the governed; have directed your attention to the opposing views of the construction of the constitution of 1789; to the results of the war as disclosed by the amendments and their construction as established in the Slaughter-House cases; to the renunciation of the rights of secession by the Southern states and to the historical vindication of their position on that issue. I have invited your attention to the limitation of individual right by the rights of society under new conditions of industrial life, and to the vast increase of our commercial interests emphasizing its national character, demanding constitutional changes that will conform our fundamental law to existing conditions and the requirements of future progress; I have brought before you the theories of an ethical and physical growth advanced by eminent political scientists and proclaimed superior to all constitutional obligations, and now, in the light of these considerations, I ask whether the adaptation of our organic law to modern progress can longer be safely postponed Can the legal profession afford to decline to recognize its peculiar obligation in this behalf?"

The Control of Public Utilities. William H. Bailey. Mr. Bailey takes up "the regulation under legislative authority of the charges for the services rendered by those operating municipal public service industries. He first gives the cases which established the constitutionality of the regulation of rates by the legislature or by city councils and passes on to "trace the development of the law as declared by the courts on the subject of the regulation of rates and the limitations upon the power of the legislatures to fix rates, and of the courts to interfere with or set aside schedules." The early rule was that parties injured must resort to the legislature and not to the courts; this being taken to mean that the regulation was final and conclusive against both the company and the public. We are then shown the development of the law through the various phases of its growth to the present state, in which it is declared that the rates fixed by the legislative power must be reasonable, neither low enough to destroy the value of the property nor high enough to infringe upon the rights of the public; that the courts have jurisdiction to compel obedience to such reasonable schedules, and they will not nullify a rate unless it be so plainly unreasonable as to be practically a taking of private property for public use without proper compensation. The matter is dealt with in a manner which gives it both interest and value.

THE CANADIAN LAW REVIEW.—October.

The Kingdom of Canada. John S. Ewart, K.C. (Continued from September number.) Mr. Ewart ended his last paper with a protest against Canada being called a colony. He begins this second part with the words, "But we are, nevertheless, a colony." He then goes on to examine the nature of the colony and to what extent it is "under authority." We are told that the "authority of the Canadian Parliament is a gift from a power outside of us, the gift of the Imperial Parliament." We are told that Canada is "not sovereign," "not a nation but a colony." We then take up the "Constitutional Limitations" and are shown that they are many and exceedingly important. Mr. Ewart's paper makes very interesting reading, but the most interesting reading is that found between the lines. In the irritation betrayed by the remark, "An American gets more respect in London than a colonist, and in my opinion he is entitled to it," we hear the truth he endeavors to persuade us does not exist. His whole argument is that of a man who will not tear himself away from the tradition that he is loyal to the faith of the

fathers, while condemning each and every tenet of that faith. What Mr. Ewart desires is doubtless coming; it may not bear exactly the shape or name of his dream, for the day for the founding of new empires and new kingdoms has passed away, and were his dream to come to pass it would not be a rejuvenation of the old. It is to be hoped that in Canada there are many men of the stamp of Mr. Ewart who have, acknowledged or unacknowledged, the dislike of dependence, the love for independence, which characterizes all free nations. We who have won our own, and have plenty to test our mettle yet in the keeping of it, wish them all success

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CENTRAL LAW JOURNAL.—November 11.

Has a State Court Jurisdiction to Issue an Injunction Against a Receiver Appointed by a Federal Court? W. A. Coutts. The receiver as the "arm of the court" could not be sued, as to sue the court was considered to be contempt. The American courts, as usual, followed the English rule in this respect until what the old pleaders would have called "a great diversity" was created. Petty claims could not be presented except through the Federal courts, and "small claimants were thus practically without legal redress against corporations in the hands of a receiver." Congress then enacted (March, 1887) that every receiver appointed by the United States courts might be sued as to business connected with the property without previous leave of the court in which he was appointed. The attempt of this paper is to decide "Whether in a case where the facts would support an injunction against an ordinary defendant, it might by virtue of this act be issued against a receiver appointed by a Federal court." In the discussion of this point Mr. Coutts cites a number of cases on both sides and gives us an interesting paper, but he adds that "the question can only be authoritatively decided by the Supreme Court of the United States," and as yet it has given us no decision on the subject.

HARVARD LAW REVIEW.—November.

Equitable Conversion. C. C. Langdell. This is the first part of a discussion on this topic, which Mr. Langdell is to treat more at length. He gives us first a careful analysis of the word conversion, then we come to the matter in point, and then we are given the first part of a paper which is characteristic in every point, extreme subtlety of thought and refined reasoning being brought to bear upon each division of the subject.

Assignability of Contract. Frederic C. Woodward. The seventeen volumes of the *Harvard Law Review*, taken in their entirety, probably contain more discussions on the finer points of the law of contract than are to be found in any other form, not excepting treatises upon the law of contract. For while the treatise writers must survey the field with a certain width of view which will give an outlook over the entire subject, these papers may, if they choose, concentrate the thought upon the veriest needle-point of argument. The present article takes us in its first paragraph into the familiar atmosphere of the scholastic debating-room, where we enjoy ourselves and are refreshed or not according to the peculiarities of our own temperament. The most interesting part of the discussion in this paper is that which may be called the individual note which renders the contract unassignable. One recognizes a very old friend in the case of the Boston Ice Company against Potter (123 Mass. 28), which once more does good service as an illustration of this.

personal note, and it is followed by a number of others illustrating this point to some extent, although not always very vividly. The discussion of all the points is of value.

The Gage of Land in Mediæval England. Harold D. Hazeltine. This second paper continues the history and discussion of the subject, beginning with the "realm of mediæval 'charges,' 'liens,' 'burdens,' and 'encumbrances' on land," and going into the gage of land with possession of the debtor, which was later than the gage of land with immediate possession of the creditor. Through it all is given the interesting historical view, the author citing historical sources as freely as legal. The paper shows great research and clear comprehension of the matter in hand.

COLUMBIA LAW REVIEW.—November.

Rescission by Parol Agreement. Samuel Williston. The article begins with the proposition that the same elements of mutual consent and consideration that are necessary for the formation of simple contracts are requisite, as a general rule, for the discharge of contracts by parol agreement of the parties. We find, however, two exceptions to the general rule. First, agreements made before breach of a unilateral contract to discharge the promissor; second, agreements to discharge a party to a negotiable instrument, whether the agreement be made before or after maturity of the instrument.

As to the first exception, after an examination of the cases Mr. Williston comes to the conclusion that the English cases support the view that exoneration before breach is good without consideration, while in most of the states consideration will probably be held essential. As to the second exception, a written renunciation or discharge is good without consideration under the English Bills of Exchange Act. The contrary doctrine was held by the American courts, but Mr. Williston says, "The draftsman of the American Negotiable Instruments Law, however, copied the provision of the English act, and in states where the law has been enacted (some twenty-five), therefore, a written renunciation is good without consideration."

The remainder of the article is devoted to a valuable discussion of the decisions upon effect of a parol agreement upon written contracts and contracts under seal.

The History of the Adoption of Section 1 of Article IV of the United States Constitution and a Consideration of the Effect on Judgments of that Section and of Federal Legislation. George P. Costigan, Jr. This article goes fully into the circumstances under which the article in question was adopted, giving a report of the debates and votes on the motions. We then have the legal construction of the article as finally passed, showing the conflict of opinion, and that many of the state courts at first refused to give to the judgments of a sister state any "greater rights than were extended to foreign judgments at the common law." The historical development through the decisions by which the article has finally come to have the full effect intended by the framers is shown up to the present day, including the decision of the question as to the status of a judgment given in the state courts, in the courts of Porto Rico and the Philippine Islands. It is shown that by acts of Congress the same effect is given in these cases to judgments in the courts of these islands as to judgments in state courts, and to judgments in the islands, by the state courts as to those of other states.

The Exclusive Power of Congress to Regulate Interstate and Foreign Commerce. David Walter Brown. A "rule to determine as to what subjects the power of Congress is exclusive of, and as to what

it is concurrent with, power in the states," is declared by Mr. Brown to be necessary in order to obviate the confusion now existing in the decisions of the courts. Taking the rules laid down in *Cooley* v. *Board of Port Wardens of the Port of Philadelphia* (12 How. U. S. 299, 1851) as a basis, Mr. Brown evolves the following additional rules from later cases: "Commerce with foreign nations and among the several states, being in its nature national, its direct regulation is exclusively in the power of Congress.

"The incidents of such commerce,—the commodity, instrument, agent, —being local in nature, their regulation is generally within the power of the state in the absence of conflicting legislation by Congress, except when the state regulation (1) imposes a tax upon an incident of that commerce in its quality as such, or (2) is discriminating, or (3) exceeds what is reasonably necessary to the protection of persons or property and to orderly government within the state."

MICHIGAN LAW REVIEW.—November.

Russian Raids on Neutral Commerce. Edwin Maxcy. The real question the paper discusses being, "Are foodstuffs contraband?" showing by its form that the matter is still a question for discussion, and one not yet settled against the contention of Russia, the actual heading of this article, as predicating a wrong position on the part of that country, seems somewhat prejudiced. The tendency shown in our ephemeral literature, newspaper and periodical, to prejudge a question before discussing it does not add to the reader's reliance upon the fairness of the discussion. The national precedents given us as representing the attitude of the different countries upon this question still further impress us with the unfairness of the prejudgment. The first two cited declare foodstuffs to be contraband; the next, 1793 (France), make them "occasional contraband;" the next (England against revolutionary France), "all provisions contraband;" the last (France and China, 1885), rice declared contraband. Mr. Maxcy's precedents show that Russia has not stood alone, but this is rather owing to the selection of precedents than to the state of the law itself. The trend of the treaties is the same way. The text-writers deny the right to consider foodstuffs contraband. The courts of England (who is now suffering from the custom and therefore is loud in her outcries against it, at least as represented by the public press) have declared foodstuffs to be contraband. In America we have leaned towards the opinion that articles used exclusively for peace purposes are contraband "only when destined for military or naval use of the belligerents." It is true that "there is a definite tendency towards an increase of neutral rights," and that all nations are agreed that this is a beneficent tendency which should be fostered. Russia, however, has not been, when the cases are fairly stated, so much greater an aggressor than other nations that she should be made to bear the blame which should be shared by all. The agitation against Russia, however, should bear very good fruit in the future when the critic nations who are now reprobating her conduct shall be tempted as she now is. They should be required to remain steadfast to the principles they are now so loudly advocating.

The Doctrine of Waiver. Colin P. Campbell. Passing over the history and definition of waiver in a few words, our author goes on to say, in answer to the inquiry whether a waiver is a contract or an estoppel, that "It is both, but is neither, and may be either," and that they have also been considered to be releases. He concludes that an express waiver must present the essentials of a contract, and that a considera-

tion is an essential both in express and in implied waivers, this latter decision being arrived at after an examination into the position of those who support the opposing theory. The next question asked is whether it is essential that the one against whom the waiver is asserted shall have intended the waiver. This is answered in the affirmative, with the exception of the cases where the conduct of the party possessing the right is such that it would be inequitable for him after the other party has relied upon his waiver to again assert the right. The necessity for knowledge of the facts upon the part of the one against whom the waiver is asserted is answered in practically the same way. The parol waiver of a written contract is next discussed and the rule is given that a formal condition or contract may be waived by parol (the rule regarding the exclusion of parol) evidence to "vary a written instrument not operating to exclude evidence that such an instrument has been discharged or waived." What rights may be waived and what may not is the question last discussed, and it is laid down that any right may be waived which is not contrary to public policy. The paper is exceedingly clear and to the point, without sacrificing a pleasant style to the need for condensation.

Surrender. Herbert Thorndyke Tiffany. Beginning with Lord Coke, who furnishes us with that apparent essential for an essay, a definition, we are told that the technical use of the word surrender has been obscured by the common use, and the "surrender of a lease" has come to mean merely the giving up of the premises at the end of a term; the technical meaning being "a particular mode of transfer, which derives its distinguishing characteristics from the fact that it is made by the tenant of a particular estate to the reversioner or remainder man." The paper is devoted to a very full discussion of the subject under the separate heads: "Parties to Surrender;" "Express Surrender;" "Surrender by Operation of Law;" "Acceptance of New Interest;" "Transfer of Possession to Landlord," and "New Leases to Third Persons."

YALE LAW JOURNAL.—November.

The Hague Conference of 1904 for the Advancement of Private International Law. Simeon E. Baldwin, LL.D. The Hague Conferences of 1893, 1894, 1900, and 1904, with their resulting conventions, are quietly giving us a system of international law which will not only affect the attitude of nations towards each other, but which is very likely, in the light of all that has been done, to affect the internal legal systems of the adopting states themselves. Mr. Baldwin implies that the conditions of modern life are tending towards a modification of the old English and American law of real property, and it seems that the convention which requires the merger of land in the general mass of a man's property, in case of his death, will do much to bring about some amelioration of that law. In other respects the conventions do not seem to make radical changes, but a closer rapprochement of the systems of the civil and the common law will doubtless follow this gradual agreement of the nations living under the two systems to submit to modifications of their own laws in the interest of mutual amity.

"*The Massachusetts Proposition for an Employers' Compensation Act.*" Epaphroditus Peck. If any employer, eager for further protective legislation, should be induced by the flattering promise of this title to turn to the pages of the *Yale Law Journal* in order to find what there is left for the legislature to do for him, he will probably be somewhat disappointed to find that the act referred to is in reality intended to provide for the compensation of his employee.

The courts in creating the fellow-servant doctrine, and in some in-

stances carrying that doctrine to absurd lengths, have forced the people to take legislative action where, if there had been no "judge-made law," legislation would not have been needed. The result is that the employer whom the courts favored too much finds himself no longer facing the flexible justice of a jury trial, with justice for the employer and the employee both to be hoped for, given a fair trial and proper conditions, but finds himself confronted with the inflexible justice of an act framed for the benefit of those very persons whom the courts have practically agreed have no standing before them. The larger the numbers of employees, the larger the plants of the manufacturing companies, the greater the number of men and women employed by single companies, or aggregations of companies, the more widespread is the injustice of denying them redress for injuries suffered through the fact of such employment. The courts themselves have condemned the doctrine in its present radical form, and have suggested that the legislature could alone relieve them from the results of their own previous error. England in 1897 passed an Employees' Compensation Act; some of our states have followed her example, and it is probable that in the near future all the states will have enacted similar legislation.

The Virginia State Bar Association. Volume 17, 1904. This volume of the Virginia State Bar Association contains, besides the reports of the meeting, memorials, and the routine business of the association, four very valuable papers. The first is "The State Corporation as a Party in the Federal Courts," by Hon. Francis E. Baker, judge of the Seventh Circuit of the United States. This is a topic of great interest, and is treated with much ability. "A Plea for the Just Valuation of Facts," by Hon. Alexander Hamilton, president of the Virginia State Bar Association, is a short but interesting paper, in which he argues that more attention should be paid to the actual facts than to the endeavor to make an impression by forensic argument or any of the more meretricious ways of winning the attention of mankind. The "Genesis of the Federal Judiciary System," by W. B. Richards, is an historical paper of great value. "The American Merchant Marine—Legislation as a Factor in its Development," by R. G. Bickford, treats of a subject which must be one of ever-growing interest to us. He treats of the method for forming an American system of subsidies and for fostering the industries which have been allowed to decay while the manufacturing interests have been aided in every way.