CURRENT LEGAL PERIODICALS.

INSURANCE.

Defects of the Armstrong Committee's Legislation Relating to the Dividends of Mutual Life Insurance Policy Holders. Samuel P. Clarke. The charter of the New York Mutual Life Insurance Company provides that the officers of the company, once in five years, or oftener, "shall cause a balance to be struck of the affairs of the company, and shall credit each member with an equitable share of the profits." Mr. Clark prints a table of the payments and the dividends on his policy for twenty years. He can find no explanation for the mysteries which this table presents, or any system by which it can be assumed the company could have been guided when deciding what was an 'equitable share' of the profits to be paid as a dividend. In view of this fact he seems to be justified in asking if the company has acted on any principle, or if "their course from first to last has been muddle-headed, capricious and arbitrary?" The Armstrong Committee gives no satisfactory answer, but does find that the "amount receivable by policy holders, whether their dividends have been annual or deferred have been left to the discretion of its officers, and their discretion has been exercised in such a manner that while the returns to the policy holders have been diminished there has been a steadily increasing surplus and a constant growth in the totals of income, business and assets.' " Mr. Clarke proceeds to note the principle which he believes should govern in ascertaining and distributing the surplus of Mutual Life Companies, and the objects of the legislation favored by the Armstrong Committee. He claims that "the boiled down essence of the actuary's theory and practice is, 'the more you pay the less you get!' and "so blinded, warped and set by this theory is he, that he honestly believes this to be equitable. Good Lord, deliver us out of the hands of the actuary, and for our judge give us somebody who knows iniquity when he sees it!" It is contended that the Armstrong Committee, "by errors of principle, has done a damage to the interests of policy holders, which, in the long run, will greatly outweigh all the advantages that may result from the Committee's good and skillful work in ferreting out administrative abuses."

American Law Register, March–April, pp. 161–196.

CONSTITUTIONAL LAW.

Acquisition and Government of National Domain. David R. Watson. Beginning with the perplexities of Jefferson, to whom the problem first presented itself, and examining the decisions of the courts and the acts and writings of executive officers and satesmen through the century which has followed Jefferson's administration, Mr. Watson sums up the result as follows:—

"Foreign territory acquired by the United States is subject to two classifications: First, territory which is incorporated into the United States. This is subject to the provisions of the Constitution, and its people are entitled to its benefits, including the Bill of Rights, com-

monly known as the first ten amendments. Second: territory which is not incorporated into the United States, but which may be regarded as outlying territory. This is subject to be governed by Congress under the powers granted in the Constitution applicable to such territory, not necessarily including all the provisions of the Bill of Rights, but subject to such limitations upon Congressional action as inhere in the "prohibitions,' of the Constitution. Third, the United States has full power to hold annexed territory until its inhabitants are qualified to become citizens thereof, and Congress may determine how long that period shall continue.

American Law Review, March–April, pp. 239–254.

CRIMINAL LAW.

The true remedy for Lynch Law. Hannis Taylor. The wording of the title to this article is such as to lead the reader in an examination of the text in order to at once apprehend, and if possible acclaim, the true, and presumably new, cure for this primitive method of punishment. The disappointment is great, therefore, when one meets with the old arguments against the law's delays in this country and the glorification of the criminal procedure of England. All this has been discussed and re-discussed before. It is well known to all students of the subject that while we are deploring our over-elaborate methods over here, the English are earnestly asking that their over-simple method of delivering the accused into the hands of a judge of an inferior tribunal without hope of appeal from the arbitrary rulings of that judge, shall be changed. The case of Beck, culminating in the summer of 1904 in the "pardon" of that innocent person for something he had not done, and for which he had suffered a long term of imprisonment, opened the eyes of civilized and thinking Englishmen to the very evident evils of their criminal procedure. To cure our own ills by acquiring those of others who acknowledge that they are suffering greatly under them, seems scarcely a "true" remedy for them.

American Law Review, March–April, pp. 255–266.

CONSPIRACY.

Conspiracy as a crime and as a Tort. Francis M. Burdick. Conspiracy as a crime has a full recognition in the courts; conspiracy as a tort, however, does not occupy so well recognized a place. Mr. Burdick argues with ingenuity, cites cases with great skill, and appeals to reason very successfully, to show that if it is true that the "essential elements, whether of a criminal or of an actionable conspiracy are the same, though to sustain an action special damage must be proved" it would seem to follow that we may haye the substantive tort of conspiracy, even when the acts to be done by the conspirators would be actionable if done by them acting singly; that in such a case the conspiracy is not a mere matter of aggravation of damages inflicted by the various tortious acts, but is a cause of action by itself.

Mr. Burdick contends that the recognition of a tort of conspiracy has practical advantages in that it enables the profession to treat civil and criminal conspiracies to injure, as in *pari passu*; and that it tends to diminish rather than to increase litigation.

Columbia Law Review, April, pp. 229–247.

APPEALS.

Appellate Jurisdiction. Everett P. Wheeler. A short article but a notable one. It condemns in severe language the mischiefs arising from the present state of the law of appeals. Mr. Wheeler says, "the trial of a case under this system has become a game, and if one of the lawyers violates the rule of the game it must be played over again." The tendency of the courts to render judgment on technical grounds is severely condemned, and the lawyer who would take advantage of such technicalities is very justly characterized in these words, "A lawyer whose first thought is to win his case on a technicality and not on the merits may be a sharp attorney, but will never be a first rate lawyer. In every other profession clever tricks are discredited. They ought to be in ours. The machinery of the courts should be so constructed and administered as to make their success impossible, and to do justice to every litigant according to the merits of his case. After all, lawyers are made for clients—not clients for lawyers."

Columbia Law Review, April, pp. 248–254.

BIOGRAPHY.

Frederic William Maitland. Gaillard Thomas Lapsley. "It is indeed a master that we have lost in the person of Frederic William Maitland." says the biographer, and no one who has ever had the pleasure and the profit given by an acquaintance with even one line of Mr. Maitland's varied work, will refuse consent. The death of Mr. Maitland is so great a disaster to the world of letters in which he worked that it seems as if no words could be sufficiently expressive of that loss. Mr. Lapsley knew, and studied under, Mr. Maitland, and writing as a disciple says, "It is not only the learned world of law, history and political philosophy that is bereaved by his death, it is not only the University which he served and loved well—it is rather every man who cares for learning and truth, for honest, tireless work and high-minded gentle living." He might well have added to that list, all who care for literature that is a delight, for Mr. Maitland not only had that to say which was worth saying, he knew how to say it worthily, and over and through all that he wrote played the light of a wit, delicate, spontaneous, keen and yet kind. A wit that gave to an American a vivid sense of kinship—a feeling that it is believed he would not have repudiated.

Mr. Lapsley gives a detailed account of the work of Mr. Maitland, showing his great activity, his enthusiasm, especially for that latest work upon the Year Books which has been so immensely valuable, and the vast debt which all students of the English law owe to him. This latter part of the study, however, owing, perhaps, to the necessity of outlining so great an amount of work done, in so small a space, seems rather dry and devoid of that subtle atmosphere of comprehension and appreciation which is the vital air of biography.

Green Bag. April, pp. 205–213.