

BOOK REVIEWS.

GENERAL PRINCIPLES OF THE LAW OF TORTS. By JOHN C. TOWNES, LL. D. Austin, Texas: Austin Printing Company. 1907. Pp. xi, 337.

As the title indicates, this book deals with the general principles underlying the law of torts and does not take up at all what the author calls the "named torts" except in an appendix, added to give completeness to the work. In this appendix there is a brief treatment of negligence, nuisance, fraud, assault and battery, false imprisonment, malicious prosecution, injuries resulting in death, defamation, torts violative of rights in real property, torts violative of rights in personal property, and interference with property rights under judicial process.

Professor Townes is writing primarily for law students, although there is a generous citation of cases for the assistance of the active practitioner. As a law school text book it is well conceived and gives a clear and complete statement of those principles which are at the basis of all tort law. Perhaps a self-taught student with this book in his hands might be misled by a lack of balance noticeable from the practical point of view. When he began to practice he would hardly be prepared for the great importance which assumption of risk and contributory negligence would take on. This lack of balance, of course, would be corrected by the lecturer when the book was in use by law school classes, and for such use its broad and clear treatment of the subject would be very valuable.

S. B. S.

A TREATISE ON EQUITY JURISPRUDENCE AS ADMINISTERED IN THE UNITED STATES OF AMERICA. By JOHN NORTON POMEROY. STUDENTS' EDITION. By JOHN NORTON POMEROY, JR. San Francisco: Bancroft-Whitney Company. 1907. Pp. xvi, 1048.

The compression of the essential parts of his father's work of four large volumes into a single book of serviceable size is the task assumed by John Norton Pomeroy, Jr. That the revision has been carefully made is not alone a sufficient justi-

fication for its existence. So admirable is the original work, so broad and scholarly is its treatment of the fundamental principles of equity jurisprudence and so clear and comprehensive its discussion of their application that its study ought to form a part of the training of every student and of every practitioner. Furthermore, the day is fast passing—if, in fact, it has not already passed—when there is any need for a “student’s text book,” as the usefulness of such volumes has largely ceased with the almost universal adoption of the more effective and more scientific case system. It seems, therefore, a difficult task to justify the present volume, for every student ought to be encouraged to consult the original work of the senior Pomeroy if he needs a broader viewpoint than that furnished by his cases, and every practitioner, of course, will desire to avail himself of all the learning at his service in that classic work.

Disregarding, however, these considerations, we can safely say that the “Students’ Edition” represents a careful and discriminating effort to compress within a single volume an adequate treatment of the broad doctrine of equity. Fortunately, the present editor has adopted the wise plan of accomplishing this result, not by altering the language used by his father, nor by eliminating individual paragraphs, but rather by cutting out the discussion of particular branches of the law deemed by the editor of lesser importance, and by sweeping away nine-tenths of the original notes. The value of the plan is apparent to anyone familiar with the keen logic and wonderful clearness of expression found in every page of the father’s fruitful work. To put before the student within a single volume these thoughts and these discussions of the fundamental principles involved with a few references to leading cases has been the aim of the present editor. His success has been marked. Instead of the confusing discussions, garbled sentences and crude expressions so frequently found in abridgments of this nature, we have a volume which gives to the reader the privilege of studying the subject of equity jurisprudence in the words of a master, coupled with sufficient notes to bring the work down to date and to refer the student to the original books for the leading cases.

R. D. J.

THE LAW OF CHECKS, NOTES AND BANKS, INCLUDING THE RIGHT OF PARTIES IN DEALING WITH BANKS. By THOMAS C. SIMONTON. New York: Victor Van Horen. 1906. Pp. 176.

The author of the above book is already known as a legal writer through his books entitled "Simonton on Municipal Bonds," and "A Hand-book of Practical Law." No attempt is made in this book to present a learned and exhaustive treatise. The object is, rather, to give in small compass the legal ground and reason for the various transactions with commercial paper which business men are carrying on all the time. Added to this is a treatment of the nature and powers of banks. The art of writing legal works for popular consumption is a very difficult one, but Mr. Simonton seems to be at home in this sort of work. However, even when well done, such books are very apt to foster only that little knowledge which is a dangerous thing. The ordinary business man who has learned sound business practice and who consults his attorney on points of difficulty will probably be safer than the one who studies up the subject in a popular text-book and relies entirely on the knowledge thus gained.

S. B. S.

A TREATISE ON THE LAW OF REPLEVIN, AS ADMINISTERED IN THE COURTS OF THE UNITED STATES AND ENGLAND. By H. W. WELLS. Second Edition with notes prepared by Hon. E. T. WELLS, late Associate Justice of the Supreme Court of the Territory of Colorado, from cases selected by the author. Albany, N. Y.: Banks & Company. 1907. Pp. xcv, 807.

Lawyers are always glad when a standard work, which has grown somewhat out of date, is edited and modernized. "Wells on Replevin" has been standard for a long time, but changes in the law take place quickly now, and time enough has elapsed since it was first written in 1879 to make a new edition necessary. The original work was exhaustive, citing over three thousand authorities. The new edition does not disturb the text, but adds the new matter in the form of full notes at the ends of chapters. An especially valuable feature of the work is an excellent index, itself covering 116 pages, which makes readily available the closely packed meat of the book.

S. B. S.

THE LAW AND PRACTICE OF DIVORCE. By G. L. HARDY. London: Effingham Wilson. 1907. Pp. vii, 209.

This little volume is really a handbook containing in a brief compass a summary of the present law of divorce in England. Its treatment of the subject is purely practical. The author has made no attempt to deal with the question of the dissolution of the marital relation from either the historical or analytical viewpoint. For those persons who desire to ascertain whether a divorce or a decree of separation will be awarded by an English court under given comparatively simple circumstances, Mr. Hardy's work will be of assistance, because it will furnish the necessary information as to the law and procedure involved in a very concise form. An interesting appendix to the book contains in full two recent statutes of great importance—The Matrimonial Causes Act (1907), and the Deceased Wife's Sister's Marriage Act (1907).

R. D. J.

THE LAW OF PERSONAL INJURIES, AND INCIDENTALLY DAMAGE TO PROPERTY BY RAILWAY TRAINS, BASED ON THE STATUTES AND DECISIONS OF THE SUPREME COURT OF THE STATE OF GEORGIA. By JOHN L. HOPKINS. Atlanta, Georgia: Foote & Davies Company. 1902. Pp. lii, 849.

As indicated by its title, this book is a text-book digest of the negligence law of Georgia. While such text-books can never rank with original works that break the way through some unexplored wilderness of the law, when well done they are extremely valuable, and this particular one is eminently well done. Anyone who desires to find the state of negligence law in Georgia on any particular point needs only to turn to its pages, and, by means of its logical arrangement and full index, he will soon be in possession of all the court of last resort of that State has to say on that subject. When once the ground covered by such a book as this has been thoroughly worked over, and the results put in permanent form, no one, whose time is of any value, can afford to do it again for himself. Consequently, we should expect to find this book in the library of every Georgia lawyer whose practice ever included negligence law.

S. B. S.

A TREATISE ON SUITS IN CHANCERY; SETTING FORTH THE PRINCIPLES, PLEADINGS, PRACTICE, PROOFS AND PROCESSES OF THE JURISPRUDENCE OF EQUITY; AND GIVING NUMEROUS ILLUSTRATIVE FORMS OF PLEADINGS, WRITS, ORDERS, REPORTS, DECREES AND OTHER PROCEEDINGS IN SUITS IN CHANCERY FROM THEIR BEGINNING TO THEIR ENDING; BESIDES MANY PRACTICAL SUGGESTIONS FOR SOLICITORS AND MASTERS. Second Edition. By HENRY R. GIBSON, A. M., LL. D. Knoxville, Tenn.: Gaut-Ogden Co. 1907. Pp. xx, 1203.

"Gibson's Suits in Chancery" has been the standard work on the equity jurisprudence and practice of Tennessee since it was first published in 1891, when the author was in the midst of his career as chancellor. The book before us is the second edition, enlarged and improved by the author's maturest thought. His strong philosophical bent of mind is apparent throughout, yet the intent and accomplishment of the book is eminently practical, so that a balance of valuable qualities is secured to a degree that is most unusual. The scope of the work includes a complete treatise on equity jurisprudence, with special reference to Tennessee, interwoven with everything of a practical nature, form, pleading, writ, order, or anything else that would serve in the practical enforcement of the rights and remedies set out, the whole made available by an excellent index. Such a scope inevitably results in a large book, and when we learn that, among other things, the concurrent jurisdiction of the Chancery Court of Tennessee includes "all suits to recover money due for work or labor done, or services rendered, or for the hire, rent, use, price or value of property, real or personal," we are constrained to wonder at the skill which compresses so much into little more than twelve hundred pages. Probably it was done by leaving out everything unnecessary. This reveals large experience. It is a much to be regretted result of our federal system of diverse jurisdictions, that the value of so masterful a work must be limited in the main to a single state.

S. B. S.

PROCEEDINGS OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION AT ITS THIRD ANNUAL MEETING. Lancaster, Pa.: Wickersham Press. 1907. Pp. 258.

The addresses reported in these Proceedings are written, as is of course to be expected from the purposes of the associa-

tion, from the point of view of an economist rather than from that of a lawyer. Nevertheless, even from the purely technical aspect several of the papers are of undoubted interest to the legal profession. This is especially true of William C. Johnson's address on the Regulation of Life Insurance Companies. The discussion of the problems connected with colonial administration are also worthy of consideration. The article of Charles Johnston (Bengal Civil Service, Retired) "Helping to Govern India," is not only illuminating as to the basis of some of England's administrative measures, but also decidedly entertaining.

R. D. J.

PROBATE REPORTS ANNOTATED: CONTAINING RECENT CASES OF GENERAL VALUE DECIDED IN THE COURTS OF THE SEVERAL STATES ON POINTS OF PROBATE LAW, WITH NOTES AND REFERENCES. By WM. LAWRENCE CLARK, Vol. XI. New York: Baker, Voorhis & Co. 1907. Pp. xxiv, 736.

The modern development of specialism in the law has produced not only text-books on many of its particular branches, but, in increasingly great numbers, series of reports, devoted to one subject. Among the best of these are Probate Reports Annotated. Primarily, each volume consists of about a hundred cases on probate law, drawn from the recent decisions of the courts of last resort of the several states. Following each case is a copious note giving many citations on the same general subject covered by the case reported. At the end of the volume appears a section called "Memoranda of Other Recent Decisions," which gives an annual digest of the probate law of the United States.

The careful selection of the cases printed in full insures that they are all important, and space will not permit here a discussion of the points involved, but as an interesting example of the extent to which some courts will go in their endeavors to prevent the exercise of undue influence, the following is quoted from the syllabus of *Edgerly v. Edgerly; et al.*, 73 N. H., 407, and found on page 147 of the volume before us.

"On application for probate of a will, the burden is on the proponent to show that the will was not the result of undue influence, so that a mere absence of evidence on such issue is fatal to the allowance of the will."

S. B. S.

PROCEEDINGS OF THE THIRTY-FIRST ANNUAL MEETING OF THE ILLINOIS STATE BAR ASSOCIATION. Springfield, Illinois: Illinois State Register Book Publishing House. 1907. Pp. vi, 214, 164.

In addition to the usual record of the proceedings of a bar association meeting, this Report contains an illuminating discussion of the problem of particular interest in the Central and Western States of the best method of securing fair and impartial service and equitable rates from the railroads. The principal paper on this subject, presented by James H. Wilkerson, Esq., contains a review of the history of federal railroad regulation. In reply thereto Blewett Lee, Esq., delivered an informal address, which in cogent and concise language, summarized the damages which would be imposed upon the railroads by the passage of unconsidered and unwise rate laws, reciprocal demurrage statutes, etc. The financial history of the last six months clearly proves that the prophecy of Mr. Lee was grounded on a solid foundation.

Another interesting and suggestive address is by Edward M. Shepard, Esq., of New York, entitled "Corporate Capitalization and Public Morals." This contains various novel proposals, notably the elimination of the present practice of expressing the value of shares of stock in dollars, which were widely commented on in the general press some months ago. Other papers presented include "Pure Food Laws," by Alfred H. Jones, Esq.; "Some Aspects of the Federal Food and Drug Act," by Frank F. Reed, Esq., and an historical essay on "The Lincoln-Douglas Debates," by Hon. Clark E. Carr.

R. D. J.

COMMENTARIES ON THE LAW OF CONTRACTS. By JOEL PRENTISS BISHOP, LL. D. Second Edition, revised and enlarged by Marion C. Early. Chicago: T. H. Flood & Company, 1907. Pp. xxii, 829.

There have been few legal text-book writers of modern times who have stamped their personality upon the law as has Joel Prentiss Bishop. To him we owe a clear conception of the legal nature of the marriage relation. On reading any of his works we are struck by the freshness and originality of his views, without in the slightest feeling that we are reading an author's opinion instead of the law. We are compelled con-

tinually to wonder at the ability which expresses so much in such small compass, and yet never lacks clearness.

The work on contracts by this author is one of his best and has stood the test of time so well that it would be superfluous to say anything about the original edition. The new edition follows the original closely. Some few changes have been made here and there in the text where recent developments of the law have modified the rule as there laid down. The development of contract law has been mainly in relation to illegal contracts, contracts in restraint of trade, and contracts against public policy. It is in these departments that the main additions to the text have been made. The chief work of the reviser has been in amplifying the notes and bringing them down to date. In this process almost four thousand new cases have been added. The book is made more generally available by references to the reports in common use, such as the Trinity Series, Lawyers' Reports Annotated and the National Reporter System.

S. B. S.

ANNOTATED CASES ON THE LAW OF SURETYSHIP. Selected and annotated by ARTHUR ADELBERT STEARNS. Cincinnati: The W. H. Anderson Co. 1907. Pp. xvii, 688.

The well-known increase in the use of surety bonds to protect the actors in almost every important transaction of the present day business world, which has resulted in a large measure from the development through corporate enterprise of a well recognized system of furnishing such security, has given a new importance to this branch of the law. A natural outcome is the production of a case book, designed for the use of students, devoted exclusively to the law of suretyship. The cases in Dr. Stearn's volume, which is based on the well established plan of such a book, have been well selected. Their grouping, under clearly defined headings, aids in giving to the reader a comprehensive view of the natural divisions of the subject, *e. g.*, Commercial Guarantees, Judicial Bonds, Bonds of Public Officers, etc. It may be thought that such headings as these suggest an empirical rather than a scientific treatment of the basic principles involved, but a more extended examination of the volume dispels this first impression. The notes added by the author to each section not only tend to serve as brief digests of the point illustrated by the principal case, but also to stimulate the student to further investigation of the authorities. The

author has not escaped the danger so omnipresent to the writer of case books. In his desire to secure brevity he has occasionally (*e. g.*, at page 325 in his report of *Mersman v. Werges, et al.*, 112 U. S., 139), so cut the report as to eliminate entirely any clear statement of the facts; and instead left it to the student to deduce these from the opinion. This treatment of a case reduces it merely to a condensed opinion—practically yielding the same mental effect as an excerpt from a text-book. The typography and index of the volume are entitled to special commendation for their clearness.

R. D. J.

TREATISE ON THE LAW OF NATURALIZATION OF THE UNITED STATES. By FREDERICK VAN DYNE. Published for the author through the Lawyers' Co-Operative Publishing Company. Washington: 1907. Pp. xviii, 528.

The passage of the Acts of Congress of June 29, 1906, and March 2, 1907, introduced radical changes in the naturalization laws of the United States, not only by making more stringent the requirements imposed upon those desiring to become citizens, but also by changing in many essential respects the previous practice in the United States and State courts. To explain and to amplify these new statutes has evidently been the dominant purpose of Mr. Van Dyne in preparing his volume on naturalization. His treatment of all the questions involved is associated with the appropriate sections of these Acts. The result is that his work is rather a digest of the law and practice of the naturalization courts, than the survey of a student of the broad problems of citizenship. These have, however, already been discussed in a companion volume by the same author. There are two features of the present volume which deserve particular commendation. One is the inclusion, frequently *in extenso*, of the Executive Orders, Naturalization Regulations and similar State papers issued by the Federal Government. The other is the full quotations from opinions of such authoritative bodies as the Spanish Treaty Claims Commission (1905). For example the opinion of that commission in the case of *Ruiz, et al. v. The United States*, given at length following page 144, is particularly illuminating on the question of the conclusiveness of a certificate of naturalization.

The importance of the present volume is emphasized by the vigorous efforts now being made under the joint direction of the Departments of Justice and of Commerce and Labor to

stamp out through the provisions of the Acts on which Mr. Van Dyne's volume is based, the widespread naturalization frauds which in the past have been such a disgrace to the country.

R. D. J.

CODE OF FEDERAL PROCEDURE. Embodying Enactments of Congress, Constitutional Provisions, Established Principles and Court Rules in Force December 1, 1906, and the Bankruptcy Act of 1898, with Amendments and Orders, together with a Collection of Forms and Precedents. WALTER MALINS ROSE. Three Volumes. San Francisco: Bancroft-Whitney Company. 1907. Pp. xxx, 1—1042; 1043—2044; 2045—3186.

This work is the outgrowth of Desty's Federal Procedure, the ninth and last edition of which was published in 1899. Mr. Rose has attempted to place before the profession a Code of Federal Procedure arranged on the plan of the Statutory Codes of many of the States. In the preparation and arrangement of his work he has made use of Desty's Procedure, but has rearranged it entirely, and supplemented it not only by a better and more practical arrangement, but by large additions of great value. Since there is no statutory code of procedure officially compiled by Congress, the author has gathered around a logical outline, the constitutional and statutory provisions, court rules and decided cases or established principles of procedure in all the Federal courts, except the Court of Claims and the courts of the District of Columbia. The Code proper is divided into two parts by the author, Part I, entitled "Federal Courts and Their Jurisdiction," and Part II, entitled "Federal Procedure." These are followed by three appendices, the first containing the Rules of the Supreme Court, Equity and Admiralty Rules, the Rules of the Court of Claims and the Rules of all the Circuit Courts of Appeal and Circuit Courts of the various Districts. The second appendix contains the Bankruptcy Act and Orders in Bankruptcy, and the third, a very complete set of forms suitable for almost every phrase of practice in any of the Federal Courts. An index of 134 pages at the end of Volume III, is so complete and has been prepared so carefully from the standpoint of the daily needs of the practitioner that it is worthy of especial notice.

The author has also preceded the sections of the code by tables of Parallel References referring to the sections of the

Constitution, Revised Statutes and Statutes at Large, and to the rules of the various courts in chronological or numerical order and to the sections where they are treated in the Code. This, together with the index, make the book a particularly good tool for practical work. There is no list of case citations other than that in the page notes, and there seems to be no necessity for it in a work of this character. The mechanical arrangement of a three-volume work of this character is of the utmost importance, for the practitioner who uses it must feel that he is able to get all there is on the specific subject in which he is interested in the shortest time, and, with the admirable index and the parallel references, such is easily possible in using Mr. Rose's work.

Part I, on "Federal Courts and Their Jurisdiction" takes up Federal jurisdiction in general, then that of the various Federal courts. A particularly valuable feature of the author's work is the fact that he treats each topic fully and completely, even at the cost of repetition. The work is peculiarly a code in this respect in that the bare law or manner of procedure is stated in concise form with page citations for authority, and practically no space is given to the statement of reasons or theories. Following the chapters on the courts and their jurisdiction, is a chapter on "Fees." This chapter covers the entire field and its compilation from the various rules and statutes and its excellent arrangement make it a most valuable addition to the work.

Part II, is entitled "Federal Procedure." Some of the chapter titles show the system of distinct and separate classification which is characteristic of the work: Chapter 22, Writs and Process in Federal Courts; chapter 28, Parties; chapter 32, Injunctions and Receivers; chapter 47, Arrest and Bail, Civil and Criminal; chapter 58, Mode of taking Appeals, Assignments and Exceptions.

Chapter 42, on "Procedure in Causes under Commerce Laws," is a new and carefully written chapter, and covers the recent legislation on the subject, with citations to such judicial interpretations as were available at the date of publication. Here again the conciseness and orderly arrangement add to the workable value of the chapter.

If a code is of value it is because it is a good workable guide to practice in accordance with its terms. Mr. Rose has given the profession such a book.

R. W. B.

NEW YORK EMPLOYERS' LIABILITY ACT. By ALGER and SLATER. Second Edition by George W. Alger, of the New York Bar. Albany: Matthew Bender & Co. 1907. Pp. xlvi, 291.

This book is written for the use of the New York practitioner. Messrs. Alger and Slater issued the first edition of their work in 1903, soon after the New York Employers' Liability Act of 1902 went into effect, and before it had been judicially interpreted. The cases cited in the first edition are largely English and American decisions from jurisdictions where Employers' Liability Acts had been in force prior to the passage of the New York Act. The new edition by Mr. Alger himself contains, in addition to the very complete citations of cases from other jurisdictions, a full discussion of the New York cases interpreting the Act of 1902. This book does not discuss reasons or theories, but undertakes to state the law in a concise form, citing full lists of cases supporting the propositions of law as stated.

Chapter II, entitled "Changes Effected by the Act in the Responsibility of Employers for the Acts of Persons Exercising Superintendence," has been very much enlarged and improved in this edition by the addition of the New York decisions interpreting this portion of the Act. The author's discussion of the common law on assumed risk as in effect in New York prior to the Act of 1902, and his section upon the change made in the New York law in this respect by section 3 of the Act, is especially clear. The English cases of *Thomas v. Quartermaine*, *Yarmouth v. France* and *Smith v. Baker*, are carefully analyzed and the judicial interpretation of section 3 of the New York Act and the law on assumed risks as evolved from the decisions, is set out in contrast with the English law on this subject.

The principles of employers' liability in general, as enacted into statute law and as distinguished from the common law, are briefly set forth in this little book, making it of value generally in jurisdictions where there is no employers' liability statute.

R. W. B.