

## BOOK REVIEWS.

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REPORTS OF THE AMERICAN BAR ASSOCIATION. Volume XXXII. A Reprint of an Essay on Professional Ethics. By Hon. George Sharswood. Philadelphia. T. & J. W. Johnson Company. 1907. Pp. 193.

No more striking mark of appreciation of intrinsic worth of a legal treatise can be conceived of than its republication by the American Bar Association fifty-four years after the date of its original appearance, and when, in addition to this unique tribute is added the further fact that this republication is made with the clear purpose of stimulating in the bar of this country a true realization of the high standard of ethics which the profession must maintain in public and in private life, it is indeed more than a renewed recognition of the value of the book, it is rather a worthy memorial of the influence for good of one of the noblest leaders of the legal profession. In honoring Chief Justice Sharswood by the reprinting of his well-known work on "Professional Ethics," the American Bar Association has taken a wise method of advancing the work of its committee on a code relating to that subject. No member of the association can read the vigorous work of Justice Sharswood without feeling a quickened determination to aid in preventing the practice of the law from becoming a mere branch of commerce. No one can study the discriminating discussion of the relations between the attorney, the court and the client without again realizing the manifold and delicate obligations which rest upon every counsellor. Consider for a moment the scrupulous nicety which the author (p. 111) displays in analyzing the duty of a lawyer in preparing an affidavit. Examine the earnest plea he makes (p. 69) for a strict upholding of the relative responsibilities of the court and the jury. Compare these thoughts with the every day practice in these matters and the need and the value of the republication of this legal classic are at once apparent.

R. D. J.

FEDERAL USURPATION. By Franklin Pierce, of the New York Bar. New York: D. Appleton & Co. 1908. Pp. xx, 437.

Mr. Pierce has written a vigorous, readable volume embodying the views of those opposed to the alleged centralization of power in the national government. He does not profess to have written a law book, but in his preface says: "This book is a plea for the sacredness of the Constitution of the United States." His thesis is that the Constitution is virtually being amended by the usurpation of power by the President, by manipulation through the judicial interpretations of the Supreme Court and by the undemocratic system of government by committees in vogue in Congress.

In the chapter on "Executive Usurpation," Mr. Pierce cites numerous executive statements and acts to show the growth of the power of the President, concluding the chapter with a strong arraignment of President Roosevelt. The chapter on "Congressional Usurpation" and the "United States Supreme Court" are replete with facts and citations which apparently substantiate Mr. Pierce's charge, that the States are being deprived of their constitutional rights by this insidious system of usurpation rather than by the method of amending the Constitution provided by that instrument itself. The author quite despairs of present conditions, and in the last chapter of his book, entitled, "How to Restore the Democratic Republic," suggests a convention for the amendment of the National Constitution. He says, "This Constitution is the most undemocratic instrument to be found in any country in the world to-day." His book, although somewhat radical, is forcibly suggestive and well written.

R. W. B.

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NEGLIGENCE IN LAW. By Thomas Beven, of the Inner Temple. Third edition, two volumes. London: Stevens and Haynes. Toronto: Canadian Law Book Co. Philadelphia: Cromarty Law Book Co. 1908. Pp. cciv, 1-726, 727-1505.

This edition of Mr. Beven's work is not as valuable for the American practitioner as the previous edition, owing to the fact, which he fully explains in the preface, that an attempt to present the law of the United States side by side with that of England is impossible of success and inexpedient. The

reason for Mr. Beven's decision in this respect comes from his conclusion that "though of the same parentage as ours, American law has in late years been developing along divergent lines, and accepts principles widely applicable that are to us not only novel but fundamentally unsound." Specific instances are cited, one the case of *Lawrence v. Fox*, 20 N. Y. 268, concerning which, Mr. Beven says: "this case decides, that a telegraph company is responsible not only to the sender of a message, but also the addressee; that persons not parties to a contract may, nevertheless, sue for damages for its breach," while in England the contradictory principle is well settled.

Two characteristics of Mr. Beven's method of treatment make these volumes of universal interest: first, his searching inquiry into the validity of the decisions of the courts; and second, the notes in which the author traces the history of many of the principles of the law of negligence, and also shows how and when changes have been made in them. Relative to his keen analysis and criticism of decisions, the author says: "It may be as Lord Coke tell us, that the whole common law of England resides in the breasts of the judges; but in welling from the sanctity of its source it is apt to flow into distractingly cross-currents and to tinge itself with strong individual traces of the particular channel through which it is drawn. To find the true pure stream is a little difficult without the assistance of those methods which purge error in the realms of science or philosophy." For the notes tracing the history of principles and theories, Mr. Beven apologizes, but for the practitioner intent upon the understanding and application of a particular principle to certain concrete facts, these historical notes are of great value.

It is not often that the *style* of the writer of a good usable law book attracts attention, but Mr. Beven's clear vigorous English has lost none of its charm in this edition of his text. One must, aside from the greatness of Mr. Beven's work as a treatise on the law of negligence, characterize it as *attractive*, in beauty of diction, keenness of logic, clearness in the statement of principles, and in the scientific classification of the subject matter of the text.

R. W. B.

**MINING, MINERAL AND GEOLOGICAL LAW.** A treatise on the law of the United States involving Geology, Mineralogy and allied sciences, as mining, real estate, public land, United States customs and other litigation. Also the acquisition and maintenance of mining rights in the public domain and obtaining patents for mineral land under the United States mining laws. By Charles H. Shamel, M. S., LL. B., A. M., Ph. D. 1907. London and New York: Hill Publishing Co. Pp. xxx, 627.

The law is the only profession whose practitioner may be called upon at any time to show himself familiar with the principles and details of any art, science or business whatsoever. To make it at all possible for the lawyer to do this, text books have been written upon a number of the arts and sciences in their legal aspects. The most familiar of these are the works on medical jurisprudence. The present work is a treatise on those aspects of geology which may be of use to the lawyer when considering mining questions, and to the mine owner when considering legal questions.

Adequate works of this two-faced kind are as rare as are men eminent in two professions, but the present book is thoroughly adequate.

The main portion of the book is occupied with the discussion of the various theories of vein formation and to this end all the latest authorities are cited. As is pointed out, the proper theory of the formation of ore deposits is very important in many litigations. The law peculiar to mining rights is then set out.

About a third of the volume is occupied by an appendix which includes the United States mining laws and land office regulations, State and Territorial mining laws, a bibliography and an elaborate table of rock classification and geological formations. The State statutes given are only those of the Western mining States, and are limited to those laws concerning property rights in mines and mining claims. The police statutes are omitted. The full bibliography is one of the features of this work, which is all too seldom met with in books of this class.

This work ought at once to become standard in its department.

S. B. S.

THE GROUNDS AND RUDIMENTS OF LAW. By W. T. Hughes. Vol. I. Chicago: Usonia Book Co. 1908. Pp. xix, 356.

Mr. Hughes has professedly undertaken to condense a vast amount of legal learning within the scope of this small book. "The Grounds and Rudiments of Law," as outlined by him, are largely maxims found in "Broom's Maxims." Mr. Hughes' attitude toward the law and his grandiloquent use of English throughout the book is shown in the opening sentences of his preface: "Bacon and Paul must ever remain two of Justitia's greatest sons! Wrapped in individualistic solitude they stand above all." There are chapters entitled "The Fountains of the Law," "Renaissance of the Civil Law," and "Estoppel." The book is practically valueless for the practitioner, owing to the florid style of the author and his utter lack of solidity and continuity of treatment of the subject matter. The book as a whole discusses subjects that do not present practical difficulties to the lawyer or student, and the author's burdened seriousness is distinctly amusing as expressed in such sentences as on page 7 of the chapter entitled "Fountains of Law," where he says: "The unshackled savage of America was appalled at the national holocaust in Peru submerged in rapine and in blood."

R. W. B.

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DATUM POSTS OF JURISPRUDENCE. By W. T. Hughes. Chicago: Usonia Publishing Co. 1907. Pp. xiv, 250.

A "Datum Post," according to Mr. Hughes, is "a point from which a reckoning is made." In this little volume, the author undertakes to condense and arrange for practical use 416 leading cases, and the various maxims and principles of law illustrated thereby. The chief characteristic of the work is the attempt to condense without sacrificing clearness. The author has succeeded in this remarkably well, but it seems doubtful whether either the practitioner or the careful student would be satisfied with the condensed statement of the author if the original cases are available. The grandiloquent style of the author, so evident in his later work "The Grounds and Rudiments of Law" is not apparent in this work, except in the preface. If a condensed form of a number of "Leading Cases" is needed, Mr. Hughes's book furnishes it.

R. W. B.

A TREATISE ON ELECTRIC LAW, COMPRISING THE LAW GOVERNING ALL ELECTRIC CORPORATIONS, USES AND APPLIANCES, ALSO ALL RELATIVE PUBLIC AND PRIVATE RIGHTS. Second Edition. By Joseph A. Joyce and Howard C. Joyce. Two Volumes. New York: Banks Law Publishing Co. 1907. Pp. cxc, 1774.

The modern tendency to produce legal treatises dealing with a branch of the law included within empirical rather than analytical boundaries is well illustrated by Joyce on Electrical Law. From a legal standpoint there is no real reason, for example, why cases dealing with the rights and duties of electric light corporations should be grouped together merely because they furnish illumination by means of filaments or carbons heated by the passage of an electric current. However there is a real basis of convenience in bringing together within two volumes a discussion of every case in which persons or corporations dealing in or utilizing electricity are concerned, because it is of course true that the resulting problems represent a special class when considered from the purely business standpoint.

The authors have been unusually successful. The earlier edition has been thoroughly gone over and brought down to date by the introduction of much new material. So recent has been the revision that an extended section has been included dealing with the question of wireless telegraphy. The work also includes a very careful examination of the questions arising under the Post Roads Acts and of the Interstate Commerce clause of the Federal Constitution (Chapter IV.) and of the corporate powers of telegraph, telephone and electric light companies (Chapter XIII). The vexed question as to whether and under what circumstances an electric light telegraph or telephone line constitutes an additional burden on the highway for which an abutting owner may claim compensation (See Sec. 296, sq.) is adequately treated. In connection with this discussion it is curious that the latest Pennsylvania Supreme Court case, *Brown vs. Radnor Electric, & Co.*, 208 Pa. 453 (1904) has not been noted, while a country court case has been referred to in some detail (Sec. 331a).

In the first part of the second volume there is a painstaking discussion of the intricate legal problems presented by induced and interfering currents.

The discussion of such questions as injuries to passengers on electric cars, the abuse of authority by street railway employees, &c., could have profitably been omitted as these

subjects are adequately covered by existing works and the mere fact that an electric current is the motive power by which the car is propelled, does not bring these cases within any proper meaning of Electric Law. On the other hand if a chapter had been added on the elementary technique of Applied Electricity it would have been of great assistance to the busy practitioner, who in cases involving the preparation or interpretation of every-day electric contracts is bewildered as to the meaning of the most ordinary terms and in the examination of witnesses in suits involving the overloading of motors, &c., is hopelessly perplexed by the words of even "one syllable" in electrical nomenclature.

*R. D. J.*

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LEGAL ESSAYS. By James Bradley Thayer, LL.D. Edited by Ezra Ripley Thayer. Boston: Boston Cook Company. 1908. Pp. xvi, 402.

This collection of Legal Essays, of the late Professor Thayer, will be of universal interest to the legal profession. It contains a number of papers prepared by Professor Thayer for delivery on special occasions and hitherto unpublished, together with others published from time to time in the Harvard Law Review, and elsewhere. Ezra Ripley Thayer, who has collected his father's essays for publication, states in the preface that no changes have been made in the original except the occasional correction of a clerical error. The editor has prefaced such essay with a short account of the occasion of its original publication or delivery. "The Origin and Scope of the American Doctrine of Constitutional Law" is an address given before the Congress on Jurisprudence and Law Reform, at the World's Fair, at Chicago, on August 9, 1893. Professor Thayer discussed before this Congress the power of the American Judiciary to declare legislative Acts unconstitutional. The essay on "Advisory Opinions" or opinions in which the Judiciary advises the Legislative branch of the government, was written at the request of Chief Justice Bradley, of Rhode Island. The history of this practice in the United States is outlined and the legal quality of such opinions discussed.

This book of essays is more than a set of legal discussions. It shows the human side of Professor Thayer, in the addresses and essays he prepared and delivered before non-professional audiences. In the essay entitled, "The People Without Law,"

Professor Thayer's deep interest in the welfare of the American Indians is shown. He made many addresses on this subject, giving his time freely for years, insisting that it was the duty of the Government to bring the Indians under the protection and control of the ordinary laws of the land. In this essay, originally published in the "Atlantic Monthly," Professor Thayer discussed in a style even more delightful than that used in his professional work, the legal and political history of our relations with the Indians, setting forth his own idea of a constructive governmental policy toward them. Another essay of a non-professional character, and at the same time combining the legal acumen of Professor Thayer with his ability to clarify a subject for a non-professional audience is "Our New Possessions," which was read before a small dining club, of which Professor Thayer was a member.

Bedingfield's Case—"Declarations as a Part of the Res Gesta"—is the most extensive essay in this volume. It was published in the "American Law Review" in 1880 and 1881, and has been cited as authority by many of the higher courts in the United States. One of the most delightful essays of this volume is that entitled, "Trial by Jury of Things Supernatural." This too was first read before the dining club referred to above. It was published in the "Atlantic Monthly" for April, 1890, but is of special interest at this time, owing to the recent criminal cases involving various methods of mental and spiritual healing.

*R. W. B.*

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REPORT OF THE NINETEENTH ANNUAL MEETING OF THE VIRGINIA STATE BAR ASSOCIATION. Edited by John B. Minor. Richmond Press. 1907. Pp. 300.

Added to the committee reports and other proceedings usual at meetings of Bar Associations, are several interesting articles. The one of the widest bearing is by Hon. John R. Dos Passos, on "The Results and Responsibilities of our Representative Democracy," in which the author discusses the necessity of restricting immigration and suggests the desirability of separating citizenship and the right to vote. The vital part of the article is a protest against the extension of the power of the Federal Government to deal with such commercial questions as the creation and control over corporations. Another article of current interest is on "The Eleventh Amendment," by Allen Caperton Braxton.

*R. D. J.*