

## BOOK REVIEWS

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LAW, ITS ORIGIN, GROWTH AND FUNCTION. By James Coolidge Carter. New York and London: G. P. Putnam's Sons. 1907. Pp. vii, 355.

In this volume are assembled thirteen lectures, which Mr. Carter at the time of his death was preparing for delivery before the Harvard Law School. They were the outgrowth of his earnest conviction, deepened by maturing years, that the rules of law as empirically laid down in the text books and decided cases should be studied "as parts of a classified and orderly system exhibiting the law as a science." His paramount theme is that the foundation of all private law is to be sought not in legislation conceived as the direction of a sovereign, but in the development of customs. His view of the functions of judges is that these men are experts in determining what one person has a right to expect from his neighbor, or in short, what is the custom or rule of conduct of the people with regard to any particular transaction. In the development of the investigation the author, after pointing out the numerous, but universally unsuccessful, attempts to accurately define the meaning of "law," first examines from an historical standpoint the gradual growth of the regulation of human conduct. From this study, the outlines of which are skillfully condensed in a few pages, the conclusion is derived that custom is the only law disclosed in the earliest stages of society. By an analysis based on illuminating sketches of the state of society at different historical periods, and in varied parts of the world the conclusion is reached that it is as true to-day as it was among the earliest primitive savages that law in its essence is merely the expression through the decisions of judges (or experts) of the customs of the people. For example, Mr. Carter believes that in the interpretation of a deed the Court merely decides whether or not under existing customs or rules of conduct the language used is sufficient to pass the title. The same principle is to be applied to the law of negligence, of carriers, etc. Even the well-known codes are made to fit into this theory by the statement "The law enacted in these civil codes was not *made* by the legislation enacting them" (p. 117). In the summary of this analysis of historical devel-

opment of law Mr. Carter says "Custom, therefore, is not the accidental, trivial and meaningless thing which we sometimes think it to be. It is the imperishable record of the wisdom of the illimitable past reaching back to the infancy of the race, revised, corrected, enlarged, open to all alike and read and understood by all."

Space will not permit of even a suggestion of the discussion of the proper function of legislation which is defined to be primarily that of public and criminal law, or of the keen presentation of the dangers (but not of the advantages) of codes; or of the vigorous and at times almost ferocious attacks on the theories of Bentham, of Austen and of Maine.

The language throughout is forceful and the logic convincing. To the almost irresistible temptation of the enthusiastic advocate, the stretching of his theories to an unwarrantable extent, Mr. Carter has succumbed but seldom. No one can read his glowing words without being struck with the charm of his style and the vividness of his expression. No one can study his book without obtaining a most illuminating insight into the processes by which the law has grown in the past and will develop in the future. No one can peruse his volume without the steadfast conviction that Mr. Carter has made a most valuable contribution to the analytical and accurate study of a noble science.

*R. D. J.*

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INTERNATIONAL LAW APPLIED TO THE RUSSO-JAPANESE WAR, WITH THE DECISIONS OF THE JAPANESE PRIZE COURTS. By Sakuyé Takahashi. American edition. New York: The Banks Law Publishing Co. 1908. Pp. xviii, 805.

This work is of unusual interest and timeliness. The qualification of the author is obvious. He is professor of international law in the Imperial University of Tokyo; former professor of the I. J. Naval Staff College; vice president of the International Law Association, London; legal adviser to the Japanese fleet during the China-Japanese War; member of the legal committee in the I. J. Department for Foreign Affairs during the Russo-Japanese War, and author of "Cases on International Law During the Chino-Japanese War." Although the author modestly keeps himself in the background, the book betrays that he himself furnished much of the advice on which important action was taken, and thus we have information from very intimate and exact sources.

The chief value of the book is that it makes accessible a great mass of documents which it would be impossible for the ordinary reader to reach, Part V being entirely given up to reports of the decisions of Japanese prize courts.

Apart from the official documents, which, of course, speak for themselves, the text of the book is given up mainly to special pleading on the side of Japan. In view of the place which Japan has made for herself in the family of nations, the book is almost pathetic in its evident efforts to set out Japanese action in a light worthy of according her an equal place among the nations. No author could write the following unless he belonged to a very new country:

"Japan has prescribed strict observance of the Geneva Convention on the part of her troops, which she must continue to do, as her aim is to be treated as an equal of European States."

A pleasing feature of the book is the appreciation which it shows of the good offices of the United States. On page 59 appears the following:

"No judicious reader could possibly glance over these pages without being made aware of the book's intention, deeper than it may apparently seem, to bring to light the friendly attitude which the United States Government never failed to preserve during the withdrawal of the Japanese subjects who were found in Russian territories and in the land occupied by Russia. It has been an earnest endeavor to make both the American and Japanese public well acquainted with facts hitherto comparatively little known. Peace among civilized nations must be the pedestal upon which international intercourse is to be placed; and if any two friendly nations breed estrangement, however slight, because of a sensational and groundless misunderstanding, fermented among the uneducated classes, then the more refined and highly educated should be largely held responsible for the consequences. What perhaps seems a too minute exposure of details illustrative of the Americo-Japanese friendship surely will not be regarded as casual when viewed in such a light."

The book is divided into five parts, an enumeration of which will give a good idea of its scope.

Part I—The Outbreak of War and Its Effects.

Part II—Laws and Customs of Land Warfare.

Part III—Laws of Naval Warfare.

Part IV—Neutrality.

Part V—New Cases on Prize Law Added by the Japanese Prize Courts.

A complete diary of the war and the text of the treaty of peace are included with other interesting matter in the appendices.

S. B. S.

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A TREATISE ON THE LAW GOVERNING INDICTMENTS. By Howard C. Joyce. Albany, N. Y.: Matthew Binder & Co. 1908. Pp. xcii, 916.

Although the subject of the proper drafting and presentation of indictments is one of great difficulty, except in the simplest cases, no adequate treatment of the extremely technical questions involved has hitherto been presented to the public. In Mr. Joyce's volume is now to be found a thorough, systematic and accurate discussion not only of the problems of technique involved in the actual preparation of the instrument, but also of the broader questions relating to the scope of the powers and the limits of the jurisdiction of the grand jury, the interpretation of the phrases "due process of law," "infamous crimes," etc. The dominant characteristics of the book are the accuracy of statement of the existing law and the clearness of the language used, rather than any marked originality of treatment or evidence of scholastic investigation of basic theoretical principles. However the volume does not purport to be a comprehensive philosophical treatise, and Mr. Joyce has in it given to the profession another book of great practical usefulness.

One feature is deserving of special mention and commendation. As an appendix is added a collection of well-chosen and appropriate forms with a novel, but most desirable addition: *i. e.*, a reference to the report of the exact case where the particular form was used and sustained by the test of actual experience.

R. D. J.

REPORT OF THE THIRTIETH ANNUAL MEETING OF THE AMERICAN BAR ASSOCIATION, HELD AT PORTLAND, ME., AUGUST 26, 27 AND 28, 1907. Baltimore, Md.: The Lord Baltimore Press. 1907. Pp. 1266.

The Annual Report of the American Bar Association is, as usual, full of interest, primarily because in the annual address of the president there is embodied a concise statement of the progress of legislation during the past year. In addition to this the routine reports of the standing committees disclose the effect of the concerted opinion of the profession as evidenced *inter alia* by the legislation adopted by the various States upon the recommendation of the association. Particularly suggestive in this respect is the address of the president of the Conference on Uniform State Laws. Although, as therein pointed out, the past year was not as memorable in this movement as the one before, yet it is evident from the report that there is a decided interest in the subject of uniform laws which is being made manifest not only by the demands of the State Bar Association, but also by the laws already enacted.

The most noteworthy of the addresses delivered before the convention are those of the Hon. James Bryce on "The Influence of National Character and Historical Environment on the Development of the Common Law," and of the Hon. Charles A. Prouty on "A Fundamental Defect in the Act to Regulate Commerce." In the latter paper there is a careful analysis of the powers of the Interstate Commerce Commission, from which the author draws the conclusion that unless the executive and judicial functions now exercised by the commission are separated and the former entrusted to a new Department of Commerce, there is a grave reason to apprehend that the commission "will either become remiss in its executive duties, or will, in the zeal of those, become unfitted for the dispassionate performance of its judicial functions." Although this tendency has not yet been manifest in the work of the present commission, yet there is undoubtedly an unwise combination of two distinctive classes of work which now must be handled by one commission. In addition to this fact it is becoming more and more clear that the commission is overloaded with work, so that some lightening of its burdens must be secured in the near future to enable it to fulfill with promptness the difficult duties entrusted to it.

R. D. J.

A TREATISE ON THE INCORPORATION AND ORGANIZATION OF CORPORATIONS CREATED UNDER THE "BUSINESS CORPORATION ACTS OF THE SEVERAL STATES AND TERRITORIES OF THE UNITED STATES." Third edition. Revised to January 1, 1908. By Thomas Gold Frost. Boston, Mass.: Little, Brown & Co. 1908. Pp. xv, 909.

Mr. Frost's work might be more properly styled a manual than a treatise. While the earlier chapters contain a somewhat detailed analysis of the doctrine of ultra vires acts, the collateral impeachment of a corporation's right to exist and other important questions, yet the volume is essentially a summary of the corporation acts of the various States carefully classified as to subject matter. This work has been so accurately and systematically done that the book will be an invaluable aid to the profession in making possible a rapid comparison of the advantages and disadvantages of incorporation in any State. In passing it is interesting to note that the author states that the incorporation acts of Pennsylvania, Georgia and Maryland "are veritable legal antiques," and would bear revision without any injury whatever to the best interests of those Commonwealths, a hint which might well be conveyed to the respective Legislatures.

For practical purposes the digest of incorporation acts of the various States will prove very useful, as it is well arranged and brought down to date. The "Forms and Precedents" compiled for use throughout the country will also constitute a helpful aid to those advising corporations doing business in various communities. In the present edition of Mr. Frost's work are included forms for amending charters and dissolving corporations under the various acts.

*R. D. J.*

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LAWS RELATING TO FOREIGNERS AND FOREIGN CORPORATIONS.  
By G. F. Emery. London: Effingham Wilson. 1908. Pp. xi, 157.

During recent years the English Parliament has passed an unusually large number of acts closely affecting in their operation mercantile pursuits in the United Kingdom. Among these may be mentioned the various companies acts, the Mercantile Shipping Act of 1906, the Workmen's Compensation Act of 1906 and the Patents and Designs Act of 1907. When it is considered that it is claimed by many persons that the

Workmen's Compensation Act, by its terms, imposes upon any English ship owner an extraordinary liability for injuries to seamen entirely irrespective of the part of the world in which the vessel may be when the accident takes place; and that under certain circumstances a foreigner's right to a British patent lapses because the article, supposedly protected, has not been manufactured in the United Kingdom, it at once becomes apparent how important it is for every person doing business in England to have at least a cursory knowledge of these and similar statutes. To fulfill this need is the purpose of Mr. Emery's book, and so far as is possible within the limits of the brief volume now under examination he has succeeded admirably. In addition to a discussion of the recent statutes above referred to he has in his introductory chapters (unfortunately not always clear, owing to excessive brevity) discussed questions relating to service of process on foreign corporations, to the effect of foreign judgments and to the respective rights of foreign individuals, partnerships and corporations doing business in the United Kingdom.

R. D. J.

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MINING LAW AND LAND-OFFICE PROCEDURE. By Theodore Martin. San Francisco: Bender-Moss Company. 1908. Pp. lxiv, 980.

The author offers a book professedly stating *the law as it is to-day* as applied to mining in the different States and Territories. This text differs from other works in that it gives only the *legal* aspect of mining, leaving mineralogy and geology to their own proper fields. The fact that the law of mining as set forth by Mr. Martin is applicable largely to the western portion of the United States, to Alaska and the Philippines, makes the book of less value to the eastern practitioner, but the general character of the work, the author's careful citation of cases and his references to the statutes of the various States and Alaska and to Federal statutes make the work of great value for general library reference.

Mr. Martin's arrangement of his book is as pleasing as it is scientific. In Part I, which includes thirty-five chapters, he takes up the practical problems of mining and states the law as applicable to them. Chapter II treats of "Miners' Rules and Regulations," Chapter V of "Lode Claims," Chapter VI of "Placer Claims," Chapter XIII of "Marking the Boundaries

of a Mining Claim," and Chapter XX of "Proceedings to Obtain a Patent."

Part II, including twenty-four chapters, is a discussion of Federal statutes applicable to the States, to Alaska and the Philippine Islands, and the Land Office rules and regulations, and the statutes of the various States. Part III contains a very complete set of forms suitable for Federal, State and Territorial practice.

Mr. Martin's book is not too brief, neither is it burdened with unnecessary matter. The index is excellent, and the mechanical features of the work add materially to its practical value. The long active practice of his profession has guided the author in his discrimination of subject matter and given the profession a clear, concise statement of the law of mining.

*R. W. B.*

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THE LAW OF THE FEDERAL AND STATE CONSTITUTIONS OF THE UNITED STATES. By Frederick Jesup Stimson. Boston: Boston Book Company. 1908. Pp. xxii, 386.

The latest work of Professor Stimson was prepared for the author's use in his classes at Harvard University. It is a scientific analysis and study of its subject matter, and is not a text-book or digest for the practicing lawyer. Book I discusses the "Origin and Growth of the American Constitutions." This broad subject is necessarily briefly treated, but the fundamental principles are stated and the sources of the author's authority where any doubt could arise.

Book II is entitled "Constitutional Principles as Expressed in the English Statutes of the Realm and American Constitutions." The jury trial, habeas corpus, bail and punishment and other subjects relating to personal liberty are traced historically in Chapter I. Chapter II contains a digest of English social legislation. Chapter III contains Professor Stimson's unique analysis of the division of national and State power, in which he, by the use of a chart, shows the Federal powers, Federal powers forbidden to the States, powers expressly reserved to the States, etc., referring in each division to the clauses of the State and National Constitutions granting or limiting these powers.

Book III is a comparison of the State Constitutions with the Federal Constitution. The sub-headings under which this comparison has been made are numerous, and show a keen and exhaustive analysis. Nine hundred and eighty-six distinct

subjects of comparison are treated with the brevity necessary in a one-volume edition. This part of the author's work is probably too brief to give the average student satisfaction, and if Professor Stimson could enlarge this part of his work to a two-volume edition it would doubtless be very acceptable to both his students and the profession at large. Illustrative of this brevity is Article 34, on "Municipal Finance and Taxation," which is treated in a little more than four pages of text.

This work of Professor Stimson will be appreciated by law students for its keen searching analysis into every detail of our Federal and State Constitutions and their working relation. It is suggestive to the student, and presents in a brief form the results of a scholarly view of the present practical problem of our State and Federal relations.

*R. W. B.*

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PROBATE REPORTS ANNOTATED. Volume XII. By William Lawrence Clark. New York: Baker, Voorhis & Co. 1908. Pp. xxiv, 807.

The latest volume of this series of carefully selected cases relating to the probate law of the United States does not differ from its predecessors in scope or arrangement. Extensive "case notes" are included in this issue covering the following subjects: "Joint and Mutual Wills," "When Legacies are Charged on Land," "Revocation or Setting Aside of Probate of a Will," "Construction of Wills by Substituting 'and' for 'or' and vice versa." In addition brief notes have been added covering the more important points referred to in the other decisions printed in full in the volume. The present book maintains the same standard of excellence displayed in the previous volumes of this series.

*R. D. J.*

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THE NEGOTIABLE INSTRUMENTS LAW. Third edition. By John W. Crawford. New York: Baker, Voorhis & Co. 1908. Pp. xlviii, 212.

This volume contains the full text of the negotiable instruments law of New York, together with very careful annotations showing the exact form in which the law has been enacted in the thirty-five States which have now adopted it. The changes made, except in Illinois, are very slight. The author

of the present work, who drafted the original act in New York, has added to the text careful notes which give not only a summary of the more than six hundred decisions relating to the statute, but also memoranda disclosing the condition of the law on the subject of bills and notes prior to the adoption of this standard legislation. The present volume is a compendium rather than a text-book or a treatise. In its arrangement it follows closely the previous editions. The necessity for the present publication arises from the large number of decisions interpreting and applying this statute reported since the preparation in 1902 of the second edition.

*R. D. J.*