

BOOK REVIEWS

THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION. By Frederick H. Cooke. New York: Baker, Voorhees & Co. 1908. Pp. xcii, 302.

"Commerce consists in transportation (not necessarily all transportation but certainly) including transportation of persons, tangible property, and (at least under certain conditions) of intelligence." With this definition of his subject Mr. Cooke has presented a new work on The Commerce Clause wherein he seeks to set aside as based on "inadequate comprehension of unifying principles" certain well developed lines of decision of the United States Supreme Court. The author's judgment is that the makers of the Constitution intended that the authority given to Congress by the commerce clause should be a merely concurrent power. Admitting, however, that the prevailing opinion is to the contrary, he contends for the rule that "in no case can commerce within the scope of the Commerce Clause be regulated under authority of a state." As a final deduction he advocates the distinction (which has not been adopted by the Supreme Court) that "it is beyond the power of a state to regulate the conduct and liability of those engaged in transportation within the scope of the Commerce Clause solely for the benefit of such class."

With these general theories in mind the author proceeds to an extensive review of the Supreme Court decisions. His style is not always lucid or compact, but the earnestness with which he advocates the adoption of his views results in the presentation of an interesting discussion of many noted cases. To endeavor to controvert his conclusions in this brief sketch is of course out of the question. If a reader desires to obtain an adequate comprehension of Mr. Cooke's treatment on various important issues he may refer to his discussion (page 110) of the doctrine that in any case the power of Congress to regulate commerce is, in the absence of the exercise thereof, exclusive of exercise of the power of regulation of such commerce under authority of a state; or to his treatment of the power of a state to interfere with foreign corporations to engage in commerce within its boundaries; or to his condemnation (see page 27) of the "anomalous, and it seems to us not improper to say, the absurd 'original package' doctrine."

R. D. J.

STREET RAILWAY REPORTS, ANNOTATED. Volume V. Albany, N. Y.: Matthew Bender & Co. 1908. Pp. xlvi, 964.

The latest number of this series maintains the same high standard of excellence as was established in the earlier volumes. The scope of the notes has been somewhat broadened and their numbers increased. Both these changes add to the value of the work. The addition of a table of contents of the notes in the first four volumes, makes the matter contained in the entire series more accessible. As was pointed out in the review of one of the earlier volumes, the arrangement of the index is based upon a minute sub-division of subjects classified rather according to the essential *facts* involved in a case than the essential *principles*. A somewhat more logical grouping of the cases according to legal doctrines involved instead of this empirical system would add to the value of the work. Among the more important cases set forth in full in the present volume are the following: *Kuhlen v. Boston & Northern Street Railway Company* (p. 385), wherein the Supreme Court of Massachusetts clearly defines the responsibility of a railway company to prevent dangerous crowding among actual and intending passengers in subway and elevated stations where it controls the means of access; *Bird v. Common Council of Detroit* (p. 456), wherein the Michigan Supreme Court decided that cities restrained by a constitutional provision from entering upon or being interested in "any work of internal improvement" can neither operate or construct street railways; *Little Rock Ry. & Electric Company v. Goerner* (p. 33), an Arkansas case wherein is laid down *inter alia* the rule that when a passenger boards a car holding a transfer ticket void on its face owing to the mistake of the issuing conductor, he is nevertheless entitled to transportation under his contract with the company, but that if his transfer is refused his remedy sounds in contract and not in tort; and *Marshall v. Nashville Ry. & Light Company* (Tennessee), which contains a brief but interesting summary of the law as to the liability of a street railway company to a policeman, who while travelling on a pass claimed to have been injured by the gross negligence of the defendant.

R. D. J.

THE PRINCIPLES OF ANTHROPOLOGY AND SOCIOLOGY IN THEIR RELATION TO CRIMINAL PROCEDURE. By Maurice Parmelee. The Macmillan Company. 1908. Pp. viii, 410. Price, \$1.25 net.

In an interesting and entertaining little volume the author has presented a discussion based upon the view point of a scientific criminologist of numerous questions relating to the conduct of criminal cases. It is his conviction that the present methods of prosecution, of examining witnesses and of deciding the advisability of certain lines of testimony should be considerably changed. For example, he contends that public defenders, as well as public prosecutors, should be appointed and paid by the state, and that in order to avoid biased opinions these officials should at short intervals interchange these offices. By this system he claims that more equal justice, especially for poor defendants, could be secured, and that at the same time the moral and professional standards of advocates distinctly raised. In his discussion of rules of evidence, the author pleads earnestly for the more extended use of impartial and scientific expert witnesses and for the admission under proper restrictions of circumstantial evidence in many cases where it is now excluded.

Although in some instances the definitions of legal terms are not strictly correct from a legal view-point, yet the author's treatment of the details of legal procedure is in the main clear and accurate. It is so well known that there are many defects in our method of criminal cases that any such thoughtful presentation as the present of possible improvements in the administration of justice will prove of great value to either the sociologist or the jurist who is willing to consider the bearing of modern psychology, penology and criminology on the everyday cases in the courts.

R. D. J.