

BOOK REVIEWS.

HANDBOOK ON AMERICAN MINING LAW. By George P. Costigan, Jr. St. Paul: West Publishing Co. 1908. Pp. 765. Ch. xxviii. Appendices.

The so-called Law of Mines and Mining occupies an unusual position in relation to our science as a whole. The lawyer and student of law are confronted with the legal aspects of a department of natural science which presents questions peculiarly intricate and technical, even for its own devotees. Here two widely diverse branches of knowledge intersect. It is, therefore, probably not too venturesome to remark that in very few instances do the legal temperament and the peculiar legal bent take naturally to the problems necessarily involved, interesting as they undoubtedly are. The lawyer's training keeps him in contact with commercial topics; the legal aspects of a subject like insurance, for example, are normally within his grasp. But the legal geologist and the geological jurist are, perhaps, exceptional.

Mr. Costigan's fitness to present this subject to the profession is almost unique. The preface of his recent treatise mentions his practical experience in mining camps and in mining states. He has ably succeeded in compressing within a readable space, in a text of 535 pages, an exceedingly comprehensive survey of the subject of American Mining Law which originated in federal territory at a time in our history when the vast domain beyond the Mississippi was as yet not completely divided into well defined territorial units for governmental purposes. This body of rules and regulations, framed by practical miners in California, was largely adopted and then supplemented by federal legislation and also by state legislative action, and is now in force in sixteen states and territories, all of them west of the Mississippi.

After a brief mention of the history and development of American mining law and a treatment of the relation of mineral lands to the other components of the federal land system, Mr. Costigan devotes two chapters to the extremely difficult matter of definition. In this respect, especially, he has accomplished considerable, and this feature is excellent. His four chapters on location are noteworthy for the ability displayed in treating a topic which is not universally appreciated by the beginner.

But perhaps the author deserves most credit and commendation for his adroit presentation of the subject-matter of Chapter XXI concerning the complexities and technicalities of the law of the apex. This valuable portion of the book makes the topic of extralateral rights less intimidating to the student of to-day.

Mr. Costigan's work contains fifty-four invaluable diagrams or plats which elucidate the text most helpfully. The appendices will appeal particularly to the hurried practitioner. They comprise various federal enactments and departmental rules governing the Philippines and Alaska. The Texas system of mining laws is inserted as of particular interest. An abundance of illustrative forms occur in appropriate places. The number of cases cited may be said to be in proper proportion to the body of the text. The index is copious and serviceable.

Notwithstanding the deprecation which the constant resort to the so-called "hornbook" in the more elementary and basic subjects of the law deserves, the average student is in a position especially to appreciate the form which the author's efforts have taken. The ordinary course in American Mining Law, or in Mining Law in general, as offered in the older law schools, is an auxiliary of ten to fifteen lectures. The black-letter paragraphs in Mr. Costigan's book afford a complete and concise outline of the subject.

R. S. W.

A TREATISE ON THE INTERSTATE COMMERCE ACT, AND DIGEST OF DECISIONS CONSTRUING THE SAME. By Henry S. Drinker, Jr., Lecturer on the Interstate Commerce Act in the Law Department of the University of Pennsylvania. In two volumes. Pp. xxii, 1140. Philadelphia: George T. Bisel Company. 1909.

These two volumes by Mr. Drinker present a careful and scientific analysis of the Act to Regulate Commerce, its amendments and supplements, together with an accurate digest of all cases of importance which have arisen under this federal legislation. The first volume is devoted to a consideration of the principles which have been developed under the interpretation of the courts and the Interstate Commerce Commission, while the second volume furnishes abstracts of 724 decisions, prepared with a degree of skill which entitles it to commendation for an excellence not usually possessed by the ordinary digest.

The subject-matter of the first volume is divided into two

general divisions, whereunder are treated first the substantive requirements of the act; and, second, its enforcement. Under the first heading, after a comprehensive review of the scope of the act and an introductory chapter, consideration is given to the two most important topics arising in this branch of the law—the reasonableness of rates and discriminations and preferences. The discussion of these two topics constitutes the main body of the work, but there are also chapters on interchange of traffic, discrimination between connecting lines, filing and publication of rates and adherence to tariffs, the commodities clause, etc.

In that part of the first volume dealing with the enforcement of the act, there are chapters relating to the Commission, to its powers and duties and practice before it, and to civil and criminal proceedings in the courts.

The full text of the act is given, together with comments showing its development and amendment in such form as to enable the history thereof to be readily traced. By effective devices, reference to the various cases and their place in the digest is made easy. In short, in these two volumes there is offered to anyone desiring to be familiar with this branch of the law a thoroughly practical and theoretical aid to a full understanding of the Interstate Commerce Act and of its interpretation.

In the treatment of his subject, the author is to be commended for his careful scientific analysis and classification, for his clearness of exposition, for the attention which has been given to the historical development of the act, and of the decisions in reference to it, and for the absence of theoretical disquisitions upon questions which, as yet, remain open. As pointed out, the two main topics discussed are the reasonableness of rates and discrimination and preferences. With respect to the first problem—one of the most difficult and intricate confronting the Commission and the courts—the discussion of the various facts which have been considered as relevant to the issue in such proceedings is decidedly helpful, and it is believed that the relative importance accorded to the various factors entering into the determination of the question is remarkably satisfactory. The question of reasonableness is discussed first with reference to reasonableness in the absolute sense, and then with reference to relative reasonableness as determined by comparison of rates. In dealing with the first part of this question, the author refers particularly to the cost of service to the carrier—an element necessarily difficult of determination—and to the value of the service to the shipper, under which two general divisions attention is given to the minor factors considered

in arriving at a conclusion. With respect to the question of relative reasonableness, whereunder is considered the question of comparison of rates, there is a careful distinction drawn between comparisons for the purpose of showing that similar commodities are handled between the same points at lower or higher rates, and comparisons for the purpose of showing that commodities in their nature competitive with the commodity in question are accorded lower rates.

This latter class of cases, as is pointed out, is really dependent on the principles governing the question of discrimination. The discussion of this topic is thorough and suggestive. For convenience, the author finds it necessary to abandon the division of the subject which would follow from a recognition of Sections 2, 3 and 4 of the act as separate topics for discussion, and adopts a division more in line with the inherent nature of the question to be considered. This method of treatment tends to clarity of interpretation and a better understanding of the decisions and the act.

The general subject of discrimination is considered as it arises between individuals in respect to charges, between individuals in respect to transportation matters, other than charges, and between localities. The treatment of the topic is clear and comprehensive, and exhibits a full recognition of the important elements entering into the problem, and in particular of the element of competition. As a part of the general subject-matter referring to this topic of discrimination, there is also included an admirable discussion on the question of discrimination among carriers *qua* carriers.

One further special point is deemed worthy of reference, to wit, the treatment of the subject of jurisdiction as between the Commission and the courts, since we believe that the author's analysis of the decision of the Supreme Court of the United States in the *Abilene Oil Case*, 204 U. S. 426, is of decided importance.

In concluding, it should be added that in the discussion of the Acts of Congress and the decisions in reference thereto, there is an appreciation of the actual social and economic conditions underlying this legislation and the decisions which gives to the work a breadth of treatment and a value of interpretation meriting the highest praise and commending the work to all persons who may be interested in its subject-matter, either from a practical or theoretical standpoint.

H. W. B.