

## BOOK REVIEWS.

---

**SELECT ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY.** By Various Authors. Compiled and Edited by a Committee of the Association of American Law Schools. In Three Volumes. Volume III. Boston: Little, Brown and Company. 1909. Pp. 861.

With the appearance of the third volume of the Select Essays in Anglo-American Legal History, the shelves of private libraries as well as those of our law schools will hold an admirable piece of work, the like of which has not been attempted heretofore. This collection of essays replaces nothing; it is new in conception and its purpose is to supply a long-felt need. For the incomparable work of the late Mr. Maitland and Sir Frederick Pollock is descriptive of only a certain geological era in the age of our law. Other successful attempts to treat our law from an historical standpoint are now somewhat antiquated or fail to cover the latest periods of development.

There is but a single new contribution in this whole ensemble of seventy-six essays, that of Mr. Zane on "The Bench and Bar of England" in Volume I. In truth the zealous student and scholar who delights to browse through our larger law libraries where the valuable legal periodicals of two generations have been amassed and preserved would probably in time find every essay presented here. But this very fact immediately suggests the value of the present work and the height of the committee's achievements. Every law student of the last decade who has any enthusiastic regard for the scientific side of his subject reads at least occasional contributions emanating from the galaxy of legal thinkers at Cambridge, Mass. There are other schools and groups, both in this country and abroad, whose researches into the historical development of the law of the English-speaking people are embodied in invaluable articles which appear from time to time in our leading law journals. But the essay appearing in our legal periodicals and the reports of proceedings of learned bodies is not readily accessible, to say the least. The lukewarm student whose interest should not be allowed to flag is likely to become discouraged if the additional task of locating the suggested article is imposed upon

him. The committee have collated in these three volumes the most instructive and useful essays upon the growth of our legal institutions. They have done their work marvellously well and theirs was a task that compelled enormous undertakings. The extent of their explorations will probably never be realized, even by the appreciative readers of this compilation.

The collection comprises seventy-six essays, each one of readable proportions and satisfactorily complete in itself. For the accomplishment of this very feature, the editors very likely determined to exclude chapters in some of the very estimable monographs and works of greater scope on historical subjects. It is at once suggested that by success in that direction the collection may be merely or largely an aggregation of articles which do not form a symmetrical whole, that however perfect the several units, there must exist a lack of continuity in such an assembly. That no pronounced hiatus exists is the reply that may safely be made upon a preliminary survey of the work. There are certain realms that the editors have probably decided to exclude, and wisely so, but their finished product is not a patchwork design or mere mosaic.

In the first volume general surveys of the long expanse of territory were accomplished, and the editors found it advisable to treat of five chronological periods. In the second volume, which appeared in March of 1908, the collators assumed the treatment of the history of particular topics, viz: The Sources of Our Law, The Organization and Jurisdiction of Courts, Procedure, and Equity.

In the most recent of the three volumes, the editors have continued the treatment of the history of specific subjects of our law. Under Part V, Commercial Law, five essays treat of the origin, expansion and influence of the law merchant, and the more particular topic of negotiable instruments.

Mr. Burdick's article on "Contributions of the Law Merchant to the Common Law" and Mr. Scrutton's "General Survey of the History of the Law Merchant" seem to cover much the same ground, but it would be presumptuous to decide that one or the other is superfluous. The history of the law of insurance, the development of the law of carriers and the growth of the law of patents are represented by three essays respectively. In Mr. Justice Baldwin's "History of the Law of Private Corporations in the Colonies and States" and in Professor Williston's "*History of the Law of Business Corporations before 1800*" one recognizes two familiar friends. Mr. William Mitchell's essay on "Early Forms of Partnership" is one of the twelve components of this interesting group.

Professor Ames' universally heralded "History of Assumpsit" could not be denied a place, although already reprinted on various occasions. Professor Hening's "Beneficiary's Action in Assumpsit" is also one of the group of five essays illustrative of the evolution of the law of contractual relations. This latter essay has been recast somewhat by its author, and in view of the fact that it appeared in two installments, each in a separate volume of the *University of Pennsylvania Law Review*, its reappearance as a single insertion is appreciated. "The History of the Law of Torts," Part VII, is clearly outlined by three able contributors, Professors Ames and Wigmore and Mr. Veeder.

Regarding the "History of the Law of Property In General" perhaps the two most notable of the five contributions are the late Professor Maitland's "The Mystery of Seisin" and Professor Ames' "Disseisin of Chattels." The essayists whose names are connected with the final topic of "Wills, Descent and Marriage," five in number, include Justice Holmes, Professor Bigelow and Mr. Bryce. Mr. Ernst Freund of the Editorial Committee deserves credit and congratulation for a valuable translation which he has made of selected extracts from a work of M. Robert Caillemer on "The Executor in England and on the Continent" and which he has rearranged to form one of the articles in this group.

A feature of this collection of essays that merits especial mention is the extremely useful list of references appropriately preceding each part into which the work is divided. A glance at these valuable supplements suffices to intimate the difficulties of selection and elimination that must have confronted the editors. The Committee has also taken considerable care in the elimination and omission of the less instructive portions that may have appeared desirable under other conditions. Whenever necessary the authors have, if possible, willingly and successfully revised their work. To Professor Freund was assigned the work of preparing an index, which happily in this work proved not to require the elaboration necessary to a treatise. A complete alphabetical list of those authors whose contributions have been reprinted follows the index.

The publishers deserve a remark upon the appearance presented by these three volumes. It is a veritable relief to behold something which does not suggest the old-style law publication, whatever its design and purpose. But to those who conceived the idea of so welcome and useful a publication, and especially to Professors Freund, Mikell and Wigmore, who carried out the project so ably, is due a most generous vote of

thanks and praise. It is not the purpose of a book review to lose itself in bursts of enthusiasm and to consist solely of encomiums, but it is not too venturesome to announce that few if any books of the last decade or two will serve to stimulate interest in the sources and development of our law as will these seventy-six essays so ably assembled and placed in proper relation with one another.

---

A TREATISE ON THE RULE AGAINST PERPETUITIES, RESTRAINTS ON ALIENATION AND RESTRAINTS ON ENJOYMENT AS APPLICABLE TO GIFTS OF PROPERTY IN PENNSYLVANIA. With a Particular Discussion of Spendthrift Trusts, Married Women's Trusts, Accumulations and Gifts to Charities. By Roland R. Foulke of the Philadelphia Bar. George T. Bisel Co. 1909.

This title suggests, of course, a trespass upon a pre-empted field, and in the nature of things anyone writing upon these subjects must make large use of Mr. Gray's well-known volumes. But the book more than justifies its existence. It cannot be ignored by any one interested in the law of property.

Nowhere is the need more urgent than in Pennsylvania for work of precisely this sort—a thorough and acute examination of the decisions in the light of the established rules, written by a man saturated with his subject, if so moist a metaphor be permissible in this connection. While many volumes dealing with special branches of the law of the State have been published, most of them are no more than ill-arranged and unsatisfactory digests, with little evidence of original thought or investigation. Even among the best, few are comparable in any way with Mr. Foulke's treatise. It is a notable contribution to legal literature, showing thorough comprehension of difficult questions and diligent study of the cases. Its analysis, comparison and criticism of the decisions will be found interesting and refreshingly frank. The author is far from considering that whatever the Supreme Court has decided is right.

Mr. Gray, in one of his prefaces, remarks that upon questions of remoteness there is "a definite recognized rule; if a decision agrees with it, it is right; if it does not agree with it, it is wrong. In no part of the law is the reasoning so mathematical in its character; none has so small a human element. A degree of dogmatism, therefore, may be permitted here which would be unbecoming in other branches of the law. \* \* \*

If a decision conflicts with the Rule against Perpetuities, one may call it wrong, however learned and able the Court that has pronounced it." Mr. Foulke has not hesitated to act upon this dictum, even to the extent of differing on several points from its learned author's statements of the law.

If some of the objections to the cases seem hypercritical, all are in the interest of exact terminology, a praiseworthy and needful object. The author's own style is as clear and precise as even this complex subject demands. When he takes issue upon matters of substance, he has usually cogent reasons in support of his views; and while some of his suggestions are radical, all are provocative of thought.

He severely criticises, at page 27, the definition of a vested remainder in Pepper & Lewis's Digest, Vol. XVII, col. 30294. His first objection is that "it assumes the disputed point of law whether there can be a remainder in personal property." The point, however, is not "disputed" in Pennsylvania. No court here has denied that a future interest in personalty, corresponding to a common-law remainder in realty, is properly called a remainder, or has even deprecated the use of the term. "Interest" and "remainder" have been used interchangeably, especially in cases of mixed devises and bequests and of trusts; and "remainder" has been used by the Supreme Court with direct application to personalty, as in *Whelen v. Phillips*, 151 Pa. 312, quoted with approval in *Phillips's Estate* (No. 2), 205 Pa. 311. Moreover, in the Acts of 1834 and 1871, relating to the entry of security upon delivery of personal property subject to future interests, the phrase "persons entitled in remainder" is used. The other objections are based chiefly upon the effect of the words "in possession" in the first part of the definition, which might well have been omitted. The objection that the words, "it is immaterial that the remainderman will not necessarily be *in esse* when the precedent estate ends," do not apply to a remainder for life is not well taken. Under a limitation to A for life, remainder to B for life, B's remainder is none the less vested because he may die before A, and this is what the definition says.

There are minor inaccuracies, as where (page 88, n. 3) characteristic language of Gibson, J., is attributed to Tilghman, C. J. The references to the sections of Mr. Gray's book are not always correct. It is difficult to understand how decisions of the Supreme Court can be overruled by an opinion of the Superior Court, however able, as is stated at pages 159, 161 and 162. The criticism of Pepper & Lewis's Digest at the foot of page 159 is unwarranted, since the case relied upon by Mr.

Foulke was decided after the publication of that volume of the Digest. In general, however, the book shows great carefulness.

While not many topics will lend themselves to so precise and clean cut a treatment, it is to be hoped that this book will set a standard for future treatises upon the law of Pennsylvania, and help to make them real contributions to learning and to the lightening of obscure corners, rather than perfunctory products manufactured to be sold.

*S. D. M.*

---

**THE LAW OF UNFAIR BUSINESS COMPETITION.** By Harry D. Nims. New York: Baker, Voorhis & Co., 1909.

The title of this book seems to need the rather lengthy sub-title in order that it may be clear to the average reader of the law just what subject-matter is supposed to be covered by the contents. We learn from the sub-title that it treats of "Trade secrets and confidential business relations; unfair interference with contracts; libel and slander of articles of merchandise, trade names, and business credit and reputation." All of these subjects have heretofore been discussed by treatise writers, but under various heads and widely separated divisions of the law until very recently, when some attempt has been made to bring together the decisions covering ground similar to that of this treatise. So little has been done thus far, however, that there was room for a treatise which might bear the stigma of belonging to the fashions of an elder day, but which would give to the seeker after justice toward present day affairs, a foundation upon which he could safely rest his modern superstructure. This room Mr. Nims has not attempted to fill. This is not criticism upon Mr. Nims; it is more than likely that if he had attempted the task—if he not only attempted it, but if he had brought it to a very excellent completion—it would not have found a publisher. In the book as it stands we find what it is supposed the modern lawyer wants: a convenient analysis; black letter headlines to each minute sub-division; copious notes, and—all the cases, or, at all events, all of the more important. All this will undoubtedly render the book of much value to the profession, since it appears to have been done earnestly, honestly and with care. The point is, why do we not go to the encyclopaedias and the digests for this sort of thing? Why have the class of law books formerly designated "treatises" become merely text-books, or a simple running commentary on the decided cases?

