

## BOOK REVIEWS

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THE FIXED LAW OF PATENTS. By William Macomber, Buffalo, N. Y. Boston, Mass.: Little, Brown & Company.

The plan adopted by the author, as well as the title of the work, is somewhat novel. The title of the work is based on the plan followed of quoting the Statute and extracts from the Appellate Courts in the leading cases bearing upon the subject. What is the fixed law relative to the various subjects is thought to be better ascertained by the use of the exact language of the Appellate Courts in selected cases bearing upon the subject than by statements of the text writer as to what he may understand to be the decisions of the courts upon the subject. Mr. Macomber has, therefore, treated the various subjects, and sub-divisions, relative to the law of patents, in alphabetical order, first where the subject admits of it, by quoting the statute, and then by giving excerpts relative to the subject from the leading cases, using, except in minor instances, the language of the Court, and sometimes premising with a general statement before the citation of authorities. Another novel feature of the work is that the author does not make use of the decisions of the U. S. Circuit Courts, in that they are liable to change and reversal, but quotes merely from the decisions of the U. S. Supreme Court and the decisions of the U. S. Courts of Appeal of the nine circuits.

The subjects are arranged in alphabetical order, allowing of easy reference and method of finding the leading and latest decisions of the Appellate Courts bearing upon the subject. The work is one which will be welcomed not only by the patent bar, but by the profession generally, where particular subjects and authorities relative to the law of patents may be desired to be investigated by the general practitioner.

In citing the authorities, the author has also adopted a novel plan of abbreviating the titles of the cases. The author thinks that the day has gone by when the learned Judge, or lawyer, may give from memory the title of the leading cases. This may be unfortunately true, due perhaps to the existence of books of easy reference, such as perhaps the author's, when one need no longer rely on memory, and neglects the habit. The author has also premised the work with "a Brief Survey," which, it appears from the preface, was an afterthought and supplemental. This brief survey considers the subjects in alphabetical order, but too briefly to be of much value in itself, the value being in the references noted therein to the later sections of the work. The book is a digest, and as such will prove one of very considerable value, being well arranged and sub-divided with the excerpts from the decisions well selected, and generally well in point. An additional value to the work is that, being just published, it is up-to-date, which makes a valuable addition to the work-shelf of a busy practitioner.

H. P.

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THE LEGISLATION OF THE EMPIRE, 1898-1907. C. E. A. Bedwell, Editor. (Four Volumes. 1909. London: Butterworth and Co., 11 and 12 Bell-yard Temple Bar.

Comparative legislation becomes a study of increasing importance with the development of a tendency to abandon the *laissez faire* princi-

ple of government for a constructive policy. Any limitation upon personal freedom which it is proposed to enact should be drawn with reference to the experience of other nations with laws of a similar kind. The work of compiling and criticising the laws of European countries is excellently done by the Société de Législation Comparée in its comprehensive *Annuaire*; the New York State Library does a similar service for the United States and the English Society of Comparative Legislation publishes a yearly summary of the legislation of the Empire. These compilations, however, soon become unwieldy because of their size and lack of correlation. Indexes and summaries are needed to place the experience of a longer term at command. This is the service rendered by this excellent resumé published by the English Society to cover the period 1898-1907 in the British Empire.

The statutes reviewed apply, of course, to civilizations and political divisions widely dissimilar. Laws regulating lepers in British Guiana, the Leopard Societies formed for committing murders in Sierra Leone, the regulation for the dwellings of sheep-shearers in Australia, the ordinances as to flogging and forced labor in Africa, Parliamentary election acts and laws prohibiting the issuance of trading stamps in South Australia, are examples of the wide extent of the survey. There are certain subjects which from their frequent appearance seem to be concentrating the attention of all the legislatures; among these are legislation for the protection of minors, limitations on the freedom of contract and the use of the executive ordinance power to take the place of legislation. Especially interesting are the experiences of those legislative experiment stations, the Australian Commonwealths and the attempts to force the native populations of the tropics to aid in industrial developments. There is occasionally a lack of proportion shown in the choice of material, as, for example, when Sierra Leone is given nineteen pages and the acts of the Canadian Parliament but twenty, but it is almost impossible to avoid such inequalities in a joint work of this kind.

Books of this sort will prove of value in proportion as we assume a scientific attitude toward legislation. They will aid to rid us of the anomaly still so often observed—the enactment of laws repeatedly proved to be failures under conditions substantially similar. The importance of a literature which will enable us to profit by all past legislative experience can hardly be over-emphasized.

C. L. J.

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TREATISE ON EXECUTIVE CLEMENCY IN PENNSYLVANIA. By William W. Smithers, of the Philadelphia Bar, with Statistics, Record, Data and Forms by George D. Thorn, Clerk of the Board of Pardons. Pp. 289, including Index and List of Authorities. 1909. Philadelphia: International Printing Company. \$3.

This monograph illumines one of the dark recesses of practice, and its author discharges a portion of the profession's obligation to humanity.

The first Professor of Law in the University of Pennsylvania declared when in May, 1791, as a Justice of the Supreme Court of the United States, he charged the Grand Jury in the Virginia Circuit:

"There are, in punishments, three qualities, which render them the fit preventives of crimes. *The first is their moderation.* The second is their speediness. The third is their certainty. . . . A nation broke to cruel punishments becomes dastardly and contemptible."

The work before us in an elaborate manner shows the procedure whereby punishments for crime when unduly severe or unjust may at any time after conviction be moderated. In its presentation and development of its theme, it is both philosophical and practical. At the same time, it cannot but prove of great interest to the student of the history of our law and be of particular service to Governors of the Commonwealth and to the ever-changing membership in the Board of Pardons, as well as to that somewhat narrow circle at the Bar whose practice requires them to invoke the pardon power in behalf of clients.

Opening with a historical survey, tracing the development of the doctrine of executive clemency in Anglo-Saxon jurisprudence down to the settlement of Pennsylvania, and then more minutely to the Constitution of 1874, it proceeds to an elaborate analysis of the power as embodied therein, its nature and origin. The remaining half of the text occupies about one hundred pages devoted to a discussion of the reasons now warranting the exercise of the pardoning and related powers, and sets forth with great minuteness the general rules and particular principles which control, and this in turn is followed by specific information as to the practice before the Pennsylvania Board of Pardons, its rules, etc.

One of the features of the work is the set of forms, covering applications for reprieve, for remission of fine, for remission of forfeiture, for full pardon, for pardon after commutation, even for pardon after prison sentence served. There are also forms for protest against pardon, for the recommendation of the Board to the Governor for pardon, form of reprieve, for recall of death warrant, for commutation to life imprisonment, for notice to the Sheriff, with forms also for the Sheriff's return and Warden's receipt, as also for remission of fines, remission of forfeitures, etc., etc.

The work, as an essay in legal history, particularly the first ninety-eight pages, is entertaining and of unusual value, and should interest the American Bar generally. It is embellished with a wealth of quotation, and while written in the author's brilliant style, evidences thorough and painstaking research.

L. H. A.

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THE COURTS OF THE STATE OF NEW YORK—THEIR HISTORY, DEVELOPMENT AND JURISDICTION. By Henry W. Scott. New York: The Wilson Publishing Co.

No subject has been more neglected than American legal history and no subject offers a better field for scientific research. A quantity of valuable material lies buried in the archives of the States, most of which has never been published in accessible form and all of which is in need of scholarly editing and classification. The fact that the author of the book under review, coming recently from another district to New York, failed to find a treatise on the history and jurisdiction of the courts is not creditable to the bar of that State, and should incline one to be lenient in criticising the author's attempt to supply that need. There is, however, one glaring defect in the work that cannot be passed over; no authorities are cited, nor are the sources given from which the statements in the text are derived. This entirely destroys the value of the book for the student and scholar and reduces it to the level of a popular magazine article. If a revised and amplified edition is forthcoming, as the publishers intimate in their prefatory announcement, it is to be hoped that notes of references and a bibliography will be added. Recent polar controversy has emphasized the im-

portance of doing scientific things in a scientific manner and having at hand the data to sustain one's thesis. Part III of the work seems a needless repetition of what has been previously stated and the typographical arrangement raises a suspicion of padding.

*W. H. L.*

