BOOK REVIEWS

THEORY AND PRACTICE OF ESTATE ACCOUNTING. By Frederick H. Baugh and William C. Schmeisser McCurlander. Baltimore: 1900.

The object of this book, it is stated, is to give the estate accountant in "handy form" the legal principles on which estate accounting is based. The work is avowedly practical and it may be that some of the clerical forms suggested would be useful to an accountant or bookkeeper having to do with the clerical details of an estate. Such forms differ so in the various jurisdictions that an opinion thereon is hazardous. But as no authorities are cited, except three text-books, it is hard to see how this work could be of much use to the legal profession.

W. H. L.

A TREATISE ON THE LAW OF INDEPENDENT CONTRACTORS AND EMPLOYER'S LIABILITY. Including Formation of the Relation, Employers' General and Exceptional Liability, Interliability of Employers and Contractors and their Subordinates. Theophilus J. Moll, of the Indianapolis Bar, Dean of the American Central Law School, Indianapolis. Cincinnati: The W. H. Anderson Co. 1910.

It is difficult to reach any other conclusion than that the volume does not merit being called a "treatise." There seems to be no analysis or discussion by the author of the reasons underlying the decisions collated, and, in many instances, he has omitted the reasons themselves, giving but a brief statement of the action of the Court with regard to the particular set of facts before it.

Apparently the object of the author is to briefly state the law as it has been declared in the various jurisdictions. The major portion of the book considers the liability of the employer, both as to third persons and as to his employees, for the acts of an independent contractor. There is a chapter devoted to the employer's liability to contractors and their servants, while the final chapter deals with the liability of contractors and sub-contractors.

Viewed as an exposition of the decisions on matters within the scope of the title, the book will be found useful. The text is enhanced by notes which contain numerous references to important cases, and it is, therefore, valuable as a digest. The volume shows evidences of commendable industry on the part of the author, and the modest hope expressed in the concluding sentence of the preface that "his effort will be of some service to the profession" cannot fail of realization.

J. T. C.

A TREATISE ON THE LAW OF FIDELITY BONDS WITH SPECIAL REFERENCE TO CORPORATE FIDELITY BONDS. By H. Barratt Walker, of Baltimore: Wilson Bros., Law Publishers. Pp. XV. 303.

This book contains a rather full collection of cases in which the law has been applied to corporate fidelity bonds, with considerable explanatory matter in notes by the compiler and other well-known writers on the subject. The author has admirably stated the principle of each leading case in a few words, and where possible has used the very language of the Court deciding the case. While not much light is thrown upon the development of the fundamental principles of suretyship, the work has the advantage of treating with some detail different topics embraced in the subject, and for this reason should be very acceptable in the sphere from which it was produced—"the firing line" of active practice.

I. E. D. C.

THE CIVIL CODE OF THE GERMAN EMPIRE. As Enacted on August 18, 1896, with the Introductory Statute enacted on the same date. (In Effect January 1, 1900). Translated by Walter Loewy, B. L. (Univ. of Cal.), LL. B. (Univ. of Pa.). J. U. D. (Heidelberg). Translated and published under the auspices of and annotated by a special committee of the Pennsylvania Bar Association and the Law School of the University of Pennsylvania. Boston: The Boston Book Co. London; Sweet and Maxwell, Limited. 1909. Pp. LXXI, 689.

The Civil Code must be considered in its relation to other laws of the empire, the State Laws, and to the Customary Law. The decisions of the courts should also be referred to in connection with the Civil Code; for the history of German jurisprudence shows that in practice the influence of judicial decisions cannot be denied. The translator observes: "Such decisions have great weight and are practically regarded as precedents when they represent the consistent practice of the courts."

Since the formation of the Empire, a great number of Imperial Laws have been enacted, of which the German Civil Code is an important one.

The first Code Commission, after submitting its draft, was at its own request empowered to draft Acts governing Land Registration, Ex Parte Matters (Freiwillige Gerichtsbarkeit), and Execution Proceedings, etc. These Ancillary Laws (Nebengesetze) went into effect simultaneously with the Code on January 1, 1900.

This code does not include the regulation of "Commercial" transactions. Under the formal plan of 1874, the Commercial Law was to be the subject of separate codification. The Commercial Code of 1861 had been adopted by the empire, but its provisions exceeded the proper limits of the "law of merchants." The new Commercial Code was adopted May 10, 1897, and went into effect simultaneously with the Civil Code.

In the preparation of the Civil Code, the list of subjects reserved to the States "gradually grew as the commissioners realized the practical impossibility of abolishing certain State laws. which formed integral parts of the State's history. The exceptions in favor of the State Laws are made partly in the code itself and partly in the Introductory Statute." The State retained in the main "police" regulations, "the provision for matters intimately associated with the internal wel-

fare of the State." There were left temporarily to the State certain branches of law which since have been regulated more or less by Imperial Law.

The supplementary status of the Customary Law "is disputed by few and is generally accepted and taught in the Universities"; although it "often presents grave difficulties in practice." This Customary Law is such only as is general throughout the empire; otherwise "the blessing of a National Code would indeed be a very elusive one." A peculiar State custom retains effect, therefore, only where expressly reserved.

The work now published contains a list of about 50 important Statutes of the German Empire, in three divisions: I, Civil Law; II, Commercial Law; III, Organizations of the Courts and Procedure. Among them are the Commercial Code, the Negotiable Instruments Act. Acts respecting co-operative and limited associations, Patent Law, Designs, Trade Marks, and Copyright, and Unfair Competition. Among these Statutes, the German Civil Code occupies a dominating place.

The Civil Code is divided into five books. Book I relates to Persons and Things; Transactions in Law; Limitations; Terms for Performance; Exercise of Rights; Self Defense, Self Redress, Prohibition of Malice; Giving of Security. Book II, Law of Debt Relations, Obligations (Schuldverhaeltnisse). Book III, Law of Things. Book IV. Domestic (Family) Rights, herein of Marriage, Divorce and Guardianship. Book V, Inheritance.

The history of the present translation of the German Civil Code is of interest. The mixed population of the State of Pennsylvania, and the commercial relations with foreign countries, led the Pennsylvania Bar Association in 1905 to appoint a Committee on Comparative Jurisprudence, for the purpose of formulating a plan for meeting the needs felt of a more extended means of acquaintance with foreign law. This committee was composed of Charles Wetherill, chairman; Dr. William Draper Lewis. Dean of the Law School of the University of Pennsylvania, and William W. Smithers, of the Philadelphia Bar.

In the following year they were authorized to undertake, conjointly with the University of Pennsylvania, the translation now published. The translation was intrusted to Walter Loewy, Esq., a Pennsylvania alumnus. Mr. Loewy had removed to San Francisco, and after the work had progressed considerably, his library was destroyed in the catastrophe which for a time overwhelmed that city. The work was renewed. and in the meantime Mr. Schuster's exposition of the Principles of the German Civil Code issued from Oxford in 1907. That volume explains the German terms used in the code, and the committee were fortunate in obtaining from Dr. Schuster his permission to refer to the appropriate pages of his work, wherever the need of explanation was felt.

The volume containing Mr. Loewy's translation presents in the preface a more detailed account of the origin and progress of the work; a most interesting historical introduction, showing the sources, preparation, and adoption of the code, written by Mr. Smithers, of the committee; the Translator's Analytical Introduction, and references to analogous provisions in the more important foreign codifications. prepared by Mr. Wetherill. The Introductory Statute, and an Index, conclude the volume.

The whole work evinces marked care, accuracy and extraordinary industry, especially in the feature of cross-reference notes to other legal codifications.

L. E. H.

PRINCIPLES OF THE LAW OF DAMAGES. By Hugh Evander Willis. St. Paul: The Keefe, Davidson Co. 1910. Pp. 73 and 246.

This volume is designed on somewhat the same principle as Mr. A. G. Sedgwick's most valuable little treatise upon the same subject. It consists in the statement of a series of formulæ purporting to express in authoritative form the general principles of legal rights and legal injury, the principles upon which damages are assessed, and the application of these latter to a great variety of specific actions. These principles are derived from and supported by cases taken from those collected in the case books of Professors Beale and Mechem, together with a considerable number of cases selected by the author. The author in his preface expressly calls attention to this fact. In laying down authoritative formulæ the author is constantly and inevitably confronted with the task of choosing between the conflicting rules prevalent in different jurisdictions. In most cases the existence of rules other than those chosen by him is stated in the explanatory text, though he does not always do so, as in the case of the right to recovery the highest, or, as he calls it in his index, "the higher", intermediate value of shares of stock, converted or not delivered as agreed. Pp. 77 and 78. Nor does his choice of the particular rule or the reasons given for its selection appear to be always sound. For instance, he prefers (§ 63) the New York and Massachusetts rule as to the damages recoverable against a vendor who has falsely misrepresented the quality, etc., of an article sold, in preference to that adopted by the courts of England and the United States Supreme Court. The latter he regards as "contrary to the full, true purpose of the Law of Damages, and the author does not think that the objection of its advocates to the rule herein adopted is well taken. The ground of objection is uncertainty, but the damage is no more uncertain here than in the case of breach of warranty, and the ordinary rule in regard to certainty should apply." It is submitted that the reason lies much deeper; unless the vendor is bound to make the representation good, which, in the absence of warranty or contract that the goods are as stated, he is not bound to do, the vendee has no legal right to have the article in the condition represented and is entitled to no compensation for his disappointment. He is merely entitled to be replaced in the same position that he occupied before he was misled by the false statement. This is fully accomplished when he receives the difference between the value of the article which he has bought and the price he paid for it. The New York and Massachusetts doctrine confuses actions of deceit or cases upon warranties and actions of deceit in which no warranty is alleged or proved. The earliest case in which the New York doctrine is announced, *Whitney* v. *Allaire*, 1 N. Y. 305 (1848), is largely based upon the case of *Sherwood* v. *Sutton*, 5 Mason 1 (1827), which the Court there cites for the rule of law set forth in the syllabus without appearing to notice that the charge of Story, J., is directly opposed to the rule as so stated.

Professor Willis champions with great eloquence and some apparent heat the view, expressed by Professor Greenleaf in his well known controversy with Mr. Theodore Sedgwick, that the giving of exemplary damages is a pure anomaly, which he says, p. 31, is "altogether inconsistent with sound legal principles and should never have found lodgment in the common law as it never has in Equity which is supposed to be in advance of the common law." The policy of allowing the jury to award such damages is a matter as to which legal opinion has been and will probably continue to be divided, but to a student of the historical development of the Law of Torts the suggestion that this is a late judicial invention is, to say the least, startling. That the Law of Torts was in its

original form punitive may be accepted upon the authority of the late Professor W. F. Maitland. That the action on the case has even to-day an important deterrent function to perform, in securing, by the punishment of their violation, the due observance of private rights of a sort too unimportant to make the violation thereof a matter with which the State does, or can be expected to, concern itself, is evident from that class of case, to mention only one among many, of which *Laird* v. *Traction Co.*, 161 Pa. (1895), and *R. R.* v. *Baker*, 125 Georgia 562 (1902), may serve as examples.

Possibly due to this very lack of attention to the historical development of the law and to a tendency to regard all rules as good or bad as they agree with, or run counter to, the author's ideas of utility and justice and as they do or do not preserve the symmetry of the *a postiori* theory which he unreservedly accepts, that the object of all common law procedure is solely to secure compensation to the injured party, it is in these parts of the book, in which the author indulges in extended discussion of the theoretical basis of the rules which he lays down, that the work is least worthy of praise. To give only one more instance, it might perhaps be well to allow to one who has innocently dealt with the property of another without his authority a *quasi* contractual right to compensation for labor, etc., bestowed upon the improvement of the property, and to work out a fair adjustment of the rights of such trespasser and of the owner of the property, by allowing the former to set off such a claim when the latter sues for damages for the conversion of his property. The one difficulty is that no such general *quasi* contractual right is recognized in any known case. If the owner can lay hands on the improved property he may retake it and no action lies by the technical trespasser for reimbursement for the cost incurred by him in improving it. It is only where the Court is asked to lend its aid to enforce the harsh rule that the owner of the property is legally entitled to it at all times and in whatever condition it may be that they balk at the hardship which the logical result of this rule would entail upon a merely innocent trespasser and, out of mercy to him rather than upon any definite theory, in many jurisdictions allow the jury to deduct from the damages recoverable the beneficial expenditures of the defendant.

It may be pointed out also that the author, apparently appalled by the difficulties of that most intricate subject, proximate and remote cause, contents himself in glittering generalities in regard to it. Nor are his statements, general as they are, wholly consistent with one another. The rule stated in § 11: "Consequential damages are substantial compensatory (and special) damages awarded for such injuries as are certain and, though not necessary and immediate, as result naturally * * * because, in torts, they are the natural and probable consequence of the wrongful act, whether foreseen by the wrongdoer or not," is far from equivalent to his statement, p. 40, that "In tort cases, substantial damages include compensation for any injurious consequences, whether foreseen by the wrongdoer or not, provided the operation of the cause is not interrupted by any intervening cause and but for the operation of the cause the consequence would not have ensued."

While this volume will hardly be of any great service to one who desires to understand the rationale of the Law of Damages, it appears to accomplish the object which the author desires to attain and, in the main, to state in definite form and with commendable clearness of expression the effect of the cases with which he deals, the value of which is assured by the character of the sources from which they are taken.