

BOOK REVIEWS.

INTRODUCTION TO THE SCIENCE OF LAW. By Karl Gareis, Professor of Law at Munich, translated from the third German edition by Albert Kocourek, Lecturer on Jurisprudence in Northwestern University, with an Introduction by Roscoe Pound, Story Professor of Law at Harvard University. Boston Book Company. 1911: XXIX, 338 and index.

Had this translation appeared in 1887 when the work was first published in Germany it would have been received here with general indifference, if noticed at all. The great Bar of the United States, more numerous than that of any country in the world, was still absorbed in disposing of the great mass of purely commercial litigation which followed the Civil War and in meeting the immediate and practical demands of the newer states where the wave of industrial activity and increasing population left no disposition or opportunity for the scholarly side of the profession. A few might have paused to marvel at the mental state of one who had devoted so much time to giving English form to the book of a German legal writer, but with a few rare exceptions no man would have turned the pages.

For a period of more than ten years, however, a notable change has been taking place, revealed at first at meetings of the American Bar Association, and now finally manifested in a wide-spread spirit of research and doctrinal discussion to be met with not only in every association, school, and journal pertaining to the law, but even in the reported arguments of counsel and court decisions. Law magazines never had so many readers as they have today and books relating to historical and philosophical jurisprudence are being welcomed and read as never before. The Bar is establishing a state of equilibrium amid routine daily demands, civic duties and the need of a broader equipment. The American lawyer has reached the conviction that the great and novel problems which confront him in this formative period of jurisprudence cannot be solved by the battledoor and shuttlecock system of case law but must be evolved from a more definite base by analysis, synthesis and reasoned classification.

England and America have thus far shown so little interest that in seeking the philosophy of the law one is practically confined to Austin: "Lectures on Jurisprudence, or the Philosophy of Positive Law," Salmond: "Jurisprudence," and Terry: "Leading Principles of Anglo-American Law." The new need, therefore, cannot be met among our own writers. On the other hand the material calls and high pressure labors of the bar for the past quarter century have left no opportunity and until of late but little inclination to become familiar with other languages. The work of the translator has accordingly become highly important. He, however, is largely circumscribed in his choice of fields, for in no country has the development of jurisprudence better opportunity for comparative law study or the conditions required more scientific appreciation of legislation and the philosophy of law than in Germany.

The translation of this leading work of Dr. Gareis has an advanced favor because it comes from a German lawyer and one whose learning and teachings have received the highest approbation in his own country.

To the American lawyer who has heretofore declined to explore any regions of jurisprudence that cannot be classed as historical or purely analytical there is a refreshing surprise calculated to remind him that there are new horizons when he turns to the very first section of the Introduction of this book and notes the objects:

1. "To furnish to beginners a fundamental introduction to the science of law."

2. "To afford to those engaged in particular departments of legal science a survey of these separate departments, based on fundamental notions."

3. "To furnish the scientific generalization and basis of the various departments of the law, and the separate studies in legal science, in such manner that these detailed parts may be seen to be the divisions of an organized unity, arising as an imperative of reason, from the attributes of human nature itself."

4. "Finally, the framework of comparative law, which in its turn serves in part for the illustration of the study of positive law and in part provides the basis for Philosophy of Law."

In the elaboration of these objects the writer has manifested a power of presentation through logical classification and subject grouping that holds and instructs the reader by its very art and lucidity. The historical evidence of legislative progression from fundamental juridical truths, the solidarity of first principles and the philosophical justness and fitness of the evolved doctrines are made so clear that all controversial impulse is allayed.

The classification is shown by the following heads: Law and its Sources; Systematic Classification of the Law; Civil or Private Law; Personality; Material Things; Obligations; Family; Inheritance; Public Law; The State; State Activity; Interest of State in Law, and Sovereignty of Justice; International Law; Methodology of Legal Science.

Under the last named head is treated "Principal studies, Subordinate studies and Auxiliary studies" and "Methods of Study and Academic Education" as a guide to instruction which the law faculties of our Universities might well very gravely consider.

The translation is generally smooth although in places unusual words have been chosen where more common ones would have avoided an appearance of pedantry. In the choice of technical legal terms the translator has wisely followed Dr. Schuster in "The Principles of German Civil Law" thereby helping to build up uniformity among English translators of German legal works.

The Introduction by Dr. Roscoe Pound cannot be omitted by the reader without substantial loss. His deep and lucid mind intensifies the living flames of interest which this work ought to have for every legal student and every American lawyer imbued with the true supervocational spirit of scholarship and professional pride.

W. W. S.

THE COMMERCIAL CODE OF JAPAN. Translated into English by Yang Yin Hang, a native of China. University of Pennsylvania Law School Series, No. I. Boston: The Boston Book Co. 1911., pp. XIX, 319.

This book is an interesting production for several reasons: first, in view of the fact that the United States has no national system of commercial law. Under the pernicious constitutional doctrine which has left some of the most important powers of sovereignty in the several States, the American commercial laws are still those of the sovereign members of an allied confederacy, as in 1789, and not the uniform and universal system which is required by the great nation which our country has become.

This work is also interesting as showing the newly aroused spirit of inquiry in the minds of the Chinese. The learned Chinese translator has earnestly studied law, law as taught in Tokyo, law as taught in the University of Pennsylvania, as well as in his own country, and his production of this book, not merely his ability, but his energy and willingness show him to be truly *servius ad legem*; and until very recently there was none such among the natives of China.

It seems to be a very good translation, in good English, of a very able and tersely expressed work of legislation. There is but one fault, probably caused by the fact that the services of the translator were urgently required by his own government; so that while the work was being prepared for the press, he was obliged to return to China. While the translation of the code itself is complete, the introductory statute is not included in the work. When a second edition is prepared this should be added as an appendix. It is much to be desired that the able translator should extend his labors to the jurisprudence of his own country, the laws of which are of very ancient origin.

The Chinese penal code, promulgated in 1647 by the Emperor Shun-Chi, is in English, but that venerable legal classic, the Code of Li-Kwei, two thousand years old, has not yet been translated.

The book is mechanically good, well printed, and delightfully legible. The only misprint is to be found on page VI: the name of the barrister of the Inner Temple who translated the German Commercial Code is not Pratt, but Platt, and this is noted here because his work is so good that there should never be any doubt or misunderstanding as to his name.

It is a pleasure to find that this work has been faithfully edited. The notes are excellent and add greatly to its interest and value. The references to the European Commercial Codes are particularly happy and valuable as are the references to the Japanese Civil Code. Of this curious and important work it may be well to remind the student that there are two good English translations of it; one of them by Mr. Gubbins, an attaché in the suite of the British minister, which gives the original Japanese text on the margin of each section; the other by Leo H. Loenholt, a professor of law in the Imperial University at Tokyo, which also includes translations of several other Japanese laws.

The Japanese statutes relating to civil procedure, land transfer and personal registration are said to be scientific and important, but remain untranslated.

The most interesting point of the work is the fact that hardly any of the provisions of this code are distinctly of Japanese origin. Nothing could more clearly indicate the completeness of the revolution which has taken place in Japan.

At a time within living memory Japan did not admit foreigners to her territory and her people clung with Oriental conservatism to the feudal government and laws based on custom which had come down to them from past ages. Under the new conditions resulting from the mental awakening of Japan in the last century the insufficiency of the local customs which regulated her trade was evident. The fact early became apparent that Japan, rapidly acquiring commerce, was practically without commercial law.

Faced with this condition it seems that the advisers of the Mikado reached the correct conclusion that commerce is of world wide and international, as well as of local concern, and that a power entering the great community of civilized sovereignties should accordingly adjust her commercial regulations as well with the view of harmonizing the rights and labors of her great mercantile associations with those of other nations, as to deal out equity as between the merchants at home.

Moved by these considerations the Japanese statesmen forwarded an examination of the commercial laws of the civilized powers; and in 1890, a commercial code, based on European law, was promulgated.

At the same time, and on the other side of the world, the greatest jurists of the newest empire of Europe, brought together by the genius of Bismarck, were engaged in the vast work of the codification of the civil law of Germany, and in 1896 produced the most comprehensive, scientific, exact, and complete legislative work of modern times, the Imperial German Civil Code, and this was accompanied by several other elaborate statutes, among them a code of commerce. It was natural that the Japanese legislation should be influenced by so great a work, and, accordingly, it will be

observed that those titles of the Civil Code of Japan of 1898 which regulate the rights of property are largely based on the German law. This led to a review of the commercial law, as it was evidently necessary that the regulations governing commercial transactions and property should correspond with the general law; accordingly, the present Japanese Code of Commerce is almost entirely based on the corresponding German code.

It would, however, be most unjust to the Japanese legislator to consider it to be a servile copy; it is an ingenious adaptation of the German law to the Japanese requirements, with occasional use of other legal systems on those points in which they seemed more available. This is fully shown by the notes of reference from which it seems that certain sections are based on the French, Italian, Hungarian and other commercial codes, indicating that the entire codified regulation of the world's commerce was referred to in the preparation of this Japanese work.

Lack of knowledge of the pre-existent Japanese law and custom renders an adequate review of this work impossible; but even without this, the importance and value of the codification are evident, and this translation is a most interesting addition to our legal literature.

Charles Wetherill.

Philadelphia, Pa.

CASES ON ADMINISTRATIVE LAW. By Ernest Freund, Professor of Law in the University of Chicago. American Casebook Series. St. Paul: West Publishing Co. 1911. Pp. XXI, 681.

In the introduction to this volume, the purposes and objects of Administrative Law are clearly expressed in the following words: "The term 'Administrative Law' is sometimes applied to all provisions of law regulating matters of public administration, such as civil service, elections, municipal government, schools, public revenue, or highways. In so far as such legislation involves problems of public policy and of administrative efficiency, it concerns the student of political science and of public administration. The chief concern of administrative law, on the other hand, as of all other branches of civil law, is the protection of private rights, and its subject-matter is therefore the nature and the mode of exercise of administrative power and the system of relief against administrative action. This limitation of the subject seems conformable to the prevailing usage and understanding in this country, while on the continent of Europe all positive statutory law is treated as belonging to the province of administrative law."

There are a number of requisites to make a well constructed case book: a careful selection of cases; a correct and concise report of the same; and a logical classification of the subject-matter. When, as in the case book before us, these qualifications have been secured, the student cannot fail to have his interest in administrative law awakened by the elaborate system of checks found in the various divisions of the government, that is the executive, legislative and judicial. He sees, how, admirably following out the idea of Montesquieu in his "Esprit de Lois," each department dovetails into the work of every other; yet at the same time remains separate and independent. The selection of cases in Professor Freund's book is indeed a good one and, in addition, with the aid of the foot notes, a student may search more deeply into the principles underlying the system of administrative law.

A criticism of the classification of a case book is indeed superficial without months of actual study; however, from a careful perusal, it appears to follow out a logical order of studying the principles of administrative law. The subject is divided into two parts: the first dealing with administrative power and action. The author begins with the introduction of cases showing the executive, his powers and functions, and gradually leads us through those taking up the authority of the executive

in political and non-political and ministerial acts, to his power of administrative execution; in other words, the first part treats of the executive and his powers and functions. In part two the subject of relief against administrative action is considered under three heads: actions to recover damages or money against various administrative officers; the second chapter of part two deals with actions for specific relief, that is, actions in which *mandamus*, *quo warranto*, *certiorari*, and *habeas corpus* proceedings are instituted to obtain specific relief from administrative officers; the last chapter is devoted to judicial control over the various administrative officers.

This book creates a favorable impression at first glance by reason of its attractive green buckram binding and clear print on heavy paper. The difference in treatment as compared with Goodnow's case book on the same subject is very marked. Goodnow, in his recital of cases, devotes more space to the statement of facts and such parts of the opinion as will bring out all the points of administrative law, considered in each particular case; Freund, on the other hand, includes only the part of each case which applies directly to the special topic or principle which the case is intended to illustrate. As Goodnow intends his casebook to supplement his textbook on the principles of administrative law he makes use but sparingly of additional references in form of foot notes, while Freund uses these to facilitate a more thorough study of administrative law.

Robert T. Potts.

EQUITY IN PROCEDURE. By William T. Hughes. Central Law Journal Co., St. Louis, 1911.

If there is anything in this volume that really bears on equity or procedure it will probably remain undiscovered for the author's style is so obscure and his method so discursive, that it is doubtful whether the average lawyer could be persuaded to analyze its involved passages, with a view to determining what it is that is intended to be proved. On the other hand, some will no doubt enjoy his trenchant criticisms of the "legal jungle" and regard as profound his restatement of some of the obvious principles of law in terms of maxims. These latter are applied to legal topics in groups or, so-called, "trilogies" with auxiliary maxims or "cognates." Now, as Austin Abbott has said, there is a certain charm about legal maxims. They seem to put so much wisdom in so few words. But when the attempt is made to solve a question by maxims, it usually results in resolving the question into another double question, quite as debatable as the first, namely, which of two or more maxims is properly applicable? From the thousand and one aphorisms that have been handed down from the remote past it is of course, possible to select some that pithily express some phases of rules of law, or what were rules of law. But to seek in maxims the rules of social conduct, or the reasons for those rules or the principles upon which they are based, is to search the shadow for the substance, and to assume that modern jurisprudence will find its "datum posts" in wise saws and their modern instances is, putting it mildly, to underestimate the progress of the law as a science.

W. H. L.

CASES ON PERSONS AND DOMESTIC RELATIONS. By Albert M. Kales, Professor of Law in Northwestern University. American Casebook Series. St. Paul: West Publishing Co. 1911. Pp. XXIX, 654.

The author states in his prefatory note that in compiling this casebook he endeavored to incorporate those requisites which he thought Professor Ames had in mind when writing casebooks. These he conceived to be: A comparative study, in a given subject, of the law of all jurisdictions where

the law was founded upon the common law of England; brevity in pages; and information for the notes.

It would seem that Professor Kales has done his work well, although the volume is open to criticism, chiefly in respect to size. The text, notes, and index cover 654 pages, not including cases on "Marriage and Divorce," which are to be given in a supplement. Greater brevity might have been secured by omitting some of the cases in the collection. Although the author has used a number of problem-raising cases, he has incorporated some which are important for the information they convey rather than for the problems they present. Such cases might well have been placed in the footnotes.

Again, even when the cases are important as problem-raising, it sometimes happens that several cases given under the same heading present the same problem with like answers, or that the problems raised vary but little, one from another. Some of these cases are not of enough importance to justify their retention in the text at the cost of increasing the size of the book; they, too, could have been placed in the notes.

The result of thus reducing the number of cases would have been to decrease the size of the book, without impairing its efficiency, and to encourage its use by those law schools which allow a limited time for the study of the subject of which it treats.

As it is, however, the work deserves commendation. Evidently, Professor Kales has given considerable study to the subject, and has exercised discretion in selecting his cases. Not only are most of them valuable for the purpose of training in case analysis, but, apparently, the whole field of jurisdiction has been searched, and drawn upon to furnish material for text and notes.

A feature of the book which makes it all the more valuable for classroom work lies in the notes. The author, wisely, has made no attempt to have these notes take the place of a digest of the topics discussed, but has endeavored to furnish a great deal of valuable information without using too much space.

The subject matter is arranged, in a way that is satisfactory, under numerous topical divisions and sub-headings. An excellent feature is the inclusion in the table of cases of those cited in the footnotes, although the value of the table is lessened considerably by the fact that the cases are indexed under the name of the plaintiff only.

In conclusion, it may be said that, while open to criticism, the book is well adapted for its purpose, and should prove of value not only in inculcating the principles of the subject of which it treats, but also in offering opportunities for analytical training in case law.

J. T. C.

CASES ON SURETYSHIP. By Crawford D. Hening, Professor of Law in the University of Pennsylvania. American Casebook Series. St. Paul: West Publishing Co. 1911. Pp. XVIII, 620.

This book is the most recent casebook on Suretyship. It has been issued in the American Casebook Series, which is being prepared under the general editorship of James Brown Scott. Thirteen books, comprising about one-half of the series, have been published or are in press and will soon be issued.

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