

BOOK REVIEWS.

THE GENIUS OF THE COMMON LAW. By Sir Frederick Pollock. Columbia University Press, New York, 1912.

The Charpentier lectures for 1911, delivered at Columbia University by Sir Frederick Pollock, appear in printed form as a delightful series of essays upon "Our lady the Common Law" attended by her faithful knights upon many a perilous adventure, her achievements and mishaps not less varied than those of pilgrims and knights in general. With a lightness of touch rare in professional writing, the learned author has sketched a series of pen pictures of the origin and growth of the Common Law, its early formalism, its struggle for supremacy with alien systems, its assimilation of mercantile customs, its wonderful capacity for adaptation to new social and economic conditions, its vitality and essential democracy. "If," says the lecturer, "there is any virtue in the Common Law whereby she stands for more than intellectual excellence in a special kind of learning, it is that freedom in her sister, and in the spirit of freedom her greatest work has been done."

Nothing, indeed, is more typically English than the Common Law, tough to resist continental innovation, impervious to metaphysical influences, pliant in yielding to insistent popular demand, preserving such that is picturesquely archaic, but always unerringly practical in its aims. Sir Frederick is an avowed champion, and claiming the privileges of a veteran draws upon the stores of his ripe experiences, as well as historical knowledge, for the grounds of his faith, a faith that is not less inspiring because free from dogmatic assertions of perfections wholly imaginary, not less convincing because he has sometimes clothed it in figurative language or disguised it by a broad and tolerant philosophy.

W. H. L.

THE LAW RELATING TO CONFLICTING USES OF ELECTRICITY AND ELECTROLYSIS. By George F. Deiser. Philadelphia: F. and J. W. Johnson & Co. 1912.

One of the most wonderful things about the Common Law is its facility for adaptation to new commercial and civic conditions, as they arise in the course of the world's progress. During the Nineteenth Century the most tremendous strides were made along every line of development, both in art, in science, and in mechanics. At the beginning of that century electricity was almost an unknown quantity; at its end it was one of the most potent factors in industrial conditions of the day. Such wonderful development naturally gave rise to new conditions which the law had to adapt itself to meet, and in many respects this adaptation is still in progress.

In a most interesting little treatise, entitled "The Law Relating to Conflicting Uses of Electricity and Electrolysis," George F. Deiser, Esq., of the Philadelphia Bar, has set forth this growth and adaptation of the Common Law, assisted by statutory enactment, as it applies today in certain situations created by modern industrial conditions.

The two subjects treated in the book are analogous principally in that they both have to do with electrical action. In the first and most extensive part of the work, Mr. Deiser considers the problem of such great importance to many telephone companies arising from the induced currents created on their wires, which carry a current having a potential of about 1,000 volts, by the proximity of trolley feed wires upon which is flowing a current

of much greater potential. As Mr. Deiser points out, the franchises of the telephone companies are somewhat dominated by the franchises of the street railway companies, since in the exercise of the latter the railway company is facilitating the natural use of the highway, whereas the telephone company is not. The former may, therefore, be said to have a dominant use and the latter a servient use of the street; and on this premise most of the suits in equity appear to have been decided, generally in favor of the railway company; although, in some instances, damages at law have been recovered by the telephone companies equal to the cost of protecting their circuits from the interference created therewith by the street railways.

The second part of Mr. Deiser's book relates to the rights and remedies of water and gas companies against street railways using the single trolley system. The damage done to gas and water pipes by the use, by a trolley company, of the earth as a return circuit was conclusively pointed out in the case of Peoria Water Works Co. v. Peoria Railway Co., 181 Fed. Rep. 990, which case is very thoroughly discussed by Mr. Deiser as the leading one upon this subject. The electrolytic action set up by currents will in time absolutely destroy pipes buried in the ground, but as yet apparently no adequate preventive has been discovered. Yet, as is evident, both parties are in enjoyment of legitimate franchises in a legitimate way. Can it be said that the destruction of the water company's property is *damnum absque injuria*? Is it not rather a taking of private property for public use without compensation, since the trolley company is acting under a franchise granted by the city or State? These questions do not seem to have been satisfactorily and conclusively answered.

Extended discussion is impossible here, and for those interested or having cases dealing with these novel and more or less unsettled subjects a reading of Mr. Deiser's most interesting little book and a thorough consideration of the conclusions therein reached will prove unquestionably profitable.

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