

BOOK REVIEWS

LECTURES ON LEGAL HISTORY AND MISCELLANEOUS LEGAL ESSAYS: James Barr Ames; With a Memoir; Cambridge, 1913; Harvard University Press; pp. viii, 553.

"He may leave his impress for good upon that system of law which, as Lord Russell has well said, 'is, take it for all in all, the noblest system of law the world has ever seen.'"

These words occur in the address of the late Dean Ames on the occasion of the dedication of the building of the Department of Law of the University of Pennsylvania. Perhaps no other thought in that address has, at this time, greater significance than these words, fittingly descriptive of the work and influence of the man who spoke them.

The essays upon fundamental contract, property and tort law matters, now for the first time brought together in one volume, amplified by additional citations and notes of the author and added to by collateral papers not heretofore published, are the sum total of the actual writings of this greatest of modern American legal investigators.

The remainder of his life work is found in the excellent collections of cases now widely used for scientific teaching of legal principles. But when we say that the work of this life may be found between the covers of books, or contained upon the library shelf, though the shelf always near at hand, it is in deep ignorance of the greater truth about the life. In the Memoir, published in connection with the essays, are to be found the more faithful records of his work, his great mental power, and the earnest inspiration by which he succeeded. We are told that his life seemed guided by the text, "So that I train your lawyers and judges, let who will write your books." And this, after all, is the greatest secret of the universal love and respect with which the fresh memory of this man is today regarded. As a prominent instructor and head of a foremost law school, he was in intimate touch with a host of men in an important period of their lives, and made upon them a profound and lasting impression. What they gained from that association has made them, fortunate as they are, a large power in the bar of an entire country. Quickened powers of legal thought and reasoning, due to the influence of an original and striking conception of the universality of principles, has been joined in them with a deep rooted respect for just law and equity and its practice and use in honor and integrity. This is the greatest, though the less visible, contribution of the man to his country's bar and law.

Although the subject of review is but the smaller portion of his work, these essays are replete with examples of the habits of industrious research and striking generalization. Out of the great maze of early, poorly considered and even more poorly reported cases, the development of principle is traced with fidelity and genius. As the path is opened up by the unerring hand of the writer and vistas of the thought spread out to the reader, the mind rushes along them conscious of the truth and thrilled by the feeling of grandeur in accomplishment. There is a poetry always in excellent things. As we look upon the great things of nature or of masters we feel our own contracted sympathy and personality stretching out in an effort to absorb. The contraction may again take place, but never to the original extent. The mark remains.

To undertake the reading of these essays, notably the History of Assump-sit and Purchaser for Value, is to invite an experience of precisely similar character. The thought is carried on through difficulties and places of doubt

and trouble with a simplicity of statement and clearness of argument that fills us with wonder and admiration. We feel our own powers stretching as they seek to enfold the mentality which inspired and bore the burden of the work. And as understanding comes, the mastery of the workmanship, simple and unorthodox perhaps, but without craft, startles us as we turn from page to page.

The essays are not new and it seems hardly appropriate to enter into a discussion of them. Many of them have long been tested, and are now fully accepted. In not a few cases the principles contended for have been sanctioned by judicial opinion, based largely, if not entirely, upon the arguments by which they are here supported. The volume is a valuable possession: one that will always improve upon further acquaintance; suggestive and illuminating always; a mental stimulant.

R. J. B.

MISHNAH: A DIGEST OF THE BASIC PRINCIPLES OF THE EARLY JEWISH JURISPRUDENCE. BABA MEZIAH (MIDDLE GATE), ORDER IV, TREATISE II. TRANSLATED AND ANNOTATED BY HYMAN E. GOLDIN, LL.B., OF THE NEW YORK BAR. PUTNAM'S (N. Y. AND LONDON), 1913.

The compilers of the Talmud during the fifth century, in systematizing the enormous mass of Jewish common law, followed the arrangement of the Mishnah in their division of the subject matter. The Mishnah was an attempt at codification, completed under Rabbi Judah, the Prince, a distinguished descendant of the great master of the law, Hillel, at the end of the second century. The code was arranged under six divisions or "Orders," which were named Seeds, Festivals, Women, Injuries, Holy Things, Purifications. Under these six heads, the compiler disposed of the entire body of the law; civil, criminal, ecclesiastical and religious.

The fourth order, Injuries, is divided into ten treatises: (1) "The first gate," dealing chiefly with the subject of torts; (2) "The middle gate," dealing principally with bailments; (3) "The last gate," dealing principally with sale, contract, real estate and decedent's estates; (4) "Courts," dealing principally with organization and procedure of courts, and criminal law; (5) "Punishment"; (6) "Oaths"; (7) "Evidence"; (8) "Idolatry"; (9) The "Chapters of the Fathers," containing ethical maxims; (10) "Decisions," dealing principally with decisions either in civil or religious matters, that had been made through error. It is obvious that this arrangement of subject matter follows a different principle than the modern law codes. A broad distinction between the civil, criminal and ecclesiastical law is made, but the lines of demarcation are not sharply drawn.

The rabbinical lawyers followed a logic of their own, and, within the limits of the rules that they laid down for themselves, they developed a juristic system of extraordinary scope and thoroughness. It is to one of the treatises of the fourth order of the Mishnah to which attention is now directed. Mr. Goldin has undertaken to translate and annotate the treatise entitled "Baba Mezhiah" or "Middle Gate," one of the treatises of the order "Nezikin" or "Injuries." In looking over his book we are at once struck by the peculiar arrangement and sequence of the subject matter, differing in this treatise, as in the arrangement of the Mishnah as a whole, from modern systems with which we are more familiar. The subject matter is broadly divided under the following titles: Articles, lost and found; Bailment; Bargain and Sale; Interest; Contracts of Hire and Lease; and the law relating to adjoining properties. The underlying principle in this division of the subject matter is the doctrine of bailment, the determination of rights in relation to property which has passed into the possession of another, under an expressed or implied contract other than that of sale or gift, or by inheritance. The reader of Mr. Goldin's book having this principle in mind will be able to observe the logical sequence in the development of the subject matter.

The original text of the Mishnah is written in what may be called Neo-Hebrew. It is different from the Biblical Hebrew and was the language spoken by the people in Palestine as late as the second century and thereafter especially cultivated by scholars, and was enriched by adaptations from Aramaic, Greek, Latin and other tongues. There have been many translations of the Mishnah as well as of the Talmud, from the beginning of the eighteenth century, when a Latin translation of the Mishnah appeared by Surenhusius to the latest and most important attempt to translate the entire Talmud, that of Lazarus Goldschmidt, whose work has been in process of publication since 1897. Mr. Goldin's translation indicates a desire on the part of the author to reproduce as closely as possible the idiomatic value of the Mishnic technical terminology. His notes, which are based upon the Talmudic discussions and later commentaries and codifiers, constitute a very important part of his book, for without them, it is doubtful whether the reader could grasp the meaning of the text.

Studies in the field of Jewish law have found new votaries; but I note in the last four or five volumes of the *Zeitschrift für vergleichende Rechtswissenschaft* several articles indicating that German legal scholarship is beginning to occupy itself with this long neglected field of jurisprudence. It would be desirable indeed if among the many American lawyers who have had some training in Biblical and post-Biblical Hebrew and who are not entirely unfamiliar with the Aramaic idiom of the Talmud, there should be a few to devote themselves to the study of Jewish jurisprudence. Unfortunately this field, the cultivation of which would richly reward the scholarly lawyer, has been practically abandoned to the theologian and the pseudo-scientific student of Jewish, so called, "race characteristics." Would that the American lawyer might contribute toward the attempt, now being seriously made, to lift the entire subject of Jewish jurisprudence out of the field of polemics into the higher region of pure scholarship.

Mr. Goldin is to be commended for his work undertaken in the proper spirit and offered, let us hope, as an indication of his future labors in the same field.

The book is well printed and is to be recommended to all those who are interested in Jewish Law and comparative jurisprudence.

D. W. A.

THE LAWYER IN LITERATURE. By Hon. John Marshall Gest. Boston: Boston Book Company, 1913.

Five of the seven lectures in this collection have appeared at various times in the University of Pennsylvania Law Review. We greet with pleasure these cheerful fireside companions, with their fund of witty anecdote and apt allusion. Judge Gest, though an omnivorous reader, is an appreciative and discriminating one; he sees in the characters that troop through the pages of Dickens, Scott and Balzac not flat shadows thrown for a few moments upon a screen, but living, breathing men and women who have a world about them into which they fit. Any of us can read a novel and visualize the people and the incidents of the story, but not all of us can appreciate the historical background of the novelist himself, out of which he steps forward to address us. "Looking up the references" used to be half the fun of reading Cicero and Virgil, but there are no classical dictionaries to pilot one through the channels of literature more nearly contemporary. Here we have a guide, masking his thorough knowledge behind delightful informality, who leads us not only along the main currents, but off into the quiet waters that are all the more attractive because they are seldom seen.

Perhaps, as Professor Wigmore suggests in an introduction, Judge Gest's little book will be useful to students of law by referring them to stories in

which they can learn no end of sharp practice and useful tactics. He quotes at length a Chicago juriconsult, who, in telling of a difficult litigation, says that reading *Eugène Grandet* "helped me to hound that man so that at the end of eight years there was not anything left but his hide." However that may be, good literature needs no excuse. Judge Gest's collection of essays holds possibilities of entertainment for a wider circle of readers than merely those who follow the profession of the law, and it is sure to send them back to the books to find there new delights that had not been known of before.

S. R.