

BOOK REVIEWS.

EXCLUSION AND EXPULSION OF ALIENS IN THE UNITED STATES. Clement L. Bowie, of the District of Columbia Bar. John Byrne & Co., Washington. Cumbersome in form, inadequate in index and defective in what we might term the more mechanical virtues of modern law book making, this interesting and valuable volume fully redeems these minor faults by exhibiting on almost every page a refreshing touch of personal intimacy with the subject in hand. As such it is in striking contrast with some recent examples of modern law books whose mechanical perfection has poorly disguised unmistakable signs of legal hack.

Dealing as it does chiefly with administrative problems, in which the personal equation plays so large a part, the book before us doubtless owes much of its freshness to the co-operation accorded to the author by various officers of the immigration service of the government. Indeed the tribute of gratitude paid by the author to Mr. Parker, the law officer of the Bureau of Immigration, is in itself alone a guarantee that the book reflects much first-hand knowledge not accessible in the reports.

It is unfortunate, however, that the author has not always taken more pains to disclose the sources of his authority. Having in mind for instance the recent incident of the detention of Mrs. Pankhurst, curiosity led us to turn to the author's treatment of that phrase in the present immigration law, which prohibits entry of those who have been convicted of crimes "involving moral turpitude." We were interested to note the *obiter* statement of Judge Ward that a conviction of the crime of stabbing did not necessarily involve moral turpitude, and we were still the more interested to note the author's statement (p. 178) that in a later case cited, the same point "came up squarely for decision—and the court held that it did not." We searched in vain however through the report of this case for any reference to the crime referred to. The court, in its opinion, merely referred to a statement in the alien's petition "that he had committed certain felonies in Italy involving moral turpitude" and that the facts set out left no doubt that he belonged "to one of the classes of aliens excluded from admission." If, as doubtless is the fact, the petition contained a reference to the crime of stabbing, and the author had before him a record of the case, a summary of the facts which are omitted from the report of the case in the Federal Reporter would have been invaluable as establishing the authority of the case upon the point for which it is cited, although we might add, that in view of the nature of the decision it is a little difficult to see how the case could in any event be considered as an authority for the author's proposition.

In the same perhaps too critical vein we sought the author's light upon the interesting question as to how far the immigration officers were privileged to exclude an alien upon evidence irrelevant under the rules of law. Under the heading of "Evidence" in the index we found the identical subject referred to, in different language, under two sub-heads, each of which referred to a different page in the text. Turning to the first reference (p. 552) we found the author's statement that where the statute does not prescribe the nature of the proof to be presented "the presiding officer is in no way limited by law as to the nature or amount of the evidence which he may consider," but found no authority cited in support of this proposition. Turning to the other reference (p. 596) we found a statement of substantially similar effect, accompanied by a single reference (under a mis-

citation at that) to a case containing merely a qualification of this principle. No where does the author cite in support of his proposition, the two cases which are directly in point upon it (*Lee Lung v. Patterson*, 186 U. S. 168, and *Frick v. Lewis*, 195 Fed. 693), although both of these cases are cited under a number of different points elsewhere throughout the book.

In discussing (pp. 230-233) that portion of Section 9 of the Immigration Act of 1907, which forbids the importation by transportation companies of aliens suffering from certain specified diseases, and which provides that "if it shall appear to the satisfaction of the Secretary of Commerce and Labor that the existing of such diseases or disabilities *might have been detected by means of a competent medical examination*" at the time of foreign embarkations, the offending company should pay a fine of one hundred (\$100) dollars, we note that the author expresses what appears to us to be an insupportable construction of the act, although one that may possibly have been inspired by his official collaborators. The comment is as follows:

"Inasmuch, however, as there is nothing in the act to indicate that there is put upon the transporter the obligation of an absolute guarantor as to the condition of the alien at the time of embarkment it would seem that questions of fact, such as the availability of a competent surgeon, or evidence of belief or of good cause to believe on the part of the master that he was employing a competent surgeon when as a matter of fact he was not, should be proper subjects for the Secretary's consideration."

As the statute is peremptory and mandatory, we are unable to see that the subjects above referred to can properly be considered in the forming of the official opinion contemplated by the act. In view moreover of the fact that much of the cruel distress which occurs as a result of the coming to our shores of inadmissible aliens is directly due to the persuasions of too ambitious agents of steamship companies, it would seem that public policy should demand a strict enforcement of this law.

In passing, we note that the method provided by law for the collection of the penalty referred to, represents one of the furthest developments of administrative process which has yet been attempted under our constitutional system. The act provides that on failure to pay the fine, clearance papers may be indefinitely withheld. This summary administrative power was naturally enough bitterly assailed in the Supreme Court on the ground that it abolished the distinction between the judicial and the administrative branches of the government, a contention to which our present Chief Justice replied "the proposition magnifies the judicial to the detriment of all other departments of the government," while, to the argument that gross abuses might arise from the mistaken use of this power, he replied in equally trenchant language, that the contention "mistakenly assumes that the courts can alone be safely entrusted with power."

This reference to a characteristic extension of administrative power suggests the importance of a wise caution in the matter of extending an already very far reaching discretion imposed upon the inspectors whose duty it is, in practical effect, to finally pass upon the rights of aliens to be admitted to our land. It having been determined, as above noted, that these officers are not to be governed by the legal rules of evidence; as also that hearings may be had upon *ex parte* affidavits of which notice need not be given to the alien even if he has employed counsel, and that neither the alien nor his counsel is entitled to inspect the decision of the immigration officers before taking the permitted appeal to the Secretary of Commerce and Labor, it is obvious that no effort should be spared to develop an administrative body fully qualified for the exercise of these truly solemn responsibilities. This fact is emphasized when we consider that the final appeal to the Secretary, while of great value in cases of public importance, must in the large majority of cases amount to little more than a revision of a printed record by a sub-

ordinate officer of the Department at Washington, with the presumption overwhelming in favor of the decision of the local inspectors who have had the benefit of a personal contact with the alien. As the law contains such elastic prohibitions as that which excludes aliens "likely to become a public charge," a phrase peculiarly responsive to "the length of the chancellor's foot," it is a grave question, whether in the next revision of our immigration laws, which will doubtless contain some more severe and perhaps equally elastic tests of admissibility, provision should not be made for the establishment of an intermediate administrative tribunal of appeal of a somewhat higher rank than the present Boards of Special Inquiry, composed of three local inspectors, one of whom may have already passed upon the alien's case.

As the Supreme Court itself has gone so far as to decide that the claim of a person seeking admission to the United States on the ground that he is a citizen may be finally passed upon by the administrative officers, and is not subject to an appeal to the courts, and as a long line of district court decisions, of a similar tenor, have effectively confirmed the final administrative discretion of the political branches of the government, we find in the attitude of the courts themselves the strongest reasons for emphasizing the importance of devising ways and means, other than judicial intervention, for strengthening and safeguarding wherever possible, the system by which decisions of such paramount moment to so many human beings are to be rendered. Indeed it is probably fortunate for the discipline of the system itself that cases frequently still arise (although much less frequently than formerly) in which the courts are impelled to reverse the findings of the immigration authorities on the ground that they have been rendered without any evidence to support them. Such decisions are scattered throughout the recent volumes of the Federal Reporter and are ably discussed in the book before us. The attorney who faithfully represents the cause of an alien seeking, and unjustly denied admission, performs no small service to the community, and to such this book will be indispensable.

In conclusion we note that the various prohibitions of the immigration laws penalizing masters of vessels for the illegal importation of aliens, suggests a situation demanding, and fortunately permitting, a simple and effective relief. At the present time the master charged with a violation of the act is frequently offered the alternative of abandoning his ship to be present at the next ensuing jury term or of forfeiting his bail, if his vessel does not expect soon to return to the port. He cannot make settlement of the case nor may he plead guilty of the charge and have it summarily disposed of. The situation is entirely analogous to that which is so abundantly taken care of by Revised Statutes 4300-4305, passed at a time when the immigration laws were unknown, and providing a most effective method of summary trial before a court without a jury, by masters charged with violations of the Navigation Laws. While an anomaly in criminal procedure, these provisions are a model of simplicity and fairness and should be extended by Congress to cover the cases of violation against the immigration and Chinese exclusion laws. In a footnote will be found the reviewer's suggestions of an act designed to accomplish this end.¹

Returning to the volume under review, we congratulate the author upon his suggestive treatment of a subject of great public interest, and heartily commend it to the profession.

J. Y. B.

¹ BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the provisions of Chapter Nine of Title Forty-eight of the Revised Statutes of the United States, comprising Sections Forty-three Hundred to Forty-three Hundred and Five, inclusive, relative to summary trials of masters, officers and seamen for certain offenses against the navigation laws, be and the same hereby are

extended to cover and include all offenses which may hereafter be committed by any master, officer or seamen of any vessel, irrespective of the ownership thereof, against any provision of the Act of February 20, 1907, Ch. 1134, 34 Stat. L. 898, regulating the immigration of aliens into the United States, or of the Act of September 13, 1888, 25 Stat. L. 476, prohibiting the coming of Chinese laborers to the United States, or of the several amendments to said acts.