

BOOK REVIEWS.

CASES ON CONTRACTS. Ernest W. Huffcutt and Edwin H. Woodruff. Third edition, revised and enlarged, by Edwin H. Woodruff. Banks & Company, Albany, N. Y. 1913. Pp. 774.

Two schools of thought have been developed in recent years concerning the proper method of presenting to students of law the cases designed for their instruction under the prevalent case system. By one of these schools it is argued that the case system depends for its success upon the development of inductive reasoning and the quickening of the prospective practitioner's ability to see for himself, without exterior aid, the value, bearing and ramifications of decided cases. For the most certain attainment of the power of keen analysis the cases selected for him are arranged in an orderly fashion so the presentation of the subject proceeds step by step, but the progress is not heralded by refined and detailed chapter and section headings. Something is left to the student to do for himself. He undertakes the reading of the cases exactly as he would if they were found by him, after independent search, in the official reports. He blazes the way for himself without carefully posted and worded sign boards to guide his steps. All the compiler of the book has done for him is to place at hand the materials he should have to raise for himself the structure of the law, assisted by the experience of his fellows brought out in the class discussion. By the other school it is believed that such a process carries the case system to a logical extremity, which practical use of it shows to be inadequate and artificial. When the law is being first unfolded, analysis is unawakened. The result of harsh methods of stirring it to life is then too likely to be confusion and resultant inaccuracy. Hence every assistance must be tendered to lighten the load.

The present collection of cases is compiled under the latter theory, and for a carefully prepared analysis of the subject of contract law in a fashion suited to the student, that adopted by the late Dean of the Cornell Law School and Mr. Woodruff, can hardly be surpassed. Confessedly it is an adaptation of the outline first made by Sir William Anson for his treatises on contractual law, but in many instances it has been revised to meet the less detailed requirements of a collection of cases as distinguished from a text.

Aside from the disputed question of case-book form, the present edition of this leading collection of contract cases is an advancement upon the older editions in several ways. It is enlarged. Twenty pages of new matter are added to the important topic of consideration, fifteen to the treatment of matters affecting the reality of consent, and proportionately to other topics. By the omission of cases dealing with capacity and impairment of the contractual obligation space for these enlargements has been secured without rendering the volume unwieldy. These subjects would seem wisely omitted. Both are more properly treated in other courses, and in view of the difficulty experienced everywhere in covering the more germane topics in the time allotted to a course on contracts, nothing should be crowded into it which breaks its compactness and introduces foreign ideas.

The annotations, now inserted for the first time, referring to standard authorities and to leading monographic articles in legal magazines are well chosen and helpful. From time to time articles appear which are most suggestive and instructive, but no serious attempt has heretofore been made to put them to their potential use in the field of legal literature. The recesses of a law library for a time remain unknown paths to students

and for that reason Mr. Woodruff's careful and discriminating use of such articles in his notes is most valuable. The reviewer has had occasion to refer to this in his criticism of a new text book which also appears in this number of the REVIEW. The same appreciation is applicable to a case-book.

The new edition has unquestionably improved this standard collection and added to its effectiveness for the purpose for which it is so excellently designed.

R. J. B.

THE HISTORICAL DEVELOPMENT OF CODE PLEADING IN AMERICA AND ENGLAND.
Charles M. Hepburn. Anderson & Co., Cincinnati. 1897.

This is a reprint, or reissue, of Mr. Hepburn's invaluable treatise on the historical development of the systems of pleading now in use in England and many of the American States. It includes a discussion of the causes which led to the overthrow of common law pleading; of the adoption of the New York Code of Civil Procedure and the spreading of the new system, with various modifications, across the United States; of the reforms in England, culminating in the Judicature Act of 1873; followed by a critical discussion of the points of agreement and disagreement in the two systems American and English, the former resting on positive statutes and the latter on rules of court. In this connection it may be noted that modern writers on procedure are inclined to favor the elastic English rather than the rigid American system and that New Jersey, the last convert to the reformed system, has in its Practice Act of 1912 followed Connecticut in leaving much to the rules of court, the direction that future reforms will probably take. In pointing out the progress of civil procedure in the nineteenth century, and there has been real progress, the author has dealt perhaps somewhat too gently with the short-comings of the code system, the fearful verbosity of code complaints and the new crop of technicalities connected with the joinder and splitting of causes of action, the code demurrer and the general denial. With these and other abuses the twentieth century must deal.

W. L. H.

THE UPAS TREE. Robert McMurdy. F. J. Schulte & Co., Chicago. B. F. Stevens & Brown, London.

Another writer has set his pen to work a revulsion of the social conception of the necessity and justification of capital punishment. He has chosen for his channel of communication, the novel; for his setting and necessary instrumentalities, the law and its administration; and for his fictional framework, the "ancient and eternal triangle," the man, the wife, and the woman.

The novel is quite readable, the action quick, the incidents varied and decidedly dramatic. Yet one does not find himself, as he follows the story, becoming intimate and sympathetic with the characters intended to attract him, nor hostile to those which should merit his contempt. They seem formal semi-automatons which the author has set up to sustain or animate his motif. The incidents, through which these characters move, are planned to aid, and operate with a mathematical precision in impelling, the working of an inflexible inanimate machinery of law; and at this point the author's depiction shows not a little skill in "drawing the court and jury." The extended confidential relations of the attorney and his client whose death occurs during dramatic and compromising associations with the former; the attorney's secret hobby in the study of poisons, his unexplained haste in securing cremation of the body according to the directions of a will favorable to himself are the incidents upon which the circumstantial case of the prosecution (animated by the venom and hate of "the woman rejected") is founded, and results in the conviction and sentence of death which the drunken hangman is prevented from inflicting only by main force when, melodramatically, the confession of the true culprit is disclosed.

When one has finished he is somewhat at a loss to know why the author has so consistently presented an impregnable case against his hero, reserving his proof and even suggestion of innocence until the last moment, while its total absence throughout has precluded the sympathy of the reader, and its disclosure so late in the plot hardly brings a reactive compensation. The story closes with a "confession," the gist of which is the arguments against capital punishment. While the work is weighted with assumptive settings and arguments so common in fictional writings, it will, nevertheless, furnish an enjoyable evening's reading, and lead the legal reader through a familiar field, and one doubtless best adapted to present most strongly the author's "case against capital punishment."

J. C. A.

THE VALIDITY OF RATE REGULATIONS; STATE AND FEDERAL. Robert P. Reeder. T. & J. W. Johnson Co., Philadelphia. 1914. Pp. 440, xv.

No doubt can exist that this volume is a noteworthy and timely contribution to the literature of rate making. While the country at large was waiting last year for the decision of the Supreme Court in the Minnesota Rate Cases, it was impressed anew upon all who seriously considered the matter how important a question this business of rate regulation and public utility valuation had become. The country seems launched upon an era of regulatory measures; good will, for the most part, prevails between government and utility, with the banker keeping a watchful eye upon both, hoping that good will, in another and different sense, may receive the serious and enlarged consideration the descendants from the Florentine banc believe it should. The *bona fide* test of the theory of regulation demands a careful and scientific study of the soundness of proposed theories of rate making and property valuation. This problem is essentially one bringing the economist, the engineer and the lawyer into working harmony, and the country will do well, in the coming days of travail, to look with considerable indulgence upon the poor, much-beset lawyer who it forced to be at once not only lawyer but expert in economic theory and engineering practice.

So far as a lawyer may judge, Mr. Reeder has prepared a treatise which successfully embodies the three essential fields to be considered in rate making. Always a lawyer, he puts economic theory to the test of judicial decision after argument and evidence, but as an economist he has not failed to point out unsoundness of decision where error has seemed to prevail. Where is the balance to be struck? None can speak with absolute authority. But earnest study and thought have equipped the author to present forcibly and clearly the trend of case law and science to date, and to forecast the future course.

The literature upon the subject is scattered. Few serious treatises exist. It is mostly found in shorter articles dealing with particular phases of the subject; printed in scattered pamphlets and without collation or discriminating selection. The present volume, in the compendious notes, has brought under one cover the best thought in these pioneers in the field of rate law, and given us a summarized analysis of them at their best. But the author's work has not been neglectful of original case discussion and criticism. On the contrary he has examined with care apparently all the cases involving the problems of rates, and keenly analyzed them and estimated their effect.

One is particularly struck with the excellent opening chapter upon the commerce clause, which is discussed in view of the new light shed by the Minnesota Cases. It is manifestly germane to a discussion of the validity of rates that the dividing line between interstate and local commerce be clearly marked. Separate valuation of the respective properties devoted to each must be made; separate estimation of probable effect upon the returns from each is necessary. It follows that in all cases in which a railroad or other utility

is engaged in both kinds of business, the division must be made. Such a chapter is therefore inserted, not for a discussion of the relative powers of State and National governments, though that too is important, but to make this separation. It is well done and commendation is due the author for his careful summary of the problems of a century. Many points yet remain to be decided, but these are not slighted; the problem is put, the probable tests suggested and the extent of actual decisions noted.

The discovery and explanation of principles is the province of a text-writer. Beyond the scrutiny and analysis of cases to determine in what respects they conform to and in what diverge from, sound thought and practice, the writer is not concerned with the explanation of particular decisions. The present volume stays within this province and within it does its work well, with clarity of expression and dispatch, proving a pleasant surprise after the verbosity of so many modern texts, whose chief aim is to attract attention by a plurality of volumes. Mr. Reeder's work should attain a high position among careful modern treatises; it fully deserves to rank with the best of these, and in its particular field it has but few comparable rivals.

R. J. B.