

## BOOK REVIEWS.

ADDRESSES ON GOVERNMENT AND CITIZENSHIP. By Elihu Root. Collected and edited by Robert Bacon and James Brown Scott. Pp. ix, 552. Cambridge: Harvard University Press. 1916.

In this volume the editors have grouped four lectures on "The Citizen's Part in Government" delivered at Yale University in 1907, two lectures on "Experiments in Government and the Essentials of the Constitution" delivered at Princeton University in 1913, a number of speeches made during the debates in the New York Constitutional Conventions of 1894 and 1915, a half dozen speeches in the United States Senate, numerous addresses before various public bodies, political, scientific and commercial, and eight addresses delivered before bar associations. The material covers Mr. Root's entire public career, and is an excellent selection of his public utterances, illustrating his ideas on the subjects of government and politics.

Mr. Root is a complete embodiment of Walter Bagehot's description of a constitutional statesman, "a man of common opinions and uncommon abilities." In his speeches one looks in vain for "anything you had never seen before." But one recognizes from the start the unusual ability with which he presents his opinions, advocates the measures which he urges or refutes those which he condemns. His political creed is admirably set forth in his "Acceptance of the New York Senatorship." He is "a convinced and uncompromising nationalist of the school of Alexander Hamilton." He believes "in the exercise of the executive, the legislative and the judicial powers of the national government to the full limit of the constitutional grants, as those grants were construed by John Marshall, and would be construed by him today." Throughout his addresses, he repeatedly explains our American system of constitutional limitations, and insists that upon this and the system of representative government developed under our constitution, rest the safety of society and the preservation of our liberties. Much of his effort therefore is devoted to opposing those measures which have been put forward to weaken these foundations, the Initiative, the Referendum, the Recall and the Popular Review of Judicial Decisions. Devoted to the Constitution as construed by Marshall, he has felt it a duty always to praise it and to protect it against attack and alteration. The most effective article in this book is his argument in the Senate against the amendment of the Constitution providing for the direct election of Senators. It should be read by every student of our constitutional history.

As is to be expected of a great lawyer he speaks from the floor with greater skill and power than from the platform. The antagonism of debate spurs him to efforts which produce a vigorous eloquence and a lucidity of thought and expression which are often missed when he speaks to audiences who do not talk back. The most interesting part of this book, therefore, both for its substance and for the light which it throws on Mr. Root's character is to be found in the speeches in Congress and in the Constitutional Conventions. Here his devotion to the principles of repre-

sentative government is illustrated not only by his opposition, already mentioned, to the propositions of those who would introduce direct popular action into the legislative and judicial departments, but by his advocacy of the restoration of the governing power to the officers elected by the people and stripping it from the irresponsible autocracy which now controls it through the machinery of party organization. His speech in favor of the Short Ballot is not only a convincing argument, but also a masterly description of the institution of Invisible Government by one who has observed its workings at close range. The spirit which animates this brilliant attack upon the system which has usurped the power of the people, shines also in the address on the case of Senator Lorimer.

In those articles addressed to audiences of his profession, Mr. Root again is commonplace. He is zealous in his advocacy of reform in procedure. Important as is that subject, and difficult as it is to convince most lawyers of its importance, the perpetuation of repeated pleas for its adoption does not seem so important. The theme of the lawyer's duty to be loyal to our institutions is somewhat worn. These utterances of a leader do not perceptibly raise the level of the matter which, fills the reports of bar associations. One does not expect, perhaps one should not expect to find scholarly or constructive work in the occasional formal speeches of a great lawyer whose chief work is in courts, in cabinets and in counsels, but it is to be regretted that he so fails to recognize the kind of work that is being done in the schools as to complain of "half-baked and conceited theorists" who are teaching students "to despise American institutions."

Mr. Root has been a prominent figure in the history of so much of this century as has passed and it is desirable that his papers and speeches should be collected and arranged for the convenience of those who will study that history and the many legal, political and social questions which it involves. This work as illustrated in the present volume has been well done.

*John Stokes Adams.*

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OPHTHALMIC JURISPRUDENCE. By Thomas Hall Shastid. Pp. vi, 147. Chicago: Cleveland Press. 1916.

In the words of Mr. James H. Brewster, formerly Professor of Law in the University of Michigan, in his introduction to this volume: "The author of this volume is well qualified by study and experience to discuss the legal relations of ophthalmology."

Mr. Shastid's work fills a long-existing gap in the knowledge of both the lawyer and the eye-expert, for not only has the ophthalmologist been largely unaware of his legal responsibilities as well as privileges, but the lawyer, too, has been sadly at sea when his practice has brought him into a case of damage, with the duty of examining the expert ophthalmologist, and too often has he been as largely at a loss in bringing out important points from his own expert witness, as he has been at fault in detecting the weaknesses of the expert witnesses of his opponents. In other words,

the ophthalmologist on the witness stand has been left too largely to his own devices, through the ignorance of his counsel, the latter hoping devoutly that only good might come of the testimony. This has occurred so often that the subject is entirely one-sided in discussion amongst medical men. So, therefore, until the lawyer learns how, through a thorough technical knowledge, to handle his expert ophthalmologist on the stand, Mr. Shastid's book will be of immense value to the said ophthalmologist, for if the latter must largely "go it alone" on the stand, it becomes imperative that he should know the range of his legal limitations.

The various chapters of the book set forth admirably the details of the announced headings, such as, for instance, the subject of malingering, where usually, not only does the lawyer know nothing about it, but too often the ophthalmologist knows almost as little—and in these days of Workmen's Compensation laws, malingering looms large in practice.

The chapter on Visual Economics alone makes the book worth while, for, though the formulae seem involved, the exact amount of damage to vision in its relation to efficiency and money-earning capacity becomes highly important, and, reduced to a mathematical status, precludes the too-often introduced element of guess-work and sympathy. The modern lawyer must ask the ophthalmologist to state exactly how much damage is done to the eye, and he must be able to judge for himself of the correctness of the answer, while the ophthalmologist, on the other hand, must be able to say with mathematical exactitude how much interference with visual efficiency has occurred, in order that some basis of damages may be reached.

Whether the day will ever come in the United States when official experts in the various medical lines will be appointed for all courts will probably rest largely upon the development of the status of the medical expert under present conditions. It is a fact that the present situation is subject to much improvement, for at times the medical expert, either through his ignorance or a lowered ethical tone, is far from being a credit and ornament to his profession, while the lawyer, too, has his lapses from the code of ethics of his profession, and many and often are the complaints by the expert of his treatment on the stand. To such an extent has this latter fault gone, that there are, in many of the large cities, prominent ophthalmologists who refuse under any conditions to go upon the stand, claiming that they cannot afford to submit themselves to the treatment so often accorded the expert witness. Probably this diffidence comes from an ignorance of the special knowledge needed for this particular class of work—an ignorance the less excusable since the publication of Dr. Shastid's book.

While "East is East and West is West," lawyers and doctors will probably never hold exactly the same point of view about any kind of human frailty, be it mental or physical, for, although the members of both professions are entirely human, as a fundamental basis, yet the two courses of training and experience diverge widely upon many points, and while it is the part of the doctor to think and believe that a weak spot in a human is something to be supported and healed, it is, from the point of view of the lawyer, with his modern training, something to be seized and used to advantage. This divergence gave rise to many of the dissensions in

the past, but can we not hope that Dr. Shastid, with his co-equal legal and medical training, will do much in this book to smooth down many rough places, to instruct upon many crying points of ignorance, and to hasten the day when the ideal trial will be held consisting of a smooth, rapid, courteous, and accurate finding out of the truth in a given case?

It is beyond question that every ophthalmologist will need this book, as it is the only one of its kind and quality, while at the same time the lawyer will find much of comfort in it for himself when medico-legal eye-cases come up in his experience.

C. P. Franklin, M. D.

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SELECT CASES AND OTHER AUTHORITIES ON THE LAW OF PRIVATE CORPORATIONS. By Edward H. Warren. Second Edition. Pp. xi, 1040. Cambridge: Published by the Editor. 1916.

Bishop John Spaulding once said, "He teaches best who enables his pupils to dispense with his aid." Such an ideal may well be questioned in its application to the "case-system." While Professor Warren's book does not usurp the place of the teacher, it does enable him more efficiently to exercise his higher functions and use his opportunities. This volume is something more than a mere collection of cases on the law of private corporations. In every detail is shown the most careful editing by one who has a mastery of the subject.

While the arrangement of topics treated may not be conventional it commends itself as logical and useful for the consideration of the subject from a practical, as well as pedagogical standpoint. The changes made in the second edition show a careful plan and are valuable additions. Consideration at greater length of the subjects of Unincorporated Associations, and Offenses Against the Sherman Anti-Trust Act, is warranted by the importance they have assumed in the lego-commercial world. Even a practitioner may find material here of service.

In the printing of the cases much space, and consequent labor to the student, has been saved by eliminating extraneous matter, in many instances by succinctly restating the facts, and by avoiding recurring tedious examinations of authorities. *Spring's Appeal*, printed on page 769, furnishes an illustration. However, in each section there is at least one case giving the facts of several others, through the court's review of decisions. This affords opportunity for applying the principles studied in the section and stimulates thought.

A commendable feature of the book is found in the numerous valuable notes by the editor. These are not mere compilations of cases "accord" or "contra," but often contain critical comments, analyses of aid to one dealing with the problem, and instructive comparisons of cases. Particularly on this account is the absence of a moderate index to be regretted. So also are principles subordinate or correlative to that in the principal case presented. The volume in a sense happily combines with a case-book many of the characteristics of a text. Typical examples of notes are those on pages 719 and 991. The addition of dates to cases cited in the notes would

aid in ascertaining where the attitude of courts is changing. The notes, as well as the cases, printed in clear type, appear to be given to permit the student to read—not squint.

The thoroughness with which the subject has been covered is exemplified in the note on page 305, giving the provisions in the different states on issues of stock at a discount or for over-valued property. The corporate forms in the appendix give the student interesting evidence of the extramural relations of the subject and may be pursued with profit by others.

If, in the page headings, the appropriate subjects alternated with the names of cases that plan would be of assistance to those who will use the book. But they will appreciate the compactness of the book, its typographical execution, and a binding that permits of a flat opening.

More case books like this one would be welcomed by those interested in the scientific working out of the "case-system."

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REASONABLENESS AND LEGAL RIGHT OF THE "MINIMUM CHARGE" IN PUBLIC UTILITY SERVICES. By Samuel S. Wycer. Pp. 82. New York: American Gas Institute. 1916.

This pamphlet contains, in its first part, a brief discussion of the minimum charge in the schedules of rates of public utilities and its general acceptance and propriety, in order to avoid discrimination. There are also included a compilation of decisions of sundry regulating commissions, whereby minimum charges have been established; and a compilation of non-adjudicated minimum charges in existing rate schedules.

The data contained in the pamphlet will doubtless prove of material value to any persons interested in the propriety of the charges of public service corporations.