

BOOK REVIEWS.

CASES ON LABOR LAW. By Francis B. Sayre, Harvard University Press, Cambridge, Mass., 1922, pp. 1017, including index, large octavo.

We have before us the most complete and comprehensive collection of important statute laws and leading cases affecting what are distinctively regarded as labor problems which has ever been brought together. The author has exercised a high degree of intelligent discrimination in making his array of choice cases. It illustrates what for convenience, but with doubtful conviction, we may term the development of this-kind of law. Every person having to deal with questions of such nature will find Prof. Sayre's book truly a *vade mecum*. The truth of this remark will become evident upon even a cursory and partial review of the chapter titles of this book.

The author opens by introducing us to the early English statutes and to nineteenth century and later English legislation. This is followed in due order by cases relating to questions of the legality of labor combinations from several points of view, both English and American; to federal jurisdiction over labor disputes, including interference with interstate commerce or with United States mails; to legality of ends pursued through collective action of labor organizations; to lockouts, boycotts, black lists; to union labels; to union organization in non-union fields; to corporate rights, powers and liabilities of unincorporated labor unions; to rights and liabilities of members of labor unions in respect to third parties; to trade agreements; to internal government of unions; to the use of the injunction against labor organizations; to prohibition of strikes by injunction or by criminal law in the lights of the Thirteenth Amendment; to regulatory labor legislation, including among other matters employment of women and children, laws regulating employment in dangerous or unhealthful occupations, controlling hours of labor, minimum wages and miscellaneous protective laws; to employment in a business charged with a public interest; to compulsory arbitration and the industrial court; to workmen's compensation laws. The foregoing enumeration, practically of chapters headings, will give some idea of the scope of the book, but an incomplete one because of the large number of subdivisions usually to be found under each heading.

After inspecting a book of this character with all its learning, one is tempted to ask why, if society were put upon a normal and natural basis, any reason should exist for the preparation of such a work. In other words, after all, is it not essentially ephemeral, and, were fundamental social relations to be worked out properly, would not all this mass of law, so called, prove to be essentially useless and obstructive? Of course these queries have no relation to the immediate usefulness of the work; but, fully considered, they compel one to regard the social situation from a rather mournful point of view.

To illustrate the idea in mind, let us visualize the trade union movement abstractly. Were there to exist in this land equal rights and equal opportunities as between man and man, its most ardent advocate today must admit that the trade union would be without just basis, for, after all, the effort of

the trade unionists would then be to secure by force of organization an advantage against at least some of his fellow citizens which he would not, without such organization, possess. In a state of absolute equality, therefore, the trade union would be essentially evil as an effort to create a superiority of conditions for its members as against those outside its pale. But, as we shall have occasion to enlarge upon, equality not existing, a trade union is today an unavoidable method of attempting to obtain for its members some approximation to equality, some of the advantages of which present social conditions deprive them.

If, again, there existed a true regime of equality among us, can we conceive of the slightest excuse, or perhaps we should ask, occasion for laws limiting the number of hours of employment, or relating to conditions surrounding dangerous occupations or to the employment of women or children? Would not these things adjust themselves without calling for legislative interference? If they would, as we may believe can be demonstrated, then laws of this character exist only because we have a lopsided and imperfect civilization.

The argument can be carried much further. It may be pointed out that wherever we have had the nearest approach to industrial freedom, there trade unions have been weak or non-existent, and there has not been any reason for all the congeries of laws affecting the treatment of labor we now find needful. As so-called civilization has grown; as we have got away from equal conditions, new methods of taking advantage of the want of equality have sprung up, and new laws have been passed by legislatures to oppose them.

The whole subject may be illustrated by comparing the situation in the United States with that now and heretofore prevailing in England. When, one hundred and fifty years ago, there existed in the United States almost a condition of absolute economic equality, there were no trade unions, no protective labor laws, no minimum wage laws, and the necessity for the existence of any of these things would have been denied and ridiculed. In England, conditions of inequality being much more general than in the United States, and growing in a practical sense more rapidly, we have found the earliest and most complete development of trade unions and of all the mass of labor legislation including out-of-work compensation, that may perhaps be discovered anywhere. In the United States, drifting in the same direction because of its getting away from the condition of comparative economic equality which once prevailed, there go up more and more strident cries for new labor legislation. These crying demands under existing conditions must be honored; but, if economic freedom prevailed, they would never have been heard.

This legislation simply offers evidence that monopoly has grown so strong and inequality so pronounced that the individual can no longer protect himself, but must call upon the state to render his position more bearable.

Thus labor laws, however necessary today, are really the *indicia* of a decaying, not an advancing, civilization. Looking at Prof. Sayre's book from this point of view, it must be regarded after all as only relating to a passing, not—let us hope—to a permanent phase of society.

There are those of course who will contend that these suggestions are

without foundation because economic freedom does exist, as they believe, in the United States. To answer such persons completely would much exceed the limitations permitted this review, but we may point out the obvious fact that from month to month the natural opportunities—the land and all that goes with it—of this country, are held in tighter and tighter grasp; and yet from this land all must obtain their support. There is no other source.

The immense majority of our population today are and must remain practically divorced from ownership of the land upon which men live, and they are consequently paying an expanding tribute to some other human beings for the privilege of existence.

We have also created tremendous patent and other artificial monopolies which, whatever may be the arguments excusing them, do at the present time deny equality.

The bands of all these things, put about the freedom of action of the community, circumscribe the action of individual men, drive them into trade unions, and, by way of partial relief, compel the enactment of labor laws which, in a nation truly free would be superfluous if not positively vicious.

Many questions arise in one's mind from the examination of Prof. Sayre's book. To illustrate one of these: The book presents the most important decisions affecting the question of "government by injunction," and notes to references point out that the so-called "government by injunction" operates to deprive men of the rules of criminal evidence and of the method of trial by jury which we have found appropriate for the adequate protection of every individual. It may be, however, that though usually unexpressed, the objection to government by injunction is deeper and more subtle. The suggestion may be made that in granting injunctions of this nature the courts have by their fiat made property of that which prior to their utterances, was not property. The public has an uncertain but as yet inarticulate feeling that this is the fact. When, by way of example, a judge declares that an employer has a property right to be protected by injunction in the free flow of labor, or has a like right in the good will of his business which must be protected against even the persuasions of a striker, he creates property as truly as would a legislator who today might recognize the validity of the importation of a slave and protect the master in the enjoyment of his possession. A true definition of property will not permit it to extend beyond the tangible object of individual creation. The employer, of course, did not create the free flow of labor nor could he create the good will which rests in the consciousness of other men. The latter may be the result of his action, but it is not a creation in any true sense. We can say this, while recognizing that as between buyers and sellers of a business a purely conventional good will may be treated as if it were property. We may point out the fact that the courts have never recognized a property right in the striker or locked-out laborer to control even the most illegitimate acts of his late employer. Should not both or neither be regarded as having property interests as against the other?

In a broad way the student of great affairs must recognize that reforms at all serious in their nature, rest upon the limitation in the application of the term "property," rather than in its extension to new subjects. For in-

stance, the Seigneurs of France felt that they had a property right in their power to interfere at every Gallic cross-roads with the freedom of exchanges, and in their ability to inflict upon the peasantry the burden of *corvées* and other special taxes. Their creation of property in themselves without right, forced a revolution. Our Civil War was fought to bring about a re-definition of property, and after that struggle chattel property in human beings no longer existed in the United States. In various countries property in giving offices or employments, has been abolished with consequent greater equality and freedom to the community. These various lessons should teach us to beware of any expansion of the idea of property to something beyond the power of strictly individual physical creation.

Should not the courts have long ago considered these precedents with all their implications? The courts have lightly and unphilosophically assumed the function of redefining and extending the term "property," reading into it new meanings which excuse greater and greater control over the actions and activities of men. The result has been injurious to judicial prestige and oppressive to those against whom decrees have been directed.

The fact is that the judges (and, sad to say, the lawyers) are not close students of social tendencies or of the philosophy of society, and know not whither they are undertaking to direct the nation. As it is, one man of narrow vision and possessing only a legal method of approach lays down what he calls the law and a hundred other judges, bound by precedent, follow his footsteps along an uncertain path to an unknown goal. Withal, we lawyers insist that the community shall admire the work of ourselves and of our magistrates, and we resent doubts of the divine excellence of our judges as emphatically as Kaiser Wilhelm was wont to resent doubts as to his relations with the Almighty.

So, while admiring the industry and good judgment of Prof. Sayre, acknowledging the merits of his work, our approval may not always extend to the social conditions attending the raw material he spreads before us.

Jackson H. Ralston.

EARLY HISTORY OF THE FEDERAL SUPREME COURT. By W. H. Muller. The Chipman Law Publishing Company, Boston, 1922, pp. xii, 117.

The apparent purpose of this little volume is to give in brief scope the history of the Supreme Court prior to the appointment of Chief Justice Marshall; and while the discussion does not evince any particular thoroughness of research, it is a succinct and readable account of what happened in those early days. The author's conclusions with respect to the Court are fairly well summarized in his statement that "a study . . . of its establishment, of its first members, and their early decisions, is instructive and shows that the foundations were already being laid for its future greatness and influence, even before the appointment of the great Chief Justice." With this thesis in mind, he probably attributes somewhat more importance than is justified to the activities of the Court during the period in question, but his position is clearly

and briefly stated, and the book is a convenient source of information with respect to its subject-matter.

It also contains brief accounts of the personalities of the various judges who made up the Court during the years in question.

Henry Wolf Bicklé.

A MANUAL OF ARCHIVE ADMINISTRATION, INCLUDING THE PROBLEMS OF WAR ARCHIVES AND ARCHIVE MAKING. By Hilary Jenkinson, M. A., F. S. A., Oxford, Clarendon Press, London, 1922, pp. xviii, 283.

"Without documents there can be no history." Mr. Shotwell's statement (page 7 of his editor's preface) is not to be controverted. But Mr. Jenkinson gives us to understand with an almost severe insistence that a mere document has no status as proof for an historical event or act until it has become an archive. The amateur in Archives might confound and confuse the terms, but only before he has read this book of Mr. Jenkinson's upon Archives. A document may be very beautiful, conveying in every illuminated or beautiful plain letter the story of the period that produced it; genuinely old it may be, excellently preserved, clear as to date, place of making, confirmed by contemporary fact, and for all that, may be a mere document, to be relied upon or not as the historian may choose; he uses it at his own risk, the Archivist—and we shall see that he is right—guarantees nothing. We begin to see why when we are given the definition of an Archive. It is not the definition any dictionary will give us; it is one built up out of Mr. Jenkinson's knowledge of, and work among, the Archives themselves.

"A document which may be said to belong to the class of Archives is one which was drawn up or used in the course of an administrative or executive transaction (whether public or private) of which itself formed a part; and subsequently preserved in their own custody for their own information by the person or persons responsible for that transaction and their legitimate successors.

"Outside this definition we have nothing but plain documents—pieces of written evidence, each one of which must be treated upon its individual merits by the historian or other student who would use it for his own purposes." (P. 11.)

We are given no such clear definition of an Archivist. We have to put together his portrait from partial views of his duties, his methods, his limitations, throughout the book. He can accept only a duly authenticated Archive, which has never been out of accredited custody for any period of time. A month, a week, a day, may afford time for changes, and thus destroy entirely the credibility of the Archive, relegating it to the status once more of a mere document. The reasons for this severity are clearly and convincingly given. Completely carried out the regulations given for the making, preserving and keeping of these accredited documents would make the Archive so treated absolutely reliable, never to be contradicted. Unless, and Mr. Jenkinson does not contemplate the possibility, there should happen to be an unreliable, and unscrupulous Archivist. Such a contingency, it is hoped, is no longer one that

must be contemplated, but the history of documents in the past only too clearly shows that here has been one of the most fruitful sources of the contamination of documents.

Mr. Jenkinson sets forth the duties of the Archivist in a very plain and matter of fact way; he saves no time by reducing his statements to their shortest wording by way of the literary phrase. Yet when he comes to formulate headlines for sections of his work he betrays a certain almost poetical feeling in his phraseology. For he tells us of the "Physical Defence of Archives," and the "Moral Defence of Archives" as if these wards of the Archivist were something human to be kindly entreated and cared for. In the latter part of the book we are given instructions for the physical storing and preserving of the Archive matter which will be useful to any librarian, custodian, or private owner of documents. This book is really a new thing in books. The subject has not before been covered to this extent and in this way. We already owe the author a great debt for his book on "Paleography and the Study of Court Hand," and this new book adds to the debt.

While the volume is issued from the Oxford Press, its existence is owing to the Carnegie Endowment for International Peace, Division of Economics and History, of which Dr. John Bates Clark is director, and it forms one of the series on the Economic and Social History of the World War. One part of the volume is devoted to the collection and preservation of war Archives, and it is this part which was the real inspiration for the undertaking of the work. The question as to selecting and rejecting such documents, and the manner of treating them after such selecting was finally made, led to the opening of the whole question of the treatment of Archives.

M. C. Klingel Smith.

A SELECTION OF CASES UNDER THE INTERSTATE COMMERCE ACT. Edited by Felix Frankfurter, Byrne Professor of Administrative Law in Harvard University. Second Edition. Harvard University Press, Cambridge, 1922, pp. xii, 789.

This second edition of Professor Frankfurter's "Cases Under the Interstate Commerce Act" retains the plan of the first edition so far as concerns the general division of the subject-matter and the topics under which the cases are collected; but it obviously represents a complete reconsideration of the value of the original selection, since, of the approximately 100 cases which appeared in the first edition, about forty are retained in the second edition, the balance being replaced by about sixty new cases, most of which have been decided since the original collection was published in 1915.

The four general topics dealt with are "The Scope of Commerce Regulated by the Act," "The Duties of Carriers Under the Act," "Functions of the Interstate Commerce Commission in the Enforcement of the Act" and "Function of Courts in the Enforcement of the Act," and each of these subjects is again subdivided for the purpose of the classification of the cases. The collection is well adapted to give the student a familiarity with the more important principles arising in connection with the Interstate Commerce Act;

but it seems questionable whether it would not be preferable to exclude some of the cases, *e. g.*, those regarding loss and damages and the collection of revenue, which relate to the principles of carrier law rather than to the administrative matters that more especially characterize cases under the Interstate Commerce Act. It seems to the reviewer that the editor has very wisely devoted most of the volume to cases dealing with the powers and duties of the Interstate Commerce Commission in the enforcement of the Act. The teacher will undoubtedly desire these if his purpose is to have the student finish the course with some practical grasp of the real operation of this important legislation.

Henry Wolf Bickl.

THE HOLY ALLIANCE, THE EUROPEAN BACKGROUND OF THE MONROE DOCTRINE. By W. P. Cresson, Ph. D., Oxford University Press, New York, 1922, pp. vi, 147.

Dr. Cresson's brief but comprehensive study of the Holy Alliance is significant both because of the timeliness of its publication and also by reason of the documentary sources which he discovered in the Russian archives, and to which historians have not hitherto been granted access. It is timely because historical students and the general American public need to be reminded just now of the international system which Alexander the First planned, and which recalls in so many respects the aspirations of Woodrow Wilson. That system based upon the principles of Christian Brotherhood and designed to perpetuate world tranquillity, is of peculiar interest at this time, when, as in 1815, Europe is bled white and the horrors of war are carried over into the period of ostensible peace. Any study which will tell us more of the scheme of co-operation which the idealistic Tsar had in mind is well worth while, at the moment when the political leaders of mankind must consider just how far international co-operation may solve the problems of today.

The author has done good service by rescuing the Holy Alliance from that morass of misunderstanding, in which it has been confused by careless journalistic writers with the Quadruple Alliance dominated by Metternich. It was, of course, quite different in origin and purpose and caused no little anxiety to the obscurantist Austrians, lest it should, through the vague benevolence of its principles, encourage the Revolution itself. In the public mind the anti-liberal application of Metternich's doctrine of Intervention has generally been ascribed to the Holy Alliance, but quite incorrectly. Dr. Cresson has traced clearly the process by which Alexander, gradually falling under the influence of the Austrian chancellor, permitted his project of Christian federation to fall into the background after 1818, and thus enabled the reactionary Quadruple Alliance to fasten its hold upon Europe. The design of the Holy Alliance certainly did not provide for the exercise of democratic principles, but Metternich himself bears witness to the fact that it "was never founded to restrain the liberties of the people, nor to advance the cause of absolutism. It was solely the expression of the mystical beliefs of the

Emperor Alexander; the application of the principles of Christianity to public policy."

More important to the historical scholar, perhaps, is the contribution which Dr. Cresson makes in his survey of the efforts of Alexander the First to bring the United States into his federation. This is based upon unpublished documents in the Imperial archives, which were opened to him after the March revolution of 1917, and upon research in the archives of our own Department of State. He shows that the formation of the Holy Alliance at first created a not unfavorable impression in American diplomatic circles, and that Dashkov, the Russian envoy to the United States in 1817, gave the Tsar to understand that his overtures were likely to meet with a friendly reception in Washington. Dashkov, however, soon discovered that the United States Government was little interested in foreign affairs and his mission was almost unnoticed: "They do not worry any more about me than if I were the Emperor of Japan." He was replaced by the Chevalier Polética whose instructions were even more urgent in their appeal to the Washington Government to join Alexander's League of Peace. That government, especially after the Congress of Aix-la-Chapelle, felt that there was reason to suspect that Alexander's American policy was not altogether disinterested—a view justified by Dr. Cresson's researches, which seem to confirm the belief that the Tsar's efforts to bring us into closer relations with the European Powers resulted largely from his hope of securing a diplomatic ally opposed in policy to Great Britain. Already in 1818 our Minister in St. Petersburg was warned by Adams that "we cannot participate in and cannot approve any interposition of other Powers, unless it be to promote the total independence, political and commercial, of the colonies."

The tendency of the United States to hold off from all European combinations was strengthened by the increasing influence of Metternich over Tsar Alexander. The result of the Congress of Aix-la-Chapelle was to make plain that the real controlling power in Europe would not be the idealistic Holy Alliance, but rather the reactionary system of the Austrian chancellor. In the face of such facts, there was little prospect of success for Polética, who found it impossible to sow effective seeds of distrust between Great Britain and America. The Russian envoy recognized that his negotiation was losing ground and when, in June, 1819, he brought forward the emperor's request that the United States should accede to the Alliance, Adams replied that the same reasons which had caused Great Britain to refuse her signature to this pact, governed the policy of the United States; that the agreement was a personal one between sovereigns and, therefore, not appropriate for the consideration of a constitutional state.

There is so much of value compressed in this small volume that criticism may seem captious. One might wish, however, that in dealing with the historical outskirts of the subject, rather more care had been taken with details. The author seems to over-emphasize the effect of the judicial assassination of the Duc d'Enghien upon Alexander's anti-Napoleonic policy in 1804. The rupture between Russia and France was due less to the indignation of the Tsar than to reasons of state. Several months before the execution of the ill-