

BOOK REVIEWS

THE JUDGES IN IRELAND 1221-1921. By F. Elrington Ball. E. P. Dutton Co., New York, 1927. 2 Volumes, pp. xxii, 773.

So far as the records we have shed light upon these seven hundred years of Irish history, that light seems to reveal a storm-tossed sea of souls; sometimes a little less tumultuous, and with a gleam of sunshine here and there, but never a complete calm. Yet Mr. Ball is calm. He claims to be of Ireland, saying that he is the "representative of two English families that appear first in Ireland in the latter part of the seventeenth century," so that even by his own account he is of a transplanted family of English blood and Celtic blood does not flow in his veins. This may be all the better for the judicial balance that he tries to hold impartially, not letting his English blood overbalance too heavily the Irish element with which he has to deal. One must say "the Irish element" in order to be truthful, for Mr. Ball shows plainly that an "Irish judge" for the greater part of these centuries did not mean a man born in Ireland and promoted to a judgeship. In reality it has seemed to mean in something like two-thirds of the cases, an Englishman rewarded for services to some eminent Englishman by an Irish judgeship. Mr. Ball may be correct in thinking that this system, if it may be called a system, has been of benefit to the Irish themselves and to the character and attainments of the members of the judiciary. The "authority of England was absolute in their appointment" and it is Mr. Ball's task to "show the manner of men that were raised to the benches of the Irish superior courts by England, and so far as is possible the influences which accounted for their selection, the circumstances in which their duties were discharged, and the estimation in which their services were held." He has discharged this task most painstakingly. He has done for the Irish judges that which Mr. Foss, in his *Judges of England*, did for the English judges. But the task which the author has set himself is much harder than compiling a mere catalogue of judges with the bare facts of birth, appointments and death. This Mr. Ball has indeed done; he has given us the usual biographical details in a chronological order. He has also given lists of the judges under the courts in which they served, also in chronological order. This is what Mr. Foss did, but we have in these two volumes a minute account of the judges in chapters which he entitles "Precursors," "Prototypes," "Evolution," and "Mediaevals." Then come the "Tudors," "Elizabethans," "Monarchists and Cromwellians," and the "Restoration." In the earlier chapters of this first volume we hear echoes of the names familiar to us through the *Year Books*—Hankford, Scardeburgh, Skipwith and Willoughby. Mr. Ball, however, confesses that he is no lawyer, and we do not find him lingering with any tenderness of feeling over the judges of the *Year Books*. He goes on in the second volume to add chapters whose titles have an almost romantic promise to the ear—political romance, at all events—"Whig and Tory," "Tories Triumphant," "Whigs Omnipotent," "Court and Country," "The Country on its Trial," and so on, to the final chapter, "The Union in Danger." One rather eagerly expects the wonderful

word painting of a Claude Bowers; expects these judges to come alive and set forth the facts of their time as exemplified in the acts of their lives, until Irish history as read in the lives of her judges is seen as a stately pageant of the passing years. But the expected does not happen; could not happen possibly in such brief outlines as these life histories must be set forth. Yet, this is no reason for criticism; the facts are told in the most exact fashion, and a most useful telling of the various appointments and the reasons for these appointments; reasons which touch upon great events in history, open up vistas of important periods in the life of the people—an always struggling people who never wholly succumb no matter what the circumstances. We are told of the devotion of the judges riding on circuit; the riots and the executions and “bloody assizes”; of famine and fever, of which the judges take their share and calmly depart to make room for new appointees, very conveniently as it seems. We also have a few accounts of the great houses built by these judges appointed from England and we hear of the large sums saved by some of them. We hear also of the jealousies and disappointments suffered by those ambitious of appointments and not receiving them. It is a little difficult to get a clear view of the characters of these men because of Mr. Ball’s style) rather peculiar at times, although effective in a way. Perhaps an extract from his description of Lord Clare may best convey an idea of the author’s literary method. He says, of Lord Clare: “His public career was a short one of less than thirty years, for more than twelve of which he held the great seal. Before entering upon it he had gained in Dublin the highest academic honours, had added to his distinction at Oxford, and had been called to the bar, like Burgh, without keeping terms. When six years at the bar he entered Parliament; in five years more he was attorney-general; in six years more he was chancellor and a baron; in four years more he was a viscount; in two years more he was an earl; in four years more he was a baron of Great Britain; and in three years more he was dead.” [Vol. 2, Book VI, p. 234.] One is left almost as bereft of breath at the end of the paragraph, as was the eminent judge. But after this swift removal of Lord Clare from the scenes of his earthly triumphs we are given a paragraph which sums up the real work of the great man’s life, which softens a little the abruptness of his end.

On the whole a reading of the entire work leaves one with a feeling of very great respect and admiration for the immense labor which has been done in acquiring what appears to be a familiarity with every phase of the legal history of all those centuries. A familiarity that gives the feeling that the author must have met at some period of their lives all these judges, chancellors, masters of the rolls and lesser lights of the bench, and that they in very brief audiences had stamped upon his mind their characteristics and the outstanding events of their lives. We feel sure that if they were of English descent and inclined to be Protestant he felt kindly toward them as being of his own mind and kind, but if Catholic and Irish he can very gently condone their faults. This interpolation of biographical sketches between the limited and dry data of the lists should prove to be of great assistance to those who need something more than the mere dry husks of the lives of these men

who took a very important part in the history of their times, and of whose lives for the most part there has been but a meagre record.

The biographical lists themselves are fuller than we might expect and appear to have been very carefully done. Coming between the descriptive chapters as they do it is very easy to turn from the lists to the longer record of any judge, and so get not only the necessary information but also the atmosphere of the time in which he lived and of the events which shaped his character.

The political side of the appointments of the judges to the Irish bench by the English governments now monarchical, now Cromwellian, then Tory and Whig—is shown with a perfect frankness. Partisanship is shown to be all powerful, but within the limits of party, worth is given its due. If the best man for the place could not be useful to the party in power, then a man who could be useful must be appointed, but he must, if convenient, be fitted for the place. Mr. Ball is clearly most conscientious in both his praise and blame, and leaves us with the impression that he believes that through all the vicissitudes of time and inevitable change, the appointments were, as a whole, such as to uphold the character of the bench. These chapters are probably not meant to be read as a whole; they are rather meant for consultation in a given case where there is need to obtain information as to a particular judge; but when they are so read, dull as a continuous survey may seem in itself, it yet rouses in the reader a desire to read more of these men, so many of them comparatively unknown, who lived and aspired, in some cases made great and heavy sacrifices, and who in spite of greed in some, and error in others, died doing their duty as they saw it. Some of them feeling all the while that they were exiles from their real home, while some, even those of English birth, became a lover of their adopted country and did their best to see that justice was done within her borders.

The American publishers of this work have put it into a very attractive binding with just enough of the Irish green to indicate the country whose judges are considered in its pages. The printing and paper are as excellent as they should be for a book which certainly will long have a place on the shelves of all law libraries, and of all other libraries where biographical data is a necessity.

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THE STATE AS A PARTY LITIGANT. By Robert Dorsey Watkins. The Johns Hopkins Press, Baltimore, 1927.

This monograph, published under the auspices of the Board of Studies of the Johns Hopkins University, is a scholarly contribution to the discussion of a subject concerning which there is comparatively little literature in the English language and sets a rather high standard both in conception and execution to be met by future writers on a subject which undoubtedly will become of more and more importance as the activities of the modern state increase. The title is

somewhat misleading for the discussion is confined to England and the United States Government, with a passing reference to the immunity of the sovereign in Roman law and to a somewhat more exhaustive sketch of the lack of immunity of the French Republic. There is little of value in the monograph concerning the immunity of the states of the American Union or of the English dominions and their subdivisions.

The author attempts to support the conclusion that the doctrine of sovereign immunity in England was originally purely personal to the king and that the exemption of the government exercising power in his name was based upon a fundamental misconception of sovereignty, that is, a confusion of the personality of the king with the corporate entity of his government. The argument is plausible but no reasons are advanced as to why the king's officers or the officers of his government when acting pursuant to orders of their superior officers did not secure the privilege of this immunity when suit was brought against them because of such acts. While we had no king and Chief Justice Marshall issued a *subpœna ducus tecum* to President Jefferson, practically the same situation was evolved in the United States though until the Eleventh Amendment the courts evidenced an intention to permit suits against the United States as they would against any corporation.

There appears no sound theory which would permit suit against an officer of the state because of an act done in compliance with either statute or orders of a superior officer and which would not permit suit against the state by reason of this act. On the contrary, unless the state is to be hamstrung, the officer should be free to carry out the statute or his orders and the responsibility should be that of the state or the superior officer who gave him the order. If it required an express statute or a petition of right to permit suit against the state, why did it not require similar authorization to permit the state to maintain a suit? If an officer of the state may be made a party defendant because of an act performed in accordance with statute or orders which he must obey, why is he not authorized to become a party plaintiff to enforce the rights of the state? Wherein does the theory of the English courts and the United States courts differ as to suits by, or against, the state and against the officers thereof? What was the practice followed by the colonial courts and by the courts of the Thirteen States prior to the adoption of the Constitution? These and similar questions which might throw light on the present situation are not considered in this monograph. Also there is no consideration given to the tendency of the courts, especially in the United States, to enter the field of administration by the use of extraordinary writs against administrative officers. An interesting chapter might have been devoted to this matter and particularly to the fact that due to the limitations on the jurisdiction of the federal district courts, such writs are almost the exclusive prerogative of the District of Columbia courts tracing their jurisdiction to that of the colonial courts of Maryland.

While the author's review of the decisions is not exhaustive, it is refreshing and furnishes an adequate discussion of a general current of authority both in England and in the United States. Evidently the author believes that there is little reason for some of the distinctions found in the decisions, even of the courts of last resort, concerning torts and contracts, corporations owned in whole or in part by the state, and the state as a litigant in the courts of another state.

The monograph is provocative of thought and will be of great assistance to attorneys having occasion to press claims in courts against the state or its officers. It should be of equal assistance to students of comparative law on the narrow point of the state as a party litigant.

O. R. McGuire.

Washington, D. C.

ROMAN LAW. By Max Radin. (Hornbook Series) West Publishing Co., St. Paul, 1927. Pp. xv, 516.

Professor Radin has undertaken an ambitious task in giving, in less than 500 pages, an outline of Roman Law in its development and history through more than 2000 years. The author himself states that his book is intended as a brief and simple introduction to a large and difficult subject, and it would be unfair for any reviewer to demand anything more from it. Considering then the book as an outline, it has been very well done; yes, one might properly use even more laudatory words on account of its brevity and conciseness. There must have been many temptations to go into further explanations, comparisons and interpretations. And in all its conciseness, the book is complete.

Objections might possibly be raised against the system of the book, but they shall not be gone into here. The reviewer may, however, be allowed to question the value of the forecasts preceding each chapter of what it will disclose. To include such forecasts is a very common practice which is somewhat of a nuisance. The book is not intended for schoolboys, and to the grown reader there is something irritating in having another person stand behind his chair with a pointer. All such forecasts appear to be a useless waste of space.

The language of the book is not entirely free from Germanisms and Gallicisms and at times the style is so concentrated that it becomes necessary to paraphrase it in order to arrive at the real meaning, but as a whole it is very well and lucidly written.

There are some comparisons with the Common Law, but the book is not intended as a study in comparative law.

Aside from the intrinsic value of the book, it may be questioned whether it is of much practical value. To those lawyers who have some knowledge of Roman Law it is a very handy repetition course. But it is doubtful whether it will be able to arouse much interest in its subject among the great majority of American lawyers. To them Roman (Civil) Law is something to be abhorred, because it is the law, under which—directly or indirectly as Canon Law—all the tyrannies and oppressions of Continental Europe have grown up and been practised. A great many of these lawyers are under the impression that in the "Civil Law" countries of Europe the Constitutional Law of Justinian is still practised. The reviewer wonders whether the book would not have been more useful and more valuable for its own purposes, if it had confined itself to a fuller exposition of the law of obligations, the only part of Roman law which today has, and probably always will have, great practical importance and interest.

The sixty-one separate rights and forms of action set out in the book are of great interest to students of social science and cultural history, and of greater and special interest to the student of comparative history of law, as the source and arsenal from which the civilist chancellors of the Twelfth and Thirteenth Centuries drew their weapons and ammunition when they set out to conquer new and extended powers for their kings. But today none of them is of any practical use and has very little interest in itself.

It is probable that whatever interest the majority of American lawyers may have in Roman Law is mostly founded upon a desire to know how it is practised today in the "Civil Law" countries of Continental Europe. But there law is practised under what we would call Equity Rules, and all actions are brought under something like our Bills in Equity—the same in form whatever may be the wrong complained of, or the remedy asked.

The book is remarkably free from printer's errors, except such as appear to have been carried over from the typewritten manuscript, namely such transpositions of letters which typists are apt to make.

If the reviewer were possessed of the learning and energy of the author, and then had undertaken to introduce Roman Law to the American Legal Public, he would probably have followed a different plan. But that does not mean that he does not lower his sword before the author and his work. It is a great achievement to have given even an outline, but a full outline, of such an enormous subject in such a way that whosoever reads it is bound to obtain a connected idea, both of the soul and of the body, of the law of the Romans.

Axel Teisen.

Philadelphia.

THE AMERICAN BAR. Prepared and edited by James C. Fifield. The James C. Fifield Co., Minneapolis, 1927. Pp. 1222.

This rather large book is a legal directory which is prepared and published annually. It contains a short biographical sketch of the leading contemporary lawyers of the United States, Alaska, Island Possessions of the United States (Hawaii, Philippines and Porto Rico), Canada and Cuba.

The lawyers and law firms whose names appear in this directory have, apparently, been very carefully selected. From other members of the bar, bar association officials, bankers and other business men of the same or neighboring communities have been ascertained the reputations of the lawyers whose names are listed. Upon the consensus of these opinions is based the editor's selection, and unless properly endorsed by these several groups, no attorney or law firm is listed. In his foreword the editor very emphatically states that "no lawyer or law firm can buy representation in this directory." The editor has obtained his information from correspondence with the above-mentioned groups, supplemented by the reports of travelling representatives who have covered all of the United States and Canada.

The names of the attorneys and firms selected are arranged alphabetically—first according to the state and then according to the town or city in which

they reside and practice. After the name of every town is the name of the county in which it is located, its population and, for convenience, the name of one leading bank. County seats are indicated by an asterisk. At the end of the section devoted to each state is a list of all the counties of that state with their respective county seats. Under each attorney's name appears the type of practice in which he is engaged together with a concise but complete sketch of his life. In case the name listed in the directory is that of a firm, there is added the names of the individual members who compose it. Postoffice and cable addresses are also given.

Considered as a whole, the book contains some very valuable information. Whether one be engaged in a business or a profession he finds it necessary, at one time or another, to retain counsel in a strange community. On such occasions, he can save himself much time, trouble and inconvenience by referring to the pages of "The American Bar," where, under the name of the community in which he requires counsel, he will find listed the outstanding members of that community's bar—lawyers in whom he can repose full faith, confidence and responsibility. It is for this use in particular that the volume is unhesitatingly recommended.

S. B. G.