

## BOOK REVIEWS

COOLEY'S CONSTITUTIONAL LIMITATIONS. 8th ed. by Walter Carrington. Little, Brown & Co., Boston, 1927. Pp. ccii, xix, 1565.

It would be a very difficult task to bring down to date effectively any legal treatise, written more than fifty years ago, without entirely rewriting it. In the field of constitutional law this is quite impossible, as is evidenced by the work under review. Judge Cooley has his established place as a writer on the Constitution and his writings will always be of value to students in that field, for his interpretation of the Constitution and for his discussion of problems which had arisen in his day; but a vast amount of constitutional law has been made in the last half-century and problems have come to the fore of which he never thought. The effort by successive authors to fit this new material into the old framework becomes less satisfactory with each attempt. We have as a result such cumbersome footnotes as that to the full faith and credit clause on page 57, which covers seven pages double column, and that commencing on page 38 and covering six pages double column, dealing with the acceptance by the federal courts of the state decisions as to state law. Such examples might be multiplied indefinitely. New matter is also introduced into the text by the use of extended brackets. The whole effect is awkward and disjointed.

One should not expect a treatise in any field of law to be a digest of all of the relevant cases, but we are assured in the preface to the present edition of Judge Cooley's book that "a careful selection has been made of all important cases that are within the purview of the treatise as defined by Judge Cooley in his preface to the second edition. These include all such cases reported prior to June 1, 1926." One does not however, find *Murphy v. Sardell*,<sup>1</sup> holding state minimum wage laws invalid, following the decision as to the District of Columbia legislation in *Adkins v. Childrens Hospital*,<sup>2</sup> *Terrall v. Burke Construction Co.*,<sup>3</sup> which repudiates the doctrine that a license to a foreign corporation might be granted upon condition that it would be withdrawn if resort by the corporation was had to the federal courts, is not cited. *Doyle v. Continental Insurance Co.*,<sup>4</sup> and *Security Mutual Insurance Co. v. Prewitt*,<sup>5</sup> which are overruled by the later case, are not cited for the particular point which they decided, but only for the general proposition that a license to a foreign corporation to do business may be withdrawn at will. *Carroll v. United States*,<sup>6</sup> is cited for the proposition that "where a man is legally arrested for

---

<sup>1</sup> 269 U. S. 530 (1925).

<sup>2</sup> 261 U. S. 525 (1923).

<sup>3</sup> 257 U. S. 529 (1922).

<sup>4</sup> 94 U. S. 535 (1876).

<sup>5</sup> 202 U. S. 246 (1906).

<sup>6</sup> 267 U. S. 132 (1925).

an offense whatever is found on his person or under his control which it is unlawful for him to have and which may be used to prove the offense may be seized and held as evidence in the prosecution" (p. 616) and nowhere does the editor discuss the point which the case really decided, namely, that an automobile may be searched upon reasonable suspicion without a warrant.

The question who are citizens, including the effect of marriage upon citizenship, is not described; naturalization has a short footnote; expatriation is not found in the index. There is no discussion of the constitutional law with regard to Indians, and there are only three footnote references to this subject. Federal aid legislation, with its important possibilities, is not mentioned. The possibility of encroachment upon the normal state powers through the use of the treaty-making power is not referred to. The possibilities lying in the constitutional provision for interstate compacts, with the consent of Congress, are not considered or even suggested, notwithstanding the successful operation of such a compact between New York and New Jersey setting up the New York Port Authority, the compact between New York, New Jersey and Pennsylvania, with regard to the Delaware River, and the proposed Colorado River compact to involve six or possibly seven states.

Cooley on Constitutional Limitations will continue to be an important book of reference for the student of constitutional law and constitutional history, but if another effort is made to bring this treatise down to date it is to be hoped that in the process it will be entirely revised and rewritten, the material which has been added from time to time worked into an harmonious whole, each subject carefully restudied, and the present gaps filled in.

*Charles K. Burdick.*

*Dean, Cornell University Law School.*

OUTLINE OF SURETYSHIP AND GUARANTY. By Earl C. Arnold. Callaghan & Co., Chicago, 1927. Pp. xvi, 620.

The title of this treatise is too modest. It is more than an outline. Perhaps it is for this very reason that a reviewer in looking over its pages may be tempted to offer the criticism that its very compactness of material may be at times a source of confusion to the uninitiated. There are so many subtle distinctions in the law of suretyship and guaranty that too much brevity of treatment may be worse than no treatment at all. It requires consummate skill of authorship to condense into five hundred pages material which could without reproach be expanded into a thousand. The arrangement of the contents is excellent. The treatment of the "Statute of Limitations" and the "Effect of Bankruptcy" in separate chapters is particularly timely and helpful.

This book should be a great aid to the law student to whom, frequently, some of the principles of suretyship seem hopelessly befogged, for the author's elucidation is clear and in language which the student can readily understand.

To the reviewer, the book in spots has the defect of a lack of proper emphasis. Few students have the capacity to discriminate between that which is important and that which is only incidental, that which is firmly established

and that which has hardly passed beyond the stage of the tentative. It is a great help to have these distinctions brought to his attention.

Here and there the author allows a passion for dialectic to run away with his sense of values as, for instance in what seems his overtreatment of a promise to the surety of indemnity given by a stranger. *Green v. Creswell*,<sup>1</sup> *Thomas v. Cook*<sup>2</sup> and the long line of cases succeeding them offer an opportunity for endless discussion. The correctness of the established rule must rest primarily on what construction is to be placed upon the promise of indemnity, *i. e.*, does the debtor agree to indemnify the surety or guarantor unconditionally or only if his principal fails to do so? The incident that the principal is bound to indemnify his surety is not of itself determinative of the nature of the debtor's promise. The dependency of his promise upon the obligation of the principal to indemnify gives the clue to the answer. This query the author in his eagerness to support *Green v. Creswell* does not even postulate. But these are minor defects in a treatise that should be valuable not only to the law student but also to the practitioner. It would be a captious critic indeed who would withhold from the author praise for a task carefully conceived and skillfully executed.

Charles G. Little.

Chicago.

CASES ON FEDERAL JURISDICTION AND PROCEDURE. By Harold R. Medina. West Publishing Co., St. Paul. 1926. Pp. x, 674.

The attempt to review a case-book prepared primarily for classroom use, without having actually made such use of it, is always more or less unsatisfactory. The teachability of particular cases can rarely be accurately gauged until they have been presented and discussed in the class-room; indeed, the full value of a case is sometimes not appreciated until it has been so used for several years. However, there are several other standards by which a case-book can be judged, which, fortunately for the reviewer of new works, do not require actual use as a condition to a fairly accurate conclusion as to the probable value of the work.

The author of the work under consideration points out in his preface—but with a conservation of statement which conveys a very inadequate idea of its present importance—the present “commanding position” occupied by the federal courts with respect to a great many “ordinary litigated matters.” Time was, and not so many years ago either, when the average lawyer looked upon the federal court as the vassals of medieval England doubtless looked upon the Curia Regis—as a court for great men and great causes. Cases in the lower federal courts were considered so rare in the practice of the average small town lawyer—and after all it is principally average small town lawyers that are being turned out by most law schools—that familiarity with

<sup>1</sup> 10 Ad. & E. 453 (1839).

<sup>2</sup> 8 B. & C. 728 (1828).

federal procedure was hardly deemed necessary. When forced by circumstances or a more alert opponent to try a case in the federal court, the lawyer usually stumbled through it giving thanks for the conformity act and cursing Congress for the phrase "as near as may be" therein. A case in the Supreme Court of the United States was looked upon as the crowning feature of a successful career at the bar—a prospect to be viewed with mixed emotions of satisfaction and foreboding; of pride and trepidation. All that is past. It has no place in an age in which the panacea for all ills is supposed to be a constitutional amendment, or at least an act of Congress. The federal courts have been forced to abandon their air of superiority and aloofness and to step down where the average business man and the average lawyer (to say nothing of the average police court character) can view them in the same light as the state courts of equivalent jurisdiction. Viewing them, he observes a striking likeness of some features; albeit, the same striking differences and contrasts which so often appear among relatives. No matter where he is located, or how narrow the field of his practice, no lawyer of today can safely ignore the matters of federal jurisdiction and procedure, on the theory that he is not likely to have to deal with them. This change in the relative importance of state and federal courts has led to the establishment of courses in federal procedure in most standard law schools, and without question the end is not yet.

The author of the book under review has recognized the inherent difficulty of classifying and treating the "vast mass of details of practice." In the opinion of the present reviewer he has solved this problem in the only effective way, by disregarding these details in his arrangement, and allowing them to appear only as incidents in the consideration of cases dealing with the more fundamental principles. However, there is a difference between disregarding these details in the arrangement of a work, and omitting all treatment of them. The book conforms to the orthodox idea that a case-book must contain nothing but cases, and as a consequence the instructor using it must either leave these incidental details of practice to be drawn out by the students unaided, or devote time to them at the expense of the fundamental principles intended to be developed. It seems to the writer of this review that the insertion of summaries and notes in the form of text would have made the book a more effective instrument for the teaching of procedure. Indeed, it seems to be coming to be recognized that the inclusion of such material, at least, in case-books on adjective law, is not entirely sacrilege. In this connection it might be observed that there is not, in the work under consideration, sufficient emphasis on what is sometimes termed the mechanics of practice. For example, in the chapter on Removal of Causes there is a rather exhaustive treatment of the jurisdictional side, but nothing whatever as to how a cause may be removed. A summary or text treatment of this phase of the matter would have added to the practical value of the work without in any way detracting from that phase which the compiler desired to stress.

The above criticisms are really directed not so much at the book itself, as at the system which required it to take that form or be viewed as unorthodox. The book consists of well-selected cases, admirably arranged and edited, and without doubt is capable of being made the basis of an effective course in federal procedure. The treatment of the *Conformity Act*, one of the most difficult phases of federal procedure, while occupying less than fifty pages, is comprehensive and entirely adequate to develop the underlying principles and to illustrate the most important limitations. A valuable feature is the inclusion, in the appendix, of those articles of the Constitution bearing on the subject, and of the statutes involved. Conceivably, the book would have been more usable if some system of direct reference to these statutes in the appendix had been incorporated.

Wayne G. Cook.

University of Iowa Law School.

SOURCES OF THE CONSTITUTION OF THE UNITED STATES. By C. Ellis Stevens. New ed. The Macmillan Co., New York, 1927. Pp. xix, 313.

Anyone who would enjoy more than a very moderate acquaintance with the Constitution of the United States must investigate its sources. There is perhaps no branch of learning which demands so imperatively a study of its history as does the Law. This is especially true of Constitutional Law. Without a strong personal grasp of the events and problems of the past, no student can hope for a correct appraisal of the present or an intelligent outlook upon the future.

Our Constitution is written in simple language, but in its principles are the fundamentals, the vital elements of human government. Just as the structures which span our great water courses represent a development which began before Xenophon constructed a bridge to facilitate the retreat of the Ten Thousand, so does our Constitution represent a growth which began before Hammurabi reigned in united Babylon.

Mr. Stevens, in his small volume, makes no attempt to investigate remote sources, but considers only the more immediate with reference to English and Colonial history. Whilst many of our most fundamental principles of government were old before England had a name, the fact remains that our debt to English law and English experience is practically incalculable. The author has done valuable work in his limited field. His chapter on the American Executive is perhaps the most valuable, especially since here, more than in the other chapters, his treatment is distinctive and out of the hard-worn path.

The publishers have done a commendable service in presenting this volume anew to the public. It is to be regretted however, that they did not take notice of some important changes which have been made since the author wrote the preface to his second edition in 1894. For instance, on page 158 after

referring to the fact that President Washington was accustomed to communicate with Congress by oral address, the writer says: "Jefferson however, filled with theories of democracy imbibed from France, introduced the practice of sending written messages, which has since been continued." This was, of course, true in 1894. The omission on the part of the publishers in this instance may be of little consequence, but another failure to bring the volume up to date is more glaring. In Appendix 4, the text of the Constitution is printed, but the amendments adopted since 1894, that is the 16th, 17th, 18th and 19th, are omitted. When one finds a copy of the Constitution in a book printed in 1927, he reasonably expects to see the document in its entirety, not as it was thirty years ago. Although the publishers have thus failed to bring the volume up to date, it is nevertheless a valuable one and will amply repay a careful reading.

*Linus A. Lilly.*

*St. Louis University.*

## STATEMENT OF OWNERSHIP, MANAGEMENT, CIRCULATION, ETC.

Pursuant to the regulation of the Federal Post Office, revised by the Act of August 24, 1912, herewith is published a Statement of the Ownership, Management, etc., of the UNIVERSITY OF PENNSYLVANIA LAW REVIEW, published at Philadelphia, Pa.:

| Name of                              | Post Office Address |
|--------------------------------------|---------------------|
| Student Editor, David H. Frantz,     | Philadelphia, Pa.   |
| Business Manager, Franklin H. Berry, | Philadelphia, Pa.   |
| Treasurer, B. M. Snover,             | Philadelphia, Pa.   |

Owners: (If a corporation, gives names and addresses of stockholders, holding 1 per cent. or more of total amount of stock.) University of Pennsylvania, Philadelphia, Pa.

Known bondholders, mortgagees, and other security holders, holding 1 per cent. or more of total amount of bonds, mortgages, or other securities. No bonds or mortgages outstanding.

FRANKLIN H. BERRY,  
*Business Manager.*

Sworn to and subscribed before me this thirteenth day of October, 1927.

B. M. SNOVER,  
*Notary Public.*

(Seal)

My commission expires April 8, 1929.