BOOK REVIEWS

CASES ON THE ADMINISTRATION OF THE CRIMINAL LAW. By Edwin R. Keedy. The Bobbs-Merrill Co., Indianapolis, 1928. Pp. xx, 586.

This is a casebook which has been long needed and which well fills the need. For many years the subject of criminal procedure, or the administration of the criminal law, as Mr. Keedy chooses to call it, has been taught, if taught at all, as a very minor incident in connection with the course in criminal law. The result has been that while law school students have been at least moderately well grounded in the principles of the substantive law, they have gone forth into practice with practically no knowledge of the problems which harass the practitioner in this field.

Recently a great interest in the so-called "crime wave" has directed attention to procedure and administration. Many intensive campaigns in the public press have produced a number of recent legislative changes and have threatened to distort the public perspective by placing undue emphasis upon a few procedural processes.

It is high time of course that a foundation be laid for scientific work, by properly educating those lawyers who are to be leaders at the bar a few years hence. Tentative efforts in this direction have been made in a few schools. Usually these courses have been frankly local in character, based upon the cases and statutes of the jurisdiction in which each school is situated. Mr. Keedy's book makes possible the development, as a part of every law school curriculum, of a standard course in criminal procedure.

The arrangement of material is an interesting one. In the editor's preface it is stated that: "The material is arranged in the chronological order in which the proceedings occur but is grouped under the title of the particular official or body of officials whose duties are involved in order to emphasize the administrative features of the problems." In order to accomplish this result Mr. Keedy has devoted his first chapter to "Police Officers" in which he includes the subjects of "Arrest" and "Investigation of Crime." His second chapter is entitled "Magistrate" and its first section title is "Warrant of Arrest." As a matter of fact, arrest and investigation frequently proceed without a warrant of arrest, and in any event the arrangement is well justified in order to secure the emphasis which the editor desires. In the later chapters where the coincidence of administrative functions becomes more complex, the simple expedient has been adopted of using a larger number of chapters and staggering the sections under them in the following manner: Chapter IV—"Prosecuting Attorney" (A), Section I—"Information"; Chapter V—"Trial Court" (A), Section I—"Jurisdiction," Section II—"Venue"; Chapter VI—"Executive" (A), Section I—"Interstate Rendition"; Chapter VII—"Trial Court" (B), Section I—"Arraignment and Pleas," Section II—"Demurrer and Motion to Quash."

In this way both arrangements are secured without sacrificing logical order in either. Individual points of view of the editor as to the proper scope of the course, are revealed by the exclusion of material on "Former Jeopardy," except as it appears casually in cases under such titles as "Nolle Prosequi" and "Waiver of Jury," and by the inclusion of a section on the "Public Defender"

and of cases on such subjects as vasectomy, women jurors, jurors in juvenile courts and "straw bail."

Those who believe in modernness of material in casebooks will also be pleased with the fact that more than half of the selections bear dates later than 1900, and more than five-sixths later than 1850. Much additional material is made available by careful annotations.

Mr. Keedy's long research in this field, coupled with his present intensive work in the preparation of a model code of criminal procedure for the American Law Institute, qualifies him admirably for the preparation of such a casebook.

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PROGRESS IN THE LAW: ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, Vol. 136, No. 225, March 1928, Philadelphia. Pp. ix, 187.

In the words of the editor in charge of this volume, Mr. John S. Bradway of the Philadelphia Bar, this is an effort to place before the lay reader some of the salient facts as to the progress the law is making in coping with modern problems, which takes the form of twenty-seven short articles by specialists engaged in active work connected with the subjects of their respective contributions. It is with the mechanics of the administration of justice that the writers are chiefly concerned, although one group of essays purports to deal with changes in substantive law. The series opens with an article by Dean Pound, of Harvard Law School, on the social and economic problems of the law in which, as the distinguished writer has done on so many previous occasions, the consequences of passing from an agricultural to an industrial order of society are described. In the contributions that follow the variety of topics is such that it would extend this notice too far to comment upon them in detail, although they are of the type that provokes lively discussion wherever lawyers meet. The work of the American Law Institute, the movement for uniform state laws, for simplified procedure in the civil and criminal courts, conciliation, public defenders, training for the bar and legislative reference work are among the subjects reviewed. Naturally the essays are of unequal merit but they have in common a crisp note of optimism, due, one may suspect, to the fact that they were supposed to discuss *progress,* as well as to the fact that each writer rides his particular hobby, but the progress indicated too often is an expression of pious hopes rather than realities. Thus when Mr. Shelton, speaking of the reform of procedure, says, "There has been done in the United States by way of enlarging public confidence and interest in seventeen years what it took more than a century and a Dickens and a Bentham to achieve," he is indulging in one of those eloquent flights of the bar meeting that the facts hardly support. England simplified its procedure in 1873, but in only a handful of states has anything approaching the flexibility of English procedure been even attempted; in many the practice is still pre-Dickens. Indeed until the Supreme Court overrules or explains away the majority opinion in *Slocum v. New York Life Ins. Co.*,[1] it is difficult to see how trial practice in the federal

[1] 228 U. S. 364 (1912).

courts can be effectively modernized. Mr. Guthrie sings pæans to the services of bar associations, but one has only to attend the meetings of such bodies, or to wade through their published transactions, to find them immersed in a dreary, rhetorical obscurantism; unable or unwilling to come to grips with fundamentals. The impression given by these articles is one of slow change, the inevitable change that comes in the growth of every large and complex organism, stimulated, it is only fair to say, by the efforts of the high-minded type of gentlemen who contribute to this volume. Movements are visible but whether there is *progress* or not, we know almost as little as the fly walking on the table in the dining car. Americans, whatever other talents they may possess, have not shown that instinct for justice characteristic of England and Rome. From the earliest days there has been in this country a conflict between two pioneer types, the half-educated sentimental enthusiast, eager to impose his social standards and moral theories on his neighbors, and the undisciplined individualist, an adept in avoiding the consequences of his indifference to public affairs. This has not made for respect for law. Beautiful plans may be set down on paper and read to admiring ladies at luncheons, but the administration of justice will not improve in substance until the American changes his attitude toward government. For what chance has the sense of justice to take root and develop in the plain citizen when great cities are ruled by humbugs and thugs; when the justice of the peace is the cheapest of petty politicians, untrained in the law; when the lower ranks of the bar are filled with ignorant shysters and ambulance chasers who, sad to say, sometimes rise to positions of power; when democratic theory opposes educational qualifications for bench and bar; when, in fact, the less a man knows about anything except the pulling of door bells the more likely he is to get to the legislature or Congress? William Penn observed shrewdly: "Governments, like clocks, go from the motion men give them." It may be added that, in all probability, law does not progress *in vacuo*.

William H. Lloyd.

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HANDBOOK OF FEDERAL JURISDICTION AND PROCEDURE. By Armistead M. Dobie. Hornbook Series, West Publishing Co., St. Paul, 1928. Pp. xiii, 1151.

The tendency in recent years towards centralization of power in the Federal Government, and the extension of its jurisdiction to new subjects, have resulted in increased litigation in the courts of the United States and probably will lead to even more in the future. This makes the subject of federal jurisdiction and procedure one of growing importance to the lawyer.

For many years I have been of the opinion that in giving instruction on this subject it is sufficient to touch only the high points, for the jurisdiction of the federal courts and their procedure is a subject which is unstable and constantly changing. Indeed, recently Congress has made an important change by the passage of the *Act of January 31, 1928*,[1] abolishing writs of error in the federal courts, and providing that in all cases, civil and criminal, relief which heretofore could be obtained by writ of error shall hereafter be obtainable by

[1] Public, No. 10, 70th Congress (S. 1801).

appeal. A lawyer may be at the bar for many years and never enter a federal court. To load up a student, therefore, with the intricacies of a subject like the law with relation to the removal of causes from state to federal courts—which may be entirely changed by the time he has to apply it, seems to me to be worse than useless. To understand the general principles governing the subject and to know where to look for the law when it is needed, is sufficient.

There are two classes of books on federal jurisdiction and procedure: one is usually a number of volumes, going into detail on the subject, and constituting a working tool for the lawyer; the other a single volume, giving a general outline of the subject, and intended as a textbook for students' use. Dobie on Federal Procedure, one of the Hornbook Series, partakes of the nature of each of these, or an abridged combination of the two. It contains very full notes, with references to the cases, and a discussion of the principles treated, while it also has the characteristics of a law school textbook. Its presentation shows a broad knowledge of the subject and also evidences a great deal of research. The book contains more than 1100 pages, has a very good index, and, what is of importance usually to the student, sells for a price within his means. It is to be regretted, however, that it does not contain a table of cases, which would be of value to the practicing lawyer.

Federal procedure and practice is generally regarded as a very dry subject, but Professor Dobie presents it in an interesting and attractive style. Appropriately, he devotes a few pages to favoring the proposed *Uniform Procedure Act,* which would give to the Supreme Court the power to prescribe rules of practice in cases at law.

While a book like Dobie on Federal Procedure will answer many questions with which the ordinary practitioner in the federal courts is unfamiliar, cases are constantly arising presenting questions which no book on the subject will answer. For instance, the question has just been presented to the Supreme Court for the first time as to whether the *Criminal Appeals Act of March 2, 1907*[2] gives a right to a review in that court on writ of error (now appeal) of a prosecution by information for contempt of court.

Professor Dobie's book is a distinct and valuable contribution to the literature of the law on the subject of federal procedure and practice.

William J. Hughes.

Office of United States Solicitor General.

REPORT OF THE THIRTY-FOURTH CONFERENCE OF THE INTERNATIONAL LAW ASSOCIATION. Edited by Hugh Bellot. Sweet and Maxwell, Ltd., London, 1927. Pp. cxcix, 742.

The International Law Association, founded in 1873 for the reform and codification of international law, has been able materially to influence recent development in the rules governing the relations of states. Its contribution to uniformity of national legislation on general average and bills of exchange is well known; its work in the field of international law proper, though less visible in positive results, must count as one of the main elements in the present

[2] 34 STAT. 1246 (1907), U. S. C. (1925) TIT. XVIII, § 682.

movement towards greater certainty and more uniform interpretation in that system.

Of the various reasons which go to explain the admirable reports and drafts produced by the Association, two may be emphasized. The first is the serious study devoted to items on the agenda before the Conference meets; the second is the keen analysis brought to bear by jurists representing all the legal systems of the world upon the projects submitted to its meetings. The period from 1914 to 1919 inclusive is for obvious reasons blank. With that exception the Association has held almost annual conferences, and the venue reads like the log of a globe-trotter. From Christiania to Buenos Ayres, its members have had the fullest opportunity of coming to grips with those differences in point of view which still make it precarious to speak of one law of nations. The discussions show that to some extent those differences, so far at any rate as they are doctrinal, can be removed by joint study. One consequence is that the reports furnish an excellent gauge of actual tendencies in international legal thought.

The thirty-fourth Conference met at Vienna in August, 1926, and was attended by some three hundred members. It dealt with maritime jurisdiction in time of peace; maritime neutrality; plans for a permanent international criminal court; the unification of rules concerning contracts of sale, work and services; rates of exchange in the payment of contract debts; expropriation of alien property; and the protection of minorities. Papers were read on extradition and on the legal status of the League of Nations. The Report, published in 1927, under the editorship of Dr. Hugh Bellot, contains resolutions, draft rules, or draft conventions on most of these subjects. The drafting, one notes, is marked by a solicitude for clearness and accuracy not always discernible in the more official efforts in the same field; while the recorded discussion brings out not only the difficulties of codification in general, but the principal objections to some of the formulæ now current in draft codes on both sides of the Atlantic. It is to be hoped that the volume will be consulted in detail by those concerned in the Herculean task of codification.

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THE LAW OF PROPERTY. By William F. Walsh. Second edition. Baker, Voorhis Co., New York, 1927. Pp. lxxxiv, 829.

The reviewer is much impressed both with the principles laid down in the preface to this work, and also with the application of those principles throughout the work itself. The main principle referred to is, as stated in the preface: "If lawyers and judges can be induced to discard legal fictions, to cast away obsolete rules having no possible bearing on modern conditions, however material they may have been in feudal times, a great step forward will be made." A really great step forward was made in the discussion of the various problems in the body of this volume. The development of the law of property affords an unusual opportunity for the application of this principle. The law of property inherited from prior centuries a large number of rules which, however proper in their origin, have by the passage of time become obsolete. The proper

function of the court in dealing with such obsolete rules is treated with singular clearness by the author. The chapter dealing with "Future Estates" contains many illustrations of the author's purpose. As such illustrations, the reviewer may refer briefly to his discussion of the Rule in Shelley's Case; the present status of executory devises; the treatment of several important rules of construction growing out of the topic of executory devises; also his comments on the Rule against Perpetuities. In each of these cases and many others, the author's comments are forceful and sensible. The volume covers at least briefly the entire field of property, thus differing from the books of Reeves and Tiffany which are limited to real property. The selection of cases is exceedingly happy and the volume will be particularly useful to students who are using the most modern casebooks. Kales' views are frequently referred to and sometimes criticised; this portion of the volume will have special value to users of Kales' casebook on future interests. On the other hand, the volume hardly seems sufficiently broad to serve as a general digest for practitioners; Tiffany, for instance, covers the subject of real property more exhaustively, including chapters on mortgages and kindred subjects which are quite outside of the scope of this volume.

Taken as a whole, the volume ought to be of much use to students of the law of property, and particularly to those who in the present system are studying the various kinds of estates and interests in First Year Property, as well as to those who in their Third Year Property are dealing with problems related to Future Interests.

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THE DISTRIBUTION OF POWER TO REGULATE INTERSTATE CARRIERS BETWEEN THE NATION AND THE STATES. By George G. Reynolds. Columbia University Press, New York, 1928. Pp. 434.

In this work Doctor Reynolds has attempted the ambitious task of treating the historical, political and legal phases of his subject within the textual confines of four hundred pages, an undertaking that would appall many an author experienced in this field. In the first part of the treatise, he has succeeded in giving in historical sequence a clear, succinct statement of the judicial interpretation of the commerce clause of the Federal Constitution, a very useful summary for the layman and the student. This statement, covering some two hundred and eighty-five pages, is conveniently broken up into three chapters, the first comprising the material down to 1887, the second covering the succeeding period to 1920, while the last seven years make up the third installment of this historical survey. Within these periods the topical treatment is adopted, lending conciseness and lucidity. If any one topic in these chapters deserves special mention, we can commend his able review of the decisions on state taxation of interstate carriers. The most obvious criticism, however, of the author's review of the development of the judicial interpretation of the power of Congress over interstate commerce may be directed to his failure to point out the influence and effect of the decisions of the Supreme Court which construe the

admiralty clause of the Constitution, an interplay of forces which has been brilliantly delineated by Doctor Frank J. Goodnow in his well-known book on "Social Reform and the Constitution."

Upon the whole, the attitude of the writer towards the work of the Supreme Court is sympathetic, though occasionally he unduly stresses a personal point of view upon grounds difficult to substantiate. For example, he rather severely criticises the decision in the case of *Wiggins Ferry Co. v. East St. Louis*,[1] in which the court held that the license fee of one hundred dollars for each ferry boat was well within the state police power, and finds it difficult to understand how the Court failed to see that the case involved a recognition of the taxing power. Despite the lower standard of pay of steamboat inspectors in 1883, may not Justice Woods have been correct in concluding that the eight hundred dollars exacted from the Wiggins Company to cover the local regulation and inspection of their fleet could not as a matter of law be held to be an imposition of a tax? His intimation that the *Wiggins Ferry* case cannot be reconciled with that of *Gloucester Ferry Co. v. Pennsylvania*,[2] which held that the state cannot levy a tax on the capital stock of a foreign corporation engaged in interstate commerce merely based on its temporary use of a terminal within the state, is indicative of lack of appreciation of the fundamental distinction between regulation and taxation.

The succeeding chapter of seventy-four pages on federal laws affecting state powers covers quite thoroughly the present situation and leads to the closing chapter on the present distribution of the power to regulate interstate commerce and the consideration of proposed changes. Here the author evidently attempts to apply the result of his investigations to the working out of a thesis suggested in his introductory chapter. The points he endeavors to make are: that the results of centralization have in some respects been unfortunate, that there is a new and distinct movement towards decentralization, and that the practical basis for legislation to this end lies in declarations by Congress abandoning part of the field it has occupied. No grounds are given for the first assertion; indeed, as Mr. Charles E. Hughes has recently pointed out in his book on the Supreme Court of the United States, the present beneficial effects of centralization of control over interstate commerce are incalculable and the mistakes which have been made in the past were due rather to the failure of Congress in some instances to exercise more promptly its constitutional power. As to the second point, it would be difficult to find anyone versed in public affairs who would now advocate a decentralization of authority over interstate commerce; such an idea at the present time is farthest from the thought of the most rabid advocate of states rights. So far as a contrary view obtains today, it is mainly indicative of a protest on the part of special interests against a too-rapid extension of federal power over interstate carriers not yet subject to federal control. As to the third point, the author's contention that Congress may limit its power over interstate commerce by statutory declaration does violence to every principle of settled constitutional construction. The decisions upholding the *Wilson* and *Webb-Kenyon Acts* give no basis for such a conclu-

[1] 107 U. S. 365 (1882).
[2] 114 U. S. 196 (1885).

sion and the suggestion that after a century of settled construction, "in some way the Court must be persuaded to recede from its view" is, to say the least, a startling recommendation.

To many of us it seems plain that the states under the limitations of the Constitution cannot deal adequately with the problem of interstate motor transportation, and plainer still that if there were no such restrictions state control would ultimately result in disaster. With the rapidly growing movement of freight by truck and with ten times the passenger capacity of the railroads, the problem of the interstate automobile increasingly demands uniform regulation. This fact is so patent that the state commissions without a dissenting voice have put themselves upon record as favoring regulation by Congress. The thesis adopted by the author therefore seems to be mistaken; the problem he should have discussed was not that of a trend toward decentralization, which is non-existent, but rather the subject of the practical limits of the further extension of the power of Congress over interstate commerce. The important question now before the country is how far such legislation should be immediately extended and what machinery can be created competent to administer the law. The proposal to leave the primary administration of such federal laws as may be adopted to those state commissions which consent to act is prompted for the most part by the difficulty that confronts us to find some adequate agency to carry out the uniform regulations which are demanded by present day economic considerations.

It is always valuable, however, to have the obverse view presented, no matter how surprising it may appear, and Doctor Reynolds is to be congratulated upon marshalling some ingenious arguments in support of his deductions. We may regret that his limitations of space foreclosed a more adequate discussion of the factual side of the social, economic and political relations of his subject. His narrative is incisive; his style often approaches the brilliant; so that, all in all, the presentation of his argument is unusually attractive. The book is well worth a careful reading by all students of our constitutional and political problems.

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THE INSURANCE COMMISSIONER IN THE UNITED STATES. By Edwin W. Patterson. Harvard University Press, Cambridge, 1927. Pp. xviii, 589.

No one interested in insurance literature should fail to read Professor Patterson's book. It is well written, but not well organized; about one-half of the space being devoted to one chapter. The book represents the first attempt to set forth in a comprehensive manner the powers and duties of the insurance commissioner in this country, together with his methods of operation and their effects. It is complete. Of new general notions the insurance scholar will obtain few in the reading of this book, but his knowledge of details will be enhanced by so doing, even though he has had occasion to examine most of our insurance laws and rulings. On matters of opinion, treated in the book, the views of readers, of course, will differ. They will differ, also, regarding the

wisdom of using certain expressions tending to convey a point of view; such for instance, as the reference to the "wolves" and the "sheep dog," page 41, the astuteness of claim adjusters, on page 246, and possible conclusions of the cynical realist, on page 501. The minimum valuation requirement of New York, described on page 197, was abandoned in 1923, except for certain purposes other than those which the author had in mind when he wrote that page. On the whole it is a good book, written from original sources, and covering its field in complete detail. It will long remain the standard reference on this subject.

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THE ART OF ARGUMENT. By Harold F. Graves and Carle B. Spotts. Prentice-Hall, Inc., New York, 1927. Pp. xi, 298.

This book is another attempt to take the rigor and formality out of a course in argumentation. The authors have abandoned the conventional arrangement of the older books, left out the difficult portions of the study, including most of the common fallacies, and presented a miscellany of good advice about this or that method of appeal. They have jumbled the logical and emotional problems somewhat indiscriminately, but not without a certain practicality. They have rather obviously written down to the immature beginner, and the book should be more useful to high school students and to independent students inadequately prepared than to students in the regular colleges. Argumentation is after all a difficult subject, and the attempt to present it in easy, chatty, informal style always results in some loss of completeness and authority.

As far as it goes the book is useful. The advice is sound, the illustrations plentiful and clear, and the style direct and simple. The specimen brief is thoroughly unsatisfactory in its introduction, and reasonably satisfactory in its discussion; but as the specimen briefs in most other books are hopelessly bad throughout this represents a gain rather than a loss. The specimen outline is merely a list of topics giving no hint of structural composition, and so is of very doubtful use. The best portion of the book is the chapter on "Fixing Attention," which has freshness and suggestiveness.

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