BOOK REVIEWS

THE PRESIDENT'S REMOVAL POWER UNDER THE CONSTITUTION. By Edward S. Corwin, National Municipal League, New York, 1927. Pp. xv, 70.

This brief but distinguished essay was written primarily as a commentary upon the decision of the United States Supreme Court in the case of *Myers v. U. S.*[1] rendered on October 25, 1926. The essential legal point in controversy in this case was the constitutionality of an act of Congress whose controlling words were as follows: "Postmasters of the first, second, and third class shall be appointed and may be removed by the President by and with the advice and consent of the Senate, and shall hold office for four years unless sooner removed or suspended according to law." Myers had been removed from his office as a postmaster of the first class before the expiration of his term by virtue of an order of the Postmaster General, directly authorized by the President. He brought suit in the Court of Claims to recover his salary for the remainder of his term, on the ground that the removal was illegal, and unauthorized because the Senate had never advised and consented thereto, as required by the statute above quoted. The Supreme Court, in denying relief to the petitioner on his appeal from an adverse judgment in the Court of Claims, placed its decision squarely on the fundamental ground that the statutory requirement of the advice and consent of the Senate, as an essential for the removal, was invalid under the Constitution.

It will be seen at once that the precise question to be decided did not by any means involve the whole problem of the removal power under the United States Constitution. In reality the question presented was a relatively narrow one; *viz.*, may the consent of the Senate be constitutionally required by statute as a prerequisite to the removal of an "inferior" officer, appointed by the President with the consent of the Senate? The case did not involve: (a) any part of the great question of the removal of "superior" officers; (b) the constitutionality of legislation prescribing the method of removal of "inferior" officers appointed otherwise than by the President with the consent of the Senate, *e. g.*, those appointed by the President alone, or by the heads of departments; (c) the question whether Congress might specify the exclusive grounds of legal removal, while leaving the actual function of removal in the permitted cases to the President. Yet the opinion of the Court treats all of these questions without much discrimination.

Professor Corwin's main contentions may be viewed in either their negative aspect or their positive aspect. As a critic of the decision, he attacks: (a) the interpretation placed by Taft, C. J., on the *history* of the removal power in the federal government; (b) the logic of the decision in confusing the view that the removal power is incidental to the *executive* power, *i. e.*, the power

[1] 272 U. S. 52, 47 Sup. Ct. 21 (1926).

granted to the Chief Executive, with the essentially dissimilar view that the removal power is incidental to the *appointing* power; (c) the unnecessary and improper *breadth of the reasoning* of the opinion which goes far beyond the necessities of the case, and really seeks to establish the doctrine that the President's power of removal is not susceptible of legal restraint, under the Constitution, as to any executive or administrative officers, high or low.

On all these points Professor Corwin's vigorous criticism of the opinion of Taft, C. J., who spoke for the majority of the Court, is illuminating and convincing. The historical errors in the majority opinion are very well exposed in the brilliant and learned dissenting opinion of Brandeis, J.,[2] with whose contentions Professor Corwin, for the most part, agrees. It must be borne in mind that the main reliance of the majority is rested, in the opinion of Taft, C. J., upon the interpretation placed upon the Constitution in reference to this problem of the removal power, by the members of the First Congress, in an important debate in 1789. In this debate many of the former members of the Constitutional Convention participated, and the debate and the vote which followed it are frequently referred to by Taft, C. J., as "the decision of 1789." This debate related to the removability of the Secretary of State, who is a "superior" officer, and whose powers and functions are exclusively derived from the President's constitutional prerogative to handle foreign affairs. Furthermore, although the actual vote ensuing upon the debate in question was in favor of the inherent power of the President to remove, yet the legislative majorities necessary to reach this result were made up of several groups, only one of which, a small minority, took the view that the President's removal power, wherever applicable at all, was uncontrollable by legislation. Taft, C. J., states that the legislative "decision of 1789" was acquiesced in for seventy-four years by all departments of the government. The fact seems to be that, while the qualified "decision of 1789" was followed in practice until 1863, it was never supposed to possess either the *scope* or the *finality* attributed to it by the Chief Justice.[3] It is familiar history that since 1863, Congress has adopted numerous statutes purporting to limit, in one way or another, the removal power.

From the standpoint of legal reasoning and logic, the central issue in the whole controversy seems to be whether it is proper for the judiciary to work out, chiefly by deductive, analytical reasoning from the brief and very general phrases in Article II with regard to the powers of the President, a set of detailed definitions and rules as to these powers, which are to be permanently unchangeable by legislation, because supposed to be necessarily involved in fundamental constitutional principles. Is it proper to rest exclusive reliance on these somewhat casuistical, deductive arguments in relation to a subject to which the Constitution does not directly address a single word, when

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[2] *Ibid.* 240, 47 Sup. Ct. at 66.

[3] See the opinion of Marshall, C. J., in Marbury v. Madison, 1 Cranch 137, 162 (U. S. 1803); 7 HAMILTON, WORKS OF HAMILTON 80-81; both cited by Taft, C. J., 272 U. S. at 137-142, 47 Sup. Ct. at 32-33.

we view the problem in relation to the power very plainly given to Congress in Article I, section 8, to "make all laws which shall be necessary and proper to carry into Execution . . . all other powers vested by the Constitution in the Government of the United States, or in any Department or officer thereof"?

When the "executive power" is confronted by the "necessary and proper" clause we have a situation which reminds one of the old controversy as to the relative superiority of the immovable object and the irresistible force. But it is at least an extremely plausible suggestion that the framers of the Constitution, in view of their complete silence on the specific question of methods of removal of executive officers, must have intended that this important matter should be worked over by Congress, by virtue of the power conferred under the "necessary and proper" clause. Since the framers expressly recognized different methods of appointment for officers of the United States, and took cognizance of an important distinction, with reference to appointment, between "inferior" officers and others, it is reasonable to suppose that like diversities must have occurred to them with reference to methods of removal. Yet no plan is expressly laid down with reference thereto. Was it not intended that Congress should fill out the scheme, under the "necessary and proper" clause, in somewhat the same way in which Congress has been allowed to establish inferior courts of the United States, to parcel out jurisdiction among such courts, and to regulate their procedure?

The type of analytical, deductive reasoning from abstract concepts like "executive power," exemplified in the opinion of Taft, C. J., is certainly not to be favored as against the concrete experimentalism of detailed legislation adapted to the exigencies of the particular executive agency in question. It should be remembered that the President, through his veto, has a powerful voice in legislation, and that Congress itself can hardly fail altogether to recognize the value of coherence, subordination and discipline in the executive department. Holmes, J., in his brief dissenting opinion says: "The arguments drawn from the executive power of the President and from his duty to appoint officers of the United States (when Congress does not vest the appointment elsewhere) . . . seem to me spiders' webs inadequate to control the dominant facts."[4] Spiders' webs they are indeed, spun out with patient labor from general concepts into which the notion of Presidential dominance seems to have been packed away, when the "concepts" were in formation in the minds of the judges. But if the decision in *Myers v. U. S.* is to be fully observed, these spiders' webs may prove all too adequate to control the "dominant facts"; the facts shown by experimental results, the facts as to the variety of need and exigency in different classes of offices, and the fact of the extra-legal growth of administrative independence in many situations.

The positive or constructive side of Professor Corwin's book is no less valuable than his penetrating negative criticism of the majority opinion. His

[4] 272 U. S. at 177.

positive thesis is compactly stated as follows: "The essential nature of the office under consideration, as shown by its characteristic duties, determines the scope of the removal power in relation to the power of Congress in creating an office, to fix its tenure."[5] And he adds, "the very simplicity of the Court's solution of an extremely complex question is what above all else condemns it."[6]

The validity of our author's main proposition is, upon reflection, manifest enough from the standpoint of political science. Our general legal traditions, too, favor the shaping of legal rules in adaptation to particular situations. As practical lawyers, we have a horror of generalizations. Does not this tradition hold good in the field of constitutional law? "Law, as a means in the service of human purposes," says the philosophic jurist Stammler, "requires for its justification the proof that it is a right means for a right purpose."[7] Can the constitutional rules with reference to tenure of office be formulated without reference to the particular purpose and function of the particular office under consideration?

It is hardly necessary to say that Professor Corwin's affirmative propositions are not enunciated "ex cathedra," but are supported by persuasive arguments, and by an illuminating historical exposition. The general effect of these propositions is: that the power of removal of subordinate executive officers inheres in the appointing power, not in the executive power as such; that both the power of appointment, and the power of removal, must be exercised subject to constitutional legislation of Congress fixing the qualifications for the office, the extent of the tenure, the permissible grounds for removal, and the methods of removal to be followed; that the test of the constitutionality of such regulatory legislation by Congress is that it shall leave the President's primary constitutional prerogatives unabridged, and that it shall be "necessary and proper" in all respects, that is, consistent with the function and character of the office whose tenure is under consideration. The central fallacy of the decision in the *Myers* case is that it reconciles executive control over removals with the relevant powers of Congress, by the crude expedient of delivering the whole field to the executive power. This view is not in accord with sound juristic methods. There is no real balancing of the interests involved, no recognition of the fact that the overdevelopment of the executive power may involve an absorption of what is universally admitted to be legislative or judicial power, for instance that the President's power of removal of members of the Interstate Commerce Commission, if established,[8] would enable him, to a large extent, to absorb the

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[5] CORWIN, THE PRESIDENT'S REMOVAL POWER UNDER THE CONSTITUTION, (1927) viii.

[6] *Ibid.*

[7] HUSIK'S TRANSLATION, STAMMLER, THE THEORY OF JUSTICE (1925) 26.

[8] See the significant claims for the President's removal power over the members of the great administrative tribunals in the opinion of Taft, C. J., 272 U. S. at 135, 47 Sup. Ct. at 31.

undoubted power of Congress to regulate commerce. Does not the maxim *suum cuique tribuere* have an application in our constitutional law?

In concluding, it may be remarked that Professor Corwin's method of treatment of his subject seems especially happy in its development of both a positive and a negative, or critical, form of stating, and explaining, the same essential positions. The reader leaves this brief, but significant book, with an unusually favorable impression as to its form, its methodology, its nicety of perspective, and its accurate measurement of the various elements, political, legal, and historical, which should receive consideration in the treatment of this complex matter.

Charles S. Collier.

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THE PARADOXES OF LEGAL SCIENCE. By Benjamin N. Cardozo. Columbia University Press, New York, 1928. Pp. 142.

We welcome this new little volume by the distinguished Chief Judge of the New York Court of Appeals not as the completion of a trilogy, but as an augury that we shall have from his pen a sheaf of juristic studies every three or four years. *The Nature of the Judicial Process* (1921), *The Growth of the Law* (1924), and now *The Paradoxes of Legal Science,* form an organic whole. The books are important chapters of what we hope some day will be a spacious work, entitled, *Reflections on the Art of Adjudication.* Were a Browning to put their substance into verse, he would doubtless entitle it, *Any Judge to Himself.* For in truth, these are judicial self-revelations. But they belong to science rather than to biography, because they describe the conditions and influences which, in varying proportions, determine the labors not of this author-judge but of every judge of a high court.

The contributions to understanding which have endured are not so much systems as insights. Perhaps systems themselves are the result of the elaboration and over-refinement of penetrating glimpses into truth. It is not without significance that the two judges in our day who have given powerful direction to juristic thinking have done so not by heavy treatises on jurisprudence. Mr. Justice Holmes has re-fashioned the assumptions and methods of American legal thinking through essays. The work of philosophic permeation begun by Mr. Justice Holmes more than half a century ago (and happily still continued in his opinions), is being carried on by Chief Judge Cardozo, and again through the essay form. The task of adjudication is a strong corrective against over-systematization, and a constant admonition against premature generalization. But the judicial function also reveals the bankruptcy and deception of mere empiricism. Decisions are not *ad hoc* judgments. An individual case is both offspring and parent. After quoting a remark of Chesterton's to the effect that the most important thing about a man is his philosophy, Judge Cardozo adds, "The more I reflect about a judge's work, the more I am impressed with the belief that this, if not true for everyone is true at least for judges." Here is the key to Judge Cardozo's writings and to his opinions, though one must

quickly add his qualification, "of course, it is easy to misunderstand such a statement—to press it too far—and to make it an untruth." The essay form is the fit instrument for a thinker whose chief concern is to lay bare the contending claims that seek the mediation and authority of society through law, and to give some indication, at least, of how these processes of mediation in fact operate. For the essay is tentative, reflective, suggestive, contradictory and incomplete. It mirrors the perversities and complexities of life.

Viewing the judge not as technician but as philosopher, Judge Cardozo, in attempting a candid scrutiny of what confronts the judge, must deal with what confronts the law. In each of his books he is concerned with the enduring problems of state-enforced law, however varying the range of control exercised by state law, however different the modes by which it is asserted and shifting the fashions in nomenclature of the guild which administers law. What are the factors entering into an individual pronouncement of law? What are the methods of inquiry to ascertain the norms relevant to judgment upon the particular instance? When should the past exclusively govern, and when must the past be tested by conformity to the standards and feelings of contemporary society? What are the sources for ascertaining the needs of the present, and, in the clash of needs, whose need prevails? These and like questions are not conundrums. They are the daily stuff of the solicitude of every critically minded judge. Of such is not the kingdom of heaven, but this world's jurisprudence.

Upon these themes Judge Cardozo sheds light in each of his three books, but each has its own preoccupation. In *The Nature of the Judicial Process,* he described memorably the known forces and tendencies which are expressed in decisions. In his *Growth of the Law,* the emphasis was on the dynamic conceptions in judging. In the latest book, law is revealed more and more as the comprehension of contradictories, the art of mediating between antitheses. Precedent and justice, stability and progress, the individual and society, liberty and authority—these are life's antinomies and they are the burdens of the law. At once we are out of the realm of the absolute, the dooms of the foreordained. Not the logic of certainties, but the logic of probabilities—and there is no calculus of probabilities! Not yet, certainly; and no early hope of attaining one. One hears an occasional sigh of longing in these pages for such a calculus, the aspiration for certainty, the assurance of the multiplication-table, which from time to time must possess everyone who works with the treacherous and intractable materials of the social sciences. All too often this desire betrays us into the formulation of illusory certainty. It is a natural but an idle quest. Law would gain in candor and wisdom if we exorcised the wish for such a calculus, emphasized the necessary meagreness and evanescence of our data, and concentrated on such assurances of attainable objective norms as we can derive from a recognized procedure of judgment and an unflinching rigor in laying bare the conscious foundations of judgment.

This is merely putting into clumsy language what Judge Cardozo has often expressed so felicitously. In this book he has made still more clear his aware-

ness of the forces in law—and his awareness of his unawareness—the pulls and pressures included in the resultant of the forces that make law, but of which we know neither the sources nor their direction. Only by rigorous and continuous inquiry, analysis and criticism can we discover these concealed forces or know the strength of those that are patently operative.

Judge Cardozo draws much of his material from the problems of public law. And here a reticence is laid upon the Judge, even in the rôle of essayist. In graceful and delicate language, Judge Cardozo hints at the peculiar demands made upon the American judge by a candid analysis of the problems of constitutional law and of the materials and methods appropriate to their solution. Humility, painstaking solicitude for the ascertainable feelings and needs of present-day society, the imaginative effort to reconcile contending claims, respect for "the spontaneity and persistence with which groups are established" to conserve a social interest—these are the high qualities of discernment, of tolerance, of wise statecraft without which constitutional law is a system of pernicious abstractions instead of the governance of a teeming continent. Law is seen to be more and more related to the organic processes of life outside of the law. Nothing is more striking, nor more hopeful for a synthetic approach to the problems of society, than the common nature of the problems discussed by Judge Cardozo and those dealt with by professional philosophers, especially philosophers reflecting upon life through the discipline of the sciences, like Whitehead, or of statecraft, like Haldane and Smuts. The necessary adaptation of means to ends, the interplay between organism and environment, the futility of believing that fallible minds can fashion infallible moulds for the future—these are themes for the philosopher, but they also have the most concrete possible meaning for all who have a duty towards law, whether as judges, practitioners or teachers. "It is the first step in sociological wisdom," writes Whitehead, "to recognize that the major advances in civilization are processes which all but wreck the societies in which they occur:—like unto an arrow in the hand of a child. The art of free society consists first in the maintenance of the symbolic code; and secondly in fearlessness of revision, to secure that the code serves those purposes which satisfy an enlightened reason. Those societies which cannot combine reverence to their symbols with freedom of revision, must ultimately decay either from anarchy, or from the slow atrophy of a life stifled by useless shadows." [1]

Through his opinions and his essays, and the contagion of his example, Judge Cardozo is contributing mightily to the penetration of this "sociological wisdom" into the hardened and complacent fabric of the law.

Felix Frankfurter.

Harvard Law School.

THE NEUTRALITY OF THE NETHERLANDS DURING THE WORLD WAR. By Amry Vandenbosch. Eerdmans Publishing Company, Grand Rapids, 1928. Pp. 349.

An extremely difficult subject is illumined by this recent work of Professor Amry Vandenbosch. No more prolific field for a general discussion on Neutrality could have been selected than Holland; so situated geographi-

[1] WHITEHEAD, SYMBOLISM, 88.

cally as to be almost in the centre of the belligerents during the entire war, and so situated politically that with its numerous treaties and conventions with the European Powers, its every move and the contact of every Power with it presented a problem in Neutrality, the solution of which became increasingly difficult with the progress of the war. Even as the war closed, the action of the fleeing Kaiser in seeking an asylum within its borders added a post-war dilemma from which Holland emerged only after strained negotiations and debate.

The historical aspect of the book commends it to every student of International Law who seeks to find in one depository the most ample and detailed statement of the problems of neutrality embraced in such obscure subjects as angary, and such new subjects as aerial rights, privileges, and limitations, and the use of the radio. The book is partly historical, but only as the history itself aids in the discussion of the growth of the various questions with which it treats, and thus becomes helpful in the realization of the problems presented to the advocate for neutrality or for the rights of belligerents.

Professor Vandenbosch discusses the various commodities, the use or the transit of which gave rise to the most acute controversies, and gradually causes to emerge the growing importance of the subject to belligerents and neutrals, until the acuteness of the difficulties involved in the needed adjustment of the various claims of belligerents, with the rights of the neutrals, becomes manifest. No more clear exposition is possible of the effect of methods employed by belligerents, in accordance with the circumstances of a neutral, to enforce their conception of their rights respecting transit of various materials over the territory of a neutral, and on its through waterways and railroads, than that contained in the second portion of the book.

In every case, International Law, as it stood, or was supposed to stand, was a subject upon which none of the contending parties could agree. Various constructions were put upon different Conventions and the Rules of International Law, and the difference in point of view became more and more marked and the subject of more bitter debate from time to time, until, as is pointed out in the last chapter of the book, the juridical situation did not become clarified, but involved an evolution of neutral duties. The evolution and development of neutral duties was, however, always in line with the fundamental principles previously established.

The book presents clearly the various conceptions of neutral duties under modern conditions. These various conceptions of neutral duties make the need of a restatement of the rights of belligerents and the corresponding duties and rights of neutrals more apparent, and the clearly analyzed problems confronting the Dutch, set forth in the book, together with the statements of the method of treatment of these problems by the Dutch, will be of considerable assistance as a working basis in the recodification of the Laws of Neutrality on Land, to which all the Powers are now giving their attention.

Several chapters in the book suffer by reason of an insufficient generalization, which would be of value after the lengthy discussion of the varying posi-

tions taken by each Power concerned in the debate on the subjects respectively treated in these chapters. This is particularly true of chapter 3, where the right of transit of military materials is exhaustively treated both from an historical standpoint and with reference to the method taken by Great Britain in sending military materials, across Norway, to its Russian Ally. Indeed, when the author does undertake to generalize, his generalization either takes the form of a justification of the stand taken by the Dutch, or is found to be fully treated only where recourse may be had to various previous authorities on International Law.

An ample appendix, which presents the various regulations finally adopted, covering the admission of foreign warships, the buoying of the ports, the regulations for coast lines and the various regulations dealing with the subjects of aerial navigation and radio, is a commendable feature of the book.

It is to be regretted that the Index shows signs of haste in preparation, and does not aid in quick access to the wealth of valuable material collated and treated.

To the consideration of the whole subject, Professor Vandenbosch has brought a power of analysis, the ability for patient study and the facility for clear expression, which will give his book a marked place in the bibliography of the whole subject.

William J. Conlen.

Philadelphia.

THE LAW OF OIL AND GAS. By Walter L. Summers. Vernon Law Book Company, Kansas City, 1927. Pp. xviii, 863.

The reviewer has read Professor Summers' treatise from cover to cover, and the more he reads the more he is impressed with the magnitude and excellence of this scholarly work. To read, classify, analyze and criticize over two thousand cases in this intricate subject of conflicting decisions, and to reduce them to system and legal order, is the great task Professor Summers undertook in writing this book. In the preface he says: "In the preparation of this work the writer has had the task of making practically all deductions of legal principles directly from a great and ever increasing mass of confusing and conflicting decisions, as well as that of organizing and presenting them in some logical sequence of his own invention, so as to make them readily available to the practicing lawyer." This task Professor Summers has accomplished admirably well.

The book contains twenty-six chapters with a table of cases cited and discussed, together with a very complete index of the subject matter, rendering readily available any information contained in the book. The first chapter touches upon the physical and economic facts of oil and gas, and points out the former erroneous belief as to their migratory character in a state of nature which prevailed in the early cases, and which was responsible for the peculiar development which the law of oil and gas has taken. Chapters two

to seven deal with the landowner's legal relations to oil and gas as evolved and developed from the great body of case law already existing on this subject. The landowner's rights in oil and gas are treated from the viewpoints of trespass and waste, of rights of reversioner and remainderman against strangers, of his privileges to take oil and gas from his land, of his duties with regard to existing wells, and of limitations on his right to deplete a common gas reservoir. Chapter five contains a critical analysis and review of leading cases dealing with the landowner's rights and duties respecting ownership of oil and gas. Chapter six deals with his powers and liabilities to transfer his legal interest in oil and gas, and the distinction between the grant of a separate interest and one of a lease for production; separate interests created by exception, reservation and deed; and loss of legal interest by non-user and adverse possession. Chapter seven is a critical analysis of the nature of the landowner's interest and his privilege to reduce all of the oil and gas underneath his land to possession and become the absolute owner thereof, even though in so doing he drains his neighbor's land, subject to the limitation in some states by statute, and at common law, not to waste the oil or gas in the common reservoir, or to injure it. It is shown that the landowner is not the owner of the oil and gas in *situ*. Chapters eight to nineteen contain a comprehensive discussion of oil and gas leases. The legal interests created by leases, the validity and duration of the same, the drilling, rental, forfeiture and surrender clauses with their construction and interpretation, together with the development of the various clauses and forms of leases, and express and implied covenants for exploration and development, the protection of the land and the marketing of the product, are comprehensively treated. The lessor's remedies by way of ejectment, specific performance and injunction, assignments, rents and royalties, and termination of oil and gas leases, are fully considered. Chapters twenty to twenty-five consider miscellaneous and minor subjects; such as, taxation of oil and gas interests, mechanics liens, tort liability of operator of wells for injuries to person or property, drilling contracts, mining partnerships, and production of oil and gas from public lands. Chapter twenty-six is in the nature of an appendix, and contains a collection of important lease forms in general use with clauses that have been most subject to judicial interpretation, and other minor forms in common use. Fifty-five pages are devoted to this. These forms are annotated to sections in the text where they are discussed, thus much increasing their value. The notes in the text are numerous and comprehensive, with valuable extracts from opinions, thus rendering the work of especial value to the lawyer with a small library, or the busy lawyer with more adequate facilities at his command. Citations of cases are numerous and exhaustive, and seem almost unnecessarily so at times.[1] So far as an opportunity has been afforded to examine the cases, they quite generally support the text.

Perhaps in no part of the field of oil and gas have the decisions of the

[1] See SUMMERS, THE LAW OF GAS AND OIL (1927) 391n., 514n.

courts been more conflicting than those dealing with the landowner's interest in oil and gas in place. The part of Professor Summers' book dealing with this, chapters two to seven, is undoubtedly the most difficult part of the field and contains the most valuable contribution of the author to the law of oil and gas. The clearness and lucidity with which he has treated this part of the subject should do much to clarify the principles in this apparent conflict of decisions. The necessity for a clear exposition of the law was perhaps nowhere greater than here, and much has been done in laying down correct principles as future guides for lawyers and courts. As he points out, while the landowner cannot have ownership of oil or gas in place until reduced to possession, he has a property right in it which gives him the exclusive right to operate upon his own land and to reduce it to possession, and this property right is transferable. The difficulties of the law in the field of oil and gas are much increased due to the fact that it cuts across many other fields of law, such as contracts, property, equity, torts and others.

The duration of the lease, and the history, development and exposition of the *habendum* clause are treated by Professor Summers in his usual clear and lucid manner. So, also, are the drilling, rental, forfeiture and surrender clauses, and the "unless" lease. The function of the *habendum* clause, which is solely to define the extent of the term created by the instrument, has been fully pointed out, and the errors of some courts in leading cases involving the interpretation of this clause have been pointed out. The book should furnish a safe future guide to the correct interpretation of the duration of the lease as created by the parties to it in this clause. Express and implied covenants of the lessee for exploration and development are well treated, although Professor Merrill has now admirably covered that subject in his special treatise devoted to that particular field.[2]

This book meets a great need, and Professor Summers has admirably fulfilled the difficult task which he undertook. The industry and patience exhibited in the preparation of this volume are evidenced on every page to the highest degree. He has produced a work that no lawyer, whose practice in any way involves this field of the law, can afford to be without, and in so doing, he has rendered an incalculable service to the profession.

C. G. Haglund.

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PRINCIPLES OF BUSINESS LAW. By Essel R. Dillavou and Charles G. Howard. Prentice-Hall, Inc., New York, 1928. Pp. xxviii, 781.

In their preface, the authors state that they have had in view two distinct objectives. The first was the preparation of a text, supplemented with case material in such form that student and teacher might have before them a brief statement of fundamental legal principles, correlated with cases showing how these principles are applied in actual practice. The second objective was to

[2] MERRILL, COVENANTS IMPLIED IN OIL AND GAS LEASES.

combine the text method and the case method so that the usual business law subjects taught in colleges and universities might be covered in the allotted time. They state that it has been their experience in teaching business law according to the case system that the time allotted is too short to cover the subjects which should be studied.

Three hundred and ninety-two pages are devoted to a statement of rules of business law. After three short introductory chapters dealing with the study of the law, the courts, and court procedure, Book I takes up Contracts in general; Book II takes up Suretyship and Insurance; Book III, Agency; Book IV, Negotiable Instruments; Book V, Business Organizations; Book VI, Personal Property; and Book VII, Real Property. Each of the fifty chapters is followed by appropriate review questions and problems.

Throughout the reading matter are notes referring to illustrative cases. These cases occupy three hundred and seventy-seven pages and, with the index, constitute the concluding part of the volume. Most of the cases consist of a brief statement of the facts and a portion of the court's opinion showing the application of legal principles to these facts.

Doubtless this work will be found useful in teaching business law to students. For the most part, the statements of law are clear and simple. However, it is to be regretted that the work does not show more evidences of ripe scholarship. So many textbooks on business law have been produced that one who undertakes to add to the number of these works should offer some special inducement to the reader. The fact that the study is elementary only makes it more important that the book be free from error, and exact in its statement of legal principles. Profound jurists, such as Sir William Anson and Samuel Williston, have covered most of the subjects treated in the text under review, and it is disappointing not to find their efforts more carefully reflected in this volume.

John J. Sullivan.

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PIEDPOUDRE COURTS. By Gustav L. Schramm. The Legal Aid Society, Pittsburgh, 1928. Pp. xi, 219.

"Piedpoudre Courts" analyzes in fairly exhaustive fashion a large number of cases brought before the Aldermanic and Justice of the Peace Courts of Allegheny County, Pennsylvania, and finally disposed of before the Appellate Court, known as the County Court. Considering that Mr. Schramm has written his last chapter, styled "Suggestions," in the light of statistics covering a large number of cases and an extended period of time, his conclusions are entitled to weight with the reader. While not detracting from the worth of the brochure, its readability is somewhat impaired by a few typographical errors. The survey should prove of interest to anyone, whether member of the Bar or otherwise, who believes that the machinery of the courts, particularly as it affects the small claim litigant, is of vital concern.

W. H. McNaugher.

Pittsburgh, Pa.

SECOND MORTGAGE AND LAND CONTRACTS IN REAL ESTATE FINANCING. By Samuel N. Reep. Prentice-Hall, Inc., New York, 1928. Pp. xxi, 255.

Dr. Reep's book is not susceptible of very high recommendation to law students or practitioners. It demonstrates the extreme difficulty of attempting to write a general statement of the law without voluminous qualifications and distinctions. The substantive law and procedure differ so widely between the various jurisdictions, that any general statement serves to confuse rather than to clarify. The book contains quite insufficient footnotes, and the legal reference books are unfortunately not those most widely known, nor of unquestioned authority.

These same reasons rather detract from the value of the book to the average real estate agent or broker. A man practicing the real estate business in Pennsylvania is not concerned with the law of Minnesota or Wisconsin or South Carolina. It is just possible that he might derive something of an educational nature from the work, but beyond this he might only be confused by the multitudinous difference between the law stated and the law with which he is familiar.

There are several chapters, particularly those on usury, which have real merit. The distinction between the theory and the operation of the usury laws is forcefully brought out, and the need for reform is pressed home. The compilation in the Appendix of the usury laws of the various states is valuable and interesting.

This part of the book is its justification. But it is most regrettable the author has permitted his work to tend toward verbosity, and has at times not too lucidly expressed his ideas.

Philip C. Pendleton.

Philadelphia.

CASES ON PROBLEMS IN THE LAW OF REAL PROPERTY. By Basil H. Pollitt, New Jersey Law School Press, Newark, 1928. Pp. xiii, 888.

As the first attempt to produce a collection of cases largely from the jurisdiction of New Jersey, Professor Pollitt's book is both commendable and valuable. Like all casebooks, it derives its greatest value from its suitableness for wide reading and systematic study of essentials by the use of a single volume. There is some overlapping in scope upon an earlier incomplete casebook by another compiler (to which no reference is made), yet it may still be regarded to a large degree as complementary to the earlier one.

Not all the cases are from New Jersey but they have all been selected from carefully considered opinions, and embody a comprehensive view of the subject within the scope of the volume. The separate jurisdiction of the Equity Courts being still preserved in New Jersey, many "favorite" opinions of the Chancellor and Vice Chancellors are included.

The table of contents reveals the following chapter heads: Concurrent Ownership, Terminable Fees, Uses, Future Estates, Executory Interests, The

Rule in Shelley's Case, The Rule against Perpetuities, Incorporeal Interests in Land, and Supplementary Cases.

An interesting series of twenty-four problems in the field of Uses will be found at the end of the chapter bearing that title. The experiment in correlative arrangement of the cases in Incorporeal Interests is an aid to the student, and a step likely to be followed and developed. The Supplementary Cases, included partly for variety in teaching material, cover in a brief way such subjects as; water rights, accretion, adverse possession, dedication, rent, church pews, etc.

The reviewer does not believe in teaching undergraduates by means of the case method exclusively and, although he does not wish to enter into a discussion of that subject, he therefore feels that the book could be made more useful to students by the addition, between the cases, of more headnotes and explanatory material. Whether regarded as an advantage or disadvantage, it would be less difficult for the student to follow, and is not without precedent. Knowledge, unless organized, is confusion.

The printing and physical make-up are well done, and the few errors are carefully corrected in the "Errata," which facts, together with the worth of its contents, seem to forecast that the casebook will achieve its compiler's purpose; that is, that it will "encourage further intelligent research and furnish a bit of inspiration" to any student.

Elmer G. Van Name.

South Jersey Law School.

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 Ownership, Management, etc., of the UNIVERSITY OF PENNSYLVANIA LAW REVIEW, published at Philadelphia, Pa.:

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