BOOK REVIEWS

DE OFFICIO HOMINIS ET CIVIS JUXTA LEGEM NATURALEM LIBRI DUO. By Samuel von Pufendorf. Vol. I. A Photographic Reproduction of the Edition of 1682, with an introduction by Walther Schücking. Vol. II. A Translation of the Text by Frank Gardner Moore, with a translation of Walther Schücking's Introduction, and an Index by Herbert F. Wright. No. 10 of the Classics of International Law, Carnegie Endowment. Oxford University Press, American Branch, New York, 1927. Pp. Vol. I., 30a, 167. Vol. II., 2, 27a, xxi, 152.

Pufendorf did not intend in this book to produce one of the classics of international law. He intended, as he says in his Preface, to "set forth for beginners the chief headings of natural law." That is, he intended to explain those moral principles which underlie all law, and to show what their connection is with the positive law of the state, and with the international law which governs the relations between states. He starts with the principle that men derive their knowledge of what is morally good and what is morally bad from three sources: natural law, which is the light of reason, and common to all nations; from the civil law of the state; and from divine revelation. "Each of these studies," he says, "uses a method of proving its dogmas corresponding to its principle. In the natural law it is asserted that something must be done because the same is gathered by right reason as necessary for sociability between man. The last analysis of the precepts of the civil law is that the law giver so established, the moral theologian acquiesces in that ultimate proposition, because God has so ordered in the Holy Scriptures." But the three studies necessarily overlap, and, in particular, "the study of civil law presupposes the natural law as a more general study."

The main object of the book is to give the student an idea of the more general principles derived from the natural and the divine law, and of their relation to the principles of the civil law and international law. Thus it is rather a treatise on moral philosophy and political theory, treated from a jurisprudential point of view, than a treatise upon law. The first book deals, from this broad philosophic point of view, with the duties of the particular individual in relation to God, to himself, and to his neighbors. The second book, from the same point of view, deals with the duties of men in the various associations of which they form a part: in the family, as employers, and as citizens. The last form of association involves a discussion of the origin of the state, its functions, its structure, and its authority. It is in connection with this topic that Pufendorf introduces the only two chapters that bear directly on international law—one dealing with war and peace, and the other with alliances. The discussion in these two chapters is scanty, and adds little to the matter contained in Grotius's great work.

On what ground, then, can this book be classed as a "Classic of international law"? Walther Schücking, the learned author of the Introduction, finds the answer in Pufendorf's insistence, all through the book, on the concept of duty derived from the abstract ideal of man's sociability. "His fundamental idea is the social man." So that "an epoch which has as its task the 'socialization of

international law' must recognise in Pufendorf a leader and path-finder." It was on this basis that he rested the natural law, on which, in common with Grotius, he rested the as yet very new science of international law. Neither when Grotius nor when Pufendorf wrote was the time ripe for a purely positive treatment of international law. It was for this reason that the works of Gentili and Zouche, which treat the subject from a much more purely positive point of view, were not so influential as the works of Grotius and his followers, who relied more on the doctrines of natural law. And even now, when a purely positive treatment has become possible, it is sometimes good to have recalled the great principles which underlie the positive rules, and to test those rules in the light of these principles. "We know," as Schücking says, "that it is always proper to continue to develop valid right rationally under great guiding principles, and that our age, which has overcome space and has completely transformed the face of the earth, needs the solution of this problem more urgently than any other." Pufendorf's work, because it is based on these guiding principles, may yet be useful to modern international lawyers in search of a theoretical basis for a rule to resolve some new combination of complex facts. It is for this reason that it may be placed among the "Classics of international law."

W. S. Holdsworth.

All Souls College, Oxford, England.

CHARLES DICKENS AS A LEGAL HISTORIAN. By W. S. Holdsworth. Yale University Press, New Haven, 1928. Pp. 157.

These four charming essays[1] will prove equally interesting to lawyers and to literary men, for the light they throw upon Dickens as a writer is considerable. A thoughtful French critic has recently remarked that Dickens obtained powerful effects by very restrained means. If he attacked an institution, his most telling passages are not those where indignation stirs him to rhetoric, but those where he tells plain facts in simple language as though they were the most ordinary thing in the world, where the merest suspicion of humor is enough to reveal the deep feeling beneath the restraint.[2] Professor Holdsworth has submitted Dickens to a test which would be gravely damaging to most satirists, and there is no question that Dickens emerges from it unscathed. The test is that of the blue-book. Side by side with passages from the novels he has placed extracts from the immense reports of the various commissions on procedural reform and the parliamentary papers of one hundred years ago, and the comparison of the novels with the officially ascertained facts shows that Dickens never overstated his case. There are very few satirists—very few critics in any style—who could bear so searching an examination. As Professor Holdsworth shows, Dickens most prudently reserved his attacks for those classes and institutions of which he had first-hand knowledge.

It is good to see that both the artistic and the historical criticism of Dickens reveal the same splendid merit of earnestness kept in check by literary restraint

[1] Delivered as lectures on the William L. Storrs Foundation and published on the Ganson Goodyear Depew Fund in the Yale Law School.

[2] MAUROIS, ÉTUDES ANGLAISES (1927) 144.

and by strict fidelity to fact. Where more violent attacks would have failed, the sober and judicious narrative of Dickens had immense effect.

One of the abuses which stirred him most was one which his own father had suffered from, imprisonment for debt. Here Professor Holdsworth gives a short but interesting history of imprisonment for debt and creditors' remedies.[3] Perhaps it might be mentioned in this connection that the recent statement by Sir Edward Parry in *The Gospel and the Law* that there are at this moment 11,000 non-criminal debtors in prison in England has been officially contradicted by the chairman of the Prison Commission.[4]

Dickensians will find in these entertaining and learned papers a valuable contribution to the study and appreciation of their hero.

Theodore F. T. Plucknett.

Harvard Law School.

CONCEPTS OF STATE, SOVEREIGNTY AND INTERNATIONAL LAW. By Johannes Mattern. Johns Hopkins University Press, Baltimore, 1928. Pp. xix, 200.

In seeking definitions for *sovereignty* and the *state* one may quest for the immediately practical source of authority for law; for the ultimate political authority in the State; or pursue philosophical inquiry as to the moral bases whereon may be predicated control over "free-willing" men. Blackstone justifies his acceptance of the *state* by reciting that it rests upon "the wants and fears of individuals which impel them in self interest to create" it. And his *law* as "a rule of civil conduct prescribed" predicates a "supreme irresistible . . . authority" in which the "rights of sovereignty reside" to prescribe that *law.*

The reviewer understands the juristic conception of the *state* to be that the *state* is this source of power which is the requisite background for a society governed by *law.* A practical man turned philosopher, John C. Gray, in his *Nature and Sources of the Law,* remarks that "from the viewpoint of law and jurisprudence," "the importance of Sovereignty has been exaggerated." John Austin, a military man turned jurist, who spent much thought on it, makes it a more or less axiomatic thing. Many lawyers, "good," in the practical sense, live and prosper without giving it a thought. The acceptance of a "big stick" somewhere in the scheme is a working necessity for dealing with the lesser minds who do not perceive the enlightened self interest which actuates the "individuals" to whom Blackstone refers.

However, sharp minds have for hundreds of years played upon the ideas wrapped up in the package words *state* and *sovereignty,* as a statement of the contents of Dr. Mattern's book demonstrates. Chapter one concerns itself with Bodin's theory of *sovereignty, sovereignty* in the Holy Roman Empire, and Bodin's influence in England; chapter two with the compact theory of Hooker, Hobbes, Locke, and Rousseau; the succeeding ones with national and popular *sovereignty;* with Kant, Hegel, and Fichte; with the Austinian or analytical school; with Willoughby's juristic conception of the *state,* its critics and Ven-

[3] There are some useful remarks on the subject in YVER, LES CONTRATS DANS LE TRÈS ANCIEN DROIT NORMAND (1926) 270, 275.

[4] The London Times, Oct. 11, 1928, at 17.

gradoff's modification of it; with the denial of *sovereignty* by Duguit, Laski and others; with the state and the *civitas maxima* according to the Austrian school; and with the German conception of *sovereignty* without independence. The concluding chapters, twelve and thirteen, are entitled respectively, the Juristic Conception of the State Restated, and the General Application of the Juristic Conception of the State. There is a bibliography, and a very adequate index.

Sovereignty, as applied to that authority which gave final decisions, was developed philosophically by Bodin, a Sixteenth Century Frenchman. The author's thesis, that Bodin rationalized the absolutism of the then regnant monarchy in his own land, and that concepts advanced as universal are frequently little more than reflections of the particular fact situations known to those who put them forth, leads him to show how little the contemporary political conditions in Germany, where no general authority was to be found, comported with Bodin's theory. But the contemporary political conditions in England, both the then monarchy's assertion of the divine right doctrine, and its repulsion of the Papacy's assertions of supremacy of government spiritual over government temporal, not only consisted with, but also received support from Bodin's views.

The compact theory is neatly done. It is ascribed to Roman and feudal sources, and to the doctrine, put forth by the medieval church, that the bonds of a people to a temporal ruler were releasable by the church because of the ruler's defaults toward the church, a doctrine which the peoples could logically, and later did actually, use to declare themselves released of either prince or church. The effect of the compact doctrine on the political thinking of the makers of the American Revolution is described, even to the thorough-going Jefferson's assertion that, as a voting majority for anything (under the expectations of life in his day) would cease after nineteen years, political society would expire at the end of that time for lack of contractors! The compact theory is primarily a political one but, as Dean Pound has pointed out in his *Spirit of the Common Law*,[1] it has affected our juristic thinking as well. Up to this point in his volume, Dr. Mattern has touched but lightly on the juristic theory of the *state.*

The remainder of its two hundred pages, the greater part of it, is given over to Mr. Willoughby's juristic conception of the *state,* its criticism, its defense and its modification. To one not particularly versed in the recent literature of the political science writers, this view of Mr. Willoughby, who is a professor at Johns Hopkins University, seems to be largely that of the Austinian or analytical school of jurists, who accept the *state* as a necessity to their definition of *law,* and who do not, just as Mr. Willoughby seemingly does not, inquire behind the fact of its existence. This view apparently does not admit of a conception of such a thing as international *law,* which Dr. Mattern admits,[2] and lays Mr. Willoughby open to the charge that he too, like Bodin and the Seventeenth Century Englishmen, is intellectually a creature of his time and environment. The dissent from *law* as a *command,* voiced by Duguit and Laski, Dr. Mattern declares to be a confusion of *state* with *government,* and is ascribed to the bureaucratic conditions in France in Duguit's day.

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[1] POUND, THE SPIRIT OF THE COMMON LAW (1921) 43.

[2] MATTERN, CONCEPTS OF STATE, SOVEREIGNTY AND INTERNATIONAL LAW (1928) 61 *et seq.*

Then follows, in chapter ten, a discussion of the Austrian school (Kelsen and others), which school grapples with the non-placement, in Mr. Willoughby's view, of international *law.* Kelsen labors toward a reconciliation of the meaning of *law,* under the Austinian definition, with *law,* as used in the international sense, by positing a *civitas maxima* which is supreme over the *state* (using the word in the municipal sense) upon which the legal order which is known by the term *international law* may rest. The author then takes up, as chapter eleven, the German conceptions of the present day and, in that and the remaining chapters, ties up the doctrine of Mr. Willoughby to the new Germany, and comes back to his prefatory statement that, "The fundamental ideas of the new German National Constitution were found to rest squarely upon the juristic conception of the State, a theory ably presented to the English-speaking world by Professor W. W. Willoughby."

The writer's only criticism is implicit in his hope that, since knowledge in other fields is being so "humanized" that works on them are becoming "best sellers," Dr. Mattern may be led to write a book on the same subject, definitely put together for the man in the street. The general topic would interest the latter if it were presented in simple terms. Dr. Mattern's success in his present work impels the reviewer to hope that he will undertake this important task.

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THE LEGAL STATUS OF AGRICULTURAL CO-OPERATION. By Edwin G. Nourse. The Macmillan Co., New York, 1927. Pp. xix, 547.

Agricultural co-operation used to be little business; now it is big business. The leaders of agricultural co-operation once were crusaders and reformers; now they are scientific and management experts. Farmers' co-operatives used to run a grain elevator or a country store on the Rochdale principles. If their activities expanded they had to be chary of prosecution as common law monopolies or as violators of the anti-trust laws. Now nearly every state has a standard marketing act under which may be organized large scale enterprises whose necessary and characteristic activities at least are protected from such legal attacks. The old style co-operative was an association or a stock corporation dealing with members and non-members and returning its rare profits in the form of patronage dividends after a limited dividend on the capital stock. The modern co-operative is a non-stock corporation each member of which has one vote. It deals only with producer-members who are under strict, and often long-term, contracts to sell or consign all they have of a particular commodity to the association for marketing in a pool. Settlement is made with the members on the basis of net returns. Modern co-operative marketing is an effort to centralize a naturally decentralized industry so that it may perform large-scale operations; to enable the farmers as groups to compete with other organized groups, to take advantage of modern credit mechanisms, and to obtain the benefit of specialized division of labor and managerial skill while preserving individual independence and participation.

Mr. Nourse sets out this evolution of agricultural co-operation with the addition of many illuminating details. His book is like the expansion of an

economist's address to a bar association. It is not a lawyer's treatise. The arrangement does not follow familiar digest headings, nor are particular legal problems of the co-operatives tied up conveniently with analogous problems of other and more familiar legal fields, and there are no helpful procedural suggestions. A lawyer is apt to object to such non-technical language as *secure* in the sense of *obtain*. All this does not imply that Mr. Nourse has not accomplished what he set out to do. He can read cases and statutes, summarize them accurately, cite them appropriately and criticize them intelligently. The forms and other matter in the appendix are admirably selected. Everyone who reads the book knows exactly what Mr. Nourse thinks the legal status of farmers' co-operatives was, and is. There will not be universal agreement with all his conclusions, notably with his opinion that statutes exempting co-operatives from the operation of restraint of trade statutes, apply only to the activities of the associations *per se;* and do not mean that these corporations, like any others, may not be prosecuted for being bad, as well as big, corporations. But Mr. Nourse's arguments for his position are cogent and seem to be supported by logic and legal precedent.

Mr. Nourse obviously knows a great deal about the co-operative movement which he does not print. It would be interesting if someone so well acquainted with the personalities involved, and with something of the gift for characterization and synthesis possessed by the best of contemporary historians and biographers, would think, concerning American co-operative marketing associations since the war, that "now it can be told," and would tell it. The large-scale co-operatives have not all succeeded. Some have failed lamentably. Mr. Nourse has a little to say about the reasons, but this is not primarily his topic. Modern co-operatives might be divided into two classes, those in California and those elsewhere. The California co-operatives, for the most part, deal with perishable or semi-perishable commodities. They represent in many instances the expansion of a well-integrated local or regional activity. Nothwithstanding some failures, California co-operatives have a high average of success. The greatest weakness of the co-operatives elsewhere is that they have not been through a period of growth and natural expansion. They have sprung full-grown from the financial fountains of the federal government. The co-operative genesis outside California was in 1920. The modern co-operatives were made possible by the coincidence of a business depression with the existence of the War Finance Corporation. The War Finance Corporation was really the Third Bank of the United States, with limited powers. Organizers in the cotton, wheat and tobacco states had no difficulty in signing up a large membership on five-year contracts, enforceable both by action for damages and by injunction. The War Finance Corporation was ready to lend unlimited amounts secured by an ample margin of warehoused commodities. When prices advanced promptly certain co-operative leaders had illusions of grandeur in which they saw themselves as dictators determining commodity prices for the whole world. Certainly many farmers expected the co-operatives materially and permanently to raise prices. Most of the co-operatives were organized during the period from 1920 to 1922. Before the expiration of the five-year contracts many members had become dissatisfied and broken their contracts. The courts were filled with damage actions, injunction bills and even criminal

prosecutions, against members and outsiders, all seeking to prevent or punish breaches of contracts. The associations won countless Pyrrhic legal victories, but the resulting bad feeling wrecked several associations and seriously hampered the whole co-operative movement. Mr. Nourse soundly condemns the compulsory feature in members' contracts, although he admits that an association may be justified in requiring a new member to agree not to withdraw for three years. After that there should be an annual withdrawal privilege on giving reasonable notice. This is coming to be the actual practice of the best managed co-operatives.

Co-operative marketing associations now, and perhaps always, can do nothing more than to insure orderly marketing. Every annual crop should be marketed in twelve months. That has always been the principle of the War Finance Corporation and of its successors, the twelve Intermediate Credit Banks. The most the co-operative can promise the farmer is that he will get the average price of the entire season. By himself he will likely get close to the lowest price or will run undue risks and pay too large charges if he holds his product off the market. The co-operative can protect its member from the necessity of forced sale by borrowing at reasonable rates and paying to him a generous fraction of the value of the crop on delivery. It may save him substantial processing and warehousing charges. In addition it can advise him as to proper methods of cultivating, harvesting and preparing the product for market, can help him choose the most profitable varieties and can suggest means of protecting the crop from insects and disease. But that is all. That many farmers believe that is not enough explains the continued agitation for farm relief. Mr. Nourse does not go outside his topic in this volume, but the list of publications and announced plans of the Institute of Economics of which Mr. Nourse is a member, indicate that he and his colleagues contemplate a comprehensive survey of every important phase of the whole complex agricultural problem. If subsequent volumes maintain the standard set by Mr. Nourse in the present book, the Institute will have handsomely justified its existence.

John Hanna.

Columbia Law School.

CASES ON THE LAW OF TORTS. By Lyman P. Wilson. Callaghan and Co., Chicago, 1928. Pp. xxiii, 1068.

The editor of this latest case book on Torts has an eye for cases which interest students and develop the subject. In the five hundred-odd cases in the collection, he has been able, without neglecting the old stand-bys, to find more than 300 cases arising since 1900, most of them excellent. The fact that very few of these recent cases have appeared in other collections indicates the painstaking care with which he has both read and culled from the reports. In distribution the cases are only one-fifth English, with a preponderance from the northeastern states. The editing has been done with care, the facts condensed but generally leaving in all useful information. Taking the place of notes under the individual cases, at the beginning of each chapter or sub-chapter are exhaustive references to law review articles, which should prove of great assistance to teachers, particularly to those beginning the subject.

Although the book as a whole is excellent, there are some matters as to which I disagree with the editor and of which it may be worth while to speak: With the general arrangement, roughly corresponding to that of Bohlen,[1] and Pound's edition of Ames and Smith,[2] I am in hearty accord. I doubt, however, the wisdom of Part I: seventy-six pages of general characteristics, discussing the nature of torts, the persons liable, and even the liability for injuries to an unborn child. This introductory matter involves at times, as in the case of *Rich v. N. Y. C. & H. R. R. R.*,[3] difficulties far beyond the beginning student. My real quarrel with the arrangement is, however, that it postpones the discussion of the delightful technicalities of assault and battery which throw the student at once into the center of interest in the subject. Of course no great harm is done since this part may be omitted.

Of more serious moment is the cutting down of the material upon fraud. This I presume has been made necessary by the inclusion of many topics, some of which seem to get beyond the confines of the time allotment for torts. That this is the deliberate choice of Professor Wilson appears from his preface, where he says that he desires "to give the student a fairly broad outlook early in his course of study, and to include in outline many topics which cannot be minutely considered." So far as this involves a conflict between intensiveness and extensiveness I must differ, except in the single topic of "Interferences with reasonable expectations," which, coming last, has little chance to get consideration. I suggest, however, that if adequate time is spent upon the introductory part as well as upon such topics as the liability of a master to a servant both at common law and under *Workmen's Compensation Acts*, there may not be time to give *Lumley v. Gye*[4] even a cursory inspection.

Another quarrel, perhaps of less importance, is with the headings of some of the parts. Thus, Part II, which deals with trespasses and conversion, is headed, "Loss shifted because incurred through defendant's intentional act." This seems misleading, since the characteristic of the trespasses is that the action lies although there is no loss. Part IV is headed, "Loss shifted because of inherent fault." This part includes liability for the keeping of animals, workmen's compensation, and other situations in which there is usually said to be liability without fault. I presume that Professor Wilson by his title means that the defendant is held responsible because of the great likelihood of harm which may result from things subject to his control. But even with this interpretation it is difficult to see how the cases under the *Workmen's Compensation Acts* can be included under such a heading. Part V is headed, "Specific harms produced through intangible media or through intangible things." The first cases under this heading are cases involving injury caused by fear of harm, matter which would seem to be better included with the cases upon negligence.

The omission of all notes except the references to law review articles seems

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[1] BOHLEN, CASES ON THE LAW OF TORTS (2d ed. 1925).

[2] AMES & SMITH, A SELECTION OF CASES ON THE LAW OF TORTS (Pound's ed. 1917).

[3] 70 App. Div. 623, 75 N. Y. Supp. 1131, WILSON, CASES ON THE LAW OF TORTS (1928) 10. (The case is not reported in the reports cited above, only a memorandum of decision there appearing.)

[4] 2 El. & Bl. 216 (1853).

to me a mistake. I am quite sure that Mr. Wilson underestimates his ability to interest his students when he says that they shun reading the footnotes. Of course it depends upon the notes. Reference to at least some of the more interesting cases, with a brief summary of the salient facts, as in Dean Wigmore's book,[5] seems to me to be a very distinct advantage and worth far more than the space thus occupied. Perhaps to make up for the lack of the customary small type in the notes, a considerable number of cases, or extracts from cases, are printed in fine print. This device has been used before, but it grows no better with age. A case important enough to print is sufficiently important to be printed so that it may be read comfortably.

As indicated at the beginning, the things which to me seem to be flaws are not of overwhelming importance. The book can well be used by those who agree with the editor in arrangement and content, and by those who do not. The important thing is the cases, and except in one or two topics they are both plentiful and excellent.

Warren A. Seavey.

Harvard Law School.

COURT PROCEDURE IN FEDERAL TAX CASES. By Hugh C. Bickford. Prentice-Hall, Inc., New York, 1928. Pp. xxxviii, 440.

Reviews are ordinarily a mixture of the reviewer's personal prejudices, an assumption of superior knowledge as to the correct solution of disputed questions of law and manner of treatment, and statements that notwithstanding the criticisms directed at the book, it is nevertheless worth while. The present review is not extraordinary.

Before 1917 there were no text books of any note devoted exclusively to federal income taxes.[1] Prior to that time the subject had not seemed to warrant separate or extensive treatment. At any rate it had not assumed sufficient financial importance to lure persons capable of writing text books on federal income taxes into such an unprofitable task. But with the advent of the *War Tax Acts,* federal income taxes assumed a new importance. A hitherto existing but unrecognized field was promptly occupied by a number of authoritative text books. And the creation of the United States Board of Tax Appeals in 1924 opened up a new phase of federal income tax law, which not only induced annual editions of established texts, but also soon brought forth several very competent books devoted entirely to practice and procedure before that Board.

Within the last year or so the number of appeals taken to the courts from decisions of the Board of Tax Appeals has drawn attention to the rules, practices and machinery for such review. The book here reviewed is concerned in part with that subject. While it also treats of tax suits brought in the first instance in the federal courts, that subject has frequently received independent treatment in other text books on federal practice.

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[5] WIGMORE, SELECT CASES ON THE LAW OF TORTS (1911).

[1] COOLEY, LAW OF TAXATION (1886) was, of course, a standard general work on taxes.

While all of the material in the four parts of the book is not new, its inclusion in one volume devoted entirely to court procedure in federal tax cases is new. The book is readable; the subject-matter simply and excellently expressed. Probably its virtue is its vice and its vice is its virtue. It is a book for the lawyer who by virtue of his tax practice finds himself now confronted with the necessity of handling a case through the federal courts, or for the accountant who has a case before the Board which it is expected might be appealed. Without the slightest disparagement, it might be said that the book is not, and probably was not intended as, one which courts will be likely to cite in support of conclusions on disputed questions.

It is to be regretted that the author does not more frequently discuss the many doubtful questions which confront any lawyer having an extensive tax practice before the Board of Tax Appeals and the federal courts.

There is a considerable dearth of available knowledge as to what remedies, aside from review by the Circuit Court of Appeals, are open to a taxpayer upon the refusal of the Board to take jurisdiction. This subject might well have been discussed at some length. There also seems to be insufficient discussion of the Board's jurisdiction over persons, including matters of citation, service on parties, necessity of including as parties, distributees, purchasers, successor corporations, etc., and the effect on review by the Circuit Court of Appeals of non-joinder and misjoinder of parties in the appeal before the Board. Other questions of interest, such as the effect of a failure to claim a refund in the petition to the Board of Tax Appeals, either in the event that the refund is disallowed on redetermination or in the event that the commissioner refused to make refunds found on redetermination of the tax, might have been more extensively treated.

The author, in a number of cases, has expressed without qualification his own opinions on what are still controversial questions, as where he states that, "It has also been held that informal claims for repayment do not constitute claims for refund as required by the statute."[2] As a matter of practice, the Treasury Department has been accepting informal refund claims where they have sufficiently expressed the grounds on which the refund was sought. *Ritter v. U. S.*,[3] cited by the author in support of his statement, is authority primarily for the conclusion that a refund claim, if made to the wrong person, such as a revenue agent, will not form the basis for a suit. It is doubtful whether that case is authority on the point that an informal claim, if properly filed, is insufficient.

Another example is his statement that Section 1113 of the *Revenue Act of 1926* amending Section 3226 R. S. amends the common law rule requiring protest in actions in assumpsit against the collector.[4] While we may assume that this conclusion may eventually be sustained, its correctness is still disputed; there are a number of recent court decisions bearing on the point.

In discussing the jurisdiction of the Court of Claims it is suggested in a foot note[5] that until as recently as 1925 the Government objected to the juris-

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[2] BICKFORD, COURT PROCEDURE IN FEDERAL TAX CASES (1928) 123.
[3] 19 F. (2d) 251 (D. C. Pa. 1927).
[4] *Op. cit. supra* note 2, at 118.
[5] *Ibid.* 168, 169.

diction of the Court of Claims to hear claims for the recovery of internal revenue taxes. This statement might very well have been amplified to suggest that there has continued to be considerable doubt as to whether the Court of Claims would take jurisdiction of questions of fact in suits for the recovery of internal revenue taxes, following its ruling in the *Williamsport Wire Rope* case.[6] The final position of the Court of Claims is presaged by the very recent action of the Solicitor General in conceding such jurisdiction.[7]

The usefulness of the book as a reference work would have been increased by the use of cross references in the foot notes. The happy avoidance of repetition would have retained more of its charm if the reader were able to find an answer promptly by a cross reference, without the necessity of thumbing the index. As to the index, while its length and scope is always a matter in which there is room for a considerable difference of opinion, it would seem that the author has erred on the side of brevity.

Lest these comments should indicate any disapproval of the book as a whole, it should be added that most of these are matters of judgment and treatment, and that the others are natural results of the first edition of any work. The book gives a clear, concise statement of federal court procedure and the usual rules and practice. It offers a real addition to existing works on the subject. Any lawyer engaged in tax practice should find it informative and helpful.

Jacob Mertens, Jr.

New York City.

LAW OF BILLS, NOTES AND CHECKS. By Melville M. Bigelow. (Third Edition.) By William Minor Lile. Little, Brown & Co., Boston, 1928. Pp. lxix, 599.

Dean Lile has produced the third edition of the well known short treatment of the subject of bills and notes by Bigelow, the first edition having appeared in 1893, the second in 1900. Unlike many revisions the latest editor has embarked upon a policy which involved the scrapping of the original plates, the rewriting of the text and the incorporation of much new foot note material. The second edition of twenty chapters of three hundred and forty-nine pages has expanded into forty-five chapters of five hundred and ninety-nine pages. The editor tells us that his "chief purpose has been to set down the present law of negotiable instruments in such form as to appeal to the interest and understanding of the average law student," without forgetting however, "the needs of the busy practitioner."

He begins with a new chapter on non-negotiable paper followed by a short statement of the history of the law merchant. The different types of negotiable instruments are then enumerated, and preliminary definitions of parties to commercial paper are indicated. Some aspects of the subject of delivery are then introduced and this is followed by a series of chapters on formal requisites.

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[6] The Williamsport Wire Rope Co. v. U. S., 63 Ct. Cl. 463 (1927), *aff'd* U. S. Sup. Ct., June 4, 1928, 48 Sup. Ct. 587.

[7] Supplemental Brief of Government in Minnaugh, Ex'r v. U. S., pending in Court of Claims, No. F-388.

The liability of primary and secondary parties is then elaborately developed in a group of nineteen chapters. A short chapter on suretyship as affected by the law of negotiable paper then appears, and the closing fourteen chapters are concerned with the holder in due course, and with the problems involving equities, defenses and discharge. On the whole the arrangement is a good one. Much can be said in support of the policy of holding in reserve the abnormal situation of the holder in due course, and the rights of prior parties as against him, until the problems which do not involve outstanding equities and defenses are completed.

The author has wisely introduced a good deal of analytical and critical comment. One may express the regret that this method is not sustained throughout the work. He is also to be commended for his use of material from the law reviews, but here again one is disappointed on noting the absence of reference to much valuable work from these sources, and also because the references to such careful discussions are all too frequently merely cited, with no utilization, in the text or foot notes, of the contributions referred to.

Dean Lile wisely calls the attention of the student and the profession to the fact that codification "has distinctly fallen short of its avowed object," *i. e.*, of making the law uniform. Anyone at all familiar with the run of decisions on the codified subjects cannot help but be impressed by the force of tradition. Common law cases are continually used as authorities and not as mere aids to interpretation of the text of the *Act*, as they should be. Cases are all too frequently decided on a consideration of one or more sections of the *Act* when other sections are equally and sometimes more applicable to the situation, and again there may be no consideration of the *Act* at all. This perpetuates diversity. Dean Lile places the responsibility for this situation upon the profession, both courts and lawyers.

His explanation that, "no codification of this or any other branch of the unwritten law can hope to prove an adequate expression of the law until American lawyers and judges have learned to interpret codifications of pre-existing law as continental lawyers and judges are accustomed to interpret the civilian codes," contains a stimulus to professional thought on this important matter, but it is doubtful whether this explanation of the facts, after thirty years of work with the code, should longer serve as an excuse. Nor does Dean Lile accept it as such, for his familiarity with the judicial product in this field during the past quarter century, leads him to the regrettable conclusion, "that lawyers and courts have not familiarized themselves with the new code nor been industrious in exploring its resources." Dean Lile's work should help in this important educational program.

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REAL ESTATE TITLES AND CONVEYANCING. By Nelson L. North and DeWitt Van Buren. Prentice-Hall, Inc., New York, 1927. Pp. x, 719.

"Real Estate Titles and Conveyancing" is suggestive of a broad field. The authors limited their objective in the preface, stating that, "They have long felt the need of a book which, with as little technical legal phraseology as possible, would simply and clearly discuss and clarify the origin and funda-

mentals of land titles, the searching and abstracting of titles and the forms of procedure in real estate transactions." The persons for whom they labored are indicated in the statement that they hope the book "will be found of help to the (1) title man in his work, (2) to the dealer in real estate in his transactions, (3) to lawyers and title men on title closing, (4) and as a textbook for the use of students." To attain their end, the authors prepared twenty chapters covering 319 pages of text, and collected and classified 370 pages of modern real estate forms.

About fifty pages were devoted to the history and development of the law of real property, the subject matter of which has little real connection with the contents of the book proper. The authors, being law lecturers as well as practitioners, naturally placed emphasis on such an introduction. In so brief a space little more than summaries were given, and confusion arises from such brevity. The twenty-two lines devoted to future estates do not present a bird's-eye view of that subject, but several pages on easements do make a very satisfactory summary of them.

The meritorious part of the book is that which was builded upon the authors' experiences. The two chapters on descriptions and surveys were exceptionally well done. The uses to be made of the various kinds of descriptions were explained clearly, and thirty-one charts and diagrams were included to illustrate the more technical situations. Of equal value are the three chapters on abstracting and examination of titles. Here, also, about one hundred charts and diagrams were used very effectively by way of emphasis and explanation. Instructions are given where to search for, and how to abstract, judgments, mechanics' liens, *lis pendens,* foreclosures, partitions, probate procedure, and many other kinds of clouds upon titles. Chapter eighteen is a lesson on the sale of real estate. Starting with an involved statement of facts, the authors have shown the manner of performing the various steps, including the contract to sell, procedure prior to closing, what the seller and purchaser should be prepared to show, and finally the execution of the necessary instruments.

There are twenty-two chapters of carefully selected real estate instruments, including acknowledgments, contracts of sale, deeds, bonds, mortgages, building and loan mortgages, trust deeds, assignment of mortgages, satisfaction of mortgages.

However, a little adverse criticism is inevitable. No cases are cited, no statutes are quoted, and no sources of information are noted. There are places where footnotes could have been used to advantage in explaining some of the pitfalls and conflicting situations that exist in the law. The authors stated, however, that the volume was not intended as a legal treatise, yet their method of treatment of the subject shows that they did not necessarily intend the work exclusively for laymen.

Nevertheless, this volume is a valuable contribution to all persons interested in the problems of titles, not only from the fact that it gives careful instructions in the performance of technical acts concerning them, but also from the instructive charts, maps, tables, plats, surveys, and forms presented to aid in the performance of such acts.

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CASES ON DAMAGES. By Judson A. Crane. American Casebook Series, West Publishing Co., St. Paul, 1928. Pp. xiii, 508. A COLLECTION OF CASES ON THE MEASURE OF DAMAGES. (Third edition.) By Joseph Henry Beale. Little, Brown and Company, Boston, 1928. Pp. xviii, 749.

Whether an attorney represents the plaintiff or the defendant, a litigated claim involves him in a consideration of the existence of the legal right and of the procedure by which it is asserted. As a part of the first of these problems he is usually called upon to investigate the extent to which the legal right can be made to yield compensation in the form of a money judgment. The reasonableness of the client's query: "How much can I recover?" "How much am I in for?"—the seriousness of this problem when the case reaches trial, set a challenge to the instructor, who is usually called upon to cover the subject of damage law in one term, and to the author, who designs, or should design, his casebook with this condition in mind.

Furthermore, the pragmatic, pliable nature of the law of damages does not ease the difficulty as much as one might expect. If, on the one hand, the history of damage law is comparatively recent, if courts have captured from the jury relatively few legal rules to govern the measurement of losses, on the other, the factual situations are necessarily of extraordinary diversity and range. The subject deals with every form of remedy effectuated by money judgment. Within this vast field the process goes on by which precedents tend to stiffen into rules, only to break down in the face of different realities. If there is a constant temptation to search for the general underlying the particular, the author and teacher face the danger of presenting the particular as the general, and find that only by the multiplication of instances can a fair picture, and real experience in the handling, of damage problems be acquired. Rules of legal causation, certainty, avoidable consequences, even value, escape helpful general formulation and become useful only after studying them in operation under the stress of many differing situations. This does not shorten the road.

Given the scope and character of the subject and the short space of time that can fairly be devoted to it in the curriculum, it has seemed to the reviewer that perhaps greater rigor might be exercised in excluding material which, with justification, can find its place in the general courses in torts and contracts. The measure of a right is a phase of the right itself, determined by the same law that gives rise to the right. It is not intended thereby to suggest that the whole problem of the extent of recovery should be studied piece-meal in connection with each form of liability, but that a course in damage law, unless watched, easily becomes a trespasser. Proximate cause is brought within the field under the head of direct and consequential damages. But in contract it is a problem of the extent of the voluntary assumption of a liability, and in tort of the extent of the imposition of a moving, spreading liability. Furthermore, a group of tort remedies depends upon the presence of actual damage, which thus becomes a condition of primary liability. Questions of aggravation and mitigation, in so far as they are mere illustrations of the relevancy of testimony, can often be left to a course in evidence.

Professor Crane's casebook is designed to replace Mechem and Gilbert's collection of cases on Damages, published as one of the American Casebook

Series in 1909. Almost three-quarters of the cases contained in the earlier book have been deleted, and in their stead just short of a hundred new illustrations have been substituted. Under four topics the books are identical. In one of these, interest, might well have been incorporated recent illustrations of the tendency to allow this recovery as a part of complete indemnity, even where the amount of the claim is justifiably in dispute. A very distinct gain is noted in the incorporation of an introductory group of cases illustrative of the procedural application of the law of damages. On the other hand, the subject of direct and consequential damages, or legal causation in tort and contract, has been radically reduced. While, with one exception, the new illustrations are interesting, it seems that, if the subject is to be incorporated at all, it is too difficult to treat so scantily, and that markedly differing type situations have been insufficiently emphasized.

The footnotes, including references to law review articles, add much to the value of the book.

While Professor Crane, by eliminating everything having only a historical value, has substantially reduced his material, Professor Beale, in his third edition, has left his earlier casebook of 1895, with its historical illustrations, intact, and has added about thirty modern cases. Professor Beale's collection is the richer of the two, although by severe abridgment of facts and cutting of opinions, the volume seems even smaller in bulk than Professor Crane's.

It is perhaps not surprising that Professor Beale, with his known interest in the subject, should devote almost one-sixth of his volume to the subject of proximate and remote damages. If Professor Crane has gone to extreme brevity, Professor Beale has perhaps overweighted the subject. Perhaps the material might be clarified for the student if there was some external indication of the grouping of the cases. The 112 pages, without break, appear to be arranged into first, cases in tort; second, cases in contract; and third, cases, notably involving common carriers, in which the action might be either in tort or contract. The last group of cases seems more valuable for the analysis of the types of factors and agencies controlling a factual sequence than for their dual character as resting on breaches both of contract and of a public duty. Studies of legal cause have shown it helpful to investigate the subject by passing from the simple to the complex state of fact; that is, from the transmission and transformation of the original force to the introduction of outside agencies. A similar method of development might well prove helpful in damage casebooks.

Both Professor Crane and Professor Beale recognize that the first quarter of the century, especially since the World War, has been fruitful of important domestic, social and economic changes that have put the general principles of damage law to new tests. These two collections of cases have successfully brought the subject down to date and are valuable and much needed additions to the casebook family.

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