BOOK REVIEWS.

STARE DECISIS, RES JUDICATA, AND OTHER SELECTED ESSAYS. By Robert von Moschzisker. Cyrus M. Dixon, Philadelphia, 1929. Pp. vii, 375.

The Supreme Bench in the several States is now gradually coming to be a seat of learning and of intellectual independence. The examples of a Holmes and a Dillon and a Cooley have long ceased to be unique. Twenty years ago the present writer published some sour comments on the ignorance of the judges; in particular, referring to the valuable articles in the current legal periodicals, the comment declared "there is little or nothing in judicial opinion to show that these articles have ever been read." And yet in that short period of twenty years, a change is perceptible. Judges, indeed, are now found to be even authors of articles in law reviews; therefore they must be readers of them!

Chief Justice Moschzisker's judicial opinions have long been noticeable for their outstanding qualities of legal learning, acute analysis, and lucid exposition. It was natural that he should be given opportunities, by the editors and by the bar associations, to reach a wider audience than the readers of the Pennsylvania Supreme Court Reports. This volume assembles a selection from his various essays and addresses.

The topics include: "Stare Decisis," "Res Judicata," "Presumptions as to Foreign Law," "The Common Law and a Federal Jurisprudence," "Federal Equity Jurisdiction," "Briefs in Appellate Courts," "Amending the Federal Constitution," "Judicial Review of Constitutionality of Legislation," the "American Bar Association in London," the "Old Supreme Court Room in Philadelphia," and the "Bi-Centennial of the Supreme Court of Pennsylvania."

The address on behalf of the visiting American lawyers at the Grays Inn Dinner, in London in 1924, is a genial and felicitous example of American postprandial oratory. Incidentally we learn from it that the eminent author's name (which has bothered us non-Pennsylvanians, for some time past, to pronounce) does not import a purely Kosciuszkan hematogenesis; for on his maternal side two ancestors were a Scot and an Englishman who came to the Colonies a century and a half ago; and in the next generation the Moschziskers will cite a Macbeth and a Macduff among their maternal ancestors!

The address on "A Philadelphia Lawyer" is a worthy tribute to the long line of eminent advocates and judges who have built up and preserved the reputation of that city and its commonwealth. Andrew Hamilton, Horace Binney, Edward Tilghman, William Rawle, Jeremiah Black, John Gibson, David Paul Brown,—what stirring episodes and notable annals are not recalled by the mere catalogue of these famous names! The author believes, on the authority of the late lamented Hampton Carson, that the phrase "a Philadelphia lawyer", signifying maximal professional shrewdness, first came to be used in 1735, when Andrew Hamilton was imported from Philadelphia to New York, to defend Peter Zenger in the celebrated trial for seditious libel. But no specific authority is given for this; Mr. Carson, says the author, admitted "that his extensive reading had not furnished an authentic statement on the point." And the reviewer has somehow formed the impression that David Paul Brown, practis-

ing as a trial lawyer in the 1850's, was the personage whose extra-State fame created this homage to "the Philadelphia lawyer." (By the way, who nowadays reads *"The Forum"*, that two-volume periodical, which Brown founded and edited? It contains some gems of his experience; and also, if memory serves, his once celebrated Rules of Professional Ethics.)

The technical essays here collected are good examples of what a supreme judge can do to advance the cause of orderly legal thinking by offering to the public the systematized results of his lucubrations while deciding particular cases. The reviewer has never happened to form any opinion on the majority of the topics treated. But on the subject of "Stare Decisis" (the first essay in this volume) he has had occasion to do some thinking; and in this instance he records the impression that the learned author has not touched the real difficulties of the problem.

John H. Wigmore.

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CASES ON THE LAW OF CARRIERS. By Ralph Stanley Bauer and Edgar Watkins. Prentice-Hall, Inc., New York, 1928. Pp. xxiii, 1140.

This recent addition to the collections of cases for the study of the law of carriers has several points of individuality. From the outset there is a recognition of the prominence of statute law in the field. This does not mean the elimination of common law cases, but does mean that the importance of well selected cases containing contrasts and comparisons with and between statutory and common law rules has been kept prominently in the foreground. Another feature is that a large number of the cases are of considerable length and have apparently been selected with a view to include numerous citations and extracts from other cases. A number of the cases, therefore, contain chronological lists of citations of other cases marking the development or history of the principle or principles applied in arriving at the decision. Thus we find in Part I on the topic of Regulation of Common Carriers by Government, 100 pages given to eight cases, out of 160 pages allotted. The main text contains about 225 cases, but the inclusion of cases containing a large number of citations makes a larger number of decisions available. A third feature is the selection and editing of cases from what may be called the practical standpoint. Comments of judges and excerpts from the examination of witnesses, omitted in most selections of cases, appear in many cases in this book, apparently for the purpose of getting closer to the practice by which the results were attained. In some instances these may be helpful to the student as they were to the court.

The typographical set-up of the book, for which it is presumed the editors are not responsible, results in a greater bulk than is justified by the contents. Large type, widely spaced lines and paragraphs, and commodious margins may lend to legibility, but add to bulk and might lead one to fear that he could not cover 1100 pages, whereas the material would seem to be nicely adjusted to the average time allotted in the curriculum. Appendices contain a large portion of the *Interstate Commerce Act*, the *Federal Bills of Lading Act*, and the *Uniform Bills of Lading Act*. Whether it is well to include the statutes with the text

may be only a matter of policy. With the *Interstate Commerce Act* and related statutory law available for thirty cents from the Superintendent of Documents, an appendix for statutes seems hardly necessary and not as readily usable as a pamphlet which can be used alongside the text.

The editors have pointed out in their preface that Part I, "The Regulation of Common Carriers by Government," can be used later if desired. This is so obvious that there seems little justification for placing it first before the concepts of the common carrier or his legal duties and liabilities have been set forth. Unless this chapter is postponed, the student would be faced with the difficult question of the conflict between interstate and intrastate rates in the sixth and seventh cases in the book. The selection of cases and treatment in this Part is well done and condenses a lot into 160 pages. First come the topics of the validity and methods of delegation of the regulatory power in interstate commerce. Then, through *Southern Ry. Co. v. Atlantic Stove Works* is presented a discussion of the powers and authority of a state commission. This brings the subject naturally to the conflict between interstate and intrastate rates, and we find the *Shreveport Case* and the case of *Wisconsin R. R. Commission v. Chicago, B. & Q. R. R. Co.* presented. Pages 86-101 are given over to cases on rate judging and adjustment of rates to conditions and not to distances alone. The influence of competition on rates is shown in *Interstate Commerce Commission v. Chicago, Great Western Ry. Co.* A footnote on page 102 calls attention to the tenor of the *Hoch-Smith* resolution, the interpretation of which recently had so disastrous an effect on the reappointment of Mr. Esch. An interpretation of the specific policy of Congress to encourage transportation by water through the establishment of through routes and joint rates between rail and water carriers is given to the student in *Baltimore and C. S. S. Co. v. Atlantic Coast Line Ry. Co.* The procedure in a reparation case, including a discussion of the wide range of evidence allowed before a commission, seems to be the justification for the space allotted to *Spiller v. Atchison, T. & S. F. Ry. Co.* The cases, on the whole, are used effectively and show, so far as the brief treatment permits, how commissions work and how regulation is effected.

Part II, "Who are Common Carriers," indicates its contents and the first division, "Common Carriers of Goods," is illustrated with cases chronologically arranged from *Allen v. Sackrider*, 1867, down to *Film Transport Co. v. Michigan Public Utilities Commission*, 1927. A typical example of the cases selected for their content showing the chronological development of the principles involved is *Frost v. Railroad Commission of California.* The topics, "Who are Common Carriers of Live Stock," "of Passengers," and "Common Carriers by Statute," are not extensively developed. It is not especially evident why *Magoffin v. Missouri Pacific Ry. Co.* is the only case under "Who are Passengers?".

Part III, "Duties and Liabilities of Common Carriers," covers the bulk of the text. The standard subdivisions are followed, ranging from "Duty to Serve All" down to "Connecting Carriers" with space apportioned as the editors deemed the topic warranted. Under "Liability as Insurers" we find cases from *Christie v. Griggs* down to three cases against the *Boston Elevated Ry. Co.* in 1927. About sixty pages are given to cases on the passenger ticket and rights thereunder, including *Shelton v. Erie Ry. Co.; Frederick v. Marquette, etc., Ry.*

Co., and *Wilkes v. Chicago, R. I & P. Co.* Under "Bills of Lading" the cases run from *The Delaware*, 1871, down to the *Federal Bills of Lading Act.* "Limitation of Liability" furnishes cases from *Boston and Maine Ry. Co. v. Hooker* down to the three *Lawrence Leather Co. Cases* in New York in 1926. "Limitation of Liability to Passengers" is elaborated in the historical sketch in *Missouri, K. & T. Ry. Co. v. Zuber.* We would be disappointed if we did not find the sinking of the Tokomaru under "Route" and the same is true of *Johnson v. Pensacola and Perdido R. R. Co.* and *Ocean S. S. Co. v. Savannah Locomotive, etc., Co.* under "Duty to Serve". "Delivery to the Proper Person" involves a long selection from *Pacific Express Co. v. Shearer* and the topic is brought down to 1925 in *In re Taub.* The doctrines relating to connecting carriers are traced from *Muschamp v. Lancaster, etc., R. R. Co.* down to *Oregon and Washington Ry. & Nav. Co. v. McGinn.* It will be seen that the field has been covered chronologically and the standard cases have not been overlooked. The modern cases used have not been chosen from any list of outstanding or leading cases, but include many less known, but equally suitable cases bringing out the principles desired. It is for this reason, apparently, and because of the intentional selection of cases involving other citations at length, that such cases as *Adams Express Company v. Croninger* appear otherwise than as individual text cases.

The inclusion of the duties and liabilities arising out of the relation of carrier and passenger with those arising out of other types of carriage does not seem to justify itself. It necessitates, under the topic "Beginning and End of the Carrier's Relation": first, a presentation of the cases illustrating the beginning of the carriage of goods; second, a change to the beginning of the carriage of persons, *i. e.* the formation of the relation of carrier and passenger; third, the end of the passenger relation; fourth, a return to the duty of the carrier to deliver the goods to the right person; and fifth, a discussion of connecting carriers. It is not believed that the two types of carrier relations are enough alike to justify commingling them under these headings, simply because they both have a beginning and an end, and both are carriers.

The last division of the book, "Liabilities of Shipper to Carrier," has a group of striking cases on the obligation to pay freight, demurrage, and the costs of extraordinary services, which make a satisfactory unit, and round out the subject.

The absence of editor's notes and references to current comment of law review articles and similar legal discussion which we have come to expect in the later case books is striking. This may be due to the method of selection and editing of cases in which judicial comment on trends and development is prominent. Whether there is enough material here for a satisfactory course on the law of carriers is of course largely a matter of individual opinion. The choice of cases and the number that are treated individually will also vary with tastes, but there is enough difference in this selection to warrant instructors of the subject in giving it a careful examination before deciding upon a case book for class use.

Charles E. Cullen.

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WORKING MANUAL OF ORIGINAL SOURCES IN AMERICAN GOVERNMENT. By Milton Conover. Revised Edition. The Johns Hopkins Press, Baltimore, 1928. Pp. 167.

This new, enlarged edition of Prof. Conover's well-known Manual will be welcome in all college classes on Government. The author includes problems and assignments on the Constitution, the Executive, Congress, International Affairs, the Electorate, the Judiciary and State and Local Governments. He also adds chapters on unofficial sources, including poems, essays and fiction, and on Political Theory.

Prof. Conover's Manual brings the student into direct contact with original sources of material and makes a course on Government a genuine introduction to real government problems as they are handled by government administrators, legislators and judges. In short, Prof. Conover gives us an inside view of Government. The revised edition carries the author's excellent plan further into important details of the American system. It is so arranged as to fit admirably into any of the standard textbooks on Government and will be an indispensable aid to faculty members and students alike.

James T. Young.

University of Pennsylvania.

LAW FOR ENGINEERS AND ARCHITECTS. By Lawrence P. Simpson and Essel R. Dillavou. West Publishing Company, St. Paul, 1929. Pp. xvii, 633.

Here is a happy combination of text and case book designed primarily to give technical students a bird's-eye view of the legal aspects of the problems with which they will inevitably have to grapple in the practice of their profession.

In this age of intense specialization, in which, as someone has aptly remarked, the specialist tries to learn more and more about less and less, it is a rare individual who is entirely master of his own chosen field of endeavor. About all he can hope to do in some other field is to obtain a very general idea of the aspects which will most closely affect him and his work in his own specialty.

If an engineer can acquire enough knowledge of legal principles to avoid some of the legal pitfalls which will beset his path, his time devoted to a study or even casual reading of this work will have been well spent. Its use in classes of technical students should in no inconsiderable measure help to give the student some familiarity at least with some of the fundamental legal principles and help him to avoid what may be costly blunders, and after all, this is about the most that can be hoped for in the few hours which can be devoted to legal study by the average technical class.

The cases used are aptly selected to illustrate the legal problems of the student's own profession, and as far as possible the non-essential details have been eliminated. The range of subjects treated is particularly well chosen, as there are included, in addition to the customary sections on Contracts, Sales, and Agency, sections on Mechanic's Liens, Regulation of Public Utilities, and Workmen's Compensation, which are oftentimes omitted in a work of the scope of this one, and although the book is designed primarily for the engineer, the legal principles set forth necessarily are of general interest and application, as are most of the cases.

It is to be hoped, however, that use of the book will not disclose that the authors in their zeal for compression in their statements of legal principles, and excerpts from the illustrative cases, have gone to the extreme they have reached in compressing the history of the origin of legal reports into the following sentence in Section 2—Sources of Law—where they baldly assert that "at a very early time beginning with the Year Books in 1272 the Courts began to keep a record of their decisions".

Henry D. M. Sherrerd.

Philadelphia.

THE LEGAL EFFECTS OF RECOGNITION IN INTERNATIONAL LAW. By John G. Hervey. University of Pennsylvania Press, Phila. 1928. Pp. xiv, 170.

There are two kinds of international law, that administered by truly international tribunals and that laid down by courts drawing their authority from some particular sovereign. The latter, to an examination of which this book is confined, is a crippled thing, deformed at birth by the doctrine, which neither those courts nor Dr. Hervey question, that the courts must follow whenever the political arm of the government has given an express lead either for or against recognition. The book is an analytical attempt to classify the results at which tribunals, thus hamstrung, have arrived; and if it is not always satisfactory nor clear, the difficulties of the subject may be the cause. The scope of the book excludes criticism of the Department of State for what it has done in regard to Russia, the nearest approach being to say that the continued recognition of the Kerensky government mocked the truth.

We must distinguish among unrecognized governments, thinks Dr. Hervey, between those as to which our political branch has taken an express negative attitude and those in which the failure to recognize is merely passive. The status of the former is nil before our judiciary, whereas the latter have been treated in three ways: presuming the old order to continue, ignoring both the old and the new; and taking the new into account for certain purposes, where only private rights are at issue and public or political questions are not involved. This third view the author finds growing and in it sees the promise of considerable relief from the difficulties attending persistent non-recognition. He goes into the cases with keen and correct analysis, clears up some possible misconceptions, as, *e.g.*, concerning *The Charkieh* and *Mighel v. Sultan of Johore,* and gives the impression of having done a thorough job.

Nevertheless it is disconcerting to find *Kennett v. Chambers* put among those cases wherein the political branch has taken an express negative attitude, and then to find it again in the chapter on passive failure to recognize. A dictum in *Yucatan v. Argumedo* is dealt with in the latter chapter, though one wonders whether it was not really a case of express negative attitude. These instances are disturbing and make one wonder as to the accuracy and value of this part of his conclusions.

The main and most valuable thesis of the book is drawn from New York cases and language of Judge Cardozo, that where justice and public policy

require it, effect may be given in our courts to the acts of an unrecognized government; and this Dr. Hervey regards as the way out of the Russian dilemma as reducing the possibilities of international complications and yet avoiding encroachment on the political departments.

There is a good chapter with pertinent criticism on the retroactive effect of recognition, and an excellent one giving the author's conclusions. The book as a whole helps to clarify the subject and will doubtless, as its author wishes, stimulate further study and research in this field.

Hector G. Spaulding.

Law School, George Washington University.

CASES ON SURETYSHIP. By Stephen I. Langmaid. American Casebook Series. West Publishing Company, St. Paul, 1928. Pp. xii, 662.

Professor Langmaid has followed the plan of organization and classification of subject matter common to most of his predecessors in casebook-making for the subject of suretyship. He has sought distinction for his book, not by innovation of form, but by careful choice and effective use of content. By economical methods of editing, he has succeeded in producing a volume of such size that, "substantially all of it can be covered in the time usually allotted to the course." This drastic economy, especially in respect to the number of cases and the amount of subject matter, is in sharp contrast to the frequently followed policy of including a generous excess of cases and topics to allow the instructor considerable choice.[1]

The topical organization of material on the contract of the surety, in the book under review, differs sharply from that both of Dean Arant and Professor Henning. Professor Langmaid limits it to the Statute of Frauds, one chapter of eighty-four pages. Professor Henning used eighty pages for substantially the same subject matter, and in addition devoted one hundred eleven pages to forms of, and essentials to, the formation of contracts of suretyship. Dean Arant's treatment of the contract covers two hundred sixty-two pages, of which one hundred forty-nine are devoted to the Statute of Frauds.

If one could agree that the only value of the material on the contract of suretyship is to furnish a review of the essentials of the law of contracts generally, there would seem to be no compelling reason for its introduction into a casebook on suretyship. The reviewer believes, however, that it is essential to an effective understanding of the law of suretyship that the student grasp clearly the distinctions between the contract of suretyship and the resulting suretyship relation which is created by law, and out of which flow the rights and duties of the parties. A great deal of meaningless and confusing learning has been expended in an effort to demonstrate an essential distinction between a guaranty relationship and a surety relationship, when, in the writer's opinion, the question is one of differences in the nature and extent of the contract obligations. If more emphasis were placed upon the simple question of whether the personal surety, or guarantor, has by his contract assumed the full scope of liability of the principal obligor, or has qualified it by limitations or conditions, many of the

[1] *Cf.* ARANT, CASES ON SURETYSHIP iii.

difficulties created by such catch phrases as "a surety undertakes to pay if the debtor does not," and, "a guarantor undertakes to pay if the debtor cannot," would be avoided; and further, the courts would not have to resort to such statements as, "it is said to be an original undertaking and not a strict or collateral guaranty," or, "the undertaking is in the nature of a surety," or, "the undertaking of the appellee in this case is not a strict collateral guaranty, but is a direct, absolute, and original promise to pay," in order to save themselves from the logical inferences of prior assumptions. Consequently, the reviewer feels that in the early presentation of the subject of suretyship there should be considerable emphasis upon, and discussion of, the contract of the surety as distinguished from the contract of the principal obligor.

In view of the large number of recent cases turning on the interpretation of the contracts of corporate sureties, one might reasonably expect a new casebook to include cases especially to present questions of interpretation and construction of the contract of the surety. Whether or not the courts should apply to the contract of the corporate surety any rules differing from those applied to the contract of the personal or gratuitous surety, they have assumed, in many decisions, that they are applying different rules of interpretation, and have further assumed that, for the purposes of interpretations, the contract of a corporate surety is to be treated as a contract of insurance.[2]

The chapter on the Statute of Frauds is a remarkably fine piece of work. The selection of cases leaves nothing to be desired, either from the historical or the analytical standpoint, and the cases and footnotes furnish material for an effective development of the relation between the statute and the doctrines of suretyship. The editor has made good use of Dean Ames' test that the defendant's promise is not within the Statute of Frauds if an action of debt will lie against him, and also of Professor Henning's point that the statute is inapplicable where the common law action of account would lie. The modern cases are well chosen to show the efforts of the courts to develop a substantive test for "special promise to answer for the debt," etc., that will satisfy the formal requirements of the Statute of Frauds and avoid obvious fraud.

The pruning of the text of the cases has been done so skilfully that they have lost little, if any, of their pedagogical value. The editor has apparently realized his hope that, "sufficient has been retained to enable the student to appreciate the fact situations, and to get a clear, undistorted understanding of the opinion."

The footnotes contribute materially to the excellence of the book. In addition to the familiar *contra* and *accord* cases, the notes contain pertinent comments and questions, with case citations, which develop the doctrine of the principal case and ought to stimulate original thinking. The use of numerous annotations to periodical material is commendable and in line with modern casebook making. Effective use has been made of the statutes that have cut across the field of suretyship, notably sections of the U. S. Bankruptcy Act, the Negotiable Instruments Law, and a Missouri statute embodying the rule of *Paine v. Packard.*[3]

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[2] Treanor, *The Rationale of Corporate and Non-corporate Suretyship Decisions* (1927) IND. L. J. 105.

[3] Pain v. Packard, 13 Johns. 174 (N. Y. 1816).

The editor has not followed, "the device of propounding in the footnotes various problems in orderly sequence,"[4] but he has used to good advantage many abbreviated case problems. The reviewer believes that case problems add to the effectiveness of a casebook as a teaching tool, and he prefers the full problem with facts sufficient to furnish the student with material for discriminating thinking as a part of his regular preparation for class discussion. The reviewer also believes that the case problems should be taken from the footnotes, accorded typographical dignity equal to that of the cases, and raised to a parity with the edited case itself as a part of the teaching apparatus.

The reviewer agrees with the compiler that the changes in the law of suretyship as applied to questions involving a corporate surety have been exaggerated; but he also believes that these changes, such as they are, have a significance out of proportion to the extent of the changes themselves. In a most interesting review of a casebook on mortgages is the following:

> "*Mortgage* is a legal concept; that concept, in all its phases, is important. *Mortgage* is also a security device. That fact, in all its phases, is even more important. The legal concept is empty without its application. The history, the steady changes of the concept are unintelligible except in the light of the strains successively put on the concept by men's needs and men's actions. The present meaning of this concept, its future course, are not less unintelligible without that light."[5]

Suretyship, also, is both a legal concept and a security device. The legal concept of suretyship with its doctrinal formulas developed and became stereotyped at a time when, as a security device, its function was simple and much restricted, and when the surety became such, either gratuitously and as a personal favor, or at the most, to obtain some incidental business or personal advantage. Modern business enterprises demand the flexibility of personal security and the financial dependability of real security, and the corporate surety company with its great fluid assets meets this demand. The fact situation out of which the great body of suretyship doctrines arose has changed, at least as respects the most important of present day suretyship transactions. There is rich pedagogical material in the corporate surety cases in view of the fact that they strikingly reveal the judicial process wrestling with the problem of applying traditional doctrines to the violation of a well recognized legal relation, and of avoiding at the same time a traditional result which would be manifestly unjust in view of essential changes in the factual basis of the legal relation. These cases give us illuminating examples of the strain which is put on the legal concept of suretyship by "men's needs and men's actions." These cases, viewed in the light of the security needs of modern economic life, reveal the necessity of a re-examination of traditional doctrines of the law of suretyship, with the objective of determining whether these doctrines can be modified sufficiently to allow the effective use of the corporate surety company as a security device under the concept of suretyship, avoiding on the one hand the cumbersomeness and rigidity of real security, and on the other hand the paralyzing effect of the "favorite of the law" doctrine applied to the private gratuitous surety. Certainly something

[4] LANGMAID, CASES ON SURETYSHIP (1928) vi.

[5] Book Review (1926) HARV. L. REV. 142, 145.

of this sort has been happening. Cockburn, C. J., once said[6] that the rule that a surety was released by a binding extension of time, however short, and regardless of damages, was "consistent with neither justice nor common sense"; but he added that the rule had been generally established so long that it could only be altered by the legislature. Compare this with: "We hold that the extension of time of payment, unless resultant harm is shown, does not discharge a paid surety."[7] Are the courts trying to inject justice and common sense without the aid of the legislature? Is the rule referred to by Cockburn inapplicable to the paid surety for the reason, as some courts have said, that the paid surety is an insurer? Or, is the old rule yielding under the strain of "men's needs and men's actions?

Professor Langmaid has included enough corporate surety cases to accomplish his purpose of indicating "the modifications of principles previously laid down for the personal and gratuitous surety," and of "setting forth the present view of the courts."[8] The reviewer, however, as indicated above, favors a broader objective, the realization of which would call for a greater number of corporate surety cases, the inclusion of an additional topic, and considerable supplemental material to inform students of the conditions which have created the need for the corporate surety, of the business methods and practices of surety companies, and of the extensive use of this type of security. The editor's expressed purpose would be none the less effected, the functional content of the suretyship course would be enriched, and the means supplied to stimulate a critical study of "the nature of the judicial process," and of the working of the process in a particular situation familiar to, and understood by, the student. There ought to result a clearer appreciation on the part of the student that as the facts of life change, becoming more and more complex, legal doctrines must also change, must grow and expand, or else die. For it is true of suretyship law, as well as of law generally, that, "The law must be stable, and yet it cannot stand still."[9]

W. E. Treanor.

School of Law, Indiana University.

REAL ESTATE FINANCING. By Nelson L. North, De Witt Van Buren and C. Elliott Smith. Prentice-Hall, Inc., New York, 1928. Pp. xi, 630.

Although two of the authors of this book are lawyers, it is clear that the text itself was not written from the lawyer's viewpoint, *i. e.*, to help him solve his real estate problems. While, as will be pointed out more specifically, the appendix contains some very helpful legal forms, it would seem that the body of this work was intended as a general and fundamental exposition of present day financial developments in the real estate world, with most of which the practicing lawyer is already familiar.

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[6] Swire v. Redman, 1 Q. B. D. 536, 541 (1876), LANGMAID, *op. cit. supra* note 4, 418, n. 52.

[7] Standard Salt & Cement Co. v. Nat. Surety Co., 134 Minn. 121, 158 N. W. 802 (1916).

[8] LANGMAID, *op. cit. supra* note 4, v.

[9] POUND, INTERPRETATIONS OF LEGAL HISTORY (1923) 1.

As such it outlines extensively the highly specialized financial superstructure that has been reared in the large city upon real estate values, with its expression in organized financial methods. It explains how real estate can be financed through any one of the several kinds of indirect and guaranteed first mortgages and through the many classes of Junior Liens, Land Contracts, Land Trusts, Leaseholds, etc. There is a discussion of arbitration clauses in long term leases and of the immunity of syndicate ownership from the regulation and taxation of corporations. All of this is, if not new to the lawyer, at least presented in an organized and comparative manner, which may crystallize some of the underlying considerations in that field. If the authors had wished this book to be of greater interest to lawyers they might have been more responsive to the general need for financial and legal information in connection with certain recent developments in real estate, concerning which the law is still in the infancy of application. Such a development, concerning which there is much interest and curiosity, is that of co-operative ownership. Legally what is the nature of the estate of an owner of an apartment in a co-operative building? What legal consequences have followed the creation by ingenious methods, corporate and otherwise, of indirect individual ownership of such apartments in the face of the impossibility of direct ownership by a division of the fee into horizontal strata? These and many other phases of this new age in real estate are not given sufficient consideration to make them of more than passing interest to the profession.

The book, however, is of permanent value to the lawyer because of the many complete forms comprising the appendix. These, although annexed to illustrate to the general reader the *modus operandi* of the subject matter of the text, are so complete and recent as to constitute a helpful reference. This is especially true in connection with modern methods of financing real estate enterprises by securities issues. Here will be found helpful models of the various legal instruments used in the business of underwriting and distributing real estate securities, with all its ramifications, as it is practised today.

David Stock.

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