BOOK REVIEWS

GORDON'S ANNOTATED REAL ESTATE FORMS. By Saul Gordon. Standard Book Company, New York, 1929. Pp. xxxvii, 1016.

Form books are good servants but bad masters. Nearly every practicing lawyer has had the experience of coming to grief, or nearly so, because of blindly following a form. Printed forms are especially seductive and dangerous. There is something about the psychology of a printed form, which the human mind finds it hard to resist. Nevertheless, the form and the form book have a deserved and honorable place in the equipment of a lawyer's office.

The author of *Gordon's Annotated Forms* has undertaken a large task in writing a form book stated to contain forms which are valid in all the States. Notwithstanding the difficulty of the work, he has succeeded admirably. The general headings of the books are suggestive: Adjoining Landowners, Advertising Use, Agency, Powers of Attorney, Ante and Post Nuptial Agreements, Assignments, Bonds, Building and Construction, Chattel Mortgages, Deeds, Escrow, Estoppel Certificates, Guarantees and Indemnities, Joint Adventures, Leases, Licenses and Easements, Mining, Oil and Gas Leases, Mortgages, Options, Partnership Agreements, Releases and Satisfactions, Sale of Land, Timber Agreements, Trusts, Acknowledgments.

It is not the province of the reviewer to give advice as to the use of a book, be it form book or what else. The writer must, however, recur to the danger of the use of a form book. Forms are suggestive, merely; they are not and cannot be a substitute for knowledge of the law. To follow forms blindly, will spell trouble. To use them wisely is good. One of the chief values of forms is to check up omissions, to present to the mind of the draftsman certain matters which because of the hurry of a particular matter or because of lapses common to all, may escape the mind altogether.

The book abounds with citations of cases, nearly every form being so fortified. In following forms, or adopting suggestions therein contained, one can feel sure of his way if the form has stood the acid test of litigation. To quote the author's language, most of the forms have "been distilled in the crucible of litigation" and the balance have been "effectively tested in the rigorous school of practical experience".

The wise man said "of making many books there is no end" (Eccl. 12:12), so that, even in Solomon's day, there seems to have been objection to the output of the press. This complaint, cannot, in the opinion of the writer, apply to Form Books. If it is permissible to recur to the use of these in general and depart from the consideration, of this one book in particular, it may be said that there is always room for one more Form Book. Indeed, it is unwise to consult one only.

The general practitioner is frequently called upon to prepare instruments which are out of his usual line of work. Even in these days of specializing, this is true. What appeals to one in studying Mr. Gordon's book, is the fact that he has in the broad sense, limited his book to "Real Estate Forms" and has at the same time not confined himself to the ordinary forms to be found in the ordinary real estate form book. The old-fashioned form book contained merely things

which one ought to know anyway. The author of this book gives forms which are germane to dealings with real estate in the broad and modern way. He has, to paraphrase his own language in the preface to his book, included not only forms which relate to the sale, exchange and mortgaging of real property and interest therein, but also to the use and improvement thereof. The author has very wisely included forms relating to brokerage contracts, ante and post nuptial agreements, building and construction agreements (including the very valuable "standard documents of the American Institute of Architects"), crop agreements, guarantees, and many others. As the author says, notwithstanding the fact that some of these might not have a place in a work designed primarily to deal with real property agreements and conveyances, yet, there need be no apology for their inclusion. The world in which we live, and this includes the legal world as well, is a practical sort of a place after all; and we all, individuals as well as governments, are often called upon to do things which seem to be technically wrong but practically right, so we commend the author for being practically right in adopting the wide angle he has used in admitting many valuable forms to his book.

The writer of this review personally gives a hearty welcome to Mr. Gordon's book, to a very busy office where time is very important in locating a guide to the preparation of documents which may be a little bit out of the beaten path.

Wayne P. Rambo.

Philadelphia.

SOME MODERN TENDENCIES IN THE LAW. By Samuel Williston. Baker, Voorhis & Co., New York, 1929. Pp. 158.

This small volume comprises three lectures given by Professor Williston at the University of Virginia Law School under the auspices of the William H. White Foundation, which provides for the delivery each year of a series of lectures by a distinguished jurist or publicist. The first is a discussion of the two theories of administering justice; that of absolute rules implicitly followed, and that of unlimited discretion where the merits of the particular case are considered without reference to rules; with observations on the impracticability of applying either system alone. The second lecture considers some of the problems of case and statute law and the necessity of dealing scientifically with the ever-growing complexity of American law. The third deals with the work of the American law teacher especially in the field of research. The distinguished author has not aimed in these lectures to present novelties, but has endeavored to explain to his audience some of the practical difficulties inherent in the administration of justice in a time of change and in a country such as ours. His point of view is conservative and in accord, as a rule, with the outlook of the great men who were his masters and whose methods he himself has done so much to perpetuate. It is noticeable that in spite of the many years spent as teacher and writer Professor Williston is always the lawyer, with a sympathetic understanding of the difficulties that confront the practicing bar, the judge and the legislator. However interesting a theory may be, he does not forget that law is practiced in a court house, with all that that means, and not in a seminar alcove. This is the proper method for the law teacher to follow if his function

is to train students for the active bar. A professorship of law, like any professorship, can be used as a means of escape from the struggle with vulgar realities, the common ills of an imperfect universe, but the pedagogue who takes that path seldom amounts to much.

W. H. Lloyd.

University of Pennsylvania Law School.

THE MIXED COURTS OF EGYPT. By Jasper Yeates Brinton. Yale University Press, New Haven, 1930. Pp. xxvii, 416.

The portrait of Nubar Pasha and the encomiums of Sir Maurice Amos and Judge Theodore Heyligers, the latter of whom the reviewer heard at the Hague on this subject, begin this book. They strike the theme of an exposition of an Egyptian institution born of the superior diplomacy of Nubar Pasha and his Khedivial sovereign to a career of great good for Egypt. Judge Brinton has compactly written lucid descriptions, exciting narrative, and fair appraisal.

An introductory chapter shows the origin of the Mixed Courts in the archaic and now at last obsolescent system of Capitulations, the outgrowth of a time when Consular Officers were the heads of the, in a loose way somewhat autonomous, foreign colonies over which they presided; and when European peoples and those acclimated to their systems of municipal and international law found something more than the regular diplomatic channels which might or might not at a particular moment lend themselves propitiously necessary to the protection of their nationals and protegés abroad. Turkey and Egypt nourished the system of Capitulations in the fertility of conceptions of justice as a personal incident of one's religion.

The record in the author's hands of Nubar Pasha's courageous diplomacy in a continuous and prolonged effort, in the face of reverses, to accomplish the establishment of what are now known as the Mixed Courts, through negotiations which must please all parties in the unanimous agreement of a treaty, is a fine short historical novel. The chapters on the more than fifty years of activity of the Mixed Courts, productive of confidence in the security of persons, transactions and property in Egypt, and of a fund of experience from which large help could be drawn in the work of establishment of the Native courts, present an important history of the development of legislative methods under difficulties, of the maintenance of judicial independence in the face of a prolonged period of martial law, of the growth of an unexcelled judicial *esprit de corps,* and of a competent bar, of the provision of adequate means of recording land titles and of protecting mortgagors, and of the development of a universal system of corporation and bankruptcy law.

The chapters on the judiciary are an inside story of the mechanics of decision in the Mixed Courts, while the chapters on the Parquet, Procedure, Proving the Case, and Criminal Jurisdiction make an adequate introduction to the features of judicial proceedings in France and the countries following the models of her codes, contrast them to those of common law countries and build a picture of the special aspects which apply to the Mixed Courts. The relation of the Mixed Courts which have acquired jurisdiction of nearly all important litigation to the nearly two score independent courts which are grouped into four

broad systems,[1] present large opportunity for exploration to philosophic lawyers who love analyses of knotty sets of fact.

Contrary to the decisions of the United States courts, which will seek to reduce the quantity of litigation before them by a holding that an assignee takes no greater right to come into court than his assignor,[2] will look for some element of lack of diversity and will demand affirmative proof of jurisdictional facts, the Mixed Courts will desire to enlarge their business, require that objections to jurisdiction be affirmatively shown, and hold that minimal elements such as finding a single creditor of a bankrupt[3] or a possible shareholder of a corporation[4] to be of different nationality, are a sufficient ground of jurisdiction involving such corporations or bankrupts.

Montesquieu's warning of evils without a separation of powers[5] must have been based on a picture of society where the alternative is a royal exercise of legislative and judicial power in a fashion which French philosophers, whose thinking made France inflammable, must decry. But a new condition in Egypt may make a legislature acting within the limits of a Charter and composed specially of a part of the judiciary of the Mixed Courts a necessary and competent instrument. Times change, places change, and answers change.

Thus, the greatest value of Judge Brinton's work is its stimulation to a comparison of legal problems, to a study of the growth of law by judicial processes, to a test of long accepted political doctrines, to a measure of the adaptability of judicial processes to social interests, and to the valuation of the methods and extent of imposition of standards of governmental conduct under conceptions which form a part of constitutional law and international law as developed in Western Europe, England and America. No one who reads A. Esmein's *Éléments De Droit Constitutionnel Français et Compare* can doubt the kinship of modern constitutions. Few will doubt, upon a reading of the diplomatic correspondence of the United States and of other countries, that diplomacy has a tendency to impose the conceptions which form a part of such constitutional fabrics as standards for the ordering of civilized governmental functions at times when national conduct may be or seem to be questionable in some international phase. In the Capitulations we have a specific example of an effort to give Western ideas of justice to colonies in Eastern lands. The Mixed Courts are the newer and more efficient instrument of colonization of a part of the world with the Western conceptions indicated. The Egyptian institution established upon an international charter made in agreement with Egyptian power does not give the appearance of an imposed institution but rather of an adapted institution become a guard against mutual oppressions. Its success is an indication that legal training and judicial temperament in many countries are adequate to the task of even-handed justice, is an answer to the fear of national prejudce in tribunals of an international color and is consequently a matter of hopefulness for world peace.

Judge Brinton's service goes beyond the retailing of the story of substitution of an efficient judicial instrument for the judicial chaos of Capitulations.

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[1] Including with the Mixed Courts, Native Courts, Religious Courts of Personal Status, and Consular Courts without mention of certain special courts; refer to Chapter XVI at p. 276.

[2] See p. 108.

[3] See p. 107.

[4] *Cf.* the problem of determining the alien character of a corporation in time of war.

[5] See p. 324.

Though his is not a lawbook but a book about law, yet thoughtful lawyers more than thoughtful laymen will profit from its reading.

Isaac J. Silin.

Erie, Pa.

THE CONSTITUTION AND WHAT IT MEANS TODAY (4th ed.). By Edward S. Corwin. The Princeton University Press, Princeton, N. J., 1930. Pp. xxviii, 160.

If a person came to me and said "I do not know anything about the Constitution of the United States. Where should I begin in my study?" I would recommend Corwin's book. *The Constitution and What It Means Today* can be recommended not to the lawyer or the political scientist but to the student who has little knowledge of the Constitution as interpreted by our courts.

The author has written a book that is concise, readable and authoritative. The text is written so compactly that the omission of any sentence would mean a loss. The physical makeup of the book, with its use of two kinds of type, makes it easy to distinguish between the Constitution which is quoted in full and the author's comments. The plan of discussion follows the Constitution but the comments make a running story which makes the book easy to read. Obscure terms are explained. The placing of the references at the end was a happy thought. It permits a more attractive makeup. The reader's attention is not diverted from the main line of the argument by citations and footnotes, yet it does permit the more serious student to verify the author's contentions.

Some of the comments on the Constitution should have been developed to a greater degree. It is doubtful if the full significance of our peculiar method of electing our President which may permit a candidate to secure a majority of the popular votes and, at the same time, a minority of the electoral college and win the election, is sufficiently explained. The evolutionary development of Constitutional law and new standards is mentioned but not sufficiently emphasized.

The book is stimulating. The suggestion that the President's cabinet be permitted to participate in debates in both houses but have no vote, or the alternative suggestion, that the President's cabinet be made up of chairmen of the more important Congressional Committees will come as a revelation to many Americans who look upon their government as so fixed in structure that a constitutional amendment is required before any changes can be made.

The most stimulating part however is his treatment of the discretionary power which the Supreme Court frequently exercises in the review of state and national legislation. If the Supreme Court has performed an important function it has been its work of changing a rigid Constitution to a flexible one. Looking at the situation historically the brakes which the Supreme Court sometimes applies to the legislative bodies, in acting as a balance wheel of government, may be a good thing. If one is interested in social legislation the brakes which the Supreme Court applies may seem to be the work of a reactionary group. Instead of making the Constitution more flexible they seem to be making it more rigid. Quoting Felix Frankfurter, the author points out that up to 1912 only 6 percentum of the acts of the legislatures were declared unconstitutional, from 1913 to 1920, 26 percentum, and from 1920 to date, 35 percentum. This would not be so serious if you had an objective test of unconstitutionality. The feeling is, however, that the decisions are based not upon sound legal principles but upon the temperament and training of the judiciary. I wonder if it is not possible to

get standards and criteria into the law so that you could eliminate decisions which are based on such grounds. Is there no substitute?

In reviewing legislation the author says that the Court has two methods that it may follow, called the broad and narrow review. In the narrow review the court starts out with the proposition that a legislative act is presumed to be valid and that if facts could exist which would render the legislation reasonable it must be assumed that they did exist. Broad review sets out with the idea that "liberty is the rule and restraint is the exception" and special justification is to be adduced in support of any new inroad upon previous freedom of action. Is the system of broad review or the narrow review likely to produce the best law or the most desirable social results? An example of narrow review is *Powell v. Pennsylvania*,[1] cited by Corwin, in which an act prohibiting the manufacture and sale of oleomargarine was upheld. The Court took the ground that it could not say, "from anything of which it may take judicial cognizance", that oleomargarine was not injurious to the health, and this being the case the legislative determination of the facts was conclusive, it being no part of the functions of the courts to conduct investigations of fact with a view "to sustaining or frustrating the legislative will". The Court in this case seems to be neglecting its function of interpreting the Constitution in order to protect a minority group from the arbitrary action of the majority. This amounts practically to no review.

In a broad review as in the *Burns Baking Co. v. Bryan*,[2] in which the Court discussed the entire process of bread making and decided that the act was unnecessary as a protection against fraud, there is at least a case in which the Court tries to get at the root of the question by an examination of the facts. Granting the validity of judicial review and granting that due process should mean protection against unreasonable acts of the legislature that position is abandoned if one believes only in a narrow review. Is it not better for the Court to examine all facts and conditions which gave rise to the law rather than say that it can take no judicial cognizance of the facts? If we do have a further application of the scientific method to the law will it not tend to replace decisions that are based on conservative training, economic philosophy, and so on? It is no answer to say that the Court is a super legislature, that fact seems to be well established, but we can try to make it a more intelligent super legislature.

Raymond W. Foery.

University of Pennsylvania.

CASES ON THE LAW OF SUCCESSION. By Alison Reppy. Callaghan & Company, Chicago, 1930. Pp. lxxxvii, 1118.

With three such excellent case books as Warren, Costigan, and Mechem and Atkinson in the field, a new case book on Wills to justify itself would seem to have to offer something new either in selection of cases or content or analysis of subject-matter. Professor Reppy's case book has no such justification. All except some forty of the cases have appeared as principal cases in other case books and these forty cannot represent any thorough-going search of the reports. Nor is the content or arrangement new. Descent is treated first as in Gray but insofar as there is any departure from what has become largely standardized the analysis is that of Mechem and Atkinson. The mechanical features of the book are good. Its bulk, however, is against it.

Percy Bordwell.

Iowa Law School.

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[1] 127 U. S. 678, 8 Sup. Ct. 992 (1888).

[2] 264 U. S. 504, 44 Sup. Ct. 412 (1924).