BOOK REVIEWS

HANDBOOK ON THE LAW OF EVIDENCE. (Fourth Edition.) By John Jay McKelvey. West Publishing Company, St. Paul, 1932. Pp. xix, 576. Price: $5.00.

To one who has noted with satisfaction such recent contributions to the Hornbook series as those made by Arant, Madden and Vold, and who has enjoyed the notable new edition contributed by Vance, this latest addition to the series comes as something of a disappointment. While the books first mentioned have tended to lift the Hornbook to a new plane of value, this book tends to continue the series as in its pre-war mold.

Many reviewers in the past have assumed that a work of real merit could not be confined to such modest proportions as a single small volume. We have had books in the immediate past which refute this assumption. Perhaps we are coming to the realization that an intensive cultivation of a small field is of more lasting value than a hasty excursion over a large one. Perhaps this is but another way of saying that the better law books are written and not dictated. Even some of our publishers are about to decide that a textbook need not compete with the American Digest system, and that some of the recent six, eight and ten-volume juristic extravaganzas might well be compressed into two volumes, with resulting increased happiness for all. Certainly the fact that a book is small can no longer be offered as an excuse for mediocrity.

Mr. McKelvey's book cannot be labeled mediocre. It does well what the author set out to do. The book contains a fairly accurate statement of the prevailing rules of evidence. The footnotes are slightly more voluminous than most of the Hornbook offerings. The cases cited are mainly those appearing in the earlier editions, with some of the better recent cases added. The selection seems to be a good one, particularly in view of the fact that today it is difficult to find well-considered opinions upon points of evidence.

While a new edition does not require as its basis some startling difference in theory or approach, it should be founded upon something more than new cases in the footnotes. The thing most characteristic of this new edition is the more highly developed critical sense of the author. The continued juxtaposition of judicial and administrative machinery in our modern society has made apparent to the author the futility, viciousness, and fatuity of some of the rules of evidence, which in his earlier editions the same author appeared to assume to be God-given and immutable. Truly, man's greatness may be measured by his ability to keep up with the times. The author's critical faculties are sharp. His objections on the whole are well taken. He points out convincingly many instances in which the courts themselves as a matter of self-preservation are modifying the rules of evidence in the interest of efficiency and justice. The book displays an increased alertness of mind which sets it apart from its earlier editions and from many of the earlier Hornbooks.

The book falls short of the standard set by certain other recent Hornbooks in that it achieves little synthesis. While it points out the dangers and defects in the strait-jacket theory of judicial evidence, it offers little in the form of suggested improvements, except an increased discretion in the trial court. Perhaps this is the solution, but it is one which will be unacceptable to a great portion of our profession and public. The great future in the field of the law of evidence however seems to lie in the direction of recasting whole fields of the subject upon new foundations, and in systematizing what now appears to be dissociated masses of precedent.

One rejoices then in the great stride forward which this familiar little book has taken, but regrets that it has not gone still further.

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A HUNDRED YEARS OF QUARTER SESSIONS—THE GOVERNMENT OF MIDDLESEX FROM 1660 TO 1760. By E. G. Dowdell; General Preface by Harold Dexter Hazeltine; Introduction by Sir William Holdsworth. Cambridge: at The University Press. New York: The Macmillan Co., 1932. Pp. xliv, 215. Price: $4.00.

This is the ninth volume of the Cambridge Studies in English Legal History, under the general editorship of Professor Hazeltine, of the University of Cambridge. It is a fresh reminder of the serious interest taken by Englishmen in the history of their legal and political institutions. We may hope that American legal historians will eventually appear in number and ability sufficient to show us, by similar detailed studies, the actual operation of English institutions on early Colonial American soil and along the expanding frontier. Save for the isolated output of some lonely law school professor, the hope will probably remain deferred, for the profession as a whole has been, and still is, far too absorbed in the study of new law for changing conditions to devote attention to law in retrospect.

The main title of this book might lead us to expect a study of the administration of law by a particular criminal court, the Quarter Sessions. Its sub-title, however, informs us that it is an account of the workings of local government of Middlesex at a time when that County was not yet nearly co-terminous with London but was nevertheless changing from a purely rural to a suburban condition. Today, as we know them in this country the Justice of the Peace and the Court of Quarter Sessions have been stripped of their executive and administrative powers. Their judicial power alone remains and the purely criminal jurisdiction of present Quarter Sessions is about all that is left to remind us that this court was once the whole body of Justices of the Peace of a county whose original duty had been the maintenance of the public peace.

Behind the century covered by Mr. Dowdell's study of conditions in Middlesex lies the long history of the *Conservator Pacis* or *Custos Pacis*. He originated perhaps under the *edictum regium* of Archbishop Hubert Walter in 1195. His important functions were military and the maintenance of the peace. In the fourteenth century, under Edward III, the Guardian of the Peace had become the Justice of the Peace and had been permanently established by Parliament in England proper with increased civil and judicial functions. It was then that all the Justices of each county were organized into the Court of Quarter Sessions; so called, of course, because it was required to meet for the transaction of its business four times a year. The Court was constituted when two or more Justices were present, including one of the *quorum*, that is, one whose presence was specially designated by the king's commission as necessary. Between the quarterly sessions was held the Assembly of Justices in General Sessions, and practically continuously the Justices acted alone in Petty Sessions in the Hundreds.

Of this early period Professor Hazeltine mainly speaks in his General Preface, not in the form of detailed history but rather to indicate what still remains to be uncovered in the historical steps by which this typical English institution of the Justice of the Peace was extended to other parts of the United Kingdom, the Counties Palatine, Wales, Ireland, Scotland, and finally to the distant parts of the Empire, including the American colonies.

The important growth and elaboration of the functions of the Justice of the Peace and of Quarter Sessions occurred during the Tudor period beginning with Henry VII in 1485 and ending with Elizabeth. England was still medieval and rural. The Wars of the Roses, a baronial and feudal contest, had made possible the emergence of a dynasty with tyrannical powers. Through the royal Commissions of the Peace appointing the Justices and through successive legislative acts, local government was reorganized and the burden of actual administration and of the supervision of the numerous autonomous local organs that survived the Middle Ages was added to the Justices' duties. The process continued through the period of the Stuarts, when the struggle between a government by Parliament or by kings by divine right came to a violent head. Upon the Restoration of Charles II in 1660 Mr. Dowdell begins his detailed examination of the records of Quarter Sessions in Middlesex County, with the avowed purpose of determining how much of the Tudor structure of local government had survived the Revolution and how well it was functioning in the populous suburban parts of the County.

The author's conclusion is that the system itself survived but was working less and less efficiently. It is safe to say that by the end of the century covered, that is by the accession of George III in 1760, we can trace the beginning of the decadence of the Justice of the Peace from his proud position of ruler of the County. With the Restoration the landed gentry, from whom the Justices were chosen, returned to authority. But their spirit was slack to meet their onerous duties. Weak central authority left a multitude of petty, jealous and independent organs without co-ordination or direction. These medieval holdovers made poor tools for the Justices and Quarter Sessions to work with. Parliamentary reform was piecemeal, through the creation of *ad hoc* commissions, that left the understructure unaltered while adding to the complexity. Inaction was aggravated by a system of forced service without pay; by bewilderment in the face of a crushing burden of responsibilities aggravated by sectional jealousies; while in the background were at work Adam Smith's philosophy of *laissez faire* and a relaxing standard of public morals. It required a reformed electorate and Parliament in the nineteenth century to modernize England's system of local government.

Blackstone mentions as belonging to the jurisdiction of the Court of Quarter Sessions "The smaller misdemeanors . . . not amounting to felony, and especially relating to the game, highways, ale houses, bastard children, the settlement and provision of the poor, vagrants, servants' wages, apprentices and popish recusants." It was through the devising or discovery of instrumentalities for the exercise of their police power, that is to say, through their criminal administration, that the civil administrative functions derived and expanded. They were enlarged by the attempted regulation of matters of private morals, encouraged thereto by the zealots of purity and piety surviving from the non-conformist Commonwealth and by the belief that they could in this way reach the seeding ground of open breaches of the peace and violations of the law. Indeed these civil administrative functions had come to outweigh the Justices' judicial duties, as we see at once on examining Mr. Dowdell's Table of Contents where they are listed under the headings of Law and Order, The Poor Law, Highways and Bridges, The Labour Code, and the Regulation of Production and Distribution. An Appendix contains the text of specimen documents taken from the Records of the Quarter Sessions. Here are reproduced Orders of Court relating to poor relief and street cleaning; a Representation to the Lord Chancellor complaining of one of their number as unfit to be continued in the Commission of the Peace because of misdemeanors committed; a Presentment to the king expressing the opinion of the Quarter Sessions on a variety of matters; Indictments including one against

a tailor for paying two shillings and six pence as a day's wages "from six of the clock in the morning until eight of the clock at night," whereas the statutory wages were one shilling and eight pence besides "one peny and half peny for that day's Breakfast"; and an Information for regrating.

Sir William Holdsworth's Introduction provides the really necessary general historical frame within which to place Mr. Dowdell's specialized study. On concluding this Introduction, which constitutes a real addition to the study of the organs of local government contained in his great History of English law, the reader realizes that he is here concerned with a very important chapter of English institutional history and hence of the English Constitution itself. Covering as it does the very century when English law and institutions were carried to this country, the book, I should say, was an indispensable forerunner to the work of uncovering the exact scope of the functions of the Justice of the Peace under early commissions in this country.

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THE LAW RELATING TO TRADE COMBINATIONS. By A. L. Haslam. George Allen & Unwin, Ltd., London, 1931. Pp. 215. Price: 10s.

This small volume discusses the law of trade combinations in Great Britain and various Commonwealths of the British Empire. The author confines himself to a purely legal approach of the issues involved. He does not think that it is the function of the Courts to adjudicate between the conflicting theories of political economy. Legal principles, he feels, should be divorced from contemporaneous economic thinking.

With such a restricted viewpoint, Dr. Haslam places emphasis upon excerpts from opinions in the leading British cases. It is a difficult task to attempt to analyze the conflicting British authorities which attempt to state the fundamental basis of liability of persons acting in combination wrongfully.

The cases in the British law of restraint of trade are by no means consistent, any more than those under the anti-trust laws of the United States. The English authorities are divided into three general classes: (1) Those which declare that the tort of illegal combination consists of a conspiracy to injure, and that what is lawful in the case of an individual acting alone may be actionable if done by two or more acting in combination; (2) the cases which hold that the combination is not the essential element of the tort, the important element being intimidation or coercion; and (3) those which criticize the two principles stated above and adhere to neither. The author concludes that neither the conspiracy nor the intimidation theories can be held to be the underlying basis of the tort of illegal combination.

The view of the author, that interference with a trade or calling of another is actionable unless justified, is not inconsistent with the general trend of reasoning in the decided cases. In his opinion, it is the only solution of the confusion which now exists in the law. This view closely follows that expressed by Mr. Justice Holmes in some of his early Massachusetts cases, and also the discussion of the earlier cases in his *The Common Law.*

The chapters dealing with the criminal responsibility of combinations and trade unions are of special interest to English readers because of the maze of statutory law enacted by Parliament. The discussion of the Trade Disputes Act of 1906 and The Trade Disputes and Trade Unions Act of 1927 are so related to labor union and political conditions in England as to be mostly of historical interest to American readers.

A further chapter, on the problem of trust control, sketches the legislation and decisions in various countries, including the United States. The author makes an interesting comparison between British and American law by indicating how in England the law has permitted competition to be carried on to the bitter end, even to the extermination of the weaker combatants in the struggle, whereas the American courts have been solicitous for the preservation of trade units and have checked the attempts of stronger rivals to annihilate weaker concerns.

The decisions of the Supreme Court of the United States, culminating in the recent *Appalachian Coals* case, and our literature dealing with trusts, trade associations and competitive practices, establish beyond a doubt that the impact of economic thought has had a profound influence upon the statement and reformulation of legal principles in the development of the law of restraint of trade.

The legalism of Dr. Haslam's text is thus out of spirit with the American modes of thought in this field of the law, but the volume will be of interest to those who are interested in the collection and discussion of the leading British authorities.

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PROBATION AND CRIMINAL JUSTICE. Edited by Sheldon Glueck. Macmillan Company, New York, 1933. Pp. viii, 314. Price: $3.00.

Criminology and penology have never been treated in this country with the serious scholarship which they enjoy abroad. With us the prevention and treatment of crime are largely material for sensational articles in the magazines and the Sunday newspapers rather than the subject of intensive study and research in colleges and law schools. The discouraging result is that members of the bench and bar alike are, as a rule, inadequately equipped from the standpoint of the social sciences in dealing with the problem of criminals and of those who commit crime (there is a vast difference between the two), and legislatures are hopelessly unresponsive to the results of modern investigation in the domain of scientific and efficient penology.

Doctor Glueck, in addition to contributing an essay of his own on "The Significance and Promise of Probation", has gathered together in this volume an interesting and comprehensive series of articles touching the subject of probation from various angles. There are studies of the history of the probation movement in the United States and the extent and workings of the system in England, France, Belgium and Germany, an analysis of the proper functioning of probation officers, a study of their requisite qualifications and some of the technical aspects of their work, helpful suggestions for the success of their endeavors in dealing with various types of law-breakers, and some practical aspects of the use and needs of probation as viewed by a criminal court judge. It is such a book as this that imparts a dignity and seriousness to the subject, sorely needed in view of the cynical attitude largely prevalent in America concerning all ameliorative types of penal measures.

There are two aspects of the probation system which must be quite obvious to even a casual observer of our criminal courts. The first is that, while many judges employ it as part of their regular stock in trade, there is no whole-hearted enthusiasm in its use nor any apparently abiding belief that it will effect a rehabilitation of its beneficiaries. This results from the fact that there is little disposition in America to view a criminal from any scientific standpoint of sociological forces and psychiatric conditions, but only as an enemy of the social order and, as such, a person to be punished or at least restrained. Notwithstanding the bitter disillusionment arising from the prevailing economic situation, we still have not lost

the point of view of a frontier civilization, namely, that anyone can get along if he tries hard enough, that every one is the master of his own destiny, that there is no need for anyone to succumb to temptation, and that therefore one who falls from grace is a wilful and deliberately wicked person to be dealt with forcefully and relentlessly. Any attempt to inject into the case inquiries as to environment, ancestry, health, pathological influences, psychiatric abnormalities, is frowned upon as an indication of sentimentality and mollycoddling,—as an attempted invasion by academicians and "high-brows" into the realm of the practical administration of the criminal law. In short, the tendency still is to insist upon the penal and deterrent functions of a criminal sentence rather than upon the moral and social rehabilitation of the offender.

The second feature of the prevailing situation which, perhaps, is the cause of much of the lack of faith in probation and parole just referred to, is that, outside of juvenile courts, there is little real scientific case-work done among probationers. Many probation officers, especially in our large cities, are the appointees of dominant political organizations and are frequently selected because of their importance in the world of politics rather than their qualifications as social workers. Their compensation is usually far from adequate, and they are called upon to minister to hopelessly excessive numbers of probationers, making probation a system which exists on paper rather than a real agency of rehabilitation. The result is that judges soon come to realize that putting an offender on probation is in effect nothing more than suspending sentence and giving him an uncontrolled liberty,—the only restraining condition being that another commission of crime on his part or a relapse into unsatisfactory conduct will bring about the imposition of a prison sentence. Probation thus becomes a mere sword of Damocles rather than the administration of a helpful social education and a moral support. It is obvious that unless it insures scientific investigation and individual case treatment, it is nothing but a form of leniency.

Before probation can become a truly effective branch of our penal system there is much that will have to be done. In addition to the need of a better personnel than that which generally prevails at present among our probation officers, there must be adequate education of our law students in criminology and penology, so that when they shall come as lawyers into the criminal courts they will have a profound sense of responsibility to the social order and a consciousness of the dignity of their calling as participants in the administration of criminal jurisprudence rather than as members of a guild engaged to employ their wits on behalf of persons seeking to escape from the meshes of the law. Such education will also insure a trained judiciary who will have a larger appreciation of the importance of modern research in psychiatry, physiology and sociology, and who will therefore be better able to read and understand the case reports dealing with the offenders whom they are called upon to sentence. Finally, there must be a much more extended system than at present for procuring case histories and making social, physical and mental investigations of defendants in the criminal courts; too often, under prevailing inadequate agencies for such investigations, the judge in the criminal court is compelled to pronounce sentence and thereby to deal with the whole future relations of a criminal with society without having at hand the basic facts a knowledge of which is indispensable to an intelligent disposition of the case.

The general tenor of the articles in Doctor Glueck's book is much less pessimistic than that adopted in this review. On the contrary, there is manifest a sense of satisfaction in the progress which, if slowly at least continuously, is being made. The general picture is one of historic and current development, with great promise for the future, and the book as a whole indicates the lines along which further progress should be directed. While the articles to some extent lack unity,

and necessarily lose a certain amount of continuity by reason of the varying types of authorship, they form, on the whole, an interesting and informative picture of the entire subject of probation, and every judge, lawyer, social worker and even intelligent layman, can read them with interest and profit.

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RICHARDS ON THE LAW OF INSURANCE. (Fourth Edition.) By Rowland H. Long. Baker, Voorhis & Co., New York, 1932. Pp. xxi, 1346. Price $18.50.

A comparison of the preface to the third edition of *Richards on Insurance* with the preface to the fourth and latest edition brings into relief a distinct difference in the intellectual attitude of the authors. In the preface to the third edition, Mr. Richards showed dissatisfaction with the casebook system:

> "Each decision is but a pin point on a vast surface. By what means, then, may this subject of insurance law best be presented to student and practitioner? by text-book or case-book, or by aid of a book which, in its plan, shall omit the inconveniences, and borrow the meritorious features of each of the others?[1]

His criticism of casebooks that "Index, table of contents, and syllabus, all were deliberately eliminated from some of the case-books," [2] showed that casebook editors of that day, like some modern editors, were afraid of blocking intellectual activity by furnishing the students with general classifications.

Mr. Richards recognized the shortcomings of the treatise:

> "The hypothesis that a jurist can produce the happiest results toward furnishing a scientific exposition of a subject in its entirety, when his aim is to offer persuasive arguments for the determination of the narrow issues usually involved in litigated cases, carries no compliment to the bench. Court opinions when severed from their particular environment of fact are proverbially misleading." [3]

> "In the text-book the abridgment is rather in the form and substance of every case. In the latter (text-book), the author endeavors in a few words of his own to give the pith and point of each case. This description in many instances owing to brevity is indefinite. The result is well-nigh a series of abstractions lacking not only perspective and color but also precision." [4]

While Mr. Richards criticized certain features of treatises, he expressed belief that the treatise was definitely superior in some respects.[5] Consequently, he attempted to "unite and harmonize the distinctive advantages of the general treatise with those of the casebook" in a volume "designed primarily for the class room".[6]

The third edition was written twenty-three years ago by a man who was struggling with the text-casebook problem of producing the best material for student use. His criticisms of both systems are strikingly like those current today. He had not conceived of many of the devices now used to enliven casebooks.

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[1] RICHARDS, A TREATISE ON THE LAW OF INSURANCE (3d ed. 1909) vii.

[2] RICHARDS, *op. cit. supra* note 1, at xi-xii.

[3] RICHARDS, *op. cit. supra* note 1, at viii.

[4] RICHARDS, *op. cit. supra* note 1, at xi.

[5] RICHARDS, *op. cit. supra* note 1, at ix-x.

[6] RICHARDS, *op. cit. supra* note 1, at iii.

The language in which he expresses his opinion indicates assumptions more typical of a deductive era than the present. Nevertheless, it is believed that his intellectual attitude was more wholesome and promising than that expressed by the author of the fourth edition in the following paragraph:

> "My effort has been to put into the work a statement of the law as it exists to-day with an indication of its trend for to-morrow. I make no pretense of originality. The opinions of the courts determine the law. Accordingly, I have quoted liberally from the judicial decisions for I know of no other practicable way to present the reasoning behind the decisions and indicate their applicability to factual situations as they may arise in the future." [7]

The hypothesis that a treatise writer should make no pretense at originality is not likely to lead to the production of a great work. The writer's assumption seems to be that his function is to make a compendium of the decisions; that he has no obligation to acquire perspective; that it is improper for him to direct, suggesting advances and changes; rather it is his job to record.

Since the author of the fourth edition of *Richards on Insurance* operates upon the basis that he should make no pretense to originality, it is not surprising that he has not produced a scholarly work. The attitude is not conducive to scholarship. The writer of this review, by criticizing the attitude of the author, does not mean to suggest that a critical attitude necessarily results in scholarship. Instances of bad decisions based upon theories of public policy and social expediency may be found. The fact that a judge or a legal writer is committed to the cause of making legal rules conform to the needs of society does not insure the accomplishment of notable results. The ideas under which he operates may be so restricted as to be outside the field of social needs. The development of the warranty in insurance is an instance of the growth of a succession of ideas conceived of as expressing public policy.

In justifying the strict warranty of the common law, Park argued "that it is absolutely necessary to have one rule of decision, and that it is much better to say that warranties shall in all cases be strictly complied with, than to leave it in the breast of a judge or jury to say, that in one case it shall, and in another it shall not." [8] Later, the courts developed a process of construing clauses to be representations rather than warranties so that immaterial breaches did not avoid the policy.[9] Statutes abolishing warranty and requiring materiality for the avoidance of a policy for misrepresentation form a third stage of development. Some statutes establish contribution to loss as a test for the avoidance of a policy. This field of what should be the basis for avoidance of a policy for misstatement or for breach of clauses in the policy is still open for scholarly study. The author of the fourth edition of *Richards on Insurance* does not adequately treat the results that are being reached under the various conceptions. The adequacy of the conceptions is an interesting subject. The various statutes need study for several purposes—to give the practitioner an idea of the next development, and to obtain information as to the functioning of the statute for purposes of amendment.

The discussion of the effect of misstatements as to age in applications for life insurance policies is an example of unadventurous and uninspired writing, which was carried over from the third edition without change.[10] The writer states that in life insurance age is material as the rate of premium is based on it;

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[7] LONG, RICHARDS ON THE LAW OF INSURANCE (4th ed. 1932) v.

[8] PARK, INSURANCE (3d ed. 1796) 318, quoted in VANCE, CASES ON INSURANCE (2d ed. 1931) 367.

[9] See Moulor v. American Life Insurance Company, 111 U. S. 335, 4 Sup. Ct. 466 (1884).

[10] LONG, *op. cit. supra* note 7, § 352; RICHARDS, *op. cit. supra* note 1, § 353.

that policies have been held void where age was misstated; that the New York standard policies provide for adjustment to the amount that the premium would purchase at the true age. The common law cases invalidating policies for misstatements as to age are not questioned. The possibility of the court reaching at common law the same result provided for in the New York standard policy is not suggested. The case seems to be one which demands a questioning of the common law conception of "materiality" as a test for avoidance of a policy for misrepresentation. This section of the book on statements as to age is typical. Although uncritical, the discussion is good from an informational standpoint. A fairly accurate picture of the legal background is given, although a list of states having statutes similar to the New York requirement is not included. The style is of the descriptive type which is to be expected from the announcement in the preface.

In one instance, the author relegates the most important legal material to a cursory footnote.[11] The matter under discussion is another example of poor text retained from the third edition.[12] In developing waiver and estoppel, the author states that parol evidence will not be admitted to show that a different house should be substituted in the policy. In a footnote,[13] he states: "Remedy, if any, in such a base is by reformation." This separation of legal materials bearing upon the same problem and placement of the controlling matter in a footnote is an unjustified adherence to historical development. Adequate treatment of a particular problem demands a consideration of both legal and equitable remedies. This inadequate treatment appears at another place, where the author makes a blanket statement that parol evidence cannot be used to prove agreements to changes in the terms of the written document, when the oral agreement is made prior to or contemporaneously with the execution of the contract.[14] As the statement fails to mention the possibility of reformation, it fails to give a true picture of the legal background necessary to pass judgment on the matter.

The fourth edition follows the same general outline as the third edition. The book is divided into two parts: "Part I, The General Principles of Insurance Law," and "Part II, Meaning and Legal Effect of the Clauses of the Policies". This division probably flows from Richards' efforts to make his book a good pedagogic device. There are undoubted advantages to give a unified discussion to certain insurance problems as concealment, misrepresentation, waiver and estoppel. The general attitude toward the treatment of the matters within this field, bears upon problem after problem which arise under particular clauses in various types of insurance. This background need not be repeated entirely with the treatment of the problems under the various clauses. While the general background is valuable, a book which did not go into the specific problems in the principle types of insurance would be impractical from the practitioner's standpoint. He wants the material directly bearing upon his problem. It is interesting to note that a recent insurance casebook [15] emphasizes the importance of a general treatment of insurance problems.

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[11] LONG, *op. cit. supra* note 7, at 182.
[12] RICHARDS, *op. cit. supra* note 1, § 132.
[13] LONG, *op. cit. supra* note 7, at 182, n. 37.
[14] LONG, *op. cit. supra* note 7, at 193.
[15] "The tendency of insurance law is to fall apart into unrelated sets of legal rules, such as marine insurance law, life insurance law, fire insurance law, etc. With the increasing number and importance of the newer types of insurance, this tendency, in its ultimate effect, will reduce insurance law to merely the authoritative meanings of particular phrases in contracts. Neither juristically nor pedagogically is it desirable that the law be so atomized. The technical exigencies of the various branches of the insurance business give rise to legal problems which have much in common, and the influence exerted upon legal rules by the habits and attitudes of the insuring public creates further similarities. Hence the diverse branches of insurance law are here partly synthesized in treatment." PATTERSON, CASES AND MATERIALS ON INSURANCE (1932) v.

Richards wrote a good insurance treatise twenty-three years ago. There was room for improvement in 1932, but it is doubtful whether the fourth edition has been revised to an extent which justifies its publication. A few new topics have been included, but a whole field of old material which needed reconsideration, retesting and criticism has been either untouched or inadequately treated. Apparently, the fourth edition is a larger and more extensive work. It contains 924 pages of text to 678 pages for the third edition, but this difference in size is almost accounted for by larger type and wider spacing between lines.

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INTERNATIONAL SERVITUDES IN LAW AND PRACTICE. By Helen Dwight Reid. Foreword by James Brown Scott. University of Chicago Press, Chicago, 1932. Pp. xxii, 254. Price: $3.00.

Ever since the North Atlantic Fisheries Arbitration of 1910, the term "international servitude" has been looked upon as not quite respectable. The tribunal in that case condemned the servitude doctrine as unsuited to present conditions in the international world and incompatible with the notion of sovereignty. Since then most students of international law have tended to follow the opinion of the tribunal without thinking very much about the matter.

In the present work, Professor Reid takes strong issue with this common view. She subjects the international servitude to intensive scrutiny and concludes that it is an important and useful concept in current international life. She lists a large number of existing treaty arrangements which display all the characteristics of international servitudes and seem properly classified as such. She argues that the notion of servitude is not incompatible with the notion of sovereignty, and believes that, if the stigma of subservience could be removed from the term, it would provide us with a highly satisfactory means of solving some important economic and political problems.

The definition of international servitude advanced by the author follows closely the Roman Law analogy. In order that a grant may be so classified, it must be international (the parties thereto must be sovereign states); it must be permanent (not limited to any definite term, however long); and must be territorial (a "real right", running with the land). It must furthermore be restrictive or permissive, not an obligation to perform a definite act. If a grant satisfies these requirements it is a servitude, and survives changes in sovereignty over the territory affected, save where there is a merging of the dominant and servient states.

Professor Reid's most notable contribution is her collection of existing examples of servitudes. In this task she has displayed unusual zeal and perseverance. She classifies and analyzes these grants under the headings of "distribution", "intercourse", and "security". The mere length of the list is ample justification for the establishment of a separate category for these grants apart from that of normal contractual relations between nations.

One might wish that the author's discussion of the theory of servitudes were a little fuller and more incisive than it is. Too often she is content to answer the objections of one authority merely by quoting the words of another. Again, she seems too easily satisfied with dialectical devices for evading practical problems. Thus, in dealing with the knotty problem of the effect of servitudes upon sovereignty, she is content to repeat the traditional formula that sovereignty is not affected because the act of making the grant is in itself an exercise of sover-

eignty. This is cold comfort to a state which finds itself unable to resist the pressure to grant rights over its territory and which knows that, once made, the grant is perpetual and cannot be revoked without the permission of the dominant state or states.

It cannot be questioned, however, that Professor Reid has made a highly important contribution to the literature of the subject, and has provided ample grounds for restoring the term "servitude" to a respectable place in international jurisprudence.

Frederick Sherwood Dunn.

The Johns Hopkins University.

BOOKS RECEIVED

ADMINISTRATION OF CRIMINAL JUSTICE, THE. By Wayne L. Morse and Ronald H. Beattie. The University of Oregon Press, Eugene, 1932. Pp. xi, 227.

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