

BOOK REVIEWS

CASES ON CONTRACTS. (Second edition.) By Arthur L. Corbin. West Publishing Co., St. Paul, 1933. Pp. xix, 1304. Price: \$6.50.

This new edition of an excellent and popular casebook will be welcomed by contracts instructors throughout the length and breadth of the land. It is the work of a great law teacher—a teacher who, as one of a group of outstanding scholars in the Yale Law School of fifteen years ago, did for legal thinking in the classroom what certain progressive jurists have done for it in the courtroom. These eminent professors—even in the face of bitter criticism—lifted the law from the oversimplified conceptualistic rut into which it had fallen to the higher pragmatic plane where it became once more as complex and as uncertain as life itself.¹ A full realization of the magnitude of the contribution which these men made grows with the years—the keen analysis, for example, of Wesley N. Hohfeld,² the brilliant jurisprudence of Walter Wheeler Cook,³ the careful application of the Hohfeld-Cook philosophy to the Contracts field by Arthur L. Corbin.⁴ True, all of these thinkers regarded the law as complex and uncertain. But, once more, it should be emphasized that Hohfeld, Cook, and Corbin did not do what some of their alleged disciples have done. They did not presume to cast legal principles out of the window like so many old shoes and then, seemingly, decide each case simply on its facts. The original “functionalist” (unhappy word!) school at Yale *did* employ legal principles. It regarded these principles as convenient summary expressions of past experience through the intelligent use of which the issues in the great host of legal cases could be decided. Professor Cook, for example, has always recognized the importance of employing legal principles as useful tools in the judicial process but he has been careful to point out the latent fallacy which may be involved in deducing the decision of a borderline case from a preconceived principle of law.

This tendency to point out the fallacies resulting from the uncritical use of legal language is brought out forcibly in the questions which Professor Corbin has appended to some of the leading cases appearing in his second edition. These questions sometimes smack of the Hohfeld terminology.⁵ They indicate also

¹ “If the law consisted of one set of rules, consistent, uniform and logically constructed, the author’s problem and the student’s problem would be greatly simplified, though less interesting. The law is not such a set of rules, and it must be taught as it is—inconsistent, variable, illogical, growing and changing with the growth of civilization. As the *mores* change, the prevailing notions of social and economic welfare, the conscious and unconscious customs of men, the practices of business affairs, even as the notions of individual groups and individual men change, so also change the stated rules of law.” CORBIN, CASES ON CONTRACTS (1st ed. 1921), Author’s Prefatory note.

² The papers published by Professor Hohfeld in the various legal periodicals have been collected in COOK, FUNDAMENTAL LEGAL CONCEPTIONS (1923).

³ *The Alienability of Choses in Action* (1916) 29 HARV. L. REV. 816; *The Alienability of Choses in Action: A Reply to Professor Williston* (1917) 30 HARV. L. REV. 449; *The Powers of Courts of Equity* (1915) 15 COL. L. REV. 37, 106, 228; *Logical and Legal Basis of the Conflict of Laws* (1924) 33 YALE L. J. 457; *Jurisdiction of Sovereign States and the Conflict of Laws* (1931) 31 COL. L. REV. 368; “Substance” and “Procedure” in the Conflict of Laws (1933) 42 YALE L. J. 333.

⁴ More than a dozen of Professor Corbin’s articles in the contracts field have been collected in SELECTED READINGS ON THE LAW OF CONTRACTS (1931).

⁵ See, for example, the following question in the list appended to *Offord v. Davies* at 169: “After the plaintiff had discounted one bill, did the defendant have remaining (a) ‘right to revoke’? (b) ‘power of revoking’? (c) privilege of revoking?” See the note to *Payzu v. Saunders* at 809, where the editor quotes from the opinion of Mr. Justice Burch applying the Hohfeld terminology in *Rock v. Vandine*, 106 Kan. 588, 189 Pac. 157 (1920).

that the editor does not believe that such problems as those involved in offer and acceptance, for example, can be solved by resorting uncritically to such catch-all phrases as "meeting of the minds" or "mutuality".

In addition to his thought-provoking questions, Professor Corbin includes numerous other features which make his work an acceptable teaching medium. The important leading contracts cases decided since 1921 have been added. A new chapter entitled "Remedies for Breach" has been included. References to pertinent sections of the American Law Institute's Restatement of the Law of Contracts predominate. The excellent idea of including citations to Roman, Continental and even Asiatic⁶ source materials has been carried over from the first edition. Less attention has been paid to law review material than in other recent contracts casebooks, as, for instance, in Costigan. Perhaps since the publication of Selected Readings on the Law of Contracts it is no longer necessary to load the footnotes of a contracts casebook with references to leading articles. It does seem, however, that the inclusion of citations to comments and casenotes from the legal periodicals would not have been amiss in the footnotes to leading decisions.⁷

Despite the foregoing minor criticism, the reviewers believe that Professor Corbin's second edition will—as did its predecessor—survive the test of time. It is as fine a product of its type as has yet appeared—the type of contracts casebook which groups the decisions around certain traditional divisions of contract law. Because Professor Corbin's book is such a fine example of its kind, it will be particularly interesting to compare it with the product of a "new deal" in contracts casebooks concerning which we have been hearing recently. Professor Harold C. Havighurst of Northwestern⁸ is at work on a collection of materials which will assemble contracts cases "according to subject matter and not according to the rules and doctrines applied".⁹ This project sounds intensely interesting. Whether it will replace the traditional scheme still remains to be seen. At all events, until the Havighurst book appears, we have Corbin—and a mighty fine casebook it is, so fine in fact that, despite any turn which casebook-making may take, it may never be supplanted.

*Thomas Clifford Billig,
Melba Stucky Billig.*

*West Virginia University,
School of Law.*

CRIME, LAW AND SOCIAL SCIENCE. By Jerome Michael and Mortimer J. Adler. Harcourt, Brace and Co., New York, 1933. Pp. xxix, 440. Price, \$3.50.

Somewhere, that wise counselor H. S. Jennings tells us that when prospective parents plan the birth of a child they may always hope but they always must fear. Despite the fact that there is every reason to believe that the offspring will be like its parents in normality, there is no guarantee he will not possess characteristics which will cause parents and friends to wonder why the issue is what it is. In the present work there is presented and critically reviewed an extensive range of researches seeking the answer to why persons become crimi-

⁶ The Japanese Civil Code is cited in several footnotes, for example, in the note to *Payne v. Cave* at 150, and in that to *Shuey v. United States* at 165.

⁷ Case notes to *Petterson v. Pattberg*, for instance, appear in at least seven law reviews. None of these notes are referred to by Professor Corbin.

⁸ See Havighurst, *A Classification of Contract Cases for Teaching Purposes* (1933) 7 AM. LAW SCHOOL REV. 844.

⁹ FROM HAVIGHURST, *DESCRIPTION AND STATEMENT OF PURPOSES IN THE REORGANIZATION OF CONTRACT MATERIALS* (1932), mimeographed.

nals. These researches do not furnish the answer. Professor Michael of the Columbia Law School and Professor Adler of the law faculty of the University of Chicago are both trained scholars who completely disarm the critic by their magnificent command of dialectics. There is no question of their complete mastery of the tools of analysis which they employ. Logic, that demon of jesuitic argument, appears in these pages with all its medieval deadliness.

The purpose of this volume was to determine whether an institute of criminal law and criminology should be established. To their own satisfaction the authors conclude that if ever there was a time to establish such an institute, that time is now, before criminologists further befog the problems of causation by their abysmal ignorance of even the elementary tenets of scientific procedure or analysis.

One of the chief points is that such researches in causation of crime as have appeared to date have yielded exactly nothing with reference to the etiology of crime and the reason for such failure is that research students in this field have no conception of the fundamentals of scientific method. Their work has been shot through and through with "raw empiricism" which has not afforded the causative explanations which harmonize with the necessary requirements of science. The criminologist depends upon the sociologist and the psychologist, but since neither of these is a scientist, in the meaning employed by the authors, their results can hardly be considered seriously from the scientific standpoint. Such researches as have been conducted are dismissed as negligible since they contribute nothing of value to an understanding of crime causation. The authors lean toward the statistical method as the correct scientific procedure for an understanding of causation, with rigid control of variables so that such correlations as result will at least indicate the probabilities of valid description. Throughout the study the authors leave the impression of dismissing many excellent studies in a cavalier fashion, which hardly agrees with their enounced scientific realism. In fact, one is hard put to make sense of many of their criticisms and feels tempted to indulge in some of the intemperate and wholly unnecessary denunciatory adjectives to be found in the volume. They espouse quantitative measurements and scientific objectivity and at the same time inject "derogatory" and "meretricious" as descriptive adjectives in describing work done by competent and qualified scholars. The great defect of this type of analysis is that it is purely eristic and that "myopic" tool, medieval logic, has been drafted to make inevitable that which in its turn does not warrant serious consideration, if the reader remains sober. If anyone seeks words and admires refined mental gymnastics, and marvels at the agility of the human mind in logical exercise, by all means get this book.

The authors finally decide that although criminology is not now a science, it may become one. Undoubtedly their institute will aid in its creation. The institute, of course, should be established, preferably at Columbia. (Curiously, no mention is made of the American Institute of Criminal Law and Criminology and its work.) The staff should have no one on it that has ever done any work in the field but should have in the criminological division psychologists and sociologists "who among themselves combine the knowledge, experience and techniques possessed by" a logician, a mathematician, a statistician, a theoretical physicist and an experimental physicist, but since "there is no group of psychologists and sociologists which possesses such knowledge, experience and techniques" the authors recommend the foregoing specialists and, in addition, a mathematical economist and a scholar from the field of psychometrics and a criminologist who knows what it is all about, but preferably one who has never done any research himself.

The division of criminal justice should be staffed by a legal philosopher, a student of the history of law and of legal institutions, a student of comparative

law, a student of the criminal law "whose major interest is in the rational analysis of these bodies of law", and students who have specialized individually in the fields of police, prosecution and treatment. It is noteworthy that this division contemplates employing specialists who are required to know what they are doing.

The general conclusions are that we know nothing about causation or the effect of treatment. We shall never know any more than nothing until we perfect a method of research which will incorporate much of the natural science procedure. The complexity of social data amounts to a defense reaction masking the present ignorance of method on the part of criminologists. We need, not more research, but a clearer understanding of method since all studies thus far made display fatal methodological defects.

There is no question but what the authors are quite right that the etiology of crime has not yet been revealed and that many "researches" are little better than declamation, but the fact remains that much of the work thus far done rightly or wrongly has resulted in a far more intelligent understanding of crime causation than they seem willing to admit. But unfortunately none of the studies is "scientific". You scare ghosts with: "In the name of God, speak." You damn criminology and sociology with: "It is not Science." It sounds like word magic. Lawyers, jurists or legislators are not likely to find this volume very helpful for the solutions of problems, practical and theoretical, constantly arising in the formulation of policies designed to facilitate the administration of criminal justice or promote programs of prevention.

J. P. Shalloo.

University of Pennsylvania.

CASES ON CONVEYANCES. By Marion Kirkwood. Commerce Clearing House, Chicago, 1933. Pp. 767. Price: \$6.00.

In order to place this casebook in the proper perspective, it seemed advisable to make some references to Dean Fraser's casebooks which together with this book constitute the Commerce Clearing House Property Series.¹ At the outset, it may be queried whether the title is entirely appropriate to all the subject matter included therein. However, that is not of any great consequence. The topics which are treated in this volume are Covenants of every kind, Easements, Licenses, Rents, Profits, Formal Requirements of Conveyances, Surrender, Dedication, Description, Estoppel by Deed, Recording, and Title Registration. The aim of the series as a whole is to present approximately the same subject matter that is ordinarily given in courses in Personal Property, Rights in Land and Titles. The chief change in Professor Kirkwood's volume of the series is in the rearrangement and evaluation of the old subject matter.

The process of the rearrangement and evaluation is most discernible in respect to Covenants, Easements, Profits, and Rents. It is in the treatment of these particular subjects that Professor Kirkwood has made a worthwhile contribution. For instance, the whole subject matter of Covenants, including Covenants Running with the Land, Covenants Running in Equity as well as Covenants for Title, are dealt with in the same chapter. It would seem logical to assume that better results might be obtained than when the same subject matter was scattered through several chapters, or even placed in different casebooks to be studied in different years.

The new treatment is especially noticeable in connection with Covenants Running with the Land which are generally regarded as constituting one of the

¹ Volume one by Dean Fraser for the introductory course in Real Property was reviewed in (1932) 21 GEO. L. REV. 109.

most difficult, and to the students most confusing, chapters in the whole field of real property law. Professor Kirkwood has included what might be termed a minimum number of cases, evidently for the purpose of developing only the general principles without any effort to cover all possible situations. The only subdivisions made are between The Running of Covenants at Law between Landlord and Tenant, and The Running of Covenants at Law between Other Persons. No attempt is made to present all the varied situations which may arise upon assignment by one or other of the parties.

The reviewer ventures the opinion that Professor Kirkwood has taken a proper step towards simplifying this difficult subject. After five years of various methods of treatment accorded to this subject in numerous classes, the reviewer has come to the conclusion that it is of doubtful propriety to attempt much more than a presentation of the general principles and an approach to the problems. The writer cannot appreciate the necessity of numerous cases dealing with "Running Covenants" or with "privity", one of the most illusive words not only in the subject of covenants but in the law in general. Nor does the reviewer subscribe to the notion that there is one rule of thumb to fit all cases in the determination of whether a covenant runs or does not run in spite of the fact that every now and then some writer comes along shouting Eureka! Eureka! It seems that the interests of the students are promoted best by presenting only the fundamentals of approach to the problems involved, leaving each to wrestle with the more particular situations as he comes in contact with them in practice, if at all.

Covenants Running in Equity and Covenants for Title, although part of the same chapter as Covenants Running with the Land, are treated in about the usual manner. Here again, the reviewer wonders whether Covenants for Title have not been given generally, more attention in the past than they deserve. It is doubtful if they are really of much practical value. Buyers, today, rely more upon a thorough examination of title or a guaranty of title, than upon any covenants.

The idea of unifying similar subject matter is likewise applied to Easements. Implied easements and easements by "exception and reservation" are all gathered into one chapter and treated as a part of the general subject of easements.

The subject of Profits is disposed of briefly by the inclusion of only three American cases which really present the useful side of the matter. Two of them involve the question of whether the grantee received a right of profit or an absolute conveyance while the third is the leading American case of *Hall v. Lawrence*.²

The subject of Rents is also largely confined to the development of fundamentals. Little effort is given to the development of rights of assignees in various types of situations. Assignment today is largely a matter of the particular contract and so time may well be saved by omitting numerous assignment cases from the casebooks.

As a matter of information, it may be added here that the cases under Rents taken with the cases under Surrender and Covenants Running with the Land in this volume, together with those appearing under Estates in volume one and under Waste in volume two of Fraser's casebooks touch upon most of the usual problems of Landlord and Tenant. This would be a matter for the consideration of those who have, or contemplate a separate course in Landlord and Tenant.

The Torrens System of Title Registration is treated in accordance with its growing importance. When we see that Cook County, Illinois, in which the great City of Chicago is located, has one-fourth of its land registered under this

² 2 R. I. 218 (1852). The case deals with the chief incidents and characteristics of profits and particularly with the divisibility and assignability thereof.

newer system and that some fourteen States have adopted Statutes on the subject, it would seem appropriate to give the subject more than a passing glance. To that end the editor concludes the casebook with a reprint of the Uniform Registration Act and six cases, including the Illinois case of *Eliason v. Wilborn* recently affirmed by the United States Supreme Court.³

The casebook is intended for use after the introductory course in real property. After a few excerpts from Blackstone's Commentaries, the editor goes directly to cases upon the subjects at hand. Any further historical material is deemed unnecessary in view of Dean Fraser's presentation of the historical side of real property in volume one of the series. The cases are almost entirely American and in a large measure modern, with a broad regional distribution. Some fourteen to twenty were taken from each of such jurisdictions as California, Illinois, Massachusetts, and New York with thirty-eight other States represented by smaller numbers. It is rather the rule than the exception that the statement of facts is either by the editor or is abridged. Likewise, portions of the opinion, not pertinent to the particular subject, are frequently omitted thus resulting in short and well edited cases. A large proportion of the cases have not had a previous appearance in casebooks. However, the old familiar ones are not discarded. In many instances the editor has selected modern cases which contain a thorough discussion of such landmarks as *Lord Mountjoy's* case, *Spencer's* case, *Packenham's* case, *Kingdom v. Nottle*, *Webb v. Russell* and others. Many of the cases which previously appeared in Bigelow's and Aigler's casebooks are found in problem form and the editor gratefully acknowledges the aid of those books. By the frequent use of problems the editor seemingly aims to accomplish the same result that others have attempted to obtain through the use of abstracts of cases or through cumulative footnotes. These problems are generally skillfully framed and will be a quick asset to the teacher, since many of them are based upon old and familiar cases. References to comments in Law Reviews frequently accompany them. A criticism might be ventured that possibly too many problems appear in spots, sometimes giving the reader the impression that the editor was trying to include too much in the course. In view of the many problems, it was the part of wisdom not to attempt an addition to the law through the use of footnotes, which, with a few exceptions, are confined to making available the periodical literature on the subject.

Taken as a whole we have a well edited casebook of carefully selected cases representative of modern law, with a new pedagogical approach to several of the more difficult problems which may make the work of the students more interesting and profitable. It is a worthy addition to a series which is likely to prove meritorious and popular.

M. P. Rapacz.

De Paul University,
College of Law.

UNLOCKING THE TREASURIES OF THE TRIAL COURTS. By Leon C. Marshall. Johns Hopkins Press, Baltimore, 1933. Pp. xi, 42. Price: \$.75.

Under this alluring and almost lyrical title, Professor Marshall of the Institute of Law of Johns Hopkins University offers a neat brochure of forty-two pages and five charts or form sheets, which can adequately be described as an interesting and usable handbook for the making of statistical studies of the work

³ 335 Ill. 352, 167 N. E. 101 (1929). *Aff'd* 281 U. S. 457, 50 Sup. Ct. 382 (1930). The Court sustained the validity of a Torrens certificate in the hands of a bona fide purchaser for value although the certificate of his vendor had been issued upon a forged deed.

of the trial courts, particularly in the fields of divorce and criminal litigation. Its indisputable premise is that we know far too little of what goes on in the every-day work of our trial courts. "It is the thesis of these pages that the situation can be markedly improved; that practicable, inexpensive techniques can be devised for securing dependable generalized knowledge of a considerable part of our trial court happenings." As proof of the possibilities, the author presents *The Divorce Court*, also published by the Institute, in which the techniques explained in the present brochure were employed in a study of the divorce courts in Maryland.

Perhaps the greatest value of *Unlocking the Treasuries of the Trial Courts* is in the submitted sample form or tally sheets for the transcribing of the records of the courts, contained in their dockets and filed papers. The tally sheet for divorce litigation may be used as an example. This consists of seventy-four separate items under such principal headings as Pleadings, Type of Service, Relief Granted *Pendente Lite*, Disposition of Action, etc. Complete and helpful instructions are appended to each report sheet. Professor Marshall denies that quantitative studies of the work of the courts are necessarily expensive. The contravention of the general contrary opinion rests on the assumption that some ambitious and public-spirited teacher of law in connection with his regular duties will undertake to supervise the work; that he can persuade his students and the alumni of the school to perform the clerical labor of transcribing the records of the courts on to the tally sheets; and that inexpensive and competent help can be obtained to collect, compute, and summarize the data of the tally sheets into compact and usable form. For this last operation punch cards and statistical machines will be of great service. Without more ado, let it unequivocally be stated that no one who contemplates making a study of the work of the trial courts should be without a copy of *Unlocking the Treasuries of the Trial Courts*.

Professor Marshall attempts to disarm criticism by emphatically denying that he proposes a quantitative statistical study as being in itself all-sufficient. Nevertheless, since he urges the making in the several states of studies similar to that of the Institute in Maryland, it is believed that a word of caution should be added. The administration of law is a very human thing. It is indeed more of an art than a science. A quantitative study may, it is true, disclose many things: how many actions have been commenced; what proportion are decided in favor of the plaintiff and what in favor of the defendant; what time elapses in the course of the litigation, etc. But this is only a small part of the story and it fails almost entirely to reveal the human element in the judicial system. To obtain an understanding of that, resort must be had to personal observation of the judicial machine in action, and to interviews with those who are in daily contact with its operations. While the distinguished scholars of the Institute of Law would probably not ignore this phase of research activity, it does seem to have been relatively neglected. For this reason *The Divorce Court*, it is believed, suffers by comparison with such works as the survey of criminal justice in Cleveland by the Cleveland Foundation, the various studies of administrative commissions under the auspices of the Commonwealth Fund, and several of the special reports made by the National Commission of Law Observance and Enforcement. Statistics properly gathered are doubtless more objective and scientific than the information gleaned from personal observation and interview, but they leave too much undisclosed. The reviewer believes that no study of the work of the trial courts can be complete without a resort to these latter techniques also. This phase of the work is, however, hardly to be entrusted to the inexperienced neophyte law student. Even a trained law practitioner or teacher may not qualify as an observer or interviewer. One who undertakes a survey of the work of the trial courts should certainly either have some experience in sociological research,

or at least should study carefully what has been written concerning the methods of that art. For this purpose the recent work of the two masters, Sidney and Beatrice Webb, *Methods of Social Study*, is both most delightful and informative.

Ray A. Brown.

University of Wisconsin Law School.

PRINCIPLES OF BUSINESS LAW. (Revised Edition.) By Essel R. Dillavou and Charles G. Howard. Prentice-Hall, Inc., New York, 1933. Pp. xxxix, 966. Price: \$5.00.

This book is the revised edition of a work on business law that has been quite well received, the first edition having been published in 1928.

The organization of the new edition follows very closely the general plan of the earlier edition. The introduction includes a brief discussion of the nature of law, the sources of law, the organization of courts, and the procedure by which a civil suit is tried. The remainder of approximately the first half of this one volume work consists of a treatise on the subjects ordinarily classed under the general head of business law. This portion of the book is divided into seven parts, namely (1) contracts, (2) agency, (3) negotiable instruments, (4) business organizations, including partnerships, corporations, and unincorporated associations, (5) personal property, including sales and bailments, (6) security relations, including suretyship, insurance, conditional sales, bailments as security, and chattel mortgages, and (7) real property, including mortgages, landlord and tenant, and lien laws.

Since this treatise material is condensed into less than four hundred and fifty pages, this portion of the book is necessarily confined to a bare statement of legal rules, there being little or no room for a discussion of the reasons behind these rules or of the factual situations to which the rules apply. This deficiency is partially overcome by the large number of cases in the second half of the book. Although the facts and the opinions of these cases are greatly abbreviated, the average length of the cases being one page, the use of this case material proves very helpful in illustrating the application of the rules stated in the first part of the book. Also, the opinions in these cases provide some valuable discussions of the reasoning upon which the various rules of law are based. The case section is divided into chapters corresponding to the chapter divisions of the first part of the book.

A person's opinion of the value of a business law book made up of a combination of treatise matter and cases largely depends upon one's idea of the purpose which a course in business law is intended to accomplish. The writer considers that such a course is designed primarily to give students a general knowledge of legal rights and liabilities so that the students as business men will know when it is desirable to consult a lawyer and when their rights can be protected without the necessity of incurring expense for legal advice. Thus, it cannot be doubted that a general knowledge of legal relationships on the part of business men will result in the elimination of much unnecessary litigation caused by slipshod business methods, as well as providing understanding clients that can be of much greater assistance to their attorneys when legal services become necessary.

The general knowledge of legal principles needed by a business man can be acquired only by making at least a cursory study of several divisions of the field of law. Case book instruction is far too slow to cover the necessary subjects within the time that can be allotted to the study of law in the academic curriculum of a university. The exclusive use of treatise material tends to make

the study of law too much of a memory course without giving a student the proper idea of either the way in which law is developed or the effect of its practical application. The combined treatise and case method of instruction strikes a happy medium that has proved quite popular in recent years, as is shown by the increasing number of text-books of this type.

Dillavou and Howard's first edition has proved to be one of the better text-books that combine treatise and case material. The revised edition shows an improved organization of material and the elimination of minor imperfections that always creep into a first edition. Also, the revised edition mentions certain recent changes in the law, such as the 1933 amendment to the Bankruptcy Act, which amendment provides for compositions and extensions without debtors formally being adjudicated bankrupts.

The chief criticism that may be directed at this work is one that is inherent in the method of teaching business law and not in the book itself. The brief space into which so much material must be crowded necessarily causes legal principles to be stated as categorical rules, there being no room for an adequate discussion of majority and minority views or for a discussion of exceptions to the rules stated. Also, the broad field covered in so few pages naturally results in the statement of one rule after another without any opportunity for properly emphasizing the most important principles. These two objections can be at least partially overcome by classroom lectures, although a deviation from the categorical rules of a text may tend to confuse the average class.

One minor objection to this book is the somewhat limited scope of the index, which defect detracts from the value of this volume as a ready reference work for finding particular rules of law. In addition to being limited in scope, the index in the volume reviewed by the writer ended with the letter "s". This omission, which is obviously the publisher's error, is possibly explained by the fact that the volume reviewed was one of the earliest copies of the new edition to come off the press, the defect probably being corrected in later printings.

W. W. Kennerly.

University of Tennessee School of Law.

NINTH ANNUAL REPORT OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE (June 15th, 1932—June 15th, 1933)—Publications of the Permanent Court of International Justice, Series E, No. 9. A. W. Sijthoff Publishing Co., Leyden, 1933. Pp. 375. Price: Fl. 4.75.

The *Ninth Annual Report of the Permanent Court of International Justice* appears this year in a slightly condensed form, thus making possible a material reduction in the sale price of the Report without curtailing its contents. The first chapter contains as usual certain essential facts concerning the members of the Court, the composition of the special Chambers and the organization of the Registry. From it we learn that during the past year new additions to the premises of the Court have been made. Furthermore, the terms of the arrangement now in force with respect to the Court's installation at the Peace Palace are given. Chapters II and III are devoted to the Statute, the Rules of Court and to the jurisdiction of the tribunal. Here is found a detailed treatment of the question of the revision of the Statute and of the Rules of Court. The interesting information is given that nineteen of the cases thus far dealt with by the Court were submitted by unilateral applications, four—including the important case concerning Eastern Greenland—were based upon the "Optional Clause" of the Statute of the Court. The tribunal has also dealt with seven cases submitted by special agreement and with twenty-six cases submitted for advisory

opinion. A list of all these decisions, together with relevant summaries, is given in Chapter IV, while in Chapter V is set forth short reports on the judgments, advisory opinions and orders rendered since June 15th, 1932. This fifth chapter is undoubtedly the most important in the Report. Chapter VI is devoted to a digest of decisions taken by the Court in application of the Statute and Rules. Chapter VII to the latest publications of the Court, and Chapter VIII to a consideration of the Court's finances.

It should be added that the bibliography contained in Chapter IX, and consisting of 80 pages, is very valuable. It comprises a list of recent publications, including articles in reviews, dealing with the Court. Finally, Chapter X gives a table of the States which have signed the "Optional Clause", and also a complete list of the instruments governing the jurisdiction of the Court, including the text of those which have been recently concluded.

John B. Whitton.

Princeton University.

THE ADMINISTRATION OF JUSTICE. Edited by Raymond Moley and Schuyler C. Wallace. The Annals of the American Academy of Political and Social Science, Philadelphia, 1933. Pp. v, 256. Price: \$2.00.

The purpose of this volume, edited by Professors Raymond Moley and Schuyler C. Wallace, is to present in compact form for the consideration of the lawyer and social scientist certain important and up-to-date materials dealing with the administration of justice. As the editors point out, "a re-analysis of the general problems centering around the structure of the judicial system is obviously imperative in a discussion of this character, for despite the extensive tinkering with the judicial machinery which has taken place here and there throughout the country, the general structure of the judicial system still presents basic problems". The editors have built the present collection of essays around six principal categories: problems of general administration, problems of civil procedure, scientific methods in the courts, scientific studies of the courts, trends in legal education and the devolution of justice.

The essays are on the whole both readable and informative. The contributors include practicing lawyers, legal theorists, judges and social scientists, all of whom have either written extensively in the field of law administration or dealt with the problems at close range as administrators or practitioners. Brief reference to several of the essays which seemed to the present reviewer of especial interest and significance may serve to indicate the character of the volume and its importance to the student of "law in action".

Professor Charles G. Haines concludes an illuminating discussion of the general structure of court organization by summarizing the principles which in his judgment require special emphasis in any plan to revise existing judicial processes. He stresses (1) flexible constitutional provisions for court organization; (2) establishment through constitutions and statutes of a certain amount of unification of the court system involving a limited supervision over all inferior tribunals by the supreme court and a judicial council authorized to prepare and issue rules of procedure, to assign judges for special duties and to bring about uniformity in records and statistics; (3) expeditious procedure in the preparation of affidavits and in the discovery of documents, with greater use of masters and judicial assistants; (4) flexible administrative arrangements to permit needed specialization, to provide for the use of such devices as conciliation and arbitration, and to facilitate the settlement of controversies by summary judgments, declarations or right and like methods. The author believes that these principles

could be put into effect by degrees, without the necessity of wholesale reconstruction of existing judicial machinery.

Kenneth Dayton, a practicing attorney in New York City, writes with both candor and discernment on the subject of costs, fees and expenses in litigation. He shows how attorney's fees may be reasonable enough in the light of work done but nevertheless disproportionate because of the needless duplications in our system of litigation. He points out that the expense of litigation must be cut down by simplifying judicial processes. He advocates a principle of no costs where the action is brought and defended in good faith. But in cases where the action or defense is not bona fide he would impose the entire reasonable expense of the successful party upon the loser. He contrasts American procedure in this regard with that of England, where the successful party insists upon and receives from the loser all his reasonably necessary expenses. He condemns the tendency in some quarters to impose heavy costs upon all litigants, regardless of the merits of their causes, merely to reduce the volume of litigation. He ventures the suggestion that the question of compensation for attorneys might well be left to special taxing masters who would devote their entire time to such problems and attempt to bring about some measure of uniformity. In conclusion he emphasizes the need not only for statistical information but for objectivity of viewpoint in consideration of proposed reforms. "Even when we have the facts", he reminds us, "solution will still be difficult because so many desirable changes will run counter to practice and tradition and ingrained habits".

Perhaps the most challenging and constructive discussion in the entire collection is that of Professor Edson R. Sunderland entitled "Improving the Administration of Civil Justice". The author considers in some detail the types of service rendered by the courts in declaring the rights of parties and reviewing cases on their merits, contrasting English and American appellate practice and concluding that "in no other important civilized country in the world do appellate courts operate under such technical restrictions as in the United States". Passing in review the problems of court procedure, Professor Sunderland demonstrates the weakness of *ex parte* showings and presents the advantages of discovery before trial. The latter device, he points out, diminishes the importance of the pleadings and eliminates a large portion of the time-consuming and expensive technical procedure relating thereto. Empowering judges to advise the jury on the facts would, in the author's view, reduce time, strain and scandal in impaneling juries, facilitate the introduction of evidence, enable the judge to exercise more effective control over the conduct of the trial, simplify the task of instructing the jury on the law and reduce the number of new trials.

The matter of judicial personnel receives interesting treatment at the hands of Professor Rodney L. Mott, Mr. Spencer D. Albright and Miss Helen R. Semmerling. On the basis of data presented in their paper the authors conclude that while there are certain differences between the type of lawyer selected for the federal bench and the type chosen for the state judiciary, such differences are not so great as might be expected. Federal judges have a more distinctive political background than state judges and are usually men of broader experience and contacts. There is considerable evidence, that a judicial profession within the legal profession is gradually being developed. Judges are chosen more and more from among the class of lawyers who are professionally conscious and who have superior training. The tendency to promote prosecuting attorneys to judgeships and trial judges to appellate courts, together with increasing terms of judicial service, has increased the opportunities of the bench as a career.

Other worth-while articles include Professor Jerome Hall's treatment of some basic problems in Criminology, Mr. Herman Oliphant's discussion of paral-

lels in the development of legal and medical education, Dean Charles E. Clark's presentation of the educational and scientific objectives of the Yale School of Law, Professor L. C. Marshall's study of judicial statistics, and Mr. I. Maurice Wormser's consideration of legal ethics in theory and practice.

Social scientists who believe in the curative value of facts—who hold that studies showing the actual processes of government are worth more than pretentious tomes devoted to arm-chair speculation and literary theory—will find these essays both informational and stimulating.

Pendleton Howard.

University of Idaho Law School.