BOOK REVIEWS.


In this case book Mr. Richards has followed the same arrangement of subjects as in his textbook “A Treatise on the Law of Insurance” (3rd ed.). The two volumes supplement each other. Mr. Richards has succeeded in condensing within a small space a collection of cases and footnotes which deal with many important questions of insurance law. The book is divided into two parts. Part I consists of cases illustrating certain general principles of insurance law; Part II of cases illustrating the meaning and effect of certain clauses commonly found in policies of insurance. This seems to be a practical and effective scheme of division, and part II should be found particularly useful. As the basis of the chapters in this part, the author has inserted the New York Standard Fire policy, and typical life, accident and marine policy forms. Mr. Richards states in the preface to this book referred to above that “The law of insurance is composed of upwards of 3000 reported cases in the English language, to which must be added a great body of statutory law.” In a casebook of reasonable size, it is obviously impossible to do more than cover this large field in a general way. The choice of topics and the selection of cases seem to have been wisely made. When a conflict of authorities exists upon any point, a case is given on each side of the question. The footnotes by the author have been prepared with more than ordinary care, and contain upwards of 1200 citations supplementing the cases printed in the text. Mr. Richards has departed from the type of casebook criticised in the preface to his textbook, in which “index, table of contents and syllabus were deliberately eliminated.” With a table of contents, footnotes and other means, the material is presented in a coherent and readily comprehensible form.

B. F. P.


As there has been no general revision of the Pennsylvania Constitution for thirty-seven years, and amendments have been adopted only twice during that period, all of them in regard to a single subject, viz., elections; and as the prescribed method of amendment, though slow, is extremely simple; even those of us who have taken part in securing these amendments might be pardoned for opening this book with a feeling of wonder as to how the material—on the subject could justify a treatise of 292 pages, especially as Mr. Dodd is by no means alone in the field. His treatment of the subject, however, dealing both with its history and with the legal principles which underlie, or should underlie, the decisions of the courts in regard to it—principles as to which there is a great temptation to theorize, here, for the most part, wisely withstood—seems to amply justify the publication. His discussions are interesting, though the form of the book would have been improved by a division into a number of chapters of convenient length.
length, instead of five only, one of which occupies half the total number of pages, excluding the appendix.

When, in 1776, independence necessitated some change in the frame of government of the several colonies, the legislatures of New Jersey, Virginia and South Carolina adopted constitutions of their own motion, without any kind of submission to the people, and those of Connecticut and Rhode Island did practically the same thing, simply voting to continue their royal charters in effect, mutatis mutandis. In New Hampshire, New York, Delaware and Georgia, the legislatures received special authority to frame constitutions, but did not submit their work for adoption by the people, the latter step being taken only in Massachusetts, Pennsylvania, Maryland and North Carolina, in all of which it could probably have been omitted without serious disapproval. In view of all this, one can readily understand the slow development of the idea of a fundamental law, adopted by the people themselves, and changed by their action only, as distinguished from ordinary legislation.

At first the binding force of a constitution upon a state legislature was only moral, and the New Jersey constitution of 1776 sought to strengthen it by requiring the members of the legislature to swear not to annul or repeal certain specified parts of that instrument. The first Pennsylvania constitution required the people to elect every seven years a council of censors, to enquire whether the legislature had exercised unconstitutional powers, and to recommend the repeal of statutes which the censors thought unconstitutional. Some of the other early constitutions also contained provisions looking to revision at other hands than those of the legislature. Undoubtedly the decision in Marbury v. Madison (1 Cranch 137), in 1803, though made in regard to Congress only, must have operated to destroy the idea that a state legislature could change a constitution, but Mr. Dodd does not mention that case, and in fact glides rather hastily over this part of his subject.

It has never been positively decided whether a legislature, in providing for a constitutional convention, can limit its authority in any way. Judge Jameson, in “Constitutional Conventions,” contends that it can, but Mr. Dodd takes the opposite view, which was that of the New York and Michigan conventions of 1894 and 1908 respectively, though other conventions have been more subservient. The Pennsylvania Act of 11 April, 1872 (P. L 53), undertook not only to regulate the mode in which the constitution should be submitted to popular vote, but also to forbid the convention to change the constitution in certain respects. These restrictions were to some extent disregarded, and Wells v. Bain (75 Pa. 39) upheld the legislature as to the mode of submission, but Woods’ App. (id. 59) held that the adoption of the constitution by popular vote prevented any decision on the other point, though the dicta were strongly in favor of the legislature’s power.

The constitutions of Pennsylvania and some other states contain no provisions for revision by a convention, but this does not prevent revision by that means. Of the constitutions which contain such provisions, only seventeen specifically require adoption by popular vote. In a few of the other states, recent conventions have promulgated the constitutions without any submission, and Miller v. Johnson (92 Ky. 589) and Taylor v. Comth. (101 Va. 829) held that as the people and all branches of the government had acted under a constitution so promulgated, its validity could no longer be questioned.

The requirement that the legislature shall approve constitutional amendments at two successive sessions originated when legislatures were permitted to amend constitutions, the re-election of members who had approved the amendments being regarded as a popular ratification of their action. The modern practice of requiring all amendments to be adopted by popular vote amply fulfills the purpose of this ratification, so that the requirement of a second passage by the legislature is no longer necessary, unless mere delay be thought desirable.

It would have been interesting if Mr. Dodd had considered the results of a conflict between amendments which the people have adopted and the unamended parts of the Constitution. The failure to adopt one of the
amendments recently proposed in this state has produced this situation, which the courts will probably be called upon to deal with. The book was evidently written, however, before the vote in 1909.

C. C. B.


The many-sidedness of the law is at once the delight and despair of those who pursue its study, but in the case of those concerned in plans for its logical arrangement, despair will frequently predominate. Substantive and adjective law seem inextricably entangled. If, then, Professors Mordecai and McIntosh have included in their casebook on remedies much that is purely substantive law, who will be bold enough to point to the precise spot where the line must be drawn? Surely no one, unless, perhaps, a colleague whose course is overlapped and whose thunder, incidentally, is stolen.

No one, however, who has grappled with the problem of teaching procedure will fail to admire the industry and scholarship that has produced this volume of nearly a thousand pages, covering all branches of remedial law, with and without judicial proceedings. In the selection of cases, a decided preference is given to decisions of the North Carolina courts, but, if this detracts somewhat from the value of the work for general use, it ought to add to its popularity in the favored jurisdiction. In treating the cases themselves, the facts are abridged to very concise digests, a method which casebook writers have found wise and necessary in complicated cases involving many points, but which, if universally adopted, deprives the cases so treated of part of their educational value. Indeed, one of the purposes of the case system of instruction, as distinguished from the didactic lecture system, is to teach the student how to analyze the facts of real litigated disputes and thus get to the heart of the issues involved.

A feature of merit in the work is the introduction, an encyclopedic summary of the principles illustrated by the leading cases, which, if read in review, will enable the student to get a general view of the subject, often a matter of difficulty, unless the reading is under careful direction. And if the student reads and retains all that will be found in this volume he should be well equipped to deal with procedural problems.

W. H. L.


The subject of legal ethics has become of recognized importance in recent years, and Mr. Archer has prepared an excellent work. It deals thoroughly with the ethical problems which confront the lawyer in the performance of his duties to his clients, the adverse party, other lawyers, the court, and the state. The author presents the problem and his solution in a clear and concise form, and while the reader may in some cases disagree with his conclusion, he has had the benefit of an able discussion to assist him in arriving at his own solution.

Although the book is of value to any lawyer, it is particularly so to the young lawyer who is just entering the profession. Indeed, the author seems to have intended the work primarily for the young lawyer. In the second chapter he discusses and gives advice upon such matters as the location of an office, the advisability of taking a clerkship in another's office or starting out in independent practice, and the general condition in which an office should be kept. Later in the book a chapter is devoted to a discussion of the desirability of entering into politics. There is also an excellent chapter on fees, and a schedule of fees is given in the appendix.

The book is based on the canons of ethics adopted by the American Bar Association and Hoffman's Resolutions.

R. C. H.