BOOK REVIEWS


To a student of Pennsylvania institutions and traditions this volume comes as a welcome addition to those other works of Mr. Konkle that have appeared in the past twenty-five years. As the author has not listed his other works on the title page under his name, it seems appropriate to furnish such a list, for one who reads this book ought to be familiar with them if he desires to understand the men who played great parts in the formation of the Government of Penn, the contest with the Crown, the liberation of the Colony, and its erection into one of the United States. The volumes dealing with this period from 1682, down through the first quarter of the nineteenth century, are: David Lloyd and the First Half Century of Pennsylvania, Life and Times of Thomas Smith, Life and Letters of James Wilson, Joseph Hopkinson, Life of Nicholas Biddle, and George Bryan and the Constitution of Pennsylvania.

Benjamin Chew, the subject of this newest work, was born in Maryland, the son of a Quaker doctor, who afterwards became Chief Justice of what were then known as the Lower Counties, New Castle, Kent and Sussex,—those three counties which figured in the boundary disputes between the Penns and the Baltimores, and which later became the State of Delaware. Young Chew, at the age of fifteen, entered the law office of Andrew Hamilton, who was previously the Attorney-General of Pennsylvania, and who became the leading lawyer in the Colonies. He studied there for four years, or until Hamilton's death in 1741, when he returned to Dover, where his father sat as Chief Justice, and for a period became his father's assistant. At twenty-one, he went to London and entered the Middle Temple as a law student, at a time when William Blackstone was a student there. Returning to Dover in 1746, he commenced the practice of law, but his Philadelphia connections, formed when he was with Andrew Hamilton, took him there often, and the dispute as to the boundary line between Maryland and Pennsylvania, arising at this time, caused him to spend much time in both places, so that by 1754 he had a house in Philadelphia, and abandoning the tenets of the Quakers he became a member of Christ Church, on Second Street above Market. As a very young man he was thrown into large and important affairs, and by 1755, at the age of thirty-three, he became Attorney-General of Pennsylvania, succeeding Tench Francis, and this position he held at the same time as that of Councillor of the Colony, and Speaker of the Delaware Assembly. A year later, Mr. Konkle says: "He was easily the dominant spirit in the executive and legal sides of the two Colonies." He became the legal advisor of the Penns, both personally as well as proprietors, and becoming more and more a Philadelphian he withdrew from the Assembly of the Lower Counties. His practice increased greatly, and no lawyer of his time in Philadelphia excelled him. At the age of thirty-seven, he was the leader of the Philadelphia Bar.

With this background it would not have been startling had Chew actively espoused the cause of the Crown against that of the Colonies, but he signed the Non-Importation Resolutions of 1765, which causes Mr. Konkle in his Preface to make this interesting observation:

"Mr. Chew as a crown and proprietary officer stood for the charter and constitution of the provinces; and stood for it as a citizen as well. When the Crown and Parliament began encroachments on it in 1765, he
was one of the first to resist, and recognized treason in them as in anyone else. His loyalty was not royalism, and to the Crown, but to the charter and its secondary charter or constitution. This discovery is rather startling, for it is the highest type of Americanism, namely, loyalty to the supremacy of law and constitution. That is why, although a crown and proprietary officer in 1776, he was first a citizen under the provincial constitution and found no difficulty in becoming one under the commonwealth and national constitutions. That is why he became the highest interpreter of both provincial and commonwealth constitutions. Apparently the writer must look farther for a 'Tory' subject.”

It is a pity that such a man as this some twelve years later had of necessity to be removed from his office as Chief Justice of Pennsylvania. But he and Penn, the Governor, held unique positions, and as Crown officers were objects of suspicion and distrust. Prior, however, to this happening he became Register General of Pennsylvania and Delaware, and Recorder of Philadelphia City. By 1772, he had largely withdrawn from the practice of law, and in 1774 he became Chief Justice of Pennsylvania. At his appointment Governor John Penn wrote Thomas Penn: “Mr. Allen is just going to resign the Chief Justicehip to Mr. Chew, who is the ablest man in this country, and will be the best judge that ever sat in the Supreme Court.” That Mr. Konkle is right in his estimate of Chew as a loyalist, not a royalist, is well illustrated in his charge to a grand-jury in April, 1776, when he said: “I have stated that opposition of force of arms to the lawful authority of the King or his ministers is High Treason; but in the moment when the King or his ministers shall exceed the constitutional authority vested in them by the Constitution, submission to their mandates becomes Treason.”

Arrested and detained under restraint in 1777, he retired to Union Iron Works, New Jersey, but a year later he was released, and in 1781 he again took up his residence in Philadelphia. For twenty years he had held office, but now for ten he held none. As Mr. Konkle says, he and Penn saw the inevitable outcome of the struggle, and their uniquely responsible positions made it impossible for them to do other than to stand and wait. When the question of a settlement of the Penn interests in Pennsylvania arose, Chew again represented the Penn family, and by 1785 he was tempted to take up the practice of the law again, but he was sixty-three years of age, and resisted that temptation. He was compelled to sit idly by and see the Federal Constitutional Convention organized, and the carrying into effect of the Constitution of 1787. Upon the reorganization of the Courts in 1791, Governor Mifflin appointed him President of the High Court of Errors and Appeals. At this time he bought back the famous estate of “Cliveden”, around which the Battle of Germantown had been fought, and which he had sold to Blair McClenachan in 1779. The High Court of Errors and Appeals was abolished by an Act of 1806, but Chew continued as President of the Court until its final dissolution in 1808. He thus was President for seventeen years.

The Port Folio, the leading American literary journal of the time, in an article written in 1811, shortly after Chew’s death, estimated him “as a man of consummate worth, rather than real greatness,” and says that—“His talents though not the most elevated and commanding, were yet sufficiently elevated, to be of the most useful kind. They were solid and practical, calculated to benefit mankind, not buoyant and speculative, fit only to amuse and delight them.”

* At ix.
Chew was essentially a counsellor, and his soundness of judgment matured at an early age. His opinions are tersely expressed, and his reasoning is close and logical. The opinions that he wrote, such as now are in existence, have come down largely through the notes of his colleagues on the Bench, and through the Reports that they were able to compile by the use of those notes.

The book is well printed and well illustrated, with reproductions of documents, family portraits, and pictures illustrative of his house "Cliveden", and other places wherein he played a part.  

*Joseph Carson.*


It is an accepted generality that the judicial rules of evidence are not controlling in administrative determinations. How far has this departure from judicial standards progressed, specifically? That is the subject of inquiry in this rather brief but cogent work, an investigation of the realities of administrative practice. The study is broken up into four main parts. First, legislative provisions in the different jurisdictions, or absence of provisions, relating to rules of evidence; second, specific exercises of the rule making power vested in administrative bodies; third, a report of the results of a questionnaire addressed to the state and territorial public service commissions, to the Interstate Commerce and Federal Trade Commissions, and to the Commissioner General of Immigration, and designed to search out their actual practice and their views upon the desirability of applying the rules of evidence; fourth, the attitude of the courts in passing in review upon questions of inclusion and exclusion of evidence. Perhaps the author's most valuable contribution in this work lies in his excellent comparative analysis of pertinent judicial decisions, state and federal, approximately fifty in number, covering Interstate Commerce Commission, Federal Trade Commission, state public service commission, alien exclusion and deportation, and tax cases, with a summation of results under appropriate heads.

Burdens of proof, presumptions, what constitutes a *prima facie* case, are alike excluded from the author's investigations. He is concerned in this treatise only with those rules which affect dependability of evidence—hearsay, matters not of record in the proceeding, secondary evidence, opinions and conclusions not of qualified experts, other similar informalities—and, incidentally, with the relation of the admission of such evidence to the fundamental requisite of a fair hearing. His aim is to discover "what rules of evidence are not applied, why they are not applied, and, so far as possible, with what effect."

In pursuit of the aim first stated, namely, what rules are not applied, the field of investigation is thoroughly covered. The material is arranged by types of administrative tribunals and by types of evidentiary questions, separately. This adds to the value of the book for easy reference. Some variation is revealed in the actual practice of different types of administrative bodies and of different jurisdictions. However, the general limits of departure from the "technical rules" of evidence are clearly indicated.

With respect to the second aim, to determine why the rules are not applied, the author has collected and put into an orderly arrangement the familiar pronouncements of the courts and of the commissions, together with many not so well known. They stress the peculiar nature of the administrative function, the need of expedition and the saving of expense, the assumed expertness of
commissioners, the absence frequently of legal counsel, and like reasons stated in different terms.

What has been the effect of this relaxation of the rules? It is clear that the author is not satisfied that the results have been altogether salutary, though the answers to the questionnaire sent to the commissions reveal their state of mind on this point as quite complacent. The thought occurs that to have made the investigation complete it might have proved illuminating to canvass the views of those whose fortunes and rights were subjected to administrative findings, and who lost. Certainly the records imply an abiding faith, on our part, in the integrity, the wisdom, the impartiality and the expertness of those who preside over our administrative system of justice. There is a ring of sincerity and a note of admonition, too, in the author’s conclusion that we may have gone too far in relaxing the safeguards to administrative procedure. He concedes that discrimination must be made between the different kinds of work of the commissions, and between the commissions themselves. He does not urge the view “that administrative hearings must be warped into the mold of judicial trials”. But he deprecates the ready admission of hearsay, and findings made in part upon evidence not produced of record, with the resultant denial of the right of cross-examination, all of which threaten fairness of hearing and dependability of decision. “The pro forma reception of evidence,” he believes, "promotes decisions on ‘hunch’." He submits “that even the expert commissioner should receive hearsay sparingly, should not deny himself the testing value of cross-examination, and should be willing to introduce what he acts upon.” These are sensible observations.

Because of its pointed suggestiveness, we quote in conclusion a paragraph which summarizes the cumulative effect of the cases analyzed.

“It is the view, moreover, of both courts and commissioners, certainly of commissioners, that the latter are experts who may, on that account, be trusted to seek facts for the foundation of their orders without the aid of the rules which courts have believed necessary to assure an honest, accurate, and unprejudiced assembling of information for juries, indeed for judges. Commissioners, it is believed, can weigh the evidence, whatever its nature and however informally presented, better than courts. Their expertness enables them to know the worth of hearsay, the probable authenticity of unidentified signatures, the comparative value of evidence taken in other causes—without being confused or misled by, or obliged to sift out, the collateral issues involved; to know the value of the conclusions of lay witnesses without presentation of the data upon which they are based; to understand how far to give credence to matters not within a witness’ knowledge; to judge of the correctness of secondary evidence as to the contents of books; to know whether or not to consider testimony not shown to be connected with the case; to judge of the value of letters and telegrams and copies of contracts; to sense the accuracy of commercial ratings, investors’ manuals, recitals in deeds, interviews, newspaper clippings; to know the worth of common knowledge; to understand the statistical reports of carriers, and the scientific reports of engineers without examination of the makers; to give proper weight to the affidavits of prostitutes and the ex parte statements of their ‘customers’; to evaluate impeachment without explanation; to tell how far to treat contradictions as affirmative evidence; to value the testimony of wife against husband; to know to what extent proof of the commission of one act is proof of the commission of a similar one; to take evidence for what it is worth without discrimination at the outset as to competency; and to act dependably and fairly upon their own information undisclosed to parties or to reviewing courts—all better than judges and juries. Commissioners have prescience indeed. This is not
an indictment of commissioners; it is a recital of their own doings with the rules of evidence, told by themselves, and sanctioned by reviewing courts.”

Robert A. Maurer.

Georgetown University Law School.


The thesis of the author can be stated in a very few words which every layman will accept without reservation. The thesis is that law ought to aim at producing as much happiness as it can, and the corollary is that helpful legal criticism must have this aim of the law in view. The philosopher, however, and the legal philosopher, too, does not agree so easily with a proposition which to the ordinary citizen seems self-evident. Self-evidence, in fact, as a category, has almost been erased from the philosophic vocabulary. The legal philosopher must first know what law is, what happiness is, and then he may be unwilling to grant the thesis. Dr. Cohen, therefore, must tell us first what law is: “a body of rules according to which the courts . . . decide cases.” He does not trouble to define happiness, though he makes it clear that the term designates “the state of mind in which pleasure predominate.” But he avoids the word happiness in his discussion because of its ambiguity. He shows first that ethics is indispensable in legal criticism. He then proceeds to show that the fundamental idea in ethics is “the good”, in terms of which all other ethical ideas can be expressed.

He then devotes the longest chapter in the book to a discussion of the meaning of the ethical term “good”, and comes to the conclusion that “good” is equivalent to “contains a surplus of pleasure”, or rather, to quote his words: “A is intrinsically good is equivalent to A contains a surplus of pleasure.” It follows easily from these premises that the only really valuable and significant criticism of law is concerned with whether it does or does not bring about a surplus of pleasure in human life.

This does not of course mean that the law cannot be judged, or evaluated—and significantly, too—from other points of view. Much less does it imply that one who is ignorant of the technique of the law is the best judge of what law is good. Accordingly, the author passes in review the various standards of legal criticism that have been proposed, some of which are non-ethical, while others are ethical but fall short of the author’s standard, namely, whether the law in question produces as much good as it can. It is not necessary in this place to enumerate all of these standards rejected by the author. The interested reader will consult the book itself. Suffice it to say that they are rejected not because they are, in the author’s mind, of no value at all, but because they are partial, subordinate and not ultimate. Thus the “aesthetic” standard, as the author calls it, or the standard of “logic” as others designate the same thing, namely that of uniformity and consistency, is taken seriously and given its due as contributing to the certainty and predictability of the law, which in turn does to a certain extent promote the author’s own standard, the good life. It is rejected only as the sole and ultimate standard of evaluating a judicial decision. And a similarly reasonable attitude is taken by Dr. Cohen to a more important standard, that of justice. The difficulty here primarily is to know what justice is, and most of the definitions are either open to question or, if accepted, do not carry the conviction that justice as so defined is the sole and ultimate standard of legal criticism.

Dr. Cohen insists that the ethical standard of legal criticism applies not only to acts of the legislator, but also to judicial decisions. The denial of this by

2 At 93.
jurists is based on the accepted principle of *stare decisis*. The judge is limited in his function, so the opposing view runs, to discovering the principle of the case in past decisions and to subsuming the case at bar under that principle—a logical and not an ethical process. Dr. Cohen’s reply is that legal criticism undertakes to test the principle itself. Why should a judge be bound by past decisions? If the principle is to be accepted, it must be on ethical and not on logical grounds. And secondly, even on the assumption of the principle of *stare decisis*, pure logic alone would not enable the judge to infer the principle of a case from a past decision, for no case is like another; at least the names of the parties are different, and to ignore this difference on the ground that the names of the parties are an irrelevant detail, is no longer a logical but an ethical question. This sounds rather extreme, and might expose the author to the charge of speciousness, but when he raises the question in the same connection whether a past decision in which a rich party was plaintiff (or defendant) should be followed in the case at bar where the party in question is a poor man, his view that the matter can be decided on ethical grounds only and not on purely logical is not so specious after all.

Granted that the ultimate criterion of a good law (legislative or judicial) is that it promotes the good life, the next question is: What is the good life?; and this turns on the meaning of the good. This, in the abstract, is a purely ethical question, a question in the science of ethics. And, as was pointed out before, Dr. Cohen devotes chapter III, the longest chapter in the book, to an elucidation of this point. He passes in review the various ethical theories advanced by philosophers and decides in favor of what he calls hedonism: the adjective good has a unique meaning which cannot be expressed in non-ethical terms; it is constant in its signification and not variable; all things (experiences) which contain a pleasure surplus are intrinsically good, and conversely only things which are intrinsically good are things which contain a pleasure surplus.

The next step in legal criticism is to decide whether a given law does or does not promote the good life as thus defined. This is no longer an ethical or a legal question, but a question of fact. And to answer it adequately, nothing less than universal knowledge is necessary, or at least a perfect knowledge of economics, sociology, psychology and anthropology. For we must be able to calculate the effects of the various laws. However, between the content of the law as it stands in the statute book and its results in human life, there are certain legal factors that must be taken into consideration, namely the relation and coordination of the elements of the legal and political order. This topic the author treats in chapter IV.

From the brief analysis just given the reader will perhaps catch something of the present writer’s feeling that the book under review is very worth while. It treats of an extremely important topic in an expert and satisfactory way. The reasoning is clear and rigorous. The material both on the legal and ethical sides is well mastered in a systematic survey. No words are wasted and yet the book is not dry. The author is well trained in the logic of the modern schools and something of the scepticism or non-dogmatism of the modern philosophy of science pervades the spirit of the entire book. The present writer read the book with a great deal of satisfaction and takes great pleasure in congratulating Dr. Cohen on so conspicuous an achievement and in expressing the hope that out of his experience in the practice of the law he may from time to time continue to apply his canons of legal criticism to the details of legal enactment, decision and enforcement, and publish his results by way of filling out the framework presented in the book under review.

*University of Pennsylvania.*

Isaac Husik.

This little book is a renewed attack upon the highly reprehensible practices of the Allied Powers during and after the World War in confiscating the private property of enemy aliens. The subject has been abundantly treated since the war, notably, in the United States, by Judge John Bassett Moore and Professor Edwin M. Borchard. The authors of the present brochure do not add much that is new, but they give a convenient summary and offer suggestions for a new international convention which will safeguard private property in the future.

There is a good statement of the pre-war international law which had clearly embodied the results of long custom and practice in its prohibition against confiscation of enemy private property. The war measures in the various countries are then summarized as a prelude to discussing the dishonest attempt in the Peace Treaties to evade the stigma of confiscation by requiring the defeated powers to compensate their own nationals. Due credit is given the United States and certain other countries for their restoration after the war of varying percentages of the confiscated properties. The financial impossibility of adequate compensation being paid by Germany is described. The post-war expressions of condemnation of the confiscatory practices are noted.

For the future, the authors believe that only strenuous efforts will restore the sound old rule of international law. They advocate the conclusion of a general convention protecting private property (both tangible and intangible) on land. They admit the difficulty of attempting to secure the immunity of private property at sea. The resolution passed by the International Chamber of Commerce in 1931 is looked to in part as a model, and it is this resolution which is referred to as “a Kellogg Pact for private property, a Kellogg Pact which does not ban economic war as such but only strives to abolish its especially two-edged and mutually destructive form: the confiscation of private property.” The authors consider it essential to couple the conclusion of such a convention with a rectification of the injustices perpetrated by the Peace Treaties.

As in most arguments on this subject, the authors stress the self-interest of investing states. They are careful not to press the point too far, but they suggest a possible connection between American restitution of sequestered private property and recent American financial dominance and British confiscation of private property and recent British loss of financial leadership. The authors also argue that unless the confiscatory rule is set aside and the old law restored, persons will be afraid to make investments in foreign lands. The argument is a common one and theoretically sound but it does not receive convincing support from the record of the past fifteen years; perhaps investors are too forgetful or too near-sighted.

The brochure is obviously a brief for a definite point of view, but it is calmly written and relies on sound grounds, legal and economic, rather than on invective. Although most of the footnote references are to secondary sources, the facts and the law seem to be stated with very few inaccuracies.

Columbia University.

Philip C. Jessup.

Mr. Stone has given us not only a definitive study of the procedural aspects of the international guarantee of minority rights under the League's auspices, but a most illuminating analysis of the underlying theory and the practical effectiveness of such guarantees.

He begins by comparing the permanent, impersonal, semi-judicial control exercised through the Council of the League with the sporadic intervention of an individual state, as it took place in the nineteenth century. The advantages of disinterested intervention by an organization entrusted with permanent supervision are obviously very great from the point of view of the maintenance of international good feeling and of the effective protection of minority interests as well.

After a comprehensive analysis of the theoretical basis of the Council's competence and of the juridical nature of the League guarantee, Mr. Stone proceeds to a detailed consideration of the preliminary procedure as it has evolved in the past eleven years. The nature and form of the minorities petition, the rôle of the minorities section of the Secretariat, the conditions of receivability and the treatment of receivable petitions are all discussed very thoroughly, with frequent citations of actual cases, as reported in the Official Journal and other League documents.

There follows one of the most valuable contributions of Mr. Stone's book, his study of the composition and functions of the Minorities Committees and his estimate of the results of their work. He emphasizes the extra-constitutional nature of their activities, and their difference in status and function from actual committees of the Council, thereby clarifying a most confusing aspect of the problem.

Part III discusses the procedure before the Council, after that body has been formally seised of a question. Mr. Stone here makes another important contribution to the clarification of the theory in his careful differentiation of minorities procedure proper from that followed in the case of disputes between states relating to minorities questions. As he points out, it was one of the objects of the treaties of 1919-1920 to remove the protection of minorities from the realm of inter-state disputes, particularly between interested parties, and to enforce the guarantees by the disinterested action of the whole Council, rather than by interstate litigation. In spite of this, a considerable number of disputes have arisen, and the historical development of Council practice in respect to such cases is described and analyzed, reaching the conclusion that "only when, in the opinion of the Council, there is a real threat to peace, will it consent to treat as a dispute between states a question concerning alleged infractions of the minorities treaties."

Chapter VII deals with the constitutional checks upon the activity of the Council: for example, the proper methods of seisin, the possible limitations on the jurisdiction of the Council in a particular case, and the operation of the rule of unanimity (which includes the right of the state whose observance of the minorities treaties has been called into question to full representation on the Council during the consideration of its case, and therefore to vote when the Council makes its decision). According to Mr. Stone, "Such a rule does not mean that the powers of the Council are nullified. . . . At each stage the State concerned must face the full Council which, in spite of the divergent interests of its numbers, forms, in general, an unsympathetic audience." Furthermore, the Covenant exception for majority rule, in matters of procedure, "including the appointment of Committees to investigate particular matters" (Art. 5) prevents
the recalcitrant State from blocking investigation, and the provision of the minorities treaties conferring upon the Permanent Court of International Justice compulsory jurisdiction in regard to their interpretation makes it possible for the Council to ask for an advisory opinion without the consent of the State concerned.

Chapter VIII takes up, step by step, the actual procedure before the Council, including such matters as the rôle of the Rapporteur, the Council discussions, and the various methods of bringing moral pressure to bear so as to remedy conditions as promptly and effectively as possible, and at the same time not un-duly humiliate a State disposed to be conciliatory.

As the author says in his conclusion, his "study presents at every stage a picture of the growth of a very complicated machine on the basis of very simple treaty texts." As in many other fields of law, "a scrutiny of the texts alone without an examination of the Council's practice would not have provided more than a slight indication of the form and qualities of the machine." Of the five main principles underlying the present procedure, "three were present in the settlement as reached at Paris, whilst the other two have been produced empirically as a result of the Council's experience."

The book closes with a brief appreciation of the present machinery and of the prospects of its future development. There are some useful documentary appendices, including tables of the cases considered by the Council, and a good index. It should be of value to everyone who wishes a clearer understanding of one of the most significant legal experiments of the day: the attempt to guarantee by international supervision certain fundamental rights of particular groups of individuals against infringement by the government of their own state.

Helen Dwight Reid.

University of Buffalo.

MATERIALS IN THE LAW OF SECURITY TRANSACTIONS. By Albert Kocourek. Edwards Brothers, Inc., Ann Arbor, 1932. Pp. (Book one) viii, 250; (Book two) vi, 243; (Book three) vi, 327; (Book four) x, 306. Price $7.00.

The casebooks which established the casebook system consisted of cases and not much else. Ames, in his Cases in Equitable Jurisdiction, did include voluminous notes, but these notes consisted almost entirely of citations and the briefest of abstracts. Williston, in his Cases on Contracts, had few notes, and these were mostly citations at the end of chapters. Beale, in his Cases on the Conflict of Laws, had few notes, almost wholly made up of citations. Many other early casebooks consisted only of cases with occasional extracts from treatises and ancient statutes.

Class presentation was based upon the statement of the case by a student. Williston and Beale, and I suppose this was true also of Ames, enriched the class discussion by stating hypothetical cases, some imaginary and some drawn from court decisions. Presumably other teachers using these casebooks likewise employed hypothetical cases. If a teacher happened to have studied at Harvard, some of the illustrations doubtless had a pronounced Cantabrigian flavor. In any event the casebook itself did little or nothing to furnish the teacher with illustrative material.

Present day casebooks have gone a long distance from the early Harvard models. Casebooks for third year students have tended especially to be a
combination of casebook and treatise. To an increasing extent the case ma-

terial, as distinguished from the text, has concentrated on unsettled and anticipated

problems. The modern casebook, too, includes more suggestions to the student

and teacher in the way of question and problem. Teachers of independent

mind sometimes resent the amount of illustrative material that has been pre-

pared for their consideration, if not their use. On the whole, however, this

additional material is usually helpful, notably in the case of the teacher who

is overburdened with classes.

The sterility of much law teaching, where it is confined too closely to the

statement and discussion of cases, has induced many teachers to develop class

discussion more and more around problems suggested by the case material.

Mr. Campbell has already recognized this in his Cases on Mortgages, by in-

cluding in his volume a large number of cases which can serve as problems

either for oral or written exercises. Mr. Campbell presumably intends the

problems to be a supplement to the discussion of the cases. In the volumes

under review, however, Mr. Kocourek has made a more distinct break from

the old style case method of instruction, for his book contemplates that the

problems solely will be the basis for constant written exercises and also for all

of the oral discussions.

The actual arrangement of Mr. Kocourek's casebook is not so novel as

the method he uses personally in its presentation. Each chapter contains a

number of sections composed chiefly of cases but supplemented by quotations

from texts and extracts from statutes. At the end of the chapter there are

a number of problems. For example, following the first chapter, there are

eighteen problems. These problems seem to be based largely upon decided

cases. Code numbers and letters apparently if interpreted would furnish a

citation to the case. One or more problems are assigned to the class for each
day's discussion. Each student is put in the position of an appellate judge and

is supposed to report his findings and decision in writing. These opinions are

the basis for what goes on at the class meetings. When Mr. Kocourek wrote

the preface to his first volume he anticipated a number of advantages which

included the development of the student’s creative power, a more realistic

view of the limitations of legal rules, a more critical evaluation of decided

cases, a stimulation of interest, a systematic appraisal by the student of his own

progress and a more reliable check for the instructor on the student's work.

When Mr. Kocourek came to write the foreword for his fourth volume he re-

ported that the expectations advanced for his method had been amply realized.

He adds that the problem method properly employed does not exclude sound

theory, profitable dialectic, or the function of the teacher.

These four volumes, including 459 cases and 132 case problems, cover

with the various acts and other material 1126 pages. The subject matter is

“real” security. The term real is opposed to personal security, that is surety-

ship. In fact, however, Mr. Kocourek does not include in this volume land

security so that the course is devoted to the security uses of chattels, choses

in action, specialties, and documents of title. The first book contains two chap-

ters, one on dormant goods and one on active goods; Book II, discusses price

security and future goods; Book III, goods in course of marketing and docu-

mentary goods; Book IV, collateral obligations and speculative goods. Each

chapter is divided into five similar sections entitled respectively: preliminary,

the parties, third parties, remedies, and problems. In addition are the inserts

which consist mostly of statutes.

The four volumes are presented in paper binding, with two column pages,

reproduced by the modern method of photographing typewritten material. The

typing has been expertly done and the books are excellent examples of litho-

printing.
Mr. Kocourek has won much eminence in several fields of law, including legal philosophy. Security lawyers generally are greatly in his debt because he has devoted at least for a time his scholarly abilities to the problems of the presentation of security transactions.

John Hanna.

Columbia Law School.


A few years ago Professor Hanna of the Columbia Law School presented Cases and Materials on Creditors' Rights, which deals chiefly with problems of the unsecured creditor after a default. He has now offered a companion volume designed to present some of the problems incident to secured debts, including the methods whereby the creditor may assure himself against the consequences of possible default. Thus, the volume under review may properly be said to be a supplementary collection to the editor's earlier casebook.

The latest volume by Professor Hanna is divided into three unequal parts. Over one-half of the book is devoted to real estate mortgages. Suretyship material accounts for the smallest part of the volume. In addition to combining in a single volume the materials customarily offered in these separate courses, the editor has turned pioneer and added a valuable collection of cases and materials respecting transactions in which personal property is pledged as security. Contemporary business practice is increasing the use of conditional sales, chattel mortgages and trust receipts in credit transactions, and the modern commercial lawyer must be familiar with various security devices. Until fairly recently the importance of such credit transactions was not emphasized in the curriculum of the modern law school.

This modern and up-to-date volume is of timely interest since existing economic conditions have compelled creditors in many instances to realize upon their security, if any, and the liquidation of loans presents numerous problems of current concern to the profession. The book contains approximately one hundred and fifty principal cases in its fourteen chapters, more than 60 per cent of which were decided within the last decade. While only one English case is included in the collection of principal cases, it is interesting to note that some twenty-five of the principal cases were decided by the Federal Circuit

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1 Book Reviews (1932) 81 U. of PA. L. Rev. 240; (1932) 32 Col. L. Rev. 149; (1932) 17 Corn. L. Q. 718.
2 Book Reviews (1933) 46 Harv. L. Rev. 1351; (1933) 33 Col. L. Rev. 779; (1933) 17 Minn. L. Rev. 460.
3 The Uniform Trust Receipts Act, as finally perfected by the Conference of Commissioners on Uniform State Laws, was approved recently by the American Bar Association and recommended to the several States for adoption. (1933) 19 A. B. A. J. 600. Professor Hanna has contributed a number of articles on trust receipts. (1929) 29 Col. L. Rev. 545; (1931) 19 Calif. L. Rev. 257; and (1933) 2 Mercer Beasley L. Rev. 1. He is also the author of The Law of Cooperative Marketing Associations (1931); Book Reviews (1931) 80 U. of PA. L. Rev. 330; (1931) 31 Col. L. Rev. 1088; (1931) 45 Harv. L. Rev. 219; (1931) 41 Yale L. J. 157; (1931) 17 Corn. L. Q. 325; and (1931) 6 Temple L. Q. 134.
4 Cf. Sturgis, Cases and Materials on the Law of Credit Transactions (1931); Book Reviews (1931) 44 Harv. L. Rev. 880; (1931) 31 Col. L. Rev. 734; (1931) 40 Yale L. J. 495.
The principal cases are well chosen and embrace sufficient historical material. Additional historical material is incorporated in the numerous notes interspersed throughout the volume. Many of the principal cases explain the mechanics⁸ of various credit transactions and typical modern business forms⁹ and statutes are included in appropriate relation to the legal matter. In about seventy-five cases only a condensed statement of the decision is included. The extensive notes throughout the casebook contain many references to law review material and should prove valuable to students and practitioners alike, since they reflect Professor Hanna's wide knowledge of the subject matter.

To criticize the book in detail would be a work of supererogation. It is more important to understand its relation to the body of the law of which it is a vital part. Professor Hanna has grouped the business and legal aspects of his subject matter in a scientific manner and his casebook should contribute materially to the desired improvement in the division of law school curricula.

There are dangers in seeking to indicate the connections between different branches of the law in a casebook. Thus, Schroeder v. Arcade Theatre Co.,¹⁰ without an explanatory note, is apt to give the student an erroneous idea of the relationship between bondholders and the trustee under the modern corporate mortgage¹¹; a disputed problem in corporation finance. Recently a number of cases¹² have been decided respecting the right of individual bondholders to enforce payment, which should be considered in connection with the notes on page 854 of the casebook. Where a creditor releases the principal debtor, it is familiar law that he also releases the surety, unless there be a valid reservation enforce payment, which should be considered in connection with the notes on page 854 of the casebook. Where a creditor releases the principal debtor, it is familiar law that he also releases the surety, unless there be a valid reservation of recourse against the surety. While this principle applies to a composition agreement,¹³ the rule does not apply to a composition in bankruptcy, due to the provisions of the Bankruptcy Act.¹⁴ Mention might have been made in the Notes to this important distinction.

Madden v. Beverly Development Corp.,¹⁵ should be read in connection with Central Chandelier Co. v. Irving Trust Co.¹⁶ The recent case of Woodward

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⁸For instance, the intricacies of the so-called “short sale” is described in Provost v. United States, 269 U. S. 443, 46 Sup. Ct. 152 (1926); casebook at 98.

⁹E. g. the forms employed by the General Motors Acceptance Corporation in financing the sales of automobiles are printed in the casebook at 211-215.

¹⁰175 Wis. 79, 183 N. W. 542 (1921); casebook at 847.


¹⁵259 N. Y. 343, 182 N. E. 10 (1932). See also Miller v. Hart, 32 Hun 639 (N. Y. 1884); Clinton Trust Co. v. Joralemon Street Corp., supra note 11, reversed on other grounds.
v. Schiff throws additional light on the legal incidents of the relation between stockbrokers and their customers.

The reviewer fails to appreciate the wisdom of including in the volume some ten pages containing the table of contents of a typical corporate mortgage. Otherwise, Professor Hanna is to be congratulated for editing such a splendid casebook.

New York City, N. Y.


The author of this book is a psychiatrist who has devoted many years to an intensive study of the mental processes of the so-called "criminal insane". The present volume (of quarto size), consists almost entirely of the autobiographical account of five patients who were studied by Dr. Karpman, together with comment on each case not only by the psychiatrist, but by fellow patients. There has been almost no attempt at verification of the accounts, except by means of such considerable internal evidence as has been brought out by the questioning of the patient by the psychiatrist.

It is safe to say that the book is so far one of the most complete and authentic collections of criminal autobiographika which has yet appeared. It will not have a large popular sale, largely because it is available only to members of the learned professions, but every serious student of crime owes Dr. Karpman a debt of gratitude for his industry and diligence in accumulating so impressive a mass of data on the stuff our criminal courts deal with.

Massachusetts Department of Mental Diseases.

BOOKS RECEIVED


FONTIS JURIS GENTIUM. (Digest of the Diplomatic Correspondence of the European States.) Edited by Victor Bruns. Carl Heymans Verlag, Berlin, 1933.


(88)


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