

BOOK REVIEWS.

COMMENTARIES ON THE CONSTITUTION OF PENNSYLVANIA.

By THOMAS RAEBURN WHITE of the Philadelphia Bar.
Pp. XXVII and 618. Philadelphia: T. & J. W. Johnson
Co. 1907.

For many years there has been a manifest need of a book which would contain a careful exposition of the interpretations which have been placed by the Courts on the Constitution of Pennsylvania. This want is admirably supplied by Mr. White's excellent volume. His treatment of the constitutional law of this Commonwealth as it has been developed by the Courts although comprehensive, is yet so concise that his work is produced in the form of a single volume. The book was prepared in a large measure while Mr. White, as Assistant Professor in the Law Department of the University of Pennsylvania, was engaged in lecturing on the Constitution and statute law of the state. This book is not intended to take the place of Mr. Buckalew's "An Examination of the Constitution of Pennsylvania" which was published shortly after the Constitutional Convention of 1873, but rather to treat of the interpretation of the Constitution since that time.

The brief historical introduction with which Mr. White has prefaced his book, will prove of great interest to everyone who has not had an opportunity to study the development of the Pennsylvania constitutions from the date of the Royal Charter of Charles II to the present day.

The various chapters of the book treat of the different provisions of the Constitution under appropriate captions, e.g.—Local and Special Legislation; Limitations of the Legislative Power; The Executive; Railroads and Canals. The general scheme is to quote in each instance the constitutional provision relating to a particular subject. This is followed by a statement of the development of the law to the present, usually supported by extracts from the opinions of the Supreme Court.

To illustrate more fully the scope of the work it will be worth while to briefly examine his treatment of the complex subject of local legislation. After a brief discussion of the classification of acts as general or local and special, Mr. White refers to the abuses arising prior to 1873 from the passage of almost countless private acts, and then quotes

the constitutional prohibitions against special legislation. The questions arising under the various attempts at classification are treated with brevity and clearness with references to all the leading cases, e.g.—*Wheeler v. Philadelphia*, 77 Pa. 338 (1875), and *Com. v. Moir*, 199 Pa. 534. No attempt is made to refer to every case in which the subject has been mentioned as the author properly regards that as the province of a digest rather than of a book of commentaries, but sufficient cases are cited to make clear every statement.

Mr. White's book is a valuable addition to the legal literature of Pennsylvania. It contains an accurate, clearly expressed and broad treatment of every question which has been dealt with in Pennsylvania Courts in which the interpretation of the Constitutions has been involved. The verbatim quotations from judicial opinions while occasionally too lengthy, serve to supplement the careful commentaries of the author. To everyone interested in questions of constitutional law whether as a practitioner, a legislator or a student Mr. White's work will prove most useful and of great interest.

R. D. J.

THE INTERNATIONAL LAW AND DIPLOMACY OF THE RUSSO-JAPANESE WAR. By AMOS S. HERSHEY, Ph.D. Professor of Political Science and International Law in Indiana University. New York: The MacMillan Company 1906.

To those who are in search of an interesting narrative of the diplomatic incidents connected with the Russo-Japanese war the above book will prove a gratifying discovery. It is written in an easy style and holds one's interest remarkably well for a technical work. Here indeed lies an important fact, the book is not technical and therefore the student and the international lawyer must accept its statements with several grains of salt.

In the first place the plan of the book is poor. There is no logical sequence in the treatment of the various topics and no division between the problems presented by incidents of land warfare and those arising upon the sea. Then too the author gives you frankly to understand at an early stage that he does not pretend to be impartial and the result is that this essay is almost offensively pro-Japanese. This expression is used advisedly because a work of this kind should be written absolutely without prejudice if it is to be of any use at all. There may be other places but so far as the reviewer can ascertain the only point where the Japanese

are severely criticised is at page 263 when in speaking of the capture by the Japanese of the Russian torpedo boat *Ryesstutelm* which had sought refuge in the Chinese port of Che-Foo, Mr. Hershey says: "The Japanese Government refused to offer any apology, disavowal, or restitution for this gross violation of Chinese Neutrality, and it must be admitted that her conduct in this matter, although altogether exceptional, constitutes a blot upon a record which was otherwise remarkably clean and spotless from the standpoint of International Law."

In order to preserve the fiction of this spotless record Mr. Hershey vehemently defends Japan's initiation of hostilities without a declaration of war, although the most casual investigation of authorities would show him that the precedents are against such action, and he excuses the open violation of Korean neutrality by the Japanese on the specious ground so frequently employed by the Japanese themselves that Korea being a weak and helpless nation was not entitled to fair and equal treatment but that her neutrality could be freely violated on the theory that "might makes right." It is not contended nor does the reviewer wish to give the impression that Russia was guiltless of infractions of International Law. As a matter of fact neither belligerent behaved fairly towards the other and the world at large. It is surely a mistake, however, to turn a legal treatise into a bit of special pleading and for this reason it is thought that this book while of undoubted historical interest will not prove to be a valuable or a permanent addition to the bibliography of International Law.

T. J. G.

THE PRINCIPLES OF GERMAN CIVIL LAW. By ERNEST J. SCHUSTER, LL.D. of Lincoln's Inn, Barrister-at-Law. Oxford: Clarendon Press, 1907. Pp. xlvi, 684.

This work deserves notice not only for its intrinsic usefulness but also for what its mere publication signifies to the lawyers of all countries where the English Common Law prevails.

The reasons which will cause it to attract attention in the United States are fairly traceable to the widespread and deplorable perversion of the ancient and scientifically defined rule of *stare decisis*. Notwithstanding the occasional instances between the times of Coke and Blackstone when the real juridical function of this great principle was employed to defy logic and solemnly sustain absurdities it had

become in its true sense a bulwark of the Common Law when the "Commentaries" were written and remains so to-day.

It has likewise always been recognized for its scientific force in the Civil Law, merely being invoked by a different method. As the learned Roman juriconsults were appealed to for interpretation of the law, so the opinions of modern Continental juriconsults are sought through their code commentaries for utilization by advocates in argument before the courts.

Under the Common Law system no original opinion or commentary has been deemed acceptable unless uttered amid the insignia of judicial office and supported in principle by the decision of some earlier wearer of the ermine. During the period when judges and courts were few it was not possible for the juriconsults of the bench to vary much in their interpretation of the law and by reliance upon decided cases for underlying principles they reached results that were comparatively uniform. With the settlement of this country, however, difficulties began to appear. Men inadequately trained for judicial duties and of mediocre intelligence were empowered to announce binding doctrines of jurisprudence bearing the earmark of inferior minds and the lack of a profound study of the legal bases involved. From inability to grasp the true principle, apply it scientifically and sustain it reasonably arose a widely recognized privilege of citing former decisions *en bloc* and not by way of illustration only. In this originated the vicious diversity of doctrines and the slavish rule of mere case law now prevalent and which make the results of a suit at law as uncertain as the proverbial Chancellor's thumb.

Manifestly this is at variance with the true *stare decisis* rule whether the comparison be made with the early English method or that of the juriconsults under the Civil Law. In its modern application we are deprived of the only *raison d'etre* which is equally demanded by both those systems, viz: the *rationale* of the doctrine involved in a particular case. Lord Mansfield said in *Jones v. Randall*, Cowp. 37: "The law of England would be a strange science indeed if it were decided upon precedents only. Precedents only serve to illustrate principles, and to give them a fixed authority."

While this historical departure was not attained in a day, a year, nor in a decade, it has nevertheless been so steadily growing that the profound, logical, doctrinal arguments of earlier years have practically been replaced by mere citations of decisions frequently rendered by men unlearned in the science of jurisprudence and whose utterances would be counted as worthless if unsupported by the judicial office.

A widespread appreciation of this fact largely explains the general and special codifications in various States during the past half century. Certainty has been sought in the limitation of precedent to textual interpretation. Concurrently it has led the Bar of the whole country to look with increasing interest toward countries not subject to the English Common Law and with a growing indulgence for codes as a possible specific against the dangers and injustice of *stare decisis* as now applied. Of late years other factors have served to enlarge and fix attention in the same direction. Our phenomenal commercial growth, extraordinary immigration, important international marriages affecting property rights, the recent foreign acquisitions by war and the propensity for travel inherent in our people have obliged the Bar to become better informed as to the private laws of foreign countries. New social, industrial and political problems likewise constantly arouse inquiry as to how other nations have dealt or are now dealing legislatively with them. In this respect it will be recalled that our attention was especially directed to the German Bankruptcy Act, the French Employer's Liability Law and the Swiss Governmental Savings Banks. On the other hand the very concentration upon our own affairs which in former years bound us to the Common Law created a seemingly studied exclusion of other tongues so that but a small part of the profession in this country can boast a knowledge of foreign languages. This has doubtless also been owing to the fact that our own language is fast becoming universal for it is to be noted that even of the English Bar few speak any other save French. As supply follows demand and our broadened relations having created the need only of late years, little has been done in the field of translation. At this time there are English translations of only the following: Civil Code of France; Commercial Code of Germany; the Civil Code of 1889 and the Code of Commerce of 1885 of Spain; and the Civil and Commercial Codes of Japan. As to text books or commentaries there are practically none of importance save Sohm's *Institutes*, beyond what may be termed institutional, such as the works of Grotius, Puffendorf, Savigny and Jhering.

The disadvantage resulting from the field of foreign law being practically inaccessible has within the past few years aroused some activity. The Pennsylvania Bar Association at its meeting in June 1905 appointed a Committee on Comparative Law with instructions to report upon the situation and make recommendations. At the meeting in June 1906 this Committee said in its report:

"It cannot reasonably be doubted that there is a growing inclination to weigh recent extensions of Common Law doctrines and the ever-increasing and sometimes startling Federal and State legislation in the scales of general comparison. . . . A disposition is manifest to test every new legal proposition and every social, political and commercial innovation in the light of experience at home and abroad and by every system of jurisprudence. . . . The Committee is convinced that the American lawyer should have access in English to the great landmarks of jurisprudence and the modern laws of all countries. Fundamental juridic truths constitute the world's institutional law and are confined to no era nor to any one people."

This was followed by a recommendation that an arrangement be entered into with the University of Pennsylvania to bear the expense of a translation of the Imperial German Civil Code and the Association so ordered. The work it is learned is already half completed and should appear next winter. As projected it will contain a historical introduction and be annotated as to source and interpretation largely on the lines of the admirable translation now being published by the French government through the Committee on Foreign Legislation of the Ministry of Justice.

As a further indication of the general movement mention may be made also of the action of the American Bar Association. At its meeting last August there was appointed a Committee "to suggest a method of co-operation with the several State Bar Associations, institutions of learning and other interested bodies whereby important legislation of foreign nations affecting the science of jurisprudence can be brought to the attention of American lawyers and become available in the general study of private law."

The degree of general and professional interest is likewise indicated in the growing attention to foreign laws manifested by the law libraries throughout the country. Harvard University leads with a collection of some ten thousand volumes. The New York Bar Association, the University of Pennsylvania, the Law Association of Philadelphia, the Northwestern University, and several great institutions of learning and libraries in the West also have large Foreign Law Sections filled with carefully selected works.

The drawback, however, arising from lack of translations, is a serious one which will require time and a more concerted effort of the profession to overcome. As the movement becomes broader no doubt there will be a response by the publishers both in this country and in England. The latter seem already more alive to the situation than our own houses. Last year an English company published "The German Empire" by Dr. Burt E. Howard, containing much of interest

to lawyers concerning the courts and procedure, imperial and "particular," which cannot elsewhere be found in English and forming an admirable companion to the work which is before us.

There have also appeared from time to time law magazine articles of interest to students of foreign laws, among which, in this connection, may be mentioned one published in December 1902 and January 1903 in this magazine entitled "The German Civil Code" recounting the growth of German law from the earliest times to 1900 when the Code went into effect. Finally we have this work by Dr. Schuster whose wide research, familiarity with his subject and general scholarly attainments are foreshadowed in the preface and fulfilled throughout even to the index. His declared objects are significant at this period of our legal history:

"(1) to assist the study of English law from a comparative point of view, (2) to give an insight into the latest and most perfect attempt to systematize the whole of the private law of a country, (3) to give some practical help to the increasing number of practitioners who in the course of their daily work have to deal with questions of foreign and private international law."

That the English lawyer of to-day is protesting with his American brother against the slavery of case law and the perversion of *stare decisis* is shown by another sentence from his preface:

"Even those who look upon the study of law exclusively as a help to professional success have begun to see that the grasp of legal principles is of greater value than mere knowledge of cases and of isolated rules."

The importance, the scope and the utility of this work will appear more fully when it is recalled that it does not present a translation of any specific text but is an exposition of the active principles of the whole German law, customary, common, particular and imperial. These terms can be briefly explained. Throughout the territory now embraced within the German Empire customary laws have in various localities resisted all attempt at modification and are recognized as unaffected by legislative action of state or empire. The common law as so termed is understood to be a modified form of the Roman law embodied in Justinian's compilation and "received" in Germany in 1495 under the sanction of the Holy Roman Empire. This was subject to local customary laws and in many regions has been supplemented or displaced by state codes, such as the Bavarian Code of 1756, the Prussian Landrecht of 1794, the Code Napoleon which in 1804 became effective in many provinces,

the Badish Landrecht in 1810 and the Saxon Civil Code of 1863. The "particular" laws are those customary or statutory provisions enjoyed by certain cities or localities of various states. The imperial laws are those which have been promulgated since the founding of the Empire in 1871. The force of these respective bodies of laws reaches almost every right and duty in various degrees and the advantage of presenting the subject in the form here adopted is at once apparent. No other way would have enabled the author to indicate the principles actually in force territorially. The further valuable feature is added of constantly recurring English Common Law citations to emphasize differences in principle or illustrate variety of application. It lends a familiarity to the doctrine announced or text cited when its absence would at times confuse, especially in such portions as require the use of German terminology.

These English authorities are also separately tabulated as are all the German Codes and Statutes referred to. These latter number thirty-seven and embrace imperial, state and local substantive law and procedure but their territorial force constantly requires commentaries in connection with the customary, common and particular laws. The whole subject after the Introduction is divided into five books: I, GENERAL RULES OF LAW (Chapters: Persons,—Natural, Corporate, Associate,—Rights, Acts-in-the-Law, Prescription), II, LAW OF OBLIGATIONS (Chapters: Nature, Creation, Interpretation, Circumstances, Discharge, Remedial Rights, Transfer, Joint Liabilities and Rights, Transfer of Property, Temporary Use of Property, Work and Services, Partnership, Aleatory Agreements, Suretyship, Abstract Agreements, Offers of Reward, Unlawful Acts, Obligations imposed by Circumstances), III, LAW OF THINGS (Chapters: General Survey, Possession and Registration, Ownership, Rights of User, Real Rights as Security), IV, FAMILY LAW (Chapters: Husband and Wife, Parent and Child, Guardian and Ward), V, LAW OF INHERITANCE (Chapters: General Survey, Statutory, Testamentary, Contractual, Compulsory (legitim), Administration, Sale of Right of Inheritance).

The usual difficulties in translating technical terms have been encountered by the author but the reader's embarrassment is reduced to a minimum by the happy choice of broad and unmistakable English equivalents where possible, the use of Latin expressions in certain instances and the retention of German words only where they have special designatory force serving to fix the idea more clearly and where an attempt to translate would be cumbersome and confusing. With practical foresight Dr. Schuster has even added

an Index to German Technical Terms, so that the student need labor under no uncertainty as to the full scope of any word retained in the original.

While it is impossible in this review to consider the work from the standpoint of conflict of laws or to specially mention the several principles which are without even analogy in our law it is not too much to say that the treatise is comprehensive, practical and scientific to a degree unparalleled save in Blackstone's Commentaries. As the student takes the latter in hand to learn the bases of the English Common Law so can he peruse this work with the assurance of receiving just as broad a knowledge of the principles of the Germanic law. Heretofore there has been no such presentation of the subject. Even in Germany there is no one work so concise, clear, comprehensive and practical; and the only other attempt, that of Professor Ernest Lehr in his "*Traité Elementaire de Droit Civil Germanique*" enlarged from his lectures at the University of Lausanne and published in 1891, while indeed valuable for its historical treatment, really, for the American lawyer, clears away little of the inherent confusion which marks the most intricate system of law known to the civilized world. This task has, however, been accomplished by Dr. Schuster.

W. W. S.

ROMAN PRIVATE LAW. Founded on the "Institutes" of Gaius and Justinian. By R. W. LEAGE, M. A., B. C. L., Of the Inner Temple, Barrister-at-Law, Fellow of Brasenose College, Oxford. London and New York: The Macmillan Company, 1906. Pp. xiii, 429.

In this work Mr. Leage gives us the subject matter of the *Institutes* of Gaius and Justinian, following, in the main, the original order of treatment. The book does not profess to be an exhaustive treatise on the Civil Law but the author contents himself with the more modest purpose of setting forth as simply as possible the principles of that law as given by the institutional writers thereon. This purpose he accomplishes admirably. It is not, however, a mere translation of important portions of the original. However, the matter is presented in clear, concise language, which any one familiar with the Latin text will recognize at once as remarkably satisfactory as an equivalent of the original.

Occasionally the author refers to the rules of the English law and makes comparison therewith, but such matter forms a very small portion of the book. Its purpose is rather to render easy of access the rules of the Roman Law as expounded by the most accomplished of the classical jurists,

and the student of English law will find of no small value its exposition of these rules in a form of which he can easily avail himself.

A short "Historical Introduction" forms the opening chapter in the book and contains a terse and accurate statement of the sources of the Roman Law. While, as the author himself points out, this chapter presupposes a knowledge of the elements of Roman Constitutional History, the knowledge presupposed is such as is generally possessed by the person who finds use for a book such as this.

The arrangement of the subject matter follows, as we have said, the old classification of the institutional writers, and there are the usual divisions into the general headings: The Law of Persons, The Law of Things, and The Law of Actions, and the subdivisions hereunder are the fairly well established ones. There is no effort at novelty or originality in the treatment of the subject matter—in fact such treatment would be at variance with the professed purpose of the work. Its claim to commendation must depend principally on the accuracy and clearness of statement of the principles of the Roman Law, and upon the judiciousness which has been shown in the selection of the rules given. In all of these respects we have no hesitation in giving it unqualified praise.

But, it is entitled to further consideration in view of its very adequate treatment of the jurisdiction of the praetor and the relation of that jurisdiction to the body of the civil law. Owing to the analogy here existing to the English equity system, the book will find special acceptance with those lawyers interested in this subject.

The book is one of modest purpose. It is gratifying to find that purpose accomplished in excellent fashion, and points of merit in the work which the author does not even profess to promise.

INDEX DIGEST OF INTERSTATE COMMERCE LAWS. By O. P. ANDERSON. Pp. 276. Nashville, Tennessee: Marshall & Bruce Company, 1907.

This volume contains the complete text of the Interstate Commerce Act including the amendments of 1906, the two acts relating to the immunity of witnesses who testify in interstate commerce cases, the so called Elkins Act and the Act expediting equity cases brought under the Interstate Commerce Act. For all these Mr. Anderson has compiled a single index which is admirably fitted for the use of the practitioner or the legislator who desires to ascertain the present provisions of the United States Statutes relating to

common carriers engaged in interstate business. This index refers not only to all the important single words used in the act but also contains more comprehensive headings so that it is equally as useful to one who is familiar only with the general subjects covered by these laws as to one who desires primarily to investigate the use of a particular phrase or word. The index serves also as a digest for under each heading is a succinct summary of the provisions of the various laws so that without examining the specific sections the reader can determine whether the reference to a particular word relates to the question he has under consideration. The excellent typography of the volume adds greatly to the value of the work.

R. D. J.

A HANDY BOOK ON THE LAW OF BANKER AND CUSTOMER.
By JAMES WALTER SMITH, Esq., Of the Inner Temple,
Barrister-at-Law. London: Effingham Wilson, 54 Thread-
needle Street, 1907. Pp. viii, 197.

The purpose of this book lies between that of the ordinary legal treatise and that of the superficial discussion of rules of law offered as a guide book to the layman. Mr. Smith has written for a limited class, capable of understanding and using to advantage the information he gives. This information, while in some respects elementary, is clear, explicit and considering the scope of the book, complete. The "banker" and his "customer" will find the book valuable, for it contains facts with which they should be familiar since they relate to the ordinary transactions of everyday commercial life.

It is unnecessary to refer in detail to the division of the subject matter and its treatment. Suffice it to say that the division is helpful and the treatment accurate to a degree far beyond that of the average book of this class.

THE TARIFF AND THE TRUSTS. By FRANKLIN PIERCE of
the New York Bar. New York: The Macmillan Com-
pany, 1907. Pp. xi. 387.

Mr. Pierce presents in this book a vigorous attack on the protective system, enforcing his argument by such evidence as he finds in statistics and by the history of tariff legislation in this and other countries. It is too much to expect to find novel ideas in a discussion of a question so long the subject matter of dispute, but in his analysis of modern economic phenomena as influenced by the imposition of protective duties, Mr. Pierce can lay claim to presenting the present day aspect of the problem.

It is this that gives his book value, and prevents its being merely a re-statement of trite matter. It does not lack, however, a statement of those matters which are a part of any adequate discussion of the subject, and among these we regard as worthy of special attention the historical sketches of the tariff history of England and Germany.

Careful attention is given to the relation of the federal legislation with regard to the registration of ships, against which the author inveighs bitterly but not without a clear presentation of his reasons for so doing. Chapters pointing out the special relation of the tariff to manufacture, labor and farming serve to develop the thought along particular as well as general lines.

A TREATISE ON CRIMINAL LAW AND CRIMINAL PROCEDURE AND ON EVIDENCE. By CHARLES E. CHADMAN, LL.M., LL.D., Chicago: Frederick Drake & Co., 1906. Pp. xviii, 333.

This book is one of the so called "Home Law School Series," and does not require extended comment. It is adapted to the needs of the beginner to whom are not open the advantages of intelligent direction of his legal studies. It sets forth in simple form the elementary rules of Criminal Law, Criminal Procedure, and Evidence, and includes an appendix of questions intended to enable the student to conduct a self-examination. In view of the author's purpose and the limited space devoted to the subject, it is obvious that the treatment of these subjects must be exceedingly superficial.