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Book Review

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BOOK REVIEW

INSTITUTES OF THE ROMAN LAW OF CIVIL PROCEDURE, by Leopold Wenger; Revised Edition, translated by Otis H. Fisk; Veritas Press, New York, 1940; pp. xxix-440; \$6.00.

In view of the recent perceptible interest in the study of Roman Law and the gradual increase of manuals in English suitable for its study, the translation from the German of Wenger's "INSTITUTES," familiar to students of Roman Law as the only extensive treatment of the law of civil procedure, should meet with a thorough, if limited, welcome. This translation, together with another appearing in Italian shortly before, in fact constitute a second edition of the original German, published in 1925.

The book is in no sense an elementary treatment of the subject and presupposes a certain familiarity with the substantive law of the Romans as well as the briefer treatments of the law of procedure found in such manuals as Buckland's "TEXT-BOOK OF ROMAN LAW," along with the history of private and public law. However, within these limits the work is institutional and didactic in character in that it provides a comprehensive analysis of Roman civil procedure in the various stages of its development in historical times. At the same time, the scholarly character of the work appears particularly in the copious and extensive notes which indicate the principal problems of recent research in this particular field.

General principles of the notion of civil procedure are first discussed, followed by a treatment of the organization of the courts, the competence of the various magistrates, etc. The major portion of the book is occupied with the bipartite procedure peculiar to Roman Law, the proceedings "*in iure*" and "*in iudicio*," in the first of which are traced the developments from the statutory actions of the XII Tables to the all-important formulary procedure developed by the Roman praetor and of the utmost importance to the development of substantive law itself. Particularly illuminating is the continuity of "*imperium*" in all the various stages of development. Then follow treatment of Execution and Extra-Suit Protection of Law. The second part of the book concerns the further development of procedure in the so-called bureaucratic "*cognitiones*" of the empire up to the time of Justinian, concluding with a brief chapter on the non-state courts, especially the ecclesiastical courts of the Christian era.

One pre-eminent difficulty in the various textbooks on Roman Law is the inevitable necessity of extensive quotation from the Latin sources, and since it does not appear expedient to translate these passages outright, it makes for rather rough reading on the part of one whose Latin is none too steady. The present edition includes an appendix with a translation of all the Latin and Greek passages, but even with this help the perusal will probably be none too comfortable for the average reader. With no apologies, the translation prefers the device of close adherence to the original German text, but it does seem that some few liberties could have been profitably taken with the involved German prose style. Some of the sentences, painfully Englished out of the original, are almost meaningless on first reading, such as: "the chiefest etymologically contrary explanations are . . ." (p. 96), or "plays the part of the refractory man of silence, whom one can not, with the best of wills to interpret, treat as one making an admission" (p. 114). These are only random illustrations of the type of translation and similar ponderous phrasings can be found on any given page. Surely this copy-book style of translation could be improved to the point of ordinary readability without too much violence to the ideal of a literal translation. On occasion, the reviewer found it necessary to consult the Italian version to clarify the meaning of transliterated

words and phrases. After all, identity of metaphor is not complete in two given languages, and a readable translation requires some imagination as well as a dictionary. There are minor sources of irritation in such inaccuracies as "Augustinian" for "Augustan" in referring to the time of the Emperor Augustus.

On the whole, the mechanical difficulty of reading this translation, along with the technical nature of the subject-matter, will probably not prove too attractive for the ordinary law-student, but to one inclined to research in comparative law Wenger's treatise on civil procedure and its close connection not only with substantive law but also with constitutional and economic development, will be a welcome addition in English to the scientific methods of the jurisprudence of Romanists.

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