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BOOK REVIEWS.

A TREATISE ON THE LAW OF CORPORATIONS HAVING A CAPITAL STOCK. By William W. Cook, of the New York Bar. Seventh Edition. Boston: Little, Brown, and Company. 1913. Five volumes, pp. cxix, 4984.

Nothing that I can say can add to or detract from the just popularity of this work. For downright usefulness in the lawyer's office this work from the first edition to this seventh one has been and will continue to be almost indispensable. It has been in the various editions equally useful to me in my work as a teacher of the subject of which it treats, throughout the past 19 years. I can recall no legal treatise that I have consulted so often, and with such uniformly satisfactory results, through so long a period, as this work. The text is remarkably concise and lucid, but makes up only a comparatively small part of the great mass of material in these five big volumes,—perhaps not more than one fourth of all. The great bulk of the work is made up of Mr. COOK's own abstracts of the cases given in the notes. The great quality of these abstracts is that they hit the point for which they are cited,—and they hit it in the way an investigator wants it hit,—squarely and accurately. To the notes in no other text have I gone with more confidence, and obtained greater satisfaction. The work is not and is not meant to be, a treatise on or a discussion of the principles of Corporation law, as MORAWETZ, TAYLOR or MACHEN, but is a statement in the most readily available form of what the courts have decided. Or as stated in the preface to the third edition, and so admirably carried out, it is "A statement of general principles in the text and an exhaustive analysis of the cases in the notes." The work has developed from the original subject, "Stock and Stockholders," of the first edition, into one covering the whole of Corporation law. For this reason, perhaps one might criticise the classification, or order of treatment, as not being the most logical possible, as for instance not so good as TAYLOR's, yet as a practical classification of the material in such a way as to be easily accessible for immediate use it has been eminently successful. "The divisions, chapter subjects, and section headings are so made as to find without delay, the point of law in which one may be interested. They have been built up from study of the cases themselves."

The qualities of this work are undoubtedly due in considerable degree to the author's close touch with the things of which he writes, arising from his long and eminent career as a practitioner in this field of the law,—and nearly everything he says comes as if it was the furnished armor or weapon of battle prepared for immediate use in the legal arena.

This seventh edition differs from the sixth edition mainly in the development of the law relating to: State regulation; Interstate Commerce Commission regulation; Anti-trust acts; Ultra Vires; Frauds on Stockholders; Holding Companies; Railroad consolidation; Reorganizations; Powers of Corporate officers; Stockholders suits; Organization of unincorporated associations as express trusts; Foreign corporations; and Liabilities of quasi

public corporations; also the addition of ninety-one corporation forms, mostly taken from those in actual use, and prepared by the most eminent counsel. Each form also indicates the section in the text treating of the subject-matter, which therefore serves as a most useful annotation of the form.

This edition adds 6000 new citations,—perhaps over 3000 new cases,—making over 60000 citations in this edition from about 32000 cases. In the 4th edition (1898) there were approximately 38000 citations from 19000 cases, while in the first edition (1897) there were about 6000 citations from 3000 cases. From the first to the last editions Mr. COOK has done his own abstracting and analyzing the cases cited in the notes.

The first edition contained four parts, which have been continued throughout all editions. These were: Part I, Issue and Liability on Stock—298 pp. in the 1st Ed., 818 in the 6th., and 860 in this; Part II, Transfer of Stock—147 pp. in the 1st Ed., 336 in the 6th, and 362 in this; Part III, Miscellaneous Incidents of Stock—195 pp. in the first Ed., 705 in the 6th., and 781 in this; Part IV, Stockholders Wrongs and Remedies—106 pp. in the 1st. Ed., 710 in the 6th Ed., under the title, "Frauds Ultra Vires, Intra Vires, Negligent and Irregular Conduct of Directors, Stockholders, Promoters and Agents; with 801 pages in this edition under the same title. In the 3d Ed. (1894) Part V—Bonds, Mortgages, Receivers, Foreclosures and Reorganization, was added to the work then, with 310 pp.; in the 6th Ed. this topic covers 674 pages, and 709 in this. To the 3d Ed. was also added Part IV—Steam Railroads, Street Railways, Telegraphs, Gas, Electric Light, Water Works, and other Quasi-public Corporations, to which was given 117 pages; in the 6th Ed. the same was given 430 pages; and 515 in this. In a general way these figures show the relative growth of these large topics. The third edition also contained Part VII—Abstracts of the Statutory and Constitutional Provisions of the Various States, and the Federal government. This has been left out of subsequent editions.

In a rough way the growth of Corporation law for the last 25 years is indicated by the size of the volumes in the various editions of Mr. COOK's work: 1st Ed. (1887), 787 pages; 2d Ed. (1889), 1066 pp.; 3d Ed. (1894), 2068 pp.; 4th Ed. (1898), 2783 pp.; 5th Ed. (1903), 2970 pp.; 6th Ed. (1908), 4309 pp.; 7th Ed. (1913), 4984 pp. In the preface to the first edition Mr. COOK stated that the remarkable growth of Corporations during the past 25 years (i. e. from about 1862-1887) had then created a body of law "so vast, complicated, and unwieldy," as to require treatment in separate parts. Since then it has become vastly larger and more complicated, but such works as Mr. COOK's have made it possible to keep track of what has been going on.

In fact, reading Mr. COOK's prefaces in the various editions, five years apart, gives a very clear and succinct statement of the broad course of corporation development. When the first edition was prepared the rights, duties and obligations of the stockholders,—the real parties in interest,—had not been worked out, and were perhaps the center of discussion. In the second edition the "Trusts and recent combinations in trade are explained and their legality considered." In the third edition, bonds, mortgages, deeds of trust, foreclosures, receivers, reorganizations, watered stock, and the

peculiarities of public service corporations had become important. In the next five years (4th Ed.) nearly one-fourth of the railroad mileage of the country had passed through receivership in the courts, "watered stock, broken pledges, insolvent preferences, illegal bonds, doubtful mortgages, foreclosures, receiverships, and reorganizations" were the order of the day, and "corporation ruin has created corporation law." In reorganization proceedings, "the powerful majority dictate the plan; the weak are at the mercy of the strong; and in the process millions pass to reorganizers by way of profit." Trusts had taken on "the form of huge corporations," and the relation of New Jersey to these corporations "resembles that between a feudal baron and the burghers of old, who paid for protection." By the 5th Edition the Holding Company had the stage; notwithstanding the anti-trust acts, and the Northern Securities decision. The consolidation of railroads authorized from 1865 to 1873, was insignificant compared with the consolidations (largely unauthorized in 1900. "The laws of trade were stronger than the laws of men. * * * Consolidation is the spirit of the age, moving on resistlessly, regardless of human laws and hostile public sentiment." By the 6th edition there was "deep satisfaction with present management of corporations, and when the wave of socialism rolls high, as it certainly will sooner or later, conservative thought may have to turn to some such plan as is outlined herein [the preface] to avoid the perils of governmental ownership of quasi-public properties." The plan proposed by Mr. Cook was a "Governmental Railroad Holding Company,"—to acquire the stock of all the railroads in the country, with a board of directors made up of the Interstate Commerce Commisssion and others chosen by stockholders to whom the government should sell the stock—This "is not socialism," nor "governmental ownership," but "private ownership regulated by the Interstate Commerce Commission, protected by the judiciary, and is absolutely practical." In the 7th edition Mr. Cook says: "We are drifting toward government ownership of public utilities," * * * "This is an age of consolidation, natural, irresistible and inevitable. * * * It cannot be stopped any more than the tides." "The railroads are not owned by Wall Street," but "are controlled by Wall Street because Wall Street makes it a business to control things for power and profit, especially the latter." "The question is whether capital shall control the public and its government, or whether democracy shall control the government," * * * "whether men shall be free and capital subject to their control." "History tells what happened when the privileged classes of Rome absorbed the wealth of the Republic." To avoid this, and government ownership, Mr. Cook in his Introduction to this Edition repeats, amplifies, argues more fully, and replies to Mr. Ackwith's criticism of his plan of a governmental railroad holding company proposed in the preface to the 6th edition. The plan should receive the careful consideration of all who feel the danger. Mr. Cook supports it with great force and acumen,—but not convincing to the present writer. The relief would at best be temporary. The causes of trouble lie deeper, and the forces stirring the hearts and minds of men are elemental and cosmic in character, and no makeshift will satisfy them.

H. L. W.

THE CONTINENTAL LEGAL HISTORY SERIES. Edited by a Committee of the Association of American Law Schools.

II. GREAT JURISTS OF THE WORLD, FROM GAIUS TO VON JHERING. By various authors. Edited by Sir John MacDowell, Fellow of the British Academy, and Edward Manson, Secretary of the Society of Comparative Legislation. With an introduction by Van Vechten Veeder, Judge of the United States District Court, New York. With portraits. Boston: Little, Brown, and Company, 1914. pp. xxxii 607.

The general features of this series have been noted in reviews of Volume I and Volume III (Cf. 11 MICH. L. REV. 342). This volume is an excellent supplement to its immediate predecessor, "A General Survey of Events, Sources, Etc." and it has the human interest that belongs to biography. As the product of various authors it is naturally somewhat uneven in the style and execution of the several lives. With some of the writers the desire to present the salient features of the lives in full detail has been yielded to with the result of a decrease of interest in the story of the human achievement. Among the most interesting of the essays are those on Grotius, Montesquieu, Bentham and Savigny partially due, to be sure, to the intrinsic interest of the subjects but also in part to the skill in presentation.

J. H. D.

THE MODERN LEGAL PHILOSOPHY SERIES. Edited by a Committee of the Association of American Law Schools.

V. LAW AS A MEANS TO AN END. By Rudolf von Jhering, Late Professor of Law in the University of Göttingen. Translated from the German by Isaac Husik, Lecturer on Philosophy in the University of Pennsylvania. With an Editorial Preface by Joseph H. Drake, Professor of Law in the University of Michigan. With Introduction by Henry Lamm, Justice of the Supreme Court of Missouri and W. M. Geldart, Vinerian Professor of English Law in the University of Oxford. Boston: The Boston Book Co. 1913. pp. lix, 483.

XII. PHILOSOPHY OF LAW. By Joseph Kohler, Professor of Law in the University of Berlin. Translated from the German by Adalbert Albrecht, Associate Editor of the Journal of Criminal Law and Criminology. With an Editorial Preface by Albert Kocourek, Lecturer on Juriprudence in Northwestern University. With Introductions by Orrin N. Carter, Justice of the Supreme Court of Illinois, and William Caldwell, Professor of Logic and Moral Philosophy in McGill University, Montreal. Boston: The Boston Book Co. 1914. pp. xliv, 390.

The earlier volumes of this series have been discussed in previous issues of this Review. (Cf. 8 MICH. L. REV. 351; 10 MICH. L. REV. 663 and 11 MICH. L. REV. 174.) In addition to the editorial contributions mentioned on the title pages, each of the volumes contain valuable appendices. Appendix I, of Volume V, gives an appreciative account of Jhering, the man and his works,

by Adolph Merkel, Late Professor of Law at the University of Strassburg. Appendix II has an enlightening discussion of "Finality in Law" by L. Tanon, President of the Court of Cassation of France. Volume XII has in one appendix a review of "Kohler's Philosophy of Law," by Adolf Lasson, Professor at the University of Berlin, and, in another appendix, J. Castillejo y Duarte, Professor at the University of Valladolid, discusses "Kohler's Philosophical Position."

With the publication of each successive volume of the "Legal Philosophy Series" the value of the underlying purpose of the series is made more evident. Gareis's "Juristic Survey" will be an invaluable model for the author of the treatise on Elementary English Law when some English or American legalist has learned enough about the history and philosophy of our own law to be able to present its fundamental principles in a form suitable for the beginner in the subject. Berolzheimer's "World's Legal Philosophies" and Miraglia's "Comparative Legal Philosophy" will give to such a scholar a fitting introduction to the history of the legal philosophies of Continental Europe and the later volumes of the series make accessible the best work of the greatest philosophic jurists of modern Europe. The most insistent demand made upon legal thinkers of our country at the present time, is for some amelioration of our complicated—one may even say chaotic—system of law. But most thoughtful men now recognize that the way to betterment is not by any rough and ready scheme of codification. We are not nearly so ready for a code as Europe was at the beginning of the last century and, if we may judge by the experience of Germany, we may be well into another century before the necessary preliminary work is done. We must know much more of the history of our system; we must know something of comparative law, at least of the Roman law, twin sister of our own system; and above all, before we can hope for unification, we must learn something of the philosophy of law, which is a history of the struggle for an intellectual and all-embracing unity. The "Legal Philosophy Series" and the "Continental Legal History Series" have been planned to give to American lawyers and judges the necessary grounding in history of law, comparative law and juristic philosophy, and although the editor in chief of the series modestly claims only the function of interpreter of the legal knowledge of the Continent, the conception of such a plan and the successful execution of it arises to the dignity of a great original contribution to the solution of our legal problems.

A warning should be given at this point that the way to get a proper conception of the worth of the volumes mentioned above is not to continue the reading of this review but to get the volumes themselves and read the several appendices, all written by critics who are acknowledged masters of the subject. But some observations may not be out of place on a question that occupied most of the attention of the notable gathering of practical jurists and legal philosophers which met at Chicago recently in the "Conference on Legal and Social Philosophy." The question is, how can philosophy be of practical use to the distracted lawyer and puzzled judge who is looking for some unifying principle to help in the solution of practical difficulties?

The struggle for a better definition of law has resulted in a progressive widening of the application of law. To one who will read carefully the several volumes of the "Legal Philosophy Series" it will be perfectly evident that the struggle for a wider and deeper philosophic conception of the bases of law has had a like result. The practical bearings of Aristotle's fundamental postulate of justice that "equality is equity" was recognized but dimly in his own time, but throughout all subsequent time it has been used as a working formula in state-building and law-making and is now universally accepted as the guiding principle of modern democracy. The theory of natural law first definitely formulated by Aristotle was adopted as a unifying principle by the practical Roman. Throughout the Middle Ages it served as a bulwark for the protection of the people against the encroachments of Emperor and Pope. In the hands of Grotius it was made the basis of the law of nations. In its modern garb of the law of reason it has been said to be "the life of the modern Common Law." The pseudo-philosophical theory of utility as elaborated by Bentham and his followers became the practical basis of law reform by which large portions of the English system were completely reconstructed. The social utilitarian theories of Jhering and his insistence upon the idea that law is not simply a growth, the various stages of which are to be observed and registered, but that law is the result of a striving with a purpose toward a previously determined goal, has borne abundant fruit in Germany and can be made of great practical use in our own system of law where our growing social needs demand an expansion of our historical common law. As we take the long look back over the history of juristic philosophy we must acknowledge that metaphysical lucubration has been an efficient handmaid of practical progress. The philosophic as well as the practical advance has been at times discouragingly slow and we frequently have our patience tried by the logomachy of the theorists which só frequently only destroys what has gone before and takes no step forward. But a careful reading of master works of the really great juristic philosophers shows that each does make some slight advance upon the work of his predecessor and each brings some aid to the solution of the practical problems of being and doing.

The last published volume, Kohler's "Philosophy of Law," is in many respects the most inspiring and helpful of the series. The phenomenal genius of the man shows in this volume as in all his work, and his life work is such as to make a non-Teutonic professor gasp with astonishment. In 1903, when the last census of him was taken, his published works included 526 separate titles, many of them large books, covering topics in general jurisprudence, civil law, criminal law, four good-sized volumes on aesthetics and five in poetry. He is classed as a Neo-Hegelian and is acknowledged to be the leader of this school. He accepts Hegel's "philosophy of identity and doctrine of evolution but rejects his dialectics, (that is the theory of a thoroughly logical, rhythmical growth)" (See page 22). His philosophy of law starts with the "reconstruction of Hegel's doctrine and interprets his doctrine of evolution to mean that mankind constantly progresses in culture." (Cf. p. 26). This "culture" is, of course, the German "Kultur" so much dwelt upon by the other

Neo-Hegelian of this series, Berolzheimer. It is the social force that controls nature through science and art. Law is one of the phenomena of this culture and there must be a conscious effort to adjust the culture of the present to that of the past. The law "must adapt itself to a constantly advancing culture and be so fashioned that conformably to changing cultural demands it promotes rather than hampers and oppresses it." (Cf. p. 4). The general part on the philosophy of law as a phenomenon of culture is followed by a special part on the law of individual persons and the law of the body politic. One might wish that the author were not quite so belligerent in his criticism of opposing schools. From one in his position of acknowledged pre-eminence there might well be expected some mercy toward his more lowly opponents, but such is not the Teutonic professor who knows only the mailed fist as an instrument for combatting error. But it certainly is interesting reading and the volume is a worthy companion of its predecessors in the series. J. H. D.

JUSTICE AND THE MODERN LAW. By Everett V. Abbott of the Bar of the City of New York. Boston and New York: Houghton, Mifflin Company. The Riverside Press, Cambridge, 1913. pp. xiv, 299.

The author of this little book proposes "to exhibit the ultimate principles of justice as actually existent in the law." He rejects the Austinian theory of law because of its fundamental error of a sharp separation of law and ethics. He thinks that the sociological theory of jurisprudence is also faulty in that it merely substitutes the indefinite command of the community as a whole for the definite command of the sovereign. He says that "the law is only the promulgation of ethical principles as they are understood and applied by the community" but declines to discuss philosophy and rests on the "universal human perception that moral obligation does exist." This would not seem to carry us much further into the heart of the matter than does Carlyle's "sense of the oughtness" as the basis of justice, if it were not that he immediately announces three principles: "the egoistic right of freedom, the altruistic duty to help, and the voluntary reciprocating rights and duties of contract," as the basis of all human jurisprudence. The first chapter is devoted to the relation and interplay of these three principles. The next two chapters on the law as it is practiced and the law as it is administered are devoted to an acute and interesting discussion of the obstacles set up by courts and legislature, through which the progress of justice is impeded. These chapters, with their keen analysis and trenchant criticism of decisions of the courts are the best parts of the book. He shows that the lawyer of the common law with all his prejudice against generalizations is nevertheless much given to theorizing. 'Instead of boldly and frankly generalizing he thinks and argues in maxims, proverbs and scraps of gnomic wisdom which are only generalized statements of hasty views and are not the product of scholarly and scientific investigations." And he is only saved from the disasters consequent on his false reasoning by his practical skill in meeting facts.

In his last chapter the author urges that the courts throw overboard the doctrine of *stare decisis* and appeal all questions to the principle of sufficient reason, though what that principle may be is not too clearly enunciated. His point of view in general is that of the modernist who interprets the much abused doctrine of equality as an equality of opportunity to be guaranteed by an impartial tribunal, and who insists that the highest duty of the practicing lawyer is to apply himself vigorously to the discovery and exposition of the principles of right reason. The book is not a profound contribution to the philosophy of law but as an application of certain basic working formulae of justice to our present day legal problems may be said to justify itself. J. H. D.

BOYCOTT AND THE LABOR STRUGGLE. By Harry W. Laidler. Introduction by Henry R. Seager, Ph.D., New York, John Lane Company; London. John Lane, 1914, pp. 488.

This work comes at an opportune time, when legislatures are being urged to legalize this weapon of the laboring classes by statute.

It is a well written and most careful study of the subject by a member of the New York Bar, and an economist, and is a valuable work from both the economic and legal standpoints.

The author first discusses the economic side. He traces the past forms known to students of history, and shows that while the practice is old, the term originated with Father John O'MALLEY in 1881. He then gives the kinds employed in modern business as: (1) Consumers; e. g. by the Consumer's League label; (2) Employer's, e. g. by the Blacklist; (3) Trade,—such as the Lumbermen's Associations; (4), Political,—as the boycott of James G. Blaine by the printers in 1884; (5) International, such as Chinese refusal to purchase American goods, or the Persians to handle British commodities.

The author defines "boycott" in its broadest sense, as "an organized effort to withdraw and induce others to withdraw from social or business relations with another" (p. 27), and gives special definitions for the employers (p. 36) and the laborers (p. 60) boycotts.

He discusses the latter under two heads: Negative, and Positive. The negative is to secure for "fair" firms the trade of labor,—as by the Union label. The positive is to prevent trading with the "unfair" firms,—as by the "unfair" or "we don't patronize list." These latter are: Primary—simple combination to suspend dealings, without inducing or coercing others; Secondary,—a combination to induce or persuade others to stop dealing with the supposed offender; Compound,—inducement through coercion and intimidation, either by threats of pecuniary injury, or of physical violence.

His conclusion is that the boycott can be successful only when used with great care and as a last resort. The American Federation of Labor has used it with great care. Success depends largely upon the vigor with which it is pushed at the outset, and there is small chance of success against a firm that has a monopoly.

Negative boycotts are legal, and 41 states have provided for registering a label.

The primary positive boycott has met with little opposition, but the secondary has been generally condemned in the United States both by the courts and by statutes.

Conspiracy is usually charged, and some courts hold that an act that is lawful for one to do is lawful for several to do together; some others say a boycott which injures business only, does not injure a property right, and should be legal. Yet the courts of only 5 or 6 states uphold secondary boycotts,—New York, Montana, California, Rhode Island, Maine, and Oklahoma. In 14 states various kinds of boycotts have been held illegal. In 25 states the highest courts have not passed on the legality of boycotts in labor disputes. Of these, 4 have statutes condemning boycotts, and the courts in 7 others hold trade boycotts accompanied by malice or threats illegal.

In England boycotts are not criminal if not accompanied by violence or some similar act, and since 1906 trade unions cannot be sued for damages at all. Persuading boycotts, without force or violence, are upheld in Germany. In Austria, Belgium, France, Holland and Italy there are statutes against intimidation which would probably be held to apply to boycotts accompanied by threats or violence.

Many efforts have been made and are being made to legalize, by statute, certain forms of boycotting in the United States, and Maryland and California, following England, have declared it is not indictable for two or more to do what it is lawful for one to do. Mr. Laidler believes there is a tendency toward legalization in this direction.

The third part of the book discusses the reasons for and against making the boycott legal,—finding it easier to give arguments in favor of instead of against, doing so; and believes that the primary, secondary, and compound boycott involving only a threat to injure business by a withdrawal of patronage or labor, without violence to person or property, should be made legal.

The work is excellent in detail, non-partisan as a rule,—with possibly a slight leaning toward the labor side,—and filled with lucid discussion and apt quotations from the authoritative literature of the subject, with proper citations. An appendix gives a most valuable summary and digest of the decisions of the Federal and State courts, with a table of cases and bibliography. The work is also well indexed. It is a valuable and timely work.

H. L. W.

FEDERAL INCORPORATION. CONSTITUTIONAL QUESTIONS INVOLVED. By Roland Carlisle Heisler, Gowen Memorial Fellow in the Law School of the University of Pennsylvania, 1910-12. University of Pennsylvania Law School Series No. 3. Boston. The Boston Book Co., 1913. pp. viii, 231.

This little book contains the fullest and best discussion of the many constitutional questions involved in the matter of Federal Incorporation, that has come to the attention of the reviewer. There are eight chapters: Nature of the Power Vested in Congress by the Commerce Clause; Incorpo-

ration under Powers other than that over Commerce; Methods of Obtaining Compulsory Federal Incorporation; State Legislation with Reference to State Corporations Engaged in Interstate Commerce; State Legislation with Reference to Federal Corporations Engaged in Interstate Commerce; Jurisdictions of Federal Courts over Suits by or against Federal Corporations; The Meaning of the Term "Commerce Among the Several States."

The conclusion arrived at by the discussion in the first two chapters is: "Congress, as an appropriate means of regulating commerce among the States, can incorporate not only railroad and bridge companies, but also trading companies. As an incidental right, a federal trading corporation could make intrastate sales. It could also be given the corporate power to produce, which could be exercised as a legal right in the District of Columbia and the Territories, and which could also be exercised within a state, if the laws of the state did not deny such right." The author takes issue with Mr. GARFIELD upon the Federal power to confer the right to produce within a State without its consent, and also denies the power of Congress to confer the *capacity* to produce on a Federal Corporation, except as the local legislature of the District of Columbia, or over the Territories.

In chapter three he concludes that a corporation could be incorporated by Congress under the taxing or post-office, or army power, but such corporation could carry out only such powers and would be limited to such purposes, and they would not justify a practical working incorporation act for corporations engaging in commerce.

To what extent the Federal government could compel Federal incorporation is treated in chapter four. Four methods have been suggested: (1) By excluding the products of State corporations from interstate commerce. The author concludes that both by reason and authority the "power to regulate commerce among the states" includes the power to prohibit such commerce, and shipments from one state into another are not "exports," nor "imports" within the provisions of §§ 9 and 10 of Art. I; but effectively to exclude the products of a state corporation they would have to be excluded from interstate commerce when purchased and owned by individuals, and to do this would be an arbitrary and unreasonable classification, and so violate the due process provision of the Fifth Amendment.

(2) By direct exclusion of State Corporations from interstate commerce. He believes this can be done under either the "entity," or "group" theory of corporate existence. "The state cannot grant to the entity the absolute right to engage in interstate commerce, because it is beyond the power of the state to make such a grant," for Congress has exclusive jurisdiction over interstate commerce—under the "group" theory. "The privileges conferred by the state can have no extraterritorial effect, but can be exercised as of right only within the limits of the state which granted them," and Congress can refuse to allow the extension of such privileges to enter state commerce.

(3) Taxation of interstate commerce transacted by state corporations,—this, while "much less desirable than the direct exclusion of state corporations from interstate commerce," he believes would be constitutional under

the *Veazie Bank*, (8 Wall. 533), *McCray*, (195 U. S. 27), and *Flint*, (220 U.S. 108), cases, notwithstanding Professor WAITE's article in 6 MICH. L. REV. 277.

(4) Exclusion of Mail Matter of State Corporations,—which he considers, probably, unconstitutional, as an arbitrary classification violating the due process provisions.

In chapters five and six Mr. HEISLER examines the powers of the states with reference to state and federal corporations engaged in interstate commerce, under the headings of Taxation, and Police regulations. His conclusions are: A state cannot tax the privilege of engaging in interstate commerce by either a State or a Federal Corporation; and a tax on gross receipts partly derived from interstate commerce is invalid, unless some proportional part of such is used only to determine the value of property within the state. A state can tax property either of a State or Federal Corporation which has a situs within the state, although it is employed in interstate commerce. The difficulty is in measuring the value. The author believes that, although under the *unit rule,* valuations determined by apportioning gross earnings, or property, or capital stock, or franchise, according to mileage or business done as in the *Adams Express Co.* case (165 U.S.) have been generally upheld, such valuations necessarily include an element of value arising from interstate commerce, and are therefore, or should be, unconstitutional in principle; and while the Supreme Court is not likely to overrule these cases in reference to State Corporations, it probably would not extend them to include Federal Corporations.

A state can tax the intrastate business of a State Corporation engaged in interstate commerce, provided, according to recent cases, such tax does not impose a burden on interstate commerce. The author apparently favors the dissenting opinion of Mr. Justice HOLMES, in the *Western Union* case, (216 U. S. 1) as being more in accord with fundamental principles. The book was written before the *Minnesota rate* decision was rendered (33 S. C. 729). The same rule, the author believes, would be applied to the intrastate business of. a Federal Corporation, although he notes the dicta of the Court in several cases adopting the view of Mr. Justice SWAYNE, in the *Peniston* case (18 Wall. 5) that Congress has power to remove all the operations of a Federal Corporation from state regulation or taxation as the local business of the National Bank was exempted in the *Osborne* case (9 Wheat. 738).

A state can also impose a charge upon an interstate commerce corporation, Federal or State, for local government supervision, if a reasonable charge for services performed, or for the privilege of using the public highways, as by telegraph poles in the streets (*W. U. Tel. Co.* v. *New Hope,* 187 U. S. 419; *St. Louis* v. *W. U. Tel. Co.,* 148 U. S. 92).

Under the police power the states can exclude from entry into the state, such articles as are inherently dangerous to the health and safety of the people, if really necessary to do so,—certainly in the absence of conflicting Federal regulation; but as to other articles, the silence of Congress, is an indication that interstate commerce therein should be free; so too any burden upon a corporation engaged in interstate commerce, which in its opera-

tions materially burdens such commerce is invalid. And as to any producing function of such Federal Corporation, the states could admit or exclude or attach conditions the same as in the case of any State Corporation not engaged in interstate commerce.

As to suits against such Federal Corporation Congress could provide that only the Federal Courts should have jurisdiction, even with reference to any producing function conferred upon such corporation.

The last chapter is a valuable one as to the meaning of "Commerce among the States."

The author finds many points upon which the Supreme Court has not yet passed, but upon nearly every one something has been said, or some pretty definite analogy is to be found in some one of the more than two hundred cases,—nearly all from the United States Supreme Court—reviewed or referred to. And although, perhaps, many will not fully agree with all of his conclusions, yet all will find here a thoroughly excellent working out of the important questions that would arise from Federal incorporation of trading corporations. The book deals only with legal questions, and not at all with the economic or political problems such a policy raises. H. L. W.

COMMENTARIES ON THE LAW OF MASTER AND SERVANT. By C. B. Labatt, B.A. (Cantab) M.A. (Toronto), of the Bar of San Francisco, Cal. Second Edition. The Lawyer's Co-operative Publishing Co., Rochester, New York, 1913. 8 Vols. pp. ccv, 10090.

From BLACKSTONE's chapter of 11 small pages written 150 years ago, summing up the results of 700 years' growth of the English law of Master and Servant, to this monumental work, is a long period, if measured in the pages needed to treat this topic. At the same rate, 63 years to the page, we have in the last 150 years, traveled 63000 years beyond BLACKSTONE, or, in other words, we are 90 times as far away from his time, as he was from the Norman Conquest. He wrote at the very beginning of the modern industrial system, before the steam engine, the factory system, the railroad, or the development of the modern sciences underlying our application of machinery to industry. When he wrote, Master and Servant was for the most part one of the Domestic Relations, as he treated it, and had been so for thousands of years; but now it has become a contract relation extending to every situation in which one person undertakes to work for another under or subject to the latter's control, and these volumes forcibly call attention to the almost infinite complexity of our modern industrial life.

This work treats this relation in almost every conceivable detail except "the hiring of seamen and persons in public employments." There are eight volumes, 126 chapters, 10090 pages, with many additional ones as 8944, 8944a to 8944yy, including such as 8944kk-1 to 18. There are also 2793 sections with many numbers duplicated by a, b, &c. The table of contents contains 205 pages; the table of cases 718 pages, and the index 445. Every facility is therefore employed to make the material available. It is evident that

no reviewer can do anything more with such a work than to indicate in a very general way what topics are included, and state the results of a few tests as to the quality of the work.

Volume I, treats of the "Relation and Contract"; Volume II, "Wages and Hours of Labor"; Volumes III, IV, and part of V, of "Employers' Liability"; Volume V also includes "Statutes and Contracts," "Compensation Acts," "Blacklisting," "Rights in Products of Service"; Volume VI, covers "Apprentices," and part of "Master's Liability for Servant's Torts"; Volume VII, finishes "Master's Liability for Servant's Torts," and treats of "Enticement," "Interference with Service," "Labor Unions," "Strikes," "Boycotts," "Arbitration," and "Union Labels," while Volume VIII, treats of the "Constitutionality of Enactments."

The first installment of this work was published in two volumes in 1904, and it was then thought that one more volume would suffice to complete the work; that one volume has expanded into six volumes, and the first two volumes have been brought down to date, as a second edition,—the cases of the last two or three years being inserted by Mr. Walter M. GLASS. The chapters relating to "Wrongful Interference with the Contract by Third Persons," is the work of Mr. Charles C. MOORE, while those upon "Trades Unions" and "Strikes," are by Mr. E. S. OAKES, and those on "Criminal Liability of a Servant," and on "Criminal Liability of a Master for the Acts of a Servant," and on "Contracts of Servants," are the work of Mr. C. H. SPURR. These are all members of the Editorial Staff of the Lawyers Co-operative Publishing Company. Substantially all the remainder of the work is by Mr. LABATT, and has involved a prodigious amount of labor,—perhaps beyond the capacity of any individual without having at his command the labor saving aids of a great publishing house.

Mr. LABATT's ideal, as he states it, was to compile a treatise so "as to serve the purpose of a code, a critical and exigetical commentary, a digest of facts, and a collection of leading cases." He undertakes, with great clearness and success, to "show not merely what the courts have decided concerning certain states of fact, but also the principles to which their decisions have been referred, and the reasoning upon which their conclusions have been based." For this reason copious extracts from the opinions of the judges are given and justified.

It was the author's aim in the first two volumes (first edition) "to cite every decision which has been rendered by a court of review in any of the countries in which the common law is the prevailing system of jurisprudence, and the materials collected represent the result of an exhaustive examination of all the reports, whether official, semiofficial, or nonofficial which have been published in England, Scotland, Ireland, the United States, Canada, Australia and New Zealand."

This same thoroughness seems to characterize the later volumes. The dates of the cases cited are given, in order that the development of the rule in any jurisdiction may be readily traced, and in many notes the development in each state is indicated by the decisions from such state being grouped together.

When the first two volumes were prepared the author ventured to call attention to and criticise the unreasonable extent to which the doctrines of "assumed risk," and "fellow servant" had been pushed, and the unsubstantial foundations upon which they are based. In this edition he is able to see the progress made in legislation in abolishing or modifying such doctrines, and perhaps in some degree as the fruit of his labors and criticism.

From any test the present writer has been able to apply to the work, and in whatever place he has examined it, or upon whatever topic fairly within the province of the work, he has found it unexcelled, exhaustive, luminous and learned. It is preeminently valuable for the practitioner, and will undoubtedly remain for a long time, the unrivalled authority upon the subject. H. L. W.

SELECTED CASES ON THE LAW OF CONTRACTS, by Ernest W. Huffcut, late Dean of the Cornell University College of Law, and Edwin H. Woodruff, Professor in the Cornell University College of Law. Third Edition, revised and enlarged by Edwin H. Woodruff. Banks & Company, Albany, N. Y. 1913. pp. xvii, 774.

The third edition of HUFFCUTT & WOODRUFF's selected cases in contract law, is in many respects, an improvement on the earlier editions, which at the time they were published left little to be desired. They have been generally used for several years by those engaged in educational work and the present edition will be received with favor. Professor WOODRUFF has added some new features of great value to the teacher and the student.

In addition to including the more recent cases, he has given to his reference notes great value in that he refers the student, under most cases, to the Cyclopedia of Law and Procedure; to subject notes in the Lawyers' Reports Annotated; to leading articles in various legal periodicals, in which the doctrine of the principal case is discussed or involved. The thoughtfulness of the editor in giving this helpful aid to the student can not be too highly commended. We regret, however, that Professor WOODRUFF acquiesces in the idea of a few educators that contractual capacity should be discussed under the law of Persons. Personal responsibility depends generally upon the subject as well as on the person. In dealing with persons the law presumes capacity to contract. The contrary must be made to appear. We have criminal responsibility, testamentary capacity and contractual capacity, and if we are to discuss criminal responsibility in the law of crimes why not discuss contractual capacity in the law of contracts? It is necessarily involved in the law of the subject and has very little relation to other questions of legal responsibility.

The work of the publishers is well done. The paper and the type are good and the pages of the book please the eye. J. C. K.