## REVIEWS.

*Constitutional Law of England.* By Edward Wavell Ridges, of Lincoln's Inn, Barrister at Law. Stevens & Sons, Limited, London, 1905. Pages, xxxii, 459.

The phrase, "constitutional law of England," is used by Mr. Ridges to denote that law for all the British dominions. The justification of the work is, indeed, in great part, the changes which have occurred during the last forty years in British colonial policy, such as the creation of the Dominion of Canada in 1867; the assumption in 1876 of the imperial title as respects India; the federation of most of Australasia in 1900, and the addition, in 1901, to the royal title by reference to "the British Dominions beyond the Seas."

The volume is less a discussion of British constitutional law than an explanation of the various agencies through which the British people and possessions have from time to time been governed. It is mainly of the nature of an enlarged title of the Statesman's Year Book. The author is not one of those who seek, as their main goal, *rerum cognoscere causas.* Brief consideration is given to the forces out of which the fundamental laws and institutions of England have in slow course been evolved.

It would, however, be unfair to judge the success of Mr. Ridges in treating his subject by the tests to be applied to a work on American constitutional law. Here it is a head of law, definite in form, standing by itself, and outranking every other at every point. For England, it is indefinite in form, part and parcel of the whole national life, and subject at any point and any time to parliamentary control.

The author (p. 3) classes with laws affecting the distribution or exercise of the sovereign power, that are observed and enforced by the courts (which he names Constitutional Law proper), the opinions of the law officers of the crown on questions put to th em by the ministers or government departments. While the official position of the attorney general and solicitor general of England has been greatly dignified since 1895 by their exclusion from private professional practice it seems going very far to say that their opinions are absolutely binding upon the courts. The judiciary is no doubt obliged to follow the decisions of the executive dedartt ment with respect to matters of public foreign relations. Buthose decisions are ultimately the act of the Crown, and derive their force from that. The official opinion will probably be followed, but it may not be.* An opinion, however, on a matter of private right, although adopted and acted on by the government, could hardly tie the hands of a court to which an individual injured by the course taken might appeal for relief.

* See Jones v. United States, 137 U. S. Reports, 202.

Attention is called (p. 14) to an interesting proof in recent practice of the principle that laws must be shaped to social conditions rather than social conditions to laws. Great Britain has, of late, applied it in a large way to her colonial system. The erection of the Dominion of Canada was a measure reflecting English sentiment. It created a strong central government. It made it strong by leaving its powers largely undefined, while those of the associated provinces were laid down in terms. Thirty years later Australian confederation came in deference to colonial sentiment. It created a central government relatively contracted in its scope, and with limits strictly prescribed. The local legislatures, however, were left as before without an endeavor to define their powers.

Mr. Ridges is no believer in the American theory of placing the judiciary above the legislator by conceding to it the power to declare a statute void because unconstitutional. He views it as an inherent weakness in our political system (p. 15), in its introduction of an element of "legalism and rigidity." The omnipotence of parliament is to him the assurance of its perpetual vitality.

It is interesting to an American to observe how fully Mr. Ridges acknowledges (p. 49) the justice of the demand for no taxation without representation which brought on the Revolutionary War. He rests it on *Magna Charta*, but with a reservation as respects possessions where the population is mainly aboriginal and unfitted to participate in the work of government.

One of the most valuable parts of the book is the discussion (p. 393, Appendix A) of the remedies by way of appeal or proceedings in error in criminal cases. What scanty opportunities there are in case of an unjust conviction are clearly indicated. To supply the want of them it seems that five thousand applications for a pardon are annually presented to the home secretary. In this connection, the story of the Beck case is told in some detail (p. 417.) Beck was convicted in 1896 on a serious charge in consequence of the erroneous exclusion of certain evidence, and was imprisoned at hard labor for five years. This led to a second charge and a second conviction in 1904. The home secretary afterwards became convinced that he was an innocent man and pardoned him, but his life was ruined.

The author seems to share in the general incapacity of foreigners to understand the difference between the authority exercised by the State and by the United States. Having found one constitutional provision that, if vacancies happen in the Senate when the legislature of any State is not in session, "the Executive thereof" may fill it temporarily, and another investing the President with the executive power, he proceeds to inform his readers (p. 17) that the President is empowered to fill vacancies in the Senate.

The volume is marred by an occasional slip of the proof reader. In one place (p. 13), "accept" has been obviously substituted for "except"; in another (p. 166), the serious error occurs of giving

1871, instead of 1781, as the date of the practical abolition by the Act of 28, Geo. III., of the Board of Trade and Plantations, which, up to that time, had wielded so important power over the American colonies, and in a third (p. 336), the Act of Union (of 1800) between Great Britain and Ireland is stated to have gone into effect on January 1, 1901.

As a convenient manual to show in orderly arrangement and historic progression the distribution of governmental power throughout the British dominions and the mode of its administration, the book has a place which it fills fairly well, but it bears little mark of original thought or investigation and hardly rises to the level of its title. It is handsomely printed and quite well indexed. *Simeon E. Baldwin.*

*Lawson on Contracts.* Second edition. By John D. Lawson, LL.D., Dean of the Department of Law and Professor of Contracts and International Law in the University of Missouri. The F. H. Thompson Law Book Company, St. Louis. Sheep, pages xxi, 688.

Not to re-open the classic controversy as to the respective merits of the text-book and case systems in teaching law, we would submit as worthy of attention the method now pursued at Yale in the first-year course in contracts, and to suggest the book under discussion as a valuable adjunct to systems of a like nature. The method is the use of a text-book, supplemented by cases, or rather, perhaps, of cases introduced by a text-book. Now there are surprisingly few works which qualify as the introductory text-book in such a course. So to qualify, it is necessary that the book be brief, but not so brief as to necessitate uncomprehending, and, therefore, merely mechanical, memorizing. It should imply practically no legal knowledge to the student; consequently, it should be as free as possible from unexplained technical terms. It should make the relative importance to be accorded to the various principles plain by emphasis of position and space. Of all the writings on contracts scarcely any satisfy these requirements. "Lawson on contracts" is an exception. We should be doubtful, however, of the ability of the average student to attain a thorough knowledge of contracts from the use of a text-book of this nature, unaided by cases. Those very points, wherein its superiority as a preliminary text-book lies, militate against it as a means to thorough and complete knowledge. But as an introduction to the case method it is admirable.

Few, except those who have studied it in the schools, are familiar with the first edition of this work. Its elementary nature naturally precludes it from being among the citations used by judges. To these few, however, the second edition is recommended as a vast improvement upon the first. The more important subjects, such as Agreement, are given much more space, and the exceptions and digressions are curtailed. Not the least noticeable point of contrast between the two editions is the change—much

for the better—in the style of writing. For example, the subject of Agreement, in the first book, is introduced as follows: "Agreement consists where two persons are of the same mind and intent concerning the subject matter." In the second, the corresponding paragraph reads: "Agreement consists in two or more persons being of the same mind and intention concerning the subject-matter." Almost every sentence is improved in some way, making the whole much more clear and concise. The changes in the manner of publishing the book, while numerous, are unimportant. But the present work is a great improvement upon the former.

*G. S. A.*

*Ewell on Fixtures.* By Marshall D. Ewell, LL.D. Second edition by Frank H. Childs. Callaghan & Co., Chicago, 1905. Sheep, pages cviii, 784.

Since the first edition of Ewell on Fixtures, in 1876, much has been done toward unification in the Law of Fixtures, although at that time it had departed some distance from the transition stage between the harshness of the ancient English doctrine and the more lenient and reasonable modern theory. The text proper has remained practically unchanged, however, from that of the first edition except for some few omissions. But the notes are of vastly more value. The original digests of cases, which Mr. Childs has introduced, are numerous, and denote the various changes in the law. We believe that the space occupied by them, though a very considerable proportion of the book, was well used. We are assured that the present edition was prepared under Mr. Ewell's supervision, so that there can be no doubt that there will be no falling away from the high authority which the former edition has so long exercised.

*G. S. A.*

*Pomeroy's Equity Jurisprudence.* Third Edition. By John Norton Pomeroy, Jr., A.M., L.L.B. Bancroft-Whitney Company, San Francisco, 1905. Three volumes. Sheep, pages lviii, 3525.

When a new book upon any subject of law comes out one takes it up with a great curiosity to see if the author has really simplified the subject, or thrown new light upon it by the workings of his own brain in delving into the reasons for the rules and propositions stated, as, for example, Professor Thayer did in the subject of Evidence, but, along with the curiosity, there usually exists a lurking dread that one's time is to be spent in reading simply a restatement of the rules and decisions already stated. But, upon seeing a new edition of such a standard work as "Pomeroy's Equity" everywhere recognized as being authoritative, the feelings aroused are altogether different; a sadness creeps over one that the changed state of the law should demand a new edition of the work after the world has lost the master-mind who originally conceived it, and, coupled with this, is a certain resentment at the audacity of a new editor in thinking that he can improve upon the

original. However, we are very glad to see that, with the same filial respect for parental authority (would that all authors of legal works had such authority to be respected) as was shown in the second edition of the same book, the work of the father has been left intact and separated from the notes and additions rendered necessary by the growth of the law.

We do not say the above with any idea of giving anyone the liberty of drawing the conclusion that the necessary notes and additions are at all carelessly written, for the very opposite is the fact. They are written in a most skillful and scholarly manner, as might be expected from the pen of a man with the ability already proven and still the modesty shown instead of the self-sufficient audacity above referred to.

The Editor apologizes for the bulkiness of the work. Upon considering the great scope of the subject, the enormous growth of it since the last edition, and the extreme thoroughness of treatment, both as to the annotations and the citations, we think that he is to be congratulated for having kept the work down to the physical proportions that it now has. The most lengthy annotations occur under the subjects of the Jurisdiction to avoid a Multiplicity of Suits, the Equity Jurisdiction of the United States Courts, and special topics under Notice, Priorities, and Bona Fide Purchase.

The work is referred to as a "Standard text-book." It certainly is standard, and for the earnest lawyer and the diligent student it is a text-book, but the great exhaustiveness of the work has rendered it somewhat bulky for a class-room text-book. However, this same great exhaustiveness renders it one of the best of reference works, so that the very high repute with the profession which the former editions have occupied in this respect is not only sure to be maintained, but also just as certain to be increased. Another feature that makes it still more valuable for purposes of reference is the thoroughness with which the citations are collected and applied, and the fact that in doing this the so-called standard encyclopedias and digests are not trusted implicitly.

The insertion of states in the index, as was done in the previous edition, also saves much time for the busy lawyer and his overworked understudy. *S. W. B.*

*Page on Contracts.* By William Herbert Page, Professor of Law in the Ohio State University and Author of "Page on Wills." The W. H. Anderson Co., Cincinnati, 1905. Three volumes. Sheep, pages cccclxv, 3083.

"Page on Contracts" is an evident, and, we believe, successful, attempt to delve into every crevice of contract law (or, at least, of *American* contract law), and to present a treatise, complete up to the present time, in every detail. In this respect it bears a close resemblance to "Wigmore on Evidence," and, although it differs in many other features (as, for instance, the valuable digested cases with which Wigmore abounds and of which the book under

discussion is totally lacking), yet these differences are rather due to the subjects of the respective books than to any lack of research on the part of Professor Page. To this the four hundred page table of cases, in fine type—cases, a number of which we have examined and found strictly in point—bear witness. If our observation, just made, concerning the cases examined, is true of all—and we have no reason to believe it is not—the work, being of such magnitude, is an especial credit to Professsor Thayer. For, if we may be allowed a digression, we have been impressed with what seems to be a rapidly increasing tendency, especially in works of large paging, to follow the citations of the different encyclopedias. Sometimes, though perhaps not often, these citations fail to support the proposition for which they are given, but very frequently the cases are there cited under headings different from those under which they logically should fall. Every man's opinion on these matters is individual to himself, so that it seems to suggest lack of research when table after table of cases, in many recent publications, are cited as authority for only those statements for which they act in the same capacity in encyclopedias, even though they are equal or better authority for other points. This seems to be true among some of the encyclopedias themselves. This criticism does not, we think, apply to "Page on Contracts."

Following the plan of most modern text-writers, he starts with a brief historical introduction; enlarging that plan he discusses chronologically those branches of his subject which yield to that treatment, such as Usury, the Seal, Specific Performance, and Limitations. Sometimes he seems to have spent too much space in these introductions and to a few other parts of his work—to have sacrificed conciseness to coherence. For instance, the discussion of the case of Abbot Walter and Gilbert de Baillol, while interesting, and undoubtedly of bearing upon the subject (History of the Seal), might have been wholly relegated to the notes without any integral loss to the work.

The established order of most writings on contracts is followed, *i. e.*, Formation, Construction, Operation, and Discharge. Each of these titles, except the last two, occupies a separate volume, and, in his treatment of each, the author necessarily wanders somewhat into the allied branches of the law. On the whole, however, he maintains an excellent unity, and everything of contracts, such as the law of Sales, receives full attention.

*G. S. A.*

*Leading Cases in the Bible.* By David Werner Amram, M. A., L. L. B. Julius H. Greenstone, Philadelphia, 1905. Cloth, pages 220.

While the Bible has been quoted from by lawyers of all generations—though it must be confessed that latterly it has been used overextensively to give an emotional assistance to weak defenses in criminal courts—the idea of selecting its

leading cases is original, and the running comments of the author, accompanying each story are full of interest, though perhaps not always concurring to the view of the average reader. The introduction is the most valuable essay in the work, although it must be confessed that a large part of it is but a reaffirmance of the biblical criticism which is, as we understand it, taught in the more advanced theological schools of this country. The stories themselves give, of course, a glimpse of patriarchal jurisprudence, although even with the comments, it is often impossible to understand the attitude of the minds which produced them.

*G. S. A.*