

BOOK REVIEWS

The Upas Tree. By Robert McMurdy. Illustrated. Laird and Lee, Publishers. Chicago.

This is a badly-written, and decidedly interesting novel. The style is crude, but the plot is good and well-managed. Law students ought to find the book particularly attractive, for its principal characters are lawyers, and its most exciting scenes take place in a court-room. As the main theme is the subject of capital punishment by hanging, it is fitting that the greatest dramatic value of the story lies in its suspense.

The reader does not know whether the jury will bring in a verdict of guilty, whether the hero can escape if it does,—and what is more, the reader cannot guess whether or not the hero is guilty. This skill in concealment is the most clever part of the plot-construction; and to a layman the pleas of the opposing lawyers seem particularly well done.

The moral object of the work is to condemn capital punishment, which did not convince me for the simple reason that I was convinced already. Capital punishment, like war, is a relic of barbarism. Good arguments are urged against it in these pages.

The book also counts strongly against trial by jury, though perhaps this was not the author's intention. Emile Faguet says that the chief characteristic of our age is the systematic cultivation of Incompetence. Trial by jury—where men are selected to judge a case for the sole reason that they are unfit to do so—is an excellent illustration. What is the use of the state and the defense hiring experts to testify when experts in weighing testimony are barred? When Edward J. Phelps was a Professor in the Yale Law School, I well remember with what earnestness he said in a public lecture, "Trial by jury is a good thing which has outlived its usefulness."

The reader will find this story sustained in interest, and on certain pages thrillingly tense, like a real trial. It is a pity that the illustrations were added, for the drawing is abominably bad.

WM. LYON PHELPS.

A Treatise on Attorneys at Law. By Edward M. Thornton, Northport, L. I. Edward Thompson Co. 1914. 2 vols. pages I-CCLXXX and 1-1499.

It has been an occasion of frequent remark that there has been no textbook meriting the name of a great, or even satisfactory, treatise upon the subject which more directly than all others concerns the members of the legal profession as such.

In 1878 the first edition of Weeks on Attorneys and Counsellors at Law was issued, and a second edition of the same book appeared in 1892. This work has held its position as an authority on the subject principally, if not solely, because it was the only one in the field. It is very much spun out, repetitious and while seldom demonstrably incorrect, is inexact in statement and a book which seems to have no real grasp of the subject. To say that it is not useful would be unfair; to say that it is or ever was, in any true sense, a masterly treatise on the subject would be far from the truth. To a few definite questions it gives a definite answer. On the great majority of subjects it is little more than a sort of index digest of cases, many of which arose under radically different professional conditions than those which prevail here and now, and few of which are subjected to any real study, criticism or arrangement.

Supplementing Mr. Weeks' book there have been for a considerable number of years before the profession, reasonably satisfactory articles in the legal encyclopedias and an excellent although small monograph by Mr. William B. Hale, published as part of a book entitled "Principles of the Laws of Contracts as Exhibited in Special Contractual Relations."

A work, however, which develops the subject historically and shows in particular the way in which there has arisen a body of rules based in part upon general principles of contract and in part upon the customs of an ancient profession, has never been attempted. This is the more to be wondered at when it is remembered that every lawyer needs a guide for his own conduct. It is perhaps only another instance of the application of the proverb that the shoemaker's children are the ones who go unshod.

The present work owes its origin no doubt to a desire to supply this need. Its author, Mr. Edward M. Thornton, did not live to see the completion of his work but died while writing the last chapter, this chapter, which deals with the important subject

of discipline, having been revised and completed by Mr. Hiram Thomas of the New York Bar.

Physically the work fills two volumes of ordinary law book size and the mechanical execution leaves little to be desired. It begins, as does the volume of Mr. Weeks, with a brief historical sketch of the rise of the profession in various countries and with the definitions to be used throughout the work. This portion of the book is in briefer compass than the corresponding part of the earlier work. On the subject, for instance, of to what extent and in what sense a lawyer is a public officer, Mr. Thornton has contented himself with results and has not developed the cases to the same extent as did Mr. Weeks. The present work thus gains in incisiveness over its predecessor and leaves it to the reader to follow out the authorities cited for the reasoning upon which they are based. This treatment may be said to be typical of the whole work.

It is not primarily a book for students, nor is it a learned historical treatise. It does give, however, an answer to most questions which arise as to the powers, duties and liabilities of the lawyer and cites the authorities upon which the answers to the questions are based. The knowledge that one gets from reading its pages is more real than that which would be acquired from the reading of the earlier work. While it cites English cases freely, it is written to answer questions occurring to-day and under our present system and is not filled with discussions which have no present relevancy.

The writer seems to have borne in mind the fact that the law of attorney and client is primarily a department of the law of agency, but that the relation is an agency *SUI GENERIS*, where rights, powers and duties are affected by peculiar considerations of public policy, many of which have their roots far back in history.

Had the author done his work only decently well, he would have placed the profession under obligation. He has, however, done far more than this and it may be safely predicted that his book is one which will be found useful by the profession and which will be received by the Courts as an authority worthy of most respectful consideration.

G. E. B.

Where the People Rule. By Gilbert L. Hedges, Bender-Moss Company, 1914, pp. 214.

The secondary or sub-title to this little book is, "The Initiative and Referendum, Direct Primary Law and the Recall in use in the State of Oregon." This indicates its purpose, namely, to show what these laws in fact are, explain their operation and show how they have been useful. The author takes up the Initiative and Referendum, the Direct Primary and the Recall and deals in great detail with the practical working of the law relative to each. Appendices show an Official Recall Election Ballot, the sections of the Oregon Code made a part of the Direct Primary Law, measures which were submitted to the voters of the City of Portland at a special election and the Constitution of Oregon. There are also citations of all the cases in which the courts have construed these laws, which make the book valuable to the lawyer and voter as well as to the student of politics who is interested in investigating these topics.

H. W. A.

