

BOOK REVIEWS

Limitations on the Treaty-Making Power of the United States.

By Henry St. George Tucker, formerly Dean of the Law Schools of Washington and Lee University and George Washington University. Little, Brown & Company, Boston. 1915. pp. 444. \$5.

This treatise upholds a constitutional theory, directly opposed to that maintained by Charles Henry Butler in his work on the "Treaty-Making Power under the Constitution."

Mr. Butler rests that power in part on the general rights of the United States as a sovereign and, because of these, claims that it extends to every subject which can be the basis of negotiation and contract between any nations.

Mr. Tucker is of opinion that this position is untenable, and lays special stress (p. 98) on the Tenth Amendment to the Constitution, under which all rights not granted expressly or by implication to the United States are reserved to the States respectively or to the people. He quotes the leading pronouncements of the Supreme Court of the United States on the effect of this amendment and, as to its application to treaties, suggests (p. 106) that Mr. Butler "fails to realize that all the subjects of treaties, whether they be personal or property rights, in different countries may be lodged in different departments of the government, and subject to a different control than that of the treaty power At this writing (1914), Germany might by treaty cede a portion of her territory to Russia as a condition of peace, or *vice versa*, in order to terminate the world's greatest war. Could the United States by treaty cede any part of one of the States of the Union?"

It may be added that in the negotiations for ascertaining our Northwestern boundary culminating in the Ashburton treaty of 1842, this question assumed a very practical character. Great Britain claimed that lands which we insisted to be part of Maine really belonged to her, under the Treaty of 1783. Maine, however, was ready to give her assent to any reasonable disposition of the controversy, and secret arrangements and agreements between her government and the United States were made, which smoothed the way to this.

Mr. Tucker calls attention (p. 118) to the general practice, wherever representative institutions are maintained, to require parliamentary ratification in the case of treaties affecting individual rights. It was sought for the cession by England of Heligoland in 1890. Germany here acquired a rocky island, which seemed to the British foreign office of little worth, but has turned out to afford an important base of naval operations. That no member of Parliament opposed the measure seems some indication that much is not always gained in the way of discovering defects by bringing a treaty before a legislature.

As another pertinent illustration of the consequences of the theory for which Mr. Butler contends, Mr. Tucker thus refers (p. 120) to trial by jury: "Germany and Great Britain might by treaty agree to abolish trial by jury as to the citizens of each in the country of the other; but it is clear that no such treaty could be entered into by the United States, for this right is guaranteed in the Constitution itself, and cannot be the subject of diplomatic agreement."

With equal force he asks (p. 81), "Could it be claimed by anyone that a treaty between France and the United States, giving the citizens of each country the right to engage in business in the country of the other, would be effective in the State of Maine in allowing a citizen of France to open a bar-room for the sale of intoxicating liquors?"

The many treaties under which we stipulate to concede privileges of inheritance to citizens of other countries Mr. Tucker considers as simply widening the State laws on the subject, so as to remove the disabilities otherwise attaching to aliens, and in no way as declaring what those laws shall be (pp. 144, 416).

To the famous case of *Ware v. Hylton*¹ he devotes a chapter, treating the doctrine announced in the opinion as *obiter dictum*, and supporting the claim by a close and minute analysis of the issues really involved (p. 201).

Mr. Tucker, who served eight years with distinction as a member of Congress, takes strong ground (Chapter VIII) in favor of the right of that body to examine treaties before making appropriations to carry them out.

In Chapter IX he devotes fifty pages to an historical review of the instances in which other nations have complained to the

¹ 3 Dallas 199.

United States on account of acts of one of the States of the Union. Nothing hitherto published constitutes a more valuable collection of diplomatic discussions of this nature.

One of the strong points of Mr. Tucker's treatise is the fulness of his reference to precedents, executive, judicial, legislative, and diplomatic. He quotes extensively, and with effect, from his father's work on the Constitution and devotes one chapter (Chap. XI) to the latter's report to the House of Representatives in 1887 on the Hawaiian treaty. J. Randolph Tucker was a sturdy defender of states rights, and his work as a constitutional student was thorough and exact. His son, who succeeded him in Congress, has also succeeded him, as the work under review well shows, as a keen and scholarly advocate of the doctrine of Jefferson, as to the proper construction of the grants of the Constitution.

S. E. B.

Creditors' Rights and Remedies. By Garrard Glenn. Published by Little, Brown & Company, Boston. 1915. pp. XLVI and 461.

This book contains the substance of a course of lectures delivered in the Columbia University Law School on the rights of creditors respecting their debtor's property. The author states his aim in preparing them to have been to harmonize, as far as possible, the various statutes and doctrines which are scattered through the body of our law so as to demonstrate the system afforded by our jurisprudence for the realization of debts out of the debtor's property. In other words, the author's aim was a synthesis of the law relating to creditors' rights.

A book which accomplishes this will prove of great value, for certainly there is no class of rights concerning which a lawyer is more often called upon to give advice than the rights of creditors. The present work does not profess to present an exhaustive discussion of any particular phase of the general subject. That is not its purpose. Many complete books are devoted to special topics, which are comprised within the general subject, such as executions, bankruptcy and receivers. Because, however, such is not its purpose it does not follow that the book is not of great value. It is exhaustive enough that in practice a lawyer often would not have to look further than this book for

the law which he seeks and authorities which support it. Indeed, a feature of the work of no small value is the carefully and discriminatingly selected authorities cited. The chief value of the work is that it affords a single volume in which one can find the law on any phase of creditors' rights. It is a book that it will pay every lawyer to have in his library.

H. W. A.

Income Taxes. By Henry Campbell Black. Published by Vernon Law Book Company, Kansas City, Mo. 1915. pp. XXXVII and 865.

Income taxation as a source of revenue has been in successful operation in this country for a relatively short period. Until very recently it was resorted to largely experimentally and to meet special needs. Of late years, however, it has so grown in favor that it is rapidly becoming a permanent institution. It becomes a matter, therefore, of direct interest to the taxpayer and his legal adviser, as well as to financial officers of corporations, local representatives of foreign corporations, American firms doing business abroad and banks and trust companies collecting foreign interest or dividends, all of whom are in some measure charged with the details in the administration of the law itself.

The book in hand is a second edition of the author's work which first appeared in 1913. The great development of the law since the publication of his first edition and the extraordinary degree of favor with which that edition was received has induced the author to undertake a thorough revision. The first chapter includes that part of the Tariff Act of 1913 which deals with income taxation. The author has adopted the device of breaking up the statute into seventy sections, numbered consecutively, and each introduced by a black-letter headline descriptive of its contents. In the second chapter, the Treasury regulations and decisions have been treated in the same way. A system of cross-references has been provided, linking together the text of the statute, the departmental regulations, and the detailed treatment of the subject in the body of the text so that there is no difficulty in finding all that Congress, the department and the courts have said on a given point. All the forms officially prescribed by the Treasury Department have been brought together and printed

in the appendix, which also includes those provisions of the revised statutes relating to the assessment and collection of internal revenue taxes in general. The decisions since the first edition and many others not previously cited have been mentioned in their proper places. Several chapters have been entirely rewritten and greatly enlarged.

The author has here dealt with a very important act of Congress, singularly infelicitous in its language and confused in its arrangement but important to every citizen and taxpayer nevertheless, in a very clear manner. The public will therefore welcome the publication of a book which will give a definite answer to the practical and difficult questions which are continually arising under this act of Congress.

H. W. A.

The Law of Arrest. By Harvey Cortlandt Voorhees. Published by Little, Brown & Company, Boston. 1915. pp. XLIII and 287.

This is a second edition of a little book that is in general use in police departments and law offices. It is of first importance that the officer who invades the sacred rights of personal liberty should know exactly what his official rights and duties are. In few cases can he rely solely on the statutes in his jurisdiction for guidance for the reason that they never contain more than a small portion of the law which binds him. A statute, for instance, will tell the officer that it is his duty to make an arrest for a breach of the peace but seldom do they tell him what a breach of the peace is. So of breaking doors; the use of stratagem when effecting an arrest or seizure; illegality in the use of force or handcuffs; confining the prisoner and general treatment of the prisoner. It is in the close case that the statutes do not help the officer and this book has been written to arm him with just such knowledge as he needs at such a time. The author has thoroughly covered the field of the law of arrest and has greatly enhanced the value of his book by the citation of numerous authorities. He has also included a very useful collection of annotated criminal forms relating to the subject. The general excellence of the mechanical make-up of the book deserves special mention. Because of the clearness of the author's treatment and its

thoroughness and accuracy of detail the book should prove invaluable to those for whom it was written.

H. W. A.

Wills and Administration. By William Patterson Borland. Published by Vernon Law Book Company, Kansas City, Mo. 1915. pp. XV and 723.

This book is a revision and enlargement of a former work of the author, "Notes on the Law of Wills and the Administration of the Estates of Deceased Persons," which was the embodiment of a course of lectures delivered in the Kansas City School of Law. The author has sought here to produce a real text-book rather than a mere running digest of the cases. He has endeavored to state concisely in a single volume all the principles relating to this subject which find support in the adjudicated cases. This was of course a big task, for much of the law of wills is badly tangled. But for this reason the author's effort is all the more commendable and he has succeeded probably as well as the nature of the task which he set himself permitted. It cannot be said that his book is superior to some of the more elaborate works already published but it probably is as good as or better than any one-volume work yet published. From the point of view of the practitioner the book will be most serviceable to the westerner, for the reason that most of the cases cited are from the western states though enough cases have been cited from England and the states generally to make it of more than local value. The law student will find its concise and reliable statement of the leading principles relating to the subject very helpful. We commend it to both lawyer and student.

H. W. A.

Essentials of the Law. By Marshall D. Ewell, Late President and Dean of the Kent College of Law of Chicago. Published by Matthew Bender & Company, Albany, N. Y. 1915. Volume 1. pp. XVI and 867.

This book is the second edition of Professor Ewell's work. It represents an effort by an able law teacher to prepare an edition of Blackstone's Commentaries which will be suitable for use as

a text-book in law schools, where the text-book system is still used, and of practical value to law students everywhere. Everyone of course knows that Blackstone's Commentaries is one of the greatest legal classics and that the study of it nowadays is not emphasized as much as it should be. The author has here sought to give us a modern edition of what is essential in Blackstone. In the preparation of the work the experience and thought of many years as a law teacher has been brought to bear. The aim has been to eliminate matter which is no longer useful and retain all that is of present interest. As to what matter is of this character, there is room for a difference of opinion, but Professor Ewell's ability and experience as a teacher would entitle his view to much respect. Besides undertaking to select and print herein what is essential the author has further aided the student by the mechanical make-up of the book. He calls attention to leading principles by displaying them in heavy-faced type. The more important parts of the text are printed in small pica type while matter which is of minor importance is, as a rule, printed in brevier. The work is to be commended. It of course leaves out or abbreviates a good deal of the obsolete law, but it still leaves enough to give a historical sequence and enables one to take in at a glance, as it were, the English law from its beginning. It should prove of special interest and value to law students and to such we heartily commend it.

H. W. A.

The Illegality of the Trial of Jesus. By John E. Richards.

The Legality of the Trial of Jesus. By S. Srinivasa Aiyar.

Published by Charles E. George, New Orleans, La. 1914.
pp. 92.

This book presents the views of two distinguished jurists upon the question of the legality of the greatest trial in history. Judge Richards, an able California lawyer and judge, sees the result of this trial as a crucifixion undeserved and unfairly imposed as a penalty wrought by passion and prejudice. The East Indian savant, one of the ablest jurists of his day, has made a close analysis of the legal aspect of the case and finds no irregularity or illegality in the proceedings or anything harsh and undeserved in the penalty imposed. The point of view of each is very interesting.