BOOK REVIEWS

Justice and the Poor—A Study of the Present Denial of Justice to the Poor and of the Agencies making more equal their Position before the Law with Particular Reference to Legal Aid Work in the United States. By Reginald Heber Smith. Published for the Carnegie Foundation for the Advancement of Teaching. New York, Charles Scribner's Sons. 1919. pp. xiv, 271.

From the days of Magna Carta, freedom and equality of justice have been the bulwark and the boast of English law. The author's premise that a denial of justice to the poor is the condition which exists today may startle some, and may offend others. To certain persons any statement which may be seized upon by a sensational press as a "scare head-line" suggesting the oppression of the poor by the privileged, is anathema in these days of social unrest. But a perusal of the book should satisfy the most conservative reader that the author is far from asserting any conscious oppression by a dominating group in the community or any discrimination on the basis of wealth in the substantive principles of the law. His thesis is that while the primary rights and duties between man and man are defined by rules of law without partiality, yet in the machinery of administration there are defects so grave that in fact, even though not in theory, the poor are denied court justice. These defects are three—delays, court costs, attorneys' fees—and the potent influence which they exert in the denial of justice is due mainly to comparatively recent changes in conditions brought about by immigration, the rise of the wage-earning class, and the enormously rapid growth of large cities. Few persons realize the volume of "petty litigation" in urban communities. Of 1,224,000 cases entered in the English County Courts in 1913, 98½ *per cent.* were for claims under £20 and the average claim was about £3. In the Cleveland Small Claims Court, which has jurisdiction of claims less than $35, there were 5,106 cases for trial in 1915 and the total judgments were less than $33,000. The wage-earner or small tradesman who has an honest claim of only a few dollars may well think there is no law for him, if the court machinery is such that he must advance costs and attorneys' fees equal to the amount of his claim and must wait months before he can have a trial. Statistics and a liberal citation of the literature of the subject have been brought together by Mr. Smith and present convincing evidence that our court machinery has broken down in the respects mentioned in dealing with the small claims of the city poor.

Having established his premise in the first part of the book, the second portion of the author's study deals with ameliorating agencies which are making for a reform of court machinery in the interest of the poor. Foremost of these is the Small Claims Court. The essential features of such a court are extremely low court costs or none at all, the abolition of formal pleadings, the exclusion of lawyers, the examination of parties and witnesses by a trained judge without formality or the observance of technical rules of evidence, and the prompt trial of the case on the return day. Thus are overcome the three defects of administration which make for a denial of justice in small claims. In several cities such courts have already been established. The small claims court in Cleveland, known technically as the Conciliation Branch of the Municipal Court, is the most nearly perfect type of court for small civil causes which has yet been developed, although, as Mr. Smith points out, there still remains opportunity for improvement in the development of collateral functions, such as providing for

the payment of a judgment by installments and for a trusteeship, if the debtor owes numerous creditors.

Of the other ameliorating agencies mentioned by the author, there is space to refer only to one—the Defender in Criminal Cases. Here the position of the poor man charged with crime is dealt with. That he is entitled to protection before the law and that adequate protection requires adequate representation by counsel, no one will deny. That the state must furnish such counsel has long been recognized in the traditional system of assignment by the court. But this system has resulted either in entrusting the defense to young and inexperienced lawyers, who for the sake of obtaining experience and notoriety are willing to take cases without fees, or to that class of "professional jail-lawyers" whose practices have become a disgrace to the profession and the deepest blot on the administration of criminal justice. It is this condition which has given rise to the defender plan, beginning with the public defender appointed for Los Angeles County, California, in January, 1914. Several other states have followed on. In New York City an organization known as the Voluntary Defenders Committee was financed by public spirited citizens and began work in 1917. Mr. Smith reviews the activities of the several defenders and shows how this plan has raised the tone of criminal trials in their communities. That this is a reform which will develop and spread seems clear. No public spirited attorney can afford to remain ignorant of what has already been done or to form a deliberate opinion as to what the future development should be.

"The office of the attorney is indispensable to the administration of justice, and vital to the well-being of the court."[1] While in small claims cases his functions may usually be performed by the judge, there are numerous other classes of cases where the lawyer's services remain, and will continue, indispensable both in the trial and in advising a client as to substantive rights before trial. This fact and the inability of thousands of persons to pay adequate fees have given rise to Legal Aid Societies. The history of such organizations and their present position throughout the country with relation to the administration of law is stated most clearly in the final part of the book. They have come to rank as one of the greatest of legal reforms. They are doing more to maintain the confidence of thousands of immigrants and of poor citizens in the justice of our laws and in the soundness of our political institutions than any other single agency. Where, then, should one expect to look for leadership and financial support for such organizations? Obviously to the legal profession. That the profession has sometimes failed to give adequate leadership and support in the past is an additional reason for shouldering the responsibility for the future. Many problems of policy confront the Legal Aid organizations. Only if the legal profession will give its deliberate attention to these problems can they be solved aright and only by a right solution can an administration of justice be effected which will give the poor man substantial equality before the law.

Mr. Smith's undertaking began in a study of Legal Aid Societies suggested by the application of certain societies for a grant of funds by the Carnegie Foundation. The book which has resulted is a systematic treatise on the administration of justice in the United States so far as it relates to the causes of the poor. His treatment of the subject exhibits the clear insight of a legal scholar, the accuracy and moderation in statement of a conservative lawyer, and the optimism and liberalism of a practical reformer. Every lawyer and every public spirited citizen who reads this book should feel a debt of gratitude to the author and to the Carnegie Foundation which made possible its publication.

T. W. S.

[1] Killets, J. in *In re Thatcher* (1911, N. D. Oh.) 190 Fed. 969.

Cases on the Law of Property. Volume II. Introduction to the Law of Real Property—Rights in Land. By Harry A. Bigelow. (American Case-Book Series.) St. Paul, West Publishing Co. 1919. pp. ix, 88; xviii, 741.

This case-book, the last to be published of the five "American Case-Books on Property," covers, in the main, the same ground covered by the second volume of the late Professor Gray's *Cases on Property*. It deals with the subjects of Air, Land, Streams, Surface and Underground Waters, Profits, Easements, Licenses, Covenants and Agreements running with the Land, Rents, and Public Rights. In addition are two subjects included in Gray's first volume, the Introduction to the Law of Real Property and Waste. In the judgment of the reviewer the case-book amply fulfills the strict requirements recently set forth by Professor Wormser (28 YALE LAW JOURNAL, 205) and in addition is of especial interest because of two things, the treatment of the historical introduction or background of the subject of Real Property and the use of the Hohfeldian analysis and terminology.

Professor Wormser not only set a high standard of editorial preparation for a case-book, but also urged that no case-book should be prepared for a subject already adequately covered. But another series of property case-books was needed in view of the developments in the law since the publication of Gray's *Cases*. Gray prepared the plan, which others are in the main following. It needs, however, but an examination of such a subject as Waters, adequately covered by Bigelow, to show how dangerous it is to rely upon Gray for a complete view of the modern law, particularly in American jurisdictions. In fact one of the great advantages of this work is that without slighting the English authorities, there are given throughout the most recent American cases.

We can hardly quarrel with Professor Bigelow's selection unless it be on the side of overcompleteness. In accordance with the custom of this series, the notes are so extensive as to make the work valuable even to the practicing lawyer. It is hardly a defect, however, to have a fullness of material; though the instructor must make his own selection rather than rely solely on that of the editor, it is obviously a gain to be certain that the material made available does not contain serious omissions.

But besides supplying an adequate collection of cases upon a subject where such collection was needed, Professor Bigelow has added original features. In the third volume of this series, Professor Aigler had urged that it was impossible to teach the historical development of real property law by the use of a few cases and much ancient secondary material as attempted by Gray. The solution here offered is a frank abandonment of the case method and the substitution of a short treatise covering this history.

Now every teacher of Property will have his own ideas concerning the proper method of approach to real property law. Certainly, however, there is much to be said for Professor Bigelow's plan. Littleton's *Tenures* means little to the beginning law student who has yet to connect the Statutes of Uses with the modern warranty deed. Indeed we may say, why the "Introduction" at all in a case-book? Cases are studied primarily to train the student in capacity to acquaint himself with the living law, not to teach him history. Throughout the study of Property, and particularly the subjects covered by the next volume of this series, Professor Aigler's *Cases on Titles*, the practical and present day as well as historical aspects of disseizin, grants; estates, uses, and so on are shown. Why should these subjects be fleetingly touched in the classroom in a preliminary historical survey?

This does not mean that Professor Bigelow's little treatise is not of value. An historical survey of a difficult subject, done simply and clearly but yet briefly, cannot fail to be of great advantage to the student. Nor does it mean that the historical background is not necessary to all legal study, and in par-

ticular to the study of real property law. It is simply a question of means and methods. Mature law students should be expected to master their historical treatises by themselves and thus leave the classroom for the analysis and discussion of decided cases, particularly as these cases will themselves reflect and illustrate the historical background. After all, this portion of the work is a textbook and hence its use is properly as collateral reading.

Professor Bigelow's own idea is that this "Introduction" may more profitably be used in connection with Professor Aigler's *Cases on Titles,* for the first year property course. But it may be questioned whether the traditional plan is not preferable since the student first studies the easier cases on the subject here called "Rights in Land"—the defining of the point where the privileges of ownership cease and the rights of the neighbor commence—rather than the more difficult subjects of estates and deeds.

As the reviewer sees it, the most commendable feature of the book is the editor's use of the exact terminology set forth by Professor Hohfeld in his "Fundamental Legal Conceptions." Nowhere is the need of exact analysis and discriminating use of terms greater than in this subject,—the word "property" itself being a snare for the unwary. While Professor Bigelow's employment of the fundamental legal conceptions is disclosed most in a certain caution in expression, yet this itself is a guarantee of the care he has used in the choice of terms and insures against careless and misleading expression. In this connection he has an interesting and apposite suggestion that the conventional divisions of the subject follow a distinction between the legal relations considered. Thus he suggests that the casebook on *Titles* deals with "powers" and "immunities," while this book deals with "rights." But it would seem that he errs in failing to emphasize the importance of the "privilege" relation, for every case which decides against a right of action for one property owner thereby holds that another property owner has a "privilege." In fact he might have substituted for the less exact expression *Rights in Land,* the title *Rights and Privileges of Ownership.*

Nevertheless, the care taken in the use of terms is the final demonstration of the care with which the entire volume has been prepared.

CHARLES E. CLARK

The Conflict of Laws Relating to Bills and Notes, Preceded by a Comparative Study of the Law of Bills and Notes. By Ernest G. Lorenzen. New Haven, Yale University Press. 1919. pp. 337.

Professor Lorenzen's book is a timely and valuable contribution to the literature of bills and notes and to that of the conflict of laws. Its value and its interest lie equally in the materials collected, the method employed, and the purpose and conclusions of the author.

The first part of the book contains a concise study of the internal law of local bills of exchange of the more important European countries. The study is made from the standpoint of Anglo-American law, similarities being merely indicated, variations dealt with at some length. The survey includes of course the N. I. L., the Bills of Exchange Act, and the Hague Uniform Law of Bills of Exchange. The second part is made up of a very careful analysis and comparison of the conflict of laws rules now in force in England, the United States, and the major countries of Europe and South America on those bills and notes which have gotten into international or interstate commerce. The rules proposed by the Hague Convention for uniform adoption are also examined, together with the views of the leading jurists, past and present; and the author makes in each case a carefully weighed recommendation for

uniform adoption in this country of the rule he finds best suited to our conditions and our policy. The third part of the book reprints the various acts involved in the discussion. There is an eight-page bibliography, and an adequate index.

The first part is in itself enough to make the book worth while. Here is material—so far as is known, the only material in English—which no practitioner whose work involves international exchange can well do without. The treatment is not elaborate enough to show the solution under foreign law of the more intricate problems which may arise; but it is ample to point out to a man in what matters he may not trust his own judgment and experience, but must for safety sake seek the advice of local counsel. For the student or teacher of negotiable paper this part is no less interesting. Constant contact with a single set of doctrines brings one insensibly to the assumption that what is—in our own system—must be. Yet Professor Lorenzen confronts his reader with an almost bewildering set of divergencies in the simplest points; as, for instance, that in Europe a bill of exchange cannot run to bearer. It comes as a healthy shock to discover that rules which one has, by dint of reiteration, accepted as inevitable, have been doubted, or changed, or rejected, in civilized communities which seem, despite that fact, to get along. Even casual reading of the comparison means new breadth and scope in one's approach to the subject, and new insight into the way of growth among us of this branch of law, which from the one parent stock of the law merchant has under different conditions developed details so varied. To take a simple illustration, how can the "maker's intent" theory of our own requirement of words of negotiability even be argued for, when the Bills of Exchange Act makes instruments negotiable without such words? And surely light on the true explanation is afforded by knowledge that under the German law, a bill to be valid must bear in its body its designation in terms as such a bill.

The second portion of the book has received even more careful attention from the author than the first. Professor Lorenzen's aim is to provide materials for a future American uniform act on the conflict of laws rules relating to bills and notes, and to influence the draftsmen of such an act to approximate, in some degree, uniformity with foreign countries, and thus to approach that happy time when a case will be decided in the same way, regardless of what forum it may come before. Before any criticism can be attempted, however, either of aim or of method, some discussion of the basic aims and nature of the rules of conflicts is necessary. It is to be regretted that the author's views on these matters are nowhere in the book developed systematically; for they make enlightening, stimulating reading.[1] They can, however, be extracted in part from his method, and in part from his discussion. It is not always easy extracting. Professor Lorenzen is not a stylist. The full thought-value is not always apparent on the surface of his sentences; but the careful reader will find the ore amazingly rich.

Rules of the conflict of laws exist, like other rules of law, to settle disputes which arise, and which it is desirable to settle in a uniform fashion. The fact that the situation they deal with may come before any one of a number of forums makes a substantially uniform disposition of the case—i. e., certainty in similar dealings—in no way less desirable, but merely more difficult of attainment. And such a rule of uniform disposition of the case must, to

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[1] The writer has had the privilege of consulting the manuscript of Professor Lorenzen's admirable paper on *The Theory of Qualifications and the Conflict of Laws*, shortly to appear in the COLUMBIA LAW REVIEW, in which the author's theory of conflicts finds clear expression.

be just, and to endure, be fitted to the expectations which the people at large entertain who enter upon such transactions. Even in municipal law, however, we have long come to distinguish great bodies of rules which are in the main but the technical tools of technicians for the regulation of unusual cases; rules which exist merely for certainty's sake, and which might, for all the reaction they have upon the community, quite as well be the opposite of what they are. If a telegraphic offer is mangled in transmission, and "accepted," what difference does it make to the business community whether a contract has been formed or not? The only question is as to which party is to stand the immediate loss and so to have the ultimate right over against the telegraph company. These are rules governing cases where, in the general run of transactions, there *is* no real expectation of the parties, cases which the *mores* have never developed to cover. And because the most of us are not to any great extent concerned with international affairs, it is believed that the proportion of rules of this sort is in the conflict of laws unusually high. This is believed to be strikingly true in the matter of bills and notes. It is probably well ingrained in the *mores* of Western civilization that, by and large, a man should not be held liable civilly for an act which was wholly lawful under the law of the place where that act and its consequences occurred; but who would undertake to say that it makes a grave difference to business men whether an endorser undertakes in case of dishonor to pay at the place of his domicil, or of his commercial domicil, or where he became a party to the contract, or where the maker has agreed to pay?

It is clearly Professor Lorenzen's belief that our doctrines of the conflict of laws are yet in the main in a formative stage; and that many of those relating to bills and notes might be changed without any great damage to, or indeed any very noticeable strain on, the commercial fabric. Both of those positions seem to the reviewer sound and practical. Professor Lorenzen further advances the seemingly unusual, but vitally true proposition that no conflict of laws rule can be weighed against a rival rule until it is seen, by reference to internal legislations, whether it makes any difference which of the rules is adopted, and what that difference is. Hence his collection of material in Part I. Working along these lines, he examines the competing conflict of laws rules of bills and notes; makes note of the differences in their effects; examines how far this or that rule is in fact grounded in the *mores* of a nation, and so is not a subject of international compromise, and how far it is but a technical tool which is capable of compromise without serious impairment of the commercial usages of the country where it obtains at present; and, with American conditions in mind, he makes specific, rather conservative, recommendations as to what alterations would be desirable, and what feasible, in our own law on the subject. The aim and method of the work are equally sound. Undoubtedly any proposal for compromise of any kind will meet with intrenched opposition—opposition largely on the part of those technicians whose mastery of the present rules has given them at once an interest in the preservation of those rules, and, through long habit and familiarity, a sense that such rules are "just" in the absolute and are, regardless of their real relation to our life, vital to our interests. The Hague Conferences sufficiently bring out this attitude on the part of many of the delegates. That does not alter the value of Professor Lorenzen's work, nor affect the soundness of his approach.

In closing, recognition should be made of the intellectual stimulus to be found in the author's analysis of his subject matter, his careful sundering, in treatment and in thought, of aspects of contracts which it has been the tendency of our law, in the main, to lump together.

K. N. L.