

BOOK REVIEWS

- Principles of Contract.* By Sir Frederick Pollock, Bt. Ninth Edition. London, Stevens & Sons, Ltd., 1921. pp. lx, 820.
- Chitty on Contracts.* Seventeenth Edition. By W. Wyatt-Paine. London, Sweet & Maxwell, Ltd.; Toronto, The Carswell Co., 1921. pp. ccv, 1098.
- Contrats par Correspondance.* By Albert Cohen. Paris, Ernest Sagot & Cie., 1921. pp. xii, 196.
- Contracts in Engineering.* By James Irwin Tucker. Second Edition. New York, McGraw-Hill Book Co., 1920. pp. xii, 331.

Anything coming from the pen of Sir Frederick Pollock is worth the attention of the American scholar and lawyer, both because of the power of his reasoning and because Sir Frederick has among Englishmen an exceptional knowledge of American problems and American law. Pollock on *Contracts* has become a classic, and in succeeding editions it has been kept pretty well up to date by the author. The text of the present edition, however, will not be found to differ much from that used in 1905 by Professor Williston in his American edition. There is a little change as to contracts by correspondence, and Dr. Albert Cohen's pamphlet is cited. There is still no chapter on the subject of Discharge. It would have been interesting to get Sir Frederick's explanation of *Les Affreteurs v. Walford* [1919, H. L.] A. C. 801, where a court that purports never to reverse itself deals again with the rights of a third-party beneficiary.

There are some new sections on Repudiation; and the former chapter on Impossibility is suppressed, some parts of it being included in the new chapter entitled "Conditions, and herein of Frustration." The frustration cases have compelled a fuller treatment of the law as to conditions, but this treatment is still far from complete. Rule-makers, whether they be text-writers or a legislature, can seldom construct rules in advance of actual experience with facts. The experience of the English courts, broad though it is, probably does not cover as many possible cases as does the experience of the courts of our 48 states. The present chapter is obviously following the work done by various authors in this country. Sir Frederick has not reached bottom in distinguishing between conditions precedent and conditions subsequent; and the present reviewer believes that the modern rules as to Impossibility are not mere "canons of interpretation" and that the rule as laid down in *Paradine v. Jane* is substantially without influence. The author does not distinguish between impossibility of performing acts required by a promisor's duty and impossibility of fulfilling conditions precedent to a promisor's duty.

It may incidentally be asked why the subject of discharge of sureties is discussed under the heading "Unlawful Agreements." The agreement by a creditor to extend the time of payment may discharge a surety, but it does so because it is valid and operative and not in the least "unlawful."

It ought not to be expected that the seventeenth edition of an English work on contracts originally published in 1826 would be worth buying in the United States. No doubt this edition of Chitty on *Contracts* would be of great service to an American lawyer if he had nothing else. It is a large volume, dealing with the general theories of contract law in rather meagre fashion, and attempting to cover—as was the fashion in Chitty's time—the whole field, including Sales, Agency, Partnership, Bailments and Carriers, Leases, Negotiable Instruments, Master and Servant, and Suretyship. Much of the book is devoted to English statutory law, the chapters on stamping of contracts and on the capacity of parties containing little else.

No American student should go to this book to learn our law, for it is not even aware of modern cases and modern development of theory in the United States. The work is practical and reasonable, but makes no close analysis and gives no enlightening discussion of such subjects as unilateral contracts and consideration. *Cook v. Oxley* is quoted at length with entire approval, and there is no effective explanation of *Dickinson v. Dodds*. No difference is noticed between a quasi-contract and a contract implied in fact. The editor does not observe that *Les Affreteurs v. Walford* [1919, H. L.] A. C. 801, affects the law as to the rights of third-party beneficiaries, and the case is not even cited. Perhaps the English courts will also fail to observe the fact.

It is with especial pleasure that a student of the common law will read the thesis of Dr. Albert Cohen on *Contracts by Correspondence*. We have here an attempt by a Continental lawyer to make a study of Anglo-American contract law by the use of cases, comparing it also with the law of France. In what other Continental work on comparative law will be found a "table of cases"? Here we have a list of 150 English and American cases; and they are often stated and discussed in the author's text. Among these cases are found such familiar names as *Adams v. Lindsell*, *Cook v. Oxley*, *Dickinson v. Dodds*, *Mactier v. Frith*, and *White v. Corlies*; also a few more recent cases like *Bank of Yolo v. Sperry Flour Co.* (1903) 141 Calif. 314, 74 Pac. 855, and *Cole etc. Co. v. Holloway* (1919) 141 Tenn. 679, 214 S. W. 817. Along with the cases are cited and discussed works like Williston's new treatise on Contracts, and articles in the *YALE LAW JOURNAL* and the *HARVARD LAW REVIEW*. Dr. Cohen understands such subjects as our "objective theory of contract," irrevocable offers, and acceptance by silence. He accepts the theory of Lord Herschell in *Henthorn v. Fraser* that acceptance by mail operates from the date of mailing because of business custom and not because the post is a "common agent." He knows of our conflict as to whether an offer is "operative" before it is known to the offeree. His clear and accurate statement of American law makes one soon feel at home even though the language is in French. No doubt his short chapters dealing with the Conflict of Laws are of less value than the rest of the work.

Contracts in Engineering is written as an elementary text-book for engineers and contractors. "The aim has been to enable the engineer to co-operate efficiently with lawyers, and to appreciate more perfectly the need for their assistance." If restricted to this purpose, the book may be useful. It may give to engineers some general ideas as to the problems of the lawyer, and it may give to lawyers some general ideas as to the facts of an engineer's business. This should result in the drawing of better engineering contracts. Perhaps the author is too confident that he can state "in brief compass" "a considerable number of elementary legal principles" and can convey to a beginner a definite and accurate idea by "a simple and brief statement of the spirit of the law." He warns the student, however, that conflict is common and that error is possible. The reviewer is of the opinion that this work is of greater service as a lawyer's handy reference book than as a text for students. Engineering students would much better be given a small number of selected cases so that they can observe how legal principles are constructed by the courts and are applied by them to the varying facts of life. They might thereby gain a little insight into "the spirit of the law." The present book attempts to give them altogether too much, and the result cannot fail to be thin, misleading, and incorrect. Observe the following "questions" for students prepared by the author: Give the technical definition of a sale. Discuss the Statute of Frauds as a rule of evidence. What does an indorser warrant? What is the liability of a partnership in tort? Name the principal common-law powers of a corporation. Define a trade fixture. Define proximate cause.

ARTHUR L. CORBIN.

Yale University Law School.

America and the Balance Sheet of Europe. By John Foster Bass and Harold Glenn Moulton. New York, The Ronald Press, 1921. pp. vi, 361.

This book should be read by every person interested in international relations and public affairs. It presents a dispassionate and analytical diagnosis of the existing economic position in the world, essays a conclusion of the probable economic and political consequences if the position is not soon radically altered, and suggests the necessary remedies that must be adopted. In a sense it is a work supplementary to Keynes' *Economic Consequences of the Peace*, with the advantage of three years' tangible experience of those economic effects which Keynes predicted. The argument of the book constitutes an interpretation, in terms comprehensible by the layman, of the figures presented by a study of the current balance sheet of Europe. The book has a purely educational purpose and is so constructed that the reader is permitted, after a study of the facts in Parts I and II, to draw his own inevitable conclusions. In the last chapters, the authors venture to suggest a way out of the dilemma into which Europe and the world at large has been driven.

Part I of the book constitutes an analysis of the existing economic situation. The authors point out the tests and criteria, namely, foreign trade, depreciated exchanges, unbalanced budgets, mounting debts, and inflated currency, by which the position can be established. The conclusion is inescapable that the Treaty of Versailles and its execution have directly retarded the economic recovery of Europe and that almost before our eyes the position is from month to month rapidly growing worse. The authors indulge in few predictions, but, given the truth of the premises as presented by the figures, the conclusion is manifest that all Europe is approaching economic and social disintegration, and will soon find itself engulfed unless heroic measures are promptly adopted in common council by the statesmen of Europe. The authors seem none too hopeful of the ready adoption of such measures, although the recent calling of the Genoa Conference indicates that the pressure of facts has at last penetrated the chancelleries. Whether the situation can still be controlled and whether the remedies adopted will be adequate to meet the economic disease from which the world is suffering remains to be seen. The authors emphasize the point throughout that the problem is not special to any one nation, but is a unit affecting all Europe in very nearly the same degree and ultimately the world in general.

That brings the authors to Part II, which is confined to "The Reparations Dilemma." It is introduced by a history of the reparations controversy, followed by an examination of the economic effects of reparations on the payer and on the payee. The conclusion is reached that not only can the debtor not pay in the only way a national debt can be paid—in goods or services—but that the creditors cannot afford to permit themselves to be paid, because their own markets and industries would suffer badly. The authors regard the reparations as uneconomic and a bar to world recovery. The unwelcome but nevertheless inescapable conclusion is that the reparations must sooner or later be so materially reduced that they will yield little if anything. Almost the same argument leads to the conclusion that the inter-Allied debts and the Allied debt to the United States will have to be cancelled if trade is to be maintained in anything like healthy proportions. This thought, to which informed economists have already yielded assent, will soon have to be accepted by politicians and the people at large. Two long chapters on the "political factors in the European situation" are a masterly study of the unwillingness of statesmen to face the economic facts and, indeed, of perverseness in acting contrary to them, with disaster a consequence. The dilemma of France, either (a) to ruin Germany now in the hope that a resurrection will be impossible, but thereby inviting a general European financial, economic, and perhaps social collapse and upheaval, or (b) to permit Germany to recover, with consequent economic recovery in Europe, but danger of a war of revenge upon France, is strikingly, if dispas-

sionately, portrayed. The inevitable divergence of the British and the French policies in Europe under these circumstances becomes clear merely by suggestion.

Part III deals with "Remedies—Proposed and Real." The entire catalogue of proposals for the relief of the world depression and the reconstruction of Europe is examined and most of them are found wanting. Nearly all require the taking of large chances on European stability by the American investor, and so long as the statesmen do nothing to make the risk safer, but, on the contrary, seem to be making it continually more unsafe, these proposals are not likely to have any considerable measure of success. Nor is "stabilization of exchange" a remedy. This cannot be effected while the causes of instability, namely, huge budget deficits, mounting public debts, inflated currency, and restricted production, continue to operate. On the contrary, when the causes of instability above mentioned are courageously attacked by statesmen informed by an economic rather than a political orientation, there will be no need for an artificial "stabilization" of exchange. This would then take care of itself. The four basic requirements of "the way out," as seen by the authors, are (1) an increase of domestic production in each country, bringing prices down; (2) a restoration of relatively unrestricted and balanced trade between nations, requiring practically a cancellation of allied debts, an almost complete abandonment of reparations and a removal of the trade barriers interposed among the continental nations of Europe; (3) a restoration of the gold standard, requiring probably a repudiation of a large part of the public debt of many European countries, as the lesser of possible evils; and (4) a balancing of budgets by a drastic reduction of expenditures, notably for armaments. If economic health can be restored to the world, through continuous economic rather than primarily political co-operation, and by the courageous adoption of the heroic measures advocated, there is still a chance that political health may return and internal disintegration and new wars, which now seem inevitable, avoided. The probable consequences of such an eventuality within the next generation do not require portrayal.

EDWIN M. BORCHARD.

Yale University Law School.

Trust Estates as Business Companies. By John H. Sears. Second Edition. Kansas City, Vernon Law Book Co., 1921. pp. xx, 782.

The first edition of this treatise, which appeared in 1912, was a pioneer work in a field of constantly growing practical importance. There is still little in print upon the subject. It is included in Wrightington's *Unincorporated Associations*, and has received fairly full treatment in Fletcher's *Cyclopedia of Corporation Law*. There is also a small book by Guy A. Thompson, called *Business Trusts as Substitutes for Business Corporations*. The subject is certainly one which deserves more attention than it has yet received.

In Mr. Sears' book about 300 pages are devoted to an appendix containing forms which are of considerable interest. Only about 400 pages remain for the presentation and discussion of the law. This part of the book is loosely put together. The author first disclaims any desire to urge the use of the trust device as a means of evading the law, and attempts to remove the stigma attaching to trusts as a result of the activities of the Standard Oil organization and its imitators in the closing years of the last century. There is then a chapter on the various methods of establishing a trust estate in business, showing (what no one can doubt) that a trust may be created either by will or *inter vivos*, either by one person or by several. The author then proceeds to consider in a rather disjointed way the nature of a trust. He throws in a few paragraphs on spendthrift trusts and on passive trusts, which shed no light on the nature of trusts in general and which seem to have no bearing upon the more specific subject matter

of the book. In the following chapters dealing with the liability of the trustees, the trustees' right of indemnity, the liability of the trust-estate, and the non-liability of the *cestuis que trust*, the treatment is more felicitous. But some matters of considerable importance are not discussed. The possibility of creditors reaching the *cestuis que trust* through a possible right of the trustee to indemnity from the *cestuis que trust* personally, as indicated by the decision in *Hardoon v. Belkios* [1901, P. C.] A. C. 118, is not mentioned. The personal risk run by the trustees when a tort liability is incurred and the amount of the liability exceeds the value of the trust estate, is not perhaps sufficiently emphasized. It is not made clear how far creditors have direct claims against the trust estate and how far their claims are dependent upon the trustees' right of indemnity. See *Clack v. Holland* (1854, Ch.) 19 Beav. 262; *King v. Stowell* (1912) 211 Mass. 246, 98 N. E. 91. It is believed that a more thorough analysis of the underlying principles and a more complete presentation of the authorities would add to the value of the book.

AUSTIN W. SCOTT.

Harvard University Law School.

Law of Evidence. By Pitt Taylor. Eleventh edition. By Joseph Bridges Matthews and George Frederick Spear. In Two Volumes. London, Sweet & Maxwell, Ltd., 1920. Vol. I, pp. cii, 1-665; vol II, pp. 667-1468.

The first eight editions of this treatise were prepared by Mr. Pitt Taylor himself. The first, which appeared in 1848, was nothing more or less than an English edition of Greenleaf, as the author practically acknowledged in his preface. It immediately took front rank among English textbooks on the subject. In 1864, Chief Justice Cockburn said of the then current edition: "All that could be done or desired in this department of our jurisprudence is accomplished." The English reviewers commonly speak of the treatise as Taylor's "monumental work," and it is probably the most frequently cited text in the English Courts. The seventh edition required extensive changes and additions on account of the Judicature Acts of 1873 and 1875. And in the eighth edition, in 1885, on account of various unrelated statutes which incidentally affected the prior text, so many alterations were called for that the author marveled at his own "intrepidity in venturing to prepare" it for the press.

The present editors have used the eighth edition as the basis of their work. Because of developments in the law of evidence, both common and statutory, they have been compelled to rewrite some sections and to add others. They have prepared extensive new footnotes, and have endeavored, apparently with a marked degree of success, to assign to their proper places in Mr. Taylor's arrangement the cases decided between the time of preparation of the eighth edition and "the end of the long vacation in 1919." But it must frankly be said that what is really needed is not a new edition of Taylor, but a new work on evidence, which will do for the English bar what Mr. Wigmore has done for the American bar. Indeed, an English edition of Wigmore would seem to be much more useful and useable than this new edition of Taylor.

E. M. MORGAN.

Yale University Law School.