BOOK REVIEWS

Law, Life and Letters. By the Earl of Birkenhead. New York, George H. Doran Co., 1927. Vol. I, pp. 296. Vol. II, pp. 326.

Legal subjects occupy about half of the two volumes of this work. Interspersed among them, in a rather haphazard fashion, are chapters on such topics, among others, as Stray Thoughts on Letter-Writing, The Works and Life of Sir Walter Scott, Eighteenth Brumaire, The Truth About Margot Asquith. The opening chapter deals legalistically with the recent libel suit of Captain Wright against Lord Gladstone. The latter published *prima facie* libellous statements concerning Captain Wright, in order to invite a suit for libel in which he might be enabled to disprove calumnious statements made by Wright concerning Lord Gladstone's father, the eminent statesman. Cases rarely occur where statements concerning the dead afford the basis of a suit for damages by descendants. There is a *dictum* of Justice Stephen that a libel on a dead person is not a misdemeanor "unless it is intended to injure or provoke living persons"; but Lord Birkenhead quite pertinently, it seems to me, remarks that not the intention but the natural consequences of the language used, should determine whether it is calculated to cause a breach of the peace,—the ultimate test. In the interest of history, the public becomes, in course of time, entitled to comment upon the notable dead, without fear of reprisal. Lord Birkenhead could not, for instance, imagine Judge Jeffreys' descendants bringing an action against a modern biographer for maligning the character of their ancestor. But attacks on a dead father, and perhaps on a grandfather, would naturally cause "warm" and "reasonable" resentment which might be expected to find vent in violence. Juries in judging cases ought to "consider themselves as dealing with normal, sensible living persons and not with descendants abnormal, hypersensitive, or more vindictive than the common run." But does this connotation take account of such normal sentiments as family pride, affection, gratitude and hereditary traditions of moral conduct? Probably not; and the manifold and varying reactions of normal persons to attacks upon the fair fame of their forebears are hard to forecast.

The chapter on this subject is extended to animadvert upon the questionable practice of Lady Oxford in quoting discussions with persons of distinction no longer living, in which the "vivacious and undefeated Lady seldom comes off second best"; the pernicious habit of modern novelists, particularly Arnold Bennett, of bringing into his stories "under a thin disguise * * * circumstances of disparagement" relating to one "who is alive or recently dead, in a matter which was never proved against him in his lifetime"; the habit of Mr. Wells in his comments upon public matters, of foisting upon reviewers and the public "tiresome pamphlets * * * in the guise of romances" and putting forth so-called literature which is "tiresome, dull, sterile and uninteresting"; and the recent growth of semi-scandalous volumes of memoirs like Lady Cardigan's notorious volume, the Memoirs of Harriette Wilson and the Whispering Gallery. But the author suggests no remedy through the law for these abuses.

In commenting on the increase in the cost of legal proceedings, Lord Birkenhead says that it "is a very important element in the falling off of litigation, of which the bar today so bitterly complains." It will strike the American public as strange that just complaint can be made by anyone

of a decrease of litigation, when the congestion of business in our courts is already causing such delay as to amount to a denial of justice. In our great cities, such congestion is due largely to so-called negligence suits, which constitute nearly 75% of jury cases; and one reason that these are so numerous is that under the contingent fee system plaintiffs are put to no expense; nor is the cost of the defense a deterrent because that is minimized by the fact that corporations or indemnity companies (who are usually the defendants) employ a staff of salaried trial counsel. In England the contingent fee is illegal and the unsuccessful party must pay the costs not only of his own solicitor and counsel, but often those of the other side. Lord Birkenhead does not very successfully defend the enormous increase in England of the cost of litigation; and he is on quite indefensible ground when he implies that it is a source of regret that "litigants will prefer to make a *reasonable* compromise, rather than embark upon these perilous financial waters." More and more in this country have compromises been encouraged by the courts, which frequently act as mediators; arbitration out of court has grown in favor; and if by such means litigation should decrease, all classes of the community would rejoice, even though it should cause complaints from some members of our already overcrowded bar.

The distinguished author comments upon the change in the procedure in England by which a defendant charged with crime is permitted to testify in his own behalf. The judge there, but not counsel, may comment upon such failure. In New York and other states in this country, neither counsel nor the court may make such comment. In England counsel for the defense "will hardly ever take the responsibility of advising a prisoner not to give evidence." But in this country it is not uncommon for counsel to give such advice, especially where he is of opinion that the state has not made out a case; and sometimes that course is advised as affording the only chance of escaping conviction. But defendants who decline to testify are generally convicted.

Lord Birkenhead's practice was exclusively as a barrister. He asserts that the tendency is "to exalt advocacy," because of the conspicuous and attractive qualities which it requires and the traditional precedence which it bestows. But he is solicitous lest the magnitude, complication and importance of the work of solicitors may not be understood. In modern financial, commercial and industrial affairs, and in the administration of great estates, solicitors must be possessed of legal knowledge, constructive skill and originality of conception; and intellectual superiority in such matters is bound to bring rewards in money, reputation and social position, which will naturally tend to remove the barriers which have existed between the two branches of the profession. The *a priori* arguments of Lord Birkenhead against the removal of those barriers, are not convincing, though it is not difficult to appreciate his sentimental attachment to a system under which he has achieved rare distinction. But a nation which has a genius for legal concepts, and which has had the spirit and hardihood to emancipate itself from the anomalous intricacies and recondite lore of the law of estates and property, and to reform the organization of its courts and their procedure, will not forever tolerate, without substantial modification, a professional system which preserves the preeminence of one branch of the profession, whose fame rests on "litigious terms, fat contentions and flowing fees," over the other which occupies itself with constructive effort. Lord Birkenhead points out that death has played a part in eliminating professional distinctions, for there died not long since "the last Sergeant-at-Law" and "the last Advocate, the last Conveyancer, and the last Special Pleader practicing under the Bar"; and he might have added in this con-

nection as he did in another, that when the great law reformers of the Nineteenth Century had a clean slate on which to write and created the county courts (probably the most important tribunals in England for the mass of the people) and reorganized the court of the Justices of the Peace, they provided that "in those courts barristers and solicitors co-exist as advocates, neither branch having any peculiar privileges in those courts as against one another." There is reason also to believe that in ordinary practice privileges based on the tradition referred to are frequently ignored. Thus, where an opinion of counsel is sought upon a written statement prepared by a solicitor, the restriction that the former may not make a supplementary or independent investigation of facts, has been long since in practice relaxed; and a barrister may also, in preparing important and complicated cases, himself sometimes interview the client and his principal witnesses.

The cumulative effect of such encroachments as these will in time leave nothing but the shell of an antiquated and once respected system, and then the process of sweeping it away will be simple. The tendency of English people to make their law and its administration expand or contract according to the requirements of changing social and business life and the needs of a developing civilization, makes it probable that this change will ultimately come.

Much that the learned author says in the chapter on the Breach of Promise of Marriage will have interest to lawyers. Action based upon such a breach seems to be more frequent in the English courts than in ours. There is an indisposition on the part of American women, particularly those of social position, to expose their private affairs to the public gaze. A respectable body of opinion in England favors the abolition of the action there, principally because it is such a fruitful source of blackmail. The author, however, sustains his view of the justice of the cause of action with warmth born of conviction, and his conclusions are based upon a far more extended experience than leaders of the bar in this country usually have.

Lord Birkenhead displays the most intense interest in the subject of divorce law reform, which occupies nearly fifty pages of his first volume. He denounces the law as "barbarous," and he contrasts it with the law of America where divorces "are adjusted more easily, less publicly, and less scandalously," although admitting that in some localities

> "the rules of divorce are almost as unaccommodating as with us * * * the matter is not desperate, for, unless I am misinformed, a domicile can be procured in a less difficult state which will resolve the conjugal problems of a severer domicile."

Most people in America will not agree with Lord Birkenhead in his optimism as to the divorce situation here. Indeed, it is the general opinion that we have a divorce problem of our own in this country which is the cause of recurrent scandals and almost continuous efforts at reform. The situation in England was recently referred to by an English judge thus:

> "Many of these cases are perfect farces, and the legislature had much better let these people go before a Registrar of Births, Marriages and Deaths and record the fact that they no longer desire to be married. * * * Quite half of these cases are collusive, but that is not always a reason, in my view, for refusing relief to an injured spouse. Indeed, half the petitions for divorce now are, in fact, though not in form, brought by the guilty party."

And a correspondent of Truth says that "the game is so well known that, in polite circles in which it is played, his confession has acquired the *nolo espiscopari* flavour, and no one pays any attention to it."

The Royal Commission which sat for three years before the war, made radical recommendations which, however, have never been agreed to by Parliament. The author's argument in favor of the recommendations of the Commission is sustained, vigorous and forceful. While admitting that certain "additional reasons formerly required" before a divorce could be granted on the ground of adultery, have been removed, and the lessening of the expense of divorce proceedings has enabled married people of moderate means to avail themselves of the law as they could not before, nevertheless, Lord Birkenhead believes that no thorough reform can be obtained until divorces can be granted upon five additional grounds recommended as a sufficient cause by the Commission, which are as follows:

1. Wilful desertion for three years;
2. Cruelty;
3. Incurable lunacy of five years' standing;
4. Habitual drunkenness; and
5. Imprisonment under a commuted death-sentence.

He attributes the defeat of the bill to accomplish this reform largely to the Bishops of the Church of England, and he is by no means content to rest with the reasons which impelled them to oppose it. With a trace of asperity he refers to them thus:

"Their mental position is a curious one. They are not legislating for their own flock. * * * No member of the Church of England need sue for a divorce nor need re-marry if divorced. All that the Bishops and their lay retainers in the Houses are doing is to compel other people to live up to standards which they do not accept. * * * They are merely encouraging the poor to disregard the marriage tie and the rich to laugh at the law."

Lord Birkenhead's lengthy justification of the activities of the King's Proctor will suggest to the American lawyer that the precautions of the English system to prevent collusion in divorce actions, are probably more effective than those prevailing in this country, where they are largely dependent upon the ability and experience of the trial judge. The necessity for such precaution in this country is indicated by the frequency with which we hear of one spouse *"giving"* the other a divorce.

Sir Hall Caine recently resuscitated the old question whether the law courts are cruel, and Lord Birkenhead comes forward in defense with arguments rather trite to lawyers. On the question whether an advocate should defend a client whom he knows to be guilty, he confronts Sir Hall with the somewhat hackneyed statement of Dr. Johnson, that "the advocate is not to usurp the function of the judge." We may infer from this argument that the learned ex-Chancellor attributes the abuses of cross-examination to the differing temperaments and variable practices of trial judges; for, contrasting the conduct of one "able and experienced judge" in a famous case, who admitted questions, seventy per cent of which were "irrelevant, offensive and almost unprofessional," with that of another who in an equally well-known case, announced "In this case I shall not exclude *any* evidence," he advocates as a cure for such legal medleys a more strict observance of "binding and intelligible rules which are an indispensable element of the law of the land."

Closely connected with this subject is the nature and extent of the power of the judge in influencing the jury. Though "judges are responsible for

matters of law; jurymen are responsible for matters of fact," a very different conception of the function of the judge from that prevailing in England, has grown up in this country. In an extreme expression it is embodied in pending legislation in Congress (the Caraway bill), which would make a trial judge a mere moderator or automaton through whom propositions of law would be austerely announced to the jury, with no assistance from concrete illustration or illuminating comment, lest some incautious remark might disclose to the jury what the judge's individual opinion might be, and thus lead it to abdicate its right to reason for itself. That such practice would be at variance with the historical theory of jury trials under the common law, Lord Birkenhead makes plain:

"The judge is perfectly entitled to make plain to the jury the way in which his own mind is working. The judge, in other words, is perfectly entitled to attempt to impress upon the jury the view which he has himself formed of the facts of the case.

The skill of judges at *nisi prius* may very often be measured by the tact by which they manage their juries. If a judge has formed a strong view upon the facts of the case, he naturally desires that it shall prevail, and the stronger the judge the more concerned he is that his view shall be reflected in the conclusion."

If the learned author were sitting at *nisi prius*, he would be guided thus:

"I should as tactfully and persuasively as I could, insinuate my views into the minds of the jury, while contriving to avoid the criticism that I was overbearing them in what was their function and not mine. But I should, nevertheless, loyally recognize the reality of their function and the separation between it and mine."

These quotations will evoke from an American lawyer a vigorous dissent from Lord Birkenhead's statement that such procedure in the English courts has "been largely, if not completely, reproduced in the United States of America."

Milestones of My Life is a chapter containing a brief autobiography of the author and is of engaging interest. It illustrates that the highest distinction in the legal profession is open to the English youth of intellectual capacity with other elements of success, even though without the adventitious advantage of birth, wealth or favoritism. As to a barrister entering public life, he concludes:

"Unless, therefore, the rising barrister whom we are attempting to advise, has given some distinct evidence of political, as distinguished from forensic, capacity, he will on the whole be well advised to write politics off the slate of his life; nor does such decision deny to him a very distinguished career. He may, if he be among the elect, become a judge of the High Court; thence he may be promoted to be a Lord Justice of Appeals; if he be one of the foremost men in his legal generation, he may even become a Law Lord and a life Peer, so that even for the non-political barrister, if he be a real winner in the legal Derby, a career of extraordinary distinction is open. He may live to make the laws of England, even to administer justice in the far-flung and complex jurisprudence of the British Empire, in virtue of membership of the Judicial Committee of the Privy Council."

A member of Parliament may more easily continue in the profitable practice in England than in this country. Many English barristers either live in London or have litigated business there, and it is thus easy to continue their professional activities there; and it is expected that they will. In this country the centers of governmental activities, both executive and legislative, are usually geographically at a distance. The lawyer who stays at home can more conveniently and effectively care for the clients' interests,

than his political brother who seeks at a distance distinction in the fascinating field of political life. Furthermore, more frequently than in America, judicial distinction is achieved in England through political channels, for, as Lord Birkenhead remarks on this point:

"And it is, of course, not less apparent that the most dazzling prizes of the profession fall to those who have proved alike their political and their legal efficiency. Except by strange and infrequently recurring chances, no man becomes Lord High Chancellor who has not sat in the House of Commons. The Lord Chief Justice of England, except by the same kind of accident, is always one who has passed through the Parliamentary hurly-burly, and the law officers of the Crown, with all the dazzling possibilities which their offices afford, must from the very nature of their duties, find seats in the House of Commons.

It may, therefore, be confidently predicted that the lure of Parliament will always make an irresistible appeal to the most adventurous and gifted members of the legal profession."

What Lord Birkenhead says of the pecuniary rewards of his own practice is interesting:

"In my first year I made £120; in the second year £1200; in my third year £3100; in my fourth year £4200; in my fifth year £5150; and in my sixth year just over £6000. These figures in pre-war days and with no real taxation to pay, were very substantial, and I should doubt whether within so short a period of time they have been exceeded by anyone who commenced his legal life without the slightest real influence behind him."

After Lord Birkenhead had declined the offer of Mr. Lloyd George to appoint him Attorney General, because the office did not give him a seat in the Cabinet, he accepted the elevation to the woolsack. He estimated that he thus sacrificed a prospective professional income of £20,000 a year. On retirement he had only to look forward to a pension of £5,000 a year. But the force of tradition decrees that one who has been Lord Chancellor shall never capitalize his eminence by practicing as a barrister. Accordingly, we find ex-Lord Chancellors eking out the meagre pension of $25,000 a year in various ways, and in the case of Lord Birkenhead (when not in office, as he is at present), engaging in pursuits (in his case literary), which, we may hope, are profitable. The decision to become Lord Chancellor is, as the author remarks

"an immensely grave one for any man who has the capacity for earning one of the great incomes of the bar, and who has established a considerable position in the House of Commons. Mrs. Brougham wrote to her son Henry, bitterly remonstrating with him when he accepted the woolsack. The genius of Erskine lingered only as a pale memory when once he passed to the cold shades of the Upper House. The salary of Lord Chancellor is indeed £10,000 a year; but he is involved in much ceremonial expenditure, so that in these days of high taxation the emolument is relatively small, and incommensurate with the dignity and greatness of the office."

Lord Birkenhead became Lord Chancellor at an age, as he assures us, "younger than any save Jeffreys and Thurlow," and he approached the performance of his duties "in a spirit of anxious solicitude; but not, believe me, in one of morbid self-distrust."

HENRY W. TAFT.

Cases on Future Interests. By Richard R. Powell, assisted by Lewis M. Simes. St. Paul, West Publishing Co., 1928. pp. xxviii, 968.

It may as well be said at the outset that this review is not written by one who will have any occasion to test this case book in the class room.

The reviewer's interest in this subject is both practical and theoretical; practical, because his work has made it necessary to know something about the law of future interests; theoretical, because the subject has been somewhat of a hobby to be pursued at odd leisure moments. Notwithstanding the assumption of case book editors that their books will be used by no one other than students in law schools, this reviewer has found the different collections of property case books very convenient sources of reference. It is not possible for the average practitioner to have easily available for ready reference all the reported decisions. It is possible for him to have the various collections of cases in the subject, or subjects, in which he is especially interested.

It has always been a theory of the reviewer that real property law in this country is largely a "local issue." Because of the many statutory modifications, this is especially true of the subject of future interests. It is therefore highly gratifying to find in this case book a very complete citation of the various pertinent statutes. An especially commendable feature is the very complete table of statutes following the table of contents.

The first chapter of the book, Early Evolution of Future Interests, is a very excellent summary of the absolutely essential historical material that is necessary to an understanding of the subject of future interests. This is followed by eighteen hypothetical cases to illustrate, as Prof. Powell says, "the multiplicity of transactions out of which problems in the law of future interests can arise." One of the purposes of this list of hypothetical cases is to "stimulate discussion." And we fancy that the discussion stimulated by some of the cases will be whether they state problems of future interests at all. For instance case 17 concerning inchoate dower. To this reviewer inchoate dower is a rather present nuisance than a future interest. Case 10, involving the deposit of a deed in escrow, is an interesting one, a case not usually thought of as creating a future interest. It would seem to this reviewer that the skilful teacher can make use of the hypothetical cases to give a general picture of the whole subject, before plunging the student into the decided cases.

At first blush there is a seeming shortage of English cases, which to this reviewer is not a fault, but a merit. When one has read almost one hundred pages without encountering an English case one wakes up with a start. "What! has an editor of a case book on future interests discovered America?" This starts one on the statistics which reviewers of case books seem to think essential. A count of cases shows that one's first impression is wrong. Of the 211 cases in the book, 67 or almost one third are English. That Prof. Powell has sought to use only those English cases which seem necessary to fill in the historical background is evidenced from the preface where he says:

> "Whether we like it or abhor it, nevertheless the law of the future interests now existent in the United States contains a high percentage of rules and procedure understandable only in the light of history. In practice, a lawyer can not take time to acquire this background in the investigation of the law applicable to a particular case. Hence this book seeks to present those early cases which show the origins of present practices and constructions, without a knowledge of which a student of this topic would lack needed equipment."

He further states that he has not thought it necessary to try to find cases other than those used by Gray and Kales to illustrate the historical development of the subject.

While we are on this subject of statistics it may be said that after deducting the 67 English cases we have left 144 cases. These cases are taken from the decisions of the courts in 29 American jurisdictions, including the

federal courts and the courts of the District of Columbia. Of these 144 cases, 35 are from New York, 22 from Illinois, and 19 from Massachusetts. It will thus be seen that 76 of the 144 American cases are taken from three jurisdictions. Next to New York, Illinois and Massachusetts, come New Jersey with 9 and Pennsylvania with 6 cases. It will be noted that over half the American cases are from three jurisdictions, and that nearly one fourth of the American cases are from New York. Twenty-one American jurisdictions are not represented by any cases. The disproportionately large number of New York cases is doubtless due to the fact that most of the editor's teaching experience has been gained in that state. All of which is another instance of the fact that property law tends to become a "local issue."

No editor can include all the cases, but if this reviewer were editing a case book on future interests he could not well exclude *Smaw v. Young*[1] which contains one of the best discussions of certain phases of future interests that he has ever seen. It is rather surprising that this case escapes even the foot notes.

But to come back to the first hundred pages, which as stated above are wholly American cases, many of them quite recent American cases. The use of American cases at this stage seems to the reviewer to have the advantage of introducing the student to an extremely difficult subject through the medium of language that is more easily understandable than the ancient English cases; and the further advantage of showing the student that the subject is of more than purely historical interest. Whether *Biwer v. Martin*[2] ought to be introduced so early in the game is an open question. To this reviewer it seems one of those horrible examples of judicial "throw back" which should be relegated to the foot notes.

The pedagogical value of the ingenious questions that Prof. Powell has appended to each case is for the experienced case law teacher to settle for himself. Our advice to any teacher contemplating the use of this book would be to examine these questions pretty thoroughly. Otherwise his bright pupils are going to give him some bad half hours. Incidentally it might be said that question 6 (b) on page 276 has caused the reviewer some practical trouble in Ohio. And he doesn't yet know the answer.

A highly commendable feature of the book is the emphasis on practical questions, especially the chapter on statutory proceedings which minimize the inalienability of future interests. This chapter deals with the various statutes by which voluntarily inalienable interests may be disposed of by judicial proceedings. In this connection attention is called to the Ohio Statutes on page 453, which this reviewer happens to think might well serve as a model for less progressive jurisdictions—New York for instance. There is another practical section on the question as to who are necessary parties to judicial proceedings affecting future interests. The cases on the valuation of future interests as between life tenant and remainderman are helpful.

The foot notes are especially full and are made more helpful by the very complete citation to articles and notes in the various law reviews. And the work is further made valuable by its many citations to, and quotations from, Holdworth, *History of English Law*.

We have often wondered why case books are so inadequately indexed. We put this question recently to a group of property teachers, several of whom had edited case books and the only answer we received was that too good an index would be an illegitimate aid to the pupil. Which answer seems to be based upon the assumption that case books are for class room use only, an assumption which we tried to combat earlier in this review. There may be an excuse for no index. There is certainly no excuse for an

inadequate one. Now, for instance, any book by Powell, the young David who slew Goliath Gray on the question of Determinable Fees would surely contain a rather complete discussion of the subject. Of course this book contains plenty of cases and plenty of citations on the situations which give rise to determinable fees. And yet one can not find Determinable Fees either in the table of contents, or in the index. Of what value would Smith's *Leading Cases* or Sharswood and Budd's *Cases on Real Property* be without an adequate index? Our advice to the modern authors of case books is "go thou and do likewise."

At the end of this rambling and more or less impressionistic review we may summarize by saying that it seems to us that the subject has been thoroughly and interestingly covered. Certainly, if any student, whether in law school or elsewhere, will think his way through this book, he will have a very thorough and a very practical view of the modern law of future interests.

In his preface Powell says:

"The law of future interests has a long past, an active present, and seems likely to acquire an ever-increasing importance as long as property accumulations continue or increase and the human desire to devise property and to create trusts exists."

The writer happens to be one of those who believe that the conditions that are making for a more extensive creating of future interests is not, socially speaking, a wholly desirable one. But if we are to have future interests, it behooveth the lawyer to know something about the subject. And we know of no better medium for acquiring this knowledge than this very excellent case book. And if a rank outsider may be permitted an opinion we venture to say that this collection of cases will be found eminently teachable.

CHARLES C. WHITE.

The State as a Party Litigant. By Robert Dorsay Watkins. Baltimore, The Johns Hopkins Press, 1927. pp. xvii, 207.

This is an excellent concise review of the present state of the law in the United States, England and France, on the suability of the state by individuals. Primarily the author sticks to the case-law, keeping the discussion close to the ground. This is especially helpful as to the law in France. It is difficult to judge any body of foreign law merely from the abstract formulas which are used by native writers. We want to know just what these mean as between a plaintiff and the defendant in actual occurrences. This concrete knowledge of the actual working of the law in France brings home to us undodgable conviction of the backwardness of English and American law on this subject.

The author is not concerned with the distinction in this country between the national state and our component commonwealths. Hence the reader need not expect here a discussion of the 11th Amendment and the suability of state officers, or how near the latter gives relief against a state in some types of cases. In others it gives only a judgment against the officer personally. Why is not the political community suable, where it should be responsible? That is the major thesis of the book, both in presenting the existing law and criticizing it. Much is said, too, as to what should be fixed as the range of state responsibility, particularly in Chapter VII, The

[1] 109 Ala. 528, 20 So. 370 (1895).
[2] 294 Ill. 488, 128 N. E. 518 (1920).

United States as Defendant (Court of Claims) and Chapter X, Administrative Law and State Responsibility in France.

Chapters I to IV inclusive cover the history of the doctrine of non-suability in England, proceedings against the state in England, the petition of right, the state as plaintiff in England and suits against officers in England. Chapters V to VIII inclusive cover in the same order the corresponding topics in the United States. Perhaps the least currently known matter is that presented in Chapter VI on the extent to which the United States, when it consents to be sued, has a different standing from that of a private defendant in an otherwise like case. Chapter IX discusses state property in domestic courts of admiralty in England and in the United States. In the latter the Public Vessels Act, Mar. 3, 1925, goes far to concede the principle of national liability for tortious acts of national officers committed in the course of their normal actions in carrying on the government. The other chapters, not so far mentioned, are Chapter XI on the state before foreign courts, and concluding Chapter XII in which the theories of non-suability without consent are examined and some conclusions offered.

The author emphasizes the inadequacy of a two hundred page treatise to exhaust the topics embraced. He presents an excellent summary of decisions, of doctrine, and of the leading contributions to theory,—a well documented hand-book to guide any student to further study. Apart from the value of stripping the old dogma that the "sovereign" cannot be sued without his consent of its fictional supports so that legislators will become more ready to grant consent to suits for torts as well as for other wrongs, it seems to the reviewer a waste of time to deal with it in the hope that it may be so far destroyed that courts will abandon it without legislation.

In point of theory, to the simple mind the dogma was shown to be utterly without justification in a modern democratic state by Justice Wilson and Chief Justice Jay in *Chisholm v. Georgia*.[1] The latter said:

"It is agreed, that one free citizen may sue any number on whom process can be conveniently executed; nay, in certain cases one citizen may sue forty thousand; for where a corporation is sued, all the members of it are actually sued, though not personally sued. In this city [Philadelphia] there are forty odd thousand free citizens, all of whom may be collectively sued by an individual citizen. In the State of Delaware, there are fifty odd thousand free citizens * * * can the difference between forty odd thousand and fifty odd thousand make any distinction as to right?"

Chief Justice Jay also called attention to the expectation that the new Constitution would "promote justice."

In commending the book, let the review close with the author's quotation from the opinion of the Court of Claims in *Brown v. U. S.*[2]:

"In the great arrogance of great ignorance, our popular orators and writers have impressed upon the public mind the belief that in this republic of ours private rights receive unequalled protection from the government; and some have actually pointed to the establishment of this court as a sublime spectacle to be seen nowhere else on earth . . . [The section allowing suits by aliens] has revealed the fact that the legal redress given to a citizen of the United States against the United States is less than he can have against almost any government in Christendom. The laws of other nations have been produced and proved in this court, and the mortifying fact is judicially established that the government of the United States holds itself, of nearly all governments, the least amenable to law."

D. O. McGovney.

[1] 2 Dallas 419 (U. S. 1793).
[2] 6 Ct. Cl. 171, 192 (U. S. 1870).

Paul Vinogradoff—A Memoir. By the Right Hon. H. A. L. Fisher. Oxford University Press, American Branch, New York, 1927. pp. 74.

That memoirs of Sir Paul Vinogradoff should continue to appear is indicative of the impression he made upon his contemporaries, especially upon such as came in personal contact with him. As a scholar, as a teacher—he was one of the greatest teachers in a university noted for its great teachers—as a linguist who could speak and write with force and distinction at least twelve languages, Vinogradoff was internationally known to the world of scholarship and learning. In this memoir, written by his fellow townsman and university colleague, we are introduced to the less generally well known Vinogradoff the man. We are able to follow, in an unusually intimate way and from the time when he was a schoolboy, this man who loved music, art and people as well as books, and who travelled widely largely for the sheer joy of it. As early as his student days at Moscow University we find him noted for his brilliant scholarship and his liberal ideas in regard to both politics and religion. To collect materials for a dissertation for his master's degree he went to Italy where he "worked by day in the Chapter Library with mild and scholarly Benedictines, and drank by night in the Café with fire-eating red shirts." A few years later he is to be found "lying full length on the grass in the Parks at Oxford" converting Maitland to the study of English legal history. His natural gifts overcame the usual handicap of foreign birth and training. Genial, composed, charming in conversation he was a welcome guest in Oxford common-rooms and in English homes even from the first, and long before he came permanently to live in England. All these things and many more are related in this memoir, which brings out the human and personal side of that cosmopolitan Russian who in 1903 became Corpus Professor of Jurisprudence, and settled down in Oxford to win not only the approval but also the affection of that conservative and critical community.

G. E. WOODBINE.

The Legal Aspects of Zoning. By Newman F. Baker. Chicago, The University of Chicago Press, 1927. pp. xii, 182.

The writer discusses zoning under six chapter headings: (1) municipal aesthetics and the law, (2) zoning legislation, (3) the zoning ordinance, (4) the zoning board of appeals, (5) the legality of zoning, and (6) the problem of the metropolitan area or region.

The more interesting and valuable parts of the book are the second, third and fourth chapters. The others trace in broad outline the need for, the rise of and the judicial attitude toward the establishment of the zoning movement. They are largely descriptive, but well documented and exhibit no little insight into underlying considerations. The cases are given in digest form, without much attention to critical significance. The chapters first mentioned, however, are constructive and suggestive; the ideas are offered in the author's own words; and the treatment of legislative and administrative policies is specific. The assembly of data is excellent. And the references make available to the lawyer the best of the materials produced by non-legal consultants. The March, 1928, edition of the mimeographed pamphlets issued by the Department of Commerce should be used as a supplement.

It is the best book on the subject since the publication, six years ago, of Williams, *The Law of City Planning and Zoning.* Because Professor Baker's work has been done more thoughtfully and with better organization, and because he has recorded the output of legislation and judicial opinion as well as the improvements in zoning procedure during this im-