BOOK REVIEWS

Les Aspects Économiques du Droit de Prise. Par Jacques Dumas. Avec une Preface de M. Lyon-Caen. Paris, Société Anonyme du Recueil Sirey, 1926. Tome I, Avant la Guerre Mondiale. pp. xii, 237. Tome II, Depuis la Guerre Mondiale. pp. 290. 126 fr.

With admirable industry and a great, but never superfluous, wealth of documentation, Dr. Jacques Dumas has set himself to investigate from the economic standpoint what are the real effects of prize capture. Dr. Dumas has the high position of Advocate-General in the Court of Appeal at Paris, which eminently qualifies him to be a good judge of evidence, and not to interpret facts according to his liking. Therefore, although he is well known as a convinced and almost militant pacifist, his pacifism is not of the sentimental order. His conclusions are always based on reason, whether we agree with the reasoning or not.

He finds that the capture of private property at sea is a game which is not worth the candle. The complexity of modern business and insurance makes it totally impossible to tell where the force of the blow will fall. If capture is to be abolished, the institutions of contraband and blockade must, he sees, be abolished too, except for a narrowly limited category of absolute contraband, the export of which he thinks neutrals ought to be expected to prevent. His first volume was in the press at the time of the outbreak of the war of 1914; he publishes it now as it stood, and in his second volume he reviews its conclusions in the light of the war. It is apparent that they required, in themselves, little or no modification. No one expected, before 1914, that the theories of capture of enemy property, of occasional contraband and of continuous voyage would be used for the purpose of starving out a belligerent population as though it was a fortress; the thesis of his first volume was simply that the capture of floating merchandise, as such, was not in itself sufficient to bring about, or contribute powerfully to, the surrender of an enemy, and that it was, moreover, costly in proportion to its results; and for that he makes out a strong case.

At the same time, the reader may think Dr. Dumas is sometimes a little inclined to eat his cake and have it. He draws an impressive picture of the absolute dependence of Great Britain on the maintenance of sea communications, demonstrating that prize capture is a most formidable weapon (Vol. I, p. 126)—and when the adversary objects, "Why abandon such a weapon," his reply is merely that although capture can work great havoc, it can never reduce an adversary to terms. That is a *petitio principii:* it is not enough to say that it never has reduced an adversary to terms, when it is so obvious that it might. In fact he calls it the Allies' "best weapon" (Vol. II, p. 11) himself. A further example of this intellectual tendency of the author is afforded by his method of dealing with the effect of war in driving a belligerent's commerce to seek shelter under a neutral flag. If it suits the argument, neutral capital will always be adequate to receiving the belligerent ships and goods, or will find some specious method of covering the transfer (Vol. I, p. 38); again, if it suits the opposite argument, belligerents will be too clever to be circumvented (Vol. I, p. 111). If it is wrong to permit the supply of arms to a belligerent it is not wrong to permit the supply to a poor country like Servia (Vol. II, p. 19). Neutrals are wrong to trade with Germany and even to supply it with food (Vol. II, p. 177)—but nothing is said about the enormous trade which America did in the supply of arms to the Allies!

As in 1806, neutrals were, in 1914, too remote and too weak to secure the observance of the standard law of prize. It is certain that powerful nations would never permit their commerce to be interrupted as the belligerents successfully controlled neutral commerce in 1916. But we have the possibility of other world wars to reckon with. To abolish the right of capture in ordinary wars might be a useful reform; but it would still leave it possible to urge that we are thus depriving the belligerents in a world war of a decisive weapon. The true answer to this is, that it is a felonious weapon—it depends for its efficacy on the contempt of the rights of neutrals. The Allied stranglehold on Germany and the German submarine campaign against British trade would both have been entirely impossible had the rights of neutrals been respected.

In dealing with the new situation created by the mutual attempts of the Central Powers and the Entente Powers to starve each other out, the author comes to the reluctant conclusion that a case may be made out for the proposition that a decisive military effect may be obtained by such an interdiction. He does not think that in fact any such result was obtained by either side. The German submarine campaign left Britain, France and Italy importing as much wheat from America in 1917 as they respectively did in 1914. Perhaps he forgets that Russia was no longer a source of supply —and surely the British people were rationed severely, the gravity of which situation the Prime Minister and others admitted. More figures than Dr. Dumas supplies would be necessary to convince us. And it is clear that the weakening of the stamina of the German people was in a large measure responsible for the final collapse of their armies, although Dr. Dumas argues that they got all they wanted by requisitions. So that the novel military weapon of starvation by capture may be conceded at any rate some value; but here we are at once in the domain of contraband and its modern extensions. And in this connection we cannot refrain from pointing out an inconsistency on the part of our author. While condemning blockades and contraband altogether, he nevertheless excuses from point to point all the extensions of the theory of contraband perpetrated by the Entente Powers. Apparently he excuses them as reprisals, or vaguely because of the original sin of the Germans.

When the Declaration of London provides a long list of articles which can never be declared contraband, Dr. Dumas observes that it was quite right to declare them such "as soon as Germany began to obtain them under false names or under false colours." But if Germany was entitled to get them, what did it matter what means were employed? It was far more straightforward to repudiate the Declaration as unratified; to adopt Dr. Dumas' startling reasoning would be to deprive all international engagements of any sense or value. Dr. Dumas, quoting Lord Salisbury's pronouncement that food can only be contraband when detained for the (armed) forces of the enemy, thinks that the mere fact that the amount of food exports to a neutral had increased, demonstrates not only that the food was meant to go to an enemy country, but that it was meant for his armed forces (Vol. II, p. 152). What is hardly what we expected from Dr. Dumas (but it is characteristic of much that used to be spoken and written in Entente circles) is the suggestion, made more than once, that the protests of neutrals against the sophistries of the "blockade" were often nothing but the expression of the thoughts and the interests of Germany. It is a greatly regrettable outcome of the war to have committed France to the abandonment of her old strong attitude against excessive belligerent pretensions at sea. Oh, for an hour of Hautefeuille!

The author blames the maintenance by England of the right of prize capture for the German submarine campaign; but the wild extensions of

the principles of contraband, which he seems to approve, would have brought about that campaign in any event. The capture of German goods was a very minor matter. He speaks of the ill-will created against the Allies by the rise of forces in neutral countries, and he blames prize-capture for that; but it was again the contraband policy that was responsible. Neutrals, in his eyes, are little better than Allies of Germany, and even France's Allies do not please him; England's "high political instinct" saves her from the losses to which others succumb—she gets all the fresh fish she wants (Vol. II, p. 187).

Dr. Dumas shows very forcibly that the so-called "blockade" was not a blockade, and he asks why cabinets should not have proclaimed a regular blockade, since the process was clearly effective enough. The obvious answer is that the Baltic ports were not, and could not be blockaded. He usefully points out that the Allied captures gave the Germans a handle for making increased requisitions in the occupied territories; though as he observes that they would have gone the limit anyway, the remark has less force than it otherwise might.

The author brings out with great cogency the paramount interest which Great Britain as an insular power has in conserving her sea communications, by upholding the sanctity of private property and the sacredness of the neutral flag. He does not hesitate to tell her that she need not expect to be forever supreme at sea.

In Volume II, the author throws Jean-Jacques overboard, with his doctrine that war is a relation of state to state, and should not affect non-combatants, which is the sheet-anchor of Volume I. How can we say that war should not affect non-combatants when it is proclaimed that "l'armee c'est la Nation!" German "eratisme" has brought us to this pass; and, says Dr. Dumas, Germans should not complain of the consequences. Unfortunately, the consequences fell largely upon neutrals. It is extraordinary how opinions change under the stress of circumstances; Dr. Dumas who in Volume I is strongly in favour of the strict limitation of the category of conditional contraband, in Volume II (p. 21) appears to complain of the general supply of innocent articles by neutrals to Germany!

Dr. Dumas is most interesting and his book most valuable, when he comes to estimate the relative value of the factors which contributed to raise and lower the cost of insurance and freights during the war. He points out with his usual acuteness that pure speculation and uncertainty always count for a good deal in such matters. And he rightly lays stress on the enormous risk, in the late war, to an innocent ship, of the unlawful and oppressive new practice of sending in a vessel for examination on the chance of making out a case. Dr. Dumas talks about the impossibility of searching "a fond de cele" a big steamship at sea. But he ought to know that a small ship was never searched "a fond de cele" at sea. Every one of those vessels so sent in, in defiance of the evidence of her papers, ought to have had costs and damages, except in cases where successful proceedings were taken against her. In a war where it was utterly uncertain what the Allies would do next, insurance rates had to cover, not only the probabilities, but the possibilities of the case. Insurance is no sufficient guarantee against prize.

In conclusion, we must say that every ramification of the topic is dealt with in detail; the questions of transfer to foreign flags, of insurance, of incorporation, of blockade, of contraband, of reimbursement etc., are all carefully studied from a historical as well as a modern point of view. The work is a perfect storehouse of information, which must have cost much diligent and unremitting labor to collect and to present in so intelligible and attractive a form. It will doubtless be an indispensable classic.

Tokio, Japan TH. BATY.

Studies in the Law of Corporation Finance. By Adolf A. Berle, Jr. Chicago, Callaghan & Co., 1928. pp. xvii, 199. $3.50.

This is a series of most interesting essays on problems in the law of corporate finance which have largely arisen out of the rapid development of the American securities markets during the decade since the World War, and on which the law has not yet become wholly crystallized. Most of them have already been published in various law reviews. Their titles are: The Historical Basis of the Law of Corporation Finance, The Present Position of the Corporate Management, Non-Voting Stock and "Bankers' Control," Non-Par Stock and Control of Participation Rights, Non-Cumulative Preferred Stock and Control of Participation in Surplus, Participating Preferred Stock and Control of Contingent Dividends, Convertible Bonds, Stock Purchase Warrants and Control of the Value of Option Rights, Subsidiary Corporations and Control of Credit Resources, Publicity of Accounts, Management Purchases of Stock and Control of Security Values, and Development of the Law of Corporation Finance. They may be read, with both interest and profit, by laymen as well as lawyers. They are bound to have a considerable influence on the development of the fields of law which they discuss; indeed, one of them has already played a substantial part in inducing two Circuit Courts of Appeal to disregard the natural meaning of a contract by preferred stockholders that their annual dividends shall *not* accumulate, and to hold that because of the "relationship" to common stock of a stock expressed to be "preferred" there arise rights to corporate earnings which become fixed as the earnings accrue, and which, notwithstanding the contract that they shall *not* accumulate, *do* accumulate. The vice of thus disregarding the explicit language of stockholders' contracts is well pointed out in the dissenting opinion of Judge Learned Hand in *Barclay v. Wabash Railway Company*, 30 F. (2d) 260 (C. C. A. 2d, 1929).[1]

The thesis running through the essays under review is the development of rather inelastic "relationship" obligations between the various classes of security holders, between corporate management and the corporation and its security holders, and between corporations under common control, or controlled one by the other. The author has that type of mind which readily consigns to precise pigeon-holes all varieties of corporate securities however complex, and tends to reduce complicated problems to mathematical formulae. He has great facility for the pat phrase packed with the idea intended to be conveyed, such as "Earnings should be christened at birth" "and bastard subsidiaries." His zeal for the "relationship" rules for which he contends leads him to a disregard (which will be somewhat shocking to the lawyer with the conventional point of view of the fundamental principles of the law of corporations) of what has always heretofore been regarded as a contract between stockholders, embraced in the certificate of incorporation, by-laws and stock certificates, and subject to control and to modification in accordance with the governing provisions of the constitution and statutes of the state under whose laws the corporation was created.

While it may be conceded that draftsmen of corporate documents sometimes incorporate provisions purporting to grant to the corporation itself, or to the management, powers which so shock the conscience that they should be held to be invalid, and although it may also be conceded that courts of equity should be zealous to protect against, and find remedies for, abuse of powers by corporate managements or by one class of security holders as against another class, nevertheless it is at least questionable whether there is not more loss than gain in the development of rules of law disregarding the clear language of contracts made between competent

[1] Noted in (1929) 38 YALE L. J. 820.

adults, wholly without any element of coercion, or in the development of rules affecting the obligations of management so rigid in their standards as to make responsible men hesitate to assume the risk of adverse after-the-fact claims by disgruntled—or blackmailing—stockholders. Undoubtedly legal principles are constantly following the development of higher ethical standards, but should they not *follow* such developments? In other fields of law there is, and always has been, a substantial gap between the strict rules of law, or, indeed, the principles enforced by chancery, and the commonly accepted principles of etiquette and ethics.

And it may even be questioned whether there is any ethical gain in the establishment of a rule of law respecting any corporate security which, as the author seems to concede in respect of his rule governing dividends on non-cumulative preferred stocks, produces a security which its creators had no idea of creating, and which neither the original recipients nor the run of investors and business men who may have purchased or dealt with it, ever contemplated. The suggestion that "corporations having non-cumulative preferred stock and holders of such stock should consider their respective rights and duties: a revaluation of non-cumulative stock will frequently result," coupled with the suggestion that "imaginative counsel" may find ways of defeating contract provisions regarded by the author as onerous, itself raises a question of ethics.

Undoubtedly, there is a drift in current decisions in the direction urged by Mr. Berle. Sometimes, however, he goes a bit far in his statement of the present state of the law: for example, his erroneous statement that under a New York charter of a corporation having stock without par value, which states the capital to include a specified amount per share of stock, the corporation may not issue any shares of such stock except at a price per share at least equal to the amount attributed as capital in respect of such share; again, his over-statement of the effect of *Hodgman v. Atlantic Refining Co.*, 13 F. (2d) 781 (C. C. A. 3d, 1926); see *Bodell v. General Gas & Electric Corp.*, 140 Atl. 264 (Del. 1927). Probably, also, he goes too far in the proposition that it is doubtful that a contract between two corporations under common control will be permitted, and in his, from a practical standpoint, disqualification of corporate officers and directors from market dealings in the securities of their corporations.

But however much one may dissent from Mr. Berle's underlying philosophy, these essays must be recognized as an excellent and stimulating bit of advocacy. As a statement of the present state of the law they are of doubtful accuracy. Query, as to the extent to which they are a prophecy.

New York, N. Y. ROBERT T. SWAINE.

The Elements of Law, Natural and Politic. By Thomas Hobbes. Edited With a Preface and Critical Notes by Ferdinand Tönnies to which are subjoined selected extracts from unprinted manuscript of Thomas Hobbes. Cambridge, Cambridge University Press, 1928. pp. xvii, 195. 8s 6d.

"When the Parliament sate that began in April, 1640, and was dissolved in May following, and in which many pointes of the regall power, which were necessary for the peace of the kingdome and safety of his Majestie's person, were disputed and denied, Mr. Hobbes wrote a little treatise in English, wherein he did sett forth and demonstrate, that the sayd power and rights were inseparably annexed to the sovereignty, which sovereignty they did not then deny to be in the King; but it seems understood not, or would not understand, that inseparability. Of this treatise, though not printed, many gentlemen had copies, which occasioned much talk of the author; and had not his Majestie dissolved the Parliament, it had brought him in danger of his life." [1]

[1] MR. HOBBES CONSIDERED (1662) 4, quoted in WOODBRIDGE, PHILOSOPHY OF HOBBES (1903) xv,

In Hobbes' day one could not philosophize in an easy chair. Intellectual differences were likely to produce sharp physical repercussions. When the Long Parliament met in November and promptly committed Strafford and Laud to the Tower, Hobbes who, though intellectually courageous, was physically timid, was the first of the royalists to flee to Paris. It is this "little treatise in English," which caused so much annoyance to parliamentarians and so much fright to Hobbes, that we have before us. Curiously enough this work was never printed in the unified form first given to it by the author until Professor Tönnies prepared his edition from the collated manuscript copies of the "little treatise" preserved in the British Museum. It first came from the press in 1889, but the greater part of this impression was lost in a warehouse fire so that the book has been unobtainable for many years. The present printing, with only slight changes from that of 1889, makes the work readily available.

In 1650, while Hobbes was still a refugee in Paris, the "little treatise" was printed as two separate works, the first entitled "Human Nature; or the Fundamental Elements of Human Policy," and the second, "De Corpore Politico, or the Elements of Law, Moral and Politic." The bi-section of the work did not at all correspond with the division of the original work into two parts, and certainly operated to weaken the unity of the author's treatment. In the following year was published the philosopher's great work, *The Leviathan* upon which his fame rests.

The modern reader of this work at first marvels at the reputation that Hobbes acquired as a thinker, and even more at the persistence of his influence down to our own times. He is disposed to agree with Hume, who wrote a century later:

> "No English author in that age was more celebrated, both abroad and at home than Hobbes; in our time he is much neglected. . . . Hobbes' politics are fitted only to promote tyranny and his ethics to encourage licentiousness."

Yet in spite of his unsound thinking and his obvious rationalizing, the reader finds himself devouring his pages with eager interest and enjoyment. This is due to the freshness and vigor of Hobbes' style, the independence of his thinking and his readiness to take into account facts as he observed them, and perhaps also to the interest that always attaches to the smooth working of a syllogism, however doubtful the premise, or worthless the conclusion. It was not till after forty that Hobbes had first made the acquaintance of Euclid. He embraced with enthusiasm his method of reasoning, and used it with telling effect to deduce some most astounding conclusions from premises asserted dogmatically to be necessary principles of natural law, as derived from the dictates of reason. Thus: "Everyman by nature hath right to all things, that is to say, to do whatsoever he listeth, to possess, use and enjoy all things he will and can." (p. 55) It follows, as a corollary, that the natural state of man is war; and since the end of natural law is peace, "one precept of the law of nature therefore is this, that every man divest himself of the right he hath to all things by nature." (p. 58) He divests himself of his natural right to do as he listeth by making a covenant with others of the community by which all are agreed that their common will to use force, "the sword of justice," shall be exercised by one man, or one group of men thereunto designated, which is the sovereign. Inasmuch as the "right" of each man in nature is unlimited, it necessarily follows that the "right" conferred on the sovereign, as a sort of third-party beneficiary of this social contract, is unlimited; and the subject, having relinquished all his right, has no right to resist the sovereign. Hence the sovereign cannot be punished, and has absolute power and right to exercise

the will of the commonwealth, to raise armies, to make war and peace, to levy supplies, to make and unmake laws, thereby determining relative questions of right and wrong, to appoint ministers and other public servants, to determine the religious beliefs of the subjects, and, indeed, to do, without let or hindrance, all the things that the Stuarts at the time were essaying.

While Hobbes' philosophy of governmental absolutism was naturally interpreted in terms of the contest then raging between the Parliament and Charles I, especially in view of Hobbes' expressed opinion that absolute monarchy was the best form of government, it is to be noted that it was the sovereignty created by the social contract, wherever it might reside, whether in democratic assembly, oligarchic council or monarch, which was made absolute by Hobbes in this first "little treatise" as well as in the more elaborate *Leviathan;* and the ultimate basis of all of his reasoning is found in the common weal. When looked upon as absolute sovereignty that leads to governmental despotism, Hobbes' political philosophy has a remarkably modern appearance. Thus, those that assert that the government, so long as it acts under its sovereign's charter, the Constitution, has unlimited "right" to determine what its subjects shall eat and what they shall drink, and what they shall not, are merely declaring Hobbes' governmental despotism; while those that assert that the prohibition laws violate the "personal liberty" of the citizen are merely denying Hobbes' thesis that the sovereign's "right" over the subject is without limit. The "little treatise" is significant still.

The two fragments treating of optics and motion, here printed for the first time, and incongruously bound in this volume as appendices, are irrelevant and immaterial in so far as the lawyer reader is concerned.

Yale Law School — WILLIAM R. VANCE.

The Origin, Structure, and Working of the League of Nations. By C. Howard-Ellis. Boston, Houghton Mifflin Co., 1928. pp. 528. $7.00.

The author finds the roots of modern international relations in "Science—organized and cumulative knowledge" which he characterizes as the "one new thing under the sun." Science, he thinks, has increased contacts, created universal interdependence, and exaggerated the gap between human beliefs and the material conditions of human existence. The narrowing of this gap he considers the great problem of the twentieth century, and the major function of the League of Nations.

Not least interesting is the author's brief résumé of the causes of the war and of the peace. The first he finds in the "whole structure of international society. . . All the governments concerned were in varying degrees responsible." The second he finds in "the paradox of modern war" that "in order to win you must reduce the belligerent nations to a condition where they are unfit to make peace." (p. 51) In illustration, he cites the deliberate war-time opinion of several Englishmen who would be popularly ranked above rather than below the average on the point of toleration. Each of these writers advocated the treatment of the enemy as a mad dog as the first requirement of peace.

Thus, in the author's opinion, a complete change in the methods of international relations is needed, and this change cannot be expected directly from any war. He hopes for it, however, as the result of the activity of the League of Nations which almost miraculously survived the barterings of Versailles, though from a historical point of view it can be seen "to have

grown materially and inevitably out of the forces that shape civilization."

The author writes with enthusiasm but judgment. His survey of the origin of the Covenant, the functions of the League organizations, and the rôle of the chief associated entities—the International Labor Organization and the World Court—is well documented and unprejudiced. He admits that writing on social conditions is selective. History is not an exact science. Facts are "man-made, and we make them not in order to admire their beauty as things in themselves, but primarily so as to do what we want with them." Thus, while sticking close to events and documents and occasionally criticizing, the spirit of the crusader is not wanting. Especially in dealing with some of the anti-war schemes widely propagandized in America as substitutes for the League, he almost loses patience; he wishes it understood that he does not believe in panaceas, but in the careful day-to-day handling of incidents so as gradually to create habits of resort to peaceful procedures, to strengthen institutions, and imperceptibly to modify national interests and policies.

A chapter on International Law discusses its weakness, due to the vagueness of its sources, the range of important international relations outside its ken, the lack of adequate means of development, and the dogma of sovereignty theoretically incompatible with the existence of international law at all. (pp. 302-305) The League, in the opinion of the author, has introduced changes in international law more profound than public opinion and politicians have realized, particularly in the facilities it gives for developing international law in accord with the actual conditions of international society and on a basis of world polity rather than state sovereignty. (p. 363) The result of this has been an emphasis upon the law of peace, a tendency to abandon the conceptions of war and neutrality, and to substitute a law of international procedure and international police.

The book is in the main expositive. The author avoids generalizations and theory, and his exposition gives evidence of first-hand knowledge. The chapter on the technique of the League's activities, dealing with open and secret diplomacy, the ratification of conventions, assembly and council procedure, the function of technical organizations and of the secretariat officials is particularly deserving of attention.

The book is the most ambitious yet published on the League as a whole. It is as yet incomplete. The author promises two additional volumes dealing with the functioning and with the achievements of the League. These will be looked for with interest, and the present volume will undoubtedly serve the useful purpose which the author intended in university classes and among intelligent readers.

University of Pittsburg QUINCY WRIGHT.

Cases on the Law of Bailments and Carriers and of Service by Public Utilities. By Edwin C. Goddard. Second Edition. Chicago, Callaghan & Co., 1928. pp. xxvii, 1033. $4.50.

Cases on the Law of Carriers. By Frederick Green. Second Edition. St. Paul, West Publishing Co., 1927. pp. xxv, 851. $5.50.

Obsolescence in a casebook may arise from three different sources. The illustrative value of the cases themselves may be impaired by the accumulation of more recent decisions; the development of new points of view, or changes in the field in which the law operates, may render the editor's classification of the subject matter unsound; and, finally, the utility of the book as a medium for study may be seriously altered by reorganizations in law school curricula.

Casebooks that were originally designed for courses in the law of carriers have felt the full pressure of this threefold source of obsolescence. Twenty years ago, when the first editions of Professor Goddard's and Professor Green's volumes were the last word in casebook editing, a course in the law of carriers was deemed an important, if not an indispensable item in every student's schedule. Since that time, however, the course has steadily lost ground. The expansion of the public utility industry, together with a growing disapproval of narrowly specialized courses, has promoted the study of public service law in general, rather than of a particular application of the law to the business of the common carrier.

As a result of these changes it has usually been thought necessary to discard most of the material assembled in casebooks for the old course. In that course problems of regulation were considered chiefly in their relation to the *business* of the carrier. The purpose of the course was primarily to prepare the student to deal with commercial transactions arising between the carrier and the shipper. The emphasis is now in the other direction. Questions of commercial law are deemed relevant in the study of the law of public service only to the extent that they affect the major problem of *regulation.*

A second edition of one of the early casebooks in this field must, therefore, be scrutinized with more than the perfunctory examination usually accorded a new edition of a work which basically has been unaffected by the passing of time. Here the task is not so much to revise as it is to remake. It is not so much a question of incorporating supplementary material as it is a question of elimination.

But neither Professor Goddard nor Professor Green has felt the need for this kind of treatment in the edition he now puts forth. Inasmuch as "the bailment relation . . . deserves more than the incidental and fragmentary reference it receives in property law courses," and since the common carrier is "the foremost in extent and importance" of all public utilities, Professor Goddard feels justified in retaining the material of his original work with slight alteration, while he attempts to cover the more recent developments in the law of public service through a series of supplementary chapters. Professor Green adopts the same method of revision because he desires "to exhibit the law of carriers as including more than the law of public service." For, he argues in his preface, "to require a carrier to perform his services adequately and impartially does not, of itself, alter the services or displace the law that governs them."

It is unquestionably true that the law of bailments has a definite historical relation to the responsibilities of the common carrier. It is also obvious that the *regulation* of an industry relates to but one phase of its activities. But it does not follow that either proposition is to be adopted as a thesis for a course in public service law in the present day law school. And the question still remains, whether in pursuing the doctrines of his preface, either editor can counteract the obsolescence that has rendered most of the casebooks on carriers unserviceable. The disintegration of the old course is a fact that the mere revision of a casebook cannot obviate. For no other reason than because the problems of regulation grow wider in scope and recur more frequently, it has been necessary to dissociate them from the questions of commercial law that constituted the bulk of the course in carriers.

The extension of the doctrine of "public interest" to new types of industry is rapidly eliminating the traditional lines of demarcation which were once thought to separate the private from the public enterprise. Just as Beale and Wyman at Harvard realized as early as 1902, that the law of carriers was not the law of public service, so must every student of public

law today recognize the futility of confining principles of regulation to any arbitrary classification. Every type of industry is now subject, in varying degrees, to regulation in the interest of the public. If this be true, it is clear that the present course in public service law is itself too rigid and must, if the curriculum reflect reality, become part of a larger study embracing a comparative consideration of the regulation of industrial enterprise in all forms. It is probable that the obsolescence which eliminated the early casebooks on carriers may overtake in even a shorter space of time those more recent volumes which deal frankly with problems of regulation in the field of public service.

If, therefore, these editors seek to revive the course in carriers, the signs of the times are against them. If they seek to render their books serviceable, even temporarily, in the new courses, it would seem that the method of revision has not been sufficiently thoroughgoing. Doubtless each volume contains much of special interest, and, after all, it is perhaps true, that one should not look too deeply into the structure of a casebook. At best it is a tentative guide to study, subject continually to variations to meet the purposes, aims, and sometimes the whims, of the individual instructor. This is nowhere more true than with respect to those books which from time to time attempt to embrace the ever shifting law of public interest.

Yale Law School RICHARD JOYCE SMITH.

Litigation of Husband and Wife. By Charles M. Jacobs. Philadelphia, Dorrance & Co., 1928. pp. 565. $7.50.

In a personal interview with the author, the reviewer was advised that the object of the present volume was the collection of all the "legal" material revolving about the subject of husband and wife. It is exactly this—and perhaps regretfully nothing more—that the book accomplishes. The social importance of Domestic Relations would seem to necessitate the collation of materials other than strictly "legal," if that term is to be restricted, and unfortunately so, to case law. Its importance is clearly indicated by the increasing number of pertinent publications: for example, the Russell Sage Foundation volumes on marriage, and recent casebooks by Professor Madden and Professor McCurdy. The latter was ably reviewed by Goeffrey May in (1928) 37 Yale Law Journal 1173.

The volume is indicative of a tremendous amount of hard and painstaking labor in collecting and allocating so many decisions on the instant problem. The subject, susceptible to countless ramifications, is handled by the author in cyclopedic manner. This "Corpus Juris" form of writing has been attacked again and again; but apparently the objections have not yet wholly prevailed. Since the subject is so difficult of standardization, the author merits some praise because his book does present to the reader a more or less carefully planned review of the subject. A chief criticism which must be advanced is that the book contains no index, and only the sketchiest table of contents referring to the chapter headings. This is unpardonable, and greatly impairs its sole function as a source book. The author has made no attempt to reconcile, set off or compare decisions, one with another, or even venture to contribute his own thoughts in any fashion whatsoever with the view of analyzing the various decisions.

It is a good piece of work only from the point of view of a complete assemblage of cases. It lacks, however, any individualistic touch or personal contribution of analysis and constructive criticism.

Springfield, Massachusetts JOHN I. ROBINSON.

Practice and Procedure in the Supreme Court of the United States. By Reynolds Robertson. New York, Prentice-Hall, Inc., 1929. pp. xlii, 418.

The first edition of this book appeared in 1928 and was reviewed in (1928) 38 Yale Law Journal 134. While that edition was in process of being printed, the Act of January 31, 1928 [45 STAT. 54], abolishing writs of error to federal courts, was enacted, and its probable effect was discussed in an appendix. Considerable doubt as to the meaning of Section 2 of that Act arose soon after its approval, and, in order to clarify it, Congress passed the Act of April 26, 1928 [45 STAT. 466]. The enactment of this important legislation rendered desirable an immediate revision of this manual. In the second edition the author has fully covered the subject of appeals under the new statutes. Complete forms for use on appeal are also included. Except for the chapters dealing with appeals and procedure in original actions, the general outline of the earlier volume is followed. This is now an authoritative handbook on procedure and forms in the Supreme Court of the United States.

Birmingham, Alabama — DOUGLAS ARANT.

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