

## BOOK NOTICES.

*Underhill on Evidence.* By H. C. Underhill of the New York and Brooklyn Bar. One volume, 8 vo., law sheep, 691 pages. Price, \$6.00 net. T. H. Flood & Co., Chicago.

The "main object" of this volume is stated to be "to present in a concise and clear narrative a reasonably comprehensive statement of the rules and principles of the existing law of evidence for the use of students of law pursuing their studies in law schools or elsewhere." Instructors of law students have long felt the need of a new text book in that field where "Greenleaf on Evidence" has hitherto held supremacy. The inexorable law of evolution has not spared the rules of evidence, but on the contrary has found in them peculiarly susceptible material, and the text book last referred to in its many editioned and endlessly foot-noted efforts to keep the pace is no longer a model text-book. It has a noble history and distinguished merits, but when the modern footnote rises up too frequently to call the ancient text untruthful, the students lose interest in the subject. The volume under review therefore seeks to enter a field which is by no means fully occupied. It shows also the results of a studious effort to fulfill its prospectus. Its order of treatment, it is true, does not seem to us entirely logical, but we observe that neither courts nor lawyers often agree as to what is logical in that connection. Its style is perspicuous and its law appears to be contemporaneous and good. Its author, however, has not studied the Connecticut reports exhaustively, else *Farrell v. H. R. R. Co.*, 60 Conn. 239, would have been cited upon the question as to when negligence is matter of law and when matter of fact, and *Fay v. Reynolds*, 60 Conn. 217, as to the force of the so-called presumption of innocence in civil cases involving proof of crime. The rule in York's case is also conspicuously absent. The chapters on Expert and Opinion Evidence, Privileged Communications, Judicial Notice, and Competency of Witnesses, are modern and valuable. Realizing that to the average student the brief and juiceless precision of Stephen is not so attractive and therefore not so profitable as the more companionable style of Greenleaf, the author has not neglected to expand his text with apposite illustrations and modest literary effects. The book is easy to read. It shows also—and this is a much needed feature in such books—how the rules of evidence are applied in actual practice; how to conduct an examination in court; how to get, use, support and attack witnesses, and, in short, gives much practical advice in that direction for which a

beginner may well be grateful. It appears to be a valuable treatise and one which in actual use will demonstrate its right to an existence. This is sufficient praise for any modern law book.

*The Law of Eminent Domain in the United States.* By Carman F. Randolph. One volume, 8 vo., law sheep. cxxv+462 pp. Price \$5.50 net. Little, Brown & Co., Boston, 1894.

This is a learned and scholarly monograph on a subject which increases in importance with the material progress of our country, and which interests every property owner in the United States. Eminent domain is the right of the State to take private property for public use on payment of compensation. The extension of our highways, the expansion of our steam and electric railroads, together with the vast engineering schemes for the reclamation of swamp lands, and the irrigation of arid lands, are but a suggestion of the innumerable progressive movements which are constantly demanding of the State an exercise of the eminent domain. As a result of the constant and varied application of this right a great body of law has been created. Mr. Randolph has written this book for the purpose of presenting the principles of this law, and the rules governing its application. The first chapter contains a brief historical sketch of the rise and development of the right of eminent domain in this and foreign countries, with a comparative view of this power and kindred powers. The subject is treated clearly and interestingly, and forms an admirable introduction to the thirteen subsequent chapters, which discuss among other topics, the Jurisdiction of the Federal and State Courts, and the Effect of the Federal Constitution on State Eminent Domain; Public Use, with an analysis of what constitutes public purpose and who determines it; the Authority to Condemn Property, with its exercise by and qualification of agents; Interference with Private Property in furtherance of Public Purpose, and Compensation and Damages. The author also discusses very fully the rules of procedure by which the rights and obligations incident to the exercise of the eminent domain are enforced, together with the legal and equitable remedies for wrongful interferences with property under cover of the public interest. Mr. Randolph's style is clear and forcible and his volume shows conscientious and laborious research. He has given a clear presentation of the general principles of the law of eminent domain applicable to all the states, and not mere local interpretations of the law, and has supported his statements by citations of only those cases that he has personally examined. The work will be accepted by the profession as a trustworthy, authoritative statement of the law, and a valuable

addition to the literature on this subject. The book is indexed thoroughly, and the paper, typography and binding are of the best.

*Bliss on Code Pleading.* A Treatise upon the Law of Pleading under the Codes of Civil Procedure, etc. By Philemon Bliss, LL.D. Third Edition, Revised and Annotated by E. F. Johnson, B.S., LL.M. One volume, 8vo., law sheep, xxxv. + 809 pp. \$6.00 net. West Publishing Co., St. Paul, 1894.

Judge Bliss' work on "Code Pleading" has been in constant use by the profession and by instructors in our leading law schools for a number of years, and needs no words of introduction and commendation. It is an analytical, logical and philosophical presentation of the fundamental principles of code pleading, and embodies the results of long years of study. The author wrote with a two-fold purpose, first, to make the work a practical one by giving the rulings of courts which have been called on to give a construction to the provisions of the code, and second, to present to the members of the bar the scientific aspect of the code by giving the foundation and object of its rules. The work is divided into two principal parts, Of the Action and Of the Pleadings. Under the former are considered the Nature and Form of Actions, and the Parties to the Action, and under the latter, which composes the body of the work, are considered, Title, Statement and Relief, with rules governing what should not, and what should be stated, and the manner of stating; The Answer, with the subdivision of Denial, Defense of New Matter, and Counter-claim; The Reply; and Remedies for Defective Pleading, subdivided under Demurrer, Answer, Motion and Amendment. Mr. Johnson, the editor of this third edition, has preserved substantially the text of the former editions, but has increased the value of the work as a book of reference by embodying the subject matter of each paragraph in a single prefatory sentence, in conspicuous black type, and by the addition in large type, of leading cases which have been cited and approved by courts of high authority. In the notes many new topics of recent development are considered and discussed, and a valuable chapter has been added, on the subject of Extraordinary Legal Remedies. The mechanical features of the book are all that could be desired.

*Outline Study of Law.* By Isaac Franklin Russell, D.C.L., LL.D., Professor in the University of the City of New York. Bound in sheep, 270 pages. L. K. Strouse & Co., New York, 1894.

This little volume contains a summary of a course of lectures

delivered by its author before a class of non-matriculants. The introductory lectures are devoted to a study of the nature of law, and the subsequent ones to the divisions and subdivisions into which law is usually divided. The author reveals a breadth of knowledge that forms a rich back-ground to the terse but clear statements which characterize each lecture. It is an excellent book on elementary law.

*The American Digest* (Annual, 1894) September 1, 1893 to August 31, 1894. Prepared by the Editorial Staff of the National Reporter System. West Publishing Co., St. Paul. October, 1894.

This huge volume of 5431 pages, contains a digest of the decisions of the principal courts of this country, together with notes of English and Canadian cases. The decisions are arranged under topics and sub-topics, and by an elaborate system of general and specific cross references, one may turn in a moment to the particular paragraph of a decision, for which he is seeking. At the end of the volume is a valuable table of cases that have been overruled, criticised, followed and distinguished during the year. The task of preparing this work must be herculean, and the West Publishing Co. deserve the congratulations and thanks of the profession on the thoroughness with which it is performed, and the promptness with which it is issued. The volume is printed in clear type and bound substantially, and is capable of resisting the severe handling it is sure to receive.

*Principles of the Law of Real Property.* By the late Joshua Williams. The 17th Edition, Rearranged and Partly Re-written by his son, T. Cyprian Williams. With American Notes by Harry B. Hutchins, Professor of Law in Cornell University. Law sheep, lii. + 813 pages. Price, \$4.00 net. Boston: The Boston Book Co., 1894.

Very few books of an elementary character, treating a single subject of law, have stood so successfully the test of time as Joshua Williams' work on Real Property. The first edition appeared a half-century ago and was immediately recognized as a scholarly and masterly treatment of the subject. The author, by taking a mean course between elaborate detail and a bare statement of principle, produced a work that was readable and intelligible to students possessing no previous knowledge of law. His presentation of the logical and historical development of the law on this subject did much to free the mind of the erroneous, but quite prevalent opinion that the law of real property was simply a compilation of technical, arbitrary and unreasonable rules. This

new edition by the author's son embodies the substance of everything contained in the earlier editions, and in addition contains a brief and clear explanation of the modern changes in the English law of real property. Prof. Hutchins, in recognizing the value of this work to American law students, has added thereto full and complete American notes, in which he points out whatever of the English text is not of practical importance in the United States, and the statutory changes peculiar to this country, together with the radical changes in the common law. The book is well bound and clearly printed, and will prove valuable not only to law students but also to general readers desiring a knowledge of the laws of real property.

*A Treatise on General Practice.* Containing Rules and Suggestions for the Work of the Advocate in the Preparation for Trial, Conduct of the Trial, and Preparation for Appeal. By Byron K. Elliott and William F. Elliott. Two volumes, 8vo. bound in sheep. Price \$12.00 net. The Bowen-Merrill Co., Indianapolis and Kansas City, 1894.

These two volumes, which are an enlargement of a former book of these authors, covers the entire work of the advocate in the preparation and trial of the cause. They begin with the first step in gathering the facts, and follow the proceedings through the preparation for trial, the conduct of the trial and the preparation for appeal. The authors, the elder of whom is a man of wide learning and general culture, and who was for many years the chief justice of the Supreme Court of Indiana, have brought to their work the ripe judgment that comes from years of experience at the bar and the bench. The first volume is devoted to the advocate's work out of court preparing for trial, and the wisdom, experience and keen observation of the authors appear in the valuable suggestions contained in the opening chapters entitled, Learning and Preparing the Facts; Ascertaining and Preparing the Law of the Case; and The Theory of the Case. The second volume treats of the advocate's work in court during the trial, and contains among its many excellent chapters three that are especially valuable for their cogent advice: The Address to the Jury, Arguments of Questions of Law, and Fallacies and Artificies. The work is written ostensibly for young and inexperienced advocates, but the two volumes are so replete with valuable advice and practical suggestions, and are written in such a bright, animated vein, with apt illustrations and amusing anecdotes, that they will prove fascinating to the old retired practitioner who has fought his legal battles, as well as instructive and helpful to the

young advocate on the eve of battle. The literary style is fresh and delightful and the volumes are in striking contrast to the dry, technical works that make up the greater part of every legal library. They are well bound, clearly printed, and effectively indexed, and should prove of great value to young lawyers, and full of suggestions to older practitioners.

*Trial Procedure.* A Treatise on Procedure in Civil Actions and Proceedings in Trial Courts of Record under the Civil Codes of all the States and Territories. By John C. Fitnam. Law sheep, liii.+867 pp. Price \$6.00 net. West Publishing Co., St. Paul, 1894.

An article recently read before the section of Legal Education of the American Bar Association, by one who had made a close examination of the points involved in the decisions of our appellate courts, contained the statement that "nearly one-half of the questions carried to and decided by the courts of appellate jurisdiction in this country, were questions arising out of disputes as to the proper method of bringing before the courts the merits involved in the original differences. That is to say, substantially one-half of the time, expense, and labor incurred by our highest courts in determining the legal questions they could not evade, was spent in correcting the mistakes of lawyers, *in teaching lawyers how to practice law.*" Can there be a more forcible presentation of the great need of accurate works on the subject of procedure and a stronger plea for a more thorough study of the rules and principles of the subject by members of the Bar. This valuable work of Mr. Fitnam aids to a great extent in supplying this need, and its close study will prove of inestimable value to a practitioner. The author has embodied in this volume the fruit of an exhaustive study of the codes of the various code States and an examination of all relevant cases, and he has discussed tersely and forcibly all the questions of procedure that are apt to arise during a trial. The work is admirably arranged. The first twenty-three chapters are devoted to a discussion of courts, their jurisdiction, organization, powers and officers, and to a consideration of the powers of special judges, the appellate jurisdiction of trial courts, and the proper steps to be taken by each party under the various circumstances that arise during the pendency of the action. The subsequent chapters treat of summons and subsequent procedure to the end of the action. The volume deserves a place in every library.