Book Reviews

Cases on Insurance. By George W. Goble. Indianapolis: The Bobbs-Merrill Co. 1931. pp. xxxix, 898.

THE reader who takes up this volume is first struck by the excellence of its typography and the completeness of its equipment. No other source book that has come under the eye of this reviewer compares with this in the extensive and efficient aids to its use as a teaching implement. Besides the usual table setting out the 273 cases reported more or less fully in the text, it contains an additional table of some thousand cases which are commented upon or quoted from in the text and notes. There is also a list, extending over ten pages, of articles and notes in various law school periodicals, which are cited in the book. This list, while not including all useful citations within the field indicated, nor even all that are actually given in the book, affords a much more nearly complete catalogue of periodical literature pertinent and available than can be found in any other similar collection of materials intended for student use. Granted that at least half of these hundreds of notes and comments are of no earthly value, unless it be to afford a sort of autoptic proference showing that some problems in insurance law are too difficult even for law students and law teachers, yet this vast array of pertinent comment will prove an invaluable aid in effective study of this subject; and to require discriminating exclusion of the useless items would place too heavy a burden even upon such an omnivorous reader as Professor Goble has proved himself to be.

The author's annotation of the cases reported is unusually extensive and thorough. The notes contain not only citations of other cases treating of varying phases of the problems presented by the principal cases, quotations from opinions in related cases and from relevant essays, and, as already indicated, a wealth of citations of articles in legal periodicals, but also numerous questions that search out the bases of the decisions reported or demand the solution of related problems arising from variant factual situations. Almost without exception these questions are followed by citations of cases and articles which will aid in answering them. There are eager and earnest teachers who think that such questions should be left up in the air, and the student with them, unless he has wit and courage sufficient to bring himself unaided safe to earth. But after all the student has only three years in the law school. He is given cyclopedias, digests and textbooks to aid him in solving problems with maximum efficiency and minimum time cost. His casebook should be so constructed as to aid as well as stimulate his further researches. While no single student can possibly be expected to investigate all the problems suggested in the vast number of questions Professor Goble has incorporated in his notes, they cannot but be very helpful to every teacher who is giving a course on the law of insurance and especially to one who is newly teaching the subject. He may well allow his classroom discussions to be guided by the questions thus raised. Such teachers will also find valuable the author's suggestion, contained in the preface, as to omissions that may be made in case the teacher has not available sufficient time to use all the material presented.

But after all pedagogic aids are but aids. The real value of the work must be determined by the quality and arrangement of the material selected. In this respect Professor Goble's work is admirably done. At the outset the reader is struck by the large proportion of non-judicial material included. Extracts from books on the economics and practice of the business of insurance and from legal treatises and essays on the subject, all, or nearly all, valuable and interesting, account in the aggregate for some sixty pages. Surely this shows a desirable tendency in the making of source books for law teaching, and promises an escape from the tyranny of the so-called "case system" narrowly followed.

The author's preface tells us that "the classification of the material in this work does not follow conventional lines." Perhaps it would be better to say that the arrangement differs from that of any preceding casebook on insurance. The same "cluster points" are used, but the major and minor groups of cases follow in a changed order. But in any event one may commend the straight-forwardness of the arrangement and especially of the headings attached to chapters, sections and sub-topics. There is a refreshing absence of verbal legerdemain. No attempt is made by the use of unfamiliar phraseology, by large importations from the language of the economists and sociologists, to create an impression of aggressive originality and great learning. The reader seeks in vain for the alluring expressions "behaviour," "judicial reaction," "sociological aspects." And yet the non-legal material included in the collection, the arrangement of judicial decisions and the implications of problem questions posed in the notes, show an awareness of the significance of sociological and economic backgrounds, and of the general relationship of law to the other social sciences, that needs no advertising.

As to the wisdom of the author's classification and arrangement of the material used one has some doubt. An experienced teacher of law knows that it rarely makes much difference in what order the group of concepts more or less clearly delimited by judicial action are studied, so long as natural relationships are observed. The question whether constitutional law is to be given at the beginning or end of the three year course will not prove fatal, however decided. Whether one goes from London to Dover, or from Dover to London, the scenery is pretty much the same.

All this being granted one yet gets the impression that Professor Goble has over-classified his material, has arranged it too laboriously. After some introductory extracts from non-judicial writings, printed under the caption "The Function and Theory of Insurance," the author divides his work into two parts. Part I bears the title "Personal Insurance (Life and Accident)," while Part II, entitled "Property Insurance," appears to include all other kinds. While the titles "Personal Insurance" and "Property Insurance" are sometimes used by writers on the business of insurance, they do not seem well suited to the use of lawyers. To no one are life and accident insurance more "personal" than are health and unemployment insurance, and to the lawyer liability insurance is not less personal. Indeed all kinds of insurance are but devices to protect persons against the risk of losing (1) earning power (life, accident, health, unemployment); (2) interests in property (fire, marine, fidelity, theft and hundreds of other kinds); and (3) immunity (liability, workmen's compensation, physician's defense, etc.). All kinds are equally personal. However, if the author wishes to use these particular expressions as labels for his two major groups of phenomena, the user of the books will probably suffer no evil effects, even though they be unhappily chosen.

But can we say the same thing of his assumption that "Personal Insurance" contracts form a homogeneous group so different from "Property Insurance" that the two groups must be treated independently? In his preface he likens the teacher who tries to treat life, fire and marine policies concurrently to

the unhappy circus rider "trying to ride the elephant, the bear and the kangaroo at the same time." One might suggest the substitution of the salamander and the hippopotamus as better typifying fire and marine contracts; but however that may be, the writer seems inconsistent in furnishing his pedagogic circus rider with only two parts when he must ride three such beasts. The reply seems to be that in order to be consistent, he would need to give two score separate treatments, which would be impossible and absurd. The author's method of treating independently life and accident policies in one group and all other kinds in a second group is not impossible or absurd, but, in the opinion of the reviewer, it is wasteful and unwise. Accident and liability insurances have more common characteristics than have those of life and accident. Fire and life insurances have as many common problems and practices as have fire and marine contracts. And so throughout the list of scores of insurances bearing recognized labels, there are present some differentiating factors, but more common elements grounded in the common economic function of distributing losses arising from infinitely varying perils, and the common general method of accomplishing this adequately and equitably. It would seem to be wiser to treat the many common elements commonly, and only the differentiating factors independently.

But one cannot predicate right and wrong of classifications. Convenience is the only test. If Professor Goble's classification and arrangements are found by experience to be more convenient and effective than others we shall gladly adopt them, whatever may have been our *a priori* views.

It goes without saying that no self-respecting review should fail to point out the errors into which the author has fallen; otherwise the reviewer's superior knowledge of the subject might be questioned. And there are a few errors here that should be corrected. For example, it is stated [p. 62, n. 17] that in the two cases cited the "beneficiary" was allowed to recover for the insurer's negligent delay in acting on a life application. In fact it was the insured's administratrix that recovered in each case. The intended beneficiary seems never to have been allowed a cause of action, for what reason is not clear. So it is expressly stated [p. 48, n. 12] and elsewhere implied [pp. 18, n., and 574, n.] that insurance has been declared by the courts to be a public utility whereas it is believed that they have never gone farther than to assert that it is sufficiently affected with a public interest, whatever that may mean, to be subject to regulation, even to the extent of fixing premium rates. Other slips could perhaps be noted; but it should be added that the accuracy of the annotation, considering its wide scope, is truly remarkable.

The criticisms made above, if such they be, are of little importance when viewed in relation to the excellence of this work as a whole. Its use in the class-room can hardly fail to be interesting and stimulating.

Yale University. W. R. VANCE.

The Interstate Commerce Commission. By I. L. Sharfman. Part I. New York: The Commonwealth Fund. 1931. pp. xvi, 317. $3.50.

ABOUT a decade ago The Legal Research Committee of the Commonwealth Fund began an extensive study of administrative law. Professor Ernst Freund's volume, *Administrative Powers over Persons and Property*, served as an introductory survey of the general field. The Foundation designs to supplement the introductory volume with specific studies of administrative bodies. The Federal Trade Commission was first subjected to analysis by Gerard C. Henderson. The Interstate Commerce Commission is likewise to

be portrayed in an intensive study, and the present volume, covering the legislative basis of the Commission's authority, is to be followed by three additional Parts. The remaining Parts will cover, respectively, the scope of the Commission's jurisdiction, the character of its activities, and the nature of its organization and procedure.

For the general student of administrative law as well as for the intending practitioner before the Commission, there is no other book which so clearly and impartially recites the forty-year evolution of Federal legislation in railroad regulation. Professor Sharfman, a competent expert in this domain, recognizes to the full how inevitably the new type of administrative organ of government contravenes the rigid though hoary doctrine of the complete separation of governmental powers. Mr. Justice Holmes, in his dissenting opinion in *Springer v. Philippine Islands*,[1] has demonstrated forcibly and with latent humor how impossible it is to put the old wine of the sharp separation of governmental powers into the new bottles of expanding administrative law. Professor Sharfman, without rearguing the point, states correctly that the Commission, "as a functioning tribunal . . . oversteps at almost every turn the so-called separation of governmental powers;" that "in its determination of controversies it is exercising judicial authority, and in its prescription of future adjustments it is itself enunciating legislative policy." [p. 288]. It is a relief to see this factual treatment of the Commission's activities. The trammels of "justness," "reasonableness" and "public interest" which are supposed to confine that tribunal's functions to the specific enforcement of statutory standards are largely illusory. It is time that such verbal veils as "*quasi*-legislative" and "*quasi*-judicial" be discarded.

But if the Commission's present ample exercise of broadly discretionary power be conceded, the history of the acquisition of that power is nowhere better traced than in Professor Sharfman's treatise. The original Act to Regulate Commerce of 1887 was almost twenty years old before it developed a set of legal teeth, in the Hepburn Amendment of 1906. Since then, and particularly in the Transportation Act of 1920, its powers have continuously widened and deepened. "The legislative structure is primarily significant, therefore, because of its organic relationship to the character of the Commission's powers and processes."

If any qualification of this volume's delineation of the Commission's present powers is in order, it may be suggested that sometimes the mark is a bit overshot in such findings as that "any clearcut differentiation between the spheres of private management and public control is largely obliterated." [p. 248]. It ought not to be forgotten that since 1920 something over five billions have been invested in additions and betterments to the nation's railroad property. The initiative in determining the form and shape that these additions and betterments shall take lies almost entirely within the discretion of the railway managements, and outside that of the Commission. True it is, that where security issues are a prerequisite, the Commission's approval must first be obtained. There is a chance of a suspensive veto here. But the veto goes rather to the details of the financing, not to the inception or origination of the projects for capital outlay. The present law purports to empower the Commission to order the building of extensions, but except for minor extensions, the supposed power is of dubious value, as Professor Sharfman recognizes in the case of *Public Service Commission of Oregon* v. *Central Pacific Ry.*[2] While this substantive originating power remains in the hands of the railway managements, it can

[1] 277 U. S. 189, 48 Sup. Ct. 480 (1927).

[2] 159 I. C. C. 630 (1929).

hardly be said that all "of the significant activities of the carriers are subjected to governmental control" [p. 283], if that be construed to mean that significant discretion no longer resides in railway directorates.

Yale University. WINTHROP M. DANIELS.

Essays in Jurisprudence and the Common Law. By Arthur L. Goodhart. Cambridge: At the University Press. New York: The Macmillan Co. 1931. pp. xiii, 295. $5.

THROUGHOUT this collection of very readable essays an authoritarian philosopher conducts a search for fundamental principles. He seeks to show us the difficulty in the solution of modern problems caused by our lack of formulation of the underlying fundamental principles. Few labor leaders in England, for example, realize the truth of the author's statement that "the question whether a general strike is legal under the law as it stands is at present one of the most important—if not the most important—problem to be considered in planning new legislation." [p. 226]. In other essays he shows the importance of the search for other principles such as possession, negligence, and *ultra vires*. Sometimes, however, the author fails in his search, as when he sadly admits that "the law of divorce is based on no discoverable principle." [p. 43]. This is an unfortunate state of affairs in so important a field. It even raises grave misgivings as to whether the law of divorce is really a "law" at all in any accurate sense.

In the first essay, *The Ratio Decidendi of a Case*, we are shown that the search for principles must be conducted in a certain and orderly manner, or else the principle which we discover may not be a "principle" at all, but something else which the author neglects to name. We must therefore constantly keep in mind that the real "principle" of a case is not based on the reasons, nor the rule, nor on *all* the ascertainable facts. Instead we must look only (a) at the facts the judge treated as material, and (b) the reasons based on these facts alone. In this process certain "facts" (of person, time, place, kind and amount) have the mysterious property of being immaterial unless stated to be material. All other more gifted facts are material unless treated by the judge as immaterial. The actual facts of the record should be ignored whenever the judge states enough facts to make this possible. Librarians should therefore use every effort to keep such records of cases from immature students. The author warns us of this when he says: "The emphasis which American Law libraries are now placing on collecting the whole records in the leading cases may prove to be a dangerous one, for such collections tend to encourage a practice which is inconvenient in operation and disastrous in theory." [p. 13]. Where there are several opinions written "which agree as to result but differ as to material facts, then the principle of the case is limited so as to fit the sum of all the facts held material by the various judges"—without dividing them by the number of judges sitting.

The author is not troubled by what "facts" are, nor by their variety, nor with distinguishing them from conclusions of "law." For he points out that "the material facts which are usually found in any legal situation are strictly limited. Thus the fact that there must be consideration in a simple contract is a single material fact, although the kinds of consideration are unlimited." [p. 24]. So also we assume that Proximate Cause, *Ultra Vires*, Negligence, Intent and Domicile would be considered as "single material facts." At any rate it is out of such materials that we discover principles, which, when discovered, are absolutely final, at least in England because of the rule of *stare decisis*.

The author proves that this is true in his essay on *Case Law in England and America* by the simple method of showing that nearly all the English writers believe it. True, a certain Professor W. Jethro Brown of Australia suspects the English Courts of an ingenious ability to distinguish away an inconvenient precedent. But as Mr. Goodhart points out, "Unfortunately Professor Brown does not give any references to prove these ingenious distinctions" and "a statement unsupported by citations is of doubtful value however distinguished the writer may be." [p. 54]. Professor Brown being thus disqualified because he appeared in public without footnotes, the motion is unanimously carried that English courts follow precedent to any inconvenient result because forced to do so by the inexorable application of legal principles to such single material facts as "Consideration," *"Ultra vires,"* "Negligence," etc. In that way we achieve a very high degree of certainty of result.

In America, on the other hand, *stare decisis* is not so well observed. This is proved by the fact that so many American writers admit that courts find means, direct and indirect, of evading it. The reason, however, is apparent to the observer of underlying social conditions. As Mr. Goodhart points out: "In England with its comparatively stabilized civilization . . . the desire for logical consistency is paramount . . . . In the United States on the other hand with its rapidly changing social conditions . . . it has been found necessary for the courts to be more venturesome." [p. 280]. Again: "Perhaps the English Jurist is faced with fewer problems than are his brothers in Canada and the United States for in England, where the division between the past and present is less marked than it is in the rapidly changing social conditions of America, there is not the same need for legal adjustment." [p. 31]. England must have been an interesting place in which to live during the industrial revolution when the future was not so cut and dried as it is in the year 1931.

One might think that the consistent application of such certain rules would make the English law too rigid. Fortunately the occasional weak judge has saved the situation, and we marvel at a legal system which can turn even its worst decisions to such good ends. Mr. Goodhart shows how this is done as follows: "For that matter, by what may seem a strange method to those who do not understand the theory of the common law, it is precisely those cases which have been decided on incorrect principles or reasoning which have become the most important in the law. New principles of which their authors were unconscious or which they may have misunderstood, have been established by these judgments. Paradoxical as it may sound, the law has frequently owed more to its weak judges than it has to its strong ones. A bad reason may often make good law." [p. 3].

Whether England still needs a few weak judges to furnish it with new principles is not clear. Probably not with its present stability. However, the paragraph shows us the mysterious ways of *stare decisis.* If an English judge creates a new principle intentionally, he is false to his vows. But if he does it through ignorance, a kindly Providence intervenes to guide his stumbling footsteps up to the green pastures and beside the still waters.

Apparently Providence does not act this way in America because Mr. Goodhart says that "In America there are as many able lawyers as there are in England but there is also a far larger number of less competent ones. Unfortunately it is of frequent occurrence that the cases which are of the greatest importance to law as a science are argued by lawyers of the second class." [p. 73].

The conclusion that England still clings to artificially found principles while America is abandoning them is puzzling to the reviewer, in the light of so much evidence of an English retreat from them. That vast field of

legal philosophy known as pleading has in England been buried under a simple administrative device. The method of English criminal appeals has removed another great field of the law at least partially from the difficulties of binding doctrine. The taxing of costs certainly makes extremely difficult the path of the litigant who feels sure that he can vindicate some principle on appeal. And also one wonders how many inconvenient cases are quietly taken out and buried under the process which the author describes as follows: "Only a small proportion of the decided cases are reported each year; unless a case deals with a novel point of law—and novelty is strictly construed—it will rarely find its way into the reports." [p. 57]. Of course any principle can be made very clear and definite—if one is only permitted to select some cases and ignore others. The system seems excellent, but does its excellence consist in the fact that the unchanging and stabilized social conditions of England in the year 1931 encourage *stare decisis*, or in the many concealed escapes from the consequences of that doctrine?

The reviewer's interest in the underlying philosophy of the book has led him to neglect its many merits. It is written in a lucid style which makes difficult abstractions easy to read. When the author escapes from his theories, as in the essay on Costs, his work justifies the highest praise. And even as to the philosophy, we must admit the curious paradox which clings to all judicial institutions. That paradox, though difficult to express, may be put in this way. If courts, or at least persons who deal with courts, did not so firmly believe that justice was dispensed according to the inexorable dictates of impersonal rules, our machinery of justice might suffer a strange change which might not be agreeable even to realists. It may be that just as an individual needs to cherish dreams and illusions, so also must his judicial institutions.

Yale University. THURMAN W. ARNOLD.

The Equity of Redemption. By R. W. Turner. Cambridge: At the University Press. New York: The Macmillan Co. 1931. pp. lxxii, 198. $5.

A SOBER and closely reasoned general preface by Professor Harold Dexter Hazelton, the editor of the Cambridge Studies in English Legal History, introduces this study by Mr. Turner of the development of the equity of redemption. In this finely integrated essay, Professor Hazeltine demonstrates with a wealth of illustration drawn from an abundant scholarship, that, while the law of security and especially land security has had a development exhibiting similar phenomena in England and the modern European countries whose codes are based on the Roman law, the English law of mortgages contains few, if any, elements borrowed directly from the law of the Romans. What we see in nearly all countries is merely a general progress from the forfeit idea to the conception that the gage or pledge is collateral security and a recognition of forms of security where the debtor remains in possession of the *res* until default in the payment of the loan.

Mr. Turner's essay, consisting of eight chapters and an appendix, is obviously the product of one who has supplemented a long and comprehensive acquaintance with his subject matter by much original examination of early authorities. The materials are conveniently arranged and adequately documented. Chapters I and II, dealing with the common law conception of estate and the foundation of the equity of redemption, are followed by a discussion of the important decisions of Lord Hale and Lord Nottingham and the enduring influence of Lord Hardwicke upon the conception of

equity of redemption as an estate in land. Mr. Turner is confident enough of his ground on most questions to feel no hesitancy in stating frankly the points upon which he is doubtful, such as the grounds upon which equitable jurisdiction over mortgages was first assumed. It seems evident, as he indicates, that the chancellors must have been greatly concerned to relieve mortgagors against unjust imprisonment. In the first case where the chancellor decreed a reconveyance (1456) there were peculiar circumstances amounting to fraud and oppression by the mortgagee. The chancellor's jurisdiction likely arose in a relief against satisfied bonds.

In chapter V Mr. Turner includes an historical account of the nature of the mortgagor's possession from earliest times to the Real Property Act of 1925. Chapter VI, which is amplified to some extent in Professor Hazelton's preface, discusses the influence of Roman law and the movement toward *hypotheca*. Chapter VII is a brief essay on rights *in rem* and rights *in personam* with particular reference to the equity of redemption. Chapter VIII covers in separate subdivisions analogies of the equity of redemption and the trust, the mortgagee as trustee, the theory of cloggings and the mortgagor and the franchise. The appendix considers briefly the changes wrought by the Law of Property Acts, 1922-1926. The legal charge is now generally adopted as the form of land security in England, but it is still possible to grant a term for years to secure repayments of money at a fixed date. Mr. Turner contends that although the legal right to redeem ceases when the date for payment has passed, the mortgagor's equitable right to redeem is the same today as before 1926.

Mr. Turner is never pontifical. The few instances where a tone of mild dogmatism is apt to provoke comment, deal with matters having small relevance to his main thesis. An instance of the latter sort is the discussion of Sir Francis Bacon and his suggestion that Bacon's interest in Shakespeare is now generally accepted. It is interesting to read this observation at a time when Mr. Leslie Hotson's Shakespearian researches have demonstrated some of Shakespeare's personal reasons for touching upon legal matters in certain of his plays.

When Englishmen in the 17th century settled various areas on the opposite side of the Atlantic, not only were courts established, but, to a great extent, the legal institutions of England, including the mortgage and the equity of redemption, were introduced. The early judges in these colonies and provinces were frequently literate. The records of the opinions of these judges and the statutes enacted by various political subdivisions have introduced interesting variations into the law of mortgages, an account of which would make a valuable supplement to Mr. Turner's admirable composition. These records are probably not available in Mr. Turner's own country, but if he, or those interested in his thesis, were ever in a position to make an expedition to the region colonized by the Englishman of the 17th century, he might discover the materials for additional chapters.

Columbia University. JOHN HANNA.

Cases on the Law of Evidence. By Edward W. Hinton. Second edition. St. Paul: The West Publishing Co. 1931. pp. xviii, 971. $6.50.

TWELVE years have elapsed since the first edition of Hinton's *Cases on Evidence*, and no edition of a generally recognized casebook on the subject has appeared since 1925, when Maguire's revised edition of Thayer's *Cases on Evidence* was published. This alone, in view of recent developments in the

law of evidence, made a second edition of Hinton's *Cases* both desirable and timely.

The number of pages of case material has been reduced from 1087 to 962, 194 cases in the first edition have been omitted, and 149 new cases have been added, the latter constituting about one-fourth of the total number of cases.[1] With the exception of Chapter 6 no change has been made in the chapter headings. That chapter is now entitled "Preferred Evidence" instead of "The Best Evidence," and includes in section 1, "Proof of Execution of Attested Documents," cases dealing with rules of preference for attesting witnesses, formerly dealt with in section 2 of Chapter 2, under the heading "Required Witnesses." The omission and the division of certain sections and the relabeling of others are distinct improvements. The wisdom of relegating to a footnote,[2] however, all cases relating to offers of evidence and objections may be seriously questioned.

Aside from these and a few other minor changes, the arrangement of the topics is that of the first edition. The chief criticism of the present arrangement is that it offers a great temptation for the instructor to spend too much time on Chapter 1, "The Court and the Jury." Since the instructor will generally feel it necessary to supplement the cases with other material and time-consuming discussion on rules of substantive law and procedure, thorough consideration of the cases on Presumptions and the Burden of Proof, Judicial Notice, and Determination of the Admissibility of Evidence will not infrequently result in neglecting the questions of admissibility which are raised in the chapters devoted to exclusionary rules. In the use of the casebook by an instructor having this view, one solution is to take up the first chapter last and thus avoid the temptation until it ceases to be inviting; another is to have the relation of the pleadings to the proof and incidental matters included in the course on procedure.[3] It may be noted that Professor Hinton in placing these topics in the first chapter follows Thayer, while the first solution suggested is substantially carried out in Wigmore's *Cases* and is recommended in a modified form in Maguire's recent *Supplement* to Thayer's *Cases*.

A doubt arises in regard to the arrangement of cases in the last two sections of Chapter 6, showing the application of the best evidence rule. Although it is possible to consider more cases in consecutive order than in the first edition, due to the chronological arrangement of *every* case in *both* sections, it is still necessary to rearrange the cases if the various branches of the rule are to be taken up in logical order. Slight attention is often given to the rule because of general agreement with Thayer's view.[4] But the fact that mere mention of the term "best evidence" deludes students into a feeling of false security makes it seem advisable to consider the rule in detail, if it is to be considered at all, for there are many who accept Lord Hardwicke's statement that, "The judges and sages of the law have laid it down that there is but one general rule of evidence, *the best that the nature of the case will admit.*" [5]

While the references to most of the important law review articles are a valuable addition, the meager citations to Wigmore's treatise[6] and the failure to cite more comments and notes, particularly those written by

[1] The greatest number of changes were made in Chapter 2, "Witnesses," and Chapter 3, "Hearsay".

[2] P. 109.

[3] CLARK, CASES ON PROCEDURE (1930) c. 6.

[4] THAYER, A PRELIMINARY TREATISE ON EVIDENCE AT THE COMMON LAW (1898) 497.

[5] Omychund v. Barker, 1 Atk. 46, 49 (1744).

[6] The only two sections mentioned are found in the notes on pages 186 and 333.

Professor Hinton, are regrettable. Professor Hinton commented [7] on several new cases included in the second edition, namely, *State v. Martin, Leemon v. Leighton, Petition of Talbot, Raffel v. United States, Pan-American Petroleum & Transport Company v. United States* and *A. B. Leach & Co. v. Peirson,* and on many other cases raising interesting problems of evidence.[8] Their omission is no doubt attributable to the author's characteristic modesty. With this exception the footnotes, in most instances, contain adequate reference to case material and periodical literature.

The author did not see fit to include problem cases, and his statement in the preface that they "clutter the collection" and that "teachers usually prefer to supply their own problems" seems questionable in view of the success of Maguire's revised edition of Thayer's *Cases,* which contains over 400. It is hoped that the third edition will have this feature as well as the most recent innovation, the inclusion of excerpts from law review articles, comments and notes.

A comparison of the two editions of Hinton shows that the second edition is not a first edition with a few new cases and citations. The author has performed a difficult task in a most creditable manner.

George Washington University Law School. WILLIAM T. FRYER.

Rights of Aliens under the Federal Constitution. By Norman Alexander. Montpelier: Capital City Press. 1931. pp. vi, 153.

THE legal treatment of the status and condition of an alien in the United States from either the standpoint of international or constitutional law is specially complicated because they are subject to both State and Federal control. The approach chosen by Samuel MacClintock in 1909,[1] and by Mr. Alexander in 1931, has been the constitutional test. In the years which have elapsed since Mr. MacClintock presented his essay, treating alienage and citizenship, Federal legislation, and treaty rights of resident aliens, little or no intensive study has been made of the condition of aliens in the United States. Consequently Mr. Alexander's study is especially welcome. He has chosen a broader field than Mr. MacClintock and has included material upon the scope of Federal authority over aliens, the constitutional rights of aliens in exclusion and expulsion proceedings, civil rights of aliens, and aliens and due process of the law.

The effort and skill involved in the collection of pertinent cases and statutes will evoke the appreciation of every one who comes to use this book. The efficient brevity of the summaries of the more important cases, welded into the text itself, renders the treatment the more valuable.

The thoroughness with which Mr. Alexander has treated the chapter upon the civil rights of aliens, not hesitating to point out economic causes of discrimination and the weakness or failure of the constitutional protection, makes the third chapter outstanding. In view of the many able discussions of the deportation problems, it seems lamentable that Mr. Alexander did not devote his entire attention to the question of civil rights and due proc-

[7] (1925) 19 ILL. L. REV. 369, 577, 681; (1926) 21 *ibid.* 396; (1927) 22 *ibid.* 301; (1928) 23 *ibid.* 172. To these may be added (1931) 26 ILL. L. REV. 320, a comment on Donald Friedman & Co., Inc. v. Newman, which appeared after publication of the second edition of HINTON.

[8] (1924) 19 ILL. L. REV. 200, 280; (1925) 20 *ibid.* 76; (1926) 20 *ibid.* 607; (1926) 21 *ibid.* 62; (1927) 21 *ibid.* 821; (1927) 22 *ibid.* 189; (1928) 22 *ibid.* 545; (1929) 24 *ibid.* 97; (1931) 25 *ibid.* 809.

[1] MacClintock, *Aliens Under the Federal Laws of the United States* (1909) 4 ILL. L. REV. 27, 95.

ess (the material upon which chapters III and IV are based), elaborating in particular the discussion of the alien and the treaty-making power. The position of the foreign consul under treaty in succession cases, for example, has a history in cases alone which deserves a more intensive treatment, as do some of the post-war cases on the treaty rights of former alien enemies.

Yale University. PHOEBE MORRISON.

The Law of Mortgages of Land. By John D. Falconbridge. Second edition. Toronto: Canada Law Book Company, Ltd. 1931. pp. lxxix, 807.

THIS work (by the author of the *Canadian Law of Banking and Bills of Exchange*) is a comprehensive treatise on the Law of Mortgages of Land, minutely indexed, in which the law is stated in clear and simple language. No doubt the book will be fully reviewed in one or more of the Canadian legal periodicals, and its utility to the Canadian reader fully discussed. It is the purpose of this review to point out wherein this leading text book on the subject in Canada may be of use and interest to the lawyer and student in the United States.

Substantial portions of the law stated in the book are applicable in the United States as well as in Canada. Especially is this true of chapter III, which deals with a legal mortgage in equity and clearly expounds such equitable doctrines as the clogging of the equity of redemption and disguised forms of mortgage, and chapter V, which treats the subject of equitable mortgages, including floating charges created by corporations. The chapters on accounting between mortgagor and mortgagee, on interest, and on costs in mortgage actions will be of great assistance to American lawyers who have mortgage foreclosures in making up accounts in these actions. Likewise the detailed discussion of the mortgage contract itself, the nature of the mortgagee's title, and his remedies in case of default, together with the rights which accrue to the mortgagor by reason of equitable principles, and of the vexed subjects of subrogation and marshalling and other problems arising out of the transfer of the equity of redemption, will unquestionably be of use and interest to the American lawyer. In the first edition observations upon the subject of conflict of laws were scattered throughout the book, but in this edition the author has gathered together the results of recent investigations in that field in a separate chapter dealing adequately with the subject as it relates to mortgages.

From time to time practitioners in the United States must have to do with Canadian registry and land titles acts, especially those of Ontario and the border provinces in the North-West. The effect of the Ontario Registry Act, and particularly the sections which deal with the registration and priorities of mortgages in Ontario, is fully explained. In Alberta and Saskatchewan exclusively, in Manitoba to a large extent, and in Ontario to a limited extent, the system of land titles (Torrens system) prevails. The statutes which govern this system of recording titles to land have modified greatly the application of legal and equitable principles in regard to mortgages; and the author outlines the main principles underlying such statutes and discusses the effect of the statutes upon legal and equitable estates and priorities between mortgagees.

The author confesses in the preface that he has allowed himself a certain liberty of criticism of decided cases, and since the effect of the decisions is clearly stated, this critical attitude adds to the value of the book.

The arrangement is logical and follows the course of a mortgage transaction from its formation to its conclusion. There is a complete analytical table of contents, and a corresponding summary of topics at the opening of each chapter is very useful to anyone who wishes to reach quickly the point which he is seeking. The book, by reason of its literary merits and its elaborate treatment of a difficult subject, is one which should be found in the library of every practitioner whose practice leads him into the field of mortgage and finance.

Toronto, Canada. GEORGE ALEXANDER URQUHART.

Selected Readings on the Law of Contracts. Published under the auspices of the Association of American Law Schools. New York: The Macmillan Co. 1931. pp. xcvi, 1320.

THIS book comprises reprints of a hundred or more leading articles, notes and book reviews relating to the law of contracts, selected by a committee appointed by the Association of American Law Schools from American and English law reviews and other legal periodicals. In a witty introduction Chief Judge Cardozo, of the New York Court of Appeals, points out the importance of these publications wherein "academic scholarship is charting the line of development and progress in the untrodden regions of the law", and the value of bringing together in permanent and convenient form this pamphlet material. "Truth, no longer vagrant, is here dignified and honored in the respectable security of an indubitable book."

In the main the selected articles are reproduced in their original form. In a number of instances, however, the authors of the respective articles have revised their work for this publication, and in some cases the committee have made some slight revisions. The arrangement of the articles is by groups under much the same general topical headings as one would expect to find in a text book on the subject.

The mechanical aids to the use of the contents are excellent. There is a comprehensive alphabetical table of cases cited or discussed and a very well worked out general index to the topics dealt with. To this is added a "Selective Bibliography of Periodical Literature on Contracts", also topically arranged, which seems to cover about all of the useful law review material available, whether or not reprinted in this volume. The result is not only to make the appropriate material of the book itself easily accessible to anyone seeking law on a particular topic of contract law, but also to make the work a very convenient tool wherewith to reach other sources of authority.

While in a general way these articles cover the entire subject of contracts, one must not expect to find this book to be the equivalent of, or a substitute for, a textbook or encyclopedia. From the nature of the case the greater part of its contents deal with phases of the law which are interesting from the viewpoint of the legal scholar,—close points where the law is not settled, nice distinctions in terminology, or the historical antecedents of rules (or reasons now given to support rules) which may of themselves be by now well crystalized. The distinctive feature of the book is that it collects in conveniently available form material scattered through hundreds of volumes of publications otherwise available only in a few large libraries and as to which no general index or digest is extant.

The book's primary appeal will be to students and teachers of the law of this subject, as affording readings supplementing casebook instruction. There, indeed, Judge Cardozo's prophecy of sanctity as a veritable book may