Book Reviews

Interstate Transmission of Electric Power. By Hugh Langdon Elsbree. Cambridge: Harvard University Press. 1931. pp. xiv, 212. $2.50.

THE control of the electric light and power industry is a topic that has instigated much superficial writing. Colored as it is with the sensationalism of politics and the lure of a controversy between the Right and the Left, it has been too "timely" to inspire in most cases the patient analysis its complexity as a problem in public law demands. In spite of conferences heralded in fat headlines, investigations concluded with evangelical gusto and books that have acquired the preeminence of best sellers, the problem still awaits scholarly exposition.

Under such circumstances it is refreshing to find in Mr. Elsbree's study of the conflict of state and federal jurisdictions to control interstate transmission of power a sincere attempt to grapple with difficulties and a willingness to forego a popular panorama in the interests of a more intensive treatment of a single phase of the problem. In concentrating upon the interstate transmission of electric energy the author has struck the core of a growing sphere of irregulation and in dealing with the conflict of state and federal jurisdictions he has raised a new case against the rigidity of our constitutional system. More than once in the past this conflict has been capitalized by private industry to elude statutory restraints. In the nineteenth century it prolonged the parole of the railroads from regulation and in the present day it is the very basis of a flourishing business in motor transportation. In the past it has been enough that the United States Supreme Court declare the immunity of interstate transactions from control by the states. Industry has been alert to seize the opportunity thus provided. So it is with electric light and power. The Supreme Court has declared that the really important phase of the business, the interstate transmission of energy from one company to another, is beyond the jurisdiction of individual states. We have only to await the rapid annual increase of such transmission, its natural development enhanced by the possibility of avoiding or at least delaying adequate governmental control.

Mr. Elsbree recognizes the difficulties of coping with the inherited rigidity of constitutional clauses. Supreme Court decisions have seldom been swept aside in a day and satisfactory alternatives have been long in the making. It is not enough to call for the immediate organization of a new federal agency or the convocation of states into regional authorities. At every step is to be considered the constitution on the one hand, and the nature of the industry on the other. His course, therefore, is to present in detail the development of the law and the practices and policies of state commissions, and in the light of the data thus set forth, to demonstrate the shortcomings of plans elsewhere proposed.

It is possible that at the outset the author is too preoccupied with unwinding that curious doctrine of the "constitutionality of unconstitutional conditions." Even a lawyer is prepared to admit that functionally the transmission of electric energy ought not to be dependent upon the law

of game birds in Connecticut or of shrimp in Louisiana. It is also remarkable that although writing from the point of view of a political scientist, he is distressed at the irreconcilability of court decisions and regrets "that nothing is certain in the realm of constitutional law." It would seem, furthermore, that his single misconception of the problem is in the assumption that the question of controlling the holding company is easily separated from the general question of the control of interstate transactions including the issuance of securities.

Most admirable, however, is the treatment of attempts of state commissions to administer control in face of the decisions of courts. The author seeks to determine whether, as has been alleged by those who oppose an increase of regulation, the gap caused by the immunity of interstate transactions between generating and distributing companies can be adequately bridged by control of the price to the ultimate consumer. His survey of the practice of state commissions demonstrates the futility of that course and the illusory benefits of those tempering decisions of the Supreme Court which tolerate state regulation where transmission across state lines is linked directly with the consumer.

This attention to the administrative processes, with its evaluation of the actual experience of existing agencies, brings to light concrete data without which it would seem impossible even to point the way to a solution of the problem; and it is significant that with this data before him the author finds that none of the proposed plans for superstate or federal control is satisfactory. Even the Couzens plan which he describes as furnishing "the most comprehensive mechanism of regulation yet suggested" is found wanting to the extent that it contemplates control through the federal administrative system without proper coordination with the state commissions. On the other hand, the supposed ideal solution in the form of regional compacts among several states is shown to be unworkable under the present attitude of most state commissioners who unnecessarily insist upon the autonomy of their respective jurisdictions.

The book's chief value is precisely in this recognition of all the difficulties, legal, economic and political, that must be encountered in any attempt to render control effective. To the extent that he has emphasized these difficulties, sought out concrete data and avoided a peroration of high sounding panaceas the author has injected a scholarly note into a field where scholarship is sadly needed.

Yale University. RICHARD JOYCE SMITH.

Put In His Thumb. By K. N. Llewellyn. New York: The Century Company. 1931. pp. ix, 119.

THE sort of experience that sometimes justifies the arts which appropriate the adjective *aesthetic* occurs whenever perception—whether of sensation, of emotion, or of intellectual discovery—is so communicated that the receiver is satisfyingly (not always joyously) possessed by it to the exclusion of his normal humdrum cares. Opera at its best (without distinction between Wagner and Gilbert and Sullivan) can produce such experience. A music of language alone can carry similarly vivid and absorbing perception of meanings to which it is suited. Obvious verbal rhythms and tinklings, however, become shop-worn and lose their power. Often also something happens to willingness to be possessed by such perceptions as poets are usually concerned to communicate. As time passes I find that I get but rarely from verse, whether rhymed and metred or

"free," the sort of experience I mean. I get it more abundantly from Holmes' prose.

In spite of whatever it is that has happened to my aesthetic apparatus, I was able, after opening not quite easily gates grown rusty with disuse, to get it genuinely from some of Karl Llewellyn's poems. One of them conveys a re-discovery of the joy of shaving; another is his neat "Ballade of the Class in Contracts." And though these light verses are good, they are not his best. Material for poetry has become so hard to find since the romantic stock got worn out that poetizers have sometimes tried to get along without any—unless perhaps some subtle emanation from form or formlessness perceptible only by hyper-sensitized antennae. Llewellyn is no such esoteric cultist. Nor is he a romantic hang-over. But he shows that some poetic perennials may still be as fragrant as in a time of romanticism; "Girls are curious." Bleeding hearts, no longer pageants, would usually now-a-days be shunned as boring if exposed to view; but the suppressed pathos perceivable in many if not most of the ordinarily "successful" middle-aged may be movingly communicated; see the poem called "Economic Incentive." A modern poet could not afford to be caught, like Shelley, "beating in the void his luminous wings in vain." "The poor boob!" is what we should be apt to exclaim. But the void may still entice us with glimpses of black-and-white clear certainty which when we come down to earth turns gray; see "Ultimate Absolute."

Whatever the poetic magnitude of these and other poems that I liked greatly, their publication by a professor of law is surely important. To write it off as mere play outside of professional bounds is to miss its significance. Our professional bounds are expanding. Perhaps indeed there are no bounds to explorations which may count professionally save those to which atrophy of unexercised faculties confines us. Holmes as prophet, and latterly a host of followers among whom Llewellyn is a leader, have shown in their legal writing the value of breadth and range of human understanding. The object of life is living. Law is worth study because living is conditioned by it. The most eager and satisfying of our professional pursuits are stimulated by some picture, often vague and sometimes tawdry, of the good living which we hope that law may be made more than it does to serve. The filling out, correction and ordering of details in that picture is an inescapable part of our job; for upon its validity or sufficiency the value of our work may ultimately depend. We need to beware lest we exclude from our pictures without notice and hearing human pursuits and satisfactions—those, *e. g.*, which poetry may inspire or attest—whose innocence or excellence our own lean imaginations and experience have not established *ex parte*. "The remedy for most of the evils which beset our civilization is for us to become more civilized."

Yale University. WALTER NELLES.

Criminal Justice in England. By Pendleton Howard. New York: The Macmillan Co. 1931. pp. xv, 436. $3.

THE central theme of Professor Howard's book is how English criminal prosecutions are conducted without any official corresponding to the American district attorney. There is the Director of Public Prosecutions, who with a small staff of assistants, conducts annually six or seven hundred of the most difficult and important cases. In commercial fraud cases reliance is placed upon private prosecution, but the success or failure of the

great bulk of the prosecutions depends primarily on the police and to a lesser extent on clerks of court.

The skill of the English police in securing evidence and preparing cases for trial is amazing. So efficient is their work that in courts of summary jurisdiction the charge is dismissed or withdrawn in only 7 *per cent* of the cases.[1] In courts of general trial jurisdiction dismissals without trial or plea of guilty are rarer still, amounting in the Central Criminal Court to less than 3 *per cent.* So careful are the police to keep track of witnesses and to secure their attendance at the trial that the Crown rarely, if ever, asks for a continuance. What would not an American district attorney give for a police force that could render him such efficient service?

The actual handling of cases in courts of summary jurisdiction, Mr. Howard tells us, is usually done by police solicitors or clerks of court. Wonderful beings these English clerks, who are not mere keepers of records, but experienced attorneys or barristers! It is hard for an American to conceive of a clerk of court putting in the case for the prosecution, assisting the defendant to present his defense and keeping error out of the record by tipping off the judge as to the proper ruling to make.

Presenting cases before courts of Assize and Quarter Sessions is the prerogative of barristers. Often not selected until just before the case comes on for trial, the barrister usually has little or nothing to do with the preparation of the case. Often only the excellent brief prepared by the police or justice's clerk prevents him from being in the predicament of some American assistant district attorneys whose sole knowledge of the case is secured by a ten minute talk with the policeman who is to be the prosecuting witness.

In short, the place of the American district attorney is taken in England largely by trained and capable clerks and police, whose integrity and political detachment is beyond question. With such people handling prosecutions it matters little that there is lack of uniformity in the process of prosecution between different parts of England, that functions and jurisdictions overlap and historical anomalies persist. The English system of criminal prosecutions seems designed to substantiate the dictum of Lord Bryce:[2] "the student of institutions as well as the lawyer, is apt to overrate the effects of mechanical contrivances in politics." The excellence of English criminal justice is due to people not machinery!

What is the English substitute for the district attorney, is not, of course, the only topic dealt with. Professor Howard discusses at length the organization, jurisdiction and functioning of the courts; also arrest, bail, jury trial, costs, speed of criminal justice and other topics. In addition he has an excellent chapter on the movement for public prosecution.

The author's description of criminal prosecutions in England is for the most part scholarly and accurate. However, he greatly over-emphasizes the practical importance of private prosecution, even if one disregard his startling statement that: "The notion that the commission of a crime is an offense against the state itself as well as a mere private injury to one of its members is, at least so far as the English criminal law is concerned, of modern origin." [p. 383]. Misleading, also, is his picture of the place of jury trials in English criminal prosecutions. In a section entitled "The Obsolescence of the Criminal Jury" he deduces that because many offenses which formerly were severely punished and hence tried before a jury are now punished lightly and hence tried summarily, therefore "the criminal jury is smoldering to extinction." [p. 310].

Professor Howard evaluates as well as describes the prosecution of

[1] Criminal Statistics, England & Wales, 1928, Table IX.

[2] Quoted at p. 44.

crime. In so doing, he compares English procedure with that of France and of the United States. His description of French procedure is superficial. With regard to American criminal procedure he makes the astounding statement that: "It is patent, therefore, that what the United States has done is simply to graft on to the English . . . type of criminal procedure the Continental institution of the public prosecutor." [p. 5]. Further, in describing American procedure, the author forgets that what he has said about English procedure varying in different parts of the country is even more true of American procedure. For example, if the author were a Boston, rather than a New York, lawyer, he would doubtless not be impressed by the speed of English criminal prosecutions or consider challenges of jurors and long examinations on the *voir dire* characteristic of American jury trials.

Inaccuracies of description and vagaries of judgment are, however, exceptional. For the most part, Professor Howard displays sound judgment and keen appreciation of what is fundamental in criminal administration. Particularly astute are his evaluations of the importance of the work of the Director of Public Prosecutions, of the English Trial judge, and of the Court of Criminal Appeal. Especially noteworthy because of its sagacity and bearing on American conditions, is his discussion of the part played in straining the post-war relations between the public and the police by the "material increase in the number of offenses created by legislation which, in contrast to the criminal law as a whole, does not command universal public support." [pp. 228-236].

Thus Professor Howard's book is a valuable contribution to the science of administration of criminal justice as well as being a good description of existing English practices. Students of either law or political science should find it stimulating as well as interesting and instructive.

Harvard University. SAM B. WARNER.

Cases on Federal Jurisdiction and Procedure. By Felix Frankfurter and Wilber G. Katz. Chicago: Callaghan and Company. 1931. pp. xix, 769.

THE student who masters the cases collected in this book and who takes the time to reflect upon the problems served up to him will have a grounding in federal jurisdiction and procedure that is sound and thorough.

Chapter I is a collection of cases outlining the limits of the judicial power as specified in the Constitution and illustrating what is a "case or controversy." The lines dividing judicial power from legislative and administrative functions are marked out, and the resistance of the courts against being drawn into controversies verging on the moot is indicated. If there are problems in the law more baffling, I do not know them; yet so far as I am aware this is the first case-book covering the field. Nothing but the most critical study of the Supreme Court decisions could have enabled the editors to array the cases dealing with these matters, since conventionally they are classified under other headings.

Chapter II covers "legislative courts," another topic which seems to be unique in case-books. The commencement of the doctrine is furnished in the case of *American Insurance Co. v. Canter*,[1] and its present stage of development exhibited in the recent *Bakelite* case.[2] In addition to these two

[1] 1 Pet. 511 (1828).
[2] 279 U. S. 438, 49 Sup. Ct. 411 (1929).

cases, the student's attention has already been directed by the editors to *Keller v. Potomac Electric Power Co.*,[3] which is included in Chapter I. The inclusion of this chapter is most timely and fortunate. The territorial courts have no mystery about them; but the courts constituted by Congress to handle special matters "arising between the government and others, which from their nature do not require judicial determination and yet are susceptible of it" *(Ex parte Bakelite Corporation)*, occupying a place somewhere between administrative boards and courts of the more familiar type, offer plenty of problems to the exploring student.

Chapter III contains cases on the law, substantive and adjective, applied in the federal courts. The "general law" departure from the state decisions is shown in *Swift & Tyson* and the *Black & White Taxi* case. The other great departure, the rule of following the earlier state decisions rather than the later where contract rights have intervened, is not set forth, other than by a passage in *Burgess v. Seligman*.[4] The unfortunate omission of *Gelpcke v. Dubuque*[5] is doubtless due to the fact that that case is commonly read under constitutional law, although it would seem more appropriate in a course on federal jurisdiction and procedure.

The remaining chapters are devoted to the jurisdiction of the three "constitutional courts," that on the District Court naturally getting more cases than those on the Circuit Court of Appeals and the Supreme Court. The subsection dealing with the jurisdiction on diversity of citizenship and the subsection dealing with cases raising a federal question are particularly comprehensive. As contrasted with these, I think that the editors have done well in offering relatively few cases on jurisdictional amount and on venue. There are of course plenty of such cases in the books and plenty of distinctions, some of them subtle ones; but they offer little to the imagination. To demand much of the student along these lines would be more of a tax upon his memory than upon his power of reasoning.

With trifling exceptions, the editors have succeeded in confining their cases to those in the Supreme Court, and the opinions are well distributed as to time of rendition. Another valuable feature is the annotations referring the reader not only to cases, including those in the British Dominions, but also to a wealth of material in legal periodicals. The pace set by the book is a fast one. But the thoughtful student, even without the stimulation afforded by the tossing of the ball back and forth in class discussion, will seize the fundamentals, will be abreast of the present trends, and will, it is hoped, push on to the reduction of the intricacies still ahead.

United States District Court. ROBERT P. PATTERSON.

Problems of the German-American Claims Commission. By Wilhelm Kiesselbach. Translated by Edwin Zeydel. Washington: Carnegie Endowment for International Peace. 1930. pp. 135. $1.50.

A CLAIMS commission which brings by its decisions to American claimants over three hundred million dollars is of more than momentary interest for its pecuniary problems alone, but, as a member of the family of claims commissions of World War origin, the work of the German-American

[3] 261 U. S. 428, 43 Sup. Ct. 445 (1923).
[4] 107 U. S. 20 (1882).
[5] 1 Wall. 175 (1863).

Mixed Claims Commission is also important as a part of the machinery created by, and under, the Treaty of Versailles. Some evidence of the validity of the claims presented for its consideration—20,425 claims to the value of $1,479,064,313.92—may de deduced from the fact that final awards made thus far (less than two hundred claims remain to be considered) represent but 38 *per cent* of the original demands. The Commission has not escaped the critical comment of American students of international law, but the literature available in English upon its labor has received a valuable addition in Dr. Kiesselbach's book. The author, who was a German member of the Commission, has written brief sketches on some of the major problems which confronted it for the purpose of giving explanatory sidelights upon the decisions themselves. Based upon drafts "written under the direct impression of the discussions in the Commission itself," each chapter affords the American reader scholarly information not only as to the Commission itself but also as to the German view of the problems which it considered. Dr. Kiesselbach discusses only the history and duties of the Commission, the legal nature of the claims, the neutrality claims, the nationality of claims, the extent of the obligation to render compensation in case of death and injury (Lusitania cases), claims of life insurance companies, claims of marine underwriters (subrogation), the extent of Germany's obligation to give compensation for damages in respect of property—"loss" and causal connection, naval and military works or materials, and corporation claims.

Decisions of the Commission re-read in the light of Dr. Kiesselbach's comments afford greater food for thought. The importance to be given to awards by a commission whose decisions were to be "controlled by the terms of the Treaty of Berlin" and which was not "bound by any particular code or rules of law" but was "guided by justice, equity and good faith"[1] is questionable. The legal foundation of the Treaty of Versailles, which Dr. Kiesselbach refuses to discuss, is open to too much criticism to suggest that awards based upon such a treaty should be placed in the same category as those of commissions bound to make decisions in accordance with the rules of international law. The legitimate scope of the use in war of the submarine and airplane will not receive a binding definition at the hands of such a commission,—a conclusion which is evidenced by the fact that both instruments of war continue to be built by the various Powers and that their use continues to be a matter of heated debate. The right of a belligerent who entered the war after its outbreak to reparation for all injuries received by its nationals during the period of neutrality receives no conclusive treatment by such a commission.

No estimate of the interest aroused by Dr. Kiesselbach's summary of the work of this Commission would be complete without a consideration of the dispassionate method in which he concisely states both German and American points of argument, the divisions among the Commissioners and the deductions to be made from such elements. The whole gains merit from this scholarly treatment of sorely debated problems. That a book written avowedly for a national audience should proceed in the consideration of such delicate problems with dignity, without acrimony, and with a depth which commands respect even in difference of opinion, is some evidence on which to base a hope that treaties dictated by force are not completely barren of constructive contribution.

Yale University. PHOEBE MORRISON.

[1] Mixed Claims Commission, United States and Germany, Decisions to June 30, 1925. Administrative decision no. 1. 7-8.

The Elements of Crime. By Boris Brasol. Second edition. New York: Oxford University Press. 1931. pp. xvii, 433. $5.

THIS edition being quite the same as the first, further comment is attracted chiefly to the author's attempt, acclaimed in the introductions by John H. Wigmore and William A. White, to give adequate representation in his theory of criminality to both the experience of the criminal law and that of pursuits such as psychiatry and psychology. One becomes accustomed to one-sided expositions of this problem, and that side is more and more frequently not the legal. But here is an attempt at synthesis, for the ingredients of which one may turn to the chapter on Responsibility.

The contribution here offered from the experience of the criminal law is rather meagre. Allowance in the legal process for consideration of the psycho-physical condition of an accused is as usual sketched as a jury instruction in McNaughten terms, delivered after partisan experts have answered hypothetical questions. The inference is that no one engaged in the process is supposed to concern himself with the accused as a human being save the jurors, and they only to the extent of determining whether the evidence adduced fits an admittedly incomprehensible definition of insanity—a delightfully simple conception which would relieve prosecutors and courts of considerable responsibility. Even if the foregoing were deemed an acceptable picture of the comparatively rare case going to the jury on an insanity plea, there would still remain the great multitude of cases presented to no jury, most of them indeed being settled before trial. Questions of responsibility—for one must include under this head less as well as more serious psychic impairments so long as they influence disposition—arise in many of them. Where then in the process do these receive consideration?

For a whole age group of offenders it may be recollected that there are juvenile courts where the McNaughten instruction does not figure. For the rest, a prosecutor, as frequently happens, may select from several possible charges one less serious, and recommend lenience or a suspended sentence. On occasion he may go so far as to forbear prosecution on condition that an accused voluntarily enter a psychiatric institution or take other needed treatment. A judge in passing sentence must consider what disposition, within the frequently wide limits of statutory discretion and the considerably narrower limits imposed by the system of institutions available, is most suitable under all the circumstances as they appear. Surely it is in these ranges of discretion that one finds the major legal modes of adapting disposition to the psycho-physical condition of an accused. What cannot be achieved within this existing framework by bolstering up discretion with two kinds of facilities—expert advice to officials where needed, and more highly developed systems of penal, disciplinary and psychiatric institutions to give effect to discriminating decisions—is scarcely to be expected from redefinition.

But the reasons for these discretionary decisions do not appear in opinions, nor are they contained in statutes. Definitions do not figure prominently here. Hence the greater allure of that darling of many theorists, the substantive law definition of insanity. Preoccupation with this hornbook rule, apart from its context of legal process, naturally favors the ready finding of obvious discrepancies between legal and psychiatric conceptions of "responsibility," to the great disadvantage of the former. Confining himself to the occasional jury trial on insanity plea situation, the author is accordingly satisfied with suggesting a revised instruction, and would have it propounded to impartially selected experts,

unvexed by hypothetical questions, and whose finding would be binding on the jury.

Yale University. GEORGE H. DESSION.

Eigentumsvorbehalt und Abzahlungsgeschäft. By Helmut Rühl. Berlin: Julius Springer. 1930. pp. vi, 333.

THIS book, sanctioned by the Berliner Juristischen Fakultät, makes it clear that this country has no corner on legal difficulties arising out of the conditional sale, installment-credit sales in general, and the whole of installment financing. Dr. Rühl has made a pioneering attempt to corollate adequately all of the existing German law having to do with these matters. The result is a thorough-going book which deals not only with the strictly legal problems of what Professor Seligmann has called "installment selling," but also with the economic and social connotations thereof. The book is well sprinkled with Austrian, Swiss, and Anglo-American notions of conditional sales law, which are used by Dr. Rühl by way of comparison, contrast, and suggestion. For "the" American law the author has cited the bare wording of the Uniform Conditional Sales Act divorced from case law interpretation. He makes such frequent use of the Act that he might well have made it clearer that to date but eight states of the Union have adopted it.

Dr. Rühl points out that in Germany post-war credit needs have led to an immense growth in the use of the conditional sale device as it is provided for in section 455 of the German Civil Code. While figures for all conditional sale transactions for the whole Reich are lacking, still some hint as to what has been going on in Germany may be obtained from the author's statement that the German credit-installment houses in the year 1927 did a business totaling somewhere between 600 and 750 million reichsmarks. The manufacturer uses the conditional sale in his dealing with the wholesaler, the wholesaler uses it with reference to the retailer, and the retailer makes great use of it in selling to the individual consumer. This popularity of the device exists in spite of the following facts: (1) There is no registry requirement in the German law except in very special instances. The author urges, after roundly condemning the American notions of registry and its cure-all effects, that this system be not adopted in Germany. (2) Under sections 932 and 933 of the German Civil Code the conditional vendee can defeat the vendor's reserved property interest by sale or even by pledge of the goods to a third party who does not know of the conditional sale and who is not grossly negligent in not knowing of it. Dr. Rühl points out that the gross negligence exception has in it sufficient elasticity to protect the vendor in the usual case. Thus, he argues, since it is now an almost universal practice for German automobile dealers to sell new automobiles under conditional sales contracts, anyone buying a new car from one not a dealer is to be deemed grossly negligent if he does not insist on being shown, and if he does not examine, the contract under which his would-be seller acquired the car. (3) The installment sales law of May 16, 1894 places heavy restrictions on the seller's free enforcement of the contract and permits the buyer to return the goods at any time before complete payment and be liable only for reasonable rental, depreciation, and minor costs. In case he has already paid more than the sum total of these items, he can recover the difference from the seller. The author does not make it clear how the value of the items just mentioned is determined if the matter gets into court, as it

in many cases must, but it is likely that the expert witness, that godsend to German and Austrian courts, is called upon to perform a function which in this country we would look to a jury to perform.

Bankruptcy of the conditional vendor or vendee, the manner in which the vendor's security title may be lost through specification, intermingling, and accession, including under the latter matters somewhat similar to our problem of fixtures, and the transferability of the interests of both parties to a conditional sale are discussed in full by Dr. Rühl. The typical clauses copied from installment contracts in actual use by business concerns in Germany and a discussion of their validity comprise an especially interesting feature of the book. Many of these provisions savor of American influence as do also the credit financing arrangements discussed in the latter portion of the book. The bibliography containing non-German as well as German works having to do with conditional sales and pertinent legal and social problems is complete and should prove helpful.

Yale University. J. H. BEUSCHER.

Cases on the Law of Suretyship and Guaranty. By Herschel W. Arant. Second edition. Chicago: Callaghan and Co. 1931. pp. xx, 637.

Handbook of the Law of Suretyship and Guaranty. By Herschel W. Arant. St. Paul: West Publishing Co. 1931. pp. xii, 471. $5.

WHEN Dean Arant published five years ago the 1074-page first edition of his *Cases on Suretyship* his book was accepted as a necessary and distinguished modernization of the Ames selection, already twenty-five years old. Aside from occasional suggestions that Dean Arant had somewhat neglected the relational, as distinguished from the contractual elements of suretyship, and the comment that something more might have been indicated of the business uses of suretyship, the only adverse criticism of Dean Arant's casebook was its length. Dean Arant himself indicated in the preface possible omissions for classroom use. In the second edition the author has accepted this criticism and has eliminated about 400 pages. Most of the cases now printed also appeared in the first edition but there are a few omissions to permit insertion of recent cases. The sixty pages of notes include digests or citations of most of the cases unused from the first edition. The notes also refer the student to what the leading law reviews have said about the various topics considered. Neither in the notes nor elsewhere does Dean Arant make any concessions to those who advocate the use in law casebooks of non-legal material. His cases, however, do contain a good deal of material describing the contemporary utility of suretyship as security. The cases tend to be American and since 1900, but there are numerous older cases and a sprinkling of the leading English decisions.

The general approach is to develop the principles of suretyship through the cases dealing with the non-compensated surety and to examine the application of these principles in cases where a compensated surety is a party. The organization of cases still follows the example of Ames, although there are minor variations within the main divisions.

Dean Arant's handbook is a worthy addition to it predecessors in the Hornbook series. The author tells the student clearly enough what the courts have decided, but is emphatic in his dissent from some of the rules about a surety's defenses. His principal contribution lies in suggesting

that some of these rules can be contradicted if one approaches the problem from a contract point of view instead of making the surety's defenses depend upon the right of subrogation. The arrangement of the treatise follows that of the casebook.

Both the casebook and the treatise are excellent samples of modern American skill in typography and binding.

The controversy between such traditional courses as suretyship and groupings which include suretyship as a part of a consolidated course on credit transactions or security is not unlike that which agitated the colleges a few years ago between the advocates and opponents of compulsory Greek and Latin. The classicists demanded the ancient languages for everyone for the sake of the formal discipline and because of the common elements in the classics and in modern life. The answer, which ultimately prevailed, was that (a) the customary classical courses did not do enough for the future philologists, statesmen and others for whom Greek and Latin might well be essential, and (b) the ordinary person could get his mental discipline in ways that would be of much more direct utility in his subsequent life. In the case of suretyship, the ordinary advanced law student by going over the development of the principles of the topic, may be spending more time than he can afford, in view of the future utility of the subject. On the other hand, for the specialist, the legal historian, the scholar generally, the offering of the casebook is insufficient. One solution for the professional student, though not necessarily the only or final one, is the new type casebook in which an attempt is made to review, within the limits of a single volume, the law of several security devices, of which one is suretyship.

Columbia University. JOHN HANNA.

Introduction to Roman Law. By James Hadley. With a preface by Alfred R. Bellinger. New Haven: Yale University Press. 1931. pp. viii, 333. $2.50.

WHEN these lectures of Professor Hadley were first published in 1873, it was said by a reviewer in the Nation that they constituted the first work of an American author on the Roman law. That is not quite accurate, because in 1854, Mr. Luther S. Cushing—whose Manual was the Bible of youthful Parliamentarians in the last decades of the nineteenth century—published his *Introduction to the Study of the Roman Law.* Cushing had in 1850 edited Domat and in 1839 translated and edited Pothier's treatise on Sales. Besides, in 1852, Thomas Cooper's edition of the *Institutes of Justinian* was in its third edition, by Voorhis.

Nevertheless, in this same year, 1873, the twelfth edition of Kent's *Commentaries,* in its notes to the 23rd Lecture which gives a summary of the history of the Roman Law, can refer to nothing in English on the Roman Law except the notes to Maine's Ancient Law and the Roman Law chapters of Austin. It is interesting to recall that the edition was prepared by an already distinguished young lawyer of Boston, Mr. Oliver Wendell Holmes, Jr., then in his thirty-third year.

Mr. Hadley's book, consequently, has a real importance in that it was the first widely used manual of Roman Law in the United States,—if any manual of Roman law can be said to have been widely used in the United States. It must, however, be asserted that this importance is almost entirely historical. The author was an eminent Hellenist—a fine scholar whose personal and literary influence helped to mould a generation. He

made no pretense at being a lawyer and in his lectures meant to do pioneer work in a field he found to be astoundingly neglected. It is very doubtful, indeed, whether, if he had lived, he would have allowed the publication of these lectures in their present form, and it can almost surely be stated that he would not have authorized their issue at the present time.

There have been many manuals of Roman Law, since 1873, available in English to American readers, and most of them are better and fuller than this one. It contains a succinct and compact summary of a great many institutions of Roman Law, but these cannot be said to be well selected. The fourth lecture on the progress of the Roman Law gives a full statement of the *legisactio*, almost nothing of the formulary procedure and quite nothing of the procedure by cognition or libel. The *lex Aebutia* is not mentioned, the consensual contracts are finished off in some eight pages. Words like agency and assignment do not occur. Suretyship is ignored.

What the book does say is in the main correct enough, but it would rarely give a lawyer a complete account of what Mr. Hadley is describing. For example, on page 322, one could not guess that the Falcidian law had been robbed of most of its force by Justinian because it could be specifically excluded by will. Only exceptionally however, is there a slip which can be called a serious blunder, as when (pp. 139-140) Blackstone is charged with ascribing to the Common Law what in fact he asserts —somewhat incorrectly—of the Roman Law. Finally, I suppose it is the printer who gives us the delectable Spoonerism, of *Stamphilus* and *Patichus*, for *Pamphilus* and *Stichus*. [p. 211].

One matter ought perhaps not to be passed over. The date of the title page is 1931. But the book, except for Professor Bellinger's preface, is a verbatim reprint of the edition of 1873. In fact the plates must be the same as those of a much earlier impression because the types are often broken and the pages badly inked. Many publishers do such things, but the Yale Press should not be one of them.

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Die Haftung des Verkäufers einer fremden beweglichen Sache in den Vereinigten Staaten von Amerika in Vergleichung mit dem deutschen bürgerlichen Recht. By Dr. John Wolff. Herausgegeben vom Institut für Ausländisches Und Internationales Privatrecht in Berlin. Berlin und Leipzig: Walter de Gruyter and Company. 1930. pp. 84. RM 4.

To many lawyers Comparative Law seems a purposeless system of equations and non-equations involving simple units of comparison. It is unfortunate that Dr. Wolff's comparative study is not available in English text, for it constitutes as fine an illustration as this writer has seen of the function and justification of comparative legal research.

S sells to B without authority goods owned by T. The transaction is split into situations: B's remedies first, before delivery; second, after delivery while in undisturbed possession; third, after deprivation of the goods by T.

The analysis does not end with a statement of the law in Germany and America. It commences there. The American reader might have expected only to come across familiar American maxims made somewhat exciting by their comparison with unfamiliar German ones. It was exciting to