

liberally in favor of the land-owners, and to impose no conditions on their power to give or withhold consent. *Merriam v. Utica R. R. Co.*, 18 N. Y. Misc. 269. An injunction will be granted if the company begins construction without obtaining the required assent. *Stockton v. Railway Co.*, 53 N. J. Eq. 418.

TRUST DEED—VALIDITY—PERPETUITIES—PUBLIC CHARITY.—TROUTMAN ET AL. V. DE BOISSIERE ODD FELLOWS' ORPHANS' HOME AND INDUSTRIAL SCHOOL ASSOCIATION ET AL., 71 PAC. 286 (KAN.).—A conveyance of land was made to trustees and their successors in perpetual trust to provide a home and school for children of deceased members of a secret society. *Held*, that it was not a gift for purposes of a public charity, and was void by the rule against perpetuities. Cunningham, Pollock and Burch, JJ., *dissenting*.

The majority opinion asserts that no trust can be considered a public charity, the purpose of which is not one which the State might itself undertake. In so far as it affects the validity of the trust this assumption is new. Trusts for the poor of churches or secret societies have been held charitable. *Conklin v. Davis*, 63 Conn. 377; *Atty-Gen. v. Old South Soc.*, 13 Allen (Mass.) 474; *Duke v. Fuller*, 6 N. H. 536. And secret societies, as such, have been held charitable objects. *Everett v. Carr*, 59 Me. 325; *King v. Parker*, 9 Cush. (Mass.) 71; *Savannah v. Lodge*, 53 Ga. 93; *Indianapolis v. Grand Master*, 25 Ind. 518; *Vander Volgen v. Yates*, 3 Barb. Ch. 242. *Contra*, *Babb v. Reed*, 5 Rawle (Pa.) 151; *Bangor v. Lodge*, 73 Me. 428.

REVIEWS.

A Treatise on the Power of Taxation, State and Federal in the United States. By Frederick N. Judson, of the St. Louis Bar. F. H. Thomas Law Book Co., St. Louis, 1903. 1 vol., sheep, pp. 868.

Taxation has not received as much attention from text writers as its importance would seem to demand. Judge Cooley in 1876 wrote the first comprehensive treatise on the general subject. A two volume work by Desty followed in 1884. Recently, however, it has come into greater prominence. Reforms in the methods and principles of taxation are progressing rapidly. Indiana in 1891 developed a new machinery that was watched with interest by other States and led the way for Michigan's reform in 1899, and the notable attempts of Ohio, Wisconsin and Minnesota. And while economists have pointed the way, and legislatures experimented, the courts have weighed more carefully than ever its delicate problems complicated by our dual system of State and national sovereignty. And as the conditions of the times appear to require books upon subdivisions of important subjects, so the various phases of taxation are beginning to be treated separately. In 1886 Mr. Welty's book

on Assessments and Taxation appeared, and in 1895 Dos Passos on the Inheritance Tax Law.

Mr. Judson devotes his volume entirely to the *power* of taxation. In his preface he says: "It is the aim of this work to show the limitations of the taxing power of the State and of the Federal government so far as these limitations have been declared and expounded by the Supreme Court of the United States. Decisions of the State courts and inferior Federal courts have been cited as applying or illustrating the limitations thus declared. These limitations fix what the State *can* tax. What it *has* taxed must be learned from its own statutes and the decisions of its own courts. What it *ought* to tax is a question for economists and reformers."

The inherent difficulty of this subject becomes apparent when we recall the long line of decisions of the Supreme Court which it has called forth and the series of able dissenting opinions that accompany them. The extent and importance of the author's treatment is seen by a glance at the topics of the several chapters: I. Limitations upon State taxation growing out of the relations of the State and Federal governments; II. Contracts of exemption from taxation; III, IV, V. Regulation of commerce; VI. Regulation of commerce—the taxation of steamboats and vessels; VII. Taxation of interstate commerce; VIII. Valuation of interstate properties for taxation; IX. Taxation of national banks; X. The fourteenth amendment; XI. Due process of law in tax procedure; XII. Due process of law and the public purpose of taxation; XIII. Due process of law in special assessments for local improvements; XIV. Due process of law and the jurisdiction of the States; XV. Equal protection of the laws; XVI. Equal protection of the laws in the valuation of property; XVII. Taxing power of Congress; XVIII. The enforcing of federal limitations upon the taxing power.

Under these heads, it will be seen, come some of our most famous decisions. Beginning with *McCulloch v. Maryland*, the author takes us through the long maze to the Insular Cases with such a strong grasp of the entire field that the reader is carried along with a continuity of thought that rivets his attention and absorbs his interest as he sees the evolution of this judge-made law. Mr. Judson has shown his complete mastery of the subject as much by what he has refrained from doing as by what he has actually done. Judge Cooley remarked: "The subject of taxation seems to invite some consideration of questions of political economy," but the author does not for a moment fall to the temptation, and never suffers himself to wander from the exact task in hand. His style throughout is clear, vigorous, and convincing. The mechanical execution is excellent, the type being large and the index complete. A conviction is borne in upon the reader as he closes its leaves that it will be of the greatest service to the profession, a valuable assistance to the student, and the standard work on an important branch of an exceedingly important subject.

J. H. S.

The Law of Suretyship. By Arthur Adelbert Stearns, of the Cleveland Bar. The W. H. Anderson Co., Cincinnati, 1903. 1 vol., pp. 747.

The second American edition of *Fell's Law of Guaranty and Suretyship* (1859), confessed that the discussion of the nature and extent of guaranties of promissory notes had resulted in many conflicting opinions, not only between courts of different States, but also between successive judges of the same court, and this statement fairly illustrated the condition of the authorities at that time in all branches of the subject.

But since the great growth, in recent years, of surety corporations, the courts have been called upon to give much closer attention to the exact relations existing between the parties to a surety undertaking, and as a result the cases have been brought into more rational accord. Mr. Stearns has seized this opportunity to issue a most accurate and authoritative book, the value of which must be acknowledged not only because the time was ripe for such a treatise, but also on account of the clear analysis, logical classification and thorough investigation which he has given the subject.

One of the most interesting chapters is the one devoted to Corporate Suretyship. The author discusses the delusion, fostered by the similarity in the business methods between surety companies and insurance companies, that corporate suretyship is different in its nature from private or accommodation suretyship. Corporate suretyship is not a new kind of promise to pay the debt of another, and is subject to all the rules and equities of private suretyship.

That a surety is a favorite of the law, whose contract should be construed strictly in favor of the surety, has largely disappeared in the construction of corporate suretyship. This is explained as being not so much on account of the surety being a corporation receiving compensation as it is for the reason that these corporations draw up their own contracts, carefully and distinctly defining their rights, and the courts apply the general rule which estops a person from claiming any special construction of ambiguous words which he himself has written.

The question as to the necessity of having the consideration as well as the promise in writing under the Statute of Frauds, first held in England in *Wain v. Warlters*, 5 East 10, in 1804, and thereafter accepted as English law until the Mercantile Law Amendment of 1856, which made it unnecessary to express the consideration in writing, is still unsettled in America. A note, giving the decisions in the various States, shows that the majority of the States have with England repudiated the doctrine of *Wain v. Warlters*, *supra*.

The chapter on Surety as Related to Negotiable Instruments is exceedingly valuable. Although the great lack of harmony in the earlier cases on this subject made all attempts at classification impossible, the later cases have shown a wide range of uniformity among the authorities.

J. A. T.

A Treatise on the Law of Negotiable Instruments. Fifth edition. By John W. Daniel and Charles A. Douglass. Baker, Voorhis & Co., New York. 1903. 2 vol., pp. 1937, sheep.

This work is so widely and generally known as the standard authority on the law of negotiable instruments as to require little comment. This fifth edition, re-edited and enlarged with notes and references to American and English cases, meets the want for a book on this subject, brought down to date and containing the many important cases that have been decided in the past twelve years. Though the text of the earlier editions remains in the main unchanged, it has been necessary to add new paragraphs, because of new laws such as the 1898 Stamp Act and because of new diversities in the forms of negotiable instruments. We notice many changes made and many new cases cited in Chap. XI on "Banks and other Agents for Negotiation or Collection," in which in at least one instance the author says he is convinced that his views, as given in previous editions, are erroneous. Some thirty-five hundred new cases have been embodied in this edition, such cases being carefully selected from the decisions of the highest courts in all parts of the English-speaking world. Since the fourth edition was published in 1891, Mr. Daniel's hope, expressed in the preface to the first edition of 1876, has been realized in the "New Negotiable Instruments Law" now adopted by so many States. This new statute is given in full in the appendix. C. W. B.

The Elements of the Law of Negotiable Instruments. By John W. Daniel and Chas. A. Douglass. New York: Baker, Voorhis & Co. 1903. Cloth, pp. 418.

This book is based upon "Daniel on Negotiable Instruments" and is designed and adapted particularly for the use of students in law schools. The general arrangement and classification follow in the main that of Mr. Daniel in his larger work on this subject, but of necessity many chapters of the latter have been entirely omitted, and others have been much condensed and re-arranged.

We would commend this work for its clearness, brevity and conciseness, and think that it should prove invaluable to students and to others who desire to familiarize themselves with the law of negotiable instruments without resorting to the more voluminous treatises on that subject.

A great number of the more important cases are cited in the foot-notes, which have the peculiarity of containing the bare citation, without any comment or any reference to the scope and effect of the decisions. The appendix contains the full text of the "New Negotiable Instruments Law," first enacted by New York in 1897, and since adopted by many other States. C. W. B.

The Writings of John James Ingalls: Essays, Addresses and Orations. Arranged and authorized by Mrs. J. J. Ingalls and Wm. E. Connelly. Hudson-Kimberly Publishing Company, Kansas City, Mo. 1902. 8 vol., pp. 536, cloth. Illustrated.

Senator Ingalls of Kansas—statesman, politician, poet, litterateur, president of the Senate in a prophetic period, and for eighteen years its acknowledged master in the art of invective and the strategy of cutting sarcasm—his career was as stormy as the history of the State he represented from the Reconstruction days until the wave of populism overwhelmed him in 1890. He gave to Kansas her motto, "*Ad astra per aspera*"—to the stars of State sovereignty and security in the Union through the blood of border warfare; he was a national figure in the historic epoch of Blaine and Conkling, Lamar, Grant, Tilden and Garfield. And probably no public man in the past half century has possessed more consummate command of language, or whose addresses and orations are more fitted to enrich English literature. Ingalls was no prolific writer, but his speeches, essays, magazine articles and letters here compiled illustrate his literary finish—and also the characteristic vigor of the vaguely appreciated Trans-Mississippi half of the nation. His best-known product is the sonnet beginning:

"Master of human destiny am I!"

the manuscript of which is reproduced in fac-simile.

This collection of the great Kansan's vagrant writings ought to be of more than passing interest, especially to lawyers and students to whom the innerness of national political struggles in the '70's and '80's appeals as in those days did the personally recalled contests of Webster and Clay and Calhoun of the ante-rebellion period.

We think the publishers should have found room in the volume, however, for many more examples of satirical repartee and withering retort for which Ingalls was famous; and that the binding of the book is too suggestive of some government report to be appreciated from an artistic viewpoint or to sufficiently indicate the literary and typographical beauty of the contents.

H. M. H.

A Treatise on the Law of the Measure of Damages for Personal Injuries. By George P. Voorheis. The Laning Co., Norwalk, Ohio. 1903. Sheep, pp. 577.

The author assumes for purposes of discussion, the preliminary facts of personal injury and liability of wrongdoer, and treats solely of the measure of damages recoverable in such cases. The scope of the work is manifestly narrow—narrower even, than the present tendency toward specialization in the practice of law would seem to require or justify. In the final estimate, it is a treatise on a single phase or aspect of the larger subject of "Damages for Personal Injuries"—a subject sufficiently limited and a unit which we do not think can be profitably divided.

Within the lines marked out, however, Mr. Voorheis has thoroughly treated his subject. The book has the merit of originality in its form of presenting the material. The lists of verdicts which supplement the text at various points, are apparently a product of the author's own ideas and certainly add much to the book's usefulness. The arrangement is simple and natural, each element of dam-

age—expenses incurred, loss of time, bodily suffering, etc.,—receiving separate treatment.

Some 120 pages are devoted to a very thorough exposition of mental suffering, the cases being analysed into nine different classes, each of which is exhaustively reviewed. Class sixth, treating of mental suffering in the so-called "telegraph" cases, is somewhat unsatisfactory in that the cases are not brought down to date, several important decisions of the last year or two, not being noted. Thus on pages 225-7, *Reese v. Telegraph Co.*, 120 Ind. 294, is incorporated into the text as a leading case in support of the doctrine that damages may be recovered for mental suffering because of failure to deliver telegram. But this case was expressly overruled in *W. U. Tel. Co. v. Ferguson*, 157 Ind. 64 (1901), a case which the author plainly overlooked.

The book is well indexed, the table of cases is especially complete, and the citation of the Reporter System, etc., adds to its serviceableness. It can be recommended to the attention of any one specializing in this particular class of cases, although not, we believe, an especially valuable work to the general practitioner. S. W. E.

ACKNOWLEDGMENTS.

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