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## REVIEWS

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*American Railroad Law.* By Simeon E. Baldwin, LL.D. Boston, Little, Brown & Company, 1904. Sheep. Pages 770.

The author's purpose to write a book on railroad law which shall be distinctively American law, has been conscientiously and thoroughly carried out in this volume. The impression of a railroad lawyer, beginning to read the volume, is that it is an elementary treatise designed for the recitation room. The same lawyer, before he lays down the volume, realizes that it is a profound brief, clearly, logically and cogently expressing the law of our country as applied to railroads.

Judge Baldwin's statements of principle are always so clear and so convincing as to appeal alike to the law student and the practicing lawyer. His illustrations are generally contained in the cases cited rather than in the text of the volume. For this reason the book reads so simply and so clearly as to give one the impression of an elementary treatise, and yet there is little left to be said on the subject of American railroad law when the last page is turned.

If, then, we express our difference of opinion with the author on some statements, it is not by way of disparaging the book as a whole, but to call attention to points that might have been dwelt upon at greater length or have been brought to the attention more forcibly or concerning which there is a difference of opinion among the profession.

Judge Baldwin is, in our opinion, too optimistic when he says in the preface that the Fourteenth Amendment assures a railroad company against unfriendly legislation and against the impairment of its property rights without due process of law. This would be true if every railroad company were blessed with a close charter; few railroad companies are so fortunate. The result is legislation to accomplish that which the courts would not permit. If a community fancies that it has a grievance against a railroad company, its resort in these days is to the legislature, and not to the courts—knowing that the courts would grant a non-suit, whereas the legislature will pass such laws as political expediency dictates.

On page 108 Judge Baldwin makes the statement that: 'A location creates in the company a certain title to the land which it includes, as against all except the owners, and as to them a right to a title on tendering due compensation.' We believe that this is too limited a statement of the law of eminent domain. Where a railroad company brings proceedings to take property for a location, the necessity for which taking has been

passed upon by the proper tribunal, the railroad company, upon furnishing security for the payment of such damages as may be assessed, becomes immediately entitled to the possession of the land and vested with the title thereof. If the former owner of the land does not for any reason receive his pay, his action is not to recover title to the land, but to recover the pay which he ought to have received when the title to the land passed from him.

On page 356 Judge Baldwin falls into the pardonable error of a lawyer who is not entirely familiar with the handling of freight traffic. There is no usage among railroad companies to require the production of an ordinary bill of lading before surrendering the goods which it calls for; in fact, the usage is the other way. Railroad companies pay no particular attention to the ordinary bills of lading excepting where some suspicion may arise as to the ownership of the goods. On the other hand, an "Order and Notify" bill of lading is made the subject of the most jealous care by railroad companies. This form of bill of lading is employed by consignors when they wish to realize upon the shipment before it reaches destination. The bill of lading is deposited in a bank and a draft drawn upon the ultimate consignee. The bill of lading then becomes an instrument more or less negotiable in nature, the production of which is always required by the common carrier before the delivery of the goods.

It is to be regretted that Judge Baldwin did not dwell at greater length upon the specific methods of consolidating railroad companies. We should like to read from his pen a description of the distinctions between consolidations by purchase of stock, by lease, by reorganization, and by absolute corporate merger. We believe this part of the railroad law is not one generally understood either by the profession or the layman.

*Edward G. Buckland.*

*Street Railroad Accident Law.* By Andrew Nellis of the Albany (N. Y.) Bar. Matthew Bender, Albany, N. Y., 1904. Sheep. Pages 823.

The great development in the use of electricity as a motive power for street railways during recent years has increased many fold the amount of litigation arising out of street railroad accidents. The law must, therefore, develop with equal rapidity to meet these new economic conditions, and there has necessarily been an increasing demand in the profession for a work giving the general principles and rules of law applicable to such matters. Mr. Nellis, in his work, has endeavored to meet this demand. His work presents for ready reference and use the established rules and principles with the reasons upon which the same are founded. Copious notes are found elucidating the text in which are also found the citations of numerous authorities from the courts of the states and territories of

the United States and of Canada. Separate chapters are devoted to an instructive treatment of the relation existing between the railway company and its passengers, between it and persons other than passengers and employers, and between it and its employees. The principles of the law of negligence applicable generally in actions against railway companies are carefully discussed. This statement of the law is supplemented by chapters on "Pleading," on "Presumptions," "Burden of Proof," "Evidence," "Elements and Measure of Damages," "Questions for the Jury," etc., giving the rulings on questions of practice arising in such actions. The work, as a whole, is well adapted to the use for which the author intended it.

M. W. W.

*A Political and Constitutional Study of the Cumberland Road.* By Jeremiah Simeon Young, A.M., of Lake Forest College. The University of Chicago Press, 1904. Paper. Pages 106.

In the early part of the present century the Cumberland Road proved of almost incalculable value in the development of the Middle West and the binding together of coast and frontier. Its construction and extension were the subject of many hard-fought contests in Congress over Federal constitutional powers with regard to eminent domain and internal improvements. Professor Young has chosen this topic for a clearly-written and business-like treatise which, although disclaiming historical completeness, is of no little historical merit. The study is intended primarily for the student of political science, but affords none the less profitable and interesting reading for the lawyer. Its chief interest from the lawyer's standpoint, however, lies in the intimate connection which has already been referred to, between the Cumberland Road and the course of ideas, in and out of Congress, with regard to constitutional construction.

C. C. R.