

REVIEWS.

A Treatise on the Law of Crimes. By William L. Clark and William L. Marshall. Second edition by Herschel B. Lazell. Keefe-Davidson, Co., St. Paul, Minn., 1905. Sheep, pages xxxiv, 906.

The first edition of this valuable work appeared in 1901 and the present revision is due to a desire to bring the original work down to date and to bring it within the compass of one volume. The time allotted to the study of criminal law in most law schools does not permit a thorough analysis of that branch of jurisprudence and for that reason the work under consideration can hardly be considered suitable for use as a curriculum text-book. But it will materially aid the diligent student or practitioner in acquiring that thorough knowledge of criminal law which every lawyer should possess, no matter how far from the criminal courts his inclinations and practice may take him. The opening chapters upon the nature of crime and the sources of criminal law furnish the most satisfactory treatment of these kindred topics that the writer has yet seen, while copious notes give ample opportunity for more extended study. The chapter upon intent and capacity is thorough and exhaustive to such a degree that it would seem it might well be somewhat condensed in view of the extent to which the same matters are taken up subsequently in the consideration of particular crimes. The chapters upon parties and the criminal act are clear and accurate. Altogether, nearly one-third of the work is taken up with the subjects that we have considered, which seems rather an undue proportion of the whole, when we consider the multitude of particular crimes that must be dealt with in the remaining two-thirds. Each offense, however, seems to receive sufficient attention to render its consideration fairly complete while the space devoted to the more important matters, as homicide and larceny, amounts to a good sized treatise in each case. The system of black-letter summaries is similar to that employed in "Marshall on Corporations" and the result seems rather more satisfactory than in the latter volume. The authors seem to have resisted successfully the temptation to sacrifice accuracy to brevity in these summaries. The notes throughout the volume are abundant and have been rendered much more valuable by the addition of many cases decided since the original publication of the work. The accompanying table of cases covers thirty-six pages and is probably the most complete collection of citations in this branch of law to be found in any text-book. Careless proof-reading is indicated by such an obvious error as "offense" for "defense" on page 719. But the work on the whole, shows most careful arrangement and expression. We believe its new edition will commend itself to all those interested in this branch of the law.

B. E. C.

The American Judiciary. By Simeon E. Baldwin, LL. D. The Century Co., New York, 1905. Cloth, pages xiii, 402.

In the first part of "American Judiciary," Judge Baldwin traces the growth of tribunals in this country from the time when they consisted mostly of unskilled men, with inconclusive authority, to the present, when, we believe, our highest courts are more independent and their judgments more conclusive than is the case in any other country. For in England, however efficient the judges may be, their decisions may always be thrown aside by *ex post facto* legislation in Parliament.* In France and other strictly code countries, the judiciary receives much less respect than here, because, probably, having much less regard for precedent—(it is sometimes forbidden to use precedents)—the decisions of the highest courts are never, strictly speaking, the final statements of the law. In France, for example, it sometimes happens that a case appealed, referred down by the Court of Cassation to a second Court of Appeals, and again appealed, will receive a different judgment on the second appeal though the same point be raised.† How much more powerful and authoritative the American courts of last resort are, is indirectly shown by Judge Baldwin in his chapters on "The Judicial Power of Declaring What Has the Form of Law Not to be Law," and "The Force of Judicial Precedents." But in both the beginning and end of this book are traced the different struggles through which the judiciary had to pass to obtain this independence.

Part second deals, for the most part, with the organization and practical workings of our courts and the character of our Bench and Bar. Sentimentalists will disapprove of Judge Baldwin's continued advocacy of the whipping post as a punishment for certain crimes (p. 246). Here, however, his contention is mostly for its use in the southern states, especially for the correction of the negro element. Though Judge Baldwin does not dwell at length on the question, it is well worth notice. For, in the minds of most people, the whipping post necessarily involves a retrogression from modern ideas of civilization, and even the suggestion (p. 246) that imprisonment is far more degrading than a privately conducted flogging would be, fails to obscure the fact that the former is one degree farther removed from the tortures of the middle ages. But certainly it is not inhuman that some such retrogression should be resorted to in the case of the negro. Metaphorically, he has cut across a long corner in his journey toward civilization. He is lost in his environment because he has not arrived by a natural route. The very crimes for which the negro of the lower class is so notorious, are largely due to his forced growth along some lines and, perhaps, stagnation in others—

* Such power has been recently exercised in the celebrated case of the Scotch Free Church.

† If it so happens that the Court of Cassation reverses the decision of the Court of Appeals, and the second and third Courts of Appeals, to which the case is successively handed down, decide in the same way as the first, the power of the Court of Cassation to reverse in the particular case is exhausted.

they are not the crimes which were common to him in Africa. So that, in the face of so many unwise gifts forced upon him, there could be, in our opinion, no more salutary measure than to reduce his punishment to the level of his comprehension—for as Judge Baldwin points out, the terrors of jail are not at all convincing to the lower class of negroes. It is suggested (p. 247) that the reason why this punishment has not been provided in the southern states, is that it smacked of slavery. But it is shown that imprisonment is also slavery (and much more so), so that no such scruples ought to obtain.

While the author eulogizes, in the main, the judicial systems of our states, he is not at all prone to pass over their faults. He shows (p. 282) the reason why many of our trial courts contrast so unfavorably with those of England, *i. e.*, that in many states the judges are elected for short terms and at slight recompense, so that the judicial standard is low, whereas in England the term is life-long and the salary high, with corresponding efficiency in the judges. This grave fault in our system accounts for much of the unfortunate adverse criticism of foreigners to our judiciary. The fact that in one state at least (Texas) far less than half of the judgments appealed from, should be affirmed by the Appellate Court, shows need of change in this respect. It would be no easy matter, however, to bring about a change. In the last chapter the attitude of the American people toward the judiciary is discussed.

The two preceding paragraphs will show that the book contains more than a mere description and explanation of the American judiciary. In many other places are discussed live questions which are pertinent to the subject.

Though elementary, not being intended so much for lawyers as for others, it clears up many points which are extremely puzzling to those who are in the first few years of the study of law. Written in a style which reminds one of Bryce's "American Commonwealth," its clearness and coherence, considering the large field covered and the depth of learning shown, are remarkable.

G. S. A.

The Law of Passenger and Freight Elevators. Second edition.
By J. A. Webb of the St. Louis Bar. The F. H. Thomas
Law Book Co., St. Louis, 1905.

It has been nine years since the first edition of this author's treatise on elevators was published. The second edition is about as badly needed by the profession as the first was. The law of elevators occupies a very small portion of the law, but it is a branch that has taken a prominent place in the last few years and has come to be rather important. The cases have multiplied and the law has become more clearly defined upon their construction, condition and operation. This edition greatly enlarges the first, and the subject is more exhaustively and carefully treated. Citations are inserted in the text. The rights, duties and liabilities of owners and operators relative to passengers, employees, licensees

and trespassers are treated separately and thoroughly. Damages and personal injuries are discussed and the rules governing parties to actions, pleadings and other matters of practice. The work is altogether a complete compendium of the subject and should be valuable to the practitioner.

M. S. W.

Brief Making and The Use of Law Books. By William M. Lile, Henry S. Redfield, Eugene Wambaugh, Alfred Mason and James Wheeler. Edited by Nathan Abbott. West Publishing Co., St. Paul, Minn., 1906. Buckram, pages viii, 472.

This book consists of four parts: Part I, The Brief on Appeal, by Henry S. Redfield, Professor of Law, Columbia University; Part II, How to Use Decisions and Statutes, by Eugene Wambaugh, Professor of Law, Harvard University; Part III, American Law Publications, by Alfred F. Mason, Editor of the American Law School Review; Part IV, How to Find the Law, by James E. Wheeler, of the Yale University Law School. The Appendix contains a list of abbreviations of law publications, alphabetically arranged which is very handy for reference. Dean William M. Lile of the University of Virginia School of Law, wrote the introduction, and his name is probably included among the authors as a compliment to him, because of the great interest that he has not only taken, but has also aroused in others, in the thorough teaching of law students in this most practical part of the subject, the looking up and gathering together of the law upon any particular point.

The need for a book of this nature is very forcefully argued in an article by Alfred Mason in *The American Law School Review*, vol. I, page 294, which seems to have been written as a sort of a forerunner to pave the way for this publication.

When a book is the first of its kind, as this one appears to be, it might be expected that parts of it would be a trifle rough, as for example, one looking through section 80 might be led to the erroneous belief that L. R. A. consisted of only 50 volumes or might skip entirely the "American and English Encyclopedia of Law" which although by no means perfect, is still extremely useful. Of course the first of these impressions might be corrected by referring to page 140 of the text and the second by referring to page 163, but if a student should start to work out as a practical case, one of the examples in section 80, he would not be liable to look up to see if the impressions created by the examples were correct. But by reason of the fact that the authors have previously put so much study and thought upon the particular topics, upon which each wrote, such rough places are exceedingly rare.

We sincerely hope that this book will fulfill its avowed purpose, and be a basis of instruction that will give the student and young practitioner such a working knowledge of the depositories of the law, with such practical suggestions as to the method of collecting the authorities, that he will be more easily able properly to present his case to the court.

S. W. B.