

REVIEWS.

Procedure, its Theory and Practice. By William T. Hughes, LL.B. Callaghan & Co., Chicago, 1905. Two volumes. Sheep, pages xiii, 1289.

This treatise, sent out with an announcement that "it is the greatest work for fifty years," is indeed a remarkable book, but seems better adapted to excite wonder than to afford either systematic instruction or practical assistance.

The author has evidently read a great deal of law; but the book is so marked by individual peculiarities that the ordinary student or practitioner will be bewildered in trying to turn it to practical service.

Mr. Hughes' main theory is that the skeleton of the law is in its maxims. This is not a bad theory, if intelligently applied; but the conception of a maxim in the author's mind seems to be that it is any sentence, no matter how complex or obscure, which is in Latin.

A great portion of the larger volume of the work is devoted to the mere stating and translating of such so-called maxims as this: *Actus inceptus cujus perfectio pendet ex voluntate partium revocari potest; si autem pendet ex voluntate tertiae personae, vel ex contingenti, revocari non potest.* This is translated as follows: An act already begun, whose completion depends upon the will of the parties, may be recalled; but if it depends on the consent of a third person, or on a contingency, it cannot be recalled. We imagine that the Latinity of this sentence would have surprised Cicero; either in Latin or English it certainly lacks the simplicity and force of a true maxim, and recalls Commodore Bunsby's sage remark, "The bearin' o' these here remarks lays in the application on 'em."

Another "maxim" selected at random, and which is given as an isolated piece of knowledge, without development or application, is: "*Bonum defendentis ex integra causa, malum ex quolibet defectu.*"

The second, and larger volume consists wholly of such maxims, arranged in alphabetical order, and interspersed with brief articles, alphabetized under the titles of leading cases, and giving a list of the principal decisions which have followed and developed the doctrine of the leading case. In these articles appears the second striking peculiarity of the work—that the title seems to bear no relation whatever to the contents. It might exactly as well be entitled Hughes on Real Property, or on Criminal Law, as on Procedure.

For instance, there are articles on Infants, Husband and Wife, and Married Women; these articles are brief statements of the substantive law affecting these classes of persons, supported by

admirable citations of selected cases; but they contain no reference whatever (except two or three lines under Infants), relating to the institution or conduct of suits by or against them.

In the disconnected and undigested pages of this treatise, one may often find useful references to recent and valuable cases, as well as to the ancient and leading ones; but the extraordinary sections which make up a great part of the book, can in no other way be so well shown as by quoting, *verbatim et literatim*, two of its sections: "*Linea recta est index sui et obliqui, lex est linea recti*: A right line is an index of itself and of an oblique; law is a line of right. Coke, Litt. 158." (p. 970) "*Quod constat clare, non debet verificari*: What is clearly apparent need to be proved. 10 Mod. 150. *Res ipsa loquitur*; *Non potest adduci exceptio*, etc.; *In rebus manifestis*, etc.; *Probat in extremis praesumitur media*. See Judicial Notice. *De non apparentibus*, etc.; *Cum adsunt testimonia*, etc.; *Cothran v. Ellis*." (pp. 1107-8)

These passages show an interesting fondness for the language of Ancient Rome; but we cannot see that they throw much light upon the Theory and Practice of Procedure.

E. P.

American Political History. By Professor Alexander Johnston. Edited and supplemented by L. A. Woodburn, Professor of History and Political Science, Indiana University. G. P. Putnam's Sons, New York, 1903. Two volumes. Cloth, Vol. I, pages 437; Vol. II, pages 588.

Teachers and students of American Political History will welcome these two volumes, containing the articles of the late Alexander Johnston. Contributed to Solor's *Cylopædia of Political Science, Political Economy and Political History*, a work which is universally recognized as the most valuable compendium and richest issue of information on these subjects.

Historical study and teaching in America suffered a serious loss by the untimely death of Professor Johnston in 1889, at the early age of forty. His works had won for him a high reputation as an author and recognition as an authority in political history.

Professor Woodburn has successfully undertaken the task of collecting and arranging these articles so as to form a connected and readable narrative of the political history of the United States from 1763, the date of the Treaty of Paris and the generally accepted date of the beginning of American political history, to 1876, the close of the reconstruction period. The chapters deal only with the more salient features of the historical development of the American Republic, treating these in a comprehensive and finished manner. The editor has supplemented Professor Johnston's work whenever this has been necessary to secure a connected narrative and to bring the subject matter down to date. An introductory chapter and a chapter on the "Monroe Doctrine" have been inserted. Also in the chapter, entitled the "American System," the article of Mr. W. C. Ford on "Tariffs in the United

States," in Solor's Cyclopædia, has been used. Yet in no way have the conclusions and suggestions of Professor Johnston been altered.

The work is in two volumes. The first volume treats of the period from 1763 to 1832. It is divided into two parts, the first considering the period from 1763 to 1800, the "Revolution and the Constitution," the second dealing with the period from 1800 to 1832, the "Growth of Nationality." The second volume deals with the Slavery Controversy, Civil War and Reconstruction, covering the period from 1820 to 1876.

Throughout the work there are valuable notes and citations. And at the end of each chapter there is a bibliography for supplementary reading, which is of inestimable value to the student. This work is not one to be used as a general text-book on American political history. The editor does not offer it as such. It does not contain a complete and detailed account of the political history of the republic. The editor has simply collected and arranged the articles of Professor Johnston, thus presenting a substantially complete outline, treating only the important epochs and distinctive phases of the nation's growth with a detail of information and reference rarely found in other works of a similar character.

Pomeroy's Equitable Remedies. By John Norton Pomeroy, Jr., A. M., LL. B. Bancroft Whitney Company, San Francisco, 1905. Two volumes. Sheep, pages ix, 1875.

These two volumes appear as an expansion from volume four into volumes five and six of the third edition of "Pomeroy's Equity Jurisprudence," which was reviewed in volume xv, YALE LAW JOURNAL, p. 107. In expanding what the original author said upon the subject of equitable remedies, his son has not done it in the manner that we should have expected from the father. From him we should have expected not so much a superstructure upon the foundation of decision, but a foundation for a superstructure of decision, a work in which the rules were stated not so much with words of the decisions from which they were taken as in that author's own inimitable phraseology, which always seized the rule by its root, natural justice, and then so stated it as to make it the foundation of further justice. But in this work we get statements of the law, following very closely the beaten paths of the decisions, showing in the author great ability for accurate research, and skillful and scholarly annotation, but very little of that independence of thought that characterized the original work and made it the basis of many a decision. However, the conditions have changed since the appearance of the original work, so that at present, the cold, accurate matter of fact law, methodically arranged, is probably of much more use to the profession, than it would now be possible to make a book having as much independent thought in it as was in the original "Pomeroy's Equity Jurisprudence."

The topic of injunctions receives the lion's share of space, as it deserves from its increased and growing importance, the chap-

ter on "Injunctions against Interference with Freedom of Trade or Employment" being of especial interest. The subject of "Receivers" also assumes considerable proportions, and corporation law is to be found in almost every paragraph.

S. W. B.

Hints for Forensic Practice. By Theodore F. C. Demarest, A. M., LL. B. The Banks Law Publishing Company, 1905. Cloth, pages xi, 123.

This monograph consists mainly of a strenuous objection to the use by counsel during trial of the phrase: "Objected to, as incompetent, irrelevant and immaterial." In arriving at the conclusion that this phrase "should not be uttered," the author has reasoned logically both upon the direct etymological meanings of the words, and upon the legal interpretations given to the words separately and to the phrase as a whole. Most lawyers have arrived at the same conclusion from experience, although they are liable to annex the amendment, "except when I cannot think of a more definite reason."

The latter part of the book compares the striking out of evidence with an instruction to the jury to disregard evidence, and the direction of a verdict with the setting aside of a verdict.

As a whole, the book is one which should be very interesting and instructive for the practicing attorney to read, in spite of the fact that the author, showing a characteristic common to New Yorkers, has discussed so many New York cases as to give the book a distinctly local color.

S.W.B.