BOOK REVIEWS

Jural Relations. By Albert Kocourek. With an Introduction by John H. Wigmore. Indianapolis, The Bobbs-Merrill Co., 1927. pp. xxiii, 482.

What is it that this recognized scholar has created, that his publisher can advertise: "The Most Unusual Law Book Ever Written?" In the author's words, "it deals chiefly with the jurisprudence topic of 'Rights'." Again, the author announces a discovery of the fundamental part which "Jural Relation" has for legal phenomena. And this he tells us "is the connecting link between law regarded as a body of legal rules and the social activities upon which the law is to operate." From this point he tells his story.

I am sure that I have missed much of the artistry with which the story is told. Probably I have been too much interested in the architecture and functions of the creation. At least these are the bases on which I venture to pass judgment on the book.

My interpretation of Professor Kocourek's book is that he offers a most elaborate language technic for handling the problems which arise in the administration of law. The elaborateness of the creation cannot be exaggerated. It purports to be a completed system with the ramifications of its entire theology all worked out, and it can well be assumed that such is true. Now the falsest hope of legal scholarship has been to devise just this sort of instrumentality. Seemingly it has been assumed that some device of words can be perfected which will in large part displace the necessity of intelligent judging. The capacity to pass an acceptable judgment has almost universally been subordinated to a method of statement. The attempt has been made under all sorts of guises, and there is not much to indicate that efforts in this direction will ever cease. In fact at this moment the profession at large is engaged in a wholesale attempt to restate the rules of the common law in black letter. But such attempt, grandiose as it may be, is antiquated, crude and incomplete in method, in comparison with the methodology of this author.

The major postulate of Professor Kocourek's creation is not very far down the line of inquiry. You meet it in the opening paragraph of the first chapter: "(1) *A system of potential legal rules.* First, there is a body of legal rules existing only in the abstract—potentially—awaiting application in concrete cases." Certainly this is not unfamiliar legal theology, but even so, the more likely it is to prevent the student who has found such theology empty from reading further. These rules plus the "situations of fact," plus "jural relations" (p. 3) supply the foundation for the superstructure which follows. The function of this machinery is to save the clumsy and erratic process of dealing with these rules by hand, so to speak, from which at present so many bad results follow. By way of illustration: instead of a lawyer or judge taking out his pencil and paper and seeking to solve a complex computation by way of addition, subtraction, multiplication, division, algebraic equation, the logarithmic table, or other such device, he is given a machine which has keys set to the mass of rules in our system of law. All the operator has to do is to punch the appropriate keys as directed, operate certain levers, and the correct result flashes out. A perfected mechanism designed to save labor, eradicate errors and to give a more perfect result! The human equation reduced to a minimum! Is such an invention to be despised? Not at all. On the other hand it could but represent the highest expression of science. The fear of a "mechanical justice" is puerile. The only fears of mechanical devices are: (1) that they are not mechanically perfect; (2) that the limitations of any mechanism

should be forgotten. I have the same sort of reaction to the description of the author's process that I have to an explanation of the intricacies of a submarine, of a modern telephone exchange, or the processes of television. I am bewildered, but withal I am willing to guess that it is the most perfect machine of its sort yet exhibited. Hohfeld's machinery was never perfected, and while the author uses many of the ideas of Hohfeld, for which he gives generous credit, he perfects a different machine—one more complex and one doubtless more delicately poised. But the two are designed along the same lines and for the same purposes. To the debates which followed between the successors of Hohfeld and the author, he gives great credit for the clarification of his own ideas. And it may be added parenthetically that probably the greatest value of the Hohfeldian analysis lies in the very fact that it has been kept relatively simple and adjustable.

The contributions in this direction are severely limited—more so than it seems to me has yet been realized. The least of these limitations is the difficulty involved in the change of a language technic in so large and active a field of thought and practice as that of the law. To Professor Kocourek his creation doubtless seems simple enough. But it does not seem so to those who have not followed its development. There are few minds engaged in the administration of the law capable of mastering it. If the lawyer's justly warrantable instinct for rejecting this sort of device, even before he knows what it is, could be overcome, there are few judges, practictioners and teachers who would give the time to attempt a mastery. Perhaps such is not necessary. Of the millions who successfully operate automobiles, complex machinery though they are, few know anything about their mechanism. They depend almost wholly upon the workmanship behind the machine to keep it going. If the device under consideration can be put to work successfully in only a few places, the slow process of evolution struggling against apparently insurmountable odds will find a place for it in a remarkably short time. A generation or two of law school students makes over the thinking of the profession throughout. The ultimate device may not be that of Kocourek or of Hohfeld, but it will be one modified to meet the requirements of the day. The difficulties of language will not kill the idea if it be usable.

But there are severer limitations than those of language. The most serious are these: (1) a perfected language technic implies crystallized rules of law, even though the crystallization be only for the day, or the instant; (2) assuming rules of law and language both adjusted on any particular day, constant readjustment of each would be required. There must be definiteness and certainty for any sort of logic, mechanical or otherwise. If the rules of addition, multiplication, etc., were equivocal there could be no adding machine, rapid calculator, tables or other such devices. Professor Kocourek's creation requires unequivocal rules of law, at least for the instant. And the despairing outlook for the success of the scheme is that rules of law tend to become less and less dependable, and more and more fluid as society becomes more complex and people more intelligent. And what is more, the choice between competing rules gives room for countless errors. In the cases with which we disagree, ordinarily we find that our disagreement is at bottom not with the application, but with the choice of the rule. Rules, after all, are nothing more than the crystallized judgments of society in the simpler cases. Here they are most usually clear. But it is not the simple cases which demand machinery, much less the elaborate machinery here suggested. It is the very cases where the judge's judgment as to the rules themselves is most in doubt which call for assistance and which cannot obtain it through the machine device. As society moves on, as new cases arise, old rules give way to new ones with multiform refinements and the processes and the judgments of judges themselves

are modified tremendously. A machine cannot be prospective. Moreover, the element of human judgment, the largest and most variable element in law administration, cannot be subjected to the control of rules to any great degree; not nearly so much as we have always pretended it could. Law is far less crystallized than we dare admit and it becomes fluid with variety of case and change of judge. But assuming that law administration can be successfully subjected to a mechanical device, there lies danger to a science of law in such fact. It is too easy to continue the use of a device after its adjustment with life has broken. This is not insuperable; nevertheless it is the hardest fight the legal scientist has to make even against the crude legal technics of the past. Now let it be quickly said that Professor Kocourek would be the first to deny that rules of law remain static, or that they can be fixed for any long period. On the other hand, he fully recognizes the constant process of crystallization and break up from day to day. And his reply to my criticism would doubtless be that his creation would necessarily be adjusted to these changes. But the difficulty of such a concept is that to make the adjustments is equally as hard as to decide the case acceptably in the first instance. Moreover, the danger that such adjustments would always be made belatedly and that the real problems would tend to become lost in the theology of the system would be just as great, if not greater, than that afforded by the current language technics.

The appeal of a successful mechanism is tremendous. When we see the advances in the physical world about us, the inquisitive minded lawyer asks why not in our science too? The medical man names every part of the body minutely. His mastery of these gives him remarkable power. But of course they do not furnish judgment in diagnosis. They are means primarily of articulating judgment. The human body is small and static as compared with the social body. The ponderousness of the aggregate of jural relations if minutely named would doubtless be beyond the capacity of the human mind and still allow it to function otherwise. And the changes in them are so rapid that grandfather and grandson are ages apart if measured in terms of physical life. These changes require modifications and readjustments so that if a lawyer had to accomodate the numerous jural relations to them he could do little else than keep up to date. The Chinese alphabet would be a mere morning's exercise by comparison. And as I understand Professor Kocourek's scheme of things he realizes these difficulties and does not propose to name every jural relation as does the medical man the parts of the body. On the other hand symbols—claims, duties, privileges, etc., are to be used instead. But if symbols (words representative of several particularizations) are used, we shall lose the very advantage the medical man has obtained and again face all the errors and mistakes which grow out of their use, and especially symbols which are quickly loaded down with "inherent" meanings.

Nor does the logical precision of the mathematician help us any. He has dependable premises because he constructed them so. He cannot get beyond them nor does he desire to do so. But here again the lawyer cannot control his premises. His starting point comes from the outside. But it is said that while mathematics is an ideal thing wholly unrelated to life, yet its value is inestimable to human society. The argument is that law may have its pure science as well. There are suggestions in Professor Kocourek's book which intimate that this might well be his objective. I had rather believe that the device here offered is not so ambitious. But even so, the element of multiple human judgments which would have to be depended upon to draw down the gifts of a pure science to the troubles of an every day world doubtless would continue to be uncontrollable and thus unpredictable. Though I should quickly agree that if he has found the basis of a pure science of law, in time his contribution would render the

profoundest service to society. My doubts here go back to the assumption that society is stable enough for such a science or that we are yet even approaching a "maturity of law," if we shall ever do so.

As hopeless as this approach to a science of law seems to me, I do not feel that a rather highly perfected science is beyond reach. But instead of a science built upon absolutes as here suggested it perhaps will be one built upon relatives; highly expansible and elastic words, guiding rules, simple organization, all of which have the quality of accommodating themselves instantly to the dominant factor of human judgment. Such, in fact, seem to be the qualities which gave the Hohfeldian scheme its quick hold on legal scholars and which have marked its further extensions. Uniformity may well be the basis of a science of chemistry or even biology, while a science of law may be required to rest upon the variables of each new day. Suffice it here to say, that such a science should postulate law in its nature as something entirely different from "an aggregate of rules" or anything similar thereto. Moreover, a science so based would find no necessity of putting much emphasis on a language technic. It would likely find the language available for the time and place sufficient. Thought has always had strange ways of making itself articulate. It is clear enough that where words are lacking, ideas are usually wanting. (p. 363) Such a science would doubtless go much further back than rules, or claims, duties, privileges, powers, etc., for its studies. It would go back behind the barter and bargain currency of the day.

Now all this does not mean that Professor Kocourek's book is not a most valuable one. I have read few books which have stirred my imagination or excited my admiration more. No one can read it and have any peace or complacency. If it should turn out that I am all wrong and that here are bared the foundations of a worthy science of law, then he will have performed a remarkable service indeed. If on the other hand the magnificence of the attempt should but definitely determine that there is no way out through the language door, its service would be little less valuable. But if it should be nothing more than a functionless machine for the museum, still its wealth of parts (the highly polished and adjusted terms and distinctions) will be of real value to any science of law which may eventually be devised, whether they be used as this author suggests or not. But more than all of these, here is a creation of American legal scholarship—a scholarship that has given its time, with a few brilliant exceptions, to puny tasks and that in a timid way. Here is one of our most able scholars who dares risk something; who dares play the role of a scholar. There is nothing quite so pitiable as a leader of thought who is afraid to lead; whose whole mind is occupied with dodges and defenses to protect him from the chagrin of having been detected in error. On the other hand, there is no encouragement like creation by a contemporary. From this point of view the publisher's announcement is fully warranted.

LEON GREEN.

The Paradoxes of Legal Science. By Benjamin N. Cardozo. New York, Columbia University Press, 1928. pp. v, 142.

The four lectures contained in this small volume were delivered at Columbia University on the Carpentier Foundation. They give us the latest conclusions of one of our most enlightened and intelligent judges as to the nature of law and of the judicial process. For this reason, aside from all others, the lectures are of great interest and importance.

The title of the first lecture indicates the general trend of the discussion, Rest and Motion—Stability and Progress. Law must be stable and yet must change to meet new economic and social conditions. How are the two

demands to be reconciled? Judge Cardozo tells us he has consulted the philosophers as well as the scientists, and that throughout he finds the same antithesis.

"The reconciliation of the irreconcilable, the merger of antitheses, the synthesis of opposites, these are the great problems of the law. 'Nomos,' one might fairly say, is the child of antinomies, and is born of them in travail. We fancy ourselves to be dealing with some ultra-modern controversy, the product of the clash of interests in an industrial society. The problem is laid bare, and at its core are the ancient mysteries crying out for understanding—rest and motion, the one and the many, the self and the notself, freedom and necessity, reality and appearance, the absolute and the relative. We have the claims of stability to be harmonized with those of progress. We are to reconcile liberty with equality, and both of them with order. The property rights of the individual we are to respect, yet we are not to press them to the point at which they threaten the welfare or the security of the many. We must preserve to justice its universal quality, and yet leave to it the capacity to be individual and particular. The precedent or the statute, though harsh, is to be obeyed, yet obeyed also, at the sacrifice not seldom of the written word, are to be the meliorating precepts of equity and conscience."

There is much in the present series of lectures, as there was in the earlier ones on *The Nature of the Judicial Process*, which seems to suggest that it is the learned author's belief that the "methods of judging" can be separated into distinct categories, such as the method of logic, the method of historical development, the method of sociology, etc., and that the result of the judging will depend upon the method used. The following passage, for example, seems to say just that:

"The law has its formulas, and its methods of judging, appropriate to conservation, and its methods and formulas appropriate to change. If we figure stability and progress as opposite poles, then at one pole we have the maxim of *stare decisis* and the method of decision by the tool of a deductive logic; at the other we have the method which subordinates origins to ends. The one emphasizes considerations of uniformity and symmetry, and follows fundamental conceptions to ultimate conclusions. The other gives freer play to considerations of equity and justice, and the value to society of the interests affected."

Just what is meant is not entirely clear to the reviewer. It seems to be implied that by the "method of deductive logic" one can follow "fundamental conceptions to ultimate conclusions." If the reviewer understands the results of modern investigations into the nature of formal or "deductive" logic, no such procedure can be or ever actually is followed by any human being in solving problems which involve judgment. It is quite probable that the learned author would fully agree to this, but since what he says is capable of an opposite interpretation and leaves much unsaid, it has seemed to the reviewer desirable to state the matter clearly. Obviously the limitations of a book review preclude the possibility of developing the assignment in detail.

This lack of clearness as to this fundamental matter leads Judge Cardozo to overlook, in his discussion of the development of our law, the fact that legal principles—and rules as well—are in the habit of hunting in pairs. By this is meant that whenever we are confronted by a doubtful situation, one which therefore demands reflective thinking, we usually find that in the past conflicting interest and conflicting social policies have each received recognition from the courts to some extent, and that these results have been rationalized in terms of "conflicting" principles (or rules), each of which can easily, and without departing from any prior decisions, be "construed" as "applicable" to the "new" case. Space permits of only one concrete example. A colleague submitted to two eminent students of

Anglo-American law for critical discussion the following problem: a contract of employment expressly provides that claims for wages shall be non-assignable. A court has held that a claim for wages (which without the restriction would be assignable) is assignable in spite of the restriction. Is or is not the decision correct or sound "on principle"? One of the eminent students said in substance: the decision is incorrect, for it violates the principle of freedom of contract. Said the other: the decision is sound; rights arising from contract are property; the restriction is an attempt to restrain the free alienation of property, and so ineffective. Obviously a more realistic logic would recognize that, so far as the decisions go, neither of the supposed "principles" ought to be stated as a "universal," ready to serve as the major premise of a syllogism by which the case can be decided. What we should say is that generally we permit freedom of contract, but not always, and that generally restraints on alienation of property are invalid, but sometimes they are not. So stated, however, the illusion of being able to reason deductively disappears, for if all that we can say is that most men are mortal but some are not, we shall find it quite difficult to assert categorically that Socrates is mortal. Thus deprived of our "deductive" support, we shall find it necessary to examine into our "real" reasons for wishing to decide the case one way or the other, and thereby be compelled to note the social or economic consequences of a decision one way or the other.

One must also dissent from the assumption of the learned author that in the field of the conflict of laws the results have actually been reached by the "remorseless application of [deductive] logic." (p. 68) Here, as in other branches of the law, the appearance of "logical" reasoning is preserved by the use of terms of ambiguous and shifting meaning; and while the actual results reached can to a considerable extent be thrown *ex post facto* into a logical system—especially if one ignores a large number of the decisions as "unsound"—this is merely a more or less convenient way of stating decisions which were in truth reached for other than so-called "logical" reasons.

The lectures are written in Judge Cardozo's usual delightful style, and, while they add little that is fundamental to what he had already given us, are interesting and suggestive throughout. It is to be hoped that they will be widely read, not only by lawyers but also by laymen who are interested in the legal system under which they live.

WALTER WHEELER COOK.

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Cases on Wills and Administration. By Mechem and Atkinson. Rochester, Lawyers Co-Operative Publishing Co., 1928. pp. iv, 698.

There are two striking features of this new casebook just brought out by Dean Philip Mechem of the University of Kansas Law School and his colleague, Professor Thomas E. Atkinson. Perhaps the most noteworthy feature is their ability to produce an excellent casebook containing but few English cases, and to find recent cases by which they treat the problems with which they propose to deal.

To make clear the innovation, a comparison between their book and the two other most commonly used casebooks on Wills, the one by Professor Warren and the other by Professor Costigan, is in order. Professor Warren's casebook contains 269 cases, of which 118 or somewhat fewer than fifty per cent are English; 93 or approximately one-third of Professor Costigan's 289 cases are English. The present book contains 192 cases, of which 24, or one-eighth, are English cases.

To bring home the second innovation, namely the use of recent cases, it may be said, unless the reviewer is inaccurate in his figures, that 73 cases of the 192 were decided between 1900 and 1920. Thirteen cases were decided in 1921, six in 1922, five in 1923, seven in 1924, eleven in 1925, eleven in 1926, seven in 1927 and one case in 1928 although the casebook is dated March 1st, 1928. Thus, 134 of the 192 cases were decided since 1900 and only 58 were decided earlier than that date. This seems to mean that the historical method of approach has been abandoned, and what perhaps would be called the "functional" approach to the study of the problem has been followed.

The first chapter deals with The Rationale of Succession; further chapters deal with Mental Capacity, with Undue Influence and Fraud, with the Execution of Wills and with Testamentary Character and Intent. It may be noticed that the problems involved in mistake have not been considered in connection with undue influence and fraud, but rather in connection with so-called dependent relative revocation. The next chapter, at least with respect to its title, has something new—The Integration of Wills, including so-called incorporation by reference. This is an excellent chapter, and the selection of cases and the footnotes show an appreciation of the fact that to treat the problems here under the heading Incorporation by Reference gives a misleading and confused idea of the situations that arise.

Bemis v. Fletcher[1] is used, presumably, as a horrible example of so-called incorporation by reference, the reference looking to the future. There are two or three cases which illustrate the fact that not all the problems can be accounted for either by the theory of integration or of incorporation by reference: that is, they illustrate the fact that a will may contain a general description of beneficiaries or of property, which general description must at some later time be made more definite by another act or event. If that act or event is testamentary in character, if it is intended to supplement the will, it should be an attested or incorporated act or event.

In the section dealing with "mistake," the editors have sought to bring the problems connected with the execution of wills into juxtaposition with the problems met in the revocation of wills. The cases selected show admirably the confusion that has arisen in the minds of the courts in dealing with this problem. The cases on the revalidation of wills are also well selected. The reviewer is glad to note the case of *In re Hardyman*,[2] which to his mind, sets forth the sound rule regarding the significance of republication.

It is interesting to note how the subject matter varies as between this casebook and the two older ones. A number of topics in the older books have either been omitted or reduced to footnotes: for example, the problems of accounting, of priorities, of time of payment of legacies and distributive shares, of refunding, all of which are important considerations in the older books. There are two cases which remotely, but not directly, deal with inheritance taxation. (pp. 393, 489)

On the other hand, many items are dealt with which are practically ignored in the older books: for example, family settlements (p. 384); agreements not to probate (p. 388); provisions in the will for forfeiture of interest in the event of contest (p. 404); agreements not to contest wills (p. 397); the interest necessary to entitle one to contest (p. 447); the distinction between adverse claims and claims against the estate (p. 483); legal services performed by the executor (p. 522); payment of interest by the executor and forfeiture of commissions (p. 530); the effect of the Statute of Non-claim on the filing of claims against an executor for misappropriation of trust funds; the filing of claims secured and unsecured (pp. 562, 575); the manner of adjudication of claims (p. 566); the garnishment or attachment of the interest of a legatee or distributee (p. 590); the signifi-

cance of per capita as distinguished from per stirpes distribution (p. 595); the peculiar rule regarding ancestral estates under the California community system (p. 602); the effect of the conduct of heirs on succession (p. 615); ademption by the committee of an insane person (p. 665), and so on. A case which the reviewer regards as a horrible illustration of what should not happen when there is a lapse of residuary legacies, is given at page 684.[3]

In addition to these items, the problem of the finality of probate decrees is brought out under two subdivisions: (a) as bearing upon adverse claims (p. 483); (b) as bearing upon claims under a will or under a decree of distribution. (p. 690) Under the heading Anticipation of Inheritance, the editors have included cases involving conveyances and releases by the heir or distributee, the satisfaction of legacies and devises, and advancements. (p. 629) They have raised the issue whether the assignment of a life insurance policy to a child is an advancement. (p. 645)

It is interesting to note that the editors have devoted 85 pages to the functions and necessity for probate, whereas Costigan devoted 14 pages and Warren 3 pages to the same topic. There is also a greater variety of problems raised respecting the jurisdiction of probate courts.

The book contains many notes which exhibit much research and study of the problems discussed. Many of the notes also contain variations of the problems stated in the principal case and invite inquiry as to the proper solution of them. There are forms given for proceedings in probate matters, and the references to law review articles and to discussions in the various sets of annotated reports are rather full.

This casebook therefore presents a wide departure from the traditional one on this subject. Some may not approve of the complete omission of many topics which are treated in the other casebooks; but who is willing to assert that the topics inserted are not important, and in fact indispensible for a thoroughgoing knowledge of probate law? This reviewer feels some hesitation with respect to at least three cases, those on pages 53, 189, and 527. The doubt arises not from the feeling that the problems are not important, but rather from a feeling that perhaps they can be more thoroughly examined in a course in Trusts.

The reviewer believes that an excellent bit of work has been done by these editors, and that the casebook is well worthy of a trial in class room work.

ALVIN E. EVANS.

[1] 251 Mass. 178, 146 N. E. 277 (1925).
[2] [1925] 1 Ch. 287.
[3] Corbett v. Skaggs, 111 Kan. 380, 207 Pac. 819 (1922).

Banks and Banking. By John T. Morse, Jr. Sixth Edition. Revised and enlarged by Harvey C. Voorhees. Boston, Little, Brown & Co., 1928. Vol. I, pp. ¢, 952. Vol. II, pp. viii, 953-2134.

The standing of this work within its field is well attested by the fact that it has gone through six editions, two within the last ten years. Morse continues, no doubt, to be the outstanding work of its kind. It carries with it a reputation acquired through its use by courts and profession for almost fifty years. A decision upon some question of banking law would scarcely appear complete if Morse were not quoted or cited.

Five editions of a treatise of this character may be expected to have so definitely settled its scope and plan that a sixth would reveal only slight changes in the structure of the work. A survey of the table of contents justifies this expectation. Chapter and section headings remain the same as in previous editions. In broad outline, the two-volume work may be said to treat: 1. Organization, Powers and Management of Banks; 2.

Deposits, Checks, Collections and Liens; 3. Insolvency, Forfeiture, Ultra Vires and Liabilities of Shareholders; 4. Bank Bills. To the subject-matter of the fifth edition have been added appendices containing the text of the Negotiable Instruments Law, acts of Congress affecting the Federal Reserve System, and an explanatory table of changes in the national banking laws resulting from the passage of the McFadden Bill (Act of Feb. 25, 1927).

Since the publication of the fifth edition much banking law has been made. The Banks and Banking occupies 367 pages in West's third decennial digest (Bills and Notes, 423 pages for the same period). One may readily appreciate the task of an editor who endeavors to expound the results of those years and to chart the trends and developments of this branch of the law within the compass of footnotes, with only minor variations of text. The present editor has brought the citations up to date and has frequently digested important cases, decided since the last edition, in the accompanying footnotes. In view of the increasing volume of litigation, the development of new banking fields and the changing viewpoints of courts on many banking subjects (*e. g.*, judicial notice of bank collection methods, ownership of deposited items, etc.), it is to be regretted that the publishers and the editor felt it necessary to confine themselves within the framework of earlier editions.

No doubt any author writing within this field will always be confronted with the problem stated at the opening of the work: that is, finding the median between treating only such part of the law as *owes its existence* to banks and banking, and including all law *applicable* to banks. As the latter is impossible without writing an encyclopedia, and the former is obviously inadequate, "the sensible plan seems to be, to group in these volumes the law peculiar to banks, and such further matter as is of *frequent* application in, or has a *very important* bearing upon, their business." Plainly, the latter objective cannot be fully attained unless note is taken of changing banking technique and the litigation or legislation attendant thereon; nor can it be reached by attempting to confine a treatment of such subjects to inelastic categories. If limitations of space prevent expansion, the selective process must become more critical.

The importance of the Federal Reserve System in financial affairs would seem to justify an independent treatment of the law relating thereto, rather than limiting such treatment to the scattering of pertinent citations in an isolated fashion through the footnotes. As noted, one appendix contains the text of the Federal Reserve Act; another contains other acts of Congress affecting the system. But since the passage of the Act in 1913, there has arisen a considerable body of case law, which together with the regulations of the Federal Reserve Board, sets the scene for a large part of the operations of the system. No digest of such regulations is listed, nor, for that matter, is mention of any regulation to be found in the index.

Almost two hundred American cases involving letters of credit have been adjudicated; the use of such instruments is of growing importance, especially in import and export transactions; the text however devotes but two pages to the subject. Trust receipts and trade acceptances are not indexed. The only reference to bankers' acceptances directs one to the text of the Federal Reserve Act; the same is true of the fiduciary powers of national banks. Guaranty fund cases are digested in a six-page footnote under Who May Be A Banker. The problems arising from branch banking are relegated to the footnotes of Business of the Bank—Time and Place. Obviously, the text of the work as a whole is not materially varied or added to.

Some dead timber may be expected to be carried over from edition to edition when a work is re-edited and not revised. Until Congress sees fit

to remove the tax on state bank notes, the consideration accorded them by the treatise could well be eliminated without loss. Officers of savings banks will be surprised to know that "money deposited in a savings bank remains the property of the depositor." The limited discussion of the characteristics of savings banks fails to take account of the fact that today there are, in some jurisdictions, banks with capital stock, which are as truly savings banks as are the mutual savings institutions so well known to New Englanders. A ten-page treatment of the Conflict of Laws appears as in prior editions and of course cannot be other than confusing owing to its inadequacy.

A 250-page digest of all cases construing the national banking laws constitutes a valuable feature of the work and one of particular interest to all those connected with national banks. The much-litigated matter of state taxation of national banks comes in for thorough treatment and the citations afford immediate reference to all the holdings on the subject.

The sections devoted to bank collections have been well edited and give the reader a thorough exposition of the various situations in which the many vexing questions relating to collections arise. The chapter on Title to a Deposit raises similar problems, closely related to collection matters, and develops the question of ownership of paper deposited with a bank, but in this connection distinctions between varying fact situations are not sufficiently appreciated.

It is only natural that those portions of the treatise devoted to bank operations should seem to be more alive and of more commercial significance than those devoted to the form and organization of a bank. Without belittling the importance of the latter, it seems that much would be gained by shifting the emphasis to the former, with corresponding changes in the space devoted to the two divisions of the subject. One ventures to suggest that the bank in operation is of more importance (and of interest) than the bank in process of formation. Perhaps the ideal treatise would be one which would take its color from the daily work of a bank and which would be written, primarily, from the standpoint of the varied services and offices of a bank—extension of credit, receipt and transfer of funds, inter-bank relations, etc., with their attendant methods and devices,—rather than one which takes standardized categories as proper subjects for distinct treatment without correlation. In the absence, and probably until the production, of such a work, Morse retains its pre-eminent position as a treatise on the subject of banking law.

WAYNE L. TOWNSEND.

Charles Dickens as a Legal Historian. By William Searle Holdsworth. New Haven, Yale University Press, 1928. pp. 157.

Professor Holdsworth's lectures should be a joy to the student of legal history. From them he will receive assurance that when he reads his Dickens, he will find the description of lawyers, courts and legal proceedings accurate and helpful in clothing the dry bones of legal history with flesh and blood.

The confirmed lover of Dickens will be interested to re-read many of his favorite passages in the light of the information Professor Holdsworth gives, as to their accuracy and their implications. Some of Dickens' references will be made more understandable, and the reader of Dickens will not only enjoy this book in the first instance, but again and again will refer to these lectures as explanatory notes to be consulted as to any doubtful point connected with such descriptions as those of the Chancery Courts, Sergeant Buzfuz, Mr. Guppy, and Mr. Jaggers.

It is interesting to note the impression these lectures made on one reader. Mr. A. Edward Newton, in the October Yale Review, says that he would like to meet Professor Holdsworth and ask him, "How much longer will you lawyers continue to regard your profession as respectable?" He states that he intends to buy a number of copies of the book, and "send them to my legal friends, for in spite of my dislike for their profession, every other man I know is a lawyer. Its reading confirms in me my belief that the law is not a science but a craft: That was also Dickens' opinion." In another place, Mr. Newton asks, "Is there a lawyer in the pages of Dickens who is honest or respectable?"

These impressions seem a bit curious. It is true that Dickens portrays lawyers who are rascals, and others a bit more respectable, who are still guilty of moral obliquities. But by the same process, it would be demonstrated that Dickens regarded the clergy, as a whole, as very undesirable citizens. Mr. Chadband and Mr. Stiggins are certainly as objectionable as Dodson and Fogg. True there is a Frank Milvey but there are also Tommie Traddles and Mortimer Lightwood. There is no suggestion in David Copperfield that Traddles' ethical standings were not of the highest, and while Dickens poked fun at Mortimer Lightwood, again it is evident that he was an honest, as well as an attractive, man.

Dickens described the weaknesses and shortcomings of the legal profession, as he described the weaknesses and shortcomings of many other occupations. For example, Bradley Headstone and Mr. Creakle surely are not ideal schoolmasters. But treating matters in this way seems a far cry from condemnation of every occupation described, and it seems probable that Professor Holdsworth will be astonished to find his book taken, even in jest, as a demonstration that the profession of the law is subject to the following criticism:

"Time was when most young men of nimble wits went either into the law or the church: they were called the learned professions. This is only another way of saying that a man after having his wits sharpened was given license to prey on the community—of science and of business in the modern sense, there was nothing. It is curious that it is not considered, in England, respectable to earn money; but it is respectable to inherit it, especially in very large amounts—if it has been stolen in the first place or is acquired by the practice of the law, one may become very distinguished indeed."

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