BOOK REVIEWS

The Supreme Court of the United States, Its Foundation, Methods and Achievements: An Interpretation. By Charles Evans Hughes. New York, Columbia University Press, 1928. pp. 269.

This book comprises the six lectures which Mr. Hughes gave before Columbia University in 1927 on the George Blumenthal Foundation. The title will be apt, perhaps, to raise false hopes. The bulk of the volume is a survey of American constitutional law, which, while excellent for its brevity and clarity, is singularly devoid of efforts at interpretation of an evaluative nature. Just how good or just how bad a piece of work the Court has, in his opinion, done, Mr. Hughes never once hints.

The chapter that best realizes expectations, though it requires amendment at points, is chapter II, entitled the "Court at Work—Organization—Methods." It affords (especially in pages 55 to 77) the best account that has been assembled of the proceedings of the justices behind the wings, and one which has the further advantage of being authenticated by the fact that the author himself is a former justice. To be sure, Mr. Hughes takes pains to explain that he is not "revealing confidences" gained during his incumbency; but the apology seems a bit ungenerous, inasmuch as he has occasion to cite for many of his statements in this connection two former justices—Story and Campbell—to whom apparently the idea did not occur that such an apology was required. Nor in fact was it; for while any court must naturally do much of its work in private, if there is any organ of government which is not entitled to have its proceedings shrouded in secrecy, it is the Supreme Court of the United States, whose decisions are professedly always based on the better reason, and at any rate set metes and bounds to the power of the other organs.

On page 32 Mr. Hughes writes: "These [constitutional] questions have been decided after full argument in contested cases and it is only with the light afforded by a real contest that opinions on questions of the highest importance can safely be rendered." But Bacon challenged more than 300 years ago the legalist's notion that a contest is the best way to develop the truth, and the cooperative methods of modern science daily renew this challenge to the characteristic methods of the law courts. On page 38 it is further asserted that "judges are constantly sustaining the validity of legislation which as legislators they would probably condemn." This is doubtless true of those judges "who have gained a distinct reputation for their liberal attitude" referred to in this connection, but its accuracy as regards those judges who are responsible for the present dimensions of judicial review under the due process of law clause seems to the reviewer decidedly questionable. (pp. 212-13). On page 49 we read: "But you cannot expect to have judges worthy of the office who are without convictions and the question from that point of view is not as to the qualifications of judges but whether you will have a court of this character and function." Does this mean that in the appointment of judges to the Supreme Court no account should be taken of their known views on public questions? If they are chosen because they have convictions, it would seem that the convictions they have may also be properly considered.

Some other statements involve more definitely factual issues. The characterization on page 37 of the rule laid down in *United States v. The Del.*

& Hud. Co., 213 U. S. 366, 29 Sup. Ct. 527 (1909), as "a self-denying rule" is certainly not accurate for all cases. In the case just mentioned it enabled the Court to eviscerate an act of Congress without shouldering the responsibility of declaring it void; and when the rule would have saved an act it has been sometimes ignored (*Employers' Liability Cases*, 207 U. S. 463, 28 Sup. Ct. 141 (1908)). The statement on page 51 that Lincoln, in his comments on the *Dred Scott* decision, "gave due respect to the judicial institution" allows great scope to "respectful" criticism in view of Lincoln's charge of conspiracy among "Roger, Stephen, and James"—a charge that we today know to have had a considerable measure of justification. Nor is it indicated that the decision in the *Dred Scott* case was unceremoniously overridden by Congress with Lincoln's assent by the act of 1862 excluding slavery from the territories. The assurance vouchsafed on page 52 that "there was no ground . . . for the suggestion that President Grant attempted to pack the court" in order to procure the reversal of the decision in *Hepburn v. Griswold* is much too positive. It may be that Grant knew nothing of that decision (page 53) when he sent in the names of Strong and Bradley to the Senate, but we have the testimony of both Chase and Boutwell, Secretary of the Treasury, that the latter did, and that is all that was necessary to set the proper machinery in motion. Nor should it be overlooked that Strong had as a member of the Supreme Court of Pennsylvania sustained the Legal Tender Act; that Bradley, besides being known as an advocate of strong War and Reconstruction measures, had all his professional life been a railroad attorney (the railroad interest was in 1870 a debtor interest); and that the decision in *Hepburn v. Griswold* was virtually rendered by a minority of the Court, and so by a long standing rule, abortive. Similarly, the comments on the income tax decision of 1895, on page 54, overlook the principal ground for public criticism, namely, the Court's presumption in "correcting a century of error"—in other words, its reversal of a century's precedents; and the obvious bias of some of the judges from the state of mind they had permitted themselves to lapse into regarding "socialism." The doubt expressed, however, whether it was Justice Shiras who changed his mind on that occasion is well warranted in light of the positive statement made by the late justice's son at the time of the latter's death a year or two ago. The vacillating justice, it is scarcely open to doubt, was Justice Gray. In *Springer v. U. S.*, 102 U. S. 586 (1880), Gray had joined his brethren in sustaining a national income tax levied by the rule of uniformity; and he was not among the dissenters in *Pollock v. Farmers' L. & T. Co.* (157 U. S. 429, 15 Sup. Ct. 673 (1895); 158 U. S. 601, 15 Sup. Ct. 912 (1895)). Also, the views of Justice Brewer, the only other justice besides Gray and Shiras, whose attitude in the *Pollock* case is not a matter of record, were almost certainly in line from the start with those of his uncle, Justice Field, whose apprehensions regarding socialism he indulged to the full.

A more particular contribution to history is the anecdote which Mr. Hughes relates, on the authority of the late Justice Harlan, with regard to the efforts of the Court to induce Justice Field to resign some time before he did so (pp. 75-6). Justice Field certainly overstayed his time. A casual examination of the reports will show that for some years he was far from carrying his share of the Court's then excessively heavy burden. In the term of '95 he spoke for the Court in only four very brief opinions, one of which was required to explain something said in one of the others. In the '96 term he prepared no opinions for the Court. He sent in his resignation in April, 1897, indicating the following December 1st as the time when it should take effect. The stipulation enabled him to exceed Marshall's term by two months.

The excellent sketch of constitutional law afforded by the last four of Mr. Hughes' lectures duly emphasizes recent developments. Of the nearly 300 cases cited fully two-thirds were decided within the last thirty years. One or two criticisms may be ventured. The statement on page 93 of the holding in the *Newberry* case (256 U. S. 232, 41 Sup. Ct. 469 (1921)) should have been accompanied by the explanation that it was rendered under the Constitution as it stood before the addition of the Seventeenth Amendment, when the election of senators, being by the state legislatures, was much more evidently separable from the processes of their nomination than it is today. The reviewer also believes it an error to represent the "clear and present danger" rule as indicating the limit set by the First Amendment in protection of freedom of speech and press against Congress. The statement quoted on page 166 from the *Gitlow* case (268 U. S. 652, 666, 45 Sup. Ct. 625, 630 (1925)) and that quoted on page 168 from the *Toledo Newspaper* case (247 U. S. 402, 419-20, 38 Sup. Ct. 560, 564 (1918)) appear to give the doctrine of the Court. On page 105 the question of the constitutionality of the draft for foreign service, which was the form of the issue in 1917, is in view of the history of the matter, mistakenly oversimplified—as indeed it is in Chief Justice White's impatient opinion in *Arver v. United States*, 245 U. S. 366, 38 Sup. Ct. 159 (1918). Pages 139-40 suggest, without answering, the interesting question of the right of Congress to enact a code of law for the determination of controversies between the states.

The book should be of real service to both the layman and the special student. The latter, however, will be somewhat irked by the fact that Mr. Hughes did not see fit to take us more into his confidence concerning his own views with respect to the traditions of the Court of which he was once so distinguished a member.

Princeton, N. J. EDWARD S. CORWIN.

The Law of Unfair Competition and Trade Marks. By Harry D. Nims. (3d ed.), New York, Baker, Voorhis & Co., 1929. pp. cliv, 1293. $20.

Unfairness in business is more than a legal concept; it is a thing which vitally affects the whole community. Business will have no incentive to progress and capital will be even more timid than it is, if the legitimate results of enterprise are to be diverted or development obstructed by unfair conduct, and the public, which Judge Coxe once called "that vast multitude which includes the ignorant, the unthinking and the credulous," is bound to suffer because it is the public that is always exploited by the unfair trader. A book like this is more than a law book; it is a constructive force promoting fair dealing and decency.

There are some offenses against which society is able to protect itself. A guest who misbehaves is not invited again. The golfer who does not count his shots finds it hard to get a game. Bores can be avoided. But offenses against good business sportsmanship or manners cannot thus easily be dealt with. Something more is needed, and we now have a body of law which has come to be called "unfair competition"—the English equivalent of "concurrence deloyale" which the French used to describe this general type of tort before we had come definitely to recognize it. This body of law is the result of the efforts of the courts to stop conduct in business which shocks judicial sensibilities.

"Unfair competition" is a subject on which there has been a great deal of fuzzy thinking. The name is inaccurate, and such is the potency of labels that at one time it seemed likely to be confined to what the English call "passing off." Unfair competition was asserted to embrace only conduct where by some sort of device one trader misrepresented his goods as

those of another. All other business barbarity by inference was fair competition. Happily this calamity was averted, more by accident than by design. The courts began to speak of "unfair competition" in cases brought under the anti-trust acts which had nothing to do with misrepresentation of goods, and this, perhaps more than anything else, allowed the phrase to escape from its straitjacket. But still the delusion exists that unfair competition deals only with the sale of goods, even with the markings upon the packages. Somebody ought to be resourceful enough to get a new name which will designate the offense which unfair competition really is. Mr. Nims has been unable to. He told me that he tried and gave it up, and perhaps it is as imprudent for the author of a successful book to experiment with titles which his customers may not recognize as it is for the manufacturer of oatmeal to modernize the picture of a Quaker on his cartons. There may be a suspicion that the goods are different, and good will may thus be imperiled. A mere reviewer has no such responsibility.

But before attempting to devise a new label, it may be useful to determine what is the matter with the old one. "Unfair competition"—"unfair" is a good enough mild word, but why "competition"? Competition connotes two traders trying to sell the same goods to the same people. This gives folks addicted to the consideration of words rather than things a chance to dodge. They say, "If there is no competition there can be no unfair competition"—which is sound enough when dealing with phrases but not with facts. Why not say, "If there is no competition there can be no actionable wrong." When put this way of course it does not make sense; yet this, in effect, is solemnly said by the courts all the time.

The concern which makes Beechnut bacon and a lot of other goods upon which they put the Beechnut mark has not made cigarettes. A maker of cigarettes places the Beechnut mark upon his cigarettes and thus, by profiting by the Beechnut reputation, gives them a salability which otherwise they would not have. But cigarettes do not compete with bacon or chewing gum. There being no competition it was argued there could be no unfair competition.

R. H. Macy & Company is well known and has a valuable reputation. It operates a retail store only in New York where everybody knows it as Macy's. A dealer in Flint, Michigan (whose name was not Macy), opens a department store there and places a sign with the word "Macy's" over the door. R. H. Macy & Company has no store in Flint. There is no competition. But there is a wrong.

Thomas A. Edison does not make fountain pens. A maker of fountain pens (whose name by the way was not Edison) stamps his pens Edison. There is no competition, but the action is unfair.

Ingersoll watches are advertised and sold at definite prices suggested by the company producing them. They are recognized as being good value at these prices. A dealer for some ulterior purpose of his own advertises Ingersoll watches at less than cost, with the result that the public gets the impression that the customary prices are excessive and other dealers, being unwilling also to sell at a loss, decline to deal further in Ingersoll watches. There is no competition between the Ingersoll Watch Company and the price-cutting dealer. Or suppose the dealer, to sell other goods, tells people asking for Ingersoll watches that the pinions are made of lead, and for purposes of exhibition and to give verisimilitude puts a lead pinion in an Ingersoll watch, what then? There is no competition between the Ingersoll Watch Company and the dealer, and "unfair" seems much too delicate a term to use.

There is an action *in rem verso* which is recognized in continental Europe [1]

[1] GERMAN CIVIL CODE, art. 812; SWISS FEDERAL CODE, art. 70.

and is described by Baudry and Barde, the French commentators, as "an action in which a person claims restitution of an increase in wealth created to his detriment, and without just cause, in the estate of another." That is to say, it is an actionable wrong for a man to increase his estate by appropriating something of value belonging to another. A person who has so conducted himself as to inspire confidence acquires a good reputation. A good reputation in business is a thing of value. A trade-mark is merely business reputation symbolized. Therefore, for a man to claim for himself the good reputation belonging to another, by applying to his goods that other's trade-mark, would seem to be a wrong coming within this principle. And so long as the reputation is in fact appropriated, it cannot be important that the goods may not compete.

What we are really dealing with and calling unfair competition are trade rights and duties. The right of a business man is to have full benefit of the reputation he has established, a part of which is the trade that, without interference, would normally flow to him; and the duty of others is to refrain from appropriating this reputation or doing anything to divert or obstruct the normal flow of trade which probably would result from it.

"Trade rights and duties" as the title of a book would probably not convey to anybody the least information of its contents; so it perhaps is best that I remain in the good company of Mr. Nims and with him confess my failure to give a name to a subject that I am sure everyone agrees is misnamed. As long as it is understood that there need be no competition in unfair competition, no harm will be done. This is only following conventional linguistics. There is no soda in soda water, no grapes in grape fruit, no bread in bread fruit, and a clothes horse is not a horse but is good enough to hang things on.

The development of the law dealing with the subject is interesting. From its small beginnings in the law of trade marks, through the passing off of goods by other means than by the imitation of trade marks, it has now spread out to include all manner of business depravity such as false indications of geographical origin, misdescription of goods, disparagement, commercial bribery, misuse of confidential information, inducing breach of contract, interference with trade relations, intimidation of customers, by threats, for example, of infringement suits and similar acts, the result of which is an artificial interference with the normal course of trade.

The law has pantingly pursued the wrongdoer, sometimes catching up with him, sometimes not. Sometimes the pursuit has led up blind alleys—sometimes, while stopping to dispute about the classification of the offense, the offender has been allowed to escape.

There has been much discussion of the nature of the property rights involved and some philosophizing of a highly artificial kind which a tough-minded realist is inclined to view with impatience. For these are intensely practical cases. They deal with the realities of the present, and first of all they are cases of fact. Take, for example, an ordinary case of misrepresentation involving the misleading marking of goods, the kind of case usually called one of trade-mark infringement. To a practically minded person the issue would seem to be one of fact, and the questions to be answered simple enough. Does the mark in question distinguish the plaintiff's goods? Is it being used by the defendant so as likely to confuse his goods with the plaintiff's? If so, a wrong is committed which ought to be stopped—and effectively stopped. What difference can it make by what means the misrepresentation is made—whether it is by misuse of an arbitrary mark, a geographical or descriptive or personal name or dress of package or configuration of goods—it is all one. Fraud is fraud and it is the fraud and not the manner of it which calls for the interposition of the law. But

instead of getting at the matter directly, all manner of refinements have been invented. The imitation of an arbitrary mark needs one kind of an action, a personal name another, imitation of a label a third, each calling for different relief; and thus a lot of rubbish has accumulated.

A trade-mark must be arbitrary and have no reference to the goods; hence it can identify them. Use by another, then, presumptively misrepresents his goods. But supposing that the evidence shows that there is in fact no deceit—well, there ought to be, say the courts, and enjoin the use of the trade-mark. A geographical or personal name is not arbitrary; hence presumptively it does not identify and is not a trade-mark, and therefore no deceit can result from its use by the defendant. But supposing the evidence shows that the mark which theoretically cannot identify, in fact does so and that its use by the defendant does misrepresent—well, it ought not to, say the courts, and they deny relief or give only a little. Thus does theory often prevail over fact.

It is time to sweep into the dust-bin many of the refinements which have been allowed to grow up, and recognize that any mark which in fact enables goods of one trader to be distinguished in trade from those of others is a trade-mark, and to represent by any contrivance as the goods of *A* those for which he is not responsible is a wrong for which *A* is entitled to redress, and that both of these questions are questions of fact—not of theory.

The cases involving personal names are typical. A surname such as Baker's as applied to chocolate or Ford to cars has come to distinguish quite as effectively as any arbitrary name possibly could. An infringer uses the name Baker or Ford on spurious goods. What difference ought it to make if his name happen to be Baker or Ford? Is there any right to steal another's business and seduce his customers by one means rather than another? If so, it is a confession that the law in dealing with fraud has at last found its limitation. Here again, theory triumphs over fact. The theory is that a man has a right to use his name in any business he chooses to enter. The fact is that to use certain surnames in certain businesses will always result in injury and deception. Which is it better to have, the injury and deception, or to have certain men restrained from using their surnames in certain businesses?

The second alternative seems better, and I think we may expect to see it accepted. It is a logical development. At first no restraint was imposed on the use a man might make of his own name, then he was obliged to refrain from using it with imitative accessories. Later he was obliged to couple it with an announcement of distinction, *e.g.*, "W. H. Baker has no connection with the old chocolate manufactory of Walter Baker & Co.," "not the original Rogers," and the like. More recently he has been restrained from applying his name as a name or designation of competing goods, *e.g.*, Woodbury's Soap, Henderson's seeds, and required to use it as a part of an address and inconspicuously on the sides or back of packages. But supposing a situation (and it is not difficult) where every means of distinction honestly carried out would be idle—what then? And what about the theoretically absolute right of every man to use his own name in his own business? When the irresistible force, "No one has any right to represent his goods as the goods of another," encounters the immovable object "Every man has a right to use his own name in his own business"—which will give way? I hope and believe the second.

Mr. Nims in his Chapter VI treats this question fairly and I hope as a true prophet.

It is as unwise to attempt to define unfair competition as to define fraud. Definitions limit. Once several years ago, after a course on the subject, a student who, with an endurance which did him credit, had attended through-

out, came up to speak to me. I said, "What is your idea of this subject?" and received the answer, "Well, it seems to me that the courts try to stop people from playing dirty tricks." One might spend weeks reading cases and find many definitions less satisfactory than this.

Chicago, Ill. EDWARD S. ROGERS.

A History of the English Bar and Attornatus to 1450. By Herman Cohen. London, Sweet & Maxwell, Ltd., 1929. pp. x, 622.

Mr. Cohen calls his work a compilation, and it is clear that he has emptied his files into his book, with the result that we have an immense amount of material drawn from the most diverse sources bearing upon the history of the legal profession. The arrangement is by no means clear, nor is there the much-needed introduction or conclusion stating the broad results of the investigation. The reader will therefore do well to bear in mind the relevant passages of Professor Holdsworth's History as a clue to the maze of matter here presented.

Nevertheless, the collections of Mr. Cohen are of great interest and value, for if they do not give a formal history of the bar down to 1450, they do give a roughly classified body of material, and historians will be grateful to him for assembling in one volume so much information. He has read very widely and has gleaned considerable quantities of matter from sources which are primarily non-legal, such as literature in prose and verse, and chronicles which often relate the progress of monastic litigation from the point of view of the litigant, his counsel, his expenses, and the steps which worldly wisdom suggested for furthering a cause, all which matters are discreetly veiled in the more professional sources of the Year Books and Plea Rolls. The discoveries thus made are related fairly fully, so that the reader is generally put in immediate possession of the facts and is therefore in a position to draw his own conclusions. An aspiring historian would find it a useful exercise to begin where Mr. Cohen leaves off, and digest his materials into a critical history of the bar.

Mr. Cohen's views on the history of the profession are at times somewhat confused, while on matters of general legal history he several times hazards opinions which are questionable; it is therefore a work to be used with caution. Its main purpose, however, is to render available a vast mass of scattered source material, and from this point of view the author can be credited with a great measure of success. His book is the fruit of much learned labor, and some of it is of great interest; thus the well-known opinion that ecclesiastical models influenced the English bar is aptly illustrated from the works of William of Drogheda, recently re-edited by Professor Wahrmund, and this is only one example of the energy with which Mr. Cohen has searched far and wide for information.

Cambridge, Mass. THEODORE F. T. PLUCKNETT.

Annual Survey of English Law, 1928. By the Department of Law of the London School of Economics and Political Science (University of London). London, The London School of Economics and Political Science, 1929. pp. xv, 301.

In spite of its importance, there is little that a reviewer may justly and safely say of the initial volume in an annual survey of the development of English law. He may chronicle the event of its publication, tell what the book is about, insist that the performance might have been different, wish the venture god-speed—and that is all.

The book is addressed to the general reader rather than to the lawyer.

Its concern is with law as a social institution, and not as a body of rules. Its place is intermediate between casual comments which are current and histories which must wait to be written. The central idea is to present a detailed picture of the law in the making; "to furnish the background required . . . to bring this process into relief"; "to place it in its proper perspective in relation to the general body of the law"; to reveal "the processes of change and development which are constantly in operation," and "to record the development of legal principles from a critical point of view." Thus it is at once a work of reference, a survey, and a picture of a developing institution.

The execution of such a project involves countless judgments, runs serious hazards, and involves numerous compromises. The plan of the whole, the division into parts, the selection of materials, the allotment of space, the method of treatment, all involve choices among many alternatives. As the work of some eight persons the volume gains in accuracy of statement at the expense of unity. As a digest of legislation, judicial decision, and legal treatise, it elevates comprehensiveness above thoroughness. As a record of all significant facts its sacrifices something of perspective to currency. It is a product of several men who differ in experience and penetration, in historical outlook and prophetic insight, in regarding the essential task as description, narrative, analysis, interpretation, or criticism.

As an immediate statement of the events of a year in the life history of a law, the book is good enough. It is comprehensive; the record is set down under eleven headings, Constitutional Law, Local Government and Administration, Law of Persons and Family Law, Property and Conveyancing, Contract and Agency, Mercantile and Maritime Law, Industrial Law, Criminal Law, Evidence and Procedure, Conflict of Laws, and International Law. For reference there is a "table of cases," a list of "acts, conventions, and documents," and an "index." The statutes are clearly and succinctly presented in the general language which must be employed before the courts have breathed into abstract terms the breath of life; the decisions are told off, with due regard to the cases directly in point, but with a commendable absence of indiscriminate citation; the books and articles are briefly described without bringing "contributions to knowledge" before the throne for judgment. What one misses most is the illusion (not delusion) of movement and growth, of a human institution accommodating itself to the changing circumstances of society. A general chapter at the beginning of the book or at the end would have been of great value. But such an evanescent quality is hard enough for the individual to capture and set down in his book; perhaps it is too much to expect of the bigger and better method of cooperative research.

The *Survey* is an engaging and valuable adventure. But, as the editors of the volume probably know better than any of us, we really do not know what happened in English law in 1928. The maxim that the meaning of it all does not become clear until afterwards holds true in legal history as well as elsewhere. Magna Carta was not Magna Carta until time brought meaning into the words; the future of equity was made before equity was clearly recognized; bills of rights have the habit of establishing rights which those who drew them up had never heard of. A statute of great current moment may be of little practical importance; a chance phrase that escapes current notice may be the germ of a code of law; we never know what the current case really decides until the next case comes along. The stuff of the law, for 1787, for 1846, for 1928, has the habit of being remade by the course of unintended events. But, it is better to get such a picture as we can of the development of English law in the last calendar year than to have no picture at all. We are under

obligations to the staff of the department of law of the London School because they persisted in taking a look even if they had to see as through a glass darkly.

New Haven, Conn. WALTON H. HAMILTON.

Cases on Personal Property. By Thomas A. Larremore. Rochester, Lawyer's Co-Operating Publishing Co., 1928. pp. xv, 640.

In a comparison of this book with the others in this field of law, three striking differences are noted: the large number of cases used, there being over three hundred, the subject matter covered and its arrangement.

One of the apparent shortcomings of the book is in the selection of some of the material. The material in the chapters on Property—Tangible and Intangible, "Property" for the Purpose of Injunctive Relief, Consortium and Privacy, and Crimes is usually covered in other courses in most law schools and could have been omitted without detriment to the book. The cases on Dead Bodies and Base Animals are unusual but may be worth the space given to them. It is doubtful, however, whether the topics of Title Deeds and Heirlooms, and Manure are of such practical value today that space should be given to them in a case book. Doubtless there is plenty of material elsewhere in the book sufficiently to enrich the minds of the students without the aid of these chapters. The heading of the chapter, The Negative Community, is unique, though the well selected cases thereunder bring out the meaning of this term very excellently. The elimination of the material mentioned above would have enabled the editor to have inserted additional cases on tacking in the chapter on Prescription. In the chapter on Pledges, the case of *Sproul v. Sloan*, 241 Pa. 284, which shows the measure of damages for the conversion of pledged stock, is used. Other cases, showing the different rulings on this point, should have been included.

It seems that a rearrangement of some of the material would greatly add to the value of the book. One of the most obvious changes is in the position of the chapter on Recaption which should come first, after which should come the chapter on "General" and "Special" Property, as the cases in the latter show some of the common law forms of action. Since common law pleading is not taught in some law schools, or, if so, after the course on Personal Property, and, since many students begin the study of law during the summer with the course on Personal Property, it would have been profitable to have included other cases showing the forms of action. If it is deemed advisable to include it at all, then the chapter, Bill in Equity, should have been inserted at this point. The cases under Part VII, What is Possession, should have been placed in other chapters covering this material, thus eliminating the somewhat choppy arrangement of the book.

One other possible criticism is that in a large number of cases no reasoning is given for the rule of law propounded, and this is lamentable. In order to save space, the editor used the expedient of "boiling down" the facts, and in the main this is to be commended, but cases or excerpts from cases merely stating the rule should be used sparingly. The reviewer realizes that the "desirable" case is not always available, but whenever possible, cases giving the reason or "policy" for the rule are highly desirable, especially for those who try to avoid the purely formalistic approach to the study of law.

Considered as a whole, Professor Larremore's book, in the opinion of the reviewer, is the best one in this field. The selection of cases and the treatment of the subject matter of the main topics, which comprise the larger portion of the book, show the exhaustive and painstaking research and study the editor did, and the results are highly commendable. Through

this careful selection of a large number of cases, many problems are presented which give the teacher an excellent opportunity to show the fine distinctions drawn by the courts and the process of reasoning involved. Herein lie the chief merits of the book. Moreover, as the editor points out in the Preface, the teacher can get away from the "hand-me-down" sets of notes which accumulate about so many law schools through the use of the abundance of material and different topics covered. The teacher is further assisted here by the extensive footnotes which contain many variations of the problems of the principal case, and for this meritorious work, nothing but the highest praise can come.

Incidentally the book is well indexed, and in the list of cases, the cases are cited in both the plaintiffs' and the defendants' names. The black fabrikoid binding, type, and paper used make for a neat and attractive volume.

Lawrence, Kan. R. F. PAYNE.

Streik Aussperrung und Berufsverbände im neuen Englischen Arbeitsrecht. By Dr. Ludwig Hamburger. Berlin, J. Bensheimer, 1929. pp. x, 80.

Until 1927, the recent English enactments dealing with industrial conflicts were legislative corrections of judicial action adverse to labor. The Conspiracy and Protection of Property Act, 1875,[1] was a consequence of the London gas-stokers' strike in 1872. The prosecution of five of the strike leaders on a charge of conspiracy and their sentence to twelve months' imprisonment "created indignation, and led to an impressive demonstration in Hyde Park."[2] In due course the application against strikers of the loose law of conspiracy was mitigated. The *Taff Vale* case,[3] in 1901, powerfully stimulated the growth of the Labor Party and also the influence of its aims among Liberals.[4] These currents of opinion were registered in the Trade Disputes Act, 1906.[5] It is familiar knowledge that this act relieved trade unions from liability for torts.[6] In 1909, the *Osborne* judgment[7] again roused labor to action, by forbidding trade unions to use their funds for political purposes.[8] The Trade Union Act, 1913,[9] once more came to labor's relief. Thus, down to 1927 the modern English law controlling trade union activity expressed the interaction between the judiciary and Parliament.

The General Strike of 1926 vastly affected the orientation of British labor. Inevitably, also, it led to a reexamination of the legal status of British trade unions. The result was a drastic modification of the immunities and the privileges which prior legislation had secured for labor. Unfortunately, the Trade Disputes and Trade Unions Act, 1927,[10] was not a characteristic British product. It was conceived in panic and resentment. The superb moral self-restraint which the British people showed to the General Strike was not observed when the Tory government pressed

[1] 38 & 39 VICT. c. 86 (1875).
[2] 1 GARDINER, LIFE OF SIR WILLIAM HARCOURT (1923) 255 *et seq.*
[3] [1901] A. C. 426.
[4] HALDANE, AUTOBIOGRAPHY (1929).
[5] 6 EDW. VII, c. 47 (1906).
[6] DICEY, LAW AND PUBLIC OPINION IN ENGLAND (2d ed.) xlix *et seq.* (note).
[7] [1910] A. C. 87.
[8] See *inter alia*, WEBB, HISTORY OF TRADE UNIONISM (1920) 631-34; Geldart, *The Status of Trade Unions in England* (1912) 25 HARV. L. REV. 579; GELDART, PRESENT LAW OF TRADE DISPUTES AND TRADE UNIONS (1914) (pamphlet).
[9] 2 & 3 GEO. V, c. 30 (1913).
[10] 17 & 18 GEO. V, c. 22 (1927).

for legislation to provide safeguards against a future recurrence of such a strike.[11] And so it put upon the statute books an act characterized by the former Lord Chief Justice as "vaguer and more indefinite" in its penal provisions "than the language of any Bill that I ever remember seeing which had to go for interpretation before the Courts of Justice."[12] The act not only contains language too treacherous for judicial application; it also curbed trade unions in matters wholly unrelated to the circumstances of the General Strike.

In the pamphlet under review, Dr. Hamburger gives an admirably lucid and well-balanced account of the history and meaning of this legislation. It serves as a valuable chapter on the relation of legislation to social policy. But the significance of the act will happily be short-lived. The temper of the British is too steady to have allowed the resentment which was the impulse to this legislation to provoke resentment against it so as to tempt its enforcement. And now, that a calmer atmosphere has again entered English political life, the act will not merely remain a dead letter; it promises soon to be formally modified. Sir W. A. Jowitt, the present Attorney General, has already given notice on behalf of the MacDonald government, that the government would press a bill for the amendment of the act.[13]

Cambridge, Mass. FELIX FRANKFURTER.

[11] See the speech of the Marquess of Reading, 68 HANS. DEB. (Lords) 69-70 (1927).
[12] The Marquess of Reading in 68 HANS. DEB. (Lords) 839 (1927).
[13] 229 HANS. DEB. (Commons) 45 (1929).

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