

## BOOK REVIEWS

*Le Code de Droit international privé et la Sixième Conférence Panaméricaine.* By Antonio S. de Bustamante. Paris, Librairie du Recueil Sirey, 1929. pp. 226. 30fr.

Although matters of a public nature discussed at the Sixth Pan-American Conference held at Havana in 1928 attracted the most attention, the Code of Private International Law adopted by the Conference will stand out in history as one of its great accomplishments. The Code is primarily the work of that eminent Cuban jurist, Dr. Antonio S. de Bustamante, Judge of the Permanent Court of International Justice, President of the Sixth Pan-American Conference, for many years professor of private and public international law at the University of Havana, and author of several works on the conflict of laws of deep originality and practical sense. In the present volume Dr. Bustamante relates briefly the efforts made in Latin America in the direction of the codification of private international law and the steps taken in the preparation of the present Code. This is followed by a chapter giving an account of the draft code, of the deliberations and decisions of the Third Commission of the Sixth Pan-American Conference, of the plenary session of the Conference of February 13th, 1928, and of the declarations and reservations made by the different delegations. The larger portion of the work is taken up with appendices, giving a detailed report of the sessions held by the Third Commission of the Sixth Pan-American Conference and the provisions of the Convention and Code of Private International Law.

The discussion of the draft code by the Commission of Jurists at Rio de Janeiro in 1927 may be found in a volume published by Dr. Bustamante in 1928, entitled *La Commission des Jurisconsultes de Rio de Janeiro et le Droit International.*

The United States Government was represented at the Conference at Havana, it being the first time that the United States has taken an official part in an international conference for the purpose of codifying the subject of private international law. The Code was approved at Havana by all Latin American states with certain reservations. The American delegates, however, were unable to vote for it in view of the fact that the subject matter dealt with by the Code is largely reserved in this country to the individual states, but expressed the hope that the United States might adhere subsequently to certain of its provisions.

The Convention has been ratified already by ten of the Latin-American countries, including Brazil. In view of this fact a few words concerning its content and general characteristics may be of interest.

The Code contains a preliminary title consisting of eight articles, and four books. The first book is entitled International Civil Law (arts. 9-931); the second, International Commercial Law (arts. 232-295); the third, International Criminal Law (arts. 296-313); and the fourth, International Law of Procedure (arts. 314-347). As the titles of these books indicate, the provisions laid down in all except the last book have reference to the subject matter contained in the Latin-American Code on civil, commercial and

criminal law. The fourth book includes the subjects of jurisdiction and procedure in both civil and criminal matters. The scope of the code thus goes much beyond the subject matter ordinarily dealt with in Anglo-American books on the subject of the conflict of laws.

The Latin-American countries have been divided on the question whether the law of domicil or that of nationality should be made the basis of the rules of the conflict of laws. Argentina favors the law of domicil; Brazil, that of nationality; whereas Chile represents a third point of view, applying frequently the Chilean law to foreigners in Chile and at the same time to Chileans abroad. The conflict between the claims of the law of the domicil and those of the law of nationality could not be adjusted at the Conference, and the Code allows each contracting state to choose either of the two as the "personal law."

The Code follows the continental rather than the Latin-American point of view. As a result the application of the personal law has a much wider scope than it has with us. For example, "capacity" to do any juristic act is governed by the personal law, irrespective of the fact whether it has reference to the law of domestic relations, to contracts, or to wills. Two other differences of a fundamental nature may be noted. One of these is that the notion that the law of the situs controls interests in real property is not recognized to the same degree as it is in England and the United States. Under the Code the law of the situs governs on principle only with respect to property questions as such. If the right is derived from the law of domestic relations or from the law of inheritance, the personal law controls. To illustrate, the rights of a wife in the real property of the husband are governed in the absence of a marriage settlement by the personal law common to the parties, and in the absence thereof, by that of the first matrimonial domicil. Again, the Anglo-American rule that the powers of an appointee of a court, such as a guardian, and the disabilities imposed upon a person, as in the case of a spendthrift, by reason of the appointment of a guardian are not entitled to extraterritorial recognition is not adopted by the Code.

As regards the formulation of the rules themselves, the Code indicates a mode of approach which is unfamiliar to Anglo-American students of the conflict of laws. In connection with almost every topic of the first book, particular rules, provisions or prohibitions are said to be of an "international public order." In Article 3 of the Code the term is said to have reference to laws that are binding alike upon all persons residing in the territory, whether or not they are nationals, and in Article 8 there is a provision that the rights acquired under the rules of the Code shall have extraterritorial force in the contracting states, except when any of their effects or consequences would be in conflict with the rules of international public order. In connection with property the phrase may mean that the law of the situs governs absolutely. The rules are couched in such general terms that it is frequently doubtful whether reference is had to the law of the forum, to the law of the situs of the property, or to the law of the place where the contract was made or to be performed.

It would have been well, therefore, if many of the provisions of the Code had been made more specific. Compared, however, with the existing law in most of the Latin-American countries and with the provisions of the Convention of Montevideo of 1889, which is in force between Argentina, Bolivia, Paraguay, Peru and Uruguay, the Pan-American Code of Private International Law represents a great step in advance. Its success was mainly due to the untiring efforts and profound learning of Dr. Bustamante.

New Haven, Conn.

ERNEST G. LORENZEN.

*Public Regulation of Competitive Practices.* New York, National Industrial Conference Board, 1929. pp. 320. \$3.

This volume is a second and revised edition of a deservedly popular work. It considers a series of miscellaneous subjects covering, in a general way, what the law deems fair and permissible dealing in competitive practices. To indicate the range of the discussion, it may be noted that the treatment embraces such subjects as less-than-cost selling, price discrimination, resale price maintenance, commercial bribery, exclusive dealing arrangements, tying contracts, interlocking directorates, and intercorporate stockholding. Together with Henderson's *Federal Trade Commission*,<sup>1</sup> it ranks as the leading text reviewing these matters.

To some extent, of course, the subject matter intersects that of two other fields in which the Conference Board has published studies—trade associations<sup>2</sup> and mergers.<sup>3</sup> The volume differs from the other two, in that the legal problems do not arise primarily from the federation and cooperation of independent competitors, nor are they necessarily bound up with the mere size of the business unit. The discussion and analysis is more thorough and shows a greater appreciation of and insight into the subject than *Mergers and the Law*, published by the Conference Board.<sup>4</sup>

As the first edition of the book appeared less than five years ago, it would perhaps be more advantageous to discuss some of the outstanding portions of the new material which has been added to this edition. The features of this revision include a discussion of the trade practice conference, which is perhaps the outstanding development of the last three or four years in the American trade association movement. The summary and appraisal of the trade practice conference contains a valuable classification and critique of the actual rules embodied in the various resolutions of the conferences held to date.

By way of supplement rather than in criticism of the author's commentary, it is the experience of the reviewer that the popularity and spread of the trade practice conference idea arises from the fact that the resolutions are formulated under the aegis of the Federal Trade Commission. Since the commission represents an arm of the federal government, a code of fair business dealings created under such auspices supplies an element of authority and prestige, which was lacking in the formulation of codes of ethics drafted by a committee of an association without government sponsorship.

The enforcement of the trade practice conference rules has given rise to some doubts in the minds of some trade association executives and lawyers concerning the practical benefits of the rules when they are subjected to a severe test. Conceding that a moral effect is produced which was not present in former association codes, there exists the feeling on the part of a number of those who have taken advantage of these conferences, that an effective method of practical enforcement is yet to be discovered or applied in a satisfactory manner.

For example, the rules under "Group 2," which are distinguished from those under "Group 1" because they are expressions of the trade and are not enforceable by the Commission, commonly deal with those vital sales and price problems in which the associations are most interested. The inaction on the part of the Commission in failing to compel compliance

<sup>1</sup> G. C. HENDERSON, *THE FEDERAL TRADE COMMISSION* (1924).

<sup>2</sup> *TRADE ASSOCIATIONS: THEIR ECONOMIC SIGNIFICANCE AND LEGAL STATUS* (National Industrial Conference Board 1925).

<sup>3</sup> *MERGERS AND THE LAW* (National Industrial Conference Board 1929).

<sup>4</sup> Book Review by Benjamin S. Kirsh of *MERGERS AND THE LAW* (1929) 29 COL. L. REV. 1175.

with "Group 2" resolutions indicates that perhaps very little advance has been accomplished, when resort to a drastic enforcement policy is necessary, over the codes of ethics which have long been an integral part of trade association machinery.

The discussion of the important decision of the Supreme Court in *Van Camp v. American Can Co.*<sup>5</sup> is enlightening. A diversity of view has been expressed in law journals and business publications, both with respect to the extent of the change in the construction of Section 2 of the Clayton Act and the practical effects of the decision upon marketing policies. It is too early to appraise the decision at present because of the presence of a number of uncertain elements which become patent upon an examination of the opinion. The reviewer has pointed out in another place,<sup>6</sup> that the decision was not on the merits, that the purchasers were not in the same functional class, that an element of monopoly may be involved because of the control of a patented machine by the seller, and there may be found to be secret rebates from a published list—elements which may reduce the decision on the merits to comparatively little importance in the development of the law. Until the final decision is handed down, one can only indulge in speculation as to what changes in legal policy have actually occurred.

As is recognized, the subject has been developing so rapidly that even since the publication of the book, the Supreme Court decisions in the *International Shoe*<sup>7</sup> and the *Klesner*<sup>8</sup> cases have added new aspects which would necessitate rewriting important sections of the text. As regards the *International Shoe* case, may we say that irrespective of the facts involved in the holding, the language in the majority opinion—to the effect that Section 7 of the Clayton Act deals only with such acquisition as will probably result in lessening competition to a substantial degree or to such a degree as will injuriously affect the public—presages the blunting of the edge of this Section? A legal situation created so recently exemplifies the provisional and tentative nature of legal opinion in these and related matters.

The author has adequately performed his function in collating the authorities in an exhaustive manner and in discussing them with intelligence and learning.

The legal principles are at all times discussed in relation to their economic and business environment. It is because of this setting that the book contains a far more satisfactory analysis of the legal questions than a text constructed on the older legalistic models.<sup>9</sup>

New York, N. Y.

BENJAMIN S. KIRSH.

*The Law of Insanity.* By George A. Smoot. Kansas City, Vernon Law Book Company, 1929. pp. xxiv, 635. \$10.

In reading the first chapters of this book it appeared to the reviewer that here was a reprint of something published perhaps not later than 1850 or 1870. But no, for turning to the preface it was noted that the volume is offered to the legal profession in 1929 to meet "a real need."

<sup>5</sup> 278 U. S. 245, 49 Sup. Ct. 112 (1929).

<sup>6</sup> Opinion on the *Van Camp* case, *supra* note 5, submitted to the Secretary of the American Trade Association Executives, abridged in N. Y. J. COMM., June 14, 1929.

<sup>7</sup> *International Shoe Co. v. Federal Trade Commission*, 280 U. S. 291, 50 Sup. Ct. 89 (1930).

<sup>8</sup> *Federal Trade Commission v. Klesner*, 280 U. S. 19, 50 Sup. Ct. 1 (1929).

<sup>9</sup> Cf. Book Review by Benjamin S. Kirsh of THORNTON, COMBINATIONS IN RESTRAINT OF TRADE (1928) 14 A. B. A. J. 586.

It seems incredible that such antiquated, threadbare, and factually incorrect material, at least as it deals with the history, definitions, forms, and causes of insanity should be thought adequate to fulfil the needs of an intelligent profession.

Interspersed with occasional correctness we find many remarkable statements. We learn that the three classes of insanity are amentia, mania, and dementia; and that mania signifies an inflamed mind and is the form of insanity "frequently spoken of by text writers as lunacy."<sup>1</sup> We read that there is such a thing as moral mania, due to weakening of the moral senses, and that this may and may not extend to the mental faculties. Fortunately it appears that "society and her courts cannot recognize such a state of mind as any excuse"—"a premium would be placed on moral degeneracy." And this about emotional insanity: "Puerperal, or emotional, insanity," is a temporary clouding of the mind by emotion; it is a broad term and "includes all mental disturbances which find their seat in the nerves, rather than in a diseased mentality." Masturbation is a frightful affair, we gather from the enlightening chapters on the causes of insanity. Indeed it is "perhaps one of the most flagrant causes of mania," and moreover, "it frequently develops into one of the more violent forms of derangement, such as homicidal mania."<sup>2</sup> Under the rules of evidence, it appears that it is "frequently competent to show masturbation on the part of the alleged non compos." Frenzy, fanatica mania, erotomania, kleptomania, and various other "manias" come under consideration, evidently as if they were all forms of the mania that is defined above.

But nothing in this volume is so jumbled as the chapter, which should be so important, on Definition of Insanity. One section in particular offers strange analogies and stranger illustrations about dragons, frankensteins, and what not. Moreover, the law seems to know a great deal about heredity, vastly more than science nowadays knows, and about the irritated and diseased brain cells that pathologists have so frequently been unable to discover.

Can proceedings to determine insanity, rules of evidence, the legal status of the insane, which, thanks to the common sense of jurists, frequently ring true to the requirements of justice, be safely based upon such inaccurate fundamentals, such primitive psychological and psychiatric conceptions?

Why should lawyers and law students not consult sound authorities on mental defect and mental disease, and why should they not read the best works that have been written in the last decade? Is this asking too much?

It is to be hoped that we may look forward to the adoption of the more simplified procedure that obtains in some parts of the world by which insanity is defined as legal irresponsibility resulting from mental defect and mental disease; and that only the fact of such irresponsibility shall be determined by the court with the aid of such understanding of these conditions as science can offer.

Boston, Mass.

WILLIAM HEALY.

*Cases and Materials on the Law of Sales.* By Karl N. Llewellyn. Chicago Callaghan & Co., 1930. pp. vii, 1081. \$9.

In editing his casebook Professor Llewellyn has not confined himself to the usual compilation of materials professing upon the surface to be a mere cold presentation of judicially crystallized principles. Rather has he boldly exposed his own interpretation of the decisions, of their classification

<sup>1</sup> Crosswell v. People, 13 Mich. 427, 436 (1865).

<sup>2</sup> Hurst v. State, 40 Tex. Cr. App. 378, 382, 46 S. W. 635, 637 (1899).

and of their trends. In discussion after discussion "principle" is examined in the light of factual situation, marketing technique, social economy and current economic organization—all to the end that the student's cerebrations may not be confined within ossified categories. Not that the casebook is overburdened with such interpretations, nor that an explanation of every case (or every tenth case) is attempted in the editor's own terms. That would be manifestly impossible. But the whole attitude of the book is one of querying, of close analysis. Why? Was the result reasonable? Was the court's ruling reasonable on the facts? How big a factual protection to the retail buyer is the discarding of the rule of the instant case? The editor's attitude toward his subject is in its every phase, markedly unconventional—so unconventional in fact that, from the standpoint of published pedagogical materials, the collection is unique in form, content, emphasis and approach.

The usual casebook runs about 250 cases; the present one contains 801 numbered cases in addition to the mass of comment, extract, annotation and citation—all within a compass of less than a thousand pages. How is it done? Each principal case, edited in the usual manner, is followed by digests of several cases with variant fact set-ups. In each the reasoning of the court is succinctly set forth. The materials are compiled in reliance upon the belief that the student can not have too much material with which to test for himself the validity of enunciated doctrine and observe the relative weight given to different groupings of fact by the judicial mind. Throughout the materials appears a running text of comments, explanations of sales methods or financing devices, and a thorough sprinkling of provocative questions. Indubitably the first effect of this new method of presentation is to cause confusion; the inexperienced student cannot at once assimilate so many new ideas. Fortunately this condition does not last too long. Soon the questioning and comment come to stimulate more and more a querying attitude on the part of the student himself which in turn induces more intensive work. Thus, in the end, succeeding reactions are productive of infinitely better results. Yet the very richness of materials constitutes a problem for the teacher; the quantity is ample for a course of twice the length of the usual sales course. The only solution lies in the exercise of discrimination in the selection of those parts of the book which are to be used in the class room; the rest must be referred to the student's own time and interest.

Consistently with the expressed belief of the editor that the property aspects of the law of sales are of lesser importance, this casebook devotes more than half of its space to the contract elements and relegates "title" to a section of eighty-nine pages, coming only after chapters devoted to the price term of the contract, quantity, various delivery problems, the buyer's remedies and an extended consideration of warranties. In the litigation of a society where a contract for unidentified goods characterizes most distribution transactions prior to sale for actual consumption, present sale of goods actually before buyer and seller does not bulk large. Accordingly the emphasis upon the contract features does not unduly ignore the property aspects of the subject but is rather a significant attempt to place them in their proper proportion.

A great deal of ingenuity is displayed in the organization of two contract subdivisions: The Price Term of the Contract, and The Seller's Obligation as to Quality, "Warranty." The first is a branch of the subject rarely accorded space in a casebook. The chapter concerns itself not only with the usual f.o.b. situations and suits for the price but considers problems of increasing importance in modern marketing, such as credit terms with safety-valve provisions and price-fixing contract stipulations. It is highly

to the credit of the editor that a proper appreciation has been shown for the developing and changing technique in methods of marketing and in standardizing contract terms. No sales casebook can make any pretense of being modern which does not give due consideration to the problems raised by *Weston Paper Mfg. Co. v. Downing Box Co.*<sup>1</sup> and the rules of the Silk Association of America.<sup>2</sup> Here, as in those pages devoted to requirement contracts, Mr. Llewellyn has done a distinct service for the future practitioner by introducing him to situations in which the law is amorphous, but which may be expected to become of increasing importance with the presently developing use of such types of contracts and contract terms.

The presentation of the law of warranty has been developed along historical lines in order to show the changes effected therein by a shift from a primitive, rural and individualistic society with its emphasis upon present sale to the economic organization of society in the present day, attended by its dominant credit economy. The study of the adaptation of judicial doctrine to the changing business viewpoint is arresting. By way of question and discreet annotation the holes in the Sales Act provisions relating to warranty are wisely suggested. Here is a service performed which it is hoped may ultimately bear fruit in the elimination of ambiguous and contradictory clauses of the act; obviously more precise definition in Sections 11-16 is needed. That some of the editor's criticisms are over-refined does not detract from their value as a whole.

"Title" is Mr. Llewellyn's particular obsession and to its disintegration he devotes a considerable portion of his comment. His criticism of the unfortunate use of the concept to settle issues to which it has no necessary relation is well taken<sup>3</sup> and the analysis in terms of results is incisive. But what does he propose to do with the "lump concept" of title in the face of a Sales Act which refers risk of loss to the location of "the property" and makes recovery of the price dependent upon the passing of such property? Plainly he hopes for a change in the judicial practice of resort to the unitary concept—"These split concepts [e.g., of special property and general property in the law of pledge] were not wholly adequate but they were an admirable beginning. Sales law has been curiously backward in building analogous concepts. They are, to be sure, definitely in process of emergence; a good number have already clearly emerged."<sup>4</sup> But such changes are slow; "the inertia of old ideas" does not permit of rapid transition; the Sales Act will continue to tell the courts to look for title.

The case book has too many points of interest to permit an adequate discussion of them all. There must be mentioned, however, the constant devotion to analysis in terms of factual situations and the endeavor consistently to integrate decisions and business practice. Distinct treatment of the financing of sales tends to focus attention upon the particular and prevent consideration of the issues involved therein in terms of a different and perhaps wholly unrelated transaction; hence a separate chapter on Intervention of a Financing Agency in Sales Transactions where documentary transactions, letter of credit financing and trust receipt security

<sup>1</sup> *Weston Paper Mfg. Co. v. Downing Box Co.*, 293 Fed. 725 (C. C. A. 7th, 1923), LLEWELLYN, CASES AND MATERIALS ON THE LAW OF SALES (1930) 23.

<sup>2</sup> At issue in *Raw Silk Trading Co. v. Katz*, 201 App. Div. 713, 194 N. Y. Supp. 638 (1st Dep't 1922), LLEWELLYN, *op. cit. supra* note 1, at 42.

<sup>3</sup> *Dow Chemical Co. v. Detroit Chemical Works*, 208 Mich. 157, 175 N. W. 269 (1919), LLEWELLYN, *op. cit. supra* note 1, at 57; *Cadillac Machine Co. v. Iron Co.*, 205 Mich. 107, 171 N. W. 479 (1919), LLEWELLYN, *op. cit. supra* note 1, at 67.

<sup>4</sup> LLEWELLYN, *op. cit. supra* note 1, at 562.

are adequately considered. The book is of the present day; the practitioner (i.e. the lawyer-draftsman) is clearly in mind throughout the discussions of the cases; 665 are American and 325 of these have been decided since 1920 (195 between 1901 and 1919). A prodigious amount of labor has gone into the collection of these cases; keen discrimination has been exercised in their selection and classification; their value as a teaching tool has been established by actually teaching from them for several years. Whether or not one may agree with Mr. Llewellyn's basic philosophy, it must be admitted that here is a tool which is modern, freshening, stimulating to a degree unattainable by orthodox methods. Its greatest merit lies in the fact that it is realistic, appreciative of the actualities, and without respect for attempts to compress analysis within the limits of outmoded categories.

New Haven, Conn.

WAYNE L. TOWNSEND.

*Insurance Law.* By Sanford D. Cole. Second edition. London, Effingham Wilson, 1929. pp. xiv, 169. 6s.

One takes up this little book with some measure of wonder as to why anybody should attempt to treat, even in the most summary fashion, so great a topic as "Insurance Law" within the compass of 165 duodecimo pages, excellently well printed in large type. The statement found in the preface that the scheme of the publication is "to provide a book which will serve the purposes of ordinary individuals who have no special knowledge of the subject," rather confirms the initial fear that one has before him another of that numerous assembly of books, designed primarily for sale to that class of persons who are simple enough to assume that by such easy process every man may become his own lawyer. But the perusal of only a few pages will quickly overthrow this pre-judgment. It is true that the very clearly written text sometimes discloses a lack of critical interest and even of consistency. Thus on page 35 we find the statement that "as a broad general principle a person who genuinely requires protection against risk of loss has an insurable interest" in property, while two pages farther on the writer refers to a decision of the House of Lords (*Macaura v. Northern Assur. Co.*, [1925] A. C. 619) that the sole stockholder of a corporation had no insurable interest in the property of that corporation, as a matter of course, although to American lawyers the judgment seems scarcely credible. But read as a whole, the writer shows rare discrimination in his statements of rules governing the decisions of insurance cases and remarkable accuracy in his necessarily broad generalizations. The reader who takes up the book with wonder as to why such a book should be written puts it down with no less wonder that such a book could be so well and profitably written.

New Haven, Conn.

WILLIAM R. VANCE.

*How to Conduct a Criminal Case.* By William Harman Black. New York, Prentice-Hall, Inc., 1929. pp. li, 394.

This book begins by sounding a note of hope. The first sentence of the author's foreword runs as follows:

"This book is not written for lawyers alone. It is a straightaway story so simple that any layman can understand it. It contains a glossary explaining the meaning of every technical term used. *It enables readers to comprehend every point in a criminal lawsuit.*" (Italics ours.)

After we have found out the scope of the book from the author's foreword and almost before we know it, we have on our hands a man who has committed larceny in New York. We find out whether to take him to

the district attorney or magistrate. We learn how to get evidence of the crime through the medium of a search warrant. We are warned that search warrants have at times an unfortunate recoil and that we had better be sure that we possess "probable cause". If we do, here are all the forms properly drawn up and signed by Mr. Meegan the owner, and Mary Smith, a corroborating witness. The district attorney then investigates the case. Perhaps we want a bond to keep the peace. If so here are the forms. We present the case in the magistrate's court. We learn how to provide for bail, how to arrest a fugitive from justice in another state, how to proceed before the grand jury, how to try the case, how to appeal. Various side excursions are offered to us by way of habeas corpus, methods of holding witnesses who wish to depart before testifying, changes of venue, etc.

The three hundred things that can happen to a defendant in New York are thus cataloged and discussed. Realizing that no book of directions as to how to operate a mechanical contrivance is complete without blueprints, the author has provided us with a large chart about 24" x 30", which starts with the arrest of the criminal in one square and branches out in all directions showing everything that might happen to him in a criminal trial in little squares. Each square or station of his progress is labelled. They are connected by arrows, so that if the defendant does not happen to land in a square which releases him, he automatically moves on to the next square which in turn opens up its series of possibilities.

The simplicity and straightforwardness of the book is further illustrated by the fact that in its three hundred and ninety-four pages, only thirty-seven terms are used which need explanation in the glossary. Even these terms are not particularly difficult but the author plays safe. For example the glossary tells us that "ante" means "before" and "post" means "after", whereas "vs." means "against."

The author is not critical of the existing methods of criminal procedure. If there is anything which he would change about it, it is not mentioned, and he goes to some trouble to explain and justify distinctions between legal facts and non-legal facts, and the general methods in vogue in drawing up criminal pleadings. If present indictments are obscure and contradictory, the fault lies in the nature of things, and not in the rules of criminal procedure. For example, in referring to the practice of inserting contradictory counts in an indictment, so confusing to a layman, he says: (p. 369)

"Here the two stories (counts), while contradictory in detail and in essential detail for each story, set out a series of facts which amounts to larceny by virtue of a different provision of the statute; but, read together, they have reference in the mind of the pleader, to the same transaction, *una et eadem res* (the glossary helpfully informs us that this phrase means 'one and the same thing'), but two different versions thereof. *And this is as it should and must be.*" (Italics ours.)

The book will be useful to anyone who wants a quick reference to the mechanics of New York criminal procedure.

Morgantown, W. Va.

THURMAN ARNOLD.

*Edward Coke, Oracle of the Law.* By Hastings Lyon and Herman Block. Boston, Houghton Mifflin Co., 1929. pp. viii, 385. \$6.

*Chief Justice Coke; His Family and Descendants at Hollcham.* By Charles W. James. London, Country Life, Ltd., 1929. pp. xiv, 340.

The long subtitle of the first of these books accurately describes its contents to be the story of Coke's long rivalry with Francis Bacon, some account of their times and contemporaries, famous trials in which Coke par-

ticipated, his stand against King James I to maintain the supremacy of the Common Law, his share in wresting the Petition of Right from King Charles I, with a statement about the law writings of Coke on which generations of lawyers were trained. These matters find their appropriate places in five sections respectively on Coke the boy, the lawyer, the judge, the patriot and the writer. There is an appendix on the Rule in *Shelley's Case*. The book is well indexed, and contains nineteen excellent illustrations.

Without the trappings of learning, there being no foot-notes and no precise references in the text to the sources of information and quotations, this book is in fact the result of painstaking and extensive search among printed materials. So far as facts are concerned, it probably has added nothing to our information concerning Coke and his times. On the other hand it has overlooked nothing already known, and could easily have been supplied by its authors with all of the paraphernalia of Ph.D. scholarship. That they have not done so should not prevent one from realizing that they have given a more complete and circumstantial account of Coke's public life than has hitherto been available. By synthesizing known facts they have performed a creative act. The result is in many respects happy.

The authors have been influenced in their literary style by the prevalent fashion in biography. That is, they have sought to make the book interesting and easy reading. At the outset they labor in the process, being lumberingly sprightly. When they reach Coke the lawyer, they strike their true stride and proceed straightforwardly with a wealth of detail in itself so interesting that the call to literature is forgotten.

The method of the book leaves no spot for a final summary and appraisal of Coke's character, accomplishments, and place in history. The reader is left to decide for himself. Here, it seems, an opportunity was lost. Is the traditional view that Coke was a "mere lawyer" correct? What is the explanation of the strikingly contrasted episodes of his life? His harsh conduct as a prosecuting officer, the sacrifice of his daughter to obtain his own return to political influence, his bitter antipathy to Bacon, his avarice for land, on the one hand, and on the other, his industry, his personal abstemiousness, his learning, his bold stand against James I for the independence of the judiciary, his equally bold defiance of Charles I in defence of Parliament. In this last episode in Parliament, Coke first burst into tears, unable to speak, and later, controlling himself, named the Duke of Buckingham as the cause of all their miseries. "How came tough old Coke upon Littleton, one of the toughest men ever made, to melt into tears like a girl, and sit down unable to speak?" asked Carlyle. "The modern honourable gentleman cannot tell. Let him consider it, and try if he can tell! And then try if he can discover why he cannot tell!" The authors do not answer the question how he could have been the "most offensive of Attorney-Generals" (Spedding) and "one of the most disagreeable figures in English history" (Trevelyan), while he was also the "most admired and venerated of judges" (Spedding).

Mr. James, former librarian at Holkham, in the second of the books under review, deals chiefly with the private life of Coke, and by the use of material to much of which other biographers have not had access, lays the basis for new judgments. While he has consulted printed works, his volume is made up mostly from manuscripts (largely unpublished) which are at Holkham, at Heveningham Hall, and in the British Museum, the Bodleian and Trinity College, Cambridge. The greater part of his book is devoted to the family and descendants of Coke, but the material on the family and on the first two generations of descendants throws much light on Coke himself. The fifty pages which relate directly to Lord Coke are filled with quotations from manuscripts, portions of some of which are reproduced in facsimile.

For example, while he was writing, Mr. James had before him Coke's own copy of "A Reporte of the Judgment and Part of the Arguments" in Shelley's Case, with his notes thereon; his notes for his seven Inner Temple readings; his Answer to the King in the Commendam case, in his own handwriting; an account of his imprisonment in the Tower; and a chronological list of events in his life, entitled "Degrees and Proceedings." At the end of this record Coke wrote these words, "He came to all his offices and places without begging and bribery."

The author does not defend Coke for all things for which he has been universally condemned; but on some matters he begs to differ. On the assertion that Coke was narrow in his religion—a fanatical puritan—Mr. James says, "I do not agree. His constant reliance on, and veneration for, the law of God as before everything else is very marked. I believe him to have been a sincerely religious and devout man of what is called the 'old High Church' school." An intimate acquaintance of Coke's is quoted as saying, "Never was man so just, so upright, so free from corruption as he was. Courteous to great and small, and the most religious and orderly man in his home that lived in our state." Ample evidence from household accounts is given that Coke was not stingy, and that he kept a hospitable home. There is much to show that to his large family he erred in being over-generous, and that Lady Hatton must bear a large share of the blame for the disgraceful events that cluster around their daughter Frances. For those who are interested in the life of a great public figure, Mr. James' book offers a fascinating supplement to the formal biographies. In lawyers and law writers the following comment by Coke written when he was composing his Institutes may strike a responsive chord:

"Whilst we were in hand with these four parts of the Institutes, we often having occasion to go into the city, and then into the country, did in some sort envy the state of the honest ploughman and other mechanics; for one, when at his work, would merrily sing, and the ploughman whistle some self-pleasing tune, and yet their work both proceeded and succeeded; but he that takes upon him to write, doth captivate all the faculties and powers both of his mind and body, and must be only attentive to that which he collecteth, without any expression of joy or cheerfulness whilst he is at work."

New Haven, Conn.

FREDERICK C. HICKS.

*Famous Speeches by Eminent American Statesmen.* By Frederick C. Hicks. St. Paul, West Publishing Co., 1929. pp. xi, 990. \$5.

This is an anthology of important public addresses made by leaders of American thought since 1850, from Seward to Lincoln. If one were inclined to be captious, he might take issue with Professor Hicks on his definition (in the preface) of the last word in the title, 'Statesmen'. If he had said 'Eminent Americans' instead of 'Eminent American Statesmen' the title would have been more in keeping with the contents, and no less suggestive.

One cannot examine the book without becoming aware of the fact that not only is oratory not dead, but that the past three-quarters of a century has produced speeches and speakers that will compare favorably with those of any previous period in American history. A reader may miss from the Table of Contents the names of some of the more distinguished American orators, but if he will read the speeches themselves he may be surprised to learn what a substantial amount of real oratory has been delivered during this period. This volume is an effective answer to those who assert that oratory is a lost art.

To attempt a detailed account of the fifty-odd speakers and the 960 pages

of their utterances is quite impossible. The leading subjects in American history during the past seventy-nine years are discussed, several of them from divergent angles. The work is a comprehensive and well chosen collection that should be of real value to the student of the spoken word.

An excellent feature of the book is the foreword that precedes each speech. It gives a brief account of the speaker, the occasion of the speech, and the date, with occasional significant comments.

Clinton, N. Y.

CALVIN L. LEWIS.

*Leske-Loewenfelds Rechtsverfolgung im internationalen Verkehr*, Band VIII, *Das internationale Privatrecht der europäischen und aussereuropäischen Staaten*, 1. Teil, *Die Quellen des internationalen Privatrechts*. By A. N. Makarov. Berlin, Carl Heymanns Verlag, 1929. pp. xviii, 459.

This part of the well known work by Leske-Loewenfeld, as its name indicates, is devoted to the source material of private international law. The compiler is a former professor of law of the University of Petrograd. The present volume contains the statutory provisions of all the countries of the world, including the 48 states of the United States, relating to the conflict of laws, and all treaties relating to the subject, and in addition a bibliography of the literature of each country.

It is most remarkable that a single person should have possessed a sufficient knowledge of languages to be able to find the source material of so many countries and to give an accurate translation thereof, but apparently this is what Professor Makarov has successfully accomplished. The compiler has used the latest collections of laws and the latest editions of the codes that were available. Statutory material thus presented cannot, of course, be relied upon with confidence, for changes may occur, as, for example, in the case of Mexico, even while the work was going through the press. However, to the student of the conflict of laws who is interested in getting a general survey, the work is of the greatest value.

New Haven, Conn.

ERNEST G. LORENZEN.

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