

Criminal Law is an excellent subject for introducing a student to an analytical study of cases and an historical view of the common law method of the development of law. But the reviewer never finishes teaching the subject without feeling that the class has been offered a very inadequate picture of the living law. Interpretation and application of criminal statutes, problems of practice and procedure in criminal trials, cases involving probation, the indeterminate sentence and theories of penology, form a very important part of the grist which the courts are daily grinding. Yet these subjects are completely ignored in the law schools in the course on Criminal Law—at least in so far as text material in the casebooks is concerned. It is to be hoped that the casebook of the future will be able to present a truer picture of the field of modern criminal law and that the curriculum will provide adequate time for its study. Until such a book shall be written, Dean Mikell's *Cases* will doubtless continue to be, as the first edition has been in the past, the most widely used, and the most usable, collection of cases for law school teaching of the subject.

THOMAS W. SWAN

*Arbitration and Business Ethics.* By Clarence Birdseye. With a Foreword by Charles L. Bernheimer. New York, Appleton & Co., 1926. pp. xiii, 305.

This little book is devoted not only to Commercial Arbitration, but also to Common Law Arbitration, Statutory Arbitration, Industrial Arbitration and Other Examples of Arbitration—and Business Ethics. Such are the headings of the five parts into which the book is divided. The discussion of these several types of arbitration is found in the space of 177 pages, including the last chapter in which the author makes a twelve page recapitulation of his preceding twenty chapters.

"Strict or pure commercial arbitration," according to the author, is found only in self-governing commercial organizations, such as exchanges, and in trade associations. A permanent tribunal is a necessary element. By-laws providing for the sanction of expulsion or suspension to abide an award form another essential element. Rules providing for the arbitration of future disputes are also indispensable. Economic considerations, such as costs and delays of court litigation, "do not have much or any weight in connection with strict commercial arbitration. The activating motives are of a much higher nature."

Contrasted with this strict Commercial Arbitration, with its "ocean liner perfection" is the crude Common Law Arbitration. Parties attempted only spasmodically to settle a dispute by such arbitration as came under the common law rules. Their attempts were chiefly "to avoid litigation with its expenses and delays," and such arbitrations were without "any suggestion of higher business ethics which lie at the very foundation of strict commercial arbitration of any time or clime." These attempts to arbitrate were "merely a temporary and really worthless makeshift, and might well earn the contempt of the judiciary."

The author's treatment of Statutory Arbitration embraces a reference to the English Arbitration Act, a summary of difficulties deemed incident to procuring legislation in the United States to change common law rules and a twenty-nine page report of the history of arbitration in the New York Chamber of Commerce (1768-1926), and a reference to arbitration statutes recently enacted in the United States.

In discussing Industrial Arbitration the author reports on the industrial reorganization following the English Industrial Revolution of 1760, the advent of the "factory system," the development of labor unions, and the

fact that while "arbitration was and almost invariably has been banned by the trade unions" its development may be looked for out of the employer-employee trade agreements. It is the author's plea to resort to "true industrial arbitration instead of old-fashioned collective bargaining." The plans of the Bethlehem Steel Corporation and of Hart, Schaffner & Marx are reported in part.

The last part, entitled Other Examples of Arbitration, embraces a brief report of the practices of the United States Chamber of Commerce, a reference to arbitrations under Rules of Court, a report on the Jewish Court of Arbitration and a reference to the existence of the American Arbitration Association. The functions of officials like fence-viewers are treated in a two-page chapter entitled Official Administrative Arbitration by Non-Judicial Functionaries. Conciliation and Commercial Courts and Small Claims Courts are referred to in separate chapters of five and three pages respectively.

An appendix of 110 pages contains a reprint of 100 ordinances of the cloth workers of the City of London (1587) (number 46 concerns the settlement of disputes), a reprint of the Objects-clauses of certain business organizations, a reprint of the arbitration clause used by the Moving Picture Industry, a reprint of the arbitration statutes of Illinois, New York, New Jersey, Oregon and Massachusetts, the United States Arbitration Act, a reprint of the Hart, Schaffner & Marx Labor Agreement, the Anthracite Agreement of February 17, 1926, and some arbitration forms used by Chambers of Commerce and Trade Associations.

The book is chiefly a platitudinous glorification of business organization. "Business ethics," "commercial honor and good faith," "service," "co-operation," "uplift," "altruistic and ethical spirit," "larger" and "higher" "interests," "lend a hand" "spirit," "sacredness of contracts," "get-together spirit," "manhood rights," "honorable dealing," and like expressions become an obsession. They crowd out any critical or thorough treatment of the subject. The following paragraph, which is the author's sixth element of Commercial Arbitration, may be cited as typical:

"Sixth, underlying and enveloping and giving life and vision to the foregoing elements, is the ethical and guild spirit which was responsible for the original birth of the organization. That spirit grows and is strengthened as the decades pass by, and as new generations gain control who were reared under the better conditions of the new collectivism, and who have not personally experienced the evils of the older individualism which finally found an unwilling combination of discordant trade rivals. That spirit works increasingly for better business ethics and methods, for the sacredness of contracts, for mutual confidence of fellow members' integrity and good faith, for loyalty to the organization and its ideals, for a realization that the whole is greater and better than any of its parts, for a united effort to make the future better than the past, and to lend a hand."

□ WESLEY A. STURGES

*A Selection of Cases on the Law of Municipal Corporations.* By Charles W. Tooke. Chicago, Callaghan & Co., 1926. pp. xlv, 1335.

The purpose of Professor Tooke's collection of cases on Municipal Corporations is to provide for a course of "sixty semester hours" amounting to two hours a week throughout the school year. In the reviewer's opinion this is not too long a time to be devoted to the subject of Municipal Corporations. It is, to be sure, a quite special subject. On the other hand, questions involved in this topic give rise to an immense amount of litigation;