BOOK NOTICES.


It is a circumstance of note in the history of the English law of contract that two such books as these should fall to be chronicled at the same time. The little volume from the Clarendon Press, which would almost tempt a layman to read law by its attractive form, will delight lawyers by the merits of its style and matter. It is written by one who is at home with ideas, and who seizes with the readiness of a scholar everything which is in the air. It is remarkably readable, its illustrations are new and most wisely chosen, and, without pretending to be a work of great originality, it gives proof of the writer's fresh and apprehensive intelligence on every page. It is also a model of proportion. Most works of the sort which rise above mediocrity show a bias in the direction of some particular doctrine, and develop that at the expense of others equally important. But here everything receives its due and orderly attention, and everything is seen in the clearest light.

Without holding one's self ready or bound to prove the proposition, one may suspect that the work owes some of its more penetrating qualities to Mr. Langdell's Appendix attached to the first edition of his Cases on Contracts. There was a deal of suggestive matter hidden away there in a few lines, sometimes, to be sure, almost as latent as the good law which Lord Coke tells us is expressed by Littleton's "&c.," but nevertheless to be found by the careful student. And now Mr. Langdell has published a second edition, and the brief index of the first has grown into a series of systematic discussions.

It is hard to know where to begin in dealing with this extraordinary production,—equally extraordinary in its merits and its limitations. No man competent to judge can read a page of it without at once recognizing the hand of a great master. Every line is compact of ingenious and original thought. Decisions are reconciled which those who gave them meant to be opposed, and drawn together by subtle lines which never were dreamed of before Mr. Langdell wrote. It may be said without exaggeration that there cannot be found in the legal literature of this country, such a tour de force of patient and profound intellect working out original theory through a mass of
detail, and evolving consistency out of what seemed a chaos of conflicting atoms. But in this word “consistency” we touch what some of us at least must deem the weak point in Mr. Langdell’s habit of mind. Mr. Langdell’s ideal in the law, the end of all his striving, is the elegantia juris, or logical integrity of the system as a system. He is, perhaps, the greatest living legal theologian. But as a theologian he is less concerned with his postulates than to show that the conclusions from them hang together. A single phrase will illustrate what is meant. “It has been claimed that the purposes of substantial justice and the interests of contracting parties as understood by themselves will be best served by holding &c., . . . and cases have been put to show that the contrary view would produce not only unjust but absurd results. The true answer to this argument is that it is irrelevant; but” &c. (pp. 995, 996, pl. 15). The reader will perceive that the language is only incidental, but it reveals a mode of thought which becomes conspicuous to a careful student.

If Mr. Langdell could be suspected of ever having troubled himself about Hegel, we might call him a Hegelian in disguise, so entirely is he interested in the formal connection of things, or logic, as distinguished from the feelings which make the content of logic, and which have actually shaped the substance of the law. The life of the law has not been logic; it has been experience. The seed of every new growth within its sphere has been a felt necessity. The form of continuity has been kept up by reasonings purporting to reduce every thing to a logical sequence; but that form is nothing but the evening dress which the new-comer puts on to make itself presentable according to conventional requirements. The important phenomenon is the man underneath it, not the coat; the justice and reasonableness of a decision, not its consistency with previously held views. No one will ever have a truly philosophic mastery over the law who does not habitually consider the forces outside of it which have made it what it is. More than that, he must remember that as it embodies the story of a nation’s development through many centuries, the law finds its philosophy not in self-consistency, which it must always fail in so long as it continues to grow, but in history and the nature of human needs. As a branch of anthropology, law is an object of science; the theory of legislation is a scientific study; but the effort to reduce the concrete details of an existing system to the merely logical consequence of simple postulates is always in danger of becoming unscientific, and of leading to a misapprehension of the nature of the problem and the data.

The preceding criticism is addressed to the ideal of the final methods of legal reasoning which this Summary seems to disclose. But it is to be remembered that the book is published for use at a law school, and that for that purpose dogmatic teaching is a necessity, if any thing is to be taught within the limited time of a student’s course. A professor must start with a system as an arbitrary fact, and the most which can be hoped for is to make the student see how it hangs together, and thus to send him into practice with something more than a rag-bag of details. For this purpose it is believed that Mr. Langdell’s teachings, published and unpublished, have been of unequalled value.
Not only for this purpose, however, for even if Mr. Langdell's results should hereafter be overruled in particular cases, they will have done very nearly as much to advance the law as if they had been adopted. For they must be either adopted or refuted, they cannot be passed by. And a conclusion based upon the refutation of its opposite is very different from the same opinion based on ignorance of the arguments by which such an opposite could be maintained.


The first edition of Mr. Mayne's work on Damages was published in 1856, and was reprinted the same year by the Messrs. Johnson of Philadelphia, in their "Law Library." In 1872, Mr. Lumley Smith edited the second English edition; and in 1877 the third English edition appeared, with the joint labors of Mr. Mayne and Mr. Smith. In the present edition we have the first attempt to adapt the work to the necessities of the American lawyer.

In his preface to the first edition, Mr. Mayne acknowledges his indebtedness to Mr. Sedgwick's work on the same subject, but states that he has only resorted to American decisions where there were no English decisions in point. Mr. Smith, in the second edition, adhered to the same rule. It is obvious from an inspection of their work that the few American cases cited were taken, not from the reports, but from Mr. Sedgwick's treatise. In the third edition, no attempt was made to include the American cases decided since the publication of the second edition. Mr. Wood had, therefore, a wide field before him. We regret to say that we find much unevenness in his manner of doing his work. Some topics are annotated with all the authorities from Maine to California, while others are passed by in silence. One of the most vexed subjects which an admiralty lawyer encounters in his practice is the measure of damages, where a cargo is lost by a collision at sea, through the fault of a vessel other than the carrier. The difficulty arises from the interpretation which the courts have put upon the rule laid down in Smith v. Condry, 1 How. 28, where the cargo was lost by such a collision in the port of departure. This subject is not mentioned by Mr. Wood, although the cases which bear upon it are numerous. So, nearly the only addition made by Mr. Wood to the subject of Marine Insurance is a long note on persons who have an insurable interest,—a topic which is entirely out of place in a treatise on Damages.

Mr. Mayne, in the preface to his first edition, spoke of the great difficulty he had encountered in distinguishing between the right to recover and the amount to be recovered. Whenever we have had occasion to examine his book, we have thought he was worsted in his encounter with this difficulty. Mr. Wood does not seem to have had any encounter at all; but to have either been unconscious of the existence of the difficulty, or to have succumbed without a struggle. We consequently find a great deal in his work which might better have been left out, and which detracts from the "great value" of which the author feels sure the work will be found to the profession. Another