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### Book Reviews

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(5) Abolish the office of Juvenile Judge and confer the powers and duties on the Clerk of the Superior Court, as is now done in the smaller counties of the State.

(6) Combine county and city health departments.

There are other consolidations that could be made, such as all the water and sewerage district boards under one board.

The contention that in any such consolidation the officers constituted to administer the joint affairs of the county and city must be county officers, is not justified. Under the authority given the Legislature by Section 14 Article VII of the Constitution it could abolish the offices of county commissioners, treasurer, register of deeds and surveyor and substitute other offices or boards in the place of these offices, and give them such powers over the combined functions of the consolidated governments as it saw fit.

Therefore, there would seem to be no constitutional objection to an act of the Legislature consolidating many of the County and City departments.

A. C. AVERY.

Asheville, N. C.

## BOOK REVIEWS

*Stephen J. Field, Craftsman of the Law*, by Carl Brent Swisher. Washington, D. C.: Brookings Institution, 1930. Pp. 473. \$4.00.

"When Terry arrived at a point just behind Field he turned suddenly and struck him twice on the side of the face \* \* \*, with his right hand extended, Neagle drew his gun with his left and fired twice in rapid succession, killing Terry instantly."

This is not quoted from a moving picture scenario; it is a passage from the life of a Supreme Court justice. The Neagle referred to was Justice Field's body-guard, and the Terry who was killed was a former Chief Justice of the State of California. I quote this passage because it is Exhibit "A" to support the statement that, while the book contains an entirely satisfactory account of Justice Field's life and work as a member of the Supreme Bench, it also contains plenty of interesting action and anecdote. Without seeking to give that aspect of the book undue prominence, I suggest that the anecdotal part of the book contains an answer to the question which many litigants—especially female litigants—ask themselves as to whether or not it would be a good thing to pull the hair of judges who decide

cases against them. Justice Field's hair was not pulled but the hair of Judge Sawyer, a distinguished member of the Federal Bench in California, was given quite a terrible yank in a railroad car by a woman whose case was pending before him, he having decided a preliminary matter against her. At a later date she gleefully remembered the wooling she had given Judge Sawyer and said: "I gave it to him good. I pulled his old hair good." Notwithstanding the personal satisfaction she got out of the affair it was altogether futile because in the end she lost her case. It can be put down, therefore, for the guidance of future litigants, that no matter how much they want to pull the judge's hair it will do them no good.

The explanation of these incidents and others of a similar nature which are described in the book is that Justice Field was a Forty-Niner in California and was active in the life of the state during its rugged pioneer days. He must have been a man of great moral courage because he constantly rendered pro-Chinese decisions which very naturally brought down upon him the intense hatred of many Californians. He always insisted in his judicial decisions that the State of California could not even indirectly control Chinese immigration, holding always that it was a subject for congressional action alone. One incident which is related in connection with his interest in the Chinese question may be of some value to the psychologists who are investigating the mechanics of thinking. John F. Swift, one of the commissioners who had helped draft a treaty with China, was very much interested in lobbying the treaty through the Senate. The treaty was in danger and he needed Justice Field's help. The Justice was entirely willing to assist him but first wanted to be convinced that the treaty was sound and should be adopted. For some reason or other they seem to have been in a big hurry, so Field said: "I am in the habit of listening to argument and my mind is trained by that habit to reflect and deliberate while it is going on before me. I think best and quickest while so engaged. Imagine yourself addressing the court on the point made against your treaty and argue it to me. Go on." Whereupon Swift proceeded to argue the matter, convinced Field, and Field ordered out his horse and buggy and proceeded in great haste to the Capitol to lobby for the treaty. This reminds me of a client I had once who was telling me about his case which was rather involved. I asked him a question which called for a rather long answer, and he rose, stood by my desk and began to answer me. I suggested that he sit down but he replied that he was

a traveling salesman and was in the habit of talking while standing at a man's desk, and that he believed he could answer my questions more satisfactorily if I would allow him to assume that position.

Regardless of what the mechanics of his thinking process were, Field seems to have been an unusually clear-headed judge, although most of his thinking was in favor of corporate interests and what we now call entrenched wealth. He apparently took the side of corporations and capital on all new questions. For example, he dissented from the decision of the court in the epoch-making case of *Munn v. Illinois* and was one of the five justices voting to hold the Federal income tax law passed by Congress in the year 1894 to be unconstitutional. It is interesting now, after the operation of the current income tax law for a number of years with entire safety to the government, to read the predictions of the dire results that he said would be bound to follow the adoption of an income tax policy by the government. Among other things, he said the adoption of such a policy "will mark the hour that the sure decadence of our government will commence." Although the bent of his mind was thus against the trend of the times, there is no question but that he was of tremendous service in maintaining the balance and sanity of the court, and the very fact that the majority of the court knew that they would have to deal with his hard-headed, vigorous dissents made them all the more careful to find and state the real truth of each legal question that came before them involving the opposing interests of the people on one side and the corporations on the other.

He served as a Supreme Court Justice for a little more than thirty-four years, and, although toward the end his mind became cloudy on some subjects, it was always clear on law. Upon one occasion toward the close of his career as a justice it was found necessary to present certain materials to him at his home. Two of his colleagues visited him there, found him seated in an arm chair, his head dropped forward on his breast and his eyes closed. Uncertain what to do the visitors hesitantly took out their papers and began to read them to him. For some time Field gave no evidence that he heard. Then suddenly he raised his right hand. "Read that again," he commanded. The passage was read again. "That is not good law," he exclaimed. "You err when you say—" and here he launched into a clear and forceful argument which finally convinced his listeners that he was right. His argument completed, he lapsed into his former comatose condition. He showed no sign that he was aware

when the two justices gathered up their papers and left the room. They returned to the Capitol, and upon presenting Field's argument to their colleagues the whole court changed its decision and acquiesced in the opinion which Field had given.

I cordially recommend this book as being an unprejudiced account of the life and work of a great judge, told in a manner to sustain one's interest from beginning to end.

C. W. TILLET, JR.

Charlotte, N. C.

*The Law of Coöperative Marketing Associations*, by John Hanna.  
New York: The Ronald Press Co., 1931. Pp. 509. \$7.00.

Professor Hanna's work ranks with Professor Frankfurter's two studies, *The Business of the Supreme Court*, and *The Labor Injunction*, for the brilliance of its achievement in the integration of law and fact. It is more than a law book; it is the epic of an economic institution. The pages are alive with personalities, individual and corporate. The drama of marketing the principal agricultural products is played against a legal backdrop, it is true, and the characters wear a familiar legal costume of contract, statute, and court decision, but the liveliness of the action is new to the law-book world.

The last one hundred and fifty pages are appendices filled with samples of articles of incorporation, by-laws, marketing contracts of various sorts, financing instruments, and federal statutes. There are two long chapters of comparison between the standard coöperative marketing act and the variations of legislation found in the several states, arranged both analytically and state by state. This material is exhaustively documented. Dry as dust to the casual reader, these appendices and statutory chapters will be of enormous help to the lawyer, coöperative executive, or banker.

It is in the historical chapter, and in those dealing with the organization, marketing, management and financing aspects of the work, that the uniqueness of the author's accomplishment stands out. His attitude is not that of a lawyer who has to litigate in court a dispute which developed before he was consulted. Rather, the writer sits in the place of the business counsellor, starting with a difficult business situation and evaluation with business and legal acumen the various choices open to him. The responsiveness of contract devices

to the varying needs of the raisin growers in California as distinguished from the needs of the cotton growers in the Carolinas, for example, causes one to wonder whether the law of contracts is found in the philosophic universalities of the Restatement of that subject, in the myriad of headnotes in the American Digest System, or in the carefully engineered instruments developed by the dominant forces in each field of commercial activity.

M. T. VAN HECKE.

Chapel Hill, N. C.

*North Carolina Handbook of Evidence*, second edition, by Walter S. Lockhart. Cincinnati: The W. H. Anderson Co., 1931. Pp. 540. \$7.50.

Every North Carolina lawyer who tries cases will acquire this new edition of a familiar handbook, and will be constantly grateful for its collection in brief compass of the statutes and references to the decisions. Mr. Lockhart has been assisted by Mr. Richmond Rucker in preparing this edition and they have accomplished ably and successfully what they set out to do—to bring up to date a handy guide to the enacted and decided law in North Carolina on the subject of evidence. The reviewer's only regret is that these two gentlemen did not take advantage of the opportunity presented by their re-survey of our local trial practice, to go beyond mere description—useful as that is—and to criticise such of our local doctrines as appear to stray from the paths of sound expediency. They have done this in only a few instances, for example in section 94 they rightly stigmatize our rule that photographs may never come in as "substantive" evidence as "a relic of misconceived judicial interpretation."<sup>1</sup> Other vagaries, such as the questionable practice of permitting proof of prior consistent statements of a witness by way of "corroboration" in the absence of any attack on the witness (section 282), the holding in *State v. Carr*<sup>2</sup> that the opinion of an expert witness upon a matter in issue may not be admitted, and our unduly restrictive doctrines as to the admissibility of book-entries<sup>3</sup> of a party in his own behalf (section 143)—all these pass without adverse

<sup>1</sup> Compare John H. Anderson, *Admissibility of Photographs as Evidence*, 7 N. C. LAW REV. 443 (1929).

<sup>2</sup> 196 N. C. 129, 144 S. E. 698 (1928). See comment by T. S. Rollins, Jr., in 7 N. C. LAW REV. 320 (1929).

<sup>3</sup> See *Proposals for Legislation in North Carolina*, 9 N. C. LAW REV. 13, 43 (December, 1929).

comment. It would have been most interesting and helpful likewise if the learned authors had expressed their opinion upon some of the moot and unsettled evidential problems that the bench and bar will have to face in future, such as the question of the extent to which the common law rules of evidence apply in hearings under the Workmen's Compensation Act.

It is believed that more frequent references to detailed comments in the pages of this REVIEW<sup>4</sup> might have added to the usefulness of the volume, though perhaps the reviewer may be prejudiced in that regard.

A just answer to these charges is that the author's chief aim was not to leave the North Carolina law of evidence better than they found it, but to describe carefully, competently and accurately the current practice as it is. This they have achieved in fullest measure.

C. T. McCORMICK.

Chapel Hill, N. C.

*Essays in Jurisprudence and the Common Law*, by Arthur L. Goodhart. Cambridge, England: Cambridge University Press, 1931. Pp. xv, 295. \$5.00.

This collection of essays comprises thirteen articles by the distinguished editor of *The Law Quarterly Review* which have appeared from time to time within the course of the last four years in various legal periodicals. These essays are divided roughly into two groups: Essays in Jurisprudence and Essays on the Common Law. In the first group fall the following essays: *Determining the Ratio Decidendi of a Case*, *Recent Tendencies in English Jurisprudence*, *Case Law in England and America*, *Three Cases on Possession*, *Corporate Liability in Tort and the Doctrine of Ultra Vires*, *Liability for the Consequences of a "Negligent Act,"* and *The Palsgraf Case*. In the second group are placed these essays: *Liability for Things Naturally on the Land*, *Blackmail and Consideration in Contracts*, *Costs*, *The Legality of the General Strike*, *Recent Cases on Banking and Negotiable Instruments*, and *The New York Court of Appeals and the House of Lords*. Clear and keen in their analysis of legal

<sup>4</sup>For example, C. W. Hall, *Impeachment by Evidence of Witness's Bad Character*, 5 N. C. LAW REV. 340 (1927) D. S. Gardner, *Admissibility of Confidential Confession to Spiritual Adviser*, 6 N. C. LAW REV. 462 (1928); Frazier Glenn, Jr., *Effect of Uncontradicted Rebutting Evidence on Presumption*, 8 N. C. LAW REV. 228 (1930); John B. Lewis, *Parol Agreements to Vary Liability of an Indorser*, 8 N. C. LAW REV. 315 (1930).

problems, written in an interesting and lucid style, and covering a rather wide range of subject-matter—these essays embody a distinct contribution to legal literature.

FRED B. McCALL.

Chapel Hill, N. C.

*English Executor and Trustee Business*, by Gilbert Thomas Stephenson. New York: Harper & Brothers, 1930. Pp. 262. \$4.00.

This is a comparison between the broader aspects of English and American law and practice in the fields of corporate fiduciaryship, administration of estates, and inheritance taxation. It is based upon two summers' visits and interviews with the officials of some twenty of the leading English corporations and the Public Trustee. Written in a journalistic vein, it is neither exhaustive nor pedantic. It is, however, interesting and comprehensive. Business and administrative policies and problems which predominated in Smith, *The Development of Trust Companies in the United States* are, in this book, subordinated to the discussion of the law, and particularly the new statutory law connected with the Law of Property Acts of 1925. But the relating of that new law to the administrative needs is excellent.

The lawyer or judge or trust company executive who has occasion to handle an English estate, would do well to get his bearings from this book before starting in search of more definitive material on doubtful points. The legislator might find food for thought in the services of the Public Trustee. Mr. Stephenson's reasons for believing that we do not need such an institution in America are not convincing. The work would have been more dignified if the last chapter had not been devoted to telling the English readers how much better American trust companies handle advertising, selling, profits, and the like.

M. T. VAN HECKE.

Chapel Hill, N. C.

*Jurisdiction and Procedure of the Federal Courts*, by John C. Rose. 4th ed. Albany: Matthew Bender & Co., 1931. Pp. 994. \$15.00.

Since Judge Rose published in 1915 his little book of lectures on Federal Procedure, delivered to his classes at the University of Maryland, its popularity has induced its publishers to issue three new editions, each larger and more costly than the last. The successive



increments in size come chiefly by enlarging the appendices. In addition to the Judiciary Act, the Judicial Code, the Equity Rules, and the Supreme Court Rules, the present edition adds for the first time, eighty pages of practice forms. The original lectures were admirable in their kind, simple, clear, readable, and mellifluous. They were designedly elementary and were intended not for reference by practitioners upon whose narrow and detailed points upon which controversy usually arises, but for general reading by those first approaching the Federal portals for the purpose of acquiring a rounded introductory knowledge of the Federal judicial system and procedure. This edition which has added only about two hundred cases, besides references to the new statutes and rules, to the sparse citations in the notes of the earlier edition has not greatly expanded the usefulness of the work. It is still the best, though now a disproportionately expensive, modern introductory text on Federal Procedure.<sup>1</sup>

C. T. McCORMICK.

Chapel Hill, N. C.

*Saving Taxes in Drafting Wills and Trusts*, by Joseph J. Robinson.  
Kansas City: Vernon Law Book Co., 1930. Pp. 584. \$7.50.

After anxiously watching a legislature explore all spring for new sources of revenue with which to support public education, one is apt to view with alarm a book which purports to tell lawyers how to deprive the states and the federal government of income and inheritance taxes by the manipulations of draftsmanship. His fears, however, are soon allayed. For the author, the tax counsel of a great Chicago trust company, has not shared his skill with the reader. Instead, it is another stereotyped law-text book, with the literal words of decisions, statutes and departmental regulations arranged in a colorless mosaic. The federal legislation of 1928 fills the last two hundred pages of the book and is often summarized, piecemeal, in the earlier chapters. There are rough summaries of state statutes, by topics, but without the references to volume and page so necessary as guides to the exact language the lawyer needs. The table of contents and index are full, but when one has utilized these leads the page where he finds himself is disappointing.

M. T. VAN HECKE.

Chapel Hill, N. C.

<sup>1</sup> DOBIE, HANDBOOK OF FEDERAL JURISDICTION AND PROCEDURE (1928) is much more detailed and of far wider usefulness to the seasoned Federal practitioner, but by the same token it can hardly be classed as a merely elementary text.