Another cause of public apathy in both large and small claims may be the distrust of attorneys and plaintiffs once bitten by the umpireage[11] system of arbitration. Under this system each side selects a paid arbitrator and, if they cannot agree, they select a paid umpire. It is only natural when the umpire's findings of facts and figures coincide with those of the insurance company's arbitrator, as they too often do, that the individual claimant should feel that the umpire has favored the side most likely to employ him in the future as arbitrator or umpire. Two of the shorter articles on "Should Arbitrators Be Paid," one representing the English viewpoint that "the laborer is worthy of his hire,"[12] the other commending the American Arbitration Association for its National Panel of unpaid experts on call to act as disinterested three man courts,[13] point up this problem. Plaintiff's counsel who have received an award of $7,000 for a $30,000 house gutted by fire and then been denied relief[14] "as for a total loss" when the Building Commissioner has ordered it torn down as too dangerous to repair have nothing but a wholesome fear of the umpireage system. It is to be hoped that arbitration of the modern type will dispel this attitude.

The leading article[15] on the law side of the Journal is directly related to the insurance symposium. It traces the development of the distinct concepts of appraisal and arbitration. It emphasizes the alleged unfortunate effect of that distinction under modern statutes. Where originally the appraisal was countenanced by the courts as a device to avoid the rule that arbitrations are contrary to public policy, the distinction is now interpreted by the courts to deny to appraisals the efficient statutory enforcement granted the arbiters' award. So long as appraisals are carried out under the umpireage system it seems to the writer that the practice of the insurance companies needs more reformation than the attitude of the courts.

All in all this combination of law and business practice should be a welcome addition to both the fields of economic and legal literature. It should encourage those who feel that only through an appreciation of economic, social and business practice can there be an adequate approach to legal problems.

PAUL CLEVELAND*

* Assistant Professor of Law, University of Chicago Law School.

BOOK NOTES

THE ULTIMATE POWER. By Morris L. Ernst. Garden City, N.Y.: Doubleday, Doran & Co., 1937. Pp. xv, 326. $3.00.

This book, intended to be a best seller, is an impassioned appeal by a New Deal lawyer for some reform to curb the power of the Supreme Court. It is another in the

[11] Sir Frederick Pollock in a congratulatory message to the new Journal characterizes this practice as follows: ". . . . there is reason to think that the provisions for arbitration in existing commercial contracts are too often imperfect or out of date, such as the old-fashioned form of reference to two arbitrators and an umpire." Pp. 4–5.

[12] W. E. Watson, p. 18. [13] John S. Burke, p. 21.

[14] Contrast Midwood Sanatorium v. Firemen's Fund Ins. Co. of San Francisco, 261 N.Y. 381, 185 N.E. 674 (1933), rearg. denied, 262 N.Y. 469, 188 N.E. 24 (1933), with Rutherford v. Royal Ins. Co., 12 F. (2d) 880 (C.C.A. 4th 1926) and other cases collected in 49 A.L.R. 817.

[15] Kupfer and Danziger, Appraisals under Arbitration Laws, p. 92.

growing field of literature directed at divesting this body of some measure of its sanctity. Its slapdash style, frequent historical inaccuracies, and coloring of historical detail are explainable, perhaps as techniques to capture the enthusiasm of the public, and perhaps as the natural results of the author's fervor.

Starting with the colonial era, Mr. Ernst leads us along the familiar pathway of constitutional development, stopping occasionally to inject interesting sidelights on the more important men and customs of their times. The author offers his interpretation of the intentions of the framers in drafting the better known clauses of the Constitution; and contrasts the modifications and distortions introduced by the Supreme Court. He portrays this action by the "judicial witch doctors" as creating an array of bewildering decisions concerning due process, interstate commerce and the sanctity of contracts which, in turn, have created an economic chaos destined to bring revolution.

As a preface to his own proposal for Supreme Court reform the author presents an illuminating discussion of the many other suggestions now current. He then seizes upon language of James Madison to lend historical dignity to his own proposal of a constitutional amendment empowering Congress, by a two-thirds vote, to override any judicial veto. By thus insuring to Congress the final word in legislation, Mr. Ernst seeks to restore to the people "the ultimate power."

EXPANSIONISTS OF 1898. The Acquisition of Hawaii and the Spanish Islands. By Julius W. Pratt. Baltimore: The Johns Hopkins Press, 1936. Pp. vii, 360. $3.00.

In tracing the combination of forces which resulted in the acquisition of a Pacific empire by the United States, Mr. Pratt runs counter to the current fashion of historical analysis. According to this writer, America's shift from an agrarian to a commercial imperialism owed little of its philosophic formulation to interested economic pressure groups. The need of American business for colonial markets and fields of investment was discovered not by business men but by intellectuals: historians, sociologists, clergymen, journalists, naval strategists and politicians. These men, playing with terms like destiny, duty, religion and power, worked to prepare the mass frame of mind for war against Spain long before business interests saw any advantage in the prospective war. Mr. Pratt cites impressive chapter and verse to bear out his point that until May 1, 1898, American business men were either opposed to expansion and saw only economic dangers and political risks in the program, or were generally indifferent. American business was experiencing at the time a revival after several years of depression. Business men feared that war with Spain would disrupt revival. Despite the high tariff legislation which followed soon after the war, business interests were generally disposed to accept the free trade doctrine that it was not necessary to own colonies to benefit by trade with them. They saw that they were able to trade profitably with the colonies of the world's imperialist nations without having to bear the cost of their protection and administration.

What shifted the American business man's point of view on May 1 was Dewey's dramatic victory at Manila, coming when European nations had, apparently, begun the partition of China. Though the volume of American trade with China was at the time only two per cent of its total exports, the American business man came to believe that China offered a *potential* market for his surplus goods. The victory at Manila offered the United States a far eastern base from which the threatened potential