BOOK REVIEWS

May's Criminal Law. By Kenneth C. Sears and Henry Weihofen. Fourth Edition. Boston: Little, Brown & Co., 1938. Pp. lvi, 438. $3.75.

More than twenty years ago as a student in law school, I first read *May's Criminal Law*, then in its third edition, published in 1905. John Wilder May's work was one of the few textbooks retained for use after admission to practice. Clear and concise, it was often useful for reference.

The fourth edition is entitled in the original author's name, but the vital spirit is that of the revisers. The classification of offenses is that employed by the original author, inspired no doubt by the fourth book of Blackstone. Around this framework, Professor Kenneth C. Sears of the University of Chicago and Professor Henry Weihofen of the University of Colorado have written a complete new work and have written it well. Their language is accurate and interesting.

The aim stated in the preface, "to have a suitable expression of the current law," has been substantially attained. In the process of streamlining, most of the text of the third edition has been eliminated. Many of the old citations have been dropped, and many comparatively recent decisions are cited to support statements, which could not have been made in 1905. A valuable addition to the citations consists in numerous references to articles in law reviews and other periodicals.

Discussion of the rules applicable to arrest for crime, bail, jurisdiction, venue, interstate rendition and criminal procedure has been eliminated, and the space thus gained is devoted to such matters as entrapment, immunity to accomplices in consideration of testimony and other aid to the prosecution, mental capacity for crime, irresistible impulse, vicarious responsibility of management and stockholders for crimes committed through the instrumentality of a corporation, and other points as to which the law was vague or undeveloped thirty years ago or since has been more or less modified. On some of these points there had been few decisions prior to 1905.

The application in hundreds of decisions of principles developed in an age of animal transportation to responsibility for death or injury caused by the operation of an automobile has expanded the doctrines of criminal negligence and resulted in distinctions unknown when automobiles were slow and few. This process has generated conflicting decisions on points seldom, if ever, discussed prior to publication of the last previous edition. Drunken drivers had not yet given rise to social problems.

Judicial solution of new problems in decisions on differing states of fact has resulted in new principles, not unaffected by recent legislation, which are easy to state but difficult to apply. The conflicting views are noted. It is unusual to find in so short a book such thoughtful discussion of conflicting judicial statements.

An effort is made to differentiate between attempts, assaults with intent, solicitations and preparations to commit crime. This task is most difficult, because different courts have given different answers to questions precisely similar. After all, if an assault is an attempt coupled with apparent ability to succeed, how can a rational distinction be made between an attempt to commit robbery and an assault with intent to commit robbery?

Less space is devoted to discussion of such common law offenses as blasphemy, simony, apostasy, duelling, embracery, heresy, piracy and other matters of more interest to the antiquary than to the practicing lawyer.

Due attention is given to offenses of new statutory regulations of a federal government constantly enlarging its power by expanding the definition of the commerce clause. Thus, discussion of the Mann Act has its place in the text, which was written just too late to warrant discussion of offenses under the National Prohibition Act and just too soon for authoritative exposition of offenses denounced by the National Labor Relations Act. When the fifth edition is published, will Senator Wagner be a prophet as forgotten as Volstead now is?

Such terms of the social scientists as "anti-social" and "social injury" have found their way into this commentary. Due recognition is given throughout the work to a fact which the authors well state: "Courts have shown at times a large capacity to ignore the wording of statutes." The revisers recognize, though not in such pointed language, that some courts sometimes show some capacity to ignore the language of their own decisions.

This book should be of more interest to students of the present than any previous edition was to students of the past, because in the process of putting new wine into an old bottle, language has been employed which is always interesting and at times fascinating. Its accuracy should make it of value to the practicing attorney.

GRENVILLE BEARDSLEY*

Moore's Federal Practice under the New Federal Rules. By James William Moore and Joseph Friedman. Albany: Matthew Bender & Co., 1938. 3 vols. Pp. lxxxiv, 827, 666, 1017. $25.00.

This timely treatise on federal practice by authors of undoubted scholarship and demonstrated knowledge of the subject should make an instant appeal to those of the legal profession throughout the country who have occasion to appear in the federal courts. To them it will be an almost indispensable tool for unfolding the purpose and working of the new Federal Rules of Civil Procedure, and of showing how the Rules fit into an entire scheme, a considerable part of which is regulated by Acts of Congress. It should likewise be of profound interest to all lawyers and persons who have at heart progress and greater efficiency in the administration of the courts, as these Rules and their exposition may have a far reaching effect upon the practice in the courts of the various states. Local prejudices against federalizing state practice will inevitably disappear if the federal system demonstrates its superiority. That demonstration will depend on interpretations placed upon the Rules, and early interpretations may shape their ultimate direction and success. The publication of such a comprehensive and scholarly treatise so soon after the promulgation of the Rules has required a broad grasp of the problems of procedure in general as well as of federal procedure, a close association with the work of the drafting committee as it progressed, laying foundations of the book while the Rules were in the making, and a rare ability to keep a broad field of knowledge in perspective, organizing and expressing it clearly under a gruelling concentration.

Following an introduction dealing with background, scope and general summary, the work is divided into eleven parts giving specific treatment to each of the eighty-

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