

REVIEWS.

of the discussions and decisions is too doubtful to be stated here, but is attempted to be ascertained below." Then follows a long note of considerable historic interest, but not of much practical value.

The next division of the work appears with a dissertation "as to the kinds or purposes of criminal combinations." These he sub-divides as follows:

1. Combinations to criminal conspiracy, properly so called, within the meaning of the ancient ordinances of conspirators.

2. Other combinations expressly prohibited by Statutes now in force.

3. The rule of the seventeenth century that combination for any crime is punishable.

4. The question of a wider rule.

5. Combinations against government.

6. Combinations to prevent or defeat justice.

7. Combinations against public morals and decency.

8. Combinations to defraud.

9. Combinations to injure people otherwise than by fraud.

10. Combinations relating to trade and labor.

11. Lord Denman's antithesis.

In each class he examines chronologically the different cases that come under the class. This he has done with much succinctness and ability. The gradual expansion of the law with the growth of society is ably illustrated. He deals roughly with Lord Denman's antithesis, viz., "Conspiracy consists in the combination for accomplishing an unlawful end or a lawful end by unlawful means." He says that it was invented by Lord Denman to express the very opposite of that for which it is sometimes cited, and points out that in 1839, when Lord Denman's own phrase was attempted to be used before him as containing a definition of what combinations are criminal, he said, "I do not think the antithesis was very correct." And again in 1844, when the attempt was repeated, he explained the meaning of the phrase as being a limitation and not a definition, by the observation, "the words '*at least*' should accompany that." He points to other cases where the alleged definition when applied to the touchstone of experience utterly failed to act as a definition, and concludes this interesting chapter

with the cutting remark that "an expression cannot be the definition of a conspiracy, the defining part of which is itself so devoid of definiteness for the purpose for which a definition is required."

The next division of the work treats of the act of combination. The author begins this section by stating that "every crime consists of a state of intentionality—some form of intention or of carelessness—and an overt act or omission to perform a duty." He then proceeds to the discussion of what "overt act will suffice." In this he takes a very wide range, quoting not only cases decided in England, but referring to the laws of Scotland, France, Belgium, North Germany, Bavaria, Austria, Holland, Italy, British India, United States, and Canada.

His reference to the law of Canada (taken by the way, from the dictum of a Lower Canada Judge) is not very happy. It is as follows: "By the common law, as it is interpreted in Canada, according to a recent Canadian work, Clarke's Criminal Law, 1872, p. 401, 'a conspiracy is an agreement by two or more to do or cause to be done an act prohibited by penal law, or to prevent the doing of an act ordained under legal sanction, by any means whatever; or to do or cause to be done an act, whether lawful or not, by means prohibited by penal law,' *Reg. v. Roy*, 11 L. C.J. 93, per Drummond, J. This definition of Mr. Justice Drummond is certainly open to the objection that it wants definiteness. But those who know Mr. Justice Drummond will not be surprised to learn that he has not succeeded where Lord Denman failed, that is to say, in giving a definition of Criminal Conspiracy, sufficiently comprehensive, and yet sufficiently accurate to embrace all cases, and none but such cases as in law create the criminal offence.

The author concludes his work by a statement that he uses in common law of the doctrine of the criminality of agreement are of the following kinds and subject to the following limitations.

1. Its principal function is that of a general auxiliary to law, creating particular crimes.

2. In some cases it may be proper to treat the agreement for a minor offence, as so altering its quality and mischief, as to make it a fit object for punishment as a crime.