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Book Reviews

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BOOK REVIEWS

THE BENCH AND BAR OF OTHER LANDS. William L. Burdick. Brooklyn, New York. Metropolitan Law Book Company, Inc., 1939. Pp. xii, 652.

Although travel bureaus have in recent years attempted through planned itineraries and set cruises to standarize foreign travel, it is doubtful if even those embarking on the same world cruise see the same world. This is because they do not see with the same eyes. The business man sees a business world. The professional man has an entirely different outlook. The lawyer, however, will wish that the program permitted more opportunity to visit courts of law and to attend their hearings, and to visit law libraries and law schools in order to become acquainted with lawyers and judges and watch them function.

Dean William L. Burdick not only has made frequent trips abroad but has recently spent more than a year in foreign travel, devoting all of his time to visiting courts and law schools, meeting members of the bar from England to Japan.[1] The result is a book which tells the American lawyer what he would wish to see were he to embark upon a world cruise, visiting the countries whose legal systems are treated. It might perhaps be described as a conducted tour for law-minded tourists.

Our first stopping place is quite naturally England, the foreign land whose legal system holds our greatest interest. In fact, 223 pages, or 34% of the book, is devoted to this portion of the subject.

We are reminded of the achievements of our legal ancestors in the section which tells the history and describes the appearance of Westminister Hall,[2] and then follow our conductor to the Royal courts of justice, where we see our legal cousins at work in the law courts.[3] Our footsteps then turn by way of Fleet Street to Ludgate Hill and to Old Bailey Street, where our conductor tells us, "Old Bailey Street is so named because here was located 'The old bailey,' that is, the bailey or open area, which centuries ago was just inside the wall which enclosed in this quarter the medieval city. Newgate Street received its name from the fact that here, at the northern end of Old Bailey Street stood the 'New Gate,' one of the five principal gates of Old London."

"Old Bailey Street is of great interest to all students of the history of our criminal law as it is also to many thousands of readers who are moved by the many tragic tales of its past. Here for over six hundred years, or from the time of Edward III, the London criminal courts have been held and their stern ideas of justice dispensed. Today, there stands in this place an imposing building, the Central Criminal Court, completed and formally opened in October, 1907. . . ."[4]

We next enter the criminal courts, where we see the judge entering his courtroom carrying in his hand "a little bouquet of gay flowers surrounded with a frill of white lace paper,"[5] and this is because medical science in the middle of the eighteenth century, when this custom originated, taught that the odor of flowers was a disinfectant and conferred an immunity in the matter of contracting contagious disease. It is obvious

[1] P. v. [2] P. 5. [3] P. 43. [4] P. 114. [5] P. 118.

that we are in a land of custom and tradition. Our guide here tells us of a former trip when he visited Old Bailey in 1887, twenty years before Newgate Prison was removed to make way for the present modern building, when he then saw the small cells and that narrow open space about seventy feet long surrounded by cell-wards called "the Press Yard." "Here in olden days those who 'stood mute' when called upon to plead at their arraignment were pressed with heavy boards and weights 'peine forte et dure' until by this torture they were compelled to plead or else be crushed to death. As late as 1770 this barbarous practice was followed. Since conviction of felony resulted in the forfeiture of estates, and since one could not be put on trial until he pleaded, occasionally, an indicted prisoner submitted to this death in order to preserve his property for his heirs."[6]

We are then shown indictments in use at the present time, which consist of only three necessary parts; a proper commencement, a statement of the specific offense charged, and such particulars as are necessary to give reasonable information of the nature of the charge. We find that the caption, while ordinarily present, is a fixed form and is no part of the indictment. The form of such indictment is as follows:[7]

(Caption)
(As already explained)
The King v. John Doe

Central Criminal
Court.
(Or other court)

Indictment

John Doe is charged with the following offense:

Statement of Offense

Murder

Particulars of the Offense

John Doe on the first day of January, 1937, in the county of Middlesex, murdered Richard Roe.

Next we visit the courtrooms and observe criminal trials in progress, and we are astonished to see the defendant in the dock where he has no opportunity to communicate with the barrister who is representing him, except through attracting the solicitor's attention, who may, if he deems the matter important enough, step to the barrister's side and whisper in his ear or perhaps carry a written message to him.[8] We are astonished at the rapidity with which jurors are chosen,[9] and we find that the trial on behalf of the State is conducted not by a professional prosecuting attorney but by a barrister in general practice employed for this trial only, who may as often be employed by the defense as by the prosecution.[10]

It is with reluctance that we turn from descriptions of criminal court

[6] P. 120. [7] P. 140. [8] P. 143. [9] P. 145. [10] Pp. 150-2.

trials which are so realistic that we almost feel that we are breathing the air of the courtroom itself.[11] We make a short visit to the inferior courts and find that in one court at least, the County Court, it is not necessary that the litigant's solicitor retain a barrister in the usual manner; inasmuch as solicitors themselves have the "right of audience," most of those appearing before the court are in fact solicitors.[12]

The proceedings before the House of Lords which we are privileged to witness, and those before the Judicial Committee of the Privy Council, are impressive not only because of the breadth of the appellate jurisdictions exercised but because of the dignified informality of the proceedings.[13]

Our visit to the Inns of Court is fortunately timed in June, 1933, and we are privileged to attend with Dean Burdick, the 718th anniversary of the signing of Magna Charta at Temple Church.[14]

Our guide's long experience as a legal educator lends authority to the explanation which he gives us of the origin, history, and operation of the inns, the four great bar associations to which the English barristers belong, and his explanation as to the education of both the intending barrister and solicitor. He does us one final service in England by taking us to the public record office and letting us have a look at the original of Dooms Day Book and Magna Charta itself.[15]

At this point we cross the English Channel and soon find ourselves in the City of Paris at the "Palais de Justice," constructed on that island in the Seine which Caesar, in his *Gallic Wars*, tells us is the home of the Parisii and which thereafter was the capitol of France under Romans, Franks, and their successors.[16] Roman governors here built the palace, portions of which are doubtless incorporated in the present building where so much of the history of France and the development of its law has taken place, and where the principal courts of the Republic are still held.[17] We know that France is a civil law country, but this knowledge has not prepared us for their manner of choosing judges and lawyers from different professions and the organization and procedure of French courts. We find law schools far exceeding in numbers of students in attendance those to which we are accustomed, but most of these students are not preparing seriously for any legal vocation. Separate courses lead to the magistracy, including the positions of prosecuting attorney, judge, etc., and to the practice of law. There is ordinarily no possibility of a lawyer ever being elevated to the judiciary.[18]

We also find the lawyers divided into two classes, avocates (barristers) and avoues (solicitors). We are surprised to learn that the more than seven hundred year old school of law of the University of Paris has ten thousand students, that the course lasts three years for the Licentiate in Law, with one additional year for the Doctorate, that the school year is divided into two semesters—from November to March and from March

11 Pp. 141-153.
12 P. 165.
13 Pp. 181-9.
14 P. 201.
15 P. 209.
16 P. 239.
17 P. 241.
18 P. 258.

to June, that the student lecture load is from twelve to fifteen hours per week, and that, most surprising of all, the entire faculty of the law school numbers not more than sixty members.[19] We also have an opportunity to observe in operation the probationary period of three years for young lawyers.[20] We find that by law an avocate may not ordinarily sue for his fee and that no contingent fees are permitted. We are not therefore surprised to learn that fees are ordinarily required to be paid in advance.[21] Here also we visit the courts while in session[22] and witness criminal trials which serve to dispose of the famous myth about "the presumption of guilt."[23] We see in practice the result of the practical elimination of the rules of evidence[24] and of the absence of cross examination,[25] except by the court itself at the suggestion of the avocate.

In Rome we visit the Forum and in these historic surroundings are reminded of the days when Roman law was imposed upon the world; and we attend the modern law courts in the beautiful Palace of Justice which is described by Dean Burdick as "the most impressive law courts structure he has seen."[26] We find a system as to judges and lawyers similar to that prevailing in France, and, for that matter, in most civil law countries.[27]

We are also glad that we are permitted to visit the University of Bologna Law School, the oldest in the world, dating from the Twelfth Century, where the modern academic Ll. degrees having reference to the two laws had their origin.[28]

Not the least interesting part of this book is that which discusses the effect of Fascism in Italy,[29] of Nazism in Germany,[30] and of Leninism, Stalinism, Communism or what have you, in Russia,[31] and the unfortunate results in the realm of justice and the practice of the law. The opportunity to observe the Russian courts in operation[32] and the description of many trials, newspaper accounts of which have become familiar to us,[33] are very interesting. Not less so is the account of the experiment which has there been made, first in the abolition of the legal profession, and the subsequent organization of a new collectivist bar,[34] at least half of the fees for legal service of its members being paid to the secretariat. The recent re-establishment of a law school with a two-year curriculum is of special interest to the professional reader.[35] The accounts which follow of the legal systems and the functioning of the courts and the lawyers of Egypt,[36] Palestine,[37] India,[38] China,[39] and Japan,[40] are all filled with interest.

In his foreword, Dean Burdick says: "The book has been written in the hope that it may have a place among the leisure readings of members of the legal profession, and students of law. . . ."[41] It not only should have such a place but should be read by every lawyer who aspires to

19 P. 273.
20 P. 274.
21 P. 274.
22 P. 286.
23 P. 291.
24 P. 296.
25 P. 323.
26 P. 348.
27 P. 356.
28 P. 360.
29 P. 373.
30 P. 422.
31 P. 479.
32 P. 439.
33 P. 467.
34 P. 479.
35 P. 481.
36 P. 491.
37 P. 513.
38 P. 578.
39 P. 583.
40 P. 625.
41 P. v.

have a broader understanding of world conditions as they affect his profession.

WEBSTER H. BURKE[42]

A BRIEF SURVEY OF THE JURISDICTION AND PRACTICE OF THE COURTS OF THE UNITED STATES. (Fourth Edition.) Charles W. Bunn. St. Paul, Minnesota: West Publishing Company, 1939. Pp. ix, 257.

Thirty words were used by the framers of Article III of the United States Constitution to describe the judicial system of this country. Thirty-seven more words fixed the tenure of office of the judges required by that system; and one hundred and twenty-three words stated the jurisdictional powers possessed by them. Of the three articles creating our tri-partite governmental system, Article III is by far the shortest. But, as is often the case with brevity of statement, thousands upon thousands of words have since become necessary to explain, define, and make operative the few short sentences contained therein.

Constitutional amendment, congressional enactment, and judicial decision have so encompassed that judicial system in a plethora of problem as to frequently give rise to doubts as to the scope of its jurisdiction. Rules of court regulating procedure have in turn added to the confusion, and, until recently, efforts to remedy such a situation frequently did little more than make matters worse. Faced with such a maze, it is with infinite relief that the practitioner and the student can turn to such a work as this little practice manual. Here he will find in non-technical language an outline approach to that much-complicated problem of how to get into and stay under the Federal judicial system.

The work does not purport to be a complete and exhaustive statement in authoritative tone of the entire subject, but in its field its usefulness is clearly attested to by the fact that it has gone through four editions in the twenty-five years since it first appeared. The present edition lacks none of the merits of the earlier ones.

WM. F. ZACHARIAS[1]

ELEMENTS OF GUARANTY — TEXT AND ILLINOIS CASES. Reuben Freedman. Chicago, Illinois: Foundation Press, Inc., 1939. Pp. xxii, 432.

This is a combination case and text book intended primarily for use by students in law schools. The ratio of the text material to the case material is such that the fundamental principles of guaranty are succinctly stated textually.

There are approximately one hundred leading cases, chiefly Illinois Supreme and Appellate Court decisions, including a selected group of problem cases provided for further study after the elements of the subject have been mastered.

The statements of the basic principles or rules of law are accompanied by concrete illustrations taken from adjudicated controversies.

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There is a copious index following the topical arrangement of the material.

This is intended to be a comprehensive but simple presentation of the subject of Guaranty and to combine the desirable features of the case method with the textbook method of study. It is also stated to be an objective to provide a work which saves the time of a student by enabling him to grasp the essentials of the subject outside of a library.

ERNEST E. TUPES[1]

HANDBOOK OF ADMIRALTY LAW IN THE UNITED STATES. Gustavus H. Robinson. St. Paul, Minnesota: West Publishing Co., 1939. Pp. xiii, 1025.

It is difficult to review with sobriety a book in which the subject is the stuff of which novels are made and great tales are told. Every lawyer as a boy made or sailed ships in a pond or stream and read *Moby Dick, Treasure Island,* and *Two Years Before the Mast.* I venture now that every lawyer would recapture some of his juvenile maritime enthusiasm by perusing Professor Robinson's *Handbook of Admiralty Law,* and I earnestly hope the volume will find its place as fireside reading in many a lawyer's home, even though he never ventures on a winter cruise or comes closer to the sea and the ships than through the local movie news reel. The first chapter on the history of admiralty law, followed by chapters on the American adoption and interpretation and the explanation of maritime torts, constitutes an absorbing introduction to the stiffer chapters thereafter. The land-locked lawyer may sail the main, encounter strikes, mutinies, and affrays, refresh his knowledge of distant lands, and take a turn at the oars after sinkings, strandings, and burnings, merely through the rich vocabulary of the cases.

Speaking from a more serious viewpoint and as one who for several years practiced with a firm in good repute as maritime lawyers, I am conscious of the admirable selection and arrangement of material, the right balance between proposition and case, not only of the law which remains more or less historically adamant, but of the vast amount of novel propositions created by legislation entirely new or greatly modifying previously settled law.

For more than a decade it has been impossible for the practitioner to select the forum with certainty or forecast the result in a great class of cases involving injuries to longshoremen and harbor workers, stevedores, and particularly land laborers whose work brought them in contact with "maritime" risks. Jurisdiction was assumed by the local courts unless and until the jurisdiction was lost by decisions or action of the federal courts. For about the past fifteen years, state compensation acts sought to be applied to longshoremen and harbor workers have competed with general admiralty tort law. When does the national act apply as against the state act? The question has been answered several times but never quite finally. A line of decisions started with the Jensen Case.[1] The "maritime but local" theory arose through convenience, if not necessity,

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[1] Southern P. Co. v. Jensen, 244 U.S. 205, 37 S. Ct. 524, 61 L. Ed. 1086 (1917).

and many cases were withdrawn from the heretofore "exclusive" admiralty jurisdiction. Over this period of time, federal decisions distinguished cases of conflicting jurisdiction that were incapable of being distinguished until the Supreme Court had spoken. Federal legislation attempted to give national uniformity to classes of workers with ever changing risks of employment, whose next injury occurred so singularly as to prevent well defined classification. In the forty pages of Chapter IV, Mr. Robinson achieves the well-nigh impossible by chronological arrangement and development of the cases, plus close and searching analysis. A common denominator is found and the cases reduced to a workable basis of reason and logic, although the dissenting judges would still question the result. The seasoned proctor has had difficulty with this realm and will benefit from a careful reading of the author's explanation. The author has thrown clarity on the scene, which for a long time remained crepuscular.

To the non-maritime lawyer or general practitioner, it is this chapter that is of the most interest, for, whether he desires it or not, his next client may be one whose injuries are in the borderline situation indicated above; and the lawyer must be able to decide that he will undertake the case before a commission or a common-law court, or forward the case to a brother specializing in admiralty.

This chapter will also appeal to the student who has studied the customary tort field, including workmen's compensation, but who will be baffled with a case involving maritime elements. He may find the first four chapters, not only of absorbing interest but of actual benefit to his continued study in the customary fundamental courses.

For the proctor in admiralty, since no textual treatise of equal rank has appeared for more than a decade, it is especially satisfying to find analysis and comment on the cases involving the Federal Arbitration Act of 1925,[2] the Longshoremen's and Harbor Workers' Compensation Act of 1927,[3] and the act renouncing sovereign immunity from libels in personam for damage caused by a public vessel of the United States.[4] Still more recent and novel is the discussion and comment afforded by the section on labor disputes in admiralty, followed by a section pertaining to the Federal Mediation Act[5] passed only a year ago. The S.S. President Hoover[6] and The Algic[7] were front page news yesterday, but they here receive orderly arrangement and comment. The author's approach to problems which might be of high social or emotional implication is kept purely legal. Nothing is urged, but sometimes the lack or need of legislation is suggested. Of public interest also is Chapter XVIII on Limitation of Liability, wherein the author explains the amendments of 1935 and 1936[8] following the disaster of The Morro Castle.

The familiar and standard topics of Admiralty Law are as skillfully

2 9 U.S.C.A. §§ 1-15.
3 33 U.S.C.A. §§ 901-50.
4 46 U.S.C.A. § 781.
5 46 U.S.C.A. § 1251 et seq.
6 N.Y. Times, December 17, 1937, p. 2, Jan. 9, 1938, p. 22, as cited by Robinson at p. 349.
7 D.C.Md., 1937, A.M.C. 1611, and 95 F. (2d) 784 ( ).
8 46 U.S.C.A. § 183.

presented as those chapters which have been given attention in this review. The author states in the preface that he purposely omits Admiralty Pleading and Marine Insurance, although there is naturally incidental reference thereto. While the volume is necessarily brief and textually standard in form, the cases commented upon or referred to, the notes, and the law review citations make this handbook of admiralty law in the United States not only a clear statement of contemporary substantive law but a well documented key book for exhaustive research if one is so inclined. As in other texts of the red leather bound Hornbook series, the format and type is pleasant to the eye.

DONALD CAMPBELL[9]

PATENTS—A TEXT BOOK COMPILATION OF THE PATENT DECISIONS OF THE SUPREME COURT OF THE UNITED STATES. Beirne Stedman. Charlottesville, Virginia; The Michie Company, Law Publishers, 1939. Pp. xii, 708.

This work covers all of the patent decisions of the Supreme Court down through Volume 304 of the Official Reports, Volume 58 of the Supreme Court Reporter and Volume 82 of the Lawyer's Edition.

Any lawyer who is at all interested in this highly specialized branch of the law should have a copy of this book in his library. For the specialist it is a time saver and for the general practitioner, whose problems concerning patents are only casual, it will prove a reliable guide to the fundamentals. It exhaustively, concisely, and apparently with accuracy, covers all of the decisions of the Supreme Court in construing and applying the patent statutes.

As indicated by the title, the work is substantially a compilation of the decisions, since much of the material is in the language of the court and frequently it consists of verbatim quotations from the opinions. The work differs from the usual text book in that it contains only Supreme Court decisions, an obvious advantage, since it segregates the law as finally adjudicated from that which has no higher authority than the decisions of District Courts or the Circuit Courts of Appeal.

It has been found satisfactory as collateral reading for classes beginning the study of Patent Law by the case method. It is recommended for the lawyer just embarking upon the specialty whose scholastic course did not include a course in patent law.

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