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## Book Reviews

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## BOOK REVIEWS

**STUDIES IN MASSACHUSETTS TOWN FINANCE.** By Eugene E. Oakes. Cambridge: Harvard University Press, Harvard Economic Studies 57, 1937. Pp. xvi, 237. \$2.50.

Professor Oakes has attacked the theoretical problems of local finance by means of the case method. He selects nine suburban towns in eastern Massachusetts as his cases. The entire course of each town's history—legal, political, and economic—so far as it bears on certain types of financial problems is traced. The most fundamental phase from the author's viewpoint seems to involve the division of towns and the fiscal causes and consequences of such developments.

Among the conclusions which have been derived from the study—rather, series of studies—is that the technique employed has general implications far beyond the purview of this volume. Other inductions are that (a) town division appears to result primarily from a lack of balance between taxes and expenditures in various parts of the town; (b) town division frequently results in one town's being in easy financial circumstances and the other's facing grave difficulties; (c) town finances normally suffer from rapid industrial growth; (d) towns suffer acutely from industrial depression, and in the event of industrial decline a policy of severe contraction of town services is the only one feasible; and (e) there are grave financial problems (which the study develops) implicit in popular sovereignty under certain fairly characteristic conditions.

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JAMES W. MARTIN.

**READINGS ON PERSONAL PROPERTY.** By William T. Fryer, Third Edition. St. Paul: West Publishing Co., 1938. Pp. xxxii, 1134.

The announcement sheet for Professor Fryer's Readings in Personal Property suggests that it is a source book of materials on personal property and also a new approach to the study of that subject. The compiler's preface, however, seems to indicate that it is intended to supplement one of the regular casebooks in this field of law. It must be that it is intended to be supplementary as it is hard to see how the use of such a book alone would be of any advantage over the ordinary casebook. In fact the casebook would seem to be a much better approach in making the students learn to think like lawyers than this book of materials would be, as the latter approaches the problems presented from the point of view of the answers, not in the way they are presented to the lawyer in actual practice.

To require students to purchase this work in addition to a casebook

seems hardly fair. It is making him purchase material already available in the average law school library, for the use of which he has already been charged in his tuition bill. The chief value of such a work, it seems to the reviewer is the saving on the wear and tear of the bound volumes of law reviews in the school library.

This can hardly be called a selection of materials as the compiler has apparently taken everything bearing on the subject of personal property which he could find in the law review. He has taken the good, bad, and indifferent, some that is hardly worth reprinting. In fact the average office secretary or stenographer could have gone through the digests of law periodicals and made the same collection. The arrangement under chapter and section heads, of course, is another matter. The usual captions found in casebooks have been followed: Introduction, Possession, Bailments, Finders, Liens, Pledges, Bona Fide Purchaser, Adverse Possession, Accession, Confusion, Interests Affected by Judgment, Effect of Choice of Remedy and Judgment, Gift, Fixtures, and Emblements.

The work contains a fair amount of footnote materials, citations, comments. It also contains forms for chattel mortgages, conditional sales, trust receipts, and leases. It should be a valuable addition to a library which has not been able to secure complete sets of the standard law reviews and journals.

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W. LEWIS ROBERTS.

WALKER ON PATENTS (Deller's Edition). Anthony William Deller. Baker, Voorhis & Co., New York. (1937). Four volumes, Royal octavo, boards, pp. cccxxxix, 3806. \$50.00.

This notable work has a history well worth the telling. Its author, Albert Henry Walker, a Vermonter born in 1844, did not become a member of the bar until 1877, just shortly after he received the LL. B. degree of Northwestern University School of Law, but his second recorded appearance as patent counsel occurs in a case before the U. S. Supreme Court. Let me reproduce his account of the inception and creation of this work, as set forth in the preface to its first edition: ". . . The most extensive treatise, heretofore published on the same subject, was published in 1873 (Curtis on Patents, 4th ed.); but it cited only one hundred and eighty American cases, together with one hundred and sixty-one English adjudications. The inadequacy, to the needs of the profession, of a treatise so limited in scope, was clearly impressed upon me when I entered, in 1877, upon a somewhat extended practice in patent litigation. During the next four years, I was called upon to argue several patent cases in the Supreme Court, and many others in many of the Circuit Courts of the United States; and in preparing those arguments, I was forced to make many laborious researches, from which a complete text-book would have largely relieved

me. Under these circumstances, I resolved, early in 1881, to undertake the production of a treatise so much needed by the profession. I began writing on the first day of May of that year, and soon became so much interested in the work, that I largely suspended my active practice of the law, in order to give the book the freshest of my efforts, and thus the greatest degree of merit consistent with my abilities. . . ." The cases<sup>1</sup> to which Walker refers, were founded upon the Thompson & Batchelder Air Brake Patent No. 9,109: I wish that I could report that he was as successful in these cases as he was to become renowned as the author of Walker on Patents, but, alas, candor compels me to record the melancholy fact that five of these six cases were decided against him. Save for two occasions, in cases<sup>2</sup> wherein he appeared only as *amicus curiae*, Walker came but once more before the U. S. Supreme Court, there to argue unsuccessfully in a case,<sup>3</sup> which, had it been decided in his favor, would have wrought an immense improvement in the U. S. Patent system, and would have rendered unneeded the suggestions for its betterment made recently by high authority. But Walker won his victories in the lower Federal tribunals, and he did write the only text-book on patent law that has attained a seventh edition. Four editions came from his hands in the years 1883, 1889, 1895 and 1904, and he was working on a fifth edition when he died in 1915. The fifth and the sixth editions, the work of other hands, were published in the years 1917 and 1929.

The fate of a celebrated legal text-book at the hands of revisers can be a minor tragedy. Many a reviser, torn between the desire to retain the very words of the master and the necessity of modernizing the text, confines his labors to the adding of fresh material to the text in a manner that recalls the pinning of tails upon the donkey of the children's game played blindfolded. But the present edition of Walker is no such patchwork. Dr. Deller has done what any competent reviser must always do: he has laid bold hands upon the sacred text, excising what is obsolete and no longer useful, retaining what is worthwhile, and adding what is needful to bring the text up to date; and out of these materials, he has woven a flawless fabric, wherein the general pattern of the original work is very clearly discernible, though greatly enriched in detail. But so deftly has Dr. Deller correlated the old and the new subject matter, and so skillfully has he imparted to the text greater coherence and fluidity by judicious rearrangements of topics, that he has transcended the role of reviser, and has become, in a very real sense, the veritable author of the work.

If we seek to discover the reason for the pre-eminence of Walker on Patents, (and there can be no doubt as to its pre-eminence, since it has been cited with approval time and again in opinions of many Federal and state courts), I believe that we shall find it disclosed in the

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<sup>1</sup> 97 U. S. 554, 98 U. S. 546, 105 U. S. 189, Fed. Cases 12,417, 12,424, 9 Fed. 512.

<sup>2</sup> 124 U. S. 694, 209 U. S. 1.

<sup>3</sup> 210 U. S. 405. See also the dissenting opinion in 150 Fed. 741.

intrinsic nature of the work. Its three predecessors, now well nigh forgotten, were essentially philosophical treatises on patent law: Walker on Patents has always been a book of rules derived immediately from the decisions of record, with only the slightest intimations of independent ratiocination and tentative speculation: it has always been a statement of what, according to the decisions, the law actually is, and not of what the law should be. Indeed, the very practicality of the work has called down upon the head of its author this acrid comment: "Walker was a practical man, unpolluted with the faintest trace of scholarship or intellectualism, but he produced one of the two best known books on American patent law"<sup>4</sup>—a remark which, in all likelihood, might have been regarded as a compliment by Walker, since the production of a text-book on patent law, free from intellectualism and speculation and immediately usable by the patent bar, was precisely the intention of its author. Guided by this same intention, Dr. Deller has surpassed the efforts of his predecessor to make this work indispensable to the attorney engaged in the practice of patent law, for in the present edition, the scope of Walker on Patents has been so greatly expanded that it now comprises every aspect of patent law, from the composing of the application for patent to the final injunction and decree for accounting in an infringement suit.

It is tolerably obvious that no detailed appraisal of a work of 3806 pages can be compressed in a review of the present dimensions, but, in a rapid survey of the work, some comments will be offered upon those portions which are entirely new. Chapter I contains a readable Historical Review of the Origin of Monopolies and a short sketch of the early American patents granted by the colonies and by the states prior to 1790: it is a matter of some historical interest that the first American patent was granted in 1646 by the General Court sitting in Boston. To Chapter II, entitled The Subject Matter of Patents, Dr. Deller has added an appendix containing the Senate and House Bills and Reports from which resulted the Federal legislation empowering the Commissioner of Patents to grant patents upon novel plants. Chapters III-VI cover such topics of substantive patent law as Invention, Novelty, Utility and Abandonment, while the entirely new Chapter VII answers conclusively the question posed by its title, Who May Obtain Letters Patent. Chapter VIII, dealing with the substantive law of Designs, and an appendix, containing all of the Federal legislation pertaining to patents which has been enacted since 1790, complete the first volume. Chapter IX, entitled The Patent Application, is an elaborate treatment, novel in almost its entirety, of the adjective law relating to the prosecution of applications for patents before the U. S. Patent Office, and includes a detailed consideration of the highly technical subject of Interferences: the Rules of Practice in the U. S. Patent Office (including forms) and the Orders, Notices and Circulars of the Commissioner of Patents occupy an appendix to this chapter. Chapters X-XV treat of

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<sup>4</sup>Emerson Stringham, *Outline of Patent Law* (1937), p. 66.

The Nature of Letters Patent and the Regulation of Rights Thereunder, the Construction and Validity of Letters Patent, Disclaimers, Reissues, Titles (with forms), and Licenses (with forms), while Chapter XVI, which concludes the second volume, is an extensive discussion of the Patent Monopoly in Relation to the Anti-Trust Laws, a subject that will undoubtedly become increasingly important as time goes on. Volume 3 is devoted almost exclusively to the substantive law of patent litigation, containing as it does Chapters XVII-XXVI, which bear the titles Courts, Causes and Parties, Infringement, Interfering Patents, Qui Tam Actions, Declaratory Judgments, Suits in Equity, Actions at Law, Injunctions, Damages and Profits. By far the most interesting chapter in this volume is the new Chapter XXI on Declaratory Judgment: in no litigation is this form of equity proceedings more useful than in patent litigation, since it enables a party, under appropriate circumstances, to test the validity of a patent before incurring substantial liability for possible infringement thereof. Volume 4, having but the single Chapter XXVII entitled Pleading, Practice and Forms, is a splendid treatment of the adjective law of patent litigation: this volume might well be termed "Patent Litigation Without Tears", for every detail of pleading and practice and every form conceivably usable in patent litigation attain inclusion therein, as do also the Federal Equity Rules, the Rules of all of the Federal Courts, and the Judicial Districts of the United States. An index of all forms, an admirable subject-matter index, and a time-schedule, indispensable in litigation, complete the final volume, while the list of cases cited throughout the work is prefixed to the text of the first volume.

CHARLES E. RUBY.\*

CASES ON ADMINISTRATIVE LAW. Kenneth C. Sears. West Publishing Co., St. Paul, Minn. (1938). Pp. vii-800.

In Chapter I the author has selected cases illustrating the action of an administrative agency, showing the history of extraordinary remedies used in certain aspects of litigation concerning administrative agencies and tribunals and how the American Administrative Law has developed through their use. Chapter II deals with the general nature of administrative agencies and tribunals, as they have now developed, the methods by which they function, and judicial limitations upon the finality of their rulings. Chapter III considers the way in which administrative agencies and tribunals function in particular lines of activity. Chapter IV deals with the selection, responsibility, and removal of officers. The final chapter, which is in three sections, deals generally with the responsibility of local governments and with the responsibility of the state and national government for wrongs done to persons and business organizations.

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STUDIES IN CURRENT TAX PROBLEMS. Shoup, Carl, and Others. (The Twentieth Century Fund. New York, 1937. Pp. 303, xxiii.)

Incident to preparation of *Facing the Tax Problem*, the Twentieth Century Fund's "survey of taxation in the United States and a program for the future," which is one of the most significant contributions to the recent literature of taxation, research workers prepared a number of detailed technical research reports. These reports constituted a basis for the analysis of current practice and for the tax program proposed in *Facing the Tax Problem*. Such of these reports as were used directly in the earlier volume without technical analysis have been incorporated in *Studies in Current Tax Problems*. Numerous other research memoranda are being published in current periodicals.

The materials included in the present volume deal primarily with the tax load and with technical problems of budgetary estimates; they are therefore without great interest to the legal profession as such. Since in so important a manner they condition the legal, economic, administrative and political phases of the plan of taxation as presented in *Facing the Tax Problem*, they cannot be ignored by any student of the more general aspects of public finance.

J. W. M.

HALEY ON THE MOTOR CARRIER ACT AND OTHER PHASES OF ADMINISTRATIVE LAW. Herbert P. Haley. Rue Publishing Co., Denton, Maryland, 1938. Pp. v-155.

This little book on the Motor Carrier Act, which was passed in 1935, should be very useful for those who are in the field of departmental practice. The nine chapters in the book deal with judicial review; with common and contract carriers—the "Grandfather" clauses and other clauses; with applications for certificates of public convenience and necessity; with the requirements of "fit, willing and able", "public convenience and necessity", and "consistent with the public interest". It further deals with applications for brokerage licenses; with consolidations and merger; with acquisition and control; with the issuance of securities; with insurance; and with rates, fares and charges. It is interestingly and carefully written. The price of the book is \$3.

