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Book Reviews

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BOOK REVIEWS

SUPPLEMENT TO LAW OF PUBLIC UTILITIES. By Oscar L. Pond. Indianapolis: The Bobbs-Merrill Company, 1935. Vol. I, pp. 58, Vol. II, 114, Vol. III, 177.

Pond's fourth edition of his treatise on Public Utilities, in three volumes, was published three years ago. During these years, many important decisions and statutes affecting the subject matter of those three volumes, have made it very desirable to bring this work up to date. To do this, the author has made use of the method already successfully applied to codes and digests, a pocket supplement to each volume. In addition to a digest of the decisions coming under the various sections of the earlier volumes and comments on the same, there has been included in the supplement of the third volume the Federal Motor Carrier Act and the Holding Company Bill.

One objection in the past to buying high priced textbooks has been that with few exceptions they are soon out of date and of little value. Mr. Pond has discovered a way to meet this objection. In applying the pocket supplement idea to textbooks, he has introduced a practice that we may expect to see extended to other treatises in the near future.

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PARLIAMENTARY LAW AND PROCEDURE. By John Q. Tilson. Washington: Ransdell Incorporated. 1935, pp. xv, 176.

For guidance of ordinary parliamentary bodies, Robert's Rules of Order and Cushing's Manual have been the generally accepted authorities. In legislative halls, Reed's parliamentary guide, based upon the rules of the House of Representatives, has held sway. Now the Honorable Mr. Tilson, long time member of the lower house of Congress and a recognized authority in guiding legislative bodies, seeks to replace these parliamentary manuals by one of his own, that will serve both clubs and legislatures.

He has taken the most important of the House Rules—XI, XIV, XVI, XVII, XVIII, XXIII, XXVIII, and XXX—and added explanatory notes thereto. The result is a sufficient guide for those well versed in parliamentary procedure but not a work that can replace either Robert or Cushing in the hands of the average user of those treatises. It will not meet the needs of those who wish to turn at once to a statement of parliamentary usage, to settle some disputed point.

The author scores the practice of requiring a second for a motion,

overlooking the real reason for the rule—that the time of a deliberative body should not be taken up with a matter unless there is more than one member interested in it.

The last chapter, headed "Miscellaneous", has many suggestive "don'ts" for presiding officers.

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WIGMORE, JOHN HENRY. A supplement 1923–1933 to the Second Edition (1923) of a Treatise on the System of Evidence in Trials at Common Law. Boston: Little Brown & Co. 1934. pp. xv, 1395, $15.00.

Wigmore's work on Evidence is rightly held in the highest regard by students, teachers, and practitioners. It should be compliment enough to say that the 1934 Supplement brings the material up to date. This it does and more. There are 67 new sections as shown in the preface, covering a variety of subjects. Not only these new sections but the notes of the old furnish a great mass of information.

Four indexes, adding greatly to the value of the work, cover topics, statutes cited, cases cited, and authors quoted or cited (as to both Treatise and Supplement).

12,000 judicial decisions and 9,000 statutes are cited in this Supplement which makes a total for both Treatise and Supplement, on the author's computation, of 77,000 citations of decisions and 22,000 citations of statutes. Where is there another work of such proportions with as few errors?

The work is of such scope that it is impossible within reasonable limits to discuss it in such a manner that one unfamiliar with the subject would appreciate it. But no one who would be interested is likely to be unfamiliar with the Treatise and so let us say again that Wigmore's great treatise is now brought down to 1934. Those of us who use the Treatise are greatly indebted to Mr. Wigmore for making it unnecessary to search the authorities for the 10 year period 1923–33.

FRANK H. RANDALL.

NEUTRALITY: ITS HISTORY, ECONOMICS AND LAW, Vol. I. THE ORIGINS. By Philip C. Jessup and Francis Deak. Columbia University Press, 1935. pp. xiv, 294.

Of all questions of foreign policy there is none which so engrosses the American public at present as the policy the government shall assume towards foreign wars. The refusal thus far to join the League of Nations has intensified rather than lessened the problem. The Briand-Kellogg Pact further complicates the problem. What the theoretical bases of neutrality are, how its rules originated and how

they developed, and what is its present and future status,—these are questions to which Americans seek authoritative answers, insofar as they may be had. The book under review is the first of four volumes which undertakes to render just this valuable service.

In this book the following subjects are dealt with in succeeding chapters: The emergence of a law of neutrality, treaty development of legal rules, contraband of war, the early development of the law of blockade, enemy property, procedure law at sea, early prize court procedure, and neutral duties. The authors have performed a capital piece of work in tracing the origins of the rules governing neutral rights and duties up to the Napoleonic Wars. They have sueceeded, without undue simplification, in extracting the rules from the tangled political and economic setting and the frequently even more tangled rationalizations of judges and diplomats. Though dealing with the historic origins of neutrality the book has a very strongly contemporaneous flavor, for the authors have written with the modern problem constantly in mind.

The authors conclude that "(the method and manner of belligerent endeavor to control neutral trade) during the World War, precisely as in the sixteenth and seventeenth centuries, was argued and decided, not on the basis of what was assumed to be law, whether conventional or customary, but on the basis of hard facts presented by existing conditions, strategic necessities, whether real or alleged, and political exigencies—conditions, necessities and exigencies produced by a multitude of factors whose combinations and reactions were, and always will be, far beyond the control of theoretical assumptions." In spite of this conclusion Professors Deak and Jessup intimate that they believe that the rules of conduct can be successfully formulated. We eagerly await the fourth volume of the series, in which Professor Jessup will undoubtedly discuss this problem at greater length.

A. VANDENBOSCH.

THE INTERSTATE COMMERCE COMMISSION. A Study in Administrative Law and Procedure. By I. L. Sharfman. Part Three, Volume B. New York: The Commonwealth Fund. 1936, pp. xiv, 833.

The fourth volume of Professor Sharfman's series on the Interstate Commerce Commission is confined to a study of that very intricate problem, rate regulation, considering both the rate level and the rate structure. "The rate level", the author explains, "is concerned with the reasonableness of charges in an absolute sense rather than in relationship to each other." The rate structure has to do with the "adjustment of specific charges as between different persons, places, commodities, and types of traffic, in the interest of preventing discriminatory practices and maintaining equitable rate relationships."

The advice given to one about to read one of Scott's novels might well be applied to Professor Sharfman's work. Skip the first two

hundred pages if you want to get into the real story at once. These two hundred pages or more represent gleanings from the reports of the Commission and tediously follow the hearings before the Commission to advance or to lower rates since 1910. After these recitals are over the reader finds an exceptionally fine analysis of the problems of rate-making. Here he finds a scholarly discussion of such subjects as value of service to cost of service, established rates and their influence, commodity values, transportation costs, social importance of goods, the removal of discrimination, the influence of competitive factors, and the influence of commercial factors.

The author concludes that "after all, it is a central and basically sound principle of our economic system that prices are properly fixed when they correspond to production costs, even in the case of most necessary goods; and there is no clear reason for holding that that part of production which consists in the transportation of commodities should be required to follow some other pricing principle". He believes that the rate structure and its regulation, looked at broadly, over many years of control, shows only a moderate achievement towards a symmetrical and logically integrated system of charges. The Commission has, however, wiped out striking injustices and anomalies of the rate structure.

Professor Sharfman's treatise is a real contribution to the already great mass of literature on the subject of rate-making.

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CASES ON CRIMINAL LAW AND PROCEDURE. William E. Mikell. West Publishing Co., St. Paul, Minn., 1936. Pp. 1–1050.

A comparison of the new edition of Mikell's Cases on Criminal Law with previous editions and with other case books on the subject shows striking changes in the organization and arrangement of the subject matter, and the order in which the various topics are treated. Chapter 3 of the former edition, dealing with "intent" has been shortened; cases from this chapter have been transferred to chapters dealing with specific offenses. In the former editions the material on so-called "general principles", such as contributory negligence and guilt, coercion, and the cases dealing with entrapment, self-defense, prevention of crime, etc., was placed before the cases on the specific offenses. In this edition these topics are treated after the specific offenses. It is believed that the student will get a clearer and more orderly knowledge of the subject by studying the specific crimes before taking up what are, in effect, defenses to these crimes. This arrangement also results in less repetition. The new order in which the subjects are presented does not, however, mean merely a re-arrangement of the order of topics. It involves also a re-arrangement of the cases

within the topics, the omission of certain cases and the inclusion of others, and more particularly the shifting of cases from one topic to another.

The present collection of cases, about 250 pages, is a revised edition of the 1910 edition. It has just been completed by Professor Mikell and is published here for the first time. The demand for rationalization of the rules of Criminal Procedure has been insistent during the past twenty-five years. Five years ago this movement received a decided impetus with the publication of the American Law Institute's Code of Criminal Procedure. Many of the cases new in this edition will show the response of courts and legislatures to this demand. Sixty-one, more than one-third of the cases appearing in this edition, were not in the edition of 1910. Of these, all but two were decided since the first edition was published, and more than half were decided since 1930. The author is indebted to the American Law Institute for permission to reprint pertinent sections of its Code of Criminal Procedure in the notes.

MCCORMICK ON DAMAGES. Charles T. McCormick. West Publishing Co., St. Paul, Minn., 1936. Pp. 1–778.

This text covers the important questions of the measure of damages which present themselves so frequently in modern litigation. Every lawyer knows that the real outcome in many cases hinges, not upon the substantive question of liability, but upon the practical problem of what is the basis for measuring the damages. The importance of these questions is illustrated by the frequency with which they have been presented for determination in recent decisions of the Supreme Court of the United States. A notable instance is the recent Gold-Clause Case (*Perry* v. *United States*) which was made to turn on the pivotal question of the measure of the plaintiff's loss.