Kentucky Law Journal

Volume 20 | Issue 1 Article 12

1931

Book Reviews

James W. Martin
University of Kentucky

Alvin E. Evans
University of Kentucky

Forrest Revere Black
University of Kentucky

Book Reviews

Law and Literature.—By Benjamin N. Cardozo. Published by Harcourt, Brace and Company, New York City. Pp. 190.

These discussions are in the nature of scholarly recreations, they are very clearly the recreations of a *scholar*. The volume is made up of seven essays and addresses, some of them reprinted from law journals or other publications. The style in each case is more or less informal, though none the less logical and polished; indeed the degree of informality varies considerably from the running comment and familiar anecdote, the talking over in a "desultory and intimate way appropriate for relatives and friends" (p. 176), in "The Comradeship of the Bar" to the semi-formal discussion of legal opinions found in the essay from which the book is named. On no single page is the reader bored or subjected to the slightest attack of ennui.

The volume would make excellent reading for every member of the bar and in fact for every student of society from whatever angle. The appeal ranges from that found in an authoritative discussion of good form in presenting legal materials to the part of the physician in the reform of criminal law, on the one hand, and, on the other, to the attitudes which a young attorney should adopt. While the discussions are rich in precept with respect to legal ethics, social ethics generally, for that matter; there is no single instance in which the tone is objectionably didactic. Though the volume is commended as excellent reading for members of the bar, it ought to be emphasized that this work of one of our greatest jurists, is not a law book; it should be read rather for the same reason which prompted the author to read Plato's *Dialogues*, Bandler's *The Endocrines*, or Gillin's *Criminology and Penology*, with which he exhibits more or less intimate familiarity. In other words, the lawyer perusing these discussions will do so with the recognition that his wisdom as an attorney, not to mention his responsibility as a citizen, depends on things other than purely legal knowledge.

James W. Martin
Bureau of Business Research,
University of Kentucky.

Select Cases and Other Authorities on the Law of Trusts.—By Austin W. Scott. Cambridge: published by the Editor, 1931. Pp. xiv, 818.

The first edition of Scott's Cases on Trusts was published in 1919. It was admittedly based upon Professor Ames' cases, but Professor Scott had added a good deal of material of his own, particularly in the chapter dealing with Distinctions Between Trusts and Other Concepts, but more especially in the addition of his invaluable chapter on Resulting and Constructive Trusts.

The new edition is a thoroughgoing revision. It contains approximately the same number of cases as the old edition, namely about three hundred; but almost one-third of these cases are not to be found in the earlier edition. Many of the cases not so used before are, of

course, more recent than the first edition, but not all of them. The omissions and insertions are found well distributed throughout the book. Footnotes have been thoroughly worked over, and brought up to date with citations of recent cases, articles and periodicals, and other material.

Some new arrangement of the material has been made. Thus a new chapter is inserted entitled "The Administration of Trusts." The editor introduces a new section dealing with "The Liability of the Trustee to the Beneficiaries" with all new cases. Formerly he had dealt with interests of life tenant and remainderman in a chapter on "Investment of Trust Funds." Here he has added a new section entitled "Successive Beneficiaries."

In a footnote on page 771, the editor states as a general rule that a trust once created cannot be revoked where no power of revocation is reserved. This statement however, is qualified rightly on page 787. He might perhaps have dealt more fully with the termination of contingent equitable interests. He might also have indicated that the real problem in the Totten case is whether a settler can revoke a trust once created without reserving the power to revoke.

This book will undoubtedly continue to serve a large portion of the schools as a basis for the course in Trusts. There is probably no book published which contains as valuable a collection of material as this, when one considers the extraordinarily valuable footnotes.

Dean, College of Law, ALVIN E. EVANS
University of Kentucky.

JUDICIAL REVIEW OF FEDERAL EXECUTIVE ACTION.—Patrick H. Loughran, The Michie Company. Charlottesville, Va. 1930. pp. xi, 813.

The author of this treatise, which is the first in a series of two volumes, has specialized for more than two decades in federal administrative law practice. He presents an exhaustive digest of cases exhibiting the extent of present judicial jurisdiction with reference to much of the subject matter of federal executive action wherein public interest or private rights are involved. It is the author's conviction that the general atmosphere of the executive department—a political department—is one that is anything but conducive to a satisfactory discharge of functions that are of a judicial nature; consequently to that department should never be intrusted the power of final action, on either law or fact, in any subject matter affecting private right. The first volume, which analyzes the present status of judicial review of administrative action reveals that the judiciary is powerless to review many errors of judgment in some acts of 'executive justice' and that the courts are without a power of discretion to determine questions on the law of proof of facts, or to review on the facts if there is any substantial evidence whatever to support the facts as found by executive officials. The author admits that the dissatisfaction he has felt with the provisions made by Congress for judicial review of administrative action has been the incitement to the performance of this work.

No one can doubt that this is one of the gravest problems in our ever-growing jurisprudence. Chief Justice Hughes had this in mind when he said, "The power of administrative bodies to make findings of fact which may be treated as conclusive, if there is evidence both ways, is of enormous consequence. An unscruplous administrator might be tempted to say, 'Let me find the facts for the people of my country, and I care little who lays down the general principles.'"

The author has indexed the cases under the names of courts, departments, commissions, boards and offices and under the forms of action and subject matter. It furnishes the only handy reference in a single treatise of this important body of case law. It is hoped that this work will receive the distribution that it deserves and that the author will complete the second volume dealing with constructive proposals for a greater judicial control of administrative rulings.

FORREST REVERE BLACK

Professor of Law,
University of Kentucky.

SOCIAL CONTROL OF SEX EXPRESSION.—By Geoffrey May. New York: William Morrow & Company. Pp. xi, 307.

The English seem to believe that they have been better able to approach problems of morality than we have and that their *laissez faire* attitude is more in harmony with modern liberality than our own. A recent article points out the difference in the way the English look at problems of sex expression from the American way, and indicates that the English view is the more tolerable one for modern civilized society. They point not merely to our laws prohibiting the manufacture and sale of intoxicating liquor, but also to the statutes of American jurisdictions on adultery, fornication, etc.

The book of Mr. May however, tells a rather significant story of English history. In the first book the doctrine of sex repression is set forth among primitive peoples, and especially among the ancient Hebrews and the early Christians. Chastity was a property right in the father which passed to the husband. Among the early Christians chastity was revered for its own sake rather than for any bearing it might have upon family life. A significant story is told about the effort of the church to control sex expression through the penitentials (page 82) and the ineffectiveness and corruption of ecclesiastical jurisdiction, is set forth at length. The various methods of proceeding, namely by inquisition, accusation and denunciation, are recorded. Women were denounced by Christian asceticism as evil and dangerous, although the romanticism of chivalry praised them as worthy of love and reverence. The problem is discussed under the various periods of English history and the writer proceeds to pre-Revolutionary America and to America of today. The story is well told, and is immensely worthwhile reading, especially for the legislator who conceives it his duty to frame legislation in the interest of morality.

Dean, College of Law, ALVIN E. EVANS
University of Kentucky.