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Book Reviews

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BOOK REVIEWS

PRINCIPLES OF THE LAW OF CONTRACTS. By Charles Joseph Turck. Chicago: Callaghan and Company, 1929. Pp. lvii 1-654.

In the year 1879 the brief treatise on Contracts by the well known Englishman, W. R. Anson, was first published. The conciseness and charming style of the writer made it immediately a popular book among law students, and even among lawyers. So well has the book been received that several American editions have been brought out. One of these was back in 1887 by Professor Knowlton of the Michigan Law School. Another well known edition of recent years is that by Professor A. L. Corbin of Yale. Late in 1928 still another edition, being a revision of the Knowlton revision, was brought out by Professor Charles J. Turck, now President of Centre College. This book is the outgrowth of a number of years of experience in teaching the subject of Contracts, President Turck having formerly been Professor of Law at the Vanderbilt Law School, and subsequently Dean of the Law School of the University of Kentucky. The edition is a timely one, altho it seems a bit unfortunate that it should have been brought out just prior to the official publication of the Restatement of about one-half of the subject matter of the Law of Contracts by the American Law Institute. It thus appears that President Turck did not have the benefit of the final judgment of the authors of that monumental piece of work.

In addition to bringing the notes up to date throughout the entire book, and inserting occasional notes to qualify statements which might be misapplied, President Turck has pretty thoroughly revised the text in the following sections only: 11-18 inclusive, 108-113 inclusive, 121, 138, 141-143 inclusive, 163-165, 167-169, 181, 208-211, 248, 277, 289, 301, 323-332, 340-344, 350-355, 362-368, 388-389-390, 406 and 409.

In addition to citing the recent important cases in this country, President Turck has inserted in the later part of the work a series of selected problems which seem to him to be useful in the application of the principles laid down in the text.

It is to be noted that the first considerable alteration in the text has to do with offer and acceptance, and the alteration is

a distinct improvement upon the original. On page 23 there is an extended note dealing with the power to withdraw an offer in the case of unilateral contracts. The nature of unilateral contracts is well discussed.

Instead of the very brief discussion in the Knowlton revision of contracts not performable within a year, President Turek has inserted a much more extended discussion with extensive foot-notes and goes into greater detail regarding the question whether impossibility of performance within a year on one side only is sufficient to take the case outside the Statute of Frauds.

Section 121 contains a considerably extended discussion of the difference between contracts of sale and contracts for material and labor.

Section 138 dealing with forbearance as a consideration for a promise is a new section. President Turek also deals with the nature of consideration in subscriptions, and particularly in charitable subscriptions, and notes the fallacy of the current views respecting the consideration. It is interesting to note that his criticism is not out of line with the Restatement of Contracts putting charitable subscriptions outside of obligations requiring consideration, and frankly making them an exception.

There is also an improvement over the older edition in the discussion of the problem of consideration where one makes a new promise to do a thing which he is already legally obliged to do, but makes it to a third person. The view which was adopted by the American Law Institute is advocated, and the more important cases which oppose this view are cited, including *McDevitt v. Stokes*.¹

There is considerable additional discussion in this new revision on the very delicate topic of mistake. It does not always seem to be clear whether the author is dealing with unilateral mistake or mutual mistake. The problem is difficult at its best, and is exceedingly difficult to discuss understandingly in such a small compass.

Naturally, Mr. Anson was not interested in contracts for the benefit of a third party. Considerable material has been added on that subject in the present revision. It is implied in Section 226 that the English have completely changed the law

¹174 Ky. 515 (1917).

by statute with respect to the right of the sole beneficiary to sue on a promise made for his benefit. We are not sure, however, whether the author means to so indicate, or whether he means to limit his statement to insurance contracts. In general, the conclusions reached on the general problem of contracts for the benefit of third persons do not disagree with the statements found in the Restatement of the Law of Contracts.

In Sections 340 to 344 the discussion regarding assignment of contracts and the rights of parties where there are successive assignments of a chose in action or of equitable interests, is much improved over that found in the older revision. The examination of the problems involved in *Dearle v. Hall*² is much more fully set out and the recent case in the Supreme Court of the United States adopting the opposite doctrine is inserted in the foot-note along with many other cases.

Sections 362 to 368 involving joint, and joint and several obligations, are new, there being no discussion of that matter in the old edition. Likewise, the material on substantial performance found in Sections 388, 389 and 390 is new.

The reviewer feels that the objections to the doctrine of anticipatory breach (apparently accepted by the author) are so evident that he would like to have found a fuller discussion of that problem.

On the whole, the new work has value and the language is simple and easily understood. This reviewer believes this book is the best brief text available to students, and that it will not be without helpfulness also to the busy practitioner. It is of course, not designed as a reference book. It can be used profitably in connection with the Restatement of Contracts worked out by the American Law Institute. President Turck is to be commended for the partial working over and improving of an old classic.

ALVIN E. EVANS.

CASES ON DOMESTIC RELATIONS. By Joseph Warren Madden. American Casebook Series. St. Paul: West Publishing Company. 1928, pp, xix, 742.

Professor Madden's Cases on Domestic Relations is more than a revision of Kales' Cases on Persons which it is evidently

² 3 Rus. 1 Ch. 1828.

designed to supplant in the American Casebook Series. It is practically a new work. While the editor has in the main followed Professor Kales' outline, he has drawn not more than half his cases from the earlier work. Of the one hundred forty odd new cases over sixty were decided since 1913, when Kales' cases with Vernier's supplement on Marriage and Divorce was published.

Instead of including the cases used by Kales to illustrate the early law as to property and contract rights of married women, Professor Madden has substituted an eight page summary of the old law in the subject. This with the twenty pages of cases under modern statutes would seem a somewhat inadequate treatment of the subject. The editor, however, has forestalled this objection by suggesting in his preface that "in schools which devote particular attention to the law of one jurisdiction, the local statutes and their interpretation will form essential additional material for the course."

In his effort to keep his collection of cases within the limits of a two-hour course of one semester, he has resorted to notes summarizing the law upon such topics as adoption, illegitimates, validity of transactions between husband and wife as against the husband's creditors, and community property. In Professor McCurdy's new collection of cases, on the other hand, one finds ten pages of cases devoted to legitimacy and adoption; thirty pages to contracts, conveyances and transfers between husband and wife; and twenty pages to community property. In view of the tendency at the present time of parties desiring divorce to go to France or to Mexico for the purpose of securing dissolution of the marriage bonds, the omission of the subject of jurisdiction in divorce seems a serious one. Because of the important bearing the subject has upon subsequent marriages of the parties, it would seem that the doctrine of *Haddock v. Haddock* and *Atherton v. Atherton* deserves more than passing mention in a foot-note. It would seem to have a place in a course on domestic relations as well as in a course in conflict of laws.

Those teachers who have been accustomed to using Woodruff's cases will notice the absence of sections on insanity, drunkenness and aliens.

The editor has selected his cases with care, and has avoided the mistake some compilers have made of summarizing the facts

and denying the student the opportunity of distinguishing between what is relevant and what is not. There is a goodly number of footnotes and many references to law review articles. The work is a very great improvement upon Kales' Cases on Persons and is certain to be well received by law school teachers.

W. LEWIS ROBERTS

ECONOMIC FOREIGN POLICY OF THE UNITED STATES. By Benjamin H. Williams. New York: McGraw-Hill Book Company. 1929, pp. xi, 426.

Professor Williams has produced an excellent piece of work in *Economic Foreign Policy of the United States*. In this book he discusses calmly and carefully the place of the economic motive in foreign affairs. To the individual who believes that the United States acts only from disinterested motives the work is an eye-opener, for it shows clearly the influence of capitalism in diplomacy.

The book has numerous footnotes, copious quotations from men in public affairs, and frequent charts and tables. The bibliography is adequate, but not critical, and the index is short but analytical.

Seldom do slips occur, and they are usually in proof reading and of minor consequences as on pages 5, 165, 257, and 322. At times, perhaps, the need for brevity gives a slightly erroneous impression. Thus, on page 281 the author leaves the impression that Canada and the United States had only one reciprocity treaty, 1854-1866, when limited reciprocity in fisheries was established in 1872 and again in 1889. On pages 317 and 318 he fails to point out the fact that Great Britain voluntarily withdrew from the Samoan Islands and perhaps leaves the impression that the three countries—United States, Great Britain, and Germany—were entitled to equal rights in territory as well as in commerce and shipping. Yet, on the whole, the book is a scholarly piece of work, a credit alike to the author and the publishers.

The work falls into two main parts—"The Diplomacy of Investment" and "The Diplomacy of Commerce,"—the major emphasis being on the first, which consists of eleven of the twenty chapters. The first chapter is entitled: "Introduction:

The Place of the Economic Motive" and the last chapter is labeled: "Conclusion: The Economic Diplomacy of the Future."

In Part 1 Professor William discusses the transition from a debtor to a creditor and the value and investments from the public standpoint. He devotes separate chapters to the political encouragement of capital exports, the sending of capital to foreign oil fields, and capital embargoes. He believes that the United States by discouraging or prohibiting loans in order to force concessions of one kind or another has failed to make sufficient gains to offset the injury to her prestige. He assigns the remaining chapters of Part 1 to the protection of American investments abroad, emphasizing in particular the "enormous expansibility" of the due process doctrine. He considers anti-revolutionism and manipulation. Under the practice of armed protection he discusses naval patrols, neutral zones, landing parties and forces of occupation, and American officered constabularies. He devotes two chapters to financial supervision, customs receivership, the collection of internal revenue, and control over indebtedness and expenditures. In Chapter XI he shows by chart the chief ways in which the United States has controlled the finances of such backward countries as Bolivia, Cuba, Dominican Republic, Haiti, Liberia, Nicaragua, Panama, and Salvador. He concludes Part 1 with a thought-provoking chapter entitled: "The Collection of the Interallied Debts: A Problem in International Finance and Politics." The last paragraph of this chapter hints at marked reductions:

"There are few responsible Americans who believe that the debt should be cancelled forthwith and without some consideration in return. It seems, however, that wise statesmanship would stand ready to participate in a general readjustment in which reparations, the debts, and any other economic disabilities would be subject to such revision as would appear calculated to advance the best interests of the world."

Under the Diplomacy of Commerce Professor Williams traces the historical aspects of commercial diplomacy, noting the struggles against mercantileism, the quest for trade privileges in the East, the entrance of Infant Industry, the coming of Mass Production, and the demand for equal treatment. He discusses bargaining tariff laws, reciprocity treaties, the most-favored-nation clause, the open door, the closed door, the freedom of the

seas, and the coastwise trade monopoly. He devotes two chapters to raw materials. In these chapters he emphasizes the industrial and military importance of raw materials, our position in raw materials, methods of securing raw materials and foodstuffs, the question of freedom in raw material commerce, protection restrictions, and restrictions for price-fixing and stabilization purposes. Under the methods used to fight against the control of raw materials by foreign monopolies he notes diplomatic representation, refusal of loans, economy in consumption of controlled materials, appropriation of money, and research investigations.

In his last chapter the author emphasizes the need of considering the effect upon the nation as a whole, of taking a far-sighted view, of developing a world outlook and intelligent cooperation, of reaching amicable agreements when disputes occur, of entering legislative conferences for the settlement of world problems, and of assigning to the different interests in our infant economic diplomacy the weight to which they are entitled. Concerning the business interests he concludes:

“ . . . Wealth and talent are at their command. They are inspired by an irrepressible enthusiasm and a dogmatic self-righteousness. Can anyone doubt but that as the decades of the twentieth century pass by, their influence in the molding of politics will continue to be powerfully exerted? This is inevitable. It is right that in a system of representative government their voice should be heard. But such influences should be given weight only in so far as they are in line with the dictates of wise statesmanship, taking into consideration the interests of the whole nation, today and tomorrow.”

WALTER W. JENNINGS

ESSAYS IN THE LAW OF LIBEL. By Leon R. Yankwich. Los Angeles: Parker, Stone & Baird Co., 1929, pp i-iii, 1-310.

Judge Leon R. Yankwich has recently published a treatise on the Law of Libel. While it is largely based on the decisions and statutes of California, it is not intended to be a local book. In the various chapters of the book he discusses the problems of what is libelous, the newspaper's relationship to libel, the application of the law of contempt to newspapers and the duty of the newspaper with respect to crime news, and its obligations not to hamper the proceedings of the court either before or

during trial. He further discusses the defenses in the law of libel, privilege, the character of the plaintiff and the scope of the attacks that can be made upon his character, and the limitations upon those attacks. The final chapter deals with criminal libel.

At the outset two criticisms should be made. One is that when the writer is not quoting his story is not continuous and connected. For example, on page 9 there are fifteen paragraphs, the shortest one being less than one-half a line long. Such pages may be found almost anywhere throughout the book. A more connected and continuous style of writing would make the book far more attractive. The second criticism the reviewer has to make is that there are far too many long quotations. It would be fair to say that probably more than one-half of the book is taken up in quotations. The reviewer believes that the writer should assume that most of his readers have access to the authorities, and that in general he should summarize the conclusions reached rather than make long quotations. Sometimes it may be necessary to quote where the exact wording of the court has special significance, but certainly that cannot be urged for all the quotations in this book. For example, pages 136, 7, 8 are completely taken up with long quotations except for about three lines. The very next page is likewise more than one-half a quotation. See also pages 152, 3 and 4.

There is a valuable discussion of constructive contempt and a criticism of the practice of courts in certain jurisdictions in punishing libel of the judge as constructive contempt. He points out on pages 177, 183 the injustice and unfortunate results arising from such practice. Comment is made, page 180, on the case *Dale vs. State*¹ and the peculiar rule developed in Indiana that a publication may be contempt even though it does not refer to a pending case. Mr. Dale's service to the cause of freedom of the press is deserving of study. There is further valuable comment on the doctrine that truth is no defense to a proceeding of constructive contempt by one who is not an officer of the court.

In the chapter dealing with "The Newspaper, The Court and Crime News" the author on page 196 points out rather striking statistics regarding the number of persons convicted of

¹190 Ind. 110, 150 N. E. 781.

felony in California as compared with the total number arrested. One other fact would have helped the statistics, and that would have been to show how many major crimes were committed for which no arrests were made. We are led to believe, however, that in California a far better showing has been made with respect to the problem of crime prosecutions than records show in many other jurisdictions.

On page 204 the author quotes in a foot-note an eloquent passage from the *Christian Science Sentinel* for October 20, 1928, which should be read and taken to heart by every newspaper publisher.

In the chapter dealing with the character of the plaintiff as an issue in libel, one wonders why the author gives so many merely cumulative illustrations of his thesis.

The chapter dealing with the law of criminal libel is one of the best in the book. The author shows that libel of the dead is not the only type of criminal libel, as has been sometimes intimated.

In spite of these defects the reviewer believes that this book will find a place for itself in the libraries of a good many lawyers.

ALVIN E. EVANS

PRINCIPLES OF JUDICIAL ADMINISTRATION. By W. F. Willoughby. Washington: The Brookings Institute. 1929, pp. xxii, 662.

Professor Willoughby has had the boldness to attempt that which has not been tried previously, namely, a survey of the various machinery of justice as a connected whole. Hitherto no author has been willing even to attempt a study of the procedure of the courts as an entity. Rather it has been deemed sufficient to handle the various matters of process, pleading, trial, evidence, judgment and appellate procedure as more or less detached and isolated subjects. Not only has Professor Willoughby correlated these subjects in a single survey, but he has included also such other items as administrative tribunals, prevention of crime, the organization of the judiciary, agencies of law enforcement and law reform, and legal aid work.

The book is chiefly of value as a survey, and a correlating survey at that. Recognizing it as such, the reader will not be unduly disappointed to find that the treatment accorded many

items is very sketchy and inadequate in character. Nor should one expect an infallibility of judgment as to each issue raised. For instance, the chapter on "Appeals" is rather unsatisfactory. The conclusion is reached that a very limited review should be accorded questions of fact on appeal. With such a conclusion more than one student of procedure doubtless will differ. Rather should the problem be tackled from the standpoint of eliminating the immaterial and unessential facts before trial, and then granting a broader scope of review to the lesser number of fact-questions presented on appeal. There seems an inconsistency in saying, as the author does, that the scope of fact review should be very limited and yet that an action on appeal should partake of the nature of a retrial.

With the groundwork so finely laid by this survey, there remains the task for someone of working out a modern philosophy of procedure. Surely this book will have fulfilled its mission if it should serve as the forerunner for such a task. In the meantime judicial councils, law reform commissions and bar association committees should find this a valuable handbook for the more practical measures of procedural reform.

GEORGE RAGLAND, JR.

REAL COVENANTS AND OTHER INTERESTS WHICH "RUN WITH LAND," INCLUDING LICENSES, EASEMENTS, PROFITS, EQUITABLE RESTRICTIONS AND RENTS. By Charles E. Clark, Chicago: Callaghan and Company. 1929, pp. xxv, 201.

Professor Clark's Covenants and Interests Running with Land is one of several small but excellent legal treatises made up of articles that have been published by the authors in leading law reviews. Professor Clark has dealt with some of the more difficult phases of real property law. A chapter is devoted to each of the following subjects: Licenses in Real Property Law, The Running of Easements and Profits, The Running of Real Covenants, Party Wall Agreements as Real Covenants, the Running of Equitable Restrictions, and The Running of Rents.

The positions taken by the author on controversial matters, as a rule, seem sound. After stating the views of Professors Vance and Simes as to assignability of easements in gross, he concludes that the traditional attitude of the courts against assignability of such easements is sound. In regard to privity as

a requirement in covenants running with the land, he is convinced "that privity in the sense of succession to the estate of a party to the covenant is the only privity which should be required in the case of real covenants; that this requirement should not be applied technically so as to require succession to the identical estate of the assignor but merely to his general legal position as regards the specified field; that where such privity exists, and either benefit or burden is intended to run and 'touches or concerns the land,' it should be held to pass freely with the land, either alone or together with its accompanying burden or benefit where that too satisfies the necessary legal requisites; and that failure of one end of a covenant to run should not prevent the other end from passing to assignees of the land where otherwise it may properly be so transferred.

To meet the objection that the Rule against Perpetuities raises to the two theories usually advanced to support the validity of a covenant to pay half the cost of a party wall at such future time as the nonbuilder shall make use of it, the author suggests a third theory. It is to the effect that the nonbuilder upon the making of the contract immediately acquires a general interest in the party wall but that there is a restrictive agreement against a use by him or his assignees until he or they shall make the required payment. The author supports his theory with convincing arguments.

The final chapter, which treats of rents, is not so carefully worked out as the other chapters. The earlier part of the chapter on party wall agreements repeats in part matter contained in the preceding chapter.

The book should be of great aid to the student in gaining a mastery of these intricate problems of real property.

W. LEWIS ROBERTS

ETHICS FOR SUCCESS AT THE BAR. By Edwin Bolte, Baltimore, Md.: Waverly Press, Inc. 1928. Pp. i-xvi, 1-196.

In this modest little book the author seeks to hand down to the younger generation of lawyers the results of some of his own experiences. He discusses the nature of the office of attorney, admission to practice, suspension and disbarment, privileges of an attorney, his relationship to his client and to the public, dealing incidentally with problems of the retainer and compen-

sation and lien, the initiation and termination of the relationship between the attorney and client. His last chapters are general advice to lawyers with respect to how they may succeed in the practice.

The book does not pretend to be a scholarly history of advocacy. There is, therefore, no discussion of the advocacy of Roman law, nor does he deal with the history of appearance by advocate in early English criminal trials.

Some criticisms may fairly be made. First of all, the book would have a much more pleasing appearance if the citations were put in footnotes instead of given at length in the body of the discussion. Not always has there been good proof reading. For example, La. Ann. is cited on page 48 as La. Arn. Fi. fa. is written fifa on page 64, not as a Latin abbreviation. The word "action" appears instead of the word "origin" in the second line from the bottom of page 81. Covenant is spelled *covenent* on page 98. The author also speaks of "a memoranda" on page 101, and he speaks of *inadmissive* evidence on page 87. There is rather naive advice on page 104 to young attorneys to make a card index of their friends, enemies and acquaintances. There is also further advice about joining religious and fraternal organizations for the purpose of acquiring contacts.

There is, however, some very wholesome advice with respect to other matters, and particularly with respect to the duty of the lawyer to his client. The advice as to making insanity a defense in criminal matters is well given. On the whole, the book would be useful for young lawyers who are seeking an elementary discussion of the problems of the ethics of the lawyer, his relationship toward his clients and towards the public.

ALVIN E. EVANS