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Book Reviews

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BOOK REVIEWS

A CONCISE HISTORY OF THE COMMON LAW. By Theodore F. T. Plucknett. Rochester, N. Y.: The Lawyers Co-operative Publishing Company. 1929, pp. xviii, 458.

Those who are interested in the history of the common law, yet find their hours too crowded to digest more lengthy histories, should feel particularly grateful for this scholarly volume which has just come from the pen of one of our really distinguished legal historians. Well known for his earlier works¹ and enjoying a favorable reputation both here and abroad, Professor Plucknett was especially qualified for the work which this book represents.

The book is intended primarily for law students in the early stages of their legal education and for them it should form an excellent historical introduction to their legal study. However, the busy professor and even the general reader cannot fail to derive great profit from a careful perusal of its interesting pages. The writer proceeds on the theory that to be elementary it is not necessary to be obsolete or inaccurate and with that in mind he has eliminated unnecessary detail and technicality.

The author's treatment is presented under two general heads which he terms a General Part and a Special Part. In the General Part we find these topics: The Crown and the State, The Courts and the Profession, External Forces, and Methods of Progress. The Special Part is confined to the subjects of Real Property and Contract. The first part of Book One contains an admirable discussion of the developments from the Roman conquest to the end of the eighteenth century. In part two the high point seems to be the chapter on Professional Literature. Certainly it is here that the author exhibits the greatest confidence, due largely we suppose to his work on the Year Books. Many students and even teachers of Equity will no doubt be surprised to find that subject classed with the Civil Law, the Canon Law and the Law Merchant as one of the "External Forces" on the development of the common law. The flexibility of custom, the forms of action legislation and precedent are briefly described as elements which have contributed to the growth of the law. It is interesting to note that Professor Plucknett felt that his treatment of these as methods of progress used by the common law needed justification.² Students of Real Property will be especially pleased with the author's lucid and vigorous discussion of feudalism, tenures, uses and trusts and conveyances. In

¹Published: Statutes and Their Interpretation in the Fourteenth Century; Joint Editor of Pound and Plucknett, Readings on the History and System of the Common Law; Edited Year Book 13 Richard II (1929); General Editor of the Ames Foundation; Professor of Legal History in Harvard Law School.

²p. 261.

his development of the action of Contract the chapter on Assumpsit to Slade's case is well nigh a model.

Professor Plucknett acknowledges his debt to Pollock and Maitland and to Holdsworth. But it is certain that much of the material presented is the product of the writer's own researches. The book is closely connected with Pound's *Readings on the History and System of the Common Law*, in the last edition of which Professor Plucknett was a collaborator. The two can well be used together.

The reading of this little book will serve to emphasize more strongly in the minds of most of us the need of some such systematic treatment of the legal history of this country. May the day not be far distant when some steps are taken in that direction. Who is better fitted for that work than Professor Plucknett?

ROY ROBERT RAY.

Southern Methodist University School of Law,
Dallas, Texas.

A TREATISE ON AVIATION LAW. By Henry G. Hotchkiss. New York: Baker, Voorhis & Co. 1928, pp. xviii, 492.

The first 100 pages, comprising one-fifth of the book, deal with different aspects of the law of aviation; the remaining four-fifths contain a compilation of conventions, statutes and regulations.

The text is not exhaustive, but is sufficiently comprehensive to give one a good "bird's eye" view of the subject. The author first gives a brief account of the sources of aviation law and the bearing of international law. There follows a consideration of proprietary rights in air space, tort liability of owners and operators, rules of the road, the law of insurance, the applicability of workmen's compensation acts, the law of common carriers and the relation of constitutional, patent and admiralty law, as well as criminal law.

The book is clear, concise and in the main accurate. The lawyer will find it valuable, at least as a starting point; and the layman, particularly one interested in aviation, will read it with more understanding and satisfaction than most law books.

Many problems in aviation, not easily solvable by reference to the common or statute law, are bound to arise. The legislator, the judge and the lawyer will need help. This book should be in their libraries.

FRANK H. RANDALL.

LEADING CONSTITUTIONAL DECISIONS. By Robert Eugene Cushman. F. S. Crofts & Company. 1929. pp. xii, 343. (Revised Edition).

This revised edition by one of the outstanding scholars in the field of Public Law is adapted admirably for a short course in Constitutional Law. The author has collected about fifty of the leading cases decided by our highest court and in order that their strategic significance may be appreciated, a short introductory note is utilized for the purpose of reconstructing the historical background of each case and indicating the relation of the principal case to other perhaps

equally important decisions which could not be included. The book was compiled primarily for classes in Political Science and for that purpose it is clearly the outstanding book in the field.

The reviewer is of the opinion that the law school curriculum could be improved if two courses were offered in constitutional law; one elementary and general in scope (which at least would expose the student to a background that is sadly lacking today), followed by an advanced course dealing with a few problems thoroughly. Today in most law schools the attempt is made to offer in one course all of the constitutional law. The general practice is to use a case book of 1800 pages and employ a "hit and miss" method, with the result that the student fails to acquire a background and does not have the opportunity to master a single constitutional problem. If the curriculum were altered, the Cushman casebook would be well-suited for the law school background course.

FORREST R. BLACK.

CAPITAL STOCK WITHOUT PAR VALUE. By John R. Wildman and Weldon Powell. New York: A. W. Shaw & Company, 1928. pp. ix, 553.

Capital stock without par value has become an apparently fixed incident of the corporate form of business. Frowned upon by bankers and lawyers alike, at first, in a short decade it has taken the field quite completely. Today, authorized by statute in thirty-nine states, it finds itself favored among common stocks more than three to one over its older and more clumsy rival, the par value share. Not unnaturally numerous articles in law and business periodicals and several books have been devoted to this new corporate device. The present book is the latest published on the subject. As far as the strictly legal aspects of the subject are concerned, there is a better treatise than this available. But from the standpoint of accounting this book is as good as can be had. And after all, many of the intricate problems of non par stock are problems of accounting. Certain it is that many of the abuses of the device would not have appeared had the cardinal accounting principles set forth in Chapters IV, IX, XI and XIV been strictly obeyed. From this standpoint Chapter IV alone is worth the price of the book.

It is doubtful whether lawyers will care to resort to this volume for strictly legal phases of non par stock when the studies of Berle, Wickersham and others are available. The advice on page 122 as to precautions which should be taken when a corporation changes from par to non par shares is illustrative of the approach of the whole study. The advice given is good as far as it goes but it is doubtly dangerous in that it does not go far enough. Upon such a change there is, as Berle has pointed out, great danger that existing surplus may be frozen with capital. The authors suggest precautions as to the accounting procedure which are entirely proper but they overlook the additional safeguards which Berle indicates are necessary from the lawyer's standpoint.

GEORGE RAGLAND, JR.

FEDERAL LIMITATIONS ON MUNICIPAL ORDINANCE MAKING. By Harvey Walker. Ohio State University Press, Columbus, Ohio. 1929. pp. viii, 207.

In this work, Professor Walker has presented a digest of United States Supreme Court decisions dealing with the powers and limitations of municipal corporations under the Constitution of the United States. The primary purpose of the work is to furnish municipal officers a concise statement of the nature and extent of municipal power under the federal constitution. The author makes no attempt to deal with state or inferior federal court decisions and does not consider any problems involved under state constitutional provisions. After an introductory chapter presenting a general discussion of the place of the municipal corporation in our legal system, Dr. Walker devotes the greater portion of the book to the constitutional status of municipal corporations under three provisions of the United States Constitution; the commerce clause, the contract clause and the Fourteenth Amendment. More than four hundred cases are cited in the table of cases. This work will serve as a handy source for municipal officers and scholars interested in the constitutional aspect of municipal ordinance problems.

FORREST R. BLACK.

THE LAW OF AVIATION. By Rowland W. Fixel. Albany: The Matthew Bender Company. 1927, pp. xv, 403.

In the words of the author, this book "is an attempt to classify the laws of aviation and to state the reasonable rules of law concerning the ownership, operation and use of aircraft." There is a chapter on definitions and one on the historical background. The remaining chapters consider "the theory of sovereignty in airspace," the relation of aviation law to international law (under the rather inaccurate heading "Law of Aviation a Branch of International Law"), international regulations, rules of the air, and several other branches of the law as applicable to the law of aviation. The foregoing topics comprise the first quarter of the book, the remainder being a compilation of different acts and regulations.

The book contains many matters of interest to the layman as well as to the lawyer. It is one of the first in this country on the law of aviation and has a place in any law library. It is to be commended more as a reference work than as a book to be read through by the student of aviation law.

FRANK H. RANDALL.

THE DISSENTING OPINIONS OF MR. JUSTICE HOLMES. The Vanguard Press. 1929. Arranged with introductory notes by Alfred Lief, with a foreword by Dr. George Kirchwey. pp. xviii, 314.

Mr. Lief is to be complimented in compiling in an attractive form the literary gems from the dissenting opinions of Mr. Justice Holmes.

In the history of the Supreme Court, no other judge has given such an eloquent expression to his political and juristic philosophy as has the present senior member of that august tribunal. About one-fourth of the book is devoted to majority opinions in which Mr. Justice Holmes was the spokesman for the court. Although this portion of the book is not in conformity with the title, it serves the purpose of emphasizing the point that Holmes has been more than the "Great Dissenter." Of the total number of cases in which he has participated, the ratio between majority and dissenting opinions has been eight or ten to one. The compiler has classified the dissents under five headings; hampering social experiments, infringing on freedom, encroaching on the states, usurping power and escaping taxes. This compilation by Mr. Lief should be available to every student of the social sciences for the life work of Mr. Justice Holmes is part and parcel of most of the great problems of our times.

FORREST R. BLACK.

FAMOUS SPEECHES BY EMINENT AMERICAN STATESMEN. By Frederick C. Hicks, St. Paul; West Publishing Company, 1929. pp. xi, 990.

Professor Hicks offers lawyers a novel way to study recent American history in this, his latest compilation. The addresses are grouped around pivotal events which have occurred during the last seventy-five years. Obviously this sort of collection has an advantage over the usual hodge-podge of detached and unrelated speeches. It is instructive as well as entertaining.

In the selection of his spokesmen Professor Hicks defines a statesman as "anyone who deals with public questions in a statesmanlike manner." As a matter of fact, however, thirty-five of the fifty-two speakers selected on such a basis were trained for the law and a large majority of them were at one time or another actively engaged in the practice. This is rather striking testimony to the value of legal training.

GEORGE RAGLAND, JR.