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Book Reviews

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BOOK REVIEWS

CONTRACTS IN THE LOCAL COURTS OF MEDIEVAL ENGLAND. By Robert L. Henry. London: Longmans, Green and Co., Ltd., 1926. pp. 250.

Dr. Henry's study of contracts in the local courts of medieval England is of special interest to the student of legal history. The author has given his readers the results of his researches among the rare manuscripts of the collection of the Seldon Society. The period covered is that from A. D. 602 to A. D. 1485. One finds here an account of the earliest forms of pleading. There are declarations, pleas by way of confession and avoidance, other defenses, and replications taken from these early records of law suits.

Of trial by compurgation, the author concludes: "Not only did one-sided proof by law compurgation or witnesses usually produce the correct result, but it had the added quality of being expeditious. There could be no long drawn-out trials by the introduction of interminable evidence. A limited number of persons swore a prescribed oath or testified briefly, and that ended the matter."

The present day advocates of arbitration for the settlement of civil cases will learn from Dr. Henry's work that arbitration in civil cases is no new thing. The author points out that there were six cases of arbitration in the records of the Manor of the Abbey of Bee between 1246 and 1275. (p. 95).

The author has given an interesting account of the use of the tally as documentary evidence. "The tally was a stick of wood, usually squared, marked on one side with traverse notches representing the amount of a debt or a payment. The rod was cleft lengthwise across the notches, the debtor and creditor each receiving one of the halves." He also devotes considerable space to the use of the *wed*, from which comes our word wedding; the God's penny; and the earnest; in the proof and enforcement of contracts. The *wed* was used to bind the bargain. The God's penny was the Anglo-Saxon *wed*. As the debtor might be willing to forfeit the few copper coins given to bind a bargain, it later became the practice to give a substantial amount as earnest money to insure the buyer's sticking to his bargain.

Thus arose the present day practice of paying a part of the purchase price to bind the bargain.

The author assumes that his reader is familiar with the legal terms of the period covered. He does not go into an explanation of such terms as *wed* and God's penny until he reaches the final chapter, altho he frequently uses the terms in the first part of the book. He also embodies in his text a great number of the pleadings found in the old records he has examined and leaves his reader to draw his own conclusions as to their value in the development of the subject.

Finally one might well ask why the book was not entitled the Practice and Procedure of the Local Courts of Medieval England, for the author has fully as much, if not more, to say about the practice and procedure of the local courts of the period covered as he has to say about the contracts of that day. This may be in part due to the fact the contracts of the period depended largely upon the means of enforcing the agreement of the parties.

The book on the whole is very instructive and, in parts, very interesting reading.

W. LEWIS ROBERTS

HANDBOOK OF ROMAN LAW. By Max Radin. Saint Paul, Minn.: The West Publishing Company. 1927. Pp. I-XV, 1-516.

Modern scientists are now in many of the fields of science, seeking to write their books dealing with particular sciences in such a way that the butcher, baker and candle-stick maker may be able to read them and have their intellectual interests broadened and in the long run, may become more useful and intelligent citizens. Interest in classical study has, however, been largely limited to the so-called high-brows. Classicists have not understood how to create a living interest for the laymen in the intellectual life, political institutions, philosophy, art, and history of the peoples of Greece and Rome. The stock market, oil, international relations and the advertisement of our national virtues have a greater popular appeal.

Professor Radin has not sought to write a book on this extremely complicated problem for the man in the street, but he has wished to write a book that educated persons may read and that lawyers may profit by. How many copies will be sold to

such as these, no doubt the publishers would like to know. The book, however, merits a wide sale. Lawyers with any taste at all for comparative law will find the book full of information in the main reliable, and their attention to the matter how two civilizations have met and dealt with the same or similar problems will be sharply challenged.

No reviewer of course, can be satisfied, since he himself did not write the book; and therefore the present reviewer proceeds to point out certain limitations which are not necessarily criticisms, but yet which affect his personal estimate of the book.

Knowing that Professor Radin is a classicist as well as a lawyer, he would have expected a larger use of Livy's history and the important records therein contained; he would expect a greater emphasis laid upon the criminal procedure of the time of Cicero and a discussion of the two types of criminal procedure before two of the assemblies and something said about the relation of the *quaestio extraordinaria* and the *quaestio perpetua* to the *senatus consultum ultimum*, for under the latter, Cicero justified his proceeding against Cataline. A little more discussion of the profound constitutional changes which took place during the period of the famous triumvirate would not have been out of place.

The reviewer wonders whether the term *ex parte* would not suit the idea intended to be conveyed better than the word "interlocutory" on page 57; whether the *conditio captatoria* is quite comparable to our notion of a mutual will, on page 409; whether the term "marshaling" is used in quite our legal sense on page 424; whether the etymology of the term "*prae-scriptio*" (page 364) had much to do with the fiction of a lost grant.

Occasional infelicities of expression may be noticed, such as that on page 402 where it is said that "holograph wills were allowed by parents in favor of their children," where the author evidently means holograph wills in favor of their children were allowed to be made by parents, and on page 203 where the word "both" would be preferable to the word "either" in the fourth line.

The reviewer, however, wishes to comment on the clarity of the author in setting forth how citations to the Corpus Juris are to be read; on the unusually excellent discussion of *furtum* as comprehending the law of conversion; to the clearness of the

exposition of the *Lex Aquilia* in section 49, and to the clear treatment of testamentary succession. Probably the author has gone into as much detail as we could expect in a handbook.

On the whole, the book is commended as an attempt to set forth a highly complicated subject in language as simple and free from technical expressions as may be. The reviewer hopes that many will read it.

ALVIN E. EVANS.

BLACK ON CONSTITUTIONAL LAW, Hornbook Series, Fourth Edition. West Publishing Company, 1927. pp. xxxi, 815.

CASES ON CONSTITUTIONAL LAW, Hornbook Case Series, to accompany Black on Constitutional Law, West Publishing Company, 1927. pp. x, 586.

For law school purposes, the case and text books prepared by the late Henry Campbell Black will be of little value. As an elementary presentation, they may be found useful in undergraduate courses in political science. Of the two volumes, the text is far superior to the case book.

The case book is subject to a number of criticisms. In the first place, the excerpts that have been selected from the cases are so brief, in most instances, as to destroy any merit in the case method of presentation. In the second place, there is a very inadequate treatment of the topics selected. (a) Fifteen pages (482-497) are allotted to a discussion of the important problem of due process of law. (b) The "Limitations" on the police power are presented in four pages (353-357) and the one case selected for this section is not even decided by the Supreme Court of the United States. (c) The enumerated powers of Congress (other than the taxing power and the commerce power) are treated in excerpts from three cases covering a total of seven pages (125-132). In the third place, a greater criticism is justified when one considers what is omitted. (a) There is no section dealing with the relation of the nation and the states under our federal system and such old favorites as *Chisholm v. Georgia*, *Texas v. White*, *In re Neagle* and *Abelman v. Booth* are omitted. (b) There is no section on the privileges and immunities of citizens of the United States and such famous cases as the *Slaughter House Cases* and *Minor v. Happersett* are missing. (c) There is no section dealing with the treaty power, (d) the war power,

(e) double jeopardy. (f) There are no cases on territories or dependencies and the student of this book will never have an opportunity to know of the danger that lurks in the doctrine of the "Insular Cases." (g) Finally, in these post-war days of mass arrests and illegal raids, some cases dealing with unreasonable search and seizure should be presented, so that the student might know the attitude of our highest court concerning practices that should "shock the common man's sense of decency and fair play."

An examination of the table of contents of the text book will show that its scope is broader and its treatment more thorough than that of the case book. The text undoubtedly will be of use to laymen and students as an elementary introduction to the study of constitutional law and as such it is a worth-while addition to the Hornbook Series. But just as the case book is not to be compared with Hall or Wambaugh or Evans, so the text will not supplant Willoughby or Cooley or Burdick.

FORREST R. BLACK.

THE OUTLAWRY OF WAR, A CONSTRUCTIVE POLICY FOR WORLD PEACE. By Charles Clayton Morrison. With an Afterword by John Dewey. Chicago: Willett, Clark & Colby, 1927, pp. x, 332.

The recent interchange of notes between France and the United States government has brought to the forefront the question of the outlawry of war, a question that is of interest to the lawyer as a leader in his community.

Dr. Morrison's proposition is "that the nations shall condemn and renounce forever the use of war for the settlement of international disputes; that they shall do so in a universal treaty; that this treaty shall also provide for the equipment of an international court with a code of the laws of peace and with jurisdiction by which it may summon an offending nation, hear the case and render its decision; and that each nation signatory to the treaty shall agree in full faith to abide by the decision of the court." The casual reader will at once say that this is nothing more nor less than the Borah scheme for the outlawry of war and he will probably be not far from right. In fact Senator Borah in giving his approval says: "A great book . . . clear

and courageous thinking upon the most vital problem of these days. . . . I trust it will be universally read."

The author believes that the way to outlaw war is to go and do it. As to just how he would interest nations that are now members of the league is not made clear or just how he would interest such a nation as Russia in such a treaty is not made evident. Apparently he thinks that all that is necessary is for the United States or any other leading nation to raise the standard and all will flock to it at once.

The League of Nations is founded on a politico-military agreement, and therefore, the author thinks, cannot be the instrument for outlawing war. The Permanent Court of International Justice is, he feels, not to be accepted because it is not a real court but, as Senator Borah emphasized over and over again in the Senate debates, simply another court of arbitration.

The author would enforce world peace by relying upon the honor and good faith of the peoples of the world, the "compelling power of enlightened public opinion." That to the average mind will seem visionary and fantastic, the author admits. By way of proof that his position is sound, he relies upon the abolition of dueling, of slavery, and of piracy, by way of analogy. He fails to take into account that in every one of these cases there was more than a mere declaration of outlawry. In every case there was a force behind the legislation capable of seeing that the declaration of outlawry was observed.

Dr. Morrison's contribution to the current literature on this subject is well written. He conveys some of his own enthusiasm for the subject to the reader. His material is well arranged and his arguments are thought-provoking.

W. LEWIS ROBERTS.

1928 CUMULATIVE SUPPLEMENT TO COLLIER ON BANKRUPTCY
—THIRTEENTH EDITION. By Fred E. Rosebrook. Albany, N. Y.:
Matthew Bender & Company, Incorporated. 1928. pp. 446, 241.

The fact that the Bankruptcy Act of 1926 amended nearly forty sections and subsections of the former act made necessary the new supplement to Collier on Bankruptcy. This supplement is divided into two parts. The first brings down to date Volumes 1 and 2 of Collier. The new parts to the various sections are

set out in italics. The cases decided under the different heads and sections are also given in digest form. Part two of the supplement deals with matters covered in Volumes 3 and 4 of Collier. It contains the changed forms, the new rules of the United States Supreme Court and the rules of the various Circuit Courts of Appeals and the District Courts. Many of the rules of these two sets of courts are entirely new.

This new Supplement is indispensable to the lawyer who has any work in bankruptcy. It gives him the latest citations on the subject and brings his four volume edition of Collier down to date. It is neatly bound in a loose leaf folder form, is of convenient size and well printed.

LAW OF THE AIR. By Carl Zollmann. Milwaukee: The Bruce Publishing Company. 1927, pp. xvi, 286.

THE LAW OF RADIO COMMUNICATION. By Stephen Davis. New York: McGraw-Hill Book Co., Inc. 1927, pp. ix, 206.

As aptly observed by Mr. Davis, "The growth of law follows social and economic development." There have been remarkable developments quite recently in radio and aerial communication. Consequently the law is experiencing "growing pains" as it attempts to reconcile old principles to new situations. These facts make these books particularly timely.

Pioneer books in dealing with the new problems raised by air communication are handicapped by the scarcity of material upon the subject. Consequently much of the discussion is by way of analogy. But analogies, though dangerous, prove interesting in the hands of the authors and their conclusions are of value. The statutory authorities, including the Radio Act of 1927 and the Air Commerce Act of 1926, are included in the appendices.

The Law of the Air contains chapters on Airspace Rights, Government Control, Damage Liability, Insurance, Patent Rights, Radio and various appendices. The Law of Radio Communication has chapters on Present Conditions, The Right to Engage in Radio Communication, Control of Broadcast Programs, Libel and Slander, etc.

Both books are written in popular style, the phrasing of Mr. Zollmann being particularly happy. Mr. Davis' book is

largely the outgrowth of his experiences as Solicitor of the Department of Commerce.

They will stimulate thought on the legal phases of the various forms of air communication.

ROY MORELAND.

OUTLINES OF SURETYSHIP AND GUARANTY. By Earl C. Arnold. Chicago: Callaghan and Company. 1927, pp. xvi, 620.

Professor Arnold's treatise on Suretyship is timely and should be well received. The shift from the accommodation surety to the compensated surety in the business world during the past two or three decades, has made necessary a change in the attitude of the courts in regard to the consideration that is to be given a surety. The courts have come to realize that the principle of *strictissimi juris* applied in the case of the gratuitous guarantor whereby he was made a favorite of the law, is inapplicable to the case of the compensated surety. Professor Arnold's book is about the only brief work on the subject that is available to the student which emphasizes this change in the law brought about by the rise of guaranty and surety companies.

Instead of calling attention to these changes as he has considered the various phases of suretyship law, the author has reserved his discussion of the compensated surety for a separate chapter near the end of his book. Possibly a better impression would have been made had the contrast been drawn between the two as each topic was treated.

The author has given an excellent discussion of the problem raised by the decisions in *Thomas v. Cook*, *Green v. Cresswell*, *Rearder v. Kingham*, and *Wildes v. Dudlow*; and has undoubtedly reached a sound result. Contrary to the conclusion usually reached by text book writers and many courts, he has found a sound basis for reconciling these seemingly inharmonious decisions. The author has also sought to lay emphasis on the distinction between a surety and a guarantor, a distinction that the courts do not often observe.

Professor Arnold has devoted a much larger proportion of his book to the subjects of official bonds and bonds given in judicial proceedings than is usually found in works of this size

on the subject of suretyship. These topics have been covered carefully and should make the book of greater value to the student.

The extensive use of excerpts from court opinions which the author makes use of in his text seems objectionable. Their use makes the work less readable. In some places the subject matter seems not so well organized nor as clear cut as might be desired.

W. LEWIS ROBERTS.