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Book Reviews

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BOOK REVIEWS

CRIMINAL RESPONSIBILITY. By Charles Mercier. New York: Physicians and Surgeons Book Company, 1926, pp. 256.

The republication of Dr. Mercier's classic work on Criminal Responsibility, with an excellent introduction by Joseph Millard Osman of Columbia University, serves to direct attention once more to the differences between legal and medical views of insanity. It will be recalled that Dr. Mercier wrote the book to meet a statement of Sir Fitz-James Stephen that "there is an absence of any general account of the whole subject (of insanity) showing what is the common cause of which all these symptons are effects, and how they respectively proceed from it." Since the book was first published in 1905, there have been numerous other efforts made by physicians and psychologists to lighten the darkness of the law on the subject of the insane; but it must be confessed that the rigidity with which courts and lawyers hold to the rules laid down by the judges in McNaghten's Case in 1843 rather indicates that the doctors are poor teachers or that the lawyers are poor scholars.

Dr. Mercier wrote to answer a single question, "Whom ought we to punish?" He began with the assertion that is startling to a legal reader that criminal responsibility is not a quality of the person who has committed the wrong, but a demand on the part of others that he shall suffer for that wrong. Under what circumstances should society demand the punishment of offenders? That depends on the purpose of punishment, and while Dr. Mercier fully recognizes the deterrent and reformatory purposes, he says flatly, "whatever else it may afterwards become, punishment is first and foremost retribution." We as individuals are angered when wrong is done without punishment, and society as a whole becomes uneasy when wrongdoers sow the wind and escape the whirlwind. "Under what circumstances do we experience that uneasiness which demands for its relief the infliction of pain?"

Dr. Mercier then proceeds to analyze these circumstances. His summary is that "He does wrong who seeks gratification by an unprovoked act of intentional harm," which is not far from the legal conception of an act plus an intent as constituting a crime. This definition brings the author at once to the problem of insanity, manifesting itself in disorders of conduct or of

bodily function or of mind. Into the discussion of this medical problem, which is handled with remarkable lucidity and logic, we will not attempt to follow in this brief review. Attention may properly be directed, however, to some of the significant contentions advanced by Dr. Mercier which have been the subject of frequent discussion in medical and legal circles since the first publication of his book. He held that the majority of insane persons are sane in a considerable proportion of their conduct; that the limits between the sane and the insane are ill-defined, and that some insane persons (e. g., the morally insane) should be punished, but not with the same severity as a same person for the same offense; that moral imbeciles should not be punished but should be given special medical treatment designed to remove the disability, if possible; and that the test laid down in McNaghten's case may yet be made to satisfy medical standards, provided that the knowledge of the nature and quality of the act be construed to include a knowledge and appreciation of the circumstances in which the act was done, and provided further that due allowance shall be made for those who may know that the act is wrong but do not know how wrong it is.

The day still seems far distant when the mental capacity of criminals will be tested by appropriate medical standards, rather than by the confused guess of twelve men in the jury box. A modest suggestion of improvement is found in the Criminal Responsibility Bill, and the Expert Testimony Bill, both of which have been approved by the Institute of Criminal Law and Criminology and are discussed in articles by Professor Edwin R. Keedy in the Harvard Law Review, vol. 33, pp. 535, 560 and pp. 724, 738. The first bill provides that "no person shall hereafter be convicted of any criminal charge when at the time of the act or omission alleged against him he was suffering from mental disease and by reason of such mental disease he did not have the particular state of mind that must accompany such act or omission in order to constitute the crime charged." It avoids any definition of insanity, and leaves the matter of mental disease as a question of fact to be determined by the jury. The second bill authorizes the judge to call one or more disinterested qualified experts, not exceeding three, to testify at the trial. It does not, however, prevent the prosecution or defense from calling other expert witnesses.

It is obvious that under these acts the expert states his opinion of the mental state of the defendant when the crime was committed and the judge determines the mental state required by law to accompany the act and make it a crime, and so instruct the jury. The jury then finds whether or not the defendant, having the mental condition described by the experts, had the mental state required by the law as laid down by the judge. A doubting critic may question whether these changes are drastic enough to meet the serious situation presented by frequent pleas of insanity in homicide cases; but the proposals by eliminating single or artificial tests of insanity and by providing for medical experts selected by the judge and paid by the county afford some ground for hope.

Furthermore it must be remembered that the lawyers are not entirely to blame for our present situation. The medical experts have contributed more uncertainty and vagueness than should have been expected of them. They have in many cases been willing to be the pliant tools of men whose minds may have differed in some slight ways from the mind of a normal person but who ought nevertheless to have been punished. They have too often lost sight of the interests of society while they became too readily advocates of clients. The book of Dr. Mercier is not an argument for a further recognition of manufactured pleas of insanity. He fully recognizes the paramount interests of society. He aims to make insanity a thing that can be understood by laymen and recognized by judges. A study of the principles of criminal responsibility presented by him will not lead to universal assent, but it will help lawyers and judges who come in frequent contact with the criminal insane to understand the various kinds of mental disorder from which these unfortunates suffer.

CHAS. J. TURCK.

THE NEGOTIABLE INSTRUMENTS LAW ANNOTATED. By Joseph Doddridge Brannan. Fourth Edition. By Zechariah Chafee, Jr., Cincinnati: The W. H. Anderson Company. 1926. pp. cxlviii, 1041.

Professor Brannan's valuable reference book on the Negotiable Instruments Law has been made still more valuable by a careful revision, re-arrangement, and enlargement by Professor

Chafee. Professor Brannan's first edition contained about two hundred fifty pages. The present work has nearly twelve hundred pages. This increase in size is made necessary for the most part by the growth of the law of negotiable instruments under the uniform act. This growth of the law together with the fact that the courts differ in their construction of certain sections of the act renders necessary a revision of this book from time to time. One might be justified even in believing that it is only a question of time before it will be necessary to adopt a new negotiable instruments law if we are to have anything like uniformity.

Professor Brannan in the earlier editions of his work attempted to collect all the cases decided under the Negotiable Instruments Law, to comment upon their bearing upon the law, and to tabulate them so as to render them of use to the practicing lawyer. Professor Chafee has followed Professor Brannan's method and carefully collected all the cases decided upon the subject since the third edition. He has added marginal notations to indicate the various topics under discussion, an arrangement which makes the volume much more convenient to use. He has also made accessible valuable material in law reviews by giving references thereto. The author has omitted the articles bearing upon the controversy over the Negotiable Instruments Law between Dean Ames, Judge Brewster, and Mr. McKeehan. He has, however, retained the summaries under each section of the respective views of these three writers which were given in the earlier editions.

In his preface, the author points out six defects he finds in the present act as shown by a study of all the recent cases. He would exclude long-time corporate obligations and interim certificates from its scope; he would change the limitations upon a holder for value under a restrictive indorsement; he would amend section 52 in order to do away with the confusion on the question whether a payee can be a holder in due course; he would add specific provisions to do away with the present uncertainty as to the effect of payment under mistake; he would also make definite the liability of a drawee bank to the owner of a check after paying one who holds it under a forged indorsement; and finally he would either amend or drop the pro-

visions in regard to suretyship. Such constructive criticism of the act is valuable and should bear fruit in due season.

The earlier editions of Professor Brannan's book have been widely used and have met with the approval of the practitioner. The scholarly work of Professor Chafee on the fourth edition has added very much. The book in appearance is exceptionally attractive. The printing is excellent and the red fabrikoid binding very neat.

W. LEWIS ROBERTS.

CASES ON THE LAW OF MORTGAGES. By James Lewis Parks. American Casebook Series. St. Paul: West Publishing Company. 1926. pp. xiii, 587.

Professor Parks' Cases on Mortgages adds another number to the popular American Casebook Series. He has departed somewhat from the more or less conventional arrangement of cases on mortgages. He has taken up the difficult question of priorities early in the course. This seems a wise thing to do as it helps the student to get some idea of the questions relating to mortgages that arise most frequently in practice. In chapter three the editor sets before the student the interesting matter of restrictions upon the right to redeem. A whole chapter is devoted to agreements to extend the time for performance of the secured obligation. Subrogation, contribution, and exoneration are left for the final chapter and are considered under the heading of marshaling assets. These changes would seeem to add to the interest in the course.

An appendix contains the fifth draft of the uniform mortgage act which was submitted by the special committee to the Commissioner on Uniform State Laws. For purposes of comparison and discussion, it is convenient to have a copy of this proposed legislation in the hands of the student. There might well have been added two or three of the more common forms of mortgages.

In the choice of cases Professor Parks has shown good judgment. American cases have been preferred and not as a rule those of most recent date. While he has selected from a wide field, the bulk of his cases come from the industrial sections of the country, namely, New England, New York, New

Jersey, Illinois, Michigan, and Wisconsin. It is in these sections that mortgages are most frequently resorted to in raising capital for carrying on business and suits involving questions relating to mortgages came most often before the courts. Also the standing of the courts in these states might lead one to expect more carefully prepared opinions. Then, too, the fact that there are comparatively few cases of recent date suggests the fact that the fundamental principles of mortgage law were early worked out. Perhaps the thing about the cases selected that will commend itself most to the teacher of mortgages is the fact that they are for the most part short cases, few are more than two pages in length. This has been accomplished by carefully abridging facts and by omitting those parts of the opinions which do not bear upon the points under consideration.

Professor Parks has supplied a large number of notes. They are not, however, of such a nature as to give the student the key to the problem considered, but rather are suggestive and provocative of further discussion. Frequent reference is made to such valuable works as Tiffany on Real Property and to articles in the leading law reviews.

This casebook shows painstaking work on the part of the compiler and should appeal to the discriminating teacher of mortgage law. W. L. R.

JURISDICTION AND PROCEDURE OF THE FEDERAL COURTS. By John C. Rose. Third Edition. Albany: Matthew Bender & Company. 1926. pp. xxxiv, 919.

The New Federal Act of February 13, 1926, enlarged the jurisdiction of the Circuit Court of Appeal in order to relieve the congested condition of the Supreme Court docket. Other far-reaching changes were also made by this act, so that all treatises on federal procedure became of little value to students or practitioners and revisions became necessary. Also recent decisions of the Supreme Court have thrown new light on such questions as the right of removal, equitable defences, counter-claims set up in equitable actions, unreasonable searches and seizures, prosecution of criminal contempt, and the right of federal receivers to remove state court suits against them to the federal courts.

Judge Rose has embodied these changes in the third edition of his popular work on federal procedure. The result is a larger, better treatise on this complicated subject.

Few men are better qualified to produce so authoritative a work on the subject. The author's place as United States Circuit Judge of the Fourth Circuit keeps him in touch with the practical problems that are arising in the courts and his position as lecturer on federal law at the University of Maryland enables him to study those problems from the point of view of the scholar and to work out a consistent theory in regard to them. He is especially fortunate in presiding over a circuit court in which admiralty cases frequently appear on the docket.

The author has given considerable space to the question of jurisdiction of federal courts as well as to the difficult question of just when a party may remove his case from a state court to a federal. Cases illustrating the rules considered are aptly selected. When discussing important principles of law where there have been conflicting decisions in the past, the writer has referred the reader to Supreme Court opinions where the court has carefully considered the particular point in issue.

The author's view in regard to section 25 of the Judiciary Act of September 24, 1789 is somewhat startling at first. He believes that this section "has played a greater part in shaping the history of this country than any other enactment ever made by Congress." He says: "In view of a very large school of political thinkers, it extended the judicial power of the United States beyond the limits of the constitutional grant. For many years the Supreme Court of Errors and Appeals of Virginia denied its validity. A very dangerous situation would have resulted had not the original section, with great foresight, provided that when the Supreme Court reversed a judgment or decree of a State court it might, in its discretion, in any case which had once before been remanded by it, proceed to a final decision and award execution. State Courts would have refused to obey its mandate, as, in fact, the Supreme Court of Errors and Appeals of Virginia did. There would have been no way, which public opinion would have sustained, of coercing the State Court into obedience." (p. 554).

Judge Rose's work is clear, concise, and scholarly. It is a work of the very greatest value to the practitioner since the average lawyer of today is being called more and more frequently into the federal courts. W. L. R.

CASES ON FEDERAL JURISDICTION AND PROCEDURE. By Harold R. Medina. American Casebook Series. St. Paul: West Publishing Company. 1926. pp. x, 674.

The publication of a casebook in a field where none has been heretofore offered and in a subject which does not usually appear in the law school curriculum, perhaps, needs justification. The subject of federal jurisdiction has, as a general rule, if offered at all, been given by a federal judge or by a lawyer who has a great deal of practice in the federal courts; and that, too, in a series of lectures. The presentation of a full sized American Casebook on the subject may seem, then, to the conservative law teacher, somewhat of an experiment. To the reviewer the experiment seems eminently justified. Questions involving federal procedure are being forced more and more upon the practicing lawyer. Income taxes and prosecutions under the prohibition law raise many interesting questions. It has become almost imperative for the student to get at least the fundamental principles involved in federal practice while he is in the law school.

At first glance it might seem that the student would get these fundamental principles in his course in Constitutional Law. There are, as everyone knows, so many important questions to cover in that subject that no time is allowed for a consideration of jurisdiction and procedure. A comparison of Dean Hall's Cases on Constitutional Law and Professor Medina's Cases on Federal Jurisdiction and Procedure shows but eleven cases common to the two books. Among these are the famous *Marbury* v. *Madison, Osborn* v. *Bank of the United States, Swift* v. *Tysen,* and *Strawbridge* v. *Curtiss.*

The arrangement of the book is excellent. Chapters are devoted to each of the following subjects: Nature, Source and Extent of the Federal Judicial Powers; State Laws as Rules of Decisions; The Conformity Act; Law and Equity in the Federal

Courts; District Courts—Original Jurisdiction; District Courts —Removal of Causes; Circuit Courts of Appeals; Supreme Court—Appellate Jurisdiction; and Supreme Court—Original Jurisdiction. An appendix contains portions of the United States Constitution, miscellaneous statutes bearing upon the organization of the courts, and the federal judicial code.

Almost no footnotes are given. This lack of notes will meet with the approval of those teachers who object to them on the ground that they present the answer to the problems before a class discussion can be had. The lack of copious notes, however, makes a casebook of little value to a practicing lawyer. Dean Ames' casebooks, for instance, were of almost as much value to the practitioner as to the student.

Professor Medina's book is certainly inviting and leads one to wish for a place for the subject on an already overcrowded curriculum and for an opportunity to try it out in the class room. W. L. R.

THE UNITED STATES BOARD OF TAX APPEALS, PRATICE AND EVIDENCE. By Charles D. Hamel. New York: Prentice-Hall, Inc. 1926. pp. lxxiii, 477.

The United States Board of Tax Appeals, created by the Revenue Act of 1924 and given greater powers by the Act of 1926, is a real court with jurisdiction over appeals from findings of the tax commissioner, in income, profits, estate, and gift taxes. Its jurisdiction is limited by statute and those who feel aggrieved at its decision may appeal to the Circuit Courts of Appeal or the Court of Appeals of the District of Columbia. Since large amounts of money are usually involvved in cases taken to this court and since appeals in tax cases are taken with increasing frequency, there is a demand for a book which explains the organization of this new court, covers the method of procedure followed in it, and also contains citations of decisions already rendered by it. Such a work is now supplied by Prentice-Hall, Inc., who specialize in taxation problems and supply one of the leading tax services now offered to lawyers.

The author has done an excellent piece of work on the whole. He has devoted considerable space to the subject of evidence, too much possibly, as he has given all the rules of evi-

dence followed in the equity courts of the District of Columbia whether they bear upon tax cases or not. The Act of 1926 provides that the proceedings of the board shall be conducted in accordance with the rules of equity courts of the district. This provision is, of course, the reason for including all the rules of procedure of these courts.

In the first two chapters the author has dealt with the provisions of the Act of 1924 as well as those of the later act of 1926 in a way to confuse one reading the book for the first time, but to use the words of Blackstone in reference to the law of real property, the student will find that "perhaps upon a second perusal of the same, his doubts will be probably removed." As soon as cases cease to arise under the Act of 1924 a rewriting of these chapters will doubtless be made.

The appendix contains the Revenue Act of 1926 with notes giving the changes from prior acts; the chapter on the District of Columbia Code bearing upon the subject of evidence; Treasury Department instructions to collectors of internal revenues; rules of practice before the board; forms; and bureau letters.

The mechanical make-up of the book is excellent. It is well printed and is artistically bound in flexible leather. The growing importance of the legal side of tax questions assures this manual, written by a former member of the board, an immediate success. W. L. R.

INTRODUCTION TO ANGLO-AMERICAN LAW. By Hugh Evander Willis. Bloomington, Indiana: University Bookstore. 1926. pp. 234.

The idea has been growing among law school teachers in recent years that a course in jurisprudence should be offered in the curiculum in order to give the student a comprehensive survey of the whole field of law. Assuming that such a course should be offered the question arises as to whether it should be offered at the beginning or at the end of the student's course.

Professor Willis has prepared an outline for such a course and has apparently selected his material for the student when he starts on his legal studies.

Part one of the book takes up some fundamental legal concepts and begins with Blackstone's much quoted definition of

law. This the author rejects as unsound and suggests one which followers of the sociological school of jurisprudence will readily accept as sound, namely: "Law is a scheme of social control, for the protection of social interests, by means of capacities of influence, backed and sanctioned by the power of the state."

The author accepts Dean Pound's classification of social interests and Holland's classification of rights. He adds classifications of estates and interests in land and chattels, and gives an outline of legal procedure. Part two gives the historical development of Anglo-American law. Part three contains short biographies of some of the great English and the great American judges and lawyers. Those selected are names the student most often meets in his reading. Part four is designed to familiarize the student with law books and their use, and to aid him in brief making.

A course based upon Professor Willis' book, given early in the student's study of law, would be of very great value and would add interest to the courses in substantive law. The author has made available in one volume a mass of material that every law student should have at hand. W. L. R.

PREPARATION AND CONSTRUCTION OF WILLS. By Clarence M. Lewis. Albany: Matthew Bender & Company, 1926. pp. viii, 1115.

This book is not a treatise on the law of wills but a practical hand book for the busy practitioner in his preparation and construction of wills. The author has followed the same plan used in his "Law of Leases."

Forms of the essential and usual clauses of wills, and, in addition, a few unusual clauses, designed to meet particular circumstances, are followed by abstracts of cases from various English, federal, and state courts, respectively, construing the forms. Although these abstracts are of much value in aiding one in construing the various forms, he is impressed by the fact that they are bundled together under the various clauses without much regard to sequence. The abstracts of cases construing the respectivve clauses are followed by articles from legal periodicals. This is one of the most interesting and valuable features of the book. The thought-provoking law review article has won

an enviable place in our legal literature. Articles from the Harvard, Columbia, Michigan, New York, and Kentucky law reviews are among the representative periodicals included. The law review articles are followed in their turn by references to standard text books. Thus we have pertinent case, text book, and law review comment on each clause. Blank pages at the end of each section provide an opportunity to the reader to make individual notes. Two additional features of the book are especially commendable. The first is a questionnaire to be used by the attorney in questioning the testator, in order that he may secure all the information necessary for the preparation of any will. The other worthy feature is a very full bibliography of the authoritative works on wills.

The book will prove valuable to practitioners, although it is almost valueless to students. To the practicing lawyer, who is able to analyse and differentiate the numerous abstracts and comments given, the book will be found very useful in the preparation and construction of wills.

ROY MORELAND.

CONSTITUTIONAL LAW. By Charles W. Gerstenberg. Prentice-Hall, Inc., New York. 1926.

The subject of constitutional law is treated in a unique and interesting manner by Professor Gerstenberg in his new text on the subject. This fact makes the volume a welcome addition to legal literature. The purpose of the book is to fill an existing gap in the great body of literature on the subject and is best stated in the preface:

"To get material for teaching a short course in constitutional law is the object sought by the editor. The text material should be regarded not at all as commentary, but as a brief outline setting forth the minimum information to be retained by the well-informed law graduate. The cases include the indispensable milestones, a number of very recent cases that summarize and distinguish the important earlier cases bearing on the doctrines expounded in the respective opinions, and a few cases that, on account of problems now before the public, have more importance at the moment than they are likely to have ten or fifteen years hence. The aim throughout has been to provide material that is teachable."

If, indeed, the text is to be regarded as a brief course, it is an ample and very satisfying one. The matter covered is presented in a style that is both lucid and engaging. The writer of the book provides the reader with a combination case and text-book. The one volume is at the same time both an exposition and a repository of constitutional law questions. The author writes in the preface, it is true, that the text is not to be regarded as a commentary, but as a brief outline setting forth the minimum information one needs on the subject. But it is submitted that the manner of presentation of the material in the book calls forth into the perspective of the reader the whole field of constitutional law.

Professor Gerstenberg has exercised excellent judgment in the selection, pruning and treatment of cases. The decisions that form the milestones in the development of constitutional history are given first consideration. Then follow twenty-four of the more recent cases of the period from 1920 to 1926. These later cases are the very ones that have discussed the live issues in which lawyers are especially interested. Among these topics and cases are: Seizure under the prohibition act, the Gitlow and Pontzi cases, punishment of a lawyer for written contempt and the power to pardon, the rent law cases and the English speech in school cases.

The format of this volume is excellent. Its size is the most practical and convenient possible for the purposes for which this book is intended by the author. Special mention should also be accorded the publishers for the readable typographic make-up of the volume.

The book is interesting from start to finish. The subject is presented in a pleasing manner. The material is well classified and arranged. This volume is undoubtedly a valuable contribution to the great body of legal literature and will be welcomed by lawyers, teachers and laymen alike.

WOODSON D. SCOTT.