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Book Reviews

W. Lewis Roberts
University of Kentucky

Roy Mitchell Moreland
University of Kentucky

Charles J. Turck
University of Kentucky

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BOOK REVIEWS

HISTORY OF ENGLISH AND AMERICAN LAW. By William F. Walsh. New York: The New York University Press. 1924. pp xiv, 533.

One beginning the study of the history of English law cannot do better than to start with Professor Walsh's brief work on the subject. When we consider that Holdsworth's new book on the subject is the eighth volume of his monumental work and that he contemplates putting out two more volumes to complete the set, we realize the difficulty that confronts an author of a one volume edition. He cannot any more than cover the field in outline. That is what Professor Walsh's work really is. However it is an excellent outline.

He has naturally stressed the subject of property in which he is most interested and which possibly presents a more abundant supply of material. He has devoted over three hundred of his five hundred pages to property. He has, furthermore, dealt almost wholly with English law and very rarely touched upon the history of American law. He has based his work not upon original sources as much as upon the earlier studies by Pollock and Maitland, Digby and the still earlier treatises of Bracton and Granvill. One seldom or never finds reference to Kent and seldom to Washburn or other early American writers.

The author has divided his work into three books. Book I takes up the history of Anglo-Saxon law, feudal law, the growth of the common law, and the decline of feudalism; Book II treats of the origins and development of the law of property; and Book III briefly sketches the origin and development of the law of crimes, torts, contracts, commercial law, and equity jurisdiction.

In many instances as in the case of fixtures, the author is inclined to state what the law is at the present time and neglect to show how it came to be as it is. If one were anxious to point out defects he might find many statements to call in question: the date of Tyrell's case, the unqualified statement on page 164 to the effect that a use before the statute was the same kind of estate that we call a trust today, the failure to mention the fact

that the consideration of a covenant to stand seised is the "establishing of a man's house" as Dean Ames pointed out, and also that there can be a determinable fee since the passage of the statute *Quia Emptores*. On this question followers of Professor Gray would differ. It would indeed be an exceptional book dealing with such a technical subject as the origin of real property law that did not raise controverted points of law.

This work of Professor Walsh is very readable and makes a valuable addition to our collection of short histories of the English law.

W. LEWIS ROBERTS.

BRIEF MAKING AND USE OF LAW BOOKS. By Roger W. Cooley. Fifth Edition. St. Paul, Minn.: West Publishing Co., 1926. pp. xxvi, 1092.

The library is the student's work-shop. Books are his tools. Any treatise which facilitates and instructs in the use of these tools is useful.

The fifth edition of Professor Cooley's well-known work should prove unusually well-adapted to this purpose. The book is in six parts, the first on where to find the law, the second on how to find the law, the third on the use of decisions and statutes, the fourth on the trial brief, the fifth on the brief on appeal, and the sixth an appendix containing a specimen brief on appeal, a list of American Reports, a list of English Reports, a list of citation books, digests, and so forth.

Students will find the book of practical value.

ROY MORELAND.

THE LAW OF TORTS. By Francis M. Burdick. Fourth edition by Charles K. Burdick. Albany: Banks & Company. 1926. pp. cxiii, 617.

In the fourth edition of Burdick on Torts, which has just been published, the order and general character of the third edition have been retained for the most part. The material formerly used in the introductory chapter has been incorporated with that of the second chapter under the title of The Nature of Tort. The chapter on Injunction as a Tort Remedy has been placed under Remedies. The chapter on Tort Liability of Tele-

graph and Telephone Companies has been retained at the end of the book.

The new edition has practically the same number of pages as the earlier one but those of the fourth edition are possibly more compact and contain more material—especially is this true of the notes. The table of cases which is unusually large for a work of this size and which numbers eighty-four pages in the new edition against eighty-two in the old, contains from six to eight cases more on a page.

The work of revision has been thorough. This is especially true of the discussions on the nature of torts, recovery for nervous shocks, legal causation, and attractive nuisances. The results of the researches of contributors to the leading legal periodicals during the last fifteen years are presented as well as the decisions on the same subjects during the same time. Very great care has been taken to make the footnotes of value. It has not been the purpose of the author, as he points out, to incorporate in the notes all the cases decided on the particular point under consideration but rather select the most important ones which are most likely to be found referred to by the courts. The result is an especially valuable collection of citations. References to articles and notes in leading law reviews add greatly to the value of the footnotes.

The author has stated his principles in a concise, straightforward style and the result is a legal treatise that is more than ordinarily readable. One cannot better summarize the result than to say it is scholarly in every respect. In its new edition the book is sure to retain the position it has already gained as one of the most authoritative of the shorter works on the subject of torts.

W. LEWIS ROBERTS.

ARGUMENTS AND ADDRESSES OF JOSEPH HODGES CHOATE.
Collected and edited by Frederick C. Hicks. St. Paul: West Publishing Company. 1926. pp. xv. 1189.

Little need be said of the value to members of the legal profession of a collection of memorial addresses, court arguments, political, occasional, and after-dinner speeches by a lawyer as well known as Joseph Choate. He was one of the most successful

and popular members of the profession of the generation that is just past. Professor Hick's work is timely and he has made his selections with great care. They are without question fairly representative. One can find in this collection model speeches for nearly every occasion. Mr. Choate was a great orator as well as a great lawyer. He was in demand as a speaker on all occasions. He was second to if not the equal of Chauncey Depew as an after-dinner speaker and he was one of our most popular ambassadors to the Court of Saint James. Mr. Choate was not only a great lawyer and a great orator, he was a public spirited man and took a keen interest in the affairs of his city, state, and country. His experience in the active practice of law covered a period of more than fifty years. This long experience in later life he did not hesitate to turn to the benefit of the public. As a lawyer he was thrown in contact with nearly every phase of life. He took a prominent part in overthrowing Tweed Ring of New York City. He was president of the state constitutional convention of 1894. He took an active part in the second and the third Hague Conferences. Perhaps his most important law suit was the income tax cases before the United States Supreme Court in which the income tax law of 1894 was held unconstitutional and the aftermath of which was the sixteenth amendment to the Constitution.

Among the addresses about lawyers which the editor of this volume has selected are the memorials for John C. Carter, a leader of the American bar in his generation and one time president of its association; Rufus Choate, a cousin of Joseph Choate and one who gained fame as a great trial lawyer; Richard H. Dana, famous as the author of "Two Years Before the Mast;" Judge John F. Dillon, who produced the leading text on the subject of municipal corporations; William Endicott, secretary of war under Cleveland; and Charles Southmayd, law partner of Choate and Evarts, whom they both found ever accurate in legal advice.

Among Choate's arguments before judges and juries that have found a place in this selection, are: that in the famous seduction suit of *Martinez v. Del Valle*, the *Paran Stevens* case, the petition to the board of army officers in behalf of *Fitz John Porter*, the *Massachusetts fisheries* case, the *Goff contempt pro-*

ceedings, and the income tax cases. The addresses on international questions include those delivered at the Hague Conferences. The political speeches deal with his fights against Tammany rule and one concerns the campaign of Roosevelt for governor in 1898.

Mr. Choate's occasional speeches cover a wide field of subjects—church, school, college, the English Bible, the courts, the bar, national security, the Panama Canal tolls, the lives of men who have helped to make history—Washington, Franklin, Hamilton, Emerson, and Lincoln.

It is when we come to his after-dinner speeches that we find Choate at his best. They sparkle with wit and are often charged with sarcasm. Here, too, one finds a serious vein in many of them. One cannot help thinking of how much he drew from his own personal experience in his description of the typical New Englander in New York in response to the toast, "Fifty Years Ago." For that reason one may be justified in quoting it: "In an humble old homestead in New England, in town or country, presided over by God-fearing and man-loving parents, where both plain living, very plain living, and very high thinking prevailed, the whole object of the family life from the beginning to the end was to create a future for the sons and daughters. The whole of every year was dedicated to that, and every sacrifice that was necessary was made to give the boys and the girls the finest education which their times afforded. I remember one such household where the struggle was strenuous and unceasing, and it was the proud boast of the parents that they did succeed, on a modest professional income, in keeping four sons, Mr. President, four sons at once, in one year, in one annual catalogue of Harvard College."

W. LEWIS ROBERTS.

THE LAW OF THE AMERICAN CONSTITUTION. By Charles K. Burdick. New York and London. G. P. Putnam's Sons. 1922, pp. vii, 687.

The Kentucky Law Journal desires to take this opportunity to call to the attention of the lawyers and judges of the state and to teachers and students of political science this splendid book on the American Constitution which at the time of its

publication was not reviewed in these columns. In this volume, Professor Burdick of Cornell University joins hands with his distinguished father, Professor Francis M. Burdick of Columbia University, in presenting a study of the American Constitution that in clarity, historical research and exactness will rank with Cooley, Willoughby and other standard treatises. The first two chapters were written by the father; the remainder of the book is the work of the son.

Professor Burdick has differed from most writers in the field of constitutional law by not following the order of the constitution as the basis of his chapter arrangements. Professor Burdick has boldly struck out on an original and entirely logical arrangement. After Part I, concerning the making and amending of the Constitution, he takes up in Part II the National Government, with its powers and limitations and in Part III he groups the various limitations on the powers of the states. As to the scope of sovereign state powers, he properly leaves this problem to the writers in the field of state government, where it may be remarked there is great need at present for both case-books and text books from the law teacher's point of view.

One is impressed by the frequency with which the author has begun his discussion by reference to the debates in the Constitutional Convention, the phrasing of the Constitution itself or the remarks of those who framed that document. The historical foundation, on which subsequent judicial interpretation has been built, is laid in each chapter, and in nearly every paragraph, with remarkable care and exactness. Such a method of treatment is a forceful reminder that after all in the field of American constitutional law we are dealing with a written document, and however much in some phases constitutional law may seem to be "just politics" as one learned professor once expressed it, for the most part it remains an exact branch of the law. It is true that the cases which attract the largest popular attention usually concern the indefinite phrase "due process of law" or "life, liberty and property," but this does not affect the fact that most of the powers and limitations of government have been fairly sharply defined. The exceptions merely prove the rule. Professor Burdick's chapters on due process indicate that even this elusive phrase has been more exactly defined by

the Supreme Court than the average lawyer or citizen fully perceives.

After dealing with the great cases of constitutional law in a standard case book, the law student who is about to become an officer of the court could not do a wiser thing than to read this able and comprehensive account by Professor Burdick of the development of our constitutional law. The book ties the somewhat disjointed pictures of the constitutional provisions which come out of a casebook course on the subject into a single harmonious whole. It presents the constitution as it has been guarded and interpreted by the courts for 140 years. It is still our most cherished political document. And lawyers and judges will share with law students the somewhat rare privilege of seeing in proper perspective the great principles of our constitutional government if they will read this book.

CHARLES J. TURCK.

THE GOVERNMENT AND LABOR. By Albert Russell Ellingwood. Chicago: A. W. Shaw Company, 1926, pp. xv, 639.

The mass of legal material in the form of statutes and court decisions that is gathered within the covers of this book makes it indispensable in any course dealing with the relations between government and labor. Where the teacher is not ready to cast overboard the old traditions of lecture and text book instruction, he will at least emphasize this book as invaluable collateral reading. But there are no doubt many teachers in the social sciences who are ready to accept the book as the casebook of the course, and it is the experience of these teachers which will be of the greatest importance in determining whether casebook instruction is as practical and effective in economics and sociology as it is in law. There must be some reference in every course to standard textbooks which present in orderly fashion the accumulated information concerning the field of study. But assuming that a course in the social science is designed, as are law courses, to make men think accurately and logically and not merely to convey a certain amount of information, why should not a casebook be as effective in the one field as in the other? As a law teacher, the reviewer watches with the keenest interest the gradual acceptance of law school methods by teachers in colleges of commerce and in departments of the social sciences, and

on the whole it seems that the experiment is proving satisfactory and encouraging.

Dr. Ellingwood has arranged his material around eleven main topics; the basis of governmental regulation of labor problems, the contract of employment, the protection of the laborer against competition, the labor union, the labor conflict, safety and health, hours of labor, wages, unemployment, workmen's compensation and social insurance. The questions which he appends at the end of each topic are calculated to stimulate discussion and induce original thinking by the students. It is believed that the addition of such questions in law casebooks would add greatly to their value, and while a skillful law teacher raises such questions in class, something is lost by the fact that the problem was not directly suggested to the student in the casebook. In this respect, Dr. Ellingwood seems to have not only accepted the law case book but has improved it.

"The Government and Labor," in the eyes of a law teacher, would seem to be admirably calculated to make students think about labor problems, and the choice of material, the arrangement of topics and the stimulating questions combine to insure for this casebook an important place in the reading list of any course on labor problems. Moreover, it is an ideal casebook for such a course where the instructor has the courage to resolve that his primary task is to awaken minds rather than to fill them.

CHARLES J. TURCK.