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Book Reviews

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While it is the general rule that the law takes no cognizance of fraud that injures no one, and that fraud without injury will not support an action, the general rule is that the creditor need not show that the debtor does not have enough assets left to satisfy his claim in order to successfully maintain an action to set aside the conveyance. *Fellows v. Lewis*, 65 Ala. 343, 39 Am. Rep. 1 (1880); FRAUDULENT CONVEYANCES, 12 R. C. L. 492. He must, however, show that the creditor was insolvent. Those courts take the view that the creditor is injured because the particular property disposed of might otherwise have been subjected to the satisfaction of the creditor's claim. *Campbell v. Jones*, 12 S. W. 1016 (1890); *Barron v. Williams*, 58 S. C. 280, 36 S. E. 561 (1900).

Some courts hold that, regardless of whether or not a creditor can pay all of his claims, the transfer may be set aside if it was made with actual fraudulent intent. They give the creditor the right to choose amongst all of the parcels of property held by the debtor and attach the one that he pleases. *Henderson v. Farley Nat. Bank*, 123 Ala. 547, 26 So. 226 (1899). Thus when *D.*, debtor, owns three parcels of land, any one of which is enough to satisfy *C.*'s claims, and *D.* transfers two of the parcels, he limits *C.* to execution on the one remaining parcel. Although this would be possible in Indiana under its strict rule, the latter rule would permit *C.* to have any parcel set aside as fraudulent and attach that parcel.

August P. Petrillo.

BOOK REVIEWS

HANDBOOK ON THE LAW OF DAMAGES. By Charles T. McCormick. St. Paul: West Publishing Company. 1935.

An elementary treatise of the wideranging field of damages incorporating within itself an extended commentary elucidating the principles of that subject and possessing innumerable citations to American and English cases cannot but prove to be an invaluable asset to the student and practitioner. Professor Charles T. McCormick, of the law faculty of Northwestern University, has written such a book, available as one of the popular Hornbook Series. As is said by the author in the foreword, "The chief value, then, of a work such as this, is to reveal to the student or lawyer the array of expedients which should be considered in preparing and trying cases on the issue of amount. It cannot furnish an authoritative statement of the law valid everywhere, but it can parade the varied doctrines for review." As to what it purports to be, it must be said of the text, that it is to be commended both as to its content and plan of arrangement.

The law of damages, the methods of reckoning them, the duty of judge and jury in relation to their determination and application evokes a divergency of judicial opinion in the various jurisdictions rarely encountered in other phases of the law. Although the various doctrines and rules of damages are now quite well defined, their application in various sectors is so patently in disregard of a unified pattern that the effect is kaleidoscopic, as it were. The rules of measurement are a matter of local habit and custom in a great many instances which, in a degree, accounts for the result described. Realizing this fact, the author of this text on damages has annotated copiously the principles of damages discussed. For example, in discussing the standards and elements of damages assessed in case of the conversions of chattels and the breach of contracts to sell goods, the author

collects representative cases from every American jurisdiction, lists them in alphabetical order, and illustrates the three general rules involving the time element which goes toward determining the market value of the goods.

In the course of 811 pages the author discusses, among other things, procedure, damages for tort and contract actions and the methods of determining compensation for property taken by the public in eminent domain proceedings. General notes on "Wrongful Death" and "Survival" statutes with citations are given considerable attention. Leading cases interpreting those statutes are listed under the various jurisdictions. The rule of *Hadley v. Baxendale*, a landmark in the law of damages, is fully discussed in the course of seven pages. Land sale contracts, covenants of title, sales of personal property, construction contracts, trespass and nuisance, deceit and defamation, malicious prosecution, personal injuries, injuries to the marital relation, counsel fees and other expenses of litigation, are but a few of the important matters analyzed in the instant volume.

A review of this book would not be sufficient if it failed to comment on the obvious industry of the author in annotating his work. There are between 4600 and 4700 case citations in this handbook explaining and illustrating the topics discussed. The author has left nothing undone to produce a treatise on the law of damages that is as complete as the confines of the volume permit. As such, it merits the attention of practitioner and student alike.

John J. Locher, Jr.

CASES ON CRIMINAL LAW AND PROCEDURE. Third Edition. By William E. Mikell. St. Paul: West Publishing Company. 1933.

Mr. Mikell has presented in this publication by means of an admirable collection of cases and corresponding text materials the important problems pertaining to and arising out of the commission of crimes. This collection of cases is the third edition of a casebook originally published for the American Casebook Series in 1908, the second edition appearing in 1925.

There has been included in the text, as in the former editions, excerpts from the writings of Blackstone, East, Hale, Hawkins, Britton and others, it being the purpose of the author to trace the growth of criminal law to its present state, as well as to indicate its future development as far as possible by the more recent cases. In the preface the author points out that the development of the criminal law has been sporadic and unequal; that it is a far cry from the dictum of Lord Holt in 1702 that "corporations are not indictable" to the present day decisions that corporations may be convicted of almost every crime. With this thought in mind, the author has prepared the third edition, and with 26 cases reported since 1925 and an altered plan of arrangement, the author presents a casebook of merit. Rearrangement of chapters and rearrangement within chapters are distinguishing features of the new edition. The author believes, after experimentation in the classroom, "that the student will get a more orderly and clear knowledge of the subject by mastering the elements of the various crimes before studying matters of defense." He has altered his plan of arrangement to conform to that opinion. Cases on involuntary manslaughter are now placed after voluntary manslaughter instead of appearing under "Negligence," as in the first and second editions. In other respects the book is much the same as the earlier edition. A generous portion of the work is devoted to cases illustrating topics

such as arrest, bail, venue, grand jury, indictments and informations, verdicts, *nolle prosequi* and motion to quash and numerous other subjects of a purely procedural nature.

The work is to be highly commended. Considering the selection of cases, the sequence and orderly arrangement of subjects, this revised casebook should prove valuable in the classroom.

John J. Locher, Jr.

ROGER B. TANEY. By Carl Brent Swisher. New York: The Macmillan Company. 1935.

Perhaps no biographer ever treated his subject more humanly, more understandingly and more thoroughly than has Mr. Swisher treated Roger Brooke Taney. From almost innumerable sources in many states the author garnered the material constituting the subject matter of this work. In his search he discovered manuscripts and letters heretofore unknown which throw a new and different light on the character of this Chief Justice, and it was only when he had exhausted all possible authorities that he compiled this biography. And herein lies its value, for unless conclusions are based on facts they are of small consequence.

In portraying the character of Roger Brooke Taney, Mr. Swisher utilizes a method of presentation which is subtle without being vague. He outlines the backgrounds of the various individuals such as Story, McLean, Marshall, Sumner and others whose lives were bound up so closely with that of Taney, and with such a perspective their conduct is more easily understandable; in the same way he shows why it was that Taney acted as he did all through his life. Such a presentation is necessarily historical in nature, and Mr. Swisher has so cleverly outlined the events of Taney's day that the biography is invaluable for this reason alone.

This is not the first time that Taney has been held up to public view, but it is undoubtedly the first time that he has been justly treated. During his life he was the object of many acrimonious attacks made by those who have come to be regarded by succeeding generations as being just short of little tin gods. For this reason it was only natural that Taney, since he had been at odds with these, should have come to be regarded with disfavor. But, although Taney was perhaps the most hated man in the United States during the pre-Civil War period, when the facts are known, his character assumes a different and, until now, unknown form, and we see him, a splendid and noble figure, fighting, often alone, for what he regarded as right. In presenting this portrait of character, Mr. Swisher takes Taney through the early years of his life, through his career as a lawyer, and through the years when he was a public figure of national prominence. In this third phase of his life, Taney served as Attorney-General of the United States, as Secretary of the Treasury in the cabinet of Andrew Jackson, and finally as Chief Justice of the highest court in the land. The author shows how Taney's heritage as a Southern gentleman accounted for his political beliefs and for his interpretation of problems in constitutional law. Taney as Chief Justice did much to halt the march toward the extension of national power, and it was because of this, primarily, that he came to be disliked. But when his social and political tenets are known, his opinions in the cases of *Charles River Bridge v. Warren Bridge* and *Dred Scot v. Sandford* do not seem so extraordinary as we have been led to believe by the violent outbursts of those affected ad-

versely by the decisions. Besides this, Taney's position in the *Bank War* which took place in the years during and surrounding Jackson's administration is here presented in an extended account of that struggle. In this portion of the work is given an excellent outline of the early battles in this country over monetary policies.

This is a truly remarkable and valuable biography, and could be studied profitably by anyone interested in the economic, legislative, and legal phases of our early national history when sectional strife was rampant. And to those interested in the lives of truly great personages, this study of Roger Brooke Taney will be a source of keen enjoyment. Perhaps the strongest and most striking part of the work is that which recounts Taney's struggle to uphold the dignity and strength of the Supreme Court. This fight is symbolic of Taney the Man. It is wonderful and remarkable that after so many years Taney is vindicated, and vindicated in such a way as to show that, had the men of that era bridled their passions, the accusations hurled by them at him would not have been made. In this day and age, few authors go to the trouble of building up the character of one long dead when it is so much easier to tear down that already in existence. This is another reason why the book is worthy of especial notice. Mr. Swisher deserves special commendation for his noble efforts in behalf of Roger Brooke Taney, former Chief Justice of the Supreme Court of the United States of America.

Richard A. Moliue.