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Book Reviews

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BOOK REVIEWS

AMERICAN CHURCH LAW. By Carl Zollmann. St. Paul: West Publishing Co. 1933.

This is a task well done. The author concerns himself with a phase of the law seldom treated, and his treatment is decidedly good.

In the first place, it is an adequate treatment. The author covers his entire subject and he covers it thoroughly. He raises all of the major legal questions which arise in connection with churches and churchmen in America, and states the law which has been applied to these questions.

In the second place, it is an authoritative treatment. It is not a book composed of the author's opinions on what the law could, would, or should be on certain points. It is a book composed of what the law is on those points, and each statement is supported by a citation of the case from which the statement was taken. Some idea of the thoroughness of the author's research, and the volume of his authorities may be had from the table of cases, which is inserted in the back of the book. There are forty pages of these, and two columns of cases are contained on each page. So lengthy a list at least commands respect for the book.

In the third place, it is a logical treatment. The author raises his points in a definite order, and his organization of the whole is admirable. He leads the student gradually through the subject, in such a manner that the ideas seem to flow one from the other. It leads the intellect, and does not force concentration on the order of progress, to the exclusion of the progression itself.

Not only is the order of the whole book good, but the order of each chapter in itself is commendable. The chapters are divided into paragraphs, and the paragraphs are correlated among themselves as the chapters are, in turn, among themselves. And at the conclusion of each chapter a paragraph is devoted to a summary of the propositions developed in that chapter. It is from the good work done in these summaries that the major portion of the orderliness shown in the development is derived.

There are a few other points about the book which are deserving of special mention. The index is good, and complete. There is a foreword, a sort of lay *imprimatur,* from John McDill Fox, Dean of the Catholic University of America School of Law. The author himself is a professor of law at the Marquette Law School. The only information given as to his own church affiliation is negative. He is not a Catholic. Whatever he may be, his book is absolutely devoid of any leaning toward, or any undue attention to, any particular sect. It shows him to be a good lawyer and a painstaking author. It should be welcomed both by the clergy and by the legal profession, as an authoritative source of information.

John M. Crimmins.

CASES ON BUSINESS LAW. By William Everett Britton and Ralph Stanley Bauer. Second Edition. St. Paul: West Publishing Company. 1932.

The second edition of this book, in comparison with the first edition, is a more concise treatment of the subject; the book having been reduced by more than three hundred pages. Nevertheless, additions have been made by sections on the parol evidence rule, independent contractor, parent and subsidiary corporation, and non-par stock. Eighty new cases, decided since the first edition was published, have been added, and the footnotes have been increased.

The book is evidently intended for the benefit of business students, containing all major topics of interest to a business student, and covering the most common points of law under those topics. The authors have not attempted to cover any minor points as are found in case-books used in law schools.

Topics have been treated in the order of their importance to a business student. About one-third of the book deals with the general law of contracts, about one-fifth to partnerships and corporations, and the principal portion of the remainder to agency, negotiable instruments, and sales, the subjects being introduced in their natural order.

One of the attractive points in the book is the selection of the cases used. There has been an attempt to use modern cases whenever possible, or at least to annotate cases used with recent decisions. Cases have been chosen with a view to their present day importance and their interest to students.

At the beginning of each chapter is a short but complete summary of the points to be covered in that chapter with brief explanation of the points and terms involved; achieving the result of clearness and simplicity. For the benefit of non-professional law students, for whom the book is intended, a dictionary of legal terms is included at the end of the book.

The endeavor to familiarize the non-professional law student with a general idea of the study of law is also carried out in a twenty-one page introduction which covers in a simple and concise manner the history and nature of law, its operation, and an explanation of legal aims and methods. This explanation is not intensive, but lays the foundation for the subject matter following in the text.

Thomas E. Coughlan.

CONVICTING THE INNOCENT. By Edwin M. Borchard. New Haven: Yale University Press. 1932.

A prominent District Attorney in Massachusetts a few years ago said: "Innocent men are never convicted. Don't worry about it, it never happens. It is a physical impossibility." In refutation of this conjecture, Professor Borchard has written this book selecting sixty-five different cases out of the annals of several hundred, all of which he has set out dramatically in narrative form. From these cases the author has attempted to show the paramount necessity of a drastic change in our criminal procedure.

The writer then enters upon a complete dissertation of the reasons for the conviction of the innocent. The most capacious reasons for the miscarriages of justice may be enumerated as follows.

1. The unreliability in the identification of the accused by the victim or the eyewitness which is due to the disturbance of the "emotional balance."

2. The uncertainty of circumstantial evidence for in this case the jury must not only weigh the evidence of fact but also draw just conclusions from them.

3. Prejudice. This may be either intentional or unintentional, among the latter being overzealousness, desire of the officials to "make good," and the desire of avenging an atrocious act.

4. The "third degree" method of extorting confessions. The author states that these confessions should be looked upon with the utmost suspicion because in most instances they are not the result of a free and voluntary act.

5. Public opinion. Whenever a crime is committed the public demands that immediate justice take place. The jury and the officials are not impregnable to these demands.

Many other causes contribute to unjust convictions. Among these are expert testimony, skepticism of the public, indifference of the accused, "frame-ups," and the desire for a scape-goat.

After a complete analysis of these situations, Professor Borchard points out many enigmas for these miscarriages of justice.

The most outstanding remedy is making pecuniary restitution to the persons innocently convicted. Many state legislatures have already passed statutes either generally or in specific instances. The author traces this indemnity policy as far

back as 1532 when Charles V provided for an indemnity bond to be posted by the plaintiff in the event the accused should suffer any injury. Voltaire followed this plan and Dupont, in drafting his criminal code, inserted an indemnity clause to protect the innocent.

Many more of the remedies suggested should be adopted both by our legislative and judicial systems so that in time to come it will not only protect the innocent people but will save the state future expense and litigation. These vivid mistakes cannot be overlooked and something must be done immediately to alleviate the gross injustices done to innocent Americans whose lives are completely ruined after being convicted. As the author states, "Is it not right to compensate as far as possible the tribulations of the damned?"

Louis R. Gentili.

McKELVEY ON EVIDENCE. By John J. McKelvey. Fourth Edition. St. Paul: West Publishing Co. 1932.

This is the fourth edition of a textbook which has, in its past editions, attained a wide and an enthusiastic following. Since the first edition of this work was published in 1897, it has been so widely used by the bar and cited by the bench, and it has been received with so universal an approval, that any present comment would be presumptuous. Such a book needs no recommendation; certainly not from a fledgling in the field it covers. A line to announce its appearance, a word to mark its changes, so that he who runs may read, and thus to it is rendered its due. This book needs no ballyhoo.

The actual changes in this edition are few. Citations of many cases handed down since the third edition was issued in 1923 have been included, and thus the book is brought down to date. But the principal change is in the general outlook of the work, by a modification of the general viewpoint from which the subject it treated. This is done, not by the inclusion of new material, although some new material is included, nor by the exclusion of material previously used, but rather by a change in the arrangement of the material and the development of the underlying theme on which the work is based. This theme was present to some extent in the earlier editions, but it is stressed more in this one. Stressed not by any radical changes in form or content, but by slight changes in implications and emphasis. The result is achieved by indirection.

This outlook of the author's which is most strongly reflected in this, the newest of the editions of his book, is that the complexities of our modern existence require more flexibility than is granted by the ancient and long developed rules of evidence and procedure. He sees a tendency in the establishment of boards and commissions, toward a separation of courts as such, from fact finding bodies, which will give to the courts the facts as found, to which the courts will apply the law. This, however, is a theory and not a thesis. The book explains the theory. It does not attempt to prove a thesis by an undue focus of attention on certain principles to the exclusion of others. The author thinks that this end, that is the establishment of new fact finding tribunals, governed by less restrictive rules of procedure, can only be developed after a full understanding of the old rules has been had. The theory that the rules should be learned with a view to changing them does not influence the study of the rules themselves. The rules are still there. The author's purpose in this exposition has changed a little further since his last edition but the book certainly retains all of the authority it has gained in the many years of its existence. Irrespective of your agreement with or disregard for the author's theory, you cannot withhold admiration from the book, nor deny it respect for the authority and the lucidity of its principles.

John M. Crimmins.