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Book Reviews

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WILLS.—A TRANSFER TO A TRUSTEE ON TRUST CREATED INTER VIVOS.—A trust cannot be created by will unless the identity of the beneficiaries and of the trust property and the purposes of the trust can be ascertained from the facts which have significance apart from their effect upon the disposition of the property devised or bequeathed by the will. In the recent case of *In re Rausch's Will,* 179 N. E. 755 (N. Y. 1932), the above rule of law was followed. Herman Rausch left a will whereby he gave a fifth of his residuary estate to a Trust Company to be held by said Trust Company in trust for the benefit of his daughter under the same terms and conditions embodied in the Trust agreement made five years previous. In an earlier or previous will the testator gave a sixth of his residuary estate to this same daughter, who was later judicially declared to be of unsound mind. The only change effected by his later will is to make the share of the residue a fifth instead of a sixth. Judge Cardozo and six concurring judges held the gift valid even though the rule against incorporation by reference was well established in *In re Fowles' Will,* 222 N. Y. 222 (1918), because the gift to the Trust Company as trustee of a trust, created by a particular deed, identified the trust in describing the trustee in like manner as a gift to a corporation for the uses stated in its charter.

Is it material that the *inter vivos* trust was revocable by the settlor? The Court of Errors and Appeals of New Jersey has held that it is not. In *Swetland v. Swetland,* 140 Atl. 279 (N. J. 1928), the New Jersey Court said that the trust was valid, since the trust agreement, not being testamentary, might be referred to, to ascertain the terms of the testamentary trust. Professor Scott of Harvard wrote a very interesting article in 43 HARV. L. REV. 521 (1930), in reference to *Trusts and the Statute of Wills,* elaborating on the doctrine of "Incorporation by Reference." Even in states where the doctrine of incorporation by reference is rejected, however, it is possible to uphold the testamentary trust upon the ground that the terms of the trust are ascertainable from facts having independent significance. There are numerous cases to the effect that a testamentary disposition of property is valid if the persons in whose favor it is made and the property which is the subject of the disposition are ascertainable from such facts.

John T. Harrington.

BOOK REVIEWS

CASES ON BILLS AND NOTES. By H. L. Smith and Underhill Moore, Third Edition. St. Paul: West Publishing Company. 1932.

This is the third edition of the casebook of Messrs. Smith and Moore on the subject of Bills and Notes. The first edition was published in 1910, the second in 1922, and this, the third, in 1932. This field of the law is rapidly changing and being modified both by the force of rapidly changing customs of the merchants, and the varying interpretations put upon the Negotiable Instruments Law by the courts. These changes make a new issue of a casebook on this s' ject imperative about once in ten years.

This edition of the book has much to commend it to the student. About one third of the cases reported are new, and thus the force and the trend of the present decisions on the law are shown. These cases are well chosen and bring out the law on the points involved. The outstanding case, which has been added, is the decision handed down by Chief Justice Cardozo in the case of *New Georgia*

National Bank of Albany, Ga., v. J. & G. Lippmann, 249 N. Y. 307, and given on page 134 of the text, concerning the interpretation of Section 20 of the Negotiable Instruments Law. It is a marvel of clarity in judicial reasoning, and is in itself almost a justification of the new edition. The footnotes too have been amplified and supplemented.

The binding is well done; an important fact in a book subjected to as much wear as are those designated for class use. Perhaps the text could be bettered by placing the sections of the Negotiable Instruments Law to be considered in each section of the book at the beginning of that section, but this is a mere matter of individual preference, and dictated perhaps by personal laziness, as the entire Law is given in the back of the book. At any rate this detracts nothing from the substantial excellence of the work.

John M. Crimmins.

CASES ON THE LAW OF TITLES TO REAL PROPERTY. By Ralph W. Aigler. American Casebook Series, Second Edition. St. Paul: West Publishing Company. 1932.

This is the second edition of a casebook now widely used and universally approved in the law schools of this country. Little can be said of it save to announce its arrival and note its changes. To go further and to attempt to praise a book so widely used and so much more thoroughly known by others would make the scorn which is so often the fate of the hapless book reviewer richly deserved.

There are two principal changes in this edition of Professor Aigler's work. Part I has been considerably revised. This section concerns "Original Titles," and contains the majority of the 15% of the new cases which are included in this edition. Also the consideration of "Accretion" has been deferred from this part to Chapter III of Part II, under the general heading of "Derivative Titles," and the special heading of the "Subject Matter." This presents a more logical arrangement for the student's consumption.

The other major change in this edition is in the author's treatment of his fifth chapter in Part II, concerning "Estates." He has considerably enlarged and corelated this chapter in order to bring before the student matters not elsewhere treated in the ordinary law school curriculum. The important matters of estates in fee and in tail, the reciprocal interest of husband and wife in the estates of the other, the various ramifications of the law of landlord and tenant, and finally the matters of concurrent estates and reversions and remainders are amplified and expanded to cover a very important deficiency in the usual legal education.

These two changes certainly add to the value and the desirability of this case book. In addition the binding, the size of the pages, and the printing have all been changed with a view toward the convenience of the student and of the professor.

John M. Crimmins.

HANDBOOK OF THE LAW OF SALES. By Lawrence Vold. Hornbook Series. St. Paul: West Publishing Company. 1931.

The occasion for which this book was written was undoubtedly the increasing importance of the new Uniform Sales Act, and its influence on the law of the various states. However this book is far more than a commentary on that law alone. It is a concise and timely exposition of the law of sales, bringing down to

date the ever changing material on conditional sales on the installment plan, trust receipt security in the financing of sales, and the nature of warranty obligations. Due to our modern conditions this law is in a formative period. Any given exposition of this phase of the law is necessarily antedated in a few years, but Professor Vold's treatise gives a concise statement of that law as it is today.

The text of the Uniform Sales Act is given in the appendix. The treatment of the subject matter is admirable. At the head of each section, in black-letter type, is given a brief statement of the leading principles of the law with which that particular section is concerned. Under this is a more extended commentary, expanding, developing, and explaining these principles, and reconciling as well as they can be reconciled, any contradictions in the law. This is supplemented by numerous notes and authorities, bearing on the propositions under discussion.

Nothing need be said about the worth of the binding and the form of the book, as it is uniform with the others in the Hornbook Series. It is well indexed, and contains a complete table to all the cases cited in it.

John M. Crimmins.

THE JUDICIAL PROCESS IN TORT CASES. By Leon Green. St. Paul: West Publishing Company. 1931.

This casebook is extremely difficult to analyze. It is a shining example of the surprisingly disappointing results of an excellent theory when that theory is put into practice. The theory which regulates the arrangement of the cases and the development of the material is excellent, but its ultimate test, that is its application to practice, seems to reduce it to the crowded ranks of the mere theories. Its actual practice does not fulfil its promises of clarity, and provokes the difficulty in the analyzation of the actual subject matter.

There is no subject in law which requires a clearer analyzation of the subject matter of the course in the table of contents than does the subject of torts. It is a first year course. Its students are invariably novices in law. And, unlike the other subjects with which they are concerned, they are entirely unacquainted with the subject. To the newcomer in the law school, *torts* is a word to be conjured with, nothing more. They have some ideas on the subjects of contracts, domestic relations, personal property, and the others. They know to some extent the subject matter of these branches, and are able to follow their developments as they arise. The success of a course in torts, as in any other course in law, depends on the order of the subject in the mind of the student, under which he classifies his knowledge as it comes to him, and this classification should come primarily from the text itself. When there is apparent confusion there, notwithstanding the re-arrangment of the material in class, there is apt to be confusion left in the mind of the student. Instead of obtaining clear-cut, well-defined, and exactly co-related ideas, he is apt to acquire a jumble of isolated impressions and independent rules. Where the order is not crystal clear, the development is confused, there is chaos. This result could be avoided in the main, by a more orthodox arrangement of the materials as a starting point for a study of the subject.

The theory underlying the arrangement is beautiful. It starts out on the hypothesis that persons have interests which are subjected to harms against which the judicial process gives protection. Therefore there are four considerations to be developed under each of the major divisions of the subject, that is the interests, the harms, the judicial process, and the protection.

This is the theory. Perhaps its practical failure is due to the classifications given, perhaps to the impossibility of considering the classifications under these

four headings. Three principal headings are first the interests of personalty and property, the second the interests in relation to others, and the third, the interests of personalty, property, and in relations with others. This is certainly a departure from the standard methods of treating the subject, and a departure which leads to confusion rather than to clarity. It seems that the whole outline is dealing primarily with interests. Harms are only interests violated and the study of the judicial process and the protection seems to be more proper to the study of procedure than to torts, in spite of the eager argument of the author to the contrary in his introduction.

Even though the order were all that it could be hoped, it is a step of debateable wisdom to depart from the ancient arrangement. It deprives the student of supplementary text books which follow the old development, and this seems to outweigh any contingent benefits to be derived from the new organization. As it has been well said "By departing from the old paths of classification one puts up unnecessary barriers for the student against the use of existing legal literature, and particularly its indexes." [1]

As to a more particular treatment of the author's development, the subject of negligence is not separately treated in relation to the other subjects, and this is by far the most important single topic in the subject. There is no apparent reason for treating the keeping of animals under the subject of physical harms, and there seems to be no orderly development of ideas and flowering of principles within that subject. The selection of cases there and their order seems to be founded in arbitrary whim and do not bear any orderly relation one to the other.

There is a wealth of material in this book, too much, in fact, to be covered in the short space of one year. While there is some attempt made to treat the historical aspects of the law [2] the cases are mostly modern and deal with the law of torts from the standpoint of interest considered. There are many excellent cases contained in the book, such as *Green v. General Petroleum Corp.*, p. 356, *Palsgraf v Long Island R. Co.*, p. 1054, *Smith v. London & S. W. Ry. Co.*, p. 298, *Polemis and Furness, Withy & Co., Ltd.*, p. 979, and *Glanzer v. Shepard*, p. 1194. But one misses such old standbys as *Brown v. Kendall, Hoag v. Lake Shore Ry.*, and *Weaver v. Ward.*

John M. Crimmins.

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1 HAR. L. REV., Vol. 44, p. 881.

2 See Sioux City & P. Ry. Co. v. Stout, p. 492.