Michigan Law Review

Volume 16 | Issue 3

1918

Book Reviews

W B. Shaw
University of Michigan Law School

Horace LaFayette Wilgus
University of Michigan Law School

Robert E. Bunker
University of Michigan Law School

Willard T. Barbour
University of Michigan Law School

Evans Holbrook
University of Michigan Law School

See next page for additional authors

Book Reviews

Authors

W B. Shaw, Horace LaFayette Wilgus, Robert E. Bunker, Willard T. Barbour, Evans Holbrook, and Victor H. Lane

BOOK REVIEWS

FRENCH POLICY AND THE AMERICAN ALLIANCE, by Edwin F. Corwin, Professor of Politics, Princeton University. Princeton University Press, 1916; pp. x, 430.

It was peculiarly fortunate for the cause of the American Revolution that the sympathies of the French people and the policies of the French foreign office which knew no diplomatic methods save those of secret diplomacy, were for once heartily in accord in support of the American revolutionists. Professor Corwin in this book deals entirely with the complicated and obscure political plots and counter-plots which eventually led France to espouse openly the cause of the revolting colonies. The whole question of the timely aid France gave to America has, of course, a very particular value at the present time when this country is preparing to repay the debt we have owed France for so long. That the author does not deal with the social conditions and the sympathic temper of the French people, which in a real sense underlay the action of France, but confines himself wholly to *haute politique* does not in any sense take away from the value of his work. He reveals a new side to this very interesting phase in our contest for independence, at least one that will be new to those who are not deeply read in American history. The tendency heretofore has been to emphasize the popular and moral support of the French people and to overlook the political reasons which led to the action of the king and his ministers. The author has throughout relied upon the monumental researches of Doniol and has carefully fortified every point by copious references and quotations.

The opening chapters set forth the reason why the French Government eventually came to the aid of the American Revolutionists. France was jealous of England's growing power and her predominant place in European politics, always increasing at the expense of France, now far from what she had been in the days of *Le Roi Soleil*. Vergennes, the French secretary of state, thought he found in England's colonies a vulnerable spot. A follower of the old mercantilist principles and of old-school diplomacy, he was nevertheless a politician of no mean ability. His policy was far-sighted, but inasmuch as there was no immediate benefit accruing, he found the King and many of his ministers either out and out opponents to his ideas, or at least indifferent. Turgot, the minister of finance, was active in his opposition. France, in his view, was in no position to incur the heavy expense involved and her navy was weak. She was also bound to Spain by a treaty which obligated either nation to come to the aid of the other in case of war.

A very benevolent neutrality seemed the only way out and led to a secret provision of funds and arms which culminated February 6th, 1778, in the

secret "Treaty of Amity and Commerce" which proved the first step toward the open support which France eventually gave to America.

While the motive underlying Vergennes' policy was an eventual weakening of England through the loss of her colonies, an immediate excuse was necessary to secure the support of the King and his ministry. Vergennes therefore bred the notion that the West Indian colonies of France were in danger of an attack from a coalition of England and the rebellious colonies. Eventually this notion carried the day and overthrew Turgot's opposition. There is some question as to the weight to be attached to this argument. Professor C. H. Van Tyne, of the University of Michigan, who has had access to documents unknown to Doniol, attaches much importance to this possible coalition, as the deciding factor, and a portion of his argument in the AMERICAN HISTORICAL REVIEW of April, 1916, is discussed at some length in a long footnote by the author.

New light as to this whole period is to be found in the chapters devoted to the interminable diplomatic intrigues with Spain who was, to say the least, an unwilling participant. Even more interesting are the discussions of the preliminaries to peace in the later chapters. The American representatives were in one way ill-equipped to deal with the indirect and Machiavellian traditions of European diplomacy, but by their very honesty, persistence and straight-forward attitude, they eventually won their point.

The author has succeeded to a remarkable degree in compressing an amount of dry documentary history within the limits of this volume. Every one who reads it must feel that he owes a debt to the author for his clear and vivid presentation of the material so long buried in French archives. Though the author is at times betrayed by the very defects of his qualities into a certain roughness of style, and occasional repetitions and a few typographical errors are to be noted, he has succeeded remarkably in giving a forceful and direct account. The book is well printed and contains valuable appendices and an index. W. B. SHAW.

A TREATISE ON THE AMERICAN AND ENGLISH WORKMEN'S COMPENSATION LAWS, by Arthur B. Honnold, of the Minnesota Bar. Vernon Law Book Co., Kansas City, Mo., 1917; 2 Vols., pp. xxi, 1905.

At the date of the preface, the author states that Compensation Acts "have been adopted by the Federal Government, thirty-two states, and many foreign countries". "The underlying principles have become sufficiently fixed to make of value a text-book based on the opinions of the courts and various commissions and officers vested with the power and duty of enforcing these acts."

Volume one treats of these general principles under eight chapters, and two hundred and fifty-two sections, and Chapter IX of twenty more sections, giving selected forms for all of the important steps necessary to be taken in prosecuting a claim for compensation. The headings of these chapters are: Workmen's Compensation Acts in General, including history, purpose,

scope, construction, operation and validity; Elective and Compulsory Compensation, Persons and Funds Liable, including employers, principals, contractors, insurers, third persons (indemnity and subrogation); Persons Entitled to Compensation,—employes and dependents; Circumstances Under Which Compensation Becomes Due, including injury, accident, diseases, arising "in course of" and "out of" employment, cause, result, and occupational diseases; Defenses; Compensation,—earnings, disability, death benefits, payment, release, funeral expenses; Settlement of Controversies, by agreement, remedies, notice, evidence, legal proceedings before special tribunals or in court, review, costs and attorney's fees. Approximately 3,500 cases are cited in support of the principles discussed in this volume.

Throughout, the author has shown care and ability in selecting and stating succinctly what the cases have decided, and has so arranged them in appropriate classes and section headings as to make the results readily available by means of the carefully prepared index.

There is a minimum of discussion by the author,—the aim being to indicate what the courts have held more than to give the author's opinions. In many of the notes, quotations from the cases are given, sufficient in detail clearly to exhibit the situation, out of which the controversy arose. This is particularly the case in § 97, in reference to diseases (not occupational), which are contracted "by accident," as abscess, apoplexy, blood-poison, cardiac hypertrophy, erysipelas, hysterical neurosis, infection, kidney trouble, paralysis, pleurisy and tuberculosis, pneumonia, sciatica, septicaemia, tetanus, etc.

The difficult question of accidental hernia is treated in § 96, and the rules of the Nevada Industrial Commission are given in the text. The cases relating to nervous shock as an accident are given in § 95.

Vol. II is entirely taken up with the "Text of Legislation," and the index (covering nearly 200 pages). The texts of the statutes of the following states are given: Arizona, California, Colorado, Connecticut, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Washington, West Virginia, Wisconsin, Wyoming, United States (Federal Acts). In addition the English Act, and a synopsis of the German Act are given.

Aside from having all these acts brought together for the convenience of comparison, it is also helpful to be able to turn to the statute involved in considering the decision of any case referred to or cited in the text or notes. The author has cited not only the decisions of the courts, but also those of the various commissions, and has also given the opinions of the legal advisers of such commissions.

The work will be a very present and acceptable help to all who have to do with the enforcement of the "Workmen's Compensation Acts," in all their rapidly developing and sometimes puzzling phases. H. L. WILGUS.

CASES AND READINGS ON THE JURISDICTION AND PROCEDURE OF THE FEDERAL COURTS, by George W. Rightmire, Professor of Law in the College of Law of the Ohio State University and member of the Columbus, Ohio, Bar. Cincinnati: The W. H. Anderson Company, 1917; pp. xvi, 892.

This book reflects its editor's idea of the proper and preferable method of acquainting students in their preparation for the bar with the subject of the jurisdiction and procedure of the Federal courts. In his preface the editor says:

"Although the jurisdiction of the Federal courts is largely a matter of statute and is in the main based on an elaborate code, yet approaching the subject through the cases seems as highly desirable and yields the same good results as are noticed in other branches of the law. The traditional method of dealing with the subject has been by lectures and text-books, but the scope of the subject and the wealth of cases has shown the possibility of pursuing the case treatment."

One who undertakes to make a selection of cases best suited to the needs of students in acquiring the fundamentals of a knowledge of the jurisdiction and procedure of the Federal courts sets himself no easy task. He will be bound by considerations of environment and time allotted to the course. The time given to the course is always and necessarily limited to a greater or less degree. Only the fundamentals can be acquired by the student in his preparatory course. Nothing further could be expected or desired. The details of the subject must be left to the practitioner and cannot wisely be expected of the student preparing to enter the profession. Taking all the circumstances into consideration, can the subject be best presented to the student from the beginning to the end of his course by the study of cases? There are those who share the views to which Mr. Rightmire inclines, that "the case treatment" as he terms it, is the preferable method of leading preparatory students into a competent, working knowledge of the subject. There are others who disagree with this view. One teacher of no inconsiderable experience declares: "I do not believe the subject can be covered, within the time ordinarily allotted, by the study of cases."

The consideration of time given to the course, which must be subject to some reasonable limit, cannot be ignored. The maximum time usually allotted to the subject of Federal courts, their jurisdiction and procedure, is two hours a week for a semester, about thirty-two hours, an allotment, in view of the other subjects necessary for a preparatory course, reasonably sufficient. Benjamin R. Curtis, then a retired justice of the Supreme Court, gave a course of twelve lectures to the students of Harvard in 1872, which it would be presumptious to say has been surpassed in plan of treatment and wealth of pertinent illustration by any course of instruction on the subject before or since given. The learned ex-justice did not expect that the course would be completed with the completion of his several lectures but frankly stated to his students that his lectures would be little worth to them unless they studied the cases to which he made reference.

Mr. Rightmire has included within his collection, about two hundred

cases, some 750 pages of matter, which together with precedents on procedure, and the Judiciary Act of 1789, of 1875, of 1888, of 1891 and the New Equity Rules swell the volume to nearly 900 pages. Students will find plenty to do to cover the volume in the time usually allotted to the course. The cases included in the collection present the principal classes of Federal jurisdiction and the constitutional provisions and acts of Congress conferring such jurisdiction. The important subject of ancillary jurisdiction is not covered except incidentally. Mr. Rightmire gives evidence of having selected his cases with care and discrimination. His work will be a convenient and valuable aid to students of the Federal judicial system, and will not unlikely be judged by what it stands for rather than by what it is.

R. E. BUNKER.

FEDERAL RULE BOOK, ANNOTATED; Containing All the General Rules of Practice in Courts and Commissions, by Franklin A. Beecher. Detroit: Fred S. Drake, 1917; pp. vii, 579.

This book contains in convenient and excellent form the rules of all the Federal courts and more important Federal commissions, namely: The Rules of the Supreme Court, The Rules of the Circuit Court of Appeals, All Circuits; The New Equity Rules of 1912, The General Orders in Bankruptcy, The Rules of the Interstate Commerce Commission, The Rules of the Court of Customs Appeals, The Rules of the Court of Claims, The Rules of the Supreme Court Relating to Appeals from the Court of Claims, The Rules of the Admiralty Court, The Rules in Admiralty of the Second and Ninth Circuit Court of Appeals, The Rules of the Federal Commission, and The Rules of the Inter-Commerce Court Abolished by the Act of October 22, 1913, 38 Stat. 219. The reason for including the rules of the Commerce Court in this collection is not apparent, unless it be found in the fact that the jurisdiction of the Commerce Court was upon its abolition conferred upon the district courts. To all these is added the code of ethics adopted by the American Bar Association. All these are separately and suitably indexed and annotated.

If this book be not indispensable to the practitioner in the Federal tribunals, it will be most serviceable to him in finding at the least expense of time the rule and the cases applicable to it on any question of procedure with which he may be concerned. The arrangement of the matter and the mechanical execution of the book as a whole leave little, if anything, to be desired.

R. E. BUNKER.

JURISDICTION AND PRACTICE OF FEDERAL COURTS.—A Handbook for Practitioners and Students, by Charles P. Williams, M.A., of the St. Louis Bar. St. Louis: The F. H. Thomas Law Book Co., 1917; pp. xx, 586.

This book, the result of lectures prepared by its author during several years of instruction to students at the Law School of Washington Univer-

sity, is an elementary yet quite comprehensive treatise on the subjects of jurisdiction and practice of the Federal Courts, save the subject of Bankruptcy. The matter embraced in it covers more than five hundred pages and is based upon approximately twenty-five hundred cases. The reviewer's experience leads him to suggest that the value of the book would have been considerably enhanced had there been included in the form of an appendix or in some other convenient way, Article III and Amendment XI of the Federal Constitution, the Judiciary Act of 1789, the Judicial Code as amended and the new Equity Rules of 1912. This addition would involve but a trifling expense, would not mar the present neat appearance of the volume and would make available to the student the principal fundamental sources of the jurisdiction of the Federal Courts.

R. E. BUNKER.

OPHTHALMIC JURISPRUDENCE, by Thomas Hall Shastid. Chicago: Cleveland Press, 1916. Pp. 147.

The present volume is the reprint of an article in the American Encyclopedia of Ophthalmology, entitled "The Legal Relations of Ophthalmology." It seems unfortunate that the author saw fit to change the original title; for the misuse of the term jurisprudence will not commend itself to the scientific lawyer, and the very purpose of the present reprint is to make the material accessible to the legal profession.

The author gives by way of introduction a summary account of the courts and legal systems of America, England, France and Germany. In his effort to be brief he has made some statements that, as they stand, need qualification. Thus for example, in speaking of the federal courts he says (p. 2): "They do not, however, as a rule, enforce any former judicial decisions either of themselves or the state courts. There is, in other words, no federal 'common law'." Doubtless this will not mislead a lawyer, but it may cause a layman to draw improper inferences. In the main, the statements are accurate.

The introduction is followed by a consideration of ophthalmic expert testimony, in which Dr. Shastid has analyzed the types of cases, with which such experts have to deal, in both their medical and legal aspects. He then summarizes recent legislation in America and abroad and concludes with some general observations with regard to malpractice.

The latter part is the more valuable part of the work, and though we suspect it will be of more practical use to the medical practitioner, the lawyer whose practice involves the so-called personal injury cases, will find much that is instructive. Dr. Shastid is fortunate in having had a training both in law and medicine and hence he has been able to develop the two-fold aspect of his subject. Probably it is but natural that his long experience as a doctor, has led him to treat most fully the medical side of the subject. It would seem that it is of that which the author is best qualified to speak.

W. T. B.

A TREATISE ON FEDERAL CRIMINAL LAW PROCEDURE, with Forms of Indictment and Writ of Error and the Federal Penal Code. Second Edition. By William H. Atwell. Chicago: T. H. Flood & Co., 1916; pp. 808.

The first edition of this work appeared in 1910. The second edition follows the same arrangement as the first, with the addition here and there, apparently more or less at random, of new sections dealing with phases of the law that have developed in the last half-dozen years as the result of changes in or additions to the statutes. An additional chapter on Practice Suggestions treats various matters of practice that have been considered by the courts since the publication of the first edition. The well-annotated official edition of the Federal Penal Code, with the appendix showing the Federal penal laws not included in the Code, is reprinted in full as Chapter XXV, and is in some respects the most valuable part of the work. Some forty forms of indictment for various crimes (most of them forms that have been approved in litigated cases) are included in Chapter XXIV and (though the collection is of course far from complete) furnish some suggestions for the attorney who is inexperienced in the drawing of indictments.

There is a good deal of valuable material scattered here and there in the book, and it may well be of some assistance in supplying a guide to "the busy, painstaking lawyer" referred to in the author's preface. But it is very doubtful if a really painstaking lawyer would feel, after consulting Mr. Atwell's work, that he had been much helped in getting to the bottom of any particular question, or in obtaining a very strong light on general principles of criminal law and procedure. The work is obviously, as indicated in the preface to the first edition made up of casual annotations (which are, unfortunately, not always apposite) made by the author during his experience as United States Attorney, and supplemented by familiar and elementary observations culled from various works on Criminal Law. The annotations are extremely ill-organized and appear in many instances to be printed just as they were jotted down by the annotator from time to time; the excerpts from texts, and from many of the judicial opinions quoted, are frequently commonplace and far from illuminating. And the author's method of citing cases is fearful and wonderful! There are some dozen different ways of altering the standard form of citation and, in addition, such styles as the following, chosen at random from a few neighboring pages of the book: "United States vs. Nixon at al., Supreme Court of the United States, Oct. Term, 1914"; "Drew vs. Thaw, U. S. Supreme Court, Oct. Term, 1914"; "Sheriff vs. Daily, U. S. Supreme Court, decided May 15, 1911"; "Matter of Lacy, 1894, Okla., 4". The proper citations of all of these cases were available to the author long before the publication of his book, and such slipshop methods of citation are an affront to any reader. No table of cited cases is given, and the index is incomplete, inaccurate, and—worst of all—is not arranged alphabetically. For instance, the forms of indictment above referred to are not indexed under the names of the various crimes but are included in the index only under "Forms" where a list is given in the same helter-skelter

lack of order in which they are arranged in the body of the work, without any arrangement either topical or alphabetical.

It is to be regretted that Mr. Atwell's expressed desire to lighten the labor of his fellow attorney and to point a way to the busy, painstaking lawyer has resulted in a work marred by so many indications that the author himself is very far from painstaking.

EVANS HOLBROOK.

CASES AND OTHER AUTHORITIES ON LEGAL ETHICS, by George P. Costigan, Jr., Professor of Law in Northwestern University. St. Paul: West Publishing Company, 1917.

This is one of the American Case Book series, and is the first attempt, so far as the reviewer is aware, to provide a selection of cases as the basis for a course of instruction in legal ethics.

The term "legal ethics" as commonly used, includes not only those rules and regulations which involve the *legal* obligations and relationships of the lawyer toward his client, the court and his brethren of the profession, and in some instances toward the public, but as well his *moral* obligation toward all these. In this latter phase the term is used with reference to the lawyer much as the term "medical ethics" is used with reference to the practitioner of medicine. A practitioner of medicine may be guilty of a breach of a rule of medical ethics and incur no legal responsibility on account of it. And so the lawyer may be guilty of violating some purely ethical regulation of his profession without affecting his *legal* relationships to his client, the court or his brethren.

Let one examine the "Canons of Legal Ethics" adopted by the American Bar Association and it will be quite apparent that a lawyer may fail in the observance of many of them and his legal status be unaffected. We are not surprised therefore, to note that the author seems to appreciate that any attempt to teach this subject in its full breadth from decided cases will develop serious difficulties. Courts do not attempt to decide cases by the application of *mere* rules of morals obtaining in any department of human relationships. It is only when such rules have crystallized in the body of our civil jurisprudence that the courts recognize their obligatory force. We do not find, therefore, in decided cases authority for determining what the lawyer ought or ought not to do, apart from his legal obligation to do, or to refrain from doing, a particular thing.

Because of this dual nature of the subject, certain phases being within the control of courts, and certain others outside their authority, our book is only in part a "case" book. There would seem to be no good reason why, if the course in this subject is to be given, it should not be given with a case book in so far as the strictly legal relationships of the lawyer are concerned, and the cases selected to develop the law in this field are well chosen. As a book to be used for the teaching of morals to the embryonic lawyer one might be pardoned for preferring the lessons he learned at, or on, mother's knee.

There is much in the book which lacks that interpretation which would

enable the student to orient himself in the subject. What is the student to get from the statement of Clarence Darrow in explanation of his connection with the McNamarra cases found on page 351, which will furnish him with a rule for the guidance of his professional conduct? Or is it intended that the student should adopt the moral philosophy of Samuel Johnson, quoted on pages 210 and 211, as a proper ethical code? Are these to be regarded as among the "authorities" by which the student is to be instructed or are they intended only as illustrations of "ethics" to be avoided? The author does not make himself clear. If these are chosen to provoke discussion they are well chosen. They are but illustrative of a considerable portion of the matter in the book.

One of the considerations justifying the publication of a "case-book" on any subject is utilitarian. Is there a need to be met? Having in mind the present limitations in time upon the law course, and the importance of the many courses in the substantive and procedural law, it is, to the mind of the reviewer, more than questionable whether there should be added a course in this subject of legal ethics, and particularly a course so extended as the character of Professor Costigan's book suggests. VICTOR H. LANE.