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Book Reviews

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BOOK REVIEWS

ANALYSIS OF THE ELECTRIC RAILWAY PROBLEM, by Delos F. Wilcox. New York. Published by the author, 1921. Pp. xx, 789.

The plight of the public utilities following the World War has been shouted in a babel of demands for increased rates from one and all. The public has turned a doubting or hostile ear to these demands, and the utilities have overwhelmed the utility commissions with a vast mass of evidence to prove their case. None seem to have been harder hit than the electric railways. Some have ceased to operate, automobiles have already made deep cuts in their revenues, and there are not wanting those who predict that the electric railways, operating on fixed tracks, are already out of date and on the way to the scrap heap. One of many results of this situation was the appointment by the President in 1919, on recommendation of the Secretaries of Commerce and Labor, of a Federal Commission to study and report upon the electric railway problem. This Federal Electric Railways Commission took an enormous mass of testimony submitted for the American Electric Railways Association by able counsel acting under a special committee of one hundred. The Amalgamated Association of Street and Electric Railway Employes put in an elaborate and carefully prepared case for organized labor. The third party interested, the public, is represented by an unorganized presentation gathered from commissioners, municipal officers, and some utility experts. The Federal Commission engaged Dr. Wilcox, who had been one of the expert witnesses, to analyze the evidence and submit the result, with suggestions. This analysis constitutes the greater part of the book under review.

But the book is much more than an analysis of evidence. The report of the President of the Commission says "it represents a complete and masterful study of the whole electric railway problem," and a careful study of the book goes far to justify the characterization. It is too much to call it complete, and yet relatively it is so, for no other published study of this particular problem is so full as this. A glance at the headings of the fifty-four chapters shows how broad and also how detailed is the study, and a careful reading of the chapters does not disappoint the hope excited by the table of contents. Whitten, in his "Valuation of Public Service Corporations," performed a valuable service in bringing together and into comparison the important decisions of decided cases involving valuation and rate problems. In a similar way, Dr. Wilcox has brought together, in parallel columns, as it were, the widely divergent views of the witnesses, illuminated by short summaries or discussions of his own. This makes of the book a very valuable repository of information and argument for all interested in the subjects discussed.

Particularly valuable in this respect are such chapters as 38, The Valuation; 39, Rate of Return; and 40, State Regulation. All agree that valuation is the rock of stumbling in all efforts at readjustment of the relations

between the public and the utility, because rates are based directly on valuation. Scarcely any two agree on the theory to apply or the items to include in making a valuation. In this book all theories are urged, from that of the expert advocate of cost of reproduction new based on the abnormal prices of today, not forgetting to boost overheads and intangibles to make sure nothing has been passed over that might swell the valuation on which to base rates, to the unexpected utility man who flatly states his belief in a valuation based on the money honestly invested in the property. Cf. *Public Utility Valuation,* 15 MICHIGAN LAW REVIEW, 205. The author believes those following the leadership of the former are "riding for a fall," and that any valuations based on prices of these abnormal times will cause a "back-fire" disastrous to the utilities. The representative of another public utility urged the hazard of shifting valuations, and urged a stable valuation such that "investors may be assured when capital is put into property it will be considered at the par value of the original investment."

Much is said in the testimony about the shrinking dollar, some suggesting a doubling of valuation as an offset, some an increase in rate of earnings, and some both, not noticing the overlapping of the remedies. The true measure of return, it would seem, is to be found in a study of changes in interest rates and in earnings in other business of like kind. It is not clearly brought out that these abnormal price levels have moved interest rates upward very slightly. Former loan rates of 6 per cent have advanced to 6½ or 7 per cent, in some cases to 8 per cent, but there has been no doubling of rates. The rate for bonds has increased a little more, but here there has been no such advance as is shown in prices of labor and materials. In the chapter on Rate of Return there is reference to this, but the conclusions from such a situation are not well developed.

The study of the whole situation lends the author confidence in his theory that the remedy for utility ills is in public ownership and operation. With this the Commission does not agree, and it may be doubted if the author has made out more of a case for his theory than a pretty clear showing that at this date private ownership under public regulation is on the rocks. So far as electric railways are concerned, such evidence as we have as to public ownership and operation does not seem to justify the claim that the public in the United States can successfully manage such a business. But whatever one's theory as to public utilities, or interest in them, the compilation is almost a library of information on the questions discussed, and the training and large practical experience of the author have been used to good purpose in making it readily accessible.

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HANDBOOK OF THE LAW OF TRUSTS, by George Gleason Bogert, Professor of Law in the Cornell University College of Law. The Hornbook Series. St. Paul, West Publishing Co., 1921. Pp. xiii, 675.

Dean Bogert has attempted in this volume to "give to practitioners and students a compact summary of the fundamental principles of the American

law relating to trusteeships."[1] He has accomplished his purpose in admirable fashion. On the one hand, comparatively few of the criticisms which the book invites can be attributed to any shortcomings on the part of the author. Rather, they are defects which are more or less inherent in an undertaking of this kind. On the other hand, the book has distinctive merit for which the author should receive unstinted commendation.

Most of the volume's defects are the natural if not the inevitable result of attempting to summarize the American law of trusts in the space of 583 pages, of which nearly one-third, it is estimated, has been absorbed by footnotes and the citation of authorities. Few references of any significance are made to the English cases. Although the preface promises references to articles in the leading law periodicals, "with an attempt at completeness," and although the value of the work is enhanced by many well-selected references to this type of material, there are noteworthy omissions.[2] Writing under such limitations as to space, the author has been constrained to omit or give meager attention to many interesting and important questions. There is barely a suggestion, for example, of the present-day significance of the business trust.[3] The discussion of powers in trust seems meager and somewhat unsatisfactory.[4] For the same reason there is relatively little criticism or consideration of alternatives. The astonishing deference of some courts to the unethical motives of savings bank depositors is recorded without criticism and without suggestion.[5] It is the law that payment of consideration for conveyance to another can only raise a resulting trust when made at or before the time of conveyance.[6] But why such a rule? The case of money paid over for a special purpose is dismissed with the suggestion that trust or no trust ought to depend upon the presence or absence of intent to keep separate and apply "the particular bills and coins."[7] A trust requires definite subject-matter, and that is the end of it. But might not the subject-matter conceivably be a fund and might there not be a trust with authority to mingle? Space limitations, indeed, have almost eliminated the discussion of principle from some of the most important chapters in the book. Wherever he has indulged an opinion of his own, either expressly or by inference, Dean Bogert's view will be found liberal and convincing. He

[1] Preface, p. vii.

[2] Including, for example, Ames, "The Failure of the Tilden Trust," 5 HARV. L. REV. 389, LECT. LEG. HIST. 285; "Can a Murderer Acquire Title by His Crime and Keep It?" 36 AM. L. REG. AND REV., N. S., 225, LECT. LEG. HIST. 310; Gray, "Gifts for a Non-Charitable Purpose," 15 HARV. L. REV. 509; "Powers in Trust and Gifts Implied in Default of Appointment," 25 *ibid.* 1.

[3] P. 157.

[4] Pp. 35-6. The author says (p. 36) that "if A devise real property to B for life, subject to a power in B to dispose of the property by will in favor of B's children, then B is the holder of a power in trust, and the beneficiaries are his children. B is a trustee, just as he would be if the legal title in fee to the land had been given him to hold for the benefit of his children." But see Gray, "Powers in Trust," 25 HARV. L. REV. 1.

[5] Pp. 90-1.

[6] P. 103.

[7] See pp. 19, 20, 24.

approves, for example, of the modern tendency to construe liberally the words "benevolent" and "philanthropic" in gifts to charity.[8] He accepts the rule of *Viney* v. *Abbott*[9] that there is no implied power of revocation.[10] Too often, however, he finds it possible to do no more than state the rule and the conflict, with meager comment or no comment at all. This is characteristic of his treatment of the creditor's subrogation to the trustee's right against the trust estate,[11] the lawyer-trustee's right to compensation from the trust estate for necessary legal services,[12] the inactive trustee's liability upon default of the co-trustee,[13] and many other topics fully as interesting and important. He has been obliged to work throughout, it would seem, in the spirit of Dunoyer's remark in the introduction, *Je n'impose rien, je ne propose même rien: j'expose.*[14]

The above shortcomings, if in fairness they may be so described, are likely to be characteristic of any volume which seeks to achieve the Hornbook purpose. There are also a few minor defects of substance or form for which the author would no doubt wish to assume responsibility. The definition of trust as "status" in several instances[15] seems objectionable. Definition as relationship[16] may perhaps be preferred to definition in terms of the trustee's duty or the cestui's right; but status, having a more exact significance in our law, can hardly be said to fit the situation. Secondary references to the text of the Statute of Uses[17] might well be eliminated in another edition. The description of a promoter as an "anticipatory agent"[18] seems more confusing than clarifying. Although there are precedents for referring to certain non-charitable gifts for indefinite beneficiaries as "honorary trusts,"[19] it would seem better to describe them in terms of powers.[20] The term "honorary trust" is open to the same objection which the author very properly urges elsewhere against the use of the term "precatory trust."[21] Michigan is included among the jurisdictions in which the investment of trust funds in corporate stocks is forbidden,[22] citing *Cropsey* v. *Johnston*,[23] But *Cropsey* v. *Johnston* is not a decision in point, and the earlier dicta in Michigan cases have been overruled in *In re Buhl's Estate*.[24] Finally, it is

[8] Pp. 216-18.
[9] 109 Mass. 300.
[10] P. 248. Compare 19 MICH. L. REV. 420.
[11] P. 301.
[12] Pp. 372-3.
[13] Pp. 481-95.
[14] De la liberté du travail, I, 29.
[15] Pp. 2 n., 40, 41.
[16] P. 1.
[17] Pp. 11 n., 12 n.
[18] P. 37
[19] Pp. 424-5.
[20] See Ames, "The Failure of the Tilden Trust," 5 HARV. L. REV. 389; Norman v. Prince, 40 R. I. 102.
[21] P. 47, n. 16.
[22] P. 357, n. 62.
[23] 137 Mich. 16.
[24] 211 Mich. 124; 19 MICH. L. REV. 230. The case was decided July 20, 1920, probably too late for citation.

suggested with some diffidence that the style could be improved in another edition and space saved for discussing matters of principle by making less frequent use of extracts from judicial opinion. The use of such extracts is an approved practice wherever they are significant either as a formulation of decision or an exceptionally good statement of problem or rule, but the practice seems to have been overdone in a volume of such limited size as this one. The quotations are frequently repetitious and sometimes confusing. Where they have been used too freely the style is fragmentary and the sequence halting.

Fault-finding done, the real emphasis should be placed upon the excellent quality of Dean Bogert's work. The book stands out among its kind as one of exceptional merit. The arrangement of topics is original and effective. The historical introduction, considering the brief space allotted to it,[25] is good. Savings bank trusts are treated with unusual thoroughness,[26] these sections having been taken over with few changes from the author's article in the CORNELL LAW QUARTERLY.[27] There is an excellent brief analysis and discussion of the nature of the cestui's rights.[28] An exceptionally useful feature of the work is the inclusion of the statutory trust systems in force in several states and the incorporation in the notes of typical statutory excerpts taken more often than otherwise from the laws of New York. Although not commonly treated in works on trusts, a comparatively full discussion of the rules against remoteness, suspension of the power of alienation, and accumulations, respectively,[29] should prove helpful. There is a very full discussion of the powers and duties of trustees in chapters eleven and twelve[30] and of the cestui's remedies in chapter fourteen.[31] These chapters in particular deal with matters of intense practical importance. They should be an invaluable aid to all practitioners called upon to advise in matters of trust law.

Needless to say, the book is not of the sort to commend to the beginning student. For the mature student, however, it provides a convenient summary and reference manual to leading American cases. And for the practitioner in search of information readily available or a starting point in the quest for authorities it should prove indispensable. More than anything else, it is a ready reference manual for the practitioner. Now let Dean Bogert provide the profession with another and more exhaustive treatise, and the law of trusts in America will have received something like the expression in books to which its difficulties and its importance entitle it in relation to other subjects.

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[25] Pp. 6-15.
[26] Pp. 78-91.
[27] I, 159.
[28] Pp. 427-30.
[29] Pp. 165-80, 231-9.
[30] Pp. 289-421.
[31] Pp. 462-563.