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Book Reviews

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BOOK REVIEWS

MEN AND BOOKS FAMOUS IN THE LAW. By Frederick C. Hicks. Rochester: The Lawyers' Coöperative Publishing Co. 1921. Pp. 259.

Professor Hicks has done for a few great lawyers and a few great books what it is hoped he may do for many more lawyers and many more books. Out of his full and intimate knowledge of the literature of our profession he has gathered and presented to us in most entertaining fashion the human as well as the intellectual and professional characteristics of a full half dozen men, each of whom holds a somewhat unique place in the development of Anglo-Saxon law.

An introduction by Dean Harlan F. Stone, of Columbia, comments on the general topic of legal education and contrasts the methods of today with those of its earlier history. Referring to the case method of instruction, Dean Stone says: "In such a scheme of things there is small scope for the authoritative pronouncements of any individual, however penetrating his intellect and however gifted he may be in his powers of expression. It rejects the pedantry of Coke, it sets little store by the artificial reasoning of Blackstone, and it prefers the opinions of Kent the judge and the chancellor to the mellifluous passages of Kent the commentator." He goes on to say that in this modern atmosphere the figures and the books of the great lawyers discussed by Professor Hicks are becoming "shadowy and indistinct" and that this little book of Professor Hicks "challenges the attention with the query whether we have done well to let them become so."

The book opens with a stimulating chapter on the "Human Appeal of Law Books," in which the author touches upon their character as literature, as historical and biographical material, and their interest from the point of view of how they came to be—their story. The following chapter, "Cowell's Interpreter," gives us the story of a man and a book of whom and of which many a lawyer of this day never heard, and yet it is a most fascinating tale. That a Professor of Law, more than five hundred years ago, should conceive that he might advantage the profession and the state by making a dictionary of the law, and doing so should set the kingdom of England on fire, should claim the attention of the King, of the House of Lords, and of the House of Commons for more than a month, should be investigated by a committee of fifty of the House of Lords, which included two Archbishops, thirteen Bishops, thirteen Earls, a Viscount, twenty-one Lords and the Lords Chancellor, Treasurer, Privy Seal, Admiral and Chamberlain, and by a committee of the House of Commons consisting of the whole Privy Council, the Attorney and Solicitor General, the Recorder and eighteen other members; that he should call down the wrath of Lord Coke and the proclamation of the King suppressing the book—that a poor Professor of Civil Law could write a bit of a law dictionary of two hundred and ninety-two leaves, and incite

all this, is to suggest that indeed here is the material for the interesting tale Professor Hicks has given us in his second chapter.

Nor will our interest lag through the two following chapters given over to "Lord Coke and His Reports and Institutes," and to "Littleton and Coke upon Littleton." Lord Coke's two great legal works "might well have been the product of a lifetime largely devoted to scholarship," and yet they were written by one who, called to the bar in 1578, found time to discharge his duties as Reader in Lyon's Inn, Recorder of Coventry and of Norwich, Bencher of Inner Temple, Recorder of London, Solicitor General, Reader to Inner Temple, Member from Norfolk, Speaker of the House of Commons, Attorney General, Chief Justice of the Common Pleas, and later of the King's Bench, Member of the Privy Council, High Steward of Cambridge University, and consecutively as Member from Coventry, Norfolk and Buckingham, a career extending from 1578 to 1634. During this period he also found time to conduct a most bitter controversy with Lord Bacon, then Attorney General, to get himself suspended from the Chief Justiceship, and finally to be removed from office and spend a term in the tower. Indeed, it was dangerous business, this writing of law books in that early day.

We are led to wonder sometimes in these latter days whether law books are written as pigs are sold, by the pound, or as the hod is carried, by the day. To write a law book to help one's own son to comprehend one of the most difficult of all law subjects, is to write it under conditions calling upon the best that is in one. These conditions produced a legal classic which has remained such through more than six hundred years, Littleton's "New Tenures," or in the Law French in which it was first printed, "Tenores Novelli." When Coke incorporated this into his "Institutes" with his commentaries upon it, "it was a virtual piling of Pelion on Ossa, enabling the law student to scale the heights of legal learning," or, as Wambaugh's phrase is, the result is the "most conspicuous example of a masterpiece upon a masterpiece—much as if the plays of Shakespeare were entwined about the Canterbury Tales." Out of these facts, again, has Professor Hicks woven a story of most fascinatingly dramatic interest.

In the chapter on Sir William Blackstone and his Commentaries we get an account of the preparation of the book, its author's methods of work and its reception by the profession. We find our old sulphuric friend, Jeremy Bentham, pitching into it, sometimes with a bludgeon and sometimes with a stiletto; Professor Amos calling it the "charnel house of dead law"; the great Kent saying of the third volume, "it requires but ordinary talents and industry to compile such a volume"; and President Jefferson saying of the Commentaries, "they have been perverted more than all others to the degeneracy of legal science." But despite such attacks our author is led to say that "few law books have been so generally received with approbation by succeeding generations." And even our iconoclastic friend Bentham was compelled to say of Blackstone that "of all institutional writers he was the first to teach jurisprudence to speak the language of the scholar and the gentleman," but he must add that this quality made the Commentaries the more dangerous.

But the editor reminds me that his plans for this number of the REVIEW involve the publishing of some other good material and this must be cut off. The succeeding chapters deal in the same interesting way with three of our own great law writers of the earlier period, Professor James Kent, Edward Livingston, and Henry Wheaton. I ought to be permitted to tell something of what is in these later chapters, but am not. It's good stuff.

The book is supplemented with an Appendix of bibliographical suggestions, not less valuable than the matter it supplements.

There may be as delightful reading as "Men and Books Famous in the Law," which law students or the lawyer with a scholarly interest in his profession may pick up for an odd hour or two, but they are far to seek. I don't know Professor Hicks. I don't know whether he smokes a pipe,—an awfully bad habit,—but if one reads his book he'll fancy he's by the professor's fireside with the professor in his house coat and slippers, smoking his pipe and telling his story.

V. H. LANE.

CASES ON THE LAW OF CONTRACTS. By George P. Costigan, Jr. Chicago: Callaghan & Co. 1921. Pp. xxviii, 1489.

CASES ON THE LAW OF CONTRACTS. By Arthur L. Corbin. St. Paul: West Publishing Co. 1921. Pp. xxiv, 1514.

It was to be anticipated that such able and thorough workers in the field as Professors Costigan and Corbin would, sooner or later, give us the benefit of the maturity of thought resulting from their many years of experience in teaching the law of Contracts. It is gratifying to note that both books evidence a high order of scholarship. Of course, no book on this subject could be expected to fail to show traces of the influence exerted by the epoch-making collections of Langdell and Williston, and the authors do not pretend that they have produced anything revolutionary. The topics presented and the relative proportions of space devoted to each in the two books are in the main the same, and in this respect they do not differ radically from the earlier collections. The points of departure consist principally in the choice and topical arrangement of the materials, in the order of development of the subject matter, and in the point of view presented. Approximately two-thirds to three-fourths of the cases do not appear in the earlier collections.

Professor Costigan has avowedly emphasized the historical side of the subject, although it must not be supposed that the modern developments have been neglected. At least two-thirds of the cases are American. At appropriate places there have been inserted excerpts from text-writers and from writers of Law Review articles on historical points. These have been put in, so the author tells us, not primarily for classroom use, but rather with the hope that the student will gain enough from them to make him curious to know more about the history of the subject. Only the barest outline of topics is presented. Sub-headings have been entirely omitted except in case of the topic Performance, and here only a very few have been inserted.

A careful index is appended to make possible a ready reference to the assembled materials. One feature, which seems to the present writer to be of doubtful utility, is the addition of quite copious foot-notes, many of which do not merely state similar problems and variations of the questions raised by the principal case but in addition and in large measure contain excerpts from opinions in other cases or statements by the author which give the solution, not only of the problem in the principal case, but also of the suggested problems. These notes are invaluable to the teacher, but often, it seems to the reviewer, are inimical to the best interests of the student, since they do not leave enough to his own initiative. Professor Costigan follows the historical order and treats of Sealed Contracts first. The cases on the Statute of Frauds are placed after those on Performance and Illegality and before the cases on the subject of the Discharge of Contracts.

Professor Corbin's avowed object is in some respects a more immediately practical one. His collection is intended primarily to furnish introductory material to answer the question, "What are our American Courts going to decide tomorrow?" Accordingly, we find that more than one-third of the cases included have been decided since 1900, while less than one-third are English cases. There is very little in the collection that is of merely historical value. The main topics have been subdivided to a considerable extent, the sub-headings suggesting the content of the cases included thereunder. No doubt, reasonable men may well differ in regard to the question as to whether Professor Corbin's practice in this matter is to be preferred. A careful index is appended. The text is not overburdened with foot-notes, although there is a sufficient number to indicate the trend of the authorities and to suggest variations in the principles presented in the cases. Enough is left to the imagination of the student to stimulate his curiosity. The cases on the Statute of Frauds are placed at the very end of the book, while those relating to Third Party Beneficiaries, Assignment, and Joint Contractors come after the cases on the Discharge of Contract and before the subject of Illegality.

Both books have more material on the nature of offers than is found in the earlier collections, and this seems to be a commendable feature.

The present writer hesitates to express any opinion in regard to the order of treatment and the teachability of the materials, for the reason that the only safe test to determine the desirability of a case book in these respects is, after all, the test of actual use in the classroom. In view of the recognized ability and long experience of both authors in using the cases and other authorities here gathered together, it is safe to assume that their books will not be found wanting in these particulars. With these books added to those already in general use, the teacher of Contracts has an imposing array from which to choose.

GROVER C. GRISMORE.

PRINCIPLES OF GOVERNMENT ACCOUNTING AND REPORTING. By Francis Oakey. New York: D. Appleton & Co. 1921. Pp. xxvii, 561.

Most of the problems of financial administration in government affairs seem to have their origin in poor accounting methods, and attempts to solve them have brought to the front two principal proposals with regard to accounting procedure. One of these proposals outlines a rather unreserved application of commercial principles to public finance; the other, although advocating a change from the unscientific cash basis, is very much opposed to an unmodified extension of commercial practice to a situation only slightly related to "profit and loss" business. In "Principles of Government Accounting and Reporting" these two lines of thought have been brought into intelligible contradistinction; and it must be remarked that no style of presentation could be better adapted to the needs of the inquiring student.

Mr. Oakey is one of the opponents of the so-called commercial idea. He takes the position that rational accounting exhibits of governments can relate on the one side only to such resources as are of the "realizable" variety, like cash and taxes receivable, and on the other to obligations, like "warrants payable," which are in the usual parlance designated "current liabilities." That is to say, only the operations of current expendable funds are significant for administrative purposes. In taking this attitude the author comes to issue with the familiar declaration of the "commercialists" that financial statements should render pecuniary reflection of "all that a government owes and all that it owns," or, more specifically, that fixed properties and bonded debt are essential items in the balance sheet of any government. He argues that debt of the character of a bonded obligation cannot logically be opposed in a balance sheet to funds which have not benefited from its incurrence and to properties which could not possibly be employed toward its liquidation; in short, that bonded debt is a lien upon municipal credit and taxing power not susceptible of articulation in terms of dollars and cents. Of course, it is understood that both the debt and its sinking fund must be reported in some form, but certainly not as an item specifically related to the appraised value of unsalable fixed assets and to the apparently realizable value of current resources. That accounting for fixed properties would be accomplished on some other basis than that of pecuniary value naturally follows; and the standard of measurement which the author has chosen is "capacity to serve," that is, capacity as determined on the basis of remaining service life and of general efficiency in supplying the needs of the public. It is emphasized throughout that financial statements should be written in terms which have a real significance to particular periods of operation.

As to methods of accounting and reporting which occupy rather a middle position in relation to those which have been mentioned, the author has little to say, except for the numerous excellent citations of cases from actual practice and a paragraph or so of criticism made in the light of the principal theories.

Since Mr. Oakey is himself primarily an accountant, one can easily see why he centers his argument on matters of accounting procedure. The

reviewer believes that this circumstance has had none but a beneficial effect. The writer's method makes it possible for the student to proceed from the particular to the general, from the mere framework of finance to an apprehension of the broad principles of reporting. But it must not be gathered from this that the book is a tedious recitation of bookkeeping forms and a meaningless guide for the making of debits and credits out of the transactions of the government. There is very little said about such details, although enough is said to give scientific coherence to the treatment.

The chapters entitled "The Budget as a Report" and "The Financial Condition of the Government as a Whole" are pleasing departures from the usual scheme of presentation. They are effective in reminding the student of the expedient and the essential in the preparation of public budgets and in the problems of general public finance. And the merits of the study in respect to the definition of terms used, and the application of those terms in the field of practice, are worthy of favorable notice. The reader will find a thorough discussion of "funds," "appropriations," "government receipts and disbursements," "stores," "debt limit, natural and legal," and the usual current assets and liabilities found in government exhibits.

The author deals with his theme in a manner consistent with his understanding of accounting as "the science of producing promptly and presenting clearly the facts relating to financial condition and the operations that are required as a basis of management." Public administrators should not be compelled to take time from the exercise of wise vision to supply the deficiencies of inadequate and unintelligible accounting and reporting.

University of Michigan. R. G. WALKER.

THE QUESTION OF ABORIGINES IN THE LAW AND PRACTICE OF NATIONS. By Alpheus Henry Snow. New York: G. P. Putnam's Sons. 1921. Pp. v, 376.

In 1918 the Department of State requested the author to "undertake the task of collecting, arranging, and, so far as he may deem necessary, editing the authorities and documents relating to the subject of 'Aborigines in the Law and Practice of Nations.'" This volume was written in response to the Department's request.

By aborigines the author means uncivilized natives in the colonies of civilized states. The question of aborigines is formulated as follows: "First, what are the general principles of the law of nations which the colonizing states respectively have recognized and now recognize and apply, as governing their respective relations with the uncivilized tribes which were inhabiting the regions colonized by them at the time they respectively assumed the sovereignty of the regions? Second, to what extent and on what principles have civilized states coöperated with each other in recognizing and applying these principles?" (Pp. 17-18.)

The peace of 1763 between France and Great Britain is taken as the beginning of the modern law on the subject. In the treaties of that year native tribes were regarded as having virtually no rights whatever. But a

somewhat more generous attitude is thought to have developed under the influence of the democratizing and humanitarian movements of the last quarter of the eighteenth century. Aborigines have come to be regarded as wards of the state exercising sovereignty over them. After reviewing the development of theory as regards the relation between the state and its colonies and native tribes, the author concludes "that the power which a civilized state exercises over all its colonies and dependencies is, according to the law of nations, a power of trusteeship, and that the power of guardianship over its dependent aboriginal tribes is one of the manifestations of this general power." (P. 113.)

This whole theory impresses the reviewer, it may as well be confessed, as a bit fantastic, to say the least. It is beautiful, if true. But is it true? The analogies with trusteeship, guardianship, and agency in private law seem far-fetched. (See, for example, pp. 108, 110, 323.) The whole seems somewhat remote from the familiar facts of colonial expansion during the past century. It is questioned whether the subject ought to be regarded as a part of the law of nations in any appropriate sense of that much abused term. The author himself appears to have misgivings on this latter point, for he says that the matter is governed by the law of nations, "though not by the body of rules which apply between civilized states to which the name international law is properly applied." (P. 110.)

The reviewer wishes merely to raise these questions, for a review is certainly no place to quarrel with an author's theory. And the theory in the present instance is no more than a thread which gives color of sequence to a unique collection of materials. The selections from documentary sources which make up a large part of the book are excellent. The arrangement is original and effective. And the commentary is so well executed that it blends what might easily have been a mere digest into an essay of unusual quality. Relations between the United States and its Indian tribes, the international slave trade, the Berlin African Conference and the Congo Free State, the doctrine of intervention for humanity, and the Moroccan question are prominent among the topics considered. The author's contribution is unique in content and scholarly in execution.

EDWIN D. DICKINSON.

COMMERCIAL LAW CASES. By Harold L. Perrin and Hugh W. Babb. New York: George H. Doran Co. 1921. Two volumes: pp. xxi, 536; xv, 414.

A reviewer's estimate of any book depends largely upon his attitude toward its purpose. The present writer confesses a vigorous prejudice in regard to the purpose and type of this book. Knowledge of law has an undeniable and most desirable cultural value. It is a splendid background for the detail affairs of life. But a cultural knowledge of law requires a broader view than is furnished by the content of "Commercial Law Cases" and would properly be sought for through a very different course of study. Whatever value this book has must be found on the practical rather than the purely cultural side. As a matter of practical, utile value, either very

much more complete knowledge of law than this type of work can give is essential, or considerably less knowledge is quite sufficient.

The mistakes made by laymen are seldom errors as to law. This follows from the fact that law is so largely the crystalization of customs and conventions which men learn unconsciously. Some time ago this writer had the pleasure of reviewing a book on Engineering Contracts. Its author started with the proposition that most litigation over contracts is due to failure of some one to foresee the disputes of fact which might arise, or his failure to express clearly his ideas and intention. The book, therefore, contained only general principles of law and suggestions as to questions of fact which engineers ought to foresee and forestall. To a laymen among engineers it seemed a valuable book, because it recognized that to a layman imagination was more necessary than law.

The Perrin and Babb book, however, undertakes to teach law as law, and not to help with questions of fact that might arise in particular lines of business. It is not in any sense a work of practical advice to laymen except as a knowledge of abstract law may be of practical use. In form it purports to be "a work for general use which combines the text-book and case-method of teaching law." The two volumes include the subjects of Contracts, Sales, Agency, Negotiable Instruments, Partnership, and Corporations. There is a table of cases and a glossary, but no index. Its treatment of the subject of "sales" seems to be typical. There are four pages of text, defining "sale," distinguishing it from certain other transactions, and setting out the Statute of Frauds. These four pages of text are followed by thirty-four pages of condensed statements of fact and of opinion from cases involving those topics. A page and a half of text discusses the subject of "Warranties," and seventeen pages of condensed cases follow. Then come two pages of text on the "Transfer of Property," and thirty-four pages of cases, followed by quotation of sections 19, 20, 33, 34, 36, 37, and 38 of the Sales Act of Massachusetts. Two pages more of text on the "Rights of the Parties" and thirty-six pages of cases complete the subject. There is a total of thirteen pages of text, including the sections from the Sales Act.

In neither form nor purpose, it may as well be said frankly, does the reviewer consider the work to be sound. As to purpose, it teaches, for instance, that contracts of sale, like other contracts, need a "consideration." Several pages discuss whether a "sale," as distinct from other transactions of related nature, requires this consideration to be on a money basis. In the case on page 278 is a casual *dictum* that a "sale" "differs from a contract of barter and exchange in this, that in the latter the price, instead of being paid in money, is paid in goods or merchandise susceptible of valuation." In the case on page 289 the decision is that an exchange of stock for land is legally a "sale" within the meaning of the statute concerned. Thus, a reader meets the conflicting statements that a consideration in terms of money is essential to a "sale" and that it is not essential, and there is nothing to instruct him as to which is correct.

Unless the reader of the book knows how to run down precedents and

to hunt out and apply analogies, he cannot use such learning. It is neither cultural nor of practical value to laymen.

Similarly, it is of some value to a layman to know that contracts for the sale of goods over a certain value must be in writing. But it seems misdirected effort for him to learn that some courts construe "sale" rather narrowly in this regard, unless he also learns where the line of distinction is drawn. There is nothing in the book from which he can either learn or deduce this. In both these instances the reader is left with a half knowledge which is not only useless; it is dangerous. Thus, the book overshoots one mark and falls short of the other.

This fault is due in large part to the pseudo case-method form of the book. The true case-method of teaching requires more time than one who does not want a working knowledge of law can usually afford to spend. It is based on two theories. One is that law is so far a science that its rules can be derived by inductive analysis of many judicial phenomena; the other, that since lawyers find the law in precedent cases, they need training in distinguishing material facts from immaterial ones, separating *dictum* from decision, and otherwise analyzing cases. Neither of these objectives is reached by "Commercial Law Cases." There are not sufficient cases presented for any induction to be possible. There is no opportunity given for the comparison and contrast of decisions and development of the common factor, which occupies so much of true case-method classroom hours, because the book offers only one case involving any one principle. The cases on sales, for instance, cover less than 132 pages as compared with 1000 pages in standard case-books on the subject. The other objective is lost because the cases are not given in the form in which a lawyer finds them. All training in analysis, all mental discipline is gone, because the authors themselves have "so summarized and abstracted (the cases) as to reduce to a minimum the tedious verbiage upon which the student ordinarily wastes time." The book has therefore no advantage over the ordinary legal text-book.

On the other hand, the ordinary text-book is preferable in this, that while it gives no material for analysis and induction, it is itself the product of analysis and induction. Unlike mere disconnected excerpts from judicial opinions, it is written for the purpose of presenting the law in a coherent, sequential manner. It can, therefore, in the same space as a book of the type under review, present very much more law, freely explained and discussed and fully exemplified.

There is a suggestion in the preface that the authors expect this explanation to be made and the necessary additional information to be imparted by instructors in the classroom. "It is too often true," says the preface, "that a text-book leaves little for the instructor to add to the material there presented, and the course thereby becomes dry and uninteresting." They have, therefore, "left large scope for the instructor's individual knowledge and point of view." "It is possible and very practicable to require no reading of the opinion of the court in many cases." It may be that this shortening of the course by omission of the judicial opinions and the interpolation of necessary information by the instructor will meet the objections raised by the reviewer. But

such additional information and explanation is not available to one who studies the book by himself.

Having thus damned the book *in toto*, it would seem hardly becoming to comment even favorably on its details. The reviewer firmly believes that the basic idea of the book is unsound and its presentation of law quite unsatisfactory in consequence. His opinion as to the selection of cases and the manner of condensing them, the relative amount of space given to each topic, and like matters would be unsympathetic and therefore best not given at all.

JOHN BARKER WAITE.

BOOKS RECEIVED

KALES, ALBERT M. ESTATES, FUTURE INTERESTS AND ILLEGAL CONDITIONS AND RESTRAINTS IN ILLINOIS. Chicago: Callaghan & Co. 1920. Pp. lxxxvi, 948.

POUND, ROSCOE. THE SPIRIT OF THE COMMON LAW. Boston: Marshall Jones Co. 1921. Pp. xv, 224.

STOWELL, ELLERY C. INTERVENTION IN INTERNATIONAL LAW. Washington: John Byrne & Co. 1921. Pp. viii, 558.

THE BRITISH YEAR BOOK OF INTERNATIONAL LAW, 1921-22. London: Henry Frowde and Hodder & Stoughton. 1921. Pp. viii, 272.

WILLIAMS, MARY FLOYD. HISTORY OF THE SAN FRANCISCO COMMITTEE OF VIGILANCE OF 1851. University of California Publications in History. Volume XII. Berkeley: The University of California Press. 1921. Pp. xii, 543.