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## Recent Legal Literature

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## RECENT LEGAL LITERATURE

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HANDBOOK OF THE LAW OF PRINCIPAL AND AGENT. By Francis B. Tiffany. The Hornbook Series. Pp. xiii, 609. St. Paul, Minn. West Publishing Co., 1903.

The general features of the Hornbook Series are too well known to call for comment in a notice of the latest addition, Tiffany on Principal and Agent. Except for some minor typographical changes that have on the whole produced a more pleasing page, the plan of the book conforms strictly to that of the series.

The book appeals, of course, to the student rather than to the practitioner, and is not to be compared to the classical and standard works on agency, which it makes no profession to approach in fullness of discussion or citation. As a text-book for students it is worthy of a better fate than to be damned with faint praise, and yet the fact is that it is simply one more good text on agency of a sort of which there were already several in the field. There is no reason why it should not rank well with these, however, for it is written in the clear and accurate manner for which its author has already earned a reputation. The only originality to be desired in a text of such compass is an originality in arrangement of the work for the student, and in this respect the book will appeal to all who approve of the plan of the Hornbook Series. But it will scarcely be satisfactory to those who wish to make a study of cases an important part of a course of study, as no cases are included, and there is too much text to admit of the assignment of much else in the time usually given in the schools to the study of agency.

Some errors are inevitable in the first edition of any work, and the present work is no exception. But the errors are of minor importance and will doubtless be corrected in another edition. "*Thompson v. Davenport*," page 236, "*Thomson v. Davenport*," page 238, "*Thomas v. Davenport*," page 240, is an illustration of the need of attention in this direction. The arrangement of topics follows the same plan adopted in several works except in its order. It seems difficult to justify leaving discussion of the relations between the principal and agent for the closing chapters. Those relations are primary in point of time and importance, and until the duties of the agent to his principal are explained, the relations between the principal and third persons can be but partially explained. To take a single illustration, the rule that notice to the agent is imputed to the principal, page 257, can not be understood until it is known that the law makes it the duty of the agent to make known to his principal all facts relating to the agency that come to his knowledge (page 415).

The subject matter is to be commended for clearness and accuracy of statement. The treatment of the more obscure principles is subjected to a critical and often elaborate analysis which is sometimes to be praised and sometimes deprecated. An analysis based on real differences is desirable, but one that makes much of surface differences when there is essential unity is unfortunate. To illustrate, much is made of the distinction between an agent and a servant, because of its alleged bearing on the liability of the constituent

for the acts of the representative, which is said to depend upon different considerations in the case of agency from those that determine the liability of a master for his servant's acts. It is doubtful if these seeming differences are real. All depends upon whether the representative was so acting in the course of the purpose for which he was employed that the constituent should be responsible. Agents and servants are employed for different purposes, but so are different agents, and often the same person is both agent and servant. Whatever name is given to the representative the question is still what was the course of his employment. The discussion, here and in some other recent text and legal journals, is almost purely academic, as there are few if any cases that recognize the distinction between duties that involve "manual or mechanical" service, and those that result in new legal relations with third persons. As a matter of fact the only cases in which the distinction between agent and servant has been of real importance have been those involving a statute using the word "servant." In such cases it is necessary to decide whether the statute applies to the particular representative. Again it is submitted that the extended analysis of "imputed notice" has obscured rather than clarified a simple though disputed matter. At first notice to the agent was imputed to the principal on the ground of their legal identification on matters within the scope of the agency. With the fading of that view the courts rested the doctrine on the duty of the agent to disclose. Such duty extends equally to all facts as to the subject matter of the agency known to the agent, no matter when learned. Unless there be in the circumstances something that makes it probable that the agent will not do his duty the law presumes he has done it, and imputes the knowledge to the principal. Starting from such a simple basis all the applications of the rule become comparatively simple.

Such broad principles, explaining many apparent differences, and making easy a variety of applications, the author has often stated as a starting point, with happy results. The general statement as to scope of agencies, p. 203, *res gestae*, p. 255, admissions by agents, p. 247, and execution of negotiable instruments, p. 336, are a few of many illustrations of admirable statements of general fundamental propositions that greatly simplify the understanding of their varied applications.

On the whole the work is very creditable to its author, already of established repute because of his valuable services as a legal writer. To say that it is what was to have been expected from his pen is to give both the text and the writer deserved praise. The value of the cases cited is increased by including the citations to the American Decisions, Reports and State Reports as well as to the Lawyers' Reports Annotated and the National Reporter System.

EDWIN C. GODDARD

THE MODERN LAW OF MUNICIPAL CORPORATIONS. By John W. Smith, LL.D., of the Chicago Bar, being a revised, re-written and enlarged edition of Beach on Public Corporations. Two volumes. Sheep. Pages cciv., 1916. Indianapolis, The Bowen-Merrill Co., 1903.

This work is the latest work covering the whole topic of Public Corporation law, and for that reason alone should be welcome. It is ten years later

than the work of Beach, of which, as indicated above, it is a remodeling. It is also twelve years later than the last (the 4th) edition of Dillon's classical work upon the subject, and four or five years later than the small work of Elliott. The preface is dated January 1, 1903, and the cases seem to be pretty fully brought down to 1901,—those reported in 125 Ala., 131 Cal., 111 Ga., 185 Ill., 154 Ind., 176 Mass., 124 Mich., 61 O. S., 197 Pa. St., 71 Vt., and reports of like date being found generally throughout the work. The work has 225 more pages than Beach, and seven additional chapters, which are: Injunction and Certiorari (38); Municipal Departments (41); Damages in Municipal Matters (42); Pleading (43); Evidence (44); Franchises (45); and Civil Service and Veteran's Acts (46). The chapters on Municipal Contracts (18), Public Improvements (27), Local or Special Assessments (28), Streets, Alleys, Wharves (29), Police Powers (30), Taxation (35), Highways (36), and Mandamus and Quo Warranto (37), are very largely re-written. Several chapters have been extended by the addition of new sections, as, for example, the chapters on Ordinances and By-laws (14), has 12 new sections; Express Corporate Powers (15), has 12 new sections; Torts and Crimes (20), has 14 new sections; Fiscal Management (21), has 10 new sections; Municipal Funds (22), has 10 new sections; and Suppression of Nuisances (26), has 12 additional sections. Minor changes have been made in other places, but the work otherwise follows the outline and treatment of the original by Beach, the design of which was to "make a treatise which shall cover the entire field of public company law in all its departments, using the term 'public companies' in its widest modern sense \* \* \* and not to omit the law, as declared in the decided cases or defined by statute, of any sort of public corporation."—from the Federal government as a corporation upon the one hand, to the smallest school district upon the other. In the 46 chapters of the work, the whole subject seems to be pretty thoroughly covered. The index covers 86 pages, and is not so full as one might wish. *Taxing districts, drainage districts*, and such titles do not appear in the index, although these quasi-corporations are frequently mentioned, and the rule relating to them given in the text. Even the larger title *quasi-corporations*, has but a single index reference, referring to an insignificant matter in the text. It would seem that a work which purports to, and which does, discuss all kinds of *quasi-corporations*, should have indexed them all under either the specific, or more general title. The typographical part of the work is very well done. Each chapter has an analysis preceding the text. The sections have appropriate headings in bold-faced type, and what is more important, the material seems to have been so worked over as to appear in its proper place.

H. L. WILGUS.

A CONCISE TREATISE ON CONTRACTS UPON A NEW PLAN. By William T. Hughes, author of *Technology of Law*. Chicago, Callaghan & Co., 1903. Published for the author.

The title page announces; "A work of unification, simplification and expedition." These are large words and are not easily understood. The author's title page would have been more helpful to the reader, if he had observed "simplification." This, however, is a minor matter. Let the book speak for itself.

The "Expletion" is in three parts:

Part I. The rationale; Fundamental Conceptions.

Part II. The elements introduced and discussed

Part III. The Text Index, etc.

Of these parts in their order.

The so-called, "rationale, and fundamental conceptions" (Part I) contains nothing new and little peculiar to contract law. The writer seems to have overlooked the fact that there is a broad breach between agreement and disagreement. While the student is learning the elements of contract law he ought not to be impressed with the idea that the subject is without individuality and practically told that jurisprudence is without a science. While it is true that a study of one branch of the law involves a view into every adjacent field, nevertheless, contracts, torts and crimes ought not to be so blended as to leave in the mind simply a hazy appreciation of each.

In Part II, the author discusses the elements of contract law. In this discussion he has not improved on the works of Pollock and Anson and has not followed their scientific treatment of the subject, as many eminent American writers have done. At this point we do not approve of his "new plan." It is original, but, in our judgment, not helpful to the student or practitioner.

In Part III, the author presents his "Text Index." This is the best part of the book and will be of great value to the practitioner. He must have, however, a large library at his elbow and he alone must be master of its volumes. Students in a law school can not make much use of the book for the reason that they would all want the same volume of reports at the same time.

This book will be of considerable value to lawyers and law writers having access to complete libraries.

JEROME C. KNOWLTON

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THE HOMESTEAD EXEMPTION LAWS OF THE STATE OF ILLINOIS. By Albert Martin Kales, Assistant Professor of the Law of Property in Northwestern University. One volume. Pp. xxviii, 281. Callaghan & Co., Chicago, 1902.

A work of this character seems to have been needed. The peculiar lack of uniformity in the legislation of the different states upon matters concerning the homestead, the diversity among the decisions even where there are similarities in legislation and the frequency with which nice questions relating to the subject present themselves in practice, justify the critical examination of homestead law in each state apart from its consideration in general.

The course of legislation upon the homestead exemption has been such in Illinois that without a careful and detailed examination of the several statutes and the decisions passing upon them one cannot well appreciate their effects. It is therefore especially desirable to treat Illinois homestead law by itself.

This work appears to be the first in which the homestead cases in that state have been analyzed with the purpose of discovering correct principles and with the aim of ascertaining the weight to be accorded to judicial expressions which are in apparent or real conflict with one another. In this volume the several homestead acts are first set forth in parallel columns with references under each phrase of the acts to later portions of the work where the deci-

sions bearing upon it are examined. The decisions are then classified according to topics and under the several topics are considered historically according as they belong to one or another of the three distinct periods into which legislation, beginning in 1851, has separated the subject.

In his analysis of the cases the author has been thorough. It has been necessary for him at times to indicate clearly what he deems dangerous tendencies and to expose fallacies, but his reasoning under such circumstances, must generally commend itself to the reader.

Whether his concluding chapter shall unsettle the pretty firmly established habit of referring to the acts of 1872 and 1873 as having created an "estate," distinguishable from the occupant's interest under the earlier acts which "did not rise to the dignity of an estate," but was a "mere exemption that could not be transferred to another as a separate right," remains to be seen. This manner of expression—which is still resorted to—certainly comes near being either "wholly meaningless or of very doubtful value."

The work is suggestive in offering solutions of questions not yet determined, and, for this reason, it must prove to be of value to the practising lawyer who will sooner or later be confronted with some of these questions.

In spite of the numerous decisions in homestead cases to be found in the Illinois reports there are likely to arise new questions not settled by previous decisions. In the recent case of *Zachmann v. Zachmann*, 201 Ill. 380, for example, there is considered, apparently for the first time, the effect of an ante nuptial contract to release homestead rights when there is a minor child interested with the widow in their preservation.

But the work has more than a merely local value. There are many states in which the author's discussion of terms not unusual in homestead statutes and decisions—such as "residence," "occupation," "householder," "family," "abandonment"—or his treatment of other topics—e. g. "estoppel"—may be profitably considered. Furthermore, the work is a fair example of a method that might well be more frequently adopted by authors than it has been—an analysis of the authorities rather than their mere collection.

J. H. BREWSTER