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## Recent Legal Literature

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## Recent Legal Literature

### Authors

Harry B. Hutchins, Ernst Freund, Gustav Stein, Victor H. Lane, John R. Rood, James H. Brewster, Edson R. Sunderland, and C. H. VanTyne

## RECENT LEGAL LITERATURE

A TREATISE ON SPECIAL SUBJECTS OF THE LAW OF REAL PROPERTY. By Alfred G. Reeves, A.M., LL.B., Boston: Little, Brown & Company, 1904. pp. lxxv, 913.

This work contains a general outline of real property law and a more elaborate treatment of the subjects of fixtures, incorporeal hereditaments, tenures and alodial holdings, uses, trusts and powers, qualified estates, mortgages, future estates, perpetuities and accumulations. The volume furnishes a full exposition of the subjects discussed; and it is the author's purpose, as explained in the preface, so to add to the work "within the next three or four years, as to furnish a treatise, in two volumes, on all the topics ordinarily comprised within the law of real property." The general outline of the present and prospective parts of the treatise, as given in the fourth chapter of the volume before us, indicates a logical and comprehensive plan. The introductory chapters comprise, besides the general outline, to which reference has been made, a brief classification of property, a somewhat detailed discussion of the subject of fixtures and in regard to property, other than fixtures, that is sometimes realty and sometimes personalty. Book I, which is complete according to the plan, deals with the kinds of real property. After a brief explanation of the terms "lands and tenements" and "corporeal hereditaments," the author proceeds to discuss, in a very clear and comprehensive way, the incorporeal hereditaments that are of special importance in the United States. His chapters on easements and servitudes are especially to be commended. Holdings of real property is the general subject of Book II, and herein are discussed Anglo-Saxon holdings, the feudal system and its fruits and real property holdings in the United States. In this part of the work, the author has so considered the historical matter that the student will have little difficulty in appreciating its bearing upon the modern law of real property. Book III is devoted to estates in real property, and in the present volume the plan of this book is only partially carried out. Estates are herein classified and explained (1) with reference to the courts that recognize them, (2) with reference to their conditional or qualified nature, and (3) with reference to the time for their enjoyment to begin. As the author explains in his preface, three leading subjects are reserved for future discussion in detail, namely: "estates considered with reference to their quantity, from the fee simple down to and including tenancies at sufferance; estates considered with reference to the number and connection of their owners,—estates joint, in common, by entirety, etc., and the entire subject of titles to real property." All of the foregoing, except the subject of title, to which Book IV of the completed treatise will be devoted, will eventually, according to the author's plan, form a part of Book III.

One cannot examine the present volume without being impressed with the thoroughness of the work and with the clearness of the author's statement of legal principles. As a rule, no second reading is required in order to get the meaning. The excellencies of the book are such that one can readily

pardon a few inaccuracies, like the statement, for example, on p. 91, that the estate by the entirety "exists in most of the United States," the fact being that it exists in only about one-third of the states.

The author's purpose is to give the common law of real property. He has not attempted to show the statutory changes in the different states, excepting in the state of New York, and the changes there are given in the notes. He selects the New York codification as a typical one, and as important especially because it has served as "a model for so much legislation of other states."

From the point of view of the student, this volume will undoubtedly rank among the best upon the subject. It may perhaps be criticised by practitioners for its rather limited reference to authorities.

H. B. HUTCHINS.

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THE DATA OF JURISPRUDENCE. By William Galbraith Miller, Advocate. Edinburgh and London: William Green & Sons, 1903. pp. ix, 477.

"The Data of Jurisprudence" is an ambitious title, and the treatise hardly fulfils the promise implied in it. The author informs us that the volume is the first installment of a treatise on jurisprudence, but that it is so far complete in itself; that he is more anxious to state the problem, "What is right? What is law?" than at present to offer any solution. Yet he also claims to have provisionally traced in each section a scientific law of jural law.

These sections or chapters are entitled: The Physical Basis of Right; Right; Bond—Obligation—Duty; Law; Custom; The Aim of Law. Under each of these heads a considerable number of elementary juristic concepts are taken up for discussion in somewhat disconnected and unsystematic fashion. The impression created is rather that of a compilation of miscellaneous notes, than that of a careful elaboration of leading principles.

It is, however, not to be denied that there are many shrewd observations on problems of legal philosophy, and a good deal of curious and out-of-the-way information, especially on points of nomenclature and etymology, and many interesting illustrations from Scotch law, of which we know so little.

The lawyer who takes up the book for casual reading will be sure to derive from it entertainment and instruction. But it is not a systematic exposition of jurisprudence, nor a book to be placed in the hands of students as an elementary treatise.

ERNST FREUND.

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AMERICAN STATE REPORTS. Vols. 96, 97, 98. San Francisco: Bancroft-Whitney Company, 1904.

This excellent set of reports of which three volumes are at hand has received some attention in this Review and reference is made to the commendation and criticism already written. 1 MICHIGAN LAW REVIEW, 155, 426; 2 Id. 77, 240, 740. The notes certainly cover a wide field and are generally valuable. Each monograph is arranged in logical form and is not a mere diffuse collection of cases. The research displayed differs from that of the digester and shows the efforts of an independent reasoner whose analysis has been well made.

Some of the important notes in volume 96 are: Application of Payments,

p. 44; Of the Reversal of Judgments, p. 124; Acceptance of Goods to Satisfy the Statute of Frauds, p. 215; Of the Effect of a Void Marriage, p. 267; The Statute of Limitations in Actions Against Officers and Stockholders of Corporations, p. 972. In volume 97, we have: Regulations Which the State May Enforce Concerning the Quarantine of Animals, p. 242; Liability of Carriers for Injuries Done by Strikers or Mobs, p. 526; Circumstantial Evidence, p. 771; Right of Recovery by Employés Accepting Extra-hazardous Duties, p. 884. Volume 98 contains: Actions for Contribution not Founded on Express Promise, p. 31; Convicting on the Testimony of an Accomplice, p. 158; Executors de Son Tort, p. 190; Liability of a Master to His Servant for Injuries resulting from Defective Machinery and Appliances, p. 289; Martial Law Other than in Time of War, p. 772.

These and many other notes and references show the extent of the work. A criticism might be offered. Certain of the monographs show little excuse for their existence. While the choice of notes is largely a matter of opinion, yet when a doctrine is not new, but is well settled, when it has received exhaustive and orderly treatment, and when the treatment accorded in the note does not differ in effect from that given in the standard treatises on the subject, small benefit is rendered by inserting it. This can be said, for instance, of the note in vol. 97, p. 29, on Actions by Stockholders on Behalf of Corporations and the one in vol. 98, p. 863, When Mandamus is the Proper Remedy Against Public Officers. However, this fault is very rare and most annotations are distinct contributions.

GUSTAV STEIN.

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AN EXPOSITION OF THE CONSTITUTION OF THE UNITED STATES. By Henry Flanders; Fifth Edition, Revised and Enlarged. Philadelphia: T. & J. W. Johnson & Co., 1904. pp. xii, 326.

This book must have enjoyed a good measure of public favor to have come to its fifth edition. It may be fairly said of it that it presents the fundamental principles of federal constitutional law in a way reasonably satisfactory for student use. Mistakes may be found in it as in most books of the law. The definition of direct taxes in paragraph 136, as taxes "laid directly on land or real property or upon persons," is too narrow in the year 1904, though it might have stood a few years earlier. The author in discussing subsequently the Income Tax cases, incidentally gives the later view of the United States Supreme Court. No definition of the Police Power is attempted save through illustrations of its exercise and this discussion is limited to two or three of the three hundred and six pages of text. But too much should not be made of faults like these if such they are. The endeavor of the author to produce a work "which might be useful to the bar," as well as to meet the need of the student and unprofessional reader, can scarcely be said to be successful. The attorney at the bar cannot be content, or well assisted, by a treatise upon constitutional law which does not give him information as to where the authoritative declarations of the law can be found. It would seem particularly desirable, from the practitioner's standpoint, that in a book which so continuously uses the language of the courts, he should

be informed where the authority for the declaration can be found, for to that authority he is most certain to desire to go. And yet with the exception of the Insular cases, the Debs case, and it may be one or two more, there is no citation of authority. The text proper is preceded by the Federal Constitution, and followed by the Declaration of Independence, the Articles of Confederation, the Resolutions and letter of transmission from the federal convention to the federal congress, and Washington's Farewell Address.

V. H. LANE.

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CASES ON CRIMINAL LAW. By William E. Mikell, Professor of Law in the University of Pennsylvania. Philadelphia. International Printing Co., 1903. pp. xv, 983.

Here we have the latest as well as the largest collection of cases on criminal law compiled for students' use, so far as we are aware. The work of the editor has been thoroughly and carefully done. It is well indexed, a feature not common in students' case books. The selection seems to be judicious; the statements of fact and opinions abridged, so as to eliminate matters not pertaining to the subject on which instruction is desired; and copious reference is made to other cases on the same point, for the reader who desires to investigate further. The leading and most important decisions on each question are generally included, and the other cases seem to have been selected after original investigation, and not by merely printing the cases collected by other editors of prior collections. Some might think undue prominence is given to the English and Pennsylvania decisions; but the book will certainly be valuable to anyone making a study of criminal law, though it is perhaps too large for use as a class-book in the short courses on that subject now generally given in law schools.

JOHN R. ROOD.

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CURRENT LAW, A COMPLETE ENCYCLOPEDIA OF NEW LAW. George Foster Longsdorf, Editor; Walter A. Shumaker, Associate. St. Paul: Keefe-Davidson Company, 1904. Vols. I, II. pp. 3403. Vol. III issued in monthly parts.

The learned and industrious editors and the enterprising publishers of "Current Law" are making it possible for the busy lawyer to view with more complacency than he has been accustomed to the vast accumulation of reported decisions. In an attractive and readable form he has before him in this work a statement of the principles of law as they are applied to new combinations of facts. As one looks through these volumes he cannot but be impressed with the multitude and variety of legal questions that are every day presented to the courts, yet this mass of questions and answers seems not so overwhelming when it appears in this shape as when exhibited in advance sheets and digests. Digests must be consulted, but the most diligent and enthusiastic student will now and then become weary in his search through them for vital principles—he realizes the shortness of life. For a change, he takes up a well written essay on a legal topic, one that deals with live questions in a live style, and is refreshed. He will have a somewhat similar

experience in reading "Current Law." For the work is well done, evidently by men who have read the decisions understandingly and who are able to state the principles of law to be found in them clearly and concisely. The work, however, is something more than an encyclopedia of this day's law; the main body of the text is that, but in the notes are to be found, on many topics at least, ample illustrations of former applications of the same principles.

"Current Law" is certainly a labor saving publication of high order and its projectors deserve the thanks and the substantial support of an overworked profession.

JAMES H. BREWSTER.

A TREATISE ON AMERICAN ADVOCACY, based upon the Standard English Treatise, entitled Hints on Advocacy, by Richard Harris. Enlarged, completely revised and Americanized by Alexander H. Robbins, editor of the Central Law Journal. St. Louis: Central Law Journal Co., 1904. pp. xiv, 295.

This is a very useful handbook of general practice. There has been no dearth of works on this subject, but the common fault with most of them has been an excessive diffuseness, as wearying as it is profitless. Elliott, the best known of the American works on advocacy, suffers severely from this defect. But Harris's little treatise, which forms the basis of the book under review, is concise and pointed, full of excellent advice, while free from rambling generalities and tedious platitudes. The scope of his treatment may be seen from the following list of chapter titles: Opening Plaintiff's Case; Opening Defendant's Case; Examination in Chief; Cross Examination; Re-examination; Summing up Defendant's Case; The Reply; Conduct of a Criminal Prosecution; Conduct of a Defense in a Criminal Trial; Classes of Witnesses; and Tact and Tactics. The chapters added by Mr. Robbins,—on Office Work and Preparation for Trial; Briefs, Arguments and Methods of Speaking; Legal Ethics; and Compensation and Advertising,—while perhaps less *strikingly* new and original than the preface seems to promise, nevertheless well supplement Mr. Harris's chapters. Taken altogether, the book is a most interesting and valuable presentation of the subject of advocacy, and it ought to prove very helpful to the young practitioner.

EDSON R. SUNDERLAND.

THE MONROE DOCTRINE. By T. B. Edgington, A.M. Boston: Little, Brown & Company, 1904. pp. xxxi, 345.

This new work on the "Monroe Doctrine" may be characterized as a medley of historical narrative, international law discussion, and technical legal argument. The history is bad, the international law questionable, and the legal argument remarkably good. The author seems wholly unacquainted with the best piece of historical writing on the nature and origin of the "Monroe Doctrine." He fails to see—what Worthington C. Ford has conclusively shown in his articles in the *American Historical Review* (vols. vii-viii)—how "a question which arose as a distinctly European question was changed to an American matter; how it was altered from one pertaining solely to the

relations between the United States and England to one that concerned our relations with all Europe." Had Mr. Edgington understood this he could not have written (p. 92) "The term 'Monroe Doctrine' simply became a new name for an old policy of the government." Nor could he have asserted that "a review of the history of this country prior to Monroe's administration shows that neither of them [J. Quincy Adams or Monroe] was its [the 'Monroe Doctrine'] author."

The author discusses in succession the Monroe Doctrine, the Panama Congress, the Clayton-Bulwer Treaty, the French Invasion of Mexico and Maximilian's Empire, the Venezuelan Boundary, the Canal and the Hague Tribunal. There is little of value except the discussion of what the author calls the "Calvo Doctrine" that "a nation's public law does not admit of intervention by foreign nations." The real discussion is rather one of the doctrine of certain South American states that a resident foreigner though unjustly treated in the courts of the country in which he resides may be deprived of appeal to his own country. Mr. Edgington does not clearly show that Calvo's doctrine can be made to mean this, but as to the real question—the assumption by the South American states—he shows by a well fortified argument that it is a monstrous pretension. This point is well taken, but some of the methods suggested (p. 297) by which the United States is to curb South American presumption are curious in International Law. The author is ingenious rather than worthy of serious consideration, in his suggestions for solving certain international problems. The book is, on the whole, the work of an enthusiastic, but not very well prepared amateur. C. H. VAN TYNE.