

Michigan Law Review

Volume 5 | Issue 1

1906

Recent Legal Literature

Frank L. Sage

University of Michigan Law School

Victor H. Lane

University of Michigan Law School

James H. Brewster

University of Michigan Law School

Frank L. Sage

University of Michigan Law School

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Legal Writing and Research Commons](#)

Recommended Citation

Frank L. Sage, Victor H. Lane, James H. Brewster & Frank L. Sage, *Recent Legal Literature*, 5 MICH. L. REV. 74 (1906).

Available at: <https://repository.law.umich.edu/mlr/vol5/iss1/6>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

RECENT LEGAL LITERATURE

LIMITATIONS OF THE TAXING POWER, INCLUDING LIMITATIONS UPON PUBLIC INDEBTEDNESS. By James M. Gray. San Francisco: Bancroft-Whitney Company. 1906. Pp. LX, 1316.

We have read this large book carefully and consider it an extremely valuable contribution on this very important subject. The introductory paragraphs may drag a little, but the reader does not proceed very far until he begins to think that this is the work of a man who knows what he is writing about, who has studied thoroughly, analyzed critically, classified carefully and expressed the result clearly and with precision. It is far from being a mere digest of important cases, for while many cases are used and though there are many quotations therefrom, it is for the purpose of discovering the underlying principle, which is then clearly stated. In this way cases which at first blush seem contradictory are frequently found to conform, though not always consciously perhaps, to a common principle. The work is modestly done. The author has been sparing in his criticism and slow to express his own opinion. In fact one feels that this is almost a fault, for the opinion of one who has made so exhaustive a study of a subject is entitled to great respect, such as was paid to that of the juriconsult in the Roman Law.

The quotations of the pertinent portions of the constitutions of the various states have added considerably to the size of the work, but it has, we believe, correspondingly increased its value, for even where access to a complete library is possible, the painstaking work of the author has made this unnecessary in very many cases, with a resulting economy of time. And where reference to the state constitutions could not be had the practitioner can determine with some degree of assurance the bearing, if any, of cases examined on the question in hand.

It is not the purpose of this brief review to speak particularly of the different parts of this work, and yet reference should be made to the chapter on Limitations of Debt Contracting Power, which is the concluding chapter. The subject is treated with as great a thoroughness as the space permits, and is very helpful. The vexed question of the effect to be given to recitals in municipal bonds has, we believe, been stated as satisfactorily as was possible within the same limits.

In short, it would not be easy to speak in too high terms of Mr. Gray's book, and to say it should be in every lawyer's library is to state in trite phrase a simple truth.

F. L. S.

THE CONSTITUTIONAL HISTORY OF NEW YORK FROM THE BEGINNING OF THE COLONIAL PERIOD TO THE YEAR 1905. Showing the Origin, Development and Judicial Construction of the Constitution. By Charles Z. Lincoln. Rochester: The Lawyers' Cooperative Publishing Company. 1906. Vols. I-V. Pp. XXX, 756; XVII, 725; XVIII, 757; XXVI, 800; 549 and addendum.

The writer of this notice has not essayed a critical review of this work. To have done so would require more time than is available. Such examina-

tion has been given, however, as to convince that Mr. Lincoln has done a great work for the state of New York. Well equipped by training and experience he has brought to the work great diligence, painstaking care and thoroughness of research, and has left little to be wished for in this field. The treatment is a combination of the chronological and the topical. The first volume opens with an introductory chapter giving a general summary of the constitutional history of the state. This chapter is followed by copies of those documents which furnish the subject matter for his subsequent discussion. These include Magna Charta, the Charter of Liberties and Privileges, passed by the first New York legislature in 1683, the Declaration of Independence, the Articles of Confederation, the Constitution of the United States and its Amendments, the First Constitution of New York adopted in 1777, with its Amendments, the Second of 1821 with its Amendments, and the Third and Fourth Constitutions adopted in 1846 and 1894, respectively, with their Amendments to 1905. The remainder of this volume is given to a particular discussion of the period from the discovery of Manhattan by Henry Hudson in 1609 to the adoption of the Second Constitution in 1821. The second volume continues the treatment to the Judiciary Commission of 1890, covering the two constitutional periods, that of the Second Constitution beginning in 1821 and ending in 1846, and that of the Third Constitution beginning in 1846 and ending in 1894. The third volume carries the discussion through the period of the Fourth Constitution to the present time substantially. The fourth volume is a history of the judicial construction of the several constitutions, and will be specially interesting to the constitutional lawyer. The earlier volumes are particularly interesting from the historical and political points of view, this by reason of the legal information it presents. The fifth volume gives a table of statutes construed on constitutional grounds, arranged both chronologically and topically, those held constitutional and those held unconstitutional in separate classes. This table of statutes is followed by one of the cases used, and this in turn by an Index of Persons, a General Index and an Addendum bring the history down to the time of going to press.

The work will be found a rich mine for the student of constitutional history as made by one of the most important of the states of the Union, and will prove of great value to the lawyer dealing with constitutional questions.

V. H. L.

THE LAW ASSOCIATION OF PHILADELPHIA. Addresses Delivered March 13, 1902, and Papers Prepared or Republished to Commemorate the Centennial Celebration of the Law Association of Philadelphia, Pennsylvania. 1802-1902. Published by the Association, Philadelphia. 1906. Pp. XII, 462.

In March, 1902, the Law Association of Philadelphia was one hundred years old, and this volume is a most valuable and interesting record of the proceedings at the celebration of the Association's First Centennial. It contains, moreover, papers and addresses relating to the Bar of Philadelphia previously published, but not readily accessible.

Among the "Recollections" are several graphic descriptions of the old offices in which the student days of many famous lawyers were passed, and one cannot wonder, after reading these narratives, that the methods of study pursued in those old days produced the thoroughly equipped, learned, eloquent and astute "Philadelphia lawyer."

In the course of a valuable Historical Address delivered by Mr. Chief Justice Mitchell, the speaker remarks: "In these days of college and law school bred men, rounded, smoothed and polished into uniformity of excellence, individuality is less common than in the office bred days. I am not complaining; the progress of the age is in that direction, and it would be useless to strive against it. Men of affairs who come to the front will always have strong individual traits; but environment counts also. For general utility, the wholesale product of the factory may be a better article; but it lacks the interest, and somewhat of the artistic quality, of the work that comes from the hands of the individual workman."

As early as 1859 Horace Binney wrote: "Has not the modern race of lawyers everywhere undergone some change from the old times, by rising or falling into the Athenian category,—the very large class of those who spend their time in telling or hearing some new thing? There are, at least, professional tendencies that way, which make them less and less curious of anything that savors of a former age. Most of the old limitations have been abridged, and the exceptions to them cut away, to save the labor of looking back. Old authorities no longer divide with old wine, the reverence of either seniors or juniors. Most of the old law books, that used to be thought almost as good a foundation for their part of the truth as the prophets and apostles are for the whole truth, are taken away, I rather think, from the bottom of the building and thrown into the garret. That Littleton *upon* whom Coke sits, or seems to sit to the end of things, as Carlyle says, has fewer than of old, I suspect, to sit with him for long hours to alleviate the incumbrance. For the most part, as I am told, the incumbent and the succumbent lie together in the dust, which uppermost not many care to know."

About one-third of this volume is not inappropriately devoted to Horace Binney. What is said by him, and what is said of him, is well worth reading and re-reading. Compare, for example, Binney's dignified statement concerning the tenure of judicial office with the recent utterances of the demagogic candidate for the governorship of a great state. The Demagogue says: "I advocate making the public official's term of office so short that he will not have time or inclination to forget who it is who elected him *and that ought to control him*. * * * I advocate a material shortening of the term of office for all judges." Horace Binney says (this volume, p. 150): "The certainty and permanence of the law depend in great degree upon the judges; and all experience misleads us, and the very demonstrations of reasons are fallacies, if the certainty and permanence of the judicial office by the tenure of good behavior are not inseparably connected with a righteous, as well as with a scientific, administration of the law. What can experience or foresight predict for the result of a system by which a body of men, set apart to enforce the whole law at all times, whatever may be the opposition

to it, and whose duty is never so important and essential as when it does so against the passions of a present majority of the polls, is made to depend for office upon the fluctuating temper of a majority, and not upon the virtue of their own conduct?"

The volume is illustrated by portraits, and is so well edited and printed that it seems a little ungracious to notice one defect—the absence of an index, which would render its really valuable contents more available to one who may not have an opportunity to read the entire book. J. H. B.

A TREATISE ON THE LAW OF DOMESTIC RELATIONS. By Joseph R. Long, Professor of Law in Washington and Lee University. St. Paul: Keefe-Davidson Company. 1905. Pp. XIV, 455.

The author in his preface announces that in the preparation of this book he has kept the needs of his students constantly in mind, and has endeavored to set forth the more important principles of the law rather than the details of their application, and that in the apportionment of space among the various subjects he has been guided by his own judgment rather than by the custom of other writers.

We believe that the author has done very well indeed what he undertook, and has stated very clearly the principles of the law on this subject so far as they can be brought within the limits of the book.

About two-thirds of the work are devoted to the subject of Husband and Wife, and in this apportionment of space the author seems to have decided wisely, for there can be no doubt that it is in this branch of the subject that the law has undergone the most marked change, and has not yet been so definitely settled as it will be within a few decades.

Consistently with the author's plan the subject of Infancy, which is customarily found in books on Domestic Relations, receives but brief notice.

The cases cited are numerous and selected with care and discrimination, and this fact gives no little foundation for the author's hope that the book may be of value to the practitioner. That it will be a valuable outline to the student cannot be doubted. F. L. S.

HOW TO SUPPRESS A MALPRACTICE SUIT and other Medical Miscellanies. By Thomas Hall Shastid, A. M., M. D., LL.B. Marion, Illinois: Marion Publishing Co. 1906. Pp. 128.

The author of this little volume is both a lawyer and a physician, and while the papers which make up the book seem to have been written more especially for doctors, lawyers will find them most suggestive and interesting. That the author is quite competent to discuss legal questions was demonstrated by his treatment of the questions, "May the Plaintiff in a Personal Injury Suit be Compelled to Exhibit His Injuries? If so, Under What Circumstances?" in papers published in this REVIEW several years ago (1 MICH. LAW REV., pp. 193, 277). In making suggestions to his medical friends, therefore, he is speaking from his experience as a lawyer as well as a doctor. He has use for neither

the quack doctor nor the shyster lawyer. His rule of action for the suppression of a malpractice suit is: "Catch the other doctor in the case and suppress *him*." His description of the malpractice suit will in general commend itself to any lawyer who has been compelled to defend a respectable physician sued for malpractice. The other eight papers that make up the "Miscellanies" of this volume are very readable, and a lawyer will find on reading them that the professional experiences of the doctor are not very unlike his own.

THE LAW OF AUTOMOBILES. By Xenophon P. Huddy, LL.B., of the New York Bar. Albany: Matthew Bender & Company. 1906. Pp. xx, 367.

It is to be hoped that a good many of that very large class who have brought automobiling into disrepute by their disregard of the rights of others in streets and highways, will stop long enough in their mad careers to read this book, and to think about the matter of it—if they can think about anything. Those who run their cars from state to state will find the work extremely useful—if they care to comply with law—in showing them wherein the statutory regulations of neighboring states differ from one another in regard to the management of motor vehicles. As only recently many peculiar and stringent statutory provisions regarding the handling of automobiles have been sustained by the courts as valid, it behooves autoists to recognize the fact that there is being formed a body of statute and case law especially applicable to them. No one should attempt to run an automobile who does not understand the machine, and anyone who can understand an automobile will have no difficulty, even though he knows no law save that of his own desires, in comprehending this volume. It is written, however, for the lawyer as well as for the layman, and while from his point of view there is not much that is really new in the book—except the collection of statutes—it yet states old principles as applied to the new fact in such a way as to make it well worth while even to him.

LINCOLN THE LAWYER. By Frederick Trevor Hill. New York: The Century Co. 1906. Pp. xiii, 332.

Those who read Mr. Hill's chapters as they appeared in the *Century Magazine*, during the first six months of this year, will be glad to see them collected in book form, with appendices and an index. The author shows that Lincoln was an able lawyer, and that his early experience as a lawyer fitted him to perform the greater work of his later life. Even those who are familiar with other reliable biographies of Lincoln will find in this volume much that is new. Whatever is new, however, appears to be authentic, for Mr. Hill has spent much time in original investigation and refers the reader to his sources of information. His work is unquestionably a very valuable contribution to Lincoln literature, and we doubt whether one can now obtain a really correct view of Lincoln's life and character without reading this book.