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Recent Legal Literature

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RECENT LEGAL LITERATURE

PRINCIPLES OF THE ENGLISH LAW OF CONTRACT. By Sir William R. Anson, Bart., D. C. L. Eleventh English edition. Second American edition with American Notes by Ernest W. Huffcut, Dean of the Cornell University College of Law. London and New York: Oxford University Press, 1906, pp. ii, 462.

In his preface to this edition Dr. Anson writes: "I have endeavored in the eleventh edition to bring the book up to date, to introduce new authorities with the least possible enlargement of the text, to simplify passages that seemed obscure, and to preserve the character of an elementary treatise." This work has been well done. The author has retained the many excellencies of the earlier editions, and in bringing the book up to date he has given the numerous English statutes of recent years bearing on the subjects treated. These statutory modifications of the common law are no part of our jurisprudence, but they are written into the text and an American student must read with great care. There is danger of mistaking an English statute for a common law principle. During the past twenty years parliament has made many changes in the contract law of England. Reference to the index of this book, and to the subject "statutes," is of striking interest in this connection. So also is a comparison of this edition with those of former years, wherein the common law principles are clearly stated and less attention given to modern statutes. It is doubtful whether it is desirable to place before a student of the common law the substance of so many statutes having no force in this country. A confusion of ideas is apt to follow. The editor has appreciated this fact and such portions of the book as deal with the modern English statutes of local interest have been printed in small type. This has added much to the value of the book.

The American notes and citations of authorities are what we have a right to expect from the hand of Professor Huffcut. His work is exceptionally well done and his notes on, "Promise for the Benefit of Third Party," on "Joint and Several Contracts," and on "Substantial Performance" are of special interest and render the book of increased value to the student and the practitioner. We are pleased that he gives them as part of the text rather than places them as foot notes. The publications are to be commended for good execution in book making.

J. C. K.

A DIGEST OF THE LAW OF TRADE-MARKS AND UNFAIR TRADE. By Norman F. Hesseltine, of the Suffolk Bar. Boston: Little, Brown and Company, 1906, pp. xlviii, 390.

This small work treats of definitions; what is a valid trade-mark; what is not a valid trade-mark; property rights in trade-marks; good faith in trade-marks; partnership; trade-marks in their relation to patents; unfair trade; trade-names; assignments; infringement; license; laches; abandonment; practice and pleading (in the federal and state courts); registration;

an appendix contains the trade-mark laws of the United States of Feb. 20, 1905, and of May 4, 1906, with the rules of the Patent Office governing registration of trade-marks under the act of 1905; also forms to be used in preparing application for registration.

The introduction says: "This book states concisely the principles of the law of trade-marks and unfair trade for ready application by the lawyer. The legal profession now wants the law and cases, not pages of text-book discussions. The digest of cases shows the basis for the rule preceding. The rule is stated from a study of the cases according to the inductive method."

The author formulates and sets forth the law in a series of rules drawn from the cases. His method may be illustrated by the following definition which appears in heavy black-faced type under the caption, "What is a valid trade-mark;" "A trade-mark is (1) an arbitrary sign (2) affixed (3) by a proprietor (4) to his goods (5) with the intention of designating their origin (6) by a use thereon."

(1) "An arbitrary sign is (A) a word, (B) a combination of words, (C) letters," etc.

Each of the above subdivisions marked by letters or figures is then developed and illustrated by a digest of the cases relating to the particular point with a collection of words, marks, etc., that have been passed upon by the courts.

It is claimed that every point of every case upon the subject of trade-marks and unfair trade in the Federal Reporter, in the United States Reports, and in the Official Gazette of the Patent Office, and the principal decisions of the state courts and the English courts have been digested.

The author has made an effort to draw the line as completely as possible between *trade-mark law* and *unfair trade law* but he admits, as do all others who have considered the matter, that it is hard to do this, and that the courts have often failed to appreciate the distinction and have, for that reason, rendered decisions that are extremely difficult to reconcile.

The author seems to have done his work faithfully and accurately and the book will be found very useful to any one who has to consider the subject.

H. L. W.

A TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS. By Howard S. Abbott of the Minneapolis Bar, Lecturer on Public and Private Corporations and Civil Law, in the University of Minnesota. St. Paul: Keefe-Davidson Company, 1905, 1906. Three volumes, pp. xix, 3045.

When Judge Dillon wrote the preface to the fourth edition of his great work on the law of municipal corporations, in 1890, he thought it appropriate "to justify its size," to explain why his commentaries comprised two volumes with a total of some 1800 pages. The present work is in three volumes of nearly 3100 pages, but its size is amply justified by the great importance of the subject and the extraordinary growth of the case and statute law concerning it, during the last twenty or more years. Mr. Abbott's is the first attempt to treat this subject comprehensively and fully since the last edition

of Judge Dillon's work, which was published sixteen years ago, and its publication is therefore timely, and the book is certain to be of great aid to the bar, because of the large amount of new material which it makes available in text-book form. The extent of this new material and the recent growth of the subject are in some measure indicated by the fact that Judge Dillon cites about 13,000 cases, while Mr. Abbott cites upwards of 28,000. How accurately this vast mass of material has been treated, how apposite are the cases to the doctrines concerning which they are cited can only be fully determined by a more thorough use of the work than there has yet been time for. But a somewhat hasty examination would seem to indicate that, in the main, the work has been intelligently and conscientiously done. Judge Dillon has so fully occupied the field of the law of municipal corporations by the successive editions of his book, that it would be unreasonable to expect any new work to contribute as much, and to influence so greatly the law of this subject. It is not, therefore, unfair to Mr. Abbott, nor disparaging to his really valuable work, to say that it is not in any such measure, as was Judge Dillon's, an original contribution to the subject. It would be wholly impossible for any present writer on the law of municipal corporations to escape the influence of Dillon's commentaries, unless he should foolishly and deliberately shut his eyes to the light. And this Mr. Abbott has very wisely not attempted to do, as his occasional references to Dillon, and the apparent use of parts of the latter's analysis would seem to show. But this does not indicate that Mr. Abbott has made any improper use of such material or been unduly influenced by it. On the contrary, he seems to have worked out his subject in his own way. The actual writing methods adopted by the two authors respectively are quite different. Dillon's work is characterized by an easy and flowing style, and the value of his text is greatly enhanced by logical statements of his own opinions on controverted points, opinions which have had great influence upon the recent development of the subject, as hundreds of cases decided since 1872, the date of the first edition, will show. Mr. Abbott's text is not characterized by this style, nor do his own opinions appear to any considerable extent. His text is concise, compact, and consists largely of statements of abstract rules and general principles. Indeed this compression and abstractness of the text would constitute a serious defect in the book, were it not for the very numerous and copious notes. As before indicated, the author has cited some 29,000 cases in the notes, and this material constitutes much the greater part of the work. A majority of these cases are merely cited, but Mr. Abbott has summarized the holdings, and sometimes the facts of many of them, and from others he makes more or less extended quotations. In most of these notes, the cases are arranged alphabetically by states, and in some of them, the views of the topics discussed in the different states are carefully stated, as for example in the elaborate note concerning the subject of charter, statutory and constitutional provisions affecting the power of public corporations to incur indebtedness (note 275, p. 325).

In his preface, the author states that "particular attention has been given to those subjects connected with the exercise of municipal powers which, in the opinion of the author, are of the present and greatest relative importance;"

and again, "The extent and character of their control over public property, their power to incur indebtedness and issue negotiable securities, their right to own and operate public utilities, are questions of the deepest personal concern to everyone." The subjects of the power to incur indebtedness and to issue negotiable securities are, indeed, treated exhaustively, but in view of these prefatory statements, and the recent phenomenal extension of municipal ownership and control of the public utilities and of the inevitable further increase and importance of the problems connected with these matters, it is disappointing that Mr. Abbott has nowhere treated of these vital questions, comprehensively and as a distinct problem. He has considered them, though somewhat briefly, it would seem, in view of their importance, in connection with the different functions, such as the supply of water, of light and of transportation. Possibly this is the most practical way of discussing the subjects. It is to be hoped that in a future edition of his work, Judge Dillon will give us the benefit of his late investigation of, and reflection upon this subject. Mr. Abbott has indicated his opinion, if not his bias, as to the legal and economic aspects of these problems, as shown by the following quotations from his book. "To counteract the modern tendencies of governmental agencies in exercising powers other than those strictly pertaining to their character, through the construction of many public works and the ownership and maintenance of enterprises usually considered private in their nature, requires an accurate and thorough knowledge of their true character and legal capacities." (Preface, par. 1.) "It is the author's belief that the proper functions of a public corporation are to regulate and govern and that it is neither desirable nor legal that it engage in undertakings, to do those things, or transact that business, which properly, should be left to private enterprise. To govern and regulate efficiently and rightly requires complete disinterestedness, a condition which cannot exist where hope of gain or fear of loss are attendant essentials of certain acts or transactions. It is difficult to separate completely at all times the radically different acts of governing and regulating and engaging in a pursuit or undertaking having for its ultimate purpose the making of a profit." (P. 1141, Vol. II.) "A supply of pure and wholesome water at a reasonable cost is the end sought to be attained; logically, it would seem as if this were an object for private undertaking and private consideration, subject to the ever present and sufficient power of the government to regulate and control the time, manner and quality of the supply and the compensation charged." (P. 1143.)

It is inevitable that some errors should creep into the first edition of a work of the great bulk of Mr. Abbott's book, but in a review as brief as this, it would be unfair to the real merits of the work to put any emphasis upon the few and unimportant ones which have been discovered. The work as a whole is a very valuable addition to the available material on its subject. It gives evidence of careful, mature and intelligent industry, and will surely be well-nigh indispensable to students of municipal affairs, and to lawyers whose practice brings them into contact with the numerous and increasingly important questions discussed in it.

H. M. B.

A PRACTICAL TREATISE ON THE LAW OF RECEIVERS as applicable to Individuals, Partnerships and Corporations, with extended consideration of receivers of railways and in proceedings in bankruptcy. By William A. Alderson, of the Los Angeles Bar. New York: Baker, Voorhis & Company, 1905, pp. lxxi, 956.

Mr. Alderson anticipates the question every prospective purchaser of a law book is apt to ask, and states in his preface why he wrote this book. In 1897 he was commissioned by the publishers, he says, to revise and rewrite Mr. Beach's work on Receivers, the first edition of which appeared in 1887. The efficiency of his work, done under this commission, is attested by the fact that the publishers, after reading his manuscript, desired, inasmuch as the new edition would be practically a new book, that it should be published under the title, "Alderson on Receivers," but the author advising against this course the work was published in 1897 under the title "Beach on Receivers, Alderson's Edition."

The work which is the subject of this review is the result of another commission to the author, to furnish the profession with a treatise on the subject of Receivers complete in all its phases up to the time of its publication.

"Alderson on Receivers" is a volume of more than a thousand pages, with a full analytical table of contents, a table of cited cases in the usual form, reaching about four thousand in number, and a complete index to subjects. It combines in a marked degree the essentials of a text book for the student and a practice book for the lawyer. It is, under the circumstances of its preparation, as above indicated, the joint product of two writers specially qualified to furnish a valuable exposition of the subjects treated.

On the whole, Mr. Alderson has succeeded, in the opinion of the writer of this review, in producing a very meritorious treatise on the increasingly important subject of Receivers. It has its defects and weaknesses, without doubt, but, compared with its merits, they are inconspicuous. The work will justify the assertion that its author has discussed the general principles of the subject in such a way as to appeal to the earnest student, and has stated the rules in terms of the decisions and referred to the authorities in such a way as to make the practitioner's preparation on any phase of the law or procedure relating to Receivers the easier and surer. The practitioner who acquaints himself with the merits of this work will not be willing to do without it.

R. E. B.

Reviews of the following works will be published in later issues:

CHANCERY PRACTICE, including forms. By John G. Henderson.

A TREATISE ON THE PRINCIPLES AND PRACTICE OF THE ACTION OF EJECTMENT.
By George W. Warvelle.

THE LAW OF LANDLORD AND TENANT. By Leonard A. Jones.

THE RULE AGAINST PERPETUITIES (Second Edition). By John Chipman Gray.

THE FOUNDATIONS OF LEGAL LIABILITY (3 Vols.). By Thomas Atkins Street.

DUE PROCESS OF LAW UNDER THE FEDERAL CONSTITUTION. By Lucius Polk McGehee.

MODERN BUSINESS CORPORATIONS. By William Allen Wood.

A TREATISE ON THE LAW GOVERNING NUISANCES. By Joseph A. Joyce and Howard J. Joyce.

FOIBLES OF THE BAR. By Henry S. Wilcox.

SNYDER'S INTERSTATE COMMERCE ACT AND FEDERAL ANTI-TRUST LAWS (Supplement). By William L. Snyder.