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Book Reviews

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BOOK REVIEWS

CHANCERY FORMS, AND PRECEDENTS. Annotated with Reference to the Practice in Michigan. By Francis A. Stace, of the Grand Rapids Bar. Detroit, Mich.: Drake Law Book Company, 1908, pp. xxxix, 742.

There is scarcely a book in a lawyer's library more important than a good book of pleading forms. The legal mind seems to be peculiarly subject to the power of precedent, and the credulity with which even respectable lawyers assume and rely upon the correctness of commonly used pleading forms is astonishing. A clear and palpable blunder in a precedent will be copied by nine-tenths of the members of the bar who use the book, until it becomes an established custom, in spite of repeated decisions of the supreme court pointing out the error. This being so, a good book of forms, adapted to the varying exigencies of general practice, carefully prepared and closely edited, is a most useful thing—useful in itself and doubly useful because it will probably save the owner from depending upon a worse book.

It may be there are errors in the book under review,—it would be strange if there were not, but a perusal of its forms will convince one that it is a distinct and valuable addition to the facilities available to the legal practitioner. The forms are numerous and are well selected. They are carefully prepared and attractively printed. They cover a remarkably wide range, including the different parts of a bill in equity, a large number of original bills and petitions, bills and petitions not original, orders, notices, affidavits, etc., in proceedings for appearance, forms for taking bills as confessed, defences and the orders, affidavits, motions, etc., incident thereto, amendments, cross-bills, forms incident to all the proceedings relative to receivers, injunctions and writs of *ne exeat*, forms used in proceedings to a decree, decrees and proceedings therein, and a host of miscellaneous forms. Indeed, there is almost no form which could be desired in connection with any matter within the jurisdiction of a court of chancery, which cannot be found here. The annotations are almost negligible, but as a book of forms, supplemental to the works on equity pleading, it is excellent.

E. R. S.

HANDBOOK OF THE LAW OF SALES. Second edition, revised. By Francis B. Tiffany. St. Paul: West Publishing Co., 1908, pp. x, 534.

The first edition of this work was an admirable book of its type. It presented clearly and concisely the cardinal principles of the law of sales. The present edition is a genuine revision, containing much additional matter and the citation of many cases decided since 1895, the date of the first edition. The book is neither a commentary nor an exhaustive treatise; nor does the author dwell much upon the historical development of the subject, or give us much of his opinion as to the soundness of the existing body of sales law. However, as the book is frankly called a "hand-book," it is not to be

criticised on the above grounds. It is difficult to see how the work could be improved as a statement of the existing law of the subject. In presentation it is orderly, clear and concise, and generally, if indeed not always, sound.

The development of the subject approximates closely to that in Chalmers's "The Sale of Goods," with such modifications, of course, as are made necessary by American departures from the English rules.

The value of the present edition has been enhanced by printing as appendices the "Sales Act," drafted by the Commissioners on Uniform State Laws, and already adopted as law in six of the states, and the English Sale of Goods Act, and by many references in the foot-notes to these acts. Several chapters have been rewritten, the most notable improvement being in that on Conditions and Warranties. It is on this subject and its terminology that the present law of Sales is most unsatisfactory. The author apparently does not see his way to suggest a new term for the unscientific and confusing one, "implied warranties." It might have been well to more clearly point out that these so-called "implied warranties" are to all intents and purposes "conditions," though the author does state that fact. Perhaps, too, the author might have made more of the distinction between "mere conditions" and "promissory conditions." As to the mooted question whether for breach of express warranty the buyer has the option to rescind or to sue for damages, or whether he has only the latter remedy, the author guardedly intimates a preference for the option, p. 370. This is in accordance with the provision of the Sales Act, § 69 (1), (d), and with justice and sound common sense as well. The author refers to the interesting discussion of this subject between Professor Williston and Professor Burdick in the Harvard Law Review (Vols. 16 and 17), and the Columbia Law Review (Vol. 4).

As the latest work on the subject of Sales, the book should be of value to practicing lawyers; and those who are in favor of the text-book method of instruction could scarcely desire a better book for students. H. M. B.

THE SCIENCE OF JURISPRUDENCE. A Treatise in which the Growth of Positive Law is Unfolded by the Historical Method and its Elements Classified and Defined by the Analytical. By Hannis Taylor, LL.D. (Edin. and Dub.) New York: The Macmillan Company, 1908, pp. lxxv, 676. Price, \$3.50 net.

The scope of this work is well indicated by the sub-title. In the first part the author presents in attractive style the results of the work of the masters of jurisprudence, particularly those of Bryce and Holland, to whom the volume is dedicated. The method suggested by Bryce, in Essay XIV on "Methods of Law-Making in Rome and in England" and XV on "The History of Legal Development at Rome and in England" of his "Studies in History and Jurisprudence," has been followed by Dr. Taylor in his treat-

ment of the historical chapters III and IV, on the "External History of Roman Law" and the "External History of English Law." These chapters, however, have been expanded until they give us a very satisfactory treatment of the history of Roman private law and of English public law, treated with especial reference to its bearing on the private law. These two chapters are brought into vital organic relation with each other and with the remainder of the book by the large generalization that "there is rapidly arising a typical state-law system whose outer shell is English public law, including jury trials in criminal cases, and whose interior code is Roman private law." In the first chapter on the "Analytical and Historical Methods Contrasted" the author insists on a reclassification of the four methods of jurisprudence as discussed by Bryce, by coalescing the *a priori* and the analytical methods under one head, subdivided, however, into two branches; and by making the comparative method simply a branch of the historical. In chapter V the author puts forward in detail the arguments for his claim that Pelatiah Webster was the "Architect of our Federal Constitution," a claim which he has recently urged in a "Memorial" to Congress. The original document by Webster is printed as an appendix to the volume. The chapter on "Roman and English Law" gives a number of interesting facts in regard to several of the modern Roman systems, particularly those of Brazil and of the Roman Dutch law, which are not readily accessible elsewhere.

In the systematic discussion of the science of jurisprudence the general method made familiar by Holland's work has been followed, with suggestive additions from some of the more recent treatises, among which may be mentioned Dicey's "Law and Public Opinion" and Street's "Foundations of Legal Liability." Here is found also abundant citation of the later decisions which illustrate some of the principles that are still in process of formulation. The book closes, as does Holland's Jurisprudence, with chapters on international law and on conflict of laws.

In criticism of the claim to originality in the large generalization above quoted it may be said that it is close to the surface, and the absence of its announcement in print before may well be due to the fact that it has presented itself to the minds of scholars as a self-evident proposition not calling for especial comment. The use of it, however, as a co-ordinating principle has improved very greatly the presentation of the facts marshalled under it.

It seems rather unfortunate that the author has used the term "unearth" and the expression, "as if it were a papyrus from Egypt" (cf. pages XIX, and 458), to apply to his discovery of the Webster Pamphlet. The Pamphlet has been used by writers on constitutional problems for many years, and to the writer's own knowledge it has been made a subject of special study in the historical seminary of one of our universities for at least a decade past. The reading of the entire chapter on "English Law in the United States" shows what the writer means by these somewhat extravagant statements. He certainly may be credited with assigning to the document a much greater importance than previous scholars have attributed to it, but we may well wait

until the experts are through with their careful examination of his thesis before passing final judgment upon it.

A book that gives us two original concepts, even though the originality may depend upon a difference in emphasis, may be said to justify its existence as a scholarly production, and the excellent form in which the subject is presented throughout certainly makes it worth while from the standpoint of the student of comparative jurisprudence.

J. H. D.