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Book Reviews

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BOOK REVIEWS

HANDBOOK ON AMERICAN MINING LAW. By George P. Costigan, Jr., Dean of the College of Law of the University of Nebraska. St. Paul: West Publishing Co., 1908, pp. xiv, 765.

This work is one of the famous "Hornbook Series," and in no manner detracts from the reputation of that series.

The book is particularly valuable to students, and no doubt will also prove popular with practicing lawyers.

The analysis of the subject is complete, logical and commendable. The various principles of the law are tersely, succinctly and clearly stated, and sufficient cases cited to illustrate them. More could not be expected, in consideration of the purpose of the work, as stated in the preface.

The author's discussion of the cases of *Belk v. Meagher*, 104 U. S. 279; *Lavagnino v. Uhlig*, 198 U. S. 445, and *Farrell v. Lockhart*, 210 U. S. 142, is interesting and logical, but hardly sufficient to convince one that the conclusions are correct. Indeed, the author himself, with commendable caution, admits that until "the federal supreme court shall hold that abandonment by the senior locator of the ground covering the junior's discovery cannot be deemed to validate the junior claim either by the abandonment being given retroactive effect or by the junior locator's past acts of location, continuously relied on by him, being given full force without the need of repetition, the matter will be in doubt."

The author's discussion of the law of tunnel sites and the rights of the locator to unappropriated blind veins, discovered in the course of the tunnel, is, in general, commendable and accurate. To our mind, however, his conclusion as to the method of locating a mining claim on the surface, based upon a discovery of a vein in such tunnel, may be misleading. The only possible object or purpose of locating such surface claim is to enable the discoverer to procure a patent to a mining claim, which shall include the vein discovered in the tunnel.

The author states that a discovery in a tunnel is as effectual as a discovery from the surface, and cites and relies upon *Brewster v. Shoemaker*, 28 Colo. 176, but it is by no means settled that in order to make a surface location, no discovery need be made from the surface, or connected therewith within the surface boundaries of the claim. *Butte Mining Co. v. Baker*, 35 Mont. 327.

The author, following the language of the Supreme Court of the United States, in *Campbell v. Ellet*, 167 U. S. 116, states that "a statutory tunnel owner who wishes to make a surface location should so lay out his surface claim as to have some part of it directly above the point of discovery, and should mark that point on the surface."

The author seems to overlook the fact that a surface location made in the manner indicated might not include the apex of the vein discovered in the

tunnel, depending upon the dip of the vein and the depth of the point of discovery beneath the surface. Without such apex being so included, such location, or even a patent thereto, would not carry the title to such vein.

Upon the whole, the book is a commendable one, and I have no hesitation in recommending it to the profession generally.

J. B. C.

THE LAW OF REAL PROPERTY (Based on Minor's Institutes). By Raleigh Colston Minor, M.A., B.L., Professor of Law in the University of Virginia. In Two Volumes. Anderson Bros., Publishers, University of Virginia, 1908, pp. vi, 1835.

In his preface we are informed by the author that his purpose was to prolong the usefulness of that part of his father's "Institutes" which relates to the law of real property; and that his original plan was to do it by bringing out a fifth edition of the second volume of "Minor's Institutes," making only such changes and additions in text and notes as seemed necessary to bring them down to date. In the execution of this plan he met the difficulties always met by the editor of a new edition of a well known text. He was hampered in his effort to make a clear and logical presentation of the law of today by the fact that his text was fixed, and it was often impossible to make a simple insertion or omission to state the present law accurately without omitting something that should remain or breaking the original connection. Finally, to get a free hand, he abandoned his original plan, and brought out the present work in his own name, and in this way he obtained and used the liberty of moulding the text throughout to make a connected and simple statement of the law as it is today. In executing this plan he has endeavored to retain the advantages of a new edition of Minor's Institutes, by using the language of that work so far as available, and making reference under each proposition to the page in the original work from which it was taken.

The purchaser of this book who wanted a new edition of Minor's Institutes will probably experience a sensation of mingled pleasure and disappointment like to that of the man who visits his old homestead and finds the house painted a different color, a new porch unlike the old, the interior of the house rearranged, and the grounds all changed; and in both cases, no doubt, the pleasure would be lost in the disappointment. And yet, on sober reflection, when reason has prevailed over sentiment, we must admit that the changes have been for the better. The man who has a tender regard for the work of his old professor in all probability has a copy of an edition by the hand of the original author. To that he can turn when he has a reference to it from some court opinion or other text, though he might not be able to locate the citation in this work; and yet, by the use of the index, such references could usually be approximately located.

The additions and alterations are so numerous and important that these books, in substance and effect, are a wholly new and original work; and, looking upon them as such, the man who knows the law of real property and does not know Minor's Institutes will be struck at once with the clear,

simple, precise and accurate analysis of the law which he finds here. He is given each topic in skeleton form, then each division of it in proper order, historically traced from the ancient law to the local application in Virginia. While the author winds up nearly every topic with the local law of Virginia, it must not be supposed that the work is of value only to the Virginia lawyer; on the contrary, this is merely in addition to the text as a general treatise. There is scarcely a topic of the law of real property that is not expounded in its development; and while the citations are by no means complete they are selected with discretion, and anything like an attempt at encyclopedic treatment would require ten volumes rather than two; and by such a presentation the value of the work as an elementary treatise would be destroyed.

J. R. R.

CASES ON CRIMINAL LAW, selected from decisions of English and American Courts. By William E. Mikell, Professor of Law in the University of Pennsylvania. American Casebook Series, James Brown Scott, General Editor. St. Paul: West Publishing Company, 1908, pp. xviii, 610.

As is well known, Professor Mikell now teaches, and for a number of years past has taught, criminal law at the University of Pennsylvania; and those who have taken his course testify that he knows his subject to a detail and teaches it thoroughly well. In 1904 he brought out a casebook on criminal law, which he has used in his classes since. Therefore there is probably no man in the country better fitted to select a collection of cases on this subject than he. His first collection was probably the result of a wide knowledge of the subject before he began the immediate task, and a considerable experience in teaching it during the process. The present collection is the added result of his use of that collection from then till now. Apparently that experience confirmed him in his original opinions to a very large degree; for the plan of treatment pursued in the original work is adopted without a single change in the present book. That book contained 983 pages, the present contains 610; the cases in that collection appear in the present in practically the same order, except that about a third of them are omitted. His experience has enabled him to decide what cases could best be spared, and thus reduce the size of the whole to conform more nearly to the amount that could be covered in a course in the time that is given to the subject in most law schools. In addition to the cases from his original collection he has inserted here and there a few old cases discovered since the original publication, or found from experience to be worthy of space. He has also added just a sprinkling of cases decided since his first work was published. In the advertisement of the publisher we were told that Professor Mikell would select cases for the series on criminal law and procedure; and as this collection does not deal with procedure, we may expect another volume on that subject.

J. R. R.

THE ANNOTATED CONSTITUTION OF MICHIGAN, with Introduction by Fred A. Baker. Annotations by Franklin A. Beecher. Detroit: Drake Law Book Co., 1909, pp. xxi, 158.

This volume presents in convenient form Michigan's new constitution, with a suggestive introduction by Mr. Baker, whose qualifications for discussing constitutional questions are well known.

Besides this introduction the volume contains the report of the special committee of the Detroit Board of Commerce reviewing the changes made in the constitution of 1850 by that of 1908.

While the convention did not insert in the new constitution as many restrictions of a petty nature, not really suitable for a constitution, as are found in some of the more recent state constitutions, nevertheless Mr. Baker calls attention to some things that he regards as mistakes, and his views are worthy of careful consideration.

The special committee's report adds greatly to the value of the volume. The notes direct attention to the sources of the new constitution, and the decisions of the supreme court on questions arising under former constitutions are collected under the appropriate sections of the new constitution. A "comparative table of the sections of the constitutions" of 1835, 1850 and 1908, and a complete index, add to the usefulness of the book. In the notes there is some evidence of careless proofreading, but the errors are such as not to affect the sense, and the text seems to be free from them.

It would be well for the people of Michigan to become familiar with the contents of this volume.