

Michigan Law Review

Volume 8 | Issue 3

1910

Book Reviews

Henry M. Bates

University of Michigan Law School

Joseph H. Drake

University of Michigan Law School

Evans Holbrook

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

Henry M. Bates, Joseph H. Drake & Evans Holbrook, *Book Reviews*, 8 MICH. L. REV. 257 (1910).

Available at: <https://repository.law.umich.edu/mlr/vol8/iss3/4>

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.

BOOK REVIEWS.

THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION. By Frederick H. Cooke, of the New York Bar, author of "The Law of Life Insurance," "The Law of Trade and Labor Combinations," etc. New York: Baker, Voorhis & Co., 1908, pp. xcii, 302.

This work is an excellent example of a class of law books, namely, monographs, intensively treating single topics, which the vast and rapidly increasing mass of cases is making very desirable, a type which, therefore one is glad to note is increasing in number. Two other books of this class, "Regulation of Commerce under the Federal Constitution," by Thomas H. Calvert, and "The Federal Power over Carriers and Corporations," by E. Parmelee Prentice, published some two years ago, were reviewed in 6 MICH. L. REV. pp. 190 and 192. In some respects, at least, the present book is superior to either of those. Though quite as independent and virile as Mr. Prentice's book, its persuasiveness is not marred by the strain of controversialism which runs through the latter work. It is not quite as fully or elaborately stated as is Mr. Calvert's treatise, but it has lost nothing by reason of its condensation. It is quite impossible within the limits of a brief review to fairly present the author's compact thesis upon this large and important subject, but the general purport of it, and some characteristics may perhaps be presented.

In his introduction the author says: "During the last four decades, the commerce clause has, with enormously increased frequency, come to be applied to a great variety of matters, and there has become almost painfully apparent the lack of * * * unifying principles or the insufficiency of what may be regarded as attempted declarations thereof by the courts." The work which follows is an attempt "to make a statement of such principles." It does not require an examination of the imposing table of cases to convince one that Mr. Cooke has made a careful and exhaustive study of the vast amount of interpretative litigation which has arisen under the commerce clause. But the text is not clogged nor deadened by an excess of quotation from nor periphrases of court opinions. On the contrary it is an independent, acute and scholarly consideration of the subject. The author does not hesitate to express his own opinions or to criticize those of others; and while the book, in the reviewer's opinion, is in the main logical and convincing, inasmuch as the author frequently criticizes the opinions of the Supreme Court of the United States, it is not unlikely that there may be many who will disagree with some of his opinions. Indeed this indicates one of the chief excellencies of the book. It is suggestive and stimulating. At the very outset (§4) Mr. Cooke makes his own definition of commerce, in the sense in which, according to the courts, it is used in the constitution. Assuming this definition to be correct, and it seems to the reviewer to be as nearly so as any formal definition is likely to be, it affords a most interesting instance of how legal interpretation may give to a word a meaning, new, and radically different from its dictionary definition. The "original package" doctrine is characterized as "anomalous"

and "absurd." (§§17-20) Perhaps the most valuable portion of the book is that comprised in chapters III and IV dealing with the much vexed question as to the powers of Congress and of the respective states over commerce. It would be unjust to the author to attempt to state within the limits of a book notice, the line of demarcation, which he thinks separates the powers of Congress and of the states in this matter. This line is foreshadowed in the introduction (p. v) and is developed in the chapters indicated. The work is distinctly a contribution to the discussion of its important subject. H. M. B.

SELECT ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY.—By Various Authors. Compiled and edited by a committee of the Association of American Law Schools. In three volumes. Volume III. Boston: Little, Brown, and Company, 1909, pp. vi, 862.

Volume I of this series was noticed in the *MICH L. REV.*, Vol. 6, p. 359. Volume II appeared in 1908. The present volume continuing the History of Particular Topics from Volume II, gives, in Part V, twelve essays on the history of various themes of Commercial Law. Part VI has five essays on Contract including the two well known articles on Assumpsit by Dean Ames. Part VII on Torts, gives us The History of Trover, by Dean Ames; The History of the Law of Defamation, by Van Vechten Weeder, and The Responsibility for Tortious Acts: Its History, by Dean Wigmore. This last mentioned article, reprinted from the *Harvard Law Review*, for 1894, and revised and brought down to date by the learned author, shows the wonderful knowledge of the literature of the subject which characterizes all of Dean Wigmore's work. Part VIII, on Property (In General), and Part IX, on Wills, Descent, Marriage, consist of five essays each, on the most interesting phases of those subjects. In the last group are included the essays of Professor Gross on the Mediæval Law of Intestacy and that of Ambassador Bryce on Marriage and Divorce in Roman and English Law. This volume brings to a conclusion the work of the committee appointed five years ago for the purpose of editing these articles. One may say unhesitatingly that the committee has performed a valuable piece of editorial work in a thoroughly satisfactory manner. The last two volumes, devoted to particular subjects, are even more valuable than the first one as being more definite in their content and therefore more closely connected with the original source. The third volume could very profitably be used in those law schools which give a course in the science of jurisprudence, as a supplement to the systematic treatises on that subject or as a substitute for them in alternate years. J. H. D.

A HANDBOOK ON THE LAW OF PERSONS AND DOMESTIC RELATIONS. By Walter C. Tiffany. Second Edition by Roger W. Cooley, author of "Briefs on the Law of Insurance," instructor in the St. Paul College of Law and special lecturer in Legal Bibliography. St. Paul, Minn.: West Publishing Co., 1909, pp. xiii, 656.

The second edition of this popular member of the Hornbook family contains little new matter except references to the important cases decided since

the first edition was published thirteen years ago, and some changes necessitated by statutory enactments during the same period. The general scheme of the Hornbooks has of course been retained with its statements of general principles in black-letter type, so welcome to the hurried lawyer in search of a succinct statement of a general rule (and just as welcome, it may be said in passing, to the lazy student who believes in vicarious intellectual activity).

A few inaccuracies of statement in the first edition have been corrected in the second; notably those relating to marriage *per verba de futuro* (§20 in second edition), to the purchase by the wife of articles not necessities on the credit of the husband (§§70, 71), and to the parent's duty to maintain the child, and the enforcement of this duty by allowing recovery against the father for the value of necessities furnished to the child (§116).

A few such inaccuracies, however, have been allowed to remain. For instance, the statement that "the husband will not be liable for necessities purchased by his wife if he shows * * * that she had a sufficient separate income" (§71b, (3) p. 131), though probably the law in England, is not clearly supported by any great weight of authority in this country. The cases cited in support of this statement are not at all in point (in all of them the denial of the husband's liability was based on other grounds), but the state of this doctrine in the American courts is shown by *Hunt v. Hayes*, 64 Vt. 89, 15 L. R. A. 661, and *Ott v. Hentall*, 70 N. H. 231, 51 L. R. A. 226.

In speaking of the ratification and disaffirmance of infants' contracts, the original edition's statement is retained to the effect that "Some voidable contracts of an infant bind him unless he disaffirms them, while others do not bind him unless he ratifies them. A promise to perform some isolated act, or a contract that is wholly executory, has no effect until it is ratified." (§204) This is apparently merely a different statement of the familiar classification of an infant's contracts into those which are valid until disaffirmed and those which are void until ratified, which classification, it is submitted, has no basis either in reason or in authority, although there are some loose statements in old text-books and some dicta in a few cases which seem to support it. The author (and the editor of the second edition) wisely refrain from attempting to cite any cases in support of this statement. Another slight inaccuracy of statement is found in the expression of the rule as to the emancipation of the infant by marriage, where it is said without qualification that a valid marriage of the child works an emancipation even against the will of the parent. (§129.) This is doubtless true in the case of female children, whose services after marriage would naturally belong to their husbands, but no authority is cited which supports the proposition that the marriage of a son, against the will of his father, works a complete emancipation, none of those cited going further than to hold that the son and husband is entitled to so much of his earnings as is necessary for the support of his new family. (*Comm. v. Graham*, 157 Mass. 73). And the contrary was held in *White v. Henry*, 24 Me. 531.

On the whole, however, the book fulfills well its purpose of giving an accurate statement of the law, together with a reasonable number of authorities in support of the principles found in the text.

E. H.