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Book Reviews

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BOOK REVIEWS.

COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS. By John F. Dillon, LL.D., Author of "The Laws and Jurisprudence of England and America;" President of the American Bar Association, 1891-1892; formerly Circuit Judge of the United States for the Eighth Judicial District; Chief Justice of the Supreme Court of Iowa and Professor of Law in Columbia University. Fifth Edition. Thoroughly revised and enlarged. Five volumes. Boston: Little, Brown, and Company, 1911.

A new edition of this pioneer and standard work in the field of municipal corporations requires no introduction to the student or practitioner of the law. The work first appeared in one volume in 1872, and a second edition was published in the following year; it passed through a third edition in 1881, still being confined to one volume, re-arranged and much enlarged. A fourth edition appeared in 1890. In this the work was expanded into two volumes, and it is this edition with which the lawyers of the present generation are best acquainted. Over twenty years of rapid growth and changes in this field of the law since the publication of the fourth edition have created a real need for a revision and enlargement of Judge Dillon's treatise. The fifth edition, the personal work of the learned author, satisfies this need.

This latest edition is more than double the size of that of 1890, being in five volumes, which, including the table of cases cited and the index, and omitting those pages devoted to the table of contents and the prefaces, contain three thousand eight hundred and two pages as compared with the two volumes of the fourth edition, containing sixteen hundred and seventy-one pages. This great increase in size is necessitated by the growth of the law of this subject rather than by the incompleteness or inaccuracy of the former edition. Entire new chapters on phases of the subject barely mentioned in the former edition have been added in this. One of these, "Public Utilities: Transportation, Water, and Light," which extends over more than two hundred pages, serves as a striking illustration of the growth of the law of municipal corporations during the last twenty years and the expanding effect of the same on a work that adequately treats the subject. While a not inconsiderable part of the increase in size is due to the addition of new topics treated in separate chapters, a larger portion is occasioned by the changes and qualifications of the text of the former edition made necessary by the decisions and statutes of the last two decades. Scarcely a chapter has escaped some considerable change and addition, and in some chapters hardly a section remains as it was in the preceding edition. This is illustrated by the first chapter in the first volume, devoted to a historical survey of municipal corporations. One might expect this to escape changes and additions as certainly as any chapter in the book; however, one section of this chapter has been expanded from approximately one hundred and fifty words in the former edition to nearly two pages in the new, and three new sections, cover-

ing some sixteen pages, have been added to this chapter in the latest edition. The radical nature of the changes necessitated in this edition by the growth of the law is well illustrated by a comparison of section 127, of the fourth edition, with section 291, of the new publication, both of which sections are entitled "Express Power to borrow Money; Negotiable Paper." The former reads as follows:

"*Express power* to a municipal corporation 'to borrow money' is usually held to include the power to issue its negotiable bonds, or other securities to the lender. But it does not include the power to *issue notes to circulate as money,* in violation of the statute law and public policy of the State."

As presented in the new edition this section now reads as follows:

"In some of the earlier decisions it was held *that express power* to a municipal corporation 'to borrow money,' naturally, if not necessarily, includes the power to issue negotiable bonds or other securities to the lender for the moneys so borrowed. But this doctrine has, in recent years, received further consideration, and the tendency of the decisions is to hold that while express power to borrow money or to contract a loan may, it does *not* necessarily or under all circumstances, include the implied power to issue, as evidence of the loan, negotiable bonds or commercial securities conferring upon *bona fide* holders immunity from defenses. But this rule is not of uniform application, and in some States it is held that express power to contract a debt carries with it the power to borrow money to pay the debt, and also the power to issue negotiable securities in evidence of the debts so contracted. This point will be found discussed in greater detail in the chapter on Municipal Bonds, to which the reader is referred. Express power to borrow money does not include the power to *issue notes to circulate as money,* in violation of the statute law and public policy of the State."

So we might continue to point out changes and additions of this sort, if space permitted. Suffice it to say that this edition is a real revision of the text of the former edition amplified with citations to the very latest cases on the subject.

No language can convey a better or clearer idea of the thorough and painstaking character of the revision presented in the latest edition of this work than the author's own words in the preface, where he says: "Diligent and anxious care has been given to make this revision of the last edition thorough and complete. Every section and every sentence has been gone over personally by me, with the result that the work has been enlarged as above stated and with the further result that in nearly every section and part of the present edition will be found additions and changes bringing the work down as fully as possible to date."

The author is said to have cherished, from early manhood, the desire to write a work upon some subject of the law which might be of use to the profession. The frequent references by courts and counsel to his "Municipal Corporations" and the high regard which the profession holds for it as an authority furnish the surest evidence of the accomplishment of this commendable purpose. The work has been, and will continue to be, regarded as one of the few real treatises on law produced by the passing generation. It

is the product of a brilliant legal mind, unremitting application and hard labor, furnishing a real and practical exposition of the subject with which it undertakes to deal, rather than a mere compilation of cases differing little, except in form, from a digest, the too common fault of the modern law text-book. The surprising fact is that one whose life has been so filled with arduous duties and responsibilities, as that of the author has been, has been able to devote to this purpose the time and labor necessary to revise so thoroughly this admirable work. The last revision is, as it should be, the best edition of the work, and furnishes a splendid monument to the industry and ability of a great lawyer. G. S.

PUBLIC SERVICE CORPORATIONS. By Bruce Wyman, Professor of Law in Harvard University. New York: Baker, Voorhis & Co., 1911, pp. ccxvii, 1517.

This work, in two volumes, is the author's effort to contribute to the profession a work upon a new branch of the law. Not that the subject of public employment is new. The common carrier and the innkeeper as engaged in a public calling have from the earliest times in England been subject to peculiar rules of law, and in the heyday of monopoly and of government paternalism there was a far more general interference by the State in private business than has been even proposed by any court or legislature in these days. Then almost every purveyor of the necessities of life—the miller, the baker, the smith, the doctor—was subject to public regulation, whereas now the protection of the public lies mainly in competitive conditions. No longer is it necessary to compel the doctor to answer the call of the patient. If one will not respond there are others who may be called, and the loaf of bread can be procured without the aid of the law to compel the baker to serve all indifferently, so that a generation ago the common carrier and the innkeeper were almost the only persons still subject to the old requirements.

But now again conditions are changing. Competition is dying down, if not dying out, and monopoly is assuming such proportions as never before. *Munn* v. *Illinois* (94 U. S. 113) was the first great case to recognize that when any business had assumed a position of vital importance to the public, conditions might be such as to make it in law a public use, and justify the State in subjecting it to public control because of its public interest. Developments since that time have gone so far that Mr. Wyman now feels it possible to formulate a great body of the new law of public service. In doing this he endeavors, in general, to justify his positions by authoritative cases, but he does not hesitate to enter unsettled fields, and to state his own ideas of what the law ought to, or probably will, be, and not infrequently he expresses his disapproval of decisions not in accord with his general theory, even though as yet lacking authority for his position. The work in short is no mere attempt at formulation of what has already been decided, but it undertakes to contribute to the whole subject, and to point out what in the author's opinion are the correct principles which should guide future adjudications.

There are a number of interesting comparisons between what the author

terms conservative and radical rules, which leave the impression that the author leans, if at all, toward the radical, though in his preface he rather claims to be a conservative, at least with reference to the extent to which State regulation of private business should go. He is clear, however, in sounding the note that business is more and more becoming affected with a public interest, and that as it does thus change the law must more and more furnish the necessary regulation to save the public good.

After an historical introduction the work discusses in turn, Book I, Establishment of Public Calling; Book II, Obligations of Public Duty; Book III, Conduct of Public Employment; Book IV, Regulation of Public Service. Appendices are devoted to a reprint of the Interstate Commerce Act, Commerce Court Act, Elkins Act, Expediting Act, and forms for proceedings before and by commissions. In citing authorities the effort has been to select the few best cases rather than to make citations exhaustive, though on some of the newer phases of the subject all the cases thus far arising have been noted.

On the whole Mr. Wyman has given the profession a simple, clear, full and very interesting and instructive survey in a single work, of law that is of great and growing importance, which is being applied with increasing frequency in an ever broadening field, and which has hitherto been available only in scattered records. For this, and for the able manner in which he has accomplished it, the author has laid the profession under a substantial obligation. E. C. G.

COMMENTARIES ON THE LAW IN SHAKESPEARE, WITH EXPLANATION OF THE LEGAL TERMS USED IN THE PLAYS, POEMS AND SONNETS, AND DISCUSSION OF THE CRIMINAL TYPES PRESENTED. By Edw. J. White, St. Louis, Mo.: The F. H. Thomas Law Book Co., 1911, pp. 524.

Shakespeare's astonishing acquaintance with law and law terms has called forth a long series of volumes, of which this is the latest. The bulk of this volume (524 large octavo pages), when compared with other volumes on this subject, is unusual; and is to be explained by the author's practice of including in voluminous notes all examples of legal terms found in Shakespeare. Bartlett's *Concordance* furnishes the examples more handily arranged, but to one not having access to Bartlett, this inclusion adds a certain practical value to a one volume survey of Shakespeare's use of legal terms.

The practical features of this book generally, are its especial merit. It is "an attempt to abstract and brief every proposition of law, discussed or presented by the poet, in his plays and sonnets." In this endeavor to make clear "every proposition of law," the author has accomplished his best services in defining and explaining the half-obvious legal meanings, that have been taken for granted too often by many editors.

Here and there, however, this method of refusing to take for granted anything has been carried too far, resulting in a needless over-explicitness. For example, it is explained (p. 75) of Dogberry's preliminary examination of his prisoners, that "the crime of 'perjury' of course, was not committed

by the calling of Don John a villain, but if any offense this would be slander only." Again (p. 41) in reference to Olivia's telling Malvolio that he should be both plaintiff and judge of his own cause, we are told that "of course this would be an unheard of legal proceeding, wherein a party was also a judge in the cause, for it would lack the disinterested element which must always characterize the judge of any controversy."

An inclination is evident in other places to read into words and phrases legal meanings that do not exist. In *Twelfth Night* (Act 4, Scene 1), after Sir Andrew has received several unexpected blows from Sebastian, whom he had attacked under the impression that his victim was Cesario, he exclaims:

"Nay, let him alone; I'll go another way to work with him: I'll have an action of battery against him if there be any law in Illyria. *Though I struck him first, yet it's no matter for that.*" Mr. White explains Sir Andrew's last words by assuming on the latter's part an intimate knowledge of the law that permits a man to defend himself, but not to retaliate to the injury of the attacking party. "Force may be used," to quote his words, "only to avert an impending evil and to prevent a person from being overwhelmed, but not as a punishment or by way of retaliation for an injurious assault. Any addition of specific ultimate wrong or means by which additional danger is inflicted generally is held to increase the offense of battery, hence, the conclusion of the speaker, 'though I struck him first, yet it is no matter,' since in strict legal aspect, the previous treatment would not have justified the punishment subsequently inflicted and an action for damages would lie therefor." This intimate knowledge of the law on the part of Sir Andrew is certainly less in character than a foolish self-persuasion on Sir Andrew's part, that he could effect the disgrace of his opponent, even though he himself had not kept "o' the windy side of the law."

Also Leonato's comment (Much Ado, Act 2, Scene 4) upon the necessity of a God-fearing man entering upon a quarrel with fear and trembling is explained (p. 66) with reference "to the legal attitude such a person would occupy, for in law, one who is not in the peace himself cannot have his peace disturbed." Birch [*Philosophy and Religion of Shakespeare*, p. 308], correctly interpreted this passage as an ironical thrust at the Puritans who were frequently represented by their enemies as eager to urge a scriptural injunction to cover a natural disinclination to personal combat. Fabian's reference to Cesario (Twelfth Night, Act 3, Scene 4), as "a coward, a most devout coward, religious in it," glances at the same ironical association of ideas in Shakespeare's mind.

It is regrettable that more care was not taken to make the frequent quotations from Shakespeare more reliable. In an examination of the passages quoted from three plays I have noted the following corruptions of text:

P. 94 (Love's Labor's Lost, Act 1, Scene 1): *continental cannon*, should be *continent canon*.

P. 102 (Love's Labor's Lost, Act 2, Scene 1): *daily sin*, should be *deadly sin*.

P. 252 (1 Henry IV, Act 1, Scene 1): *Mordrake*, should be *Mordake*.

P. 256 (1 Henry IV, Act 2, Scene 4): *how plain a tale,* should be *how a plain tale.*

P. 258 (1 Henry IV, Act 2, Scene 4): *into,* should be *unto.*

P. 261 (1 Henry IV, Act 3, Scene 2): *to a strict account,* should be *to so strict account.*

P. 263 (1 Henry IV, Act 4, Scene 1): *his rich reprisal,* should be *this rich reprisal.*

P. 263 (1 Henry IV, Act 5, Scene 4): *a counterfeit of a man who has,* should be *the counterfeit of a man who hath.*

P. 267 (2 Henry IV, Act 1, Scene 2): *and a bunch of keys * * I had as lief they put rats-bone in my mouth,* should be *and bunches of keys * * * I had as lief they would put rats-bane in my mouth.*

P. 268 (2 Henry IV, Act 1, Scene 2): *If I become,* should be *if I do become.*

This volume as a whole is a comprehensive study of the field it covers; and although it is not able to add any considerable information to the sum of our knowledge on this subject, it is yet a stimulating presentation of this phase of the master mind. M. P. T.