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Book Reviews

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BOOK REVIEWS

Restatement of the Law of Security. 1941, American Law Institute Publishers, St. Paul. Pp. xxiv, 596.

The Restatement of the Law of Security does not deal with chattel mortgages, conditional sales, trust receipts nor real property mortgages, all of which are usually included in courses on Security or Credit Transactions. The committee has taken a limited portion of the field for treatment in this volume. It deals with pledges, possessory liens and suretyship. The latter heading is taken up in the second of the two divisions of the work (340 pages out of the 565 pages of text matter). One finds here abstract propositions of the law of suretyship under the following headings: nature and creation, suretyship and principal, surety and creditor, cosuretyship and subsuretyship, third party beneficiaries in construction contracts, official bonds and judicial bonds. A recital of these headings gives some idea of the treatment of the subject. At first glance, it might suggest a rather sketchy treatment of an important subject.

We have here abstract statements of the law of pledges, liens, and suretyship with a fair number of problems illustrating these abstract statements. The board of editors have for the most part followed the majority holdings where there is a split of authority. Without citation of cases, it is hard to see how the practitioner is going to benefit from this summary of the law when he is preparing his case for trial or drawing his brief on appeal to his appellate court. When undertaking to do either, he might question whether the product is worth to the profession the seventy-five thousand dollars, which the editors say in their preface, was set aside for its preparation. Still he would be forced to admit that the board had successfully done what they set out to do, that they had produced a work that showed real scholarship.

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LIVINGSTON HALL AND SHELDON GLUECK, *Cases and Materials on Criminal Law*, American Casebook Series, West Publishing Co., St. Paul, Minnesota, 1940, pp. 1-xxi, 1-556.

The authors, in what may be considered to be a first-rate casebook, preface their arrangement of the cases by some philosophical material on the subjects of who are criminals, theories of punishment, and sentencing practices and principles. This material may be

either omitted or assigned for collateral reading if it can be assumed the student already has this perspective.

The primary emphasis of the casebook is upon homicide and theft. Other crimes, such as assault, battery, rape, receiving stolen property, and trespass to property are treated separately but not extensively. The justification is that the editors consider homicide and theft to be the major problems in substantive criminal law.

The last part of the casebook takes up the substantive law of crimes on general principles of criminal liability. Mistake of fact and *mens rea*, mistake of law and specific intent are considered under the heading of mistake as a defense. Culpability is developed under the headings of compulsion, insanity, intoxication, and infancy. Inchoate crimes cover conspiracy, attempt and solicitation. The chapter on parties is a wholesome mixture covering various degrees of principals, accessories before and after the fact, agents and corporations. The advantage, seemingly, of discussing general principles of criminal liability will undoubtedly tend to whet the student's power of analysis even more, although some confusion will be occasioned.

In a very important *appendix* the social case history of one James Glynn (name disguised) is related after an initial interview and field investigation, which has the advantage of placing an entire criminal case before the reader.

There are certain features of the casebook which should occasion favorable comment. The case selections are short and to the point. Long-winded court instructions respecting the various elements of crimes, for which some criminal law casebooks are famous, have not been used extensively which, from the pedagogical point of view, seems sound for students commencing the study of criminal law. There are numerous problem cases summarized which apparently would save manual labor on the part of the student. Use of the casebook, however, will probably disclose little saving in manual labor for the points raised will certainly occasion reading of the original case.

The editors sound very rational and appealing in the points of view presented, but the intelligence of criminal law administration is certainly overrated. In the section on culpability the editors miss an opportunity to insert material related to the exercise of clemency by the executive under his pardoning power.

For Kentucky lawyers considerable reliance on the Kentucky cases is to be found, and the *Kentucky Law Journal* is cited frequently.

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Success in Court, by FRANCIS L. WELLMAN and Nine Prominent American Trial Lawyers. New York: The Macmillan Company. 1941. Pp. xviii, 404.

The practicing lawyer as well as the law student anticipates with pleasure the reading of a book written by Francis L. Wellman. His "The Art of Cross-Examination," "Day in Court" and "Gentlemen of the Jury" were read by lawyers, students and laymen with profit as well as pleasure because he teaches as well as entertains. In his new work, "Success in Court," he has drawn on the experience of several successful trial lawyers and given us their views as well as his own on how the beginner may best attain success in court. Wellman seeks to teach by example. He urges the beginner to become familiar with the careers and methods of the great legal lights of the past. He himself followed this method of acquiring success in the court room when he first entered the practice of law. He has not hesitated to draw upon his own cases to illustrate his points. He recounts these experiences in a very interesting way. He has made his part of the book not only instructive to the beginner but a source of inspiration to the practitioner. He urges his readers to study the great lawyers of the past, to be a gentleman under all circumstances, to be honest with both judge and jury, and to make the most careful preparation before going into the court room. Everyone will agree that these elements are fundamental to success, not only in the court room but elsewhere.

Those familiar with the earlier works of the author will find that he has drawn in part on materials used before. Sometimes his narrative is somewhat disconnected, he turns from one theme to another without first preparing the reader for the transition.

Some of the contributions made by the nine trial lawyers are hardly worthy of a place in the book. The contribution of John W. Davis is elementary, not very interesting, although instructive. Coudert's article seems out of harmony with the rest of the book. It deals with the writer's practice in the field of international law. Thompson's chapter is more in line with Wellman's method of imparting instruction. He has made it interesting by giving personal reminiscences. He, too, emphasizes the importance of preparation and cautions his reader in regard to cross-examination. Uterhart also urges his reader to make careful preparation before trial. Thus he puts down as the chief essential for success in the court room. He likens preparation for trial to the planning done by a general before battle. He would also disarm his opponent by bringing out the bad as well as the good in his case before the opponent can stress the bad. Du Vivier tells us what an American lawyer did in Paris before the German occupation. Martin W. Littleton deals with the expert witness and gives valuable instruction in regard to the cross-examination of the expert. He has made his contribution very interesting by the use of illustrations from actual cases. Buckner

parallels Wellman's contribution by going over the various steps in the trial of a case; preparation, opening and direct examination, and summation. His "idea is that the guiding principle to all cross-examination should be to establish the truth." Day stresses the importance of his first six years practice in a fair sized town in the middle west. He wishes every young lawyer could have a similar experience. His recital of personal experiences and observations adds little to what has already been set forth by the other contributors. Finally, Weymouth Kirkland stresses the importance of the lawyer's having a theory as to the accident or facts involved as a basis for his examination of witnesses, both direct and cross-examination. As he points out, it may become necessary during trial to change the theory, but nevertheless it is quite essential to have a theory as to how things happened. His is a valuable contribution to the book.

Mr. Wellman's long and successful career in the court room, his interesting way of telling his experiences, make the present volume a valuable addition to the lawyer's library.

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JOSEPH E. KALLENBACH, *Federal Cooperation with the States under the Commerce Clause*, University of Michigan Publications, History and Political Science, Volume XIV The University of Michigan Press, Ann Arbor, Michigan, 1942, pp. 1-viii, 1-428.

The importance of this book is not to be minimized, since the national emergency occasioned first by the economic depression and then World War II has been the occasion for a number of cooperative developments which several decades ago would have caused more than intellectual curiosity. When Jane Perry Clark wrote *The Rise of a New Federalism* in 1938,¹ the question of the relation of the states to the federal government was considered more or less fixed for the time being.

Kallenbach takes the commerce power of the national government and traces its legal development through a number of phases. He distinguishes four possible interpretations of the commerce problem: (1) the conditionally-exclusive power theory; (2) the concurrent powers theory; (3) the exclusive power theory; and (4) the local-concurrent powers theory. Abstractly stated, these divisions do not have much meaning, but their application to the actual cases decided by the Supreme Court takes on considerable life. The Supreme Court has alternated between acceptance of these various theories at different periods of our constitutional history.

The more recent instances of cooperation between the federal and the state levels of government are in connection with the matter

¹ Columbia University Press, New York City.

of intoxicating liquors, where the federal liquor enforcement act is adoptive in character with applicability varying from state to state as the laws of the states differ in their definitions of the term "intoxicating liquor."² Other instances of federal-state cooperation are to be found primarily in the fields of quarantine and health laws, port pilotage laws, and workmen's compensation in maritime employments.

Considerable of the book is devoted to a treatment of the theory of divestment of power to authorize the other level of government to embark on various types of legislation. The Supreme Court in sustaining cooperative legislation or tacitly approving it "has permitted a degree of flexibility in federal-state relations under the commerce clause which a rigid division of authority in accordance with the concept of dual federalism would deny."³

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FRANCIS X. BUSCH, *In and Out of Court*, Chicago, DePaul University Press, pp. 1-xii, 1-306, \$3.00 (1942).

For delightful and instructive entertainment one may well peruse this account of dramatic trials, unusual situations, difficult problems, humorous incidents, and unique personalities, which the author has collected in an interesting manner. The excerpts are based upon actual accounts which the author, as court reporter, practitioner, and legal educator, had collected over a period of some forty years. The experiences recounted take on considerable life for those familiar with the courts of Illinois and the Middle West. Chicago lawyers in particular will appreciate the local incidents relating to that environ. The hand-drawn pictograms enhance the interest of the varied excerpts given. The stories relate to many national personages, such as Clarence Darrow, the Honorable Kenesaw Mountain Landis, etc. For occasional relaxation from the rigors and routine of everyday practice, the excerpts are well calculated to afford some reminiscent relief.

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THE RULE AGAINST PERPETUITIES, by JOHN CHIPMAN GRAY. Fourth edition by Roland Gray Boston: Little, Brown and Company. 1942. Pp. xcv, 895.

The son of a great teacher and a great lawyer has done law teachers and lawyers a great service in bringing out the fourth edition of his father's famous work on the Rule against Perpetuities.

² 49 Statutes-at-Large 1928, 27 U. S. C. A. (1940 Supplement) secs. 221-228.

³ p. 382.

It was in 1886 that the first edition appeared. It has been the standard authority on the subject ever since and it has been regularly cited by courts not only in all the states of this country but in England as well. It is exceptional for an American treatise to be cited by an English court and Professor Gray's work was one of the first to be referred to.

The editor has lightened the work of reviewers by setting forth in his preface the method he has followed in bringing out the fourth edition and noting the principal changes he has made. He tells us that he has followed the language of the author as far as possible, rewritten where necessary to show the later developments in the law and made some additions. He has added new authorities and citations in the notes, referring to articles in the leading law reviews and noting the relative sections of the American Law Institute Restatement of Property. For the most part he has not attempted to distinguish the new material from the old by any system of marks "but where he has departed from the author's conclusions, he has made it clear that changes are being made." A good illustration of this is found on page 125, note 3. It reads: "Section 121j, in previous editions of this work, discussed what appeared to be a local doctrine in Kentucky as to postponement of enjoyment, similar to the doctrine in *Claflin v. Claflin*. The section thus designated is omitted in the present edition, for the reason that the Kentucky courts now seem to have adopted in effect the doctrine of *Claflin v. Claflin*, and there appears to be no ground to suppose that a peculiar situation exists in that state as to postponement of enjoyment of equitable interests."

In numbering the sections the editor has substituted decimals where the author used letters in the earlier editions; for instance, in the section just cited, 121j of the third edition, had he used that section in the new edition, it would have been 121.9.

It is hardly necessary for one to give lawyers an idea of what Gray's Rule Against Perpetuities is like. Scarcely a practitioner is not more or less familiar with its pages. The author developed his subject by the discussion of cases. This he did by the use of clear, concise English. There was no burying of ideas in a labyrinth of words. He laid stress upon the origin of the legal principles involved. All the leading cases in this field of the law passed under the scrutiny of his master mind. He usually gave a discussion of the English decisions first and then the American cases taken up state by state. Sometimes, however, there were only summaries of the decisions of the American courts. We say he covered all the leading cases on the subject. We might say that some of them are leading cases today because Gray gave them a place in his treatise.

One familiar with Gray's views on the Statute Quia Emptores and its effect on determinable fees, is, of course, interested to see how the editor of the fourth edition has handled the matter. Gray took

the position that after the passage of that statute there could be no determinable fees created. The American courts have taken an opposite view and hold that they can be created. The editor of the fourth edition makes a right about face and accepts the conclusion reached by the courts. The whole question is taken up in Appendix E, where due consideration is given to the controversy concerning this question.

The publishers have used taste and have not spared expense to produce a very attractive law book. It is hard to see how the workmanship, printing and materials used can be improved.

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