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Book Reviews

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BOOK REVIEWS

A Treatise on Mortgages. By William F. Walsh. National Textbook Series. Chicago: Callaghan and Company. 1934, pp. xlviii, 376.

Professor Walsh's Treatise on Mortgages is a concise, up-to-date manual on the law of mortgages. There has been a need for such a work for a long time. Students of the subject certainly have in this book the work they have been looking for. Professor Walsh's treatment of the subject is scholarly. He carefully analyzes the problems and gives the historical background where necessary to an understanding of the present rule. Where two or more rules or theories prevail, he has carefully weighed the claims of each as in the case of allowing a mortgagee to hold the grantee of a mortgagor's interest. In this particular case he gives due prominence to each of the three grounds given for allowing recovery; the "subrogation" doctrine, "the third party beneficiary theory" and the "avoidance of circuity."

The footnotes are unusually complete and numerous. They contain citations of several thousand cases. In fact, the number of cases cited suggests the confusion to be found in the law of mortgages and the complicated problems that the subject presents.

Professor Walsh neglected an opportunity when he omitted a consideration of the Uniform Mortgage Act from his book. The growing practice of mortgage companies to extend their business of lending money on the security of mortgages beyond the borders of their home state, has emphasized the importance of greater uniformity in the law of mortgages, especially in regard to the methods of foreclosure. Foreclosure proceedings are for the most part statutory and there seems to be no good reason why the statutes of the various states should not be uniform.

W. Lewis Roberts.

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Declaratory Judgments. Edwin Borchard. Banks-Baldwin Law Publishing Company, Cleveland, Ohio, 1934. Pp. vii-xxii, 1-669.

This book is much more than a treatise. As a treatise, it is the first and only one on the subject. The author is pioneer, historian, and propagandist, all in one. He has two grand passions. One of them has caused him to develop his views on the proposition that the sovereign state and its municipal corporations are not required to respond in damages for torts occurring at a time when the sovereign is said to be acting in a governmental capacity.

The other was the occasion of this book. He felt keenly the lack of judicial relief to settle uncertainties arising in various legal relations in advance of an overt act. The declaratory judgment, as he points out, is distinguished by the lack of a writ of execution or other coercive decree. The various types of situations are presented to which the declaratory judgment is applicable. The history of this device is traced through the Roman and civil law and its progress in the Anglo-American system is recited. It seems peculiarly useful for the interpretation of statutes, ordinances and to the obligations arising under administrative procedure in this new day when administrative regulations have increased so mightily.

The author has been a propagandist for the declaratory judgment and his book represents a very great amount of investigation. It is put forth temptingly and no lawyer in the thirty-one states which have adopted the uniform act, can afford to be without it. Mention is made in it of the large number of cases construing the act from New York and Pennsylvania. But Kentucky lawyers will be interested to know that more cases are cited from Kentucky than from either of these—some one hundred seventy-five.

The author is believed to have suffered from a *lapsus memoriae* when he wrote on page 512, "In the United States the probate court has been made by statute a court of construction, the equitable jurisdiction being limited." The authority cited deals rather with the administration of estates in equity. He refers to Story and Pomeroy but he should have consulted Woerner[1] and another section in Story.[2] Probate courts, of course, must construe wills, but this construction is incidental and is rarely, if at all, *res adjudicata*. The validity of the general observations in the chapter on wills does not, however, seem greatly impaired thereby.

It is difficult for any Yale man to pass up an opportunity to pay tribute to Hohfeld's classification and to insist upon the full panoply of rights, privileges, powers, immunities, duties, no rights, etc.[3] Professor Borchard also avails himself of this opportunity, right, privilege, or power (or is it a duty?) and at the same time dedicates the book to Professor Hohfeld.

The book is timely and well done and lawyers will find much use for it. The author, in his preface, pays generous and well deserved tribute to his research assistant, Miss Phoebe Morrison.

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[1] The American Law of Administration of Estates (3rd. ed. 1923), sec. 155.

[2] Equity Jurisprudence, (4th. ed. 1918), sec. 1890.

[3] See, for example, Corbin's Anson on Contracts, preface; the second edition of Vance on Insurance, preface; Clark on Code Pleading, p. 78.

JUDICIAL REVIEW OF FEDERAL EXECUTIVE ACTION. By Patrick H. Loughran, LL.M., D.C.L., of the District of Columbia Bar. Charlottesville, Virginia, The Michie Company, 1930, pp. xvi, 813.

The contents of Judicial Review of Federal Executive Action is set forth as "a compilation of cases that exhibit the extent of the power in the federal judiciary to review the acts of executive officers, boards, bureaus and commissions of the United States in proceedings for injunction and mandamus under the law of the District of Columbia, and in proceedings for those remedies under the general jurisdictional acts, in the District Courts of the United States in the states, that have not been suspended by special statutory remedies." Under Title I, the author has reviewed the proceedings for injunction and mandamus in the District of Columbia and covers under Part I the substantive and adjective law of the process and under Part II has collected the cases bearing on the subject. Title II covers the proceedings in the Federal courts.

The method followed is that of stating a proposition or question and then giving a holding of a case deciding the issue and quoting from the opinion of the court. There is no attempt to analyse, criticise or suggest. As a result of this method the great bulk of the book is made up of excerpts from Federal court opinions. This material is, of course, available in the digests, texts on Constitutional law and the United States Code Annotated, for the most part. It is, however, in much more convenient form as given here. There is an excellent index not only of the subjects covered but of the cases cited and quoted from. Taking a couple of problems presented, by way of illustration, we find number 37 is, "The president's political executive power under the Constitution, and his exercise of it through subordinates acting pursuant to his discretion." The case of *Myers* v. *United States* is cited and quoted in part. Section 39, "Only when acting as the president's alter ego in the effectuation of his Constitutional discretion, is an executive officer beyond the jurisdiction of the court." Here *Stokes* v. *Kendall*, 5 Cr. (C. C.) 162, 276, is cited and quoted.

In the foreword the author has given us food for thought. He calls our attention to the fact that there are large numbers of transactions between citizens and executive officers of the government where the citizen has no appeal or redress from the rulings made. Congress has been neglectful in failing to provide adequate court review to prevent injustice to both private right and public interest under the acts of the executive department. It has perhaps acted on the theory that "the king can do no wrong." Mr. Loughran's book is worthwhile if for no other reason than that it emphasizes the need of legislation in this matter.

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A HAND BOOK OF EQUITY. By Wendell Phillips Stafford. National Law Book Company, Washington, D. C., 1934, p. lxxx, 458.

The author of this volume, a former associate justice of the Supreme Court of Vermont and of the Supreme Court District of Columbia taught the course in Equity at George Washington University for many years. No doubt this pasteurization of the old leading cases will be recognized as a sort of answer to a student's prayer. There are no foot notes to disturb the reader and the rather easy-going style of the author makes the volume a desirable one for beginning students.

There are forty-one chapters which attempt to portray the high spots of Equity in a rather brief but succinct fashion, omitting entirely consideration of trusts. One finds the personal experiences of Judge Stafford occasionally mentioned and most enlightening, but primarily the reader is left to work out his own salvation. It is too bad that more of the author's personal views were not included as it would have been a great help to the novitiate to have the benefit of an eminent judge's long experience on the bench. On page 114 in referring to the difficult doctrine of the balancing of the conveniences or equities, for example it states that there are two contradictory lines of decision and "it will be for the reader to decide for himself which is right."

The volume is bound in dark blue fabricoid and trimmed in gold; its size is about 6 x 9 inches, but the printed matter covers only a space 4 x 5 1-4 inches, with a type that is a little larger than that found in most law books . . . a commendable feature. There is an analytical table of contents and a table of cases and a table of regnal years. A number of English cases have been used as well as a large group from the Eastern states. There were about ten cases from Illinois and three cases from Kentucky, namely: *Commonwealth* v. *McGovern*, 116 Ky. 212 and *Bullitt* v. *Eastern Company*, 99 Ky. 324 and *Woolums* v. *Horsley*, 93 Ky. 582.

There is nothing dealing with the N. R. A. and kindred legislation in the volume, but there is a concise chapter on jurisdiction conferred on Chancery Courts by statute. In selecting the leading cases due credit has been given to the various case books with the exception of the recent excellent collection of equity cases by Professor Chafee and Professor Simpson whereby some recent important cases only found in that publication have been omitted in the new hand book. (Ames' Cases were listed, but since 1904 many new matters have arisen and the 1933 work of Chafee and Simpson realizes that fact).

Considering all things, I conscientiously recommend the hand book to students and teachers notwithstanding such works as Bispham, Walsh, Clark, and Eaton. The volume fills a gap in legal literature.

JOHN W. CURRAN.

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THE ILLINOIS BUSINESS CORPORATION ACT ANNOTATED WITH FORMS. The Corporation Law Committee of The Chicago Bar Association. The Foundation Press, Inc., Chicago, 1934. Pp. vii-xi, 1-591.

Several states have overhauled their statutes on corporations in recent years. Illinois is the latest, the legislature of that state having passed an act making a thorough-going revision of the laws regulating private corporations in 1933.

It is not possible to note in detail all the important changes. A few must suffice. Thus, of outstanding importance are sections five and six, the former dealing with the general powers of corporations and the latter with the power to acquire its own shares. In section five the powers are enumerated and in section forty-seven, it is declared that these powers need not be set out in the articles. Section five sets out the general powers. Section eight, dealing with the consequences arising from ultra vires transactions largely eliminates that vexatious problem for Illinois.

With respect to the issuance of stock at a discount or for overvalued property, causes of litigation do not seem to be greatly diminished, though the statute provides in section 18 (see also section 20), that the judgment of the directors or shareholders as the case may be shall stand in the absence of actual fraud. This is the statutory adoption of the "good faith" rule so often criticized. Section 23 protects a bona fide purchaser of shares which were not paid up. Under section 26, meetings of shareholders may now be held without the state.

An important section (28. See also section 14), eliminates one serious defect in corporation policy noted and criticized by Ripley and Berle, in that it declares that every share of stock, regardless of class, shall be entitled to one vote. Section 38, conferring power to appoint an executive committee which may have all the full board's powers is interesting and seems capable of expansion. Section 147 makes it possible that action may be taken by shareholders without a meeting where consent of all the shareholders is obtained in writing. Provision is made for dissenting stockholders which removes their nuisance value. (Section 70. See also section 6 (c)).

Each section is thoroughly annotated with Illinois decisions and all novelties are pointed out. There are adequate references to articles in legal periodicals on the several subjects. The volume should be widely useful even outside Illinois.

FEDERAL LAW OF CONTRACTS. The Publishers' Editorial Staff. Edward Thompson Company, Northport, and West Publishing Company, St. Paul, 1934. Volume 1, pp. iii-xxi, 1-618; Volume 2, pp. v-xxi, 1-573.

This treatise and one appearing a year or so ago on Constitutional Law evinces a possibly growing feeling that the law as announced in

the decisions of the Federal courts, should be stated by itself as a distinct body of law. That the implications of *Swift* v. *Tyson* (16 Pet. 3, U. S. 1842), (Judiciary Act of 1789, sec. 34, "That the laws of the several states . . . . except where the constitution, treaties or statutes of the United States shall otherwise recognize or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases in which they apply,") is limited to laws strictly local, etc., are far-reaching, few will question. United States District Judge Charles I. Dawson recently pointed out how these Federal decisions might be brought within state control, viz.: by enactment by the legislature of the principle involved in state decisions in those cases where the Federal courts differ from state courts on matters of general law. ("Conflict of Decisions between State and Federal Courts in Kentucky and the Remedy", 20 Ky. L. Jour. 3 (1932).

Chapter XIII, on "General Rules of Interpretation" undoubtedly is the most useful one of all. In spite of *Swift* v. *Tyson*, it seems to be questionable whether it is worthwhile to state all Federal decisions as being Federal Law. In most matters there is really no conflict. It is, of course, useful to know how the Federal courts hold in all those cases where a litigant may have a choice as to the court in which he may sue or be sued. This is the execuse for the treatise.

The table of contents is similar to that of a general treatise on contracts, though the treatment is far different from that of Williston. No general theorizing is attempted. No references to the material in legal periodicals were discovered. It is a non-critical accumulation of the decisions with comment in the text concerning their general application. Such a treatise has its place.