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Book Reviews

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BOOK REVIEWS


The book fairly bristles with up-to-dateness in legal terminology, viz. Appollodorus v. Stephanus, habeas corpus, special pleas, etc. An interesting picture of the first law school, one conducted by Socrates (Socratidion as Aristophanes playfully called him), is presented in which old Strepsiades seeks to learn how "to make the worse to be the better argument" and "evasion of a suit and persuasive counter-argument" (p. 202). Specific illustrations of this sophistic are given as that speech of Xenophon when conducting the retreat of the ten thousand (p. 158). Georgias appears before us, and Hippias, and Prodicus the synonym-monger, and other sophists, orators, historians and rhetoricians.

Many interesting comparisons are noted between Athenian law and procedure and that of our common law, e.g. the Athenian counterpart of our qui tam actions (pp. 46, 49, 61, 200); their criminal prosecutions and our criminal appeals, and early form of criminal trials, p. 30; personal knowledge of the jurors (p. 77); the handling by a litigant of his own case (201) (Cf. Rex v. Hugh, Yearbook 30 and 31 Ed. I, 529 (1302). The impeachment procedure in Athens (pp. 27, 34, 44) seems more like our early criminal appeals and not much like an English or American impeachment proceeding. The Athenian doctrine of res judicata pp. 41, 74, 133, as also that of the jurisdiction of a particular court (p. 45, 51, 52) bears only outward similarity
to our own, and it is interesting to note for example, the variety of ways for the attack upon the validity of a will (p. 132).

Occasionally Mr. Bonner might have used a technical instead of a non-technical term, as for example on page 55, instead of adjournment he might have suggested a continuance.

The closing chapter on Notable Athenian Trials, is of special interest. Mr. Bonner concludes that after all the criminal law was better enforced then than with us (p. 95). It is interesting to observe that whereas Professor Radin who prepared a recent treatise on Roman Law, was a classicist turned lawyer, Professor Bonner is a lawyer turned classicist. Such a combination is indispensable for the production of such an effort as this.

The book is very interesting and the work is well done.

Alvin E. Evans.


Professor Pollitt’s Cases on Problems in the Law of Real Property is devoted almost exclusively to the decisions of one state, New Jersey, and is designed for use in the New Jersey Law School. Out of one hundred and eighty odd cases selected, seventeen only are taken from other jurisdictions. Of the old landmark cases that have furnished mental exercise for generations of students of real-property law, five only have been selected; Dumpor’s Case, Board of Freeholders v. Buck, First Universalist Society of North Adams v. Bolend, Priests of the Church in Brattle Square v. Grant, and Spencer’s Case.

The selection of cases almost exclusively from one jurisdiction, however excellent may be the courts of that particular jurisdiction, seems highly objectionable. In the first place, it is counter to the present-day efforts to secure uniformity in state laws. Lawyers who are trained in the local law alone are cut off to a large degree from the benefits gained from contact with the ideas and suggestions to be found in the decisions of the other forty-seven states and the federal courts. Few courts, indeed, ever limit themselves to their own reports when writing their opinions. Furthermore, it is difficult to see how a case-book can be compiled from the decisions of one jurisdiction that will conform pedagogically to the fundamental ideas of the case.
system. The selection from different jurisdictions enables the editor to choose conflicting opinions on nearly every important topic covered and thereby stimulate original thinking on the part of the student. If the casebook is to be used by the instructor as a source book from which he is to lecture, that is a different matter, but it is not the case method of teaching. The editor might better put his material in the conventional textbook form.

The compiler of a casebook which is to cover the entire field of real property is certainly confronted with a difficult task. Of necessity many phases of the subject are bound to be slighted, if not omitted entirely. In this particular work the editor has devoted the first ninety pages to the subject of concurrent ownership, meaning thereby joint tenancies, tenancies in common and tenancies by the entirety—twice as much space as is ordinarily given to such estates in the regular two year course in real property. The next fifty odd pages are given to terminable fees—estates upon condition and estates upon limitation; one hundred and ten pages to future estates and executory interests; forty to the rule in Shelley’s case; seventy-five to the rule against perpetuities; and the remaining two hundred and fourteen pages to supplementary cases, which cover water rights, accretion, adjoining land owners, adverse possession, deeds, dedication, covenants running with the land and restrictions enforceable in equity, rent, church pews, and estates upon condition once again.

Aside from these two fundamental objections, there is much to commend in the book. The cases seem to be carefully edited. The author has not been guilty of making abstracts of the facts and thereby denying the student the benefits of a valuable training in learning to make a statement of complicated situations which will be concise and at the same time exact. The mechanical make up of the book is excellent. The type is clear and easy to read, the paper is of the best quality, and the binding in standard law book form. The book presents a very pleasing appearance.

W. Lewis Roberts.

Here indeed is a human interest sea tale from the law. Mr. Hicks has given life, color and background to the case of United States v. Holmes, tried in the Circuit Court of the United States in 1842 and reported in 1 Wallace, Jr. 1, Federal Cases, No. 15, 383. The defendant, Alexander William Holmes, was one of the crew of the good ship "William Brown." This American sailing vessel left Liverpool on Saturday, March 13, 1841, bound for Philadelphia. There were eighty-two persons aboard this freighter including sixty-five emigrants in the steerage. At a place in the vicinity of the Titanic disaster, the "William Brown" struck an iceberg. Thirty-one of her passengers were immediately lost and the remaining passengers and the crew were huddled in two small boats.

The boat in which Holmes, the defendant, found himself was only twenty-two and a half feet long, and in it were crowded fifteen women, sixteen men, one boy and a baby, besides nine of the crew; forty-two in all. The captain, who was in the other small boat, had placed Rhodes, the mate, in charge of the boat carrying the defendant. After drifting for hours with no hope of rescue in an overloaded boat which even prevented the crew from bailing or rowing effectively, sixteen passengers were thrown over board as human jettison. The next morning the remaining twenty-six were rescued. Holmes was convicted of manslaughter and sentenced for a term of six months at hard labor in the Eastern Penitentiary of Pennsylvania.

In tracing the development of this unusual case, Mr. Hicks has added color and background by presenting vivid biographical sketches of the attorneys and judges in the case, the conflicting views expressed in newspaper editorials of the day, the closing arguments of counsel and the charge to the jury. The extreme difficulty of reaching a just decision in view of the extraordinary circumstances is cleverly summarized in the chapter entitled, "What Would You Have Done?"

A number of interesting and perplexing legal problems are involved in a solution of this case. (1) Would the fact that Holmes acted under orders from the mate have any legal bear-
ing on his guilt or innocence? (2) Justice Baldwin, in his charge to the jury stressed the point of the failure to cast lots. But would the agreement by all the parties on board to abide by the lot be a defense to an indictment for manslaughter? Suppose one or more persons dissented from the drawing of lots, "would that have any and what bearing on the legal effect (if any) that the drawing of lots would otherwise have?" Would it be lawful to take the life of one person who alone refused to draw lots? Would not Holmes have been more guilty if the selection had been made by lot? Would it not then have been a cold-blooded, reasoned act? (3) Justice Baldwin held that the law of necessity did not apply to Holmes because he owed the passengers a superior duty. "Before the protection of the law of necessity can be invoked, a case of necessity must exist, the slayer must be faultless, he must owe no duty to the victim, and be under no obligation of law to make his own safety a secondary object." Mr. Brown, the defense counsel argued that in this case no distinction should be drawn between the status of Holmes as a member of the crew and the passengers. The law of self preservation gave him the right under the doctrine of imperious necessity to save himself at the expense of others. (4) Finally what is to be said of the chief contention of Mr. Brown, the defense counsel, that the only fair way to try this case would be in a long boat in a stormy sea. In his closing argument to the jury, he said, "Suppose two men, occupying perfectly friendly relations to each other, should be cast away, and both seize the same plank and one should thrust the other off, would it not be monstrous, upon the trial of the alleged offender, that the plank should be brought into court and submitted to some men of approved skill, and measured and examined by square, rule and compass, its specific gravity ascertained, and the possibility of its sufficiency to sustain two men discussed and decided, and upon the basis of such calculation as that, the prisoner should be deprived of his liberty or his life, when, if you placed the witnesses in his precise situation, and they had been called upon to act upon sudden emergency, they would have done precisely what he did, and what every principle of natural law abundantly warrants? It is worse than idle to suppose that in such a critical juncture as this, men are to cast lots or toss up for
their lives. In such a peril a man makes his own law with his own right arm.”

This type of book should be valuable and interesting to both lawyers and laymen. The author has employed the same general method as used by Charles Warren in his masterly treatment of strategic cases in the field of Constitutional Law. There is a definite need for this sort of work. The literature of the law will be enriched by Mr. Hick’s contribution.

Forrest R. Black.


The authors of Money, Profits, and Business Without a Buyer have produced a well-written, interesting, and thought-provoking book in The Road to Plenty, a book which will arouse much opposition from many economists but warm support from others. The economic teachings are given in story form, conversations on a west-bound train out of Boston for Chicago. The central figure is the Business Man who answers all objections one by one and eventually wins support for his plan. The attempted execution of the plan, however, is due to the “Little Gray Man” who has felt the misery of unemployment first hand and who as a worker in a charitable organization is coming in contact with it daily. The plan itself we shall merely state without criticism.

As examples of the superficial views of labor and unemployment we have cited a manufacturer, a bond salesman, and a bishop. As sympathizer with and lover of the poor people we have introduced to us the Little Gray Man, who soon began a conversation with a Farmer, a Lawyer, and a Professor. The Lawyer and Professor both declared that there was no road to plenty. A business man who had heard the conversation at first refrained from taking part, but he pondered deeply while the others listened for a few minutes on a station platform to a red-headed orator exhorting idle mill hands: “We call all workers to a merciless war upon Capital and Government. Destroy the bloodsuckers! That is the Road to Plenty.”
At the dinner table that night the Business Man engaged the Little Gray Man in conversation and insisted that there was a way out. Yielding to persuasion he attempted to point out that way to the Congressman, Professor, Sheer Silk Salesman, Lawyer, and the Gray Man. Before proposing his plan he developed a few plain facts: we have abundant production facilities; there are not enough good things to go around; most people would be better off if they had more wealth; we can not have plenty unless we create plenty; we do not produce more goods because they can not be sold; and goods can not be sold because consumers "never long obtain the right amount of money for the purpose."

The Business Man taught that progress was possible only as the flow of money to consumers kept pace with the flow of goods. "Only by getting ready to prosper tomorrow can we prosper today," he urged. We have prospered as well as we have, he insisted, by easy-payment sales, and they can not increase indefinitely. The Business Man then proposed his plan—measuring the forces which make us prosperous, especially the right flow of consumer income, and sustaining that flow.

The Business Man insisted with great warmth that orthodox economists had based their theories on a false assumption, "that the financing of production itself provides people with the means of purchase." Answering the objections of the Professor, his last remaining opponent, one by one he showed how a false assumption had blocked the road to plenty.

We may well summarize his discussion in his own words, (p.152):

"Progress can come only when there is the right flow of money to consumers. The flow is not right unless in some way the shortage due to corporate and individual savings is made up, and unless there is, in addition, a sufficient flow of new money to bring about the distribution of a constantly increasing output. In the past, the right flow of money has come at times, but never for many months running. The reason why nothing has been done, in a large way, to substitute control for chance, is because it has always been assumed that nothing need be done—that production itself induces the right flow of money to consumers; that there is therefore no such thing as a Dilemma
of Thrift; in short, no such thing as the problem under discussion."

Having made his summary the Business Man then pointed out that Congress itself revealed the need of a guiding policy, but could also help better conditions. He urged that in periods of unemployment Congress should construct public works and in periods of rapid business expansion curtail or postpone public construction. A larger volume of money, he believed, might be provided in prosperous times by reducing the minimum gold reserve ratio. The heart of his theory was "the right flow of money to consumers."

To put his plans into effect he advocated the creation of a "separate Federal Board, which shall itself gather and measure the data best adapted to show the adequacy of the flow of consumer income," advise the government in all fiscal matters, control the long range planning of public works, and provide adequate publicity.

But the conversation ended without a decision to put anything into effect and with the Little Gray Man in despair. The others had merely lessened the tedium of a long journey. The Real Silk Salesman, however, gave the lover of the common people renewed confidence and so the Little Gray Man went to the Business Man with a plea that the commercial magnate take the lead. Aided by the Business Man's wife, an understanding minister, and his former travelling companions the Little Gray Man won. The ambitions of youth with its crusading zeal came back to the business leader. And so the start was made on the road to plenty. The Professor planned statistical studies as guides, the Congressman aid of government officials, the Little Gray Man the support of labor organizations, the Lawyer the approval of men seeking the stabilization of money, the Woman help from women's clubs, the Minister aid from the churches, the Business Man help from his associates, and all sought support from the press. Not charity relief but self help in a working economic organization was to be the aim. And thus the road to plenty was to be entered by all, according to the plausible argument.

WALTER W. JENNINGS.

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"The Lawyers Directory" contains all of its regular features and quite a lot of new legal matter, making it a valuable adjunct to the library of all lawyers, as well as handy and comprehensive office utility for Banks, Insurance Companies and others whose activities require a book of this nature.

The Digests of Laws for all the States and Foreign Countries have been corrected and revised to date by the best legal talent possible to secure.

The Inheritance Tax section has been revised and augmented and gives full information as to procedure in such matters, as well as regulations for stock transfers in each State.

The foreign section has been materially strengthened by securing a number of new correspondents and representatives in important points in Great Britain and on the continent.

With this issue the names of lawyers or firms which include lawyers who are members of the American Bar Association, are marked with a star, as that organization by reason of its greatly increasing membership is being more and more recognized as a potent factor for the advancement of the profession in the furtherance of professional ideals and the upholding of professional standards by its members.

The section devoted to Legal Journals has also been brought to date and contains the names of all important publications devoted to the legal profession in the United States, Great Britain and Canada. These Journals are of great value to the profession.

The Lawyers List has been most carefully revised. All of the names of lawyers appearing in this section have been listed by invitation only and confidence has been gained in the Directory by a censorship which excludes names of firms or individuals not entitled to listing by reason of the high standard set, so far as careful investigation can do so.

Court Calendars and Legal Forms for all States, Patent and Trade Mark Digests, together with other information compiled for ready reference—the typography has been so improved as to make the text easy to read, being set in always double columns instead of massed, which is tiresome to the eye.

A good deal of elementary instruction is being given in problems dealing with real estate, the transfer of title and real estate salesmanship in elementary schools and colleges. The first three chapters of this book dealing with real property law, are exceedingly elementary and would not give the lawyer additional information which he does not already have, but are of value to laymen.

The chapter on Land Surveys is, in the mind of this reviewer, not only valuable for laymen but for lawyers also, and the chapter dealing with Descriptions might well be alone worth the price of the book.

Figure One on Page 49, and the explanation of the figure, make the best presentation of which the reviewer knows of the problem of federal surveys and how lands happen to be described as they are. The discussion of the various types of indices of records of conveyances beginning on page 128 has much value in it. The discussion of Abstracting and Examination of Title including chapters nine, ten, eleven, twelve and thirteen, is evidently by a lawyer who is familiar with the most intricate problems of land titles in our very largest cities. The intricacy of the problem is increased by historical considerations. The student who has mastered this material should be able to comprehend much more easily the simpler problems which arise in small cities.

The book contains a great deal of valuable material for real estate dealers. It has valuable list of forms in the Appendix.

ALVIN E. EVANS.


Since the subject of carriers is today generally included in the course on public utilities or public service corporations it would seem at first thought that a casebook on carriers would not find a place in the present-day law school course. A second edition of Professor Green's casebook on the subject shows that this is not true. In fact the present trend seems to be to put
out casebooks in special fields which were formerly included as parts of other courses. Since in the subject of carriers there are many features that are not found in other public service corporations, a separate casebook on carriers seems justifiable. Where time will allow, two hours a week for one semester could well be spent on the subject of carriers and two hours the second semester in the field of other public service corporations. Professor Green's casebook is well adapted for such a course.

The first four parts of the first edition, as the editor points out in his preface, have been printed in the second edition without change, except to add numerous notes and citations. In fact the editor has incorporated a great deal of new material in the footnotes and brought these parts up-to-date in that way. Parts V and VI are entirely new. Part V covers the Bills of Lading and Warehouse Receipts Acts, including chapters on Negotiation and Transfer of Documents, Delivery of Goods, Misdescription, Attachment, and Lien. Part VI takes up the Interstate Commerce and Public Utility Acts, and contains chapters on Nature and Purposes of Regulation, Equality in Service and Rates, The Carmack and Cummins Amendments, Adequacy of Service, Reasonableness of Rates, and Remedies and Enforcement. These chapters make the book up-to-date and render it of value to the practitioner as well as to the student.

Professor Green has very carefully selected and edited his cases and has omitted very few of what might be regarded as leading cases in the subject of carriers. As in the first four parts, an abundance of footnotes and citations are found in the two parts that have been added.

Both subject matter and cases have been carefully indexed. The workmanship of the book from the point of view of the publisher is all that could be desired. It is printed on good paper, in excellent type, and bound in green buckram; to conform to the later casebooks of the same series.

W. Lewis Roberts.

Under a title which reminds the reader of Sinclair Lewis' satire on modern American life, Professor Ripley has set forth what he deems the evils of the present-day corporate practices and aims to put the small investor on his guard. The present volume is built around the author's three articles that were the sensation of Wall Street when they first appeared in the Atlantic Monthly.

Under the caption, Post-War Engines of Finance, the author calls the attention of the reader to the trend towards doing all business under corporate form and points out the dangers and evils resulting from the competition between the states for the business of incorporating. One state in order to increase its income from fees derived from granting corporate charters, allows a privilege withheld by others or removes a safeguard heretofore thrown around prospective shareholders, with the result that another state will go "one better." In this way one exemption or privilege after another has been granted and as a consequence we find that a shareholder today may wake up to the fact that he does not have the pre-emptive right to subscribe for new stock, that he does not have the right to participate in the management of the company by voting for directors or the power to wield an influence in the stockholders' meetings, and that his stock is of the no-par value class—a handmaid of a shifty company, as the author terms it. Furthermore there has been a tendency to relieve directors from many if not all the common law liabilities to stockholders.

To combat these growing evils, Professor Ripley believes in applying the suggestion made by President Wilson to the American Bar Association at its annual meeting at Chattanooga in 1910, which suggestion Professor Ripley has incorporated in his book as an introductory chapter. In that speech President Wilson advocated that the corporate veil be withdrawn whenever any wrong be committed and that the individuals who cause that wrong to be done, be held personally liable. He would disregard the corporate entity idea in such cases. The draft of the new corporation act of Ohio recognized this need of individual responsibility for acts committed under the guise of a corporation.
The author would also have a standing committee to represent the stockholders' interest and to keep the stockholders apprised of the real condition of the corporation. Furthermore, he would resort to a greater publicity of corporate affairs and require more complete balance and income sheets which would be intelligible to stockholders, such statements as are now being sent to shareholders of the United States Steel Corporation and the General Motors Corporation. In connection with his study of power and lighting companies he suggests the use of certified copies of the companies' income tax returns to show to the shareholders the true financial status of the companies. It is in these public service companies that we find the greatest opportunities for fraud upon the innocent investor, for here there is less government supervision. Professor Ripley feels that there is a real need for federal investigation into the affairs of these companies.

There can be little question but that Professor Ripley's warnings are timely and needed, especially in the case of our power and lighting companies, which are now passing through, as he points out, a stage of consolidation and expansion with the attendant mixing in politics such as the railroads went through prior to federal control. There can be no doubt that the author has exaggerated the dangers from no-par value and non-voting stocks, and that his proposal to withdraw corporate protection in the case of wrongdoing on the part of corporate officials will hardly appeal to the conservatism of the legal profession. Furthermore, it is difficult to see wherein the stockholders will, in the long run, receive any more protection with a stockholders' committee looking after their interests than under the present system since the directors are elected for that very purpose and it will not be much more difficult to corrupt or control two or three such boards than one. Such a committee would have the effect, at most, of increasing the size of the board of directors.

The book is well written and makes interesting reading. It is replete with concrete examples. Scarcely a corporation of note is not mentioned and provisions from its charter given. The section dealing with railroads, a field in which the author is the leading authority, is exceptionally enlightening. Main
Street and Wall Street is a work every lawyer, whether he numbers corporations among his clients or not, will find well worth reading.

W. Lewis Roberts.


Mr. Callender has written an interesting and exceedingly elementary book dealing with American Courts, their organization and procedure. One would suppose that it is too elementary to be of much service for law students, and yet it might be of much service to other classes of college students and to laymen who are interested in the general outlines only of legal procedure.

Mr. Callender's style is simple and direct, and not without humor. One can not expect a book which is so exceedingly elementary to be always accurate. Mr. Callender does not attempt to be a legal historian. It is of course difficult to make very elementary statements which would hold good for our forty-eight jurisdictions, besides the federal courts, the District of Columbia and other jurisdictions—not completely integrated with our Anglo-American system.

The book should prove to be useful for general reading, and I know of no better simple statement of the organization and procedure of our courts accessible to laymen. There is one interesting feature in that the author at the end of each chapter adds the bibliography, which is not only useful but is perhaps the best available bibliography.

Alvin E. Evans.