November 1930

Book Reviews

Chicago-Kent Law Review
BOOK REVIEWS


Despite the prevalence of dissenting opinions, it is probable that, in this book, we have the first collection of dissenting opinions by a judge of undoubted ability. Yet it is hardly fair to treat this volume as a mere legal curiosity, for Justice Holmes has not shown a passion for dissent, as such, but has felt it incumbent upon himself to give voice of his views on important constitutional questions. It should be noted that, in seventeen out of the fifty-four cases included in the book, the decisions were reached by a bare majority of the court; and in twenty of the cases, Justice Holmes’ dissent was shares by two of his colleagues.

The range of subjects covered by the dissenting opinions is extraordinary. These have been arranged by the editor under the following headings: "On Hampering Social Experiments," "On Infringing upon Freedom," "On Encroaching upon the States," "On Usurping Power," and "On Escaping Taxes."

Among the cases dealing with modern social experiments are those which consider the constitutionality of the ten-hour law in New York, the validity of a statute passed in Kansas making it a misdemeanor to discharge a man because of membership in a trade union, the constitutionality of the act of Congress which provides for minimum wages to protect women from ill health and immorality, and the act passed in Nebraska specifically prohibiting the teaching of any language but English. Justice Holmes’ dissenting opinions on infringement of freedom cover cases that arose from the passing of the Espionage and Sedition Acts as well as his opinion in the well-known and widely-discussed citizenship case of Rosika Schwimmer. Some of the important dissenting opinions in cases which, from his point of view, involved illegitimate encroachment upon the rights of the various states are in the theater ticket case of Tyson v. Banton, in the Pennsylvania case in which the State undertook to prohibit the use of shoddy in the manufacture of mattresses, and in the chain-drug-store case of Liggett Co. v. Baldridge.

This volume will be of the greatest help and assistance to students doing research work in constitutional law.

Mr. Beck, formerly Solicitor-General of the United States and author of *The Constitution of the United States*, has here brought together a number of his addresses made during the last twenty-five years, as well as some of his arguments on leading questions and cases given before Congress and the Supreme Court of the United States. He is a master in the art of concise and lucid exposition; and although the subjects treated in the symposium are not new, he has succeeded in presenting them with a fresh and interesting point of view.

Something new is said about the administration of justice in Tudor times, and the tale of the rebels held in the Inns of Court will prove delightful reading in the spare hours of a busy attorney. The change which has taken place during the last century in practice before the Supreme Court and the changed attitude of the court toward extended arguments are discussed in the first address given in the book. When dealing with the relation between the Nation and its United States, and the growing tendency of the Federal Government toward centralization and an undue expansion of its power, Mr. Beck is at his best. As an outstanding illustration of his attitude on the latter subject, he cites the revolt against prohibition.

Whether the Senate has a right to exclude a Senator-elect was argued before that body by Mr. Beck when the seating of Senator-elect Smith of Illinois was in question. Although the subject was accorded much discussion at that time, it should be considered—as one reads Mr. Beck's arguments—with special reference to the case of Senator Vare of Pennsylvania. It is well for us to connect the action of the Senate in this latter case, with the refusal of the Senate at the close of the Civil War to admit Senators elected by the reconstituted southern states.

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This book is a welcome addition to a new National Case Book Series. It is noteworthy because it deals first with the subject of intestate succession, thereby proceeding in an entirely logical and a most natural method to develop this branch of the law.
While many historical English cases are used, the majority are recently decided American cases.

That so little use is made in the annotations of the abundant material to be found in legal periodicals, is unfortunate. It will not be long, in our judgment, before any collection of cases will be held inadequate which does not open to students the result of research in the various branches of the law as set forth in legal periodical literature.

We would call special attention to the collection of cases on the administration of estates which takes up almost half of the book and which, by emphasizing probate practice, helps to give us a well-balanced idea of the entire subject of the law of succession. A good text-book, it can be used to special advantage where plenty of time is given to the study of this particular subject.


In this volume are given a brief sketch of the origins of the Mixed Courts of Egypt, its history through a half century, and a description of the judicial machine actually at work. Because the author is an American who has been a Justice of the Court of Appeals in Egypt since 1921, he is well qualified to present his material in a scholarly and authoritative manner for readers here and in England where the Egyptian system is little known.

To a visitor in Egypt, a resident there would describe the Mixed Courts as "the dominating judicial institution of the country, corresponding in general to the Federal judicial system in the United States." These Courts handle all litigation involving a foreign party or interest—except suits between those of the same nationality; and since the commercial life is largely controlled by the one hundred fifty thousand foreign inhabitants, practically all important litigation is attracted to this Court.

At every turn, the characteristic differences are shown between the world's two foremost judicial systems—the Latin and the Anglo-Saxon. The principal divergence between the courts in this country and the Egyptian courts is described in the chapter on "Proving the Case." The author says: "To any Anglo-Saxon lawyer the most striking point of contrast between the
Egyptian system and his own would undoubtedly be the predominant importance accorded in the Mixed Courts to documentary evidence as compared with the relatively negligible rôle played by oral testimony. To this would be added his astonishment . . . at the practically complete absence of any law of evidence . . . and the strictness of a rule which allowed a challenge to the testimony of the interested parties. In a word, he will find here all the more characteristic features of the classic French system of proofs."

The author has carried his work up to April, 1930, and in an addendum, inserted after the book had gone to press, he calls attention to the fact that the 1929 judicial reforms, which he discusses and which were submitted to representatives at the time of the treaty negotiations between England and Egypt, were accepted by the two nations in spite of the fact that the treaty itself was not.


The Hornbook Series includes books of varying importance, but probably none of them is of as much practical value in general use as "Vance on Insurance." During the years since the first edition was issued, many significant changes have taken place in the business of insurance, and marked developments have been made in the rules of this branch of law by both the courts and the legislatures.

The practice of insurance has been extended to cover almost every risk to which the members of a highly complex society are exposed. From the dressmaker's risk of breaking her eyeglasses to the state's risk of liability for defects in highways, none is too small or too large to be underwritten. The growth of the business has resulted in swelling the volume of litigation and increasing its complexity. This book will be most helpful to attorneys who have occasion to deal with the subject of insurance risks.
The administration of justice constituted a vital part of the Athenian scheme of government. All of the official and governing bodies had functions of a more or less judicial nature to perform. The courts constantly intervened in a fashion which is quite unknown in a modern state. For instance, they enforced the responsibility of magistrates, passed upon proposed legislation, ratified treaties, and exercised a salutary control over professional politicians.

The main source of information with regard to Athenian legal institutions, according to the authors, is found in Aristotle's *Constitution of Athens*. Other materials for tracing the development were found to be rather meagre and fragmentary.

The authors show us how the system, as developed by Aristotle, came into existence and what the varying historical and legal sources were which gave it life. Beginning with a detailed discussion of the origin and development of legal processes among the Greeks, we follow the history of the Athenian judiciary and the growth of the machinery employed for administering justice.

Students of historical jurisprudence will find this book of value in their research on the origin and background of our present-day legal systems.

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Two years ago there issued from the press a treatise on the subject of pleading and procedure, by the Dean of Yale University's Law School. It is as a supplement to that first work that the author has prepared this second volume.

The cases are arranged with respect to the subject-matter involved in the suits: first, damages for injuries to the person; second, damages for breach of contract; and, third, actions concerning personality and realty. In the latter portion of the book the early development of equity is described and a collection of cases given which deal with the union of law and equity under modern codes.

This study is limited to the criminal law and its administration in colonial Virginia. The work was undertaken to determine to what extent the American law on this subject, as it emanated from Virginia, is indebted to the law of England. The sources of Virginia law which resulted from legislation under the Virginia Company and those which arose in the Assembly under the Crown's jurisdiction are discussed, as are the methods of law enforcement and criminal procedure. The greater part of the book, however, deals specifically with the criminal law as divided into offenses against the government and public peace, against public justice, against the person, against property and property rights, against religion and the established church, against public morals, and offenses of servants and slaves. That there is little basis for the opinion that Virginian laws were more lenient and more mercifully enforced than the laws of England, is shown in this study. According to the author, "The Virginia criminal law was transplanted English law, with modifications due primarily to the different conditions, and not to a tenderness for lawbreakers or a conscious spirit of reform."

Six pages are given to the bibliography of original and secondary sources. It is so arranged as to make it an easy reference for one interested in delving into pre-Revolutionary legal history.

Mr. Scott is a pioneer in historical jurisprudence, and it is hoped that he, or an equally able successor, will devote his time to a study of the law in the other of the English Colonies. There is room for similar treatises on the development of probate law, real property law, and the growth of equity and equity jurisprudence in pre-Revolutionary America.

CASES AND MATERIALS ON THE LAW OF CREDIT TRANSACTIONS.

This case book has been prepared with the idea of displacing separate courses in bankruptcy, mortgages, and suretyship. It is not intended as a book on political economy, nor does it touch upon the various methods of financing. The author presents suggestive materials which are concerned, for the most part, with the borrowing and lending of money and the purchase and sale of property on credit.