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Book Reviews

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BOOK REVIEWS


"If we were asked what is the greatest and most distinctive achievement performed by Englishmen in the field of jurisprudence, I cannot think that we should have any better answer to give than this, namely, the development from century to century of the trust idea." It is almost unnecessary to write "Maitland" after this passage. Both the theme and the style are his. The literature of English and American law has many colorless pages. The language of the law books can too often be called austere and awkward, pompous and dull. Even opinions written in the "grand manner" become slightly wearing. But the reader familiar with Maitland's writing turns to him with relief, and the student who discovers him reads with delight. No other writer on English law has combined Maitland's brilliancy of expression with his sheer simplicity of style. And, in mentioning these, but a very small tribute has been paid to his greatness.

The present volume is a collection of essays selected as representative of Maitland's writings. A new edition of the Equity, edited by John Brunyate, and a reissue as a separate volume of the lectures on the forms of actions have been published at the same time. These three volumes are the first re-editing of any of his works since the publication of the Collected Papers in 1911.

Maitland's brilliant scholarship and capacity to give life and expression to historical details shine in the first of his writings here printed, a fragment of his introduction to the parliamentary

1 Frederic William Maitland was born May 28, 1850, in London. He was educated at Eton and Cambridge where he distinguished himself both as an athlete and as a student. He entered Lincoln's Inn in 1872 and was called to the bar in 1876. After a period of practice in which he learned something of the conveyancer's art he returned to Cambridge as Reader of English Law and in 1888 became Downing Professor of the Laws of England. His taste for research in legal history was influenced no doubt by his close association with the distinguished Russian scholar, Paul Vinogradoff. Maitland lived to become the finest scholar and the most brilliant and skillful interpreter of English legal history of his day. During the last few years of his life he was compelled by poor health to give up much of the work he had planned to do. He died in 1906 at Los Palmas in the Canary Islands, where he had gone to avoid the rigors of the English winter.
roll of 1305, the "Memoranda de Parlamento." Here he again gave evidence of that singular ability to find and express the ideas of men whose actions he studied, the ideas and thoughts which supplied direction to those actions. This was his peculiar genius, as so often the History of English Law bears test.

During the last few years of Maitland’s life he was interested particularly by various theories of corporate existence. The second essay of this volume discusses the corporation sole and raises the question whether this curiosity of the English law can properly be called an artificial person. With characteristic zest he threw his great talent for historical interpretation into the solution of the problem. The result is a closely reasoned argument which displays the abilities of the fine lawyer that he was. Near the conclusion of the essay is this pungent expression: "Be that as it may, the ecclesiastical corporation sole is no 'juristic person'; he or it is either natural man or juristic abortion." The succeeding essay, "The Crown as Corporation," further develops and applies his ideas of corporation existence.

The choicest of this collection, in the view of the present reader, are the two related essays, "The Unincorporate Body" and "Trust and Corporation." In these, Maitland is at his best. Who but Maitland could put the origin of the trust into these words:

"The Englishman cannot leave his land by will. In the case of land every germ of testamentary power has been ruthlessly stamped out in the twelfth century. But the Englishman would like to leave his land by will. He would like to provide for the weal of his sinful soul, and he would like to provide for his daughters and younger sons. That is the root of the matter. But further, it is to be observed that the law is hard upon him at the hour of death, more especially if he is one of the great. . . .

"Once more recourse is had to the Treuhänder. The landowner conveys his land to some friends. They are to hold it 'to his use (a son oes).’ They will let him enjoy it while he lives, and he can tell them what to do with it after his death."

Maitland was always interested in the fertility of the trust device. The ease with which it was adapted to accomplish divergent ends and to meet new conditions impressed him deeply. And the ingenuity with which the trust was used to avoid the spirit yet yield obedience to the strict letter of the law seemed
to attract his fancy. The story of the trust was told for German readers in the second of these two essays. The place of the trust in the development of English law and its relation to common-law notions of corporateness are described in a manner which the reader will not soon forget. Students of American and English law will gain a better understanding of the growth and development of equity and law from reading these essays. The editors have wisely translated the passages which originally appeared in German.

One is left to wonder after reading this volume why we are given merely this small taste of Maitland's work. It is difficult to agree with the editors that students "have here all that is of practical use to them." Nor is the statement that the "full Collected Papers will always be accessible in any first class library" altogether reassuring. Great difficulty has been experienced in endeavoring to purchase the Collected Papers both in America and in England. The merit of the material in the set has made the volumes, after more than twenty-five years, almost impossible to obtain. Let the record show hearty accord with Holdsworth in the suggestion that all of Maitland's works except the History of English Law be republished in omnibus form.

ROGER L. SEVERNS


There have been a number of excellent case books on the law of partnership, but until Professor Crane's Handbook of the Law of Partnership and Other Unincorporated Associations appeared, modern texts of the American law were unobtainable. Mechem's Elements of the Law of Partnership, although still outstanding, was last published in 1920. Professor Mechem's scholarship, shrewdness, and foresight made possible, in numerous instances, a correct forecast of the interpretation the new uniform act would receive from the courts. But it was high time for a correct statement of the present law of partnership in the United States, and Mr. Crane has ably performed the task.

During the incubation of the Uniform Partnership Act and for some little time thereafter, Ames, Lewis, Crane, Mechem, Burdick,
and others entered the lists and tilted in the periodicals over the projected code. Mr. Crane's familiarity with the controversies and his teaching experience qualify him especially well to formulate the present law and organize the supporting materials.

The Uniform Partnership Act has produced and will produce greater uniformity in the decisions. Professor Crane has wisely given sufficient consideration to its provisions. He has allotted space to subdivisions of partnership law according to the importance of the topic and the necessity of distinguishing contradictory holdings where possible. Bankruptcy and liquidation of insolvent partnerships is covered satisfactorily. The author states that he limited the size of the text in accordance with his understanding of the relative amount of time devoted to the subject in law schools. This criterion is accurate enough for the practitioner as well.

In many law schools there have been various attempts to treat Agency, Partnership, and Corporations en masse. The results are not as yet sufficiently harmonious to consider the plan more than in the experimental stage. The three subjects enjoy the same common denominator of business agencies, and there are many parallel areas in Agency and Partnership; the latter, however, has tricks of its own, and although they may be pointed out from case material by the instructor in the course, it would seem that in a text the independence of the subject should be maintained.

Professor Crane allows fourteen pages to Non-Profit Associations. The subject warrants even more space and appears to be a lusty and growing relative of the subject of Partnership. Trade Associations, Labor Unions, and variations of non-statutory co-operative associations seem definitely headed for growth and expansion.

This text is of immediate value as an up-to-date Hornbook and can be of great service to law students, not only by properly phrasing principles the student should have drawn from his case book, but also by furnishing him a ready guide into detailed discussion in the law periodicals through the notes citing annotated cases and law reviews.

Donald Campbell