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BOOK REVIEWS

LAW AND THE LAWYERS. Edward S. Robinson. New York: The Macmillan Company, 1935. Pp. xi, 348.

In "Law and the Lawyers" Professor Robinson has expanded the content of his essay, "Law—An Unscientific Science," which appeared in the December, 1934, *Yale Law Journal*. The result is an extremely readable and significant book-length discussion of law, lawyers, and the judicial process as viewed by a psychologist.

In the article he dealt with the pressing social necessity of treating jurisprudence as a natural science. He urged the adoption in the legal field of the methods and techniques which have made other sciences progressive although perhaps not so comforting to the conservative-minded portions of the population. In the book he reiterates this theme and proceeds to show how pragmatic philosophy and psychology can be applied to law in order to cultivate within that "cultural laggard" a sense of frowardness which he deems essential if lawyers are to operate as genuine "social engineers."

The author does not attempt to draw a Utopian plan upon which the jurisprudence of the future can be modeled. He does, however, note the many ways in which the other sciences, particularly psychology, could be called in to aid this older sister in the realm of human knowledge. Moreover, he subjects the legal institution—judicial and professional—to no slight dissection in order to point out the present evils in its structure.

Professor Robinson has viewed the processes of jurisprudence and their place in society without bias for their good points or prejudice against their bad ones. From this impartial stand, he has given a clear picture of the factors which have made law a refuge for the uncertain human being who seeks certainty, but a despair to the scientific thinker who feels that human progress can come only through change. He criticizes the priestly classes who would keep the law in stagnation by insisting upon an impossible consistency. Yet he sees the error in the point of view of those who would destroy the stability which the law in its present state imparts to human affairs.

Undoubtedly many people will feel that the author has taken undue liberties with their ideals in his forthright discussion. But, if one recognizes that Professor Robinson has taken the law into the laboratories of science for analysis and is only reciting his findings, then it is possible to accept more readily the telling blows he strikes at currently accepted modes of legal reasoning. It could be anticipated that he would extend no fawning reception to the Blackstonian theory of the law, the doctrine of *stare decisis* and other similar devices, but it is surprising to read his comment on the American Law Institute's struggles with the case law. He will probably have much to contend with before some of the changes he suggests are willingly adopted by the lawyers and jurists. Nevertheless, the book is one which immediately catches the attention of the reader and stimulates earnest thought.

A STUDENT'S TEXTBOOK OF THE LAW OF EVIDENCE. John H. Wigmore. Chicago: The Foundation Press, Inc., 1935. Pp. xxxv, 610.

It is doubtful whether the evolution of any book is more interesting than the development of this textbook from an early edition of Greenleaf On Evidence. Mr. Wigmore was a student at the Harvard Law School under Professor Thayer and at that time practically the only textbook printed in this country on evidence was Greenleaf's. It was natural, therefore, when the sixteenth edition was contemplated, in 1899, some five or six years after Mr. Wigmore had left the Harvard Law School and had made a record for himself as a teacher of evidence, that he should be called upon to produce the new work.

The resulting text was very largely the original treatise with footnotes and additions showing the later developments of the law. It was unsatisfactory, because it had, to a large extent, departed from the original, without, at the same time, giving the editor an opportunity to develop the subject in his own way. However, he did this, when he brought out his own textbook between 1905 and 1915, and his "Pocket Code of Evidence" in 1910. In 1923 the monumental five-volume edition of his work was issued. Probably it showed more signs of distinguished ability and research than any other treatise on the law of evidence. Under every subdivision, the law was arranged chron-

logically from the earliest decisions to those of the most recent date, and the student is able to trace the development of doctrines in detail, step by step.

There was one serious objection to this work, however. Mr. Wigmore did not follow the classifications of the subject adhered to in most other textbooks. In many instances he injected a new terminology which made his books less convenient to use. For example, it is questionable whether anything was gained by calling the law of real evidence the "law of autoptic preference," or by labeling the right of a witness in a suit to go and return safely from the trial a "viatorial privilege." To talk about "analytic rules" of evidence and "prophylactic rules," is disconcerting and unnecessary. Nevertheless, the five volumes contained a mass of material which can be found nowhere else.

The present single volume, while subject also to the objection of the unfamiliar terminology in the larger work, does present in compact form the principal rules of evidence as decided by the courts. Thus, if one can overlook unusual expressions of classification, this book will assist materially in the study of the subject.

CASES ON CRIMINAL LAW AND CRIMINAL PROCEDURE (Third Edition). William E. Mikell. St. Paul, Minnesota: West Publishing Company, 1935. Pp. xxiii, 775, and x,303.

A revised and comprehensive third edition of the cases on the related subjects of Criminal Law and Criminal Procedure collected by Professor Mikell has been issued by West Publishing Company in a pleasing and useful one-volume format.

The first section of the work is identical, both as to content and pagination, with the standard third edition of Cases on Criminal Law by the same author, issued in 1933, and comment on the value thereof is purposeless at this late date.

The section dealing with Criminal Procedure, however, is entirely new and is designed to replace the second edition of the same author's case book on that subject which appeared in 1912. The contents of this section are arranged along conventional lines, following the criminal prosecution from arrest through trial to review of judgment, but the material is completely revised and much of the earlier case material has been rejected for more timely decisions. About one-sixth of the total number

of cases in this section have been decided since 1930, and over one-third of them since the first edition appeared in 1910. The work is also copiously annotated, both to cases and to articles appearing in legal periodicals, and, wherever appropriate, sections of the American Law Institute's Code of Criminal Procedure are quoted in the footnotes.

The combination volume now provides the student with a complete casebook substantially no larger than the usual one, yet comprehensive enough to give an adequate basis for training in these two related fields and particularly serviceable in those institutions where the two subjects are taught as a unit. It has, moreover, the additional advantage of being timely in its treatment of Criminal Procedure, a subject on which the law is still in a state of flux.

CASES ON MUNICIPAL CORPORATIONS. E. Blythe Stason. St. Paul, Minnesota: West Publishing Company, 1935. Pp. xxix, 761.

The subject of municipal corporations has proved to be a fertile field for the writers of texts and the editors of cases, as well as for commentators whose interests are not only legal but also social or political. No subject in law is of such growing importance as that of municipal corporations, and it is not, therefore, a surprise to find this new volume by Professor E. Blythe Stason taking an honored place in the American Case Book Series.

The author has increased the usefulness of his volume by twelve pages of what he chooses to call "Introductory Notes." These notes furnish a proper and illuminating introduction to the case material which follows. They will undoubtedly stimulate the interest of the student, both by presenting briefly a suggestion of the history of municipal corporations, and by deft concentration of material which links the historical to the present.

A bibliography following the table of cases is presented under the proper chapter headings, and is said by the author to be inclusive of the treatises and law review articles thereafter cited in the footnotes. It is, of course, in no sense a complete bibliography of the subject, nor does it include all footnote references to the A. L. R. and the L. R. A. The reference given in the bibliography to articles in the various law reviews seems particularly fortunate for the topic of municipal corporations. The

timeliness of such articles is of great importance in the consideration of municipal corporations, a subject which has exhibited an expansion, growth, liveliness, and importance second to none other in law.

In the matter of case material, we naturally find most of the old landmarks and those cases announcing fundamental propositions which have for many years been used as the basis for the growing law. But, in addition to these, there is an admirable selection of cases not decided when earlier corporation books were published. The subject matter is developed through the cases in a natural and logical sequence. Cases are well chosen, well edited, and will command attention in the field of case book literature of municipal law.

CASES ON THE LAW OF TORTS. Charles M. Hepburn. Second Edition by William M. Hepburn and Archibald H. Throckmorton. St. Paul, Minnesota: West Publishing Company, 1935. Pp. xxxi, 1071.

In 1915, in the short introduction to the first edition to his "Cases on the Law of Torts," Professor Hepburn wrote, ". . . I have had in mind especially the first-year law students . . . the beginning students in Torts should have some assistance at the very outset in marking the place which is occupied by Torts in the general field of the law."

It appears that Professor Hepburn cherished the rather sensible theory that beginning students might not know anything about Torts. That conviction of the author probably prompted the preparation of the material which has been included again as the introduction to the second edition. The first eighteen pages of this book are full of precious distinction. They tell why a tort is not a crime although a crime may carry a tort along with it, and why a tort is not a breach of contract although a breach of contract may give rise to a tort. In brief, they relate the field of Torts to the broad acres of the law. The floundering student, having read these pages, will find that, although "Nuisance" is a subject of Torts, the subject of Torts is less of a nuisance.

This second edition has been limited to a modification and expansion of the first edition. The significant English and

American cases of the past twenty years which illustrate the extension of old principles or the evolution of new ones have been added. Extraneous matter has been deleted both to save the student unnecessary reading and to reduce the size of the book to a portable weight.

With equal consideration for the reader, the publisher has chosen a legible black faced type and printed it on an opaque paper, so that it is possible to read one side of the sheet at a time without becoming involved with what the author has intended to save for the other side of the page. The editors have aided the reader further by carrying the general topic headings from page to page above the cases which illustrate individual points thus constantly reminding the student of the general classification into which the case he is reading fits.

HANDBOOK OF THE LAW OF DAMAGES. Charles T. McCormick. St. Paul, Minnesota: West Publishing Company, 1935. Pp. xiv, 811.

The author appears to have performed successfully his stated task of "covering within the space of a single brief volume the wide-ranging field of Damages." Emphasis has been laid upon the administrative phase of the subject by treating the doctrines, distinctions, and standards of the subject as material which is used in actual practice by lawyers, judges, and jurors.

The reader's attention is directed throughout the work to the varied developments in the subject not only between the different states, but also between the United States and England. This is well illustrated in the chapter on "Counsel Fees and Other Expenses." This chapter concisely states the arguments in favor of the English system of allowing such fees as damages, and the arguments supporting the American rule of allowing court costs only (with rare exceptions). Accompanying this discussion is a summary of the reasons for the trend in the direction of the English rule.

The mechanical arrangement of the material is particularly commendable. Notes are in heavy type, and comprehensive foot notes summarize briefly the cases cited. As a whole, this volume should be a valuable aid as supplementary material to a case-book course in the subject.

CASES ON FEDERAL JURISDICTION AND PROCEDURE. Armistead M. Dobie. St. Paul, Minnesota: West Publishing Company, 1935. Pp. xxxix, 803.

While primarily a case book, this excellent work of Professor (Dean) Armistead M. Dobie is interspersed with quotations from his textbook on the same subject and contains some other explanatory material which eliminates unnecessary reading to discover elementary principles. Basic constitutional and statutory provisions appear along with the cases or are quoted by them, thus furthering the purpose of clarity and brevity and avoidance of unnecessary language or search for related material. In the same spirit, many of the cases are edited down to leave only the essential statements and reasoning of the courts. At the same time the cases themselves are well chosen with proper emphasis upon recent decisions.

Typical of the arrangement of the work is Chapter VI on Procedure at Law in the United States District Court. It begins with two cases on the purpose and scope of the Conformity Act and gives six cases on its application. Then follows the text of the 1934 Federal Uniform Procedure Act, with ample footnotes, and explained by a press release and a quotation from an American Bar Association Report. Next is presented the text of the Seventh Amendment to the United States Constitution followed by seven cases on trial by jury. The chapter concludes with four cases on rules of the district court. The footnotes either digest or quote from other cases and refer to recognized works of other authors—especially to American law review articles which Professor Dobie characterizes as “the best writing done on the subject of Federal jurisdiction and procedure.”

Other chapters deal with jurisdiction of the various Federal courts, venue, the application of substantive law, and the relations of state and Federal courts. The author wisely emphasizes the removal jurisdiction and procedure of the United States District Court and devotes ninety-six pages to the ramifications of this important subject.

No attempt was made to deal with criminal procedure in the Federal courts or the specialties such as patent procedure. Some mention, however, is made of bankruptcy jurisdiction and appellate jurisdiction over decisions and orders of various Federal boards and commissions.