

but in the case under discussion the court said the question of inheritance was immaterial, and laid down the rule that marriage alone was never sufficient to revoke a woman's will.

On the other hand, in Massachusetts, though admitting that the law should be uniform as to both sexes, the court held that the fact that it was wrong about a man's will, and required both marriage and birth of issue to revoke, when it should, on the principle of *Re Tuller's Will*, (*supra*), require only marriage, was no reason to make it also wrong about a woman's will; and that as the statute said, "Nothing shall prevent revocation by implication from changed circumstances," that re-enacted the common law, and made the marriage of a woman revoke her will, and the question of the reasonableness of the statute could not be considered: *Swan v. Hammond*, 138 Mass. 45 (1884); *Blodgett v. Moore*, 141 Mass. 75 (1886). *Brown v. Clark*, 77 N. Y. 369 (1879), decided that as the New York statute said that the will of an *unmarried* woman should be revoked by her subsequent marriage, the rule embodied in the statute could not be dispensed with, because the reason on which it was established had ceased, by a subsequent statute giving married women power to will. But, as the reason for it has ceased, the statute is construed strictly, and held not to apply to the will of a *married* woman who remarries: *McLarney v. Phelan*, 90 Hun, 361 (1895).

England and Pennsylvania have statutes expressly declaring that the marriage of a man or woman revokes a previous will (in Pennsylvania only in proportion to the interest of the husband or wife under the Intestate Act). Some states have followed their example, while others, without a direct statute have interpreted the reason of the common law as in *Re Tuller, supra*, that marriage in this country by altering the course of descent changes a man's or a woman's circumstances, and in so far as it alters the course of descent, and no further, operates as a revocation of a will. See *Brown v. Sherrer*, 42 Pac. 668 (Colo. 1895).

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## BOOK REVIEWS.

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THE ELEMENTS OF JURISPRUDENCE. By THOMAS ERSKINE HOLLAND, D. C. L. 8th Edition. New York: The MacMillan Co. London: MacMillan & Co., Ltd. 1896.

Holland on Jurisprudence is an old friend. Students of the Eighth Edition will find the grand divisions of the work substantially unchanged. Many improvements, however, have been made in minor matters. The five parts of the work are "Law and Rights;" "Private Law;" "Public Law;" "International Law;" "The Application of Law." "Many references," says the author in his preface, "have now been made to the new Civil Code for Germany, which became law last month. This great work, the result of twenty years of well directed labour, differs ma-

terially from the draft Code, to which allusions will be found in the sixth and seventh editions. Few more interesting tasks could be undertaken than a comparison in detail of this finished product of Teutonic legal science with the Code Civil, which has so profoundly affected the legislation of all the Latin Races." The work has also been brought down to date (or brought up to date—according to one's conception of the trend of events) in respect of the citation of recent decisions of importance. On page 304 we note *Broderip v. Salomon*—although when the book went to press that case had not yet been decided by the House of Lords. As illustrating the subject of acceptance of offers the author cites the curious and now familiar case of *Carlill v. Carbolic Smoke Ball Co.*

Of the substance of the work itself it is unnecessary at this time to speak. It is so well known to students that it may be said to have accomplished its own introduction, and it needs not that any man should perform such an office for it. While Part I. is an admirable piece of exposition, the author is perhaps at his best in his discussions of Private Law and of Public Law in Parts II. and III. The student can perform no more profitable exercise than to compare Dr. Holland's treatment of the subject of International Law as contained in Part IV. with the extremely interesting and suggestive address on International Law, recently delivered by Mr. Frederic R. Coudert, before the law students of the University of Pennsylvania, and now published in the *AMERICAN LAW REGISTER AND REVIEW* (36 N. S. page 353).

Now and then one finds a statement of principle which could have been made more striking (because more accurate) by a somewhat fuller statement than that which the author has accorded it. This is the only critical suggestion which it seems fair to make—apart of course from all discussion of those important matters of substance in regard to which jurists are divided. An illustration of a case in which a statement might have been slightly amplified with advantage appears on page 271. The author, after defining policies of insurance against fire or marine risks as contracts to recoup a loss which parties may sustain from particular causes, says "When such a loss is made good *aliunde*, the companies are not liable for a loss which no longer exists." He cites *Darrell v. Tibbitts*, 5 Q. B. D. 560. It would have been well, perhaps, to say that the companies' liability ceases only when the insured is made whole by the enforcement of a *right*—as distinguished from the case in which he may have become the recipient of a *gratuity*. See *Burnand v. Rodocanochi*, 7 App. Cas. 333.

The student's library, no matter how small, should contain Dr. Holland's book. The approved method of studying law in England and in the United States has been for generations a method which called upon the student to begin his work in the office of the clerk of the court by familiarizing himself with the practical working of legal remedies. Next in order it was thought proper for him to study (still in a so-called "practical" way) the *right* in

respect of which the remedy exists. He has never been encouraged to push his studies farther back, with a view to investigating ultimate juristic theories of right and liability—lest his mind should become unfitted for the daily routine of the law office. He has been advised not to study jurisprudence or to waste his time with mere “theory”—for the reason, among others, that such study is a thing of which the Civilians have a monopoly. It has been like the Protestant elimination of the symbol of the cross from ecclesiastical architecture in consequence of the Catholic retention of it. Fortunately the state of mind which makes such things possible is everywhere passing away. The student now learns what a contract is before he is instructed in the mechanics of an action of *assumpsit*. The next step in educational reform is to enable him to work out a theory of obligation before calling upon him to grasp the common law conception of contract. It is at this stage of the development of legal education in this country and in England that the eighth edition of Holland’s *Jurisprudence* appears. Its appearance is timely. It deserves and will unquestionably receive a hearty welcome.

G. W. P.

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THE ANNUAL ON THE LAW OF REAL PROPERTY. Edited by TILGHMAN E. BALLARD and EMERSON E. BALLARD. Vol. IV. 1895. Crawfordsville, Ind.: The Ballard Publishing Co. 1897.

Though the increasing number of law books has far overstepped the limits of the lawyer’s time, patience, or pocket, the value of such works as Mr. Ballard’s *Digest* should not be overlooked. Real Property is of such pre-eminent importance to the lawyer, that a digest devoted solely to that branch of the law cannot fail to be of use to him.

The plan of the compilers is to annotate and epitomize all the current case and statute law on real property, to compare the decisions and laws of different states, and to report in full a few of the most important cases. There are thirteen cases so reported in this volume. This vast material is first divided alphabetically into the main subjects of real property law, and then subdivided into sections arranged so as to make each subject read as a connected article.

Thus, the subject of *Abutting Owners* begins with the syllabus and opinion of the court in *P. R. R. v. Montgomery Co. Pass. Ry. Co.*, 167 Pa. 62 (1895), the opinion being divided into sections according to the points decided. Then follows a brief note of the case, and an epitome of all the cases on *Abutting Owners*, decided in 1895, grouped into sections, each section forming a note on one particular point of the subject. Where the law varies in different states, we find a full statement of the statutory provisions of all the states or an abstract of such provisions as, for instance, in the article on *Powers of Attorney* (§§ 589-632). The text of the book is followed by an index of statutes referred to in

the cases epitomized, and a complete index of the four volumes of the work.

We will find that some subjects in this book are very concisely dealt with, Equity being disposed of in three sections, and Evidence in eighteen, while, on the other hand, Eminent Domain has thirty-three sections, including four fully reported cases. From these dry statistics may be gathered the magnitude of the work and the labor involved in its preparation. The difficulty with such an enormous task is that the work must of necessity be very hasty, and important questions will escape notice, statements being made which would not be supported on further investigation. An Iowa case is authority for the remark: "The rule in Shelley's Case cannot be invoked to defeat the intention of the testator" (§ 254). Though, of course, the best authorities have always held the contrary, the editor suffers this case to pass without comment, while, on the other hand, such platitudes are indulged in as (§ 258) "Vested remainders may be conveyed," and three cases are cited to support this startling proposition.

As a digest of all the real property cases decided in any given year, this book is highly satisfactory, but as an authority on the Law of Real Property to take the place of a good text-book, it cannot be relied upon. *R. A.*

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THE NEGOTIABLE INSTRUMENTS LAW. Drawn, Annotated and Edited by JOHN J. CRAWFORD, of the New York Bar. New York: Baker, Voorhis & Co. 1897.

This work is indicative of a tendency, which has been growing more and more apparent throughout the United States, to bring the statutory provisions of the several states to as great a degree of uniformity as possible, especially in the realm of commercial law.

The chief factor in obtaining this result has been the Conference of Commissioners on Uniformity of Laws. In 1895 the Commissioners took in hand the subject of bills and notes, and Mr. Crawford was eventually appointed to draft a bill covering this important field. The bill as drawn and adopted by the Commission has been enacted by the Legislatures of New York, Connecticut, Colorado and Florida. In these states, therefore, Mr. Crawford's book will be of the utmost importance, as it not only contains the text of the existing law, but being fully annotated, with reference to the intention of the Commissioners, it will materially aid in the interpretation of the act.

This, of course, is its primary object and will prove its chief source of usefulness. As, however, the work is largely a codification of the Common Law rules, and, as the decisions are cited wherever the former law has been adopted, the book will be found to contain a collection of authorities which will be serviceable in any state.

While the greater portion of the work done by such bodies as the Conference of Commissioners consists in crystallizing the law

and sending it forth in a logical and proper form, so that it may be the more easily consulted and readily comprehended, not the least advantage accruing to the profession and to the public at large from their endeavors is to be found in the careful discussion given to controverted theories and the final adoption of a certain and intelligent rule. A single example of a much mooted question, which has been definitely settled in the present work, will suffice to show the beneficial effect of such deliberations. Take, for instance, the subject of anomalous indorsements, upon which the courts in different jurisdictions have entertained such opposite views, one treating the writer of an irregular or anomalous indorsement as a joint maker of the note, another as a guarantor, another as an indorser, and a fourth as a second indorser, while in England his act is regarded as having no legal effect.

The confusion arising from such a conflict of authority is certainly to be deplored. It has been done away with, however, in those states which have adopted this well drawn law and the ably considered decision of the Commission to the effect that an irregular indorser should, in reason and sound law, be treated as a second indorser will go far, perhaps, to settle the trend of opinion in the matter. In fact, wherever the courts have failed to agree, the different theories have been compared, and that one having most to recommend it adopted. As Mr. Crawford's book gives the reasoning by which the Commissioners arrived at their conclusions, it will be of assistance in jurisdictions where a given question is still open to judicial determination. *M. L., Jr.*

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PROBATE REPORTS ANNOTATED. By FRANK S. RICE. Vol. I. New York: Baker, Voorhis & Co. 1897.

The above is the initial volume of a new series of reports which are to be the successors of the "American Probate Reports." Their plan is stated to be, to give in an annual volume contemporaneous or recent decisions of the courts of the different states upon all matters cognizable in Probate and Surrogate courts, of general value to the profession. The editors propose to exclude all cases which "carry their own solution in the mere statement of the facts that underlie them" and to present only those "that embody the more intricate phases of probate litigation;" to give dissenting opinions where they rest upon fine distinctions and present the *contra* view convincingly; and to report all cases promptly, regardless of their appearance in official form. On the whole, the scheme of the work is well considered, and, if properly carried out, should result in a series of reports of great value to every lawyer.

But the present volume is marred by some unfortunate defects, sometimes suggestive of careless proof-reading, and sometimes of hasty preparation of the subject-matter; while the abridged quotations from Schouler, Dem. Rel., (P. 569, l. 43) and 3 Johns. Ch. 481 (P. 570, l. 4) are most ambiguously worded and convey no

idea of the statements in the original. Further, the annotation seems at times unnecessarily profuse; five pages of fine type are devoted to the Doctrine of Estates Tail, yet the author himself says (p. 11) that the universal opposition of courts and legislatures to their existence "renders the entire subject of little practical importance" in this country. In this note the author names seven states which have abolished estates tail or converted them into fees simple, but no mention is made of Pennsylvania, in which, by the Act of April 27, 1855, estates tail were converted into fees simple; though the case to which this note is appended is from Pennsylvania: *Ralston v. Truesdell*, 35 Atl. Rep. 813 (Nov. 11, 1896). On the other hand, the most important topic of implied trusts is disposed of in a note of only one page in length, and is in consequence very inadequately treated. Moreover, the editor does not distinguish clearly between resulting and constructive trusts; his definition is, "Implied trusts arise where the intent to create is a logical inference on the language of the instrument." This, of course, does not include constructive trusts, where the intention of the parties is often entirely disregarded. In the otherwise excellent note on the rule in Shelley's Case, the editor says: "It is exceedingly doubtful if any equity court in this country would enforce its (the Rule's) provisions in an extreme case, and it is certain that it is very generally regarded rather as a rule of construction than as a rule of law; that is to say, its rigors are abated in all instances when its enforcement would contravene the manifest intention of the testator." This broad statement will surprise lawyers in some jurisdictions; notably in Pennsylvania, in the light of *Heister v. Yerger*, 166 Pa. 445 (1895), and *Grimes v. Shirk*, 169 Pa. 74 (1896).

It is unfortunate that these blemishes should appear in a work on the whole so valuable and well prepared, and we hope the succeeding volumes of the series will retain all of the merits of the present one while eliminating its faults.

M. H.