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BOOK REVIEWS.

THE PRINCIPLES OF THE AMERICAN LAW OF CONTRACTS AT LAW AND IN EQUITY (Second Edition). By JOHN D. LAWSON, LL.D., Dean of the Department of Law and Professor of Contract and International Law in the University of Missouri, etc. St. Louis: The F. H. Thomas Law Book Co. 1905. Pp. XXV., 688.

This book deserves to rank among the leading elementary American text books on the Law of Contracts. Its author, Professor Lawson, has long been one of the most widely known legal writers of the United States. The material used in the present volume has been for some time in the process of collecting and represents the intimate acquaintance of the author with a vast number of American decisions at first hand. Such independent work never fails to be worth consulting on a difficult problem and often reveals hitherto overlooked cases.

The book may profitably be read by the law student and with equal profit may be consulted by the practitioner in connection with what we consider a much more important work by the same author and written on the same subject, the title "Contracts" in the Ninth volume of the Cyclopedia of Law and Procedure, pp. 213-786.

There seem to be a few points, however, deserving of criticism in the volume before us.

The author's definition of a contract,

> "the agreement of two or more competent persons in proper form on a legal consideration and with their free consent upon a legal subject matter."

(Introduction p. 2), exhibits the tendency, now fortunately flowing with a weaker current than formerly, to analyze every contract in the English Common Law into one group of elements, among which the "Consideration" is given place. Chief Justice Marshall in *Sturgis* v. *Crowninshield,* 4 Wheat. 197, in holding that a promissory note is a contract protected by the Federal Constitution observed that

> "A contract is an agreement in which a party undertakes to do or not to do a particular thing."

Mr. Lawson begins his treatise by criticising this definition because there is no mention of the "consideration." The too limited scope of his definition is disclosed when on page 82 he says:

> "The formal contract of our law is the *Contract under seal.* It is called a *formal Contract* because it derives its validity from its form alone, and not from the fact of agreement, nor from the Consideration which may exist for the promise of either party."

And Marshall showed the breadth of his common law learning by not defining a contract so as to exclude commercial paper and specialties from the Constitution's protection.

One would infer from the author's discussion of the Statute of Frauds that the Statute applied where the defendant said, "if you will let A have the goods I will see you paid." But clearly these words are not talismanic; they do not preclude the sole liability of the defendant.

In discussing consideration (p. 117) it is said:

> "All that is necessary to constitute a valuable consideration is that the *promisor* does or promises to do something &c."

It would have been better to have said "promisee" though the word may be only a typographical error.

The author is rather inclined to shut his eyes to the inadequacy of the doctrines of consideration and to accept sophistical explanations if they emanate from high sources.

"The true theory however of promises of this kind [i.e. to pay a debt barred &c.] is that they do not create new contracts but that they are merely waivers of a personal defense against existing contracts."

But if barred how can the debt exist? And if it exists and it is promised that the defense will be waived what is the consideration for this promise? On the theory of a waiver the balance of a debt after part payment ought to be uncollectible because *waived.*

It would be franker to admit that Commercial expediency outweighed the doctrine of consideration and prevented its application to such cases.

In discussing offer and acceptance by mail Mr. Lawson after citing familiar leading cases draws certain conclusions from which we must dissent:

". . . . that the post office and telegraph are his agents respectively when he [i.e. the offeror] expressly makes them so by requesting a reply by mail or telegraph or when he impliedly makes them so by using these agencies to make his offer, or when the circumstances are such that it must have been within the contemplation of the parties that according to the usages of mankind the post might be used as a means of communicating the acceptance. . . . . ."

In other words the author states that the post-office is the agent of the offeror when the circumstances compel the conclusion that the post might be used by the offeree.

But one of the latest English cases cited by Mr. Lawson, *Henthorn* v. *Fraser* (1892), 2 Ch. 27, repudiates the doctrine of agency. Kay, L. J., saying:

"the decision in *Dunlop v. Higgins,* 1 H. L. C. 381, has been explained by saying that the post-office was treated as the common agent of both contracting parties. That reason is not satisfactory. The post-office are only carriers between them. They are agents to convey the communication—not to receive it."

Mr. Lawson in thus pouring together *Household Ins. Co.* v. *Grant,* 4 Ex. D. 216, and *Henthorn* v. *Fraser,* resembles the cook who to use up everything on hand and avoid waste uses tainted meat and fresh meat to make some fancy dish and hopes that the combination will prove palatable.

The space devoted to the various topics does not seem to be in proportion to their difficulty or the frequency with which cases arise thereunder. Thus the author devotes about one hundred pages to the subject of capacity and only thirty-four

pages to the subject of Consideration, but the chief fault throughout the work is that no reference or direction is given in notes to the student where he can find fuller discussions of the questions left open.

C. D. H.

THE AMERICAN LAW OF REAL PROPERTY. By CHRISTOPHER G. TIEDEMAN, Revised and Enlarged by EDWARD J. WHITE, St. Louis: The F. H. Thomas Law Book Co. 1906. Third Edition. Pp. 1017.

To condense, even within the limits of a thousand pages, the real property law of these United States is a very difficult task and a man deserves credit if he merely makes the attempt. Professor Tiedeman's book, however, is far more than an experiment in this direction; it is the result of a lifetime of painstaking labor and in its present form as edited and revised by Edward J. White, Esq., who was for years the author's pupil, it is a monument of accurate legal scholarship.

There is one feature about the work which is especially pleasing. It is not like so many modern text-books a mere digest of reported cases with brief summaries of the law preceding a wilderness of citations. Instead it is a clear and coherent treatise of the law of real property in general with special notes giving case citations inserted only where they are useful as furnishing sanction and authority for the statements of the text. The main principles of real property law are clearly and succinctly enumerated and they are treated largely from an historical standpoint so that the reader not only knows that a certain rule or principle exists but the reason for its existence.

It always seems a fair test of a book of this kind to examine the manner in which it treats of the famous "Rule in Shelley's Case." On this point Professor Tiedeman says:

> "It has long been a rule of common law, that if an estate for life, or any other particular estate or freehold, be given to one with remainder to his heirs, the first taker shall be held to have the fee, and the heirs will take by descent and not by purchase. *The first taker is thereby enabled to make a free disposition of the estate in fee, and the heirs take by descent, only when no disposition has been made of it by the first taker.*"

The italicised portion is indicative of the method of treatment above referred to and very well illustrates it. How often do we read that the famous "Rule" means that where land is devised to a man and his "heirs" the word heirs is a word of "limitation" and not of "purchase." But to the mind of the student at any rate and often to the mind of the lawyer

such a statement is anything but enlightening. When, however, it is coupled with a clear explanation of the practical result of the technical distinction it becomes at once intelligible and useful.

All through this book a consistent effort is made to clear away the obstacles raised by archaic Norman-French terms and moth-eaten technicalities and the refinements of age-old reasoning, and in their place to introduce as their more vigorous offspring the modern principles which control the acquisition, enjoyment and disposition of real estate in the United States to-day.

We are a progressive people and our law is virile and constantly changing to meet the new conditions which are constantly arising in the nation's life. It is therefore a pleasure to meet with a book which not only fills a national want but is typical of national thought and national growth.

T. J. G.

A TREATISE ON AMERICAN CITIZENSHIP. By JOHN S. WISE, of the New York Bar. Northport, Long Island: Edward Thompson Company. 1906. Pp. vii, 340.

This volume belongs to the series of "Studies in Constitutional Law," of which series we noticed in the October, 1907, issue of the LAW REGISTER, Mr. McGehee's book on *Due Process of Law*. Its subject matter has for some time been in need of systematic treatment, and the present publication is intended to satisfy this need.

As citizenship, is stated to be "the status of a citizen with its rights and privileges," its meaning necessarily depends on the definition of a citizen which term is described as implying "membership of a political body in which the individual enjoys popular liberty to a greater or less degree." This definition suggests the method in which the subject is developed, the author first of all setting forth a historical resumé of the subject of citizenship in this country, treating it, as is necessary, in its dual aspect of citizenship of the United States and citizenship of a State. This is followed by an enumeration and discussion of the rights and obligations appertaining to the status, together with short chapters on the "Protection of Citizens Abroad" and "Expatriation."

There is an interesting discussion of the status of the inhabitants of the territory lately acquired by the United States, and its anomalous character as established by statute and decision is fully analyzed; but here as elsewhere in the book the treatment does not lay claim to being exhaustive, but presents

in clear manner a careful and readable summary of general principles.

The rights, privileges and immunities of citizens are enumerated at length, the decisions which establish and define them being cited in formidable numbers in the notes. However their full discussion could not fairly be expected in a book such as the present volume, since the result would be to carry the author too far afield and obscure the main purpose and subject matter of the discussion.

Like almost all the books printed by this publishing house, this volume is to be commended for the very excellent form in which the author's material is offered to the reader.

H. W. B.

THE LAW OF TORTS. By FRANCIS M. BURDICK, Dwight Professor of Law in Columbia University School of Law. Albany: Banks & Co. 1905. Pp. lxxx, 501.

Professor Burdick's book on Torts presents an admirable treatise within comparatively brief compass. Its purpose is to state concisely the rules of law on this subject and to expound the reasons for these rules as set forth in the decisions. Authorities are, of course, carefully cited, but consistent effort has been made to have the citations in point and decisive, and to avoid cumbering the book and annoying the reader with cases only remotely bearing upon the matter under discussion.

The classification is not novel, save that in the chapter of the book entitled "Harms that are not Torts," the principles which excuse or justify acts otherwise tortious are discussed; and in the treatment of particular torts the author avoids the order observed by some modern writers and makes his classification depend not on the motive, intent or state of mind of the wrong doer, but upon the sort of harm inflicted. He considers first the torts directed principally against the person of the victim, then those aimed at property and lastly those which are invasions of both personal and property rights.

Modern developments in tort law are carefully treated and special reference may be made in this connection to the discussion of "Unfair Competition" and to certain portions of the law of Negligence, particularly the section devoted to the "Liability of Land Owner or Occupier, and of Others Engaged in Extra Hazardous Undertakings." The influence of *Rylands* v. *Fletcher* is traced in its own and allied classes of cases, and the present state of the law is clearly set forth.

We might have expected, perhaps, to find some treatment of the Right of Privacy. In view of the comparatively recent growth of this branch of the law and the apparent propriety

of including the violation of this right within the somewhat uncertain definition of a tort it is strange that the author has entirely ignored it, especially when we find so excellent and suggestive a discussion of the nature of a tort as appears in Chapters I and II, particularly in connection with the comments on *Rich* v. *New York, etc., Ry.*, 87 N. Y. 382.

Without attempting to treat the history or the theory of the law of torts exhaustively, the author has presented with remarkable brevity and accuracy the legal principles involved in modern tort litigation, and his book will, we believe, find very general and cordial acceptance.

H. W. B.

CASES ON TORTS. By FRANCIS M. BURDICK, Dwight Professor of Law in Columbia University School of Law. Third Edition. Albany: Banks & Co. 1905. Pp xii, 1000.

This volume has been prepared by Professor Burdick and the cases selected and arranged for the use of law students in connection with his treatise on the *Law of Torts*. The divisions of the subject follow the classification of the text book both in the general outline of the work, and in the subdivisions of the same.

The success of this collection of cases is attested by those who have used it, and this third edition shows a careful selection of recent cases for addition to those formerly included, thus insuring the continuance of its valuable character as a body of cases illustrating the essential principles of tort law.

It may be doubted whether the "case system" can be utilized to best advantage when the collection of decisions is parallelled by a treatise analyzing the subject. Though the student finds the subject adequately expounded in such a text book, he is unlikely to secure the discipline and the resulting thoroughness of comprehension which results from an independent study of the cases.

H. W. B.

THE LAW OF TORTS. By MELVILLE MADISON BIGELOW. Eighth Edition. Boston: Little, Brown & Co. 1907. Pp. xxxv, 502.

When a legal text book reaches its eighth edition it establishes a claim to favorable recognition. This recognition may be due to its success as a treatise of particular utility, or to its adequacy as a thorough and comprehensive discussion of underlying principles. Bigelow on Torts is entitled, we believe, to recognition on both grounds, and particularly in this

latest edition is there a profound appreciation of the influence of social and economic forces in the development of the law.

The first chapter, devoted as it is to "Theory and Doctrine of Tort," contains a discussion of legal right, which is deserving of most careful consideration, and has a far wider bearing than a simple preface to the study of tort law. It is an examination of the fundamental conditions which find expression in the decisions of tribunals and consequently in the shaping and moulding of the body of the law.

Tort liability is considered under two heads, that resulting from acts involving a "Culpable Mind" and that resulting from acts the effect of an "Inculpable Mind," and the rules applicable in each case are correlated, and their connection pointed out. It will, perhaps, be a surprise to some to find "Negligence," discussed under the head of "Culpable Mind," but the author's reasons for this classification will be found to be of no little interest, and deserving, as in fact the whole treatise is, of serious consideration.

Of special importance, however, is the recognition given by the author to what he designates a new point of view emerging out of the agitation of social movements within recent years. This he describes as the struggle between equality and inequality—between the public and privilege, and between privilege as capital and privilege as labor—illustrated by such cases as *Rice* v. *Albee,* 164 Mass. 88, and *May* v. *Wood,* 172 Mass. 11, in this country, and *Allen* v. *Flood* (1898), A. C. 1, in England. The serious part played by the principles appearing in these decisions has, of course, not failed of recognition, but they receive in this volume a treatment adequate and exhaustive.

There is no doubt that the present edition of this work will add largely to its claim on the profession, and establish still further the well-earned reputaton it has already secured.

H. W. B.

THE LAW OF PRIVATE CORPORATIONS. By WILLIAM L. CLARK, JR., Instructor in Law in the Catholic University of America. Second Edition, by FRANCIS B. TIFFANY. Hornbook Series. St. Paul, Minn.: West Publishing Co. 1907. Pp. xv, 721.

The special features of the Hornbook Series of legal text books, the succinct statement of the leading principles in blackletter type, the more extended commentary, elucidating the principles, and the notes and authorities, have found general favor with a large part of the profession. The present volume is prepared in the usual form, and follows closely the lines of

the original work. However a thorough examination of the decisions rendered in the ten years since the publication of the first edition has been made, and a full citation of these is now included, together with certain additions to and modifications of the text.

Mr. Clark in treating with special care the doctrines in regard to corporations de facto, estoppel to deny corporate existence, subscriptions to stock prior to incorporation and watered stock, and the now exploded but still important trust fund theory, has shown a comprehension of the topics of unusual difficulty, which has given to his treatise great practical value.

As a discussion of the principles applicable to corporations generally the book has proved its merit. More than this could not be expected in a volume of its restricted limits.

H. W. B.

SELECT ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY. By Various Authors; Compiled and Edited by a Committee of The Association of American Law Schools. In three volumes. Volume I. Boston: Little, Brown & Co. 1907. Pp. x, 847.

This collection of essays on topics in Anglo-American Legal History is being made under the supervision of the Association of American Law Schools, and represents the outgrowth of a movement now of several years standing within that body. It was believed that a great deal of valuable work has been done in the effort to construct various parts of our legal history, but that the results of this labor were so scattered and difficult of access as to make them not easily available to the student. To remedy this, it was proposed to collect from all sources the best discussions extant, and reprint them in a form suitable for the profession. The committee appointed to take the matter under consideration reported in favor thereof, and the present volume constitutes the first fruits of their labor. A second volume is promised for 1908 and a third for 1909.

The general purpose of the editors has been to supplement the great treatise of Sir Frederick Pollock and Professor Maitland on the History of English Law. The collection has been made with the utmost care, lists of articles being made, considered, reconsidered, submitted to experts, and finally being reduced to one hundred and fifty titles as set forth in the Reports of the American Bar Association for 1906 (Vol. II, pp. 191, ff). It is proposed to reduce this number still further so that the essays finally published will probably not exceed seventy-five.

A cursory examination of this first volume will convince the reader of the critical judgment that has been exercised in the selection of the essays published, and such names as Maitland, Pollock, Jenks, Stubbs, Bryce, Beale and others guarantee the value of the publication, were any guarantee needed.

There are twenty-one essays included in this volume grouped together under the following historical subdivisions: Before the Norman Conquest; From the Norman Conquest to the Eighteenth Century; The American Colonial Period; Expansion and Reform of the Law in the Nineteenth Century, and Bench and Bar from Norman Times to the Nineteenth Century.

It is, of course, impossible for us to consider these essays with any hope of adequate criticism All have appeared before, scattered principally through the pages of various legal periodicals. With many of them the intelligent part of the profession is already familiar. It is gratifying to find them now offered in a form making them available as a part of a lawyer's library, as well as making possible their use in the various law schools of the country in connection with the constantly increasing regard for the historical development of various branches of the law.

The committee in charge of the publication is composed of Prof. Ernst Freund, of the University of Chicago; Prof. William E. Mikell, of the University of Pennsylvania; and Prof. John H. Wigmore, of Northeastern University.

H. W. B.

THE PREPARATION AND CONTEST OF WILLS, with Plans of and Extracts from Important Wills. By DANIEL S. REMSEN, of the New York Bar. New York: Baker, Voorhis & Company. 1907. Pp. xli, 839.

The character of this book is well explained by its author in his preface, where he states his intention to be to adopt the *ante mortem* rather than the *post mortem* point of view. Its purpose is to equip the practitioner to advise a client fully and intelligently as to the various modes of disposition of his property open to him, and to enable the attorney, having received instructions, to draw the will with precision and accuracy. It is not intended as an authority upon the interpretation of the intricacies of wills of doubtful meaning, and does not pretend to compete with such a treatise as Jarman's either in its scope or in its profound scholarship. In its own field it is a book which is without doubt of practical value in connection with the drawing of wills.

It is to be commended to the younger members of the bar, not on account of its being elementary in character, but because it is especially helpful to those members of the pro-

fession who have not by experience become familiar with the situations likely to arise in connection with the settlement of estates, and against which it is incumbent on them to guard. Too often these essentials are learned only after regrettable experience where proper provisions have been omitted, and books which will really help the young attorney in avoiding probable, but often inexcusable, mistakes and omissions are not numerous. To this class, however, we regard this book as belonging.

It is unnecessary to indicate the classification of the subject matter. Suffice it to say that the division of the topics is not novel, but the treatment is clear and comprehensive. While, as we have indicated, the work is not an exhaustive treatise on the validity and construction of wills, it sets forth in excellent fashion just those rules with respect to wills and estates created thereunder and with respect to allied matters, which are necessary to the attorney who would draw a will with knowledge of the alternative provisions open to the testator, and the form of execution required to give the instrument validity.

An excellent feature of the book consists of extracts from important wills drawn by eminent counsel and exhibiting forms of testamentary disposition which provide for complex and unusual situations as well as for the more customary though frequently involved trusts. This part of the book covers over three hundred pages, and possesses no little value. Many lawyers would, we feel sure, regard it as sufficient to entitle the book to favorable consideration. *H. W. B.*

THE LAW OF MARRIAGE AND DIVORCE. By FRANK KEEZER, of the Boston Bar. Boston: William J. Nagel. 1906. Pp. xvii, 609.

This work gives every evidence of a great deal of research on the part of the author. It attempts to condense and place in handy form for rapid reference the various and often divergent statutes of all the states relating to marriage and divorce, and to cite the leading cases on these subjects in every jurisdiction. The form of the book is logical. It treats first of the inception of the institution of marriage, and then proceeds to consider by regular steps the causes and form of its dissolution and the topics such as alimony, custody of children, etc., which are necessarily incident thereto.

It is believed that this book will be of great service to the busy lawyer who wants to decide divorce problems in a hurry. This will be especially true when the problem arises with relation to the law of a State other than his own.

T. J. G.

MILITARY LAW AND THE PROCEDURE OF COURT-MARTIAL. By EDGAR S. DUDLEY, LL. B., LL. D., Colonel, Judge Advocate, U. S. Army, Professor of Law at the United States Military Academy, West Point, New York. New York; John Wiley & Sons: London; Chapman & Hall, Limited. 1907. Pp. ix, 650.

While this book has been prepared primarily to meet the necessity at the United States Military Academy for a text book which should give in relatively brief compass a clear and thorough outline of the science of military law it will prove instructive reading to any one interested in its subject matter as well as a valuable source of information in regard to questions not infrequently arising with respect to the extent of the military power in the punishment of offenses, and its relation to the civil power.

The subject matter is well arranged and the various steps of procedure in military courts are lucidly and concisely treated. Following this portion of the book is a chapter covering not far from one-third of the text in which the articles of war are separately considered.

Appendices are added containing, *inter alia*, the text of the articles of war, and general forms.

H W. B.