

BOOK REVIEWS

TAX EXEMPT AND TAXABLE INVESTMENT SECURITIES. By Sydney R. Wrightington and Weld A. Rollins. Boston: Financial Publishing Co., 1913.

As stated in the preface, this book is intended as a manual for the investing public; it does not purport to be a legal treatise, and, therefore, its scope is limited to a statement of the statutes taxing the commonest forms of investments in the several states. There is no discussion of the constitutional limitations on the taxing power, nor is the text burdened with the citation of many cases. The arrangement is simple, the states being in alphabetical order and the kinds of securities grouped in a convenient, if inaccurate, manner. At the end there is a summary of the taxation of investments arranged by subjects, which would give the reader some idea where his money would be exempt from a state-tax; but as such taxes are very small and often paid by the corporation, it is hard to see how this summary would be of any great value to a prospective investor. The value of the main part of the book—the laws by states on each of the seventeen classes of securities into which the authors divide investments—is greatly decreased by the frequent omission to state the amount of the tax. In view of the fact that prospectuses usually state in what state or states the security advertised is exempt from taxation, the book will be useful to but a very limited number of people; however, the citation of the taxing statutes furnishes a convenient digest for any one desiring more detailed information.

C. L. M.

THE LAW OF DOMICILE IN ITS RELATION TO SUCCESSION, AND THE DOCTRINE OF RENVOI. By Norman Bentwich. London: Sweet and Maxwell, Limited, 1911.

This work received the Yorke Prize at the University of Cambridge in 1910, and is now published under the terms of that Prize. It is a valuable treatise, from the point of view of English law, upon those doctrines of domicile by which the courts resolve the conflict of laws respecting testate and intestate succession.

It is a somewhat curious fact that the principles of domicile, derived as they are from the Civil Law, play a part of greater importance in English and American law than in the systems of continental Europe which have a purely Roman origin. Our law, as did that of Rome, makes intention and choice the criterion of domicile; but European law tends generally to demand something more. Most European countries insist upon the formal authorization of the government for the acquisition of domicile, and their courts require a certificate of such authorization when a question of domicile is at issue before them. Under such requirements a change of domicile takes on almost the formality of naturalization.

When an Englishman dies abroad or a foreigner in England, leaving personal property both at home and abroad, these divergent conceptions of domicile raise perplexing questions. Unity of method in the distribution of the estate is, of course, the end to be desired; but by what law is that unity to be achieved? The author of this work, although in the teeth of much critical opinion, favors the solution of the problem through the theory of the *renvoi*. He marshals the cases both in English and Continental courts to show that the trend of judicial decision supports his view. His chapter on the *renvoi* is, indeed, one of the most constructive and scholarly of his book.

The doctrine of the *renvoi* is entirely logical. It starts with the proposition that the court, when confronted with a question of testate or intestate succession under conflict of laws, having by its own standards found the domicile foreign, should proceed to distribute the personalty within its jurisdiction as if sitting as a court of the foreign domicile. An English court so sitting must take the Continental view of domicile, and may thus find itself bound to determine, contrary

to the conclusion from which it started, that no new domicile has been acquired, and that English law governs. This is the *renvoi*, the sending back, in the court of the nationality, to the law of the nationality. The point is, however, that the law of the nationality is not thus applied *ex proprio vigore*, but, as it were, at second-hand, under the foreign authority with which for the occasion the court has invested itself. All this is logical; but the logic may be pushed farther, and then many juristic writers find opportunity for a sweeping condemnation of the doctrine. The law of the domicile sends the matter back to the law of the nationality, but this again remits it to the law of the domicile. Thus, conceivably a legal game of battledore and shuttlecock arises, each jurisdiction applying the whole law of the other, and tossing the subject-matter endlessly back and forth between the two. Mr. Bentwich's answer is that this logical outcome does not in practice result, because the court which accepts the *renvoi* retains the shuttlecock at the first return. And he finds the decisions of the courts of recent years speaking almost with one voice in acceptance of the *renvoi* as an effective rule of true comity.

Mr. Bentwich's other chapters are upon the Scope and Limitations of the English Conception of Domicile, the distinctions between Real and Personal Property, the Administration of the Estate, the Effect of Domicile upon Distribution, the Limitations of the Regulation of the Succession by the Law of the Domicile, the Validity of the Principle of Domicile in Succession, and Death Duties and Domicile. This last-mentioned chapter upon Death Duties and Domicile is an interesting discussion of certain new questions which have come to the front of late with the introduction of succession taxes into the fiscal systems of all countries.

A. M. B.

THE FIXED LAW OF PATENTS. By William Macomber. Boston: Little, Brown & Co., 1913.

In presenting the second edition of his "Fixed Law of Patents," William Macomber, Esq., has given to the profession something of a nature decidedly foreign to the average work dealing with this branch of the law. The author states that he has endeavored to produce a book "written primarily for the general practitioner—for the lawyer looking for general principles," so that, as from time to time questions of patent law arise in general practice, its possessor may have at hand a satisfactory means of answering them.

The whole of our patent system is fundamentally based upon a few comparatively short statutory enactments, yet the multitude of cases which have been decided—especially in the past few years—has produced a great number of principles bearing upon the application and interpretation of those statutes, and which might be said to constitute the *corpus* of American Patent Law. While many of these principles may be considered as practically fixed, others are still in the formative period, and still others are yet to be enunciated. In consequence, the necessity of adverting to the decisions of the courts themselves, and step by step following the reasoning by which the principle controlling a given case, which may be under consideration, has been worked out, or by which decisions, somewhat analogous, but yet not quite in point as bearing upon the exact question before the practitioner, have been arrived at, is at once apparent.

Perhaps the need of thus considering the reasoning and decisions of the courts themselves, is enhanced by the present system of organization of the Federal Courts, which have exclusive jurisdiction in patent cases, and which comprise nine courts of last resort, each of which may, and often does, hold different views regarding the interpretation or validity of the same patent.

To present these decisions, therefore, in the most convenient form, has been the object of the author, and in making the compilation, he has confined himself exclusively to those decisions which constitute the "fixed" law of patents; namely, all of the decisions of the Supreme Court, and of the Circuit Courts of Appeal, down to, and including, those contained in 225 U. S., and 194 Fed. Rep. From these cases he has excerpted the salient points, and, quoting them in the exact language of the reports, has grouped them under appropriate headings. It may be that he has utilized the best method available for this grouping and indexing; it may be that a better method can be discovered for some future edition. The abbreviation of the titles of the cases, besides, seems somewhat

strange, and sometimes leaves one in doubt as to whether or not an old acquaintance has been encountered. However, it will be found that the more the book is made use of, the more familiar does one become with its arrangement and make up, and the more readily are the cases upon any desired topic located.

The author's "Brief Summary" of the subject of the law of patents is most interestingly written, and it is thought will do much to enlighten the lawyer unfamiliar with its technicalities, while the method employed of referencing the points touched on therein, to the cases in the body of the work, enables the reader readily to clear up a knotty point, or to compare his own views, based upon the decided cases, with those of the author.

In short, it is believed that the book fills a unique place among those dealing with this most important branch of the law, and will prove of assistance and value to the patent specialist, as well as the general practitioner for whose use it was primarily designed.

G. K. H.