

BOOK REVIEWS

CASES ON CRIMINAL LAW. By William E. Mikell. Second edition. American Case Book Series. St. Paul, West Publishing Company, 1925, pp. xxiv, 79.

Public attention today is directed at the criminal law more intently than at any other field of the law, and the great weight of popular criticism centers there. It is an opportune time, though not without its dangers, to bring forth a new work, or even a new edition of a work in this field.

Dean Mikell first published a casebook on criminal law in 1903. In 1908 a second and shorter work by him made its appearance. The latter production was the first of the now celebrated American Casebook Series; the casebook forming the subject of this review is the second edition of the 1908 work. The first edition contained 610 pages; the current one has expanded to 799. A few of the cases appearing in the former volume have been omitted. Sixty cases not appearing in either of the author's two previous works have been added.

The new edition contains a total of 419 cases. Of this number 228 are English and 191 American; a total of fifty-three bear a date previous to 1700; forty, thirty-five English and five American, bear dates between 1700 and 1799; a total of 260, 137 English and 123 American, appeared between 1800 and 1899; sixty-six cases, of which sixty-three are American, bear dates since 1900. Of the last group forty-four have made their appearance since the 1908 edition. Among the various state contributions, Pennsylvania heads the list with twenty cases, then follow North Carolina and New York with fifteen each and Texas with thirteen. Massachusetts has but seven, and Illinois and Michigan each have six.

The new edition has some rearrangement in material. The new cases inserted, particularly the recent ones, are well chosen. For instance, the offering covering the intent in statutory crimes is very much enriched through the insertion of *United States v. Balint* (p. 148) and *State v. Dombroski* (p. 151). Both of these cases were decided within the last few years. The section on negligence has been particularly improved through the addition of new cases.

If the work is subject to any criticism, it is that the author has included too many of the English cases, particularly of the older ones. This often, in the class room, leads into a discussion of the highly refined rules of the common law at the expense of emphasizing the modern trend of criminal litigation. The writer ventures an opinion that the subject of larceny is over-emphasized, and too little attention is given to the growing fields of burglary and robbery. With the amazing number of prosecutions under the various prohibition acts, perhaps, some attention should have been given these cases. These, of course, are not common law cases, yet they form a great part of criminal cases today, and they will probably continue to demand much of the prosecuting attorney's attention for some time to come. The young lawyer should not be uninformed as to this field.

Improvement in criminal law rules is at best slow. But here and there a jurisdiction takes a forward step. One may have a progressive view in the

matter of insanity; another may take an advanced stand as to moral and legal duties, and so on. These high points should always stand in relief in the class room. Perhaps there has been too little of that in the author's book.

All in all, Dean Mikell had a successful case book in his first edition, and this he has improved in most every particular in his new one. The work is a success in the class room.

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CASES ON BUSINESS LAW. By Ralph Stanley Bauer and Essel Ray Dillavou. St. Paul, West Publishing Company, 1925, pp. xxii, 1044.

A book with a peculiar purpose should be judged first as doing or failing to do what it undertakes. Of the purpose itself questions may be reserved. Judged in this light Professors Bauer and Dillavou are entitled to the highest praise. They have condensed into a single volume excellent case books on Bailments and Carriers, Security Rights, Property, Insurance, Banks and Banking, Bankruptcy, Crimes and Trade Regulation. An earlier volume in which one of these editors had collaborated treated in a similar way Contracts, Agency, Negotiable Instruments, Sales, Partnerships and Corporations. Together these volumes summarize the complete law school curriculum with the exception of a few courses in adjective law, public law and domestic relations. In general the editors build on the foundation of the American Case Book Series. They use its external format, its arrangement, its subject matter and, to a very large extent, its cases. Yet they use independent judgment wherever it is necessary in the selection of cases and parts of cases and particularly in the addition of short, clear, recent cases to take the place of some of the so-called leading cases. They have also written excellent little introductions and transition paragraphs and have added in boldface type generous excerpts from statutes, particularly the several "uniform" acts. In short, with great diligence, they have succeeded in squeezing between the covers of a book a vast portion of the material out of which law courses are made.

For what purpose? For the teaching of business law to business students. But is a condensed law school course a part of the training of a business man? True, such a course has been included in the business school curriculum during its formative stage. There was a time when such a course was one of the best organized and most highly appreciated parts of that curriculum. But as other courses in the business curriculum took shape, the study of their legal aspects naturally assumed a different place. We are still in a transitional and experimental stage. Yet a few conclusions can be ventured. Surely something different from a little law school curriculum is needed by the executive. There is no idea of making every man his own lawyer. There is no hope of imparting information to the business student that will really solve difficulties when he meets them as an executive fifteen or twenty years hence. There is not even much reason to expect him to be able to look up the law or read law books or think in accordance with the "artificial reason of the law" many years hence. In short, there is no object in teaching him law in the ordinary sense of the

word. The only function of a course in business law is as an aid in the teaching of business. Every executive is called upon to use legal devices for his ends, just as he is called upon to use mechanical devices. We do not expect him to be a trained mechanic or architect even though we do expect him to know when and where and how to include in his scheme of things such devices as elevators and traveling belts, railroad switches, chutes, loading platforms, office equipment, display racks, modern lighting. In like manner we expect the executive to know how to include among the devices for his business ends: contracts, conditional sales, mortgages, leases, negotiable instruments, corporations, partnerships, agencies, stocks and bonds and numerous others that may without too much violence be denominated legal devices. That it is not necessary to be a consummate legal mechanic to handle these devices is quite obvious, for the business man must after all rely on trained specialists in the instalment of these as well as of the mechanical devices. What is not quite so obvious is that the training of the specialist does not include enough insight into the use of the devices for the purpose of the executive. The law student pays little attention to such questions as what devices are available for credit, for organization, for risk-shifting or for a hundred other purposes that the business man must accomplish. He devours the intricate learning of mortgages without once asking the practical questions: What are they used for today, and why, and what are the practical limitations upon their use and how do they compare with alternative devices? That the mortgage behind the bond has ceased to be a credit device and has become an organization device, that it is valued more for the procedure it carries with it than for the substantive law it involves is today, at least, no part of legal education. It is, or should be, a part of business education.

The book before us reflects but little of these newer developments in business law. It goes on the theory that somehow or other an executive can be trained for his problem of fitting means to ends by following judges through the mental processes by which nicely defined and thrice refined issues are decided. There is, to be sure, something of the functional idea in some of the prefatory notes, but it is woefully indefinite. "Bailments," we are told, "of one kind or another are a part of the everyday life of nearly every person." Or again: "One method often adopted by the business man of today used in securing payment for articles sold is to retain title of the article sold until such time as it is paid for." That is better; but when, in what businesses, where, why, and above all how shall we proceed to compare this with alternative devices? Perhaps a good deal of research outside of law books will be necessary before these more vital matters can be presented in the classroom.

There is one part of the book in which the editors have profited by the example of the newer books on Business Law and it is decidedly the best part of the book. The newer books stress the functional aspect of the subject—it is not too much to say they have helped arouse an interest in functional studies in the law schools as well as the business schools. Our editors, however, call attention to the fact that their arrangement and classification are, in the main, strictly "legal." "The experience of the authors," they say, "in teaching the course has, however, made it clear to them that there is a decided advantage in abandoning this strictly legalistic arrangement in the treatment of those

rights which have been classed together in Part II as 'Security Rights in Rem.' This makes it easier to compare chattel mortgages with conditional sales . . . and to make any other comparisons of a like kind that may seem desirable." But why, one may ask, does not the same principle apply to the comparison of corporations and partnerships for organization, of arbitration and the jury system for settling disputes, of insurance and the postponing of the taking of title for risk shifting, of stocks and bonds for investing?

Altogether the strength of the book is rather on its legalistic side, which is well-done, than in its practical application of legal learning to modern affairs. Its "Dictionary of Legal Terms" contains the explanation of such Latin phrases as "*In Haec Foedera Non Venimus*," but nothing about "unfair competition"; it has "*ss*," but not "C. O. D." or "C. I. F."; it has "*Quia Empiores*," but not "Federal Trade Commission"; it has "Shelley's Case" but not "Sherman Act." Here is a good deal of raw material for aid in the study of Business Law, but the specific needs of executives who wish to know how to make use of the law and of the services of lawyers are still to be worked out.

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