

BOOK REVIEWS

PENNSYLVANIA COMMON PLEAS PRACTICE (4th ed.). Selected and Annotated by David Werner Amram. Revised and Enlarged by Philip Werner Amram. Published by the author, Philadelphia, 1936. Pp. 447. Price: \$6.00.

In 1914 David Werner Amram, then Professor of Law at the University of Pennsylvania, published the first edition of this book for the use of his students. It was a case book, and not suited for use by the practitioner. In 1922 Professor Amram published the second edition, still for the use of students, but combining text and comment with the cases. In 1930, this work was revised and enlarged by Philip Werner Amram, son of the author, who had in 1929 taken over the course on Pennsylvania Practice at the University of Pennsylvania Law School, which his father had taught from 1912 to 1926. In the third edition the form of the book was radically revised, it being designed for the practitioner as well as for the student. The fourth edition, recently published, contains many additions, and has been brought up to the minute in regard to statutes, rules of court and judicial decisions.

The form of the book is chronological and for that reason very convenient. It starts out at the moment when a plaintiff or defendant walks into the lawyer's office and carries the litigation through to the end, even to the point of appeal and collection by execution. Then follow separate chapters on special forms of litigation such as foreign attachment, interpleader, replevin and ejectment. The text is largely, though not entirely, in the words of the statutes and of the rules of court. While it is concise and to the point, there are liberal citations in the footnotes which will give to those who wish to do so an opportunity to explore any point to the fullest extent. It is distinctly not a form book, but nonetheless contains upwards of 250 forms.

The new edition does not pretend to be an exhaustive work on the subject of Practice, but puts in short and convenient form the law and rules of court on the beaten path of litigation. It concerns itself with the usual 95%, rather than that of the unusual 5%, and therein lies its merit. The substance one seeks is easily found, and not concealed in a morass of immaterialities.

Robert E. Lamberton.†

SELECT CASES IN THE COURT OF KING'S BENCH UNDER EDWARD I (vol. I). Edited for the Selden Society by G. O. Sayles. Bernard Quaritch, London, 1936. Pp. clxxx, 260.

This volume, giving evidence on every page of the devotion of its editor to high scholarly standards, does much to clarify many of the obscurities in the history of the royal courts during the closing years of the thirteenth century. The editor leans toward the view of Maitland that the ordinance of 1178 related to the establishment of common pleas, which, in the early years of John's reign, bifurcated, became quiescent during the subsequent regency, only to appear again when Henry III came of age. One group of justices sat continuously at Westminster; the other, whence sprang the king's bench, accompanied the king in his journeys through the country. Mr. Sayles is reluctant to accept 1178 as the foundation date, however, as several years previously a group of justices had attended the

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king and held pleas in *curia regis*. He refutes the view of G. B. Adams, that the court *coram rege* was, under John, a duplicate court of common pleas, and, under Henry III, the council, accepting Hale's contention that the actual business of king's bench was really carried on by professional judges.

It is the editor's view that, though king's bench never ceased to entertain civil pleas, and though common pleas only gradually gave up its criminal jurisdiction, still by "the opening years of Edward I's reign the broad line of demarcation had been already drawn". The cases in this first volume hardly support the contention of demarcation, as civil and criminal suits are both available in abundance, civil litigation actually forming the bulk of the business even at this date.

The editor supplements Foss's lives of the judges for this period with critical addenda and corrigenda. More specific social and economic data would still be welcomed. The majority of the court appear to have come from the important landholding families. A number, including Hengham, received livings from the church in addition to their salaries. Virtually the entire bench were the recipients of regular pensions from important people and abbeys in return for legal assistance. Nonetheless, unlike the lay judges of American colonial days, they all had had some previous experience in judicial matters. Upon the basis of the specific evidence brought out in the trial of the judges in 1289-93 the editor exonerates Hengham of serious fault and quotes from the Year Book, 5 Edward II, the celebrated passage in the case of Isabella de Forz as an instance of Hengham's fairness and belief in the principles of due process. As these cases reveal, professional attorneys, although not as yet a closed corporation, were becoming increasingly prominent, but often utterly devoid of ethical standards.

The period covered by these cases is a momentous one in English history. Parliament was gradually becoming a national assembly and ceasing to be a feudal court. The civil wars had been brought to an end, but the Welsh war and local outbursts of baronial violence make the period a stormy one. Powerful lords defied the king and took to arms; tax assessors were assaulted in the performance of their duties; an earl asserted in 1281 that the "king's statutes shall not have a place at all within his land". On the Isle of Wight armed monks defied the king's writ over the collection of tithes.

Technicalities and ancient prejudices often combined to defeat the ends of justice. Since it was "not permissible that males should be present" at childbirth, one plaintiff was denied an inheritance. However, it is refreshing to uncover a decision of the court in 1280 refusing to nonsuit a plaintiff for using "beasts" and "chattels" interchangeably. Where a lady, in lieu of a promise of marriage, enfeoffed a gentleman of lands and he refused to go through his end of the bargain, the court fined him heavily for his "deception". Amid a mass of real estate matters and criminal litigation a few instances of contemporary commercial practices stand out, among them an interesting ruling concerning jettison and involving the barons of the cinque ports. In a fascinating old law merchant case two London citizens recovered damages for the seizure of their ship in Newcastle for an alleged tort committed on the Thames. The court here upheld the custom of London whereby its citizens might not be impleaded outside the city walls in matters of this kind.

Perhaps one of the earliest instances of the hand of precedent on the growth of common law is found in 1278 in a suit over an advowson wherein, first, reference is made to the Register of Writs to settle the issue of correct phraseology, and secondly, Ralph of Hengham denied the validity of a doom on the ground that it "was not in agreement with any judgment used in the realm of England".

To those who would question the wisdom of publishing selected materials, this excellent volume is an effective answer. To others who feel that modern

photographic developments will render obsolete the need for printing old legal sources in the future, the fifty-five volumes of the Selden Society's Publications illustrate forcefully that for the professional scholar and the inquiring member of bench and bar there are decisive advantages in having conveniently available for study and reference legal sources selected on the basis of sound judgments and painstaking investigation from among the unwieldy bulk of early legal archives.

Richard B. Morris.†

BANKRUPTCY REORGANIZATION, INCLUDING SECTION 77B. By George E. Q. Johnson. West Publishing Co., St. Paul, 1936. Pp. v, 1086. Price: \$10.00.

The years 1933-35 saw procedures incorporated into the National Bankruptcy Act of 1898 which rocked the very foundations of that statute. From a type of proceeding that had the immediate liquidation of the debtor's assets as its goal (except in the relatively few composition cases) the amendments of 1933-1935 turned the process of "going through bankruptcy" into a variety of techniques, each calculated to meet the needs of a particular kind of insolvency. Accordingly, we now have an omnibus statute covering liquidations, compositions, extensions, corporate reorganizations and—until eliminated by the Supreme Court—municipal readjustments. It is particularly concerning the reorganization phases of this new development that Judge Johnson has written.

As Bankruptcy Reorganization first appeared in the Summer of 1936, it is one of the two pioneer works in the field. That the path of the pioneer is a rough one, Judge Johnson has admitted freely in his preface. That he has smoothed the path for those who come after him should be readily conceded by anyone who studies the book intelligently. He began with a statute and a welter of unclassified decisions. He ended with a treatise which should furnish the busy lawyer who suddenly has been dropped into new fields with a competent working knowledge of corporate reorganizations under Sections 77 and 77B—and to a lesser degree of extension and composition procedure.

Although Judge Johnson may "have purposely avoided any elaborate discussion of theory and economic philosophy", nevertheless, in Chapter I, "Business and Real Estate Reorganizations", he has reviewed accurately the flaws, both theoretical and practical, which had turned the Federal receivership in equity into disrepute long before the enactment of Sections 77 and 77B. In Chapter II he sets forth in full the text of Sections 74, 77 and 77B of the Bankruptcy Act. Chapter III considers the constitutional phases of these amendments and Chapter IV treats of the additional jurisdiction which they confer upon courts of bankruptcy. The groundwork thus broken, Judge Johnson then considers such special phases of his subject as the need for "good faith" in filing petitions under Section 77B, the petition and its venue, the administrative control of the debtor's property by the bankruptcy court, the claims of various types of creditors, and the submission and confirmation of the reorganization plan. An excellent collection of reorganization forms cover 150 pages. The book contains a satisfactory index but unfortunately a table of cases is missing.

Lack of space prevents detailed enumeration of the many fine features of Judge Johnson's treatise. His treatment of the following subjects, however, is especially worthy of note: (1) executory contracts and rent claims, pp. 390-427; (2) consideration of the reorganization plan by the court, pp. 513-670.

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FEDERAL JUSTICE. By Homer Cummings and Carl McFarland. The Macmillan Co., New York, 1937. Pp. xiv, 576. Price: \$4.00.

This volume is based in large measure on the collection of manuscripts, letters and miscellaneous writings unearthed from the files and storerooms of the Department of Justice. The recovery of this material was apparently undertaken by the present Attorney General without thought, originally, of assembling it into the present work. Indeed, the process of gathering the various items is still in progress. For the serious historian the assembling and classification of the early incoming correspondence, the letter books, the instruction manuals, the dockets, and similar source material should of themselves be a valuable aid to future intensive research. Presumably the original material is available for study, and its content is not only treated in the body of the work, but separately and fully described in a "Bibliographical Note".

Federal Justice itself contains but a sampling of this vast collection of letters and documents. Naturally, the authors have included those phases of the Attorney General's activities which are of greatest general interest. Thus, for example, we find accounts of the Federalist-Democratic clash; the story of the United States Bank, and its fatal struggle with Jackson; the land and postoffice scandals in connection with the development of the West (a depressing account of mass corruption); the era of "trust-busting", in which, of course, the Attorney General had an important part; the entry of the federal government into crime detection and prosecution. Copious—perhaps too copious—footnotes supply references for everything.

Unfortunately, the book cuts through a vast domain—almost every phase of American history in which the federal government figures prominently. As a result, in places where the work deals with some particularly well-known development in our history, there is an unavoidable gloss which occasionally creates the atmosphere of an elementary history primer. For example, in the chapter on "Labor and the Law" the account of the crucial Pullman Strike, in 1894, treats with a surprisingly serious face Olney's justification for injecting the federal government on the side of the railroads because of obstruction of the mails arising from the strike. The following passage must have been inserted with tongue in cheek, but its context does not make this fact obvious:

"Acting on the advice of the General Managers' Association, Attorney General Olney appointed Edwin Walker, the attorney for one of the roads as special counsel for the government. Since Uncle Sam was a poor paymaster, Olney wrote, he was to serve 'largely from public spirit'."

On the other hand, the avowed purpose of the authors is to be informative, rather than critical, to relate a "story of men, emotions, methods, and motives in that crucial zone of the law and government bordering upon the courts and the executive". In this respect they are successful in producing a book of considerable interest. The growth of the federal government has been so enormous that new illustrations of this phenomenon never fail to amaze. Consider, for example, that in 1790 every application for a patent was not only personally examined by the Attorney General, but by the Secretary of War and the Secretary of State as well; that not until the regime of William Wirt, in 1817, did the Attorney General find it necessary to reside in Washington; that until the deluge of land fraud cases in the 50's his "staff" consisted of two clerks and a messenger. We read that Wirt, in asking Congress for his equipment (chiefly a desk, six chairs, two washstands, a stone pitcher and tumblers) added:

“As they will be attached to the Attorney General’s office as long as they shall last, they ought, I think, be strongly made, and neat enough not to be discreditable to the nation.”

Many historic characters appear, and their utterances will doubtless soon be cited as chapter and verse in the current attempt to “do something” about the Supreme Court. Thus Justice Clifford despairs that the judiciary is the weakest of the three departments, “With no patronage and no control of the purse or sword”, while Attorney General Bates pleads that “Worn out judges ought to be respectably provided for”.

The work has an exceptionally complete index—a most useful accessory to such an extensive collection of material.

Fred P. Glick.†

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BOOK NOTES

THE STORY OF THE SUPREME COURT. By Ernest Sutherland Bates. Bobbs-Merrill Co., Indianapolis, 1936. Pp. 377. Price: \$5.00.

Bulging from every corner with ammunition for present-day Court reformers is this forthright and interesting description of the ups and downs in the history of that eminent body. Opponents of change in our judiciary will find difficulty in explaining away the implications of the author's portrayal of the bizarre growth of the Fourteenth Amendment under the Supreme Court's astute cultivation. But a possible shortcoming of the entire discussion would be the tendency of Mr. Bates, apparently caught in an enthusiasm for a particular philosophical approach to modern problems, to overreach himself occasionally. For instance, many a reader may wonder whether his criticism of the ultimate holding in the *Texas Primary* cases is based on logical or purely political considerations. Apparently, he relies on the latter. In so doing he slips into the error of decrying the Court's failure, as a court, to interpret the Constitution in the light of his personal political predilections. Fortunately, the author does not lay himself open to the likelihood of reproach on this score too often. It may thus be said that a debit and credit analysis of this latest of his books results in a favorable balance.

Sylvester S. Garrett, Jr.†

THE ULTIMATE POWER. By Morris L. Ernst. Doubleday, Doran & Co., Garden City, New York. Pp. xv, 344. Price: \$3.00.

Lawyer Ernst's anti-legalistic tale of judicial usurpation of the legislative process is a convincing one, in spite of a hop-scotch style which leads him, in a chapter discussing the interstate commercial warfare that existed under the Articles of Confederation, to insert an italicized paragraph pointing out that Lord Chesterfield had pronounced violin playing ungentleel.

At the risk of belittling a job well done, one may wonder why it was necessary to devote fully half the book to a slap-dash delineation of the post-Revolutionary spectacle of economic disparity and commercial jealousy among the states merely to prove the thesis that the motivating purpose of the Framers was to give the economic royalists of that day the security which only a uniform regulation of the national economy could ensure. In doing so, Mr. Ernst labors to the verge of triteness a point which even some of the better informed members of the Liberty League might reasonably be expected to concede.

The historical approach to the Constitution is well taken, however, and supplies indubitable evidence that the Framers were not infallible experts in political theory and that their document was by no means intended to be an all-sufficient rule-book of government but, on the contrary, was generally expected not to remain adequate to solve the problems of a succeeding century. That the present interpreters of the Constitution should not now begrudge to the farmer and the wage earner the security which that instrument originally gave to American business when it first needed it is clear. And Mr. Ernst's endorsement of Madison's original proposal of a limited judicial veto which Congress by a two-thirds vote could override seems to be the most sensible answer to a problem which cannot be permanently solved merely by a temporary change in the personnel of the Court.

V. J. R.

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OUR CONSTITUTION AND ITS MAKERS. By Fred Taylor Wilson. Fleming H. Revell Co., New York, 1937. Pp. 585. Price: \$3.50.

Startling disclosures and pessimistic iconoclasm are refreshing omissions from this book. Its thesis is that our constitution is a human document, conceived in 1620 by the Mayflower Compact, helped into the world by fifty-five young men, and fostered by a jealous Supreme Court. Of course, the compromises necessary to the establishment of this document, and its early vicissitudes are familiar rote to every reader of contemporary literature in this field.

However, the intimate characterizations of the framers of our Constitution, the analysis of their emotions, and the author's prophecy as to the future of our fundamental law make the book a pre-eminent exposition of the theory on which our government was founded. Seldom has an historical tale been recounted in so delightful a manner; and to achieve this pleasant style the author sacrifices neither profundity nor accuracy.

Particularly interesting is the final chapter on the future of the constitution. With almost prophetic knowledge of President Roosevelt's recent proposal to reform the Supreme Court, the author points out the comparatively isolated instances when the judicial branch of our government has declared unconstitutional Acts of Congress, and says "When any department attempts to encroach upon the rights and duties of the other, there is an immediate clog in our governmental machinery."

M. F.

FEDERAL INCOME TAX HANDBOOK 1936-37. By Robert H. Montgomery. Ronald Press Co., New York, 1936. Pp. xv, 1207. Price: \$10.00.

FEDERAL TAXES ON ESTATE, TRUSTS AND GIFTS 1936-37. By Robert H. Montgomery and Roswell Magill. Ronald Press Co., New York, 1936. Pp. x, 526. Price: \$7.50.

A long review of these volumes is unnecessary; the fact that annual editions issue from the writers indicates rather conclusively the help they give to the tax practitioner. The titles of the books probably describe their contents as well as would a detailed listing of the materials discussed. No major changes in organization have been made from the volumes of the preceding years, though a few chapters, such as the one on the undivided profits tax, have been added. Interesting always is the personal comment running through the book, exposing here and there the "glaring inequities" of our tax system. Perhaps, the quality most found wanting in the books is the absence of citations to law review material.

D. C.

A PANORAMA OF THE WORLD'S LEGAL SYSTEMS. By John H. Wigmore. Washington Law Book Co., Washington, D. C., 1936. Pp. xxiii, 1206. Price: \$6.00.

This book presents to the reader familiar only with the Anglo-American legal system the salient features of the sixteen major legal systems which the world has known, and is particularly valuable as a pre-legal text to students starting the study of law. The most prominent characteristic of the book is the unique narrative and pictorial style utilized by Dean Wigmore to describe each system of law and how it worked. By means of pictures of legal documents, portraits and statues of famous judicial personages, and scenes of places where laws were passed and justice done, the author envelopes each legal system with its own peculiar and distinctive atmosphere, and thereby converts the dry history of the law into a fascinating story.

H. G.

LEGAL PROTECTION OF GOODWILL. By Frank S. Moore. The Ronald Press Co., New York, 1936. Pp. ix, 218. Price: \$3.50.

The nature of goodwill and the machinery our law has provided for protecting it constitute the substance of the book, which is written in an interesting and narrative style, almost breezy at times. However, profundity and thorough analysis of controversial matters were obviously sacrificed to achieve this lighter vein, with the result that the book will appeal primarily to laymen.

Although ordinarily expositions of law written for laymen do more harm than good, this book, if properly used, should be an exception. All too often a merchant will build up a valuable goodwill without the proper choice of a name, the preservation of essential evidence as to time of use, or other technical matters which provide his legal protection. The present book should familiarize its readers with the ever present danger of commercial highway robbery, preventable in our law only if the potential victim provides himself beforehand with the tools of protection invented by the common law. It is necessary, however, that these be obtained long before the danger guarded against materializes, for locking the stable door here after the horse is stolen is as futile in the field of trade piracy as in the business of livery-keeping. If the information dealing with these matters convinces the reader that he needs a lawyer to guide him through the labyrinth of technical trade-marks, trade names, and admissible evidence, the book performs a useful service. But if the layman reader decides that with the knowledge gleaned herein he can make his own way among the legal pitfalls, the book, following the path of most lawbooks for laymen, will prove to be a boomerang.

From the lawyer's viewpoint the only value of the book is as a starting point for one desirous of obtaining the background of the field in an easy way before delving into more intricate legal problems; but as a reference book or a thorough collection of cases it is valueless.

A. B. G.

CRIME AND JUSTICE: By Sheldon Glueck. Little, Brown and Company, Boston, 1936. Pp. 337. Price: \$3.00.

"For democratic nations to be virtuous and prosperous, they require but to will it." How to motivate and guide that volition and make it endure is the cardinal problem." To this problem, Professor Glueck, in this indictment of the antiquated and inefficient nature of the present decentralized system, forcefully directs the attention of laymen as well as those concerned professionally with the administration of justice. Fundamental to the reforms advocated is the elimination of the vindictive theory of the criminal law, whereby legislative prescription of punishment based solely on the type of criminal act would be supplanted by penalties decreed according to the peculiar traits of the offender and the motives for his wrongdoing. Of course, the feasibility of such a change rests on a recognition of the sociological and psychological sciences. A corollary to the effectiveness of the transition is the raising of the standards of both the criminal bar and judiciary; these ends would be accomplished by socialization of the bar, and by the selection of judicial officers solely on the basis of merit, with specialization not only between civil and criminal work, but also between types of criminal work. To still further increase efficiency there would be established a specialized administrative procedure for imposing sentences, criminal identification bureaus, and work farms, to supplant the existing jail system. Charges of impracticability of the reforms advocated are unfounded, for men of ability would be attracted to the criminal field with a resultant decrease in

political maneuvers; thus the general good of society would be served more effectively under the proposed system, because in it would be combined rehabilitation of the offender and a deterrent effect at least as great as exists today.

M. S. D.

PROCEDURE AND PRACTICE BEFORE THE UNITED STATES BOARD OF TAX APPEALS (6th ed.). Commerce Clearing House, Chicago and New York, 1937. Pp. 200. Price: \$2.00.

This handy, inexpensive manual details all the steps connected with appeals to the Board of Tax Appeals. It starts with the government's inspection of returns, and includes all essential information on court rules for review, jurisdiction, petitions, evidence, procedure at the hearing, and review of the Board's decision. Both the veteran practitioner and the individual taking his appeal for the first time will find this book invaluable for reference on many points of the specialized BTA procedure and practice.

FOUNDATION GUIDE FOR PAYROLL TAXES. By William Kix Miller. The Foundation Press, Chicago, 1937. Pp. xviii, 616. Price: \$5.00.

Obviously, this book is meant as an interpretation of the Social Security Act, for laymen who are subject thereto. As such, it is an excellent exposition. However, the lawyer will wonder why cases are not cited to substantiate definitions and conclusions. Its chief purpose, therefore, will be to serve as a guide to those subject to the tax, and as a point of departure for those who wish to thoroughly analyze a specific section of the Act.