BOOK REVIEWS


While this splendid little book, wherein wisdom is combined with entertainment, probably never will help win a particular case, it should be in every lawyer's library, on the shelf where he keeps the books which he reads and rereads.

Scarcely a week passes that one of our number does not go to the wailing wall to lament the passing of the bar's leadership in public affairs. If he does not join the ranks of the mourners, he mounts the rostrum to denounce the citizenry for their bad judgment in not availing themselves of the wisdom and the judgment of the profession. It might be well for us to consider that the lawyers who have influenced mightily the course of national destiny were men keenly aware of the conditions and the implications of the time in which they lived, of all the forces and aspirations in the social life of the time, of the physical and cultural environment which shaped those forces and aspirations and within which and upon which they must act. In the best sense of the term, these lawyers were men of the world.

Now for most of us the world view has become an increasingly difficult accomplishment. The lawyer today, particularly in the cities of one hundred thousand and upward, but to a large degree in smaller centers as well, no longer has an intimate touch with the natural environment. The machine age has divorced him from that, along with most of his fellow citizens. In addition, he does not enjoy the numerous contacts with all phases of the communal life that enriched and made fruitful the careers of the leaders of a simpler day. Increasingly we have become specialists, in one form or another, and with that development has come the specialist's narrower experience. So complex have become the various bodies of organized knowledge that we cannot hope to master them all by way of avocation. We must rely upon the men of science to interpret to us, in concise and untechnical language, their specialized knowledge as the foundation for an intelligent approach to the myriad problems of our time.

Dr. Sears has accomplished this task for ecology. If I understand him rightly, this somewhat forbidding and certainly unfamiliar term describes the study of the relation of living things—plants, animals, or men—to their environment. Clearly, yet delightfully, he paints for us the picture of the great geological epochs and of the development of life and its adjustment to the surrounding stimuli. I must not spoil the reading by revealing the story in detail. My own poor words would not tell it adequately in any event. It is enough to say that one lays this book aside with a clearer appreciation of the world as the home of man, and with a profound sense of the imperative need to maintain our culture in proper adjustment with the forces of nature. If there is anything more fundamental to the proper mental equipment of those who would restore the profession's ancient influence, I, for one, have been unable to perceive it.

The road to understanding is made more enjoyable by the multitude of clever sketches wherewith Dr. Sears has adorned the book. Every reader will regret that his fountain pen ran dry at the two hundred ninety-second page. But his wise and witty philosophy continues to the very end, and in many a telling phrase he proves that he is no mere academic dreamer. Let a few selections illustrate his gifts and whet the appetite for more.

"Justice is to be had, but it is neither for those who swagger, nor those
who beg. It must be built on Nature’s terms, through understanding and painful toil.” “Society is kept going by the willingness of men to take risks, and recognizes the fact with a rough sort of justice in the appointment of reward—if nothing is ventured, little is to be gained.” “Abolitionists and violent reformers would do well to ponder the workings of nature, particularly the principle just indicated: that security and protection are effective, not absolute matters in life.” “Any education which blurs and slurs, which does not reverence the beautiful precision of words, is a betrayal of all the human mind has struggled to achieve.” These will do for samples.

To my thinking, this book is far more important to an intelligent approach to our current problems than some which have achieved a wider publicity and more extensive sales. I commend it to your careful attention.

Maurice H. Merrill


The course of advertising, dealing as it does with words, ideas, people and current affairs, offers many pitfalls for the unwary. The unscrupulous run full tilt into the law; the incautious readily bump their heads against legal difficulties; and even the most careful are beset with continual risk. It is therefore with a real sense of appreciation that advertisers should welcome The Legal Phases of Advertising as a guide to the legal procedure of daily activities.

Mr. Finkelhor’s book is arranged and presented in such a manner that the layman can easily grasp the problems involved, and the lawyer will find in the footnote references invaluable aid in the form of case material.

Primarily, as indicated by the title, it is written to assist the advertiser in understanding the attitude of the courts toward the advertiser’s problems. In this connection the subject matter is arranged in four main groupings, presented in the order in which they would most frequently arise. The first division deals with those problems pertaining to the contents of advertisements, such as ideas, schemes, names, pictures, lotteries, etc. The second group bears on the relationship between the advertiser and competitor—the problem of unfair competition, trade marks, the Federal Trade Commission Act and the state Fair Trade Acts. The relationship between advertiser and consumer is then discussed, followed by an analysis of the problems of mediums with the advertiser.

The first three sections of the book are of primary importance in the daily consideration of an advertiser, while the last, although essential, is comparatively less valuable by nature of its more stereotyped pattern.

Ideas are the life blood of good advertising, and at the same time the source of much trouble. Mr. Finkelhor aptly indicates that an idea per se may not have utility, but its expression and sequence is recognized by the courts as protectable. Most people have ideas, and an astonishing number submit them to advertising agencies believing in their originality and commercial value. Many agencies have a rigid policy of rejecting all suggestions sent in by outside parties. Experience has demonstrated that some such precautionary measure is essential to avoid the possibility of an infringement suit by somebody who feels his scheme has been appropriated.

The use of names and pictures is another particularly important phase of an advertiser’s daily work that must be carefully watched. A recent

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example will serve to illustrate what happens when the law of privacy is violated. A photograph of a horse jumping was published in the editorial columns of a magazine several years ago. The rider's position was such that no apparent identification marks were evident. Within the past few months this same photograph was used for commercial purposes in an advertisement, without a written release having first been obtained. The advertisement was noticed by the rider, suit was immediately instigated, the photograph identified in court and substantial damages allowed.

Aside from the actual material used in the preparation of advertisements, there is a vast and vital field dealing with the relationship between advertiser and competitor, and advertiser and consumer. A discussion of this is very properly a recountal of advertising's history and growth. Mr. Finkelhor has very ably analyzed, selected and presented his material in this field, and his work should be of considerable assistance not only in unraveling the present legal entanglements but in shedding light on future legal difficulties.

We feel that more emphasis could properly have been placed on the Federal Trade Commission Act, since it is probably the most important piece of legislation that has been passed in this country affecting advertising practice. The Commission's authority is further increased by the Wheeler-Lea Act, which defines false advertisements to include not only misrepresentation, but also failure to reveal material facts. Criminal penalties are provided for advertising products which are injurious to health under conditions prescribed in the advertisement or conditions which are customary or usual.

We do not hesitate to recommend *The Legal Phases of Advertising* to advertisers as a text book, and feel that lawyers will find it interesting and instructive.

Allen R. Memhard


The best thing about this ponderous volume is the excellent editorial work. The documents included do not constitute a proud chapter in the history of American diplomacy. Not the personnel concerned, not the circumstances involved, nor the political wisdom, nor the technical skill displayed reflect much credit on the Department of State or upon the diplomatic service. Of the Secretaries of State, the seven despatches by Buchanan are adroit, the 25 by Clayton respectable, the 27 by Webster portentous, the three by Everett genteel, the 57 by Marcy discreet, and the 40 by Cass blunt.

The only achievement of the period was the arid Gadsden Purchase—a grotesque concatenation of bungling and bullying. The treaty which Gadsden gouged out of the Mexicans was such a muddle that the executive had to revamp it before submitting it to the Senate. After that honorable body had mangled it with amendments it was sent back to Gadsden with orders to extort from the distraught Mexican president immediate and unconditional ratification. Such was the "good neighbor" policy of 1853-

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1. For a review of Vol. VII of this series, see Dutcher, Book Review (1937) 85 U. of Pa. L. Rev. 862.
54. Incidentally Clayton in 1850 referred to the "obligations of good neighborhood" resting upon the United States, and in 1852 the Olympian Webster admitted the "obligations of good neighborhood and national friendship". Whig doctrine, forsooth! But, to return to friend Gadsden, he was dissected with cruel refinement by the Mexican Minister of Foreign Affairs in a despatch to his minister in Washington which won the South Carolinian a well-earned recall. Apparently only the hapless state of Mexican affairs in 1858 saved his successor, John Forsyth of Alabama, from a more richly deserved dismissal. Gadsden's three immediate predecessors had been recalled between 1849 and 1853 for almost puerile ineptitude—there were political reasons too.

It is no defense for the United States that the case for Mexico was worse. No less than twenty individuals functioned as Minister of Foreign Affairs in the dozen years. Only one of them (the dissector of Gadsden) lasted long enough to indite as many as twelve of the despatches included. The number of ministers at Washington, however, was only five. Of the five it is somewhat difficult to determine which deserves the blue ribbon for cantankerousness and pertinacity. After all, American diplomacy, even at the ebb tide of the fifties, might have been a little more considerate of the sorry situation of the neighbor republic in its sad days between our own war with it and the intervention of the third Napoleon. The value of the 700 documents collected in this massive volume is the thorough demonstration of how the international relations of the United States should not be conducted.

George Matthew Dutcher †


Ten years ago Mr. Thomas published one of the first books particularly designed to answer the needs of those interested in the law of chemical patents. Since then innumerable decisions relating to patents for chemical inventions have swelled the law reports. Revision and enlargement has logically followed in order to keep those interested in patents for chemical inventions informed of recent developments.

The present volume is neither a treatise nor a textbook on patent law. In the introduction Mr. Thomas warns the reader that he avoids hypothetical reasoning, and assumes that the attorney, inventor, chemist, or expert in the art is interested primarily in the validity or scope of a patent and has little interest in the philosophy and technicalities of the patent law. He has written it to meet the point of view of one who is interested in what a patent shows on its face, what its relation is to the prior art, and what its relation is to possible infringement. The subject matter is arranged in that fashion and the major part of the book is devoted to that phase of patent law. Discussions of technicalities of procedure in obtaining patents and in prosecuting infringers appear in the concluding chapters. Mr. Thomas has collated under each chapter heading fragmentary quotations of reported cases preceded by a terse exposition of fundamental principles. The citations have been vigorously edited in order to reduce them to ultimate essentials. This method results in a book which will cause considerable difficulty for the reader who has had no previous acquaintance with legal literature.

As a result of his sedulous care to refrain from discussing the law and its tendency, Mr. Thomas creates the impression that the law of chem-

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ical patents is different from that applicable to mechanical patents. His major quarrel seems to be with the rule that broad claims can only be allowed in cases where an inventor has conducted sufficient research to warrant such a claim.

The organic law of patents is the guide for decision, regardless of the type of invention. Patent tribunals, administrative or judicial, apply fundamental principles in deciding cases. Differences in the nature of the invention inevitably must be reflected in the results of the application of fundamental doctrines. It will be apparent, even to the inexpert, that a purely mechanical device must be described and defined in terms of its mechanically cooperative elements, while a chemical product or process must be described in terms of chemical components and their reactions. In a mechanical case it may indeed be quite proper to claim an element broadly as "means for actuating another element". That is so because the generic element, regardless of its specific form, satisfies the mechanical demand of the machine. However, in a chemical case, the inventor who broadly claims a chemical group naturally causes the Patent Office expert to ask: "Do all the members of that group act in the same way as the specific component you have described?" When it is obvious that all the members of a great generic group are not likely to function in the manner in which one or two closely related specific members do, the burden is rightly cast upon the chemical inventor to justify his petition for allowance of a broad claim.

Chemical inventions have progressed side by side with mechanical inventions for many years, although the machine was more widely developed and patented during the nineteenth century. However, the organic structure of Anglo-American patent law took root as early as the sixteenth century. Between 1554 and 1598 about forty-eight licenses or monopolies were granted in England, of which one half were truly chemical patents. In recent years the vast strides in chemical research have resulted in the prosecution and litigation of a vast number of chemical patents. The fundamental law, however, is the same in both instances and it is only in the application thereof to meet specific problems that subsidiary variations have occurred.

Mr. Thomas's generalizations at the beginning of each chapter have been over simplified and some of his comments are seriously to be questioned. For instance, the opening statement in Chapter III, discussing disclosure, is that most inventors and many attorneys mistakenly assume that the specification of a patent is of minor importance. Patents have been invalidated for inadequacy of disclosure, not because the solicitor was ignorant of the need fully to explain the invention, but because of the solicitor's unfamiliarity with the subject of the invention. This unfamiliarity is even apparent in judicial opinions. The difference in comprehension of the presence of invention and adequacy of disclosure is strikingly reflected in a side by side comparison of the opinion of the lower court in Zotos Corp. v. Rader with the opinion of the Circuit Court of Appeals reversing that judgment. Judge Learned Hand, in the latter case, I.

1. 16 F. Supp. 681, 689 (E. D. N. Y. 1936). "... the inventions of the patents in suit did not reside in the selection of particular delayers, accelerators and extenders already known to the art, but in the conception of the possibility of their association in the particular way defined in the claims in issue, whereby he met the exacting conditions and solved the complicated problems in the permanent waving of hair exothermically."

2. Zotos Corp. v. Rader, 91 F. (2d) 935, 937 (C. C. A. 2d, 1937). "But the specifications and the claims say nothing about blending or composition beyond enumerating what elements shall be used and what they will do; and these were all preordained for any competent chemist who wished to make the optimum pad. If more was required, he was left to his own devices; if the compounding of them, their proportions and their
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recognized the difficulties facing the patent attorney drafting a specification. Furthermore, an inventor, as a rule, is quite aware of the prior art and fails to inform his solicitor of the previous work which was done in the field.

Another problem confronting the patent solicitor is that of deciding whether invention is present in a new development, or whether it is merely the result of a mere routine advance in the art. Mr. Thomas has included a glossary of technical and legal terms. The definitions have been over simplified. The table of cases, covering fifty-six pages, is indicative of the vast amount of material which has entered into the preparation of the present edition. The index is excellent.

Viewed in its entirety, the book reminds me that many lawyers at one time or another start, and sometimes continue throughout their professional career, to digest cases. Mr. Thomas has succeeded during his active practice as a specialist in chemical patent law in keeping his digests remarkably complete and abreast with the reports of the cases. The present volume presents us with a compact edition of his own digest, which will serve as a springboard in running down the law of chemical patents.

I believe Mr. Thomas, himself, has recognized the greatest value of this book when he says, "The quotations . . . for the patent lawyer, are merely intended to point the way to the cases wherein the principles enunciated are discussed."

A. J. Nydick


The author states the purpose of this research monograph to be the practical one of making a humble contribution to a sound and American philosophy of law. He seeks "to give an accurate and documented synthesis of the philosophy of law or jurisprudence held and brilliantly defended by an unquestioned leader of American political thought and action in the days that witnessed the struggle for our freedom and the foundation of our national government."

The writings of James Wilson are undoubtedly among the most valuable of the storehouses of the legal and philosophic thought from which were drawn the principles which shaped early constitutional government of this country. James Wilson was born in Scotland, near St. Andrews, Fifeshire, in 1742. After attending the Universities of St. Andrews, Glasgow, and Edinburgh, he came to New York at the age of twenty-three, and shortly thereafter to Philadelphia where he read law in the office of one of the most distinguished lawyers of that period, John Dickinson. Wilson quickly rose to distinction at the Pennsylvania bar for his learning, integrity and courage. He sat in the Provincial Convention of 1775 and in several sessions of the Continental Congress, and was one of six who signed both the Declaration of Independence and the Constitution of the United States. Appointed by Washington as Associate Justice of the Supreme Court of the United States in September 1789, he so served quantity, was plain, Evans' solicitors were well advised not to claim the method; if it was not plain, the specifications are inadequate, and the patent is invalid for that reason."

3. "In chemistry, especially when the art has been striking at the mark, the first to hit does not usually do so by chance. All those engaged in such experiments are highly trained men, not ordinary routineers. A new and successful discovery is most unlikely to be the result of no more than everyday ingenuity." International Vitamin Corp. v. Squibb & Sons, 64 F. (2d) 20, 22 (C. C. A. 2d, 1933).

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nine years until his death in 1798. While on the bench, his philosophy of
government was given judicial expression in his separate opinion in the
celebrated case of *Chisholm v. Georgia*, involving the jurisdiction of the
Supreme Court in a suit by an individual against a state. Of particular
interest to Pennsylvanians is his connection with the University of Penn-
sylvania, as Justice Wilson delivered a course of lectures on law in the
College of Philadelphia in the winter of 1790-1791, and upon the joining
of the College with the University of Pennsylvania in 1792 he was ap-
pointed to the Chair of Law in the University, although he never actually
fulfilled the duties of that office.

Wilson was a vast reader of philosophy and law and, to use the words
of the author, “a discerning eclectic, forming a synthesis as remarkable for
what is rejected as for what is accepted from others”. His system rests
upon objective norms of morality, the dignity of human nature and man’s
relation to his Creator. Dr. Obering traces, among influences on Wilson’s
thought, the writings of Hugo Grotius, the early writers on the English
Common Law, “the judicious Hooker”, Bracton, Fortescue, and others,
and through them the philosophy of the “Schoolmen” from whom they in
turn derived much of their thought. Dr. Obering, being well versed in
the philosophy of the Scholastics, has paralleled his exposition of Wilson’s
system with reference to the political writings of Scholastics, such as St.
Thomas Aquinas, Bellarmine and Suarez. He points out that while
Wilson was familiar with the writings of Montesquieu, he did not accept
his views concerning the end of the State and the origin of private own-
ership; and that though he may have been influenced by Adam Smith, his
views on property and international relations were much closer to the
Scholastics than to the “apostle of enlightened self interest”. He finds also
that the supposed imposition upon our governmental philosophy of the
views of Jean Jacques Rousseau and John Locke rest rather upon verbal
coincidences than upon substance. He further shows the opposition be-
tween Wilson’s philosophy of government and that of writers who adopt
a different conception of the relation of the individual to the state, for
example: the materialism and determinism of Hobbes upon which the
supreme power of the State is held to be the determinant of right and
wrong; the subjectivism of Kant, modified by the idealistic pantheism of
Hegel under which the individual is utterly subordinated to the State-god;
and the pragmatism of William James, under which mere social utility
would justify the sheerest tyranny.

The volume is so replete with comment on various schools of thought
as each topic is discussed that it is impossible in a brief review to do much
more than present the chapter headings which are: The Science of Man
and the Law; The Moral Basis of Law, the Natural Law; The Moral
Basis of Law, Natural Rights; Civil and Criminal Law; The Law of
Nations; International Law; The State as a Natural Institution; Juridical
Defense of the Revolution; Constitutional Government.

The work is presented in choice literary style with remarkable clarity
and is copiously annotated with citations and interesting discussion. It
should prove to be a valuable contribution toward the science of American
constitutional government, and a real help to thoughtful men in formulating
principles upon which American freedom can rest secure in these days
when so many governments, corrupted with wrong philosophical thought,
are tending more and more to obliterate individual rights.

John B. Gest†

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1. 2 Dall. 419 (U. S. 1793).
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