Michigan Law Review

Volume 13 | Issue 6

1915

Book Reviews

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BOOK REVIEWS.

SELECT CASES AND OTHER AUTHORITIES ON THE LAW OF PROPERTY, by Edward H. Warren, Story Professor of Law in Harvard University. Langdell Hall, Cambridge: Published by the Editor, 1915. pp. xiv., 856.

This possesses more of general interest to the profession than the ordinary case book, as it has been made in accordance with the plan of professors in the Harvard Law School to reshape the work of the first year. This single volume covers the subject matter of Volumes I and II of GRAY'S "CASES ON PROPERTY", the fourteen hundred pages of GRAY being reduced by more than five hundred pages. This condensation has been effected, so far as the cases used by GRAY also are concerned, by cutting down the statements of facts, taking only important excerpts from long opinions, omitting dissenting opinions, also corroborative opinions that add nothing to the main decision, and other editorial devices that may decrease the bulk without affecting the essentials. There is a like rigorous editing of the cases that have been added by the present editor. The greatest condensation has been made in the law of real property, the last half of Volume I and all of Volume II of GRAY "ON PROPERTY" being condensed into a little less than four hundred pages.

It should not be supposed, however, that the new book is a mere re-editing of the old Harvard case books on property. Quite the contrary of this is true. Of the 232 cases in the first volume of GRAY, WARREN has used 63, and of the 222 cases in GRAY'S second volume only 19 are found in the new book. More than three-fourths of it thus represents independent investigation of the reports and new arrangement of the cases, and it may be presumed that the new book, as well as the old, is based on a reading of all the cases. The 454 cases of the first two volumes of GRAY are supplanted by 335 in the new book.

The arrangement has been radically changed. The introductory matter on personal property and on real property, which we have had difficulty in teaching, has been dropped entirely. Book I, "Possession," discusses the nature of possession and rights based on possession. The dicussion of the former under the captions of "power of control" and "intent to control" suggest the *"corpus"* and *"animus"* of PAULUS, followed by SAVIGNY and others of the historical school. Book II deals with the several methods of acquiring title, closing with a chapter contrasting title with possession, in the distinctions between a sale and a bailment. Book III, on liens and pledges, brings to an end the subject of personal property, covering almost exactly the same number of pages as in GRAY, "ON PROPERTY."

The most material alteration in the arrangement is found in Book IV., "Conversion." This is introduced into the book on property, apparently on the theory that infringements upon a right may be better treated from the standpoint of the right infringed upon than from that of the injury violative of the right. It would seem that the full treatment of the subject of

trover here would necessarily mean a much less extensive consideration of it in the course in torts or, according to our new nomenclature, "legal liability."

The subject of real property begins with an "Introduction to the Law of Conveyancing," but follows the old order pretty closely throughout Book V: tenures, estates, reversions and remainders, seisin, a chapter on methods of creating or transferring estates, and a chapter on rents, concluding with the statute of uses. The last two books on rights incident to ownership start with land and proceed with those forms of property more or less closely connected with land; namely, air, water, fixtures, emblements, etc., with a concluding chapter on covenants running with the land. Notes with citations of corroborative or contradictory cases are more numerous than in the older case books and notes by way of introduction to the theme and of correlation with the rest of the subject are found at the beginnings of Book II and Book IV, while the same thing is accomplished for Book V by short citations from BLACKSTONE.

It seems natural, even inevitable, that a period of great creative activity in any field should be followed by a period devoted to assimilation of the results obtained earlier. The wonderful creative fifth and fourth centuries of the Golden Age of Greek literature were followed by the Alexandrian Period in the following years and a similar phenomenon has frequently been noted since in various fields of intellectual effort. To one observing the legal profession at the present time, at least the teaching or professorial part of it, we seem to be in our Alexandrian Period. The leaders of the past generation worked out of our chaotic original sources a body of scientific knowledge and presented it in such a form as to carry the profession, in America at least, farther in one generation than it had progressed in all the preceding years of our history. But when we began to combine the results of the workers in the several fields into one compact body of doctrine for presentation in our law schedule we have found many overlappings, repetitions and inconsistencies which must be removed if we are to be faithful followers of our great twin gods, "Economy" and "Efficiency."

This new case book fulfills admirably the purpose above indicated. In quantity there is a welcome reduction of more than one-third, the overlapping with other subjects has been avoided, and the changes in order and method of presentation are such as to commend themselves to any teacher of the subject. The book is a helpful addition to our working apparatus for first year classes, though there will be some mechanical difficulties in making it fit our present schedules until the other case books are prepared on the new program.

J. H. D.

SELDEN SOCIETY. VOLUME XXX. SELECT BILLS IN EYRE, A. D. 1292-1333. Edited by William Craddock Bolland. London: Bernard Quaritch. 1914. pp. lxiii, 174.

In the course of editing the Eyre of Kent (6 & 7 Edward II.) for the Selden Society Mr. BOLLAND discovered a course of procedure which existed

for a comparatively brief time and which, perhaps in consequence of that fact, had been passed without recognition for nearly six hundred years. This was the procedure begun before the King's Justices in Eyre by bill instead of by writ. In his introduction to the second volume of the Eyre of Kent (27 S. S. xxi-xxx) Mr. BOLLAND has discussed the nature of this procedure. In the present volume he presents an interesting selection of bills from the Eyres of Edward I. and Edward III.

Causes of action which arose or were continuing while the Eyre was in a particular county might be brought before the King's Justices by an informal bill without the necessity of purchasing a writ. These bills should be sharply distinguished from the old original bills in the King's Bench, for no bill could be brought in the King's Bench in any case in which an original writ did not lie, whereas many of these bills in Eyre are for causes in which there was no appropriate original writ in the King's Bench. The explanation of this jurisdiction lies in the full and peculiar manner in which the Justices in Eyre represented the King's authority. It points, says Mr. BOLLAND, "to the immemorial belief that inherent in the King are the right and the power to remedy all wrongs independently of common law or statute law and even in the teeth of these;* * * and the hope and trust that, his own personal interests being in no way concerned, he will right the wrong and see that justice is done. And the Justices in Eyre were in a very special sense impersonations of the King who had received from the King not only authority to hold all pleas, but, further than that, authority to hearken to and give amends for any complaint that should be brought by any against any other." (p. 158.)

Dr. HOLDSWORTH has well said (13 Michigan Law Review 293-4) that there are two distinct stages in the history of Equity in England. In the first stage it was applied in and through the common law courts. This equitable character of royal justice has been emphasized by MAITLAND in his introduction to Bracton's Note Book and in his edition of the Year Books of Edward II. We find very concrete evidence of it in these bills in Eyre. The applications to the Justices are multifarious in character. The enforcement of contracts, recovery of debts, damages for trespass, wrongful imprisonment, conspiracy,—all these are among the causes of action. What we wish to notice especially is the way in which many of these bills anticipate the petitions to the chancellors in the fourteenth and fifteenth centuries. To begin with, they resemble closely the form of the Early Chancery Proceedings. There is the same informality of statement; likewise the bills generally conclude with a prayer for a remedy, without specifying it more particularly. Many of them pray a remedy 'for God's sake' (*pur deu*). This similarity to the Chancery petitions will strike the eye of the most superficial reader. However the likeness is more than superficial. This can best be seen by instancing two classes of cases. First, there is a class of bills brought by men of humble station who seek relief against oppression or extortion and who allege that their poverty, ignorance and the power of their adversaries prevent them from attaining justice by the regular process of law. This is precisely the ground upon which the chancellor took jurisdic-

tion at a later period. (e. g. Oxford Studies in Social and Legal History, IV: 78-9). There is a remedy at law but the ordinary procedure fails. Secondly, there is a class of bills in which the remedy sought did not exist by regular legal process. Bills seeking remedy for breach of contract furnish an illuminating instance. It is notorious that the common law failed to provide a remedy for breach of contract by non-feasance till the sixteenth century, yet in these bills damages are sought for just such a breach. For example bill 92 sets forth that a contract was made for the sale of land. Despite the payment of the purchase price the vendor sold the land to another and thereby "cheated and deceived" the plaintiff (vendee). (*e issi le degela e le deceust*). There is no doubt that the chancellor afforded a remedy in such a case, and, curiously enough, this bill is on all fours with a famous case in the Exchequer Chamber (Y. B. 20 Henry VI. 34. 4.). This and other similar bills for breach of contract (e. g. Bills 11, 36, 63, 71, 91, 143) will bear careful study. In brief Mr. BOLLAND has thrown much light on a hitherto little explored field of legal history.

If the statements of the bills can be trusted they present a vivid picture of the social conditions of the time, in which the absence of anything like police protection is most conspicuous. We read that a woman is struck down and her head battered with stones while she lies senseless. (Bill 97). A man is subjected to a barbarous outrage which scarcely bears telling. (Bill 147). In neither case is there any criminal proceeding; the bill is the only outcome. Such cases are scattered broadcast throughout the volume. One must remember, of course, that the mediaeval plaintiff was gifted with a fertile and picturesque imagination, and it is not unlikely that in an *ex parte* statement he did not hesitate to exaggerate his injuries. The editor, however, is of opinion that most of the allegations are substantially true. (Introduction, p. xlix.)

In the introduction Mr. BOLLAND has fully discussed matters connected with procedure by bill. He has also an interesting note on the authority of the Eyre in which he revises his previous statement in the third volume of the Eyre of Kent. We have before expressed (13 Michigan Law Review 436) a high opinion of Mr. BOLLAND'S work. This volume confirms it.

W. T. B.

A REVIEW OF BLACKSTONE'S COMMENTARIES WITH EXPLANATORY NOTES, BEING VOLUME I OF ESSENTIALS OF THE LAW, by Marshall D. Ewell, LL. D., late President and Dean of the Kent College of Law of Chicago. Matthew Bender & Company, Albany, N. Y., 1915. pp. xvi, 867.

This is the second edition of EWELL'S BLACKSTONE, the first having been published in 1882. It presents the result of twenty-seven years of underscoring and annotating by the author as he has taught this work to successive classes, together with notes and references to other texts in which may be found citations of cases on the elementary principles discussed in BLACKSTONE. The book is a shorter BLACKSTONE, from which the editor has sought to eliminate all matter that is no longer useful, while retaining all that is of

present interest. On such selection there can of course be no general agreement, but the present work is doubtless as successful as any. At all events one finds here nearly if not quite all the familiar BLACKSTONE, and a good deal that few read at the present day, such for example as Book I, chapters 3 to 13, and a large part of Books III and IV.

It will be generally admitted that the production of BLACKSTONE'S COMMENTARIES was one of the most extraordinary performances in the history of legal writing. Appearing just as the United States was entering on its existence as a nation, the COMMENTARIES constituted the whole law library of many a lawyer in the early days of our history, and lawyer and disciple of BLACKSTONE became synonomous terms. BLACKSTONE'S hold was scarcely relaxed for a century, and his work has a secure place as a legal classic. Nevertheless, it is as a classic, in its original form and not abridged, to be read by the trained lawyer, rather than as a text-book for the training of the law student, that it promises to hold its place in future. While some schools still use it as a text, yet its view of the nature of law is no longer accepted, its statements of legal principles are inadequate and necessarily often antiquated and misleading, and other methods of teaching have largely supplanted the pure text-book method, so that BLACKSTONE is less and less read as an introduction to legal study. In schools so using it, however, the present work will doubtless be considered very useful, for it is the result of long experience in such use, by a very able editor and teacher.

E. C. G.

THE CONTINENTAL LEGAL HISTORY SERIES. Edited by a Committee of the Association of American Law Schools.

IX. HISTORY OF FRENCH PUBLIC LAW. By Jean Brissaud, late Professor of Legal History in the University of Toulouse. Translated by James W. Gardner, Professor of Political Science in the University of Illinois. With Introductions by Harold D. Hazeltine, Reader in English Law in Cambridge University, and by Westel W. Willoughby, Professor of Political Science in Johns Hopkins University. Boston: Little, Brown & Company, 1915. pp. lviii, 581.

This volume represents Volume I of BRISSAUD'S "MANUEL D'HISTOIRE DU DROIT FRANCAIS." Volume III of this series ("HISTORY OF FRENCH PRIVATE LAW") gave to us Volume II of BRISSAUD'S treatise, while Part III of Volume I of this series ("GENERAL SURVEY") was a translation and condensation of pp. 150-345 of the first volume of BRISSAUD'S work. The translations of the other parts have been reviewed at some length in previous issues of this Review. (Cf. 11, MICH. L. REV. 342 and 496).

After a very interesting introduction on the origin of the state, this volume proceeds chronologically through the Roman epoch and the barbarian epoch, then devotes a chapter to the church under the "ancien régime," then, resuming the chronological treatment, gives us three chapters on the feudal period, and seven on the monarchical period, with a closing chapter on the revolutionary period. The institutions are treated topically in the several periods.

There is the same wealth of learning, accuracy of detail and clarity of style which characterize the earlier volumes and the subject matter is even more interesting. The breadth of treatment makes it not only a constitutional and institutional history of France, but also a most suggestive treatment of the comparative law of the European states. The chapters on continental feudalism are a welcome addition to our resources for the comparative study of Norman feudalism in England.