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Book Reviews

Edgar N. Durfee

University of Michigan Law School

Hessel E. Yntema

University of Michigan Law School

Floyd B. Streeter

University of Michigan Law School

Arthur Lyon Cross

University of Michigan Law School

Jospeh H. Drake

University of Michigan Law School

See next page for additional authors

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Book Reviews

Authors

Edgar N. Durfee, Hessel E. Yntema, Floyd B. Streeter, Arthur Lyon Cross, Joseph H. Drake, and Horace LaFayette Wilgus

BOOK REVIEWS

CASES ON QUASI CONTRACT, by Edward S. Thurston. American Case Book Series. St. Paul: West Publishing Co., 1916; pp. 622.

Every student of Quasi Contracts and the related branches of Equity, and every lawyer who is sufficiently familiar with the modern treatment of this field of law to make use of such a work, should welcome this book. Of principal value, is the presentation of cases, some new, some old, which have not heretofore appeared in any work on this subject. Each such case is, of course, of greater value, and represents larger efforts upon the part of the editor, than would similar contributions in most fields of law, because of the difficulty of finding the cases on this subject, digested as they are under almost every head from A to Z. Second in importance of Mr. Thurston's contributions, is the suggestion, here and there, of some new points of view, for the most part indirectly made through the collocation of the materials, for the editor seldom drops the scissors for the pen. In the broader outlines and analyses of the subject, the editor presents us with nothing new, and in this respect disappoints the reviewer, who had looked for help from this quarter—for the disclosure of some "comparatively few and simple ideas which underlie the infinite variety" of cases on unjust enrichment, some ideas more specific than the familiar formula that no one shall be permitted to unjustly enrich himself at another's expense, and yet broader than any of the other rules that have yet been deduced from the cases. Perhaps this refractory body of law will never yield to more scientific analysis than it has received. Perhaps Mr. Thurston has solved the riddle but for pedagogic reasons emulates the Sphinx. In any case, the editor is not to be censured for adopting the current classification, based on the mode by which the enrichment is acquired. Yet, accepting that scheme of classification, the reviewer regrets that Mr. Thurston did not arrange the topics in the order adopted by Mr. Scott in his collection of cases. The principal advantage which has been found in the other order is this, that it makes possible a preliminary segregation of the problems as to what constitutes an enrichment, and what is the measure of enrichment. Having fairly disposed of these embarrassing inquiries with cases in which it is clear that the enrichment, if any, is unjust, the ground is cleared for the yet more embarrassing problems presented in the succeeding cases. Of these, some may be reduced to the question whether the circumstances of an admitted enrichment are such that it cannot justly be retained; others involve in an inseparable combination, the two questions, as to the existence and amount of an enrichment, and as to whether the enrichment, if any, can justly be retained. Throughout these latter inquiries, one is aided by a preliminary view of the somewhat arbitrary and artificial conception of enrichment which the law is forced to adopt. Mr. Scott's work, in spite of its advantage of order, is impaired by a very inadequate selection of cases, a fault more serious than any defect in the arrange-

ment of the material. The present work is, as regards the selection of cases of a high order. In this respect, the only fault the reviewer would find with it is the inadequate representation of the conservative views as to Duress.

Faults have been charged to Mr. Thurston's work, but the reviewer would entirely misrepresent his opinion of the work if he did not close in terms of eulogy. It is a scholarly and lawyer-like piece of work. It is a mine of material which is excellent for teaching purposes, or for research, or for the practitioner's "search" if he knows how to use it. The profession is to be congratulated upon this contribution to its literature.

EDGAR N. DURFEE.

THE PRESIDENT'S CONTROL OF FOREIGN RELATIONS. By Edward S. Corwin, Ph.D., Professor of Politics, Princeton University. Princeton University Press. Princeton, 1917; pp. vi, 216.

In view of the interest which attaches at the present time to the control of foreign affairs, the present volume is to be welcomed as a summary of the principles and precedents governing the exercise of this important function of state in the United States.

The treatise falls into three parts. Of these the first and third include extended quotations, in the one case from the famous Pacificus-Helvidius controversy between Hamilton and Madison as to the constitutionality of the Neutrality Proclamation of 1793, and in the other from the Spooner-Bacon debate in the Senate as to the general control of foreign affairs. The second and most pretentious portion of the work is a statement, at once clear and concise, of the various precedents and discussions bearing upon the different aspects of the President's control over foreign relations,—his powers as to diplomatic intercourse, recognition of new states and governments, treaty-making, executive agreement, and "Presidential war-making". In the result, the author has satisfactorily fulfilled the two-fold object which he had in view,—to present in compact form the more important material pertinent to the subject and to state succinctly the conclusions arrived at in practice.

Exception must, however, be taken to the interpretation given to Madison's chief contention in the Helvidius papers. Thus (p. 28), Madison is accused of inconsistency in implying "that the 'executive power' with which the President is vested by the opening clause of Article II is not to be taken as bestowing other powers than those specifically mentioned in the rest of the article." This would appear a misconception. Madison is not concerned to combat the constitutional axiom that the grant of executive power to the President in Article II is general in its scope, but rather Hamilton's contention that the supplementary powers implied in the declaration of war and peace and in treaty-making are essentially executive, on the ground that both in theory and under the Constitution these powers are largely legislative in nature. This proposition is in no wise inconsistent with the view, advocated elsewhere by Madison, that the President has the power of removal, because it is in essence executive. And it is only fairness to recall the variance between Hamilton's contentions in this controversy and the views which he

had previously expounded in the Federalist as to the nature of the treaty-making power. (No. 75).

Further, it would seem questionable whether the writer's stricture upon Marshall's statement (p. 102) to the effect that Congress may prescribe the mode and devolve upon others than the Executive the whole execution of an extradition agreement, is warrantable in entirety, in view of Congressional legislation regulating the preliminaries to the surrender itself. Compare *Rice v. Ames*, 180 U. S., 371, 378. Of course in the absence of legislation the President is empowered.

It is also disappointing that the author has not stated his grounds for the interesting view (p. 105, n. 24), that the court had no jurisdiction in the *Appam Case*. The case cited, *Exchange v. McFaddon*, is distinguishable on at least two grounds,—first, that the ship libeled was a public vessel; second, that no question involving neutrality was before the court.

However, in general, the work can be recommended to the reader as a convenient summary of the "Constitutional Conventions" which have grown up, in the partial absence of judicial decisions, to determine the power of the President over foreign relations and the extent of related powers vested in other branches of the government.

HESSEL E. YNTEMA.

PARTY ORGANIZATION AND MACHINERY IN MICHIGAN SINCE 1890. By Arthur Chester Millspaugh. (Johns Hopkins University Studies in Historical and Political Science. Series XXXV, No. 3. Pp. 189.)

The field of Michigan political history, though rich in possibilities, has not attracted many investigators. Dr. Millspaugh's excellent piece of research is therefore not only a valuable contribution to the special field, but will be welcomed generally by the students of history and political science. Though this study is confined to one state, the author believes "there is nothing so peculiar in the conditions and legislation of Michigan that its experience may not be accepted as fairly typical of the experience of many other States."

The book is divided into seven chapters and has a good index. In the introductory chapter the author deals briefly with the economic and social conditions underlying recent political development in Michigan, with the composition of political parties and the general features of party organization. This preliminary survey serves as a background for the more detailed account of party machinery in the succeeding chapters. In the concluding chapter the writer presents clearly the tendencies and developments in party organization and machinery. The table of contents is very brief, but the nature of the subject matter of each chapter is indicated by means of sub-topics in italics distributed through the book. There is no formal bibliography, but the numerous references in footnotes show that the author has made extensive use of the leading Detroit and Grand Rapids newspapers of correspondence and interviews with prominent men and of other material.

The timeliness of this thesis will undoubtedly cause it to appeal to a wide range of readers. Many of the leaders mentioned are at the present time

prominent figures in state or national politics. The chief developments in party machinery discussed in this book are still in the experimental stage and the success of these measures means much to the people of the state. Probably the most valuable chapters are those on direct nominations and primary legislation. As Dr. Millspaugh says, "Michigan has now had direct nominations for fifteen years, a period of experimentation too short for the establishment of confident conclusions." He points out in a clear and interesting manner the effect of the direct nominations in operation and shows that very complicated problems have arisen. Considerable space is devoted to a discussion of party committees and conventions and to campaign finance.

It is hoped that someone with Dr. Millspaugh's ability will undertake to write a history of political parties in Michigan during the period covered by this thesis. Such a study would indeed be a valuable contribution to the historical literature of the state.

FLOYD B. STREETER.

THE PETITION OF RIGHT, by Frances Helen Relf, Ph.D. (The University of Minnesota Studies in the Social Sciences, Number 8.)

This doctoral dissertation is an acute and penetrating study of a most important subject. By a careful examination of the judicial powers of Parliament in the seventeenth century and with the aid of manuscript sources which have been brought to light since the late Samuel Rawson Gardiner wrote his monumental *HISTORY OF ENGLAND, 1603-1642*, Dr. Relf has been able to revise and amplify the findings on *THE PETITION OF RIGHT* of this acknowledged master of the period. Two misprints, only, have been noticed (Henningham for Heveningham, p. 6, and 29 for 39 Magna Carta, p. 20). In connection with the writs for the enlargement of freemen, that of *MAIN-PRIZE* might at least have been mentioned, while a knowledge of Professor C. H. McIlwain's "Due Process of Law in Magna Carta", *COLUMBIA LAW REVIEW*, January, 1914, would have ensured a fuller discussion of that important phase of the subject. Possibly, too, the author's argument is a bit finely drawn in places; but these are only minor criticisms in a convincing reinterpretation, of a type of research gratefully to be welcomed.

ARTHUR LYON CROSS.

CASES ON THE LAW OF PRIVATE CORPORATIONS, selected and supplemented with notes. By Daniel Frederick Burnett, M.S. J.D., Professor of Law, New York University. Little Brown and Company, Boston: 1917; pp. xxix, 828.

This is an excellently well selected and arranged collection of corporation cases within the compass of a single volume of text, covering 797 pages. It will compare favorably with those of Professors Warren (1040 pp.), Richards (858 pp.), and Canfield and Wormser (966 pp.). Many of the leading cases common to all collections are retained, but 73, out of the 172 cases given, have been decided in the last twenty years. In many instances statements of facts have been rewritten with care to bring out the specific mat-

ter for which the cases are given. The cases have been trimmed down with discretion. The notes, not numerous, nor extended generally, are designed "to assist the student in preparation for class room discussion", and "in some instances to bridge over and tie into the principal cases those situations", beyond the compass of a single volume, and are suited to this purpose.

The arrangement is in six books, and twenty chapters. Book I: The Nature of a Corporation, with chapters on the corporation viewed as a "sanctioned entity"; a "person"; a "collection of individuals"; and "as a franchise". Book II: The Charter: its acquisition *de jure*; *de facto*; as a measure of corporate powers; as a contract between stockholders; as a contract between the state and the corporation. Book III: Powers: particular; *ultra vires*, contracts, property, torts, crimes. Book IV: Internal Mechanism: organization, promotion, subscription, capital stock; by-laws; directors and officers; share-holders, meetings, inspection of books, dividends, using new stock, transfer of shares, preferred stock, actions of stockholders, voting trusts. Book V: Rights of creditors: against the corporation; against directors; against stockholders. Book VI: Dissolution and reorganization: dissolution, causes, means, and effect; reorganization, consolidation and merger. A good index, tables of contents, of cases reported and cited, accompany the text so that all material is readily available.

HORACE L. WILGUS.

HANDBOOK OF THE LAW OF PRIVATE CORPORATIONS. By William L. Clark, Jr. Third Edition by I. Maurice Wormser, of the New York Bar, and Professor of Law, Fordham University Law School. St. Paul, Minn.: West Publishing Company, 1916; pp. xiii, 913.

When the first edition of this work was published in 1897, the reviewer used it as a text-book in his classes in Private Corporations, when the text-book method of instruction was in general use among law schools. This book was then found to be exceptionally valuable for such purpose, for the time that could then be given to the subject. The work still has the same valuable qualities for that purpose, or for individual reading or review.

Professor Wormser's modifications seem to have been done carefully, and accurately bring the text down to the date of publication. It will be found to be a handy manual for office use, but of course cannot take the place of the large work of Cook, Thompson, and others.

The Hornbook form of heavy black-face type analysis of the subject matter treated in subsequent paragraphs is retained. The citations of the cases printed in Professor Wormser's Collection of Cases on Private Corporations, are printed in small capitals so that this text and those cases can be readily used together. Perhaps similar treatment of other collections of cases would, sometimes at least, have been a convenience to the reader and students. This, however, is a business question for the publisher. The table of contents, and index, make it easy to find what is in the volume.

HORACE L. WILGUS.

THE LAW OF UNINCORPORATED ASSOCIATIONS AND SIMILAR RELATIONS, by Sidney R. Wrightington, of the Boston Bar, Boston: Little, Brown, and Company, 1916; pp. xxvi., 486.

The author wisely refrains from attempting to define his subject because of the great difficulty in fixing any technical limits for that term, and he presents a double scheme of classification. (1) according to pecuniary purpose, (2) according to cohesion. The vagueness in form of presentation is a faithful reflection of the vagueness of the subject, but the author succeeds in giving us a fairly comprehensive view of what the courts have actually done in determining the rights and liabilities of those who are members of such groups. The chapter discussing the distinctions between partnership and trusts is one of the most helpful parts of the book. Here is given what is practically the view of the Massachusetts court on the subject, with references to cases decided in Illinois, Wisconsin and in the United States Supreme Court. The law of Massachusetts is most frequently quoted throughout the entire work, for the reason, as stated by the author, that these associations have been more largely used and more highly developed in this state. Nearly a third of the book is taken up with forms of deeds of trust that have actually been used for business organizations and have been tested by the courts. This, of course, adds materially to the volume of the book as a guide to the practitioner.

JOSEPH H. DRAKE.