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Book Reviews

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BOOK REVIEWS

SCIENCE AND LEARNING IN FRANCE. With a Survey of Opportunities for American Students in French Universities. An Appreciation by American Scholars. The Society for American Fellowships in France, 1917; pp. xxxviii, 454.

After more than three years of war which have revealed to the whole world the greatness of the French spirit, it is peculiarly fitting that a notable volume by American scholars testifying their indebtedness to and appreciation of the science and learning of France should appear in the same year which marks American participation in the war. The work under the general direction of Dean Wigmore is extremely well done. The purpose of the editors is two-fold: to put forward the contributions of France in all fields of scientific knowledge; to furnish American university students with information bearing on graduate work in France. The latter purpose is fulfilled by three voluminous appendices which give detailed statements of the organization of the universities, their requirements for degrees, etc., and in addition many practical suggestions which should prove of value to the prospective student.

The major portion of the volume is devoted to a systematic survey of what French universities have to offer in the various fields of learning from Anthropology to Zoology (the arrangement is alphabetical). The student of law will be interested chiefly in what is said of History and Law. In France these two subjects have never been divorced and if, as the editors of the section on History appropriately remark, the law professors have much to offer to the students of history, the converse is equally true. Ch. Bémont, editor of the *Revue Historique*, is but one of the French historians who have contributed greatly to the history of English law and institutions.

The section on Law pictures vividly the growth of legal study in France and essays briefly to estimate the contributions of scholars and to set forth the opportunity for American students. No doubt it will also prove useful as an introduction to French legal literature. The list of French scholars is fairly representative, though it is somewhat surprising to find the pretentious superficial work of Glasson mentioned in the same connection with the great contributions of Tardif, Esmein and Brissaud.

Naturally foreign study will appeal to but a restricted group of American law students. For him whose eye is ever on the main chance this book is not written. But, as the editors say, to the serious student abroad "one of the greatest gains must always be the sense of union with the notable events and persons of the past of his chosen field. And the profession of law in America needs to become less insular and less narrow in its outlook on the present and more aware of the continuity of all legal traditions and knowledge." These are words worth weighing; perhaps their application is not less pertinent to teachers of law. While the current of emigration of incipient scholars tended ever to Germany, our law schools may per-

chance be thankful that they remained insular. But if that current be deflected to England and France the decrease in doctoral dissertations with which the banks of the Rhine are littered may be compensated by a return to the humanities with the resultant infusion of a new spirit into our universities. If this book succeeds in calling attention to the just claims of France, the generous gift of time and labour on the part of the editors will not be in vain.

WILLARD BARBOUR.

A TREATISE ON THE LAW OF CONVERSION, by Renzo D. Bowers, Boston; Little, Brown, and Company, 1917; pp.lx, 583.

The author says that "it is somewhat remarkable that there has been thus far an absence from the list of legal publications of anything, further than short cyclopaedic discussion, that sets forth the principles applicable to so important a subject as the LAW OF CONVERSION." In other words that this is the first text-book upon that subject alone. This seems to be correct.

He justifies the publication by "the avidity with which the practitioner has always seized upon legal treatises that might be the means of assisting him in the solution of a weighty problem upon which he could elsewhere find no light." And although the common law action of trover "is now merged in the simple civil action" in the states with "the modern system of procedure," the "principles of conversion still remain as distinct and definite as they ever were."

The historical aspects of the subject are practically ignored, and although Chapter I is, "What is Conversion," and Chapter II is, "What is Trover," no reference of any kind is made to Ames's Articles in the Harvard Law Review (11 HARV. L. R. 277-80, 374-86 (1897-8), 3 Select Essays Anglo-American Law p. 417 or his lecture on the subject in Lectures on Legal History (VII, pp. 80-87); nor to Streets' Foundations of Legal Liability (Vol. 3, Ch. XIII, pp. 159-71).

The author says there are "more than six thousand cases cited in this volume." While there are perhaps that many references to cases, the table of cases shows not much if any more than four thousand different cases. Of the 106 different cases given in Ames's Cases on Torts, and Warren's Cases on Property, on the subject of Trover and Conversion, the author of this text cites only 48. Such an important case as *Fouldes v. Willoughby*, is referred to only in this way (note 5 p. 4): "Fouldes 1. Willoughby, 8 M. & W. 540; cited in *Spooner v. Manchester*, 133 Mass. 270, 43 A. R. 514." The great case of *Hollins v. Fowler* in the House of Lords (L. R. 7 H. L. 757, 1875), is not mentioned at all, although §§ 57, 58 relate to liability of brokers and factors. The author cites and criticises *Roach v. Turk* (1872), 9 Heisk (56 Tenn.), 708, 24 A. R. 360, and says: "Yet this case is cited as an authority.—Mechem, Agency, 961." The author here does not refer to *Hollins v. Fowler*, although Mr. Mechem, in the section referred to (§ 9612 the 1st Ed. of his Agency), gives the facts in the Hollins case, and indicates not only how it differs from the Roach case, but also points out that the English case "contains interesting discussions of the broker's duties and liabilities."

Again in § 63, the author says that "I confess to an inability to grasp the distinction" between the agency cases holding that "an omission of a duty is not enough to constitute a conversion," and those that hold "some positive act of the agent producing the effect of depriving the principal of his property" is necessary to constitute conversion. From this, and similar statements, and from citations similar to that of *Fouldes v. Willoughby*, above, and the citations of secondary authorities, as "26 Am. & Eng. Enc. L. 767" (p. 11), *Wait's Actions & Defenses*, 128, 155" (p. 26), "2 Cyc. 312" (p. 28), of which there are many, one feels that much of the text has been written from secondary authorities, rather than from a profound study of the cases themselves, which "doth open the window of the laws, to let in that gladsome light, whereby the right reason of the rule (the beauty of the law) may be clearly discerned."

H. L. WILGUS.

CONSTITUTIONALITY AND CONSTRUCTION OF WORKMEN'S COMPENSATION LAWS.

By Lindley D. Clark, M. A., LL. M. Reprint from Bulletin No. 203 of the Bureau of Labor Statistics, United States Department of Labor, Washington, D. C., 1917; pp. 132 (165-296 of the Bulletin).

This is the result of a study of about three hundred cases "available up to near the close of the year 1916." The topics treated are: Due process; jury trial; liability without fault; classification of employments; equal protection; exercise of judicial powers by commissions; freedom of contract, status of benefit funds; police power; injuries compensated,—accidents, occupational diseases, disfigurement, proximate cause; employments,—domestic and farm labor, hazardous, casual employments, other exclusions, public employees, children unlawfully employed, extraterritoriality, admiralty, interstate commerce, alien beneficiaries "arising out of and in course of employment;" willful misconduct; liability of third parties; temporary disability; partial disability; total disability; dependence; basis of awards; settlements; medical treatment; election; exclusiveness of remedy; notice and claim; disputes; evidence; insurance; experience under the acts; mutual insurance companies,—a copy of the New York Workmen's Compensation Insurance—Mutual Companies, law (Ch. 28, Art. 5-A) being given here, with a list of the states having such laws (p. 293).

A note at the end of the pamphlet, dated March 28, 1917, calls attention to the fact that the Supreme Court of the United States had (since the pamphlet was prepared) rendered opinions sustaining the constitutionality of the New York law (new compulsory law, enacted after *Ives' Case* was decided), *N. Y. C. R. R. v. White*, 37 S. C. 247; the Washington law (compulsory on employers both as to compensation and insurance), *Mountain Timber Co. v. Washington*, 37 S. C. 260; and the Iowa law (an elective one), *Hawkins v. Bleakly*, 37 S. C. 255. All the incidental constitutional questions,—as to negligence, abrogation of common law defenses, liability without fault, freedom of contract, jury trial, and due process,—were also passed on in these cases, and the laws sustained.

Attention is called to the different attitudes of the New York Court of Appeals, and the Wisconsin Supreme Court, as to the application of "So-

ciological jurisprudence" in the interpretation of Constitutions by quotations: "When our constitutions were adopted it was the law of the land that no man who was without fault or negligence could be held liable in damages for injuries sustained by another,"—and the ordinary risks of the business could not constitutionally be imposed on the employer. (*Ives v. South Buffalo Ry. Co.*, 201 N. Y. 271, 94 N. E. 431); "In the absence of an express provision, conditions prevailing at the time of adoption of the constitution and subsequent changes in social and economic affairs should be compared and weighed, and no attempt should be made to hold back the legislation needed for present conditions by reason of earlier constructions and interpretations," (*Borgnis v. Falk Co.*, 147 Wis. 327, 133 N. W. 221).

This small pamphlet will be found to be a very convenient and useful manual of the cases to the date of publication. Although there is no index (except an alphabetical list of cases), most of the material can readily be found in the table of contents. There is little discussion and no padding,—but the points decided in the cases are clearly stated, and compared, and differences noted. The whole work can be read in a short time, and will give a basic view of the problems involved.

H. L. WILGUS.

WORKMEN'S COMPENSATION ACTS.. A Corpus Juris Treatise. By Donald J. Kiser, author of "Conflict of Laws," "Contracts," and several other articles in "Cyc." New York; The American Law Book Co., 1917; pp. 1-146.

This is "a Corpus Juris article on the subject, designed for temporary use until the topic is reached in due course of publication of Corpus Juris, but prepared with the care which would be given in a permanent treatise." It is prepared in the well known Corpus Juris style,—about one-fourth text, and three-fourths citations of authorities and quotations from cases and statutes, preceded by an elaborate analysis and subdivision into sections.

There are seventeen main headings in this analysis: Definition, classification, and distinctions, §§ 1-4. Purpose and history of legislation, § 5. Constitution and validity of statutes, §§ 6-27. Conflict of laws, §§ 28-33. General rules of construction, § 34. Employments included, § 35. Employers within intent of acts, §§ 36-37. Employees within intent of acts, §§ 38-43. Acceptance or election to come under act; waiver and release of rights; substituted schemes, §§ 44-48. Dependents entitled to compensation, §§ 49-52. Injuries for which compensation may be had, §§ 53-78. Amount and period of compensation, §§ 79-100. Procedure to secure compensation, §§ 101-150.—Review and termination of compensation; suspensory awards, §§ 151-152. Effect of act on other causes of action and defenses, §§ 153-173. Insurance funds and premiums, § 174. Administrative officers and boards, § 175. Many of these main headings,—especially those relating to the injuries, amount, and procedure,—are divided and subdivided, so that one can readily find the matter for which he seeks.

Attorneys are generally so familiar with the "Cyc-Corpus Juris System," that it seems unnecessary to say more. This is clearly an excellent exam-

ple of that system. Whoever is seeking a quick answer to a pressing question, will be likely to find it here if it has been discussed in the courts, and he will find the references which will lead him to the cases and statutory provisions for fuller information, if these original authorities are available to him. In addition to the citations to the regular reports, Butterworth's Workmen's Compensation Cases (B. W. C. C.), Minton-Senhouse's Workmen's Compensation Cases (W. C. C.), and the Opinions of the Solicitor for the Department of Labor (Op. Sol. Dept. Labor), are cited.

The work is to have its place, in *Corpus Juris*, not as a subdivision of "Master and Servant" as is a usual place of classification, but under its own title of "Workmen's Compensation Acts."

H. L. WILGUS.

BUSINESS LAW FOR ENGINEERS, by C. Frank Allen, Member of the American Society for Civil Engineers, of the Massachusetts Bar, etc. New York, McGraw-Hill Book Co., 1917, pp. iv, 443.

The author tells us in his preface that he did not purpose to write a book to make "every man his own lawyer," but to teach the engineer so much law as may suffice to show how and when he needs legal advice, as well as to enlarge his horizon and encourage him to further legal study. For this he is to be commended. In these days of prolix legal writing it is grievous to withhold full praise from one who condenses his presentation, but it must be said that the present work has carried brevity to such a length that Part I of the book is like a skimmed house that is lathed but not plastered. So bare is the treatment. It is to be feared that the beginner at law study using part I of this book would get too little understanding and still less encouragement to further study. The great fundamental subject of Contracts is covered in 16 pages, though this receives some illustrations from chapters 16 and 17 of Part II. The matter boiled down to two pages, 9 and 10, would require days of study for any understanding. Agency receives 6 pages, of which one and a half is devoted to the comparatively unimportant distinction between agents and servants and one to ratification. Estoppel might as well be omitted as to receive 9 lines in one place and 5 in another.

To write on the law for the use of engineers calls for a professional amphibiousness possessed by few. Our author has practiced law and engineering, but his law breathes of Blackstone and his point of view was more current twenty-five years ago than it is today. One might criticize the "Early Example" on page 2, and the statements of the liability of innkeepers and common carriers, as showing legal misconceptions or inaccuracies such as might be looked for in one who is somewhat a lawyer but much more an engineer. No doubt an engineer would find similar deficiencies in a "Business Engineering for Lawyers," written by a man who had studied engineering and practiced law. Indeed the decisions of our courts on engineering problems are full of illustrations of the inaccuracies and ignorance members of one profession show forth in dealing with problems in another profession.

The fundamental objection to this book for the purpose set forth is that Part I consists of some all too condensed abstract talk *about* the law. It might and should be a study of living cases. It is like a lecture on the paintings and sculpture of a gallery without any illustrative pictures. Even in a short law course for engineering students much more might be done by the first hand use of cases involving the leading principles of those branches of the law with which the engineer should be familiar. Even such illustrative material as the author uses in discussing deeds and negotiable instruments does something to give life to this otherwise dry material of Part I. For the most part the author discusses no cases and cites no authorities, even for his quotations. Part I might serve as a printed outline for a course of lectures, but law lectures are out of date and should not be resorted to even to teach engineers a little law.

Chapter XII consists of good advice, from the legal side, to engineers and engineering contractors, and Part II is quite free from the criticism against Part I. It consists of matter that should be prepared by an engineer out of his experience, and it has been wisely selected. It covers such topics as advertisement, bidding proposals, and forms for contracts, bonds and specifications. These forms are largely standard, including the uniform agreement form copyrighted by the American Railway Engineering Association and the Standard Contract Form of the American Institute of Architects, also copyrighted. They are carefully worked out from engineering experience and are very valuable. For the sake of the matter in Part II any engineer might well provide himself with this book, and it might be of even more value to the lawyer having clients who employ or who are engineering contractors.

E. C. GODDARD.

AMERICAN CITY PROGRESS AND THE LAW, (The Hewitt Lectures, 1917). By Howard Lee McBain. Columbia University Press, New York: 1918; pp. viii, 269.

In no branch of law has there been in recent years more fundamental change than in the law of municipal corporations. There is a marked tendency to depart from many well-established principles. There is being rapidly relinquished the most characteristic feature of English and American local government—the responsibility of local officials to the locality alone. Obversely, each year sees greater legislative power granted to the municipalities. On the one hand, there is a continuous development of central control over the local officials by the state executive, and on the other, there is a constant relaxation of the limitation on local powers hitherto exerted by the state legislature.

Such radical changes necessitate the reconsideration of a number of judicial doctrines. In particular, the rule that municipal powers must be enumerated has been broadly speaking reversed in the states providing for municipal home-rule. It is now the restrictions, not the powers, that must be enumerated. Again, the doctrine of strict construction is yielding before

the popular and legislative demand for freedom for the city to undertake its imperative tasks.

Before assaults of this kind on their established rules, the courts do not always yield easily. Some have gone a long way, some but a short way, toward the reversal of accepted principles of judicial construction. The result is that our various state systems of municipal law are today a bewildering maze.

On the extent of the changes effected and on their tendencies, the author has thrown a flood of light. Even to their proper evaluation he has furnished much aid, though the intention to do so is disclaimed. The book treats, of course, only of changes. It is not an attempt at an exposition of municipal law. After speaking of the broader aspects of these changes, the author takes up specific topics for fairly full discussion,—such as zoning, excess condemnation, municipal ownership, and control of smoke, billboards, living costs, commerce and industry.

ROBERT T. CRANE.

GUIDE TO THE LAW AND LEGAL LITERATURE OF ARGENTINA, BRAZIL AND CHILE, by Edward M. Borchard, Professor of Law, Yale University, Former Law Librarian, Library of Congress (1911-1916), Washington; Library of Congress, Government Printing Office, 1917; pp. 523.

This book has all the virtues of the preceding volumes of the series of guides edited by Professor Borchard or under his supervision. Previous volumes of the series have been reviewed in 10 MICH. L. REV. 666 and in 14 MICH. L. REV. 700. The work is the result of the editor's long study in the Library of Congress and in the libraries of Buenos Aires, Rio de Janeiro and Santiago de Chile. It is a model of bibliographical completeness and excellence.

Dalmacio Velez Sarsfield who drew up the Civil Code of Argentine used as a basis the Brazilian Civil Code of Augusto Teixeira de Freitas. [Cf. the review of the Argentine Code in 16 MICH. L. REV. 469.] Andres Belle in Chile used the same original sources as did the codifiers of the neighboring states. The consequence is that the codified laws of these three countries have a literary unity that makes easy their treatment in a single volume and the close proximity of the three countries and their constant dealings with each other have tended toward a further unification of their laws. This guide will be of great assistance both to the student of comparative law and jurisprudence and to the practical business man or lawyer who may deal with either of the three countries. The Spanish Glossary of this volume is somewhat fuller than that of the Guide to the Law of Spain, referred to above, and this volume also contains a Portuguese Glossary for those dealing with Brazil. The book may be obtained of the Superintendent of Documents, Government Printing Office, Washington, D. C., for one dollar.

JOSEPH H. DRAKE.

A TREATISE ON THE LAW OF PERSONAL PROPERTY, by James Schouler, LL.D.,
Ex-Professor in the Boston University Law School. Fifth Edition.
Albany, N. Y.: Matthew Bender and Company, Incorporated, 1918;
pp. xci, 886.

Those text books are few in number that can survive the wear and tear of a half century of competition, especially when the competition is not alone in form of text but is also one of method of presentation of the subject. That Schouler's Personal Property has survived to its fifth edition, in spite of many good case books on the subject is proof positive that it has some sterling merits, and, after a re-perusal of parts of it, one can well believe that its chief merit is one of form. The veteran author is that *rara avis* in the profession, a "lawyer with a style," and, though the later editions have been broken up into paragraphs with black face headings to facilitate its use as a text book, this interferes but little with the readability of the text.

A comparison of this last edition with that of 1873 shows only one significant change and that is one in spirit or attitude rather than in form. The first edition has a long "Introductory Chapter" beginning "God, the Creator of the Universe, has given to mankind, formed in His own image and after His likeness dominion over the world, etc." This introductory homily so characteristic of all orthodox learning—even in the law—of the early seventies had already in the Third Edition (1896), shrunk to a short introductory paragraph on "General Divisions of the Subject," with fewer lines than there were pages of the original introduction. The present edition contains also the chapter on "Personal Chattels Corporeal and Incorporeal Contrasted," which appears in the third edition, though not in the first. The reviewer has not had access to the second edition.

The author tells us that although he has had some assistance in the annotation and collection of cases for this edition, he has himself edited and revised the entire volume with care, an achievement which at his age may be compared with that of the distinguished legalist and historian—whose name may not even be mentioned now, as he was an unspeakable Teuton—who began an edition of the Codex Theodosianus at the age of eighty-two.

JOSEPH H. DRAKE.

THE STANDARD OF LIVING IN JAPAN, by Kokichi Morimoto. (Johns Hopkins University Studies in Historical and Political Science, Series XXXVI. No. 1.) Baltimore: The Johns Hopkins Press, 1918; pp. vi, 150. This monograph is a study of the conditions of living in Japan, with particular reference to the cost of food, living and housing. It is based upon material collected by the author while he was lecturing at the Imperial University, Sapporo, Japan. In the absence of official data, the carefully compiled tables contained in this essay have peculiar interest.