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Book Reviews

Edwin C. Goddard
University of Michigan Law School

Evans Holbrook
University of Michigan Law School

Ralph W. Aigler
University of Michigan Law School

Edwin D. Dickinson
University of Michigan Law School

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BOOK REVIEWS

ESTATES, FUTURE INTERESTS AND ILLEGAL CONDITIONS AND RESTRAINTS IN ILLINOIS. By Albert N. Kales. Chicago: Callaghan & Co. 1920. Pp. lxxxvi, 948.

Books in general, law books in particular, are like people. Most of them are ordinary, some useful, some not, but if they had not appeared they would not have been greatly missed, having appeared they will live their few years and at least seem to be forgotten. A few are so outstanding that they make a strong impress on their time and live on beyond the period of a life. If not great they have great influence and make notable contributions. Among the notable books of our time in the field of property law may be mentioned Jarman on Wills and Gray's Rule Against Perpetuities. If Kales's Future Interests in Illinois is a lesser light it is entitled to appear in their company and must be regarded as one of the few notable law books of the time. This is not prophecy merely; Kales's first book in this field, and his numerous contributions to law journals, have already settled that. Among living writers on future interests in property none has a more assured position.

The present work is not a mere second edition of the book which appeared in 1905, though in the 871 pages of text in the 1920 book is incorporated, often with slight change, the matter of the 408 pages of 1905. In the present work we have the result of the author's rich experience as law teacher and practitioner and the ripe maturity of his scholarly mind. Characteristically he sticks closer than ever to his mistaken idea set forth in the preface that the law school courses are inadequate because they do not teach the beginner in the study of the law the local law of the state in which he is to practice. As a practitioner he will have a lifelong study of the local law. He will be a broader and better lawyer if the small part of his legal learning which he may acquire in a law school does not much stress local law, but rather lays for him broad foundations on principles which it is to be hoped will always be largely common to the law as developed in each of the states of the United States. But if we do not agree with him in desiring to see some law schools teaching "the local law of the jurisdiction where they are located," and if some why not all, yet we may strongly approve of such work as has been done by the author in an exhaustive study of a narrow field of the law as it has been developed in a given state. However, it may be doubted whether it would be desirable or useful for another Kales to arise in each of the forty-seven other states to produce such a work as his covering the same field. In other words, while the present work is of greatest value to Illinois lawyers it treats the subject so broadly as to be indispensable to any lawyer who would practice property law in any of our states, and the English lawyer may study it with much profit. But forty-seven

more like books are not needed. This is in part due to the fact that Illinois is so barnacled with the outworn rules of feudal property law as to be the best jurisdiction that could have been chosen for a book in this field, better perhaps even for a New York or Michigan lawyer than a book exhausting New York or Michigan cases. One has only to note the number of decisions in recent reports from Illinois in this field of the law as compared with the number in any other state to be impressed with the richness of material available in Illinois. If it be suggested that the New York and Michigan statutes have removed the feudal barnacles in those states, and made useless the ancient learning still in force in Illinois he need only note that the modern statutes are drafted in the ancient terminology to such an extent as to make an understanding of the modern law quite impossible without the ancient learning.

The first eighth of the book is an Introduction, not notably better than many others, to feudal land law, which is simply and clearly stated, and which is excellent preparation for an understanding of the remaining seven eighths. Book II on Interpretation and Book III on Estates are both good in their way, especially for Illinois lawyers, but it is Book IV on Future Interests which occupies the bulk of the book and which constitutes a contribution of great value to the profession. In the United States there is nothing else in this field comparing in value with Jarman's classic in England, with the scholarly editing of Mr. Sweet, though Gray's great little book already referred to covers part of the field. In this part of the work Mr. Kales's book, not only for Illinois but for other states, stands out as the work without a rival for the scholar and the practitioner, and it is likely to continue on this eminence unless and until a scholar as able does for this country on future interests created by will or by deed what Jarman and Sweet have done for England in the field of future interests created by will.

EDWIN C. GODDARD.

HANDBOOK ON THE LAW OF PERSONS AND DOMESTIC RELATIONS. By Walter C. Tiffany. Third edition by Roger W. Cooley. St. Paul: West Publishing Co. 1921. Pp. xv, 769.

The second edition of this work has been reviewed in 8 MICH. L. REV. 258. The comments and criticisms expressed as to the second edition are nearly all applicable to the present edition. Mr. Cooley states in his preface that the work of revision has included little more than the incorporation of the later decisions. A brief but excellent summary of the principal features developed by Workmen's Compensation Acts is added to Part V on Master and Servant. The chapter on Marriage has been rearranged and rewritten, the treatment of the so-called common-law marriage is greatly improved and contains an excellent summary of the present state of the law on this question.

EVANS HOLBROOK.

THE PREPARATION OF CONTRACTS AND CONVEYANCES, WITH FORMS AND PROBLEMS. By Henry Winthrop Ballantine. New York: The Macmillan Co. 1921. Pp. vii, 227.

There always has been considerable advocacy, both in and out of law schools, for some real effort to give the law student during his law course some training and equipment in the preparation of legal documents. There is, of course, the difference of opinion as to whether the limited time available in the usual three year course can be made use of profitably, even in small part, by such "practical" work. In addition there has been the difficulty of suitable material for the basis of such course. It is not unlikely that Professor Ballantine's book had its beginnings in the author's effort to provide his students with material for work along this line.

The aim of the author has been to set forth in a general way the problems that are apt to arise and therefore should be in the mind of the draughtsman, whether he be lawyer or business man, in the preparation of conveyances, contracts, wills, etc., with suggestions as to methods of meeting these difficulties by the provisions of the instrument. There are added statements of situations calling upon the student to draw documents carrying out the desire of the characters, and not infrequently there are sample instruments taken from actual litigation for study and criticism. The last chapter contains a brief discussion of the examination of abstracts of title with a form of abstract for study and preparation of an opinion of title for an imaginary client. In those schools giving the so-called practical course in office practice and preparation of documents the book will be found very useful, if not as the basis of the course at least as a guide and reference. The lawyer, particularly the inexperienced, will find the book extremely valuable for its suggestions and particularly as a means of checking up the completeness of a document.

The book involves the same difficulty and raises the same dangers as may be found in any book which may be thought by the inexperienced an adequate substitute for a competent lawyer. Last of all would Professor Ballantine claim that his book rendered consultation with an attorney superfluous. In the preface he says: "The practical suggestions and forms here given for the preparation of legal documents are not intended to enable the business man, the banker or the notary to draw documents or to dispense with competent legal advice. They are intended primarily for the law student and the lawyer for ready reference, but they should also be useful to the student of business law and the business man as a warning of the pitfalls which beset him in business transactions and the precautions that should be taken." A book on anatomy and hygiene may be very helpful even if it does not make the physician unnecessary; the sensible reader would probably be only the better able to recognize a situation calling for medical attention.

The statements in the book, generally speaking, are accurate and therefore dependable. Criticisms along this line must be directed to omissions

and incompleteness rather than positive error. Here again there need be no difficulty so long as it is realized that the book is merely what it purports to be.

RALPH W. AIGLER.

THE BRITISH YEAR BOOK OF INTERNATIONAL LAW, 1921-22. Second Year of Issue. London: Henry Frowde and Hodder & Stoughton. 1921. Pp. viii, 272.

It was the reviewer's privilege, less than a year ago, to review in this journal the first volume of the new British Year Book of International Law. See 19 MICH. L. REV. 766. The second volume amply justifies the anticipations which were aroused by the appearance of the first. More than ever an excellent series seems assured.

The second volume includes fourteen short articles. Among them we find a summary discussion of recent tendencies in prize court procedure and also some sensible reflections on the problem of sovereignty. There are other short papers written primarily to arouse interest in such subjects as air law, submarine cables, and the effect of war on treaties. Protectorates, mandates, freedom of navigation on the Rhine, and the Permanent Court of International Justice are considered briefly. Mr. T. C. Wade contributes a first-rate little historical study on "The Roll De Superioritate Maris Angliae." "Judicial Recognition of States and Governments, and the Immunity of Public Ships" by Mr. Arnold D. McNair and "Exterritoriality in China and the Question of Its Abolition" by M. T. Z. Tyau are articles of permanent value and are probably the best contained in this issue. Special mention should be made also of Reginald Berkeley's admirable survey of "The Work of the League of Nations." The present reviewer has seen nothing in print which presents the subject so effectively within the compass of a short paper. It is not too much to say that the article deserves to be read by everyone.

The articles in this second issue are more numerous and cover a wider field than those which appeared in the first, but unfortunately they are also more ephemeral in character. There is nothing of the permanent value of "The British Prize Courts and the War" by Sir Erle Richards, "The Legal Position of Merchantmen in Foreign Ports and National Waters" by Mr. A. H. Charteris, or the anonymous article on "The League of Nations and the Laws of War" which appeared in last year's volume. On the other hand, the usual features of a year book have been much expanded and improved as compared with the issue of last year. A department of notes and another devoted to book reviews have been added. The notes include two Belgian prize court decisions and an award of the British-American Pecuniary Claims Commission. It is a satisfaction to note that the editors contemplate publishing further awards of the Claims Commission in later volumes. The list of international agreements and the bibliography are much more complete than those of last year.

Does this comparison with last year's issue indicate that the editors are placing more emphasis upon those features which one usually finds in a year book or other periodic compendium of useful data and slightly less emphasis upon the publishing of leading articles which are permanent contributions to scholarship in international law? The reviewer sincerely hopes that no such shift of emphasis is intended. The British Year Book has an assured future in any event. But it will be really indispensable everywhere if there is an unqualified adherence to the purpose, announced in last year's Introduction, of providing scope for "well-informed and careful contributions to the science of international law, wherein the fruits of research can be applied to the problems of the day."

EDWIN D. DICKINSON.

THE MODERN LEGAL PHILOSOPHY SERIES. Edited by a Committee of the Association of American Law Schools. New York: The Macmillan Co. 1921.

VOL. III. COMPARATIVE LEGAL PHILOSOPHY. By Luigi Miraglia. Translated by John Lisle. Pp. xl, 793.

VOL. VII. MODERN FRENCH LEGAL PHILOSOPHY. By A. Fouillée, J. Charmont, L. Duguit, and R. Demogue. Translated by Mrs. Franklin W. Scott and Joseph W. Chamberlain. Pp. lxxvi, 578.

VOL. IX. THE SCIENCE OF LEGAL METHOD. By various authors. Translated by Ernest Bruncken and Layton B. Register. Pp. lxxxvi, 593.

VOL. X. THE FORMAL BASES OF LAW. By Giorgio Del Vecchio. Translated by John Lisle. Pp. lvii, 412.

VOL. XII. THE PHILOSOPHY OF LAW. By Josef Kohler. Translated by Adalbert Albrecht. Pp. xlv, 390.

The appearance of these volumes with the Macmillan imprint upon them leads us to hope for the issuance in the near future of the other numbers of this valuable series. Volume XIII, PHILOSOPHY IN THE DEVELOPMENT OF LAW, is in press and will probably be published before the end of the year, and the subject matter of Volume XI, THE SCIENTIFIC BASIS OF FUNDAMENTAL LEGAL INSTITUTIONS, is already provided for, so that this volume also may be expected very soon. Volume III and Volume X of the above list have already been reviewed in this journal. 10 MICH. L. REV. 663 and 13 MICH. L. REV. 713, and the basic argument of Volume IX and to a less degree of Volume XII has been incorporated in an article on "THE SOCIOLOGICAL INTERPRETATION OF LAW," in 16 MICH. L. REV. 599-616.

Volume VII, MODERN FRENCH LEGAL PHILOSOPHY, appeared in the midst of the Great War when the minds of most of us were so occupied with the insistent practical problems of the time that we could bestow but little thought on philosophic concepts. Perhaps the most interesting contribution of the French School to modern legal philosophic doctrine is found in the discussion of Solidarism. This appears to be a twentieth century philosophic concept developed by the younger French jurists as a French counterpart of the sociological theories of Stammler, Kohler, and other modern Teutonic

theorists. There is apparently no mention of it in the present volume by Fouillée, who is a representative of the late nineteenth century French legal philosophy, but it is discussed at considerable length by the younger French jurists, selections from whose works are found in this volume. The word seems to be borrowed from the Roman concept of the *obligatio in solidum*, though the modern doctrine has but a shadowy connection with the classical concept.

By the Roman jurists the obligation *in solidum* is contrasted with the correal obligation. Some modern authorities deny that there is any distinction between correality and solidarity, maintaining that the Romans recognized only one form of joint liability, namely, the correal type. The distinction between them, if any exists, seems to lie in the fact that the relationship between the obligors and obligees is a more intimate or at least a more intricate one in the solidary obligation than that in the correal obligation. The type of correal obligation is that arising from joint contract, the type of solidary obligation is that arising from joint delict. This is similar to our distinction between a joint and a joint and several liability. As a consequence of this a solidary obligation can be discharged only by performance or something equivalent to performance while the correal obligation may be extinguished by a purely formal discharge, as by *acceptilatio* or by *litis contestatio*. Furthermore, if one of the joint obligees satisfies the whole debt, in case of solidarity he may exact contributions from his co-obligees.

The greater intimacy or intricacy of the solidary relation seems to be the characteristic that has been seized upon by the French solidarists to express the concept of union and interdependence among men. Charmont speaks of solidarity as a Christian idea (Cf. Vol. VII, M. L. P. S., p. 84 *et passim*), "According to St. Paul we are all members of one body." It is a Catholic idea, "exemplified in the Communion of Saints." It is an idea borrowed from science, "an idea that serves to characterize life." It is an economic idea, "each man lives by the labor of others, and in turn labors for others." Attempts have even been made to carry the idea of solidarity into the domain of ethics. Charmont attributes the origin of the concept to Leon Bourgeois, who produced his "La Solidarité" in 1897, which made solidarity "the moral viaticum of a great party which was to draw from that idea a new store of idealism." This may seem to a legalist somewhat nebulous, but Charmont thinks its "suggestion of vagueness makes it a felicitous substitute for other words too hackneyed or too restricted in meaning to be effective." The concept is brought within the horizon of jurists as ministers of justice by the statement of Boutroux that the "solidarity which we desire to establish is such as will conform to the idea of what is just and will make the accomplishment of justice possible." It is said to be an intermediary thesis between socialism and individualism, reacting against the errors of individualism but investing the individual with a social significance, attaching him to his group and making him an integral part of it. This group, however, is "not an entity, its value is no more than that of its constituent members." Society is then not a unit entity set over against the

individuals composing it and having rights superior to all individuals—an idea which leads so easily to the Teutonic concept of the super-state which can do no wrong—but is a composite entity like our common law concept of a partnership, related most intimately to the individuals by reciprocalities, but having no existence apart from them. Solidarism thus stops short of “integral socialism, at any rate of unified and revolutionary socialism.” Finally, it advances the idea of justice by reaching out into the realm of charity. Though vague, it is for that very reason more supple, and as being at bottom a sentiment, a belief, an aspiration, it is akin to other philosophies of law.

Duguit also stresses the organic unity of society and the individual (Cf. Volume VII, M. L. P. S., Chap. IX, *et passim*). “The collective interest is merely the sum of all individual interests”; the better the latter are protected the better the former is conserved. But nevertheless “we see no trace of a collective will, we see men who have identical thoughts, identical desires * * * but it is always individuals who think and who will; the pretended social ego is nowhere to be found.” On the basis of social solidarity Duguit lays down three rules of conduct: (1) Respect every act of individual will determined by an end of social solidarity. (2) Abstain from any act that would be determined by an end contrary to social solidarity. (3) Coöperate in the realization of social solidarity.

Demogue applies the doctrine of solidarism to the apportionment of losses and division of gains among the members of a group. (Cf. *op cit.* Chap. XIX.) As it is practically impossible to determine the social debt of each individual, “the practical solution is to extend the principle of mutualization to all risks.” This is at the basis of all schemes of insurance and has even been given as the explanation of tariff unions and of coöperative movements. The limited liability of stockholders as an inducement to invest capital may be considered a corollary of the same doctrine.

The Solidarism of the French school seems to differ from the sociological concept of the contemporary German school as the partnership concept differs from the corporate idea. Furthermore, Solidarism places a greater emphasis on the mutuality of the relations between society and the individual. Duguit would apparently assume that each individual is a joint and several creditor of society and that society is a joint and several creditor of everybody. Although this concept is difficult to visualize and well nigh impossible to present in graphical form, nevertheless in its emphasis on the interdependence of the individual and society it may be considered a real advance in philosophic thinking. Then, too, the stress laid by the French school upon the concept of society as a composite entity, immanent in the theological sense, not extrinsic to the individuals as in the corporate entity, seems to be a real advance in our thinking, the credit of which may well be given to the solidarists.

THE MODERN LEGAL PHILOSOPHY SERIES has now reached a stage in which it may fairly be asked whether it has fulfilled the promise of its inception, and there seems to be no doubt but that the question should be

answered in the affirmative. The volumes already published give us a wealth of first hand information as to important movements in juristic thought throughout the world. They make possible a course in jurisprudence that will be something more than mere didactic lectures on the subject. We now have the necessary supplementary reading that can be placed in the hands of students by which an approach may be made to at least a "source book" if not a "case book" method of instruction. It is to be hoped that some competent hand may soon produce a single volume made up of selections from this series and elsewhere which will enable us to put into the hands of each student the material for a study at first hand of our sources of jurisprudence.

BOOKS RECEIVED

- CARDOZO, BENJAMIN N. *THE NATURE OF THE JUDICIAL PROCESS*. New Haven: Yale University Press. 1921. Pp. 180.
- HARDWICKE, R. E. *INNOCENT PURCHASER OF OIL AND GAS LEASE*. Dallas: Oil & Gas Legal Service, Martin Stationery Co. 1921. Pp. 112.
- JONES, J. WALTER. *THE POSITION AND RIGHTS OF A BONA FIDE PURCHASER FOR VALUE OF GOODS IMPROPERLY OBTAINED*. Cambridge: University Press. 1921. Pp. 128.
- WINFIELD, PERCY HENRY. *THE HISTORY OF CONSPIRACY AND ABUSE OF LEGAL PROCEDURE*. Cambridge Studies in English Legal History. Cambridge: University Press. 1921. Pp. xxvii, 219.

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