

PREFACE

The prominence of secondary material in the following pages requires a word of explanation. The law of mortgages embraces so many remotely related topics that it is impossible, in the time allotted to it in our schools, to cover the subject completely and thoroughly by the ordinary "case method." Of the several alternatives that this condition leaves us, the editor has chosen that of covering by cases, with a fair degree of thoroughness, certain selected topics. It is with a view to presenting to the student, in a suggestive way, some of the topics not covered by cases, that the editor has introduced into the book excerpts from text-books and from judicial opinions, and extensive editorial notes. This material is not designed to be made a part of the regular work of the course but to be a supplement to that work. It is designed to dispose of topics which, in the absence of any such material in the book, the editor, in using the book, would have felt obliged to touch upon by lecture. It is the editor's belief that this matter covers the ground in a way more satisfactory to the student than lectures, and to the obvious saving of class-room time for more profitable use. This material has been distributed through the book with a view to presenting, with the cases and the class-room discussion, a fairly systematic treatment of the subject, but the bulk of it will be found in the first hundred pages. In introducing into the book this secondary material, as in the framing of all notes, the editor has endeavored to avoid placing before the student the answers to the problems presented by the cases, or those related problems which it seemed to him practicable to work out by class-room discussion.

Another feature of this book deserving comment is the relegation, to a position of comparative obscurity, of the question as to whether a mortgage vests a legal title in the mortgagee, and those questions as to incidents of the mortgage relation which are dependent upon that theoretical question—problems which have occupied a more conspicuous place in the subject as it has commonly been taught. This has left an opportunity to give more attention to certain topics which touch the substance of the mortgage as a means of realizing the mortgage debt, but have usually been slighted in the teaching of the subject. This shifting of emphasis the editor believes justified from every

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point of view. With reference to the function of giving information, it brings forward those topics which are of the greater importance. With regard to the function of developing the "legal mind," this course brings forward complex problems of a sort which are not as abundant in the curriculum as the more elementary sort which are thus slighted. Conceding that the elementary problem is the more troublesome, there is good use, especially in the third year, for more work of the complex sort.

The editor is confident that these broad positions will meet general approval. He dares not hope, however, that any one will approve in all particulars the manner in which they have been applied.

The cases reported in this book have almost all been subjected to more or less editing. In order that a multiplication of foot-notes might be avoided, omissions and interpolations have been indicated in the text, the former by asterisks, the latter by square brackets. It should be observed, however, that omissions of the whole or part of the reporter's statement of facts, and of the arguments of counsel have not been indicated. Obvious typographical errors have been corrected without comment, but in doubtful cases the original has been preserved.

The editorial notes do not pretend to completeness. Only those cases have been cited which seemed of peculiar interest, except in a few instances where the unavailability of authorities elsewhere led the editor to cite all the cases with which he was acquainted.

The editor desires to acknowledge his indebtedness to Tiffany's Real Property, Pomeroy's Equity Jurisprudence, and Jones's Mortgages, not only for the excerpts therefrom which appear in this book, but also for help received from them, first and last, in the study of mortgage law. Great help has also been derived from Kirchwey's Cases on Mortgages and Wyman's Cases on Mortgages. Other obligations, too numerous to mention here, are evidenced upon the following pages.

EDGAR N. DURFEE.

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