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Book Reviews

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engineers to determine trespasses by his neighbors to his coal below the surface. The owner cannot be charged with notice of such trespass.

Another point, brought in the principal case, is that such an underground trespass amounts to fraud and "where the party injured by the fraud remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the party committing the fraud to conceal it from the knowledge of the other party." *Bailey v. Glover,* 21 Wall. 342, 348, 22 L. ed. 636 (1874). See cases cited in Ann. Cas. 1913C, 1093.

Therefore, the instant case is in accord with the general rule that adverse possession is impossible in the underground trespass cases, unless there be actual notice to the party injured.

Frank J. Lanigan.

BOOK REVIEWS

CASES ON DEBTOR'S ESTATES. Second Edition. By Wesley A. Sturges. St. Paul: West Publishing Company, 1937.

Since the first edition of this book written by Mr. Sturges the case and statutory law relating to the administration of debtor's estates has undergone many renovations and changes. New legal problems concerning their relation to each other and their administration have arisen. The greatest changes have come about in the Bankruptcy Act and in this the second edition the author has attempted to correlate these new developments not only in bankruptcy but also the new place of compositions and assignments in relation to the new additions to the act.

The author is met at the outset with the problem of picking the salient cases and points out of the mass of new law both statutory and case. In planning the book, the author has restricted it to a discussion of the Bankruptcy Act, assignments, extensions, compositions and receiverships with their inter-relation. In selecting his cases and materials, the author cannot deal with all the phases of the subject and must of a necessity concentrate on main points, in order to leave with the student an understanding of the subject as a whole and give the professor a simple and direct method of presenting the course on the subject.

The cases in this book are not the appalling lengthy cases that so frequently appear in a book that must of a necessity be as technical as one on this subject. The cases are short and beneath most of the cases in the book are footnotes that expand on the case and give the student and professor a lead to any contrary decisions or discussions on that case or point in the case. There are scattered throughout the book questions and comments which invite a discussion on the point just studied. Also throughout the book are found many statutory quotations from various states and the Federal Acts which will give the student an idea of the general form of laws in the various states and what to expect in his own if not listed in the book. There are also many excerpts from various writers of notes which amplify the discussion of the author.

The plan of the book is very simple and the author has simply, yet forcefully, succeeded in placing before the student a thorough picture of the problems dealing with as well as the law on debtor's estates. No one volume work can hope to be exhaustive on the subject and many things must of a necessity be omitted and in this book the author has omitted anything that did not directly pertain to the

administration of debtor's estates under the bankruptcy act and kindred acts and forms of administration. In his preface the author tells us that the general scheme and arrangement of the first edition for the comparative study of the several methods has been retained and that at this time a comparative study plan is most desirable.

One look at the plan of this book shows how the author has endeavored to place this arrangement into effect. The first section of the book deals with the methods of liquidation, extension, and reorganization. These are a necessary preliminary to an understanding of the problems involved in the administration of debtor's estates under the Bankruptcy Act. In the second part the displacement of compositions and receiverships and assignments under the Act are discussed, and in the third part the steps of administration are discussed, including the appointment and qualification of assignees, receivers and trustees, plans for carrying on the business, procedure used in collection of the assets and the proof and allowance of claims. The fourth section deals with the discharge of the debtor and his estates. The book then concludes with appendices containing Statutes Regulating Assignments for the benefit of Creditors, The Uniform Fraudulent Conveyance Act, the National Bankruptcy Act, and General Orders in Bankruptcy.

Because of the simple plan of this book, the professor may use any part of it in class without having to refer to another part because each section is complete in itself. The simplicity and able arrangement of the materials of the book recommend it very highly as a casebook giving the student a thorough view of the subject and providing the professor with an easy and simple arrangement for presenting the course.

William F. Langley.

CASES ON FUTURE INTERESTS. Second Edition. By Richard R. Powell. St. Paul: West Publishing Company. 1937.

In concert with the trend toward accumulations of property, particularly manifest within the past decade, has been the bending of the increasingly searching legislative eye upon the law of Future Interests. The constant additions of statutory enactments, together with frequent changes in judicial interpretation necessitated by the late metamorphosis in the social and economic aspects of everyday life, have encouraged the discarding of some of the more rugged and outmoded technical doctrines of this particularly rich and progressive science, and the substitution of a more enlightened and up-to-date philosophy. To acquaint the student with the changes in the legislative ingredient and enlightened judicial opinion, Mr. Powell has contributed this second edition of CASES ON FUTURE INTERESTS to the wealth of casebooks available to the student of law.

The second edition preserves the same general approach as was manifested in the first. The author has recognized that a thorough and comprehensive study of expectant estates should not be attempted without an introduction in the form of an ample historical background, and has incorporated a pertinent and concise summary of the early basic cases. Interspersed with these introductory cases illustrating the purely historical advancement of the concept of future interests are others, the prime importance of which lies in the clarification of some terminological aspect of, or the improvements in the technique of creating, expectant estates.

The author himself accredits many of the improvements to be found in the second edition to the untiring efforts during the past ten years of the legal scholars comprising the body which has formulated for the American Law Institute the *Restatement of the Law of Property*. The instructive and corrective advice of

these men has found its way to the law student through the medium of Mr. Powell's work, which has selectively given concrete expression in the form of cases to the facts found by the Restaters. Credit also has been given to the advice and teaching of Professors Simes and Cheatham.

Two new chapters have been added to the material already seen in the first edition. One dealing with restraints upon alienation was inserted "in response to the demands of many teachers of law who regretted its omission from the original work," as the author himself confesses. This feature alone should be sufficient to stamp the second edition with the mark of superiority. Also a chapter dealing with the operation of the rule against perpetuities in the state of New York, which the author believes will prove as helpful to students preparing to practice elsewhere as to those who intend to practice in New York, has been added. This section is invaluable in that the unique, in the sense of "different," interpretation of the rule may be compared side by side with the ordinary interpretations of the more conservative states.

The selection of cases has been done with the skill characteristic of Mr. Powell. A substantial percentage of the total included cases have been handed down since 1900, which should be of practical as well as psychological interest to the student using the text, inasmuch as the preponderance of late cases tends to instill an attitude of certainty of present day law concurrently with his study of the history and development of future estates. Indeed, the student is quite likely to be confronted with cases previously within his personal knowledge as a frequentee of the courtroom, or merely a thorough reader of the daily newspapers. In pursuance of his previous policy, the author has rounded out his volume with pertinent questions provocative of independent research. The manner in which these questions are put is demonstrative of a keen insight into the all too prevalent student attitude on follow-up propositions, for no indication is given as to which way the questions have been decided, and the student is driven in self defense to an examination of the queries propounded.

It is the conviction of the reviewer that the revamped organization of material, together with the inclusion of the new features heretofore mentioned, and the incorporation of still more modern cases, mark the second edition for a destiny of favor with students and teachers of future interests alike.

Frank J. Smith.

CASES ON THE LAW OF NEGOTIABLE PAPER AND BANKING. By Ralph W. Aigler. St. Paul: West Publishing Company. 1937.

Another important addition is made to the American Casebook Series with this latest contribution of Professor Ralph W. Aigler of the University of Michigan. As a result of experiences of a considerable number of years, particularly in teaching Bills and Notes, there developed in Professor Aigler a growing conviction that law school curricula generally do not offer prospective lawyers sufficient acquaintance with the law in relation to banking transactions. Feeling that Banking and Negotiable Paper are two subjects well adapted for combination in one course, the editor has covered them both in this one volume.

The first part of the book deals with Banking and covers 350 pages of the 1150 page book. The arrangement of the materials on Banking is quite simple and obvious. The material is divided into four chapters entitled: Legal Relations Between Customer and Banker; Duties of Bank and Depositor Inter Se in Normal Relationship of Debtor and Creditor; Collections; and Bankers' Lien and Set Off. As

an Appendix to chapter three, the Bank Collection code is presented. While banker clients may well expect their counsel to be able to cover a lot of ground not touched by the materials in Part One of this book, the material presented will at least give the student a working knowledge of the subject.

The second part of the book, covering the remaining 800 pages, or over two-thirds of the whole book, deals with Negotiable Paper. In this section the innovations; such as they are, are not startling. Generally speaking, the traditional method and order of development of the subject have been followed. One noticeable change is that Professor Aigler chooses to deal with the liability of parties before presenting the formal requisites of negotiable paper. The material is divided into seven chapters titled: The Negotiable Quality in General; Inception of Instrument; Liability of Parties; Formal Requisites of Negotiable Paper; Negotiation; Holders in Due Course; and Discharge, followed by the inevitable Appendix containing The Uniform Negotiable Instruments Law. The first chapter is most enlightening and interesting. Its contents are best explained by the editor in his Preface as follows: "It has often been observed that the law of Negotiable Paper is an interesting and sometimes curious combination of property and contract law. Liabilities on such paper are bound to be contractual; but in the document itself important property interests are recognized. No student should take the course in Negotiable Paper without having had the basic courses in Contracts and Property, and to the editor it has always seemed valuable to "take off" from the familiar and fundamental doctrines of those courses. It is that philosophy which explains the content of Chapter 1 of Part II. The student thereby should not only become acquainted with the negotiability concept, but he should also get some idea of its development and scope."

A feature of the book which is especially worthy of favorable comment is that in a number of situations the usual case development has been abandoned in favor of brief but concise texual presentations. These short discussions not only clarify the cases but serve to help the student to organize each section of cases before a new set is begun. The book is well annotated both with case citations and with references to articles in point in various legal periodicals. No effort has been made to make the annotations exhaustive, but those selected are well presented, and are selected because they in turn open the way to further authorities. The outstanding characteristic of the annotations is that they really assist the student rather than confuse him as some citations often do.

As a whole the book is to be highly commended. Considering the fine selection of cases, the sequence and orderly arrangement of subjects, the illuminating annotations, and the informative text material, this casebook should prove valuable in the classroom.

Joseph B. Shapero.

RESTATEMENT OF THE LAW OF RESTITUTION. St. Paul: The American Law Institute. 1937.

With the release of this volume, *The Restatement of the Law of Restitution,* the American Law Institute cements another important block in its proposed structure of the modern legal principles of our country. By the process of adopting new legal nomenclature the Institute has combined the quite familiar subjects of Quasi Contracts and Constructive Trusts into one distinct unit of legal classification. This unit has been labeled "Restitution." To those who have been schooled in the principles and doctrines of each of these subjects, with probably never a thought of their close relationship or of the dominant legal concept that winds through

them both, this combination into one distinct, coherent subject will seem not only novel but somewhat startling. It will be startling because two such time-honored names as "Quasi Contracts" and "Constructive Trusts" are not frequently so summarily abandoned for a more convenient, more generically correct term. The startled, however, will soon grow receptive, if not enthusiastic. The logic and the usefulness of the combination becomes apparent from even a superficial examination of the natural development of the subject matter and the easy continuity of the legal principles, if not from a mere contemplation of the two subjects themselves. The inclusion of these two fundamental legal subjects under one head is certainly practical for more reasons than that they make one standard sized book. They fit together because they belong together.

The purpose of the Institute in preparing this and the preceding volumes of the Restatement is "to present an orderly statement of the general common law of the United States." That this goal was to be earnestly pursued was evident with the appearance of the first volume; that this purpose is being abundantly fulfilled is made more manifest with each succeeding volume. Aside from an infrequent tendency to make law or change settled legal principles rather than state existing majority rule, which tendency seems to bear fruit more in the Restatement of Contracts than in other volumes (and who is to say that the Institute's pronouncements in such cases are not better than the rules of majority courts?), these volumes have excellently stated existing American law. The Restatements have their own definite and important place in our body of legal works. They will never replace the text books, the important treatises, nor the compilations of case authority. The Restatement is essentially a repository of law, an instrument for locating specific points. It will not replace the case compilations because, in spite of the increasing authoritative value of the Restatement (a recently published third edition of "The Restatement in the Courts" shows that the courts are citing the Restatement with growing frequency), the previous decisions of courts will necessarily always have to be the main support for decisions. The Restatement will not replace textbooks or treatises because it can be truthfully said, without detracting in any way from the importance or the value of this series, that the Restatement does not make good reading. Its necessarily intricate language and its delicate distinctions in presentation make prolonged reading extremely difficult if not impossible. The Restatement is not intended, nor is it fitted, to be studied. It is a work containing an amazingly complete statement of the principles of our law as well as the many and varied limitations and distinctions of those principles. It is a work in which the complete analysis of a particular specific rule applicable to a definite set of facts can be hunted down and scrutinized. It is ill-suited, and rightly so if it is to fulfil its purpose, for a study of the whole field of a particular legal subject.

As to this particular volume of the Restatements, Restitution, there is much that can be said. It is probably unnecessary to point out to the average lawyer or law student the general plan or scheme of the Restatements. The initiated are quite familiar with the most distinctive feature of these books—the absence of reference to cases, with the exposition of fundamental principles in heavy black type, and with the explanations, comments, and illustrations that follow these principles. The *Restatement of the Law of Restitution* is divided into two parts. Part One covers the law of the right to restitution or quasi contractual and kindred equitable relief. Part Two deals in surprisingly fine detail with constructive trusts and analogous legal remedies. In general the term "restitution" is meant to cover the legal situation in which one person is accountable to another on the ground that otherwise he would unjustly benefit or the other would unjustly suffer loss. In the common and accepted division of legal thought the subject of Quasi Contracts is limited to action at law to secure the payment of money. The Restatement of this subject, however, extends the treatment to include not only such actions, but also similar equitable remedies. While this extension of the subject is

found largely in the second part of the volume, yet we find references and explanations of these equitable doctrines interspersed all through the principles of quasi contracts in the first part. The volume, however, deals only with rights that are essentially restitutionary and does not treat of other rights which may also arise from a situation in which there is a restitutionary right. Thus one is not able to find references to such rights as ejectment, replevin, trover, tort, or even self-help. There are, however, cross references to rights arising from breaches or nonperformance of a contract or nonperformance of a trust. In its treatment of the equitable aspects of Restitution the Restatement gives especial attention to the situations in which, as a result of his right to restitution, a person is entitled to obtain a specific thing or fund, or to have a lien established thereon, or to be subrogated to the claim of another.

The bulk of the preparation of this Restatement of Restitution was done by Professors Warren A. Seavey and Austin W. Scott, both being members of the faculty of the Harvard University Law School. The thoroughness of their preparation and the completeness of their coverage of the subject is not only a tribute to their industry but a compelling reason why this Restatement should and will be accorded the same high regard that the previous volumes of the series have won.

Robert J. Schmelzle.