Notre Dame Law Review

Volume 13 | Issue 3 Article 8

3-1-1938

# Book Reviews

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sponsibility for, the child, and can legally exercise no right over her. In that case the court held that "after the adoption of a minor child by another, the parental obligations of the natural parents to such child cease to exist, and that, after such adoption, they are no more legally liable for the maintenance, support, and education of the child than a perfect stranger would be. And it furthermore follows that an adopted parent may contract with the natural parents to take care of, support, and educate the adopted child for compensation as freely and legally as such a contract could be made by the adopted parent with a stranger to the blood of such child."

The supreme court of Michigan also places the liability of support upon the adoptive parents, and releases the natural parents. In *Greenman v. Gillerman's Estate,* 188 Mich. 74, 154 N. W. 82 (1915), the natural mother of the child sued the adoptive parents' estate to recover compensation for supporting the child after the adoptive parent had agreed to pay her. The court said that under the statute declaring that the person adopting a child shall stand in the place of a parent and be liable to all the duties of a parent as if he were one in fact, an adopting parent is liable for the support of an adopted child, though the child be cared for by its natural parents. The case was reversed and a new trial ordered on the ground that the lower judge erred in stating as a matter of law, that the adoptive parent was relieved of the duty of supporting the child, and that it devolved upon the claimant, the natural mother. So this case strongly shows that the natural parent has no duty to support a child after adoption proceedings.

Although the Illinois case is the only case which has placed such a duty upon the natural parents, other cases may follow. The duty depends mainly upon the interpretation of the local statutes—whether or not a complete severance of the natural relationship between parent and child is attained by adoption. Then, if no complete severance is attained by the adoption, it depends upon whether or not a necessity has arisen to compel the natural parent to support the child. If there is no necessity, it is clear that the law casts the duty of support upon the foster parents first. Many states may be quick to seize upon this "necessity" angle, and compel the natural parents to support the child rather than have the child become a public charge and a burden upon the state. But to do so, is going to open the door to many complicated situations. As a result of the Illinois decision, it has been made possible for foster parents to shirk the duties and liabilities they assumed in the adoption proceedings, and to unburden themselves of the responsibilities. By merely pleading inability to support the child, they may force the natural parent to do so.

*Joseph Patrick McMahon.*

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# BOOK REVIEWS

CASES ON CONSTITUTIONAL LAW. Second Edition. By Walter F. Dodd. St. Paul: West Publishing Company. 1937.

A book on Constitutional Law is most timely whenever it is published; but during the past year, when the subject was the basis of much discussion, even in lay circles, material on this subject has been of greater value. Political comment, strong minority opinions, incessant criticism—all add to the weight attributed to the subject. Many important cases, revolutionizing the economic structure of the country, have brought to the American people the significance of the subject. In this book can be found not only a report of these recent important cases, with the dissenting opinions as well as the controlling opinion, being analized in separate

notes by the author and by various law review commentators, but also notes showing the inter-relation of the various decisions and the general trend of the opinions. In some cases the judges have decided a law unconstitutional; but the author points out that in similar cases the decree has been decidedly opposite and that some time in the future the minority opinion of the particular cases will be the controlling opinion.

In this book the author incorporates at the beginning of each section certain instructive material, parsimoniously set forth, which suggests to the student the general rules in relation to the particular subject. Dodd then states that the cases reported will not be those setting forth the general principles referred to, but rather the cases which created much discussion and are on the border-line. As the preface to the book points out, ninety-five per cent of the law on the police power is absolutely decided, and this is illustrated by a very few cases and several general statements; whereas, the remaining five per cent, dealing with factual situations to which no universal rule has been applied, is considered in the greater portion of the chapter. This is as it should be, but the mistake made by so many authors, of not pointing out the general ideas before delving into the complex disputed opinions, is remedied. For that reason the case selection is far better than average and the entire material is covered in a minimum amount of class time.

Because of the extent of the course the time allotted in the general law schooi curriculum is not sufficient to cover both the interpretation of the federal and state constitutions. The student is reminded of the importance of studying his particular state constitution and then the matter is dropped. So, also, the author points out that recently courses in Administrative Law, Public Utilities, Taxation and others have tended to distribute the amount of work required; but the author has not divided his book by subjects, but rather by constitutional phases, and, therefore, has needed to include many of the basic cases. For example, one of the foremost rate cases in the utilities field, *Smyth v. Ames*,[1] also stated a fundamental rule in relation to the equal protection and due process clauses of the Federal Constitution.

The footnotes are an integral part of the book. The ones of primary importance are incorporated in the book in the same size type as the cases, while the notes illustrating the rules of secondary importance and those adding weight to the rule of the principle case are set out at the bottom of the pages in the small print. It is in these latter cases that many peculiar and interesting interpretations are set forth and are of importance particularly to the academecian. The Table of Cases setting out not only those cases reported but, by way of differentiation, those merely cited, is one of the best organized Tables the writer has ever had the pleasure of using.

The student is to thnak the author for his work of many laborious weeks in preparation of this volume. This, the second edition, improves on the first, published only four years earlier, mainly because in the interim many fundamental doctrines were altered or explained by the courts. The book is clear and readable, but not critical and pedantical. The value of the book is of great importance because it is so up-to-date and has all of the most recent decisions reported. Dodd has again contributed greatly to aid the student in grasping the fundamentals of the law and the layman in acquainting himself with the timely topic.

*John E. De Mots.*

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[1] 169 U. S. 466 (1897).

CASES ON INTERNATIONAL LAW. By James Brown Scott and Walter H. E. Jaeger. St. Paul: West Publishing Company. 1937.

The study of International Law has not made a precise inroad into the curriculums of our American law schools as yet but the introduction of this new casebook should revitalize interest in the study.

Few of us boatmen paddling the rapid stream of legal knowledge have gone upstream far enough to notice that the United States Supreme Court applies established principles of international law wherever applicable. In *Riddell v. Fuhrman* [1] it was stated: "Wherever applicable, courts of the United States apply established rules of International Law. International Law is a part of the law of the land, and *must* be administered by state and federal courts wherever it is involved in causes presented for determination." The application of International Law is based on the theory that when the United States became a nation; it impliedly consented to the law of nations, and adopted it as part of the municipal law of the land. This is reiterated in the case of *Hilton v. Guyot*.[2]

Why study International Law, when the subject is so remote to the common lawyer? Of course, this inquiry could be answered by another question and that is, Why be a common lawyer but not to be facetious? I think the question is best answered by the words of Chancellor Kent, which he spoke a century ago. In his *Commentaries* [3] he said: "A comprehensive and scientific knowledge of international law is highly necessary, not only to lawyers practicing in our commercial ports, but to every gentleman who is animated by liberal views and a generous ambition to assume stations of high public trust . . . and I think I cannot be mistaken in considering the elementary learning of the law of nations, as not only an essential part of the education of an American lawyer, but as proper to be academically taught."

Only actual decisions appear in the text, which is in keeping with the purpose of the authors so as to bring the book admirably within the sphere suitable for courses both in the law schools and in other courses of universities. The editors have further developed their purpose by dividing the book into two general headings, namely, Substantive Law and Procedural Law. Each chapter has an individual table of contents, which makes it possible to study certain phases and individual problems without making a tedious search for one's topic. A novel feature of this collection is the problem notes that appear at the end of each chapter. These notes are based on leading decisions of the Supreme Court which makes them very valuable to American students.

This casebook contains not only decisions of English and American courts but also those of some sixty other sovereign nations of the world at large. The American decisions constitute about twenty per cent of the volume and another twenty per cent is devoted to arbitration cases while the residue is made up of decisions of municipal courts of foreign nations.

*Henry F. Pojman.*

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HANDBOOK ON PARTNERSHIP AND OTHER UNINCORPORATED ASSOCIATIONS. (Hornbook Series.) By Judson A. Crane. St. Paul: West Publishing Company. 1938.

In this work we have an excellent addition to the Hornbook Series of treatises on the principal subjects of the law. There need be no higher recommenda-

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1 233 Mass. 69, 123 N. E. 237 (1919).
2 159 U. S. 113 (1894).
3 Vol. 1, p. 20.

tion for this book than to say that it maintains the high standards of quality and fine workmanship characteristic of the other textbooks in this series. It contains many distinctive features which enhance its utility to the student and also to the practicing attorney.

The importance and applicability of the law of Partnership has somewhat decreased of recent years, and as a consequence it has not been stressed as it formerly was. The cause of this decline in the popularity of the partnership relation has been the increasing use of the corporate entity. General incorporation statutes making it a relatively simple matter to form a corporation and enlarging the field of operation of corporations, this legal relationship was resorted to more and more frequently in order to obtain the obvious advantages thereof. However, it is highly probable that the pendulum will now commence to swing in the other direction.

The past few years have seen an enormous increase in the number and variety of taxes that have been levied upon corporations, and it can hardly be questioned that, in the long run at least,, such taxes will continue to be levied upon corporations and their profits. Not only have these taxes affected the profits of corporations as such, but they have also further complicated the bookkeeping and rendered more arduous the management of corporations. A natural result of this increased legislation might conceivably be a trend away from the corporate entity method of transacting business and towards a return to the partnership or some other unincorporated association. Thus it is quite likely that in the future the Law of Partnership will assume an increasing importance in the jurisprudence of the United States.

In this book Professor Crane has used sound judgment, not only in the selection of his material but also in the manner in which he has arranged it. There is a logical transition from one subject to another, which results not only in better reasoning but also in easier correlation of material. In addition to the simple partnership, the book deals with the different variations thereof, such as the limited partnership, joint stock company, and business trust. These associations are rather common today and resort to their use will probably become more frequent in the future. Another distinctive and unique feature of the book is a chapter at the end thereof on non-profit unincorporated associations. Although little has been written upon this subject it is very important and promises to become more so especially with regard to labor organizations, which are very much in the public eye at the present time.

The Uniform Partnership Act, which has been adopted by almost half of the states, is frequently referred to, both as headnotes and in the footnotes. Also, to facilitate matters, the index indicates pages in the text where particular sections of the Act are considered. The value of this procedure is obvious, and it will increase as more states adopt the Act, as they no doubt will.

The book is also well annotated, with references to cases, statutes, periodicals, and other legal articles. In the appendix are set out the Uniform Partnership Act, the Uniform Limited Partnership Act, sections of the Uniform Fraudulent Conveyance Act dealing with partnerships or partners, and also Section 5 of the Federal Bankruptcy Act, which deals with partners. The states which have adopted the first three acts are also noted.

Another commendable feature of the text is its size. Realizing that the subject is not one to which a great amount of time is devoted in the law schools, the author has made the work brief and concise. However, he has not sacrificed quality for brevity. The important phases of the subject are dealt with, and references to other sources and articles are given for those who wish to delve deeper into the subject. Professor Crane has made a worthy contribution to the study of the Law of Partnership.

*Rex E. Weaver*

THE MIND OF THE JUROR. By Albert S. Osborn. Albany: The Boyd Printing Company. 1937.

In this concise book of some 239 pages, the author sets out to give us the layman's view of the law. He gives us a complete picture of trial by jury from an unbiased viewpoint. His main purpose is to acquaint the public with the outmoded methods of administering justice in our tribunals today, and to suggest and encourage changes to be made in court procedure in order to make it more fitting with our modern world. Well do we all know that our present judicial systems are inadequate and inefficient enough to meet the present day conditions, and that if a change for the better is not made soon, the administration of justice is going to slip far behind the progress being made in other fields of civilization. The over-crowded dockets in most of our courts will substantiate that statement. The author of this book has had numerous opportunities to observe the practice of law and is well qualified to speak on the subject. He has appeared as a document specialist in numerous cases, testifying in the courts of almost every state in the Union, parts of Canada, and also Porto Rico. Besides that, he has appeared before state legislatures, arbitration boards, organizations of every description, referees, and individual magistrates. He has been afforded the opportunity of seeing how differently the same thing can be done under varying laws, procedure and circumstances, and he gives us the benefit of his observations and active experience covering a period of almost forty years. He endeavors to report some of the operations of the mind of the juror, who is an active instrument in our system of administering justice. The book is extremely helpful in acquainting those who might be called as jurors with what they are to encounter, and in giving trial attorneys an idea as to the effect of the methods they use in the courtrooms on the minds of the jurors.

The author begins with a brief description of the majesty of the law, and states the need of impressing upon the jurors the reverence and respect due the law and the duty he is about to undertake. He criticizes the hasty method of administering the oath in some courtrooms—the inaudible, unintelligent mumbling of the court clerk. It is his contention that if more solemnity were given to oath administering there would be less perjury committed, and the seriousness of the nature of a trial would be more emphasized upon the minds of those participating therein. The administration of justice is not a thing to be cheapened and rendered commonplace, but it should command the respect of all. From here he goes on to give a short history of the jury system, its disadvantages, its proposed changes, and what could be done to improve it. He states and explains the juror's difficult task, how inexperienced men are called in to decide a case upon which learned lawyers and judges themselves disagree, how juries are swayed by external influence upon their sympathies. It is the author's contention that the jury system is a cumbersome and burdensome obstacle to the swift administration of justice and that much benefit could be derived by abolishing it altogether. He shows how most of the jurors are unfit for the services they are called upon to perform, and criticizes the practice of selecting jury men from voting lists, etc., and of allowing too many exemptions from jury service with the result that when a jury is impaneled we have a group of very low intelligent men. Much stress is placed upon the qualifications of a good juror, and the method to be used in testing and instructing jurors. The recent tendency of the federal courts to have the judge interrogate prospective jurors and instruct them is lauded by the author.

The reactions of the jurors to the lawyers and witnesses in the trial are clearly portrayed. The witnesses' manner of narrating the facts, their apparent intelligence, and various other things all have a decided influence on the juror's mind. The author also gives us an amusing picture of the juror's conception of the confusing rules in a law trial. Such objections as "incompetent," "imma-

terial," "irrelevant," and "hearsay" only tend to confuse the jurors and hinder them in learning the facts. Much good would be done if such objections were not allowed, and instead, an attempt was made to present all evidence having any bearing on the case, as is done before arbitration boards. In the words of one juror, the author cleverly depicts our present day trials: "If it wasn't for the damned rules we could see the game played and perhaps would be able to judge of its merits."

One method advocated to improve law practice in America is the means of settling disputes by arbitration. The author gives a good account of the advantages of this coming procedure over that of trial by jury. The men who are arbitrators generally are those who are qualified to act as such, and not like jurors—men totally unfit for the task they are asked to perform. Arbitration is speedier, more economical, and more adaptable to most cases. Arbitration is not advocated as a rival of the court, but as a cooperating agent to aid the courts in clearing court dockets by taking those cases which involve only questions of fact. Another method put forth by the author to improve our court procedure is to reduce the number of jurors, preferably to an odd number, such as 9 or 7, pay them more, and abolish the requirements of a unanimous verdict. In this way, we would have a more efficient jury and at the same time avoid disagreements because of obstinate, prejudiced jurors, or because of "tampering" with the jury.

In another part of his book, the author deals with some of the obstacles in the path of justice. First among these is the slowness of surrounding states to adopt any improvements in the law made by a neighboring state. Several examples are pointed out where one state lags far behind its neighboring state in the progress being made in improving our judicial tribunals. Another obstacle in the administration of justice is the newspaper. Oftentimes, the press has been known to interfere with justice by publishing information before an important trial has begun. While still another is the practice of refusing to permit judges to comment to the jury upon the facts of the case. Jurors could be helped a great deal if the judges were allowed to explain things to them and clear up the confusing rules. The last obstacle the author deals with is prejudice—often called "the thirteenth juror."

In conclusion, the author takes up the prevalence of crime in America, the reasons why it exists, and what can be done to help abolish it. He urges the law associations to take an active part in improving our jury system and in promoting the administration of justice, else the abuses prevalent in our system today will continue.

*Joseph Patrick McMahon.*