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Book Reviews

James H. Levi

Arthur C. Gregory

Guy H. McMichael

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holder of the unrecorded deed, being the party in the wrong, by omitting to record his deed, must assume the burden of showing a want of consideration or notice in the purchaser under the deed having priority of record, because any other doctrine would render the recording statutes of very little value. In a subsequent case, *Cutler v. James*, 64 Wis. 173 (1885), the Supreme Court of Wisconsin retreated from their previous stand and indicated that the burden of proof may be shifted from one party to the other, according to the circumstances of the case.

In other jurisdictions the authorities are not in accord. In some cases the view is taken that the want of notice and payment of a valuable consideration are essential to the status of a bona fide purchaser, and one claiming protection as such must show that his purchase was made without notice and for a valuable consideration. Other cases take the broad view that the purchaser is presumed to be a bona fide purchaser for value, and the burden of proving notice of an outstanding equity or unrecorded deed is upon the party attacking its bona fides.

The basis for the dissenting opinion in the principal case lies in the proposition that the law favors the recorded title, and any conveyance which is duly recorded must thereby obtain all the benefits which depend upon or flow from the fact of record. Courts which are motivated by a strong desire to preserve the force and efficacy of the recording statutes, adhere to the rule that the law will make no presumption against the subsequent instrument which was first recorded, and the burden is on the one claiming under the unrecorded instrument to show either notice or a want of consideration.

It seems to be conceded that the holder of a prior unrecorded deed has the burden of proving the lack of good faith in the holder of a subsequent recorded deed. The controversy arises when we come to the question of proving the purchase was made for a valuable consideration, and it is the opinion of the writer that the distinction is well-taken. The good faith of the purchaser may be seriously impaired, if not destroyed, by the inadequacy of the price at which the property is sold. The burden of proving valuable consideration should be placed upon the holder of the subsequent instrument which is first recorded.

Probably the rule which has most authority, and much reason in its favor, is that the burden is on the one who claims protection as a bona fide purchaser to show the actual payment of a valuable consideration by evidence other than the mere recitals in his deed. Upon his proving his purchase and payment of value, the burden is upon the other party asserting that the purchase was not in good faith to prove such.

Archibald G. Graham.

BOOK REVIEWS

CASES ON INTERNATIONAL LAW. Second Edition. By Manley O. Hudson. St. Paul: West Publishing Company. 1936.

Recent developments in the field of International Law, call for a second edition of this collection of cases and other materials on that subject, though only seven years have passed since the publication of the original edition.

The editor has presented the materials on international law in a way designed chiefly for students in American law schools. He has selected and presented the

topics with a view to facilitating the discussion of the problems which most frequently arise in the practice of law and in the current relations of governments. Since the World War, there have been numerous international problems which have affected the whole field of international law, and the author has felt the influence of this in the preparation of his work.

While some change has been made in the arrangement of the material from the earlier collections, this has been necessary due to the change of emphasis since those collections were published. The first chapter deals with the society of nations, in which the author places before the student the outstanding features of our present state system. He follows this up in several following chapters with the different phases of this system. In view of the fact that, only a small number of lawyers are ever called upon to deal with the special problems which arise out of the conduct of hostilities, the classic distinction between the law of peace and the law of war has been minimized. This is consistent with the purpose of the work, which places emphasis on those parts of international law which must find place in the learning of a practicing lawyer or government expert.

A casebook, to be a useful one, must have an orderly arrangement of material, with a good selection of cases from the viewpoint of quality. These requisites are present in this fine work by Professor Hudson. The cases have been chosen wisely and their selection shows a desire on the part of the author to give to the student an insight into the present day developments in international law, as well as a well-rounded understanding of the subject by including cases of historical importance.

In selecting the cases, use has been made as far as possible of the judgments and opinions of the Permanent Court of International Justice, the awards of tribunals of the Permanent Court of Arbitration, and the decisions of international claims commissions. In a few instances, such as in the section on Naturalization, the cases presented deal mainly with the national law of the United States, but this is in conformity with the needs of the American law student.

In addition to the opinions and cases reported, the author has inserted, at chronological points, important legislation and treaties, making them easily accessible by a separate table. Although the text in this second edition has been necessarily cut down to make way for a number of new inclusions, the important explanatory matter is still contained therein. There is also included an excellent compilation of a selected library of International Law, which covers the field very well.

The author has accomplished his end in presenting the law student, as well as the practitioner and government expert, a fine collection of materials and cases on the subject of International Law. It is a fitting tribute to the sagacity and knowledge of Professor Hudson, to learn that he has just been elected a member of the Permanent Court of International Justice to fill the vacancy caused by the resignation of Senator Kellogg.

James H. Levi.

CASES ON THE LAW OF PUBLIC UTILITIES. Second Edition by Young B. Smith, Noel T. Dowling and Robert L. Hale. St. Paul: West Publishing Company. 1936.

To say that the latest edition of a casebook on Public Utilities is a necessity in the classroom is superfluous considering the changes that have been made in the last few years in this branch of the law. Much of the common law has become obsolete and has been replaced by numerous federal and state legislative

acts. A host of recent cases interpreting these statutes and testing their validity against constitutional limitations have been decided. The editors taking cognizance of this situation have revised their first edition, published in 1926, to include these developments. The scope of the new edition has been enlarged to include new subdivisions of cases on "public profession" and "regulation by contract and conditions attached to privileges"; also greater emphasis has been placed upon administrative action by commissions than formerly.

One commendable thing the editors have done in presenting this volume, from the students' point of view, is that they have supplied excerpts from law review articles, thus giving the best that has been said extra-judicially on the subject and have interposed comments of their own discussing the legal principles and reasoning of the cases. Although this is not a new innovation, it is a step in the right direction for there are far too many compilers who have followed Langdell too closely by presenting a group of cases arranged in a certain sequence under few chapter and section headings without any comment whatsoever. Some comment or text matter is necessary because law students are not seasoned lawyers trained in the logic of the law. Many times an explanation or reconciliation should be made in the cases but is often omitted by the courts, because it is considered elementary or of common knowledge. Text material is an invaluable aid to a student in that it intelligently guides him through the cases making them more understandable.

A decade of experience by the editors with the first edition has shown that certain cases could properly be omitted, that a re-arrangement of the material would develop legal principles more logically and that the difficult parts of public utility law could be simplified by interpositions of text matter. The combined judgment and wisdom of the three editors in selecting the cases is in evidence throughout. All will lead to an extensive use of this book.

Arthur C. Gregory.

JUSTICE OLIVER WENDELL HOLMES, HIS BOOK NOTICES AND UNCOLLECTED LETTERS AND PAPERS. By Harry C. Shriver. New York: Central Book Company. 1936.

Many readers of this little book of 245 pages will doubtless express some feeling of dissatisfaction that a more extensive and complete collection of those non-judicial opinions which Holmes himself has called "little fragments of my fleece that I have left upon the hedges of life" were not assembled. The editor's justification for the collection is that "this volume completes the miscellanea of the writings of the late Justice Oliver Wendell Holmes" and since his other writings have been published elsewhere it would seem a repetition is unnecessary. By collecting these papers from the musty pages of periodicals and publishing them in this volume a service has been performed for the profound student of Holmes. But after all, a reader of Holmes is primarily and essentially interested in his rich philosophy and wisdom rather than to have an overdose of some isolated writings which are of no particular value and surely are not representative of the man. On the other hand, more excerpts from law review articles, speeches, letters and other papers would have given us a more balanced, interesting and exact picture of Holmes as lawyer, editor, teacher and jurist.

Part I and the appendix consists principally of book notices and editorial comments written by Holmes as editor of the "American Law Review" during the years 1870 to 1873. While Holmes' book notices are brief opinions of the legal literature that came to his desk during that period some of them are of value to

us only in so far as to show his technique of review and in that they anticipate the great jurist, for he was just as liberal in these notices as he was later to be in his decisions. There are a few book notices, however, in the first part of this book that every student of jurisprudence would do well to read in that they are gems in the field of jurisprudence. Of particular value is Holmes' criticism of Austin's definition of law which leads Holmes to comment upon the nature and object of law. The relative importance of public policy, customs, beliefs, prejudices and inarticulate instincts of judges besides the force of precedent and legislative acts as the sources of law: The test of a legal duty and "judicial legislation" by judges.

The most interesting portion of the book to a reader who is not legal minded is Part III consisting wholly of letters addressed to John C. Wu, a young man in whom Holmes showed a great deal of interest and affection by often offering advice on such subjects as style in writing, the writing of judicial opinions, speech making, philosophy and literature. These letters present Holmes in informal literary attire and cover the years from 1921 to 1932 really giving us an autobiography of the man for that period.

Mr. Shriver should be especially praised for his industry in annotating this volume. Numerous biographical sketches of persons referred to in Holmes' writings are given, thus making the material more intelligible. Wherever possible the editor has set forth later comments and views expressed by Holmes, noting an extension or deviation of his views as expressed in the work reported. Also, perhaps, realizing the shortcomings of the material in this volume a valuable and exhaustive bibliography of the works of Holmes, and a bibliography of selected articles and books relating to Holmes have been compiled.

Although the law has claimed, and perhaps always will jealously claim, Holmes as one of its immortals, he also belongs to philosophy and letters.

Arthur C. Gregory.

CASES ON EQUITY. By Henry L. McClintock. St. Paul: West Publishing Company.

For many years the question of how Equity should be taught has involved considerable discussion among both teachers and students of this broad field. Undoubtedly with this in mind, the author has attempted a more practical and enlightening method of enabling the student to absorb not only the general concepts of Equity Jurisprudence but also the more specific and detailed application of the subject to other legal courses such as Contracts, Torts, Personal Interests, and Public Interests.

With the purpose of first acquainting the student with the more fundamental and general purposes of Equity, Professor McClintock has divided his work into two books. The first deals primarily with the Development of Equity as to its origin and the nature of its relief, and, also, the General Scope of Equity. This latter division embraces the common requirements necessary to invoke the protection of Equity and is well treated. The second book of this volume, as previously mentioned, attempts to merge the general equitable principles into their proper position with regard to the particular interests arising in the four fields mentioned above.

Undoubtedly one of the most valuable assets to be found in the volume is the reference in the notes to other cases for the purpose of showing not only those jurisdictions which support the principal case but also cases voicing a contra

decision. It is apparent that the author intends to illuminate each concept with whatever rays of light legal periodicals may shed on the subject, and has succeeded admirably in this respect.

The statement of facts in the cases used are unique in that they leave no situation which is pertinent to the case untouched, and still are not of such length as to conceal the real question involved. The selection of the cases as to the year of their hearing has been equally unprejudiced in that both old and new cases are reported with the general purpose of portraying any changes in equitable reasoning in the various jurisdictions throughout the long history which the field of Equity boasts.

A work which is exhaustive in its treatment of the subject, it offers essential features and complex intricacies of particular problems suitable to the professor as well as the student.

Guy H. McMichael, Jr.

