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Book Reviews

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defendant [the defendant doctor] concurred or were connected with the negligence of the master in producing the injury and damages [arising from the malpractice] settled for by the master. . . . The injury caused by the malpractice would not have occurred but for the original injury, and resulted because of such injury, and was a proximate result thereof. . . . The plaintiff, having been paid for all [and having released *all* claim for] damages which he sustained, has no cause of action against the defendant for the same claim or any part of it." These principles are supported in other jurisdictions. The general rule is that where *X*. negligently injures *Y*., *X*. is liable for the aggravation of the injury due to the negligence of an attending physician, if *Y*. exercised reasonable care in the selection and employment of the physician and was not negligent himself contributing to his injury. See *Smith v. Kansas City Rys. Co.*, *supra*. Massachusetts applies the same principle with respect to the effect of a release in such cases. In *Purchase v. Seelye*, *supra*, the court said, in an action to recover for an unauthorized surgical operation performed by the defendant, that *if* the plaintiff's employer would have been liable for the negligence of the defendant-surgeon in improperly treating the plaintiff, then the release included such damages, and is a bar to the action, "for the reason that in such a case the plaintiff had a claim against both the railroad company [the employer] and the defendant for the same cause of action," and "a release of one of the alleged wrongdoers would operate as a release of both." There could be but one recovery for the same injury.

The principal case is distinguished by the court from the *Hooyman* case on the ground that the injury due to the malpractice arose nine months subsequent to the giving of the release and the discharge of the plaintiff as cured. Of course, if *B*. would not have been liable for the injury due to the subsequent malpractice without regard to the discharge, clearly the discharge would not affect the defendant's liability to the plaintiff for this subsequent negligence. However, if in the absence of the release *B*. would have been liable for the injury due to the defendant's subsequent negligence, on the ground that it was reasonably foreseeable, then it is difficult to understand how the release, which is broad enough to include this damage, does not operate to release the defendant from liability therefor, under the principle of the *Hooyman* case, on the ground that there can be but one recovery for one injury. If there was real or apparent need for further treatment, it is difficult to see how *B*. could escape liability for the subsequent malpractice. And since the release is comprehensive enough to include this subsequent damage, it seems that the plaintiff would not be entitled to recover from the defendant. *B*., having discharged the defendant's liability for this subsequent negligence, would be subrogated to the cause of action which the plaintiff would have had against the defendant but for the release.

Maurice W. Lee.

BOOK REVIEWS

CASES AND MATERIALS ON POSSESSORY ESTATES. By Richard R. Powell. St. Paul: West Publishing Co. 1933.

There are many conflicting opinions among law students as to the intrinsic value of the background to the law of Real Property. The interest value of a course of lectures concerning the growth of the law from feudal tenure to modern statutory modifications generally depends on the personality of the professor. Therefore we find students who consider this phase of the subject in the light of a necessary evil to be dealt with summarily. In this book which is designed

for use by law novitiates Mr. Powell presents materials suitable for the laying of a sound foundation to prepare the student for the task of comprehending the mechanics of Future Interests and other advanced studies.

An illustration of the procedure followed can be given by analyzing one of the chapters as to content. Chapter Two deals with Estates in Fee Simple. It combines excerpts from the works of legal authors and the Restatement of the Law of Real Property with a selection of pertinent statutes, both modern and ancient, plus an interspersion of cases. Contrasting the materials teaches the student to extract the gist of the matter, a technique which is valuable throughout professional life. Citing adjudicated cases adds the quality of tangibility.

Mr. Powell bases his conclusions on his experiences in meeting the entering class in Columbia University School of Law over a period of twelve years. His knowledge of students is shown by reserving the last chapter of his book for a discussion of the Statute of Uses. The sole objection to his method is the value of the text standing alone. It constitutes an integral part of the Property Series promulgated by Mr. Powell and his colleagues and considering the entire collection, the coverage of the subject is complete. If, however, one chooses the present text as an introduction then fails to remain with the Series he will encounter both repetition and omission.

Thomas Gately.

ILL STARRED PROHIBITION CASES. By Forrest Revere Black. Boston: The Gorham Press. (Copyright, 1931, by Richard G. Badger.)

Although the repeal of the Eighteenth Amendment has relegated the discussion of its ethical and moral aspects to the field of historians, the legal precedents established by cases interpreting clauses of the "noble experiment" still command a controlling influence in our courts. This book, a collection of critical discussions of these cases, contains much to interest students of Constitutional Law.

The first chapter discusses the case of *Carroll v. United States*¹ which held that an officer could stop and search an automobile if he had reasonable and probable cause for believing it was transporting liquor. Mr. Black, in criticizing this decision, decries the resulting dilemma of the motorist who is confronted with the chance of being robbed when ordered to stop or being shot if he fails to do so. His proposition that the attempt of the court to emphasize the distinction between the right of search and seizure of dwellings and automobiles without a warrant has in effect denaturalized the Fourth Amendment as to everything except the word "houses" is an authoritative and well reasoned argument.

The second chapter deals with the question of Federal Police Power over intoxicating liquor as presented in the case of *Lambert v. Yellowley*.² Whether or not the regulation of prescription whiskey is stepping outside the beverage class is the principal contention in this case. In his discussion of this question and the concurrent powers of the state and Federal government, Mr. Black evidences a prejudice for strict interpretation of implied powers.

In the remaining chapters one finds a discussion of "search and seizure," as decided in *Olmstead v. United States*,³ "vicarious liability," as interpreted in forfeiture cases, chiefly under state statutes, the meaning of the word "concurrent," the term "right of castle," and scope of "injunctions."

¹ 267 U. S. 132 (1925).

² 272 U. S. 581 (1926).

³ 277 U. S. 438 (1928).

It is a book well worth reading because it has collected under one cover materials that are difficult to locate and sets forth fundamental principles of Constitutional Law. The arguments used give the reader a clear picture of the theories involved, consequently it constitutes a handy reference book throughout the entire course.

Thomas Gately.

INDIANA ANNOTATIONS—RESTATEMENT OF THE LAW OF CONTRACTS. By Hugh E. Willis. St. Paul: American Law Institute Publishers. 1933.

To the members of the legal profession in Indiana and those whose interests bring them into contact with Indiana law this book of annotations is a necessary concomitant to the recently published Restatement of the Law of Contracts. Its form is similar to the form of the Annotations already published for California, Connecticut, Florida, Ohio, Pennsylvania, Nebraska, Rhode Island, Mississippi, Missouri, Texas, and Wisconsin. This one volume of annotations covers both volumes of the Restatement. The section number and title of the Restatement are given and, in a majority of instances, a general statement of "In Accord" or "Contra" is followed by a citation of all reported Indiana cases in point. When the Indiana holdings are ambiguous, unique, or not exactly in point the author explains the holdings in some detail. Some of the more important subdivisions are prefaced by short introductory paragraph definitions and, in some instances, a brief history of the development of the phase of the law under discussion.

Professor Willis's work in preparing this book was done under the auspices of the Indiana State Bar Association acting through a committee.

The value of this volume of annotations goes without saying. It adds the imprimatur of authority to the text it supplements, and facilitates the finding of that ever elusive "case in point." The author and his associates, by their painstaking efforts, have provided students and members of the Indiana bar with a most valuable and timely work.

Thos. L. McKeivitt.

LAW OF THE PRESS. Second Edition. Hale and Benson. St. Paul: West Publishing Co. 1933.

Professor Hale, well known as the author of the first edition of "The Law of the Press," has as his collaborator for this second edition Mr. Ivan Benson, a practical newspaperman. This association of journalist and professor of law strikes the keynote of the present work. It seeks to explain some of the formalism of the law and expose the pitfalls it contains for the unwary journalist. The purpose of the book, therefore, is preventative rather than curative. While this volume would probably be of little value to a lawyer engaged in the trial of a case for some newspaper it would be of great aid to one whose clients have foresight enough to visit him before rather than after they encounter trouble.

About one half of the book is given over to libel cases and a discussion thereof. The remainder is composed of chapters on such pertinent subjects as, "The Right of Privacy," "Publications in Contempt of Court," Freedom of the Press," and "Official and Legal Advertising." The authors have been criticized¹ for failing to discuss more thoroughly many of the more practical legal problems which confront

¹ I Chicago L. Rev. 507.

editors and publishers, and for devoting too much space to the discussion of libel. It is difficult to see how Messrs. Hale and Benson could have been more inclusive without becoming encyclopedic or without invading provinces not within the proper scope of their subject.

The objection to the materials on libel being of comparative unimportance does, however, seem to be well taken in view of the present apparent relaxation in the enforcement of the laws against libel and slander. *Time* suggests² that the situation may be explained by the unwritten law of journalism which restrains newspapers from airing each other's libel troubles. On the other hand it may be but another manifestation of the modern tendency to consider everything less sacrosanct and to overlook invasions of merely private rights. The authors have much to justify their position, however, for libel suits though few and far between are still one of the most costly forms of legal action as the recent English decision against a motion picture corporation well testifies.

Thos. L. McKevitt.

² Vol. 23, No. II, p. 40.

