



1-1-1928

Book Reviews

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Recommended Citation

Joseph P. McNamara, *Book Reviews*, 3 Notre Dame L. Rev. 168 (1928).

Available at: <http://scholarship.law.nd.edu/ndlr/vol3/iss3/6>

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BOOK REVIEWS

RATIONALE OF PROXIMATE CAUSE. By Leon Green, Associate Professor of Law, Yale University. Vernon Law Book Company, Kansas City, Mo. 1927.

The field dealing with proximate causation has been one that students of the law have found particularly vexing and cantankerous; one which seemed a labyrinth, of contradictory and complicated holdings; in short a veritable hobgoblin of the legal world. The subject is an important one, a consideration that emphasises the need of clear handbook dealing with the matter.

Clarity is the keynote of the latest work concerning itself with proximate cause written by Professor Leon Green of Yale University. In his little book of some two hundred and twenty pages particular pains seem to have been taken to present this exceedingly difficult subject in an understandable manner. Concise statements, trimmed of all excess baggage in the way of verbiage, emphasise the motive of the author. As a result the terms used will be found to apply in their widest sense, and ambiguity or technicalities caused either by terms or manner, of expressing ideas, seems to have been consistently, and withal successfully shied at.

In his first three chapters Green takes up the primary problems of tort liability, contract liability, and liability as it affects crime. The chapters are arranged in the form of an outline with major and minor divisions, and numbers to set off the various phases of the subject. All this is very valuable in presenting the matter in a method which makes it much easier for the reader to comprehend than is usually the case where the straight prose style is followed. In his fourth chapter he treats with the same problems in negligence cases with special reference to the functions of the judge and jury.

Then follows a chapter on the problem of causal relation and one on the problem of damages. The seventh chapter is the conclusion or "summing up" and is followed by a list of cases and of text-writers and periodicals cited.

As we understand the work, the author is not in sympathy with the belief that the courts have been on the correct trail with regard to this matter of causality. He therefore does not attempt to follow the adjudicated cases through their ramblings but on the other hand seeks to present a system of analysis from which a new start may be made. The large number of cases analyzed are used mainly in search of the answer as to what constitutes the fundamental considerations in cases of this kind.

Allow us to quote from the conclusion: "The method of analysis developed in the foregoing pages does not purport to make the deciding of cases automatic or even easy. Its only purpose is to make the process rational—understandable—to strip it of hocus-pocus—to free our legal thought from the slavery of mocking phrases which defy analysis because they are empty. . . . To locate the points of weakness in a case is a step just short of its solution." (*Page 199.*)

There are two major considerations which the analysis presents. The first of these is to strip the term "cause" to a one which denotes nothing more than the relation of cause and effect—"physical causal relation". The second is the express determination of the limits of protection afforded by the rule invoked by a litigant to vindicate his interest. This second step is aimed at restraining the judge from passing the matter on to the jury for determination under the magical cognomen of "proximate cause". It makes its incumbent upon the judge to determine and announce whether the risk involved is one which the rule is designed to protect the party against. There are other things which the analysis is to do but these two are the more important and serve as an index to the spirit of the book as a whole.

The thesis of the work, then, is that our courts have been busy deciding cases at one stage of the game when, in fact, the cases should have been decided at another. It would bring the factor of whether or not the particular interest was that which the law was designed to protect more into play and presents a system to be followed.

The analysis given will no doubt be found of value by the practicing lawyer in delineating cases concerning this difficult problem. It will be of solace to the teacher and of enlightenment

to the student. Professor Green's red book on Proximate Cause is thought provoking.

—J. P. M.

HANDBOOK OF AMERICAN CONSTITUTIONAL LAW. By Henry Campbell Black, LL. D., West Publishing Company, St. Paul, Minn.

ILLUSTRATIVE CASES ON CONSTITUTIONAL LAW. By James Parker Hall, A. B., LL. B. Second Edition Revised and Enlarged by Henry Campbell Black, LL. D., West Publishing Company, St. Paul, Minn.

The amazing development in the field of constitutional law brought about by vastly changing conditions has made a revision of the third edition of Black's work approach a necessity. The letting down of all but the theoretical barricades with regard to the police power; the effect of the World War in bringing to the fore potentialities inhering in the national government; the evident centralization and passing of several new constitutional amendments have given the author a great mass of material with which to treat for the first time.

This he has done in quite a commendable manner, despite the fact that the work must necessarily have been hedged about by the consideration that the volume is hardly bulky enough to allow for anything but the greatest compactness and conservatism of space. The book is a member of the Hornbook Series and like other members of that family it is characterized by terse statements of the leading ideas of each natural division of the text in black-faced type, followed by their fuller discussion, to which are appended notes and citation of authorities. The skillful use of the varied kinds of type and the effective format of the volume as a whole make it of increased value. This is especially true in the case of the student in that the work presents the logical arrangement of the subject matter in a manner which should be most forceful.

In the period of years that has just elapsed the legislatures have shown an increased tendency to attempt reforms by the method of outlawing evils. New restrictions have grown up and the courts have shown every interest in preserving these when-

ever it was at all possible. New ideas and ideals as regards the relationship of the federal government and the states, and of both to the citizens, have presented themselves in the form of constitutional matters. These are discussed with painstaking care and cases are cited showing the trend of the law with regard to such problems.

Quite wisely the author has made no attempt to do more than to cite the major cases arising under any one heading, but he has done this with such efficiency that practically every case of paramount importance is found properly indicated under the correct note. The charm of the work is its clear-cut statements and its concise treatment of the subject matter. This is aided no doubt by the topic headings to which we have referred; but notwithstanding that, the impression that one has after laying Black on the desk after having read it through, is that the author has presented his topic with clarity and in a compact manner. This feature, as is quite evident, enhances the desirability of the book from the view point of using it as a quick reference on topics constitutional.

One chapter, the fifteenth, has been given over to the discussion of the power of taxation. This chapter, roughly speaking, covers some twenty-six pages of text matter. Quite correctly it may occur to the reader that perhaps a great amount of space could easily have been spent in this case due to the increased importance of that field of constitutional law. But the book is disappointing in that there is no chapter or division treating with the jurisdictional limitations upon the state's right to tax such things as choses in action. Some attempt at a general rule drawn from recent cases (e. g., *Frick v. Pennsylvania*) would have been highly beneficial to the student and we regret that it was not included. It is a matter of such import that it rightly is deserving of treatment in a volume such as that at hand.

The absence of an appendix showing a list of cases cited and directing one to pages discussing the cases should be added in a future edition. At present there is no method by which one can get into the text directly from a case. The practice of including such an appendix has become a standard part of texts of today and it is rather difficult to understand how this vital matter was overlooked in compiling the present edition. Without such

an appendix the work, no matter how fine, loses a great deal of its practical worth.

The Hornbook Cases on Constitutional Law, a buckram bound volume by James Parker Hill and Henry Cambell Black, serves admirably its purpose as a companion piece for the text book spoken of above. The cases have been selected most judiciously and will be found to be a distinct aid in the study of the former work.

Since the cases have been selected solely for use in conjunction with the text they do not form a comprehensive presentation of the fundamentals of constitutional law in themselves. However, they were not designed to do so and therefore they must be considered to have been successful in the field that they were designed to occupy.

It would seem that this jointing of the text and case book method of study presents admirable qualities that should not be overlooked. The study of the text alone has for some time been recognized to present serious difficulties. The following of the case-method no doubt also has its disadvantages. Perhaps a judicious blending of the two schools should present the ideal method. It is not contended that the ideal has been attained in these volumes. Perhaps it has, and perhaps it has not; but the system appears to present considerations that bear thinking over.

—J. P. M.