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Book Reviews

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Book Reviews

LAW OF DAMAGES. BY CHARLES T. McCORMICK. ST. PAUL: WEST PUBLISHING COMPANY, 1935. pp. xiv, 811.

While there has been a tendency in some quarters to minimize the value of considering the law of damages as a distinct branch of its own, it is no doubt true that to the client the question, "How much can I recover?" is only second in importance to the question, "Have I a cause of action?" And in view of the fact that the lawyer's compensation is, in a large measure, proportioned to the extent of the recovery or liability avoided, the answer to the query, "How much?," vitally concerns him also.

Many years have passed since anything authoritative has been written on this subject. The law of damages has had to meet new situations and later developments since the last editions of Sedgwick and Sutherland, so that Professor McCormick's text is a most timely one in giving a present day appraisal of the law.

The book is one of the Hornbook series with the usual black face type at the beginning of each topic. It is a decided improvement over its predecessors on this subject. The author has divided his subject into six parts: introduction, procedure, standards and elements of damages applicable generally, torts, compensation for property taken by the public, and contracts. This enumeration of the parts naturally gives a very inadequate picture of the scope of the work. A perusal, however, of the table of contents with its twenty-eight chapters convinces one that the entire field of the law of damages is well covered insofar as the limits of a one volume work will permit. Attractively bound in red buckram, neatly printed in small type with narrow margins and full pages, this 811 page book, owing to its compactness, contains an amazing amount of law for a book of its size. Added to that is the great skill of the author in stating the law and his conclusions concisely by the use of well chosen key words that convey the thought without a superfluous word. This power of condensation is an admirable gift of the author and a boon to the reader. Excellent judgment and discrimination has been shown in not attempting to cite all cases on a given point but only a few, or in many instances, a single case, to substantiate the text. Even so the table of cases contains approximately 4500 citations.

The author in his foreword, after pointing out the difference in the attitude of the English and the American judges in dealing with questions of damages, makes the interesting observation, "In fact, except for shadows cast by a few landmarks such as *Hadley v. Baxendale*, the complex picture of modern American damage law is almost wholly of our own devising" (Foreword, p. v.).

The method of treatment throughout the book is sane and scholarly, with just enough of a historical background given to clarify the subsequent development and present trends. The topics seem well chosen and the amount of space devoted to each is in keeping with the comparative importance or the difficulties involved. It is not surprising then that some forty-five pages are devoted to a consideration of problems of "value." Indeed this is one of the best chapters in the book, but other major topics such as, injury to interests of owner of land, eminent domain, personal injuries, sales of land and covenants of title, defamation, avoiding consequences, certainty, and sales of personal property are also very well done. In connection with the chapter on certainty the author observes that: "The development of the standard of certainty of amount is probably the most distinctive contribution of the American courts to the common law of damages" (p. 124).

(287)

The law of damages as presented by Professor McCormick in this book should prove very helpful to any student endeavoring to gain a clear general concept of this subject, and it might well be the starting point for the lawyer in briefing a given point, following it up, of course, by a search for variations that may have grown up in his state through local decisions and statutes.

University of Oklahoma Law School

VICTOR H. KULP

LAW AND THE LAWYERS. BY EDWARD STEVENS ROBINSON. NEW YORK: THE MACMILLAN Co., 1935. pp. xi, 348.

The author of this book is a professor of psychology. His discussion relates to the beliefs of lawyers and their modes of thinking. It is directed to the lawyers themselves, for no one but a lawyer could get much from his message. And not many psychologists have had an experience which enables them to interpret their science for lawyers as he does. His experience in this respect comes from his collaboration for several years with Professor Arnold of the Yale Law School in giving courses in legal ethics and in social psychology and social institutions.

Robinson belongs to that group of recent writers who call themselves realists. "This book is part of the realistic movement in American jurisprudence and my agreements with the Yale realists and with such writers as Walter Wheeler Cook, Jerome Frank, Edward S. Corwin, Leon Green, Karl N. Llewellyn, Max Radin and Hessel E. Yntema are much greater than my disagreements" (p. vii). And again he says, "American juristic realism has thus far been a critical rather than a constructive movement. It has seemed to me that the next step is a systematic cultivation of that area common to jurisprudence and psychology. In the present book I have sought to make a beginning in that direction" (p. vii). These remarks of the author himself accurately describe, in the reviewer's opinion, his general approach as well as the degree of his achievement.

The primary theme of his book is the need for a naturalistic jurisprudence: "There must be continuous constructive effort to solve legal problems by the use of the method and viewpoint of natural science" (p. 19). This theme is carried through the entire book, but is especially stressed in the first four chapters. Closely connected with the primary theme is the notion that "all juristic problems are ultimately psychological," (p. 72) or, more specifically, that "every legal theory, in so far as it is more than the statement of an arbitrary statute or rule of procedure, is a theory about the human mind and human behavior" (p. 50). This notion is stressed in the fourth chapter, "Psychology and Legal Theory," but is also carried on through the remainder of the book.

Chapter five is a discussion of the kind of psychology which the lawyer should choose for his work. The chapter is called "What Brand of Psychology?" Robinson deals very adroitly with the problems which arise from the variety of psychological beliefs and theories. He does not fail to appreciate the difficulties which one faces who makes a choice among conflicting and shifting theories in this new and undeveloped science.

In chapters six and seven, "Psychological Analysis," the author deals with certain fallacies which are apt to be found in almost any type of thinking—fallacies affecting explanation. Here he points out the inclination to personify, the tendency to depend upon some fictitious or ultimate "psychological stuff," and various assumptions as to the processes of rationalization, the nature of the unconscious, the nature of mental conflict, and the relation of the individual to society.

Chapters eight to twelve inclusive deal primarily with the nature of the judicial process. This has been a much-discussed subject in recent years. Those who have been troubled by the many skeptical suggestions which have appeared, such as Frank's question—"Are judges human?"—will find much to think about in this portion of Robinson's book. His treatment goes beyond the shallow and psychologically one-sided views of Frank. The author applies his psychological learning in a judicious discussion of the judicial process. He does not stop with such easy explanations as "wishful thinking" or "the hunch." He sees that these are only the beginning of explanation, that they serve only to indicate the need for further analysis of the judge's activity and that of others: "The search for unconscious factors in judicial behavior can never be a fool-proof procedure and it is always in danger of suffering as much from the unconscious wishes of the analyst as from those of the judge" (p. 144).

In chapter thirteen, "Social Adjustment," the author approaches legal problems as matters of social adjustment or social control. He discusses them in terms of compensation and conflict, repression and suppression. In itself a discussion in these terms is instructive.

The final chapter, "A Natural Science of Law," deals with the philosophical question whether the modern scientific or experimental viewpoint can be adopted in social fields such as the law, and with the more practical question what the function and effect of such a science will be.

The book as a whole must be regarded as an important work. It will give any socially-minded lawyer plenty of food for thought. One need not agree with every detail of what the author says to be convinced that he has pointed out fruitful lines for study. His general exhortation to look beyond traditional legal assumptions and learn from the data and methods of the other sciences, is not new. But the author goes beyond this; he furnishes many concrete instances of unscientific method in dealing with legal problems and of false or inadequate assumptions as to the ways in which people think and behave. Indeed, these instances constitute the author's real contribution.

The reviewer can find only one fault in the book worth mentioning. This fault is an over-stress on the point that lawyers have an unscientific attitude, or, if one prefers to put it so, that they are not fact-minded. He urges that a science of law should look at legal procedure much as the anthropologist looks at the religious rituals of a primitive people. "Today legal knowledge and legal education are so organized that students are trained to talk like priests of the law rather than anthropologists seeking an accurate understanding of a tremendously significant type of human behavior. The transition from the primitive jurisprudence of our own day to the science of social control of tomorrow will be well under way when the present priestly training is replaced by a training a little nearer that of the field anthropologist" (p. 71). Instead of the forward-looking viewpoint of the scientist, the view of "lawmen," as Robinson calls lawyers, judges, and other persons whose viewpoint is that of the law, is always retrospective. "Central to all their doctrines is the principle that habit and custom are the most valid criteria of truth" (p. 27). For them, "there can never be anything quite so important about a social problem as what John Marshall would have thought about it had he met the situation a hundred years ago" (p. 28). This critical attitude of the author which runs through the early chapters of his book may easily offend many of those to whom his message is directed. The criticism is valid, but seems to be overdone. Legal writers have said almost the same thing many times. As a practical psychologist addressing his remarks to lawyers, it seems that the author has almost lost sight of his aim to convince his readers.

Before they have gone through the early chapters some readers may lose patience and put the book aside in disgust. Lawyers will hear this sort of thing more readily from another lawyer than from an outsider whom they expect to indulge in remote generalities and whom they are prone to suspect from the beginning knows very little about what lawyers are trying to do. As a matter of fact, Robinson does know a great deal about what the lawyers are attempting to do and makes many useful suggestions. Apart from the fault of manner which characterizes these early chapters, the reviewer can only speak of his book in the highest terms.

University of Michigan Law School

BURKE SHARTEL

THE INTERNATIONAL PROTECTION OF LABOR. NEW EDITION. BY BOUTELLE ELLSWORTH LOWE. NEW YORK: THE MACMILLAN Co., 1935. pp. lxxiii, 594.

The first edition of this book was published in 1921, shortly after the United States, by her refusal to ratify the Treaty of Versailles, failed to become a member of the International Labor Office, established by virtue of Part XIII of that treaty. The publication of a revised edition in which the author, a veteran student of the international labor movement brings the contents of the first edition up-to-date, followed, appropriately enough, the entrance of this country into the International Labor Office in August, 1934. Apart from recording the remarkable progress made in the past fifteen years, in the improvement, by international action, of the lot of labor, there is little change in the new edition. In organization and method of treatment, it follows closely the pattern of the original treatise. Like the first edition, there is an Introduction which traces the history of the movements, private and governmental, aiming at the improvement of the laboring classes. It is in this introduction that the major difference between the first and the revised edition can be found. The historical survey in the first edition stopped with a record of the progress made at the Second General Conference of the International Labor Organization, held in 1920. In the present edition, the author extends this historical survey to cover the accomplishments of subsequent General Conferences up to and inclusive of the eighteenth session held in June, 1934, and the adherence of the United States to the International Labor Office (pp. xlv-lxxii). The main body of the text, divided into two parts (the first surveying the early movement for international labor treaties and its relation to the United States, the second an analysis of pre-war treaties concluded for the international protection of labor) had been barely changed. A few explanatory foot-notes have been added and chapter V in Part I ("The Relation of America") has been somewhat elaborated (pp. 86-94) giving an all-too-brief account of the developments under the present administration and its solicitude for the fate of labor as evidenced by the "New Deal" legislation. In the documentary part which constitutes the bulk of the book, about 150 pages of material were added, consisting of the texts of draft conventions and recommendations prepared and adopted by the conferences of the International Labor Organization since 1921 (pp. 440-594).

Thus, the new edition carries with it all the merits and defects of the original edition. On the credit side, it is an historically accurate record of the evolution of international labor legislation accompanied by a brief analysis of the factors which favored and which hindered progress. The collection of the important documents in a handy volume and the carefully organized pre-war bibliography is very useful to students of this problem. On the other hand, the author's analysis of the problems involved, of the results accomplished and the road still to be travelled does not show

much imagination. While the action taken by various international conferences is outlined, the various threads have not been brought together; the reader is left pretty much up in the air as to just where we stand today. The author made no effort to appraise the value and effectiveness of the conventions concluded in the light of their observance and enforceability which, it is submitted, is a more realistic test than the number of ratifications. In other words, no reasoned picture is drawn for the reader which would enable him to gain a composite view of the present status of international labor protection. It is also regrettable that the author did not bring his bibliography up-to-date. To render this book a standard treatise on the subject instead of a more or less elementary reading addressed primarily to the uninitiated, considerable amount of work would have to be done. It is to be hoped that Dr. Lowe who has devoted a quarter of a century to the study of this problem will, should another edition of his book be contemplated, set to himself a more ambitious task than he must have had in view in bringing out this revised edition.

Columbia University School of Law

FRANCIS DEAK

CASES ON FEDERAL JURISDICTION AND PROCEDURE. BY ARMISTEAD M. DOBIE. ST. PAUL: WEST PUBLISHING Co., 1935. pp. xxxix, 803.

While it is dubious whether the publication of a general text on Federal Procedure would be seasonable so soon before the enactment of the Supreme Court's rules for actions at law, there can be no objection to the compilation of a casebook on the subject at this time. Indeed the great interest which has been quickened by discussions of the forthcoming rules makes the appearance of a new collection of teaching materials most appropriate. Not more than fifteen pages of Dean Dobie's book will be rendered obsolete by the new regulations, and even those will be of considerable historical interest. Teachers in university law schools do not, and should not, devote much time to matters which will be covered by the rules. There is too much spade work to be done in a course in Federal Procedure to permit any considerable attention to be given to the special details of pleading and practice (in a narrow sense) applicable to the federal judicial system.

A glance at the chapter headings of the book under review gives an idea of what the editor believes should be the scope of a law school course in the subject. Chapter 1 is upon the federal judicial system and covers the general scheme of courts, constitutional and legislative, their limited jurisdiction, and the problem of what is a case of controversy. Next are set forth the matters concerning the original jurisdiction of the district court. Here federal questions, diversity of citizenship and jurisdictional amount are the chief of the many topics treated. Chapters 3 and 4 deal with removal jurisdiction and venue in civil cases. Chapter 5 embraces the substantive law applied in the federal courts, centering of course around *Swift v. Tyson*. Next is a chapter concerned with the procedure at law in the district court. Here matters of trial by jury overshadow the treatment of the Conformity Act. This is followed by a provocative development of the relations of state and federal courts, including matters of state statutes attempting to limit federal jurisdiction, and federal injunctions and habeas corpus aimed at state judicial action. The three remaining chapters deal with jurisdiction of the circuit court of appeals and the appellate and original jurisdiction of the Supreme Court.

Particularly in the first chapter, and at frequent intervals throughout the book, the editor inserts appropriate passages from his excellent text book on Federal

Procedure and his other writings. The editor has cleared the first hurdle and is unashamed of the inclusion of text matter in a casebook. One looks in vain however for stimulating original discussions of matters which are controversial and yet are not practically handled through cases. This is especially regrettable in view of the editor's gifted and lucid pen. Why must the body of a casebook consist only of cases and other materials which have been published before? It seems a pity that the only contributions of a casebook writer should be by way of selection and arrangement of the cases and small print editorial notes.

The master's hand is shown in the skill of the arrangement and the apportionment of space to the respective topics. The editorial notes are accurate and complete. They include references to cases decided down to the very eve of publication. One of the most valuable features of the book is the citation of over 300 law review articles and there is a convenient table of these in the front of the book. In addition there are references to hundreds of smaller notes and comments scattered throughout the work.

Teachers of Federal Procedure now have two recent casebooks, the one under review and that of Professors Frankfurter and Katz published in 1931. One's choice is between two quite different works. The earlier one takes a distinctly political science slant and presents thoroughly a relatively few broad problems. Dean Dobie's collection of materials covers far more details, gives more information, but still offers plenty of opportunity for legal wit-sharpening within a narrower range. Law schools are fortunate in having two splendid casebooks of such distinct types. A teacher may adopt the attitude of one of these works, or he may use either book and so direct his teaching as to steer part way toward the ideal of the other.

Dean Dobie's work has one drawback—its length. Though it contains only 762 pages of cases and text, the editor has compressed 342 opinions into this space. Courses in Federal Procedure seldom are allotted more than 30 or 32 class hours. This means an average of 11 cases per meeting if the book is to be covered. As all teachers and students of law know, this is almost twice as much as can be adequately discussed. Of course the solution is that some cases must be omitted entirely and others studied without class-room discussion. A teacher can determine these omissions but this is an uncertain and burdensome undertaking, especially when the course represents a minor portion of his activities. It is fair to expect that an editor should suggest ways in which his book may be used within the limits of the time ordinarily allotted to the course. There is still time for Dean Dobie to speak. When he does, he will make more usable his very excellent collection of materials.

University of Missouri Law School

THOMAS E. ATKINSON

CASES ON MUNICIPAL CORPORATIONS. BY E. BLYTHE STASON. ST. PAUL: WEST PUBLISHING CO., 1935. pp. xxix, 750.

This is a well arranged and carefully edited book, which it is a pleasure to read. Roughly 10% of the space is devoted to the author's text in large type or to statutory or factual material not to be found in the old-fashioned casebook. The text is written in a clear and simple style. It serves to orient students. In many cases this information seems distinctly helpful, and at the worst it is innocuous. Throwing the student *in medias res* without orientation is, on the whole, a virtue of the case system. But the number of planes in which the student needs to be oriented in modern law is so large that occasional guidance need not mitigate appreciably the strengthening rigors

of the system. Furthermore such a note as that on the forms of municipal government may well be suggestive to the teacher who has been accustomed to confine himself to cases. A reproduction of the Euclid zoning ordinance at a length of about nine pages is clearly justified.

Selection of cases with reference to distribution by dates and jurisdictions is an important element in a casebook corresponding to no absolute criteria. The following tables (based on the first 100 cases in each work) show a comparison in this respect with three other well-known selections.

Age of cases at date of publication

Author	Publication date	Age of cases	
		average	median
Stason	1935	29	23½
Seasongood	1934	9	4
Tooke	1931	40	35
Beale	1911	26	16

Distribution of cases by jurisdictions

Author	U. S. Sup. Ct.	Federal	Leading state	No. of states
Stason	19	2	Michigan New York 8	27
Seasongood	15	5	Ohio 11	35
Tooke	13	2	Illinois 10	30
Beale	9	2	Mass. 16	22

Jurisdictions furnishing 50% of state cases

Author	No. of states	Name of states
Stason	7	Michigan 8, New York 8, Illinois 7, Pennsylvania 5, New Jersey 5, Wisconsin 5, California 5.
Seasongood	9	Ohio 11, Illinois 8, Massachusetts 4, Indiana 4, New York 3, Georgia 3, Kansas 3, Missouri 3, Washington 3.
Tooke	8	Illinois 10, New Jersey 8, New York 5, Massachusetts 5, Arkansas 5, Pennsylvania 4, Michigan 4, Wisconsin 4.
Beale	4	Massachusetts 16, New York 14, Illinois 10, Pennsylvania 6.

The first table shows that the age of Mr. Stason's cases roughly corresponds to the age of Mr. Beale's as contrasted with the extremely recent cases of Seasongood and the rather old cases of Tooke's 1931 edition.¹ Beale's cases average a little newer on publication than Stason's, and the median shows a larger difference in the same

1. It is an interesting coincidence that the three more recent books all show a constant difference of about five years between the median and the average case, whereas Beale shows twice that amount. An appreciable number of cases in the first

half of the 19th century in the Beale book chiefly account for this difference. The influence of English cases is negligible, as the two older books print only one English case apiece, and the other two print none.

sense. However, this does not disclose an antiquarian slant on the part of Stason. It is about what one would expect from the development of the law. Some cases significant in 1911 must remain so in 1935, while others must give place to more live or more interesting pronouncements of modern courts.

The second table discloses a uniform trend towards the inclusion of more United States Supreme Court cases. This seems chiefly due to the growth of subjects such as zoning, which are pressing on the bounds of the law with such force as to burst forth with a profusion of constitutional questions. The last two tables show that Stason has, in some ways, established a more even balance among jurisdictions than the other authors. In Seasongood, for instance, the number of Ohio cases is emphasized by the wide distribution of cases from other jurisdictions, and the further fact (not tabulated) that a large proportion of his federal cases involve Ohio law. The third table also shows considerable correspondence between the choices of jurisdictions of the three authors other than Seasongood (six of whose leading jurisdictions, including Ohio, do not occur on the other lists). Beale's Massachusetts interests, comparably strong, are accompanied by concentration of cases in three other great industrial states. There is much to be said for concentration in a limited number of jurisdictions furnishing an abundance of cases, particularly when those jurisdictions are likely to attract a majority of one's students. Indeed there is so much to be said in defence of each scheme of distribution that the matter cannot be further pursued here. The assumption that design or unconscious bias affects the date and jurisdiction of the cases chosen as much as the intrinsic character of the cases does probably needs no demonstration.

Such statistics, of course, do not touch the more vital points of selection of subject-matter, and here there is no easy guide. In the reviewer's opinion no casebook yet produced is adequate to sound the dimensions of the field of municipal liability in torts. An intensive study of about six jurisdictions selected at random, or with reference to the destination of students, conducted on the seminar method whenever the size of the class permits, has much more chance of at least moderate success. The reading of Mr. Stason's principal cases on this subject conveys only a mild and superficial bewilderment. Eight sections of Michigan general highway law and two and a fraction pages of extracts from the statutes of other states extending municipal tort liability are helpful additions *pro tanto*. The footnotes seem workman-like as far as they go. A paragraph of citations to law review articles on the general topic is perhaps a sufficient lead to other materials if teacher and student can be prevailed upon to dig into the solid list which is cited without comment.

Municipal bonds is a topic of comparable difficulties of a different nature, extremely hard to treat without much statutory material. There is much to be said for either omitting it, as Seasongood substantially does, or for treating it intensively with reference to a very few jurisdictions by substantially the seminar method. Several weeks spent upon tort liability followed by a somewhat shorter period on municipal bonds with a preliminary assignment of particular jurisdictions for special attention to each member of the class may break the back of the whole course so that it becomes a matter of minor importance which other topics are skipped. Perhaps the author of a casebook intended for wide distribution would be unwise to prepare an aid to what might be called semi-seminar work, even if persuaded of the basic soundness of the idea. It would be interesting to see someone try to build a casebook conforming to the theories suggested.

After making due allowance for other matter, the cases average about four pages in length as against about three pages for Tooke and three and a half for the other authors mentioned. This does not seem, however, to be due to any failure to

use a fair degree of firmness in abridging opinions, although a small residuum of frail or repetitious argument remains. Facts have not been emasculated the way they sometimes are in casebooks, and the interesting topic of public utility franchises has led to the inclusion of some long cases.

The comparisons here made should not be regarded as disclosing any definite opinion concerning the relative general merit or the present usefulness of the works considered. Conceding the proof of the pudding to be in the eating, an inspection of the ingredients and a preliminary sniffing of the new product definitely suggests a qualified pudding.

Harvard Law School

JAMES A. McLAUGHLIN

RICHARDS' CASES ON CORPORATIONS. THIRD EDITION BY SVEINEJORN JOHNSON.
ST. PAUL: WEST PUBLISHING CO., 1936. pp. lxiv, 968.

A distinguished writer has said that a book review should perform two distinct functions—describe the work accurately and appraise it critically. A reviewer is responsible for the merits and faults that he ascribes to a book, and also for his own prejudices. On the other hand it must be remembered that a review “has the advantage of freshness of impression, the disadvantage of incomplete judgment.” *The Saturday Review of Literature*, Feb. 8, 1936, p. 8.

This is the third edition of Richards' cases on corporations. The first edition was published in 1912, the second in 1924. Save for the addition of two new chapters on Finance and Reorganizations, the old table of contents is still intact. The number of pages devoted to the chapter headings in the second and third editions, respectively, are as follows: Characteristics of a Corporation, 72 pages, 63 pages; Formation, 167 pages, 141 pages; Powers and Liabilities, 209 pages, 65 pages; Directors, 76 pages, 66 pages; Rights of Stockholders, 193 pages, 198 pages; Dissolution, 37 pages, 30 pages; Creditors, 191 pages, 134 pages. Thus about the same amount of space is given to each subject except in two instances—the chapters on Powers and Liabilities and on Creditors have been shortened. This does not mean a correspondingly reduced treatment of the subject of creditors, because four important cases, such as *Northern Pacific Railroad v. Boyd* have been transferred to the new chapter on Reorganizations. But Powers and Liabilities are much more briefly considered. The new edition contains 880 pages as compared with 985 pages in the older edition. In view of the added chapters, the new book is relatively smaller.

About 130 cases have been eliminated entirely or are merely given footnote status. Some of us will regret the passing of *Hecht v. Malley*, *Luedecke v. Des Moines Cabinet Co.*, *Society Perun*, *People ex rel Union Trust Co. v. Coleman*, and *Equitable Life Assurance Society of U. S. v. Union Pacific Railroad Co.* The last two cases above mentioned would be very useful in the new chapter on Finance. Over eighty new cases have been added, and it is a pleasure to find included among them *Piggly Wiggly Del., Inc. v. Bartlett*, *Wabash Railway v. Barclay*, *Stokes v. Continental Trust Co.*, and *Continental Insurance Co. v. U. S.* It is regrettable that the book came out too soon to use *McCandless v. Furlaud*.

The new chapter on finance contains nine new cases and some text book materials, the chapter on reorganizations include sixteen cases, eleven of which are new. There are about a dozen annotations or notes in regular size print and a number of other comments in smaller type. These notes are usually short, rarely exceeding one page. There is one exception. This valuable oddity is about seven pages long, and

deals with "Statutory Restrictions on the Declaration and Payment of Dividends." It is copied verbatim from Vol. 2 of Magill and Hamilton, *Cases on Business Organizations*, p. 896.

The editor, fortunately and evidently, believes in tying up the course in corporations with the statute law. He not only includes the essential statutes, but treats them functionally. About twenty-five notes headed "statutes" are scattered throughout the book. Such notes include copious case citations accompanied by the editor's thoughts and conclusions.

The quotations from law reviews are negligible, and save a few from Dewing's *Financial Policy of Corporations* and Paton's *Accountants' Handbook*, no text book materials are included. A number of good bibliographies are available to the student who wishes to study independently the subjects which seem to be treated inadequately. Samples of these are, *Business Trusts*, p. 21, *Disregard of Corporate Entity*, p. 62, and also the long classified list of law review articles at the beginning of the book. The table of contents is minutely sub-divided following the present usual custom in that regard. An appendix of 72 pages is devoted largely to corporate reorganizations, statutes, and documents.

The reviewer is a firm believer in the business units idea, and finds it difficult to attempt an unbiased appraisal of a casebook designed for use in the teaching of a separate course in corporations. Most editors of casebooks and teachers of corporations feel that it is proper to use the comparative method in presenting the nature of the corporation. It *must* be distinguished from the other forms of business organizations. Why not continue to use this method in presenting most of the other problems in corporate law? But my respect for the late Dean Richards who was my teacher and friend, and my use of his second edition for three years, will aid me. For unfortunately, in the matter of casebooks, "Familiarity does not breed contempt." It rather tends to generate inertia and develop prejudices.

Some important subjects are treated inadequately. The *Stokes* case coupled with a brief reference to the statutes disposes of stockholders' pre-emptive rights. Magill and Hamilton devote thirty, and Frey twenty-two pages to this subject. Thirty pages are given to dissolution and much is accomplished with that space. Consolidation and merger are set forth as one mode of dissolving corporations, and there is a section with three sub-headings on "effects of dissolution." It is logical to expect a study, at this point, of the effect of a consolidation upon the liabilities incurred by the dissolved corporation. The answer to this question appears later, entirely unheralded, at pages 746 and 747 in the chapter on creditors' rights. A cross reference here would be helpful.

A word should be said about the new chapter on finance. It appears very near the end of the book. If the student understands all that precedes this chapter, the materials in the finance chapter are surplusage. For how could he understand the compensation of promoters, the proper payment of dividends, the relative rights of common par, cumulative preferred par, non-cumulative preferred par, and non-par stockholders in paid-in surplus, earned surplus, and stated capital, without knowing and understanding the problems contained in the chapter on finance? The section entitled common stock-rights in the chapter on finance logically could be included as an additional stockholders' right in chapter five. Likewise, in as much as non-par stock and option warrants are very generally used as devices to give promoters a share in future or prospective earnings, why shouldn't these devices be taken up in connection with promoters? This is illustrated in *Piggly Wiggly v. Bartlett* and *McCandless v. Furlaud*. The use of treasury stock can be studied more appropriately in the same manner. It seems unsound, pedagogically, to study finance as an end. It is a means. For in life, financial principles are not

separated from promoters, dividends, capital stock, surplus, etc. And these principles should throw light upon the solution of the problems which abound in corporate law. What is needed is a complete integration, a submergence of the means into the end. If the chapter on finance is to be helpful it should precede the study of dividends, distribution of assets, promoters, and consideration for stock, and how such consideration shall be divided between surplus and capital stock. Fortunately, a book is not a road which Justice Holmes once said "is not an invitation to leave it elsewhere than at its end."

The principal weakness of the book lies in the chapter on management. Only 66 pages are allotted to the subject. Eliminating the space given to stockholders' powers of management, Magill and Hamilton devote about 250 pages to this subject. Prof. Frey's treatment in his Chapters V, VII and XII is quite extensive; and Douglas and Shanks handle the subject even more thoroughly. Many statutory provisions now protect our investing public against unscrupulous sellers of securities. Blue Sky legislation and Securities acts have made it difficult to obtain the available public money without full disclosure of the facts. Similar protection is not afforded the investor against the frauds of managers once he has parted with his money. The depression has revealed that all is not well with the internal affairs of corporations. (Douglas, *Directors Who do not Direct*, 47 *Harvard Law Review* 1305; Samuel, *Shareholders' Money*; Brandeis, *Other Peoples' Money*; Berle and Means, *The Modern Corporation and Private Property*.) Of the nine new cases in this section one was decided in 1931, the rest date from 1927 back to 1742. It is submitted that this treatment is inadequate in that it fails to take into consideration the management problems that have arisen out of our new liberal corporation statutes, the depression, and business failures. *Rogers v. Guaranty Trust Co.* is a good example of how a statute can be the basis of a management wrong, and the current literature referred to above paints a rather sordid picture. It is true that some of these matters are suggested in the chapters on finance and stockholders' rights. Furthermore, these matters are taken up in some schools in a separate course in corporation finance. Yet the emphasis which has been placed recently on the management problems demands that even a general course should give considerable attention to the subject.

The reduced treatment of Powers and Liabilities is commendable, particularly in view of the careful annotations which are included in this part of the book. This is consistent with most other recent books on the subject. No one can object to the chapter on Reorganizations, though the reviewer thinks the materials belong more properly in a course in bankruptcy or creditors' rights. As the editor points out in his preface, this material is still very new and undeveloped. Time alone will remove this difficulty. Many cases are being litigated now, and in a very few years the profession will be in a better position to orient this new subject to the curriculum. It is proper to introduce the subject to the student.

The new edition of Richards' cases is undoubtedly much superior to the second. New cases, except in the chapter on management, have been well selected. Wherever statutes are important in the solution of a particular problem they are included and analyzed. This treatment is more satisfactory than the practice of merely printing statutes into a book. Perhaps the Uniform Business Corporation Act could have been utilized. The notes and annotations, too, constitute a distinct addition to the older edition. The thought of the editor on the more involved problems is helpful. The bibliographies and extensive citation of cases also add much to the book. Its great simplicity has been retained. It may well continue to be the leading casebook for schools that continue to teach corporations as a separate course.

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