Missouri Law Review

Volume 4
Issue 2 *April 1939*

Article 7

1939

Book Reviews

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Recommended Citation
Book Reviews , 4 Mo. L. Rev. (1939)
Available at: https://scholarship.law.missouri.edu/mlr/vol4/iss2/7

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Book Reviews

LAWYERS AND THE PROMOTION OF JUSTICE. By Esther Lucile Brown. New York: Russell Sage Foundation, 1938. Pp. 302.

This is one of a series of handbooks upon the professions in the United States. After a brief historical account of the American bar, a full third of the book deals with legal education with particular emphasis upon the work of approved and unapproved schools and new trends of work being done in the former. Following are treatments of bar examinations, admission machinery, and the activities of national legal associations and societies. The economic facts concerning lawyers are then discussed in some statistical detail. Next the weaknesses of the administration of justice are pointed out and then the measures which have been designed to correct these defects. Considerable attention is given to matters of legal aid and to the related matter of making legal services available to persons of moderate means. Finally the integrated bar is depicted, and is seen by the author as an agency through which the profession can serve its own ends "through the promotion of social well-being."

The work has the detachment of a study made by a lay person whose thorough investigations have led her to an understanding of the bar and its problems. The author is kind to the profession—some might say too kind. When activities or non-activities are criticized this is done out of the mouths of leading judges, lawyers, and legal scholars. Unlike most handbooks it has a central theme. Again and again in the later portions of the book the author returns to matters of legal education. This is tied in with post-admission education of the bar, professional stocktaking, and the obligation to inform the public to the end that lawyers and laymen working in cooperation may bring about improvement in the administration of justice.

The book is free from untruths or half truths which usually characterize a laymen's discussion of the legal profession. However, there is one important omission—a failure to treat specifically the problem of unlawful practice of the law by laymen. Efforts to curtail this have been one of the principal phenomena of judicial and professional activity in the last decade. Moreover this has an important relationship with matters which the author does discuss. If poor people are denied legal assistance from the banker, the real estate broker and the notary, it is surely an obligation of the profession as a whole to provide—particularly in the larger centers—the means whereby lawyers willing to perform adequate services at moderate cost can be easily and surely found.

The style of the book is both pleasant and lucid, and it is adequately, though not exhaustively, documented. Lawyers, prospective lawyers and ordinary readers will find it interesting reading.

University of Missouri Law School THOMAS E. ATKINSON

Published by University of Missouri School of Law Scholarship Repository, 1939

THE NEW FEDERAL RULES OF CIVIL PROCEDURE. By Byron F. Babbitt. St. Louis: THOMAS LAW BOOK CO., 1938. Pp. 362.

For limited purposes this book is valuable. What these purposes are the reader can easily determine by what follows.

In this volume one finds the new Rules of Civil Procedure for the District Courts of the United States, many of the notes prepared in connection with the rules by the Advisory Committee appointed by the Supreme Court, a few cases applicable to the rules, and the official forms to be used in connection with the rules.

Of course, at the time this volume was published, there were no cases applying directly to these rules, but it seems to the reviewer that there were many valuable state authorities which have not been included, though they interpret statutes or rules similar to the recently promulgated federal rules. An example of this is rule 60b which is based on a California statute. The statute has been interpreted by several California decisions. These would have added value to the comment on this section.

If one is interested in a thorough analysis of the rules, he must go elsewhere, for the author makes no attempt to investigate them carefully.

It would have been better if there had been a more careful editing of the book. Often it is difficult to distinguish between the committee's notes and those of the compiler of the book. For example, this is true of notes found on pages 31, 33, 35, 39, 42, 45, 46, 53 and 60.

Further main items to be found in this work are the rules of the Supreme Court of the United States for procedure before that Court and Rules of Federal Criminal Appellate Procedure. These are briefly annotated.

There are tables of contents, of text books, of cases, and the tables showing in what rules and notes of the Advisory Committee references are made to particular equity rules, provisions of the Federal Constitution, and the federal statutes. In addition, there are separate indices to the Rules for Civil Procedure, Rules of the Supreme Court of the United States, and Rules of Federal Criminal Appellate Procedure.

St. Louis University Law School CARL C. WHEATON

THE LAW OF NEGOTIABLE INSTRUMENTS. Fourth Edition. By James Matlock Ogden. Chicago: Callaghan & Company, 1938. Pp. 846.

The current edition of this student text comes just seven years after the preceding edition. Its preface asserts that developments since 1931 call for a revision, but an examination of the subject matter in the two editions shows little either of change or difference. The new edition adds an additional introductory chapter, omits one chapter on parties,[1] and boasts a total of thirty-

1. The omission is wholly one of form, many of its sections appearing verbatim in chapter XV of the new edition.

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six chapters as compared with the thirty formerly carried. This increase of chapters is due almost entirely to the splitting of old chapters in two, the change of chapter numbers and titles leaving the text matter unaltered. Some of the changes arouse suspicion that their sole purpose was to disguise the absence of material differences in content. Because it too often merely reprints the earlier edition rather than relying on additional investigation, it is necessarily less valuable and accurate than it might have been. To cite a representative but unimportant instance, the table showing the date of adoption of the N. I. L. in the various jurisdictions fails to include the Canal Zone, which adopted the Act in 1933, subsequent to the publication of the third edition.[2]

The new edition's sole important new chapter[3] deals with relations between banks and their depositors. While much of this material is identical, section for section, with the earlier edition, some new sections contain a brief history of the bankers' piratical Bank Collection Code and discuss some of its salient provisions. The general arrangement of material closely follows previous editions, the first 564 pages dealing with substantive law, the next 25 containing code pleading forms, then 43 pages discussing evidence problems, and a final 6 pages on the amount of recovery. The omission of the common law pleading forms formerly carried should not lessen the value of the book either to students or practitioners. There is a negligible increase in the number of cross-references to the text, listed under each of the N. I. L. sections in the appendix.

An innovation is the list of pertinent law review articles at the beginning of each chapter. Since no attempt is made to cite these articles in the footnotes or in connection with specific points, they promise to be of little value except as indicating a commendable desire to make available to the reader the wealth of material available in legal periodicals. More worthy of note is the addition of a table of cases which, together with the excellent and lengthy (106 pages) index, makes the contents adequately accessible.[4] Another but minor feature is the continued use of facsimiles of the various types of instruments, provisions, and indorsements. Scattered throughout the text, these diagrams furnish to readers unfamiliar with commercial instruments, a much clearer notion of their forms than is provided by words alone.

The style of the writing remains vague and cumbersome, often redundant, attempting to overcome the superficiality of its treatment by continued repetition of generalizations. A typical example is the treatment of conditional indorsements, to which two pages are devoted.[5] After stating that an absolute indorser promises to pay upon the sole condition that prior parties fail to do so and due

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2. Typical of such errors is footnote 12 on page 109, which contains a cross-reference to Section 183, the correct citation being 187, but 183 remaining unchanged from the third edition in which it was correct.
3. C. XXVII.
4. The index is the more satisfactory for containing many catchword entries in addition to the usual topical headings.
5. Pp. 181-182.

notice be given, the author says, "A conditional indorsement is one by which the indorser annexes some other condition to his liability; that is, where there is some condition in the indorsement. The condition . . . if in the indorsement . . . is valid. There may be a valid conditional indorsement . . . and yet it seems to restrict circulation . . because there is some condition attached to it." The author correctly states that a conditional indorsement does not render the instrument non-negotiable although a condition on the face of the instrument would do so, but the next paragraph repeats three more times that a condition on the face of the instrument makes it non-negotiable. That a conditional indorsement does not affect negotiability is repeated six more times with little explanation and that misleading the reader into believing that a conditional indorsement, if for any reason appearing on the face of the instrument rather than on the back, will render the instrument non-negotiable. On the other hand nothing is said about the rights of the conditional indorsee against the primary party, the pertinent N. I. L. section[6] being quoted in full with no hint as to whether the obligor is merely permitted to pay without regard to the condition or is required to do so. As this problem is not yet authoritatively settled[7] it is to be regretted that Professor Ogden did not suggest a solution instead of devoting the space to useless repetition. Possibly the word *may* should be interpreted as permissive only, the drawer not being required to disregard the condition except where the conditional indorser is made a party to the suit and shown to have no rights adverse to the holder. But since the instrument remains negotiable, the holder probably should be allowed to require payment despite the unfilled indorsement, the obligor avoiding it only by interpleading the conditional indorser as the party entitled.[8] This result seems warranted by analogy to the rule permitting a trustee to enforce obligations due him, although the beneficial interest is in another. At all events, although Ogden also fails to mention this, the common law rule[9] has been changed by the Act,[10] so common law precedents are of limited assistance in reaching a solution.

Too often the book paraphrases holdings of courts without either comment or explanation. Unaccompanied by editorial comment, *Marling v. Fitzgerald*[11] is cited[12] for the proposition that "A promise to pay money is a valuable con-

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6. NEGOTIABLE INSTRUMENTS LAW § 39.
7. Keeler Bros. v. School District No. 25, 276 Fed. 755 (D. Ore. 1921), mentions but does not decide it. NORTON ON BILLS AND NOTES (4th ed. 1914) 165-168; DANIEL ON NEGOTIABLE INSTRUMENTS (7th ed. 1933) § 776 (relying partly on United States Nat. Bank v. Ewing, 131 N. Y. 506, 30 N. E. 501 (1892), which is not in point).
8. Or, of course, by showing a defense good against that indorser, plus a superior right in that indorser as against the holder.
9. Robertson v. Kensington, 4 Taunt. 30 (Ex. 1811); BYLES ON BILLS (6th Am. ed.) 244; STORY ON BILLS (2d ed. 1846) § 217.
10. Ames, *The Negotiable Instruments Law* (1900) 14 HARV. L. REV. 241, 243; Keeler Bros. v. School Dist. No. 25. 276 Fed. 755 (D. Ore. 1921).
11. 138 Wis. 93, 120 N. W. 388 (1909).
12. P. 125, note.

sideration although the money was never advanced." That *Marling v. Fitzgerald* has been severely criticized,[13] that it is probably not the law on the point quoted, and that its holding was based principally upon the broad ground of estoppel, is not mentioned.

Despite its lack of depth the book has definite value. Its manner of approach differs slightly from other current texts, and in several instances discusses helpfully minor points ignored by other writers. More than three pages are devoted to bills in a set, with facsimiles to insure that the beginner grasps the form of these unfamiliar instruments.[14] Any practititioner using the earlier edition will find this book thoroughly familiar, with occasional later cases added. While less valuable to the individual student than other leading texts it is well worth its space on the law school library shelf.

University of Idaho, School of Law ELMER M. MILLION

CRIME AND PUNISHMENT IN THE OLD FRENCH ROMANCES. By F. Carl Riedel. Columbia University Press, 1938. Pp. viii, 197.

The subject of crime and punishment as represented in thirteenth century French romances is one which, as the author of this little book says in his introduction, has largely escaped the attention of writers and commentators on medieval literature. Here the subject is interestingly presented.

In order to understand the laws and customs portrayed in the narratives, Prof. Riedel gives us first a short review of criminal law in thirteenth century France. While not the most penetrating analysis, this summary gives a bird's eye view of the criminal law system of the period sufficient to understand the legal situations involved in the romances. These situations are then compared with the actual law, and found to be reasonably faithful to the substantive law, procedure and punishments of the times.

All this takes us only to page 97. The author then, in a chapter on the moral concepts portrayed in the romances, gives us an interesting picture of the conflict and confusion arising out of varying social and moral standards. The medieval knight's sense of honor, for example, which in practice "meant the duty of fighting whosoever opposed him in a right to which he pretended," was often difficult to reconcile with the law and even with common decency and honesty. The law struggled hard and for the most part in vain to curb this fighting man's code.

A final chapter on the literary significance of the characters found in the romances is of no interest to lawyers as lawyers. In an appendix, the plots of nine of the principal romances upon which the study is based are summarized.

"From the romances read and recited to courtly audiences," says Prof. Riedel,

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13. BRANNAN, NEGOTIABLE INSTRUMENTS LAW (6th ed. 1938) 525. *Cf.* DANIEL ON NEGOTIABLE INSTRUMENTS (7th ed. 1933) 261, 763.
14. Pp. 101-104.

"we can get not only an idea of the type of entertainment that lords and ladies enjoyed, but also a notion of what they considered right and wrong, just and unjust." And so we can. A book like this, which does not pretend to be an exhaustive study of the medieval French criminal law, gives us an intimate picture of the times which heavier treatises often lack.

University of Colorado, School of Law HENRY WEIHOFEN