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Book Reviews

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Book Reviews

ARBITRATION IN ACTION. By Frances Kellor. New York and London: Harper & Brothers, 1941. Pp. x, 412.

This volume, written by the executive vice president and co-founder of the American Arbitration Association, bears the sub-title *A Code for Civil, Commercial and Industrial Arbitrations*. It is primarily a handbook of the law of arbitration for the layman who actually uses, or might use if he knew more about them, arbitration proceedings for the settlement of commercial, labor, or any other kind of civil disputes. In Part I the author discusses the general arbitration procedure from the selection of the arbitrator to the enforcement of the award. Part II deals, under the title Special Procedures, with the settlement of inter-American commercial disputes, the procedure of the Accident Claims Tribunal in New York, and the Motion Picture Arbitration System. Eight annexes, covering almost half of the book, reproduce the federal and state statutes dealing with arbitration proceedings, the rules of procedure administered by the American Arbitration Association and the special bodies with which Part II deals, and, finally, standard arbitration clauses. Of particular value for the practicing lawyer is the summary of the statutes governing arbitration, which was prepared by Professor Wesley A. Sturges of the Yale Law School; it arranges the statutory provisions, separately for each statute, under twelve headings and a number of sub-headings, and thus facilitates comparative references with regard to any particular problem. Through this method, which deserves imitation in other fields, one learns for instance without effort that the Missouri statute, in contradistinction to other statutory enactments of arbitration proceedings, has no provisions concerning the validity of agreements to arbitrate future disputes and does not provide for a remedy in case of default under the agreement to arbitrate. The other legal references and annotations were supplied by Dr. Walter J. Derenberg, another pillar of the American Arbitration Association; the great number of unreported cases testifies to the extensive research which has gone into this unassuming part of the undertaking. A table of cases and an unusually thorough index increase the usefulness of the volume.

The author has high hopes that arbitration will become an important method for the peaceful settlement of labor disputes. The author recognizes, of course, that so far the contribution of arbitration to this cause has been negligible as compared with the important function arbitration fulfills for the solution of commercial disputes. Miss Kellor explains this by pointing to the fact that commercial arbitrations "have behind them the centuries-old habit of businessmen conducting their relations on the basis of contract and of innumerable court decisions clarifying contract law and procedural arbitration laws. Labor agreements are much more recent and are in all stages of experimentation with the process of pacific methods

of settlement. They are going through an experience which businessmen had many centuries ago when suspicion, distrust and animosity in trade relations were as rife and when the attitude of the lawmakers and the courts were no more friendly." Yet one doubts whether this explanation penetrates to the core of the matter and whether more experience is all that is needed to make arbitration a success in the field of labor relations. The European, especially German experience with arbitration as a method of settling labor disputes tends to show that arbitration is practicable only when the parties to the dispute do not question the basic ethical, political, social, or economic values by which their relations are to be regulated, but sharing them differ in the technical application and concretization of those values. This analysis is borne out by the history and doctrine of international arbitration. When Miss Kellor reports the successful use of arbitration by the United Wholesale and Warehouse Employees of New York, Actors Equity Association and the American Federation of Radio Artists, she gives support to this analysis; for in these occupations the dissensions between employers and employees are regularly not of a fundamental but of a mere technical nature.

University of Kansas City School of Law.

HANS J. MORGENTHAU

CASES AND OTHER MATERIALS ON THE LAW OF PERSONAL PROPERTY. Third Edition.
By Harry A. Bigelow assisted by Willard Leland Eckhardt, St. Paul:
West Publishing Company, 1942.

The previous editions of this well known case book were excellent teaching tools as the reviewer knows from experience. This new edition should be even better than its predecessors. It is true that there is nothing particularly revolutionary or novel about it. There is no exposition of the philosophic, economic or sociological doctrines relating to the property concept, and the book seems even innocent of a "functional approach." It is simply an adequate and interesting collection of well annotated cases, from which the essentials of the law of personal property may be derived. The reviewer believes that there is still a place in the modern American law school for such a book.

In the subject matter covered and in the selection of principal cases the third edition differs but little from the second. A few recent cases have been added, and the opening chapter considers the nature of the property concept largely by an excerpt from the Restatement of Property and two cases on the question of property rights in a dead body. But the old familiar problems and cases are there. The student will still ponder the respective claims of the rival huntsmen to that "noxious beast(s) called a fox" pursued and killed "upon certain wild and uninhabited, unpossessed and waste land, called the beach" (*Pierson v. Post*); and will still test his "legal mind" in distinguishing the claims of the finder according to whether the article is found in the bottom of a pool, in the public part of a store,

in the lining of an old safe, or buried under the floor of a hen house (*South Staffordshire Water Works v. Sharman; Bridges v. Hawkesworth; Durfee v. Jones; Danielson v. Roberts*). The right of one who has made whiskey out of another's grain is considered in *Silsbury v. McCoon*, and the problem is posed why the agister has no lien, but the trainer of a race horse has (*Jackson v. Cummins*). These matters have become part of the tradition of the law, and without them future generations of lawyers would suffer in much the same fashion as would adults generally if they had not in their early years been introduced to the rhymes of Mother Goose and the story of Little Red Riding Hood.

A separate chapter is devoted to the concept of possession, with cases selected from the fields of original occupation, levy of attachments, and the criminal law. If Bingham and Shartel are correct in their assertion that there is no single universal concept of possession, but that the same varies according to circumstances, this arrangement might foster a conceptualistic approach to a problem that could be better considered pragmatically. The writer also believes that the course in personal property would be rendered more valuable if more extended treatment were given to the frequently recurring problems in actual life, such as bailments, liens, pledges and gifts, even if less attention were paid to the interesting but relatively unimportant problems of original occupation of wild animals, accession and confusion. Although a glance at the last Decennial Digest shows over twenty times as many reported cases on the subject of pledge as on the subject of accession, Professor Bigelow's book devotes half again more space to the latter subject than to the former; a discrepancy in emphasis that cannot be explained by any lack of difficulty or importance in the law of pledge.

But these criticisms, if such they are, merely show that no two persons would compile just the same kind of a case book, which is fortunate. The book of Professors Bigelow and Eckhardt is very comprehensive. Neither has it forgotten that today the automobile and the garage have almost entirely replaced the horse and the livery stable as typical matrices from which legal controversies arise. There are over one hundred ninety principal cases in the collection. The most important feature and the greatest improvement in this edition over its predecessors is in the scope and quality of the annotations. There are the usual references to law review notes and articles and to the *Restatement of the Law* by the American Law Institute where applicable. Moreover, the citations of supplementary cases in the footnotes cover exceedingly well the problems cognate to those raised by the principal cases of the text, and frequently contain statements of fact and short excerpts from the opinions. They clearly show careful and extensive scholarly research. This is as it should be. A modern case book should be not only a selection of leading cases for class room discussion, but also a guide and source book to instructor and student alike for the field of law with which it deals. The third edition of Bigelow's *Cases on Personal Property* is an excellent example of this type of book.

University of Wisconsin Law School

RAY A. BROWN

IN AND OUT OF COURT. By Francis X. Busch. Chicago: DePaul University Press, 1942. Pp. xii, 306.

The ever present drama of the court room makes interesting this collection of reminiscences, although few of the incidents depicted are extra-ordinary and few of the characters of more than local reputation. The author first participated in the administration of justice as a court reporter, enjoyed an extended career as a general practitioner specializing in trial work, taught in DePaul University Law School as instructor and dean, and was for four years Corporation Counsel for the City of Chicago. The opportunity for varied legal experience was obviously great, and the anecdotes touch upon a wide range of subjects, not easily classifiable in a review and not fully classified in the original work.

Lawyers, who seem as preoccupied with their occupation as the traditional "busman," will probably find entertainment in this book in their leisure hours and may enjoy particularly the references to Kenesaw Landis, whose colorful personality is described in several places, and to Clarence Darrow, minor illustrations of whose genius for trial psychology and court aplomb are given. Law students, combining enthusiasm and naiveté, may relish it most, but whether they will find it as educational as the publisher promises is at least doubtful. However, vicarious practical experience is probably better than none.

Laymen seem to like lawyers' anecdotes almost as well as doctors'. Unfortunately, in this collection there is such an emphasis on incidents of litigation which tend to disclose the quick-wittedness, the eccentricities, or the discomfitures of many members of the Chicago bar that he may well find support for his previous suspicion that the trial of a lawsuit is primarily a game between the lawyers. And there is more than one episode which suggests the author was applauding a successful representation without much concern for the justice of the result.

Mr. Busch has had a busy life and it can't have been dull. His reminiscences are extremely modest, and one must consult other sources to discover the good service he has given to his community and the respect in it he has long enjoyed.

University of Missouri Law School

ORRIN B. EVANS