

1956

Book Reviews

Follow this and additional works at: <http://scholarship.law.missouri.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Book Reviews, 21 MO. L. REV. (1956)

Available at: <http://scholarship.law.missouri.edu/mlr/vol21/iss2/5>

This Book Review is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Missouri Law Review by an authorized administrator of University of Missouri School of Law Scholarship Repository.

Book Reviews

THE LAW OF PERSONAL PROPERTY. Second Edition. By Ray A. Brown. Chicago: Callaghan & Co. 1955. Pp. 853.

"This treatise should well meet the requirements as a text in law schools which do not follow the case method. It should be equally valuable as a reference book in schools when the case method is used."¹ It is a good piece of work.² It was needed and it is modern and scholarly.³ Regarding the problem of finding a satisfactory book to supplement classroom discussions of personal property, "this book is the answer."⁴ "The prediction is ventured that this treatise will [become] the standard American work on personal property and that gratuitous bailments thereof by booksellers to lawyers will fall into the third of Mr. Justice Story's categories" [mutual benefit bailments].⁵

The statements quoted and paraphrased in the preceding paragraph, culled from reviews of the original edition, are somewhat anachronous today, but in general their commendatory words and flattering predictions have proved justified and can also be applied to the new edition.

The most striking change in the new edition is its expansion and complete revision of the last two chapters, which deal with fixtures and emblements. One of the criticisms leveled against the first edition was that its coverage of fixtures was too meager and oversimplified.⁶ Its sixty-three pages for fixtures have been expanded to 106 pages, and constitute a new analysis of the fixtures material. Similarly the first edition's final chapter, "Emblements," contained fourteen pages. In the new edition, retitled "Crops," it contains twenty-eight pages.⁷

Concerning the balance of the book (i.e. the first fifteen of its seventeen chapters) it is fair to say that the new edition is neither a revision nor a mere reprinting. These chapters were excellent before, and so they remain, with the bulk of the changes consisting simply of additions to the old footnotes. These additions include citations to what this reviewer estimates as one-third more reported cases

1. Arthur, Book Review, 26 CALIF. L. REV. 163 (1937).

2. Miller, Book Review, 21 MARQ. L. REV. 101 (1937).

3. Niles, Book Review, 14 N.Y.U.L.Q. REV. 558 (1937).

4. Latty, Book Review, 2 MO. L. REV. 273 (1937).

5. Flear, Book Review, 11 TEMP. L.Q. 117, 119 (1936). The concluding portion of the above quotation requires no gloss, when one remembers that a transaction originally a bailment may later become a sale. Another reviewer conceded that Brown covered the field of personal property, "if a rag-bag collection of loose ends can be called a field." McDougal, Book Review, 47 YALE L. J. 514 (1938).

6. Niles, Book Review, 14 N.Y.U.L.Q. REV. 558 (1937).

7. The expansion is no compositor's trick. Excluding the chapters on fixtures and emblements, the remaining fifteen chapters require only 697 pages in the new edition compared with 626 pages in the first edition.

than were cited in the old edition. This portion of the book has not been substantially increased in size;⁸ nor does it make pretense of greater change than actually occurred. Throughout the first fifteen chapters the section numbers in the two editions are identical⁹ and the section headings virtually so.¹⁰ Hence general citations to Sections 1-136 of the old edition do not require transposition for use with the new edition. On the other hand the chapter on "Pledges" contains considerably more new work than any of the chapters preceding it in the book.¹¹ The enlarged "Table of Cases," which discards the bold face type used in the old edition to identify cases which were quoted or discussed, has its inevitable error or two,¹² and presumably was not done by the author himself.¹³ The index is adequate and of about the same length and arrangement as in the first edition.¹⁴

The following minor criticisms are entirely consistent with the foregoing favorable comments. The book might have increased usefulness for law students had it inserted parallel citations to Fryer, *Readings on Personal Property*. The statement in both editions that the common law everywhere accorded the wharfinger a specific lien,¹⁵ cites as authority the case of *Naylor v. Mangles*,¹⁶ without noting

8. See preceding note.

9. Sections 1-36. The section numbers and headings are also identical for the first part of the chapter on fixtures (*i.e.* §§ 137-142) but the related text material has been rewritten.

10. Among the few exceptions are slight changes in the headings of Sections 79 and 108.

11. For example, the "Pledges" chapter in the new edition, although having the same number of sections as the old edition, has 235 footnotes as compared with 205 in the first edition (whereas Chapter 13, "Parties Possessed of Lien," has only 180 footnotes compared with 172 in the first edition; Chapter 14, "Enforcement, Transfer and Loss of Liens," and Chapter 3, "Finding Lost Articles," each have only one more footnote than in the first edition; and Chapter 7, "Gifts of Chattels," has 278 footnotes as compared with 268 in the first edition). Also, of six typographical errors picked at random from the first edition, two of the three appearing in the "Pledges" chapter had been corrected, their containing sentences having been recast. On the other hand, the three errors appearing in earlier chapters ("27" for "207" in § 15, n. 37; "or" for "of" at the end of § 54; and an erroneous date in § 57, n. 57) were all reprinted uncorrected.

12. The Winkfield is not listed, either under "The" or under "Winkfield", but is discussed in the text at page 392. Under "The", the table cites *The Victor Gold & Silver Mining Co. v. National Bank of Republic* (as appearing on page 560) but also lists the same case under "Victor" (as appearing on pp. 560, 572). *Cf.* Listings for "Turner Co., Clara" and "Clara Turner Co." In citing both *Tudor Arms v. McKendall* and *Tudor Arms v. Kendall*, the table simply follows an error of the text, which on three pages correctly reads "McKendall," and on a fourth, "Kendall".

13. *Sawyer v. Administrator of Injun Joe*, 16 Mo. L. Rev. 27 (1951) is correctly identified by Professor Brown as an article, but appears in the table as a reported case.

14. The main headings are the same, except that the new index adds Uniform Commercial Code and two cross-reference headings, and drops three single entry headings (Manure, Heirlooms, Legal Relationships).

15. Section 108 (n. 30 in old edition; n. 33 in new edition).

16. 1 Esp. 109, 170 Eng. Rep. 295 (1794).

that the cited decision held that the wharfinger had a general lien. Neither edition mentions this common law general lien,¹⁷ but the new edition cites the Uniform Warehouse Receipts Act provisions thereon. In retaining unchanged the statements in the earlier edition that the innkeeper has a general lien at common law,¹⁸ the new edition perpetuates what is either an error or an unfortunate shift in the content of the words "general lien". Both editions correctly quote *Waters & Co. v. Gerard*¹⁹ that "From prior to 1775 the general lien of an innkeeper upon the goods owned by the guest has been conceded and is not now disputed by the appellant." Some other writers have made statements in accord,²⁰ but still others are contra.²¹ Two of the leading cases hereon are *Mulliner v. Florence*,²² which Brown cites only on an entirely different point, and *Jones v. Thurloe*,²³ which he does not cite at all. The true rule is that although the innkeeper's lien was "general" in the sense that he could hold the guest's horse for the charges for the guest's own entertainment as well as for the charges for caring for the horse, the lien was nonetheless lost by permitting the guest to depart without paying, and would not be revived if the guest later came to the inn again. In other words, the lien was not for the general balance, but only for the bill currently incurred. This is true notwithstanding express language in the *Mulliner v. Florence* opinions which refer to the innkeeper's lien as "general."

ELMER M. MILLION*

17. See RESTATEMENT, SECURITY § 62, Note (that wharfinger's common law general lien is obsolete).

18. Second edition, pp. 527, 549. First edition, pp. 458, 495.

19. 189 N.Y. 302, 319, 82 N.E. 143, 149 (1907).

20. HALE, BAILMENTS & CARRIERS 295 (1896); 1 JONES ON LIENS 477 (3d ed. 1914).

21. DOBIE, BAILMENTS AND CARRIERS 288 (1914). And see *Manning v. Hollenbeck*, 27 Wis. 202 (1870); *Caldwell v. Tutt*, 10 Lea (78 Tenn.) 258, 43 Am. Rep. 307 (1882).

22. L.R. 3 Q.B. Div. 484 (1878).

23. 8 Mod. 172, 88 Eng. Rep. 126 (1723), s.c. *sub nom.* *Jones v. Pearle*, 1 Strange 557, 93 Eng. Rep. 698 (1723).

*Professor of Law, New York University.

