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Book Reviews

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BOOK REVIEWS

Second Mortgages and Land Contracts in Real Estate Financing. By Samuel N. Reep. Prentice-Hall, Inc. New York, 1928.

The author, in addition to being President of the Home Financing Corporation and Home Building and Loan Association of Minneapolis, is a lecturer in real estate at the University of Minnesota. He has prepared a book primarily for those intending to enter the field of real estate financing. To those who have had any considerable amount of actual experience in the subject treated, there is not much new thought. And yet some of the matters discussed, as will be pointed out later, concern the whole public, and should be brought to its attention.

The author very correctly states that the greatest problem in real estate financing is to bridge the gap between the cash payment and the first mortgage. There is no longer any trouble in securing long term first mortgages, but conservative first mortgages are limited to 50% of the value of the property. It is generally conceded that 25% of the purchase price should be paid in cash. How, then, can the other 25% be handled?

Taking into consideration the various factors entering into the question of security, such as depreciation and obsolescence, variation in appraisal, change in use and occupancy, etc., it at once becomes apparent that each of these makes the second mortgage more hazardous, which in turn necessitates a higher yield. Immediately, the question of usury arises, and this is a phase which should receive the careful attention of the public. A multitude of methods to get away from usury have been attempted but none of them are of any avail. There is no way to hide usury, and each attempt is but added evidence. There is every reason why the man trying to own a home should be able to do so in a perfectly businesslike manner, and the lender of money, on second mortgages, by reason of the greater hazard, is entitled to a higher yield. In the present day, money is, and should be, recognized as a commodity, and changes in interest laws based on this idea should be made.

What is the situation today? Second mortgage financing is in a state of chaos and disrepute. Those who would do a legitimate business are forced by legal restrictions to give way to note shavers, often without scruples. The result is that the one attempting to own

a home in most instances has to pay much more than if the law recognized an interest rate sufficient to interest legitimate second mortgage financing.

And this brings to mind what seems to be a most illogical situation in our own state. Our Supreme Court holds that a note tainted with usury retains its taint even in the hands of an innocent purchaser. By thus holding that the purchaser of a note must ascertain whether a note is usurious or not, it would seem that the law of negotiable instruments is attacked. Even more illogical does this appear when one considers that our court protects an innocent purchaser of a note given for a gambling debt.

It would certainly be well if the thoughts of the author about the real need of legitimate second mortgage financing could be brought before the public to the end that sound reason might be applied to the situation, and means taken to place the business on a legitimate basis.

Considerable discussion is given to the question of appraisal, and while the theory of appraisal may be studied to advantage, there is no known formula to govern in the actual appraisal. Knowledge along this line can only be acquired by experience, and then it is mainly a matter of individual judgment.

To the lawyer engaged in real estate work, valuable information may be had from the author's chapters on Preparation of Land Contract Papers, Preparation of Second Mortgage Papers, and Foreclosure of Second Mortgages. The discussions of these questions, together with the forms in the appendix, make the book a desirable one for the library of a lawyer with a real estate practice.

The last three chapters, devoted to the Second Mortgage Market, Organization of Second Mortgage and Land Contract Companies, The Future of Second Mortgage and Land Contract Financing, would especially commend the volume to any one contemplating entering the field of second mortgage financing. To any one in this state having such ideas, however, it would be safe to say that it cannot be done.

B. B. VINSON.

Greensboro, N. C.

Some Lessons from our Legal History, by William Searle Holdsworth. The Macmillan Co., New York, 1928. Pp. viii, 196.

The Historians of Anglo-American Law, by W. S. Holdsworth. The Columbia University Press, New York, 1928. Pp. 175.

These two volumes contain lectures delivered by Professor Holdsworth during his visit to the United States last year. As he is the successor of Blackstone in the Vinerian Chair of English Law at Oxford University, American lawyers were particularly interested in his visit. Holdsworth's nine volume "History of English Law" is the first complete account of English legal history and is the greatest achievement of any legal historian. Not many American lawyers will become acquainted with this massive and masterly work, but they should all read the two volumes of lectures just published.

The first of these volumes consists of four lectures delivered at Northwestern University. The first lecture, "The Importance of our Legal History," sets a high standard for the volume. Professor Holdsworth is always the lawyer, as well as the historian, and consequently has an appreciation of the place of the lawyer in our Anglo-American system. For purposes of discussion, he divides law into the "Law made by Lawyers" and "Enacted Law." The law made by lawyers is the common law. Its distinguishing characteristic is its historical continuity, and its capacity for keeping in touch with life and our changing society. "The common law has thus evolved an wholly original system of developing the law. It is the product of small changes and gradual adaptations made by a learned self-governing profession, responsible only to itself."

The success of our system of case law is attributed, first, to a centralized judicial system which meant a limited number of reports. The author sees danger in too many reports. "The law is likely to be burdened with so great a mass of decisions of different degrees of excellence, that its principles, so far from being made more certain by the decisions of new cases, will become sufficiently uncertain to afford abundant material for infinite disputations of professors of general jurisprudence." Second, the success of our case law is due to a group of learned lawyers at the bar and on the bench—the bench, independent and well paid, being on the whole more able than the bar. Is our case law endangered by the multiplicity of reports today and a bar which is losing caste as a profession and no longer has the solidarity of the English bar?

His discussion of "Enacted Law" centers around the theme of the partnership of lawyers and legislature. To this partnership, he attributes the high position of the common law in the world today. "Right through our history the lawyers and Parliament have been allies. Parliament has generally respected the supremacy of the law; and the lawyers naturally acquiesced in the power of a body, in whose deliberations they took an important part, to create or modify law."

The second lecture at Northwestern on "The Common Law's Contribution to Political Practice and Theory" discusses two important pieces of legal machinery, *habeas corpus* and the jury. That neither of them can be understood without historical background is the author's contention, and he then sets forth clearly and briefly the historical background. Only in this way can we account for a writ, which was originally much like our subpoena, becoming so great a constitutional weapon for the protection of personal liberty. The history of *habeas corpus* typifies the supremacy of the law. The history of the jury, so excellently set forth in Thayer's *Preliminary Treatise on the Law of Evidence,* accounts for much of our criminal procedure (through the jury of presentment), for the Law of Evidence, for the rules of pleading and the separation of issues of fact and of law. Holdsworth sees much good in the jury system in safeguarding the rights of citizens and educating them and in keeping the law intelligible.

In the third lecture, "The Rule of Law," Holdsworth demonstrates how experience has mingled with logic in the development of our case law, and that the theories of legal philosophers have never had much influence with English lawyers. He discusses two theories which, however, throw considerable light on English legal history, the theory of sovereignty and of corporate persons. In England, the theory of sovereignty takes the form of the supremacy of law. The author analyzes modern conceptions of sovereignty as developed by Laski, Dicey and Duguit. The theory of corporate personality is shown to be closely connected with sovereignty—the group being subject to the sovereign power. In England, there were many local, self-governing groups, and English law, unlike continental law, made a practical adjustment of the conflict between sovereignty and corporate persons.

The last lecture in the first volume is unconnected with the others, being the dedicatory address at the Northwestern University Law

School building. Its title, "A New Discourse on the Study of Laws," indicates its scope, the discussion of the methods of legal study, especially the development of the case method, and the important position of the Law Schools in the legal development of today.

The second volume contains the following chapters, each being a lecture delivered at Columbia University, as follows: The Professional Tradition; The Historians of the Seventeenth and Eighteenth Centuries; Four Oxford Professors; The American and Foreign Contributions; and Maitland. In these lectures, Professor Holdsworth shows the stages in the writing of legal history by discussing the writers. Being a true historian, he shows that these writers of English legal history were in turn the products of larger movements. This history of legal historians shows why a complete history of English law has been so long in being written. Holdsworth suggests that Pollock and Maitland's History of English Law, Blackstone's Commentaries and Dicey's Law and Opinion in England form a picture of the historical development of English law which is fairly complete.

The condition of the original records and the steps taken to make the records available forms an interesting account in itself. Here the author discusses the work of private societies, culminating in the work of the Selden Society. To the reviewer, the lectures which will make the greatest appeal to lawyers and students are those on "Four Oxford Professors" and on "Maitland." The four Oxford professors are Maine, the founder of the School of Historical Jurisprudence in England, but equally important as an historian of Anglo-American law, a brilliant writer of wide reading and of keen observation; Vinogradoff, likewise in the field of Historical Jurisprudence, an expert in the period of the Middle Ages; Dicey, the lawyer; and Pollock, the lawyer and humanist. But it is in the lecture on Maitland that the author outdoes himself. Maitland is the "greatest" legal historian who "showed how history can humanize the law and how law can correct history."

Holdsworth has high praise for the American contribution to legal history; for Holmes, Ames, Bigelow, Thayer, Gray, Street, Wigmore and Woodbine, who is completing the long hoped-for edition of Bracton. Holdsworth has a keen appreciation of literary style, recognizing it in others and possessing a splendid style himself. These two books are delightfully written. The key to both volumes of lectures