Book Reviews

North Carolina Law Review

BOOK REVIEWS

The Labor Injunction, by Felix Frankfurter and Nathan Greene. New York: The MacMillan Company. 1930. Pp. 343.

North Carolina has had only a fragmentary experience, in three cases, with the labor injunction.[1] But two of these cases have been reported, involving printers' strikes at Raleigh[2] (1921) and Asheville[3] (1924). The textile strike injunction at Marion[4] (1929) was not reviewed by the Supreme Court.

As the state heads into the inevitable strife attendant upon the unionization of the industrial south, manufacturers, labor leaders, legislators, lawyers and judges have need for this excellent book, lest the mistakes made in other states be repeated, and the lessons there learned go unheeded.

The current problems chiefly agitated, and to whose origin and solution this study is mainly directed, are, in the opinion of the reviewer, seven: (1) Shall restraining orders and preliminary injunctions be issued *ex parte* on the basis of complaint and supporting affidavits, or shall they await the hearing of witnesses for both sides in open court? (2) If *ex parte* decrees are to continue in emergencies, what conduct upon the part of organized labor shall be regarded as constituting such an emergency? (3) To what extent should injunctions prohibit non-violent union activities in furtherance of labor's immediate and ultimate cause? (4) Should disturbances incidental to strikes be dealt with by criminal prosecutions and actions for damages, rather than by injunctions? (5) Shall "yellow dog" contracts[5] be enforced by injunction? (6) Are juries desirable and constitutionally possible in contempt proceedings for alleged violation of labor

[1] Professor Duane McCracken, of Guilford College, has illuminatingly traced the actual effects of these decrees in an as yet unpublished manuscript on Courts and Injunctions in Industrial Disputes (1930).

[2] McGinnis v. Raleigh Typographical Union, 181 N. C. 770, 108 S. E. 728 (1921).

[3] Citizen Co. v. Asheville Typographical Union, 187 N. C. 42, 121 S. E. 31 (1924).

[4] Marion Mfg. Co. v. United Textile Workers, Superior Court, McDowell County, North Carolina, July and August, 1929.

[5] U. S. Circuit Judge J. J. Parker's now celebrated decision in International Organization v. Red Jacket C. C. & C. Co., 18 F. (2d) 839 (C. C. A., 4th, 1927), although mentioned some five times in the footnotes in connection with union support for strikers, interstate commerce, parties, pickets and unionization activities, is not singled out for particular criticism, and seems not to have been referred to in connection with what later became its chief political significance, namely, the enforcement of the so-called "yellow dog" contract.

injunctions? (7) Can appellate review be had soon enough to prevent the breaking of strikes by erroneously drastic orders and injunctions?

To these questions and their many ramifications, the authors bring a skillfully analyzed mass of conflicting data. The judicial decisions are mainly from the federal courts and from the state courts of Massachusetts and New York. The statutes are from England, nearly all the American states, and from Congress. Lay opinion and testimony flows in from everywhere.

England, we see, has had no labor injunctions since 1906, when the jurisdiction to issue them was abolished by statute.

State action has consisted principally of statutory attempts to exempt labor unions from common-law notions of "conspiracy"[6] and "restraint of trade," only the latter receiving approval by the courts; of legislation designed to nullify "yellow dog" contracts and to deny to them equitable relief, the former, like their congressional counterpart, being held unconstitutional as a destruction of "freedom of contract"; of enactments, like the federal Clayton Act, confining the powers of the courts to grant labor injunctions to the cases where necessary to prevent irreparable injury to property, held unconstitutional by the United States Supreme Court, under the Fourteenth Amendment; of statutes limiting and regulating the granting of *ex parte* restraining orders and temporary injunctions; and of legislation providing for juries in contempt proceedings, held unconstitutional because violative of the separation of powers.[7]

Federal action has taken the form of judicial adaptations of the Interstate Commerce Act and of the Sherman Anti-Trust Act to stop interstate coercion by union labor; of judicial emasculation of the loosely drafted restrictions of the Clayton Act upon the powers of federal courts in labor injunction cases; of the Shipstead bill, whose definition of "property" as a basis of all federal equity jurisdiction would have destroyed that jurisdiction over thirty-two legitimate, non-labor matters, such as patents; and the policy declarations and

[6] The North Carolina Court, in State v. Van Pelt, 136 N. C. 633, 49 S. E. 177 (1904) reached a similar result without a statute, in highly idealistic opinions by the elder Judge Connor and by Douglas, J.

[7] The reference, at page 195, note 245, to North Carolina, in this connection, is misleading. *Ex parte* McCowen, 139 N. C. 95 (not, as cited, p. 139) (1905) had no relation to the unconstitutionality of a statutory provision for juries in labor injunction contempts. A person sympathizing with a party sentenced for manslaughter had physically assaulted the judge at his boarding house. The opinion is cautiously limited to legislative regulations of "direct" contempts.

procedural reforms of the pending Senate substitute for the Shipstead bill,[8] whose merits and defects form most of the frame-work of the chapter, "Conclusions."

The authors' picture of the creation and manipulation of a legal institution by the economic and political prejudices engendered by modern industrial life has been brilliantly executed. It is an epic of law in action. Although no reader can doubt the writers' active alignment with the forces of union labor, the book has not failed to criticise labor's at times over-eager and shortsighted leadership.

M. T. VAN HECKE.

Chapel Hill.

Commercial Arbitrations and Awards, by Wesley A. Sturges. Vernon Law Book Company, Kansas City, Mo., 1930. Pp. 1082.

To acquire elaborate machinery for arbitration is one thing; to set the machine in motion in the actual settlement of disputes is quite another. North Carolina has had for nearly three years a machine of next-to-the-best[1] model, but apparently the wheels have never started moving. If any arbitrations under the new statute have taken place, controversies about them have not reached the appellate court. Probably the wheels will continue to gather rust until business men and lawyers become more actively interested in this method of short-circuiting the judicial process. Doubtless law schools and bar associations and the legal and business press could profitably in the public interest do more than they are doing to stimulate the active curiosity of lawyers about this method of simplifying and de-formalizing the settlement of disputes and removing them from the emotional atmosphere of combat.

This book, which is entirely free from persuasion or propaganda, will do nothing to arouse such interest, but, assuming the interest, it undertakes to answer the question: how have the courts and legislatures actually delimited the rights of parties to arbitration proceedings? The author presents the entire body of present-day law on

[8] Drafted with the assistance of Professor Frankfurter. See p. 226, note 61.

[1] Presumably the most approved model is one which would make enforcible a contract to arbitrate future disputes, as in the New York and Federal arbitration acts as set out in the book under review, chapter three. North Carolina has adopted the Uniform Act which embraces only agreements to arbitrate existing controversies. See "Arbitration under the North Carolina Arbitration Statute—The Uniform Arbitration Act," by W. A. Sturges, 6 N. C. L. REV. 363 (1928).

the subject in this country, so arranged as to make it easy on any controverted point to ascertain the results of the legislation and decisions of each particular state and of the Federal jurisdiction. The subject constantly invites—perhaps demands—the expression of the author's individual opinion as to the desirable solution of moot and controverted points, but (so far as the reviewer's sampling disclosed) he has austerely refrained from any direct intimation of personal views. Nevertheless, the adroit choice and ordering of material, the keenness of analysis of facts and of cases, the deftness in the untwisting of statutory complexities, and the straightforward competence of the style, all place this book at the opposite pole from the mere digest-paraphrase type of current text-book. Moreover, despite his ascetic abstention from taking sides, the author's personal views may have been reflected in the choice which guided the selection of the frequent quotations. Thus, the author expresses no personal opinion as to whether arbitrators should have the power to exclude counsel from the hearing of the case but the following colorful language quoted from Mr. Justice (now Senator) Wagner may give a fair clue to the author's view:[2]

"My view is that whether counsel may be heard or participate in the arbitration proceedings rests entirely in the sound discretion of the arbitrators. The very purpose of arbitration is to obtain inexpensive, expeditious and final determination of disputes on the merits, free from technical rules and legal formalities. . . . The presence of counsel fortified with 'that wilderness of single instance' and with legal maxim and some legal anachronisms would tend rather to confusion and protraction than prompt decision. Besides, if one side employs counsel, a burden is cast on the other to do likewise, with resulting added expense. To permit participation by counsel as a matter of right would be fatal to the efficiency of arbitration."

The usefulness of the volume to the practitioner is enhanced by its arrangement. This facilitates the search for the ruling statutes and cases in each jurisdiction, by setting out the corresponding sections of the acts of all the states side by side with the comments under each. Thus is given a bird's eye view or, if desired, a wholly localized view, of every particular phase of arbitration procedure. Unquestionably, both for the lawyer and the research worker, this book

[2] Quoted at p. 475 from Matter of Kayser, N. Y. LAW JOUR. Jan. 14, 1925.

will long remain the most useful and authoritative compendium of the legal rules about arbitration.

C. T. McCormick.

Chapel Hill, N. C.

The Adventures of Ephraim Tutt, by Arthur Train. Charles Scribner's Sons, New York, 1930. Pp. 751. $2.50.

"There are two kinds of lawyers—the one who knows the law and the one who knows the judge," said Joseph H. Choate. "There is a third kind of lawyer," said Ephraim Tutt, "the one that knows his fellow man." Mr. Tutt probably was not implying that judges are not human beings although he may have been ignoring them. The implication, however, would not have been improbable had he been referring to his inveterate enemy, the district attorney.

This book is a collection of stories, all of which have been published before, recounting the legal and illegal adventures of the old lawyer who wears a stovepipe hat and a frock coat and smokes a gangrenous stogy. It will entertain the layman, convulse the profession and show it just what an attorney can do if he knows how. Mr. Tutt practices law as every lawyer would like to—dramatically. While the district attorney, who grins like a hyena suffering from acute gastritis and honors every defendant with an alias, diagrams the scene of the crime and stamps the indictment with purple ink "Ready For Trial," Mr. Tutt gives his final directions to Mr. Bonnie Doon, his ambulance chaser, stage manager, director of rehearsals and general superintendent of arrangements in all cases requiring an extra-artistic touch. Mr. Tutt is never at a loss—from his legal property room he can produce either a rosary or a yellow dog, depending upon the needs of his client.

It is doubtful if the most circumspect of attorneys could improve upon Mr. Tutt's system of getting rid of the litigant whose sole happiness apparently is in repeating and reiterating his woes to counsel who heard him the first time. And his method of putting a client in a properly grateful and hence liberal frame of mind would be hard to equal: first, he scares said client out of his seven senses; second, admits reluctantly upon reflection that in view of the fact that he has wisely come to Tutt & Tutt there might still be some hope for him; and third, exculpates him with such a flourish of congratulation upon his escape that he is glad to pay the modest little fee of which he is then and there relieved.

The style of this book is delightful; the combination of words audacious and humorous; the statements of the law accurate; and Mr. Tutt's philosophy worth knowing. Mr. Tutt believes that law is life, not logic, and if he juggles the law it is "to demonstrate a heresy and brand a hypocrite." He will amuse you, instruct you, and do all the things you would like to do. What more could one require of a book?

SUSIE SHARP.

Chapel Hill, N. C.

A Treatise on the Law and Practice of Receivers, by Ralph E. Clark. 2d ed. The W. H. Anderson Co., Cincinnati. [1927] 2 v., pp. c.viii, 2053. $20.00.

Corporate Foreclosures, Receiverships and Reorganizations, by John Evarts Tracy. Chicago: Callaghan & Co., 1929. Pp. xxiv, 647. $12.00.

The first edition of Mr. Clark's treatise appeared in 1918. Since that date there has been a considerable increase in bulk of the material treating of receiverships, and the author has accordingly expanded his book on pleading, practice, procedure and statutes governing the appointment of receivers, costs and expenses of receivership, claims and corporate receiverships generally. On the other hand much matter which was in the original edition, and which had great pertinence at that time, when the war was in progress, has been omitted. These omissions include chapters on trading with the enemy and alien property custodians. A rearrangement has been made of the former chapters on judicature, judiciary and procedure acts, and equity rules and orders in chancery as affecting receiverships, by which much of the old and new material on these aspects has been redistributed in other parts of the work. Two chapters are given over to receiverships in bankruptcy proceedings and to bankruptcy receiverships, statute and general orders, while a final chapter is devoted to the problems of corporate reorganization.

In this edition, as in the first, some 350 pages are devoted to forms, especially those having to do with the reorganization of corporations.

A table of cases and a very adequate index are supplied.

Mr. Clark traces the origin of receiverships from the appointments of sequestrators and receivers of rents and profits in the time

of Elizabeth, a power which was reserved to the high court of chancery until the Judicature Act of 1873. The equity powers of the high court of Chancery of England insofar as applicable to American conditions have been retained by the Federal courts,[1] a fact which has distinct significance in the case of certain recent corporate reorganizations conducted by Federal courts.[2] With respect to the states, the author's conclusion is that their courts have retained the inherent equity power to appoint receivers and that in code states this power, if anything, has been enlarged (p. 13). The author after analyzing the nature of receivers and distinguishing between those appointed by a court of chancery, statutory, *pendente lite*, etc., comes to a consideration of the pleading, practice, procedure, and statutes governing their appointment. A chapter is given to *pendente lite* receivers, the prototype of all present-day receivers. In considering the policy of the Federal and State courts, as to appointment of a receiver at the instance of a simple contract creditor, it is interesting to note the reasons supporting the author's liberal view that such appointments should be made (p. 218 & seq.). Taking this view, he is naturally inclined to see in the present rule allowing consent by defendant corporations to appointment in such cases the germ of a much wider rule in the future. Two chapters are devoted to receivers under creditors' bills and to after-judgment receivers, and a full analysis is made of the effect of appointment of receivers. A systematic consideration is given to jurisdiction, possession and title, liabilities of receivers (with the distinction existing between the English and American rules), contracts and leases, receiver's certificates, sales and to intervention, suits by and against receivers, receivership expenses and claims against a receivership.

The second volume is devoted to certain special aspects of receiverships, such as corporate receiverships, liability suits, railway and bank receiverships, partnership receiverships, mortgaged property in receivership, receivers in estates and trusts and in bankruptcy, a final chapter being given over to a cursory survey of corporate reorganizations.

In so comprehensive a work, it would be invidious to insist upon omissions in those chapters dealing with particular phases of a large

[1] Rule 90. U. S. Sup. Ct. abrogated by Rule 81 of New Equity Rules of 1912.

[2] See discussion of Graselli Chem. Co. v. Aetna Explosives Co., 252 Fed. 456 (C. C. A. 2nd, 1918) in Rosenberg, *The Aetna Explosives Case—A Milestone in Reorganization* (1920) 20 COL. L. REV. 733; Guaranty Trust Co. v. Missouri, Pacific Railway Co., 238 Fed. 812 (1916).

subject, but it may be a matter of regret to many that in a period when the failure of national banks has become a perennial feature of our economic life more space and fuller consideration could not have been given to the special statutory rules governing the liquidation of banks under the Comptroller of the Currency. Nor does it lend confidence to one using the treatise to find the National Bank Act variously dated as 3 June 1854 (p. 35, note 90), and 20 June 1874 (p. 1302); and to note on 30 June 1876 an act was passed authorizing the appointment of receivers of national banks by the Comptroller, when the original National Bank Act was passed on 3 June 1864 and itself provided for the appointment of receivers by the Comptroller of the Currency (R. S. §5234). It would have been helpful also, if the very technical rules of set-off between depositors and other creditors of a national bank treated briefly in a page and a half could have been developed in more detail. But it is easy to cavil at such matters in a general treatise.

On the whole this is a very good piece of work and deserves to hold its place as one of the standard treatises on the subject. The general principles of receivership are considered with great thoroughness, their origin in the chancery jurisdiction and subsequent development clearly traced, and such treatment accorded special types of receivership arising under statute as might be reasonably expected. Throughout, the author's parallel consideration of English and American theory, practice and statutes is most helpful.

The final chapter on corporate reorganization is adequate if by no means exhaustive.

Where Mr. Clark's book ends Mr. Tracy's begins. Mr. Tracy in his preface modestly disclaims any intention to present a full treatment of legal theory and contents himself by suggesting what reorganization counsel should do under certain circumstances. To this end he has affixed over 200 pages of forms. The volume also has an index.

When one looks back over the last quarter-century it is interesting to note the attitude of the courts toward corporate reorganizations and the tendencies of certain legal theories to develop and expand to meet the exigencies of a practical situation. It is true that the genesis of many such legal ideas can be traced back many decades but none the less the restatement of even an old doctrine under new conditions sometimes produces a startling effect. Of no

case of recent years is this more true than of the celebrated "Boyd Case."[3]

In that case the United States Supreme Court by a five to four decision upheld the right of a judgment creditor to a position immediately after secured creditors and prior to that of shareholders of the old corporation participating in the new, notwithstanding the fact that the assets of the old corporation had been sold at foreclosure under a consent decree and brought substantially less than the amount of the mortgaged debt. But under the reorganization plan the old shareholders had been given securities in the new corporation to the exclusion of unsecured creditors. It was immaterial that the value of such securities was at the time of the reorganization largely speculative; it was nevertheless an improper preference and rendered the assets in the hands of the new corporation subject to the claim of a judgment creditor. The decision brought consternation into the camp of corporate reorganization counsel and typical of the lamentations raised is that of one eminent lawyer that "the result of this decision has been to introduce the greatest uncertainty and confusion."[4] But the Boyd case had been foreshadowed by two important decisions of the Supreme Court, the Howard case[5] and the still more famous "Monon" case.[6] The latter case had been in its day also a cause for alarm. Could not, cried the most prominent reorganization lawyer of his day—could not mortgage bondholders buy in the corporation's property and also agree in advance, as a pure act of grace on the part of prior lien creditors, to give part of that property back to the shareholder debtors? Could not bondholders after foreclosure, in other words, dispose of their own property as they saw fit? If not, then the Supreme Court had "placed a dangerous weapon in the hands of guerillas" who would use it unscrupulously for its 'nuisance value.'[7] Viewed in this light, Mr. Cravath's characterization of the principles of the Boyd case as a "demon incarnate"[8] in the path of the organizer is a natural sequel. But with the lapse of years and the wide adoption by the inferior Federal courts of the 'fixed principle' of the case as one generally

[3] Northern Pacific Railroad Co. v. Boyd, 228 U. S. 482 (1913).

[4] Paul D. Cravath, in STETSON, BYRNE ET AL: SOME LEGAL PHASES OF CORPORATE FINANCING, REORGANIZATION AND REGULATION (N. Y. 1917).

[5] Railroad v. Howard, 7 Wall. 392 (1868).

[6] Louisville Trust Co. v. Louisville Railway Co., 174 U. S. 674 (1899).

[7] ADRIAN H. JOLINE, RAILWAY REORGANIZATIONS (1900). Reprinted in THE BOOK COLLECTOR & OTHER PAPERS (1904), p. 67 at 106.

[8] *Op. cit. supra* note 4, at 197.

applicable in corporate reorganizations, not only of railroads but of other corporations, and applicable not only to unsecured creditors but to all classes of participants, the rule of the Boyd case has taken on more and more the aspect of a general equitable principle to be employed in such cases. One recent writer of authority regards its stability as beyond question.[9] And after all, as the Supreme Court has subsequently said, the rule "does not require the impossible and make it necessary always to pay unsecured creditors in cash before shareholders may retain any interest whatever in the reorganized company."[10]

The gradual acceptance by bench and bar of the doctrine of the Boyd case has brought with it the development of certain corollary principles implicit in the leading case. The principal of these are those requiring the court to fix an upset price below which the assets of the old corporation cannot be sold to the new, and of passing upon the fairness of the reorganization plan before confirmation of the sale. For while mortgagee-bondholders have, as always, the right (supposing the assets do not exceed the mortgage debt) to wipe out all junior interests by strict foreclosure,[11] it is seldom in these days that reorganization managers find it desirable so to do. Newly reorganized corporations almost always need "new money" and no more hopeful group of investors can ordinarily be found than the old shareholders who to save what they can of their original investment are usually willing to invest more; but their inclusion immediately raises the question of priority of position with respect to the new corporation's securities to be distributed among the security holders and unsecured creditors of the old, the question of "fairness of the plan." And there is usually a minority of bondholders or other creditors who do not assent to the plan and do not want new securities but money, and unless some such scheme is forced upon them as that adopted by the District Court in the famous "Rock Island" reorganization,[12] such dissenters must be given a fair value in cash for their interests. This is supposed to be the function of

[9] Robt. T. Swaine, *Reorganization of Corporations, Certain Developments of the Last Decade* (1927) 27 COL. LAW REV. 901, 906.

[10] Kansas City Terminal Ry. v. Central Union Trust Co., 271 U. S. 445 (1926).

[11] Louisville Trust Co. v. Louisville Ry. Co., *supra* note 6, quoted with approval in K. C. Terminal Ry. v. Central Union Trust Co., *supra* note 10, at 454.

[12] See Phipps v. Rock Island Ry. Co., 284 Fed. 945 (C. C. A. 8th, 1922); Rock Island Ry. Co. v. Lincoln Horse & Mule Commission Co., 284 Fed. 955 (C. C. A. 8th, 1922).

the 'upset price,' an old device adopted from the English Court of Chancery. The need of some such protection for non-assenting bondholders and the junior lienholders in this day of corporate reorganization is all the more necessary, as there is seldom any real competitive bidding and the majority Bondholders' Committee can pay by deposit of its bonds.[13] But whether the upset price fulfills its function wtih respect either to non-assenting bondholders or junior interests seems more than doubtful.[14] It would seem, therefore, that at the present time courts are more and more inclined to fall back upon the fairness of the plan of reorganization as the determining test, both as a protection to non-assenting security holders and as the best assurance that a proper order of priority has been observed with respect to participating securityholders in accordance with the 'fixed principle' of the Boyd case.

With these somewhat recondite and certainly complex and important problems Mr. Tracy has dealt quite adequately in his book. He also considers the problems arising in the course of receivership before reorganization is effected, and treats in successive chapters of defaults, bondholders' protective committees, matters preliminary to foreclosure, the venue of the suit, the bill of complaint and practice on filing the bill, ancillary suits, powers and duties of the receiver, claims against the receivership estate, collection of assets by the receiver, issues and proofs, the decree, master's and receiver's sales, confirmation of sale, distribution of proceeds and conveyance of title, and reorganizations following judicial sales. Two final chapters are given over to voluntary reorganizations and trusteeships by creditors. The numerous forms appended are intended to illustrate practice in each of these phases of foreclosure and reorganization and are most useful.

As indicated, much has been said by the courts on this subject in recent years, especially by the United States Supreme Court and inferior Federal Courts, since the more important reorganizations, and of railroads, this is almost invariably so, have been effected under their jurisdiction. And much has been written by eminent reorgani-

[13] For a clear exposition of how such sales are managed see BYRNE, FORECLOSURE OF RAILROAD MORTGAGES, in STETSON, BYRNE, *et al, op. cit. supra* note 4, at 141-142.

[14] See the remarks of Wilkerson, J., in the recent and important "St. Paul" reorganization case: Guaranty Trust Co. v. Chicago, Minneapolis & St. Paul Ry., 15 Fed. (2d) 434, 442 (N. D. Ill. 1926); and for an excellent discussion of the whole subject of upset price, see Weiner, *Conflicting Functions of the Upset Price in a Corporate Reorganization* (1927) 27 COL. LAW REV. 132.

zation counsel. With both the cases and literature of the subject Mr. Tracy displays a sufficient familiarity, and since his object has been to write a book within reasonable dimensions and primarily for the practicing lawyer, it is no criticism of his work to express a regret that he has not found time to consider more fully the legal bases of certain developing tendencies in corporate reorganization such, for instance, as the possible substitution by the courts of a rule of priority of income position for the orthodox theory of priority of principal in the distribution under the plan of securities of the new corporation to security holders in the old.[15] Within the limitations imposed, however, the author has performed his task with carefulness and good judgment; and the book can be commended, therefore, to those whose lot it is to deal in such matters as well as to lawyers at large.

MANGUM WEEKS.

Washington, D. C.

How to Read and Plot Surveys or Land Descriptions, by Amos O. Nisenson, C. E. Published by the author, 9 Clinton Street, Newark, N. J. Pp. 64. $2.00.

This is an elementary but very practical little book which ought to prove of considerable value especially to those laymen in the field of civil engineering—lawyers, title searchers, realtors, title companies—whose business requires the reading of land surveys. Lawyers without a rudimentary knowledge of surveying often find themselves handicapped in correctly setting out in conveyances descriptions of tracts of land, which descriptions must be taken from plots or maps. Conveyancers also may experience difficulty in taking a description and making a plot therefrom.

By illustration and by explanation in clear, non-technical language the author gives the elementary and fundamental principles of how to plot from a description and how to describe a plot, how to plot and describe land that curves, how to describe and plot farm land, how to use a protractor, how to plot and describe when some of the measurements are missing, how to describe a tract of land or lot taken from a map of a large development, and how to describe party wall properties. The author also explains the rule for checking one's work. For these fundamentals the book is excellent and gives at

[15] See Bonbright & Bergerman, *Two Rival Theories of the Priority Rights of Securityholders in a Corporate Reorganization* (1928) 28 COL. LAW REV. 127.

least a foundation for an understanding of the more complicated problems that might arise in connection with the subject matter. We suggest that the book might have been more complete had the author included in it some of the tables of measurement used in land surveys.

FRED B. MCCALL.

Chapel Hill, N. C.

A Treatise on Equity, by William F. Walsh. Callaghan & Co., Chicago, 1930. Pp. xli, 603.

A reviewer is tempted, as he attacks a treatment of the whole of Equity in a single volume of some six hundred pages, to pre-judge the book adversely. A study of Professor Walsh's work, however, has pushed the pendulum of this reviewer's inclinations far toward the other extreme.

Facing squarely the problems raised by the fusion movement in the code states and under the transfer and equitable defense statutes in the non-code states and in the Federal Courts, the author has built his book about the effects of that movement upon the substantive law doctrines and the procedural rules of his subject. In this respect, the work is a discriminating and intelligent antidote to Judge Lawrence's[1] uncomprehending thesis of the futility of code reform and to the restrictive influence of the heritage from the old separate law and equity system.

It is not a paste-pot and scissors job. The text is critical and courageous. Professor Walsh has made the most of the provocative writings of other legal scholars, most of which have hitherto been available only in the periodicals. He has profited greatly from the leavening influence of the casebooks on Equity by Professors Cook, Durfee, and Chafee.

Stressing the attainable standards of administrative policy as compared with judicial language first uttered in the days of competitive law and equity tribunals, Professor Walsh traces realistically and with a remarkable compactness of detail the constructive effects of modern judicial tendencies and statutory provisions. Witness his handling of the difficulty of supervision and of "lack of mutuality" as factors in the specific performance of contracts (chapters 13, 14), of the protection to personal rights (chapter 10), of the bal-

[1] A Treatise on the Substantive Law of Equity Jurisprudence (1929), reviewed in 8 N. C. L. REV. 124 (1930).