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Book Reviews

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ulated.[11] However, the anomaly of two utilities trying to operate in a field that will support but one having arisen in the instant case, the court is probably justified in permitting rate-competition by the fact that one utility has been allowed to enter a limited field already occupied; also by the fact that the commission, by approving the rate of the new utility, virtually opened a rate war. But in all cases the interest of the public should be considered.[12] Will a rate war be detrimental to the public, especially if it results in the elimination of the more desirable utility?[13]

WILLIAM MEDFORD.

BOOK REVIEWS

Criminal Justice in England, by Pendleton Howard. New York, The Macmillan Company. Pp. xv, 436. $3.00.

The sub-title of this work, "A Study in Law Administration," indicates the author's aim. He wished to study the English machinery for the administration of criminal justice with a view, ultimately, to a comparison with that in the United States. Whether the English system is better or worse than the American system, it is clear that there is much less dissatisfaction with it. Machinery in itself can hardly be responsible; but it is at least worth while to find out if there is not something in our system worthy of being copied.

Professor Howard has done this work competently and thoroughly. His book has been read in manuscript by the former Chief Clerk of Bow Street Police Court. It is entirely free from errors of pure criminal practice, though I have detected a number of minor misunderstandings in its historical and constitutional explanation. There is, for instance, a slight confusion between the Court of Appeal and

[11] Under the laws of some states a utility must secure a certificate of "convenience and necessity" from the public service commission before it can operate. But in others, as apparently in the instant case, a franchise is the only prerequisite.

[12] In Incorporated Town of Mapleton v. Iowa Public Service Co., *supra* note 2, it was pointed out that a rate war is not necessarily competition, but is usually a mere fight that brings disorder and disorganization to a community. The utilities through neglect may impair service and endanger the lives of those they serve. See *Re* St. Ry. Rates, *supra* note 9.

[13] Tramp steamers, by operating only in summer time and at reduced rates, were about to drive a well-equipped commercial steamship line that furnished service all year out of business. The commission held that the interest of the public was promoted by fixing a minimum rate in order to enable the commercial line with all modern provisions for comfort and safety to operate. Public Service Com. v. Garfield, P. U. R. 1916 B, 835.

the House of Lords on page 21: there was no Lord Chief Justice of England before 1873 (p. 22); the overseers have disappeared (p. 163); no members of the standing joint committees are "elected by the people" (p. 167); the commission of the peace has been altered considerably since the time of Elizabeth (p. 239); the justices are appointed during his Majesty's pleasure, and not for life (p. 240); peers are tried in the House of Lords for felony and not for all indictable offences (p. 285); there were, surely, more substantial reasons than the Campbell case for the fall of the first labor government (p. 398).

Clearly, these are minor blemishes, to be attributed to an unfamiliarity with the English background. It is really surprising that there are not many more of them. In many respects the sense of novelty which Professor Howard must have had was a positive advantage. It enabled him to emphasize what an English lawyer might not have noticed, the importance of the machinery for prosecution, and especially the absence of a "district attorney." He draws attention, too, to the obsolescence of the petty jury, except in really serious crime. And constantly an appropriate reference to America throws into relief a peculiarity of the English system.

Perhaps the arrangement is not entirely satisfactory. The first three chapters deal with the evolution and present practice of the office of Director of Public Prosecutions. This cannot be done without frequent reference to the courts; and the American reader would, I think, wish to know first the various courts and their jurisdictions. Moreover, the development of the subject from the executive downwards tends to underemphasize one important point—that the average man meets the criminal law as it is administered in petty sessions. The man from Pudsey knows of the Director of Public Prosecutions and the Home Office only from his Sunday newspaper. Criminal justice in England means essentially "the poor man's court of justice"—the courts of summary jurisdiction. This is not meant in any sense to belittle the value of the first four chapters, especially the fourth, which is of very great importance, and is likely to be much used by those of us on this side of the Atlantic who are interested in the administration of criminal justice. No such study has ever been made before, and the ground need not be covered again. It is intended only to suggest that a rearrangement might have brought advantages.

The limits of investigation are necessarily narrow. But there are

two questions which could have been further examined if Professor Howard had had the time. The administration of justice by "the great unpaid—the amateur justices of the peace who preside in the country courts of summary jurisdiction (mentioned in Chapter VI). It is not possible to find out how they really work except by a personal investigation, which has never yet been attempted. The task would be long and the results possibly negative. But even such results would be valuable. It would be asking too much of Professor Howard to expect that he should attempt it in the short time at his disposal. The wonder is that he was able to do so much.

In the second place, his book does not tell us exactly why there is so little complaint with English criminal justice. Few people believe that we have either perfect law or perfect judges, in spite of the frequency with which this is asserted in after-dinner speeches. Why, then, has an agitation for law reform to be deliberately stimulated? I do not know, and I do not suppose that Professor Howard knows. It has something to do with mass psychology; but this was altogether outside the scope of the book, and the author ought not to be criticized for not dealing with it. It is enough for a reviewer who works half-way between Bow Street Police Court and the Court of Criminal Appeal to congratulate Professor Howard on the excellence of his work.

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Handbook of the Law of Sales (Hornbook Series), by Lawrence Vold. West Publishing Company, 1931. Pp. ix, 571. $5.00.

Obviously when one sets out to review a hornbook on the law of Sales he must dismiss from his mind, as a fair basis of comparison, the monumental works of Williston and Benjamin on the subject. He must draw in his mental sights and readjust his critical apparatus in view of the more limited scope and purposes of the hornbook. But even so, there are hornbooks and hornbooks, and therein does lie a basis of comparison. First, there is the ordinary, garden-variety hornbook—an elementary treatise designed for the use of law students—which sets forth in rather abstract, academic form the leading principles of the particular subject with some embellishments by the author in explanation of these principles. The rules of law and the

exceptions thereto are pointed out, but, as a general rule, there is no critical analysis of the problems involved; nor is there any attempted flesh-and-blood allocation of legal concepts in terms of "interests involved and ends to be achieved in the legal ordering of human relations."

Recently, a new type of hornbook has appeared on the scene; such as Dean Clark's *Code Pleading* and Professor Vold's *Sales*. These men have, as it were, glorified the hornbook. They have set a new standard of excellence for elementary treatises. We are concerned here with the examination of Professor Vold's book as the particular case in point.

In the construction of his text book on sales Mr. Vold has made a happy combination of two things. (1) He has stated the basic principles underlying the law of sales not only in the light of his own investigation of the authorities but also against the rich background furnished by his study of the subject with the master—Professor Williston. (2) In his treatment of this material he has utilized what he calls "Dean Roscoe Pound's functional perspective of interests involved and ends to be achieved in the legal ordering of human relations." We agree with the author that this "combination affords tremendous possibilities for useful application in dealing with unsettled and novel sales controversies currently arising in the active and changing business transactions of practical life."

In his introductory chapter Professor Vold immediately orientates his reader as to the function of the sales transaction in the economic scheme of things—its importance in the distribution of goods from original producer to ultimate consumer. Then throughout his entire book, like a skillful jeweler mounting a stone, he places his clearly stated principles of the law of sales in their proper mercantile and economic settings. And in stating the law his emphasis is primarily on the Uniform Sales Act and the decisions interpreting that act. Herein he departs from the treatment afforded in the older handbooks on sales. Furthermore, he takes time to make a critical analysis of the various problems—both legal and economic—which may arise in connection with a particular rule of law, e.g., the sale of goods having a potential existence.

He recognizes the fact that in modern times there has been a definite shift, in the distribution of goods, from a cash to a credit basis, and that our new credit economy has given rise to new financing

and credit devices. With this in mind he thoroughly explains and analyzes the conditional sales agreement, negotiable bills of lading, and the trust receipt and points out the legal consequences that flow from the use of these devices. His analysis definitely includes a recognition of divided property interests, from the standpoint of the security of the purchase price, that grow out of these various transactions. He thus contributes new and valuable material to the existing law of sales.

The author also departs from the stereotyped treatment of the sales law in that he "avowedly recognizes that warranty obligations are not necessarily promissory in their nature, but that such obligations may also be independently imposed by law, . . . and that such obligations are being concurrently adapted to fit changing needs."

There are other new features, including a discussion and interpretation of bulk sales statutes. A representative selection of legal materials, taken largely from the decisions of the past twenty years, forms the basis of the work. Frequent references to law review articles are also made. The book is well-rounded out by a concluding chapter on the uniformity of interpretation of the Uniform Sales Act, and by an appendix containing the Uniform Sales Act and the Uniform Conditional Sales Act. Let us reiterate: this is no ordinary hornbook; it is a real contribution to the law of sales. It should be equally valuable in the hands of the law student, the law teacher, and the practicing attorney.

FRED B. MCCALL.

Chapel Hill, N. C.

What Price Jury Trials, by Irvin Stalmaster. The Stratford Co., Boston. 1931. Pp. 143. $2.00.

"Now that all aspects of the League of Nations have been thoroughly and almost universally debated," says Mr. Ramond Moley in *Our Criminal Courts,* "those valiant oracles of public sentiment, the high school debating teams, have turned their attention to the jury system." The team advocating that the jury be abolished in civil cases will rejoice in this small volume, written for the layman, which will undoubtedly enable them to convince their audiences that something, at least, ought to be done about the jury. Mr. Stalmaster is profoundly convinced that the thing to be accomplished is the death of the jury in civil cases and that all attempts at jury reform—im-

proving the methods of selecting the jury—have been efforts in the wrong direction. His description of the jury typifies the style and summarizes generally the indictment of the book: "A lot of men picked from the poll lists who have not enough political pull to get off, or who are out of a job and want to pick up three dollars a day."

The counts in Mr. Stalmaster's indictment are listed briefly as follows:

1. Twelve untrained and unskilled individuals, with no sense of responsibility, are incompetent to decide issues which demand a specialized knowledge. "An understanding of jury personnel should convince anyone," says the author, "that such verdicts as these may be expected. 'We, the jury, find in favor of the plaintiff for the amount of the note and interest sued for. And we further find in favor of the defendant on his plea of the Statute of Limitations. And all of the jury join in recommending both parties to the mercy of the court.'"

2. The civil jury has been falsely pretending a sacredness in the law which attaches only to the criminal jury.

3. Boards, commissions, bureaus, and other organizations specially trained have been created to avoid jury trials; thus matters which should properly be decided by the judiciary are shifted to political departments of the government.

4. Judges, whose experience has qualified them to elicit material facts quickly and weigh evidence correctly, have their hands tied by the jury system.

5. Because of the jury there are more lawyers who plan theatricals and settings for their trials, as a production manager does a show, than those who really intelligently prepare themselves to present a suit so that the substantial rights of the parties may be fairly determined. "The lawyer whom you've seen argue to a jury and indulge in a tear or two for its benefit would not think of insulting the intelligence of a judge by using the same kind of arguments or indulging in the same kind of dramatics."

Perhaps the most interesting thought in the book is that the insincerity and intellectual dishonesty which follow as a natural result of this sort of practice are directly responsible for the fact that the lawyer is losing his position of influence and standing in the community and that respect for his ability of profession is on the wane.

The fervor with which Mr. Stalmaster presents the usual argu-

ments against the jury is persuasive, but he does not convince us that the rule of judges would be the panacea which he predicts—unless some formula for perfecting human nature were also provided. Neither are we convinced that "almost non-existent in these days are the fears once entertained of a haughty monarch" against which the jury was a protection. Our economic system has resulted in institutions quite as powerful as ancient monarchs. However, we are glad Mr. Stalmaster has written this book and we hope that enough people will read it to evoke the "avalanche of controversy" desired in his preface.

SUSIE SHARP.

Chapel Hill, N. C.

Minimizing Taxes, by Jay M. Lee. Kansas City: Vernon Law Book Co., 1931. Pp. xiii, 1293. $10.00.

The outstanding fault of this book is that more than three quarters of the text consists of summarized tax statutes. Indeed if 232 pages of annotated federal acts be reckoned (which so far as I can tell, substantially, though more conveniently reproduce the material in U. S. C. A. without the advantage of Board of Tax Appeals decisions and a freshening supplement) just about nine tenths of the total contents are that highly perishable commodity, tax statutes and tables. In this the book perpetuates, even extends the defect of its predecessor.[1]

It is of course no answer to this complaint that one who in the first of the book has gleaned an idea for saving taxes will want to turn to the statutes of the respective states in one place and see if the idea will work. At the very time when Mr. Lee penned his preface in Kansas City his own legislature and mine were amending their tax laws,[2] and before the volume reached the hands of its earliest readers it had in this respect become an unreliable guide. Considering present sweeping tax programs, federal and state the entire statutory nine tenths bids fair to be definitely faulty and obsolete in two years.

A scrutiny of the one tenth part of the book which deals directly with the subject shows it to be a rather thin, uncritical outline of

[1] SEARS, MINIMIZING TAXES, (1922). Reviewed in 9 IOWA L. BULL. 143.

[2] Mo. L. 1931, p. 365 seems to revise radically upward the income tax rate in force under the 1929 law which is reported in the present text at p. 738. N. C. PUB. L. 1931, Ch. 427 revises income tax rates (§310, p. 605) and imposes a new flat rate on dividends on stock of foreign corporations without exemption. Cf. Ch. 428, §306 (9). Ch. 427 also revises inheritance tax rates (pp. 501-503).

fairly evident tax saving devices, supported pretty satisfactorily by citations and brief digests. First as to business units,—what form of organization to utilize—corporation, partnership or trust—its capital set up and where to organize it advantageously; the manner of doing business as respects intrastate and interstate commerce; employment of subsidiaries; and profit distribution policies.

Second as to individuals,—the effect of domicile; savings through style of investment, as in tax exempts and insurance; gifts and exchanges of property.[3]

In these matters this book follows its predecessor so closely as to be substantially a second edition with current citations and some improvement through an occasional rewritten paragraph or heading.[4] Finally there is added a new chapter of miscellany, part of whose contents is new. It covers somewhat superficially by stringing together a few cases, the topic "Doing Business" and then adds more usefully the tax saving aspects of income and succession taxes; a discussion of sales of corporation assets so as to place the profits in the corporate or the stockholders' pockets as desired;[5] and (except for an insignificant reference to local assessments) concludes with the now highly important item of tax shifting contracts.

In the portions dealing with holding and affiliated companies no mention is made of intercompany contracts nor of the Wisconsin federal cases which shattered tax minimizing endeavors on that front.[6] But the author balanced this rather grievous omission by advance warning (p. 119) of the litigation which has produced First National Bank of Boston v. State of Maine.[7]

To the lawyer who has had a considerable tax practice this book

[3] See one scheme of tax avoidance apparently not developed by the present work: Assignment of Future Income. NOTE (1931) 40 YALE L. JOUR. 663. But perhaps this, at least where unsuccessful, falls in the field of evasion, on which the text has something to say in the introduction.

[4] The material on gifts for example has been amplified and improved. It still suffers by comparison however, with such discussions as that in (1925) 35 YALE L. JOUR. 859, though that comment did not have the benefit of the most recent cases. One most welcome change is the citing of official sources and regular reports instead of the constant advertising of one company's wares and services.

[5] Shifts of this general character are not always accepted by tax authorities. See the recent ruling of the Wisconsin Tax Commission on the payment of rentals direct to the stockholders of a lesser corporation. (Apr. 1, 1932) U. S. Daily, 200.

[6] Palmolive v. Conway, 43 F (2d) 226 (W. D. Wis. 1930); Buick v. Milwaukee, 43 (F. (2d) 385, (E. D. Wis. 1930); affirmed, 49 F (2d) 801 (C. C. A. 7th, 1931); Certiorari denied, 52 S. Ct. 34 (1931). (Cf. LEE, p. 235).

[7] 52 S. Ct. 174 (1932).