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Book Reviews

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Commentaries on the Law. Sir William Blackstone. (Ed. by Bernard C. Gavit). Washington Law Book Co. 1941. Pp. xx, 1040. $6.00.

The first volume of the Commentaries of Blackstone was published in 1765; the three remaining volumes had appeared by 1769. The attacks upon the book began immediately, the mental approach of the writer and the philosophy evinced in his treatment of the subject meeting severe criticism.

Moreover, certain defects and omissions in the work were made evident. The subjects of domestic relations and criminal law were scantily treated; the responsibility of masters for the wrongful acts of servants and the liability of infants for their acts were meagerly explained; embezzlement and false pretence were not considered; larceny and forgery were not fully discussed; only "ways" were treated under easements; fixtures were ignored; and the law of landlord and tenant and bailments were not sufficiently expressed.

However, by 1780 the book had passed through eight editions. Since then there have been more than twenty. And now a new one is offered to the public. Until about thirty years ago this book was studied by practically every candidate for a law license. In more than a century and a half no book has taken its place, and no modern legal system has anything to compare with it.

It follows the work has great merits; and chief among these are a remarkable clearness, grace and elegance of style at once lucid, precise and comprehensive joined to an orderly and logical development of legal topics which unfolds the subject under discussion to a fascinated reader like a great drama.

About 1892 William Hardcastle Brown published his edition of Blackstone without notes, except those necessary to indicate that a law had been abrogated, materially altered, or had become obsolete. As in most of the later editions, much that was without bearing on the present law or the principles which underlie it was eliminated, and the work appeared in one volume. The most striking change was the restatement of the text in modern language and condensed form (which causes wonder at the persistent appearance of the word "aliene" throughout the text). A marked separation was made of each paragraph, and catch words that immediately caught the eye were placed before each paragraph of the revised text.

Dean Gavit has taken the Brown restatement without modification in any particular and at the end of every chapter, except those purely

historical, has added a commentary, designed to explain some of the more technical portions of the law described by Blackstone and also to indicate the development of the law in the United States since Blackstone's time.

In this undertaking the author has achieved marked success, with the result that in a book of 950 pages we have all that is presently valuable in the commentaries, with the clear, concise and comprehensive notes of a scholar, by which with the glance of an eye the reader can compare the law as Blackstone stated it with the law of today. The comments are short, rarely extending beyond two or three pages; they are of a broad character, free from any attempt to show the qualifications and limitations of the text, rendering citations of authority supererogatory.

The excellence of the performance can be illustrated by Dean Gavit's statement of the struggle between the Civil and Common Law, pages 23 to 25, and his comments on the Common Law system, pages 57 to 59, and on Courts in General, pages 538 to 540.

Necessarily, however, in a work of this sort, there will be some differences as to what should be included or omitted in explaining the present law. Thus, there are certain portions of the Blackstone text that this reviewer considers of enough importance to require greater notice. For example, Blackstone, dealing with the laws of England, gives the Common Law rule that if a statute which repeals another is itself repealed, the first statute is thereby revived.[1] No allusion is made to that in the notes, but this rule has been changed by Federal statute and by statutes in most of the States. Furthermore, the comment on Chapter XVIII of the first book does not make clear that on the dissolution of a corporation its lands no longer revert to the grantor.

Also, there are statements in the comments which should be elucidated for the benefit of the student; for example, the statement[2] that it has been settled in England that the power of Parliament is superior to the Courts and that the latter do not assume or exercise the power to declare an act of Parliament unconstitutional deserves qualification.

In England unconstitutional does not mean illegal but unconventional. According to Creasy the English Constitution consists of written documents from Magna Charta in 1215 to the Act of Settlement in 1690; whatever the source, and some are parliamentary acts, they emanate from no place higher than Parliament and are always subject to repeal or modification; like any other Act they are construed by the Courts, the highest of which is one of the houses of Parliament. In England the Courts proceed as do ours, but the question of constitu-

[1] Page 47. [2] Page 152.

tionality in our sense of the word can never arise because the Constitution is of no greater authority than any other statute.

Corporations sole are very rare in the United States, perhaps obsolete except in New York and Massachusetts, and there are few points of corporation law applicable to them, hence Dean Gavit's statement on page 216 is open to objection.

The law as it relates to "base" or "qualified" fees remains in a state of confusion and incertitude. Blackstone states and illustrates what he means by "base" or "qualified" fees on page 274; writers and Courts have come to classify these fees as "determinable" fees or, as the Restatement designates them, "fee simple determinables." This change in nomenclature has added to the confusion, especially in reading Blackstone who does not mention "determinable" fees in his book, hence when Dean Gavit says on page 282 that "qualified" or "base" fees and so-called conditional fees do with earlier concepts of the law and have been rather uniformly repudiated in this country and thereafter on page 330 states "determinable" fees are still recognized in our law, the reader is confused. "Base" fees have had a very interesting history in North Carolina, and the reader is referred to Prof. McCall's article, "Estates on Condition and on Special Limitation in North Carolina."[3]

The statement on page 695 that a Grand Jury is normally limited to six jurors must be an inadvertence. The term Grand Jury was applied because that jury was constituted of a greater number than the usual jury of twelve. If any jurisdiction in the country has a Grand Jury of six members it must be exceptional.

To the law student who feels that to be a cultured lawyer he must know something of Blackstone, to the lover of our literature and institutions who wishes to broaden his historical background, this book is most strongly recommended. Indeed, this edition in one respect is superior to the previous ones, because the reader is given the Blackstone text in a concise manner and his attention is not beguiled by the silken style of the writer.

To the practitioner, the book may supplement but will not substitute for former editions. The lawyer is too cautious to quote from an author whose work has been greatly abbreviated and whose language has been altered; changes in the law he will desire supported by citations; from his point of view the work has an additional drawback, the paging of the original edition is not contained in this one, with the result that time and labor are consumed when a comparison of the two is sought.

The type is clear and easy to read, and hardly an error is noted in the proof reading. A biography of Blackstone, a list of common law

[3] 19 N. C. L REV. 334.

maxims, a glossary of law terms and withal a splendid index add to the value of the work.

KINGSLAND VAN WINKLE.

Asheville, North Carolina.

Trusts in the Conflict of Laws. By Walter W. Land. New York: Baker, Voorhees & Co. 1940. Pp. xxix, 440. $6.00.

For the attorney whose practice involves any considerable concern with trusts, testamentary and *inter vivos,* this volume should be of very real value. It would be important if it served only to make him aware of the risks which the trust must run when it steps outside the bounds of a single state. Differences in laws determining the validity of trusts are sufficiently numerous to constitute serious hazards, but to these must be added differences in rules relating to interpretation and construction and to administration. Moreover, security is not achieved by the domestic character of the trust at the time the trust instrument is drafted or even when it becomes operative. Most trusts are long-term transactions; in the interval between a trust's conception and its extinction, testators, beneficiaries, and trustees may change their domicils, the situs of the trust property may shift, and statutory change may introduce conflicts of law in time to complicate pre-existing conflicts of law in space. Finally, trusts which are not wholly domestic to a single state present the ominous possibility of double taxation.

Mr. Land has brought together the American cases which treat of these problems.[1] Of the more than 400 pages of text, approximately 275 deal with the Conflict of Laws, the remainder with problems under estate, inheritance, property and income taxes. The convenience value of such a collation of material is high, as anyone who has had occasion for research in the field of Conflicts knows too well. Moreover, Mr. Land seems to have been thorough in his research and to write thoughtfully and lucidly concerning the cases. His work is open only to a single criticism of major consequence, and the deficiency is one which the author I suspect regards as inherent in his subject.

The shortcoming which I find in Mr. Land's treatment of many of the problems with which he deals is that, although he depicts numerous points at which Conflicts decisions are in conflict or in confusion, he offers limited aid in resolving these difficulties. On occasion, to be sure, he expresses his own preference for one or another rule, but it is not often that he carries the reader beyond the point at which the decisions of the courts asserting that rule have left him.

So long as Conflicts rules could be regarded as imperatives flowing

[1] Their number is surprisingly high. Approximately 450 cases are listed in the Table of Cases.

logically from the territorial nature of law—so long, for example, as one could accept unquestioningly the proposition that the law of the situs was the only conceivable law to create interests in property—then search for reasons to illumine and fortify the conclusions dictated by the system was uncalled for. But Mr. Land does not subscribe to any such system; he recognizes that courts in the cases which he has examined have often been moved by considerations which, though frequently left inarticulate, seem quite foreign to a territorial-cum-vested-rights theory of Conflict of Laws. Unfortunately, he has not provided his readers an adequate substitute for the dogma which he rejects.

At several points Mr. Land concludes that courts seem to have applied the law with which a trust has had the most substantial contact. He lists the various "contacts" which have been factors in decision, but observes with regret that the courts have not evaluated the factors which they have employed.[2] His criticism is well taken, and it is one which could be extended beyond the trusts decisions and, indeed, beyond the reported cases to the commentary upon them. Yet the court's failure calls for the commentator to attempt the task.

Perhaps the task cannot be performed. Certainly one cannot construct the counterpart of the table of atomic weights out of the thirteen factors which have been considered in determining the law to govern the administration of testamentary trusts of personalty.[3] Perhaps even a crude hierarchy is impracticable. Perhaps, too, the considerations predominant in the decisions are not to be found among the factors at all. But if this should be the case, what does and should control? Many New York decisions on validity, as Mr. Land makes clear, are controlled not by "factors" but by the desire to sustain trusts against attack based upon the peculiar New York rules concerning restraints. Perhaps, if one could get behind the characteristically opaque opinions in this field, comparable controls would be found operating in areas where confusion and conflict seem to predominate.

For the attorney, such inquiries might be revealing when his concern is prompted by litigation, especially on the appellate level. Where, however, he is engaged in the creation of trusts, he must work to minimize not only taxes but the hazards of legal uncertainties. In this undertaking, he will be well advised to heed the numerous suggestions

[2] For example, at p. 206, the author observes, "If in fact the decisions are based upon a combination of factors rather than on one single element, one faced with the problem of choice of the governing law would like to know what elements of the trust the courts consider in making their choice. He would also like to know the relative weights given by the courts to the various factual connections, and whether or not the particular problem of administration has any effect upon what law governs. . . . On all of those questions one receives little guidance from the rules formulated in the past."

[3] Pp. 210-213.

which Mr. Land has provided for the planning of trusts from the standpoint of conflicting laws.

DAVID F. CAVERS.

Duke University School of Law.

The Administration of Federal Work Relief. By Arthur W. Macmahon, John D. Millett, and Gladys Ogden. Chicago: Public Administration Service. 1941. Pp. ix, 407. $3.75.

Behind this unimposing title lies one of the most significant projects in governmental research to be undertaken in recent years. Its point of departure was the unfortunate fact that no record has been made of the evolution of the administrative agencies set up during the national emergency of 1917. Such a record would have been invaluable to the men who were facing the same problems, traveling the same paths, and making the same mistakes in setting up relief agencies during the depression years, and the Public Administration Committee of the Social Science Research Council resolved that when the next emergency arose, the lessons of the depression years would not be wasted. With the entrance of the United States into World War II, the record and the new emergency have arrived simultaneously.

Within a month of the passage of the first Emergency Relief Appropriation Act, the Council commissioned Professor Macmahon of Columbia University to "capture and record" the evolution of the Federal work relief program. He was later joined by Miss Ogden and Mr. Millett, and for a year and a half, until late in 1937, these three were permitted to sit in governmental offices as observers, to talk over administrative problems with the leading figures, and to go through files of correspondence and records, in Washington, New York, and seventeen other states. In 1940 Mr. Millet returned to Washington to survey the changes in organization and policy since 1937, and he and Professor Macmahon prepared this study from a three thousand page summary of notes and papers made by Miss Ogden.

The flexibility of the Federal work relief program has amounted at times to amorphousness. Senator Vandenburg called it "a mystery, born in the dark." It is one of the contributions of the present authors that they not only trace the changes but point out why they were necessary, and why certain relationships that were vague were meant to be vague. As an example of their method, they point out that the Works Progress Administration appeared first in an Executive Order as an agency to review the progress of the program and report to the President. Only incidentally was it empowered to "recommend and carry on small useful projects designed to assure a maximum of employment

in all localities." It was assumed that the Public Works Administration would continue to furnish most of the employment. The line of demarcation between WPA and PWA projects was never clearly drawn. There were two reasons for this: one, that Secretary Ickes was prepared to resign if the PWA were pushed into the background; the other, that the President did not wish to destroy the rivalry between Ickes and Hopkins even if he could have done so. The President has always hesitated to make choices between men. The growth of WPA to the dominant position was thus left to time and to the potent fact that because of the higher ratio of material costs to labor costs in PWA projects, it was four times as expensive to keep a man at work on PWA as on WPA.

In this fashion, combining objective research and personal observation, the story of federal work relief is unfolded from the shadowy beginnings of the plan and the initial legislation to the launching of the program in the last months of 1935. The administrative organization during this period is analyzed in detail, including the various divisions centered around the President and such adjuncts as the Resettlement Administration, the REA, the NYA, and the CCC. Later developments are summarized, the WPA is given special attention, and a final section deals with the relationship of the WPA to other Federal agencies and to state and local governments. Of special interest to the student of law is the account of work relief legislation and the analysis of the role of the Comptroller General in reviewing the legality of specific projects.

Competent and important as are the conclusions of Professor Macmahon and his associates, space will permit of no more than his final statement, particularly significant because of the crisis which world affairs have thrust upon our government since it was written:

"Administratively, the experience of the works program pointed to the following prerequisites for success in large-scale governmental efforts: a clear delegation of the main responsibility, made possible by thorough initial planning; periodic reassessment at the center; and the enforcement of interagency relationships. All these prerequisites must be realized in the President's name without undue encroachment upon the President's personal attention. . . . But the mechanics of administrative action will not yield the full substantive results desired unless there is also public recognition and avowal of the scope and duration of the problem at hand."

SAMRAY SMITH.

Staff Member, Institute of Government,
Chapel Hill, N. C.