1930

Book Review (reviewing Roger S. Hoar, Conditional Sales (1929))

George Gleason Bogert

directs a tax at federal instrumentalities by specifically including them in a statute whose terms did not theretofore embrace them. See Note (1930) 43 HARV. L. REV. 280, 285. There is language in the cases to support such a limitation. See *Macallen Co. v. Massachusetts*, *supra*, at 631; *Miller v. Milwaukee*, 272 U. S. 713, 715 (1927). It has been thought, however, that the *Macallen* decision really involves the much broader principle that a state may not include income from United States bonds in the measure of a franchise tax. *Aberdeen Sav. & Loan Co. v. Chase*, 289 Pac. 536 (Wash. 1930); see Powell, *supra*, at 92. This interpretation, taken together with *Long v. Rockwood*, leads to the conclusion that a franchise tax measured by patent or copyright royalties should be invalid. *Quicksafe Mfg. Co. v. Graham*, 29 S. W.(2d) 253 (Tenn. 1930). But the courts may refuse to extend to income derived merely from the use of a privilege granted by the national government the same protection accorded income received directly from the national government.

WILLS — CONSTRUCTION: IN GENERAL — DISINHERITANCE BY EXPRESS CLAUSE. — *T* left all his property to the "Estate of *T*" and stipulated that "no part of said property be given unto" his niece. No such corporate entity as the "Estate of *T*" existed. The niece brought a proceeding for construction of the will. *Held*, that the property passed to those who would take upon intestacy, and that the share which would be receivable by the niece was to be distributed among the others. Order to proceed accordingly. *Matter of Weissman*, 137 Misc. 113, 243 N. Y. Supp. 127 (1930).

A merely negative provision in a will, unaccompanied by a valid disposition of the whole of the testator's property, will not serve to disinherit an heir. *Matter of Trumble*, 199 N. Y. 454, 92 N. E. 1073 (1910); *Phelps v. Stoner's Adm'r*, 184 Ky. 466, 239 S. W. 780 (1919); see PAGE, WILLS (2d ed. 1928) § 818; 2 TIFFANY, REAL PROPERTY (2d ed. 1920) § 499; (1920) 33 HARV. L. REV. 618. *Contra: Succession of Allen*, 48 La. Ann. 1036, 20 So. 193 (1896). And courts are generally slow to construe a disposition as complete, to the heir's exclusion. *Lane v. Patterson*, 138 Ga. 710, 76 S. E. 47 (1912); *cf. Tea v. Millen*, 257 Ill. 624, 101 N. E. 209 (1913). But *cf. McCaffrey v. Manogue*, 196 U. S. 563 (1905). This reluctance finds its origin in the principle that testamentary power is based on statute, and that statutes in derogation of the common law are to be strictly construed. See (1920) 33 HARV. L. REV. 618. A designation of the beneficiary in an insurance contract as the "estate of" the insured has received an interpretation like that in the principal case. *Weed v. London & Lancashire Fire Ins. Co.*, 116 N. Y. 106, 22 N. E. 229 (1899); *Clinton v. Hope Ins. Co.*, 45 N. Y. 454 (1871). No cases have been found involving the construction of such a designation in a will. But if, despite the indicated attitude, the interpretation of the instant case is followed, the legacy may be considered as a gift to a class, and the subsequent exclusion of a member of the class is, on established principles, valid. *Estate of McGovran*, 190 Pa. 375, 42 Atl. 705 (1889); *Bund v. Green*, 12 Ch. D. 819 (1879).

BOOK REVIEWS

CONDITIONAL SALES. By Roger S. Hoar. New York: The Ronald Press. 1929. Pp. x, 521. $10.00.

This is a handy manual for business executives, credit men, and collection departments, prepared by the attorney for a large scale, habitual conditional

seller. It is obviously based on a careful investigation of decisions, statutes, and practices, and reflects wide experience in drafting and enforcing installment contracts throughout the United States.

About four-fifths of the text is given over to a discussion of the status of conditional sales under the common law and the older statutes, the effect of the uniform acts thereon, the execution, filing, refiling, and foreclosure of such contracts, with final chapters on auction sales, bankruptcy and receivership, sales for resale, "quasi-fixtures," discharges, assignments, criminal statutes, usury, taxation, insurance, and drafting suggestions. The latter one-fifth of the book is devoted to a list of cited statutes, collected by states, an exhaustive set of forms, a brief bibliography, and an index. Besides making liberal references to state and federal statutes, the author cites approximately sixteen hundred cases.

The work seems generally accurate and done with good judgment. It contains a large amount of detailed information regarding local conditional sales law and practice which is valuable. For example, in discussing the filing district, it explains the split-county situations in Alabama, Kentucky, Missouri, and Virginia.

Mr. Hoar's zeal for the welfare of the conditional seller is unbounded. No stone is left unturned in the effort to give the seller a water-tight, bomb-proof contract, valid and recordable everywhere, and enforceable with the maximum of benefit to the seller and the minimum of protection to the buyer. Methods of aiding the latter are not within the scope of the treatise. For example, the means, direct and indirect, of getting the highest possible rate of interest without violating the usury laws, and of securing a valid waiver by the buyer of any statutory protection he may have, are both outlined.

Noteworthy omissions from the book are the material on conditional sales of fixtures and railroad equipment. The absence of any treatment of the former, at least, seems regrettable because of the frequence and importance of the fixture transaction and the lack of apparent reason for excluding it from a general book on conditional sales.

The sections are brief, condensed, dogmatic, without much illustration and with little attention to historical treatment. It is a book for administrators making quick decisions, and not for students who desire a foundation and superstructure or for lawyers who wish an exhaustive analysis and complete references. Mr. Hoar assumes a rather general knowledge of underlying business customs and legal rules. His footnotes usually cite one case or statute only, and often no authorities are given for statements which might well excite a desire for further investigation, as, for example, his assertion that ordinary leases must be recorded in New Mexico and South Carolina,[1] and that certain states have special Statutes of Limitations applying to conditional sales only.[2]

The brevity of much of the discussion may be judged from the eleven-line consideration of the nature of the trust receipt and the comparison of it with the conditional sale. The rather arbitrary disposal of some questions is also to be observed; for example,[3] the author states without argument or explanation that there is "absolutely no logical reason" why the conditional sale for resale should not be good as against all but the ordinary customers of the vendee, and ignores the opportunity which that transaction

[1] P. 12. [2] P. 234. [3] Pp. 310–11.

gives the vendee to mislead his creditors and to obtain credit on the faith of apparent ownership.

Mr. Hoar lays emphasis on a chapter called "Uniformity of Uniform Laws." The uniform acts each have a section directing the courts to construe the act "so as to effectuate its general purpose to make uniform the law of those states which enact it." The author argues that this section *compels,* and not merely *persuades,* a court to follow the decisions of the courts of another state when in point. He cites[4] a number of cases which he says support this position. On examination, however, they are found to be instances in which courts have willingly accepted decisions from other states in construing a uniform act, even to the extent of overturning a local rule, adopted before the enactment of the uniform law. In giving such voluntary recognition to foreign decisions, the courts have sometimes stated in rather broad language a general duty to follow such foreign decisions. But Mr. Hoar does not point out cases in which a court construing a uniform act has unwillingly admitted that it was bound to follow the construction put upon the act by a court of another state. Such a foreign decision is no doubt extremely persuasive and, except in rare instances, would be followed; but experience has shown that if the foreign decision happens to seem to the local court badly reasoned and poorly decided the local court will regretfully refuse to accept it. In many instances the courts have disagreed on the construction of the Negotiable Instruments Law. One of the most potent reasons for the present movement to provide uniform amendments to that act is the desire to harmonize conflicting construction. Here, notoriously, the courts have refused to adhere blindly to earlier foreign construction of the uniform statute.

Another matter treated by Mr. Hoar at length and with urgency is the effect of the Uniform Sales Act in validating conditional sales. He accepts and champions *Scherer-Gillett Co. v. Long,*[5] in which it was held that the Uniform Sales Act (especially Section 20) validated the conditional sale in Illinois after it had been declared void as against innocent third persons for many years. It seems clear to the reviewer that the Uniform Sales Act applies to the conditional sale wherever that institution is recognized, but that it takes no position regarding the occasionally disputed question whether a conditional sale is fraudulent and whether the conditional seller should be estopped as against innocent third persons from setting up his reserved title. In Section 23 of the Uniform Sales Act it is in substance provided that a seller can pass no better title than he has, except in cases of estoppel and some other instances. The Act makes no effort to define estoppel, but leaves in effect any rules already existing in the several states. Among such rules in a few jurisdictions was the doctrine that a conditional seller was estopped from asserting his title as against innocent purchasers from, and creditors of, a conditional buyer. In Kentucky conditional sales have long been treated as having the legal effect of a chattel mortgage. Kentucky recently adopted the Sales Act. It would no doubt surprise Kentucky lawyers to be told that the adoption of the Uniform Act has validated the conditional sale as a distinct institution and thus overturned the long-standing policy of the commonwealth.

---

[4] Pp. 40–41. [5] 318 Ill. 432, 149 N. E. 225 (1925).

Mr. Hoar has achieved the seemingly impossible task of writing a book on sales without once referring to Professor Williston's work or views. In his bibliography and elsewhere he seems to manifest a marked preference for the commercial services and practitioners' books, as distinguished from the products of the law school faculties.

GEORGE G. BOGERT.

University of Chicago Law School.

CASES AND MATERIALS ON THE LAW OF SALES. By Karl N. Llewellyn. Chicago: Callaghan and Company. 1930. Pp. xxxv, 1081. $9.00.

Professor Llewellyn has prefaced his book with an introduction of fifteen pages in which he explains his purposes and attempts to justify them. He sets forth his views on teaching law, teaching the law of sales, sales as a case-method course in the second year, and the net purpose of annotations. In addition he furnishes to the student and reviewer statistics of the book. He has, indeed, written a full and thorough review of his own book from his own point of view, and certainly no one could have done it better. It seems to the reviewer, therefore, that it would serve no very useful purpose to attempt a detailed exposition of Professor Llewellyn's views or to attempt to support, modify, or refute them. Two main features of the book, however, deserve comment: the use of case material, and the scope and arrangement of the book.

The author's position on the use of cases may be summarized as follows: the facts of a case are its most important element; rarely does the student of decisions get the facts undistorted; there is the inevitable distortion because the facts reach him second-hand and usually third-hand, and the further distortion due to the court's molding of the facts to fit the decision; it is consequently necessary for the student to read a great quantity of cases and critically to compare them in order to detect and reduce these distortions and to appreciate the law of sales in judicial action; in order that a case-book should present material in sufficient quantity it is necessary to print cases in quantity, and therefore it is necessary because of space limitations to edit and cut the cases, facts and opinions, to the least possible content; this process does no great harm, since the subject of Sales is usually a second-year course, and the student learns to study cases in the orthodox manner in the first year.

It may be admitted that facts are most important. That they reach the student subject to some distortion is inevitable: they usually reach the trial court second-hand, the appellate court third-hand, and the student fourth-hand; and, in addition, two of these stages are often subject to conscious distortion of counsel designed to make those facts produce desired results. The danger of this type of distortion is always present, but it is to be doubted if intentional distortion by the court is an important factor in Sales, where there is much less opportunity for emotional reaction than in some of the more dramatic subjects of the law. An attempt to determine the significance of this factor seems to involve a study of psychology or judicial administration rather than of the substantive law of sales. Hard cases make bad law, or good law, depending upon the view one takes, in Sales as in other subjects. But such cases are distinctly the exception rather than the rule. Moreover,