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Book Review (reviewing Joseph Warren, Select Cases and Other Authorities on the Law of Conveyances and Related Subjects (1922))

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Recommended Citation

Harry A. Bigelow, "Book Review (reviewing Joseph Warren, Select Cases and Other Authorities on the Law of Conveyances and Related Subjects (1922))," 36 Harvard Law Review 124 (1922).

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the ends of law. To see the classical Roman lawyers making practical compromises while reaching out for doctrines not yet grasped, and to compare this with Lord Coke's proposition that many things have been introduced into the common law contrary to legal reasoning on the ground of utility, is a useful exercise for the analytical jurist.

Such things contrast significantly with the general run of text books of Roman law, and one hesitates to express a doubt about so commendable a design so well executed. Yet I cannot but feel uneasy lest the subordination of analysis and rejection of modern systematic ideas may have gone too far. For the plan so scrupulously adhered to involves serious sacrifice. The author states without comment the proposition in the Digest that the contradictions it contains are only apparent, if the text is looked at properly (p. 34). Surely a caution to the unwary student would not be amiss here. This is a characteristic proposition of the maturity of law when all legal precepts are thought of as put in force at one stroke and juristic activity is thought of as a reconciling, ordering, systematizing activity whereby these precepts are to be made consistent and logically interdependent and are to be so classified as to be readily grasped and assuredly applied. Here and elsewhere one must feel that the design of excluding everything but the actual Roman law, as the Romans applied it to Roman problems, put in terms of Roman doctrinal reasoning and told in Roman classification and in the Roman order, has resulted in excluding too much. For example, in connection with interpretation by the *pontifices* he notes that there is not much to be said for the logic of their interpretations; they were useful means of altering the law to meet the needs of advancing civilization (p. 2). In such a connection comparative legal history might be used with effect and without recourse thereto the matter may hardly be put in its real aspect. So in connection with the declaratory beginning of imperial legislation by rescript (p. 20). Or the remark that "the Roman habit" did not permit fusion of two issues, e.g., claim and set off (p. 696). Is this merely a "Roman habit"? Is it not a general phenomenon of the beginnings of law and should it not be put as such? Or, again, in connection with the power of the Senate to direct a magistrate not to apply a given law in a given case or for a given time (p. 13). Here comparative law may be made to suggest matters of the highest value for the science of law. If Roman law is studied for its possibilities of enabling us to understand and to treat intelligently the law of today, such things must be looked into and must be emphasized. Yet so much has been written about Roman law from a juristic and comparative law standpoint without a solid basis in ascertainment of what the Roman law actually was that rigid adherence to a purely descriptive method is intelligible as a reaction.

It should be said, however, that parallels are sometimes suggested, e.g., in connection with appeals by *rescriptum* (p. 19), and that sometimes, without going into comparative law, illuminating suggestions are thrown out as to where to look (p. 395). Moreover wide learning and a sense of the bearing of comparative legal history are shown by stray observations everywhere (see, e.g., p. 7, note 2). But the strict exclusion of all matters that require comparative law or comparative legal history for a full answer is likely to prevent any but teachers of the highest ability and widest preparation using the book for anywhere near its full worth.

ROSCOE POUND.

CASES ON CONVEYANCING. By Joseph Warren. Cambridge: Published by the Editor. 1922. pp. xi, 807.

This work is, as Mr. Warren says in his preface, largely based upon Professor Gray's collection of cases on real property. The subject matter

is for the most part that covered by Volume 3 of Gray's cases with a few topics from other volumes of the series.

The arrangement is largely that of Mr. Gray. Original acquisition of title is first discussed in Chapters on Accretion, and Adverse Possession and Prescription. Chapter 3 takes up Forms of Conveyancing; Chapter 4, Description of Property Granted; Chapter 5, Estates Created; Chapter 6, Landlord and Tenant; Chapter 7, Joint Ownership; Chapter 8, Creation of Easements and Profits; Chapter 9, Covenants for Title; Chapter 10, Execution of Deeds; Chapter 11, Registration; Chapter 12, Estoppel by Deed; Chapter 13, Dedication.

It will be noticed that the order of the chapters varies somewhat from that followed by Mr. Gray. For the most part each of the chapters individually very closely resembles the corresponding one in Mr. Gray's cases. This resemblance varies from that of Chapters 1, 3, 4, 5, 9 and 13, where the cases used by Mr. Warren, sometimes with omissions, are exactly those of Mr. Gray and in the same order, to Chapters 2, 7, (which corresponds to 6 Gray, Book XII, Chapter 3) 8, 10, 11 (which corresponds to 6 Gray, Book X, Chapter 2) and 12, where, although the bulk of the cases is the same, the order has been changed, and other cases, almost always recent ones, have been added.

In thus stating with some detail, the similarities between Mr. Gray's work and Mr. Warren's, no implication is, of course, intended with regard to Mr. Warren's work, except that of the good judgment shown by him in retaining material which experience as a teacher has shown to be well adapted for the work in hand. The desire which the compiler of a case book not infrequently feels, however unjustifiable the feeling may be, of avoiding even the semblance of following another case book, by finding another case "just as good" was entirely exorcised so far as Mr. Warren was concerned, by the fortunate relation in which he stood to Mr. Gray; and he has done well to take advantage of it. It will lighten materially the labor of transition for those teachers who are accustomed to Mr. Gray's work and desire to substitute that of Mr. Warren.

From the foregoing observations it might perhaps be inferred that the work of Mr. Warren is merely a re-arrangement. Such is not the case. As has already been mentioned additional recent cases have been incorporated in the text in numerous instances. More than this, Mr. Warren's work is seen in a most helpful form in the notes. The footnotes under the various cases are ample and contain a sufficient, and on certain obscure points, what seems to the reviewer, an exhaustive citation of authority. These cases are recent decisions, a particularly desirable feature where so large a proportion of the cases is, as is the case with Mr. Gray's work, of not particularly recent date. The footnotes seem on the whole to be framed rather with the idea of giving information than of being used as a basis of class-room discussion. In addition to the footnotes Mr. Warren has incorporated a number of valuable notes on matters not covered directly by the cases. Among such are a two-page preliminary note to the chapter on Covenants for Title in which the subject matter of the various covenants and the measure of damages for the breaches are stated with sufficient fullness of citation to give at least a bird's-eye view of the subject; and the two-page note dealing with boundaries on ways.

The most striking and valuable contribution made by Mr. Warren is Chapter 6, covering the subject of Landlord and Tenant. Here are collected in one place cases dealing with topics that many teachers of real property have felt belonged together, but which in Mr. Gray's collection remained scattered. This chapter covers the various kinds of leasehold-

interests, covenants by the landlord as to the condition of the premises, waste, various aspects of the law of rent, including remedies, apportionment, suspension and extinguishment, and the termination of the relation of landlord and tenant. While the cases to a considerable degree are those used by Mr. Gray, there is this unified collocation of them and a large infusion of recent American decisions. Such a citation and use of modern cases are particularly desirable in a subject that in certain aspects is in such a process of transition from a property to a contract basis as is the one under consideration.

The construction of a case book is so largely a matter of individual preferences that it is inevitable that judgments should vary somewhat. Since, as Mr. Warren indicates in his preface, the subject matter embraced is too large to be covered in a 32 hour course and a certain exclusion must necessarily obtain in the material to be used in class room work, it might be wished that he had judged it desirable to give a choice of cases covering the modern law of Estates Tail and of Dower and Curtesy. But these are after all differences of detail. The proof of the pudding is in the eating. The work looks like an eminently usable one for teaching purposes and Mr. Warren's long experience as a teacher tends strongly to support the presumption that it is such.

HARRY A. BIGELOW

INSTRUCTIONS TO JURIES. By Henry E. Randall. Kansas City, Mo.: Vernon Law Book Co. 5 volumes. pp. xi, 1010; iv, 2150; iv, 3474; iv, 4845; iv, 5361.

Though written primarily for the practising lawyer and for the trial judge, Randall's Instructions to Juries will be welcomed by every student of the law. The author has assumed the rôle of the historian, who it is said should chronicle and not philosophize; yet by giving to us an accurate and authoritative statement of the law which has been actually announced and of the instructions which have actually been approved, he has furnished the data from which the more or less cloistered legal scholar may generalize, and he has paved the way for reform if reform be necessary. The first volume contains a clear and concise statement of the rules which the courts have actually announced "Governing the Giving and the Refusal of Instructions," and in the four succeeding volumes are some twelve thousand approved forms of instructions which cover every branch of the law and which are supported by some forty thousand citations.

To a certain extent the work is a digest, but it is much more than a digest. It is a chronicle of the common law of America in relation to the conduct of jury trials in so far as that common law has been announced in the form of instructions to juries. It is not a collection of syllabi which have been prepared by court reporters, nor of rules of which the author alone approves. Nor is it a collection of syllabi which, even when prepared by the judges themselves, are usually written perfunctorily and in haste; but it is a collection of rules which have been actually announced and written instructions which have been made applicable to clearly stated facts and which have been subjected to the ordeal of rigid criticism. The value of such a work, if accurate, must be very great, and fortunately, the volumes which are before us bear every evidence of accuracy and undoubtedly are the result of years of laborious toil and of a page by page examination of thousands of reports.