Yale Law Journal

Volume 15
Issue 6 *Yale Law Journal*

Article 6

1906

REVIEWS

REVIEWS.

Wald's Pollock on Contracts. Third American from the Seventh English Edition, by Samuel Williston. Baker, Voorhis & Co. New York. Pages cliv, 985.

Taken all in all, no other work on Contracts is so well written as is the work of Sir Frederick Pollock. No other work gives quite so well to the student the reason of the law or criticises the actual decisions of the courts quite so suggestively. The author constructs his statements of legal principles always from the standpoints of history and of logic. To this text, the editor of the third American edition, basing his notes upon the work of the late Professor Wald, has added an excellent view of the American decisions. The citations are very numerous and well classified. If the text can be said to become in spots too theoretical or too obviously learned for the use of any but the professor and the historian (as very possibly a busy practical lawyer might be inclined to think), the American notes can scarcely be said to be open to the same criticism. The notes, though chiefly confined to the citation of authorities with a mere statement of the rule which they are cited to support, frequently contain additional comments and explanations as suggestive as the text itself. Instances of such notes are to be found at pages 208 and 209, subjoined to the author's discussion of performance of an existing obligation to a third person as consideration for a promise of a second, and distinguishing actual performance from a promise of such performance. The portion of the work dealing with contracts for the benefit of a third person, written by Professor Williston, and appearing heretofore in 15 Harv. Law Rev. 767, is a sane and reasonable exposition of the law, having proper reference to the actual course of the decisions in this country. The inconsistencies of the various jurisdictions are set forth, and a working theory is suggested competent to solve questions arising under this head and to justify in the main the trend of American decisions. The law in the United States on this subject must be said to be in an amorphous condition, rendering classification and logical statement of principles extremely difficult. The reviewer has seen no other treatment of the subject open to so few objections as is this. Throughout, both author and editor avoid both the encyclopedic and the digest forms of text-book, forms which are at present so numerous, and which, though possibly useful enough to justify their existence, add nothing to the scientific understanding of legal principles or of their reason or their history. Although the editor of this edition has added 150 pages of original matter to the text, in order to complete the treatment of the general subject, the subject of joint con-

tracts appears to be still omitted. As was properly to be expected, this book may be used with great convenience in connection with Professor Williston's recent collection of cases on contracts, the notes in which frequently appear bodily in the new edition of Pollock, and the cases printed therein at length being very largely the ones discussed and criticised by Pollock in the text and by the American editors in the notes (with the exception of certain chapters). *A. L. C.*

Cases on Quasi Contracts. By James Brown Scott, A. M. (Harvard), J. V. D. (Heidelburg), Professor of Law in Columbia University. Baker, Voorhis & Co., New York 1905. Buckram. Pages, 772.

The compiler of these cases on Quasi Contracts uses Keener's Cases as his model, but considerably abbreviates that admirable collection. This he has done because he considers the latter work—it being recognized that a case-book is of little value except to students—rather too long for the time usually given to this subject.

The first feature noticeable is the introduction which treats of the earlier recognition given by the *Corpus Juris Civilis* to quasi contracts and to the comments of Austin, Adam Smith, Maine and others. This essay is interesting, and should be of value because not so much of what it tells concerning the Roman law as of its tendency to make clear the scope of the subject and to guard against the too frequent confusion between contracts "implied in fact" and contracts "implied in law."

The reader will next remark upon the large number of ancient cases inserted. This feature (due, doubtless, to the desire for brevity) will not be found objectionable. Though the position of the law on the subject is anomolous, since the action is in nature equitable, being founded upon neither tort nor contract, but by fiction legal, nevertheless the facts of the early cases are, as well as the judgments, simple and easily comprehended. While it seems at first strange that most of the law on a subject which is so unplaced that it has only in comparatively recent years been given a suitable name, is well settled, yet the need of its recognition was always so patent that its principles were for the most part described at an early period.

Professor Scott evidently found few cases decided since 1895, and none since 1900, worthy of insertion. We think that the last decade has not been so barren in valuable cases that no representation is deserved. A case which comes to our mind, on a point not covered by the present collection and recently decided is *Gregory v. Lee,* 64 Ct. 407.[1] Owing to code procedure, and to the frequent failure of decisions to distinguish between quasi and implied contracts (a distinction, by the way, forcibly explained by Professor

1. This case concerns the nature of an infant's partially executed contract for necessaries

Keener in his text-book[2]) it is difficult to find the recent cases in the digests. Some citation here, if only in the notes, would have increased the utility of the work. The compilation will be found a good working case book, even for an advanced student, for the notes contain numerous references t foreign writers. On the whole the ground is well covered.

G. S. A.

A Manual relating to Special Verdicts and Special Findings by Juries. By George B. Clementson of the Wisconsin Bar. West Publishing Co., St. Paul. Sheep. Pages lxi, 350.

A peculiar interest always attaches to the work of a well equipped author in a field not previously covered by other text-writers, and this is true even when, as in the present case, the topic comprises only a minor sub-division in the realm of law. We have no doubt that this volume will be cordially welcomed by those who believe that the tendency of special verdicts is "to dispel the occasional darkness visible of general verdicts." (*Carroll v. Bohan,* 43 Wis. 218.)

The preliminary historical chapter, based to some extent on the work of Professor Thayer, gives us a careful outline of the development of the theory of the special verdict, and concludes with an arraignment—more ingenious than convincing—of the jury system. The author, while regarding the special verdict as a distinct advance, declares it to be only a long step in the direction of the removal of the cumbrous and unsatisfactory machinery of trial by jury.

Chapter II takes up the matter of "Questioning the Jury as to Verdict" and will prove the most interesting portion of the work to New England lawyers. The third chapter reveals the inevitable difficulties which confront an author writing upon a subject so largely governed by statute, as is the one with which we are here concerned. The best that can be done is to provide, as the author has done, a synopsis of the statutes of those states where the special verdict is in common use.

Chapter IV takes up the distinction between the special verdict and findings in response to interrogatories. In the endeavor to make clear this somewhat puzzling question, the author remarks that "the submission of interrogatories is a sort of 'exploratory opening' into the abdominal cavity of the general verdict." This effective surgical metaphor points out a way in which the text-writer of the future may illumine his pages filled with the more prosaic details of the law.

The succeeding chapters deal with Discretion of the Court, Request for Interrogatories, Instructions, Argument, Findings, and other like details of practice. Chapter X takes up the special verdict proper, and the remainder of the work is devoted to that topic. The general impression made upon us by the work, is that a difficult

2. Keener on Quasi Contracts 14 ff.

task has been attempted, and accomplished with as great a measure of success as the limitations of the subject permitted. The skill of the author in his careful, thorough analysis of his subject, leads us to hope that he will devote his next treatise to a branch of the law that will yield results more commensurate with the amount of labor involved.

B. E. C.

Courts and Procedure in England and New Jersey. By Charles H. Hartshorne. Soney and Sage, Newark, N. J., 1905. Buckram. Pages xi, 223.

This is more a form of campaign document than a legal work. It is in no sense of the word a text-book, although as the reform advocated is of a legal nature and is well set forth, the book is interesting to read if not to study. The author does not like the present system of courts and procedure in New Jersey nor the suggestions for reform that have so far been seriously brought forth. He thinks that there must be something wrong in a system which compels judges to sacrifice and needlessly delay the settlement of substantive rights in order to determine non-essential details of procedure, and objects to New Jersey being preserved as a pleading park wherein to save the glories of negative pregnant, *absque hoc, replication de injuria,* etc., so that thy may gratify the curiosity of future generations. In considering the way in which other jurisdictions have obtained relief from systems similar to the present antiquated and intricate one of New Jersey, he divides the reforms into three classes: (1) The Pricemeal Relief, (2) The Code and (3) The British and Connecticut Reform. We think that he shows very sound sense in preferring the third. After taking up and comparing separate instances of the difficulties of New Jersey procedure, he sketches a program of reform as much along the lines of that reform as he thinks at present practicable for New Jersey.

S. H. B.

American and English Annotated Cases. Vol. I. Edited by H. Noyes Greene. The Edward Thompson Co., Northport, L. I., N. Y., 1906. Sheep, Pages 1105.

This is the first volume of an apparently unlimited series, the aim of which, it is clear, is the selection and annotation of the current leading or settling decisions in England, Canada, and the United States. The points wherein (we judge from the present volume) this differs from former similar series are its magnitude, its inclusion of Canadian and English cases and the character of its annotations. It is difficult exactly to define the line by which a collection of this kind should be bounded so that, while all necessary cases shall be included, there shall nevertheless not be a mere jumble of haphazard selections. For a volume of this kind to include a

minor case of unquestioned doctrine is less detrimental only than to lack a case of importance. In the present volume this line of boundary is well chosen. But to give a conclusive criticism it is necessary to see one or more of the succeeding volumes—this because the editor has taken cases reported all through 1904 and has sometimes reproduced cases decided in 1903. Since four volumes, approximately of the present size, are to be published yearly it will be seen that soon each volume will cover but a quarter, instead of a full year. To criticise a work in advance is, of course, preposterous—certainly not our intention—and we trust that the present standard of cases will be maintained. The value of the inclusion of English and Canadian cases is self-evident. The settled custom of citing English, and the growing importance of Canadian cases surely justifies the effort to place those of the most value in the hands of lawyers who might very probably not have access to the original reports. The notes aim at the exhaustion of the immediate points involved, and with success. The criticism which is made to order for this treatment is, of course, that it is only a small minority of cases that a point, identical with that of another case, arises. Rambling notes, however, are an abomination, and one may at least be sure that the points treated in these cases are well covered. Great effort seems to have been made to cite at least one decision from each state when possible. On the whole, the editor is to be congratulated on his production. If succeeding volumes sustain the present standard, the work will be successful.

G. S. A.