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BOOK REVIEWS

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Railroad Valuation by the Interstate Commerce Commission. By Homer B. Vanderblue. Cambridge, Harvard University Press, 1920. pp. 119.

A new book on Valuation is no novelty in these days, but Professor Vanderblue's *Railroad Valuation by the Interstate Commerce Commission* is novel in that it does not attempt to promote any pet theory of the author, but is a comprehensive review and digest of the official reports of proceedings before the Commission and of briefs filed with them, together with the author's comments thereon.

Introducing the book by referring to the Transportation Act of 1920, the author sums up the matter in a single happy phrase, "From a rule of negation designed to protect the railroads from 'confiscation' an affirmative program has been evolved" (p. 1).

Passing on to the subject-matter of the book, the author says, "The skeptic who characterized the Railroad Valuation Amendment to the Interstate Commerce Act as legislation which attempted to achieve the impossible, has, *prima facie,* been discomfited" (p. 7).

Current literature has been ignored, happily for the most part. It is perhaps to be regretted that such exclusion is so rigid that no reference is made to the very complete and forceful presentation of the matter contained in the report of the Committee of the American Society of Civil Engineers and printed in their *Transactions for 1917* as paper 1401.

The Commission's Reproduction Hypothesis is treated at length, and criticism of the method is reserved generally for the final section on Value.

In dealing with Depreciation, the author's comments are, on the whole, favorable to the work done by the Bureau of Valuation in finding Depreciation itself, although severely critical of the logic used. He states that "the carriers have quite justly maintained that the Commission has enunciated a definition in terms of worth, or value, only to report figures in terms of loss of service units, or of the exhaustion of 'capacity for service'" (pp. 46, 47).

The author did not go on, as he might well have done, and point out that when the Bureau of Valuation expresses the *equivalent* of depreciation in terms of dollars, in its so-called "Cost of Reproduction Less Depreciation," it ignores the vital factor of time and the earning power of the very dollar which it uses as a unit of measure. Instead of finding the present service value of the depreciated unit of property, the Commission sets up a theoretical figure, based upon the wrong hypothesis that the cost of restoring the portion of service life which is gone, is due and has to be met to-day, when in fact it will not have to be met until some time in the future, more or less distant.

This it does through the application of the so-called "Straight Line Theory" and it may be that the author had this in mind when he says, "The adequacy or inadequacy of past accounting methods are not in question, tho it is conceivable that they may raise ethical rather than economic questions" (p. 51). To illustrate: Assume a locomotive cost $50,000 and has twenty years of life. The method of setting up depreciation adopted by the Bureau of Valuation is to charge off 5%, or $2,500, per year, with the idea that this will amount to $50,000 at the end of twenty years. As a matter of fact, if such a sum of money were set aside in a savings bank drawing interest at 4% compounded quarterly, it would amount to much more than $50,000 when the time came to replace the locomotive. If, instead of being placed in a savings bank, it were invested in bonds of the company at a higher rate of interest, the amount would be still greater. The proper rate of depreciation should be that which compounded semiannually at

say 5% would amount to the principal sum at the end of twenty years. This instead of being $2,500 would be something nearer $1,000.

The Commission's finding as to the Value of Land is stated by the author to be "a conscious attempt to apply *dicta* expressed by Justice Hughes in the Minnesota Rate Cases" (p. 53). In criticism he says, "If there is one thing that opinion did *not* do, it was to reach any decision explicitly about land. It condemned what had been done; but it proposed no substitute program . . ." (p. 53). "The truth would seem to be that Justice Hughes (following the example of Justice Harlan in *Smyth v. Ames*) discussed phases of the problem, and decided nothing except in terms of disapproval" (p. 68).

The author argues at some length for "Cost" as the proper measure of Railroad Land, although he admits that the so-called "unearned increment" in railroad lands is "comparable to the 'unearned increment' accruing in the rent of sites devoted to other than railroad purposes" (p. 71). The argument is of little convincing force and the logic seems to be faulty, unless the author is willing to accept in full the theory held by some that land is a natural element which should be used solely for the benefit of the community and never for private gain.

In his chapter on "Cost," the author brings out clearly that "Investment in the Property" is made just as surely when money which might legitimately be distributed in dividends is put back into the property, as when it is furnished from other sources.

In the chapter on "Final Value," the author points out that lowering the rates will not *necessarily* reduce earnings. In the Kansas City Southern Case, present rates are assumed to be correct and value is based on capitalizing the earnings, present and prospective, based on those rates, and the author condemns the reasoning which he calls arguing in "the vicious circle."

The author's argument throughout this whole chapter, like that in the chapter on land, is for "Cost" as the proper measure of Railroad Value, ignoring the fact that the data necessary to find "Cost" does not exist, because many records are missing and those which do exist were not kept in a way to divulge the cost to date or the so-called "investment." From this predicament the author offers no avenue of escape, but contents himself with a general condemnation of the attempt which the Commission has made to find a figure of Value in accordance with the mandate of law, implied at least in the Valuation Act, and required in the Transportation Act.

The principal value of the book will be found perhaps in its citations of the reports of hearings and of briefs filed with the Commission and the quotations made from them. These citations are very full and, as an index, are very helpful to the student of Valuation.

EDWARD G. BUCKLAND

New Haven, Connecticut.

The Young Man and the Law. By Simeon E. Baldwin. New York, The Macmillan Co., 1920. pp. 153.

It is not the object of the book, as the author states in his Foreword, either to induce any man to take up the law as his life calling, or to dissuade him from it. It is its object to state fully and plainly both the advantages and disadvantages of the legal profession in the United States, the opportunities which it offers and the risks which it involves, the conditions of success, and the chances of failure. The object of the book, as thus defined, has been successfully and admirably accomplished. The book is instructive and interesting. It is a book which was needed, and well worth the writing. That it has at last been written, and written by a man so well fitted to the task, is something we may congratulate ourselves upon. Its author, it is hardly necessary to say, is pecu-

liarly well qualified for the task he undertook. For many years he was a Professor of Law in the Law School of Yale University, and he has served as Chief Justice and Governor of Connecticut, and President of the American Bar Association, of the International Law Association, of the American Historical Association, and of the American Political Science Association. While he is a scholar of diversified learning his chief devotion has been to the law. And this book is written by a man grown old in the law to the young man who has not determined whether it is wise or not to adopt the law as his life work. It sets forth the attractions which the legal profession offers to those who are fitted to enter it. At the same time it states the objections which exist to choosing the law as a profession. It is evident that the writer has attempted to state both sides fairly and without bias. That he should devote twice as many pages to the attractions as he found it necessary to give to the objections is only what one would expect. Then follow chapters on The Personal Qualities Requisite for Success in the Legal Profession, The Education Requisite for Success in the Legal Profession, and one on The Ideals of the Profession.

Judge Baldwin writes that "no one can rise to the highest ranks of the legal profession who is not honest at heart." He adds, "One of Carlyle's wise sayings in *Past and Present* is this: 'How can a man, without clear vision in his heart first of all, have any clear vision in the head. It is impossible.'" Carlyle and Baldwin are quite right. A lawyer, at the head of the Bar of his State, told the reviewer that he once asked a Justice of the Supreme Court of the United States, with whom he was walking down the street in Washington, whether a certain man was a great lawyer. The reply was: "How can he be? He is without any moral sense."

In discussing the personal qualities requisite for success in the profession of the law the author begins by saying that in no profession will success be probable to one who is not of fair ability and industrious habits. In addition to these qualities the practicing lawyer should have steadiness of purpose, good sense, good judgment, and good knowledge of the workings of the human mind. A good character is a man's best capital in all callings. It is the indispensable capital for a successful lawyer. The author says:

"Self-confidence is another possession of particular value for a lawyer. It may, of course, be nothing but ill-disguised self-conceit; but, if it be not thus misnamed, it is a desirable quality for every man who would win success in any profession, and to a lawyer, where founded on a just appreciation of one's powers, will be a great help in assuming on occasion a burden which is to be suddenly taken up or rejected.

"A young lawyer should not shun responsibility. If an important or doubtful case is put in his hands, he should not ask his client, when it is coming on for trial, to retain older counsel to assist him. To make such a request is a confession either of incompetency or of want of knowledge of his own powers."

The charge that Legal Procedure is antiquated and unfair is commented upon at some length. The law is bound up with the modes and forms of judicial procedure. It cannot be otherwise. Courts exist to do justice, but always by following certain prescribed rules and methods. The author says:

"Courts of justice may become in rare cases, and for the purposes of a particular judgment, courts of injustice. This is a part of the necessary order of things, under a system of permanent rules of procedure and decision. The parties would not be justly dealt with, unless the court applied the rules as they exist, notwithstanding it may support the maxim, *Summum jus, summa injuria.* Here is one of the things that Kings are good for. Relief must be sought for the past in the pardoning or dispensing power, if such there be; and for the future in a change of legislation.

"Legal procedure takes its color from the nature of the law, the proper effect of which it is designed to secure. The law to be studied and invoked by American lawyers is in the main the Anglo-American common law. If it were to be found in the shape of a code framed, like that of France, a century or more ago, its mode of expression would be necessarily somewhat antiquated; and some

of its rules might well be, also. But the common law, never having been wholly and systematically reduced to written form, leaves far greater freedom in the people, if not the courts, to make improvements in it, adding or retrenching from time to time, in conformity with the spirit of the age, and agreeable to the ripened common sense which gives it character."

Judge Baldwin makes it very evident that he does not believe in a Code. The law, in its widest sense, is, in his opinion, anything but stationary.

"There are great advantages in trusting to a common law, the creation of the people, rather than to a code, the creature of legislation. One is elastic; the other rigid. One registers conclusions reached in the past; the other, rules laid down for the future."

The opinion which he entertains of trial by jury is shown in the following statement:

"At first sight, it would seem that a jury trial was but a poor way of deciding controversies. Anacharsis said of Athens that in his Assembly the wise men argued causes, but the fools decided them. A keener mind put the matter in a clearer light. Aristotle said that it was safer to depend on the judgment of the many, than of the few. In a large body of men no one person might be particularly eminent. Nevertheless, each had some valuable quality or faculty that was noticeable, and together they possessed them all. The jury is not as numerous as an Athenian Assembly, but its members have a considerable variety of qualities, and something of what is addressed to them in argument is pretty sure to appeal to one of them, if it does not to another. It is a reasonably fair miniature of the community."

The opinion expressed by Lord Chief Justice Reading in an address delivered in New York in 1915 is quoted approvingly by Judge Baldwin. The Lord Chief Justice expressed himself as strongly impressed with the undesirability of the constant reporting of decisions which lay down no new principle, and advised the reporting of only the application of old principles to new facts. In Judge Baldwin's opinion it is "an intolerable practice" for a country where there are fifty courts of last resort that new cases should be reported which simply repeat what has already been judicially determined in the same jurisdiction.

There is much interest in what the author has to say of the opportunities of the lawyer for making money. Judge Baldwin states that no incomes of English barristers have ever been as large as the largest in the United States. One reason for that is the fact that in England there are at least two lawyers to be paid for the trial of every case, the barrister and the solicitor who employs him. Nothing is said as to the probable income of the lawyers of the present day. The leaders of the Bar of the United States at the present time are in receipt of a larger income than lawyers ever before received. It is pretty generally believed by the well informed that in New York City a few lawyers enjoy a professional income of $200,000 or more a year. A somewhat larger number make $100,000 year. But the number who do this is not large. An English barrister stated in a public address in 1910 that there were not fifty men in the whole Kingdom who earned a steady net income of £1,000. In a case recently settled in the Federal courts in New York the sum of more than $800,000 was awarded to the lawyers who represented the successful litigants. There is a striking difference between the incomes of to-day and those of one hundred years ago. This is shown by a fact not mentioned in the book but which appears to be well verified, viz. that in the great Dartmouth College Case a fee of five hundred dollars was paid to Hopkinson who was associated with Webster in the argument of the case for the college. Hopkinson was the leader of the Philadelphia Bar and one of the most accomplished lawyers in the country. The fee paid to Webster was one of like amount. There is much of interest to be found in what Judge Baldwin has to say as to the fees paid in former times and in the instances to which he refers.

There is a chapter on the Education Requisite for Success in the Legal Profession. This, like all the others in the book, is an interesting chapter. It could not be otherwise, being written by a man who during the greater part of his life has been an instructor in the law, although law teaching at no time was his vocation. The reader is informed that the American lawyer needs two courses of education: one to fit him to study what law is and and how it should be applied, and one to accompany and direct him in doing what he has been thus fitted for. His first course will occupy the whole period of his youth: the second should occupy the whole remainder of his life.

"Three years of his early manhood should be devoted to legal study from the standpoint of one who hopes to be a lawyer; the rest of his time on earth to legal study from the standpoint of one who is a lawyer."

It is his conviction, and no well informed person could entertain a different one, that the law schools now afford the best available facilities for giving a good legal education. Law is both a science and an art, and legal education must give some knowledge of it in each of these forms. To become a well-read lawyer requires not only a study of history, but a philosophical study of it. The law instructor should try to find out from his classes not so much how a rule of action is laid down as why it is laid down.

"The great object in view is not such an examination as to show how much of the day's lesson the student has read and how much he remembers of it, but one to ascertain how well he appreciates the meaning and force of what he has thus been asked to study, and how the positions taken in the books can best be defended, criticized, or applied."

Education does not create. It consists in drawing out what already exists inside. There are many men on whom a legal education would be thrown away, and many on whom it daily is being thrown away. There is nothing said as to whether one contemplating the study of law should obtain a college education before entering a law school. It may be taken for granted that every young man who proposes to become a lawyer should, if it is possible for him to do so, complete a college course before he enters a law school. The best law schools now require a college degree for admission, which shows clearly what their opinion of the question is. Nothing is said upon the question some young men ask as to whether they should attend a school in the State in which they propose to practice, or whether it is advisable for a Western man to attend an Eastern school, or an Eastern man a Western school. And no attempt is made to advise beginners in the law who are studying in offices as to the books they should read or the order in which they should be read. Nor is anything said as to the impossibility of studying law to any advantage alone in one's home, or through a correspondence school. The book contains no advice upon a question which is propounded constantly to law teachers by young men who have just completed their law studies and who want to know whether they should go to a large city like New York or Chicago, or settle in their home town, or what they should do. Judge Baldwin no doubt has been asked such questions hundreds of times, and knows full well that the answer to all such questions must depend upon the circumstances of each individual case. There is some discussion of the several modes of instruction but no advice as to whether a so-called text-book school or a case book school is to be preferred. It is evident that the lecture method of law study does not commend itself to his approval. In speaking of law lectures and of the fact that they are less used than formerly he says: "They furnished the easiest way for a teacher of law to teach, or to appear to teach. But the easiest way either of teaching or learning is seldom the best. It takes effort to produce result." Again he says: "To learn law one must study law, and the lecture room is but an indifferent place to study in."

The concluding chapter of the book is devoted to the Ideals of the Profession. In the opinion of the author the lawyer cannot fail to recognize the ideals which he ought to pursue in justice to his profession. "His whole work in life is devoted to the definition and establishment of public order under law. No one ought to seek to share in that work, who does not feel its essential nobility, and who is not ready to adorn and defend it with the best that in him lies. His practice may be small; his efforts poor. All the more should he struggle to do his part in making justice in common things known and constant."

Judge Baldwin says:

"The one, unvarying ideal of the legal profession is to advance and perfect the law which it is created to call into action. It is always in danger of pushing this purpose of improvement too far. It is always in greater danger of not carrying it far enough.

"Lovers of Goethe will recall the brilliant scene in Faust's study, when Mephistopheles dons a Professor's cap and gown, and grants an interview to a student who wishes advice as to whether he study law for his profession. 'My dear boy,' he replies, 'keep clear of that. Law and notions of right are inherited like an eternal disease: they slide themselves along from generation to generation, and spread imperceptibly from place to place. Reason becomes nonsense, and the best actions are called wrong. Wo to thee that thou art somebody's grandson! Of the legal notions that we are born with there is unfortunately never any question made.'

"If we strip this charge of its poetic intensity, it is true. The lawyer, and particularly the American lawyer, is naturally a conservative force in human society. He professes a science which some of his predecessors at the bar have praised as the perfection of reason. He must steadily aim to guard himself against sharing that opinion. He must be ready to confess that there are faults in American law and judicial procedure which can be safely eliminated, and to do one's man's part, at least, towards getting rid of them."

While the title of the book indicates that it was written primarily for young men and intended to aid them in determining whether to enter the profession of the law, no one can read it without advantage and pleasure. Indeed no lawyer, whatever his age and his experience, can read the book without profit and satisfaction. The writer of it is a scholar in the law, who has attained to eminence in his profession and whose reputation is not restricted to the confines of the United States. Out of the storehouse of his knowledge and his rich experience he has given us another book which was needed, and one which everyone interested in the law should read.

HENRY WADE ROGERS

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Commentaries on Equity Jurisprudence. By Joseph Story. Third English Edition. By A. E. Randall. London, Sweet & Maxwell, 1920. pp. xxxvii, 673.

In the forty-six years that elapsed between the dates of the first appearance, in 1835, of Story's *Equity Jurisprudence* and that of the publication of Pomeroy's *Equity Jurisprudence,* in 1881, Story's two volumes ran through no less than twelve editions. The thirteenth edition, edited by Professor Melville M. Bigelow, appeared in 1886, and the fourteenth, in three volumes, thirty-two years later, in 1918. The second edition of Story was published in England (as the First English Edition) in 1839, the same year in which it appeared in America. A second English edition appeared in 1892, and now comes the third English edition, prepared by the editor of the Law Quarterly Review. It was long ago pointed out that two of the most popular handbooks on Equity, Snell's *Principles of Equity* and Smith's *Manual of Equity Jurisprudence,* are based largely upon Story's text. (7 AM. L. REV. 141.) Thus this product of Judge Story's lectures in the Harvard Law School holds the endurance record for popularity on both sides of the Atlantic, among American law books. Indeed, if we except Blackstone, Story has also out-distanced all, or nearly all, English competitors.

To us in America who must now read our Story in three stout volumes, comprising more than two thousand pages, with the original text over-laid with notes by successive editors, and containing some seventeen thousand citations of cases, it comes as a welcome surprise to find Story's text compressed into a single volume of seven hundred pages. For an American editor, in this land of the free and home of the brave, to undertake to omit or amend any portion of the original text, however hoary and antiquated, of such a classic as Story, is deemed a literary (or is it a "jural"?) crime of the highest order. Perhaps we are right in feeling that, generally speaking, there is danger, and possibly disaster, ahead when some daring individual starts to "monkey with" the text of a standard law book. Yet, when this work is done by such an accomplished hand as that of the editor of the present English edition, no one need fear for the result.

It is obvious that even such a slow-moving portion of our legal system as Equity must have changed and developed greatly since Justice Story wrote, three generations ago. Indeed, the wonder is that so large a part of Story remains as true to-day as when it was written. In accordance with the English practice, the editor has omitted much obsolete matter and many extended discussions which were moot questions in Story's day but which have long since been clearly settled by authority; he has, whenever necessary, re-written so much of the text as is requisite to conform to changes in the rules of Equity, and has added new paragraphs to show later developments. Furthermore, no attempt is made to cite all the cases in point, even the English ones, and all the citations to American authorities are omitted. This gives us a clean page to read and avoids the necessity of elaborate footnotes, contradicting or adding to antiquated statements found in the original text. And since the present edition is primarily for the use of students who seek to know the law as it is, the editor is clearly justified in gaining clearness and saving space by this method.

This new edition should prove highly valuable to the English law student, and as a clear and accurate, though as to some matters a rather brief, statement of the English equity system as it appears to-day, the volume should everywhere receive a welcome.

E. S. T.

BOOKS RECEIVED

Comparative Administrative Law. By Nagandranath Ghose. Calcutta, Butterworth & Co., 1919. pp. xliv, 704.

The Law of Damages and Compensation. By F. O. Arnold. Second Edition. London, Butterworth & Co., 1919. pp. lxxxvi, 408.

The Equality of States in International Law. By Edwin D. Dickinson. Cambridge, Harvard University Press, 1920. pp. xiii, 424.

The United States of America: A study in International Organization. By James Brown Scott. New York, Oxford University Press, 1920. pp. xix, 605.

A Digest of the Law of Partnership. By Sir Frederick Pollock. Eleventh Edition. London, Stevens & Sons, Ltd., 1920. pp. xxiv, 267.

Hints on Advocacy. By Richard Harris. Fifteenth Edition. By J. H. Watts. London, Stevens & Sons, Ltd., 1920. pp. xxi, 348.

The Law of Torts. By Sir Frederick Pollock. Eleventh Edition. London, Stevens & Sons, Ltd., 1920. pp. xlvi, 715.

Maritime Law. By Albert Saunders. Second Edition. London, Effingham Wilson, 1920. pp. xxxii, 501. [American agents: N. A. Phemister Co., 42 Broadway, New York, N. Y.]

A Treatise on the Law of Evidence. By Pitt Taylor. Eleventh Edition. By J. B. Matthews and G. F. Spear. London, Sweet & Maxwell, Ltd., 1920. In Two Volumes. Vol. I, pp. cii, 665. Vol. II, pp. 667-1468.