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BOOK REVIEWS

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Patent Law. By John Barker Waite. Princeton, Princeton University Press, 1920. pp. viii, 316. $5.00.

An attempt to cover even the essential points of Patent Law and Practice in a book of 312 pages is not easy of accomplishment, but the author in this work has achieved his object in a generally satisfactory manner.

The author discusses the necessity of a full disclosure of the invention in the patent application, and his comments should serve as a warning to those inventors, chiefly among German chemists, who have omitted an essential feature of a chemical reaction, with the very object of preventing the use of the invention by a competitor while holding the market open for the importation of the product of the process. Many patents granted to Germans were uncovered during the war, in which the undisclosed reaction was worked out and the inventions put to use, thus defeating the object of the patentee, who, in any event, had secured an invalid grant.

The chapter on "invention or discovery" well states the situation. A most recent act of discovery which can not be patented is that of Einstein on Relativity. The means for utilizing a discovery often amounts to an invention and a skillfully drawn specification and claims may give a broad patent monopoly thereon.

Function is not broadly patentable in the United States, the law here being different in this respect from that of other countries in that it requires an invention to be defined by its mechanism rather than by the result which that mechanism attempts to accomplish.

The Patent Office would probably not grant, nor the Courts sustain, a patent for a purely mental process, not requiring the use of tangible instrumentalities, which the author believes is patentable.

The author is in error in assuming that the Patent Office limits its search to prior patents issued in the United States. The search is made through all available published records on file in the Patent Office Library. These comprise practically all the printed patents of the world, and many technical publications in addition.

The chapter on prior knowledge brings out the law quite clearly, and fully in accordance with the decisions.

Advantageous reference might have been made to the danger of publishing inventions or publicly using them before filing applications. The law in the United States permits this to be done without prejudice for a period of two years, but such publication and public use invalidate in many countries foreign patents subsequently applied for.

The chapter dealing with the question of whether an invention is usable, suggests reference to the case where the Patent Office refused to give a filing date on an application for a heavier than air flying machine, until the inventor agreed to show an air bag on one of his forms of aeroplane.

Under the new rules of the Office, witnesses do not have to sign the drawing, and models are no longer called for by the Office.

A short chapter deals with the question of interferences, which is the most complicated branch of patent practice and necessarily requires the employment of skilled counsel. A whole book could be written on this branch of the law alone.

American manufacturers are at a disadvantage in connection with the restraining of threats of infringement proceedings. Such threats abroad can be

stopped by an action to restrain threats, which usually results in their discontinuance or the bringing of a suit for infringement.

The chapter on transfer of ownership is well written. Reference, however, might be made to the provision usually carried in modern assignments, under which the right to sue for past infringements is specifically covered in favor of the assignee.

The right to use inventions by an inventor employed by a corporation was well settled, under which the inventor retained a right outside of that vested in the company, until the Federal Rubber Company's decision was rendered, when the whole right to the patent was held to be vested in the company.

A short chapter on designs is contained in the book, and the index is well arranged.

ALBERT E. PARKER

New York, N. Y.

The Law and Practice in Bankruptcy, under the National Bankruptcy Act of 1898. By William Miller Collier. Twelfth Edition, by Frank B. Gilbert and Fred E. Rosbrook. In Two Volumes. Albany, Matthew Bender & Co. 1921. Vol. I, pp. cxxxviii, 1-836; Vol. II, pp. 837-1729. $20.

As stated in the preface to this edition, Collier on *Bankruptcy* was the pioneer work on the subject, and quickly obtained a high position of favor with the bench and bar. When the book first appeared, the construction of the present Act was in many respects doubtful. There had been few decisions under it, and it differed widely from the previous statutes enacted in the United States, and also from any English bankruptcy statute. Mr. Collier's work under these circumstances was all that could fairly have been expected; but in the nature of the case it could not long remain useful. Rapidly accumulating decisions made clear what had been previously doubtful, and experience developed new questions previously unthought of. It was therefore necessary to rewrite the book, and in the preface to the fourth edition it is stated by the editor of that edition, Judge Hotchkiss, then referee in bankruptcy, and now on the bench of the Supreme Court of New York, that the book had been rewritten with the result that the fourth edition was a new work. This edition appeared in 1903, and since then editions have appeared every two or three years edited by Mr. Gilbert with the coöperation in the final edition, now under review, of Mr. Rosbrook.

The effort of the publishers and of the editors to keep the work up to date is deserving of praise, for in no subject of the law has the development been more rapid or required more frequent re-examination. It is not an agreeable task to be obliged to add that little more can be said in favor of the present edition. The book should once more have been rewritten long ago. In fact, it is now a patchwork in which it is frequently extremely difficult and sometimes impossible to discern the pattern. Older statements from previous editions, which are no longer warranted by the decisions, remain unchanged, but a new sentence is added which states the result of a later decision. A sample of this method of treatment is the following passage (taken from page 872), referring to the question whether the word "required" inserted by amendment in Section 60 *a* of the statute has the same meaning as the words "required or permitted" in Section 3:

"It seems that the amendment to §60-a is for the purpose of bringing it into substantial accord with §3-a. These provisions should be read together, and when so read there can be no permissible question but that the date of the preference referred to in §60 is the same as that referred to in §3-b. However, there is authority to the effect that Congress did not intend §3-b and §60-a to mean the same thing, but in fact, after due consideration, deliberately refused to make §60-a as broad as §3-b. And this suggestion has now received the sanctioning approval of the Supreme Court."

In other words, after first stating "that there can be no permissible question" that the words in the two sections mean the same thing, the author in the final sentence shows that now there can be no possible doubt that they mean different things. Pages 876 to 881 contain a still more confused mingling of overruled and late decisions from which no one without previous knowledge of the law could extract correct conclusions.

This method of dealing with the subject had become annoying long before the twelfth edition of the book was reached. The passage quoted above is taken from the eleventh edition and remains unchanged in the twelfth.

The plates of the eleventh edition have apparently been used again in making the edition under review. Where a change seemed indispensable in order to insert new decisions, or a brief comment thereon, a note or series of notes, or occasionally a whole page in finer print than that ordinarily used, has been set up afresh. Between the 1564 pages (which alike constitute the eleventh and the twelfth editions) and the index there is inserted in the latter edition, without comments, the Canadian Bankruptcy Act of 1919, with an index to that Act, and the General Rules of practice under the Act, promulgated by the Canadian Government.

As might be expected with this method of production, little recasting of the statements in the previous edition is to be found. The decisions have, in the main, been duly collected and cited, but even in this respect the book is not impeccable. On page 1159, is discussed the trustee's right to recover usurious interest paid by the bankrupt, and in a note the decisions under the Act of 1867, by the lower Federal Courts, are collected, but the one decision of the Supreme Court on the subject, *First Bank v. Lasater* (1905) 196 U. S. 115, 25 Sup. Ct. 206, though cited on another point in another part of the book, is not referred to.

The treatment, on page 1132, of equities in the bankrupt's property justifying reclamation proceedings is quite inadequate, and the cases on the various situations referred to are not fully collected.

In the preface to this edition the editors state of the general index that it "has been rewritten to provide for all text changes." If so, the text changes to be provided for must have been slight, for in printing the index, as well as in printing the body of the book, the same plates seem to have been used that were used for the eleventh edition.

The index contains in each edition 104 pages, and an examination of the line of the index at the top and at the bottom of each of these pages discloses that these lines are identical in the two editions with the exception of two pages, in each of which one additional entry is inserted. That the index would have been the better for rewriting may be shown by a single illustration: There have been a number of interesting and important decisions by the Supreme Court of the United States and by lower Federal Courts concerning bankrupt stock-brokers and the rights of their customers in shares of stock coming into the hands of the bankruptcy court. The index does not contain as a heading the words "Broker," "Stockbroker," "Stock," or "Share."

SAMUEL WILLISTON.

Law School of Harvard University.

La Societe des Nations. By M. F. Larnaude. Paris, Librairie de la Societe du Recueil Sirey, 1920. pp. 86.

With characteristic French precision of thought and clarity of expression Professor Larnaude, dean of the faculty of law of Paris, here sets forth in a series of conferences the character, organization, and functions of the League of Nations. He first disposes of the objection that the League of Nations is a super-state, and undertakes to show that it is a purely contractual association, of an entirely new character, which does not involve any alienation of sovereignty

properly so-called. Its functions are political rather than judicial, in the sense that the jurisdiction assigned to the international court is purely voluntary, whereas both direct and indirect means are taken to prevent wars by specific international agreements. The author is careful to point out that the Covenant does not entirely take away the legal right of war, but merely restricts the exercise of the right by laying down the circumstances under which it shall not be exercised.

In commenting upon the direct means adopted by the Covenant for the prevention of wars Professor Larnaude discusses at length the scope of Article X and fails to find in its terms a confirmation of the view of the United States Senate that it contains a permanent guarantee of the territorial *status quo*. Rather the Article does no more than seek to protect boundaries of the new states against an impending attack, leaving it to the League to determine those boundaries by its own action. This interpretation seems to restrict the scope of Article X to the new states, and the more correct view is now that put forth by the Assembly at its meeting at Geneva to the effect that "Article X does not guarantee the territorial integrity of any member of the League. All it does is to condemn external aggression upon the territorial integrity" of the members of the League; that is, the boundaries of a state may be questioned, whether before the League or as between the parties, but force may not be used to alter them.

In discussing the organization of the League the author defends the composition of the Council as recognizing the actual inequality of the nations. His attempt to delimit the respective jurisdictions of the Council and of the Assembly will be studied with interest. His assignment of a somewhat limited jurisdiction to the Assembly must, however, be read in the light of the proceedings at Geneva, when the lesser of the two organs of the League asserted unexpected and, it is believed by the reviewer, highly desirable coördinate powers.

C. G. FENWICK.

Bryn Mawr College.

Blue Sky Laws. By Robert R. Reed and Lester H. Washburn. New York. Clark Boardman Co., Ltd., 1921. pp. xxxii, 172, 267a.

This is mainly an abstract and a compilation of Blue Sky Laws. In addition it contains a fourteen page introduction and a thirteen page opinion on the scope of the Supreme Court decisions sustaining the Blue Sky Laws that have come before it. It will be of physical, if not of intellectual, assistance to those who have need of it.

T. R. POWELL.

Columbia University.

BOOKS RECEIVED

Government Control and Operation of Industry in Great Britain and the United States during the World War. By Charles Whiting Baker. Preliminary Economic Studies of the War, No. 18. Published by the Carnegie Endowment for International Peace. New York, Oxford University Press, 1921. pp. vii, 138. $1.00.

Handbook of the Law of Trusts. By George Gleason Bogert. St. Paul, West Publishing Co., 1921. pp. xiii, 675.

Cases on Contracts. By Arthur L. Corbin. St. Paul, West Publishing Co., 1921. pp. xxiv, 1514.

Sui Principi Generali de Diritto. By Giorgio Del Vecchio. Modena, Societa Tipografica Modenese, 1921. pp. 62.

The Natural History of Law. Lecture by J. E. G. de Montmorency. New York, Oxford University Press, 1921. pp. 30.

The Nature and Sources of the Law. By John Chipman Gray. Second Edition. By Roland Gray. New York, Macmillan Co., 1921. pp. xviii, 348. $4.00.

Texts illustrating the Constitution of the Supreme Court of the United States and the Permanent Court of International Justice. Grotius Society Publications, No. 8. Introduction by Hugh H. L. Bellot. London, Sweet & Maxwell, Ltd., 1921. pp. 64.

The League of Nations and the New International Law. By John Eugene Harley. New York, Oxford University Press, 1921. pp. ix, 127.

The Law of Transport by Railway. By Alan Leslie. London, Sweet & Maxwell, Ltd., 1920. pp. xcvi, 579.

Treaties and Agreements with and concerning China, 1894-1919. John V. A. MacMurray, Editor. Published by the Carnegie Endowment for International Peace. In Two Volumes. New York, Oxford University Press, 1921. Vol. I, pp. xlvi, 1-928. Vol. II, pp. 929-1729.

The Evolution of World Peace. F. S. Marvin, Editor. The Unity Series, IV. New York, Oxford University Press, 1921. pp. 191.

American Foreign Trade. By W. F. Notz and R. S. Harvey. Indianapolis, The Bobbs-Merrill Co., 1921. pp. xv. 593.

Latin-American Commercial Law. By. T. E. Obregon. With the Collaboration of Edwin M. Borchard. New York, The Banks Law Publishing Co., 1921. pp. xxiii, 972.

Military Law and the Supremacy of the Civil Courts. The Judgment of Mr. Justice McCardie in Heddon v. Evans. Richard O'Sullivan, Editor. London, Stevens & Sons, Ltd., 1921. pp. vii, 127.

Commercial Law Cases. By Harold L. Perrin and Hugh W. Babb. In Two Volumes. New York, George H. Doran Co., 1921. Vol. I, pp. xxi, 1-536. Vol. II, pp. xv, 1-414. $7.50.

Principles of Contract. By. Sir Frederick Pollock. Ninth Edition. London, Stevens & Sons, Ltd., 1921. pp. lx, 820.

Federal Corporate Income Taxes. By E. E. Rossmoore. New York, Dodd, Mead & Co., 1921. pp. xvi, 338.

Allied Shipping Control. By J. A. Salter. Economic and Social History of the World War, British Series. Oxford, The Clarendon Press, 1921. pp. xxiii, 377.

The Law in Business Problems. By Lincoln Frederick Schaub and Nathan Isaacs. New York, The Macmillan Co., 1921. pp. xxxiv, 821.

Essays on Constitutional Law and Equity. By Henry Schofield. In Two Volumes. Boston, The Chipman Law Publishing Co., 1921. Vol. I, pp. 1-456. Vol. II, pp. viii, 457-1006.

The Proceedings of the Hague Peace Conferences. The Conference of 1907, Vol. II. James Brown Scott, Editor. Published by the Carnegie Endowment for International Peace. New York, Oxford University Press, 1921. pp. lxxxi, 1086.

Trust Estates as Business Companies. By John H. Sears. Second Edition. Kansas City, Vernon Law Book Co., 1921. pp. xx, 782.

Law and Business. By William H. Spencer. Vol. I. Chicago, University of Chicago Press, 1921. pp. xviii, 611. $4.50. Postpaid, $4.70.

Van Leeuwen's Commentaries on Roman-Dutch Law. Second Edition. By C. W. Decker. Translated by Sir John G. Kotzé. In Two Volumes. Vol. I. London, Sweet & Maxwell, Ltd., 1921. pp. xlvi, 504.

Browne and Watts on Divorce. Ninth Edition. By J. H. Watts. London, Sweet & Maxwell, Ltd., 1921. pp. xxxi, 787.

The Electric Railway Problem. By Delos F. Wilcox. New York, Delos F. Wilcox, 1921. pp. xx, 789.

Chitty on Contracts. Seventeenth Edition. By W. Wyatt-Paine. London, Sweet & Maxwell, Ltd., 1921. pp. ccv, 1098.

Clerk and Lindsell on Torts. Seventh Edition. By W. Wyatt-Paine. London, Sweet & Maxwell, Ltd., 1921. pp. cxli, 955.