



1930

BOOK REVIEWS

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Recommended Citation

BOOK REVIEWS, 39 *Yale L.J.* (1930).

Available at: <http://digitalcommons.law.yale.edu/ylj/vol39/iss3/6>

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BOOK REVIEWS

Questioned Documents. By Albert S. Osborn. Albany, Boyd Printing Co., 1929. pp. xxiv, 1028.

The scene is in a court room in an Ohio city more than a generation ago. A bank teller is on the stand testifying that the disputed document is in the handwriting of the defendant. Others have preceded him, still others will follow. But the trial judge is not listening. He is looking backward a few years.—In the same court room a defendant is on trial before him charged with having forged a note. On the stand is a witness who has qualified as the originator and proprietor of a system of penmanship in use throughout the public schools of the state. He has explained that in each man's handwriting is portrayed his whole character and history, concealed from the eyes of the ignorant but like an open book to the initiated: the forged signature was written by the accused; there can be no doubt about it. Unnoticed by the handwriting expert, a genial member of the bar approaches the accused's counsel. The latter, visibly annoyed, pushes toward him the questioned note. The genial member seizes a pen and a piece of paper, looks carefully at the note, writes, and hands the paper to counsel. The latter glances carelessly at the paper, starts with surprise, and motions the genial member to be seated. Now the accused's attorney, whose turn to cross-examine has come, presents the newly made sample writing to the distinguished expert, who promptly and positively pronounces it to have been written by the accused. Now the genial member is called to the stand; he declares he has just made the sample writing. The distinguished expert so vehemently interrupts that the judge is forced to threaten punishment for contempt and to state publicly that he saw the genial member write the sample at the counsel table. The jury finds the accused not guilty.—Now the experts have finished. The judge takes a new interest in the case. The defendant from the stand denies the execution of the disputed document. Without leaving the bench the judge decides for the defendant. Expert handwriting witnesses are either deluded fools or knaves.¹

The views of this able trial judge were largely shared by the bench and bar of his time, and they were not without much justification in experience. Today they are as antiquated as the ox-cart. There may still be found an occasional judge who prefers the ox-cart to the automobile, and not a few who prefer it to the aeroplane. Yet most courts are slowly coming to appreciate that almost the only reliable evidence as to the genuineness of a disputed document is that of the honest, competent specialist. They are coming to realize that he can separate underlying facts from mere opinion or deductions concerning them. And no one has done more to bring about this result than Mr. Albert S. Osborn. The first edition of *Questioned Documents* stamped him as a master in his field. His *Problem of Proof* demonstrated that the excellence of his first volume was no accident, and made the profession anxious for the second edition of *Questioned Documents*.

It was a long time coming, but it was worth waiting for. The twenty-six chapters of the first edition have been brought down to date, and in

¹ Ex relatione Professor Eugene Wambaugh.

many respects revised. Nine new chapters and a new part have been added. It would be useless, and certainly beyond the capacity of this reviewer, to attempt comment upon the contents of the work as it relates to the instruments and processes of the lens-maker, photographer, and chemist, except to say that each instrument and each process is so clearly described and expounded that any lawyer should be able to understand it and its application to any disputed document, even though in many instances it may require an expert to make the application. And if judging by the weight of the volume, the lawyer carries it home, hoping to derive from its pages a blessed remedy for insomnia, he will be disappointed. The illustrations and examples from litigated cases enliven the text, and would furnish material for many a mystery story. Comments upon the conduct of lawyers, upon the behavior of judges and upon certain rules of law, barbed as they are with truth, challenge the attention. And practical suggestions for preventive remedies as well as for preparation and trial of contested cases force a realization of the immediate pragmatic value of the book.

No lawyer who prepares a contract or a will or any other important document can afford to miss chapters XXV and XXVI. If they constituted the whole book, no young lawyer could make a better investment. No trial lawyer should enter a disputed document case without the assistance of this volume, and no intelligent lawyer would think of doing so. Its second part of over four hundred pages consists of excerpts from opinions and other authorities on various points of fact and law arising in such cases, exceptionally difficult to find in the digests, a very valuable collection of references to legal texts, collections of cases and periodical legal literature, and an extensive bibliography. Doubtless it would be possible to prepare a better book upon the subject, but doubtless it has never been done.

Cambridge, Mass.

EDMUND M. MORGAN.

Bankers' Balances, A Study of the Effects of the Federal Reserve System on Banking Relationships. By Leonard L. Watkins. Chicago, A. W. Shaw Co., 1929. pp. xvi, 429. \$6.50.

"As a challenge to thinkers in the financial-legal field to develop through research more complete studies of the trust phases of modern business and private finance," the Chicago Trust Company has instituted a series of prizes for studies offered in competition. The annual awards for briefer studies are \$300 and \$200 for the first and second prizes; eight such awards have been made in recent years, and the studies have been published in uniform series through the A. W. Shaw Co. An award of \$2500 is also offered every three years for the best original contribution to knowledge in the field of business development and the modern trust company. The first triennial award has been made to Professor Watkins for the book under review. The reviewer cannot refrain from commending the Chicago Trust Company not only for its liberality in providing these handsome awards, but also in allowing such wide choice of subject and not restricting the competition to lines that will yield immediate profit to the donor. In the opinion of the reviewer the Trust Company can take just pride in this, its first triennial prize study, on account of the meticulous scholarship, the voluminous statistical investigations, and the high importance of the subject matter.

While the author has labeled the book *Bankers' Balances*, the subject serves in a large way as a line to which practically all phases of inter-bank relations are attached, especially inter-bank loans and discounts,

check collections and their influence on balances, the seasonal and sectional flow of funds, domestic exchange, interest paid for loans and deposits, the development of secondary reserves, and the investment and call loan operations of interior banks. The author's purpose was to discover the extent to which the expectation of the founders of the Federal Reserve has been realized that the new system would divorce the old relations between banks from the reserve question and would diminish the importance of that relationship. It would seem that the book therefore would naturally divide into three parts: the relationships before the Federal Reserve was founded, the relationships under the new system, and a comparison of the two, with reasons for any failures of accomplishment. In the first part he would examine the conditions that gave rise to bankers' balances and the characteristic relationships under the old banking system, and emphasize the defective operation of the scheme and the principles behind the reform in 1914. In the second part he would present first, the Federal Reserve plan of member bank reserves, of discounts and advances by the Federal Reserve banks to members, of the clearance and collection of checks and other items, of the domestic transmission of funds, and of the regionalization of the money market, and second, the facts as to the actual working out of these plans since 1914 and the reasons for their success or failure. And in the third part he would compare the early and present schemes, from the trends determine the probable immediate developments, indicate the possible and the impossible features of the Federal Reserve ideal, and suggest principles to guide reformers in the future. The author has followed this tripartite division of his subject, but has done so, for the most part, function by function; that is, the three stages are followed through for bankers' balances in relation to reserves, to clearings and collections, to inter-bank borrowing, to the investment and discount markets. Chapter X is a more detailed treatment of the flow of funds into and out of New York and Chicago and the uses made of them there. Chapter XI is a more or less summary chapter showing the nature of the present and possible accomplishments of the Federal Reserve as regards bankers' balances. There is an extensive appendix containing (1) a statement of certain statistical methods used. (2) ten statistical tables removed from the text, and (3) a four-page bibliography of books, articles, periodicals, government reports and documents, and miscellaneous sources.

Professor Watkins' text is charged with statistics; he has assembled in 87 tables and illustrated by 18 charts the data published largely by the Comptroller of the Currency and the Federal Reserve authorities, and no small portion of the textual material consists of explanations and interpretations of these tables and charts. Fortunately the investigator in this field has available for use an extraordinary amount of statistical data covering a long period of time; the greatest defect in the data is the fact that national bank data in contrast with state bank data are so much more complete as regards subject matter and period covered, and more comparable as between banks or periods. Professor Watkins has, it seems, exhausted the evidential value of the data on the points involved, and one feels a happy sense of confidence in his conclusions from the evident care he has taken to substantiate them. Repeatedly the reader feels the extreme difficulty confronting the author when he is trying to isolate the influence of one factor when a great number of factors are interacting; for instance, pp. 224-28, to prove that variations in bankers' balances in New York City are followed by like fluctuations in loans of New York banks and by inverse fluctuations in discount rates, or pp. 299-303, to measure the volume and effect of the flow of outside funds in New York City, or pp. 331-3, to distinguish the sources of expansion of reserves.

Bankers' balances are shown to be very basic in our banking system, and the correspondent functions to have sprung from the unique character of the system. "Both in respect to the large number of banks and the degree of decentralization it was without parallel in any other country. It is scarcely an exaggeration to say that no other system functioned more poorly. And it was at precisely those points of contact furnished by correspondents that the trouble existed." The Federal Reserve plan could naturally succeed only to the degree in which it changed the basic conditions which gave birth to the correspondent system. The general conclusions of the study are that the legislators hoped for much more than has been attained. There has been a considerable increase in the amount of inter-bank deposits since 1914, whereas the Federal Reserve was expected to diminish them among members; member banks are responsible for about one-half of the bankers' deposits maintained by all banks in the system and they hold seven-eighths of the amount due to banks; bankers' balances maintained by member banks approximate the amount of reserves carried with the Federal Reserve banks, and balances held by member banks for one another and for non-member banks equal nearly twice the reserve balances maintained with the Reserve banks. Plainly deeper forces than the law about reserves were mainly responsible for the maintenance of large bankers' deposits under the old banking system. Member banks continue to borrow heavily from correspondents in spite of what seem favorable terms at the Federal Reserve, and, of course, non-members borrow only from correspondents as before. The Federal Reserve collection system is far from universally used, even among the Federal Reserve membership. The author's analysis of the several functions performed by correspondents on the basis of bankers' deposits emphasizes the investment aspect. "From the point of view of depositing banks, bankers' deposits not only qualify on the basis of liquidity, diversification, and yield as a desirable component of earning assets, but they serve as a channel for the investment of additional funds which interior banks feel constrained to invest outside of the home market, either because of secondary reserve considerations or because of the possession of surplus funds over and above those needed at home." The author assigns a role of first importance to these investment considerations in determining the amount of bankers' deposits carried under the old system, and since the Federal Reserve failed to supply these investment services the old correspondent relationship largely persists.

It is timely that so able a book on this subject should be published. A mystery has surrounded the functioning of the Federal Reserve: many a one is asking why has it failed to reduce, stop or reverse the flow of funds to Wall Street speculative markets, when one of its first claims in 1914 was that it would divorce the commercial banks from the stock and bond market? One could reasonably wish that the book had been written in December 1929 rather than 1927 so that the striking phenomena of the last two years might have been included and analyzed; for instance, the great absolute and relative growth in brokers' loans, especially "outside" loans, the period of high call money rates and their alleged adverse effect on business and agriculture, the loss of gold in 1927-28, the spectacular stock market, and the decline in the use of commercial paper.

The book is typographically well prepared. Only a few slips have been noted; one of these on page 414 favors the reviewer by ascribing Jason Westerfield's article on *The Safety and the Service of Call Loans* to him. The text is too repetitive to be pleasureable reading.

New Haven, Conn.

RAY B. WESTERFIELD.

The Mandate for Palestine: A Contribution to the Theory and Practice of International Mandates. By J. Stoyanovsky. New York, Longmans, Green and Co., 1928. pp. xv, 399. \$8.50.

This examination of the legal status of post-war Palestine is a dispassionate presentation of the case for a Jewish national home in that country. There is much in the book which has an intimate bearing upon the issues raised by the recent outbreaks in Palestine, and scholars in search of a clear exposition of the implications of the Jewish national home policy can do no better than to consult this work. The introductory historical section is objectively executed; it reviews the various plans formulated for the post-war disposition of Palestine and describes the process by which the mandate was finally established with general international consent.

Dr. Stoyanovsky's treatment of points concerning which the hottest controversies have raged is interesting at the present moment, although the chief value of the book probably lies not in these passages but in the scrupulous thoroughness with which his analysis proceeds from phrase to phrase of the significant articles of the mandate. One of the controversial points with which he has dealt is the question as to whether or not Great Britain actually made territorial promises to the Arabs during the war which were later ignored. There are students of Near Eastern affairs who would hesitate to say as emphatically as Dr. Stoyanovsky does on page 7 that British negotiations with the Arabs prior to the revolt of the latter "never reached the stage of definite agreement." The whole correspondence between British and Arab representatives has not yet been published, as Dr. Stoyanovsky himself admits, although repeated requests for its publication have come from the floor of the House of Commons and the House of Lords. Some historians have suggested that there is good reason to believe that definite promises were actually made as the Arabs claim. The point is an interesting one inasmuch as Arabs who oppose the establishment of a Jewish national home in Palestine base a number of their arguments on the thesis that the Balfour Declaration of 1917 was incompatible with prior British promises to the Arabs in 1916. These promises, they declare, were definite and applied to Palestine as well as to the greater part of Mesopotamia and the territories now known as Syria and Transjordan. Judgment of their case before publication of the correspondence on which it is based seems premature.

Another of the questions concerning which controversy has developed under the British administration relates to Article 2 of the mandate, which lays upon the mandatory power the duty of placing the country under such conditions as will secure the establishment in it of a Jewish national home, while at the same time it is obligated to safeguard the rights of the existing population of Palestine. The extraordinary difficulties encountered by Great Britain in carrying out this article of the mandate have been due to the fact that Zionists have criticized the administration whenever it has seemed to champion the interests of the Arab population to the disadvantage of Zionism, while the Arabs have been equally indignant whenever they believe they have detected a tendency to meet Zionist wishes not shared by the Arabs. It has been the constant claim of the Arabs that policies vitally affecting the life of the country should be determined in relation to the needs of the existing population. Dr. Stoyanovsky has an observation on page 41 which represents a contrary opinion. "The present population of Palestine," he says, "is, indeed, only a part of the much larger population whose connection with Palestine has been internationally recognized. The Jewish people as a whole may be considered, for this particular purpose,

as forming virtually part of the population of Palestine. . . . The mandatory Power thus appears not only as a Mandatory, in the sense usually given to this term, but as a kind of a provisional administrator in the interest of an absent people. In this capacity the Mandatory has assumed an obligation not toward the actual but the virtual population of Palestine."

With this reasoning there are many who do not agree. Similar cases occur here and there throughout the book in which the Zionist interpretation of the mandate appears with no indication that Arab opinion does not concur. The study is nevertheless a mine of information and will serve as a standard work on the Palestine mandate.

New York, N. Y.

ELIZABETH P. MCCALLUM.

Justice and Administrative Law. A Study of the British Constitution.
By William A. Robson. London, Macmillan & Co., 1928. pp. xviii, 346.

This volume presents a valuable account of administrative tribunals in England, together with an appraisal of their work and suggestions for their improvement. In view of the suspicion with which such tribunals were viewed by Dicey and others, the author's conclusions are worth quoting:

"The judicial power which has been given to administrative bodies will, I believe, be exercised wisely, and the results are likely to be good. After surveying the facts with all the care and thoroughness in my power, I am convinced that Administrative Tribunals have accomplished, and are accomplishing, ends which are beyond the competence of our courts of law as at present constituted. . . . I believe that administrative justice may become as well-founded and broad-based as any other kind of justice now known to us and embodied in human institutions."

At another point the author says that:

"As a matter of fact there is no evidence whatsoever which goes to show that the Administrative Tribunals now working in England are any more liable to political interference than the admittedly independent courts of law."

Mr. Robson's criticism of *Local Government Board v. Arlidge*, [1915] A. C. 120, is not that the court upheld an administrative determination, but that the statute required no disclosure of the grounds for the administrative determination. He properly urges more coordinated organization of administrative tribunals and the publication of the reasons for their determinations. In his view, the substantial advantages of administrative tribunals can be preserved, while at the same time establishing the more fundamental safeguards employed in the more complex and slower machinery of administering justice through the courts. Much that he says may well be applied to the United States, though the American legal problem is materially different, in that "due process of law" sets a limit to the procedure and to the finality of determination by administrative bodies in the United States.

In view of the importance in the United States of the Interstate Commerce Commission, the Federal Trade Commission, and state public utility commissions, certain of the author's conclusions are of particular interest:

"The greatest danger with which the development of administrative law in England is faced at present is the likelihood that in the near future an attempt may be made to cut through our economic difficulties by handing over the disposal of economic controversies to official tribunals armed with plenary powers of decision and enforcement. The continual interruption of industrial production by labour disputes, the allegations of profiteering in foodstuffs and other essential commodities by combinations of producers or distributors, the assertion that utility undertakings enjoying a high degree of monopoly are maintained with an eye to the making of profits rather than to the provision of service to the public: all these discontents may easily lead to an effort to resolve economic conflict by the setting up of Administrative Tribunals of one kind or another—probably with an in-

fusion of non-official members—entrusted with powers to adjudicate upon these difficult matters. . . .

"Any attempt to settle economic controversies by reference to a hypothetical and non-existent basis of 'fairness' by means of Administrative Tribunals is almost certain to end in disaster. The mediaeval regulation of trade and industry all hinged around the conception of the fair wage and the just price and so forth; but even in those far-off days neither canon law nor common law were able to evolve workable or even recognisable standards of what economic justice demanded, and in our own time such an attempt would be utterly futile."

New Haven, Conn.

WALTER F. DODD.

Removal of Federal Offenders. By Russell Hardy. Washington, D. C., John Byrne & Co., 1929. pp. 103.

This little manual illustrates admirably the advantages in treatment that are gained by announcing one's aim shortly, and then pursuing it steadily and concisely. The subject is a narrow one. It touches on great cases in our constitutional history—Aaron Burr's Trials; *Abelman v. Booth*, a notable Fugitive Slave Law case; and the Lottery Case, *Champion v. Ames*,—in which removal proceedings were of importance. It suggests, but does not enlarge upon, questions of present interest, constitutional and otherwise. The removal statute, for example, provides that the procedure of arrest, imprisonment, or bailing, and holding for trial, of a federal offender whose removal is sought shall be the same as that fixed by the law of the state in which he is found, for the arrest, etc., of offenders against the laws of that state. This is one, therefore, of a small but interesting class of cases in which the Supreme Court has sanctioned the adoption by Congress, for its own purposes, of methods and standards fixed by the several states. Again, those who belittle the distinction between substantive and procedural rights will be interested in the question whether a summary and ministerial removal, if authorized by Congress, would be constitutional. Strictly germane subjects, indeed, such as the use of habeas corpus to secure a review of removal proceedings, are competently treated; but the author declines tempting by-paths. He is concerned to explain, systematically but laconically, the process of removal from complaint to removal warrant, and to discuss the rights of the defendant at the several stages. The scope of the book, too, despite its title, is limited to the removal of federal offenders from one federal court district to another; removal from state to federal courts is not dealt with.

Speaking, as he does, from the Attorney General's office, the author urges, with less vigor than might be expected, that the delay, possible to defendants who fight removal through all its stages be curtailed by abolishing appeal from a removal warrant. He does not attempt to support the legally tenable, but politically impossible, proposal long agitated, to abolish the need for removal proceedings by making federal warrants run throughout the country, or failing so drastic a step, to make removal ministerial when identity, jurisdiction, and indictment are shown; i. e., to make such a *prima facie* case of probable cause irrebuttable.

The value of the book is enhanced by an appendix of the forms used in the several steps of removal proceedings.

New Haven, Conn.

HARVEY C. MANSFIELD.

The Economics of Water Power Development. By Walter H. Voskuil. Chicago, A. W. Shaw Co., 1928. pp. xii, 226. \$3.

This little book is an introduction to the problems involved in the development of water power. Mr. Voskuil outlines the principles of power development, describes the water power resources of this continent, and passes on

to survey the means of social control evolved by the federal government of the United States and to consider the vexed question of public or private ownership. On Muscle Shoals and the Ontario Hydro-Electric Power Commission he writes in a detached, non-committal manner but sets forth clearly the claims and counterclaims in the controversy.

Apart from the information conveyed, the most interesting contribution of the study is the need demonstrated for some form of social control over the development of water power. The author points out that if the task of power development be left entirely to private interests it will result in many cases in the exploitation of one or a few sites on a stream to the detriment of the effective development of the whole watershed. Where streams too large to be surveyed by a private corporation have been developed at a single point, later surveys have shown that part of the potential power has been destroyed by the plant being unwisely placed. There appears to be an instance here where rationalization may be safely applied with great advantage to all. In this connection the author points out that the chief purpose of the Federal Power Commission, the creation of a single executive agency to deal with water powers, has not been fully accomplished through lack of personnel and failure to provide administrative authority over water power grants under prior laws.

Within its scope this is a well-rounded presentation of the economics of water power development.

Winnipeg, Manitoba.

D. A. MACGIBBON.

Cases on the Conflict of Laws. By Henry W. Humble. Chicago, Callaghan & Co., 1929. pp. xxxv, 750.

In this second edition, which appears six years after the publication of the first, the author has added a chapter on Taxation, consisting of seven cases. Forty cases included in the first edition have been discarded and replaced by approximately the same number of cases, decided since 1921. No other changes have been made either in the contents of the casebook or in the arrangement of topics.

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