

BOOK REVIEW

A TREATISE ON MORTGAGES. By William F. Walsh. New York University. New York. Callaghan and Company. 1934. pp. xlviii, 376.

"The purpose of this treatise is to restate the fundamentals of the law of mortgages in the light of modern developments in equity and the merger of law and equity; to examine into the history of the law of mortgages as explaining the extraordinary situation in many states in which the theory of mortgages at law is still in varying degree kept apart from the equity view of the mortgage relation; and finally to reconcile or to explain the many conflicting decisions and opposing theories which abound in this branch of the law."¹ That this purpose is a worthy, and in fact, necessitous one, cannot be doubted, in the light of present day litigation involving mortgages.

The subject-matter of mortgages is fraught with much confusion of statement, conflicting ideas not carefully worked out and resulting uncertainty as to the law. Both the practitioner and the student are in need of a brief work wherein the confusion is eliminated, or at least explained, and a carefully developed and logical analysis of the law of mortgages as it is, in its historical perspective, is presented. Such a work is to be found in Professor Walsh's treatise on mortgages.

The subject is dealt with by the author in his usual clear and concise method of approach, unhampered by inundations of legal philosophy, so prevalent in modern legal text books, written by our supposedly more astute professors of legal theory. This book then, not too encumbered with discourses dealing with unadulterated theory, is a most practical office aid, in addition to its being a learned treatise on the subject of mortgages.

Professor Walsh's approach to the subject-matter is worthy of note. He delves first, but not too deeply, into the history of the development of mortgage law, tracing its development through the English Common Law, and finally evolves the present day theories of mortgages in the United States. Having logically presented this, he proceeds to consider the types of mortgages; the interests which may be mortgaged; the nature of the mortgage debt; the rights and duties of the parties to the mortgage; the priorities of mortgages; the discharge of mortgages; the right of redemption; conveyances subject to mortgages; subrogation, contribution and exoneration as applied to mortgages; marshalling of assets and sale in the inverse order of alienation; assignments of mortgages; foreclosure of mortgages; foreclosure sales and the current problems arising thereunder; and the enforcement of mortgages by sale under power, which power is almost entirely a modern development.

A perusal of this catalog of topics into which the author has seen fit to divide the subject-matter can serve to acquaint one with the precision displayed in the handling of the treatise. A more minute survey will further reveal the author's exhaustive, yet not too elaborate, analysis of these more specialized phases of mortgage law.

Perhaps the most litigated phase of mortgage law today is that pertaining

¹ P. iii.

to and arising out of foreclosure sales. The treatment afforded it is worthy of observation and serves well to inform one of the method employed in the discussion and analysis of the various subheadings found in the subject-matter of mortgages. The sale itself and the title and possession thereby conveyed are chronicled first in an orderly and scholarly fashion. His next topic is a well-known and much litigated one, namely, that of the enforcement of the mortgage debt and the judgment for the deficiency. This covers the question of lack of market and of competitive bidding at such sales, and this, to the New Jersey practitioner should be most welcome, more particularly because of the compilation of New Jersey citations and the digest of the cases to be found therein. Such recent and important New Jersey cases as *Federal Title and Mortgage Guarantee Co. v. Lowenstein*,² *Vanderbilt v. Brunton Piano Co.*;³ *Lurie v. Hockenjos Co.*;⁴ and others, are cited and analysed along with the decisions of other jurisdictions on point, in the light of present day conditions, to clearly set forth the holdings and the reasons therefor of the New Jersey courts, as well as those of other jurisdictions on the problem, all of which is a most timely project. Next, is capably treated the question of receiverships of rents and profits, another opportune topic in view of present day conditions. Distribution of surplus monies is taken up next, and the section closes with a discussion dealing with statutory redemption after foreclosure sale.

Professor Walsh is not satisfied with a naked conclusion of law. His work is well supported and fortified with an abundance of authority, intelligently annotated, and where plausible, digested, all of which makes this book of great value to the lawyer and to the law student.

The author is to be complimented upon having lifted from the subject-matter of mortgages the veil of uncertainty that has of late enveloped it, and thus presents in a fresh and clear manner this book. Professor Walsh has delved into current problems, which others have but briefly sketched, and there emerges from his efforts this commendable and workable, timely treatise on mortgages.

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² 113 N.J.Eq. 200, 166 Atl. 538 (Ch. 1933).

³ 111 N.J.L. 596, 169 Atl. 177 (E. & A. 1933).

⁴ 113 N.J.Eq. 504, 167 Atl. 766 (Ch. 1933).