

BOOK REVIEWS

RESTATEMENT OF THE LAW OF PROPERTY. By the American Law Institute. St. Paul: American Law Institute, Publishers, 1936. Vol. I, pp. lxi, 503, Ap. 22; Vol. II, pp. liii, 1179, Ap. 82.

Similar in method of presentation to the preceding volumes of the Restatement of the Law, the American Law Institute presents the first two volumes of Restatement of the Law of Property.

A critical or analytical review of the actual content of the work is impossible, but even a cursory examination of the volumes indicates the effectiveness of the efforts which are being made to bring to legal literature a more concise and systematic treatment. So accustomed has the profession become, as the result of the pedagogic systems adopted over an extended period of years by most of the law schools, to the case precedent presentation of the law that many will undoubtedly be loath to accord to the Restatement the worth that it merits. That the legal profession is not yet ready, if it is not, to abandon the case precedent system is not to its credit and should not in the slightest degree detract from the intrinsic soundness of the Restatement of Law or of the form in which it is presented.

The present two volumes manifestly do not attempt to exhaust what is generally referred to as the Law of Real Property. The compilers have, however, carefully segregated into each volume a main division of their subject so that in effect each volume is separate and sufficient unto itself with the notable exception that there appears no index in connection with Volume I. The Institute has promised additional volumes of the Law of Property and it is regrettable that the volumes might not have been indexed individually. While it is true that a complete table of contents sufficiently elaborate as to suggest a syllabus of the work covered prefaces each volume, facility of use might have been accomplished by an individual index.

Definitions of the word "property" as adopted does not preclude consideration of what is generally referred to as personal property. With minor exceptions in Volume II there is no treatment of the Law of Personal Property included. Freehold interest, as descriptive of the First Volume, and Future Interests as descriptive of the Second Volume, concisely summarizes what may be expected to be found therein. The cumbersome pocket supplements to note exceptions to the general rule, as such exceptions may be found in several states, would not seem to be the most satisfactory method that might have been devised.

While the maieutic method might suggest that the volumes were primarily intended for the student, it becomes apparent that the work is, in fact, not a text or a case book and would not be adaptable for any classroom work. Although it approximates a codification of the law it is not primarily such nor is it technically a restatement of the law, being more properly an expression of the present existing law, both statutory and adjudicated. There can, however, no longer be any doubt that the work of the American Law Institute is

justified for the volumes of the Restatement so far issued warrant the existence of the Institute and bear tribute to the meticulous care with which the several compilers have performed their duties.

JOHN S. FOSTER.

Newark, N. J.

JUSTICE OLIVER WENDELL HOLMES, HIS BOOK NOTICES AND UNCOLLECTED LETTERS AND PAPERS. Edited by HARRY C. SHRIVER. New York: Central Book Company, 1936. pp. xiii, 280. \$3.00.

This book presents for the first time in collected form, the last of the late Justice Holmes' uncollected works, the most insignificant of which scintillate with the sparkling, yet simple style for which he was famous. Their value lies not in the things he wrote, of themselves, but rather in the broad picture they present as a whole, of a famous jurist's personal legal philosophy. Acquaintance with such philosophies is a matter of great desirability in times when rapidly changing relationships, in the business world and elsewhere, strain the familiar legal rules to their utmost. It affords a guide, a beacon by which the trend of the law, which is the only thing in law that is certain, may be directed. The items presented are what Holmes himself has called "little fragments of my fleece that I have left upon the hedges of life". Every aspect of his generous philosophy has been presented in the volume.

The introduction has been fittingly written by Mr. Justice Stone, for many years associated with Justice Holmes on the United States Supreme Court bench, who writes of these "fragments" that

"Like most that Justice Holmes wrote, they will engage the interest and stimulate the thought of the reader whether lawyer or layman. To the student of the law, they will speak with special interest for they exhibit the rare scholarship which produced the *Common Law* and they reveal the germinal ideas which a generation later were to come to full flower in the judicial opinions which have made Justice Holmes' name a symbol wherever law is the subject of study and reflection."

This inestimable value of Justice Holmes' writings have been increased no end by the highly capable work of Mr. Harry C. Shriver, the editor. He has arranged the order of presentation of the book notices and other writings in so able and effective a manner that one is tempted to believe that the book was written as a unit by Justice Holmes himself. The book has been exhaustively annotated by Mr. Shriver with references to and excerpts from Justice Holmes' decisions and former writings.

THEMISTOCLES MANCUSI-UNGARO.

Newark, N. J.

CASES ON EQUITY. By HENRY L. McCLINTOCK, Professor of Law, University of Minnesota. American Casebook Series. St. Paul: West Publishing Company, 1936. pp. xxiv, 1286. \$6.00.

The manner in which equity shall be taught in modern law schools has been the subject of a good deal of discussion, which has not resulted in any general agreement. Some adhere substantially to the old method of grouping the course about the various forms of equitable relief, others abandon the subject entirely as a separate course and undertake to teach the procedural aspects in the courses on Procedure, and the substantive principles in connection with the separate topics to which they relate, such as Contracts, Torts and Property. Neither of these methods seems to be pedagogically sound, if we can discover any common concepts or principles which courts of equity apply in the treatment of different problems. In this selection, Professor McClintock has arranged the cases on the assumption that there are such concepts and principles, and that the best method of approach is to develop in the minds of the students a familiarity with the concepts, and then to illustrate the application of those concepts to particular fields of the law. That this approach is sound is well proven by the fact that it has been adopted by many of the leading law schools in the country. The study of the application of general concepts previously developed has a value in fixing those concepts in the minds of the students, and, at the same time, the cases dealing with the application of the principles can be covered with greater understanding and rapidity.

The selection of cases has been divided into two parts, the first covering the general concepts, and the second their application to Contracts, Property, Personal Interests and Public Interests. The cases dealing with Relief against Torts are included in Chapter 4 of Part II, which deals with Property, and in Parts III and IV, which deal with Personal Interests and Public Interests, respectively. The footnotes are ample, and refer to other cases, contra to that in the text, where that contrary doctrine is not treated in a case included in the section, and also to those illustrating special applications of the doctrine of the principal case. References are freely made to articles and comments in the various legal periodicals, so as to aid the student in securing detailed considerations of the question at issue.

The cases have clearly been selected for their intrinsic value and ability to disclose a particular equitable principle, regardless of whether the case is new or old. In each section the cases have been arranged to show first the general principle applied, and then its limitations or qualifications, together with special applications. This usually results in beginning with some of the old landmark cases and proceeding to the more modern ones. Wherever the equity problem has, or ought to have, been affected by the adoption of code procedure, there are cases to bring that out. Use has also been made of the various statutes generally adopted, which have affected the substance of equity, and also of the federal equity rules.

In the editing of the cases, there has been no omission from the statement of facts that had an influence on the court, so far as could be seen from

the opinion. Where mere informative material was inserted, as was the case with reference to the history and some aspects of procedure, the editors have seen fit to include excerpts from the standard text-books, and this practice seems better adapted to the purpose than the inclusion of the omitted portion of the opinion.

The book does not emphasize the cases from any particular jurisdiction, but an examination of the cases reveals the inclusion of a great many of the outstanding New Jersey decisions, and many more are to be found in the footnotes. The volume is not, of course, intended primarily for the practicing attorney, and while the arrangement would be of aid to any lawyer, the book is at its best as an efficient means for acquiring accurate familiarity with equitable concepts.

DAVID M. KIRSCH.

Newark, N. J.

McCLINTOCK ON EQUITY. By Henry L. McClintock, Professor of Law, University of Minnesota. Hornbook Series. St. Paul: West Publishing Company, 1936. pp. xix, 421.

The past half century has witnessed a crystallization of equity into an increasingly rigid body of law. The chancellor's foot has suffered a progressive calcification to the point that he can scarcely wiggle a toe. Today, law and equity stand side by side, each "universal" in its own sphere, each unwilling to pioneer. One can visualize a reincarnate Grotius murmuring "Gracious!" as he ruefully scans the wreckage of his classic definition. For the maxim "Equity will not suffer a wrong to be without a remedy" has evolved into "If Equity has not heretofore found a remedy, there is no wrong." Equity has become as jealous of precedent as is law, and the banner of *stare decisis* flies proudly o'er its ramparts.

In truth, the equity of antiquity is no more. Remedies, once extra-ordinary, have by constant usage become quite matter-of-fact. And the arms of the chancellor, far from administering a sovereign and unhampered prerogative, dispense stereotyped relief in traditionally measured doses.

The why and wherefore of this phenomenon suggests itself immediately. In the five centuries or more of its existence, equity has been correcting the inadequacies of the law. In the searching scrutiny of innumerable litigants and administrators of equity over so long a period, reason argues, all the defects in the archaic structure of the law must have been ferreted out, and remedies cemented in place, and this twice-built bulwark must now have attained an invulnerability sufficient to withstand the onslaught of wrong doing for generations to come.

Now, this argument ignores the factor of a changing (let us avoid the controversial "progressive") civilization. The unleashing of new economic forces

should perhaps raise fascinating new problems for a court of equity. But the recent manifestations of economic evolution have been of a philosophical rather than a mechanical genus. Our contemporary economic forms and agencies have little novelty about them. And courts preoccupied with the enforcement of rights of property can hardly be expected to be disturbed by the alarms attendant upon the birth of a code of social justice and economic morality.

The concept of equity as a court of plenary powers, then, is hardly of more than historical importance. Any substantial extension of equitable jurisprudence, while theoretically a possibility, as a practical matter is extremely doubtful. The concern of the modern student therefore, must be chiefly with the already defined limits of equity. An inquiry into the sources of equitable jurisdiction and the nature of its original functions is comparable to an investigation of the anatomical origins of the coccyx. The student's curiosity is satisfied, but his fund of utilitarian information is not increased. From a pragmatic standpoint, equity may now be distinguished from law by an enumeration of the various types of action cognizable in each court. Formal differences may also be noticed, for, though no longer faithful to its vows, equity retains its sentimental attachment for the garb of the cleric.

Professor Henry L. McClintock, of the University of Minnesota, has recently contributed a volume to the shelf of Equity texts. While the customary chapters are devoted to the history of equity, "Equitable Procedure," and "General Principles Governing Equitable Relief," the author recognizes in his preface the degeneration of equity's *Psyche*. True, he does not believe that the disintegration is complete, but he regards it as inevitable.

The book has the usual Hornbook Series format, unexcelled for the purposes of the law student. Major principles are set up in bold paragraph headings to facilitate rapid assimilation. They are then amplified and explained, with copious footnotes containing case material and citations.

Necessarily the volume can give no more than a high-lighted view of the subject matter. Works many times longer than 364 pages have been self-confessedly incomplete. The materials are intelligently selected with an eye to practical information rather than learning. It is unhesitatingly recommended as a supplement to case study or as a refuge for those students who, by reason of limited time or indolence, find it impossible to learn by the case method.

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