what these authorities decided. Instead, the holding of the particular decision is frequently stated; comparisons are made also between decisions and between the views of various writers who have considered the point. In short, a study of both text and footnotes in these chapters is a thoroughly satisfying intellectual process.

Beginning with Chapter VI the author enters the nebulous field of "The Reorganization Plan or Arrangement." In Chapter VII he discusses "Valuation." Chapter VIII concerns "Intervention and Appeals"; Chapter IX, "Collateral and Semi-collateral Attack." Chapter X, "Dismissal of the Proceedings and Adjudication," closes the text. The Bankruptcy Act of 1898, as amended by the Chandler Act, the General Orders in Bankruptcy, a table of cases and an excellent index complete the book.

Space does not permit a detailed consideration of the contents of these later chapters. But if one will study the chapter on the reorganization plan as a sample, he will find it written against a marvelous background which contains a reference to virtually everything worth while which has been written either by court or commentator since the *Boyd* case.[10]

Once more Professor Finletter has done a grand job for which he deserves the eternal gratitude of his colleagues in the insolvency field.

THOMAS C. BILLIG.†

LAW OF LANDLORD AND TENANT, with Forms. By John Emerson Bennett. Charlottesville: The Michie Company, 1939. Pp. xxi, 810. $10.00.

For such a book as Mr. Bennett set himself to write, there is a pressing need. It was a twofold need, calling on the one hand for a concise summary of the rules and principles of landlords' and tenants' law, and on the other for a set of forms suggesting solutions to the more prevalent of drafting problems. Mr. Bennett's plan to combine both within a single volume, if competently executed, would answer a general prayer.

The field of law to which Mr. Bennett addressed himself has not wholly lacked competent treatment. There have been the periodic new editions of Foa and Woodfall, the English classics; there is the scholarly treatise of Tiffany; there is the two volume encyclopedia appearing recurrently under the name of McAdam; there is the draftman's reference work on lease clauses compiled by Lewis.

None of these sources has satisfied the needs of the ordinary practitioner. Obviously an English reference can be of only secondary utility to an American lawyer, and Tiffany's excellence is dimmed by the want of any revision since 1912 (his book on Real Property does not incorporate his Landlord and Tenant). Not so obviously, McAdam and Lewis fail to satisfy the lawyer outside New York because they are so heavily weighted with New York decisions. Even if they be regarded as suitable outside their state of origin, their total of three large volumes has exceeded the need and the purse of the non-specializing solicitor.

The lawyer turns expectantly to Mr. Bennett's new work. It disappoints

10. Northern Pac. Ry. v. Boyd (1913) 228 U. S. 482.

† Lecturer in Law, Catholic University of America.

on every page. The first sentence announces that "American titles to real estate are allodial * * *."[1] Not a word in text or footnote warns the reader that the opposite opinion has been put forward by John Chipman Gray, Herbert Thorndike Tiffany, Manley O. Hudson, William R. Vance and the supreme courts of several states.

The third sentence informs the reader that, "The lease contract is a remnant of and a direct descendant of the tenures once extant between lord and vassal,"[2] an idea further developed by the declarations that,

> To establish the relation of landlord and tenant possession of the leased premises must be passed to the tenant. This was the final act in the ceremony of livery of seisin, and then as now possession was essential to consummate the lease contract and confirm in the tenant an estate or interest in the land.[3]

Mr. Bennett gives no hint at either point that the leasehold has been, throughout English history, contradistinguished from the freehold of which the vassal took "seisin"; nor does he disclose that for at least three hundred years a bargain and sale has been held sufficient to vest a leasehold without actual entry.

Perhaps it will be charitable to Mr. Bennett to regard his historical references as rhetorical flourishes, and to pass to his treatment of the problems which frequently harass the practitioner. One such problem is the proof of rent claims in bankruptcy. A lawyer might naturally turn to this text, published in 1939, for help regarding the effects of the important Chandler Act of 1938. But the Chandler Act is not once mentioned! The author does not even cite, in this connection, *Irving Trust Co. v. Perry*,[4] which disclosed the one effective means of proving in bankruptcy prior to the Act of 1938. Mr. Bennett's statement that future rents are not discharged by bankruptcy of the tenant[5] is supported only by citation of a Pennsylvania decision of 1844. The statement was misleading prior to 1938, and is plainly false today. The only warning to the reader that rent claims in bankruptcy have been the subjects of recent legislative surgery is found in vague references, without more particular citation, to "the provisions of Section 77B of the Bankruptcy Act of 1934 * * * and a subsequent amendment thereto."[6]

The failure of Mr. Bennett's text to assist the practitioner or student is not wholly owing to the author's want of information on the state of the decisions. Even when the law has not moved too fast for him, his language is so vague and contradictory as to offer little help in solving any problem. For example, the reader learns that "The relation of landlord and tenant exists by virtue of contract alone."[7] But he is at a loss to correlate this observation with the announcement that "The status of the relation * * *

1. P. 1.
2. P. 1.
3. P. 39.
4. (1934) 293 U. S. 307.
5. P. 365.
6. P. 232.
7. P. 18.

is dual, representing aspects of both contract and conveyance,"[8] and the further revelation that,

> The relation of landlord and tenant is a status and while contract is usually an element of the relation, consideration in the sense that the principle is employed in contract is not always present in that status.[9]

Far from explaining this conflict, the author seems wholly unaware of it, although it is the subject of a section in Jacobs' *Cases on Landlord and Tenant*, and of an article by Dale E. Bennett published in the Texas Law Review in 1937.

Mr. Bennett's contribution to the convenience of the profession must be found, if at all, in the 158 pages of forms at the end of his book. Included there are five 99 or 100 year leases, two ground rent deeds, a 999 year railroad lease, and short term leases for a garage, a hotel and a filling station. Most attorneys will be interested only in the last three. It seems to the reviewer that they are as likely to trap the user as to assist him. The clause for damages on the tenant's insolvency in the garage lease[10] is of the type shown defective by the United States Supreme Court decision in *Manhattan Properties v. Irving Trust Co.*[11] The editor supplies no example of the type of clause shown by *Irving Trust Co. v. Perry*[12] to be effective. The hotel lease tenders to the reader[13] a clause restricting the use of premises, but it contains a subtle defect; it lacks an express negative covenant which would entitle the landlord to injunctive relief. Mr. Bennett seems unaware of the peculiar advantages of the express negative covenant; he declares mildly:

> It is no valid objection respecting legality or effectiveness of a covenant that it is negative in form. Notwithstanding it is negative in its objectives it is effective *equally* with affirmative covenants either to work a forfeiture for breach, or to sustain other affirmative remedies.[14]

In its mechanical features, Mr. Bennett's *Landlord and Tenant* presents a mixed picture. The paper, print and binding are good; the size is convenient. The subject index is full and inviting. These good features must be balanced against the omission of that elementary requirement of a reference book, a table of cases. Two other refinements which distinguish some recent publications and which would help this one are the dating of cases cited and an index of statutes.

The reviewer believes that Mr. Bennett's *Landlord and Tenant* is not a contribution helpful to the profession. It is in fact a treacherous ambush. Its misleading generalizations, its citations of obsolete authorities, and its disregard of recent changes in the law are likely to prove costly to the lawyer who relies upon it. The need for a handbook on landlord and tenant is still to be supplied.

ALFRED F. CONARD.†

8. P. 20.
9. P. 21.
10. P. 657.
11. (1934) 291 U. S. 320.
12. (1934) 293 U. S. 307.
13. P. 672.
14. P. 310. Italics supplied.

†Assistant Professor of Law, University of Kansas City.