

It is reasonable to hope that the Institute's ambitious task will tend to unify the use of terminology throughout the country and thus reduce misunderstandings and controversies, will help to remove features of conflict in the law of the different states and will supply an ideal norm by which the living law of each particular jurisdiction may be expounded and applied.

The Institute has announced that a supplement to this Restatement of Contracts will be published for each one of a majority of the states and will give detailed references to statutes and court decisions for that state, in support of or at variance with the black-letter propositions of the official text.

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CASE BOOKS ON THE LAW OF PROPERTY.

CASES ON THE LAW OF REAL PROPERTY, by William F. Walsh. Indianapolis: The Bobbs-Merrill Company, Third Edition, 1931. Vol. I, pp. xii, 857, Vol. II, pp. xi, 681.

CASES AND READINGS ON PROPERTY, by Everett Fraser. Chicago: Commerce Clearing House, 1932. Pp. 511.

CASES ON THE LAW OF CONVEYANCES, by Marion Rice Kirkwood. Chicago: Commerce Clearing House, 1932. Pp. 767.

CASES ON TITLES, by Ralph W. Aigler. St. Paul: West Publishing Co., Second Edition, 1932. Pp. xiv, 1031.

CASES AND NOTES, supplementary to WARREN'S CASES ON THE LAW OF REAL PROPERTY, by Sayre Macneil and James Angell McLaughlin. Cambridge: published by the editors, 1931. Pp. ix, 120.

CASES AND MATERIALS ON THE LAW OF LANDLORD AND TENANT, by Albert C. Jacobs. St. Paul, West Publishing Co., 1932. Pp. xxviii, 903.

CASES AND MATERIALS ON TRUSTS AND ESTATES, by Richard R. Powell. St. Paul: West Publishing Co., 1932. Pp. xliiii, 1027.

The above have come to us, teachers of the law of real property, in the last two school years and more are announced in preparation. Most of them have been reviewed in the various Law School Reviews; sometimes in response to requests of the publishers; sometimes from a desire to offer helpful criticism or spontaneously evoked by admiration of a clever treatment. Is this a flood or a wealth of materials, and contributions to their thoughtful handling? The writer takes the second viewpoint. None of the authors need advertising and any "best seller" consideration will have to depend on merit in this field.

As evidence, then, of deep interest in the pedagogical phase of real property teaching, these offerings appeal to the writer in a greater degree than tabulations of teaching results on the basis of students passed and failed, why students reached certain positions of merit or academic grade in each or every class, or why all the students were not in the first third of the grade. No.

doubt studies of the latter kind may be fruitful, but here we evidently have the teacher considering what and how his subject matter should be best presented and submitting it in print, despite the old saying, "O, that mine enemy would write a book." The tabulation method, on the other hand recalls most vividly the specter of long past school teaching days expressed in the doggerel of an unknown poet:

" 'Twas the midnight hour, and a teacher sat,
Alone his task pursuing;
He averaged this and he averaged that,
Of all that his class was doing.
He sat, he slept, he dreamed he died
And his soul—it went to Hades;
And they met him there with the question fair,
'State what the percent of your grade is'."

It is in the light of contributions to the pedagogy of our field that the publications coming out in such generous numbers must be justified, and it is believed they are; each and every one a contribution, a new tool, or a whetstone for the one in use, to aid in garnering a better harvest.

The publisher is, however, only indirectly a benefactor, and business is not, or at least has not been, a purely philanthropic institution. Herein lies the chief defect of the "series" scheme, at least where different volumes in a series in the same field are prepared by different authors. If the contributions are really individual efforts to improve the teaching process, we must expect a degree of variation in a series by different contributors, or the value of their individuality is diminished in the liaison process. Mr. Gray's six volumes had that advantage of a single-mindedness in scheme of presentation, regardless of who handled them. Such was the situation also with Mr. Warren's series.

But the book is but a tool, and a tool prepared by one mind. Use and change in conditions require oiling, whetting, and occasional new parts. Original size may not be of such importance as the skill, assiduity and mental (elbow) grease used in connection with it. No one could imagine Mr. Warren limiting himself to the 400 pages on real property in his first volume. So what a delight to have Mr. Macneil and Mr. McLaughlin contribute in printed form their Cases and Notes supplementary to Warren's Cases. For those who have used Mr. Warren's book, it is comforting, in checking over what these two teachers have presented to us, to find our notes in condensed, printed form, and here and there something which we have overlooked. Their contribution to pedagogy is usable no matter what tool the teacher is using as it is found in its entirety in any of the new books. If it is unethical to so use it, the helpful pedagogic purpose of the authors has been misconstrued. It is most convenient, though not indispensable, since teachers in the field for some time have probably gathered it in note form.

Mr. Walsh has given us his idea of the proper materials and arrangement in his two volume series. Here we find the other defect of the "series" idea, along side of the advantage of single-minded control. The first volume has

about the same number of pages as Mr. Warren used. It is intended to cover the first course in the law of personal property, and the introductory course in the law of real property, the various proprietary estates and possessory tenancies and rights incident to land and interests therein. "Natural Rights", including Easements of Light and Air, Percolating and other waters, and Lateral Support, are postponed to Chapter XXV of the second volume among a series of chapters on easements. The background of real property law proper is set forth in two short chapters. The second, Chapter VII, entitled Development of Methods of Conveyancing indicated that he has yielded to the urge to carry the introduction to the Statute of Uses over into Modern Statutory Deeds. This minimizes the space and treatment of conveyancing as such. Throughout his arrangement is strictly individual. He is presenting his ideas of arrangement and relationship which are his own, and are not an acceptance of traditional handling. Many of the chapters are brief, but are indicative of how and in what order he thinks the teaching should be done. Of course we know that he supplements the work, as the Warren book had to be supplemented. But one would have to study out his scheme and then by using the materials in his own order probably change it. Placing the cases on estates in juxtaposition to the time of their development and history will appeal to some. Where a school has no time for a separate course in the law of Landlord and Tenant, his chapter in that field seems desirable. (Chapter XI.) This first volume with some rearrangement and more outside material would be a good tool. The selections from his own History of English and American Law, Blackstone, and Kent will need supplementing. Mr. Bigelow gave 87 pages to his Introduction to the Law of Real Property and left out cases on estates. Mr. Walsh puts in cases on estates and omits other things. That is the difference of individual slant. Of course Mr. Warren did the same, and we know that the author of a History of English law and of a handbook on the Law of Property does not limit himself to this nucleus.

The second volume comprises 667 pages of cases to cover the rest of the field. Students of property law have other courses to prepare and supplementary work takes time. Anyone has a right to his own pedagogic ideas but this volume does not seem so good a contribution to the common end as the first, not because of any preference for the order of material, but it does not seem adequate. One can rearrange, but we like to do the outside work through reference to the special contributions of our co-workers in law review articles and not supplementing too many cases.

Mr. Aigler's second edition of his Cases on Titles is of the same high quality as his former book. Accretion has been transferred to Derivative Titles and new modern cases have been added here and there, but in general the editor apparently feels that his pedagogic scheme, tested by fifteen years of use, is satisfactory. We had hoped to see at least one change. Because of our preference for what seemed a more logical order, some of us have felt obligated to have our students purchase the preceding volume in the "series", Mr. Bigelow's Rights in Land and Mr. Aigler's Cases on Titles at

the same time, in order to put Chapter 6 on Estates Created into the first course, and Covenants from Mr. Bigelow's books into the course on conveyancing, or make other readjustments. This again seems evidence of the defects of the "series" idea when two most able men prepare different books in the same series. Our esteem for the excellent work done put us to some inconvenience. On the quantitative side, the selection and arrangement of cases was always above criticism and the notes suggestive. In these days of highways, widening of streets and city planning, and latterly of tax problems, some of us have found the notes on Condemnation and Tax Titles "do not satisfy".

The search for better treatment than the quantitative, classification, and arrangement scheme of the traditional case book has brought out Mr. Fraser's offering. The historical background and the foundation knowledge of interests in land, present and future, the changes in mode of conveyance with resulting contact and influence of restraints, perpetuities, and powers can form one systematic treatment, essential and basic, and Mr. Fraser has this as his pedagogic scheme. 511 pages would seem inadequate if we had not precedents and we know that the effective teacher is to use the tool. It is evidence that a very sincere student of the teaching problem considers that he has found a satisfactory method of laying the proper foundation, and he offers it for our consideration. As indicated in the preceding paragraph others have felt that estates should be developed earlier and not duplicated later, provided the treatment was adequate. The writer well remembers the scholarly handling of this field by Mr. John R. Rood that accompanied his *Decisions, Statutes, etc. concerning the Law of Estates in Land*, a book which failed of extensive recognition because it came too soon. (We found recently that Mr. Kirchwey's *Readings in the Law of Real Property*, desired for supplementary reading, was out of print.) And Mr. Fraser has approached his treatment with that ability and individuality of which we know him capable. His chapter headings are deviations from traditional titles, expressive of his effort to transfer the legal content to the reader. The development of the results of the statute of uses does not carry him, as it did Mr. Walsh, into the completed treatment of conveyancing as such. Estates are basic, and should be treated so as to give an insight into their interrelation with conveyancing but not conveyancing as an art. This logically requires some consideration of consequences, rounding out with the *Rule Against Remotely Contingent Interests*. Memory of Mr. Rood's classes recalls that this is no easy method and the selection of materials requires an ability that is reflected in Mr. Fraser's book. Selections from the historical texts are judiciously made without leaving too much savor of history. Some of us will want more than 150 cases, but this is a teaching tool and not a complete course for an automaton. Mr. Fraser's scheme requires shifting of subject matter to another book of the "series" to which we now come, but in leaving we can truly say this is a scholarly contribution worthy of great consideration to the teacher of real property law.

Mr. Kirkwood contributes his *Cases on the Law of Conveyances* in this

"series". Mr. Fraser omitted Profits, Easements, Licenses and Covenants Running with the Land and they appear in this volume. This is apparently to fit in with two ideas: first, that the foundation course will be weighty enough without further extension (and properly taught it will test the mettle of teacher and student for therein is no predigested mental pabulum); second, it fits in with that pedagogic logic which regards such interests as arising out of particular grants or in connection with other transfers. Mr. Kirkwood considers registration of titles of sufficient growing importance to set out the Uniform Land Registration Act in full and follow it with 30 pages of cases arising under the Torrens system. With 350 pages devoted to rights in the land of others and 50 to the Torrens system, out of 759 pages total, the material available for conveyancing as such is necessarily cut down. The 350 pages left cover: I. Methods of Conveying Interests in Land; II. Formal Requirements of Conveyances; III. Description; VI. Estoppel by Deed; and part of VII. on Recording. One cannot get away from essentials so to include them they must be briefly treated, and such is the fate of Adverse Possession and Accretion. Mr. Kirkwood and Mr. Fraser give us the results of successful trial and experiment for a number of years of their own teaching and they are worthy of the name of real contributions. Of course one will supplement with the contributions of other teachers, such as Mr. Clark's Covenants and Interests running with the Land, but Mr. Kirkwood has provided well selected notes referring to the law review articles, citations, and problems in the form of digested cases which have been commented upon in the law reviews, to aid one in his efforts. In connection with this series one wonders why paper which permits the print on the other side of the page to darken the page one is reading should be necessary.

Another real contribution is Mr. Jacobs' Cases and Materials on the law of Landlord and Tenant. Many of us have longed for space in the curriculum in which to insert a separate course in this field. Perhaps a proper study of curriculum revision would show us that a correlation could bring it about. Interests less than Freehold, Rent, Surrender, Covenants in Leases, and Lease Forms require some attention anyway, and we may have given it more or less in a haphazard manner. Here is a contribution of material in quantitative manner, but with a plenitude of cases are abundant notes, digested cases (Mr. Kirkwood put these in problem form), some forms of leases, and particular stress on covenants in all kinds of leases (those clauses!), and questions on the decisions and their consequences in the form decided, or with a varying set up, real questions, provocative of thought and interest. As Mr. Macneil and Mr. McLaughlin have done for us in their field, so here we find lots of our note material now in printed form, with much more contributed by Mr. Jacobs for use in a more specialized course. The student finds his reference to Mr. Schnebly's contribution on Surrender and the like without special assignment from the "prof". Here is a quantitative treatment, presented in a most thorough and scholarly manner with plenty of thought provoking element. A fine piece of work.

Some of us may have thought that Mr. Powell had furnished his contribution in his *Cases on Future Interests*, and "shot his bolt". What a pedagogical contribution that was! What a selection (and rejection) of materials keenly done, with notes and provocative questions on the effect, the consequences of decisions! How the snowball of knowledge increases in size as it is rolled along over the ground of "variations", reviewing each interest a number of times in the light of each new variation. Mr. Simes and he did a real job. But the bolt was not all shot. "The boundary walls of Trusts and Wills repeatedly obtruded themselves as barriers to the completion, or to the comprehension, of topics partly studied in the areas of law traditionally known as Future Interests. The usefulness of these separations of subject matter came to be questioned further because the editor could recollect no such divisions in his practical experience at the bar." Here too is an expression of that state of inquiry which has produced for us teachers of the law of property this wealth of material: "the research and SELF EXAMINATION induced by the curricular revision studies." Into this problem of correlation of three traditionally separated subjects, Mr. Powell has plunged with the vigor and analysis of which we know him capable. Is this a correlation we arrive at by looking backward after we have studied the divisions separately in the traditional way, or may we anticipate it by regarding the creation of interests in futuro as a single field, accomplished now this way, now that? Shall we get the units and then have a unifying review course, or unify as we go along? In a more elementary field we remember Mr. Isaac's viewpoint on that proposition. In "Security Transactions" we have another evidence of this point of attack; another, in a unified treatment of "business units". Here the craft is alive and stirring, on the attack and not on the defensive, in the perpetual inquiry, "How should it be done?" This volume has to have a special review. The notes, the digested cases, the provocative questions are all there. But more than that the work is a concentrated attack on this correlation problem, the whence, the how, and the social consequences. The first volume gives us the English historical background; then Material facts and trends in Current American Life. And we come to "Disposition of Property—Ascertaining the Manifestly Desired Disposition to Which Effect is to be Given", and "Building an Instrument Which Accurately Manifests the Actual Desires of the Disposing Party." The captions express more or less definitely the purpose. Be sure and get this book and ponder it. It may point the way to a solution of our time and duplication problems.

"Note Reader", there is no stagnation in the study of the pedagogy of the law of real property. An unselfish craft and generous publishers are engaged in promoting the better ways of teaching. The materials are so abundant, the contributions so scholarly, that we are not limited to any one "series", and can select three or four books, each from a different series, to fit our ideas, and the "best sellers" will be the best individual contributions.

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