Book Reviews

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Book Reviews


Thirty years ago it would have been impossible to compile a bibliography of separate works on quasi-contract for the reason that there were no separate works devoted to the subject. Such a bibliography at the present time consists of only six titles; the text books of Keener (1893) and Woodward (1913), and the casebooks of Keener (1888-9), Scott (1905), Woodruff (1905, 2d ed. 1917) and Thurston (1916). To these books may be added some, though not many, articles in periodicals.

The first scientific and effective treatment of the differentiated subject-matter is found in Professor Keener's article on "Quasi-Contract, its Nature and Scope" (7 Har. L. Rev. 57, May, 1893), later incorporated as the introductory chapter to his "Treatise on the Law of Quasi-Contract." The article is an outstanding landmark in our law. To the need of a separate treatment of the subject Professor Ames had called attention in 1888: "The equitable principle which lies at the foundation of the great bulk of quasi-contracts; namely, that one person shall not unjustly enrich himself at the expense of another, has established itself very gradually in our Common Law. Indeed one seeks in vain to-day in the treatises upon the Law of Contract for an adequate account of the nature, importance, and numerous applications of this principle."

The material was at hand; it was embodied in the Reports and discussed by text writers, but it had been assimilated by a fiction to the law of true contract, to which it had no essential relation. Thus Blackstone characterizes the contract obligation as embracing "Presumptive undertakings or assumpsits, which though never perhaps actually made yet constantly arise from the general implication and intendment of the courts of judicature, that every man hath engaged to perform what his duty or justice requires." (Black. Com., Bk. III, p. 162). The first edition (1826) of Chitty on Contract also shows the same confusion; the statement that in contract a "common intent" is necessary, being immediately followed by the statement that "in many cases the law will imply the assent," which latter statement he illustrates, without discriminating, in part by instances of properly inferred true assent, and in part by instances of the imposition of a duty where there was no proper inference of true assent at all. Later writers perpetuated the obfuscation. Mrs. Carlyle once said, "It is the mixing up of things which is the Great Bad." The distinction was not sharply made and systematically presented until Professor Keener performed that service.

This new casebook by so accomplished a teacher as Professor Thurston is naturally a welcome addition to the meagre number of books on the subject. In quasi-contract, more than in other branches of the law, any intelligent selection of cases will invite further recognition of the scope and importance of the subject; be helpful for instructional purposes; and, because of the relative scantiness of the litera-
The making of a casebook is largely the process of elimination of cases by a careful selection. A difference of preference as to cases chosen does not necessarily imply criticism of the compiler's choice. Professor Thurston's book is useful and generally adequate. One is struck, however, by the exclusion of any case on benefits conferred in the performance of *ultra vires* contracts of either municipal or private corporations. These topics are dismissed with a reference to a textbook, to articles in periodicals, and to a casebook on corporations. Particularly to be regretted is the omission of *Sinclair v. Brougham* (1914) *A. C. 398*, in which there is an elaborate discussion of the question whether recovery can be had at law for benefits conferred under *ultra vires* contracts of private corporations. The opinions of Lord Chancellor Haldane and Lord Sumner in the case are of special value and interest, not only because of the rule applied but also for the historical comment. Probably the most chaotic situation in the whole law of quasi-contract exists with reference to the right of recovery for benefits conferred in the performance of *ultra vires* contracts of municipal corporations. It would be a hopeless task to compass successfully within the limits of a casebook a satisfactory group of cases on this vexatious topic; but it would be helpful to include at least a very few cases as a method of merely presenting the problems of law and public policy involved, and to serve as a basis for a statement of the probable reasons for the irreconcilable difference of opinion upon the question.

The almost equally troublesome question of recovery back of taxes alleged to have been paid under compulsion of law is represented by one case only and by one and one-half pages of annotations to it. This topic would seem to require a fuller submission of case material for proper presentation of the subject. A too extensive use of annotations, composed by an editor transmutes, by so much, the casebook into a textbook. Footnotes, dealing with other cases, except upon subsidiary features of the problem, should where possible consist of facts and arguments quoted from judicial opinions.

An inspection of the book suggests further comment that may be of interest to the users of the book and to the editor in preparing a future edition. *McArthur v. Luce* (p. 72), the doctrine of which is questionable, is probably shaken by the later case of *State Bank v. Buhl*, 129 Mich. 193 (see 15 Mich. L. Rev. 234 note). *Contra* to *Dorsey v. Jackson* (p. 141) is *Davis v. Lee*, 52 Wash. 330. The early South Carolina distinction between mistake of law and ignorance of law, (p. 213, note) is later doubted in *Cunningham v. Cunningham*, 20 S. C. 317. The quoted remark of the Court from *Morgan Park v. Knopf*, 199 Ill. 444 (p. 227, note) is severely criticized and said to be probably *obiter*, in 1 Illinois L. Rev. 335-6. *Hayes v. Gross*, (p. 263, note) was affirmed in 162 N. Y. 610 upon the opinion in the Appellate Division. The footnote title, "Measure of Damages" (p. 320), is unfortunate; for the measure of the recovery sought was not damages for breach of contract, but the value, in a quasi-contractual action, of benefits.
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Conferred. *Contra to Hawley v. Moody* (p. 321) is *Lockwood v. Barnes, 3 Hill (N. Y.)* 128, though this case is what biologists might call a "sport." The singular doctrine of *Byrd v. Boyd* (p. 406), found in a few southern states, is repudiated in *Timberlake v. Thayer, 71 Miss.* 279, and is there intimated to have arisen out of ante-bellum social conditions in the South.

Except for such defects or omissions as have been touched upon, Professor Thurston's casebook is an intelligent and useful massing of material for the study of the subject. Some parts are unusually complete and satisfactory, for example, the material on recovery of money paid under mistake as to the genuineness of negotiable paper.

One might remark that he has presented some novelty in arrangement of the contents of the book, but if that be a fault it is one he shares with the other makers of books on quasi-contract. A round table conference at some meeting of the Association of American Law Schools might profitably be devoted to an attempt to determine upon some uniform classification of the subject.

In conclusion it may be added that the generally exaggerated format of the volumes in the series of which this book is a part, is much mitigated in the present instance by the use of a thin but opaque paper.

E. H. W.


The fourth edition comprises two volumes and is the massing and accumulation of the effort, work and study of H. G. Wood, John M. Gould, and Dewitt C. Moore, authors of the first and second, the third and fourth editions respectively.

The best test of the value of a law text book is the frequency of its citation by the Courts. The third edition has enjoyed this distinction for a number of years. It is a surprising circumstance that fifteen years have elapsed between the publication of the third and fourth editions.

Wood on Limitations has long been regarded as the standard work on the subject. The fourth edition will not detract from the prestige enjoyed by former editions; the work is much enlarged in its scope by reason of the great number of decided cases that have been published in the reports since the third edition. There is a table of contents; table of cases (containing over seven thousand cases); thirty-one chapters covering the entire field of limitation of actions, both at law and in equity; an appendix containing extracts from the important sections of statutes of England, and the American States and Territories, and a most complete index by the aid of which the busy practitioner may readily find the topic he desires.

In view of the rapid expansion in the field of what we have come to call "commercial law" this edition should find a ready sale, for in this field the lawyer must be ready to advise as to prospects of collectibility of a debt when the debtor resides in jurisdiction other than that of the creditor. The text and the notes are general and not confined
to any particular jurisdiction, so that the work has more than a mere local value. Sustaining the text are cases cited from the jurisdictions of the several states and arranged alphabetically.

John Alfred Kelly.


The first edition of this work was published in 1897. The author described it as a work "not intended to deal with corporation law in its application to particular corporations, but only with the rules and principles applicable to corporations generally." The arrangement of the text was excellent, and was considered so adequate that the second edition followed it with little change.

In this third edition the text has been revised and enlarged to meet the rapid development in the law of corporations during the last ten years. The work has been improved by the addition of many references to recent articles in the law reviews and magazines, and in addition to the official citations, references are made to the various unofficial reports and collections of cases. About twenty-five more cases have been cited than were included in the previous edition. The notes have been amplified and the citations on every point have been brought down to date. In the notes those cases which are considered by the author leading authorities on the subject are printed in capitals.

The leading principles are set forth in heavy faced type; this makes the book of great aid to the student in a review of the subject, though it may also tempt him to a superficial use of the book. The work will also prove of value to the practicing lawyer because of the numerous cases cited and the very exact conclusions drawn from them. The book has been carefully prepared and in its new edition will undoubtedly be much used.

William E. Vogel, '19.


After preparing the first portion of this book as a brief in connection with the Archbald impeachment trial, the author was requested to put the matter in book form, as a result of which this volume was published. The book opens with a consideration of the debates which preceded the adoption of those constitutional provisions which relate to impeachment. Then some of the important questions in connection with impeachment are dealt with. The first question is as to the capacity in which the senate sits on the trial of an impeachment. The author concludes that it sits as a court.

The main portion of the book is taken up with a discussion of the nature of the offences which may result in impeachment. Other interesting questions touched upon are whether an officer can be impeached for offences committed before his induction into office, and
whether he may be impeached after he ceases to be an officer. There is also a short paragraph on the rules of evidence to be followed in an impeachment trial.

As an impeachment trial takes much of the senators' time, it is suggested that a change in procedure would be a good thing, and this naturally leads to a discussion of the adequacy of impeachment as a remedy. It is pointed out that impeachment, as a practical remedy, applies only to judges, and that it is not altogether desirable to have them tried by the Senate. A better plan, in the writer's opinion, would be to have District Judges tried by the appropriate Circuit Court of Appeals, and all other judges, except Supreme Court Judges, by the Supreme Court itself. The Supreme Court Judges would still be tried by the Senate.

The appendix, which constitutes two-thirds of the volume, contains an abstract of the articles of impeachment in all the Federal impeachments in this country, and of all the impeachments in England, and suggested rules of procedure and practice for the senate in impeachment cases. One of the most important of these suggested rules is that, except when the President, Vice-President, or Justices of the Supreme Court are impeached, evidence shall be taken before three of the Judges of the Court of Appeals of the District of Columbia. The advantages in this are that judges are better fitted to pass upon questions of evidence than are senators, and that a great deal of the senate's time would be saved.

Though there have been few United States impeachment trials, the subject is an interesting one. To a counsel in an impeachment trial the book would be of special value, for many good arguments are advanced, and numerous authorities cited, and reference may easily be made to the articles of impeachment contained in the appendix.

Charles V. Parsell, Jr., '19.


The selection and arrangement of topics does not differ radically from that of previous authors. There was no need, if indeed there was room, for a marked departure in that respect. The striking features of Professor Burnett's book are the brevity of the cases—as corporation cases run, they are decidedly short—and the abundance of the notes. The brevity of the cases is a clear advantage, not only because it permits a good deal of ground to be covered in less than 800 pages, but because short cases contribute something of cheerfulness to a student's daily work. The notes, with the 30-page index and the 28-column Table of Cases Cited, are not far from making the book a small text. A teacher would find them useful constantly, and a practitioner repeatedly, and "in no instance are they designed to relieve the student from doing his own thinking and rendering his own appraisement." Yet there is room to fear that a student would occasionally find them too useful, as reducing that tendency to worry a case which is half the value of case-book study.

The physical excellence of a Little, Brown and Co. book—clear type
on good paper, and a sheep-colored buckram binding that is a pleasure to the eye and the hand—attract one strongly and cannot fail to be an advantage.


These two volumes are part of a set of five casebooks on the Law of Property, which are to appear in the American Casebook Series, Dean William R. Vance, of the University of Minnesota Law School, being general editor of the series. Volume V, dealing with "Wills, Descent and Administration," is already in print, but Volumes II and IV, on "Rights in Another's Land," and "Future Interests," respectively, are still in course of preparation.

The first chapter of the Casebook on Personal Property is entitled "Distinction Between Real and Personal Property," but the teacher turning to this chapter will, perhaps, be a little disappointed to find that it contains only a two page quotation from Williams on Personal Property. He is likely to think that some cases might well have been here introduced illustrating the importance of this distinction. Also he may regret that there is no case material dealing with the classification of freehold estates as real property, and of estates less than freehold as personal property, a distinction which seems so anomalous to the student beginning the study of law. He may further feel that here would be a good place for the consideration of the doctrines of property in game and fish, which do not appear to be treated in either of the volumes under discussion.

Of the following chapters of the Personal Property Casebook, however, the reader will have no similar complaint to make. The editor in his prefatory note expresses the fear that the second chapter, on "Rights of Action Based on Possession or Ownership," may seem unnecessarily long, but the teacher, at least, will readily agree with him that "the relation between the so-called substantive rights and forms of action is * * * * so intimate that the student's attention cannot be too soon called thereto," and will feel that sixteen cases are not too many for this purpose.

The material in the two following chapters on "Possessory Interests in Chattels," and on "Acquisition of Ownership," is so arranged that the teacher may take up the latter chapter first if he so desires. The fifth and sixth chapters deal with "Fixtures," and "Emblements," subjects which are usually included in works on real property, but which may be quite as satisfactorily dealt with in the present connection.

The cases in this collection are well chosen and well edited. No undue sanctity seems to attach in the editor's mind to English cases, nor, on the other hand does he show any of that foolish aversion to them which is evident in some modern casebooks. It is believed that this collection will be found very useful in our law schools.
Professor Aigler's casebook on "Titles," although the third volume in the series on Property, is really designed, as the editor tells us in his prefatory note, to be used as "the basis of the beginning course in Property," if so desired. The title of the book is not entirely enlightening as to its contents, although this fact is easily explainable on the ground that any title which would be fully descriptive would also be unduly cumbersome.

As we should expect, there are chapters on "Possessory Titles," "Prescription" and "Accretion," also chapters on "Mode of Conveyance" at common law and under the Statute of Uses, and on "Execution of Deeds," "Covenants for Title," "Estopped by Deed," and "Priorities." There are besides, however, a chapter of nearly two hundred pages entitled "Estates Created," and another of eighty pages entitled "Creation of Easements by Implication." Although the title of the work would not necessarily point to a chapter on the nature of estates, it is quite clear that this is the proper place in the Real Property series for the treatment of this subject, and that the space devoted to it is reasonable proportionate to its importance. It is not quite clear, however, that the present collection is the proper place for a chapter on easements by implication. Would not such a chapter find a place more appropriately in Volume II of the series, which is to deal with "Rights in Another's Land," and, therefore, presumably with the general subject of easements?

The reviewer has looked in vain for cases dealing with rights in streams, and percolating water, in ice and minerals, and in the superjacent air. These subjects would seem to fall within the scope of the present work as reasonably as do the general problems of estates—certainly they could be dealt with here much more reasonably than in any of the other books of the Real Property series. On the whole, however, the book seems a useful one, carefully edited, well balanced, and rich with suggestive foot notes.