# BOOK REVIEWS

*A Treatise on the Law of Personal Property.* By Ray Andrews Brown. Chicago: Callahan and Company. 1936. Pp. lxxx, 704.

Professor Brown has written a book on those segments of the law which are traditionally grouped in the law school course under the heading, Personal Property. Here the author has treated problems connected with the original acquisition of property in things, the acquisition of property by finding, by adverse possession, by accession and confusion, by gift, by sale, and by judgment and its satisfaction. He includes within the scope of his book a treatment of bailments, liens, with special reference to pledges, fixtures and emblements. It will be seen at once by those familiar with the traditional law school course in Personal Property that this text parallels the leading case books on the subject.

The work is accomplished with an admirable scholarship, and propositions of law are stated with precision and accuracy. Moreover, the author has brought to bear a critical analysis upon the various formulae and doctrines by which courts purport to be guided in the solution of cases involving these problems. The technique employed by the author is the usual one, namely, the formulation of the formal rule or principle developed by the courts and an examination of the application of this rule or principle in particular fact situations and types of fact situations. He has frequently enlightened his discussion with the statement of specific adjudicated cases. The manner in which this is done seems to this reviewer to be highly satisfactory. The old, familiar cases are to be found at the appropriate places in the text and notes. Particularly is this true where, for an understanding of the rule as applied to modern problems, it is necessary to understand the origin and history of the rule. Balanced with this treatment, however, the author has incorporated contemporary case material which discloses the function and application of these rules to current problems of property law.

While the book is written primarily from a conceptualist point of view, it is not to be supposed that the author does not realize the limitations of this technique. His position seems to be, in the main, that since this is the method of the ordinary court, to enable a lawyer effectively to present such a problem, it is necessary for him to be familiar with the terms in which the court will deal therewith. This method may not be the most effective or the most desirable one but it is the one which is normally employed and therefore one which must be mastered by the practitioner. An example of this attitude may be found in the author's discussion of bailments. After presenting inconsistent definitions of a bailment he says, "Since it is hard to deny to anyone the right to make his own definitions, the mere matter of the scope which a given court or legal writer wishes to give to a particular concept, seems a small thing over which to quarrel. . . . After all it is the principle purpose of courts of law to decide the ultimate controversy that the contending parties place before it, in a way which will be most just to the parties concerned, and of the greatest general public utility. It is unfortunate when the law forgets this primary purpose and treats its function as an exercise in syllogisms, in which the decision turns on a more or less logical deduction from some postulated major premise.

It might be well, therefore, if we could abandon the search for the definitions and elements of bailment, and confine ourselves to a consideration of the various rights and duties which arise when one person has possession of goods, which belong to another. . . . Unfortunately, however, the current of legal thought and investigation in this field has long run the other course, and we cannot therefore forego consideration of those transactions, which have been held to constitute and not constitute bailments."[1] This, to the reviewer, seems eminently sensible. Moreover, it seems to him highly realistic. A great deal of what passes for a realistic discussion of law seems to ignore the outstanding fact of the legal order, namely, the existence and use by courts and lawyers of formulae and legal labels. It is an amazing fact that many self-styled "functionalists" persist in ignoring the obvious and frequently highly important function of legal doctrines. It is certainly true that there are many concepts and formulae in what we call the law of property that require keen and critical analysis for effective use. So long as courts and lawyers continue to employ these hazy ideas in the decision of cases, it will seem to be the job of the scholar and teacher to bring to bear thereon his critical faculties and power of analysis to aid in the process, rather than to abandon the concepts and invent a new technique which, while perhaps abstractly a superior one, is not likely to be employed by the profession.

To those teachers who deplore the availability of a textbook which closely follows the development of the course in the law school, this book will not be welcome. The present writer does not share this feeling. On the contrary, he believes that the student is entitled to all the assistance he can obtain from a good textbook. Experience seems to indicate that law school students in a case-system school will resort to some help from texts. The important thing is that they have available a good one. Professor Brown has furnished a good one for the course in Personal Property.

*Fowler V. Harper.*

Louisiana State University Law School.

*Equity.* By Henry L. McClintock. St. Paul: West Publishing Co. 1936. Pp. xix, 421.

There has been considerable shifting of the judicial sands since the works of Storey and Pomeroy were prepared. Even the latest editions of those works are not up to date. Briefer and more recent texts have, with the exception of Walsh's fine treatise, shown a decided tendency to stress the historical past rather than the present trend and status of the law. In this admirable little handbook, Professor McClintock has made a conscious effort "to show the effects of the modern procedure on the development of (our equity) principles." He has also, adequately but very briefly, sketched the old Common Law rules and distinctions. This soft pedaling of the historical approach may be criticized in some quarters where the fear exists that we are drifting away from a proper study of the early Chancery Reports. However, with the widespread development and adoption of Code Pleading and its accompanying blessing of a fusion of Law and Equity, it would be unfortunate indeed, if the modern procedure and decisions were not emphasized.

[1]Pp. 226–227.