

## BOOK REVIEWS

*Select Cases and Other Authorities on the Law of Trusts.* By Austin Wakeman Scott. Cambridge, Austin Wakeman Scott. 1919. pp. xiii, 842.

"In 1882 Professor James Barr Ames published the first edition of his collection of Cases on Trusts; in 1893 he published a second edition. This book is far more than a mere collection of cases. In its analysis of the subject and in its extensive annotations it has been a notable contribution to legal scholarship. It has frequently been the guide of courts and of legal writers. It has determined the scope of the course on Trusts as it is taught to-day in the law schools of the United States." So says Professor Scott in his preface, and there is no one who will gainsay him. Yet, as Professor Scott points out, there is need of a new case-book on this subject, both because of the development of the law during the past quarter century and because of the need of cases upon Resulting and Constructive Trusts (omitted from the second edition of Ames' *Cases*) and Charitable Trusts (omitted from both editions). The editor has been fortunate in having at his disposal the material in Ames' case-book and the late Dean's manuscript annotations thereon. Of this matter Professor Scott has made excellent use, retaining much of the arrangement found in Ames and reprinting a goodly number of the same cases, as well as the more important of Ames' notes, "chiefly those which are of historical interest or which relate to controverted points." Yet the present work is by no means a mere edition of Ames' *Cases on Trusts* with the more recent decisions deftly inserted in their proper places. Professor Scott, while following Ames' classification in the main, has departed from it in many instances, and to advantage, and he has supplied a great deal of new material, producing a scholarly, well balanced and eminently "usable" case-book on this difficult subject. In the opening chapter a number of new sections deal with the several distinctions between a trust on the one hand and a use, a liability for tort, a condition and a mortgage or pledge, on the other hand. The excellent though brief series of cases and annotations on Charitable Trusts supplies a long-felt need. Chapter 4, dealing with the Resulting and Constructive Trusts, which the editor published as a separate pamphlet in 1915, bears only a slight resemblance to the chapters on these topics found in the first edition of Ames' *Cases*. Ames printed 46 cases, of which 13 are found among the 63 printed by Scott.

Throughout the book there is notable shifting of emphasis. Many of the peculiar doctrines connected with the status of the married woman at common law have been relegated to the background, being now of little more than historical interest (pp. 151, 243, 594), and new, twentieth century matters have come to the fore: witness the "tentative trust" of a savings bank deposit (p. 218); the problem whether a trust in which the settlor reserves a life interest or a power of revocation is subject to an inheritance tax upon the settlor's death (p. 225); the recent disregarding of the rule of *Morice v. The Bishop of Durham* (p. 277); the conflicting claims of the several *cestuis* when a common trustee of two trust funds steals from one fund to make good a deficit in the other (p. 680); the liability of a bank for honoring a trustee's check payable to the trustee individually (p. 733); the question whether a trustee may lawfully invest in liberty loan bonds though not expressly authorized so to do (p. 791); and the statutory reinvestment of charitable trusts in New York, Michigan, and Virginia (pp. 310, 312, notes).

Although Trusts is a subject to which the historical background is essential, the present day tendency of cutting down historical matter, merely as such, is well exemplified in this case-book. In Ames' second edition, nearly thirty-nine *per cent.* of the cases, as against twenty-five *per cent.* of those in Scott, were decisions rendered prior to 1800. In Ames the English and American cases are respectively eighty-two and eighteen *per cent.* of the whole, whereas in Scott the respective percentages are fifty-four and forty-six. About thirty *per cent.* of the cases printed by Scott were decided since the publication of Ames' second edition, nearly twenty-four *per cent.* during the present century; and twelve *per cent.* of them in the last six years.

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*On Jurisprudence and the Conflict of Laws.* By Frederic Harrison, with annotations by A. H. F. Lefroy. Oxford, Clarendon Press. 1919. pp. 179.

This book contains five lectures—(1) Austin and Maine on Sovereignty; (2) Austin's Analysis of Law; (3) The Historical Method; (4 and 5) The Conflict of Laws, which were delivered by the author as professor of jurisprudence, international law, public and private, and of constitutional law in the Middle Temple, and which were published in the *FORNIGHTLY REVIEW* in 1878 and 1879. The republication of these articles was undertaken by Professor Lefroy of the University of Toronto, with a view of making the lectures more directly available for classroom use.

The author in the preface calls attention to the fact that the lectures were delivered and published originally forty years ago and reflect the views of that day. "But as they are almost entirely historical," he adds, "it does not seem to me that subsequent authorities have displaced or superseded them."

Of the lectures published in this volume those relating to Austin are of especial interest. They were written, as it were, in protest against the dogmatism of Austin and present clearly and forcefully "the assumptions by which the Austinian analysis must be qualified and limited to the sphere to which it belongs."

Of the thirty pages of annotations added to the text by Professor Lefroy, twenty-four have reference to the lectures on Austin, the balance being devoted to the lecture on the Historical Method. The failure to annotate the lectures on the Conflict of Laws arose no doubt from the fact that Professor Lefroy's interest in the book was solely from the standpoint of jurisprudence. To the student of the conflict of laws it would have been helpful, however, if the viewpoint of the more recent writers on that subject had been indicated.

Professor Lefroy's notes consist mainly of quotations from later writers and in this he has done well, in view of the object for which the book was designed. The selections are well chosen but unfortunately they are taken, with a single exception, exclusively from English writers, who represent only a single school of thought. Although the book was published primarily for English and Canadian law students, it would seem evident that in the matter of jurisprudence an acquaintance with the different schools of thought is indispensable. The notion of sovereignty and law is not something fixed, but is changing with time and place. The quotations given by Professor Lefroy themselves show that the present English definition of law differs somewhat from what it was when Professor Harrison wrote. The student should know also that the peculiar position of Parliament has been responsible for the greater emphasis placed by the English writers on the imperative character of law than is done even by American writers, and that the difference in position of the continental courts

from that occupied by the courts in England and the United States has led in the nature of things to a different conception of law on the continent from that entertained by Anglo-American writers. Extracts from the writings of von Jhering, Kohler, Duguit, Levy-Ullman and other leading jurists would have greatly aided the reader in seeing the Austinian theory in a true perspective.

Notwithstanding this omission Professor Lefroy has placed all students of law under a debt of gratitude for having made available in such handy form Professor Harrison's interesting and stimulating lectures.

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*Traditions of British Statesmanship.* By Arthur D. Elliot. New York, Dodd, Mead & Co. 1919. pp. x, 231.

The author of this work accurately describes it, in the concluding words of his preface, as "comments on recent events and subjects suggested by them." The first chapter essays to point out the "main lines of British policy" in the nineteenth century. Beginning with chapter two, the author gives a desultory survey of the relations of Britain with the continental states which ultimately ended in the great war. He then carries us through the conflict to the early part of the year 1918 when the book was written.

On the whole, the volume is disappointing. The author's conclusions have already often been seen in print. There is nothing noteworthy in his analysis, his grouping of facts, or in the amount of historical information displayed. A few of his comments may be cited. The aims of British statesmanship in the nineteenth century were peace, security, supremacy on the seas, defence of national interests. The war was caused by German lust of expansion. The British government during the years immediately preceding the war prepared the country adequately for a possible armed conflict. The British people responded magnificently to the demands made on them during the great struggle. There has recently been an immense increase in the power of the British executive and a decline in the power of the House of Commons; payment of members is a contributing cause of the latter phenomenon. There was no demand among the English people for an extension of the suffrage; the act was passed because for the moment it suited the will of the party leaders. The proposal to grant Home Rule to Ireland is and always has been a blunder. In general, one gathers the impression that British statesmen are successful when they deal with foreign affairs, but are likely to be found wanting when they turn their attention to domestic affairs, a conclusion which augurs ill for the future.

The book has a certain value because it summarizes in convenient form the opinions which some members of the Conservative party hold concerning the recent history of their country, the crisis through which it has just passed, and the problems which it now faces. It may be of use later. A future historian may employ it as one of the sources for either a book or a chapter with some such title as "British Public Opinion during the Great War."

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*Manual of Maine Probate Law and Practice.* By Ralph Webster Leighton. Boston, Little, Brown & Co. 1919. pp. xxi, 499.

The author describes his work as a handbook. He states that "No effort has been made to argue or speculate upon what the courts may sometime say upon

some disputed points, but the law is given as it is found in our statutes and the decisions of our Supreme Court up to the present time. In most cases the exact language of the Statute is quoted, and the same is true of many of the leading decisions." The chief, and many times only, authority cited for the statements contained in ninety of the first one hundred and thirty-five sections is a statute or rule of court. Probably about the same proportion holds through the book.

It follows that what is offered is practically an annotated collation of the Statutes of Maine. Just how exhaustive the annotations to the cases are, it is difficult for one not a member of the Maine Bar to say, but judging from the experience of other states it would seem probable that there are more cases in the Maine reports on probate subjects than are here discussed.

A cursory reading shows that occasionally, at least, important statements are made with no citation of authority, e. g., the last two paragraphs of section 40, last two paragraphs of section 50, sections 150 and 151.

Occasionally it is difficult to understand the arrangement adopted. For instance, the heading of section 40 seems misleading and not accurately to describe the subjects discussed thereunder. The first paragraph of section 41 would seem to belong with the second paragraph of section 40.

However, valuing the book according to the standards the author set for himself, it is successful and will undoubtedly be most useful to everyone who has occasion to examine the probate law of Maine or to practice before the probate courts of that state. Such person will find here an excellent and reliable collation of the statutes and rules of court, and sufficient reference to the decisions to give him a starting point for further search, though it may not give him a final answer to his question.

It would add greatly to the convenience of lawyers outside Maine had citations to the Reporter system been included.

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*The American Bar—Contemporary Lawyers of the United States and Canada.*

Prepared and edited by James Clark Fifield. Minneapolis, The James C. Fifield Co. 1918. pp. vi, 746.

This book purports to be a biographical directory of lawyers of the highest standing in all the important cities and towns of the United States and in the larger cities of Canada. Its purpose is to provide a reference list of general and practical value to lawyers and business men who require out of town counsel. It promises annual publication. Of legal directories, large and small, there have been many. Usually no attempt has been made to select only those members of the profession who have the highest standing in their respective communities. This attempt is made here and so far as the reviewer can judge of the names selected from the bars of those cities with which he has acquaintance, the selecting has been well done. A novel feature of the work which gives it additional value is the insertion of brief biographical sketches, giving information concerning the lawyer's education and other matters which should be considered in selecting counsel.

T. W. S.