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Commercial Arbitrations and Awards

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leave the law schools without more than the merest reference to these important questions.

The author is to be commended for his selection of cases and the analytical arrangement of the chapters on Taxation and Foreign Corporations. Such cross section treatment, even though incomplete in every detail, is well adapted to give the student an adequate knowledge of these important divisions of the subject of Constitutional Law. His discriminating selection of footnote material drawn generously from law reviews, from cases omitted from the text, together with the problems suggested, is excellent. Footnotes of this character are more valuable to students than are mere annotation or extensive citation of cases.

On the whole the book denotes an immense amount of labor on the part of the author and indicates that it is made for the teacher who desires to present the subject in broad outline and to leave to the students the task of filling in details. It meets a keenly felt need of the teacher.

—CLIFFORD R. SNIDER.


In thoroughness of treatment this is a typically Sturgesan product; in derision of the courts, what they decide and how they say they decide it, the opposite is true. But of course this book is for sale to the profession and that makes a difference. That fact, however, is no explanation for the surprising want of critical case comparison and the entire absence of personal case appraisal by the author—shortcomings suggested by a random first sampling and confirmed over doubts by a later page by page scrutiny. Indeed, there are places—and frequent ones—where the text has almost

\[\text{Ch. XXXVIII.}\]

1 See his Legal Theory and Real Property Mortgages (1928) 37 Yale L. J. 691, 709-715.
2 Some few instances of criticism by the author should be noted as exceptions to this statement (see pp. 202, 355, 448-452, 559-560, 604-607, 922) in three of which instances however the criticism was first made by a dissenting judge or by another court. The doubts which he entertained as to the soundness of one case (see pp. 450-453) are shown to have been justified by a reversal since he wrote. Finsilver Case, 253 N. Y. 382, 171 N. E. 579 (1930).
a Literary Digest flavor—"On the other hand, the Kansas City Star observes . . ." etc.

So much by way of comment addressee to those who, knowing something of the author, entertained preconceived ideas of what his productions would be like. After surprise at the plain, everyday, ordinariness of the style has subsided, after one has ceased to look for dynamite, the genuine merits of the job begin to be noticed. Not only are large numbers of cases cited and cited accurately (tested by North Carolina the citations seem exhaustive), not only are they wrung dry by careful analysis of exactly what they decide on every issue—but their limits are carefully delineated by a statement of what they do not cover. Herein lies the one notable display of the author's own thought. He anticipates many problems that may arise and be decided but that have not yet been. The number of instances in which he does this is rather large. Still larger tho is the number of places where he finds the decisions on a given point inadequate to permit of generalization. A practical and handy test applied to the book gives assurance of its value as a lawyer’s reference work in any state. It was consulted on the fact situations of several scattered cases too recent to be discussed by the author. An Idaho case raised questions as to the adequacy of filing and registering a submission under the local statute. On the sections of the Idaho act in question we are directed by Mr. Sturges (pp. 274-275) to cases under a California act from which it was taken and to a similar Utah act. That seems to be all the help that a general treatise could be expected to offer on the particular matter and the Idaho court made the same cross reference itself—relying in part on the cases which Mr. Sturges lists. On a rehearing, the question was raised as to how

3 See Unincorporated Associations as Parties to Actions (1923) 33 Yale L. J. 383, and Review of Parks' Cases on Mortgages (1927) 40 Harv. L. Rev. 510.

4 One gets glimpses of this independent thought as well in those places where by quotation marks or other means he casts a doubt on the validity of some stock explanation or rule. See e.g. pp. 11 (merger), 157 (notions of what constitutes strictness of construction), 678 (nature of award), 767 (legal and equitable).

5 See e.g. pp. 200, 372.

6 See pp. 38, 145, 255, 691, 594, 690, 765, 772, 776, 799. The number of these non-generalized minutiae raises question as to the simplicity of arbitration law and so perhaps as to the desirability of arbitration itself.


8 See similar valuable cross referencing as to other statutes already constructed, pp. 653, 665.
much had been submitted to the arbitrators for award. The text has plenty of material touching generally on this question (pp. 229, 236, footnote 65, and p. 552), and would meet the lawyer's briefing needs thereon.

A recent Mississippi case presents, besides some elementary matters, a seemingly new question. What are arbitrators to do when part of a controversy submitted to them depends upon an option contract whose exercise is, of course, uncertain? Nothing has been found directly on the subject in Sturges, tho the matter of finality and conditional awards are discussed at large (pp. 568, 580, 595). The court cited nothing whatever but sustained the arbitrators in laying down a rule to govern the rights of the parties in either alternative."

An Ohio case questions whether a foreign irrevocable statutory arbitration agreement can be enforced in a state not according irrevocability to common law agreements. 10 An extended review touching all phases of that case is found in the concluding chapter of the treatise, "Conflict of Laws". Two other cases are mentioned in the margin. 11

The book seems to be at least a first class storehouse and one may be confident that its vacant spaces are due to want of judicial production in the respective departments. 12 As to ready availability of its contents, conflicting observations must be made. No one can complain of an arrangement following the order in which questions naturally arise in an actual transaction. Indeed it is fairly obvious and easy to follow. Common law and statutory matter are alternated—the latter being often simply a local statute very slenderly annotated. But the index as a guide calls for rather too many consultations.

11 The simple rules announced in deciding Equitable F. & M. Ins. Co. v. Steffens, 153 S. E. 731 (Va. 1930), are adequately given in Sturges, while the sparingly reported case of Wright, Graham & Co. v. Hammond, 154 S. E. 649 (Ga. App. 1930), is not a good one for present purposes. See however Sturges, p. 674.
12 Such matters as compulsory industrial arbitration (see e. g. Simpson, 33 Harv. L. Rev. 753) would obviously be outside the scope of the work, but not so, as I see it, the matter of the unenforceability of commercial arbitration agreements imposed by trade associations. See United States v. Paramount Famous Lasky Corp. 34 F. (2d) 284 (S. D. N. Y. 1929); affirmed by U. S. Sup. Ct. (Nov. 25, 1930), 5 U. S. Daily 2935.
It can only be guessed why the author adopted the usual notion of poorer workmen (often in their case justified) that readers are interested in what the courts have said and not in what the writer thinks. Why should a portrait painter do signs,—even useful ones telling us, "25 miles to Oshkosh"?

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Fairness demands that a reviewer appraise a book in the light of its author's purpose, and Professor Best has left no room for speculation as to his aim in the preparation of the above entitled volume. It is intended, he remarks in a foreword, "as a limited contribution to an understanding of the situation as to crime and the criminal law in the United States . . . . or as a help toward the creation of a larger and fuller realization of the implications of the subject". Again, he requests that the work "be looked upon rather as an elementary text—on the one hand, for the student who is seeking a fundamental acquaintance with the subject, and, on the other hand, for the citizen desiring a better appreciation of it."

With this end in view Professor Best has devoted slightly over one hundred pages to a necessarily sketchy presentation of the principles of criminal law, the definition of specific crimes, and the machinery of criminal procedure. This is followed by about four hundred pages of studies largely statistical, as to the extent of crime in the United States, the characteristics of the criminal class (including therein tabulations as to age, race, economic and social background, recidivism and the like), forms of punishment and the means of release therefrom, penal institutions and their problems. Concluding chapters are devoted to non-institutional methods of treatment of offenders and to possible measures for control or reduction of crime.

This rough outline of the content of Professor Best's volume gives one some appreciation of the extent of the task to which he

1 For the abundance of statistical material, Professor Best has drawn chiefly upon the reports of the Census Bureau.