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# Book Reviews

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## CASES ON PARTNERSHIP

By Charles E. Clark and William O. Douglas.

American Casebook series. West Publishing Company, St. Paul, Minnesota. pp. 743.

This new collection of cases just published constitutes another of the American Casebook Series. The breadth of treatment is wider than partnership and embraces illustrative cases in joint stock associations. In this respect the book adopts the modern trend of study in the broad field of unincorporated associations.

There is a departure from the usual order of partnership study in that problems relating to what is a partnership and how a partnership is created, are subordinated to the broader field of liability of associates, the distribution of assets and the management of the particular enterprise. After all, these are the real essentials in even the confined subject of partnership, as will be observed in a study of the Uniform Partnership Act wherein the very heart of the subject is found in Sections 25, 26, 27 and 28 treating of the nature of a partner's right and interest in the partnership property. The cases in the collection under consideration have been well selected and the mechanical part of the volume is in accordance with the high standard heretofore set by the publishers. Our well-known Pennsylvania case of Doner vs. Stauffer, 1 P. & W. 198, is recorded at page 382 of the volume following the Indiana case of Johnson vs. Shirley and with a note referring to the New York case of Menagh vs. Whitwell. A note is also appended at the bottom of page 385 but it is regrettable that no new thought on these much discussed cases has been brought to light.

Referring to the cases on unincorporated associations the editors in the Preface state:

"These modern cases alone would seem to justify a new collection of authorities, whether the material is to be

considered separately or, as in some schools, together with material on all other forms of business organization. The present casebook is designed for those following the former plan."

A. J. White Hutton

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## THE THEORY AND PRACTICE OF MODERN GOVERNMENT

By Herman Finer, D. Sc., Lecturer in Public Administration at the London School of Economics. New York, Lincoln Mac Veagh, Dial Press, 1932. Two volumes, pp. 1556.

The foundation of the present work is a study of the governmental machinery of four great democracies—Great Britain, France, Germany and the United States. The scope of the work is tremendous, being more ambitious than any other existing study on government. But even with so wide a scope, the work has been most carefully and exactly done. Nor does the study merely scan the surface of things to the neglect of the underlying principles on which the governments have been founded or which govern their present operation. Truly it is a remarkable achievement and one that is bound to survive as a living monument to the learning and ability of its author.

One of the many admirable features that appeals strongly to us is the method used in treating the material drawn from the four governmental systems studied. Whereas the previous studies of Lowell and Bryce, both less extensive in scope, make comparisons of the whole systems, country by country, the present work makes comparisons between the various systems, subject by subject. Thus material on the English House of Lords, the French Senate and the United States Senate will be found immediately following each other. If reintegration of the institutions of any country is desired, it can be accomplished readily by reference to the index.

The picture of both past and existing conditions in the United States is remarkably exact. Although written by

an Englishman, one will search long for any apparent inaccuracy. The treatment is up-to-date even noticing the power of the Vare political machine in Pennsylvania to elect United States Senators. (p. 720).

The author's discussion of many of our governmental agencies is most interesting. The following is an excerpt from his treatment of Government by Judges in the United States. (p. 222).

> "What then, is the fundamental difference between the American and the British Constitution? It is this. Whereas the British Parliament, democratically elected, is the ultimate authority upon the appropriate principles of the constitution at any given time, the American Congress is only the court of first instance in this decision, and is overrulable by a Supreme Court of nine members, not democratically elected. In Britain fundamental issues are decided almost by direct democracy; in America they are decided by a body of lawyers neither appointable nor dismissable by democracy. The only remedy against these ultimate lawgivers is a constitutional amendment by a process difficult and dangerous. Comparatively, not completely and absolutely, Great Britain is governed by politicians, and America by lawyers, but by lawyers whose function is that of politician in the highest degree. The issues to be decided by the judges are not technical issues, nor such as can be subsumed under a perfectly clear major proposition accepted by all; but in the end, they are moral issues, and to answer them requires that men shall always be asking the question, consciously or unconsciously, 'What judgment will make for the best civilization, granted my ultimate convictions about God, the Devil, Humanity, Progress and the rest?' These judges are statesmen, and the lawyers, politicians and teachers have put their recognition of this into terse terms: they talk of Government by Judges, Judicial Oligarchy, the Aristocracy of the Robe, Covert Legislation, Judge-made Law. We ought to say that the executive authority, which is separately empowered by the constitution, is also subject to the same judicial control, but we have preferred to emphasize the legislative aspect.
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> "Since what shall be the law depends upon a majority of five judges out of nine, it is clear that the appointment of each judge is of great moment. It is

> not surprising therefore to find that on the occasion of a vacancy, the organs of opinion, Press, party managers, Congress, President, 'political circles' just on the fringe of the official politics, the Congressional lobbies, the hotels of Washington, the seminars and common rooms of Universities, the club cars of crack railway trains, excitedly discuss the prospect. There is almost as much ado about a Supreme Court appointment in the U. S. A. as there is in the choice of a new party leader—a possible Prime Minister—in Parliamentary countries, with perhaps just a little less overt noise. The struggle for appointments has been specially urgent of recent years—for social legislation has been a source of keen dispute. In the matter of one appointment, at least, a first-class political scandal was provoked. For the appointments are made by the President by and with the consent of the Senate, and the President is under obligation to the party leaders of the Senate. The party 'bosses' themselves, like most, but not all, politicians, find their first commandment in keeping the party vigorous, and this is done by obtaining all available offices and places of honor for adherents and in not offending the interests which constitute the party. But two other considerations govern appointments: geography and professional fitness. The first is of considerable importance in a Federation so extensive in area."

The style of the author is entirely lucid. His explanations really explain and leave one with a clear-cut impression of the thought being conveyed. Although dealing with a subject that does not make the best material for light reading, the author has succeeded in writing the book with an easy flow of language that makes the book most 'readable'. Anyone at all interested in the subject matter will find the reading of it a delight.

Limits of space forbid us discussing his interesting comments on the political parties of the United States, his views why there are not clearer-drawn party lines, the evils inherent in our constitutional amending system, the reasons for the ascendancy of the Senate over the House of Representatives, etc. All of them disclose a depth of learning and clarity of thinking.

For prospective law students, a study of the work would prove invaluable, providing in itself more of an education than many receive from a college course. To students of law, both in school and in practice, the book is heartily recommended. It should be made a part of every lawyer's library and will prove interesting, as well as instructive, reading.

H. S. Irwin

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## CASES ON THE LAW OF TITLES TO REAL PROPERTY

By Ralph W. Aigler, Professor of Law, University of Michigan. Second Edition. Part of American Casebook Series, William R. Vance, General Editor. St. Paul, West Publishing Co., 1932. pp. 1023.

We know of no one better qualified to produce an excellent casebook on this subject than Prof. Aigler. The result matches the qualifications. The first edition of this book was remarkably well done and the present revision enhances its value and usefulness as a teaching tool. The author may well rest his reputation on the merit of the present volume.

The citations of cases in the footnotes, while not intended to be exhaustive and they are not, are ample to lead the inquisitive student to similar or connected cases. The suggestive or provocative type of note found in the first edition has been more generously used in the present edition. Such have been found helpful, for the student is much more likely to go to the reports to find the answer than if only the citation of the case were given with no suggestion as to what could be found therein. On the other hand, the failure to give the answer to the suggested question is approved. Any method that tends to stimulate research in the cases in the reports is bound to be helpful. We do not approve, however, of the inclusion of suggested questions to which available references are not given. The

references to collections of cases such as A. L. R. are reasonably complete. Why were the key-number references of the printed cases not given? References to discussions available in legal periodicals are frequently given. The theory on which many of these latter references have been omitted, i.e., that the instructor may prefer to give them after, rather than before, the classroom discussion, does not appeal to us. Our experience has been that references made prior to such discussion are much more apt to be investigated than when given after the student feels that the matter has been settled and closed.

The arrangement of the material is admirable. The selection of cases to be studied seems to us to be a happy one. The omissions of parts of some cases has been judicious. Sufficient cases on each point have been given to make the basic principles apparent without going to the length of wasting valuable time overemphasizing certain ones. The book should receive a most favorable reception from teachers and students alike.

H. S. Irwin