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BOOK REVIEWS

PENNSYLVANIA ANNOTATIONS TO THE RESTATEMENT
OF THE LAW OF RESTITUTION

By D. J. Farage. St. Paul, Minn., American
Law Institute Publishers. 1940. Pp. iv, 369.

The Restatement of the Law of Restitution not only has the value common to all of the restatements, but is also important because it gives initial impetus to the recognition of Restitution as a distinct division of the law. Even Quasi-Contracts, which it includes, has been treated as a distinct division of the law for a relatively short period. No digest appears to have segregated Restitution or Quasi-Contract cases as a unit, but they have been included in many other varying classifications. Hence, the high degree of usefulness of the Restatement of the Law of Restitution is immediately apparent.

Equally useful and valuable in a particular jurisdiction are the annotations to such a pioneer work, and for the profession in Pennsylvania, Professor Farage has prepared annotations in a manner and style and with a clarity and thoroughness unsurpassed by any annotations to any restatement. He has gathered together all of the appellate court cases in Pennsylvania pertinent to the various sections of the Restatement from the very earliest reports and those that followed down to the time of the publication of the annotations. This in itself was a stupendous task. He has also made reference to many cases dealing with ejectment, replevin and similar actions (although these actions are outside the scope of Restitution) for the reason that Pennsylvania has administered many of the equitable remedies of Restitution in these common law actions. He has also included many cases involving problems of Restitution which the restatement itself does not purport to cover.

Every judge, lawyer and law teacher who has occasion to deal with the law of restitution will find these annotations a highly useful and indispensable aid.

FRED S. REESE

THE BOTTLENECKS OF BUSINESS

By Attorney General Thurman W. Arnold. Reynal & Hitchcock, New York, N. Y., 1940.
Pp. xxvi, 319. Price \$2.50.

The current vigorous campaign of prosecutions which the Department of Justice is conducting against monopolies and trade combinations gives particular timeliness to this latest of Mr. Arnold's books. Starting with the assumption that no substantial political group in the United States will support any economic plan for the distribution of goods through other than private enterprise, the author predicates the success of that system upon the constant maintenance of a "free, competitive market." When, he contends, monopolies restrict free competition, "industrial democracy grows soft and finally ends by becoming completely dependent on government, while at the same time it fears government"; and when "industrial democracy" ceases, because private hands control the market, "political democracy becomes a mere shell." The only presently available and perhaps the best instrument that may be utilized effectively to preserve free markets and free competition is the Sherman Act.

These contentions of Mr. Arnold obviously carry him into a consideration of economic theories and into an exposition of his own economic philosophy concerning the place and importance in our lives of the anti-trust laws. All too often discussions of economic theories by textwriters are so speculative and hypothetical, and employ so many vague "technical" terms of a highly conceptual order (the kind of words which Stuart Chase calls "blabs"), that the reader finds himself perplexed and confused. Not so with this volume. For the economic discussion proceeds only after vivid recitals of specific, actual cases. In these the writer traces, with startling clarity, the result of enforcement or non-enforcement of the Sherman Act upon specific economic conditions. The reader finds himself persuaded that while, of course, the Act is no panacea for our economic maladjustments, it must figure in any sound plans for their solution, and that continuous enforcement of the Act is essential to the welfare of every consumer.

Especially interesting are the author's views on the interrelation between the policy underlying measures like the N.R.A., price fixing and subsidizing statutes, on the one hand, and the policy underlying the Sherman Act on the other. The apparent inconsistency between these policies recently has occasioned considerable comment. By and large, Mr. Arnold considers price fixing a dangerous "opiate," requiring utmost caution and safeguards even when administered by the government. Nevertheless, he concedes that such measures may, as did the N.R.A., have a useful function to perform provided that they be properly balanced by adequate enforcement of the "anti-trust" laws. With such enforcement, "pump-priming" and the N.R.A. measures would have proved far more effective, he contends. But

without policing under the Sherman Act, fantastically enough, they often aggravated rather than improved economic conditions.

Mr. Arnold strikes hard at the often heard argument that "cheap goods" resulting from enforcement of the Act will hurt our economic structure. These, he argues, will benefit consumers by enabling them to purchase additional necessities and luxuries with money saved through lower prices. "Cheap goods" may dislocate a particular industry in the same way that technological improvements do. But ultimately a free market with less expensive products would result in a higher standard of living. Moreover, such a market will permit easier adjustment in the event the "totalitarian" countries are going to flood us with "cheap goods" after the war.

While this work serves as a convenient vehicle whereby the Attorney General may defend himself and his "anti-trust policies" against criticism, much of which he shows to be undeserved, the book will be welcomed even by his critics as a clear exposition of the Administration's basic policies in enforcing the Sherman Act. Whether those affected by the Act approve these policies or not, at least there is value in their long needed clarification. In this connection it is gratifying to note Mr. Arnold's emphasis on the point that there is no desire to destroy size or "bigness" in itself. What is objectionable is the "use of organized power to restrain trade unreasonably, without justification in terms of greater distribution of goods." As stated by the author, the basic test applied to determine the legality under the Act of an organization is this: "Does it increase the efficiency of production or distribution and pass the savings on to consumers?"

Chapter seven outlining generally the procedure followed in enforcing the Act is particularly enlightening. It indicates a disposition on the Administration's part to deal sympathetically with all business organizations desirous of conforming to the Act and willing to "lay their cards on the table" in good faith.

Judging from the size of appropriations made for the continued enforcement of the Sherman Act, increase rather than decrease of activity by the "anti-trust" department seems certain. This book should go far in minimizing misunderstanding, in inducing compliance with the Act, and, most of all, in increasing public support and sentiment for the maintenance of a "free competitive market" through vigilant law enforcement.

D. J. FARAGE