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curing insurance elsewhere, refrained from so doing because of his arrangement with the defendant, and thus died without the completed policy he had intended. If the theory of the Restatement is correct, the result which it infers would be plainly contrary to the present holding, and in accord with leading cases in other jurisdictions. *Stark v. Pioneer Casualty Co.*, — Cal. —, 34 Pac. (2nd) 731 (1934); *Kukusba v. Home Mutual Hail-Tornado Ins. Co.*, 204 Wis. 166, 235 N.W. 403 (1931); *Duffie v. Bankers Life Ass'n. Co.*, *supra*; *Boyer v. State Farmers Mutual Hail Ins. Co.*, *supra*.

It would seem that the court reached an erroneous result in the present case because it neglected to consider the utility of the defendant's conduct in the light of the risk it entailed, but instead assumed that no duty existed and attempted to justify this decision on contract rather than tort principles. J. E. K.

BOOK REVIEWS

Conveyancing in Pennsylvania

By GROVER CLEVELAND LADNER

Clark Boardman Co., Ltd., New York, N.Y., 1941. Pp. xxxiv, 933.
Second and Revised Edition. Two Volumes. Price: \$15.00

"There ought to be a law" requiring all book reviewers to have paid the full retail price of any book reviewed. One does not care to "look a gift horse in the mouth." Even though the present reviewer will not retain the presently-discussed volumes, his school library will receive the benefit thereof, and this may blunt, somewhat, the sharpness of his pen. But an honest review of this book requires that some of its defects be pointed out specifically and a sense of appreciation has not stilled our tongue entirely.

A mild criticism of the work of the author is his continuation in this second edition of his policy enunciated in the first edition, as found in its preface: "Little space has been used discussing doubtful propositions of law." The author must purport to be (and indubitably is) an expert on the law of the conveying of real property in Pennsylvania or he would not have the temerity to publish such a work. Being an expert, his opinions on many matters where the cases are either in confusion or are silent or are not clear in their import, would have added much to the utility of this work. Modesty should not be permitted to interfere with making the treatise the most valuable one possible to judges, lawyers and students. We feel that this practice has just that effect.

The book would have profited considerably by the careful touch of a skilled

and adequate proofreader. Entirely too many typographical errors have crept into the volumes as printed. For example, "grantee" is used on page 130 where the proper word intended was "mortgagee". On page 165 a paragraph printed under the discussion of acknowledgment of deeds by the Commonwealth obviously belongs to a later discussion on the same page on acknowledgment of deeds by a corporation. On page 364, *Kirk v. Kirk*, 340 Pa. 203, is cited as *Kirk v. Kirk*, 240 Pa. 203. Many other minor errors, such as misplaced commas and improperly used capital letters, mar the book considerably.

More serious by far than these errors are statements of law in various places in the book which are either actually erroneous or give an erroneous impression. Some only of these all too frequent errors will be cited by us. For example, on page 376, the author states that there is only one exception to the general rule that priority of recording determines priority of right, in the absence of notice, the stated exception being of purchase money mortgages which have a grace period of thirty days, unfortunately. But there are at least two other exceptions which Judge Ladner omits. (1) Deeds executed out of the state of Pennsylvania (see 21 P.S. 445); (2) Separate written defeasances to absolute deeds where the subsequent execution and delivery of a grant or mortgage by the purportedly absolute owner gives priority at once without priority of recording (see 21 P.S. 951).

Again, on page 226, it is said: "A mortgage for a pre-existing debt is as effective as when given for a debt incurred at the time of the execution of the mortgage, with the exception of the possibility of being avoided in bankruptcy as a preference . . ." This ignores entirely the definite holding in Pennsylvania that mortgages given for pre-existing debts do not make the mortgagee a purchaser for value under the recording system so as to protect him against prior unrecorded deeds, etc. (see *Ashton's Appeal*, 73 Pa. 153, 162 (1873) and 37 DICK. L. REV. 282, 286); nor is such a mortgagee protected, as a taker of a legal title for value would be, against prior nonrecordable equities of which he has no notice (see *Kepler v. Kepler*, 330 Pa. 441, 446 (1938)).

Also on pages 297 and 298 it is said: "Next a covenant on the part of the grantee (of a ground rent) to pay all the taxes assessed against the property which is important in that it relieves the grantor from paying any taxes on his ground rent." (First italics added by us.) But this is not correct and the case cited for this proposition does not so decide. In the cited case of *Van Beil v. Brogan*, 65 Pa. Super. 384 (1917) affirmed in 262 Pa. 362 (1918) there was an agreement to pay the taxes assessed against the yearly rent as well as against the lot and buildings. An agreement to pay the taxes assessed against the property would not include an obligation to pay the taxes assessed against the ground rent (see *Robinson v. County of Allegheny*, 7 Pa. 161 (1847)).

On page 362, Judge Ladner states: "Should the wife elope from the husband and commit adultery her dower rights are barred", citing *Lewis v. Parrott*, 37 W.N.C. 330 (1895). It is to be noted that the book uses the term "dower rights" to include the present-day so-called "statutory dower". To put it mildly, it is at

least questionable whether this represents the present-day law under the Intestate Act of 1917. This act provides that wilful and malicious desertion continued for one year shall bar the intestate rights of the wife. In *Lodge's Estate*, 287 Pa. 184 (1926) there was an elopement and adultery but the court is careful to show that the barring of dower there came about through the act of adultery making a prior consensual separation into a wilful and malicious one and that this separation *continued for a year*, thus barring her dower rights.

Again in listing the various ways in which curtesy may be barred, on page 355 et seq., the author says that a divorce from "bed and board" will not bar curtesy, which is correct, but he fails to list a conveyance made by the wife alone after such a divorce as one of the methods for barring curtesy although on page 55 he cites the statute so providing (see 48 P.S. 117a and *Scaife v. McKee*, 298 Pa. 33 (1929) where the act was held to be constitutional).

Other errors of somewhat similar sort might be cited but we believe that we have mentioned sufficient ones to show that the user of these volumes will have to read them in an inquiring and skeptical frame of mind and should not always take Judge Ladner at his word. We feel that many of these errors and misstatements and omissions could have been prevented readily by the spending of a little more time in the work of revision of the first edition.

There are many good points about the work, sufficient certainly to make the work almost a necessity in the library of a practicing attorney and to make the book a "must" one for a law student studying the Pennsylvania law of real property. The work covers adequately all of the subjects with which it purports to deal and thereby makes itself a thorough foundation work for those interested in real property law of Pennsylvania. But on difficult issues or on novel ones, Judge Ladner's modesty or reticence prevents the work being of any considerable assistance.

The forms given in the book are extremely well done and cover almost all of those needed in the law of real property so far as conveyancing is concerned. The practice of putting many of them into the appropriate places in the text where the subject matter is discussed has been continued and should prove helpful. The book contains practical suggestions of considerable merit in the art of conveyancing. For example, the suggested form for including a "use" restriction, found on page 136, is a helpful one, as are many others.

It is to be regretted that no pocket parts are provided for to keep the work up-to-date for already the legislative acts of 1941 have made many changes necessary in the text, such as the discussion of deficiency judgments.

We believe that as a crude "rule-of-thumb" the size of the index to a text measures closely the merit of the book. So-judged, the book is A No. 1 for the index covers 75 pages. A table of cases is included which is "of the essence" of a good law book. It also includes a table of statutes cited, with their Purdon's citations as well.

Despite some obvious deficiencies, we do not hesitate to recommend its use by

lawyers and students interested in the Pennsylvania law of conveyancing of real property.

CARLISLE, PA.

HAROLD S. IRWIN

Some Legal Foundations of Society—Understanding, Purpose and Conciliation as Means and Ends of Positive Law and Representative Government—A Short Introduction to the Study of Law and Government with Psychological, Sociological and Economic Approach.

BY RUBY R. VALE, D.C.L., LL.D.

Three Volumes. C. W. Taylor, Jr., 500 Sansome Street, San Francisco.

\$4.00 per Volume. 1941.

The author needs no introduction to the legal profession, particularly in Pennsylvania. However, his former efforts have been along lines of digesting decisional law, whereas the present publication is an incursion into the philosophy of law and of government.

Volume I, under the general topic "Understanding," is divided into five subheads as follows:

- (1) The Cosmos
- (2) The Human Mental Processes
- (3) Animal Behavior and Human Action
- (4) Individual Responsibility
- (5) Reality and Its Categories.

Following this order there are notes appended, quite extensive, and with General Index the Volume embraces 262 pages.

Volume II, under the general topic "Purpose," is subdivided into three topics as follows:

- (1) Social Order and Individual Liberty
- (2) Social Organizations and Human Culture
- (3) Individual Interests and Social Organizations.

Volume III, under the general topic "Conciliation," is subdivided as follows:

- (1) Theories of Political and Societal Development Which Stress the Dynamic Mind
- (2) The Challenges of Socialistic Collectivism.

The present review is of the first volume as the writer has not had the opportunity of examining the contents of the later volumes. In the introduction the author sets forth the purpose and scope of his work as follows:

"The purpose of this thesis is to give a conception of government and positive law as determined by cosmic forces in evolution and as molded to the uses of man by his dynamic mind. This philosophy forms the background and leads to the consideration of the challenges that now confront that dynamic mind. It deduces the essence of law not alone from the nature of events in relation, but as well from the nature of man himself as an animal of dynamic mental processes. It affirms the vital nexus of individual enterprise and striving to a government of laws and not of men for the security, freedom and welfare of the group and the individual. It accepts the confidence and capacity of every mind to master animal propensities as the fundamental of the governance of all, and regards representative democracy as the only political organization yet devised, under which every mind is free to think, to plan and to achieve its purposive aspirations. It avows the equality of all before and under the law and the exclusion of none from the privileges and duties of self-government. It espouses the underlying principle of freedom of opportunity to work and to save, to seek and to attain place and to develop a personality. It questions the truth of all laws as absolutes, as well as doubts the validity of all principles as universals or as ultimates. It repudiates as without foundation in experience or warrant in reason the indispensability of any class or group of men or of any man in economy or as official in government. Finally, it suggests the solution of compromise and conciliation as the only means of adjustment, and the equitable distribution of profits as the essential of those understandings of justice that follow co-operative relations."

A reading of Volume I shows the erudition, painstaking research and profound thought of the learned author on the several topics discussed. The notes to the text, added at the end of the book, are conveniently arranged for reference of the reader but without disturbing the continuity in reading. The substance of these notes is valuable, not only for the suggested courses of study but likewise for the interesting and pertinent observations of the author. The admonition to compromise among contending economic schools as suggested at page 173 is timely. Perhaps after all the eclectic school is the best to follow.

The work is recommended to the thoughtful student of law who may have time and inclination to reflect in these troublous days and with a thought to a future less distraught by the clash of arms. The present volume is a model of the printer's art with excellent paper and print and most attractive binding. It is assumed the later volumes are of like mechanics.

CHAMBERSBURG, PA.

A. J. WHITE HUTTON