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Walsh W., Cases on the Law of Property, 3rd Ed.

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BOOK REVIEWS


The distinctive feature of this case book on the law of property is its brevity. The two volumes cover the subject matter found in the usual courses on Personal Property, Introduction to Real Property, Titles, Landlord and Tenant, Rights in Land and Future Interests. The author has thus in fifteen hundred pages of text dealt with materials which ordinarily occupy at least twice that amount of space. Even so, the books are an elaboration of previous editions. In stating the differences between this third edition and the previous edition, the author in his preface says: "In the present edition a chapter has been added on the development of conveyancing, title by adverse possession to real property as well as to personal is treated in the chapter on Possession and Ownership, and other minor changes in arrangement have been made, based on many years of experience in teaching the law of property. Many cases have been added, particularly in the chapters treating of the law of landlord and tenant and the law of future interests. The chapter on mortgages, added in the second edition, has been omitted. Several selections from the editor's History of English and American Law have been included in this edition. The notes have been considerably amplified."

The accomplishment of reducing the treatment of those phases of property law with which Professor Walsh deals to two rather short volumes has called for extensive pruning as to some portions of the subject and complete vacuity as to others. On the last score, for example, the subject of the conditional delivery of deeds is simply referred to in the last note in Volume Two in the following language: "On delivery in escrow, see Walsh, Prop. (2d ed.) 328, and notes, in which the conflicting cases and holdings as to the effect of such deliveries are cited and discussed." Unless they are hidden away in notes there are no references to the recording acts or accretion. And except for a rather elaborate survey of the statutory regulations on dower and curtesy, and some mention of the New York statutes on other subjects, few references are made to the many statutes dealing with property. The extent of the "pruning" is shown by the fact that there are but four cases on the delivery of deeds; two cases on covenants for title; sixty pages devoted to covenants running with the land; one hundred pages to the Rule against Perpetuities, and three cases on the subject of gifts of personal property. The footnotes are far from elaborate and contain but few references to law review material. There has been no innovation in the selection of cases; most of them are the familiar ones on the subject.

On the credit side of the ledger it may be said that the author's concurrent treatment of real and personal property law is a valid experiment, and one which, it is here predicted, will find increasing acceptance. In particular, much can be hoped for from a concurrent presentation of the "disseisin" of chattels and real estate. (Why could not the delivery of chattels and the delivery of deeds be treated together also?) The author has included a chapter on the Rights and Liabilities of Life Tenants, which subject is not usually thus treated in other case books. There is here, however, a notable omission in that there is no reference to the problem of the division of income between the life tenant and remainderman. Measured by other case books on the same subject there is a little more than a conventional assignment of space to the subjects of marital estates and landlord and tenant; measured by this case book, the assignment of space to those subjects is very liberal.

So much for the facts. From them the teacher of property law ought to be
able to determine whether or not he would want to adopt the book. Tradition, however, compels a reviewer to express some opinion as to the worth of the publication. Personally I do not particularly like the book and my opinion is that it is not an adequate treatment of the subject matter, from the standpoint of both substance and pedagogy. The royal road to learning in the field of property law cannot be made this easy; nor ought it to be if it could.

There is no use attempting to separate substance and pedagogy here, except for the purposes of classification, for they are actually inseparable. The manner in which we teach affects the student as much as the material we present. The reason is that legal information is but a means to an end; and not an end in itself. The desired end is a deep understanding of the judicial process and its relation to other social processes. One can only become really acquainted with the judicial process by a complete and prolonged immersion in it. This demands the reading of cases and more cases, including many of the old cases. If you feed the student the residuum of a fine straining of the cases he misses the vitamins and appears to be and actually is under-nourished and under-privileged. It may be tedious business to the student to carve out his own salvation by laborious work, but all work is tedious. And it is at best a beginning. The student must not only know but he must be able to understand what he knows, not only in relation to other legal information but also in relation to all social phenomena, and he must be able to philosophize on something other than a home-made plane. A conscious effort ought therefore to be made to make his learning and philosophy scientific. Superficial study cannot produce these results.

At the present time, too, a student should be immersed in statutes from the start. Much of the law of property in this country is now codified. We have at hand the advantages of both the common law and the civil law techniques. The latter is most valuable but it is, however, a step-child in the class-room and the court-room. Once it were understood it could be a most effective process. You cannot wait to introduce the student to it. The charm and conceit of the common law capture him early and he is forever immune to the other. You cannot take a second year student and teach him that the law of wills is statutory; it is common law to him and to the courts.

Measured by these standards the present case book is inadequate. The case material is obviously selective and meagre. There is no suggestion as to a possible solution of some of the problems of real property law; no reference to what England has done; no questioning as to the social validity of the rules presented. There is but slight presentation of statutory material, and certainly no emphasis on the civil law technique. I should doubt that it could be successfully used to teach the student the judicial process in the law of property and to develop a scientific attitude toward that process, and a professional attitude toward the practice of the law. It may form a convenient skeleton upon which to hang lectures on the rules of property law, but it is difficult to see how it can be used as a student tool for directed and supervised self-education.

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