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Book Review. State Inheritance Taxation and Taxability of Trusts by Royce A. Kidder

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would be greater permanence of tenure for the staff lawyers than is enjoyed by assistant district attorneys.

Chapter VII covers special services. Women police should not be supervised by the bureau of investigation, as women are not needed in criminal investigations. More policewomen are needed but they should be attached to a crime prevention service. Vice control should be removed from the regular police, to prevent corruption of the main body of the police, to elevate the service by freeing it from tasks which self-respecting men dislike to perform, to avoid conflicts between a headquarters vice squad and divisional commands, and to allow concentration on crime prevention and detection. Every adult person arrested, exclusive of those for minor traffic and city ordinance violations, should be fingerprinted, in order that it may be known whether a man is a repeater and whether he is wanted for other crimes.

The eighth and final chapter recommends a single metropolitan police for Greater Boston, instead of the forty independent police systems now existing. Criminals pay no attention to town lines. There would be the following benefits: economy, greater efficiency because of improved facilities for recruiting and training of specialists, better police morale and freedom from local politics, specialized services which small departments cannot duplicate, unified communication systems, easier state supervision of the interrelated activities of police, probation, courts, and penal institutions, and comprehensive planning through a superior type of administrative control.

The book is well worth the reading. It is written in a clear, simple fashion with a minimum of repetition. It is short enough to be read at a few sittings. It is eminently practical and packed with common sense. The City of Boston is fortunate in being the subject of the study. Every other city, however, stands to profit by it.

Lester B. Orfield.

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KIDDER, ROYCE A. *State Inheritance Taxation and Taxability of Trusts.*
Chicago. The Foundation Press, Inc. 1934. xxiii, 544 pp. \$10.00.

The author of this new book on inheritance taxation is a former Assistant Attorney General of the State of Illinois, who was in charge of the Inheritance Tax Division in that state. From this fact one would expect that the book would be written from a practical point of view, and that it would be competently done.

Both of these expectations are abundantly realized. The trite phrase, "practical but not profound," is a rather apt characterization of the book, though perhaps it is not altogether just, for there are satisfactory discussions of technical legal problems. But the whole view-point of the book is distinctly practical, the aim being obviously to fit the needs of the active practitioner to whom inheritance tax problems are constant

and troublesome. Thus, the procedure in inheritance tax matters is very fully discussed, and there is information as to the inheritance tax officials in all the states and territories, tables for valuing life estates, etc., as used in the various jurisdictions, and other reference data of this sort. The practitioner using this book can find out very quickly, if not all about the laws of the state in which he happens to be interested, at least the person to whom application for such information can be made. Furthermore—but this is of value to all users—the index is very careful and complete.

And in other respects the practical aspects are emphasized. For example, Chapter V, relating to "Present and Future Interests in Property Transferred by Will, and Method of Taxation," really has very little direct relation to taxation. It is, however, a matter as to which the lawyer confronted with inheritance taxation problems where such interests are involved will need a pretty carefully explanation unless he happens to be himself a real estate specialist. On the other hand, Chapter XVI on, "Conflict of Laws," is quite inadequate for a theoretical discussion, though it does express briefly, and perhaps a bit too categorically, the present state of the authority. The author evidently felt that this problem, however interesting and however important from the standpoint of the incidence of such taxation at the present day, is not particularly important to the ordinary practitioner.

Furthermore, the consideration of the problem of retroactivity, and particularly of the leading case of *Coolidge v. Long*,¹ is quite inadequate from a theoretical standpoint, though again probably satisfactory to the average practitioner. There are quite a number of other instances where there is not entire accuracy in stating court decisions, but in most cases this is a minor fault, since the substance of the existing law, so far as it can now be deduced from the decisions, seems to be fairly accurately stated—or at least sufficiently so for practical purposes.

Nevertheless, even from this standpoint, some criticisms may reasonably be made. In the first place there is the rather natural fault that Illinois decisions seem to be somewhat overemphasized. However, that is not a serious fault, as other authorities are not neglected. Much more serious is the tendency to use too much space in stating cases, sometimes going so far as to reprint opinions to the extent of several pages of the book. The plea which the author makes to justify this is "convenience," but this will hardly do, especially as Federal Supreme Court cases are sometimes thus reprinted. It amounts to very little less than actual padding of the book.

Furthermore, there are several instances where the composition and proof reading were not all that could reasonably be expected. In some cases, especially in the latter chapters of the book, there appear to be actual blunders, extending through several pages, as to note references. Ordinarily a little search will enable the proper note to be found, but

¹ (1931) 282 U. S. 582.

this seems inexcusable carelessness. Misspellings are not so serious but are sometimes a bit confusing where another word results, as, for instance, on page 36 where the French-sounding word "intendant" is used, probably in place of "intended." And New Englanders at least will be somewhat aghast to find that on page 218 one of the best known of their textile companies is somewhat unduly personalized by being named "Amos Keag."

Worse still is the language in some places. It is not always easy to tell whether this is the result of bad proof reading or a particularly infelicitous phrase intentionally used. At any rate such phrases as "the courts of other states *have supported the facts* expressed by the Supreme Court of Colorado upon this subject,"² and "the State of New York exempts a widow's dower from taxation but *states the courtesy* (sic.) of the husband,"³ are extremely awkward and by no means clear in meaning.

Apart from blunders of these sort, which are probably largely matters of carelessness, there are, as already indicated, some points as to which the opinion of the author is at least quite questionable. His defense of the doctrine of *May v. Heiner*,⁴ as distinguished from the state decisions to the contrary,⁵ on the ground that the Federal Estate Tax is on a different basis from most of the state taxes, is no doubt a justifiable distinction but does not seem in any respect to justify the federal decision. Also, the conclusion of the author as to the taxability of shares of business trusts is distinctly confused and uncertain.⁶ It must be granted that this is a reflection of the actual confusion in the cases, but a more serious attempt at rationalization would have been appreciated. The author discusses somewhat carefully the "business situs" doctrine as to credits, but without noting the very dubious foundation upon which that entire doctrine stands, in view of recent decisions of the Federal Supreme Court.

There are also a few cases where the book seems rather sadly out of date. For example, reference is in one place made to the Federal Revenue Act of 1916 as if it were still in force,⁷ and without any reference to the numerous acts since that date. In another place the case of *Moore v. Mitchell* is cited in the district court,⁸ but without any intimation that it has been affirmed by both the Circuit Court of Appeals and the Federal Supreme Court. Since this last affirmance was in 1930, it seems not unreasonable to ask that a book compiled in 1934 make some reference to it.

But perhaps too much emphasis and too much space have been given to these defects, which are, after all, minor blemishes. Even the scholar,

² P. 17.

³ P. 62.

⁴ (1930) 281 U. S. 238.

⁵ P. 197.

⁶ P. 222.

⁷ P. 394.

⁸ P. 470.

as distinguished from the practitioner, will find the book far from useless. The very acute comment on the uselessness of the doctrine of equitable conversion under the existing tax decisions,⁹ should serve to remove a good deal of befuddlement. This doctrine has sometimes been thrown into tax cases where, as the author shows, it should never have appeared.

This book, then, seems to adequately fulfill its function. To the practitioner the information contained in it is generally accurate and extremely convenient. From this standpoint at least, the book is entitled to very high commendation. It is perhaps not much more than a practitioner's manual, but if so it is one of unusually high grade.

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MORGAN, EDMUND M. AND MAGUIRE, JOHN M., *Cases on Evidence*. Chicago, The Foundation Press, Inc. 1934. xxxi, 1232 pp. \$7.50.

It is fair to call this volume a lineal descendant of the original Thayer's *Cases on Evidence*. This observation is justified on the ground that one of the editors was responsible for the 1925 revision of Thayer which contained almost half of the principal cases included in the book under review. Certain topics—particularly those on evidence of authenticity of writings, the best evidence rule, and limitations upon the application of rules of evidence—are developed by practically the same principal cases as those used in the 1925 volume. There are similarities of arrangement between the two books, yet there are also marked differences in this regard. In certain sections of the work, very few of the principal cases have been used in any prior casebook. This is particularly true in the fields where the editors have contributed to the periodical literature, *viz.*, admissions, declarations evidencing physical and mental condition, burden of proof, presumptions and functions of judge and jury. Teachers who have admired the writings of the editors now have a satisfactory vehicle for presentation of that scholarship.

The first case in the collection is from one of the early Year Books. The second is a selection from Rolle's Abridgment. This looks rather like the historical approach but the suspicion is not confirmed by what follows. With the possible exception of the section upon Business Entries there is nothing bearing the slightest resemblance to a tracing of the development of any branch of the subject. In addition to the two early decisions mentioned there is one principal case in the seventeenth century, another in the eighteenth. The remainder are since 1800, more than three-fourths in the twentieth century and a full third since 1924. It is remarkable that with such an emphasis upon modernity the editors have eliminated, or practically so, cases which might be called freaks or thought-disturbing in the teaching and learning processes. In percent-

⁹ Pp. 341-2.