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Book Review. Cases on Suretyship by Stephen I. Langmaid

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require it, effect may be given in our courts to the acts of an unrecognized
government; and this Dr. Hervey regards as the way out of the Russian
dilemma as reducing the possibilities of international complications and yet
avoiding encroachment on the political departments.

There is a good chapter with pertinent criticism on the retroactive effect
of recognition, and an excellent one giving the author's conclusions. The book
as a whole helps to clarify the subject and will doubtless, as its author wishes,
stimulate further study and research in this field.

Hector G. Spaulding.

Law School, George Washington University.

CASES ON SURETYSHIP. By Stephen I. Langmaid. American Casebook Series.

Professor Langmaid has followed the plan of organization and classification
of subject matter common to most of his predecessors in casebook-making for
the subject of suretyship. He has sought distinction for his book, not by inno-
vation of form, but by careful choice and effective use of content. By economi-
cal methods of editing, he has succeeded in producing a volume of such size
that, "substantially all of it can be covered in the time usually allotted to the
course." This drastic economy, especially in respect to the number of cases and
the amount of subject matter, is in sharp contrast to the frequently followed
policy of including a generous excess of cases and topics to allow the instructor
considerable choice.²

The topical organization of material on the contract of the surety, in the
book under review, differs sharply from that both of Dean Arant and Professor
Henning. Professor Langmaid limits it to the Statute of Frauds, one chapter
of eighty-four pages. Professor Henning used eighty pages for substantially
the same subject matter, and in addition devoted one hundred eleven pages to
forms of, and essentials to, the formation of contracts of suretyship. Dean
Arant's treatment of the contract covers two hundred sixty-two pages, of which
one hundred forty-nine are devoted to the Statute of Frauds.

If one could agree that the only value of the material on the contract of
suretyship is to furnish a review of the essentials of the law of contracts gen-
erally, there would seem to be no compelling reason for its introduction into a
casebook on suretyship. The reviewer believes, however, that it is essential to
an effective understanding of the law of suretyship that the student grasp clearly
the distinctions between the contract of suretyship and the resulting suretyship
relation which is created by law, and out of which flow the rights and duties of
the parties. A great deal of meaningless and confusing learning has been ex-
pended in an effort to demonstrate an essential distinction between a guaranty
relationship and a surety relationship, when, in the writer's opinion, the question
is one of differences in the nature and extent of the contract obligations. If
more emphasis were placed upon the simple question of whether the personal
surety, or guarantor, has by his contract assumed the full scope of liability of
the principal obligor, or has qualified it by limitations or conditions, many of the

² Cf. Arant, Cases on Suretyship iii.
difficulties created by such catch phrases as "a surety undertakes to pay if the debtor does not," and, "a guarantor undertakes to pay if the debtor cannot," would be avoided; and further, the courts would not have to resort to such statements as, "it is said to be an original undertaking and not a strict or collateral guaranty," or, "the undertaking is in the nature of a surety," or, "the undertaking of the appellee in this case is not a strict collateral guaranty, but is a direct, absolute, and original promise to pay," in order to save themselves from the logical inferences of prior assumptions. Consequently, the reviewer feels that in the early presentation of the subject of suretyship there should be considerable emphasis upon, and discussion of, the contract of the surety as distinguished from the contract of the principal obligor.

In view of the large number of recent cases turning on the interpretation of the contracts of corporate sureties, one might reasonably expect a new casebook to include cases especially to present questions of interpretation and construction of the contract of the surety. Whether or not the courts should apply to the contract of the corporate surety any rules differing from those applied to the contract of the personal or gratuitous surety, they have assumed, in many decisions, that they are applying different rules of interpretation, and have further assumed that, for the purposes of interpretations, the contract of a corporate surety is to be treated as a contract of insurance.\(^8\)

The chapter on the Statute of Frauds is a remarkably fine piece of work. The selection of cases leaves nothing to be desired, either from the historical or the analytical standpoint, and the cases and footnotes furnish material for an effective development of the relation between the statute and the doctrines of suretyship. The editor has made good use of Dean Ames' test that the defendant's promise is not within the Statute of Frauds if an action of debt will lie against him, and also of Professor Henning's point that the statute is inapplicable where the common law action of account would lie. The modern cases are well chosen to show the efforts of the courts to develop a substantive test for "special promise to answer for the debt," etc., that will satisfy the formal requirements of the Statute of Frauds and avoid obvious fraud.

The pruning of the text of the cases has been done so skilfully that they have lost little, if any, of their pedagogical value. The editor has apparently realized his hope that, "sufficient has been retained to enable the student to appreciate the fact situations, and to get a clear, undistorted understanding of the opinion."

The footnotes contribute materially to the excellence of the book. In addition to the familiar contra and accord cases, the notes contain pertinent comments and questions, with case citations, which develop the doctrine of the principal case and ought to stimulate original thinking. The use of numerous annotations to periodical material is commendable and in line with modern casebook making. Effective use has been made of the statutes that have cut across the field of suretyship, notably sections of the U. S. Bankruptcy Act, the Negotiable Instruments Law, and a Missouri statute embodying the rule of Paine v. Packard.\(^8\)

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\(^{9}\) Paine v. Packard, 13 Johns. 174 (N. Y. 1816).
The editor has not followed, "the device of propounding in the footnotes various problems in orderly sequence," but he has used to good advantage many abbreviated case problems. The reviewer believes that case problems add to the effectiveness of a casebook as a teaching tool, and he prefers the full problem with facts sufficient to furnish the student with material for discriminating thinking as a part of his regular preparation for class discussion. The reviewer also believes that the case problems should be taken from the footnotes, accorded typographical dignity equal to that of the cases, and raised to a parity with the edited case itself as a part of the teaching apparatus.

The reviewer agrees with the compiler that the changes in the law of suretyship as applied to questions involving a corporate surety have been exaggerated; but he also believes that these changes, such as they are, have a significance out of proportion to the extent of the changes themselves. In a most interesting review of a casebook on mortgages is the following:

"Mortgage is a legal concept; that concept, in all its phases, is important. Mortgage is also a security device: That fact, in all its phases, is even more important. The legal concept is empty without its application. The history, the steady changes of the concept are unintelligible except in the light of the strains successively put on the concept by men's needs and men's actions. The present meaning of this concept, its future course, are not less unintelligible without that light."

Suretyship, also, is both a legal concept and a security device. The legal concept of suretyship with its doctrinal formulas developed and became stereotyped at a time when, as a security device, its function was simple and much restricted, and when the surety became such, either gratuitously and as a personal favor, or at the most, to obtain some incidental business or personal advantage. Modern business enterprises demand the flexibility of personal security and the financial dependability of real security, and the corporate surety company with its great fluid assets meets this demand. The fact situation out of which the great body of suretyship doctrines arose has changed, at least as respects the most important of present day suretyship transactions. There is rich pedagogical material in the corporate surety cases in view of the fact that they strikingly reveal the judicial process wrestling with the problem of applying traditional doctrines to the violation of a well recognized legal relation, and of avoiding at the same time a traditional result which would be manifestly unjust in view of essential changes in the factual basis of the legal relation. These cases give us illuminating examples of the strain which is put on the legal concept of suretyship by "men's needs and men's actions." These cases, viewed in the light of the security needs of modern economic life, reveal the necessity of a re-examination of traditional doctrines of the law of suretyship, with the objective of determining whether these doctrines can be modified sufficiently to allow the effective use of the corporate surety company as a security device under the concept of suretyship, avoiding on the one hand the cumbersomeness and rigidity of real security, and on the other hand the paralyzing effect of the "favorite of the law" doctrine applied to the private gratuitous surety. Certainly something

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*Langmaid, Cases on Suretyship (1928) vi.
of this sort has been happening. Cockburn, C. J., once said* that the rule that a
surety was released by a binding extension of time, however short, and regard-
less of damages, was "consistent with neither justice nor common sense"; but he
added that the rule had been generally established so long that it could only be
altered by the legislature. Compare this with: "We hold that the extension of
time of payment, unless resultant harm is shown, does not discharge a paid
surety." Are the courts trying to inject justice and common sense without the
aid of the legislature? Is the rule referred to by Cockburn inapplicable to the
paid surety for the reason, as some courts have said, that the paid surety is an
insurer? Or, is the old rule yielding under the strain of "men's needs and men's
actions?

Professor Langmaid has included enough corporate surety cases to accom-
complish his purpose of indicating "the modifications of principles previously laid
down for the personal and gratuitous surety," and of "setting forth the present
view of the courts." The reviewer, however, as indicated above, favors a
broader objective, the realization of which would call for a greater number of
corporate surety cases, the inclusion of an additional topic, and considerable
supplemental material to inform students of the conditions which have created
the need for the corporate surety, of the business methods and practices of surety
companies, and of the extensive use of this type of security. The editor's ex-
pressed purpose would be none the less effected, the functional content of the
suretyship course would be enriched, and the means supplied to stimulate a criti-
cal study of "the nature of the judicial process," and of the working of the
process in a particular situation familiar to, and understood by, the student.
There ought to result a clearer appreciation on the part of the student that as
the facts of life change, becoming more and more complex, legal doctrines must
also change, must grow and expand, or else die. For it is true of suretyship law,
as well as of law generally, that, "The law must be stable, and yet it cannot stand still."

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REAL ESTATE FINANCING. By Nelson L. North, De Witt Van Buren and C.

Although two of the authors of this book are lawyers, it is clear that
the text itself was not written from the lawyer's viewpoint, i. e., to help him
solve his real estate problems. While, as will be pointed out more specifically,
the appendix contains some very helpful legal forms, it would seem that the
body of this work was intended as a general and fundamental exposition of
day financial developments in the real estate world, with most of which
the practicing lawyer is already familiar.

*Swire v. Redman, 1 Q. B. D. 536, 541 (1876), LANGMAID, op. cit. supra
note 4, 418, n. 52.

7 Standard Salt & Cement Co. v. Nat. Surety Co., 134 Minn. 121, 158 N. W.
802 (1916).

8 LANGMAID, op. cit. supra note 4, v.

9 POUND, INTERPRETATIONS OF LEGAL HISTORY (1923) 1.