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Cases on Negotiable Paper and Banking (Book Review)

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decisions. This is a consummation devoutly to be wished for, especially in the field of constitutional law.

Manifestly the author's general attitude toward a casebook on constitutional law remains substantially unchanged since the publication of the first edition. As in the original volume, there is not a generous profusion of notes or annotations. These have been studiously restricted. As the author puts it, "To annotate in too great detail largely defeats its purpose. When footnotes or other references are obviously too numerous, even the best student is likely to disregard them. Where there is an adequate law journal dicsussion of a topic it has been thought best to refer to such discussion, rather than to attempt an annotation that would necessarily be incomplete. An effort has been made to restrict footnotes, and to bring comments upon some of the more important matters into the text itself."

This edition is a real contribution to the literature on constitutional law. It contains sufficient materials for the usual course on the subject. It is admirably adapted for teaching purposes. Its own intrinsic merits justify placing it among the most advanced casebooks on the subject.

GEORGE F. KEENAN.*

CASES ON NEGOTIABLE PAPER AND BANKING. By Robert W. Aigler. St. Paul: West Publishing Co., 1937, pp. xvi, 1157.

This collection of 298 cases and many notes, including appendices containing the Bank Collection Code and the Uniform Negotiable Instruments Law, is a comprehensive workbook for both the field of bills and notes and the field of banking.

In order to include his materials on Banking, Professor Aigler has devoted fewer pages to cases and notes on Negotiable Instruments "than those found in some of the better known case books on the subject." It appears that the number of the cases in this division is more than adequate if the notes are not overlooked. One will find most of the landmarks which still have value and importance. In some instances, the editor courageously has dropped the old standbys in favor of more serviceable later cases. In a few places we find the old and the new side by side, the old being retained in all probability because it is a decision without which most teachers feel no course in negotiable paper would be complete. A majority of us, were we asked, would probably aver that there is still room in the social and economic sciences for a few harmless sentimentalities.

Whatever omissions there are, the editor explains on the basis of a necessity to adapt a combination of the usual course in bills and notes and a course in banking to the customary "two hours per week for the year" generally allowed in the course on negotiable paper alone.

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Since your reviewer, who has never united them, finds it difficult to agree that the two subjects (banking and negotiable paper) are well adapted for combination in one course unless the approach is to be rather completely functional, there can certainly be no objection to such combination. Although covering Professor Aigler's negotiable paper cases in sixty class hours would not be an onerous task, it might be difficult to deal with them and to do justice to the noted materials as well. With banking added, a course so pregnant with detail might result, that to cover the whole of it in the allotted time would tax the mental digestion of the average undergraduate student. This is particularly true of a course realities of which are so far from those as yet experienced in the lives of those who come before us—being in this respect unlike such things as many contracts and most torts. In the law of bills and notes the student is apt to make a slower start than we like to see.

The division of the materials in Professor Aigler's compilation, as shown by its Table of Contents and as stated in the Preface, is of the conventional, well-tried and generally successful sort. Professor Aigler himself uses the adjective "traditional" in his Preface.

One could wish, particularly since banking has been combined with negotiable paper in this book, that greater effort had been made to cover both fields functionally. Then your reviewer could see a more compelling reason and far greater value than he does in the attempt to cover both in a single course and with a single book. Of course there will not be agreement with this view except on the part of those who believe that the function of law in negotiable instrument cases can best be shown to moderns by its operation in situations involving banking litigation. It is not contended that a functional approach involving only—or chiefly—banking cases would be complete. It is quite obvious that, in the field of negotiable paper, much more than banking situations must be included in textbook, casebook and classroom development by teachers both of the functional and of the conventional schools. However, economic behavior today being what it is, it would seem that the clearest modern pictures of the function of law in litigation involving negotiable paper are to be found, if not in cases on banking law, at least in cases involving banks and banking transactions.

Many of the cases Professor Aigler has chosen for his division on negotiable paper *do* involve banking situations,—but the selection even of these, in more than a few instances, is open to the criticism that they show too little of the purpose underlying the administration of law in economic situations, and almost nothing at all of the way in which economic behavior and the law condition one another. Your reviewer must confess that his own researches have not turned up a satisfactory number of cases of the desired sort, though some, neglected by Professor Aigler, have been found. One or two references will suffice, to exemplify the type conceived as desirable rather than to criticize the omissions.

From his choice of cases illustrating negotiability and the reasons therefor, the editor omits such a fine functional decision as *First National Bank of Bridgeport* v. *Blackman*.[1] The inestimable value of this case will be readily seen upon reference to the quotations used by the court at page 329, and the discussion at pages 332 and 333 of the Court of Appeals report. Yet this

decision is not even mentioned in a note. Since the opinion in *Old Colony Trust Co.* v. *Stumpel*,[2] was delivered by a lower court, though affirmance in a court of last resort followed, it is perhaps to be expected that Professor Aigler would not see fit to include it. However, its excellence as a functional decision would, to your reviewer, have outweighed the drawback. Further, *Brown* v. *Perera*,[3] holding an instrument payable in foreign money to be negotiable, though not a decision of a court of last resort, and though not even officially reported, would commend itself to a functionalist, at least for the purpose of a note. In discussing foreign money as a medium of exchange (though it is not legal tender) on the basis that it circulates rather than is consumed, and is, therefore, less of a "commodity" than gold itself, this decision exemplifies well the economic function of law.

On the other hand, for his inclusion of *President & Directors of Manhattan Co.* v. *Morgan et al.*,[4] Professor Aigler is to be complimented. But in failing to do it justice in his notes, the editor indicates a complete lack of interest in its functional significance. Indeed, the omission from the notes of functional dealing with the cases chosen, rather more than imperfections in the choosing, is the chief disappointment found by your reviewer in Professor Aigler's compilation. The deficiencies of his cases could well have been met through the medium of notes to fill in the gaps between a mere rule and the function of law.

Professor Aigler says that he "has been far from satisfied with the effort to cover banking by sprinkling banking cases among those dealing with negotiable paper." If the sprinkling must be a willy-nilly sort of affair, Professor Aigler is to be commended for refraining from it. But if there had been interspersing of cases in one field with cases in the other, for the purpose of developing once and for all a functional approach to both these divisions, something would have been accomplished to supply a long felt need. It is no answer to this criticism that your reviewer himself has not been able so to develop his own work in the field of negotiable paper as to enable him to list himself among the functionalists, except incompletely. Because most teachers erroneously believe that in bills and notes a functional approach is automatic and even unavoidable, the difficulties attendant upon rendering instruction in that subject truly functional is, perhaps, harder than the difficulties involved in making such an approach elsewhere in our science. One can understand why Professor Aigler has not attempted it. But one could wish indeed that he had done so.

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MUNICIPAL BONDS: A CENTURY OF EXPERIENCE. By Albert Miller Hillhouse, J.D. New York: Prentice-Hall, Inc., 1936, pp. xiv, 579.

Prior to 1930 little was known about municipal debt defaults. This book presents a vast amount of factual material and historical data on this question.

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[1] 249 N. Y. 322, 164 N. E. 113 (1928).
[2] 126 Misc. 375, 213 N. Y. Supp. 536, *aff'd*, 219 App. Div. 771, 220 N. Y. Supp. 893, *aff'd*, 247 N. Y. 538, 161 N. E. 173 (1926).
[3] 176 N. Y. Supp. 215 (1918).
[4] 242 N. Y. 38, 150 N. E. 594 (1926).
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