

## The Law of Cadavers and of Burial and Burial Places (Book Review)

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Commercial Arbitration, this writer is unable to say. Suffice it to say that it is in many respects the most valuable chapter in the case book.

In the arrangement of topics, the authors present the material on the subject of Foreign Judgments immediately after the presentation of the subject of Jurisdiction. Such would appear to be the better order, from a classroom point of view, in which to study the question. This arrangement is an improvement upon that of both Professor Beale and Professor Lorenzen. The question of jurisdiction in divorce actions is presented by Professor Beale as part of the subject of Jurisdiction. The authors of this case book treat the question as part of the subject of Family Law, apparently accepting Professor Lorenzen's classification. From a classroom point of view Professor Beale's classification is preferable.

The case of *Harris v. Balk*<sup>3</sup> is treated primarily as a question of jurisdiction, both by Professors Beale and Lorenzen. The authors of this case book include the case in the chapter on Intangible Property. The problem of classification of material in a case book on Conflict of Laws must permit of individual preferences, so that the instructor who has long been accustomed to find *Harris v. Balk* among the Jurisdiction cases, will, in using this new case book, take the case out of its context and include it among those on Jurisdiction.

A review of this book cannot omit a reference to Chapter XVII which is called "Planning as to Conflict of Laws Transactions." This consists of about four and one-half pages of practical advice and caution to lawyers and legislators in considering the possible conflict elements in law. The publishers of the book have made this chapter the basis of a special appeal to attorneys to become acquainted with the book.

The work is decidedly meritorious. Students should enjoy digesting the material presented to them so palatably. Teachers will, of course, find the collection of cases brought down to date. The publishers and printers have done a commendable job, for the cases can be read without physical strain. Teachers will appreciate this fact by comparing the book with the formidable set-up of Professor Beale's old case book. The writer expects the case book to be universally received with much enthusiasm and real appreciation of the splendid work of the three authors.

BENJAMIN HARROW.\*

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THE LAW OF CADAVERS AND OF BURIAL AND BURIAL PLACES. By Percival A. Jackson. New York: Prentice-Hall, Inc., 1936, pp. lxxv, 734.

The author, who has long been a distinguished member of the New York Bar, has produced a treatise which for many years will undoubtedly remain the standard work on the subject of the law pertaining to the care and disposal of bodies of deceased human beings, and to the establishment and maintenance of burial places.

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<sup>3</sup> 198 U. S. 215, 25 Sup. Ct. 625 (1905).

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Whether or not we agree with the author's dictum, that the law pertaining to sepulture constitutes a distinct and independent branch of substantive and adjective law, we must, nevertheless, recognize that Mr. Jackson has performed an exceedingly difficult task in a most lawyerly fashion.

He has codified within the space of less than a thousand pages, the extant law on a subject which, at least to the writer's knowledge, has not been as extensively or thoroughly treated in any other single volume. To the textual statement, he has added approximately a hundred pages of forms pertaining to the regulation of cemeteries, the transfer of plots, graves and monuments therein, and the care, transportation and burial of human corpses, as well as some forms of legal proceedings in both tort and contract, germane to the general subject.

Many readers, particularly those who believe in the tenets of the Christian religion, will perhaps be unwilling to go the whole distance with Mr. Jackson, in his apparent opinion that the origin of human burial and human burial customs is to be found in the superstitious savage idea that some harm might come to the surviving kinsmen or friends of the deceased, if the corpse of their relative or friend was left unburied or uncared for. The arguments of the author in favor of such a notion are hardly persuasive enough to cause such persons to abandon their belief that the desire for decent human burial follows as a necessary consequence from the Christian belief in the immortality of the human soul.

When, however, the author departs from his personal interpretation of the religious or quasi-philosophical aspects of the subject, he is on much firmer ground, and it is this phase of his work which will endure.

After tracing the development of the law of sepulture through pre-Christian ages, he develops and expounds its growth in England, and later in the United States.

The transition from the almost exclusive control of burial from ecclesiastical authority to the present almost general civil control thereof, is clearly and explicitly stated. Nevertheless, the rights of surviving relatives or of proper ecclesiastical authority are not ignored, but are definitely and clearly set forth, accompanied by many decisions in support of the textual statements. Where there is present irreconcilable conflict, the author points out the cases on both sides of the question and indicates his belief, that in the final analysis the matter of burial or *post mortem* disposition of human beings is a question of public policy in which the ultimate interests of the state are paramount and must be recognized and given effect by the courts in preference to the wishes of individuals or ecclesiastical bodies, no matter how such personal wishes are motivated.

The treatment of disinterment and the law pertaining to the control and possession of dead bodies before and after burial, is particularly apposite.

In no other work which has come to the writer's attention, have the powers and obligations of cemeteries and cemetery corporations been as thoroughly and as clearly explained. Most of the other works on the subject, which have come to our attention, deal with some particular phase of cemetery law, such as the organization of cemeteries or their right to tax exemption. In this work, Mr. Jackson has started at the beginning and has traced, step by step, the for-

mation of public and private cemeteries, and has given all of the rules and regulations appropriate to their management. On the question of taxation of cemeteries, he is exceedingly clear, and the fact that he has summarized in one book almost all of the laws of the different states of the Union pertaining to the organization and regulation of cemeteries and of cemetery associations, would in itself make the work most valuable to any lawyer or other person interested in the subject.

Still another phase of the work which must be mentioned favorably, is that pertaining to the law governing undertakers and embalmers. In recent years much has been said, particularly by some of the large insurance companies, concerning undertakers' bills and the amount of burial charges generally, but the author of this book has, again starting with the historical origin of the work of morticians, traced the development of their rights and obligations down to the present time. This part of his work is thoroughly done and will prove of incalculable help to any lawyer who is confronted, as most lawyers sooner or later are, with a problem involving either the defense of an undertaker's rights, or the enforcement of his obligations.

The table of cases, covering some sixteen hundred or more individual citations drawn from the records, not only of New York, but from practically all of the United States, as well as from the English reports, gives the busy practitioner ready and authoritative decisions on substantially every question that could possibly arise in connection with the law of sepulture.

By reason of its thoroughness, clarity and comprehensiveness, we recommend this book to those who have any occasion to determine the law concerning the care or disposal of dead human bodies, or concerning the management, control, organization, dissolution or taxation of cemeteries, or cemetery corporations.

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