

The Law of the Press (Book Review)

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exists to afford an object lesson in legislative drafting. Whether the law as it stands today permits the creation of charitable trusts in perpetuity is the issue involved, and while this reviewer is of the opinion that such trusts may be created, it is freely recognized that this is only due to judicial interpretation of an ambiguously worded statute. The legislature could have restored the rule in the *Williams* case in more apt language, and thus removed the difficulties encountered by the Court in the decision of *Allen v. Stevens*.

The accounts given in the Outline of the well-known equity problems connected with following the trust *res* and the liabilities of trustees for the co-mingling of funds are analytically perfect, giving an original, constructive and lucid explanation of difficult and contentious principles of equity. Here, as elsewhere, the author has resorted to simplification and sententious statement.

The limits of an Outline preclude debate on diverse points of view, and the author has had to forego the opportunity to criticize opposing views as well as the opportunity to defend his own position. But his students are acquainted with the manner in which he goes about these major problems of the law teacher and the Outline is extremely useful in the classroom, for it affords a constant background for class discussion and co-ordinates the results arrived at by judicial decision. No student who knows the contents of this Outline need fear the most intricate devices of the examiner's skill.

Were there outlines of this character in all courses offered by law schools, the tasks both of teaching and learning would be infinitely simplified.

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THE LAW OF THE PRESS. By William G. Hale and Ivan Benson. St. Paul: West Publishing Co., 1933, pp. 610.

This is the second edition of this book and came from the press last June. The first edition was published in April, 1923. It is a valuable contribution to the literature upon the subject of libel, and should prove particularly helpful to the journalist, for whom it was especially written. The legal practitioner, as well as the student and the teacher in the law school, will find an abundance of material in this volume. The treatment of the subject by the authors is practical. Their purpose to develop a book not only for use as the basis of a course in the law of the press in schools of journalism, but as a manual for active journalists, has been accomplished. Professor Benson is Associate Professor of Journalism in the University of Southern California, and a trained journalist, whose collaboration "has brought about a careful revision and reorganization of materials with a view to their clarification for the lay reader." The author of the first edition, and one of the authors of the second edition, Professor Hale, is Dean of the Law School of Southern California. The preface to the first edition informs us that the book is the fruitage "of a course of lec-

tures which the author has given successively in two schools of journalism." The edition under review is comprehensive in its scope. It treats of libel both as a tort and as a crime. Chapter II deals with the nature, sources and classification of law in general, and with the organization, jurisdiction and procedure of the courts. Chapter III is devoted to the nature and scope of libel; to malice in its utterance; to the damages allowed the victim of it, and to the defenses available to a defendant who has published a libel. This chapter is well written and comprises almost one-half of the book. Succeeding chapters deal with the right of privacy, publications in contempt of court, constitutional guarantees of the freedom of the press, with the law of copyright, the rights and duties of news-gathering agencies, the legal nature of the business of news-vending; also with the law of contracts in its relation to the business transactions between publisher and his subscribers and advertisers; also with official and legal advertising.

The authoritative aspects of the book are enhanced by the citation of numerous judicially decided cases from many jurisdictions. These furnish richly illustrative material. The facts of each case are given, as well as the opinion of the court. The text of various statutes and constitutional provisions governing the press add to the sanction with which the authors speak. The case law and the statute law have been brought down to date. A table of cases and an index are contained in the book. It is to be regretted that the authors did not furnish a more complete index to a treatise so comprehensive.

We, of course, are in hearty accord with Dean Hale, who writes as follows in the preface to the first edition: "Freedom of the press is of profound interest, not only to journalists, but to all mankind. For a hundred years the subject, in its more important phases, lay dormant. Since the Great War, it, together with its bedfellow, freedom of speech, has been more thought about, more written about, and more frequently before the courts, than in all the previous history of the nation. The problems it presents are not solved. The line between liberty and license has not been drawn. Where it is drawn augurs good or ill for the future." It is interesting to consider in this connection the application of the provisions of the National Industrial Recovery Act. It is feared by some that the N. R. A. might be used to destroy the freedom of the press. If a license to publish or to continue to publish a newspaper is required under the N. R. A., and this license is refused because, for example, a newspaper has criticized the interpretation or operation of the N. R. A. as applied to the press, would not such refusal virtually be a governmental muzzle, and would it not tend to undermine an institution which is of vital necessity to a free people? The code for newspaper publishers was placed only recently in the hands of the N. R. A. officials, awaiting approval or amendment by President Roosevelt and Administrator Hugh S. Johnson. Officials of the N. R. A. have not disclosed whether the section relating to the freedom of the press was revised as the result of a long series of conferences which resulted in considerable revision of the terms originally proposed by the American Newspaper Publishers' Association. Colonel Robert R. McCormack, the publisher of the Chicago Tribune, in a recent address, stated that while the officials administering the N. R. A. disclaim intent to interfere with the freedom of the press, there were three specific instances of interference and suppression.

Colonel McCormack also said: "Whatever opinion may be entertained as to the value of code control imposed upon industries, it is obvious that if the newspapers of the country are regimented together and placed as a class under a government authority they will not enjoy the unlimited freedom that has been their lot since the expiration of the sedition laws." The National Industrial Recovery Act was passed by Congress to restore prosperity. This experiment in government, radical though it be, should be given a fair trial. We believe this is possible without a surrender of the right to free speech and to a free press.

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CORBIN'S CASES ON CONTRACTS. Second edition. By Arthur L. Corbin. St. Paul: West Publishing Co., 1933, pp. xiii, 1264.

It has been well said that: "It is almost a legal maxim that 'out of the facts the law arises,' since if there be no state of facts, there can be no question of law."¹ With the ever-mounting mass of cases it becomes more and more recognized in legal education that the law is made to fit the facts; that the student should not attempt to solve a legal problem by stuffing the facts into some pigeon-hole in his desk of legal rules and principles. For that reason it seems desirable that many different factual situations should be presented to the legal scholar. Professor Corbin has done this in his new case-book on Contracts. Emphasis should be placed upon the quantity of cases to be read, not with the idea of acquiring greater information in the law but with the purpose of thereby developing to a larger extent the law student's faculty for fact analysis. In this collection we find 523 cases, drawn from many different jurisdictions. It is interesting to note that here are opinions from the courts of all the states in the Union except six, New York State leading with 71 and Massachusetts following with 63. Although many of the old leading English and American cases are found, the editor has included a large sprinkling of more recent decisions. The historical method of presenting each new subdivision of the subject is still adhered to, beginning with early English cases and ending up with notes on the most modern pronouncement of the law as found in the Restatement of the Law of Contracts.

Following most of the cases, provocative questions have been asked to arouse and stimulate interest and curiosity on the part of students. The footnote annotations taken largely from the author's edition of *Anson on Contracts* are so full and complete as to serve somewhat as a running text to the cases. The subject of Mistake is included under the chapter relating to cases on Offer and Acceptance where it very properly belongs. As far as the reviewer has been able to discover, no cases on the effect of Fraud or Duress are included in the collection. But an innovation has been made by including a chapter

¹ *Steffes v. Hale et al.*, 204 Iowa 226, 215 N. W. 248 (1927).