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Cases and Text on Property (With 1959 Supplement) (Book Review)

Patrick J. Rohan

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CASES AND TEXT ON PROPERTY (With 1959 Supplement). By A. James Casner and W. Barton Leach. Boston: Little, Brown & Co., 1959. Pp. II, 1439. \$11.50.

This review is occasioned by the first appearance of supplementary material for Casner and Leach's "Cases and Text on Property." The reviewer will attempt to evaluate the updating of the original contents, as well as the newly added matter, from the standpoint of the book's usefulness as a teaching tool. Taking the supplement chapter by chapter one finds that the authors have enhanced their chapter on "Acquiring Title to Wild Animals" by adding a large quantity of statutory references along with modern cases, thereby giving the materials a greater semblance of present day vitality. Although the subject matter presented in this chapter is designed to achieve ends other than a knowledge of the current law of animal acquisition, the added material does point up some fundamental aspects of case law evolution and brings to the fore questions perennially raised by the students themselves.

In the chapter devoted to "Types of Possession" the authors have added a list of statutes applicable to the finder situation and some problem cases. The prolonged *Cohen*¹ litigation in New York is referred to in a footnote; however, no mention is made of the recent legislation overhauling the law of finders in New York.² The statute, in addition to conferring title on the finder after the lapse of a specified period of time, seeks to give special treatment to "lost instruments," to the trespasser-finder, and to property found on the premises of a bank, safety deposit or transportation company. The Law Revision Commission Report indicates that the statute was designed to eradicate the lost-mislaid distinction. In doing so the present enactment has swept away more certainty than it has brought to this unsettled area. The statute makes no provision for the *Hannah v. Peel*³ situation, and neglects to mention the rights, if any, of the owner of the *locus in quo* generally. Problems centering about money or other valuable objects secreted in desks, the walls of houses, etc., will still arise. In addition, the statute is not clear as to what will happen if the procedure set forth is not followed. This question proved to be an issue in the *Cohen* case, wherein the Court of Appeals sent the litigants back to comply with the requirements of the New York City Administrative Code relative to lost articles.

The chapters dealing with donative intent, delivery, bona fide purchaser, fixtures, estates in land and concurrent ownership have been generously supplied with problem cases. The tax material has

¹ *Cohen v. Manufacturers Safe Deposit Co.*, 297 N.Y. 266, 78 N.E.2d 604 (1948); *Manufacturers Safe Deposit Co. v. Cohen*, 200 Misc. 334, 101 N.Y.S.2d 820 (Sup. Ct. 1950).

² N.Y. PERS. PROP. LAW art. 7B (Supp. 1959).

³ [1945] 1 K.B. 509.

been brought up to date and some very timely tax insights added to the textual presentation of the negotiation and drafting of leases. The excellent chapter on "Recording" has been enlarged through the addition of more cases and some text material which gives the book a new dimension. The authors have gone beyond the facts as given in several of the decisions and filled out the skeleton of the stories involved. In so doing, they have satisfied the curiosity of student and instructor alike, but more important, they have taken the reader back to the trial stage and beyond to show that a large portion of the lawyer's task concerns preparation of his case. This approach may lead the student to a realization that many of the cases in his various casebooks could well have gone the other way, had there been a more thorough investigation of the facts and/or a more adequate review of the possible avenues of approach from the standpoint of applicable law. The reviewer was surprised to some extent to find that the authors had not mentioned the recent legislation in New York limiting the life of rights of re-entry and possibilities of reverter, via the imposition of filing and re-filing requirements.⁴ The newly added sections also attempt to permit removal of outmoded restrictions by authorizing the judge in any action concerning the restrictions to declare them at an end (upon payment of damages, if any), whenever it shall appear that the restrictions are of no "actual and substantial benefit" to the persons seeking their enforcement. The sections raise many practical problems, including some constitutional issues relative to their retroactive effect. This matter could have been presented in either the recording chapter or the sections devoted to covenants or modern legislation.

The authors' concluding chapters on "Legislation Restricting the Use of Land" and "Covenants" are made up largely of the more recent developments in the *Shelley v. Kraemer* area and the Radburn Association Declaration. This section of the supplement was somewhat disappointing. In their preface the authors indicate that one of their reasons for issuing a supplement is their conviction that they had been "unrealistically elementary" in their treatment of restrictive covenants. However, in the main, the cure consists of the setting forth of the *Charlotte Park*⁵ case and the fourteen page Radburn Declaration. It would seem that a shorter set of restrictions along with a few cases and problems would have been more in keeping with the rest of the book and more profitable to the student. In fairness to the authors, it must be noted that they have included three pages of problems to test the student's ability to construe and work with the covenants set forth. In addition, the supplement brings the work to approximately 1,450 pages, enough for any two casebooks. It may be that in seeking a more thorough presentation of covenants and legislative developments in the real property area the reviewer is

⁴ N.Y. REAL PROP. LAW §§ 345-49.

⁵ 242 N.C. 311, 88 S.E.2d 114 (1955), *cert. denied*, 350 U.S. 983 (1956).

attempting to expand Property I to cover all but the matters taken up in Estate Planning, whereas the authors envisage much of the material being treated in the various intervening courses such as "Rights in Land or Equity." The reviewer is in fundamental agreement with the stand taken a decade ago by the authors, *i.e.*, that a thorough grounding in the fundamentals of real property law is a necessary preface to an adequate appraisal of the modern developments in the field. However, means should be found to acquaint the students with such things as Title I, FNMA, zoning and subdivision regulation, etc., if they are to have an awareness of the scope of the present concept of "property" as well as an insight into current law and practice. Perhaps the vehicle for such a presentation could be found in a course or seminar in "Modern Real Estate Transactions" or "Land Use Planning" (both of which are currently given in the Harvard Law School on an elective basis).

The authors conclude with a valuable appendix in which they correlate the casebook to the various volumes of the "American Law of Real Property." A general table is provided through which the student may make outside reference to the "American Law of Property" on any given topic. The references are listed in accordance with the chapter arrangement in the casebook, thereby permitting the student to do the appropriate outside reading at approximately the same time the topic in question is being treated in class. A second table is provided in which specific items in the casebook, such as cases or problems, are cross-referenced to given sections of the "American Law of Property," thus enabling the student to make pinpoint references rather than a broadside investigation into the topic as such. The general excellence of the "American Law of Property" as well as the specific references supplied, serves to make this a useful teaching tool.

The supplement, in short, is a worthwhile addition to the casebook. It is well balanced and contains some new innovations which will serve to enhance the authors' reputation for fine casebook presentation. Looking at the prodigious size of the combined volume one wonders where they will go from here.

PATRICK J. ROHAN.*

* Instructor in Law, St. John's University School of Law.