

BOOKS AND PERIODICALS.

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Reports of Cases in the Vice-Admiralty of the Province of New York, and in the Court of Admiralty of the State of New York, 1715-1788.

Edited by Charles Merrill Hough, LL.D., United States Circuit Judge.
New Haven: Yale University Press. 1925. Price \$5.

This is a unique and very interesting volume. It has been compiled and edited, no slight task, by Charles Merrill Hough, LL.D., Judge of the United States Circuit Court of Appeals in New York. The contents comprise not only decisions of the Vice-Admiralty Court of the British Province of New York between 1715 and 1776, but much shrewd and informed comment by the author on the proceedings of the Court and its officers. The charm of the book is that it takes one back to the stormy days when Britain "ruled the waves" that washed the shores of many countries, one of which, as Judge Hough remarks, administered her maritime law "wholly untrammelled by any traditions of Admiralty as pursued in England." A perusal of the cases contained in the volume entirely sustains the opinion of the learned Judge that in the result "the freedom and inclination to novelty displayed by a small but vigorous Bar . . . produced beneficial results through the (latter) United States Court, which took up the work in the same spirit" and "laid the foundations of most procedure and much substance of the American Admiralty."

To Canadians, the origin of whose Vice-Admiralty Courts was the same as that of New York, and especially to members of the same profession, it is pleasant to note that what was evidently a labour of love to the author, was made possible by the generosity and care of the American Bar. Among the names of those who thus contributed are some well known to the Canadian Bar: Mr. G. W. Wickersham, Mr. H. W. Taft, and one, Mr. Charles S. Haight, who represented the owners of the S.S. "Storstad" with skill and candour in the enquiry at Quebec, presided over some years ago by Lord Mersey, into the sinking of the "Empress of Ireland" in the St. Lawrence near Rimouski.

The cases reported in this volume are drawn from records which have lain in the files of the United States District Court, so we are told, since its organization in 1789, consisting of minute books from 1715 to 1774 with the papers, evidence and exhibits in the various cases. There are some rather amusing things in the book. One a remark of a French naval officer who visited New York shortly after the Revolution: "the inhabitants engage in contraband trade with marvellous skill," a dictum applicable in one direction just now. Another is from Governor Hunter (1715) who wrote to the Board of Trade: "Mr. Mompesson, our Chief Justice is dead. I have commissioned Lewis Morris in his room for these reasons among others: that he is a sensible honest man, and able to live

without salary, which they will most certainly never grant to any in that station, at least sufficient to maintain his clerk."

Among the roll of Judges who presided over the Vice-Admiralty Court while New York was a Colonial Province occurs the name of Wm. Smith, Jr., who adhered to the Crown, and afterwards became Chief Justice of Upper Canada, dying in 1793. Before his appointment, he appeared in most of the cases reported in this volume.

The earliest Judge whose opinions are recorded therein, Francis Harrison, exercised his Admiralty functions under his designation as Chief Justice of New York, from 1715 to 1721. His successors were all appointed by Royal authority and were commissioned under the Great Seal of the High Court of Admiralty in England. The Court sat in the City Hall of New York in Wall Street.

The silver oar as the emblem of Admiralty authority was duly in evidence and was used like the Parliamentary Mace. "When the Court was in session it lay prominently on bench or desk before the Judge, and on adjournment was carried out with ceremony." It was also exhibited as the badge of his authority by the Marshal of the Court when his warrant was disputed.

The author mentions that the silver oar, emblem of the Admiralty jurisdiction of Bermuda, is still extant, and was carried in procession on the celebration of the Tercentenary of the establishment of parliamentary institutions in that Island.

A few items of general interest may be gathered from the cases reported: A slave taken in a vessel, was lawful prize to the captor and as such was sold in 1745. When slaves were salvaged with the vessel and not captured as prize they were sold, but customs duty had to be paid on them out of the proceeds of sale.

A captured vessel was restored to its owner because when taken it was shown to have been fired on by its assailant under the French flag. Its captor was in fact a British privateer which failed to hoist British colours on opening fire.

A private vessel without letters of Marque could not take as lawful prize the ships of the enemy (1757). These letters of Marque contained stringent provisions requiring the Privateer to bring in for condemnation all prizes to a convenient Vice-Admiralty Court, to keep an exact journal of all acts done in regard to prizes and to transmit it to the High Admiral of Great Britain. For the observance of these conditions a bond with sureties had to be given. Where in the proceedings before a Vice-Admiralty Court it appeared that Privateer had broken any of the Royal instructions contained in the letters of Marque, the sureties were held liable and adjudged to pay damages for the breach.

Where an enemy ship was captured by a British Privateer, and was found to have on board British subjects who were held on the captured ship as hostages for payment of the sums engaged to be paid when their ship was released by the enemy captors, the Court ordered one-half the agreed ransom money to go to the British captor. The hostages might be physically restrained or confined by the Court to enforce payment of the salvage on the ransom, to secure which they had been held by the enemy.

Fragmentary records of other Vice-Admiralty Courts established by Great Britain exist, showing their presence in Massachusetts, New Hampshire, Rhode Island, Pennsylvania, Maryland, and South Carolina.

It is to be hoped that copies of this very interesting book will be procured for the use and information of the Judges of the Exchequer Court in Canada and of the Admiralty Judges throughout the Dominion.

F. E. H.

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The Law relating to Compromises of Litigation, Disputes and Differences, with a chapter on Family Arrangements and similar transactions.
By William Douglas Edwards, LL.B., and Frank C. Watmough, B.A.
London: Sweet & Maxwell, Limited. Toronto, The Carswell Company, Limited.

This little book, which has just been issued, contains 291 pages, and covers an important branch of the law which has never previously been collected in one volume. It consists of 11 chapters entitled Definition and Characteristics of a Compromise, Forms of Compromises, Consideration as a Requisite of Compromise, Legal Capacity of Persons for Effective Compromises, Powers of Effecting Compromises on Behalf of Others, Legal Effects of Compromises, Mistake in Effecting Compromises, Unfairness of Affecting the Validity of Compromises, Unlawful Compromises, Practice in Enforcement and Setting Aside and Variation of Compromises, and Transactions Resembling Compromises, Including Family Arrangements. Each chapter is subdivided under appropriate headings, with full references to the authorities supporting every proposition of law therein contained. An Appendix of Forms is added, containing Agreements Before Litigation, Agreements After Commencement of Litigation, Clauses on Special Points, Judgments and Orders, and Contracts of Arrangement.

Naturally, the most important legal question in matters of this kind is that of consideration, and the learned authors deal with this subject in the opening sentences of the third chapter, as follows:—"In a compromise, considerations moving from the parties respectively, and constituted on either side by a promise or act, are essential elements of the contract in whatever form it be made. The consideration moving from the party, whose claim or defence is the subject of the compromise, is, or includes, the release, withdrawal or forbearance of his claim or defence or part of it, or a promise of the same. The consideration moving from the party against whom the claim is made, or the defence is set up, consists in some lawful act or promise whereby his opponent may be benefited or he himself may be prejudiced (including the release or withdrawal or forbearance, wholly or in part, of a claim or matter of defence on his side), and which is not a performance or promise of performance, wholly or in part, and specifically, of an undisputed legal liability on his side to his opponent, certain in character and immediately enforceable. A contract of compromise consisting in mutual unconditional promises effects an immediate discharge, by way of accord and satisfaction, of the claim or defence which is the subject of the compromise. A promise, giving rise to a legal right, is thereby accepted

by the party by whom the compromised claim or defence was made or set up, in substitution for it."

In a judgment of Mr. Justice Rose on 8th July last, in the case of *Capewell Horsenail Co. v. Canadian Steamship Lines Limited*,¹ he refers to the above work, in support of the following statements of the law in that action:—"Even if the claim asserted by the plaintiffs had no foundation in law, the settlement of it was valid, provided the claim was put forward in good faith—as it seemed to have been—and its soundness was not made an express condition of the validity of the settlement. The defences of mistake and want of consideration were invalid." One might add, while strongly commending this book, that its practical value to practitioners in this province is not quite as great as to those in England. Its scope in Ontario is somewhat lessened by Section 16 of "The Mercantile Law Amendment Act," R.S.O., 1914, cap. 133, which is as follows:—"Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in satisfaction, or rendered in pursuance of an agreement for that purpose, though without any new consideration, shall be held to extinguish the obligation."

M. J. G.

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Public Utilities and the Law. By William M. Wherry, Jr., of the New York Bar, New York: The Writers Publishing Co. Inc. 1925. Pp. XI. + 337.

Where, formerly, in the United States, privately owned and operated public utility corporations relied upon perpetual franchises with maximum rates thereunder, they have of recent years, through changed conditions and, especially, increasing costs, come to realise the disadvantage attaching to such a situation. For a time, short term franchises were thought to be the solution. The present stage is one in which the companies and their patrons are concerned with flexibility of service standards and rates. In this connection, the tide is turning towards the indeterminate franchise. The new conditions are being worked out under powers conferred upon the various State Public Utility Commissions; these powers being, of course, subject to final decision of the courts where disputes arise in regard to matters of principle.

The author has had an extensive practice in Utility Cases concerned with gas and water companies and street railways. He has embodied the results of his experience in a model Public Utility Law, which has, with slight modification, been placed on the Statute-book in Indiana; and he has also advised in regard to the Utility legislation in Pennsylvania, Utah, New Hampshire, Ohio, New Jersey, New York, West Virginia, and other States. In the text, there is embodied in Chap. 19 a form of Public Utility Bill, and the discussion in regard to the revisions of this draft are very instructive.

In a non-technical way and without overloading his text with citations, the author places before the public the various problems to be faced in connection with the new régime. In the matter of rates, he emphasises

¹28 O.W.N. 455.

that the initial power should be with the company, the function of the regulative tribunal being regulative and corrective. The chapters on rates—Rate Standards, the Rate Base, the Distribution of Rates—are central in his treatment. A large amount of discussion has grown up in connection with the amortization of losses, value, etc. These have engaged the attention of the Wisconsin State Commission in a marked degree.

The very vexed problem of Depreciation is one in which while there is general recognition as to the need of provision for depreciation there is lacking uniformity in regard to the methods which should be pursued in providing for a depreciation fund. In the space of less than twenty pages, the author gives a very clear presentation of the status of depreciation as defined by Court decisions.

The book is written with full recognition of the fact that regulative procedure is to be accepted as a fact; consequently, the Utility company is to be prepared, when it comes before such a tribunal, to present its case very clearly. Having this in mind, the author emphasises that in the question of relation of rates to service, it is exceedingly important for the companies to make continuous surveys in order to see that their engineering, financial, and legal situations meet the requirements of the business. His counsel to the companies is that "The time to win rate cases is before they become rate cases!"

The book is well indexed and carries a table of 125 cases which will repay consideration. In such a study, there is the danger of losing sight of the principle in a maze of detail. This book is not open to the charge that the view of the forest is obscured by the presence of the trees.

S. J. McLEAN.

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BOOKS RECEIVED.

A Treatise on Private International Law. By the late John Westlake, K.C., LL.D. Seventh Edition. By Norman Bentwich: Sweet & Maxwell, Limited, 1925.

A Selection of Cases on Evidence. By James Bradley Thayer, LL.D. Cambridge: Harvard University Press, 1925.

Transactions of the Grotius Society. Volume 10. Problems of Peace and War. Papers read before the Society in the year 1924. London: Sweet and Maxwell, Limited, 1925.

Report of the Forty-Seventh Annual Meeting of the American Bar Association. Held at Philadelphia, Pennsylvania, July 8th, 9th, and 10th, 1924. Baltimore: The Lord Baltimore Press, 1924.

Hagar and Alexander's Bankruptcy Forms, Rules and General Orders in Bankruptcy. By Marshall S. Hagar. Third Edition. By Fred. E. Rosbrook. Albany: Matthew Bender & Company, Incorporated, 1925.

The Historical Foundations of the Law Relating to Trade-Marks. By

Frank I. Schechter, A.M., J.D., with foreword by Munroe Smith, J.U.D., LL.D., J.D. New York: Columbia University Press, 1925.

The Journal of the Society of Public Teachers of Law, 1925. London: Butterworth & Co., Bell Yard, Temple Bar, London.

Life and Works of Hugo Grotius. By W. S. M. Knight. The Grotius Society's Publications, No. 4. London: Sweet & Maxwell, Limited, 1925. Price \$3.25.

The Chief Sources of English Legal History. By Percy H. Winfield, LL.D., Cambridge: Harvard University Press, 1925. Price \$4.00.

A Treatise on the Investigation of Titles to Property in Ontario. With a Precedent for an Abstract. By Edward Douglas Armour, K.C. Fourth edition, edited by E. D. Armour, M.A. Toronto: Canada Law Book Company, Limited. 1925. Price \$12.00.

Chitty's Abridgment of Canadian Criminal Case Law, 1892-1895. Volume 1. Toronto: Canada Law Book Company, Limited. Price \$20.00 per volume.
