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Book Reviews

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The rulings handed down in *Hess v. Sloane*, (*supra*), *Koehler v. Reinheimer Co.*, (*supra*), are to be clearly distinguished from the principal decision. To lend credit to a realty company is not an implied power of a brewing company. It would seem that the principal case is an exception to the rule laid down in *Whitney Arms Co. v. Barlow*, (*supra*), and *Bath Gas Light Co. v. Claffy*, (*supra*). But it must be recalled that in those cases the defendant corporation had received *substantial, tangible benefit* from the performance on the plaintiff's part. The interests of the stockholders, therefore, could not be materially prejudiced. Contracts of guaranty, however, differ from ordinary contracts in structure, effect, and method of performance. On its face, all actual benefit runs to a third party. The learned Appellate Division in the principal case held it contrary to the weight of evidence for the jury below to have found that the Bond Development Co. was a mere sham, and that the services were in fact rendered to the defendant corporation. This total absence of benefit, therefore, to the defendant corporation in which stockholders might participate robs the case of any claim it may have had to be classed with *Whitney Arms Co. v. Barlow* (*supra*), and *Bath Gas Light Co. v. Claffy*, (*supra*): in both of which cases strong equitable motives swayed the Court to override the defense of *Ultra Vires* rather than allow the defendant to become unjustly enriched by the *bona fide* performance of plaintiff.

As there is no such element in the principal case, it is submitted that by the weight of authority in this State and upon a sane policy which demands the protection of stockholders' interests the decision is sound.

BOOK REVIEWS.

I.

The Law:—Business or Profession? by Julius Henry Cohen (The Banks Law Publishing Co., New York. 1916. Pp. XVIII, 415).

The practice of law is a fascinating, if disagreeable, subject to laymen. For ages, its disciples have been the target of the fool, the knave and the man of learning. Men of the mental brilliancy of Dr. Arnold, of Lecky (see *A Chance Medley*, pp. 104, 322), and of John Adams have not hesitated to denounce the ethics of advocacy. From time to time, legislatures, mindful of their con-

situencies, have closed the courts to professional pleaders in the law.

That lawyers have escaped the floods of hostile criticism, which have threatened to encompass them, is some evidence, we think, that they have been misjudged by the public. Perhaps, the bar itself is not free from blame for the prevailing misconception of its ethics. It is an amazing paradox that the bar, composed of men trained in the art of defense, should fail so signally to defend itself against its slanderers.

Undoubtedly, numerous works on legal ethics have been written by members of the bar. But almost all of them, however, have been prepared for professional use only. And fortunately so, because, with few exceptions, their saccharine homilies and tawdry ideals have reflected upon the legal profession, instead of reflecting its high ideals. Indeed, we recall one such work, which advised the young lawyer to equip his office with out-of-date law books, as an inexpensive expedient for impressing clients with his learning and prosperity! (Some day, we trust, a Kipling of the law will arise, to write a *Stalky & Co.*, which will properly satirize these Farrar-like books, brimming over with pseudo-legal ethics.)

The legal profession has lacked, in short, a book, which would convince laymen that ethical conduct of a high order is demanded of lawyers in discharging their duties as "officers of the court." The verb "has lacked" is employed advisedly, as the needs, at last, has been satisfied by Mr. Julius Henry Cohen, a member of the New York bar.

Mr. Cohen's new work, "The Law:—Business or Profession?" is the ablest defense of the legal profession, which has come to our attention. While it does not, very properly, picture the members of the bar as a body of Galahads, it exhibits the bar as militant in dictating and enforcing obedience to ethical standards among its members. And it discloses the bench as swift and ruthless, in punishing unethical conduct. The first chapter of the book, entitled "Disbarment" (pp. 1-23), is at once the glory and the sorrow of the bar. We recommend this chapter—and, indeed, the entire book—to those who are only too ready to impugn the honor of bench and bar.

Mr. Cohen's book, as its title indicates, has a definite object. Is the law a business or a profession? This book undertakes to answer that question—a question, which is of vital importance to the bar and the rest of the public. As Mr. Cohen himself ably contends, the answer to the question is the touchstone to the

lawyer's obligations. In clear and convincing fashion, he demonstrates that the law is a profession, and not a business. In that view, we heartily concur.

Before, however, he reaches his conclusion, Mr. Cohen traces, swiftly and in popular style, as befits a work planned for the use of the lawyer and the layman, the history of the legal profession in this country and abroad (pp. 33-141); indicates, with a wealth of detail, the progressive movement, which is dominating all parts of our present-day national life (pp. 24-43; 142-157); and then discusses, with fine candor, such interesting subjects as advertising (pp. 173-200), fee-splitting (pp. 203-217), business enterprise in the law (pp. 234-242), and the practice of law by commercial and trade agencies (pp. 299-308). The canon of ethics and numerous problems of ethical conduct decided by the Committee on Professional Ethics of the New-York County Lawyers' Association are included in the book (pp. 321-380). The index (pp. 399-415) is unusually complete.

It is with regret that we feel constrained to take exception to any part of such an invaluable book as this. But poor taste is displayed by the author in the ironical remarks on page 141, and, in our opinion, they should be excluded from any future editions of the book. All in all, however, it has not been our good fortune for a long time, to read so inspiring a book as "The Law:—Business or Profession?"

II.

Law of Torts, by H. Gerald Chapin (West Publishing Co., St. Paul, Min. 1917. Pp. XIV, 695).

Cases on Torts, by H. Gerald Chapin (West Publishing Co., St. Paul, Minn. 1917. Pp. XII, 384).

Few branches of the law appeal to the student of law as does the law of torts. More than any other subject, if the criminal law is excepted, it best reflects the moral standards of the community. And because the importance of the sociological aspect in morals cannot be denied, one who ignores the sociological element must fail adequately to present the law of torts.

There are few writers, who may boast of the advantages possessed by Professor Chapin, author of the *Law of Torts*, the latest addition to the Hornbook series of text-books. For more than a decade, he has instructed novices in the law of torts. In addition, he has contributed an admirable article on the subject to the lead-

ing encyclopedia of law (*vide*, "Torts", 29 Cyc. 408). What is more, he enjoys that breadth of view, which the scholar may win only in those battle-grounds of the law, the trial and appellate courts.

Hence, one properly may expect a work by Professor Chapin to be of unusual merit. His *Law of Torts* fully satisfies the expectations aroused by the announcement of its publication. It is a scholarly work, couched in limpid language, which evidently was written *con amore*. If any criticism of it may be made, it will be because of its omission to stress more than has been done the importance of the sociological content of the law of torts. That it is, in truth, an important element, is recognized by Professor Chapin, for example, in his noteworthy discussion of interference with contractual rights (see p. 425, *et seq.*).

The book discusses, first, the general principles of the law of torts, and, then, the specific torts themselves. While this method may lack the virtue of novelty, its value is emphasized by the fact that other writers on the subject have followed the same plan. The principles of law are stated by Professor Chapin with fine accuracy. The illustrations constantly invoked to impress them upon the reader are peculiarly happy (*e. g.* p. 292, n. 3; p. 317).

We are pleased to note that Professor Chapin disapproves of the lamentable "doctrine of mental anguish", which obtains in this State (p. 84, n. 31). His criticisms of such slippery expressions as "wilful negligence" and "wanton negligence" are indicative of the thoroughness of his work (pp. 499-500).

The treatment of the subject of libel and slander is unusually thorough and satisfactory (pp. 292-345). Professor Chapin is at his best, perhaps, in his discussion of defamation. The vexatious subject of the right of privacy is discussed with great clearness (p. 268, *et seq.*). Nor is the work wanting in sound suggestions, which cannot but prove valuable to the practitioner (see, *e. g.*, p. 322; p. 492). Professor Chapin's explanation of the origin of the rule requiring proof of resultant damage, in an action for malicious prosecution, is extremely interesting (pp. 491-492), and, while novel, seems to be well founded.

The foot-notes are such as to delight the heart of a brief writer, searching for the elusive "case in point." The work, we feel sure, is certain to prove of inestimable value both to the law student and to the practitioner, and have no hesitation in pronouncing it to be the ablest American work on the law of torts in existence—a work which admirably fills a long-felt want.

II

This collection of cases on torts, prepared by Professor Chapin, follows the general plan of case-books, which are designed to accompany the text-books of the Hornbook series. We already have had occasion to point out, at length, the difference between such a compilation of cases and the true case-book (3 FORDHAM LAW REVIEW, p. 31).

It is interesting to note that about 31 of the 130 cases printed in the book were decided by courts of the State of New York. The recent and interesting case of *McPherson v. Buick Motor Co.*, 217 N. Y. 382, is included in the collection (p. 323, *et seq.*). Other jurisdictions, however, have not been slighted by the author. The necessary historical perspective, which is particularly important in the law of torts, is furnished by the inclusion of such familiar cases as *Tuberville v. Savage*, 1 Mod. 3 (p. 26); *Six Carpenters' Case*, 8 Coke, 146a (p. 182); *Simpson v. Hill*, 1 Esp. 431 (p. 139), etc.

A student, who makes use of Professor Chapin's case-book and his text-book, the *Law of Torts*, will find in them a royal road to a thorough knowledge of the laws of torts.

