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BOOK REVIEWS

REDUCING REALTY TAXES. By Henry M. Powell. New York: Boyd Press. (Revised edition 1933 and Supplement 1937). 1937. pp. 474. \$7.00.

The economic depression caused a catastrophic cycle in the value of real estate. As the author states in his preface to the 1933 edition, "the ordinary measure of market value has been wanting, and the tax assessors, the courts, the lawyers and the experts have been obliged to seek other standards of value."

In May 1937 the Corporation Counsel of New York City publicly stated that there were approximately 35,000 realty tax *certiorari* proceedings pending in his office. This mass of litigation indicates the timely usefulness of a practical work on *certiorari*, the sole remedy for relief in cases of excessive, erroneous and illegal assessments of real estate.

The author having the advantage of long experience as an assistant corporation counsel and many years of active private practice in taxation is well qualified to produce a book that meets the need in a specialized field of practice and procedure. The revised edition follows the plan of the first edition, the treatment being divided into three parts:

I. Covering realty assessments, relief methods, proof of value in *certiorari*, procedure for equalization, the applicable law relating to exemptions, with an analysis of cases.

II. Dealing with the statutory law of realty assessments, including the Tax Law, the New York City Charter, Federal and State Constitutional provisions, the County Law, Education Law, Second and Third Class Cities Law, Village Law and other miscellaneous laws.

III. Containing forms and precedents.

The supplement is arranged to fit into the proper paragraphs of the revised edition so as to bring the subject matter under the paragraph heading abreast of the latest decisions.

Illustrative of the practical usefulness of the supplement is a comprehensive statement of the new plan for settling *certiorari* proceedings in New York City in view of the enormous mass of such cases pending since 1935. Also indicative of the author's careful research is the valuable discussion in *Great Northern Railway v. Weeks*,¹ holding that inequality of assessment raises a federal constitutional question.

The supplement also contains the New York State Constitutional amendment, the amendments to general and special state laws and the New York City Charter, relating to real estate assessments, passed subsequent to the publication of the revised edition.

The work is essentially a practical text and to the writer's knowledge stands as the single work in a field now become much more important because of the revolutionary changes in realty values. The text—but even more so the new supplement—emphasizes the new means and methods that the courts have had to adopt during the stress of depression in arriving at the valuation of real estate. Capitalization of net income and reproduction cost less depreciation, have of late date become more and more important as a means of ascertaining valuation. In discussing these methods of arriving at a valuation, the author has seen fit not to restrict himself to the legal aspects of the methods, but has produced depreciation tables and other engineering data as well as an exposition of the means common among real estate appraisers in determining the effects of "plottage," "corner influence" and other factors which bear on the valuation of urban property. Likewise, the adequacy of improvements as it affects assessed valuations is considered. The author, as above stated, has

1. 297 U. S. 135 (1936).

not overlooked the implications in *Great Northern Railway v. Weeks*,² and its effect upon the confusing case of *People ex rel Rickey v. Hunt*,³ which held that mere overvaluation without evidence of inequality is insufficient to sustain a reduction. In other words, if all the property in a given territory were overvalued, no taxpayer in that territory would have a remedy. Mr. Powell not only disapproves the doctrine of this case and points out the disagreement among the departments of the Appellate Division in New York, but properly indicates that the *Great Northern* case, which holds that overvaluation alone raises a constitutional question inferentially makes the holding in *People ex rel Rickey v. Hunt*⁴ violative of the due process clause.

Inequality as a basis for reduction is discussed as is the subject of exemptions, but the proportion of writs issued on these grounds as compared to those sought on the ground of over-valuation is somewhat small, and the author properly has devoted less space to these subjects, although his treatment is sufficiently adequate and clear.

Indicative of the assiduousness of the writer's research is the thoroughness with which he has combed decisions and opinions of the courts of first instance. These opinions are oftentimes extremely important in the field of taxation for in a majority of cases the questions involved are questions of fact and appeals in *certiorari* proceedings are comparatively infrequent.

The revised edition of 1933 contains complete sets of forms and precedents most of which are taken from actual court cases and records, and the supplement, although it contains no *certiorari* forms, does set out the forms used under the plan adopted by the New York City Corporation Counsel's office for settling New York City tax cases.

This work is of utmost value to those interested in the assessment of real estate and its usefulness to the practising lawyer in New York cannot be gainsaid.

MARTIN SAXE.†

HANDBOOK OF THE LAW OF WILLS. By Thomas E. Atkinson. St. Paul: West Publishing Co. 1937. pp. 916. \$5.00.

A recent addition to the Hornbook Series is Professor Atkinson's text on the law of wills and the administration of decedents' estates. The volume was prepared primarily for the use of law students and is arranged in the customary Hornbook manner, with principles and rules of law being succinctly stated in heavy black type at the head of each section. The book is certain to be well received, for it is a clear, complete and interesting treatise written by one well qualified to undertake the task.

In addition to bringing the law up to date, the new volume is more comprehensive in scope than the earlier Gardner on Wills, which it has superseded in the Hornbook Series. Beginning with a short but adequate historical sketch, the author gives full treatment, in an informative style, to all those phases of his subject which one is accustomed to find developed in a text-book on the law of wills. Going beyond the more conventional subject matter, however, he has included a concise, though remarkably complete, survey of the principles of intestate succession which were applied in the past and are now in force in England and the United States. Besides, a sizeable portion of the book, some three hundred pages, has been devoted to an exposition of the procedural and substantive aspects

2. *Ibid.*

3. 241 App. Div. 261, 271 N. Y. Supp. 842 (3d Dep't 1934).

4. *Ibid.*

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of probate proceedings, administration, and the collection, management and distribution of the assets of decedents' estates. These chapters should prove of invaluable aid to the student and insure for him a well-rounded grasp of the subject.

In preparing a textbook for student use, it was undoubtedly the purpose of the author to elucidate the generally accepted rules of law, rather than to elaborate upon the peculiarities of the law in any single jurisdiction. Yet it is characteristic of the thoroughness with which the book has been prepared that, in the course of the author's commentary, note has almost invariably been made of the instances where the laws of a particular state make an important departure from the usual rule. The doctrine of the so-called "Totten Trust" in New York State has received attention.¹ The Louisiana Statutes on the subject of nuncupative and mystic wills are cited and discussed.² Similar instances might be multiplied. The leading decisions of the particular jurisdiction are cited in the footnotes, and it is obvious that this feature of the book will make it attractive to the practitioner as well as the student, for valuable leads by which further research may be guided are to be found in the wealth of selected reference material.

At the risk of speaking *de minimis* in a review of so comprehensive a law book, one may question the author's comment upon the attitude of the New York courts with respect to what constitutes "the end of a will." Professor Atkinson writes:³ "The New York Court of Appeals has insisted that the end of a will means the physical end, or that part which is furthest from the beginning. Other courts have taken a more liberal view and validate the will if it is signed at the logical end." The author illustrates by the so-called "letter-will" on a folded piece of paper where the testator begins to write on the first page, continues on the third, and concludes on the second. It is evidently the author's view that under the decisions of the New York Court of Appeals and particularly under its ruling in the *Andrews* case,⁴ such a will would in all likelihood be held invalidly executed in the State of New York.⁵ However, it is to be noted that a discussion of the *Andrews* decision in the subsequent *Field* case⁶ moved the same court to write the following *dictum*: "We regard the decision in the *Andrews* case as extreme, and as marking a boundary beyond which we should not go."⁷ Decisions⁸ of learned Surrogates in the State of New York have interpreted this *dictum* as evidencing a desire to relax the severity of the rule and to limit the *Andrews* decision to its precise facts.⁹ Though the Court of Appeals has not had occasion to

1. ATKINSON, HANDBOOK OF THE LAW OF WILLS (1937) 135.

2. *Id.* at 322-325.

3. *Id.* at 257.

4. Matter of *Andrews*, 162 N. Y. 1, 56 N. E. 529 (1900).

5. "In the courts which recognize the 'logical' end, this will is signed in the proper place, though probably not in New York." ATKINSON, *op. cit. supra* note 1, at 257.

6. Matter of *Field*, 204 N. Y. 448, 97 N. E. 881 (1912).

7. *Id.* at 457, 97 N. E. at 884.

8. Matter of *Peiser*, 79 Misc. 668, 140 N. Y. Supp. 844 (Surr. Ct. 1913); Matter of *Murphy*, 160 Misc. 353, 289 N. Y. Supp. 952 (Surr. Ct. 1936).

9. In Matter of *Peiser*, *id.* at 672, 140 N. Y. Supp. at 847, Surrogate Fowler wrote: "Since Matter of *Field* there is a 'constructive' as well as an actual physical end of a will. The physical end of the will in order of pagination alone no longer determines the true place for testator's signature." In the *Peiser* case, the writing was commenced on the first page of a folded sheet of paper, was continued on the fourth page and concluded in the second page. The language was consecutive and the paper would have been unintelligible without page number four. The Surrogate did not, however, attempt to distinguish the facts from the *Andrews* case but relied upon the rationale of Matter of *Field*. The will was held validly executed.

decide the point, its approval of the action of the Surrogates in liberalizing the rule may be expected.¹⁰

Throughout the book, the author has shown a marked ability not merely to explain the theory and background of the substantive rules, but also to demonstrate the practical advantage or disadvantage of a particular course of action. Such a treatment cannot fail to give the rules of law a vitality which otherwise might be lacking. For example, almost an entire chapter¹¹ is devoted to a consideration of the various devices which, wisely or unwisely, men may adopt for the purpose of avoiding the more usual distribution of their estates according to will or statute. There is considerable space given to "Practical Hints Regarding Execution" of wills¹² and "Suggestions Regarding Drafting of Wills."¹³ The student will welcome the valuable advice thus tendered to him, advice which, if universally followed by the practicing lawyer, might often be the means of saving for estates of decedents the expense of avoidable probate contests or construction proceedings. With regard to one of Professor Atkinson's practical suggestions, however, this reviewer is inclined to believe that there is many an able practitioner who would be surprised to find himself stamped as "an antiquarian or an eccentric"¹⁴ because in preparing a will for his client he begins with the words "In the name of God, Amen." Are there not lawyers, who, being fully acquainted with the historical background of the law of wills, deliberately retain the use of the expression "In the name of God, Amen"? Are there not clients who are pleased to have their wills headed in that fashion? If nothing more, does not the use of that phrase serve to emphasize the seriousness of the testator's act and bring home to those concerned the importance of a well-considered testamentary plan and a careful compliance with the law in the execution of the will? To this reviewer it seems the author is mistaken when he brands this practice as "now little short of foolish."¹⁵

Whether or not one may at times disagree with the author's viewpoint and conclusion, let it be said that, on the whole, Professor Atkinson has contributed a splendid up-to-date addition to the text material already available to the student of the law of wills. As a supplement to case book study its use should produce excellent results.

JOSEPH W. MCGOVERN†

THE LAW OF EVIDENCE. By William Payson Richardson. (Fifth edition). Brooklyn, New York: 1936. pp. li, 622. \$5.00.

The concise but extremely practical work on Evidence by Dean William Payson Richardson of Brooklyn Law School, St. Lawrence University, has been regarded highly since its first appearance, both by members of the judiciary and by practicing lawyers. The present reviewer reviewed the first four editions in the columns of the New York Law Journal and emphasized the immense practical value of the treatise, particularly for attorneys practicing in New York. While the book was prepared originally for students of the Brooklyn Law School, it has been used widely

10. (1937) 6 FORDHAM L. REV. 147.

11. ATKINSON, *op. cit. supra* note 1, at 122-160.

12. *Id.* at 298-304.

13. *Id.* at 770-781.

14. *Id.* at 772.

15. *Ibid.*

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by practitioners, because it states so succinctly and accurately the law of Evidence as it actually is.

The present edition deals with the development of the law of Evidence during the five busy years since the Fourth Edition appeared in 1931. Statutory changes, as well as judge-made law, are considered, and frequent references are made to helpful articles in legal periodicals and reviews. The chapter on Examination of Witnesses¹ is especially valuable. It is preceded by a graphic analytical outline of the entire topic, including cross references to the section of the book where each topic is discussed. The new edition is attractively bound in flexible red leather, printed on thin paper, and contains a thorough and carefully prepared index which adds greatly to the usefulness of the book in a busy office.

In using "Richardson on Evidence" students, professors and lawyers alike will be aided by the point of view of an able and thorough master of the law of Evidence, whose scholarship and erudition have been polished by the experience that is the good fortune of the active teacher.

I. MAURICE WORMSER.†

SEPARATION AGREEMENTS AND ANTE-NUPTIAL CONTRACTS. By Alexander Lindey. New York: 1937. pp. xlv, 764. \$10.00.

This is primarily a book of forms, but as the sub-title indicates, it is more than that. It contains not only various forms of separation agreements and ante-nuptial contracts, but also extensive citations and notes from cases relating to the preparation, execution, operation, interpretation and enforcement of such agreements and their relation to judicial separation and divorce.

The adjustment of marital difficulties and the preparation of separation agreements is a phase of the law to which most lawyers are rather abruptly introduced at the very beginning of their careers and many continue to deal with marital problems throughout their practice. In view of this, it is surprising how little attention has been given to the preparation of separation agreements in most form books. Much space is devoted to types of agreements to which most lawyers, no matter what the nature of their practice, very rarely need refer, whereas comparatively few pages and very inadequate consideration are given to forms of separation agreements. It is even more surprising that in treatises on the law of Domestic Relations and in some recent case books, which purport to cover the subject comprehensively, the law of separation agreements and marriage settlements is relatively neglected. Such a book as this, therefore, certainly should be useful to practicing lawyers in their application of the law to the adjustment of marital difficulties.

Examining the various parts of the book it would seem that more careful attention has been given to some parts than to others. The part containing forms of separation agreements taken from adjudicated cases with short digests of the cases, seems to be of little use. Many of the cases are out of date and it is conceded in the introduction to this part that most of them are "crudely drawn and deficient in substance."

The major part of the book, and the really valuable part of it, Part Two, contains what are termed "individual clauses" for separation agreements. In the notes under these clauses are numerous citations of cases in various jurisdictions, quotations from various leading and important cases and statements of the law applicable to these specific clauses. Many of the cases are recent and the names of all of

1. C. xxv, pp. 455-511.

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the notable cases on this subject will be recognized. This part of the book should be a valuable aid to any lawyer faced with the problem of preparing a separation agreement which entails any unusual aspects or complications.

FREDERIC L. KANE.†

CASES AND MATERIALS ON CONFLICT OF LAWS. By Ernest G. Lorenzen. (Fourth edition). St. Paul: West Publishing Co. 1937. pp. xxxvi, 1138. \$6.00.

There is a vast difference between the early editions of this well-known and widely used book and this last, and fourth, edition of the work. The early editions were case books of the usual type, containing reports of the various cases, selected and edited by the author, with the addition of a more or less limited number of explanatory footnotes and citations. It is true that in each new edition these notes were gradually increased and expanded, but now in this, the fourth edition, they have been very much multiplied and new materials introduced, so that the book is now, and properly so, called "Cases and Materials" on Conflict of Laws. The arrangement of the volume and the selection of cases, with the exception of the occasional addition or substitution, are practically the same as its predecessors. The change in this last edition consists of the new materials introduced.

In the first chapter there has been added a new section entitled "A History and General Survey of the Subject." This section lists the more prominent early Italian, French and Dutch legal scholars and gives a summary of the principles advanced by each and their effect, if any, on our own Anglo-American law, and likewise the theories of Story, Savagny, Mancini and Beale, outstanding modern writers on the subject. This section also contains a discussion of the sources of conflict of laws in the United States and the various attempts at unification by means of codes and conventions. The history and survey, of necessity, are brief and condensed and although there are abundant references to original sources, it would probably be only the exceptional, and not the average student who could or would profit by the use of it.

At the head of each section and chapter there have also been added introductory notes giving an outline of the problems contained in the chapter or section. The notes are excellent and have been inserted, as the author states, as an aid to the student. From a teacher's standpoint, however, it is more likely true that some teachers would prefer to give, whenever needed, their own individual introduction and development of the problems of the chapter or section, or else develop the same thing from the students in the class room without any aid other than he himself gives.

The other additions that have been made are the insertion of portions of articles from law reviews and text books, copious notes and references to the law reviews on the individual cases, dissenting opinions or a summary of them, and, throughout the volume, the insertion of the applicable sections of the Restatement. At the end of each chapter there have been inserted notes and references to foreign laws. These cover not only the law of England and the principal Continental countries, but also the law of the more prominent South American Republics.

In order to make these additions and still keep the book within the ordinary size, of necessity the cases have been "cut" and at times rather severely so. This has been done sometimes by a re-editing of the opinion, at times by the insertion of a shortened statement of facts and at other times by a mere summary statement of the facts and holdings of the case.

In its entirety the book is a very scholarly effort and the work, labor and re-

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search expended in its preparation are plainly apparent. It follows the more recent trend that has been made in the preparation and compilation of a book of this kind. A great wealth of material is supplied to the student, to such an extent that it approaches a text book in content and assumes the characteristics of the encyclopedia or digest. Whether this is advantageous or not becomes a question which only the experience of the future will determine.

FRANCIS J. MACINTYRE.†

OBSTRUCTION OF JUSTICE BY RELIGION. By Frank Swancara. Denver: W. H. Court-right Publishing Co. 1937. pp. 298. \$4.00.

The author argues that justice has been obstructed for atheists by state constitutions, statutes and case law which acknowledge a Supreme Being, privilege communications between clergyman and penitent, and require an oath of all witnesses and affiants.

The preamble to the Constitution of the State of New Jersey¹ is an example of the references to God in the early state constitutions which are claimed to be obstructions to justice. Such preambles but bring to mind the principles upon which our American law was given birth. Our forefathers, the pilgrims of Maryland and Massachusetts, sought freedom from religious intolerance, and civil liberty by bringing the English common law to this land where they established themselves under God and protecting constitutions that would assure religious freedom to all beliefs and tolerance to the infidel. The protection afforded the posterity of the God-fearing pilgrim fathers may be irksome to the atheist of today, but never has the atheist been denied the equal protection of the law.

Organized religion might have included the privilege of communications between priest and penitent in the common law which established the privilege of attorney and client, husband and wife, jurors, and informers, to protect the institutions of the bar, the home and the administration of justice, but the privilege was not extended to priest-penitent communication at common law² and has only recently been extended in some states³ by legislatures which appreciate that religion enhances justice and that the injury to the relation of priest and penitent caused by the risk of the disclosure of the communication is more serious than the injury, if any, to justice.⁴

At common law no person could be a witness in a judicial proceeding, unless he believed that there was a God who would punish him if he swore falsely.⁵ Although this rule has been modified by statute in many jurisdictions, the fundamental principle does not prejudice the atheist today. The statutory changes in this rule have been of three sorts. (1) In some jurisdictions, it has been provided no person shall be incompetent to testify because of his religious opinion. This, in effect, leaves

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1. "We, the people of the state of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this constitution: . . ." N. J. COMP. SR. (1911) liii.

2. See *State v. Morehous*, 97 N. J. L. 285, 295, 117 Atl. 296, 300 (1922); 5 WIGMORE, EVIDENCE (2d ed. 1923) § 2394.

3. N. Y. CIV. PRAC. ACT (1937) § 351.

4. 5 WIGMORE, EVIDENCE (2d ed. 1923) § 2396.

5. *Omichund v. Barker*, 1 Wills 538, 125 Eng. Reprints, 1310 (1744).

the oath as a uniform formality, but practically abolishes the requirements of belief formerly existing. (2) In other jurisdictions, the oath is made optional and those who have scruples against taking it, or have not the proper belief, or merely do not wish to take it, are allowed to substitute an affirmation. (3) In still other jurisdictions, the oath is entirely abolished and the affirmation is used as the uniform preliminary to testimony.⁶ That the exclusion of a witness from testifying in jurisdictions requiring belief in future reward and punishment is a denial of the equal protection of the law and an obstruction of justice, however, is discussed and denied in so recent a case as *State v. Levine*,⁷ where the court says at page 509:⁸

"The inability of a party to procure testimony from an unbeliever is not the denial of the equal protection of the laws, nor is it the denial of a civil right because of the party's religious principles. That inability rests equally on a party that is a believer as on one that is not."

Rather than an obstruction to justice, the sworn oath by which the power of a court is invoked is a protection and safeguard to atheist as well as deist. The solemnity of the oath which attaches by its essence—"the call to God to witness the truth of those facts which perhaps may be known only to him and the affiant"⁹—vitalizes an affidavit, protecting all individuals alike against spurious statements. Let the power of the courts be invoked by mere offhand statements, as suggested by the author, and the responsibility for false affirmations attaches nowhere, abolishing justice altogether. The bulwark of justice is the responsibility for the truth of witnesses and affiants. Break the barrier of final responsibility and there is no justice.

ARTHUR J. O'DEA.†

6. 1 GREENLEAF, EVIDENCE (16th ed. 1899) § 36 (4b).

7. 109 N. J. L. 503, 162 Atl. 909 (1932).

8. *Id.* at 509, 162 Atl. at 912.

9. 4 BL. COMM. *43.

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