**Marquette Law Review**

Volume 21
Issue 2 *February 1937*

Article 12

# A Treatise on the Law of Personal Property, by Ray Andrews Brown

Vernon X. Miller

more carefully edited than is customary in a book of its size. The recent developments of equity doctrine have been stated and modern applications of older principles pointed out. While so short a work may not be very helpful to judges and practicing lawyers, students will find it to their advantage to frequently consult it.

E. HAROLD HALLOWS.

---

*A Treatise on the Law of Personal Property,* by Ray Andrews Brown. Callaghan and Company, Chicago, 1936, pp.lxxx-722.

It is with some misgivings that this reviewer attempts to criticize another text. He seems to be making the same comments in every review.[1] And he does have more than a faint suspicion that the text writers cannot all be wrong. In the book at hand Professor Brown has turned out a good piece of work.

The book includes the usual topics presented in a first year course in personal property. The author has followed closely the plan of Bigelow's casebook, emphasizing perhaps more than Bigelow does such topics as carriers, sales and gifts of choses in actions. He makes pertinent criticisms about the accepted categories of bailments, concepts of possession and adjustments among claimants where there has been a mixing of chattels. He has several chapters on liens, pledges, fixtures and some sections on conditional sale agreements, all of which are usually touched on in first year courses, although such topics are all parts of the greater commercial law field for which first year law students are seldom ready. The book is not too long, the footnotes are excellent, and there are many references therein to articles in a selected few of the numerous existing law magazines.

The author has expressed his opinions about many problems. He probably does expect some of them to be criticized. But there is another kind of criticism for this kind of book. It is the opinion of this reviewer that Professor Brown's book will not help beginning law students, although the author confesses that he has had them in mind, nor can it help practicing lawyers for the "brushing-up" process which lawyers frequently require. A first year law student, who has been reading cases for some months, can read a book like this from cover to cover, read it carefully, and have acquired little more than a vague impression of what the judicial process does and what it can do in "property" cases. A practicing lawyer does not have to "brush-up" about the language of the law. What he needs is a topic digest which he can use to find cases in point.

This reviewer does not mean to disparage Professor Brown's work, but he does mean to criticize the traditional technic that encourages the production of legal texts as we have them today. The language of the law must be broken down. The judicial process must be analyzed realistically, by students, and by lawyers and judges, as well. The discretionary powers which legislators, judges and jurors can exercise, the policy choices which they do make, must be recognized and understood. Beginning law students have nothing but a scaffold of illusions unless they begin sometime to understand that words like "title," "custody," "intent," "delivery," even "bailment" and "negligence" describe nothing in particular, but may mean many things depending on what judges or jurors may determine.

The following are typical illustrative propositions taken from the text: "This surrender of power and dominion is * * * the heart of the delivery concept,

[1] See Book Review (1931) 16 MARQ. L. REV. 73; Book Review (1934) 19 MARQ. L. REV. 55; *Restatement of the Law of Agency* (1936) 20 MARQ. L. REV. 141.

and without it a mere symbolical delivery is customarily declared to be insufficient." (p. 141). "The bailee for hire is not, however, an insurer of the goods and will not be held liable for their loss or damage unless he is guilty of some negligent act or omission which is the proximate cause of their loss." (p. 288). "In the possessory lien, therefore, the security of the creditor is in the possession of the debtor's goods; in the mortgage transaction the security is in the title of the debtor's property." (p. 455). "Although the pledgee is not technically a trustee, since the legal title to the pledge resides in the pledgor, and since the pledgee has interests of his own in the subject matter which he is entitled to protect, the general analogy holds and affects the rights and obligations of the parties in many respects." (p. 593). Perhaps these statements represent extremes. They are not descriptive of the judicial process. They represent the sum of argumentative contentions in numerous cases. The author does sometimes state such propositions to destroy them as he does when he discusses gifts *causa mortis,* the vesting or devesting thereof (p. 138) and then criticizes the accepted concepts (p. 144). In the chapter on fixtures he asks questions which he proposes to answer. "Could a creditor levy on the softener (machine) and have it sold as though it were a chattel; is the softener taxable as personal property; * * * could a mechanic's lien be claimed against the real estate for the costs of its installation?" What has the legislature prescribed, what have the courts done, what could they do about these propositions? These are questions which are significant. They are the kind of questions which are "practical," which lawyers must answer every day.

An unrealistic, professional technic, understandable if one knows something of the history of the common law, has caused lawyers and judges to be concerned about professional mysteries. When does a fixture become a part of the realty? Does a gift *causa mortis* vest before the donor's death? When does title pass from one person to another? Must lawyers, judges and law professors continue forever to cover their contentions, their choices of policy, with professional fictions? Perhaps they continue to do it because it permits them to feel secure when they assert that ours is a government of laws and not a government of men, but they do thereby stifle their own progress toward intellectual maturity.[2]

For generations lawyers have been fighting real battles with wornout weapons. Our reference books, our digests, our texts, even our codes have been built upon professional fictions. We must cope with them, perhaps we must compromise with them, but let us recognize them for what they are, argumentative devices which in times past have served some more or less useful functions. We should be thankful that our judges have written opinions, which, while phrased in legal language, have given us some pretty good ideas of the controversies involved.

VERNON X. MILLER.

---

*Handbook of Anglo-American Legal History,* by Max Radin, West Publishing Company, St. Paul, 1936, pp. xxiv-612.

A thorough course in both English and American history with special emphasis on the origin and growth of the political institutions under which we live is becoming more and more recognized as a necessary background to the study of law. For obvious reasons this course cannot be offered to the student

[2] *Cf.* Book Review (1936) 20 MARQ. L. REV. 112.