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Review of “Due Process of Law,” By Rodney L. Mott

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Hennessy v. Automobile Owners Ins. Assn., 282 S. W. 791; *Moore v. Gakey*, 286 S. W. 679 and *Home Ins. Co. v. Stubblefield*, 287 S. W. 297. Colorado seems to be in accord with this view and regards the statutes of this kind as being preventative of crime but of no effect as to the civil rights of parties who have contracted with reference to the property without complying with the statute. *Littell v. Brayton Motor Co.*, 70 Colo. 286. It is with this same view that the New Jersey courts have held that failure to comply with the statute does not effect a judicial or statutory sale there being in such case no reason for the application of the statute. *Edson & Co. v. Shuster*, 128 Atl. 602. It has been held that the failure of the purchaser to comply with the statute does not preclude him from recovering the automobile from a third person. Admittedly the purchaser has a defective title but it is held that he has such an interest in the property as will be sufficient to sustain his action for its recovery, *Wiedeman v. Campbell*, (1923) 108 Ore. 55; *Moody v. Goodwin*, 53 Cal. App. 693.

The general trend of the cases seems to be to hold that failure to comply with these statutes renders the whole transaction relating to property void and the courts will leave the parties where it finds them unless the true owner with his perfect statutory title seeks to recover his property where he finds it. In such cases he is generally given relief.

F. M. H. '27.

Books Reviews

DUE PROCESS OF LAW. By *Rodney L. Mott*, Ph.D. pp. lxxi and 702. Indianapolis: The Bobbs-Merrill Company, 1926.

This work as its author indicates is "a historical and analytical treatise of the principles and methods followed by the courts in the application of the concept of the 'law of the land.' Ten of the twenty-six chapters, including more than one-fourth of the text, are devoted chiefly to the origin and development of these principles before the Constitution went into effect. While the remaining parts of the work are mainly concerned with the application of the principles by the courts, emphasis is constantly placed upon the historical development occurring during this process. As a result the work affords an excellent opportunity for studying the methods followed by and the conditions influencing the Courts in exercising their function of judicial review.

While Dr. Mott as a political scientist has naturally emphasized origin, development and methods, it should not be assumed that the practical legal aspects have been neglected. The author has excellent qualifications as a student and teacher of constitutional law and has had in mind the problems and needs of attorneys engaged in the practice of law.

The discussion of the modern law of due process follows a logical arrangement. After a consideration of due process and procedure the author considers the relation between due process and equal protection of the law. In succeeding chapters he explains the extension and application of the principle to the police power, the power to alter corporate charters and the powers of taxation and eminent domain. The growing importance of questions of fact in cases involving due process is discussed in chapters on "Evidence in Due Process Cases" and "Legislative Determination of Facts and Judicial Technique." In his concluding chapter Dr. Mott presents his conception of "The Function of Due Process of Law."

The care that has been exercised in the preparation of this excellent treatise is further shown in the extensive footnotes, index and table of cases. The usefulness of the latter is increased by references to the sections of the text in which the cases are cited. Some evidence of the great importance of the due process clauses in our constitutions and of the amount of litigation in which they have been involved is afforded by the fact that, while the table includes only the more important cases, it covers 73 closely printed pages and contains more than 6,000 titles.

Dr. Mott's work is a most valuable contribution to the literature of this subject and may be recommended to lawyers, judges and students of political science. Those who are interested in social and economic reform will also find this volume of value as a guide to the manner in which measures should be drafted "in order to avoid the pitfalls of unconstitutionality."

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HOLMES AND BREWSTER'S FEDERAL TAX APPEALS. By *Kingman Brewster*, of the Massachusetts and District of Columbia Bars and *James S. Y. Ivins*, of the New York and District of Columbia Bars. John Byrne & Co. 1927. 944 pages.

The preface states that this work is a revision of the volume entitled "Procedure and Practice Before the Board of Tax Appeals." Apparently Mr. Holmes's only connection with the book is that his name appears in the title inasmuch as the authors appear to be Mr. Brewster and Mr. Ivins. The text treatment occupies about one-half of the book and the other half is made up of a number of exhibits of greater and less degrees of relevancy. The inclusion of such a large appendix and the fact that the book is printed on rather thick paper with no attempt to condense the typography results in a much more imposing appearance than would be the case, for instance, if the book had been prepared like *Corpus Juris* or *A. L. R.*

In view of the fact that a portion of the buying public still thinks that books ought to sell by the pound, it is perhaps easy to understand why publishers cater to this feeling. We ought to be grateful to the publishers for making the pages of the text so easy to read, but it might be advisable, to indicate in the title of the book that half of it consists of extracts from Congressional Committee Reports, and copies of laws as well as other exhibits having a greater bearing on the subject.

It cannot be denied that the editorial principle of the Congressional Record, namely to incorporate everything and anything *verbatim* and *in toto* has the merit of making matters available, but when the rules of the Board of Tax Appeals and the texts of the laws are attainable free from the Government and furthermore, are already in the libraries of most tax practitioners, there is some question whether it is best to add to the expense by including them as an exhibit in each text book on the subject.

The text treatment itself is interesting and apparently quite accurate. The preface emphasizes the idea that the Board of Tax Appeals, although declared by statute to be an agency of the executive branch, is in effect a *court*.

Chapter I gives a detailed account of the procedure in the Bureau of Internal Revenue. While this is somewhat outside of the title of the book, still it is a quite valuable feature.

In the second chapter we find a careful consideration and discussion of the selection of remedies and the authors particularly emphasize what appears to them to be the desirability of trying the cases in Washington.