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Review of “Cases and Materials on the Law of Contracts,” By Harold Shepherd

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In the opinion of the reviewer one of the most valuable features of this book is the copious footnotes. Citations of text books, law reviews and other material are complete. Besides performing the usual duties of footnotes, they are particularly informative, so that the reader should find them extremely useful whether the references are followed or not.

For the many reasons stated above this book should find wide use in all schools and in the office of every practitioner of Admiralty Law. Its presence would seem indispensable.

If any criticism of the book, either constructive or destructive, is forthcoming, the limited experience of the writer of this review precludes this as a source. The reviewer can offer only commendation for the book and its author.

CLYDE W. THURMON.†

CASES AND MATERIALS ON THE LAW OF CONTRACTS. By Harold Shepherd. Chicago: The Foundation Press, Inc., 1939. Pp. xxxv, 1215. \$6.50.

This is essentially an original work although announced as a "revision" of Costigan's *Cases on Contracts*, Third Edition. The author is loyal to the Costigan tradition in urging that the study of Contracts begin, not with the assumed psychological harmony in offer and acceptance, but with the legalistic concept of a covenant under seal. This is merely a return to the conventional pedagogical fashion prevailing in England and this country before the days of Anson and Langdell. Mr. Shepherd is also loyal to the Costigan tradition in frankly supplementing the principal cases with commentaries and footnotes intended partly for informational purposes and partly for the purpose of stimulating outside reading. Of course this feature of the book, now generally characteristic of contemporary American case-books, indicates an important modification of the classical ideology behind the case method of instruction. In most of our law schools, at least in the schools west of the Alleghenies, students are required to buy books for class use which contain not only cases but also the kind of material that formerly appeared in text-books. Among books of this type in the field of contracts Mr. Shepherd's work probably and deservedly will occupy a high position.

Mr. Shepherd's book contains 357 principal cases and also, printed as a part of the text, significant extracts from seventeen commentaries, essays, or reports of professional organizations. The table of cases includes 331 cases not printed in the text, but referred to in the author's footnotes. The footnotes also include 139 references to secondary authorities, chiefly law review articles, and these are tabulated separately by authors and subjects. There is an additional tabulated list of references in the book to 135 separate sections of the 606 sections of the American Law Institute's Restatement of Contract Law.

Some of those who formerly labored for the American Law Institute, and are now gone, prophesied that the work of the Institute would be good but would remain comparatively unknown until new generations of law stu-

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dents should mature and then become leaders of the bench and bar. Evidently Mr. Shepherd wishes to help in making this prophecy come true.

TYRRELL WILLIAMS.†

A SELECTION OF CASES AND MATERIALS ON THE LAW OF CONTRACTS. By George Knowles Gardner. Cambridge: Harvard University Press, 1939. Pp. x, 1276. \$7.50.

Some years ago a justice of the Illinois Supreme Court borrowed from a first-year law student the latter's copy of Costigan's Cases on Contracts, Second Edition. When returning the book two weeks later the justice said: "Young man, if you read the footnotes, you can get a good general idea of the law of contracts." Nobody will ever make that remark about Mr. Gardner's book. It contains no footnotes. Its material, other than cases, consists only of statutes and extracts from the treatises of Glanville, Fitz-Herbert, and Chitty. In the short Foreword appears one, and only one, quotation from the American Law Institute's Restatement of Contract Law.¹ In the body of the text are 480 cases from standard reports—in some instances much abridged. The character of the eliminations is significant. Facts and decisions and reasons are preserved for the use of students. Some other things are dispensed with. In condensing a highly praised judicial opinion by Cardozo, Mr. Gardner inserts: "[Five pages of the opinion containing an historic-philosophical discussion of the doctrine of consideration are here omitted.]"² The selected cases are described in the Foreword as:

a minute fraction of the recorded experience of the race. This particular fraction consists of judicial attempts to settle quarrels over transactions which both parties had entered into voluntarily and as to which, at least at the beginning, they considered themselves to have agreed.³

Those law teachers who think that the best law is found in law review articles will not like Mr. Gardner's book. Those law teachers who with practicing lawyers remember that controversies are settled in court-houses and therefore law is made by judicial decisions, will like Mr. Gardner's book. All will agree that the use of this particular book in an average first-year class means a lot of very hard work for student and teacher. Perhaps that is the chief merit of the book. Forty-two years ago Woodrow Wilson said to a group of students at Princeton: "The Harvard Law School is the best in the country—not because of the case system, but because it has the hardest-working faculty and the hardest-working student body."

TYRRELL WILLIAMS.†

1. Page v.

2. Page 991. The case referred to is Allegheny College v. The Nat'l Chautauqua County Bank (1927) 246 N. Y. 369.

3. Page vi.

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