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A. W. Stone

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The Law of Rivers and Watercourses

By

A. S. WISDOM

London: Shaw & Sons Ltd. 1962

Pp. lxiii, 267, \$5.25

This book is comprehensive and complete in that it covers many subjects related to rivers and watercourses. Not only does it formally discuss the subjects implied by its title (*e.g.*, navigable rivers, riparian rights, pollution and rights and easements with respect to fresh water) but it also covers much that is not suggested by its title (*e.g.*, tidewaters, the sea, the foreshore, groundwater, ferries, land drainage and fisheries extending from the deep sea to the shallow tributaries.) It will prove itself to be an excellent sourcebook for England's law of waters. The book is nicely laid out: it has a detailed table of contents, quite a detailed index, and complete tables of statutes, cases, "statutory instruments" (rules and regulations of administrative bodies) and official reports and documents.

The Law of Rivers and Watercourses is not so exhaustive a treatise as Weil's or Farnham's; it is more akin to a good hornbook or Witkin's fine *Summary of California Law*. In the field of water law it compares more easily with (and favorably to) *Long on Irrigation*. The author knows his cases and statutes. His composition is centered about what one can or cannot do; what rights one does or does not have in a particular circumstance—based upon the facts and the holding in one or more of the more than 800 cases cited. Frequently the author gives the reader the gist of the facts of the pertinent case.

With respect to the English caselaw of waters, as seen through this book, it is notable how few cases are cited which were decided within the last fifty years. More cases than those are cited for the period 1863 through 1874. By far the bulk of the cases were decided between 1834 and 1915.

Could that be because English statutory and administrative law, growing rapidly in volume during the twentieth century, has made resort to the courts less necessary? That has not been our experience in the United States. Yet, with but one exception, all of the rules and regulations ("statutory instruments") which are cited

were enacted during the last thirty years. That is also true with respect to reports and documents. The statutes relied upon range from Magna Charta to the anti-pollution laws of 1961, but the ones that are discussed at length and upon which emphasis is placed, are recent enactments. It is within the last forty years that Parliament has concerned itself with land drainage, public health, river development and the problems of pollution. Legislative concern has necessarily increased in recent years because of the increase in industrialization and the increased possibilities for public uses of water; and the author has summarized and pointed up the recent enactments. Today, England's rivers are largely regulated by River Boards and Drainage Boards with broad powers to control both the waters and the people who have an effect upon the waters.

The author's fidelity to specific cases and statutes is such that the reader does not obtain a sense of movement, flow, or development in the law of waters. Unlike Wigmore in his time, or Corbin in ours, Wisdom does not venture a philosophy, attitude, or opinion toward policy considerations, nor does he make it apparent where the law is going and why. The book sticks closely to "the law" of the various topics discussed and relies on exactly what has been decided (generally in the last century) or legislated. Thus, to one more familiar with western water law in the United States, some perspective seems lacking. It seems curious that the infinite variety of possible uses of water today in England should be based so completely upon the earlier law of navigation and established fisheries, which were the primary demands that non-riparians made of the water in the 1870's and earlier.

This comment, whether fair or not, is not intended to deny Wisdom's attainment of his primary purpose in writing this book. The practicing lawyer or researching scholar who desires to get at England's law relating to waters, can readily find his place in this book, and there he will find an explanation of the law on the relevant point and citations supporting that explanation from appropriate cases and statutes. Should a sourcebook do more than that?

A. W. STONE*

* Professor of Law, Montana State University, Missoula, Montana.