able also is the brief notation of the consequence of a judgment by way of merger of a contractual obligation[21] and by way of *res adjudicata*.

The interweaving of various fields of law presents difficulties in selection which the Committee has met in diffuse fashion. The subject-matter of the Law of Damages relevant to contracts is fully treated;[23] and no attempt is made to evade the subject of specific performance.[24] Worthy of particular comment is the disposition in this field of part performance with relation to the Statute of Frauds,[25] which seems rather broad, and enforcement of negative duties.[26] Mutuality of remedy is gracefully but thoroughly demolished.[27] Yet the subjects of Negotiable Instruments and Suretyship are studiously avoided, even to the extent of a complete section disclaiming the latter.[28]

The publication is definitely workable. Not only is the table of contents set out in full in each volume, but each chapter starts with a similar table. In addition the substance, as before noted, gives frequent cross-reference. Such a section as 385 is imposing enough to constitute a complete summary of the bulk of the second volume. Of value hardly second to the Restatement itself are the Comments and Illustrations annexed to almost every section. The index seems almost surplusage.

It is safe to predict that the work will receive from the profession the enthusiastic welcome which it so richly deserves, and that it will make a very definite imprint on the course of development of the common law in the United States. It seems hardly necessary to add, for the law student, that while the Restatement epitomizes the law of contracts, it cannot be used as a substitute for intelligent study of the subject.

ARTHUR R. LEWIS.

NEWARK, N. J.

RICHARDS ON THE LAW OF INSURANCE (Fourth Edition). By Rowland H. Long. New York: Baker, Voorhis & Co. 1932, pp. vi, 1346.

The third edition[1] of Richards was until very recently considered by many the best short text on the subject. It was concise yet accurate, comprehensive yet practical. But, as Mr. Long says[2] in the preface to this new edition, "Twenty-three years have passed since the last edition of this work was published. During this time, underwriters have extended the practice of insurance to embrace every known kind of risk; the underwritings have increased fourfold; judicial decisions and legislative enactments regulating the business twofold." The book was getting old, hence less useful. Richards up to date was needed by the bar, so Mr. Long undertook this fourth edition.

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[21] Sec. 444.
[22] Sec. 449.
[23] Secs. 327-346.
[24] Secs. 358-380.
[25] Sec. 197.
[26] Sec. 380.
[27] Sec. 372.
[28] Sec. 453.

[1] 1909. The first and second editions were issued in 1892.
[2] Pg. v.

"A revision," continues Mr. Long,[3] "was felt to be inadequate; a rewriting was required. Professor Richards' excellent text had the advantage of lucidity of statement and clarity of analysis. I have rewritten it only where necessary, inserting the new matter where it seemed most appropriate.

"Among the new sections I may mention Aviation in Life Insurance, Life Insurance Trusts, Group Life Insurance, Public Liability and Workmen's Compensation Insurance, Use and Occupancy, Burglary, Robbery and Theft Insurance. The preparation of the new standard fire insurance contract, effective January 1, 1928, at the instance of the New York Legislature, necessitated a rewriting of the Chapters on the Standard Fire Policy, the author's text being retained where possible."

Washington Irving told us of the "renowned Dutch tumbler of antiquity, who took a start of three miles for the purpose of jumping over a hill, but having run himself out of breath by the time he reached the foot, he sat himself quietly down for a few moments to blow, and then walked over it at his leisure."[4]

Had Long brought Richards up to date as he promised, he would have received from us greater plaudits than the Dutch tumbler would have earned by leaping the hill. Unfortunately, the glorious plan of revision so exhausted Long that he had no energy left for executing it.

For example, instead of giving us the new section on use and occupancy promised in the preface, Mr. Long dismisses the entire subject by saying[5]:

"The phrase 'use and occupancy' being somewhat indefinite, and such a policy being almost always valued, it is difficult to ascertain or define with precision the subject-matter of this class of insurance. The contract seems in general to be intended to furnish indemnity for loss of estimated earnings or some part thereof which would have accrued from the business except for the fire."

Richards said the same thing in the same words[6] twenty-three years ago. Those words were accurate then; they are not quite accurate now. Twenty-three years of underwriting experience and litigation have defined the phrase "use and occupancy" and the subject matter of this type of insurance.[7] Further, use and occupancy policies are now seldom valued policies. The very forms given by Mr. Long in the appendix are actual loss forms and not valued forms.[8]

Were this the only unfulfilled promise it would be captious to point it out, but a comparison of the text and notes of this edition with the text and notes of the third shows that throughout Mr. Long has done little to bring Richards up to date.

For example, upon the very important question whether a mortgagee under a standard mortgagee clause is bound by the provision of the fire policy barring suit after twelve months after the loss, Mr. Long repeats[9] Richards' text[10] that he

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[3] Pg. v.
[4] KNICKERBOCKER'S HISTORY OF NEW YORK, Book I, Chapter V.
[5] Pg. 27.
[6] 3rd. Ed., p. 23.
[7] A recent New Jersey case involving this form of policy is Igoe Bros. Inc. v National Ben Franklin Insurance Co., 110 N.J.E. 373, 160 Atl. 382.
[8] Pg. 961-966.
[9] Pg. 525.
[10] 3rd Ed. p. 454.

is so bound, citing as authority the one case cited by Richards,[11] and making no mention of the later cases to the contrary.[12] For the proposition that a partial fire loss excuses an incidental occupancy ensuing, he cites[13] *Lancashire Insurance Co. v. Bush*[14] from Richards, ignoring the later case of *Kupfersmith v. Delaware Insurance Co.*[15] to the contrary. On the relation between insurable interests and the measure of indemnity, a question which continually vexes courts and lawyers, he adds nothing to Richards' researches;[16] and to illuminate the related question whether a fortuitous happening after the loss which makes the assured whole, discharges the insurer, he is content to rely on the few cases given by Richards,[17] although several other cases have since carefully investigated the problem.[18]

It would serve no purpose to catalogue the numerous other questions both major or minor in which there have been developments in the past twenty years, upon which Long merely repeats Richards.

When Mr. Long does change the text or add a note, the results are not always happy. For example, he inserts in the text the curious statement that a judgment creditor had not insurable interest in his debtor's property,[19] citing no cases in support. In this he contradicts Richards.[20] The latter of course is correct. And as authority for his earnest proposition that "to permit a creditor to take out insurance, greatly in excess of the debt, offers a clear inducement to the creditor to shorten the debtor's life and therefore contravenes a recognized principle of public policy,"[21] he gives us this learned note:[22]

> *"Reg v. Flanagan,* 15 Cox Cr. Cas. 411. Defendant poisoned her debtors after insuring their lives."

Either Mr. Long is not aware that not all states use the New York form of policy, or else he does not deem the others of importance. Not only is his discussion of the Standard Policy confined to the New York form, but his appendix

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[11] American Building & Loan Association v. Farmers Insurance Co., 11 Wash. 619, 40 Pac. 125.

[12] Miller v. Stuyvesant Insurance Co., 227 N.Y.S. 326 (1928); Saloman v. North British & Mercantile Insurance Co. 135 N.Y.S. 806.

[13] Pg. 427.

[14] 60 Neb. 116, 82 N.W. 313.

[15] 84 N.J.L. 271 (E. & A. 1913).

[16] Compare pg. 65-70 and notes of this edition with pages 72-76 and notes of third edition.

[17] Pg. 65 note 26 and pg. 36 note 13. Cf. 3rd Edition pg. 72 note 1 and 30 note 5.

[18] Meader v. Farmers Mutual Relief Association 1 Pac. (2) 138, 141 (Ore. 1931); Kahn v. American Insurance Co. 162 N.W. 685 (Minn. 1917); Haley v. Manufacturers Insurance Co. 120 Mass. 292; Tiemann v. Citizen's Insurance Co. 78 N.Y.S. 620. Two interesting and important cases on this subject decided since the publication of this book are Savarese v. Ohio Farmers Insurance Co., 182 N.E. 665 (reversing 254 N.Y.S. 683 which was reported prior to the publication of this book); and Power Building and Loan Association v. Ajax Fire Insurance Co., 10 N.J. Misc. 272, 158 Atl. 739. reversed upon another ground 110 N.J.L. 256.

[19] Pg. 44.

[20] 3rd Edition, p. 36.

[21] Pg. 56.

[22] Pg. 57 note 93.

omits all other forms, including New Jersey's. For the New Jersey lawyer the third edition therefore remains the more useful book.

Had it been any other book that Mr. Long was revising, I would be reluctant to conclude this review without praising some part of his work. But it was Richards he was working upon, and Richards was a good book. It deserved a careful and conscientious revision. Mr. Long did not give it that. His book is not a fourth edition; it is a reprint of the third.

NEWARK, N. J. EDWARD GAULKIN.

CASES AND MATERIALS ON THE LAW OF VENDOR AND PURCHASER. By Milton Handler. New York: West Publishing Company, 1933, pp. xix, 925.

This case book is edited from a fresh viewpoint. It is one of a series of four books covering the field of property, which are the outgrowth of experiments with a complete rearrangement of the grouping of materials and new pedagogical methods conducted at the Columbia University School of Law for a considerable time.

The editor points out, in prefacing his compilation, that the artificial arrangement of materials and the divisions of topics among the various property and other courses in the traditional curriculum, frequently with the stress upon matters of relatively little importance, to the neglect of subjects of both theoretical and practical value, has caused much dissatisfaction. I venture the assertion that everyone who has attempted to teach in the property field with the older tools has sought, with more or less futility, to accomplish the results claimed by the faculty in this branch of the law at Columbia.

Professor Handler has brought together, in his book, materials relating to one of the chief attributes of property, i. e., transferability, which was previously scattered throughout the curriculum. It offers in the field of Real Property the counterpart of the traditional course on sales of goods. The book is divided into three parts, the Real Estate Contract, in which problems of formation, performance and remedies are considered and the status of vendor and purchaser analyzed; the Conveyance, in which the problems relating to the contents and execution of the deed are presented; and Rights in Land of Another, in which are considered such topics as Easements, Servitudes, Running Covenants and Equitable Servitudes.

The subject is treated in the light of the modern and expanding setting to a marked degree. A casual estimate would indicate that more than half of the cases in the main text were decided after 1910 and more than ninety per cent of them subsequent to 1895. While the emphasis is on recent American decisions, yet none of the landmarks in property law has been sacrificed. Cases such as *Noke v. Awder;* [1] *Wood v. Leadbitter;*[2] *Ackroyd v. Smith;*[3] *Goodrich*

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[1] Cro. Eliz. 373, 436; 78 Eng. Rep. 124, 677 (1595).
[2] 13 M. & W. 838; 153 Eng. Rep. 351 (Ex. 1845)
[3] 10 C. B. 164; 138 Eng. Rep. 68 (Ct. of C. P., 1850)