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Book Reviews

William M. Hepburn

Joseph L. Wetli

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BOOK REVIEWS

CASES ON PLEADING AND PROCEDURE, VOLUME 1. American Casebook Series. By Charles E. Clark. St. Paul: West Publishing Company. 1930.

The comprehensive character of the present casebook is indicated by its main divisions into Books. The Introduction, treating the subjects of How a Case is Presented to the Court, and the Function of the Pleadings, is followed by four Books: (1) Claims for Damages for Injuries to the Person; (2) Claims for Damages for Breach of Contract and for Debts or Sums Due; (3) Actions Concerning Personalty and Realty; (4) Equity. Under the last title the editor has included material on the Union of Law and Equity under Modern Codes. One is likely to ask how so vast a field can be at all adequately covered in the 660 pages of the text. The work is clearly intended to give a broad view of the whole general subject of pleading and procedure, and is to be supplemented by a second volume not yet published. Even then, a comparison with such a specialized early casebook as Ames' *Cases on Pleading at Common Law*,* shows a very striking difference in treatment and emphasis. Professor Clark's book, though over twice as long, gives less than half as much space to the subject of Demurrers as does Ames', who devotes his whole first chapter to them. This is in part due to the fact that Ames uses the word "pleading" in its narrow sense, as distinct from the forms of action and their history, which receive only incidental treatment. It is also due to a growing demand for conciseness in casebooks in the at present overloaded curriculum. The editor of our book has achieved it by stressing modern law administration, emphasizing history only to explain "general principles of present day utility."

Two features of this selection of cases are particularly noteworthy, and indicate an increasing approach to reality on the part of law teachers and casebook editors. Both are embodied in the extensive use of non-case material by the editor. In the first place, in the Introduction we have copies of the various papers which were filed and which constituted the whole or partial record of two cases, one before the Connecticut Supreme Court of Errors, the other before the Court of Appeals of New York. Similar material of a purely informational character is found at appropriate places throughout the work. The old school of case method teachers is not likely to approve of too much of this sort of thing, since the assumption has generally been that the function of the law school is to "teach students to think like lawyers." What information, as distinguished from reasoning ability, any particular student might pick up, has been looked upon as a relatively unimportant by-product. Such non-case material is not new, however. Other editors have already attempted, to this extent, the iconoclastic feat of undermining the fundamental principles of casebook instruction.**

Perhaps the most interesting feature of Professor Clark's casebook is to be found in the material dealing with philosophy and logic. On page 104 we find the beginning of a two-page selection from H. E. Cunningham's *Textbook of Logic*. On the succeeding pages there are other selections from legal writers and philosophers: Professors J. H. Beale, Walter Wheeler Cook, John Dewey, Morris R. Cohen, and others. From the very beginning of his course the student is taught to question the boasted scientific character of the law.

Among the cases, we find many old friends: *Sands v. Trevilian*, *Slade's Case*, *Ward v. Macauley*, etc. The cases on ejectment, with the editor's notes, are particularly valuable, though it is doubtful whether a student will ever be able to

* Published in 1875.

** Compare, as the best recent example, Professor Keigwin's various casebooks on pleading. Ames' 1905 edition, as well, of course, as innumerable other casebooks, contains a great deal of information in its long notes. The early edition had short notes—for the most part, none at all.

get from a casebook an accurate idea of the law regarding the forms of action. What, for example, will a student make of the statement in the note on page 467 that in the absence of statute a "plaintiff with an equitable title only cannot recover in ejectment"? Though that statement is in fact strictly correct, will it not mislead him into the error of supposing that no one can recover in ejectment unless he has *the* legal title. It is possible, though all the cases on ejectment are assigned and discussed, that some may draw such a conclusion.

This excellent and stimulating casebook will, it is felt sure, receive a warm welcome by teachers and students of the law.

William M. Hepburn.

University of Alabama, School of Law.

MODERN JURY TRIALS. By Judge Joseph W. Donovan. Revised Edition. New York: G. A. Jennings Co. 1924.

Bacon, in one of his essays, has very aptly remarked, that "some books are to be read only in parts; others to be read but not curiously; and some few to be read wholly, and with diligence and attention." The application of that rule to *Modern Jury Trials* places it in the category of books to be read in parts only. It might be well to add here that the diversity of the subject matter of the book is such that it behooves no one to read the entire contents consecutively but rather to read selected portions from time to time.

As to subject matter the book can be easily divided into two parts: one treating of the author's original observations and practical admonitions derived from an active and successful practice of the law, the other containing selections of the best jury speeches of such eminent American advocates as, Abraham Lincoln, Hon. D. W. Voorhees, Judge George Curtis, Hon. James A. Van Dyke, Chief Justice Ryan, Hon. James Hamilton Lewis, Hon. William A. Beach, Clarence S. Darrow, and many others. Half-tone portraits of these famous advocates and thumb-nail sketches of their lives and characters add much to the attractiveness and value of the material.

Of Judge Donovan's own work, his chapters on Trial Hints, Selecting a Jury, Cross-Examination, Reaching a Jury, and Twenty-One Rules of Practice are particularly worthy of careful examination and study. They are well written, interesting and informative. The clarity of expression together with the appealing force of practical suggestion make them of invaluable service to every trial advocate. Moreover, the vast experience and marked success of the author in this phase of legal art gives these chapters almost the authority of a text.

In commenting on the selection of cases one is reminded of the pungent truth expressed in the Latin maxim: *De gustibus non est disputandum*. Realizing that no two persons think alike or choose alike, it is no reflection on the author's sagacity to register disapproval at some of his selections. To agree with him entirely would be as unnatural as it would be untrue. It is significant also that the majority of cases reported were tried during that period of our history extending from the middle of the nineteenth century to the first few years of the twentieth century. To criticize in the light of present day thought and circumstances would be eminently unjust. The healthy progress of a mighty nation was reflected in the sturdy character of its oratory. Perhaps, the value of oratory as a legal requisite was over-emphasized, even to the extent of being primary to the law, but the human element is ever bound to assert itself. There were occasions when eloquence approached the melodramatic, the affected, and the bombastic. Such expressions as "the sinking sun on the Western hill-slope" and "the sweet rose of a mother's affection" may have imported little or no law but they created a feeling that reached the "hearts of men." In some cases it might well have been said that "the tongue was mightier than the law."

In spite of the apparent over-emphasis of oratory by the members of the bar there is much to be learned from their methods and styles. They knew their audiences well and knew how to impress them. Some by plainness of speech and earnestness of expression affected an eloquence that was brilliant in its very simplicity. Who can deny that the simplicity of Lincoln was as beautiful and as

effective as the grandiloquence of Webster? Some, again, by flourish of words and inspired delivery have given an enduring charm to their utterances. And still others in accents golden have moved their listeners to silent acquiescence. It must be realized also that much of the eloquence of speech is lost in the written word for, as the author says: "The charm of oratory, like music, must be heard to be appreciated, and comprehended to be enjoyed."

A chapter on "Closing Periods" comprises a notable selection of eloquent conclusions to fine speeches. To be thoroughly appreciated they must be read for they appeal to the emotions as well as to the intellect. Of the many fine passages in this chapter one has struck my fancy and I quote part of it for your approval. It is taken from the closing remarks of William C. P. Breckenbridge in behalf of his client whose sight had been destroyed through the negligence of the defendant.

"A mother's heart made sad by this mournful dread of total blindness . . . She was but thirty-four, and fair and comely; the mother of these bright girls, and though her home was humble, it was full of hope and happiness. She was a poor man's idol wife, but her lot was cast in this beautiful, bountiful land, where life and health are almost paradise; where the fatness of the fields brings riches to the industrious. There was hope in their labor; there was encouragement; there was life; and in an instant all went out! by one act of the defendant."

As a concluding word the book possesses excellent merit by virtue of its informative material and its entertaining style, while its attractive cover and flexible binding makes it a fine addition to any library.

Joseph L. Wetli.

BOOKS RECEIVED

- Cases on Constitutional Law.* By Dudley O. McGovney. Indianapolis: Bobbs-Merrill Co.
- Cases on the Law of Partnership* (Shorter Selection). By Judson A. Crane. Indianapolis: Bobbs-Merrill Co.
- Cases on the Law of Torts* (Third Edition). By Francis H. Bohlen. Indianapolis: Bobbs-Merrill Co.
- Cases and Materials in the Law of Corporation Finance.* By Adolph A. Berle. St. Paul: West Publishing Co.
- How to Find the Law.* By Fred A. Eldean. St. Paul: West Publishing Co.
- A Survey of the Legal Status of Women in the Forty-Eight States.* National League of Women Voters, Washington, D. C.
- Magna Charta: A Pageant Drama.* By Thomas Wood Stevens. Chicago: American Bar Association.