



11-1-1926

Book Reviews

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Recommended Citation

Edwin D. Hadley & John A. Daily, *Book Reviews*, 2 Notre Dame L. Rev. 31 (1926).

Available at: <http://scholarship.law.nd.edu/ndlr/vol2/iss1/7>

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BOOK REVIEWS

CASES AND OTHER AUTHORITIES ON EQUITY. One Volume Edition. By Professor Walter Wheeler Cook. St. Paul: West Pub. Co., 1926. pp. xix, 1179.

Last year Professor Cook completed a huge task, a casebook of three volumes on Equity and Quasi Contracts. The combination of these two matters is the most marked change of recent years in legal instruction, strongly approved by this reviewer along with many other teachers of law.

Now comes an edition of these cases in one volume, leaving out all material on the relation of equity to torts and much of the material on Quasi Contracts. In the latter omission we lose Mr. Cook's most important contribution, for the last one hundred pages of this book are far too brief to cover the important topic of Quasi Contracts. For teaching purposes, the new edition should have been one hundred pages shorter or a bit over one hundred pages longer; as it is, many supplemental cases must be added if Quasi Contracts are to be treated as a part of the course on equity. The large number of modern American cases makes Mr. Cook's work attractive to the student, and it seems too bad that this new combination of topics could not have been maintained in a fairly full form.

This one volume book does not succeed in carrying over from the unteachably large edition another marked contribution. The rather loose presentation that Dean Ames made of the basis and nature of equitable jurisdiction and the application of that jurisdiction to specific performance of contracts has been totally revised with a result somewhat more logical than that which was given in the pioneer work of 1904. The famous and interesting topic of "negative contracts" is missing, however, its cases appearing under the topic of "mutuality". This seems unfortunate, for those cases developed some very important principles totally apart from mutuality. They review the basis of equitable jurisdiction which was developed in connection with affirmative contracts; they review "feasibility" or "inexpediency" as a defense to the use of a jurisdiction for which there is a prima facie basis; they develop the new problem of implied negative promises; and they lead into a brief discussion of the power of equity

to prevent a threatened tort, a most important function when there is no time to study specially the tort problem. The reviewer has always felt that these cases were best presented after complete study of the basis of equity jurisdiction, perfection of that jurisdiction by service of summons, application of these fundamentals to specific performance of contracts of affirmative nature, and determination of all defenses to the use of jurisdiction in spite of a prima facie case. The subject of negative promises acts as a fine review of this analytical method of attacking a problem of fact, and then adds its special material without breaking into the middle of a logical sequence of the standard average problem.

Mr. Cook makes a marked departure from logic in locating his material on the defenses of hardship and unfairness, allowing three chapters to intervene between this matter and his general discussion of defenses and conditions. Much thought fails to produce a sound reason for this lesion.

That splendid topical heading of Deane Ames, "consequences of the right of specific performance," has been changed to "equitable conversion". Dean Stone has so thoroughly routed the latter misleading phrase that nothing remains to be said; in using Professor Cook's cases the writer will certainly have his students mark out and change that heading.

The treatment of reformation and rescission for mistake follows specific performance, as usual; and makes a fine transition into the matter of Quasi Contracts. What slight new arrangement is made in treating this equitable relief is logical and useful.

By way of summary, it can be said that the historical introduction is excellent, cutting down the time spent on preliminary lectures; the treatment of jurisdiction and the general prima facie case is logical and teachable, with good footnotes; the treatment of specific performance brings a splendid contribution in the topical heading of "conditions, express and implied", but suffers from a hiatus in the listing of defenses and a use of a misnomer, "equitable conversion". The failure to maintain fully the combination of quasi contracts with equity is a sharp disappointment.

EDWIN W. HADLEY

ELEMENTS OF PRACTICE. By E. D. Webb. Matthew Bender and Company: Albany, N. Y. 1926. pp. xlvii, 549.

The procedure and practice of New York courts are clearly explained in this new book by Mr. Webb. It is intended to aid the student gain "some familiarity with pleading and practice in the supreme court and county courts under the 1,578 sections of the Civil Practice act and some 230 rules of Civil Practice".

The need for a pilot on such an uncharted sea of code sections is at once apparent. Without a guide the student would waste a great deal of time and would probably neglect to study many important provisions of the code. But with a book of this sort the student can soon acquire a knowledge of the underlying principles of actions in courts of record. At the same time he will not be bothered with a great many technicalities that need be considered only upon rare occasions.

The book is well written. Mr. Webb seems to know the rules of grammar as well as the laws of New York. The construction of the book is also good. The subjects of the chapters are those steps which ordinarily follow one another in the procedure of the case. The author has managed to secure a logical sequence that aids the student in understanding the text. In parts the book is a copy of a previous work on the same subject, Mr. George A. Miller's "Introduction to Practice." Whether or not, however, Mr. Webb has succeeded in doing for the present generation of students and lawyers, what Mr. Miller did for a former generation is still a conjectural matter. To New York lawyers, Mr. Miller's work is an old and trustworthy friend.

Mr. Webb, however, does not set up his book as a substitute for reading the code itself. In fact, he depreciates any attempt to gain familiarity with the Civil Practice Act through reading his book alone. A thorough knowledge can be secured only by studying the code itself. In so far as it goes, however, the "Elements of Practice" is extremely useful.

A useful appendix is also included. This contains twenty-seven forms that are commonly used in pleading.

We can recommend this book to those embryonic lawyers who have selected New York as their future field. Unquestionably it will be an invaluable aid to them when they are forced to deal with that famous maze of legal difficulties, the new Civil

Practice Act of New York. If the reports concerning the confusion that this new act has caused are true, we extend to New York lawyers both our sympathy and our advice to purchase Mr. Webb's book. J. A. D.

AMERICAN HISTORY. By Clarence Manion. Allyn and Bacon: Boston, Mass. pp. xiii, 479, appendix, index.

Of all the tasks in the world, one of the most difficult and exacting is that of the historian. His office is no sinecure; he must first collate facts, discouraging numbers of them, and finally choose and reject, interpret and write. Results must be noted, and causes found. Some process of cause and effect must be shown to have existed, for nothing can happen without a reason. Each event must be traced to its source, and studied in its relation to every other event. Nothing can be isolated; one thing must lead to another as inevitably as life to death. Even the most trivial facts must be discarded reluctantly, for some essential part of a cause may thereby be omitted, and the result will be developed imperfectly and unnaturally. . . . So histories are bulky, and the action is slow. Channing, Fiske, McMaster and Bancroft have all written many unwieldy volumes of American History, but each would probably deny that his own work was intended to be a complete survey of the field.

If the thoroughly scientific historian, unhampered by nice considerations about space, finds it difficult to write a complete history, what then must be the task confronting the author of a high-school textbook, who wants to develop fairly and fully the most important events of America's life, yet must confine himself to some five hundred pages? How teach the young student the complete story of the United States, omitting no important part, by means of a book not to exceed a size convenient for stuffing into an overcoat pocket? How instil into the mind of a seventeen year old pupil the fundamental principles of American politics, when scholarly authors must themselves use reams of paper in telling about it? How, indeed?

The answer is usually an evasion; very few do attempt the task. The average high school history is a bleak compilation of explorations, discoveries, battles, treaties and commercial development, well punctuated with dates. No attempt is made to ascribe any reasons for events other than perfunctory sent-

imental ones. We are told that Lord Baltimore believed implicitly in religious toleration, but we are left to guess that his tolerance was but one instance of the broad American principle. The romantic struggle of the Colonies is sketched, but we are not told how that sublime independence of mind and political theory was developed by the fierce struggle of the colonists with the forests and hills. Facts alone are given; reasons are seldom attempted, and when they are, they are so highly colored and romantically presented, that the real issues are beclouded.

In his new work Professor Manion makes a new departure from high school histories. He gets away from the accustomed balderdash, and starts on a new path. His purpose is well stated in the preface. . . . "The student should know not merely the purpose of the Declaration of Independence—to separate us from England—but he should also be acquainted with the philosophic expression of human rights contained in that great document and the peculiar American conditions that called forth that expression." The American desire for independence did not start with Patrick Henry's speech on liberty; his invective was merely a new and forcible expression of the American idea. The entire story of America's progress is but a manifestation of that two-fold love for liberty and tolerance so peculiarly our own.

The book takes us from the time of Leif Ericsson's voyages to the Presidential election of 1924. Each period is given close attention, and the fundamental theories explained. By sound examples involving every decade, Professor Manion proves the point that "the two great considerations that loom largest in the background of all history are commerce and religion." These two factors combined to impel the discovery of North America, to eliminate the various nations from power on this continent, to foment the Revolutionary and the Civil Wars, and to secure American supremacy. After a year spent with this book the high school student should certainly realize that there were never any "causeless gestures" in the United States. The teacher will welcome a work which assigns a reason for every event, a motive for every act.

FEDERAL JURISDICTION AND PROCEDURE. By John C. Rose. Mathew Bender and Company: (Third Edition).

In publishing the third edition of this work, Judge Rose has taken advantage of the popularity which the previous two editions have already secured. We do not doubt that this edition, which has been carefully brought up to date, will meet with the same popularity.

Judge Rose does not attempt to produce a reference work, or to cover entirely the large subject of Federal practice. His object has been solely to present the fundamental and basic points of the branch of law with which he deals. In this, we believe he has succeeded to a marked degree. A conscientious reading of the book cannot fail to give an insight to the essential points in matters concerning the jurisdiction and procedure of the federal courts.

Having been a federal judge for a large number of years, Judge Rose is peculiarly fitted to write about his subject. And not the least of the good features of the book, is the delightful way in which Judge Rose presents his information. Most legal text books are dry, but by adding an anecdote and the story of an unusual case here and there, Judge Rose has succeeded in adding an enlivening interest to the book. He carries the reader from one point of the law to another in an easy, story-telling style which more than doubles the effectiveness of the text.

The work has one defect. Judge Rose, like a great many jurists, is somewhat deficient in the art of composition. His sentences are sometimes long, involved, and difficult to understand. Occasionally the reader becomes bewildered in the maze of one of the author's one hundred and fifty word sentences. This lack of clarity is frequently the cause of much confusion, and tends to detract from the value of the work.

On the whole, however, this book can be recommended both to those who already are engaged in federal cases and to those who are intending to practice in Federal courts. To the former it will offer a splendid opportunity for gaining a little additional knowledge, and to the latter it will establish that basic foundation so essential to a thorough mastery of any branch of the law.