

May 2013

Cases and Materials on Modern Procedure and Judicial Administration (Book Review)

Miriam Theresa Rooney

Follow this and additional works at: <http://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

Rooney, Miriam Theresa (2013) "Cases and Materials on Modern Procedure and Judicial Administration (Book Review)," *St. John's Law Review*: Vol. 27: Iss. 1, Article 24.

Available at: <http://scholarship.law.stjohns.edu/lawreview/vol27/iss1/24>

This Book Review is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized administrator of St. John's Law Scholarship Repository. For more information, please contact cerjanm@stjohns.edu.

The present work, although it does not deviate from the original scope and aim, does contain the text as it has been amended in the light of official declarations of the Holy See. These decisions have been incorporated into that part of the text where they contribute most to the interpretation and clarification of the pertinent Canons. The index is satisfactory and the bibliography, while selective, is adequate. Of interest and practical utility to the attorney is information contained in some of the appendixes, *e.g.*: "Norms to be observed by the pastor in conducting the canonical investigations before candidates are admitted to marriage";¹ "Norms to be observed by diocesan courts in conducting cases of nullity of marriage";² "Rules to be observed in the institution of cases of ratified and non-consummated marriage."³

Since the author makes no claims to completeness or exhaustive treatment of the subject matter, an attorney who has a practical case must have recourse to other volumes as well.⁴ He will also find it necessary to consult the officials of the local diocesan chancery court. In attaining their limited objectives, however, the original author and the reviser of *A Practical Commentary on the Code of Canon Law* have been eminently successful.

REV. JOSEPH T. TINNELLY, C.M.*



CASES AND MATERIALS ON MODERN PROCEDURE AND JUDICIAL ADMINISTRATION.
By Arthur T. Vanderbilt. New York: Washington Square Publishing Corp., 1952. Pp. xx, 1390. \$8.50.

This book constitutes a landmark in the teaching of law. First of all, it is expository of the new Rules of Civil and of Criminal Procedure, now in effect in the federal courts, and it treats them, in a comparative way, in one volume under the new title of "Modern Procedure." Secondly, it extends the application of the theory of these rules from federal to state practice and judicial administration. Third, it differs from the classical type of casebook, designed to train students to analyze and distinguish apparently contradictory cases, by devoting considerable space to text material and then utilizing cases to illustrate the way in which the courts have analyzed and applied the material in their decisions. It is, in effect, a model of the new type of teaching tool which tends to combine, to some extent, text with cases. Besides, it undertakes to meet the contemporary demand for a guide on "how to" practice law,

¹ APPENDIX VIII, P. 719 (2d part).

² APPENDIX IX, *Docum. I*, P. 739 (2d part).

³ APPENDIX IX, *Docum. II*, P. 788 (2d part).

⁴ *E.g.*, REV. T. LINCOLN BOUSCAREN, S.J., S.T.D., LL.B., THE CANON LAW DIGEST (Vol. I 1934; Vol. II 1945; Supp. 1948).

* Dean, St. John's University School of Law.

instead of emphasizing the customary probing of "why," which has characterized casebooks since Langdell. Since it is Chief Justice Vanderbilt's conviction that law students should be introduced to the practice of law in their first year, rather than wait until their last year for courses on pleading and practice, he has provided a book which may have as great an influence on legal education in the future as the methods of Langdell and Ames had during the last three-quarters of a century.

Some 1,200 pages are devoted to cases and text, designed for a 4-semester hour course, or 64 class periods. If the customary rate of assigned reading at 15 to 20 pages a class period be observed, the formidable amount of information contained in the book ought to be covered satisfactorily. It is the author's own suggestion that Chapters VIII, IX and X on Pleadings, Pre-trial and Trial, be treated as thoroughly as possible. The chapters on Parties (IV), Venue (V) and Judicial Review (XI) can be covered by a few selected cases amplified by some lecturing by the professor. And the textual Chapters I, II and III, as well as the four chapters which comprise Part II, on Judicial Administration, can be assigned for reading by the student, with the recommendation that the questions following the chapters, asking detailed information about customs and procedures in effect in the student's own state, be answered carefully during individual reviewing, since one set of them may appear on the examination.

Because Chief Justice Vanderbilt, through his activities in the American Bar Association for the past twenty years or more, has been intimately associated with the movement for improving judicial administration and for simplifying civil and criminal procedure, he is able to provide an authoritative exposition of the theories underlying the new rules in such matters as bringing suit in the name of the real parties in interest, counterclaims and cross-claims, and the purposes and limitations of pre-trial procedures. His book is written on a much broader base than the pioneer issue of Pike's Casebook, which was published when the new rules of civil procedure had just been given effect in the federal courts. By combining, in one volume, a decade's experience with the civil rules with the more recently introduced criminal rules, he has provided a book which fills a great need not only for classroom use in courses in federal practice, but also for those in local practice in the small, but inevitably increasing, number of states which are adopting similar rules for local courts in order to meet the competition afforded by improved federal procedure where a choice of law arises. Especially with respect to his own jurisdiction of New Jersey, Chief Justice Vanderbilt has written a book which is invaluable for students and practitioners alike in helping them to understand the reason for, and the purpose of, the new rules promulgated in 1948 and which now constitute a pilot project for the guidance of other states.

Perhaps the most impressive feature of the book is its cogency. Instead of beginning in the usual way with some discussion of the forms of action at common law, followed by a consideration of the rise of equity, and then the combination of legal and equitable remedies under code pleading, Chief Justice Vanderbilt devotes his opening chapter to the matter of jurisdiction. His comparative study of civil and criminal rules of procedure has suggested this ap-

proach, but, in doing so, he restores modern procedure to the great tradition established by Bracton. Bracton, it may be recalled, was not only a common law judge but also a churchman, trained in canon law, and so in each case before him, where he was confronted by parties who were not only subjects of the King in civil life, but also sons of Mother Church in matters involving faith and morals, his first problem was that of jurisdiction between Church and State. His decisions were necessarily influenced by a comparative consideration of parties, cause of action, and remedies, as well as subject matter at issue. In writing his great treatise, *De Legibus et Consuetudinibus Angliæ*, Bracton endeavored to explain what remedies were possible in the royal courts and what writs were available to obtain them, and so he devoted most of his book to the forms of action and to the cases in which they had been applied. He was writing a "how to" proceed book, like Chief Justice Vanderbilt, rather than a "why" book. Unfortunately his emphasis on form has been treated as if it were the substantial element in the treatise, while his primary concern with jurisdiction has been, for the most part, overlooked. Chief Justice Vanderbilt, by putting first things first in the functioning of law, restores the living essence of Bracton to the contemporary study of law, and this at a time when legal issues are so much more likely to involve interstate and international problems on a comparative, or jurisdictional, basis than ever before. The consideration of civil and criminal rules together may also hold the key to the problem of sanctions which proved such a stumbling block to Bentham and to Holmes that they led many lesser minds astray in an excessive reliance on force. In response to Bentham's call for simplification of procedure a century and a half ago, Chief Justice Vanderbilt, taking a fresh viewpoint, has compiled a seminal book, out of which much sound progress may be developed in the future. It is in such simple ways as this that ingenuity approaches genius.

Besides being a novel and important tool for teaching modern procedure to law students, it is also a source book of primary value in providing insight into Chief Justice Vanderbilt's own contributions to the advancement of our legal system. For many years now, the author has been teaching law, actively practicing in the courts, devoting much thought to organizing the bar through exacting—and often unrewarding—committee work, compiling and writing books and—recently—reorganizing the courts of New Jersey amid the formidable task of writing judicial opinions. Like his casebook on *Administrative Law*, this book is quite exhaustive in its coverage of the subject. Like his *Men and Measures in the Law*, it indicates some of his views about contemporary issues and needs. And, like his book on *Judicial Administration*, it gathers together a wealth of invaluable material which might otherwise be lost to the rising generation of students were it not made available in a standard casebook such as this. More than this, like his *Studying Law*, it lets us see a first-rate legal mind in action, by disclosing many of the major influences on his own thinking, and how he has been able to utilize the thoughts of other men in meeting honestly and courageously the problems of today. The book prints in full the great work of Maitland on the *Forms of Action at Common Law*, and it makes available to contemporary readers, the notable 1906 Address of

Roscoe Pound on *The Causes of Popular Dissatisfaction with the Administration of Justice*. It pays tribute to Langdell's *Summary of Equity Pleading* and to Ames' Casebooks. To all these monuments, marking the progress of the law, Chief Justice Vanderbilt has now added a new book, worthy to stand beside these great predecessors, explanatory of the theory underlying the movement for the New Rules and the work for the improvement of Judicial Administration, in the eternal effort to effect greater justice and make human rights more secure. It is a remarkable achievement.

MIRIAM THERESA ROONEY.*



JUDICIAL LEGISLATION. A STUDY IN AMERICAN LEGAL THEORY. By Fred V. Cahill, Jr. New York: Ronald Press Company, 1952. Pp. ix, 164. \$4.00.

For those who might find it unrewarding to read through the countless pages of recent American juristic writing, this book will be a heaven-sent boon. In a few paragraphs, pages or, at most a chapter, the author, with deft skill, epitomizes the essence of the thinking of almost each and every worker in the field. The result is so successful that one is left without any desire to check the author's summaries or to gain first hand information by examination of original sources. It is, of course, not the author's fault that the stuff he works with turns out to be difficult to utilize in the construction of any satisfying legal theory.

There are a number of reasons for this failure, but the principal one is the effort to wed law to modern science and to make all law a handmaiden of a particular economic theory whether of laissez faire or of socialism or of some compromise between them.

The natural order of justice cuts across any economic system and any observable scientific data. Our quarrel with the Russians, for example, is not that they have a different economic system than ours, but that they impose it upon their people by methods so tyrannical, so inhuman and so unjust, and that they apparently plan, by like methods, to impose it upon the rest of the world as well. The patriarchs of the Old Testament were men of wealth, as well as of faith. They had abundance of coin, as well as flocks, land upon which to graze them and a good supply of wells of living water. The men of the New Testament were likewise men of faith, but they had merely their daily bread, if that, and were in fact warned that wealth itself might prove an insurmountable obstacle to salvation. Modern Americans seem to be steering a course somewhere between the two. On the one hand they do not despise wealth nor do they think it an evil to labor to acquire it. On the other hand, few of us now subscribe to the notion that wealth is the reward for virtue.

*Dean of Studies, Seton Hall University School of Law.