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# Cases and Materials on New York Practice (Book Review)

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the errors are quite inadvertent and together with a few of the deficiencies of objective, may readily be overcome upon revision.

In addition to the excellent selection of cases, the book is handsomely bound and tastefully printed with widely margined pages which should delight the student who makes notes in his book as he reads.

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CASES AND MATERIALS ON NEW YORK PRACTICE. By Louis Prashker. Brooklyn, Fourth Edition, 1953. Pp. xii, 1276. $12.00.

"For a . . . teacher, the problem of choosing a case book is somewhat akin to picking out a new suit."[1] In most fields of law he is restricted to "ready-to-wear," but in that of New York Practice, an industrious and gifted tailor has provided the finest of "custom-made" attire. Professor Prashker has continued to improve his product with each alteration and this fourth edition appears at the close of a quarter of a century of teaching the subject. With hesitation, therefore, there are here presented certain observations personal to this reviewer.

The work of preparing any case book must present grave doubts to the editor and is a much greater task than most of us realize. We are indebted to the author for his painstaking and scholarly compilation of this substantial body of law. It reflects a thoroughness that will appeal to both the teacher and the student. The comfort of the reader is kept in mind and the relevant statutes precede the cases. The cases chosen include the traditional as well as those effecting the newest changes, a pattern appearing in earlier editions. The book is not only an exhaustive collection of opinions, but also a scholarly reference work on all aspects of the subject.

Changes in the statute and the efforts of the author to improve what previously has been adjudged excellent material leads to certain omissions. Excerpts from the Federal Rules of Civil Procedure and a former chapter on appeals, which wisely should be left to other courses, are excluded. The edition is made attractive by the inclusion of such recent cases as *Solicitor for the Affairs of His Majesty's Treasury v. Bankers Trust Co.*,[2] illustrating the procedural device of interpleader.

There is no claim to a new approach and this is encouraging, since an examination of the case book leads to the inference that the author seeks only

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[1] 4 J. LEGAL ED. 103 (1951).

[2] 304 N. Y. 282, 107 N. E. 2d 448 (1952). See also Solicitor for the Affairs of His Majesty's Treasury v. Bankers Trust Co., 304 N. Y. 296, 107 N. E. 2d 455 (1952) (dealing with intervention).

to do the old job better. The basic principles are arrived at by a topical arrangement of the pertinent statutes and cases, considering first the jurisdiction of the courts and continuing in the order in which a practitioner views the course of an action—the summons, the complaint, the parties to an action, the answer, motions and on through to judgments and enforcement. The chapter on the complaint contains such matters as joinder of causes of action, res judicata, election of remedies and the splitting of causes of action. While there is some duplication here on subjects that are considered in earlier pleading courses in law school, we do find an extension of these topics to the local practice under examination.

The cases concerned with the court's jurisdiction are not numerous, but the statutes preceding the cases concisely define the power of the courts. The reason for the principle that the courts in their discretion may refuse to retain jurisdiction in actions between non-residents is made clear in the light of our present congested calendars. Attention is centered on the County Court since the principal case is *Howard Ironworks v. Buffalo Elevating Co.*[3] This reviewer, however, notes with regret the absence of cases defining the authority of the Municipal Court of the City of New York. It seems, perhaps, that a New York legal educator, in a procedural course, should give more recognition to the fact that this court is the busiest in the city and that the newly-admitted young lawyer will spend a large percentage of his first years embroiled in its hurly-burly.

Some comment might be made of the sequence of cases. *Bata v. Bata*[4] dealing with the doctrine of "forum non conveniens" appears as the first of the group dealing with actions between non-residents. This doctrine seems too advanced for the student, without first introducing the subject with cases such as *Burdick v. Freeman.*[5] The familiar *Pennoyer v. Neff*[6] and *Geary v. Geary*[7] are included and, along with the common law, seem to follow us to the grave. Could we not leave these two cases to the first and second year procedure courses?

In connection with the principal cases, there are set forth "case analysis questions," somewhat in the fashion of the law-quizzer, but in a much more provocative manner. This technique seeks to stimulate further thinking in the reading of a case and thus to help the student in his class preparation. Advocates of this method say that wasted time is largely eliminated when the notes suggest to the student the point of view from which he should read a case. It is true that legal dialectics must be developed in the law student, and insofar as the analysis questions pursue this end, they are all to the good. The extensive use of such questions cannot be fully endorsed by this reviewer. How-

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[3] 176 N. Y. 1, 68 N. E. 66 (1903).
[4] 304 N. Y. 51, 105 N. E. 2d 623 (1952).
[5] 120 N. Y. 420, 24 N. E. 949 (1890). This reviewer would disagree with an earlier comment as to the need of including cases defining local and transitory actions. The concept should be left to primary procedure courses. See 22 ST. JOHN'S L. REV. 326 (1948).
[6] 95 U. S. 714 (1878).
[7] 272 N. Y. 390, 6 N. E. 2d 67 (1936).

ever, from the student's first day at law school he is oriented in, indoctrinated with, and exposed to, training in inductive thinking. Can we not hope that when he has arrived at the point when he enthusiastically looks forward to a study of litigation procedures, he has progressed far enough so that the emphasis might be changed? Is it not time to break through the pedagogical barrier? Legal educators have not always recognized that law students should receive some training in the ability to use convenient legal analogies to forward a particular objective or to answer an argument suddenly made against them in the course of litigation. We cannot develop such ability by adhering throughout law school to our first year methods. The challenge of our adversary system requires a much stronger emphasis on the development of inventiveness and the ability to combat surprise than our students are presently receiving.

This reviewer feels constrained, in view of the fact that reviewers of previous editions have done so, to go on record as to the advisability of including forms in a work such as this. It seems to the writer from his experience with students that the use of forms do have an advantage and do have a place in a case book on remedial law. The author's justification for excluding them is that his text on practice includes the essential forms. They cannot be under the eye of the student, however, unless they are in this volume. The advantage of working through forms is comparable to that enjoyed by an attorney preparing and examining the pertinent papers in an action. The student is able to have a graphic example of the procedure of the cases if he is supplied, at least, with a "case on appeal" and an appendix of the basic forms.

For the student or practitioner who wishes to grasp the fundamentals of New York Practice there is no substitute for hard and diligent work. This book, of necessity, makes that clear and this may be its most important contribution. It is "the happy union of conciseness with great comprehensiveness of treatment." [8]

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[8] BL. COMM. Preface (4th Chase ed. 1938).

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