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Cases on Civil Procedure (Book Review)

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In his preface to the third edition of his case book, the author has expressed his dissatisfaction with the generally accepted arrangement of topics in case books on criminal law. Such arrangement is substantially as follows: the general nature of crime; the criminal act; the criminal intent, which includes a consideration of the defenses of infancy, insanity, intoxication, mistake of fact and of law, lack of specific intent, etc.; the parties to a crime; and finally a treatment of the more important offenses against person and property. The fault in this grouping, as the author sees it, lies in the fact that the defenses to crime are studied before the elements of the various offenses are mastered. ("The student will get a more orderly and clearer knowledge of the subject by mastering the elements of various crimes before studying matters of defense."¹) So, with a view to correcting this defect, the topics have been rearranged in the following order: the nature and elements of crimes, the particular offenses against persons and property, the defenses to a criminal prosecution, and the combinations of persons in crime.

An analysis of this order of topics would indicate that the author would have the students creep before they walk in that he would have them know what is forbidden by the criminal law, before he would have them consider what extraneous facts will excuse the apparently forbidden act when done. Logically, it would seem that the excused forbidden act is no forbidden act at all; and therein lies the justification for the present method of studying defenses in connection with the criminal act and criminal intent. However, there is no gainsaying the fact that the teaching of defenses under the old arrangement is fraught with difficulties. The elements of crimes, not yet understood, must furnish the background for a discussion of defenses. Even the various degrees of a crime become important in comprehending some defenses. Apparently, there is an incentive for simplification.

Although the author's arrangement may offend against logic and unity, it seems, on the other hand, to make for clarity and to prevent duplication. Not to submit this experiment to a complete test, would be to impede progress in legal education.

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CASES ON CIVIL PROCEDURE. By James P. McBaine. St. Paul: West Publishing Company, 1933, pp. xx, 1008. \$6.00.

In 1927, Professor McBaine prepared a volume of "Cases on Trial Practice in Civil Actions."¹ Part 3 of the present volume consumes 694 pages and is devoted to a consideration of the topics on trial practice included in the earlier volume. Parts 1 and 2 consume three hundred pages and are devoted

¹ P. vii.

¹ For review of this volume, see Ilsen, Book Review (1927) 2 ST. JOHN'S L. REV. 103.

to a consideration of forms of action and pleading. These latter topics were not considered in the 1927 edition.

In Part 1, under the general heading of forms of action, the author considers the common law actions of trespass, replevin, detinue, ejectment, trover, covenant, account, debt and assumpsit. In Part 2, under the general heading of pleading, the author considers the demurrer, the declaration, negative pleas in bar, the specific and special traverse, affirmative pleas in bar, pleas in abatement and replications. In Part 3, under the general heading of trial practice, the author considers venue and jurisdiction, process, default judgments, change of venue, continuance, selecting the jury, withdrawal of the evidence from the jury, the judge and the jury, argument of counsel, verdicts, trials by the court, new trials, bills of exceptions and rendition, entry and sufficiency of judgments. The volume, says the author, "is thought to be suitable for instructing first-year students in that branch of law we denominate procedure."²

This volume is not an improvement over its 1927 predecessor. Parts 1 and 2, devoted to forms of action and pleading, are unrealistic. They are based on the historical approach—with modern history playing an insignificant rôle. After examining a good deal of ancient—and now discarded—learning, the reader will here and there encounter a case captioned "modern significance." This is to still the ire of the student who may ask, "What is the meaning of all this to us today?" Part 3, devoted to trial practice, is based on the functional approach and is realistic in character.

Dean Clark of Yale Law School has spoken thus of the outmoded approach of Parts 1 and 2: "Inculcation of common-law pleading doctrines is the worst possible approach to modern pleading conceptions, for it gives the student so much to unlearn. Of course, this does not mean that modern teaching of procedure should reject all history; only that history should be given its proper place, as in other courses, as explaining how modern rules developed, not as an end in itself."³

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CASES ON RIGHTS IN LAND. Second edition. By Harry A. Bigelow and Joseph Warren Madden. St. Paul: West Publishing Company, 1934, pp. 813.

As a first-year book in Real Property, this volume has few rivals. It combines an easily comprehensible classification with a selection of well worded opinions that present the fundamental principles of Real Property to the student with force and simplicity.

The necessity which the teacher finds himself in, of integrating the Statutes with the general body of Real Property law as it has been historically developed, meets obstacles in the minds of the students. An earlier

² P. v.

³ Clark, Book Review (1933) 47 HARV. L. REV. 148.