

Cases on Pleading and Procedure: Volume II (Book Review)

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sustain such a hypothesis. It is true, indeed, that for the last decade or so, we have been becoming more and more "trust-minded" as is indicated quite conclusively by the statistics in this volume.⁶ Nevertheless, it is also true that we are, today, in an era of reevaluation⁷ where recent economic practices are being revised, if not entirely discredited. It is quite possible that "trust-mindedness"⁸ which must assume the constancy, if not the increment, in economic values, may decrease in popularity. The efficacy of the spendthrift trust for those other than the weak and the incompetent, may no longer be apparent. In other words, our problems change. We have seen the improbable happen. Are we going to stress the problem, which has proven itself transitory, or are we going to place our confidence in principles *per se*, trusting that they will be certain enough to avoid chaos, and flexible enough to be adaptable to new problems? Above all, it is important that the usefulness of the lawyer as a detached thinker be unimpaired. Such detachment, it would seem, is not acquired by an over-emphasis on problems.

No one appreciates more keenly than the reviewer the necessity and possibilities of experimentation in legal education. It may be that the present experiment will become the orthodoxy of tomorrow. But, as yet, I remain unconvinced that a reclassification of legal topics based on the problems to be confronted will make for ultimate betterment in instruction and practice. Such an arrangement seems to be a misdirection of emphasis, while, in addition, it offers complications of its own in respect to classification. Whether the method so ably presented by Professor Powell be generally adopted or not, law teachers owe him a debt of gratitude for his skillful, exhaustive and masterly treatment of *Trusts and Estates*. Only a pioneer of his ingenuity and scholarship can make such noteworthy explorations in the field of legal education.

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CASES ON PLEADING AND PROCEDURE: VOLUME II. By Charles E. Clark. St. Paul: West Publishing Co., 1933, pp. XVI, 698.

Let the dead past bury its dead! This is the teaching of our sages.

On examining an orthodox case book on common law pleading, one is apt to exclaim that much ancient learning on the subject is now obsolete.¹ Inertia is our only alibi for continuing to pass it on—or, perhaps, our interest in legal antiquities! History has many sins to atone for. Not the least of them is the idle resurrection of the interred.

⁶ P. 46.

⁷ See Inaugural Address of President Franklin D. Roosevelt, New York Times, March 5, 1933.

⁸ P. 41.

¹ Cf. Judge Andrews' comment in *Martin v. Peyton*, 246 N. Y. 213 (1927), "Much ancient learning as to partnership is obsolete."

This volume prepared by Dean Clark of the Yale Law School breathes the breath of life. It is the second and concluding volume of cases and materials on Pleading and Procedure. It is not orthodox. It constitutes "an attempt * * * to indicate the philosophy behind the procedural rules, to emphasize the modern aspects of law administration, and to employ history not as an end in itself, but for the light it casts on present day rules"² (p. V). Objections to the functional approach to substantive law, there may be. In procedural law, however, I feel convinced that it represents the sound method. Here our task is to engineer a mechanism that will achieve justice in the concrete. The acid test of any procedural rule is, will it work? Little else matters.

I think that with some such conceptions Dean Clark planned these volumes. The proper rule of law is here often developed by the method of comparison. Reported cases, briefed cases, notes and questions all serve to bring to a focus the issue, does the rule of the case work? Highly significant too are the constant references to valuable law review articles and notes.

The author devotes half of the present volume to material concerning the granting of specific remedies, with special reference to the injunction and specific performance, and with briefer reference to bills to quiet title, bills of peace, reformation and cancellation of instruments, and actions for declaratory judgments. The other half of the volume is devoted to material dealing with parties, splitting actions, *res judicata*, joinder of causes of action, counterclaims, objections to pleadings and amendments thereof, and summary procedure.

In respect to one matter, I must resort to the judge's expedient of "decision reserved." Experimental teaching may in the future overcome my present feeling that the author is too sanguine when he writes these "two volumes are intended to provide courses taking the place of the Common Law Pleading, Code Pleading, and Equity Pleading courses and parts of those on Equity."³ My a priori judgment is that Equity deserves its own niche in the law school curriculum. Witness the six volumes of Pomeroy's "Equity Jurisprudence," and Cook's three volumes of "Cases on Equity." Experience—those who are familiar with the scope of my professional teaching might say class interest—makes me feel that Code Pleading and Practice require a more extended treatment.

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THE ADMINISTRATIVE CONTROL OF ALIENS. By William C. Van Vleck. New York: The Commonwealth Fund, 1932, pp. IX, 260.

Students of immigration have reason to be grateful to the Legal Research Committee of the Commonwealth Fund for having sponsored this study and to Dean Van Vleck of the George Washington University Law School, for having made it. Aliens, the world over, are always in need of spokesmen, and too often of champions.

² P. V.

³ P. VI.