Prashker on New York Practice (Book Review)

James B.M. McNally
BOOK REVIEWS


The advent of Professor Prashker's New York Practice, recently issued, marks the culmination of twenty years teaching the subject at St. John's University School of Law by the author. A scientist would be hard put to find a better laboratory. The text is a clear, concise, orderly and lawyerlike contribution to the New York law of practice and procedure, which can be utilized to good advantage by student and practitioner alike. Of course, one can best gain familiarity with the Civil Practice Act and the Rules of Civil Practice by constant reference to the Act and Rules. Reading about them will never be a substitute for studying either statute or rule.

This book is a valiant effort, however, to give to the reader an overall familiarity with pleading and practice in our civil courts. The text is a fine guide to the Act and Rules and to selected cases and opinions which seem best adapted to aid both student and practitioner in acquainting themselves with the application of the many ordinary and complex problems of procedure that are bound to arise in a workaday law practice.

The Civil Practice Act and Rules of Civil Practice became effective in 1921. Since 1924 the Rules of Civil Practice have been subject to amendment by the Justices of the Appellate Division. The Rules, of course, are supplemental to the Act itself. When one considers that the Civil Practice Act includes approximately 1,630 sections, while the Rules are some 242 in number (the last numbered section of the Civil Practice Act is Section 1578, some of the numbered sections have been repealed while numerous sections have been added from time to time. The last numbered rule is 303, the rules are not always numbered consecutively), it is readily manifest that the subject matter covered of necessity must be wide in scope.

No one understands better than a teacher of law that for so large a field of study some common scheme or plan is necessary. There are many sections and rules concerning matters with which a practicing attorney rarely is required to concern himself. They relate to proceedings so special in nature that their use is seldom required. It is imperative that one knows where to find them but one can postpone acquiring the details concerning them until such knowledge is needed. But with the practice in ordinary actions, it is essential that student and practitioner alike should be familiar with the Act and Rules relating to routine affairs.

Logic and common sense ordain a natural order for procedure in an action as well as the study of the subject; the bringing of the parties into court by the service of process upon them; their statements of cause of action and defense in complaint, answer and reply; incidental motion practice; provisional remedies and replevin; depositions; trial practice; judgment and its
enforcement; special proceedings; and errors and appeal, afford a reasonable
division of subjects for study. The instant table of contents shows an orderly
talent for arrangement substantially in accordance with the above order and
an ability to call attention in logical sequence to the more important and more
often used sections of the Civil Practice Act and the Rules of Civil Practice.

The book contains a great deal of valuable practical information in con-
venient form, even to the point of suggesting a last question to be asked jurors
on the voir dire examination. Professor Prashker proves himself ready to
take a position and state his views on procedural matters which he believes
"have become encrusted with outworn technicalities" in treating with such
subjects as the rule of abbreviated pleading of performance of condition. He
attacks such propositions in language which is keen and incisive and demon-
strates beyond doubt that he has a scholarly and profound knowledge of his
subject.

The text clearly shows that it was written by a skilled and experienced
craftsman and the general treatment of the subject matter indicates careful
and painstaking research. In conclusion, it is the opinion of this reviewer that
the book exhibits a great degree of industry and merits high commendation.

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CASES AND MATERIALS ON THE LAW OF TORTS. Harold F. McNiece. Brooklyn:

The latest Cases and Materials on the Law of Torts was published this
fall by the youngest scholarly instructor, Harold F. McNiece, Esq., of St.
John's University School of Law. Like the bride's trousseau, it has something
old, something new, something borrowed, and something blue. It was intended
primarily to meet the problems of a very special and honorable type of student.
One matured beyond his actual age; humbly grateful that he was able to per-
form his greatest duty as a citizen of the United States and now honorably
discharged from the strict military discipline lasting from months to years of
service. A student who was, at last, free to pursue or renew his longed-for
profession of law. Some would come to acquire their legal knowledge coupled
with the responsibilities and obligations of spouse and family. All would be
incumbered with shortages of food and home. Definitely it appeared to Mr.
McNiece that mere outlines and summaries would not suffice. It would not
do to learn arbitrary principles of proximate and remote cause. If one was
to have any degree of success he must do more than to explain the conduct
of the "reasonable prudent man." Mr. McNiece succinctly states his appre-
ciation of the problems in his preface: "Tort law and economics have become

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