

Cases on Pleading and Procedure (Book Review)

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CASES ON PLEADING AND PROCEDURE. By Charles E. Clark. St. Paul: West Publishing Co., 1934, pp. xxii, 905.

To those already familiar with Dean Clark's Cases on Pleading and Procedure in two volumes, it will not be necessary to do more than remark that this single volume is "an abbreviated edition," there having been eliminated most of the materials on equitable remedies which many teachers prefer to handle in connection with existing courses in Equity. The two chapters on Early Development of Equity and The Union of Law and Equity Under Modern Codes, have been retained.

This most significant contribution to the teaching materials on Civil Procedure deserves the careful scrutiny of law teachers and practicing lawyers as well. Probably there is no subject which has been so everlastingly handled in the law schools throughout the country as that of Procedure. Everyone seems to have his own separate opinion about the way in which Procedure should be taught, and the existing collections of cases and other materials on the subject attest not merely the diversity of opinion on the subject but its inherent difficulty. While many, but not all, recognize the importance of the subject, very few of the schools seem willing to devote a sufficient amount of time to Adjective Law to turn out a finished product thoroughly grounded in the rather comprehensive subject matter which the phrase "Adjective Law" connotes. It is all very well to hope that the average student will pick up a considerable amount of Procedure in connection with his Substantive Law courses, but experience demonstrates that this is rarely the case. Probably the only solution is to determine, as best one may, the indispensable and fundamental principles of Procedure and try to make sure that the student is thoroughly grounded in these.

Those familiar with teaching methods and materials in the field of Procedure commonly in use twenty-five or more years ago, will find Dean Clark's collection stimulating, informative and thought-provoking. The old common law pleading technique is more or less thrown in the discard except for purposes of historical background. One of the outstanding features of the book is the formulation, step by step, of a definite philosophy on the subject which, in the course of time, seems bound to take root from one end of the country to the other with extremely beneficial results to the community and to the science of law administration. The way in which this philosophy is developed, and in which principles of sound procedural reform take shape and substance as one progresses through the book, appears to the writer of this review to be a fine piece of artistry and a contribution of major importance. Adjective Law should be the servant and not the master; the rules must be formulated not so much for the purpose of constructing a harmonious system for logicians to play with, as for the purpose of aiding the courts and litigants in a practical way to obtain justice without the constant and expensive struggle to surmount technical obstacles and a complicated and futile labyrinth.

The introduction is perhaps the most interesting part of the book. The copies of actual records which appear at the very outset represent an excellent idea although it would seem that more illuminating illustrations could have been selected. This is difficult without taking up too much space, but it seems

possible. The materials which follow concerning the function of pleadings and the historical development from oral to written pleadings, as well as the quotations from Dr. Karl von Lewinski's article "Courts and Procedure in Germany," complete the picture. This reference to the Continental practice is characteristic of Dean Clark's method.

Features which will strongly appeal to those interested not merely in procedural detail, but, more particularly, in breadth of view and fundamentals, are the materials which tend to tie up the rules of Pleading and Procedure with the rules of Evidence and a similar tie-up between Adjective Law and Substantive Law. Unless Procedure is taught in a manner which properly connects various phases of Adjective Law with one another, the result is bound to be artificial and unsatisfactory. The materials on facts and law to be found on pages 102-17 seem particularly striking and useful.

Dean Clark would doubtless be one of the first to admit that no wholly satisfactory and more or less final method of handling the subject has yet been found. It will be interesting to note future developments. It has seemed to the writer that much benefit could be derived from a deliberate and methodical emphasis on various procedural aspects of the Substantive Law courses in the second and third years. It should not be over-difficult to have a few of the lectures in selected Substantive Law courses given by the professor in charge of the Procedure courses or one of his assistants. This would be particularly helpful in connection with the course on Conflicts of Laws where the subject of Jurisdiction of Courts is traditionally handled. Some of the finest procedural material is frequently lost in the shuffle by virtue of the emphasis placed upon the purely constitutional phases of the subject of Jurisdiction, thus throwing away, as it were, one of the best opportunities to train the student in the underlying principles of Procedure.

Whatever be the particular views of each teacher on the subject, and however broad his experience and background, it would seem that he could benefit immeasurably by teaching his course for a year or two by using this case book. It is all very well to train men about to assume the responsibilities of practice in the details of practice in a particular jurisdiction. But it is the fundamentals of the subject, and the point of view toward it, and the philosophy one develops about it, which count most heavily in the long run.

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CASES ON THE LAW OF SALES. By Frederic Campbell Woodward. Third, edition by Lawrence Vold. St. Paul: West Publishing Co., 1933, pp. xxxi, 988.

A selection of cases edited by so eminent an authority as Professor Vold is bound to be of great interest. Professor Vold's most valuable text book on the Law of Sales stamps him as one of the most up-to-date of our legal writers. His case book on Sales is bound to receive the same well-merited success.