

Cases on Rights in Land (2nd Ed.) (Book Review)

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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.

generation of jurists was accustomed to treat statutes as obnoxious growths on the body of the law and to attempt an analysis of the legal system, without regard to statutory change. This made the task easy for the teacher and resulted in a one-sided view of the law and the increasingly frequent necessity of explaining away what appeared to be wrongly decided cases. A first-year student has difficulty seeing the relation between *Quia Emptores* and the modern law of Real Property. He shies at *de Donis* and is only mildly tolerant of the Statute of Frauds. Yet every Real Property teacher will tell you that a clear understanding of these statutes is essential for the realization of some of the difficulties involved in the common law doctrine of estates. In Chapter One the authors of this case-book have adequately met this problem and have given a lucid introduction to the study of Real Property from which students will readily benefit. Again, by giving actual quotations from ancient statutes and common law writers, they have not only clothed their views with authority but have attempted to introduce the student to the common law psychology. It is suggested that this is of extreme value in view of the fact that to a large extent technical phases of the common law require certain habits of mind for their complete mastery.

A first-year student must learn to find his way through the labyrinth of estates, before he can begin properly to estimate the current social value of our existing Real Property Law. At best, Real Property is one of the most difficult courses in the curriculum of the law school and it must remain so as long as the teacher and the student are unwilling to do the necessary spade work in historical research. It is for this reason that a first-year book which gives a good historical account of the developments of Real Property Law, is of untold value to both teacher and student.

In subsequent years emphasis can be brought to bear upon the fact that the common law doctrine of estates is not necessarily the best system of land tenure that can be devised by the human mind, and that it grows out of the accident of the feudal system as it developed in England. At such time, the students can also be taught to have a better appreciation of the function of legislation in modern Real Property Law. But before we reach this point, it seems to this reviewer that a good legal, historical source book of Real Property is of great use in clearing away fundamental misconception.

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OUTLINE OF THE LAW OF SALES. Second edition. By Frederick A. Whitney.
Brooklyn: St. John's University School of Law, 1934, pp. xix, 309.

From the termination of our Civil War when Secretary Benjamin put aside the Confederate portfolio of State and left the land of the Stars and Bars to follow the more gentle pursuit of the Law as a member of the English Bar, countless works of high authority on the Law of Sales have been given to the profession. With the great works of Benjamin, Burdick, Williston and numerous encyclopedists on the library shelves the practitioner of today may