

Cases on Civil Procedure (Book Review)

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BOOK REVIEWS

CASES ON CIVIL PROCEDURE. By Roswell Magill. St. Paul: West Publishing Co., 1927, pp. xiv, 578.

This recent addition to the American Casebook Series is a marked departure from the beaten path. As a collection of material in procedure to be used by first year law students this volume would seem almost revolutionary to the practitioner trained twenty or even fifteen years ago, who spent the greater part of his first year in law school wondering "what it was all about" and floundering in what seemed to many to be the impenetrable fog of common law pleading. And even to our present day generation of law students and law teachers the arrangement and the selection of the material is bound to appear as strikingly new.

Frankly experimental in a sense, this book is based upon a studied analysis of the law school curriculum as a whole, with particular reference to the subject of procedure, not as a thing apart, but as an integral part of a symmetrical whole. So long as collections of cases are to be even a large part of the law student's material, it is essential that he be given at the earliest possible moment a sufficient understanding of the function and method of adjective law to make it possible for him to read the opinion of an appellate court understandingly and with some clear perception of what the court is actually deciding. Thus the first chapter of Professor Magill's collection of material is devoted to a brief description of the Court System of England as well as our federal and state courts. This is followed by chapters on Demurrers, Objections and Exceptions, and Trial Motions, as most of the substantive law points discussed in the various opinions of appellate courts are raised by one or another of these procedural devices. This completes Part 1, with a complete appellate record of a case which was reversed by the Appellate Division of the New York Supreme Court, added by way of appendix.

Having thus at the start provided the student with sufficient information to make his work in substantive law intelligible without too much groping about in law dictionaries and encyclopedias, Part 2 is devoted to the Declaration of Complaint in the various forms of actions, Part 3 to Parties, Part 4 to Pleas and Replications, including a chapter on Recoupment, Set-off and Counterclaim, and finally, Part 5, on the Enforcement of Judgments.

While Part 1 doubtless represents a valuable contribution to the science of law teaching, it is in Parts 2-5 that Professor Magill has undertaken the more difficult task. The material is so arranged as to provide ample historical background, coupled with a consideration of the present bearing of old principles in the light of the various Codes and Practice Acts. In other words, the system of common law pleading with its fundamental principles, its forms of actions and many of its seemingly unreasonable rules is fully treated, but treated in such a way and with such a sprinkling of more or less recent cases decided by the federal and many of the various state courts, that the old "dry as dust" atmosphere is not at all perceptible.

The emphasis is placed throughout upon the system of procedure as a whole, the material is in the nature of a preliminary or introductory course in pleading and practice. The footnotes are carefully prepared to accomplish the purpose intended. They provide food for study, abundant references to the literature of the subject, and many suggested problems, with citations to authorities where such problems are discussed or treated.

It would seem that the ancient method of approaching the subject of Common Law Pleading has served its usefulness. Perhaps it was a mistake from the first to place before first year law students the material which had become almost conventional, but which was at all times highly technical, confusing and difficult to comprehend. In any event, Professor Magill's experiment is bound to provoke discussion, to lead to a reconsideration of many of the principles of legal education which have been for a long time taken for granted, and for these reasons apart from others intrinsic to the book itself, it is a forward step in the right direction.

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HANDBOOK OF ROMAN LAW. By Max Radin. St. Paul: West Publishing Co., 1927, pp. xv, 516.

One would have thought that the market for the sale of a hornbook on Roman Law was too sparse to draw the business nose of the West Publishing Company. At least, one might have hoped so. Specifically, one might have hoped that when a civilian scholar of the unquestioned eminence and learning of Professor Radin at last set himself the task of preparing an institutional work for American students, he had done so free of the trappings of the Hornbook Series. A plan that requires every section, in itself a tightly packed mass of material, to be prefixed by a heavy type black-letter summary of the context thereof, too often leads to absurdity.

Take for example, Dr. Radin's discussion of the great jurists of the classical period. His treatment of the subject for a page and a half, is scanty but considerably informative. His black-letter heading, however, reads like an epitaph:

- (1) Gaius, known only by his extant manual, *The Institutes*.
 (2) Cervidius Scaevola, author of a *Digest*.
 (3) Papinian, brilliant and profoundly influential.
 (4) Paul, ingenious and subtle.
 (5) Ulpian, eminent as a critical systematizer.
 (6) Modestinus, learned commentator. (p. 80.)

The Roman institutional treatises expound the law under the headings adopted by Gaius and followed in the Justinian *Institutes*,—persons, property and procedure. Blackstone, it will be remembered, uses the same division, with the addition of criminal law. His division was of rights of persons, rights of things, private wrongs (a procedural treatment, because the abstraction of right from remedies is a phenomenon of matured law), and public wrongs (criminal law). Dr. Radin adopts the classification of neither wholly.

After outlining Roman history generally from the earliest times to the fall of the Empire, he proceeds to a history of Roman law, to so