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Cases on Trial Practice in Civil Actions (Book Review)

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many law schools these subjects are presented in courses which students may elect only at the sacrifice of other subjects perhaps more important. Furthermore, the peculiarities of the terminology of equity pleading make a book like this very helpful to the student in his study of cases on equitable relief.

As a reference book for legal research, this work, like many of the Hornbook Series, is not of great use except as a starting point. Professor Clephane has added to its value in this respect by references on practically every page to the classic treatises of Story, Langdell, and Daniell and to over a dozen other books on equity pleading. Especially in the later chapters, the author has cited many very recent cases, and has included a few references to case notes in A. L. R. and to Key Numbers of the American Digest System. More frequent references of this kind in treatises would greatly facilitate the work of legal research.

In the presentation of some of the branches of equity pleading, the Hornbook style of brief and generalized treatment is unfortunate. Particularly is this true of the discussion of joinder, intervention, and substitution of parties. No presentation of the subject of joinder of parties plaintiff occupying less than two pages could be of great help in solving the frequently difficult problems in that field. Again, the content of bills in equity depends so completely upon principles of substantive law that Professor Clephane's very sketchy treatment of the various types of bills as problems of pleading might very possibly prove misleading.

The most satisfactory chapters are those discussing disclaimers, demurrers, pleas, and answers, although most of these topics are becoming of increasingly less importance in practice. These subjects are presented in considerable detail and with the citation of many recent cases. There is but a brief chapter on the subject of the enforcement of decrees, and it is to be regretted that no reference is made to the excellent work of Huston on this subject.

The appendix contains 100 pages of forms, including eighteen types of bills of complaint, a full set of interpleader papers, and various forms for answer, disclaimer, plea, demurrer, subpoenas, writs, orders decrees, etc. From the caption at the head of many of the forms it appears that they are in accord with the practice of the District of Columbia. The appendix also includes the Federal Equity Rules, and frequent references to these rules and to various Federal statutes are made throughout the text.

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CASES ON TRIAL PRACTICE IN CIVIL ACTIONS. By James Patterson
McBaine, St. Paul, West Publishing Co., 1927, pp. 1045.

This is another volume added to the American Case Book Series and is indeed a praiseworthy and successful attempt at compiling decisions dealing with the major steps that are most frequently taken in the trial of a civil action. The editor is the Dean of the Law School at the University of Missouri. Dean McBaine has not limited his research to a single jurisdiction, but has included in his compilation cases in a great many American jurisdictions, as well as decisions to be found in the English reports. It is, however, worthy of note that only such questions

have been presented as are common to all state and federal courts. The terms employed in the various jurisdictions may differ, but the fundamental principles involved are the same.

The subject has been approached from a chronological standpoint. Thus, Chapter 1 is devoted to Venue-Jurisdiction. Then we find the following subjects: Chapter 2, Process, including jurisdiction *in personam* and *in rem*; Chapter 3, Default Judgments; Chapter 4, Judgments by Confession or by Consent; Chapter 5, Change of Venue; Chapter 6, Continuance; Chapter 7, The Jury; Chapter 8, Sufficiency of Evidence; Chapters 9 to 11, Opening Statements, Instructions to the Jury and Argument of Counsel; Chapter 12, Verdicts; Chapters 13 to 15, Trials by the Court, New Trials and Bills of Exceptions; and finally, Chapter 16, Rendition, Entry and Sufficiency of Judgments.

The volume contains copious footnotes, in addition to 368 cases covering 1,036 pages, and, therefore, it is submitted, contains considerably more material than can be properly digested in a course on trial practice. It may be stated in passing, that it is unfortunate that there are probably but few law schools in the East that will find room in their curricula for such a course. The book is quite similar in plan to that brought out in 1915 by Edward W. Hinton, Professor of Law at the University of Chicago, entitled "A Selection of Cases on Trial Practice at Common Law and Under Modern Statutes," which the reviewer understands is now in use in the Columbia University Law School. This case book is smaller in size and contains only approximately 770 pages against over 1,000 in Dean McBaine's book. Both editors report the leading English and American cases. Dean McBaine, however, covers more American cases, particularly those in the Middle and Far West. He also includes several subjects such as Judgments by Confession or Consent, Change of Venue and Rendition, Entry and Sufficiency of Judgments which are not treated by Professor Hinton. Furthermore, Dean McBaine brings the subject down to date, reporting important cases which have been decided subsequent to the publication of Professor Hinton's volume. The inclusion of more cases, however, should not be considered a defect. On the contrary, it may well be said that prolixity upon the part of a capable editor is decidedly helpful to the instructor since it gives him more leeway in setting up his plan of study and permits him to eliminate topics or cases which he does not consider of sufficient importance for the class which he is teaching.

In closing, it may be said that it is encouraging to have another case book on trial practice. It indicates that the law schools in this country are coming gradually to the realization that a course in trial practice is practical, and as essential as many a course at present in the curriculum of any one of our law schools. As stated by Dean McBaine in his preface: "It seems as desirable that the student upon leaving the law school should have sound training in the essentials of trial practice, in order to go into the trial courts, or assist in the preparation or the trial of a case, as it is that he should have sound training in the major principles of Contracts or Wills, in order to draft a contract or a will, or assist in doing so. Procedure, though a means to an end, must be well understood, if the principles of substantive law are to be actually applied to litigation cases."

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