

Book Reviews

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Book Reviews

DIRECTED VERDICTS AND INSTRUCTIONS. By Louis S. Ashman. Baltimore. Maryland Law Book Exchange, 1939. Pp. xii, 503.

This work is the product of five years of altruistic labor by Mr. Louis S. Ashman of the Baltimore Bar. In many respects, it is a combined text and leading case book embracing numerous fields of substantive and procedural law, while it develops, from all angles, the law of prayers, instructions and directed verdicts (in favor of plaintiffs as well as defendants).

"Directed Verdicts and Instructions" supplements and greatly broadens the author's "Prayers and Instructions", published in 1923, to which numerous references are made in his later work. The earlier work (as the recent book) was produced to establish a scholarship fund in the Law School of the University of Maryland, and the royalties from both books have been assigned to the Regents of the University of Maryland. From these, at least one scholarship each year has been and will be made available to capable and deserving students selected by the Faculty Council of the Law School.

"Directed Verdicts and Instructions" has been presented to the Bench and Bar by a Lawyers' Scholarship Committee, consisting of a number of members of the Federal and State Bench. Former Chief Judge Henry D. Harlan, Dean Emeritus of the University of Maryland School of Law, is Chairman of this Committee; and the late Chief Judge James P. Gorter was its Vice-Chairman.

The various titles of the work, prior to publication, were carefully reviewed by members of the Bench of the Court of Appeals, of the Federal and the State Nisi Prius Courts, and by prominent members of the Bar.

While the book is primarily devoted to the history and law of prayers, instructions, and demurrers to the evidence, the author has treated a large volume of kindred topics, embracing nearly every allied question, of both substantive and procedural law, which may arise during the trial of a case, whether at common law (Civil or Criminal), in Equity, or in the Orphans' Court. The text is supported by a large volume of citations, from the earliest decisions of our Court of Appeals to the fall of 1939,

and the author has constantly, although with brevity, indicated the character, or scope of the citation. The work will be of inestimable benefit to the Bench for ready reference, and to the trial lawyer both in preparing his case and for reference during the trial of a case.

It will pay the Bench and Bar carefully to read and study "Directed Verdicts and Instructions" for the two-fold purpose of refreshing and adding to the legal learning of the reader. The student of law will find it to be the only complete Maryland work on the history and the law of prayers, instructions and directed findings, besides being a text and leading case book on many phases of the law of Contracts, Torts (especially Negligence), Wills and Workmen's Compensation.

Since the name of the book does not altogether indicate its broad content and scope, it would not seem amiss to describe briefly the substantial contents of its various "Titles".

In Title 1 the author discusses the origin and history of oral and written instructions to juries; the genesis of the Maryland system of "prayers"; the difference between the Maryland system and the Federal system of instructions to juries and their relative values.

Title 2 deals with the need and the practical value of prayers in the trial of virtually all types of cases or issues; the trial in courts of Law of issues from the Equity and Orphans' Courts and in Workmen's Compensation cases; jury trials in Equity courts; mandamus cases; hearings before the State Tax Commission; and related questions of substantive law.

Title 3 is dedicated to a discussion of the propriety of the conduct or remarks of the trial Judge and of counsel; the office and scope of "Jury" prayers in general and in relation to various types of cases and to various vital doctrines or rules of law, together with illustrations of the doctrine of *res ipsa loquitur*, of the presumption of negligence from the mere proof of the violation of a statutory rule of the road or other penal statutes.

Titles 4 and 5 deal respectively with "Burden of Proof" and "Damages" prayers; their form and requisites; the right of both sides to such prayers; together with many case illustrations involving the "Burden of Proof" and the measure of damages in various types of cases.

In Title 6 are discussed the many rules of law relating to the general form of "Jury" prayers, with numerous

case illustrations of prayers which assumed disputed facts, or which submitted to the finding of the jury a fact or theory which was without legally sufficient support in the evidence, or which submitted a question of law or a mere technical term to the finding of the jury.

In Title 7 are considered the question of when a prayer impliedly mis-states the law of the case; the adequacy of the factual hypotheses of a prayer as the basis or foundation for the verdict claimed by the prayer; when the verdict or other conclusion sought by a prayer may be predicated upon a segregated fact; when a prayer going to a verdict may ignore a claim, or defense, of the opponent. The full case illustrations of these classes of prayers necessarily serve to point out various principles of many fields of substantive law, such as Sales, Negligence, Estoppel, etc.

Title 8 is dedicated to a discussion, in detail, of the law of variances between the pleadings and the proof, accompanied by numerous case illustrations of technical variances; the form of variance prayers in relation to the Variance Prayer Act of 1914; the Pleadings Prayer Act of 1914; the advantage and disadvantage in demurring to insufficient declarations; the right to amend the pleadings; the effect of the Speedy Judgment Act or the Statute of Limitations upon amended declarations; bills of particulars, with special reference to their effect upon both demurrers to the pleadings and demurrers to the evidence.

Title 9 deals with the inherent power and right of the court to take a case, claim, defense or issue of fact from the decision of the jury, and peremptorily to direct the jury to find in respect thereof either in favor of the plaintiff or the defendant; the rules or formulae for judging the legal sufficiency of the evidence in general and in respect to various parties, cases, claims and defenses.

Title 10 is dedicated to a discussion of such subjects as burden of proof; presumptions; judicial knowledge; circumstantial evidence; incredible testimony; admissions in the pleadings; admissions of the parties and their agents; opinion or expert evidence.

Title 11 deals with the form and requisites and with the scope or range of general demurrer prayers, including the effect thereupon of the Maryland statute of 1825; the need of specific demurrers; the right of a plaintiff to take a *non pros* after the grant of a demurrer prayer. This title contains many approved forms of demurrer prayers.

Title 12 contains a discussion of when and how the prayers or instructions of a case should be submitted for the action of the court and for the guidance of the jury; "conceded" prayers; the right and duty of the court to reject bad prayers and to initiate good instructions.

In Title 13 are pointed out the limited jurisdiction of the Court of Appeals in reviewing appeals from the law courts; the need of general exceptions to rulings of the trial court on the pleadings, evidence and prayers; the need of both general and special exceptions to reach certain defects in granted prayers; the Maryland and Baltimore City statutes relating to exceptions and to the record on appeal.

Title 14 deals with the argument of counsel in civil cases; the binding effect of the granted prayers; the need of a motion for a mistrial in the case of improper remarks of court or counsel.

Title 15 deals with the doctrines of harmless and reversible error; the burden on the appellant to show both error and injury; the rules for construing the prayers of a case; examples of both harmless and reversible error as applied to certain erroneous rulings.

Title 16 is dedicated to a particularly interesting discussion of numerous vital questions of Criminal Law, criminal trial procedure, and motions for new trial and appeals in criminal cases. There is also discussed, in detail, the unique Maryland constitutional provision which constitutes the jury "Judges of Law", as well as of fact, in "all" criminal trials, and its effect in criminal trials upon (a) demurrers to the evidence, (b) prayers, (c) the right of counsel to argue to the jury against the instructions of the Court.

Finally, in Title 17, the author discusses the legal sufficiency of the evidence in Contract cases, Will cases, Workmen's Compensation cases, Negligence cases and in various other actions in Tort; and while doing so, discusses many phases of the substantive Law of Contract, Negligence and other Torts, Wills and Workmen's Compensation, as developed in the decisions of the Maryland Court of Appeals. Title 17 also contains a factual outline of numerous recent and leading Maryland cases in these fields, together with approved forms of the main issues in Will cases and Workmen's Compensation cases.

With marked and admirable brevity, "Directed Verdicts and Instructions" embraces much the greater part of

the ordinary field of common-law litigation; and while primarily designed as a complete exposition of the law of instructions and directed verdicts, it contains a survey of nearly every allied question which may arise in the trial of a common-law case, illustrated and supplemented by copious illustrations, forms, and references to adjudicated cases from which the trial lawyer may prepare his case.

Within a content of 470 pages nearly every title of the law is discussed from the view-point of the evidence required to establish a fact, supported by not only all of the leading cases in point, but also by a wealth of others, and also by a statement of the applicable constitutional and statutory provisions, together with numerous illustrations. A comprehensive index of 33 pages affords ready access to the desired point and to the pertinent authorities. No Maryland lawyer's library will be complete without this valuable work, and its use will make legal research an easier and simpler problem than without its aid.

—EDWIN T. DICKERSON.*

THE CONSTITUTION OF THE UNITED STATES AT THE END OF ONE HUNDRED FIFTY YEARS. By Hugh Evander Willis. Bloomington, Ind. Indiana University Publications, Social Science Series, 1939. Pp. 72.

This is an odd little book. Proceeding upon the thought that the Constitution today consists actually to a small extent only of the original document and of what he terms the "formal" amendments, and that the greater part of it is buried in the Supreme Court reports, the author has undertaken to exhume the judicially made portion and add it to the original by insertion in italics with foot note references to the sources responsible for such additions; at the same time he has rearranged the order of the constitutional provisions considerably. The net result he offers as the present Constitution, preceding it with a somewhat naive twenty-page discussion of the Supreme Court as Constitution-maker.

The offering is a strange one. A share in framing the Constitution has been accorded, not only to the Supreme Court, but as well to the courts of last resort in twenty-one states (including Maryland), lower Federal courts,

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text writers, the American Law Institute, six law reviews,¹ and the Gettysburg Address. The Maryland Court of Appeals may possibly feel complimented at being credited with having amended the provisions of the Sixth Amendment with respect to public trial by adding the words "so far as courtroom space and good conduct of spectators will permit";² but they will undoubtedly be surprised to learn that they did this by their holding in *Dutton v. State*,³ where the only constitutional issue was as to the interpretation of Article 21 of the Maryland Declaration of Rights.

The author's style, as evidenced by the italicized additions, suffers by comparison with that of the framers of the original Constitution, and the resultant combination leaves the reader with a dazed feeling of having been exposed to some kind of strange constitutional "double talk". Furthermore, inaccuracies may readily be spotted by even a casual reader.⁴

In an introductory Explanatory Note, the author states his belief that this book will fill a very great need by enabling future citizens of the United States (now students in schools, colleges, and universities) to obtain a correct and adequate idea of our fundamental law not possible of obtention by studying the Constitution in its original form. The existence of the need may be admitted, but it remains unfilled.

¹ Illinois, Kentucky, Michigan, Minnesota, Virginia, and Yale. Apparently the Harvard and Columbia influence in reshaping the Constitution has not been as great as popularly supposed.

² P. 57.

³ 123 Md. 373, 91 A. 417 (1914).

⁴ E.g., the statement (p. 65) that the guaranty of due process protects against double jeopardy and self-incrimination, *Palko v. Connecticut*, 302 U. S. 319, 82 L. Ed. 220, 58 S. Ct. 149 (1937) and *Twining v. New Jersey*, 211 U. S. 78, 53 L. Ed. 97, 29 S. Ct. 14 (1908) apparently to the contrary notwithstanding.