

Book Reviews

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Book Reviews

CASES AND MATERIALS ON MODERN PROCEDURE AND JUDICIAL ADMINISTRATION. By Arthur T. Vanderbilt. New York. Washington Square Pub. Co., 1952. Pp. xx, 1390. \$8.50.

When Arthur T. Vanderbilt, now Chief Justice of the Supreme Court of New Jersey, offers a solution of an important practical problem in the field of the law, it behooves the whole profession to attend. The student, the law professor, the successful practitioner in the courts and in the office, and the judge upon the bench, as well as the progressive leader in the work of the Bar Association and the statesman who strives to mold the institutions of the law into effective form, all these should listen, for the versatility of his accomplishments in each of these characters is without parallel in the experience of any lawyer of our day.

Now he offers a casebook on Modern Procedure and Judicial Administration, consisting not only of a collection of illustrative cases, as is customary in such a work, but also a wealth of stimulating and explanatory material in the introductory chapters that any lawyer of whatever experience may read with profit. The true significance of the subject, which the average law school man is not likely to emphasize, is developed by one who has labored in the vineyard and the student's interest is stirred by the realization that here are the tools with which he must operate. What is more important the student perceives that here is found the essential mechanism to give effect to the concept, fundamental to our free institutions, that every man who comes into court shall have a fair trial of his case, and thus the ideal of justice in action is set before the eyes of the beginner at the outset.

This kind of a casebook on procedure would not have been possible a few years ago. The author has seized upon and incorporated in the book the great constructive accomplishment in the law that is embodied in the Federal Rules of Civil Procedure adopted in 1938 and the Federal Rules of Criminal Procedure adopted in 1944, and makes these rules the foundation of the course of study. Never before was there available to the courts of this country a procedural system shaped to their needs not only by leading writers who have mastered the subject, but by leading practitioners and judges with long experience at the bar and

in the courts. This system is now laid before the student as the best which the profession has devised; and he learns that although the system was designed for the federal courts and has been adopted by the authority of the Supreme Court of the United States, the plan is so simple and comprehensive that it is suited to the needs of all jurisdictions and has in fact been adopted in large part by many of the state courts of the country.

The advantage of this kind of approach to the study of modern court procedure over the historical method is too obvious to need discussion or debate. It outlines the clear course to be followed in the institution, preparation and trial of the case that has been found by experienced and learned men to be the most effective, and it avoids the technical and accidental peculiarities of local systems. The procedural peculiarities of the jurisdiction in which the student intends to practice must of course be mastered in the end, but his acquaintance with the model system will aid rather than interfere with this effort, and the defects of the local procedure will be exposed to the young men at the bar on whom the strongest hope for improvement in administration of the courts must rest.

Not only does the book use the new rules as the framework of the course of instruction, but it seeks to cover the actual course of a litigated case from beginning to end. It is not confined to the subject of pleading, to which courses in procedure have been too much devoted in the past, but it describes the court in which the suit may be brought, the parties who may sue, the place where the suit may be brought, the process of bringing the defendant into court, the manner in which the controversy should be stated, the preliminary preparations for the trial, as well as the manner in which the case should be tried and the errors in the trial should be judicially reviewed. In addition it shows how the judgment should be enforced.

Moreover, the book contains the valuable introductory chapters, to which reference has been made, and concluding chapters on the selection and tenure of judges, the selection and service of jurors; the admission of qualified persons to the practice of the law, and the problems which confront the judges in the effective dispatch of the business of the courts. In short, the work is unique in its method and treatment of the subject. It is the only casebook that is devoted to the federal rules of civil and criminal procedure as the best system thus far devised in our law; it is the only casebook which covers both civil and criminal

procedure, as it should, because they duplicate each other to a considerable degree; it is the only casebook that covers the whole subject of procedure from the selection of the court to the collection of the judgment, instead of dealing chiefly with questions of pleading; it is the only casebook that tries to explain to the student the basic problems of procedure in the introductory chapters; and finally it is the only casebook that in the concluding chapters attempts to give to the beginner in the law an elementary background of the problems confronting judges, jurors, lawyers and courts in the field of judicial administration. No one interested in the preparation of young men for the active practice of the law can be indifferent to the challenge which Judge Vanderbilt's book offers to the law schools of the country.

MORRIS A. SOPER*

THE PRACTICAL ASPECTS OF DIVORCE PRACTICE. By Herbert Myerberg. Baltimore. The Daily Record Publishing Co., 1952. Pp. 104. \$3.50.

This book contains the substance of a lecture delivered by the author in 1951 to the members of the Baltimore and Maryland Bar under the auspices of the Committee on Continuing Legal Education of the Bar Association of Baltimore City.

It is not a law book in a technical sense. It assumes that the reader fully understands the substantive divorce laws of Maryland. It is written by a practicing lawyer for practicing lawyers, and the author feels that there are more temptations in the fields of the criminal law and divorce law than in other fields of law. Hence, the object of this book is to point out the pitfalls and to tell lawyers who practice in divorce courts how to avoid them. In this respect, the author has done better than a good job. It is a brief but quite comprehensive book, and every lawyer, young and old, should read it.

We are told that the greatest danger the divorce lawyer faces at this time centers around the question of residence or lack of residence of the plaintiff. While on this subject, he carefully distinguishes between venue and jurisdiction and seemingly thinks, and rightly so, that a few lawyers

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carelessly use these terms as if they were synonymous. He emphasizes the fact that the courts have held that lawyers for both plaintiff and defendant have a serious responsibility in determining the residence of the parties, that laxity in this matter is not likely to be excused. However, the question of residence is not the only source of danger. In drawing up property settlements, it sometimes happens that lawyers run into trouble. For example, if the gist of the action is desertion, and the language of the property settlement seems to indicate a mutual separation, the Master is likely to hesitate before he passes the case. It is also pointed out that sometimes the Plaintiff has a good case but the facts show that he is guilty of conduct that amounts to recrimination. What is a lawyer supposed to do in a case of this kind?

It might also happen that the defendant knows that the plaintiff is guilty of recrimination and so informs his lawyer, but he also tells his lawyer that he does not wish to contest the case. What to do? You will find a very satisfactory answer in Mr. Myerberg's book.

As brief as this book is, its scope is amazing. It discusses so many vexing problems, of which the following are typical. Suppose you get a fee of \$50.00 from the wife but feel that this is inadequate, what should you do? Or if you file a bill alleging six months' desertion and ask for a divorce a mensa but for some reason or other fail to take testimony, and time runs on to such an extent that your client is now entitled to a divorce a vinculo, do you file a new suit or do you file an amended bill? Again, if a client comes into your office and she has grounds for divorce recognizable in Florida or Nevada, but not in Maryland, what advice can you give her under the circumstances? On the other hand, there is the "shopper" type of client who goes from one lawyer to another until she learns enough about the requirements of the law to know what she has to prove in order to get her divorce. A few weeks later, you can see that some other attorney has filed a suit for her. What, if any, are your responsibilities in a matter of this kind?

The author supplies concrete answers to these and many other troublesome problems of like import.

From pages 70 to 87, there are discussed miscellaneous matters such as the thirty day rule, military affidavits, infant parties, and certain differences between practice in the counties and practice in the City of Baltimore.

The author also discusses what you are supposed to do when the testimony is "stale", that is when you take the testimony say in the month of June and the client does not pay the costs until October. Mr. Myerberg tells you exactly what you are supposed to do in a case of this kind.

The last chapter gives a great deal of sound and helpful advice on how to try an uncontested case before an Examiner. He offers for the consideration of the reader many sample questions which will not only save time but which, if written out before hand and carefully explained to your client and her witness before you go to the Examiner's office, will probably put them both at ease. The learned and highly experienced author has very carefully pointed out the right way and wrong way to coach witnesses before they testify before an Examiner. I am thoroughly convinced that the Examiners are very grateful to Mr. Myerberg for having written this chapter, and they will be even more grateful if all the members of the Baltimore Bar read it and carry out its precepts.

There is not the slightest doubt at all that this book should have been written twenty years ago, and it ought to be read and taken to heart by every attorney who is called upon to give advice to people who sooner or later may find themselves parties litigant in a divorce court.

H. CLIFTON OWENS*

CHARLES EVANS HUGHES. By Merlo J. Pusey. New York. The MacMillan Company, 1951. Pp. ix, 810. \$15.00.

It is, in a sense, unfortunate that this excellent biography of Mr. Justice Hughes runs to two volumes and 810 pages. A comparison with the fairly recent biographies of Mr. Justice Holmes, by Catherine Drinkwater Bowen, and of Mr. Justice Brandeis, by Alphens Thomas Mason, is inevitable. Mr. Pusey, the author of the work now being reviewed, does rather better by his hero than do Mrs. Bowen and Mr. Mason by theirs and as both of the other works were best sellers, it is reasonable to assume that the current biography of Mr. Hughes, abridged to one volume, would achieve an equal or greater popular sale. Ordinarily, this is a matter for concern only to the author

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and his publishers, but in the present state of political morality (pre Eisenhower) the lesson of Mr. Hughes' complete moral, financial and intellectual integrity is one which deserves wider popular dissemination than it is likely to have in this rather formidable two volume format.

Mr. Hughes was born on April 11, 1862 and died in 1948 at the age of 86. Between these dates he crowded an extraordinarily full life and enough occupations for several careers, all of them accomplished competently, and many of them brilliantly.

It is an interesting thing that the popular legend of the "boy genius", who entered Brown University as a mere child is somewhat tempered by the author. Actually Mr. Hughes entered Madison College, which was the predecessor to Hamilton, at the age of fourteen and a half, and two years later transferred to Brown University. A precocious child, Mr. Hughes had the benefit of the concentrated and personalized teaching of his mother, who was a professional teacher prior to her marriage to the Reverend David Charles Hughes. It might be said that Mr. Hughes went to school in a class of one. His parents, moreover, were both deeply religious and hard working people not too liberally endowed with the world's goods, and in such an atmosphere Mr. Hughes' character was formed and case-hardened.

There is something of the Horatio Alger hero in Mr. Hughes. He married the boss's daughter, but the familiar runaway horse is missing, and as a matter of fact, he did not meet his wife until he had been a partner of her father in the practice of law for more than a year and had already made his mark as an able and successful practitioner.

His first employment following graduation from Brown University was a six week calculation job for the owners in connection with certain real estate assessments. He then began teaching at a secondary school, became secretary for a stock broker, then a practicing lawyer, then professor of law at Cornell University. After two years as a professor, he again became a practicing lawyer, then Governor of New York for two terms, immediately followed by six years as Associate Justice of the Supreme Court. Later, Mr. Justice Hughes became Secretary of State, in 1928 he was named a Judge of the World Court and finally in 1930, Chief Justice of the United States, where he remained until his retirement in 1941. Between, and in many instances during, these periods he found time to practice law

and to engage in a great number of other tasks, many of them in the service of the organized bar. To mention but a few, he was at one time President of the American Bar Association, helped found the National Conference of Christians and Jews, was President of the American Judiciary Society, the American Society of International Law, and was prominent in such diverse activities as sponsoring the Byrd expedition to the Antarctic and acting as Vice-Chairman of the Pilgrims' Society.

The section dealing with Mr. Hughes' experiences as Secretary of State and his diplomatic successes and failures will probably seem overlong to the average reader. Most of the predicted highly favorable consequences of such matters as the Naval Limitation Treaty of Nineteen Twenty-Two were sunk without trace before World War II, and the detailed history of international diplomacy of Mr. Hughes' time will be of greater interest to the student or professional than to the lay reader. Unquestionably Mr. Hughes brought to the office of Secretary of State the same clarity of thought and outstanding ability which characterized all phases of his many faceted career, but this section of the book might well, for the average reader, have been drastically edited.

The author also gives a very detailed analysis of the reasons for Mr. Hughes' defeat in the Presidential election of 1916 with particular attention to the reasons for the defection of Senator Hiram Johnson and the consequent failure to carry the State of California in the election. There have been so many and so varied explanations of these incidents that it is interesting to have a look at the picture from Hughes' angle, but the results of an analysis seem no more persuasive than do any one of the many reasons given for the defeat of Governor Dewey in 1948.

The whole picture which emerges from Mr. Hughes' biography is that of an extraordinarily fine mind, coupled to a tremendous will and great energy. The author's effort to humanize his subject and erase the reputation for coldness and austerity which Mr. Hughes' memory appears to bear is not too successful. It may well be that to his intimates, Mr. Hughes was a lovable old codger and as easy as an old shoe, but to the world at large and even to the readers of this work, he will always remain a somewhat aloof and withdrawn figure. Mr. Hughes dealt with matters within the province of the average man, but dealt with them with such consummate skill and apparent ease that

his extraordinary qualities of mind overshadowed him as a human being.

In all, the biography is absorbing and rewarding. Every lawyer will find in it many interesting and inspiring incidents. It should, as a matter of fact, make a perfect gift for the lawyer or law student and for that matter for anyone who likes to read.

The serious student will be distressed to find that nowhere in the book is it disclosed whether Mr. Hughes slept with his beard under or over the sheet.

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