Missouri Law Review

Volume 2
Issue 2 *April 1937*

Article 4

1937

Book Reviews

Follow this and additional works at: https://scholarship.law.missouri.edu/mlr

 Part of the Law Commons

Recommended Citation
Book Reviews , 2 Mo. L. Rev. (1937)
Available at: https://scholarship.law.missouri.edu/mlr/vol2/iss2/4

This Book Review is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Missouri Law Review by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact bassettcw@missouri.edu.

Book Reviews

HANDBOOK OF ANGLO-AMERICAN LEGAL HISTORY. BY MAX RADIN. ST. PAUL: WEST PUBLISHING CO., 1936. pp. xxiv, 612.

One reading the title of this book would wonder at once whether a qualified scholar had given us a real history of American law. He wonders, also, at this being done by Professor Radin who heretofore has been rather engaged with Roman Law. The preface, however, indicates Professor Radin's opinion of the meaning of a "Handbook." He says that he apologizes for writing on the history of law, although, as he says, he has "no first hand or independent acquaintance with the manuscript sources of the Common Law." He has the less misgivings, however, because the history of English law can boast in recent times such names as Maitland and Holdsworth, Vinogradoff, Jenks, Bolland, Bateson, Plucknett, Winfield, Woodbine, Holmes, and Ames, "and on the work of these scholars one can have no hesitation in relying." As he says, "the American developments of the Common Law are only briefly averted to and must offer some unimportant appendices to chapters complete without them. That is due, first of all, to the fact that the history of American law still awaits its Maitland or its Holdsworth, indeed has yet to seek its Hale, Blackstone or Reeves." We must accept, then, as the contents of this book on Anglo-American Legal History, no American legal history, and an English history based entirely on secondary sources. The book must, therefore, be judged on this basis, and anything that might be said about the honesty of writing such a book on "Anglo-American Legal History" must be laid on the doorstep of the publishers.

After an interesting table in which in parallel columns are placed dates, kings, judges, constitution and court, legal sources, law books, and notable events in foreign legal history; and in American, dates, presidents, statutes, cases, notable events, we come directly to what the author calls "A Brief Sketch of English History Before the Norman Conquest" through the French revolution, followed by a sporadic section on United States history. The bibliographical note to this chapter (Chapter 1) as to others, is excellent. The history is well-written, sufficiently full, and so arranged as to give one a complete sketch of the history. The next chapter begins the consideration of English law before the conquest, and then with Chapter 3 begins the real consideration of the history of English law. The first portion is confined to a statement of the rise of parliament and the courts. This is done clearly and with few if any slips. Chapter 10, entitled "The Feudal System," is an essay on the feudal system in general; this is followed by a consideration of the feudal courts and feudal law; a chapter on the use of writs; and to this follows curiously enough, for we have had as yet nothing of the ordinary law, a consideration of the law and growth of procedure and the "Jury Inquest;" follows then a long consideration of criminal procedure and a short but interesting essay on the legal profession and the judges. The greatest names among the judges in England are gone over briefly, fol-

Published by University of Missouri School of Law Scholarship Repository, 1937

lowed by a section on the great American judges, who are Marshall, Story, Taney, Field, and Holmes of the Supreme Court of the United States, and Kent, Shaw, and Cooley of the State judges. Then comes a chapter (Chapter 21) on "Institutional Books." The books are almost entirely taken from Professor Winfield's "Chief Sources of English Law." It will interest American scholars to note that the American authors cited are Kent, Story, Holmes, Wigmore, Williston, Pound, Cardozo, and Hohfeld. Then follows a discussion of legal literature in general (Chapter 22), in which the author considers Year Books. After stating a case from the time of Edward I, the author says, "A great deal of the success or failure of application to the king's court depended on the personalities that would be encountered there, and, without being psychologists, the men who wrote the notes embodied in the Year Books were fully aware of that fact and meant to apprise their readers of it" (p. 315). The reviewer wonders what source of information the author had on this matter, for the not-too-learned reviewer would doubt his right to project a very modern idea on the lawyers of the time of Edward I.

A brief but interesting discussion of the rule of precedents follows in Chapter 24. On the whole, the conclusions of the author on this subject seem sound.

From this time forth the author, having finished his introduction of 358 pages, has something to say about the law, and for 285 pages more he goes through the various branches of the law, the law of property including tenures, the rules of inheritance, and equitable interest, the law of torts, of contracts, of agency, of corporations, and the sea law and the law merchant are considered, ending with the law of the family. From page 528 the author gives an excellent summary of his book.

Of this work there is little to say. The authority throughout is Pollock and Maitland and, therefore, the work is in general sound. A little American legal history is suggested; for instance on page 384, "In the United States, colonial New England moved largely in the direction of assimilating real and personal property, but the other colonies clung to the English principles." The reviewer is at a loss to know what the author means by this and what his authority for it is.

When at the end of the summary, page 534, the author indulges himself in the true historical liberty of prophesy, he says, "The next development of the Common Law, both in England and the United States, seems to lie in the direction of an assimilation to the Continental systems. That this assimilation will be the result of mutual action is obvious. Common-Law institutions, like trusts and estoppel, are widely used on the Continent, and the Continental obliteration of the distinctions still existing between real and personal property will, in all likelihood, be shortly effected in the countries of the Common Law!"

This short statement of the content of this book seems necessary in order to evaluate it. Nevertheless, it should not be left merely at this point, for the work of the author in this book, as elsewhere, is clear, lawyerlike, and illuminating. It is a sufficiently accurate summary of these matters for use as an introduction to the history of law.

Harvard Law School JOSEPH H. BEALE

THE LAW OF FUTURE INTERESTS. By LEWIS M. SIMES. ST. PAUL: WEST PUBLISHING COMPANY; KANSAS CITY: VERNON LAW BOOK COMPANY, 1936. pp. xv, 527; xv, 556; xv, 583.

This remarkable book deals competently and brilliantly with the entire field covered partially by Gray, last in 1915, and by Kales in 1920. Professor Simes in the preface, states his primary purpose to be ". . . to state as simply as possible the existing American law of future interests in land and other things." He fulfills that purpose admirably and at the same time draws heavily upon the indispensable English cases and texts.

In these days of prolific invention of new terms to cover frequently misunderstood older terms, it is a pleasure to see that Professor Simes neither claims to be able to invent, nor attempts to cram down the throats of his readers, sparklingly new precise words or phrases to take the place of the older, less exactly used ones. He carefully defines and then uses the terms so long, and at present used by and familiar to both lawyers and the courts. In consequence of this, a right of entry for condition broken retains that name instead of appearing in new guise as a power of termination and the contingent remainder is not re-named as a remainder subject to a condition precedent.

A well written and helpful introduction of 45 pages opens the book. Part I, in 479 pages, deals with the old and new types and kinds of permissible future interests in lands and chattels, including those of statutory origin as well as powers of appointment. Next, in Part II, comes a 264 page treatment of problems of construction. Part III, in 291 pages, deals with restraints, the rule against perpetuities and illegal conditions and limitations. Part IV, in 199 pages, covers the characteristics of and present dealings with future interests, either at the instance of or in a proceeding against the owner thereof. Lastly, in Part V, there are 104 pages concerning the vesting and termination of future interests, with particular emphasis being placed upon the effect of the latter. A table of cases cited and an index are found in the last half of Volume III.

Throughout the book, Professor Simes has been careful to present whatever may have been said in or held by the cases under discussion, so that "The Law," which is so eagerly sought for by the practitioner, is with rare exception found in it. If it so happens, as it does with maddening frequency, that there are conflicting rules or theories, they are all set forth so that one may take his choice as to which one is "The Law." If the reader be interested in what Professor Simes thinks is the preferred or desirable rule or theory, he will find the author's views and his reasons therefor stated clearly and concisely throughout the book. All of the older cases and most of the newer ones are found in their proper places and are cited for what they hold, rather than for what Professor Simes thinks they should have held.

The treatments of contingent remainders, of future interests in chattels real and personal, of powers of appointment, of problems of construction and of the present legal relations of owners of future interests are the best, from the standpoints of analysis and of the wealth and relevancy of the cited case material, that I have ever seen. No useful purpose would be served and much more space than is avail-

able would be used, were I to attempt to detail the salient points of usefulness found in the matters just mentioned.

Professor Simes deals with the rule against perpetuities as though it were one forbidding indirect restraints on alienation, in addition to being aimed against remoteness in vesting. In this, he is opposed to what has been said on the subject by Gray and most of the courts. Whether he be right or wrong on this matter is something that cannot very well be dealt with in this review, but it is certain that his clear presentation of the subject should lead to a certain understanding of just what is involved in the problem.

Statutes and stautory rules from all jurisdictions are discussed and cited throughout the book, both in the text and footnoes, so that the practitioner should find this book to be of peculiar value in this field, where legislative action is growing in frequency. Law review material is referred to more frequently than is usual, which is another indication of the author's attention to detail.

There can be no doubt of the fact that this book will supplant the books of Gray and of Kales as the leader in its field, inasmuch as there has been a long-felt need for an adequate, present-day presentation of the subject. The subject has not solidified as a static mass of rules, dating either from the time of Littleton or of Sir George Jessel, but is a constantly changing one, both because of the differences in the types of properties which are today sought to be made subject to future interests and as a result of progressive court decisions and increasing legislative enactments in its field. Professor Simes has written a book which deals with the subject as it is today and as it should be tomorrow, with enough of the past considered to make the present understandable and the future predictable. Differences of opinion as to the method of treatment of minor or even major subjects presented in the book cannot obscure the fact that this is a masterfully written book and is one to be read profitably and with keen enjoyment by members of the legal profession.

My enthusiasm for the content of the book is not lessened by what appears to be an increasing and, thus far, incurable fault in the newer text books, namely, that of placing the unofficial citation before the official one in the citation of those cases which are both officially and unofficially reported. If the publishers have discovered that the lawyers have to take the books as they are printed, then my voice, in this respect, must be regarded as one clamoring in the desert, but if a loud howl (albeit a dignified, professional howl, to observe the amenities) from one who doesn't care for this business of transposition of citations, will help to show the publishers that there is something here that should be corrected, please consider this reviewer to be "in full cry."

University of Missouri School of Law LEE-CARL OVERSTREET

PLEADING, PRACTICE, PROCEDURE AND FORMS IN MISSOURI. VOLUME I. BY RUSH H. LIMBAUGH. ST. LOUIS: THOMAS LAW BOOK CO., 1935. pp. xlix, 907.

The volume under review covers the practice in municipal, justice and county courts and a portion of the contemplated topics on probate courts. It ends with the sixth chapter scarcely well begun. At first glance, this is somewhat startling,

in view of the fact that 172 chapters are planned for the entire work. Upon reflection, however, it seems likely that the first six chapters will be the longest in the work for as shown by the table of contents, the materials concerning practice in the circuit and appellate courts are to be sub-divided into many chapters. Moreover, 120 of the subsequent chapters deal with the procedure in as many separate fields of litigation and most of these can probably be treated in relatively few pages. Yet, even allowing for these factors, it is obvious that the completed work will run into several volumes. If no further words of praise were appropriate, both author and publisher can be sincerely congratulated upon their stoutness of heart in approaching their undertaking.

One can commend the author for the accomplishments in the first volume as well as for his ambitions as to those forthcoming. The subject matter is timely inasmuch as little has been done recently in the practice book treatment of the inferior courts of Missouri. This field demands attention, as litigation in these tribunals is apt to be carried on by young practitioners, or by attorneys who are too busy to give the matters much of their time or effort. The author not only tells how to proceed, but gives adequate explanation of why the practice outlined is the proper one. To this end, common law concepts are explained and local departures therefrom lucidly set forth. The history of Missouri case and statutory law is elucidated when necessary for an understanding of the present procedure. There are adequate references to the applicable statutes, yet the work has been prepared with the idea that the user will have the statutes at hand. It is a true practice book and not a mere annotation of the legislation applicable to procedure. Furthermore, the manner of citation of cases is well adapted to a guide to the problems of practice. It avoids the tiresome compendium of the digest, yet the authorities are numerous enough to obviate the short-comings of an elementary or general text. As seems proper in a book of this kind, the author refrains from adverse criticism of the decisions, though at times he points out the need for legislative changes. In a broad sense the book is critical, for the author constantly goes beyond judicial language and lays bare the real significance of the cases. Finally, the author cites, and occasionally quotes from, the comments and studies which have appeared in the Missouri Law Series.

The greatest merit of the book is the manner in which forms are made available to the user. The author has displayed great diligence in collecting, editing, and placing them in appropriate portions of the text. Particularly when preceded by exposition, forms do more to show how to proceed than any other type of material. In addition there are frequent explanations of the unwritten phases of the practice which can otherwise be gleaned only from the mouths of experienced practitioners or intelligent court officials. The arrangement of topics is the author's own and very appropriately departs from the plans of either the statutory compilation or the digest. These three features justify the book. Without them a practice book has little excuse for existence, as both statutory and judicial authorities are available through other sources.

One might suppose that the absence of a volume index would be a handicap to the use of the book. This is not the case, for a detailed table of contents at the commencement of the book and again at the beginning of each chapter is an adequate guide to the desired topics. Moreover, as the volume breaks off in the middle of probate procedure, it is almost unthinkable to conclude with an index. One scans the book with the feeling that it has a future as well as a present value. Changes in section numbers due to new statutory revisions will not render obsolete such an able practice work as this. A pocket for slip-in materials will enable the book to be kept up-to-date in this regard as well as concerning other statutory and judicial alterations in our procedure.

No one but a practitioner of broad experience, careful scholarship and unusual vigor could have produced the present book. If the pressure of the author's practice slows the production of succeeding volumes, we must be content, for no professional writer, no teacher withdrawn from the fields of litigation, no lawyer in his twilight years, can be expected to achieve such an excellent and helpful work. Many will await the appearance of the remaining parts—the neophytes at the bar, busy attorneys especially when working on unfamiliar fields, judges and court officials throughout the state, and at least one law professor.

University of Missouri Law School THOMAS E. ATKINSON

A LEGISLATIVE HISTORY OF THE MOTOR CARRIER ACT. 1935. BY WARREN H. WAGNER. WASHINGTON, D. C., 1935. pp. 155.

This little book presents a highly useful and valuable service for all persons interested in the study and understanding of the National Motor Carrier Act. Mr. Wagner's work does not purport to be a discussion of the Act or any of its provisions, nor, as the title might indicate, is it in any orthodox sense a history of the Act as it was dealt with by Congress. Rather it is simply a compilation of material valuable as tools with which to work if one wishes to study its provisions, either in theory or in operation.

The material has been divided into five parts, of which the first, bearing the general title of the book, occupies somewhat more than half of the space. This is followed by a chronological listing of events before Congress, leading up to the passage of the Motor Carrier Act, from the first introduction in 1909 of a bill calling for "regulation, identification, and registration of motor vehicles engaged in interstate travel," to the approval of the present act by the President. Next appears what apparently purports to be a complete bibliography of recent material relevant to motor carrier regulation.

Important for purposes of background study is a list of decisions by state and federal courts dealing with state legislation thought to be helpful in interpreting and applying the Federal Act.

Finally is included a complete and detailed index of the Act which adds to the usability of the copy of the Act itself.

By a slight change in arrangement, one may say that there are two parts of major importance. The so-called history, consisting of a complete copy of the Act of Congress, exhaustively annotated by the use of footnotes citing, quoting, or explaining debates, committee reports, and other material, indicating why a particular wording was adopted, or what meaning was intended by a particular section, and thus by the Act as a whole, which should be of inestimable value to any one seeking to understand the Act or ascertain its proper application.

Parts three and four, comprising a bibliography of printed materials, books, articles, pamphlets, etc., together with an alphabetical list of cases, state and national, dealing with state legislation regulative of motor carriers, make up the second major portion of the work. The citation of each case is followed by a short statement of the gist of each decision. This material should prove invaluable as a time saver to all persons faced with the necessity of dealing in any capacity with this important legislation.

While the task Mr. Wagner has performed is almost entirely a mechanical one, it should do much to help insure a more intelligent interpretation and application of the new statute, and should meet with a hearty welcome by all students of law and government.

University of Missouri Law School ROBERT L. HOWARD

CONFLICT OF CRIMINAL LAWS. BY EDWARD S. STIMSON. CHICAGO: THE FOUNDATION PRESS, INC., 1936. pp. xi, 219.

This is a book with a thesis. The thesis is that when an act is done in one state and produces results in another, such as firing a gun in State A and thereby killing a man in State B, the criminality of the act should be determined only by the law of the state in which the actor is physically present, and he should be tried for the crime only in that state. The author agrees that the weight of authority is otherwise. It must also be agreed that the whole common law theory of Conflict of Laws, not only in reference to crimes, but also as to torts, contracts, agency, corporations, partnerships or other business organizations, and the validity of service of process, is otherwise. It is all to the effect that by causing results at a given place, the actor, even though physically elsewhere, subjects himself to the law of the place where the result occurs. Professor Stimson's opposition to the prevailing theory is well illustrated by his treatment of the homicide cases (at p. 51) together with those involving action through an agent, or the principal-accessory situation (at p. 70). If D in Arkansas, with intent to kill X, by mail arranged for an agent A, either innocently or with guilty knowledge, to send poisoned candy from Missouri to X in Delaware, so that X was thereby killed, it is urged that even though D has caused anti-social consequences both in Missouri and Delaware, the criminality of his conduct should be determined only by Arkansas law and he should be punishable there only. To the fact that no Arkansas law was violated, the answer is given (at p. 50): "The state in which the effect is produced . . . should require other governments to enact and enforce laws to prevent the individuals in their territories

from producing harmful effects abroad." The manner in which this may be required is not indicated. In support of this view, there is heavy reliance (at p. 77) upon dicta in the famous case of *Flexner v. Farson*,[1] even though that case has been almost universally condemned and was finally overruled by the United States Supreme Court in *H. L. Doherty & Co. v. Goodman*,[2] on the point for which it is relied upon. Incidentally, objection is also made (at p. 181) to concurrent criminal jurisdiction over boundary streams, as it exists in a number of states under interstate compacts or the Acts of Congress under which the states came into the Union.

The consideration principally emphasized in support of the author's thesis is fear that a defendant may be twice convicted for what is essentially one act. Very few examples are cited of such double convictions under the law as it now stands. No mention is made of the recent enactment of federal legislation[3] creating the additional crime of crossing state lines after committing a prior local crime. The adoption of these statutes and their popular acceptance rather clearly indicate, it would seem, that fear of double convictions is not currently a dominant factor in the development of American criminal law. Another consideration also emphasized (at pp. 14 and 49) is that the state in which the effect is produced has no physical power over the absent actor, and cannot secure his extradition because he is not a "fugitive" from the demanding state. This assumes, without mentioning the matter, that section six of the Uniform Criminal Extradition Act,[4] which provides expressly for extradition under such circumstances, is invalid. That at least is an open question.

The value to students and practitioners of the case citations in the volume may be somewhat lessened by the author's preoccupation with his thesis. The discussion is so completely devoted to the idea that a person should not be tried except at the place where he was physically present when the crime was committed that it cites cases almost wholly with reference to their holdings on that point alone, leaving out of consideration their analyses of the nature of the criminal act upon which, actually, most of them base their holdings on the jurisdictional question. Also, cases which merely hold that under appropriate statutes a state may and will punish persons whose local acts produce extrastate consequences are cited (for example, at p. 55) as "opposed" to the majority view, whereas most authorities agree that such cases fit in readily with the accepted idea that any state in which an act or any event in its series of consequences occurs may properly attach legal effect to the act. The volume does not cite nor apparently make use of the con-

---

1. 248 U. S. 289 (1918).
2. 294 U. S. 623 (1935).
3. Act June 22, 1932, 47 STAT. 326, c. 271, §§ 1-4, 18 U. S. C. A. §§ 408a-408c-1; Act May 18, 1934, 48 STAT. 781, c. 300-02, 18 U. S. C. A. §§ 408d and 408e; Act May 22, 1934, 48 STAT. 794, c. 333, §§ 1-7, 18 U. S. C. A. §§ 413-19.
4. 9 UNIF. LAWS, ANN. (1932) 111. The 1935 supplement lists 14 states as having adopted this Act, and some additional adoptions are known to have occurred recently. The validity of section six is supported in Drucker, *Proposed Correction to Illinois Statute on Extradition* (1931) 26 ILL. L. REV. 168.

siderable recent law review literature[5] on its subject, nor of the American Law Institute's Restatement,[6] and the only reference to Professor Beale's writings[7] is to his work of 1916. And while reference to the federal statutes[8] punishing interstate activity in furtherance of local crimes is not necessary to a discussion of common law theory, it would have added to the usefulness of the book. There is no suggestion of the relationship between the matters dealt with in the book and the practical problems of modern criminal law enforcement, and the latter are not discussed. The volume should not be criticized for not mentioning what it does not purport to deal with, but it may still be insisted that such matters are relevant.

As a collection of most of the case and statutory authority on the conflict of criminal laws, this book is more complete than any such collection yet made, whether in the encyclopaedias or the law reviews, and it should therefore be useful.

University of Missouri School of Law ROBERT A. LEFLAR

CASES AND OTHER MATERIALS ON CONFLICT OF LAWS. BY ELLIOTT E. CHEATHAM, NOEL T. DOWLING AND HERBERT F. GOODRICH. CHICAGO: THE FOUNDATION PRESS, INC., 1936. pp. xliv, 1148.

It will facilitate both the writing and the reading of this review if it is stated at once that this casebook is believed to be the best that has as yet been produced in a field in which some good volumes of teaching materials have been published. That is this reviewer's opinion.

The quality of a casebook on Conflict of Laws must be considered in the light of the rather special function which the course in that subject serves in a modern law school. The course is always given to third year students, often in their final semester. One of its objects obviously should be to give some acquaintance with the general principles, the lines of growth, and the vagaries of the law of Conflict of Laws. Secondarily, it should serve as a kind of review, or integrating, course, in which the student may have an opportunity to observe to some extent the interrelationships of subjects already studied and too often previously viewed as unrelated. In that sense the course in Conflict of Laws involves some advanced study in each of the various fields of the law in which interstate or extrastate factual situations may arise. More significant probably than either of these primarily informational objects of the course is a third, that of affording legal-intellectual exercise for somewhat advanced law students who need new stimuli and sharpened interests in the place of the "boring to death" process which many third year men charge

---

5. Berge, *Criminal Jurisdiction and the Territorial Principle* (1931) 30 MICH. L. REV. 238, Leflar, *Extrastate Enforcement of Penal and Governmental Claims* (1932) 46 HARV. L. REV. 193; Cook, *Application of the Criminal Law of a Country to Acts Committed by Foreigners Outside the Jurisdiction* (1934) 40 W. VA. L. Q. 303; Coates, *"Crime is Local"* (1936) 14 N. C. L. REV. 313.

6. RESTATEMENT, CONFLICT OF LAWS (1934) §§ 425-28.

7. See 2 BEALE, CONFLICT OF LAWS (1935) 1349-60.

8. *Supra*, note 3.

against their instructors. Reasonable adequacy for classroom use in working toward the first two purposes just listed may be assumed for any of the Conflict of Laws casebooks in common use today. The efforts of editors of new casebooks in the field are being frankly directed primarily to the third object, though it is of course realized that almost anything which tends toward greater achievement of the third automatically operates to improve the book in respect to its usefulness for the first two purposes also.

The insertion of excerpts from textbooks and law review articles, and of text material prepared specially by the editors, is a current device in casebook making of which Messrs. Cheatham, Dowling and Goodrich make some very satisfactory use. Printing a five-page case, or even a one-page case, to present an elementary idea which could be conveyed in five lines of well chosen words, is the sort of thing which causes even mildly intelligent third year students to feel that legal education is palling on them. They have already learned well the necessary lesson that judges tend sometimes to irrelevance and verbosity, and further emphasis on the fact tends merely to convince them that law teachers and compilers of casebooks have the same failing. There seems to be no good reason whatever (modesty included) why such brief statements should not be prepared by the editor, since he presumably knows exactly what is needed in his book at the particular point; though there is of course no objection to the use of other equally available well chosen words. It is clear, however, that we do not want mere brief textbooks in place of casebooks. The sacredness of Langdellian gospel does not prevent higher criticism, but practically all critics agree that the great Harvardman was right in abandoning textbook teaching. One recent volume in the field of Conflict of Laws, composed largely of reprints of entire law review articles, seems to fall down in this respect.[1] Materials taken from a dozen or a hundred authors, even though they be followed by problem cases and additional citations and a few cases printed in full, may yet be almost the same thing as a hornbook, and an equally unsatisfactory teaching tool. That criticism cannot be charged to the Cheatham, Dowling, Goodrich work; it is still primarily a casebook, full of leading cases, well-reasoned cases, and recent cases chosen always with an eye constant on teachability.

The feature of this casebook which appeals most to the reviewer is the problem cases, questions, and footnote citations. Footnotes in casebooks, it seems, have been inserted by different compilers for different reasons. A very common reason appears to be that they make excellent space fillers, at the same time satisfying the editor's pride by exhibiting his erudition to his colleagues and proving to them that he had looked at a lot of other cases before (or after) selecting the ones to be printed in the casebook. A reason perhaps less common in fact, though more traditionally given, is that they should actually supplement the cases printed in the book, by suggesting variations and related problems which the teacher may use in class if he does not prefer to use illustrative cases and questions which he has

1. CARNAHAN, CASES AND MATERIALS ON CONFLICT OF LAWS (1935), reviewed in (1936) 36 COL. L. REV. 1190; (1936) 10 SO. CALIF. L. REV. 131.

accumulated in his own notes, and which the intellectually active student (who suspects that the problem or question may be raised in class) may even think about before class. By means of intelligent selection of material, typography, and separate identification of points, the editors and publishers of this volume have achieved a high degree of justification for the printing of footnotes under the second of the reasons above stated.

It has for some time been the reviewer's strong opinion that, for a third year course such as Conflict of Laws, a book of teaching materials could well be so prepared that the central feature of the classroom work would be the discussion of problems upon which the student had labored before class as would a junior attorney upon a set of facts given to him prior to an office conference with his colleagues and seniors.[2] Such a volume would still need almost as many printed cases as the ordinary casebook, and good footnotes as well, and a few citations given with each problem. There would have to be a great many problems and questions, so that the bulk of them would not be repeated in class oftener than once in each three years, in order to minimize the likelihood of second hand research. Professor Carnahan's volume[3] was prepared on this general theory but, apart from the semi-textbook nature of its principal content, it does not contain enough problems, those which it does contain are merely abstracts of particular decided cases, the citations to which would quickly become available to all students, and the cases are not accompanied by any citations which would lead the student into those conflicting uncertainties of authority which make for truly independent thinking. Professors Cheatham, Dowling and Goodrich do not purport to present this type of volume; it is only this teacher's wish that they should.

It may be added that their volume is one which would prove very useful in a practicing lawyer's library. Its notes and citations are not so complete as those in Chafee and Simpson's monumental casebook on Equity, but they are pretty complete, making a reference book about as good as any one-volume treatise on Conflict of Laws.

Law School, University of Missouri ROBERT A. LEFLAR

MISSOURI PLEADING AND PRACTICE. BY HALE HOUTS. KANSAS CITY, MO.: VERNON LAW BOOK CO., 1936. VOL. I, pp. v, 708; VOL. II, pp. iii, 663.

A book should be judged by the manner in which its purpose is carried out, if that purpose is proper. The preface to the volumes being reviewed begins with the following statement, "This work is intended to cover the subject of Pleading and Practice in Civil Actions in Missouri." That general aim is excellent, for there is no late text covering these topics.

---

2. The most successful class which the reviewer ever taught used a mimeographed set of such problems along with LORENZEN'S CASES ON CONFLICT OF LAWS.

3. *Supra,* note 1.

But the manner of covering the subject matter becomes very important in determining the worth of these books. If they consist, in substance, merely of statutes and a digest of cases interpreting them, even though the coverage is complete, they can be of little value. We already have an annotated statute book and a good key-numbered digest dealing, in part, with all the cases covering pleading and practice in civil actions. If the coverage is incomplete, their worth is still less.

Just what, then, are the contents of these books? After a careful reading of them, one finds they contain very little more than the Missouri procedural statutes, a partial digest of cases interpreting them, and an incomplete digest of decisions stating adjective common-law rules.

Time after time, splendid opportunities to discuss important problems and to aid in improving our procedural law have been lost. Let us direct our attention to a few of these instances. On pages 12 and 13 of volume I, the discussion of the right of persons, having an interest in the subject of the action and in the relief demanded, to join as plaintiffs is too cursory. It does not clearly show that in this state the plaintiffs must all have an interest in the entire relief demanded. Thus, though they might join in asking an injunction, since in such a case they would be interested in all of the injunction, they could probably not join in an action requesting money damages, for usually those joining would not all have an interest in all of the relief requested. Here was an opportunity to discuss the propriety of the idea that the plaintiffs must each have an interest in all of the relief demanded. To the writer, it seems that the words "*an* interest in" may possibly refer to the relief demanded as well as to the subject of the action.

Under the discussion of the joinder of causes of action on pages 117 and following of volume I, a great chance was overlooked to consider the correctness of the holding that § 765 of the Revised Statutes (1929) does not permit the joining of tort and contract actions. This is a doctrine almost, if not quite, peculiar to Missouri, and it seems to the writer that it may well be incorrect. That portion of the law permitting the joinder of causes of action arising out of the same transaction or subject of the action is as much a class of joinable actions as any other class mentioned in the statute, and that part of the joinder statute nowhere says that contract and tort causes cannot be joined.

The consideration given to the terms "transaction" and "subject of the action" is entirely inadequate. It is dismissed on pages 171-173 of volume I in one sentence and a note containing some cases. Those terms should be carefully dealt with, for they are not well understood by the profession. What an opportunity there was here for the author to give a clear-cut discussion of their meaning.

Let us turn next to examples of misleading statements of which there are several. On pages 126 and 420 of volume I, we are told that petitions *need not* anticipate affirmative defenses. That would lead one to think one *could* anticipate them. Yet the law of Missouri is that one *should not* anticipate such defenses.

On page 129 of volume I, it is said that *it is not necessary* to allege matters of law. Again, the suggestion is that *it is proper* to allege legal conclusions. But theoretically law *should not* be set forth.

Again, to the reviewer, it would seem that, in mentioning rules of court, the author would have been wise to give the citations to them.

Another great deficiency in these volumes is the almost total lack of reasoning by the author, and of the reasoning of the courts in the cases discussed. Perhaps, once in a hundred pages it exists. Does a practitioner not appreciate knowing why a court has decided a certain way, why a decision is wrong, if a writer so considers it, and why a certain rule of law should prevail when decisions in a state are not in accord? At least those with whom the reviewer has spoken about the matter feel that way.

Though the writer has indicated certain deficiencies which he believes exist in the volumes being reviewed, he certainly desires to indicate the valuable features in them.

For instance, good advice is given in a considerable number of cases. For example, the author advises that one should avoid the negative pregnant in specific denials;[1] that a verified specific, rather than a general, denial of the execution of instruments upon which pleadings are founded and which are executed by the opposite party is to be preferred;[2] that each particular statute of limitations relied on should be pleaded;[3] that a demand for a jury should in all cases be made before the commencement of the hearing of a case by the court without a jury;[4] that it is wise to include in every appeal affidavit the words of the statute, "appeal is not made for vexation or delay, but because the affiant believes that the appellant is aggrieved."[5]

Helpful personal opinions as to what the law is are given. It is, for instance, the author's opinion that extraordinary legal remedies cannot be joined with other actions;[6] that a proper motion in arrest will extend the time for appeal until the motion is overruled, where no motion for a new trial has been filed;[7] that a motion in arrest should be incorporated in the bill of exceptions, and reference to it as so incorporated is sufficient.[8]

Other worthwhile features of the volumes being reviewed are the references to unreported cases; statements concerning the practice in clerks' offices; and the printing of statutory provisions just before the discussions thereof.

Frankly, though the books under discussion have certain estimable qualities, they are disappointing to the reviewer, who looked forward eagerly to their appearance. To him, they are not as helpful as they could, or should, be.

The volumes that are to follow will probably be very useful, and will make the complete set a substantial aid to the lawyers of Missouri.

St. Louis University Law School CARL C. WHEATON

1. Vol. 1, p. 161.
2. Vol. 1, p. 164.
3. Vol. 1, p. 418.
4. Vol. 1, p. 539.
5. Vol. 2, p. 314.
6. Vol. 1, p. 118.
7. Vol. 2, p. 310.
8. Vol. 2, p. 390.