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Book Reviews

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ROGER B. TANEY. By Carl Brent Swisher. New York; The Macmillan Co., 1935. Pp. x, 608.

There is, perhaps, no other task well done which yields greater returns in the form of service to the profession—practitioner and teacher alike—than the writing of a biography of a Justice of the United States Supreme Court. In no other field of adjudication so much as where issues of constitutionality are at stake does the personality and point of view of the judge count for so much. His early training and environment, economically, socially, and intellectually, his whole life's experiences and associations, inevitably affect his outlook with respect to social, economic, and governmental problems involved in many constitutional controversies. Thus, whoever performs well the task of painting the life picture of a justice makes easier the task of all students of constitutional law who come after. Particularly is this true when the subject of the portrait is so little known and so thoroughly misunderstood as appears to have been the case with Roger Brooke Taney for so many years. Many events, culminating in the *Dred Scott*[1] decision, conspired to create for Taney a large and distinguished group of enemies, sufficiently influential, largely to control the estimate of history for nearly three-quarters of a century.

As early environment and experiences frequently play no small part in shaping the outlook of public men on social, economic and political questions, so it was with Taney. The heritage of family traditions plus an upbringing amid the landed aristocracy of the South, together with his very influential associations at college, left a deep impress upon the mind of the future justice discernible in the quality of his leadership in the cabinet of President Jackson and later in the Chief Justiceship. For instance, the part he played in the Bank controversy, and the tenor of his opinions in cases dealing with corporations and the impairment of contract clause, are the more readily understood and accounted for when his early background is considered.

Mr. Swisher not only covers this early period in admirable fashion, but carries the reader through an interesting and careful study of the long public and semi-public career of his subject as a practicing lawyer and leader of the Maryland bar, and as Attorney General and Secretary of the Treasury in President Jackson's cabinet, culminating in a scholarly review of his twenty-eight years in the Chief Justiceship.

Two great controversies figured most prominently in the life and work of Roger Brooke Taney. It is, therefore, appropriate that the study of his career

1. Dred Scott v. Sandford, 61 U. S. 393 (1857).

should give most lengthy and conspicuous attention to the United States Bank, and to the problem of slavery culminating for Taney in his majority opinion in *Dred Scott v. Sandford.*[2] The major roles which Taney occupied in both controversies were well calculated to raise the storms of indignation which swept the country. Yet as to the sincerity, high principles, devotion to duty, and strength of character which dominated his action throughout, Mr. Swisher leaves no room for doubt, if, indeed, serious and intelligent doubt theretofore existed.

Aside from the more spectacular episodes in his life connected with such political controversies, Mr. Chief Justice Taney's long career upon the bench left a remarkable imprint upon the law and constitutional development of the country. His illustrious predecessor had done much to weave the principles of federalism into the fibre of the Constitution, and to cast the cloak of constitutional protection about the interests of the propertied classes. Taney, in turn, asserted that "while the rights of property are sacredly guarded, we must not forget that the community also have rights, and that the happiness and well being of every citizen depends upon their faithful preservation."[3]

The numerous cases dealing with corporations and the contract clause of the Constitution, early represented by such cases as *Bank of Augusta v. Earle*[4] and *Charles River Bridge v. Warren Bridge*,[5] did much to modify the extreme emphasis upon property rights prevailing under the leadership of Mr. Chief Justice Marshall, and restrict the application of the doctrine asserted by the latter in the famous *Dartmouth College* case.[6] According to Mr. Chief Justice Taney, who was genuinely concerned about the concentration of power in the hands of financial interests, "the object and end of all government is to promote the happiness and prosperity of the community." Human rights as distinguished from purely property rights were his first concern, and with this in mind he redirected the current of constitutional interpretation to a notable degree. While the trend of decisions evidencing this new point of view was lamented, more or less, by numerous leaders of public opinion of the Marshall stamp, as it was by Mr. Justice Story, it was left for the slavery issue in the Court, climaxed in the *Dred Scott* decision, to produce an opinion by Taney to arouse really serious feeling. However unfortunate that opinion may have been, Mr. Swisher makes understandable the normal point of view of one brought up in the South under the influence of its traditions and in the light of its economic system, and leaves no doubt of Taney's high purpose in seeking to settle so far as possible the slavery issue by this opinion. While clearly unsympathetic with the methods of the abolitionists, he was not a proslavery advocate and had freed his own slaves many years before. Perhaps no member of the United States Supreme

2. *Ibid.*
3. Charles River Bridge v. Warren Bridge, 36 U. S. 420, 548 (1837).
4. 38 U. S. 519 (1839).
5. 36 U. S. 420 (1837).
6. Trustees of Dartmouth College v. Woodward, 17 U. S. 518 (1819).

Court, however, ever endured such bitter and sustained criticism as did Taney as a result of his *Dred Scott* opinion.

In the field of interstate commerce the Court under Chief Justice Taney's leadership made notable contributions to our constitutional development. Marshall had flirted, throughout his career, with the idea of exclusive power in Congress to regulate interstate and foreign commerce. Taney inclined toward a considerable degree of freedom for state control so long as Congress had not occupied the field, thus considering the commerce clause from the standpoint of a grant of power to Congress, not peculiarly as a source of limitation upon the states.

One of the most famous developments in the commerce field at the hands of the Court during the time of Chief Justice Taney was the promulgation of the doctrine of *Cooley v. Board of Wardens of the Port of Philadelphia*,[7] sustaining the power of the states to regulate aspects of interstate commerce local in their nature, while recognizing that that part of commerce which is national in its nature, is left for the exclusive regulation of Congress. This opinion, written by Mr. Justice Curtis, was, perhaps, a compromise, and hardly coincided with the broader commerce power in the states asserted by the Chief Justice in his opinion in the *Passenger Cases*.[8]

It would extend this review unduly to discuss further important cases of this period. Suffice it to say that the work of Chief Justice Taney in emphasizing human rights or community rights as distinguished from purely property rights, restricting the growing dominance of corporate and financial interests, modifying the Marshall conception of the commerce clause as a limitation upon state power, and asserting the national power to enforce its laws without interference by the state as in *Ableman v. Booth*,[9] presents matters of vital interest to the student of constitutional law at this particular period.

The work of Mr. Swisher in giving us, almost for the first time, a trustworthy and unbiased study of a man who properly bulks so large in the constitutional development of the country, and at a time when the constitutional doctrines enunciated by him have such significance for present day problems, should have earned the gratitude of all students of constitutional law and constitutional history.

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CASES ON FUTURE INTERESTS. By Richard R. Powell. Second Edition. St. Paul: West Publishing Co., 1937. Pp. xxxix, 1068.

The first edition of this casebook on future interests appeared nine years ago and it was a distinct contribution to the pedagogy of the subject. This was

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7. 53 U. S. 299 (1851).
8. 48 U. S. 283 (1849).
9. 62 U. S. 506 (1858).

due, not only to the selection (and rejection) of case material, but to the manner of laying emphasis on the more difficult portions of the subject by a balanced allotment of space and an analytical but non-traditional arrangement of subject matter. The departure from previous standardized treatment was emphasized by inclusion of cases from different jurisdictions between which there was a conflict of interpretation or statutory modification, generous footnote material and a repetition of attack on the problems raised by this interesting subject by approaching them from different viewpoints. Thus in Chapter 4 expectant estates were treated from (1) Variations in the estate of the creator, (2) Variations in the prior estate created, (3) Variations relating to the event upon which the expectant estate is limited to take effect, and (4) Variations relating to the persons to whom the limitation is made. With the preceding chapters descriptive of the various expectant interests, the arrangement gave a five-fold treatment and presentation of the subject matter in a new light each time. This, with other approaches such as the tax problem and problems of construction, as such, was supplemented with interrogatories following the cases, which though apparently simple, had a purpose. To the writer that purpose appears to have been what Professor Hanft has recently called the lawyer's viewpoint as distinguished from the judicial review of appealed cases.

The author's approach to the pedagogical problems of Property did not cease with the above. The faculty of Columbia Law School were studying the curriculum, and "The research and self-examination of the curricular revision studies" lead to his production of the two volume edition of Trusts and Estates in 1933. They were intended to eliminate the compartment or categorical treatment of the subject matter of Trusts, Wills and Future Interests. They indicated a recognition of a situation often presented in teaching future interests. "The boundary walls of Trusts and Wills repeatedly obtruded themselves as barriers to the completion or to the comprehension of topics partly studied in the areas of law traditionally known as Future Interests." The pedagogical approach in those two volumes is now being recognized and considered by the faculties of schools of law in many branches of the curriculum.

And now we have revision of the first edition of Cases on Future Interests in the light of new developments. Mr. Powell has been a member of and for some time reporter for the Committee on the Restatement of the Law of Property, on which the American Law Institute has, so far, expended $150,000. He states that in connection therewith he "has profited by the instructive and corrective advice of many of the best teachers and leading scholars of the United States." Professor Simes, who collaborated on the first edition of Cases on Future Interests, has published his three volume work on Future Interests. Mr. Powell has been aided in his desire to improve the mode of presentation of this subject to students of law by what has been done by himself and others and he offers the results to us. The Second Edition is not a reprint. Of course the new classification for contingent remainders so strongly advocated by him for years, and the Power of Interpretation to replace Right of Reentry for Con-

dition Broken, both adopted in the Restatement of the Law of Property, now appear with the support of that pronouncement. The traditional appellations must, of course, continue in the case material. But the book is not a reprint. Again the materials and subdivisions of the subject matter have been reselected and rearranged. His "classification" now is, (1) Future interests created in a person other than the conveyor, including remainders and executory interests, and (2) Future interests left in the conveyor, including reversions, possibilities of reverter, and powers of termination. The two last mentioned were given separate chapters and treatment in the first edition, and reversions preceded remainders therein, but considered from the planning of a disposition the sequence surely is: What is conveyed away? What is left in the conveyor? Powers of Appointment receive a brief and mostly textual recognition at this point, as a part of the problem. (They receive a more detailed treatment in Chapter 11.) Expectancies are properly dismissed in a brief section of text. Some of the repetitive method of the first edition is incorporated in Chapters 4 and 5 on The Subject Matter of the Disposition, including personal property, and The Prior Interest, but any application to Shares or Bonds of a Corporation is now omitted because it will be found in the course in Trusts.

The chapters on The Rule in Shelley's Case and Disposition to a Class are not materially changed. Characteristics of Expectant Estates, Chapter 7 of the first edition, now appear as Chapter 9 styled Transferability, and Chapter 10, Protection. To the treatment of the Rule Against Perpetuities is added a new chapter on The Operation of the Rule Against Perpetuities under the Statutes of New York, which is enriched from the results of Mr. Powell's studies in that field. There are copious notes which include statutory references and many briefed or brief cases, some of which, like Clobberie's case, formerly appeared as principal cases. Numerous references to the Restatement of the Law of Property are given. The questions following the cases reappear in this edition, carrying out the purpose of the author, and because, "the passing of a decade has marked no substantial change in the acuteness of perception of the students who undertake the study of the subject."

The whole treatment is a contribution to the handling of the subject, though it may be unacceptable to those who cannot discard the traditional method of treatment. That the author is not content to "stay put" or be bound by tradition is evident in all his work and we are benefited by his willingness to share the results of his reflection and experience with us. The Second Edition of Cases on Future Interests is valuable for the student, for the teacher, and its modern analytical treatment should make it interesting to members of the bar who might be interested in examining a new approach in an old field.

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CASES ON EQUITY. By Henry L. McClintock. St. Paul: West Publishing Co. 1936. Pp. xxiv, 1286.

Professor McClintock believes that equity should be taught somewhere in a law course, but that it "is not a matter of great importance" where. If, in a separate course, he offers an orthodox casebook of 1286 pages for the purpose. The book is designed for a course of two hours per week extending over a two year period. It could be used, however, as a text for a shorter course by proper omissions without serious difficulty. The cases are well selected and edited. Sufficient facts are given to meet the requirement of case instruction and a nice balance is maintained between modern and much used older cases. No very marked departure is made from the usual topics. He does not include the subject of quasi-contracts, as Professor Cook did in his casebook, nor has he utilized the title "vendor-purchaser" as have some recent casebook compilers.

A few features of the make up of the book merit special mention. The table of cases is followed by a table of the law review articles which are cited in the book. At the end of almost every section is a list of problems. These are based upon actual cases which are cited usually with other cases for purposes of comparison. This feature is not unduly extended, however, and good use could be made of it in class discussion. One might feel inclined to criticize the paucity of footnote and non-case materials. It is believed that materials other than decisions of appellate courts have value and place in a modern casebook. Equity particularly has spots where time could be saved profitably and at not too great a sacrifice, by a judicious use of text materials. There are two or three instances of inclusion of such subject matter as well as an occasional statute.

The most significant contribution which Professor McClintock has made in this book is his rather unusual arrangement of materials. The burden of this review will be to point out and comment upon some of the more striking innovations in this respect.

In the first book, consisting of 560 pages, a "General Survey of Equity" is undertaken in which is presented the "Development of Equity" and the "General Scope of Equity." One is disturbed by this latter topic. It is feasible to introduce a topic like specific performance with a survey of the scope of the remedy but it is another matter to introduce the whole subject of equity with such a topic and not get into difficulties with the problem of inclusion and exclusion. A glance at this portion of the table of contents shows the trouble. In fact almost the whole course of equity could be treated under that topic.

The chapter on "The Origin of the Court of Chancery and of Equity" is well done. A question might be raised whether it would not have been better to use the cases on pages 13 and 14 and the note on page 18, which deal with the administration of equity through common law forms, in the later topic, "Construction and Enforcement of Equitable Decrees," at page 48 *et seq.* It would seem a bit difficult, at this earlier stage, to make the material very clear and meaningful to the student and it does illustrate very well a method of en-

forcing certain kinds of equitable decrees, and, following a consideration of that problem, it would have more vitality.

Chapter 2 on "The Nature of Equitable Relief" is vitally important. It is the writer's opinion that the most of the first section of this chapter which is called "Equitable Procedure" should have consisted of text materials. Equity procedure, as such, can profitably be minimized at this day, and in the main is essential in a course in equity chiefly for an appreciation of the fusion of law and equity. This section contains a case on multifariousness, several on joinder of parties, followed by cases on representative and class suits. It would seem likely that such a meager treatment through cases would be of little value to the student. Certainly an adequate treatment of the subject cannot be undertaken in a course in equity, nor is it desirable to do so. A brief text statement, similar to that used at page 34 to present equity pleading would have sufficed.

The section on "Construction and Enforcement of Equitable Decrees" is well done indeed. This is followed in section three by "Prohibitory and Mandatory Relief." It is a question whether this topic should be treated in this chapter under the topic "The Nature of Equitable Relief," or presented later as a preliminary consideration to the treatment of equity's jurisdiction of specific prevention and restitution for tort beginning at page 1036, where the real study of the injunctive process is undertaken in detail. This is, of course, a mere matter of choice, and pedagogical considerations will decide the choice. The fourth section, "Equity acts in Personam", is skillfully done. Much more space is usually required for this topic and some sacrifice was necessary to handle it in the small space devoted to it, but it is believed that the sacrifice has not been harmful.

The first significant innovation in arrangement, however, is in the fifth section under the topic "Equitable Discretion." The writer recalls having seen this section topic in only one other casebook on equity. The section opens with the problem of precedent and continues with such topics as equity follows the law, no right without a remedy, equity aids the vigilant (laches and the statute of limitations only incidentally considered apparently), he who comes into equity must come with clean hands, motive, the experimental decree, he who seeks quity must do equity,—all utilized to stress the main issue, the chancellor's discretion. It will be observed that the two classes of cases, better perhaps than any others to develop the concept of the chancellor's discretion, are omitted from this section; the hardship cases in specific performance of contract and the balancing equities cases in injunction against certain torts. It is desirable, indeed necessary, to treat these cases in their proper setting at pages 729 and 1118 respectively. The result is a partial treatment only of discretion with the danger, always difficult to avoid, that the student will have the well-that's-done attitude when he finishes the section. It would seem that discretion is such an essential quality or characteristic permeating all of equity that it is not advisable to attempt to isolate it into a chapter or section by itself, but to stress it at all times if and when it arises.

The final section in the chapter, deals with the fusion of law and equity. The method of treatment loses all of that dramatic quality so well achieved by Professor Cook in his approach through the historic conflict which obtained between the two systems of law and equity. Similarly, "the cold, not to say inhuman treatment, which the infant code received at the hands of the New York judges" is partially lost by the use of the case of *Phillip v. Graham* at page 218 in which Seldon, J., dissented, instead of *Reubens v. Joel,* 13 N. Y. 488, in which he had his way. Instead, the fusion statute is used to open the section followed by a development of the usual problems. It is believed that something of value has been lost and it may be attributed perhaps, to the old enemy of any casebook builder, space considerations.

In the first chapter of part two the meaning of equity jurisdiction is presented. Though quite unusual in order and manner of treatment the plan is interesting and suggestive. The requirement of a property interest for jurisdiction in equity and the difficulties implicit in that conceptual limitation of jurisdiction is well emphasized very early by the use of such cases as Ex parte *Warfield* at page 255. Then follow cases on the effect of dismissal for want of jurisdiction, waiver of objections to jurisdiction, together with the problems involved in *res adjudicata.* There is an excellent chapter on the jurisdictional requirement—"The Remedy at Law Inadequate,"—which nevertheless must be supplemented by a section at page 590 when specific performance of contract is reached on "Adequacy of Legal Remedy" and again on page 1041 when prevention of injury to property by injunction is studied. This is quite the usual technique for handling these rather troublesome questions.

The chapter "Incidental or Substituted Legal Relief" is the second important innovation in arrangement of material to be specifically noticed. A chapter on "Damages in Lieu of Specific Performance" is not uncommon in the portion of casebooks devoted to specific performance and the material of such a chapter is here included, far removed from the general consideration of specific performance problems. But more is included here than that, for questions usually treated as merely incidental to other topics are taken out of that incidental character and made a subject for major and separate consideration. For example, the question, in a bill for discovery, may the equity court retain the bill to give complete relief, or, may a cross bill, raising a wholly legal issue, be disposed of in the equity suit. There is included also a case of specific performance with damages as incidental relief, and a consolidation of an action for breach of contract with a suit for the enforcement of a lien and its retention in equity for complete adjudication, as well as a case of injunction for violation of trade name with damages additional. That there are advantages in such a chapter seem obvious. The problems are bothersome and the orthodox method of dealing with them leaves much to be desired. Dipping here and there into widely different fields, however, as was necessary to construct such a chapter would seem to raise certain difficulties of presentation to a class and one wonders if this chapter would not require a disproportionate share of time for its adequate treatment.

A third innovation is noticed in chapters four and five of part two, and chapter five in book two, part two. In the former, bills of interpleader and bills of peace are intended to contribute to an understanding of the "Scope of Equity," but one misses the time honored title "Bills *Quia Timet*" usually so effectively contrasted with bills of peace. Instead we have two widely separated chapters "Protection against Anticipated Loss," page 486 and "Quieting Title and Removing Clouds on Title" at page 1158. Here is an instance suggested in the preface to the book where the arrangement "results in some duplication . . . and some separation of related cases." Considerable care will be required on the part of the student to discover the relationship between bills of peace and bills to quiet title, on the one hand, and bills *quia timet* and bills to remove cloud on title, on the other. The first is suggested, however, as the two final cases in the chapter on bills of peace present the quieting title idea. To finish the problem, however, the student must wait until page 1158 is reached. The postponement is due, of course, to Professor McClintock's desire to treat that problem under "Property" rather than "Scope." Perhaps this further indicates the difficulty of the topic "General Scope of Equity."

The chapter "Protection against Anticipated Loss," it is believed, brings together two groups of otherwise unrelated cases. The first are those cases of cancellation of instruments because of fear of future harm easily recognizable as *quia timet* actions. The second are cases in which equity enjoins the enforcement of criminal statutes of a certain type, probably never looked upon as *quia timet* actions, but fitting readily under the chapter title adopted here. Furthermore, it was necessary to exclude from this chapter those cases of cancellation of void instruments which cloud title, clearly within the category of the chapter because it was more desirable to consider them in the later pages 1160 to 1175. Whether in this arrangement the "advantages greatly outweigh the disadvantages" can only be determined by the test of use.

Part one of book two in which "Equitable Protection of Particular Interests" is considered, deals with specific performance and relief against fraud, mistake and reformation for fraud, *et cetera.* No particular innovations are noticeable here.

The cases grouped under "Requisites of Contract," involving problems of consideration, certainty, *et cetera* might create an impression of a substantive rather than a remedial approach to equity. Indeed the topics used for each of the four parts of book two might create the same impression. Some omissions are rather noticeable in the first section of chapter one. For example, in the requisite of consideration no cases of parol gifts and parol promises to give are included. These are found, however, in the section on part performance and the Statute of Frauds. At that point it would seem necessary to reopen the consideration problem.

One comment only will be offered on the section "Adequate Remedy at Law." If this section, which closes with three cases on mutuality as a basis for specific performance had been followed by section six, "Mutuality of Remedy

Lacking," the mutuality doctrines could have been treated together. If this is desirable the one using the book could thus change the order without doing serious harm to its continuity.

Professor McClintock has chosen to follow the lead of Professor Durfee when he reached the matter of partial performance. The title of this section is "Partial Specific Performance" instead of the more usual "Partial Performance with Compensation." The usual problems are here nevertheless, except one or two cases which were used in a previous chapter entitled "Incidental or Substituted Legal Relief." The new title makes it possible, however, to include cases usually found elsewhere. For example, one finds here our old friend *Lumley v. Wagner* at page 696 and the development of equity's negative enforcement of contracts technique. It is interesting to notice the use made of this famous case. Ames, Chafee and Simpson, and Clark use it in the section on "Negative Contracts," Cook under the heading "Mutuality and the Lack of Mutuality," Walsh in the section on "Impracticability." Durfee and McClintock agree that it belongs in the present chapter. This is certainly a permissible use of the case. The placing of these negative covenant cases at the end of the chapter provides a very easy transition into the lack of mutuality doctrine, a transition which would be lost if the suggested order above made were followed.

A fourth major innovation in arrangement is found in chapter one of part two of book two. It is obvious that "Equitable Ownership Arising from Contract" as the title to the first chapter suggests an approach which looks at the thing as done rather than as merely agreed to be done and therefore as an integral part of specific performance of contract. Usually the doctrine of equitable conversion or the problems involved in such titles as "Legal Consequences of the Right of Specific Performance" and "Relief for and against Third Persons" are considered from the specific performance or remedial angle and it is believed that the right of specific performance is the underlying basis of the whole matter. There seems merit, therefore, in approaching the problem from the remedial standpoint, i. e. specific performance, rather than from a substantive position, i. e. property. That the latter approach is intended, however, seems evident when the material is examined. The creation of the right is first developed, the very first case giving away the equitable conversion secret. Then follows the "Attributes of the Right," assignability, rights to rents, possession, interest, use of the land, and risk of loss. One might expect the treatment of internal attributes such as involuntary transfers at this point but it is lacking. Then follows the rights and liabilities of third persons and the termination of the rights by forfeitures, foreclosures, *et cetera.* It is a significant change that is here made and one which can be appraised justly only after working with it.

After dealing with "Equitable Liens" and "Equitable Servitudes" in separate chapters a chapter is devoted to the "Prevention of Injury to Property." This opens with the historical development of equity's jurisdiction in the prevention of wrongs to land; waste, trespass, nuisance and disturbance of easements. It is in this chapter that the protection of intangible interests by the in-

junctive process is treated. The following interests are included; personal reputation, protection against threats, censorship of publications, labor problems, trade secrets, unfair competition problems, unauthorized practice of professions, *et cetera.* Apparently feelings, domestic relations, privacy, interests in one's name, and social relations are not to be considered as "Property" as they are given treatment in a separate co-ordinate "Part" entitled "Personal Interests." This arrangement would not prevent a use which would show the expanding concept of property in these and related matters, or it might very well permit an emphasis upon equity's jurisdiction though no property right is involved.

The book closes with a separate part devoted to "Public Interests" wherein the use of the injunction in public nuisance and crime and for the protection of political interests is presented.

The reviewer would be very unhappy if he creates in the reader of this review an impression of a serious disapproval of the book. Such is certainly not his attitude toward it. If such an impression has been created it is because of his desire to point out as fairly as possible what seemed to him to be its characteristic features and wherein it differs from other books in the field. That could only be done at the cost of some detailed statement because it was almost entirely a matter of arrangement. There is much of great merit in the arrangement, even in those portions at which some criticism has been directed. In any school where the course of equity is not inextricably tied in with curricular arrangements requiring unusual adaptation it is believed that this book would prove a very satisfactory case book for adoption.

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CASES ON CRIMINAL LAW AND PROCEDURE. Second Edition. By John Barker Waite. Chicago: The Foundation Press, Inc., 1937. Pp. xxvii, 822.

The review of a second edition of a casebook calls for both an appraisal of the original work and a statement of the ways in which the later volume differs from the first. Professor Waite's first edition was distinguished by its criminological approach to the substantive law field and a realistic critical exposition of criminal procedure. In addition to case materials there were stimulating and forward-looking extracts from treatises, periodical literature and other sources. Among some law teachers its disadvantage was thought to be the absence of any express treatment of the specific crimes.

The criminological approach has been preserved and indeed carried forward a step in the second edition. For the law student and teacher who is not a specialist in the field here is a work which inquires into the why of punishment. The general viewpoint on this matter colors the present law and it should, and doubtless will, have much more influence in the future. The materials upon the specific crimes are well chosen, both as to the inclusion and exclusion of particular topics and as to attention to modern statutory developments. Possibly some teachers may question the division into the acts required for the several

particular offenses and then the mental attitude necessary for the individual crimes. However, with no inconvenience it is easy enough to assign together the cases upon each crime in both of these aspects before treating the other offenses.

The excellent procedural parts have been improved in the second edition, not only in detail but also in scope. General treatment of the matters regarding confessions is omitted, obviously because they come within the traditional realm of evidence. On the other hand, extradition and the place of the crime, important topics which are usually neglected in the curriculum, are given a place.

The book has proportion and balance. It is the right length in pages and number of cases for a four semester hour course and with heart-breaking omissions could serve for a three hour course. Almost a quarter of the cases are new but these are not confined to decisions handed down since the first edition. Some of the opinions are sharply pruned and the facts skeletonized. This, to the reviewer's mind, is all to the good. However, there are a number of instances in which a sentence or two from an opinion is labelled "excerpt" but printed as a principal case. These are uniformly good footnote materials but as units for traditional class discussion they seem inadequate because of absence of information as to the nature of the charge, the points raised on the appeal and the connection in which the statement was made. This is a minor and perhaps a debatable point. Possibly some critical consideration of statements in a vacuum may have place in the course in criminal law.

Professor Waite's able first edition has been improved by changes which amply justify the second. The work is bound to have immediate influence in the teaching of the subject and ultimately in the administration of the criminal law.

University of Missouri Law School THOMAS E. ATKINSON.