

BOOK REVIEWS.

A TREATISE ON GENERAL PRACTICE, containing Rules and Suggestions for the Work of the Advocate, in the Preparation for Trial, Conduct of the Trial, and Preparation for Appeal. By BYRON K. ELLIOT AND WILLIAM F. ELLIOT. In Two Volumes. Indianapolis and Kansas City: The Bowen-Merrill Co. 1894.

In the two volumes of this substantial work, the authors have endeavored to give, not merely a compendium of the practice and procedure in the courts, but also the steps necessary to enable the advocate to thoroughly prepare his case before trial, and carry it to a successful issue. It is, therefore, a work on preparation, almost as much as on practice, and bears the same relation to the latter subject that Wood's Practice Evidence bears to the various technical works on evidence. But it derives its chief value from this very fact, that it presents the subject of the management of a case from a new and often disregarded point of view, yet one that is of the very highest importance. A work on Practice, as generally understood, is necessarily but a re-hash of material already worked into mince-meat, while this book introduces us to a much neglected, if not entirely new field of study. There are plenty of attorneys who can conduct a case on paper, who fail lamentably to manage it successfully before a jury, simply because their knowledge on the subject is all technical, lacking the practical element that is absolutely essential to success in dealing with men. The mere knowledge of what steps one should take is of little value, unless he knows also when and how to take them; and that it is one of the aims of this work to teach.

It is always difficult, in reviewing a new book, and this is to all intents and purposes new, although, as the authors state in their preface, it is an enlargement of a former work,) to point out its special excellencies, if it is really deserving of praise;

and it is safer to confine one's self to general commendation. Yet, in this case, it may be permissible to call attention to a few of the many valuable suggestions on points too often disregarded by the practitioner. The authors strongly emphasize the necessity of a thorough understanding of legal principles, (which by the way, would not be a bad thing for some judges,) and maintain that the man who has not fitted himself to conduct causes in judicial tribunals by a long course of study of the principles of jurisprudence, is not an advocate. This is sadly at variance with the present fad of "case-law," which the publishers would fain have us believe is the *sine qua non* of success, forgetting that the only way of knowing whether or not cases are parallel is by ascertaining whether or not they rest on the same principles.

On the other hand, we are reminded, that it is no less important to remember, that mere knowledge of principles will not necessarily enable a man to impress his views upon others; and especially, if he uses language that is too technical to be understood by ordinary men. Cases are often lost by the failure of the advocate to present his position to the jury in an intelligible manner. And to this end the client's opinion of the bearings of his case is of great value, as enabling the advocate to realize the practical light in which the case is to be regarded, and in which it should be presented to the jury.

One other, and perhaps the most valuable, feature of the work, is the strenuous insistence upon the duty of the advocate to preserve his honor and integrity; matters often disregarded in the effort to succeed, and which have always and are still contributing to bring disrepute upon the profession. The language in which this is presented, *apropos* of coaching witnesses, is very forcible. "The client may have a right to his [the advocate's] talents and skill, but not to his conscience and integrity. Nor will a departure from the path of honor lead to good results, for no man that really possesses the character and talents requisite to a true advocate can justly and ably present a cause where he knows that he has corruptly engaged in the fabrication of testimony. A guilty con-

science weakens power, and the advocate who must praise a witness can only do so with half a heart, when he knows that he is in league with him in a criminal scheme. Power and guilt are seldom allies."

It would be impossible, however, to designate all the points of excellence in this work; and one may as well stop at one place as another. Suffice it to say, that it is indispensable to any one who wishes to gain a clear understanding of the practical, as distinguished from the theoretical side of practice, without which understanding success as an advocate is impossible. It can be gained by experience; but experience is a hard teacher, and it is far better to learn by the experience of others. That is furnished in this book, and not merely in general rules, but in many specific instances in the notes, which contain most interesting examples of the successful practical handling of a case.

R. D. S.

THE STUDY OF CASES. By EUGENE WAMBAUGH, LL. D.,
Professor of Law in Harvard University. Second Edition.
Boston: Little, Brown & Co. 1894.

CASES FOR ANALYSIS. By the same Author. Boston:
Little, Brown & Co.

These little volumes in the "Students' Series," deserve to be numbered among the most valuable publications for the use of students which have appeared in recent years. Professor Wambaugh (to use his own language) aims "to teach students the methods by which lawyers detect *dicta*, and determine the pertinence and weight of reported cases." In each of the two works, the subject matter is divided into two parts or books. In the one, a "General View," is followed by a collection of some seventeen selected cases for study and analysis, and in the other, a "A Selection of Cases on Contracts," is succeeded by "A Selection of Cases on Torts."

In his General View, Professor Wambaugh first disposed of some preliminary topics, and then considers the best method of finding the doctrine of a given case. Four elements are recognized as entering into the solution of this problem. The

first is the court's duty to decide the very case before it. The second is the court's duty to follow a general rule. The third is the opinion of the judges (in connection with which the author discusses *dicta* and their weight); while the fourth element depends upon the principle, "that a case is not a precedent for any proposition that was neither consciously nor unconsciously in the mind of the court."

The work abounds in fertile suggestions, and there seems to be no portion which the student cannot study with advantage. In Chapter IV, he will learn "How to Write a Head Line." In Chapter V, he will receive many valuable suggestions on "How to Criticise Cases." Chapter X, on "Reports," is also to be commended, and on pages 130 and 131 (in Chapter XI, on "Digests"), will be found some acute observations upon the requisites of a satisfactory digest classification.

In the second work—the Cases for Analysis—the student will find ample material for practice, in reading and stating reported cases composing head notes and briefs, criticising and comparing authorities, and compiling digests. The selected cases are, for the most part, familiar to the practicing lawyer. *Adams v. Lindsell*, *Byrne v. VanTienhoven*, *Carlill v. Carbolic Smoke Ball Co.*, *Cooke v. Oxley*, *Rylands v. Fletcher*, *Trevor v. Wood*, and *Winn v. Bull*, are among those which catch the eye upon a casual examination.

At a time like the present, when the method of teaching law by the study of cases, instead of by treatise and text book, is slowly, but surely, winning recognition for itself on every hand, the appearance of volumes such as these, is an event of no small importance in the world of legal education. The fact that a second edition of "The Study of Cases, has already been called for, seems to indicate that Professor Wambaugh is meeting with the encouragement which he deserves.

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