

## BOOK REVIEWS.

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FOSTER'S FIRST BOOK OF PRACTICE. By LEMUEL H. FOSTER, of the Detroit Bar. Detroit: The Collector Publishing Co. 1897.

The purpose of this book is in fine contradiction of the alleged tendency of the times to regard the practice of law merely as a means of making fees and no longer as a profession. The author writes to help his younger brethren. He presents to them the result not only of accurate study, but the benefit of those hard knocks which the busy practitioner must receive and give in the manifold business of office and court.

In reading so good a book as this, one regrets that it must of necessity be inadequate to accomplish what its maker would desire. In delineating a field of such extent, it is impossible to fill in the local topography. The difficulty is inherent in the subject. This is recognized by the author, who says: "It is not possible to bring together in one volume like this, all the rules of the courts of all of the states either written or unwritten;" and, in his note (p. 220) upon Code Pleading and Practice, "If there is a work especially adapted to the practitioner's own state, he should procure that in preference to any other." So very large a proportion of suits must be governed by the rules of the Bailiwick, that even books of local practice require revision in many particulars—we may almost say from year to year.

To illustrate from matters near at hand: We notice in Pennsylvania that, at the last session of the legislature (1897), Acts were passed relating to such important and frequent proceedings as the regulation of the "practice, bail, costs and fees on appeals to the Supreme and Superior Courts;" "Relating to proceedings when goods and chattels have been levied upon and seized by the sheriff and claimed to belong to others than the defendant," and repealing all prior laws referring to "Sheriff's Interpleaders."

To turn from statutory law, we may especially refer to Judge Mitchell's Address on Motions and Rules before the Law Academy of Philadelphia, 1879, a classic in Pennsylvania, and his list of one hundred and fifty-three rules, with his instructive explanations, which could not be incorporated in a work intended for all the states. Compare the short though satisfactory outlines in Mr. Foster's chapters on Attachment and Garnishment with the Appendix of Statutory Enactments in the several States and Territories in the Seventh Edition of Drake on Attachment, and then let the tottering mind try to conceive the papers to be drawn, the bonds to be given and the other steps in such actions, and the impossibility of getting complete help from any general book on Practice will appear. The Rules of Court for Philadelphia County,

which went into effect on the first Monday of December last, introduced marked changes in procedure, from Admissions for the Purposes of Evidence to the Return Days of Process. We might further instance the amendments to the Equity Rules adopted by the Supreme Court in January, 1894 (published in 159 Pa.), but it is not necessary to multiply illustrations.

The genus may be beautifully described but the species and the differentia cannot be generalized. The teachings, from necessity comprehensive, cannot be a perfect guide to the tyro in those things which, *per se*, are special and fettered by local regulations and methods.

Still, this First Book of Practice, if not a complete *Vade Mecum*, because of these limitations, is full of valuable statements and suggestions tersely expressed and arranged in a natural order of succession. The statements are clear and absolute. The author refrains from that "padding" which one, writing on the law, is so apt to employ, not because of the "affectation of learning" so often criticised, but from an honest desire to support his declarations or inferences by the weight of authority.

At the end of each division there is a Bibliographic Note naming standard works on the preceding topic. These short catalogues show authorities excellent in choice, adequate in number. They afford a reader great relief in contrast with so much of the overloaded text of many law books. There are some exceptions to this abstinence, for instance, citations are given in what may be called sub-topics (under the general title of Trespass on the Case), to wit: Contributory Negligence, Liability of Temporary Master, Fellow Servants, Independent Contractors, Proximate Cause, Slander and Libel, and in other sub-divisions. In these it seems to us that the claim made in the preface is sustained, namely, "In the citation of authorities, reference has been made to leading cases only, or to cases which most clearly illustrate or strongly fortify the positions taken." The author appears to be apt in the use of decided cases. We may notice that he gives a good universal rule when he says (p. 299), "One or two well-reasoned opinions strictly in point from courts of well-established reputation for ability, will outweigh a hundred cases which simply touch the case without discussing the questions or directly passing upon them."

There is an introductory chapter on Practice, and then follow six separate chapters on the well-known common law actions of Assumpsit, Trespass on the Case, Covenant, Debt, Trespass and Replevin, each of which is comprehensively treated.

There is a brief chapter (VIII) on Actions upon Statutes. Then (IX) come twenty-four pages on Code Pleading and Practice. The author does not go into the enticing debate which has so long engaged the respective partisans of this Procedure and of Common Law Practice. Concisely written and admirable as his explanation is, we imagine, from the bulk of the N. Y. Code Civ. Proc., and like enactments in other States, this chapter will be of very slight

practical assistance in the preparation of pleadings and in the other steps in the actual conduct of a suit. The author, as noted, does not go as far as the language of Judge Grier, *McFaul v. Ramsey*, 20 Howard, 525, "The distinctions between the different forms of actions for different wrongs, requiring different remedies, lies in the nature of things; it is absolutely inseparable from the correct administration of justice in common law courts." He does say, however, with force (p. 197), "The codes have either wholly or partially abolished the distinctions between the different forms of action, but it should be borne in mind that, notwithstanding this, the underlying principles are the same, and whether the action is brought under the common law or the code, the same questions are involved, practically the same allegations must be set forth whether, in a declaration at common law or in a complaint under the code, the same defences may be interposed, and the trial in all respects proceeds in the same manner."

The remaining chapters are on Arrests in Civil Actions, Attachment, Garnishment, Habeas Corpus, Mandamus, Arbitration and Award, Appeals and Writs of Error, Practice in Courts of Equity, Motions, Petitions and Orders, Judgment and Execution, Preparation and Trial of Causes, Affidavits and Acknowledgments, Depositions, Drafting, Deeds, Mortgages, Bills of Sale, Leases and Forms thereof, and, finally and appropriately, Wills.

On the whole, this First Book of Practice far exceeds the implication of its unassuming title. It is interesting and clear, and will be a valuable help to those who will read it as a summary, bearing in mind that no general work can supply the place of careful study of local statutes, rules, decisions and what may be called unwritten practice. It would be very pleasant to quote largely from advice given in different parts of the book, which seems to us not only shrewd and profitable but, what is far better, conducive to conduct that will be honorable to client, court and counsel on the other side.

The following closing paragraphs (pp. 440, 443) may be well commended:

"Wills should be fairly written, without interlineation or erasure, but if such do occur they should be carefully noted in the attesting clause. Wills are sometimes typewritten, and there is no legal objection to a will so drawn, but we regard it as by far the better practice to have it carefully written out by hand for the reason that there is less danger of forgery, changing sheets, or making alterations . . ."

"When an attorney is employed to draft a will, he should realize that he has been paid the highest compliment in the power of a client to bestow. It is evidence that the client regards the attorney as a man who is competent to undertake so important a piece of business, and to advise him of matters that lie closer to his heart than any others, and that he believes that the attorney will keep as a sacred trust the confidential communications made to him. It therefore behooves every lawyer to be upon his guard, to see that

no confidential communication is ever allowed to escape through his carelessness, or the carelessness of his employes, and that no confidential communication be permitted to reach the ears of the public or those from whom the client wishes them to be kept. When a lawyer receives a fee, it covers not only his services, but his silence as well."

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CASES ON AMERICAN CONSTITUTIONAL LAW. Edited by CARL EVANS BOYD, Ph.D. Chicago: Callaghan & Co. 1898.

The author has brought together within the compass of a single volume a sufficient number of the leading decisions of the Supreme Court of the United States on Constitutional Law to form the basis of a University Course in the subject. We use the word "University Course," as distinguished from a course in a Law School or the Law Department of a University, advisedly. It is impossible to collect all the cases which a man, who expects to be a lawyer, ought to read in a single volume of some six hundred and fifty pages. We understand, however, from the preface, that the author does not intend his work to be used in Law Schools, that field having been thoroughly provided for by Professor Thayer of Harvard. The object of the present work is, we presume, to fill the needs of University students of political science rather than the needs of law students. From the point of view of the student of political science the collection is all that could be desired. We do not know of any case of great importance which is omitted. It is, perhaps, to be regretted that the author has not added any notes of his own.

*W. D. L.*

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THE LAW OF WILLS. For students. By MELVILLE M. BIGELOW, Ph.D. 12mo. Boston: Little, Brown & Company. 1898.

It is a lamentable fact that the common lawyers of to-day have, to a great extent, become "case lawyers;" and therefore it is an intellectual treat to take up a discussion of the law from a scientific standpoint. Perhaps there is no person in this country better qualified to so deal with the subject of wills than Prof. Bigelow. His edition of Jarman on Wills has become a standard, and what that is to the practitioner, his contribution to the "Students' Series" will be to the learner.

This handy little volume should be in the possession of every student of the common law. There is, perhaps, nothing harder for the average student than to comprehend legal dogmas, and the great teachers of law have recognized and acted upon this thought, and accordingly they combine the theory of the law with the practical results reached. Professor Bigelow has accomplished this task in a most delightful and interesting manner in his "Law of Wills."

The book contains 398 pages, of which 374 are devoted to text. There are some two thousand cases cited, so that ample authority

is given for all Professor Bigelow's contentions. The introduction contains a brief, yet thorough, discussion of the theory of will-making, in which the learned author effectually deals with the theory of "State ownership." The history of wills is traced from the early periods of Anglo-Saxon law down through the Norman conquest, and to the passage of the Statute of Wills and Statute of Frauds. The subject is carried on in a logical way, the author dealing with the nature, construction, effect and premature ending of a will. In the part devoted to the construction of wills Professor Bigelow has exhaustively dealt with that perplexing question, and his work deserves the most hearty commendation.

The uniform excellence of the "Students' Series," as well as of the general publications of Little, Brown & Co., is well known, and little need be said to add to the reputation of this firm for legal publications. It is sufficient to say that the mechanical part of the work on this little volume is all that could be desired.

On the whole, no course of study of law is complete without a course in the Law of Wills. This work of Professor Bigelow's is just the thing to present, in a compact and interesting manner, to students a subject so important and so interesting in itself; and not only is it the thing for students, but no practicing lawyer can read it without gaining some advantage therefrom. It would be a gem in anyone's library.

*B. D. R.*