

BOOK REVIEWS

JURISPRUDENCE. By Edgar Bodenheimer. McGraw-Hill Company, New York, 1940. Pp. xiii, 357. Price: \$3.50.

By means of an inadequate, though not incorrect, title, this excellent book makes a bad start. For the practicing lawyer, "Jurisprudence" is likely often to be a rhetorical synonym for law in such common applications as "Equity Jurisprudence", "Medical Jurisprudence", etc. However, except as it presents a problem in taxonomy, the question whether this book is properly entitled or not, has no importance.

Since, then, the title of this book does not definitely tell the reader what lies between the covers, it becomes the function of the reviewer to inform him.

The book has four parts as follows: I. Power and Law (dealing with anarchy, despotism, sovereignty, custom, morals, law). The section on Justice perhaps should have been transposed to Part II, which treats the Law of Nature in an historical survey. Part III treats the Law-Shaping Forces (political, psychologic, economic, national, and racial). We miss in this enumeration of factors (though not entirely in the discussion) chiefly such forces as the geophysical, the biologic, and the religious factors. Part IV is a discussion of Positivism.

It is apparent that the subject-matter treated is what, in various languages, is known as "general theory of law" (e. g., Korkunov, Sforza, Bustamante y Montoro). The German term is *allgemeine Rechtslehre* (e. g., Adolph Merkel). So far as we know, this is the first indigenous treatise which has appeared on general theory of law in this country. Korkunov's (Russian) work (1887) is available in English (Modern Legal Philosophy Series). In that same series is also found in English translation the comparable book by Berolzheimer (*Kulturstufen der Rechts- und Wirtschaftsphilosophie*, 1905).

As an historical survey of theories of law we have no doubt that this work deserves and will be accorded high praise. The field surveyed is extensive. There is no other indigenous treatise which will provide a basis of comparison. A comparison with foreign texts only serves to accentuate its merit.

There are those who will contend that the author's painstaking and informative recital of the external history of Natural Law, while creditable as a piece of writing, has no value, perhaps on the view that Natural Law occupies today the same scientific position as, say, the phlogiston theory. To take this position, of course, would be utterly mistaken. It would refuse to recognize the important contribution made by Natural Law to that field of thought called in other days, international law. It would ignore the capital influence of these ideas on written constitutions. It would also fail to see the dominating rôle which this doctrine has exerted in the past and still exerts on the structure and content of legal systems. The idea of Natural Law has been destroyed hundreds of times. It has in recent years been regarded as the greatest illusion that has assailed the legal mind. The fact, however, remains that the idea survives, and it is also a fact that it will probably survive for an indefinitely long time. As Windscheid said in a rectoral address, "Natural Law is an ancient, never-ending dream of mankind."

The author advances a Natural Law principle of his own invention. He says: "Law in its purest and most perfect form will be realized in a

social order in which the possibility of abuse of power by private individuals as well as by the government is reduced to a minimum." Since this is a formula expressing an ideal which never can be realized, as the author concedes, we wonder (perhaps too captiously) why he admits even a minimum of abuse. More seriously, we question the significance of the expression "abuse of power". What is abuse of power? When that question is answered we may find that we have nothing more than the well-known Kantian or Spencerian formula or perhaps the Stammlerian formula.

We have found some difficulty in understanding what the author means by power. Rights are a form of power according to the author. It is not clear what distinction the author seeks to make between law and power, since apparently "the element of coercion is not essential to the concept of law" (p. 15). Positive rights would seem to be a creation of law. If rights create power relations and law is not a power relation, a latent contradiction seems to arise. Thus he says that an agreement between two persons made on a desert island (and presumably not subject to dominion of any state) creates a "relation of law" (p. 4). We fail to see the valid point. The author has severely criticized Kelsen because Kelsen's norm theory includes the decrees of an autocratic ruler. The author goes beyond Kelsen. According to his view two persons on a coral reef may create the phenomenon of law.

Are there any limits on definition as measured by empirical standards? We believe such limits exist. One of the tests is significance. Two persons living in an independent world of their own cannot create a phenomenon of law. A dictator who by arbitrary decree of general application governs a people does create a phenomenon of law. The difference in these instances lies in their significance and that significance is obvious. We may go a step farther—suppose a dictator reserves the right to interfere with rules of general application in individual cases by arbitrary decree which cannot be subsumed under a general rule observed by the dictator—is such a social condition a "condition of law" (*Rechtszustand*)? Kelsen answers in the affirmative. The author severely criticizes this position. He says "this view deprives the concept of law of all meaning." This crucial example presents the problem in its best light. We confess an enthusiastic admiration of the book under review so far as it deals with the verifiable objective facts of legal theory, but we find it impossible to follow the author in many of his conclusions. On the point under discussion (and it is typical of the attitude and reasoning of the author) Kelsen is criticized because he refuses to consider anything but a theory of norms apart from considerations of history, expediency, or moral value. The author admits, as he must, that in logic, Kelsen's position is unimpeachable. The author realizes, too, that Kelsen admits, as he too must, the need of sociological explanations and treatment of the legal establishment. On the author's basis of reasoning, a stronger case can be made against the author himself because he has published a book labeled "Jurisprudence" and has refused to treat the subject of jural analytics. For the same kind of a reason, the subject of pure mathematics is bad because it does not deal with applications. And, again, an architect who draws the plans for an apartment or hotel building has failed because he has not drawn pictures of the furniture and of human beings which are to occupy the structure when and if built.

What lies in the background of these ideas? We cannot be sure of the answer since it may be based on subjective considerations. It is evident that the author does not approve of despots, but surely what even the most arbitrary of despots decrees has a content not distinguishable in social

*importance* from the laws issuing from the most enlightened democratic government.

Another point that may be noticed, and we regard it as one of capital importance, is the implication that legal positivism is not merely inadequate to explain legal reality, but that it is subject to reproach because it declines to deal with natural law ideas. The first objection probably is well-founded; the second is utterly wanting in merit. Legal positivism may be a legal philosophy or it may be merely a technique. The author, we believe, overlooks the distinction. He overlooks the possibility that a legal theorist may devote his thought, researches, and writing to what the author calls analytical positivism and at the same time be an incurable metaphysician. An analytical positivist may be a Kantian (e. g., Kelsen), an Hegelian (e. g., Kohler) or he may even be a scientific empiricist in philosophy (e. g., Cook?). We think it is even possible that a man can be a legal positivist in his technique and methods and believe in Natural Law. And here we may ask, "Is anyone entirely free from the seductions of Natural Law?" We may go even farther, "Can anyone avoid a belief in Natural Law in some one of its many forms?" Of course it may turn out that the belief has only a visceral origin. If the implied answers follow, as we think is inevitable, they have no relevancy on the present issue. The material progress of the modern world is due precisely to this diversity and specialism. Whether philosophical positivism is sound or not, is not accurately a question of jurisprudence. Positivism in jurisprudence is a mere method or technique. It may be admitted that its postulates are subject to review in the forum of philosophy. The chief postulate of legal positivism is that law is a coercive legal phenomenon. We are not convinced that the learned author has succeeded in impeaching it.

To sum up: We regard this book as a valuable and clearly expressed statement of the problems which it undertakes. One of its interesting features is that the author discusses with shrewd comments not alone the frequently dissected views of the leading jurists of the past, but also with like candor and pertinency mentions, and sometimes discusses, the views of various living jurists—several of them Americans (e. g., Thurman Arnold, John Dickinson, Jerome Frank, K. N. Llewellyn, Roscoe Pound, N. S. Timasheff). There is no other similar work which is so contemporaneous.

Albert Kocourek.†

THE MACHINERY OF JUSTICE IN ENGLAND. By R. M. Jackson. University Press, Cambridge; The Macmillan Company, New York, 1940. Pp. viii, 342. Price: \$3.75.

David Copperfield was warned by Mr. Spenlow that, in the practice of the law, a gentleman takes things as he finds them. Doubtless, the Prerogative Office was not efficiently managed; but, doubtless, it would last their time. He was right, too, said David, for the Prerogative Office survived in the teeth of a great, adverse Parliamentary inquiry. Like David, some Englishmen have criticized the administration of justice in their own country; others, following Mr. Spenlow, concede that the system is "a heterogeneous growth of complex past expedients",<sup>1</sup> but they are satisfied, withal, that English law metes out justice effectively. Americans, too, have returned to tell us of the machinery of British justice, always with interest,

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often with reverence. Recent events have enormously stimulated that interest here. News of the damage to the Temple, for example, strikes American lawyers with a sense of personal loss. Appearing at such a time, Mr. Jackson's well written study of the machinery of justice in England,—corrected down to August, 1939,—would inevitably attract attention.

But this book is not just another study of the subject. The author is a law professor at Cambridge and solicitor of the Supreme Court. Therefore, we would anticipate a sound theoretical as well as practical discussion. Nor are we disappointed. The book is an eloquent, well informed presentation of the whole case for legal reform,—upon two main lines of attack: first, it is proposed to centralize British legal machinery through the establishment of a Ministry of Justice; and, second, it is planned, in legal education, to shift the emphasis from a study of the substantive rules of the common law to the day-by-day work of courts and social legislation.

In the Preface, the author states that his book is the outgrowth of his own teaching at Cambridge for some years, and of a belief that people, in general, no less than law students, need to know how "the present system works and what criticisms and suggestions have been made". His seven chapters have the following headings: "Historical Introduction", "Civil Jurisdiction", "Criminal Jurisdiction", "The Personnel of the Law", "The Cost of the Law", "Special Tribunals", and "The Outlook for Reform". There is little documentation, though the author anticipates this criticism by saying that it is not his purpose to write "an exhaustive treatise".

Throughout, the book shows a mature familiarity with legal history, particularly in the excellent first chapter. Yet the limitations of the historical school in law are recognized, the author pointing out that Dean Ames "could even contend that because a notion was not present in the fourteenth and fifteenth centuries, it has no business to exist in modern law; . . ."<sup>2</sup>

A clear-cut picture is drawn of anomalies, inconsistencies and lack of response to modern demands in the machinery of English law. Costs of litigation are unreasonably high. "The expense of conducting an average commercial action in London is £400 for one party; this would mean £700 costs for the party who lost."<sup>3</sup> In fact, "no section of the community is satisfied with the present cost of litigation."<sup>4</sup> Appointments to judicial office are "mostly the reward for faithful political service";<sup>5</sup> more than so much for eminence at the Bar. There is no retiring age for justices in the superior courts. Among the magistrates, there are many who should be retired for age. "Infirmity, particularly deafness, is by no means uncommon."<sup>6</sup> "The Summary Courts are, with few exceptions, composed of lay magistrates."<sup>7</sup> Arrears of work are allowed to accumulate. Furthermore, "the state of our judicial statistics is deplorable."<sup>8</sup> "We do not know," for example, "how many of the cases that come before the Kings Bench Division are small cases."<sup>9</sup> Tedious and expensive delays could

2. Page 318, n. 3.

3. Page 247.

4. Page 248.

5. Page 132.

6. Page 133.

7. Page 135. Lay magistrates have not escaped criticism from other legal historians. George Nupkins, Esq., Magistrate at Ipswich, told Mr. Pickwick that "Duelling is one of His Majesty's most undoubted prerogatives,—expressly stipulated in Magna Charta,—one of the brightest jewels in the British Crown,—wrung from His Majesty by the Barons."

8. Page 323.

9. Page 323.

be avoided, if more judges were permitted to try regularly the same class of cases, thus becoming specialists, and an administrative expert appointed for the courts. The Bench is weak in its interpretations of statutes, that is to say, "there is a continuous conflict between those who frame statutes and those who interpret them."<sup>10</sup> Yet, "much of our legal system rests on statute."<sup>11</sup>

A comprehensive survey of the work of all courts should be carried through, and upon that basis, a Ministry of Justice created, centralizing all administrative agencies connected with the administration of justice, under a responsible Minister of the Crown, as the head. This would coordinate and unify the whole machinery of justice, eliminate useless appeals and keep the courts abreast of their work.

Reform cannot be expected to originate from the judges. For example, conferences of judges from time to time are provided for by the Judicature Acts of 1873-5, yet, after forty years, "not a single suggestion for change has come from the judiciary as a body."<sup>12</sup> Nor is much to be hoped for from barristers and solicitors as a class, in respect of action for reform. Even if a Ministry of Justice were set up, it would not be self-operating. Mr. Jackson concludes that there must be a new spirit "which will come from a generation of lawyers, whose training includes a study of many of the matters that would be handled by a Ministry of Justice; this would soon work a great change."<sup>13</sup> "English law and its administration through the courts is dependent on the legal profession, and if our system is to work well and develop in a satisfactory way, the legal profession must be properly educated."<sup>14</sup> "Lawyers too must see their work in its social setting."<sup>15</sup> "It is significant that the best enquiry into the working of a law court has been made by an American law school."<sup>16</sup> The function of law schools in supplying leaders for useful research is also recognized and emphasized. Finally, Mr. Jackson says: "If legal education paid far more attention to the analysis of social legislation, and did not concentrate so much upon common law, we should slowly get a change."<sup>17</sup>

British justice tends to be more and more localized, and legal education leaves "out of consideration the actual working of the law."<sup>18</sup> Reform is long overdue. With all his enthusiasm for reform, Mr. Jackson never adopts the technique of Jack Cade or the Donnybrook Fair. In fact, he says: "I do not claim that my suggestions are the only sound solution; they are put forward more as a basis for discussion."<sup>19</sup>

Those who might anticipate a mid-Victorian complacency or indiscriminate disparagement of the machinery of English justice in this book will be alike disappointed. If, as Mr. Jackson says, enlightened public sentiment is essential to reform, then he may well take credit for having illumined the scene of action in a clear, steady light.

Hugh J. Fegan.†

10. Page 214.

11. Page 304.

12. Page 213.

13. Page 320.

14. Page 195.

15. Page 195.

16. Page 320, n. 1. "A Study of Law Administration in Connecticut (1937), a product of the Yale School of Law, under the direction of Dean Clark and Professor Shulman."

17. Page 215.

18. Page 319.

19. Page 320.

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CASES AND OTHER MATERIALS ON THE LAW OF CONVEYANCES. By Arthur T. Martin. Callaghan and Company, Chicago, 1939. Pp. xi, 653. Price: \$5.50.

This book appears as one of a new series of casebooks on real property, which joins the growing list of successors to Professor Gray's famous series of property casebooks. This writer has commented upon the advantages and disadvantages of the "series" scheme of publication in another place.<sup>1</sup> It usually places the teacher of the law of real property in a position which requires him to use at least two of the books in any series, although he might prefer the treatment of the materials and cases selected by different authors in different series. If he follows the latter course he will usually find that the books do not fully supplement each other. The one-man series of Professor Gray, and subsequent works such as those of Professor Warren or Professor Walsh would avoid this difficulty. Where there are several authors in the series, such as the Bigelow-Aigler series, if a teacher wished the cases on "estates created" to go with his first semester course, and the "covenants other than for title" to be treated in the second course, the student must buy both books at the beginning of the year and use portions of the books at varying intervals. The Fraser-Kirkwood series could not be adapted to the Madden-Bigelow book, nor could the Powell-Handler series be used interchangeably with the others, though the Handler book could be used with the Frazer volumes, and with the cheerful cooperation of the writer's colleagues in Contracts and Equity.

All of this seems necessary background in estimating the production of Dean Martin now under examination, for the area and content of the work, though not the personal treatment of the subject-matter, is dependent upon the position of the book in the "series".

Apparently the plan of the "series" was to limit Dean Martin closely to the portion of the field of property law designated by some as "Conveyancing" and by others as "Titles". Within this area he has treated his subject matter in an original and modern manner, limited only by certain conventional partition walls, and not entirely by them. His book is divided into four main parts: The Conveyance; Impinging Doctrines; The Recording System; and Title Registration.

The first main division is divided into the conventional: History, Execution, Content and Form, Description, and Covenants for Title. The Historical Survey is a nineteen page article by the author and one case completes that chapter. Alas, poor Uses! I knew him well.

The second heading, Impinging Doctrines, is his own classification of the materials covering Estoppel by Deed, Adverse Possession and User, and materials on Zoning Laws, Lis Pendens, and Statutory Liens. The last named is treated rather summarily. Perhaps enough is given to make it provocative and stimulating under the later treatment of Marketable Title. Some property law teachers might prefer to have adverse possession and user treated as impinging on possessory rights in land. The title is an acknowledgment that the author recognizes the topics as impinging on a narrow view of conveyancing.

In part three, The Recording System, we find well selected modern cases, which afford a basis for comparison and contrast between the laws and decisions of various jurisdictions. Cases containing full discussion of the various issues have been selected wisely for that reason. Material on Title Insurance has been presented here, with some cases.

The fourth part, Title Registration, contains some excellent excerpts from writers on the subject, and some leading cases.

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1. Book Review (1932) 18 ST. LOUIS L. REV. 174.

Such is the subject matter in outline, and within the limits set, any other arrangement would be unsuitable. Dean Martin's contributions in treatment are original, valuable, and extensive. Throughout the various sections he has reduced the compass of the book by original summaries and explanations, and by excerpts from well chosen law review articles or text-books. This treatment gets away from the traditional casebook technique, replaces some case material, saves space, and assures the teacher that all members of his class are exposed to at least a minimum of extra-case materials, usually referred to by the instructor or in footnotes. The limited number of copies of such materials in most libraries usually prevents the entire class membership from making use thereof and interest in "outside reading" lags. The footnotes are numerous and refer to additional materials of a quantitative or condensed type, as well as to additional cases. They contain many cross-references to prior or subsequent cases for contrast or comparison, and this unifies the subject and multiplies the case material on a point without adding to their bulk. The above very desirable features appear throughout the book, eliminating the over-crowded appearance frequently observed, and aiding the author in attaining the object stated in the preface, to furnish "a basis for visualizing and appraising a system of conveyances."

Teachers are further assured of having in the hands of all students materials included in the book, such as typical forms of deeds and other types of conveyance, an illustration of an abstract of title, a brief discussion of curative acts, a title insurance policy, and an excerpt from Mr. Notnagel's *Check List for Use in Real Estate Transactions*, quoted from with special reference to tax liens. The foregoing statements show that the presentation of materials by Dean Martin is along presently developing lines and the cases selected for study are chiefly from American courts, and largely of recent date. Within the confines of the field treated the product is a very teachable book which has departed from traditional patterns of casebook technique, not in its law, but in the selection of and treatment of materials for teaching purposes. Why implied easements, easements of necessity, and easements implied from quasi-easements appear in this connection and easements created by grant and by reservation are to appear in the other volume is not clear. The cases are, of course, problems in construction, and in this book, as in most books, more is taught from construction than from models. Perhaps the embryo conveyancer may be thus warned not to leave such matters to construction.

Cross-reference on page 289 directs the reader to the first volume where covenants other than for title are to be found. It does seem that so good and modern a book might have found room for the conveyancing phase of such covenants. Blackstone's formal parts of a deed (p. 129) does indicate where such provisions should be inserted in the deed. Cases on Reservations and Exceptions are included (pp. 196-206) but draftmanship, as such, appears only incidentally, and conveyancing involves the foregoing as well as many other complex problems. Perhaps we have in mind a course in the drafting of legal instruments. At any rate authors in this field are not stressing, openly, drafting, drafting and more drafting to "prepare the law student to render those non-litigious services" (preface). We must teach the principles, but we cannot overlook what men are doing and want done. Professors Leach and Powell have pointed out how closely the problem of draftmanship is interwoven with the study of future interests, wills, and trusts, as well as deeds and leases. "Our law courses, aimed largely at producing a lawyer who knows neither the uses to which his techniques are put, nor the impacts of fact out of which his techniques

emerged, turn out at best a man under a handicap; more typically, they fail even to teach him his techniques; only the gifted learn *in vacuo*."<sup>2</sup>

Chas. E. Cullen.†

THE FEDERAL INCOME TAX. By Roy G. Blakey and Gladys C. Blakey. Longmans, Green and Co., New York, 1940. Pp. xvii, 640. Price: \$7.50.

Taxation literature is lacking in good studies of the legislative development of the principal taxes. Such studies are needed both by the tax economists who center their attention on the more general aspects of revenue problems and by the tax lawyers who are concerned with the details of the case law and the statutory provisions. This book, which is a history of federal income tax legislation from the Civil War days to 1939, fills part of the gap and does it well.

The first 478 pages of the book are organized on a chronological basis with a chapter devoted to each of the principal income tax acts. The political and fiscal background of the various acts is outlined and the discussion in the Congressional Committees and on the floor of the House and Senate is summarized. These chapters contain an excellent description of the setting of the different revenue acts and the conditions out of which they grew. This was a task well worth performing, but the authors might have given a better picture of the legislative process as it operates in the development of the tax structure, if they had devoted less space to the political battles over rates and exemptions, and given more attention to the development of the policies involved in such portions of the statutes as those relating to capital gains or the provisions governing the taxation of trust income. For example, the chapter on the epoch making Act of 1921 might well have been expanded along this line, although, of course, a detailed study of the statutory law is not within the scope of a book of this kind.

The concluding chapters are devoted to a topical discussion of the definition of taxable income, rates and exemptions, and administration.

This book will not furnish the lawyer material for his brief, but it will repay his study if he is interested in the general development of the income tax.

Paul W. Bruton.†

CONQUEST AND MODERN INTERNATIONAL LAW, THE LEGAL LIMITATIONS ON THE ACQUISITION OF TERRITORY BY CONQUEST. By Matthew M. McMahon. Catholic University Press, Washington, 1940. Pp. vi, 233. Price: \$2.00.

This work is an examination of the "obstacles and bars to the application of conquest" as a valid basis for title to determine to what extent these "bars may be interpreted as legal limitations . . ." (Preface, p. v). Conquest is defined "as a coercive act whereby territory is acquired . . . through belligerent operations, or by measures short of war . . ." (p. 14). The author surveys the opinions of writers from St. Augustine on, showing that Vattel laid down the rule that conquest conferred lawful title and pointing out that this view has been shared by many modern writers and by various tribunals. In his opinion, however, there is a growing

2. Book Review (1926) 40 HARV. L. REV. 142, 145.

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opposition to conquest as a valid basis for title. What concerns him more is whether there are actual legal limitations on conquest. He maintains that there are three: certain fundamental principles dealing with the rights and duties of states, many multilateral treaties, and the policies of non-recognition and non-intervention. His conclusion is that "despite recurrent wars, the growth of peaceful change and the legal restrictions on the use of force in the relations of states have tended to make the act of conquest illegal." (p. 214).

The study ranges through a wide body of literature not only on conquest but on related topics. Some of the latter are treated at greater length than is necessary for the purpose of the book or are buttressed by quotations which might have been omitted or summarized. The author has done well in laying bare the anomaly of modern international law which, on the one hand, upholds the sovereignty and independence of states and, on the other, recognizes the violation of these rights as a mode of acquiring good title to territory. Though he sympathizes with the view that the character of conquest is non-juristic, he gives a full discussion of writers who disagree. At the conclusion of his study of treaties limiting or, in the case of Pan-America, eliminating conquest as a legal mode of acquisition, he recognizes that they will not end wars of aggrandizement but will make it impossible for states to justify such action. After repeating the familiar narrative of recent practices regarding non-recognition, the author is forced to conclude that the case of Manchuria may furnish a precedent, but that policy has not yet crystallized in a rule of law. The policy of non-intervention is of still more doubtful force.

In general, it may be said that this book will not change the opinion of the positivist about conquest, but it does present an earnest and well-considered statement of the materials on the subject.

*Alice Morrissey McDiarmid.†*

## BOOK NOTES

HOW TO PROVE A PRIMA FACIE CASE. (Revised and enlarged edition.)

By Howard Hilton Spellman. Prentice-Hall, Inc., New York, 1939.

Pp. xviii, 815. Price: \$7.50.

Many recent graduates of law school feel that the greatest gap in their legal education is in the field of actual trial work—in the preparation of cases for trial, and in courtroom technique. This important and eminently practical field of law has been almost completely neglected by the law schools. There are arguments both pro and con as to whether the curricula of the law schools should be broadened to include practice in this type of work, but the fact remains that the actual conduct of a trial is a virtual mystery to the young attorney newly admitted to the practice of law.

It was in the attempt to alleviate this situation that this book was originally written, and Mr. Spellman has ably carried on this effort with his work in revising and greatly enlarging the second edition. This volume is not a profound treatise on the law, nor does it contain searching analyses of intricate legal problems. The authors specifically disclaim any such intention. Their purpose has been to create an intensely practical book that will give the practitioner an idea of the basic facts that must be proved in various selected types of cases and a point of departure for further study of the legal propositions applicable to the peculiar factual situation of each individual case. Each chapter deals with a separate legal situation, and

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commences with a sample examination of witnesses designed to indicate the essential testimony that must be produced to establish a prima facie case. There follows a series of Hints by the author pointing out the most important rules of law applicable and illustrated by quotations from leading cases. Although these quotations are taken primarily from New York decisions, a selection of source cases from all jurisdictions is included at the end of each chapter.

There has been added to the original edition an important new section in which a number of situations common to many causes of action are developed. In this division are included chapters on such frequently recurring subjects as expert testimony, proof of telephone conversations, and the introduction of documentary evidence. The final part of the book is devoted to a presentation of two complete trials. This is of particular value to a young lawyer desirous of obtaining some insight into the intricacies of court procedure.

It is of course true that the actual conduct of litigation cannot be learned from books, and that proficiency in this line can only be attained through long experience. However, "How to Prove a Prima Facie Case" does serve a valuable purpose by indicating the essential elements of the various causes of action and by attempting to show the pitfalls that must be avoided.

*Robert W. Sayre.†*

JURISDICTION AND PRACTICE OF THE COURTS OF THE UNITED STATES. (Fourth Edition.) By Charles W. Bunn. West Publishing Company, St. Paul, 1939. Pp. ix, 257. Price: \$2.00.

This book is an attempt to condense into some 212 small pages of large type a treatment of the salient points in federal jurisdiction and procedure. To the extent of the success achieved, it is significant because of its very brevity, paucity of citation and summary treatment.

Most of its inaccuracies—and they are not few—have been pointed out elsewhere.<sup>1</sup> They should serve as a warning to anyone who might regard the book as the last word on any specific problem in the field. Furthermore, there are numerous omissions which might have been filled at the expense of the 45 pages devoted to tables and index, unquestionably a waste of space in this case. For example, there is nothing on equity practice; nor does any hint about criminal procedure appear, although there is a brief summary of criminal jurisdiction. In the section on state law as applicable in the federal courts, less discussion could have been given to the situation where the highest court of a state reverses its own previous decision, and more to the everyday questions of conflict of laws which are now more acute as a result of the recognition by the federal courts of its basic principle in *Erie R. R. v. Tompkins*.<sup>2</sup>

Such deficiencies, however, should not obscure the principal value of the work. Any student or practitioner who is totally unacquainted with the subject will do well to invest the few hours necessary to go through its pages, even though it cannot be used as a hornbook. Giving, as it does, a bird's-eye view of the field, its plan should have served as a model, since it was first issued over a quarter of a century back, for similar work in other fields of the law.

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1. Book Review (1939) 24 MINN. L. REV. 141.  
2. 304 U. S. 64 (1938) 86 U. OF PA. L. REV. 896.

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