

decisions handed down since the delivery of the lectures seem to indicate that so much judicial self-limitation as he does predict may not occur. *Borden's Farm Products Co. v. Baldwin*⁷ indicates, if the *Gold Cases*⁸ do not, that the Court will not refrain entirely from interfering in economic affairs. *Panama Refining Co. v. Ryan*⁹ seems to presage greater judicial control over subordinate legislation than Professor Corwin envisages. *Mooney v. Holohan*¹⁰ shows that the Court can still find new procedural guaranties in the due process clauses. But, notwithstanding the implications of these cases, the climate of opinion, legal and non-legal, which made possible such decisions as the *Minimum Wage Case*¹¹ and the first *Child Labor Case*¹² seems to have altered. Today it appears to be certain that the Supreme Court will uphold legislation which the Court of yesterday would have deemed violative of the fundamental rights of individuals and corporations and of the reserved powers of the states. It is doubtful that Professor Corwin anticipated a greater revolution in constitutional law than this.

DOUGLAS B. MAGGS*

* Professor of Law, Duke University.

Illinois Civil Practice Act Annotated (with Supplement). Oliver L. McCaskill, Editor-in-Chief. Chicago: The Foundation Press, Inc. 1933. Pp. XV, 664. \$10.00.

The Illinois Civil Practice Act confronted the lawyers of Illinois of January 1, 1934, with most of the awe-inspiring generalities of the typical codes. True, some of the most scary of the stuffed shirts had been omitted: law and equity were not to be jeopardized by an operation removing their "distinctions," and the substantive law rights of many trustees, such as assignees for collection, and partial assignors, were not put to the test of legal battle by that ghost-like "real party in interest." But these attempts at debunking are at least partly offset by the inclusion of most of the more recent code reforms, and these have often been couched in the same types of glittering generalities that have proved so vexing to common law lawyers.

True, many another bar had faced a new practice code without effective text-book aid, and had survived—but how awkward and how disappointing had been those first skirmishes. Few took consolation in the fact that the code suffered more than the lawyers; no friend of the code applauded when so often the court, too blind to see the "spirit of the code" or perhaps too dazzled by the generalities, could find nothing behind the bold front other than "an imbodiment of the rules of pleading as they existed, with some omissions and numerous imperfections."¹³

The committee on Civil Practice Act of the Illinois State Bar Association, with laudable understanding, recognized that the enactment of the act has not terminated its duties. The effectiveness of the reforms lay not in the generalities of the act, nor even in the rule making power given the Supreme Court by the Act, but in the friendly

⁷ 55 Sup. Ct. 187 (1934).

⁸ *Norman v. Baltimore and Ohio Railroad Co.*, *Nortz v. United States*, and *Perry v. United States*, all decided February 18, 1935.

⁹ 55 Sup. Ct. 241 (1935).

¹⁰ 55 Sup. Ct. 340 (1935).

¹¹ *Adkins v. Children's Hospital*, 261 U.S. 525 (1923).

¹² 247 U.S. 251 (1918).

¹³ Justice Barculo, in *Alger v. Scoville*, 6 Hon. Prac. (N.Y.) 131 at 140 (1851).

interpretation given by both the lower and the higher courts. Little would be gained unless the lawyers were aided and the courts guided. Fortunately Professor McCaskill was available for the duties of Editor-in-Chief; capable assistants were to be had in Albert E. Jenner, Jr., and Walter V. Schaefer; and many members of the bar, including Mr. Walter F. Dodd, lent their assistance. In the few months intervening before the act was to be put into use, a sympathetic treatment was given each section of the act.

While lack of time made an exhaustive citation of cases unthinkable, the tracing of the source of each section gives the practitioner the information he needs for locating the cases and other materials. The annotations are concise in statement, and are preceded by summaries, in black-letter type, that make them more usable. There are adequate cross-references in the text, and the various discussions are made readily available by a good index. The search of the lawyer for discussions in the text and for materials elsewhere is aided by several tables of cross-references and sources. Many good forms are included in the appendix. All of these together make this book a real aid to the lawyer who is trying to avoid pitfalls when proceeding under the new act, or is attacking or defending steps after they have been taken.

This statement of its practical value might be misleading, in view of the title of the book. Usually an "annotated" statute or set of rules is judged by the number of the cases it cites. The discussion is unimportant; a mere citator is adequate, but it must cite all the cases, and it must be a recent edition. Mr. McCaskill's "annotations," on the other hand, are discussions giving the history of the section and explaining its meaning. The style is that of the teacher who has a clear view of the whole field and explains from that general knowledge how each section fits into the scheme, rather than that of the digest writer who sees but one section at a time in attempting to cite every case that bears directly on it. This work should have permanent rather than temporary value. Its success should be judged not by the exhaustiveness of the briefs prepared with its help, but by the spirit and understanding with which the courts interpret the broad provisions of the code. It is at least possible that the Illinois courts will interpret the act in accordance with the spirit of the reform rather than in accordance with the common law; and if they do, this book will probably be deserving of a large share of the praise.

One regret cannot be suppressed, in view of the fact that the individuals responsible for these annotations were likewise responsible for the act. Why was it possible, in the annotations, to put the intent into "plain and concise statements" while, in the act itself, the usual pleasant-sounding but hollow phrases of the typical code were so often retained? Why could not the act indicate, as clearly as the equally condensed black-letter summaries, to what extent the old rules were retained and to what extent the "spirit of the code" required that they be altered?

This criticism of the act applies mainly to the sections on pleading. Sections twenty-three and twenty-four, on "Joinder of plaintiffs" and "Joinder of defendants," will serve as illustrations. The discussion properly states that the main problem is one of joinder of separate causes of action involving different parties, and the rule, applied to both plaintiffs and defendants, is the equity rule that joinder will be permitted if sufficient grounds appear for uniting them in order to promote the convenient administration of justice. The desirability of extending such a rule to actions at law may be debatable; it is "flexible" and will "promote trial convenience" if you favor it, and it is "indefinite" and will "subject joinder to the whims of the trial court" if

you disapprove. But it undoubtedly represents the modern trend, and is in keeping with the "spirit of the code." Assuming it is adopted, why was it not clearly stated in the act, as it is in the black-letter discussion? Why was the problem misstated to be one of joinder of parties rather than one of joinder of causes of action? Why were the two sections in the act confused by the introduction of foreign problems concerning "necessary parties" and alternative causes of action? Why were the two sections used, with almost entirely different phraseology and even physical appearance, as though the problem of joinder of plaintiffs were fundamentally different from that of joinder of defendants? The first part of section twenty-three will illustrate the confused language: "Subject to rules, all persons may join in one action as plaintiffs, in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, where if such persons had brought separate actions any common question of law or fact would arise. . . ." Remember, the rule is an indefinite (flexible) one, and the test is trial convenience. Does not section twenty-three leave the impression that the rule is a definite one, and is based upon something about a "transaction or series of transactions"? What is a "transaction"? Will the maze of confusion attending its use for determining permissible joinder of causes of action involving the same parties, as used in the typical act following the New York Code, be eliminated by adding: "or series of transactions"? Is any part of this section understandable? Is there anything in it that states or even intimates that "administrative convenience determines what claims shall be tried together"?²

But little would be gained by a further discussion of the defects in these or other sections of the act. We should rejoice that several such defects of other codes were eliminated when this act was revised by the committee. Those remaining forceably indicate the need for this book and explain why hope can be expressed that, with its aid, the interpretation of the act by the courts of Illinois will be more in keeping with that "spirit of the code" so well explained in these annotations.

WILLIAM L. EAGLETON*

* Professor of Law, University of Chicago.

Handbook of Criminal Law. By Justin Miller. St. Paul, Minn.: West Publishing Co., 1934. 1 vol. Pp. xiii, 649. \$5.00.

This book should prove a handy reference volume for busy lawyers, stating briefly, with illustrations drawn from the cases, the well-accepted principles of substantive criminal law. While largely based on common law offenses, it also indicates their important statutory variations.¹ It is a revision of Mikell's edition of Clark's *Criminal Law*,² and Dean Miller's efforts have given it considerable increased utility.

The book has been pretty thoroughly revised, although there are some relatively unimportant parts which reproduce the older edition with only minor changes in text

¹ P. 44; n. 11.

² See degrees of murder, pp. 273-278; mayhem, pp. 291-292; aggravated assaults, pp. 309-312; burglary, p. 339; degrees of larceny, pp. 373-374; abortion, pp. 444-5; federal offenses relating to health, morals, comfort, and economic welfare, pp. 445-452, etc.

³ West Publishing Co., St. Paul, Minn. 1915.