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Book Review (reviewing George L. Clark, *Cases on Common Law Pleading* (1931) and *Common Law Pleading* (1931))

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reviewer is willing to claim the credit for having already used that term in the title of his law-school course.) Legislation is the process of formulating general rules, as distinguished from adjudication, the process of deciding particular controversies. There is indeed, as yet, no international super-legislature, in the strict sense of the word. But through conventions on particular topics a body of general rules is gradually forming by accretion. The process of forming these rules, and the scope of this content, is due to be studied and known.

Hitherto such a survey has been next to impracticable, owing to the wide dispersion of the materials. This volume now removes that impracticability. Here we have a collection of the principal texts, adopted or proposed, during the decade of 1919-1929. It will be a constant reference book for the vast field of international legislation, perfected or pending.

The mere list of these 229 conventions, in small type, occupies 20 pages. An idea of their scope can be gathered from the topical classification: Aerial Navigation, Agriculture, Arbitration & Conciliation, Armaments, Communications & Transit, Customs, Economic Relations, Education, Financial & Monetary Relations, Health, Industrial Property, International Institutions, International Law, Private and Public, International Rivers, Labor, League of Nations, Liquor Traffic, Literary Property, Mandates, Maritime Law, Minorities (Protection of), Navigation, Opium and Drug Traffic, Permanent Court of International Justice, Police Relations, Political Relations, Postal Relations, Railways, Refugees, Reparations, Social Questions, Tangier, Telegraphs & Telephones, War, Weights & Measures. Each of the texts is preceded by a bibliography of sources, and of comments in books and articles.

This is not the place to enlarge on any of the texts thus made readily accessible. Suffice it to say that words could not adequately express the gratitude of the profession to Professor Hudson for his labors in contributing his knowledge to the compilation of this book. The conception was great; the execution is masterly. It must rank as his "magnum opus."

JOHN H. WIGMORE.

CASES ON COMMON LAW PLEADING. By George L. Clark. Cincinnati: The Johnson & Hardin Co., 1931. Pp. x, 510.

COMMON LAW PLEADING. By George L. Clark. Cincinnati: The Johnson & Hardin Co., 1931. Pp. xvii, 221.

Professor Clark's case book on Common Law Pleading is designed primarily for a study of the scope of the common law actions. The treatment of the pleading in the actions is inadequate for students who expect to practice in the so-called common law states, but is doubtless sufficient as a background for Code Pleading.

There is a superabundance of material for the various actions, though many of the cases seem to belong in a collection on torts rather than pleading. At least, in a number of them, the tort problem overshadows any question of the action or pleading. This is illustrated by such cases as *Sullivan v. Dunham*,¹ liability for blasting; *Talcott v. National Exhibition Co.*,² liability for negligently detaining plaintiff

1. (1900) 161 N. Y. 290.

2. (1911) 144 N. Y. App. Div. 337.

on defendant's premises; *Hannabalsen v. Sessions*,³ discussion of liability for reaching over plaintiff's fence. This list might be extended considerably.

In any collection of cases on the common law actions some overlapping in other fields is unavoidable. A course in torts must deal with trespass, conversion, negligence, fraud and the like, and a course in the actions must deal with the appropriate action to enforce the liability arising from these various torts. Obviously the pleader must know the elements of a given tort in order to select his action, but it is neither necessary nor desirable to learn these elements in a course primarily devoted to something else. It would seem therefore that in a collection of cases on pleading excursions into the substantive field should be limited as far as possible.

The Editor has attempted to combine the essentials of the declaration with the scope of each action, and the two do not hang together well. In the fifty or more cases that make up the section on trespass the reader is struck with the lack of cohesion and wonders what a student would do with it. The collection may well tax the ingenuity of an instructor in organizing the material so as to give students a view of the forest which seems unduly obstructed by the trees.

There are some errors which should have been corrected. The case of *Tobey v. Webster*⁴ (p. 27) is dated in 1903. In the case of *Thorley v. Lord Kerry* (p. 128) the Court of Common Pleas appears to be reviewing on writ of error a judgment of the Court of King's Bench. This would have certainly surprised Sir James Mansfield.

In the preface to the collection the Editor gives the following explanation of his elementary text on the subject:

"Footnotes—more or less copious—are ordinarily used to supplement the case book by giving the student what is, in substance, a fragmentary text book on the course. The present Editor has preferred to publish such material in a complete and connected form in a separate volume which will, it is hoped, enable the student to get an accurate and correlated view of the subject."

Whatever may be thought of the advisability of supplementing a case book with a text, it is extremely doubtful whether the text in question serves a useful purpose. For the most part it consists of brief statements of rules of thumb about the various actions with little in the way of explanation to aid the student in a real understanding of the common law system of actions.

Some of these statements are misleading. For example, the chapter on the action of trespass on the case begins with this statement:

"Trespass lies, generally, for a direct violation of the plaintiff's person or a direct interference with land or chattels in the plaintiff's possession, or with chattels of which plaintiff has the right to immediate possession. If the defendant acted *intentionally*, trespass *must* be brought; if he acted negligently, either trespass or case can be maintained."

In a leading case⁵ on this subject the defendant certainly acted intentionally in racing on the highway, but a recovery in an action on the case was sustained for the unintended resulting collision. It is

3. (1902) 116 La. 458.

4. 3 Johnson 468.

5. *Williams v. Holland* (1833) 10 Bing. 112.

hardly necessary to cite authority for the proposition that a plaintiff may waive the trespass and bring trover for an intentional⁶ taking and conversion of his chattel. On page 41 the following statement occurs:

"It is not necessary that the defendant be benefited or that he even expect to be benefited by making the false representation in order that he be liable in deceit. But if he does receive a benefit from the plaintiff because of the deceit *the plaintiff can maintain trover for the value of the benefit* or *indebitatus assumpsit* in quasi contract for the unjust enrichment of the defendant."

In a case⁷ in which a defendant by misrepresentation had obtained an overpayment from the plaintiff an action of trover was brought and necessarily failed because there was no conversion of any specific coins or bills belonging to the plaintiff.

Some of the statements of the text are difficult to understand. Thus on page 157 it is stated:

"In some of the common law actions the scope of the general traverse—or issue—was gradually so broadened that when it was pleaded by the defendant the plaintiff was under the necessity of proving every fact alleged in his declaration; in still other actions, as trover and case, he was *required* to prove also many matters which were logically matters in confession and avoidance."

The author has not cited any cases for this extraordinary proposition, and the writer is not aware of any case requiring a plaintiff to prove anything more than the matters expressly or impliedly alleged in his declaration. Of course, where a defendant is permitted to give evidence of an affirmative defense under the general issue the plaintiff may be under the necessity of rebutting such defense, but this can hardly be called a case of requiring the plaintiff to prove matters in confession and avoidance.

About a fourth of the book is taken up with forms of declarations and pleas which are of little use to students who do not expect to use common law pleading in their daily practice.

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ANNUAL DIGEST OF PUBLIC INTERNATIONAL LAW CASES, YEARS 1927 AND 1928. By Arnold D. McNair and H. Lauterpacht. London and New York: Longmans, Green & Co., 1932. Pp. li, 591.

This is the second volume in an admirable series of annual publications which is to contain a digest of the more important decisions of municipal and international tribunals (judicial and arbitral) dealing with questions of international law. The first volume, issued in 1929, covered the years 1925 and 1926 and is to be followed by volumes covering the years between 1919 and 1926 and the years subsequent to 1928. The first volume contained digests of nearly 200 decisions, of which 70 were those of international tribunals including the Permanent Court of International Justice. The others were decisions of the municipal courts of some 34 different countries. The present volume deals with more than 300 different cases, of which about 100 are de-

6. *Bishop v. Montague* (1605) Cro. Jac. 50.

7. *Orton v. Butler* (1822) 5 B. & Ald. 652.