

Cases on Trials, Judgments and Appeals. By Thurman Arnold and Fleming James, Jr. St. Paul: West Publishing Co., 1936. Pp. 843. \$5.50.

Superficially, it appears that more than one-half of the materials in the casebook under review are not related to the topics set forth in its cleverly-worded title.¹ Beneath the surface, however, we find a thread which seems to tie "Judgments" to most of the materials dealing with process, venue and jurisdiction. Very early in the book² the editors introduce the concepts of "the correction of an irregularity," a "void judgment" and a judgment which may be set aside for fraud. Also very early³ they bring in "The Concept of Collateral Attack" and develop the distinction between collateral and direct attack. After going into these matters rather fully, they pass on to a general treatment of process, venue and jurisdiction.

Viewed broadly, procedure has to do with the time, place and manner of exercising judicial power. Power to render a judgment, or to modify or annul one, should be distinguishable from the time, place and manner of exercising such a power. We find, however, that the existence of judicial power is sometimes made to depend on when, where and how the supposed power is actually exercised. The validity of a judgment, for example, may depend on when and where it was rendered, some courts holding that a court has no power sitting at the wrong time or place. We find, also, that a court cannot render a valid judgment until certain steps of a procedural nature have been taken. Without these steps a judgment may be voidable or may be absolutely void. Another *sine qua non* is jurisdiction over the subject matter. A court is given jurisdiction of certain classes of cases and a particular case must fall within one of the classes before the court can render a valid judgment. Due process is also necessary. The taking of all procedural steps required by statute may or may not enable a court having jurisdiction over the subject matter of an action to render a valid judgment in that action. The steps taken must meet the requirements of the due process clauses of the state and federal constitutions. It thus appears that the validity of a judgment depends upon the answers to these questions: (1) Did the court have jurisdiction over the subject matter of the action? (2) Did it sit at the right time and place? (3) Were the required procedural steps (*e.g.* to acquire jurisdiction over the person of the defendant or over some of his property) properly taken? (4) Were the steps due process?

A well-rounded study of the validity of judgments requires necessarily a thorough-going study of the problems of jurisdiction, and a complete treatment of the problems of jurisdiction necessarily involves an intensive study of the validity of judgments. The problems involved are largely the same, but the approach is entirely different. In a study of jurisdiction as such, the student approaches the problems involved as a lawyer would approach them in commencing an action. In a study of the validity of judgments the approach is that of a lawyer attacking a judgment. For several reasons the latter approach is better, but the editors of the present casebook have chosen the former.⁴ The fact that they found it necessary to introduce at an early point the concepts of a "void judgment," "collateral attack," etc., indicates the nature of the difficulties which they met in their attempt to approach the problems of jurisdiction as

¹ Of the book's 843 pages, approximately 117 are allotted to "Trials," 135 to "Judgments" (*eo nomine*), and 127 to "Appeals." Some 81 pages deal with executions and pre-trial devices, while the remaining 383 pages are devoted to process, venue and jurisdiction.

² Pp. 48 ff.

³ Pp. 88 ff.

⁴ See p. 301.

a lawyer would approach them in commencing an action. By introducing those concepts early, however, they have overcome the difficulties to a large extent, and have presented a large collection of materials on process, venue and jurisdiction which should be very valuable for class-room use.

When we turn to "Trials" and "Appeals" we find a different situation. As pointed out at the beginning of this review, only 117 of 843 pages have been allotted to "Trials"—one chapter out of nine! It is difficult to see how this can be considered in any sense an adequate treatment of trial practice. The same is true of "Appeals." Whole areas of these important fields are entirely omitted; others are dealt with summarily in scanty sections of text. The treatment seems to be good as far as it goes, but it lacks much of going far enough. Much of the material on "The Place of Trial" should be eliminated to make room for topics in the fields of trial and appellate practice. Even Chapter I with its excerpts from "The Symbols of Government" should be sacrificed to provide the necessary space.

WILLIAM WIRT BLUME*

* Professor of Law and of Legal Research, University of Michigan Law School.

The Arbitration Journal—Volume I, No. 1. Published quarterly by American Arbitration Ass'n. New York, January, 1937. Pp. 431. \$5.00.

It is entirely fitting that the first number of this compact quarterly should devote some eighty pages to "an analysis and exposition of the modern practice of commercial arbitration" and but twenty or so to the discussion of the sanctions in statute and case law upon which such practice depends. The "arbitrative attitude" has from the first emphasized that, apart from private settlements, the ideal disposition of a legal controversy is to consult a "good-will" tribunal where disputes may be decided with the minimum of delay and expense and the maximum of emphasis upon the merits of the case. Too many lawyers, delighting in some technical nicety of procedure or substantive law, forget that whether the litigant seeks justice or a run for his money the facts constitute ninety per cent of the case. To such this periodical offers little. To those especially interested in arbitration practice, whether as laymen or attorneys, the *Journal* offers much in the suggestive analysis of systems, local and foreign, which they may well find applicable to their own problems. They should also be aided by the intelligent discussion of new problems raised by statutory changes and current legal decisions. To the legal practitioner with an occasional arbitration question the *Journal* should supply a growing encyclopedia of modern arbitration law and standard practice. In this connection I would suggest that an occasional supplement of modernized forms might well be published. To the layman the *Journal* should be an advertisement and beacon of hope calling attention to the 7000 members of the National Panel of the American Arbitration Association who are on call to render unpaid expert service as arbitrators.¹

The editors propose² that each number of the *Journal* will contain on the practice side articles on American and international arbitration, an inter-American section which will be reprinted in Spanish for distribution to Latin-American countries and a symposium describing the use of arbitration in some one significant field. Of growing

¹ Floyd B. Odum, *The National System of the American Arbitration Association*, p. 6.

² P. 2.