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## Vignettes Of Legal History. Julius J. Marke.

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and *Sale of Real Estate in Virginia* and *Virginia Lawyer's Basic Practice Handbook*, distributed by the Joint Committee on Continuing Legal Education of the Virginia State Bar and the Virginia State Bar Association and in *Virginia Practice Methods* (West Publishing Co. 1965) this book is the first aid afforded title lawyers in Virginia since Mr. Lucian B. Cox published the second edition of *A Manual for Title Examiners in Virginia* (The Michie Co. 1947).

While not professing to be a profound treatise on real estate law, *Title Examination in Virginia* does more than merely outline the mechanics of a title search. In fact, only one chapter is devoted to the procedure of "running the records." Rather, the author has included basic precepts which he feels the examiner must know in order to furnish his client an opinion on title. These deal with, among others, such matters as examination of instruments, descriptions, restrictive covenants, easements, chancery suits, title through decedents, liens, tax titles, and adverse possession. Throughout the book are found suggested forms for abstracting these matters.

Very useful appendices are included which make the book worthwhile to the title examiner whether he is a novice or a veteran. These include charts of land measurement, a table of curative statutes, acknowledgment requirements, commutation tables, tables of recordation fees and taxes, and samples of title examination notes, certificates, and abstract of title. Because of the size of the book, this information may easily be carried in the attorney's briefcase.

I strongly recommend that the young lawyer study this book and use it as a guide in examining his first titles. It will also serve as a review for the veteran examiner in addition to placing needed charts and tables at his fingertips.

MARVIN C. BOWLING, JR.\*

VIGNETTES OF LEGAL HISTORY. Julius J. Marke. New Jersey: Fred B. Rothman & Co. 1965. pp., xv, 337. \$6.50.

This volume by Professor Marke will both instruct and delight those who are fortunate enough to read it, especially members and aspiring members of the legal profession. For the student who is considering law study it will provide an unusual opportunity to get the "feel" of the law and thus will assist him in making his decision.

For his vignettes the author has selected from English and Amer-

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ican law, landmark decisions, intriguing personages, and ancient procedures from three periods: the early English period, with items covering 1250-1533; the later English and Colonial American period, with items commencing with 1627, and the American Constitutional period, with materials covering 1802-1873.

The volume appropriately opens with the chapter entitled "MARBURY V. MADISON,<sup>1</sup> *A Political Dilemma and Judicial Review.*" In it the author vividly describes how John Marshall, Chief Justice of the United States by appointment of Federalist President John Adams, when faced by the Jefferson administration with a political dilemma, "adroitly" avoided confrontation with President Jefferson and "established the constitutional doctrine of judicial review." In the year following the Marbury decision the Jeffersonian party brought "the only impeachment proceeding against a Supreme Court justice." In the chapter on the "IMPEACHMENT OF JUSTICE CHASE" the author describes this historic "assault upon the independence of the judiciary" and tells how it failed.

The reader is especially indebted to the author for bringing to light "THE SAGA OF GIDEON OLMSTEAD—PRIVATEER," described as "a tireless litigant, who was instrumental in securing the supremacy of the federal judiciary over the states." Captain Olmstead's litigation, under the style of *United States v. Peters*,<sup>2</sup> was successfully concluded with the judicial help of Chief Justice Marshall, and, as if justice were not its own reward, Olmstead lived until his 96th birthday in the year 1845!

Other landmark decisions of the Supreme Court selected by the author and carrying his descriptive sub-titles are: "McCULLOCH V. MARYLAND,"<sup>3</sup> "The story of a cause celebre which resolved the constitutional issue of national power versus state sovereignty"; "THE DORR REVOLUTION," "The Civil War in Rhode Island over universal suffrage. A non-justiciable question? (*Luther v. Borden*<sup>4</sup>)"; and "THE DRED SCOTT CASE," "In which the Supreme Court imposed a political judgment and committed its greatest blunder." In this period also is the litigation described in the chapter entitled "THE REPORTERS AND THE SUPREME COURT," "The birth pangs of Supreme Court reporting and how they affected the law of copyright. (*Wheaton v. Peters*<sup>5</sup>)."

The chapter on "LINCOLN AND CIVIL LIBERTIES" recreates the ten-

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<sup>1</sup> 1 Cranch 137 (1803).

<sup>2</sup> 5 Cranch 115 (1809).

<sup>3</sup> 4 Wheat. 316 (1819).

<sup>4</sup> 7 How. 1 (1849).

<sup>5</sup> 8 Pet. 591 (1834).

sions of the war years, in three episodes: "Part I. *Ex Parte Merryman*<sup>6</sup>—Does a state of war suspend the Constitution? Part II—*Ex Parte Vallandigham*<sup>7</sup>—The Supreme Court refuses to review the acts of a military commission. Part III—*Ex Parte Milligan*<sup>8</sup>—The court reverses itself." In the next chapter, "EX PARTE McCARDLE,"<sup>9</sup> "Reconstruction: Congress versus the Court," we read of the successful steps taken by Congress to avoid a feared Court decision invalidating the Reconstruction Acts. The last chapter of the American period discusses the 1873 decision in "The Slaughter-House Cases"<sup>10</sup> in which the Supreme Court placed a restrictive interpretation upon the prohibitions of the Fourteenth Amendment to the Constitution, an interpretation that has not wholly commended itself to succeeding majorities of the same Tribunal.

From the later English and Colonial American period, the author has chosen topics which have current relevance. Thus, the chapter entitled "FIVE KNIGHTS AND THE KING" (1627) recounts "the long struggle to secure the liberty of the person by the Writ of Habeas Corpus." And the chapter on the "TRIAL OF WILLIAM PENN" in Old Bailey (1670), with its sequel known as *Bushell's Case*,<sup>11</sup> ascribes to the colorful proceedings the establishment of "the right of trial juries to decide cases according to their convictions."

From the American Colonies there is the gripping story of "PETER ZENGER'S TRIAL [1732] AND FREEDOM OF THE PRESS," a vivid report "on a famous verdict in which a Philadelphia lawyer [in a New York trial] laid the cornerstone of the liberty of the press in the United States." And finally in this period, the chapter entitled "WRITS OF ASSISTANCE, SMUGGLERS, AND THE AMERICAN REVOLUTION" sets out the arguments of James Otis against the hated Writs, in the trial of *Paxton's Case*<sup>12</sup> (1761), and tells how the elements cited in the title "were instrumental in evoking the Fourth Amendment" guarantee against unreasonable searches and seizures.

From the early English period, the author brings alive notable legal personages, initially "BRACTON—FATHER OF MODERN LAW," thus described for his *De Legibus et consuetudinibus Angliae*, the first at-

<sup>6</sup>17 Fed. Cas. 9487 (1861).

<sup>7</sup>1 Wall. 243 (1864).

<sup>8</sup>4 Wall. 2 (1866).

<sup>9</sup>6 Wall. 318 (1868).

<sup>10</sup>16 Wall. 36 (1873).

<sup>11</sup>Vaughn, 135, 6 How. St. Tr. 999 (C.P. 1670). See also "The Jury That Tried William Penn," Barry R. Nager, 50 A.B.A. Journ. 168 (Feb. 1964), and "The Four Juror's in Bushell's Case," Wilmer G. Mason, 51 A.B.A. Jour. 543 (June 1965).

<sup>12</sup>1761-1772 Mass. (Quincy) 51-55, 469 et. seq. (append.) (1761).

tempt to arrange systemically the English law of that day (1250). In providing full transcripts of the pleadings in selected cases, the author thinks it probable that Henry Bracton, sometime Judge of the King's Bench and later Chancellor of Exeter Cathedral, stimulated the writing of the medieval law reports known as "THE YEAR BOOKS."

The chapter on "the celebrated and fabulous" Year Books describes them as recreating "the pomp and circumstance of a courtroom in medieval England." Rather than the work of official reporters the Year Books were compilations of the notes taken by apprentice law students on the court proceedings of that day. A great debt is owed to these medieval law students. Perhaps the American Law Student Association may some day erect a commemorative tablet in a suitable place to their ancient English prototypes. The Year Books spanned the long period of 1289 to 1535, when "just as mysteriously as they were started they abruptly ceased to appear."

The next notable jurist of the early period appears in the chapter "FORTESCUE'S DE LAUDIBUS," in the person of Sir John Fortescue, Chief Justice of the King's Bench, 1442-60, whose *De Laudibus legum Angliae* is described by the author as "the first popular English Law Book." The treatise was written while Sir John was in exile with the Lancasters after the War of Roses, for the purpose of preparing the young Prince Edward for his royal duties. "For the first time it was made clear that the common law had had an independent growth, separate and apart from the Roman law or civil law predominant on the continent of Europe; that it had an historical development which was characteristically and essentially English." Coke, in the seventeenth century "derived much help from it . . . in his *Institutes* and *Reports*, stating that because of its 'weight and worthiness,' it should be 'written in letters of gold.'"

Another type of law book is the subject of the chapter entitled "COWELL'S INTERPRETER," the saga of "A Controversial Legal Dictionary." The work was controversial in 1607, the year of its publication, because it asserted the superiority of the civil over the common law, which "aroused the animosity of the common lawyers, especially Coke," and "made assertions supporting the King's absolute power over Parliament" which so incensed the Parliament that King James was ultimately moved to suppress the book by proclamation. It is to be doubted that the Founding Fathers at Jamestown in the same year of 1607 were aware of Dr. Cowell's plight, so dire was their own.

Overlapping the three periods into which the other vignettes fall are three chapters which in a wry sense may be called "procedural" and which complete the volume. First there is the chapter entitled "PEINE

FORTE ET DURE" which describes "how and why" over the centuries until 1772 the judicially imposed torture of pressing to death was used to compel a defendant to plead to an indictment for felony. The only person in America to suffer this "ancient English penalty," the author writes, was one Giles Corey whose death at Salem in 1692 inspired a moving poem which is reproduced in the text, together with the Reverend Cotton Mather's condemnation of the practice.

Another chapter, spanning five centuries, traces the interesting story of the ancient privilege of "BENEFIT OF CLERGY," with the subtitle "Reading Tests and Penal Reform," its development, in Blackstone's words, "into a merciful mitigation of the general law with respect to capital punishment," and its beneficent assistance in the settlement of the Colonies by "felons" who "prayed their clergy" and were thereupon sentenced to transportation hither or thither.

Finally there is the chapter entitled: "ASHFORD v. THORNTON<sup>13</sup>—THE LAST TRIAL BY BATTLE" (1818) with the subtitle: "A most unusual nineteenth century trial which finally caused the abolition of a strange [English] legal practice."

Professor Marke's volume is complemented by illustrations, a table of statutes, a table of cases, and an index. The printing is clear, the type easy to read. This is a book the reviewer is happy to have in his library.

CHARLES P. LIGHT, JR.\*

FORMS FOR COMMERCIAL TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE. David W. Carroll and Frederick W. Whiteside, Jr., Editors. *Banks-Baldwin Law Publishing Company*. 1,000 pp. Forms (Publisher's Count). Looseleaf form. Replacement Parts. \$32.00.

If the promulgation of the Uniform Commercial Code did nothing more, it at least has caused lawyers to review their knowledge of commercial law, and in the process to re-examine the commercial forms they have been using. Consequently, considerable interest has developed as to the forms authorized, permitted, or required by the Uniform Commercial Code. This book is a reference book of forms for use in commercial transactions.

The publication, in loose-leaf form, contains three analytical

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<sup>13</sup>1 B. & Ald. 405, 106 Eng. Rep. 149 (K.B. 1818).

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