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Cases and Other Materials on Modern Procedure and Judicial Administration, By Arthur T. Vanderbilt

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BOOK REVIEW

Cases and other Materials on Modern Procedure and Judicial Administration. By ARTHUR T. VANDERBILT.* New York: Washington Square Publishing Corporation, 1952. Pp. xx, 1390.

Chief Justice Vanderbilt's purpose in preparing this casebook is made plain in his Preface and in the Introduction (Chapter I). Asserting in Part I of the latter his own deep feeling for "the importance of procedure in the work of the practicing lawyer and in the study of law," he nevertheless finds that "the essentials of procedure have not only been neglected, but procedure has generally been looked down on by law students and, it must be added, by most law teachers and many practitioners." To combat this disdain and neglect the Chief Justice would start the law student off "with the relatively simple and fundamental concepts of modern procedure rather than with the obsolete and complicated system of practice that prevailed in the earlier days and that is entirely alien to his life and thinking." Until recently the materials for such a modern course in procedure were not available. With the adoption and recent revision of the Federal Rules of Civil and of Criminal Procedure, however, "we can at long last introduce the law student at the outset of his studies to a simple system of modern procedure that is in force in the federal courts throughout the country and is fast being adopted on the civil side in the several states." The Civil Rules are finding acceptance for several reasons, most importantly because "the fundamental premise of these rules is that a trial is an orderly search for the truth in the interest of justice rather than a contest between two legal gladiators with surprise and technicalities as their chief weapons, an outmoded point of view that unfortunately lingers on in all too many states."

"The significance of the Federal Rules of Civil and Criminal Procedure can best be understood," the Chief Justice tells us in Part II of the Introduction, "by considering briefly the nature of the practice that preceded them." Fortunately for us, "F. W. Maitland, the most brilliant of the English legal historians, has sketched about all that the modern student needs to know of common-law procedure in seven brief lectures on *The Forms of Action at Common Law...*" These lectures are printed as an appendix to the casebook. With respect to

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equity jurisprudence, the editor writes that "the most penetrating account of Chancery practice is to be found in Langdell's *A Summary of Equity Pleading*." Excerpts from this summary are also reprinted as an appendix. The editor then traces vividly the long "fight for procedural simplicity" in England and the United States, which culminated in this country in the promulgation of the Federal Rules of Civil Procedure in 1937 and the Federal Rules of Criminal Procedure in 1944. As part of the story, the address of Dean Roscoe Pound before the American Bar Association in 1906 on "The Causes of Popular Dissatisfaction with the Administration of Justice" is reprinted in Chapter II of the casebook, together with "the dramatic story of its [hostile] reception by the American Bar Association" as told by "another great legal scholar, Dean John H. Wigmore, in an article appropriately entitled 'The Spark That Kindled the White Flame of Progress'." Referring to Dean Pound's address, the Chief Justice says, "If I had my way, I would make it prescribed reading once a year for every judge, practicing lawyer, and law professor and law student on the day he returns from his summer vacation and starts a new year of professional activity."

In Part III of the Introduction, the editor outlines "the major problems of procedure" and thereby provides a logical framework for the casebook. "Procedure under the federal rules, or indeed in any system he concludes, "is largely concerned with answering ten major questions having to do with the progress of a case from inception to conclusion, and with solving four sets of major problems revolving around the manpower of the courts." The ten major questions of procedure as they appear in the headlines to Chapters III-XII are these; (1) In what court may suit be brought—Jurisdiction; (2) Who may sue whom—Parties; (3) Where may suit be brought—Venue and the Transfer of Cases; (4) How to get the defendant or his property into court—Process; (5) What relief is sought—Remedies; (6) How to state the controversy—the Pleadings; (7) How to prepare for trial—Pretrial Procedures; (8) How to litigate the controversy—the Trial (resulting normally in a Judgment); (9) How to correct trial errors—Judicial Review; and (10) How to enforce a judgment—Execution. The four sets of problems relating to "the individuals who man the courts" (Chapters XIII-XVI) are these: (1) Judicial Selection, Tenure, Salaries and Ethics; (2) the Selection of Jurors; (3) the Legal Profession; and (4) Judicial Administration.

As a teacher of Federal Jurisdiction and Procedure, and therefore favorably inclined toward the system established by the Federal Rules

of Civil Procedure, the reviewer is impressed by the novel use of the Federal Civil and Criminal Rules to provide the entire framework for a beginning course in Procedure. And if the teaching of Procedure is confined to a single course of three semester hours, as the Chief Justice indicates was true when he was a law student, the argument in favor of the present casebook or one like it might be well nigh irresistible. Especially would this be so, in view of the commendably logical plan of the procedural portions of the present book and the additional inclusion of materials on judicial administration, or more properly, on "the individuals who man the courts." Not everywhere, however, is the procedural picture as gloomy as the Chief Justice portrays it. Thus, in the reviewer's school three hours are given in the first year to an introductory course in the fundamentals of pleading and procedure, and about one semester hour to criminal procedure. In the third year, a three hour course in Civil Procedure is also required. Additionally, Federal Jurisdiction and Procedure is offered as a three hour elective course and is quite widely chosen; and a two hour course in Virginia Procedure is available for Virginia students.

More importantly, however, Chief Justice Vanderbilt's casebook has the unique distinction of having been adopted by the Survey of the Legal Profession as one of its Reports in the field of Judicial Service and Its Adequacy. The casebook thus takes its place beside the Chief Justice's earlier book, Minimum Standards of Judicial Administration, which has also been adopted by the Survey. Scarcely less unique for a casebook is the measure of judicial approbation which it has received. "It will revolutionize the teaching of procedure throughout the country," in the opinion of Chief Judge John J. Parker of the Fourth Circuit; and in the opinion of Circuit Judge Armistead M. Dobie of the same Court, "This volume is just about as modern as the freshest dewdrop on the newest petal of the last blown rose." In the opinion of the present reviewer, this volume calls for some thorough procedural soul-searching by the legal profession, both in the law faculties and among the practitioners. And that, it seems clear, is one of Chief Justice Vanderbilt's main aims.

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