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Book Review: A Selection of Cases on the Law of Pleading Under Modern Codes

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A SELECTION OF CASES ON THE LAW OF PLEADING UNDER MODERN CODES. By Edward W. Hinton. Second edition. Chicago: Callaghan & Co. 1922. Pp. xiii, 690.

The first edition of this valuable case book appeared in 1906. The second edition comes as the result of fifteen years of wide study and thoughtful teaching of the subject of code pleading in two of our leading law schools. As Professor of Pleading and Practice, Mr. Hinton had his first edition as the basis of class room instruction for six years in the School of Law of the University of Missouri and then for nine years in the Law School of the University of Chicago. His second edition has had also the benefit of Professor Hinton's wide practical experience in the teaching of the other leading subjects in American civil procedure, and of his productive legal scholarship in the publication, within the last eight years, of a case-book on Trial Practice, of a case-book on Evidence, and, in co-operation with Professor Walter W. Cook, of a case-book on Pleading at Common Law.

The second edition is evidently not a mere reprint of the first, with a recent case inserted here and there. The first edition, Professor Hinton remarks, in his preface to the second, was prepared "in undue haste". "It is not surprising", he adds, "that mistakes were made". With this open-mindedness, the learned editor has set before him the purpose to remedy these defects "as far as possible" and to bring the work "more into harmony with the later development of the subject."

This second edition makes its entry, therefore, under the most favorable auspices. The law-teaching profession will give it a deserved welcome, such as the ambitious case-book of one year preparation cannot hope for. Speaking from his experience in using the work with a class of third year students, during the two semesters of 1923-24, the reviewer can testify that it "teaches" well. The cases are well selected, short, and to the point. Their arrangement is in six chapters—"Actions", "Parties", "The Complaint", "Demurrers", "The Answer", "The Reply"; and although a case book has been authoritatively defined as a book in which the cases are arranged in the order in which they are not to be taken, this arrangement of Professor Hinton's book works well in class room use.

The cases and the notes in the work cover 677 pages. It is rather a striking fact that this is 163 fewer pages than were needed for the cases and the notes in the first edition, the fifteen years of rapid growth in the number of authoritative code pleading cases to the contrary notwithstanding. Perhaps this is a merit. If the book is to be used on the class-room recitation basis, or as a basis for a series of lectures turning on the cases, with the class taking and memorizing lecture notes, or studying verbatim copies of the professor's lectures, the 677 pages in the case-book will suffice. And no doubt there is a sense of satisfaction in having a case-book in which every case, from cover to cover, can be specifically stated in the class room time devoted to the subject. The psychological effect is that of a piece of work completely done. But if the aim of the instructor is to encourage upperclass law students to develop the vital principles of code pleading in Anglo-American law from an inductive study, under the stimulus of class discussion, of the statutory bases of the

different codes and the decisions construing the statutes, this second edition, with all its virtues, still leaves something to be desired. The writer, in his year's use of the book in his class room, has repeatedly found it necessary, at least so it seemed to him, to supplement the text and the notes, with additional cases, American and English, with additional notes, with a considerable fuller presentation of the statutory bases of the American Codes, and with some of the Orders and Rules under the English Judicature Acts.

The editor is careful to give at the beginning of each of his six chapters the terms of the provisions on that head of the New York Code of Civil Procedure, with specific references to the section numbers of the corresponding provisions in the codes of the different states. The terms of the New York Civil Practice Act of 1920 and of the Federal Equity Rules are frequently quoted in the notes. And there are brief remarks, here and there, on differences in the enactments of the Codes. But with this and nothing more the law student is unable to study comparatively the statutory bases of the Law of Pleading under modern codes in America and England. Yet this study, along with the study of the best cases which construe and apply these basic principles, is essential to the equipment of the American lawyer if our system of pleading in civil actions is to become as simple and effective as it can and should be.

We need, for the improvement of our system of code pleading, an extensive comparison and a careful study of the existing statutes and rules and their operation in both America and England. The law schools fail in their mission if they do not find some way to accomplish this. Perhaps even a case book on code pleading of 1,000 pages would not be too high a price.

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