

Michigan Law Review

Volume 2 | Issue 8

1904

Recent Legal Literature

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Recommended Citation

Edson R. Sunderland, Robert E. Bunker, John R. Rood & John R. Rood, *Recent Legal Literature*, 2 MICH. L. REV. 737 (1904).

Available at: <https://repository.law.umich.edu/mlr/vol2/iss8/5>

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RECENT LEGAL LITERATURE

BRIEF UPON THE PLEADINGS IN CIVIL ACTIONS, at Law, in Equity, and under the New Procedure. By Austin Abbott. Second and Enlarged Edition by the Publishers' Editorial Staff. Two volumes. pp. XXXIII., XVII., 2120, Rochester, N. Y. The Lawyers' Coöperative Publishing Co. 1904.

This work is in effect a concise and well arranged cyclopedia of practical pleading. Its text is broken up into some seventeen hundred sections, classified so as to be readily accessible, each with a short and apposite heading in bold-face type, and followed by copious notes setting out, in most instances, a syllabus of each case cited. The notes are set up in single column and in somewhat smaller type than the sections of text, but they are well leaded and present an open and attractive appearance. In bulk they surpass the amount of text many times over. The index and table of contents are full and excellently arranged, and the conventional table of cases has happily been omitted, thereby freeing the work from the customary load of useless matter which so unnecessarily increases the cost and diminishes the available capacity of the modern legal text-book.

The book is a veritable mine of useful information upon the innumerable practical questions which arise at one stage or another upon the pleadings. If a pleader is in doubt how to allege a particular set of facts, he will find one or more sections of text as to how such allegations should be made, well amplified by specific illustrations respecting their form and effect as passed upon by the courts. If he is in doubt as to whether his adversary's pleading is sufficient in some particular, he will find, in its proper place, information as to whether it is correct or not, and whether, if incorrect, it is formally imperfect or substantially deficient, how and when the defect may be taken advantage of, when it is deemed waived if at all, and how far it can be aided by subsequent proceedings or remedied by amendment. More than seven hundred sections are devoted to the form of particular subjects of allegation, such as abbreviations, accord and satisfaction, account, accounting, account stated, action premature, adverse claim, adverse possession, etc., arranged in alphabetical order. The rules as to demurrers, their form, sufficiency, scope, purpose, and the practice relating thereto, are treated at considerable length, with special reference to the statutory grounds of demurrer, such as want of jurisdiction, want of capacity, misjoinder of causes, etc., provided for by the codes of procedure. Under the general head of Rules for Defining the Limits of the Issue, may be found a great quantity of material upon such subjects as, What Pleadings Constitute the Issue, What Kind of Allegations Tender an Issue, Admissions, Statutory Traverses, Admissions and the Shifting of the Burden of Proof, Inconsistency in Pleading, Aider, Departure, and Waiver. Then come chapters upon the various objections which can be urged on the trial, such as objections to the jurisdiction of the court, motions for dismissal

and for judgment on the pleadings, and motions to compel election. Variance is well presented, and the difficult subject of Amendment, which has been passed upon by appellate courts more frequently and with more apparent confusion than any other question of procedure, is treated very satisfactorily.

The book does not purport to present a connected and systematic view of pleading as a science, like the well-known texts of Stephen on the common law system, and Pomeroy on the Code. But as a handbook of pleading for practitioners and as a reference book for students, we know of no work which, within the same compass, contains such a store of useful and available information respecting the practical details of pleading, and especially is this true of pleading under the codes, although the work professes to treat with equal thoroughness the rules of pleading under the equity and common law systems.

EDSON R. SUNDERLAND

MCMASTER'S IRREGULAR AND REGULAR COMMERCIAL PAPER. A treatise on the Law of Notes, Checks and Drafts. By J. S. McMaster, Examiner New York State Bank Department. New and enlarged edition. The McMaster Company, 69 Wall St., New York City.

I have seen no work of such modest pretensions and small compass as the one mentioned in the caption which contains so much practical information on the subject of negotiable instruments. The matters treated are not only of the right sort, but they are presented in the right way. The book was written for the business man and his assistants and not primarily for the lawyer and the law student, yet it is a work which every lawyer can afford to have and no law student can afford to do without. The plan of the work and the method of treatment are unique. The beaten path of the text writer is wholly abandoned. The author picks his way through the small wilderness of regular, irregular, non-negotiable and void commercial paper, guided by the compass of experience. He is, as the caption indicates, examiner of the New York State Bank Department, and so he evidently treats of questions with which he has had actual personal contact. Every page of the book is an object lesson in the study of negotiable instruments. The book is made up of forms of commercial paper over one hundred and twenty in number, each illustrating some phase of the law of negotiable instruments. Each form makes two pages. The face and the back of each instrument are preserved. One hundred of these forms are problems in the study of the law of commercial paper, each representing an actual instrument in an actual case (and as near as can be, a facsimile of the instrument), in which some important question of law pertaining to the instrument was determined by the court. An idea of the appearance of the book can be obtained by mentally comparing it with a single form note book or check book with stubs attached, the several blanks being filled as if actually used by a hundred different business houses. Each form presents the appearance of an actual instrument. The plan of the work may be best understood from a single problem. I select No. 5 for the purpose of the illustration:—

<p>“No. 5. CORPORATE SIGNATURE. This note was given for the purposes of the Haverhill Oil Co., but the treasurer was held individually on it. MCMASTER'S COMMERCIAL DIGEST, Page 62 A.</p>	<p>\$300 <i>Haverhill, Mass., May 3, 1898.</i> <i>On demand after date we promise to pay to the order of John McClave,-----</i> <i>Three Hundred-----Dollars</i> <i>at with interest.</i> Value received. <i>D. P. Loremore,</i> <i>Treasurer Haverhill Oil Co.”</i> No.-----Due-----</p>
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The words and figures italicised in the foregoing form indicate the filling of the blanks, and the form itself, as represented, makes a page of the book. The back of the foregoing instrument is preserved and represents the indorsement of the payee John McClave as if it were actually written by him, to which is added the following note by the author:—

“The owner of this note sued the Oil Co. on it, but stopped the action before judgment and sued Loremore individually and recovered against him.

MCMASTER'S COMMERCIAL DIGEST,

Page 62 A.;

78 Maine, 390.

‘We think the note must be construed to be the note of the defendant, and not of the corporation. It contains no apt words showing that the parties understood it to be the contract of the corporation and not of the defendant. It nowhere appears that the defendant made the promise for the corporation. The language used expresses his own promise, and what is added after the signature is descriptive of the person.’ The following cases are directly in point: *Sturdivant v. Hull*, 59 Maine, 172; *Mellen v. Moore*, 68 Maine, 390; *Davis v. England*, 141 Mass. 590.

78 Maine, 390.

A proper form of signature to bind the corporation and not the individual would be

Haverhill Oil Co.,

By D. P. Loremore,

Treasurer.”

Most of the matters treated by the author, as indicated in the foregoing example, are matters that have been passed upon by the courts within recent years. The cases illustrating the subjects treated are mostly very late cases and thus the author presents the latest authorities upon the disputed questions of the law of negotiable instruments.

If this book contained nothing else to commend it to the business man, the lawyer or law student than the excellent, correct, neat and business-like forms of commercial paper as used in the best business houses, it would, for that feature alone, be worth all it costs. The dress of the business man or lawyer's commercial paper is quite as indicative of correct habits in business matters as personal apparel in social matters. The forms of commercial

paper as exemplified in this book are correct, neat and tasty. Those who use such forms in their own business will not be subject to criticism for slovenliness. But the book contains much more than mere forms. It discusses through those forms important questions of law and that too in a way which appeals most admirably to the understanding of the reader and challenges and holds his attention. It treats, moreover, of the definition and meaning of terms and illustrates them in the same practical way. I commend this book to the business man, the lawyer and the law student, and I commend it without reservation, because I have used it and feel that I know whereof I speak. I regard it as a valuable, and to the law student an almost indispensable, supplement to any of the large works on the subject of negotiable instruments.

The work named in the caption is a new and enlarged edition of the original publication which first appeared, as I gather, in 1902.

ROBERT E. BUNKER

AMERICAN STATE REPORTS, Vols. 93 and 94. Bancroft-Whitney Co., San Francisco, Cal., 1903, 1904.

VOL. 93, AMERICAN STATE REPORTS. The following are some of the principal monographic notes in this volume: Constitutional Inhibition against Local or Special Legislation Where a General Law can be Made Applicable, 106-113; Extent to Which Litigant can Control a Cause in which he has Appeared by Attorney, 169-179; Exclusion of Trespasser, 254-261; Liability to Corporations of Subscribers to Their Capital Stock, 349-394; Liability for Malicious Prosecution of Civil Action, 454-474; Mode of Taking Advantage of Breach of Condition Subsequent, 572-578; Liability of Physicians and Surgeons for Negligence and Malpractice, 657-667; Prescriptive Title to Water, 711-731; Liability of Persons Communicating Contagious or Infectious Diseases to Others, 840-855; What Contracts with Newspapers are against Public Policy and Therefore Void, 905-912.

VOL. 94, AMERICAN STATE REPORTS. The following are the principal monographic notes in this volume: Countermand of Executory Contracts of Sale, 119-125; What Constitutes a Transaction a Sale, 209-258; Compelling the Accused in a Criminal Case to Perform Acts and Submit his Person to Inspection and Examination, 336-347; Recovery of Voluntary Payments, 408-444; Actions on Lost Instruments, 465-480; Judgments of Courts of Other Nations, 532-559; Liability of one Receiving Payment of a Check Through a Forged Indorsement, 641-650; Declaration of a Person Since Deceased, When Admissible Against Third Persons, 672-683.

For recent reviews of former volumes of this series see 2 MICH. LAW REV. pp. 77, 240.

It would be impossible in the space allowed to this review to indicate the scope of the cases reported in these volumes. Cases that might not seem to the writer of this review as of especial importance, might be of most interest to some others. The collection seems to be up to the standard of the preceding volumes. In reading and glancing through the new volumes as they come in, it has been observed that the best late cases on the topics of especial

interest to me seem usually to be included, or as many of them as could be expected in view of the great volume of current decisions.

JOHN R. ROOD

95 AMERICAN STATE REPORTS. Since writing the above, we have received Vol. 95 of the same series. Among others, the following monographic notes in this volume appear worthy of especial notice: Liability of Ministerial Officers to Private Individuals for the Nonperformance and Misperformance of Official Duties, 62 pages; Validity of Conditions and Restrictions in Deeds, 11 pages; Rights and Obligations of Parties to Private Ways, 12 pages; Ademption of Legacies, 29 pages; Estoppel to Plead Statute of Limitations, 13 pages; Effect of the Bar of the Statute of Limitations, 24 pages; Coroner's Inquest as Evidence, 10 pages; The Effect of a Conveyance or Encumbrance of the Homestead by only One of the Spouses, 34 pages.

Reference to the minor divisions of these notes might be more easy if the page on which they would be found were given in the analysis at the head of the note, but the assistance from this change would not be great except in the long notes. It is observed that, besides the index, table of cases, etc., this volume contains 961 pages; on which are reported 105 cases, if we mistake not in the count, also the notes above mentioned, and others. Comparison of this book with a few late volumes of the official reports, selected at random, may be of interest. It would seem that the omission of briefs of counsel, and the condensation of statements of fact more than make up for the space occupied by the notes. If we have not erred in the count, 205 Ill. contains 63 cases on 650 pages; 130 Mich. contains 148 cases on 701 pages; 88 Minn. contains 118 cases on 540 pages, and 176 N. Y. contains 67 cases on 540 pages.

JOHN R. ROOD