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Procedure and Forms of Common Law Pleading

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record. Our traditional forms of procedure probably need no fundamental change. The problem is to meet the elusive human factor in a system of good laws administered by fallible men. Surely this factor cannot be legislated out of existence. Nor can it be obscured by the idealistic description of the system as a government of laws and not of men. An anti-lynching sentiment will, when the millennium arrives, make the sequel to the present record a converse expression of the desires of men expressed in the administration of their laws."

Without waiting for the betterment of social relations he then goes on to show what improvement might be made in our present statutes to reduce the number of lynchings; he very carefully shows existing legislative attempts including Federal, and concludes with a Model act which briefly summarized suggests:

- a. Penalizing the county in which the lynching occurs for the benefit of the estate of the victim, and allowing the county to recover against the participants.
- b. Removal of police officer for cause and declaring him permanently ineligible for public office.
- c. Provisions for changing of venue and amending rules of evidence.

The reviewer's only adverse criticism would be that the appendix containing the existing legislation is rather lengthy if not unnecessary.

This volume shows a painstaking, understanding study of a most difficult social problem, suggests an intelligent attack of that problem, and will be valuable for reference and serve as a model for students who in the future when more data is available, desire to continue a study so ably begun in such a scholarly fashion.

—JAMES B. BLACKBURN.

University of Pittsburgh School of Law.

PROCEDURE AND FORMS COMMON LAW PLEADING. By Roger O'Donnell. Washington, D. C.: National Law Book Company. 1934. Pp. XLIX, 459.

This volume appears to have been prepared primarily for students as a compendium of a more elaborate work designed for use by practitioners. The first part deals with the forms of action, the principles of pleading and a bit of procedure, including within the compass of 283 pages the following 29 chapters: Historical

Development of Pleading; The Formulary System and Theory of the Case; The Classification of Actions; The Action of Covenant; The Action of Debt; The Action of Detinue; The Action of Replevin; The Action of Trespass; The Action 'on the Case; The Action of Trover; The Action of Assumpsit; The Action of Ejectment; Joinder and Election of Actions; Parties to Actions; Procedure to an Action; The Syllogistic Nature of Pleading; The Composition of Pleadings; Duplicity; Plural Counts; Venue; Pleading Time, Quantity, Quality and value, Names, *etc*; Dilatory Pleas; Demurrers; Defensive Pleadings; Title and Authority; New Assignment, Protestation, Departure, *etc*; The Retrospective Motions; Attachment and Garnishment; Service of Process and Quashing Same. The second part, 163 pages, comprises a collection of forms applying to the various forms of action.

By way of comparing his efforts with Mr. Stephen's classic work, the author says: ". . . Stephen wrote both as a historian and a guide and his work was prepared for use by Oxford students who had become accustomed to such a compendious form of expression that every word was made to assume its full meaning; it can hardly be said that such attentive reading as that required of the Oxonian is practiced by the average student of today, and in this volume there has been a studied effort to state each and every proposition in simple language and to clothe the treatment of the subject with such a garment of simplicity as to make it less difficult to grasp the principles and learn to apply them without devoting too much time to an effort to understand the intricacies of explanation or expression."

Apropos this statement (which it is to be hoped is not an echo from any such slogan as "common law pleading simplified"), it must be conceded that the author certainly has succeeded in expressing himself forcibly and clearly and displays a peculiar knack for explaining the operation of a technical principle in non-technical terms; but one may be permitted to question whether his comparison is accurate and just. He certainly does not intend to imply that he has consciously used words without the intention that they shall convey their "full meaning". As to any parsimony of words that might result from terseness of phraseology, it certainly may be reflected that the author himself could not afford to indulge in any superfluity of statement in undertaking to deal with 29 such chapters within the compass of 283 pages. Anent the historical approach, it may be doubted whether, in the ancient subject of Common Law Pleading, any expositor can be an ade-

quate "guide" without also being to a liberal extent a historian, the truth of which proposition is exemplified in the author's own method of treatment. Finally, it may be doubted whether any student, Oxonian or otherwise, can acquire a knowledge of Common Law Pleading without the most diligent *study*, not to mention "attentive reading". In fact, one of the predominant characteristics of the author's style is his aptitude for expressing himself so concisely and precisely that his entire meaning is concentrated in a single terse phrase or word. It is his ability to conserve words and to pack a large measure of substance into a small space that saves his work from a possible charge that it is merely a glorified "black-letter" text.

No attempt can be made to go into a detailed commentary on the merits of the various topics in the 29 chapters. It is perhaps superfluous to say that there is nothing new in substance, the only room for novelty in such a subject being in the method of treatment. In spite of the fact that the author condemns the case method as a primary method of teaching the subject, his citations, where authorities are cited at all, are confined almost exclusively to cases from Keigwin's, Sunderland's and McBaine's cases. So extensively are the cases from Keigwin cited, that the volume, at a glance, might be taken as a supplement to the case book. A feature which will be urged by some as an annoying defect is the fact that no authorities are cited at all for a multitude of statements, some of which would seem to need substantiation. It frequently is impossible to determine whether a proposition is intended as a statement of established, adjudicated principle, or as a deduction or illustration sponsored wholly by the author.

The text is not wholly free from the charge of inaccuracy; and a few propositions which are subject to controversy are stated dogmatically. The following are submitted briefly as illustrations: Assumption (pp. 10-11) that the action on the case did not exist prior to the Statute of Westminster (Plucknett *contra*). Assumption (p. 21), that *personal* actions are only concerned with a property right. The old fallacy that a seal imports a consideration (pp. 27, 35). Statement (p. 28) that it is always sufficient to lay a breach in the language of the covenant. Statement (p. 30) that, in debt, "The money sued for is a segregated, individual body of money, identified as the property of the plaintiff". Statement (p. 42) that, in debt on a judgment, "the damage consists of the full amount of the judgment", with interest. Statement (p. 44) that, "As expanded beyond its original scope, detinue may

be employed to recover a chattel unlawfully held by a wrong-doer, even though the original taking was lawful" (likely inadvertent). Statement (p. 47) that, in detinue, "The damages are ordinarily measured by the value of the goods as found by the jury". Apparent assumption (p. 54), contradicted in later text, that all actions in trespass are confined to (1) violence to the person, (2) *de bonis asportatis* or (3) *Quare clausum Fregit*. Statement (p. 77) that in actions for libel or slander "The 'colloquium' is the defamatory statement itself" and the innuendo serves "to connect those words with antecedent statements in the declaration". Statement (p. 96) that Special Assumpsit developed after General Assumpsit (*Ames contra*). Statement (p. 188) that "Misjoinder or non-joinder of parties plaintiff or defendant must be pleaded in abatement". Statement (p. 223) that the general issue is very narrow in all cases except trover, case and assumpsit, later contradicted (*e. g.*, on p. 234 as to debt). Assumption (pp. 229, 259) that the plea of *liberum tenementum* is always a sham plea. Statement (p. 273) that a motion in arrest of judgment, sustained, always terminates the case. As to Latin phraseology, see (pp. 93, 126) "*cum personam*" and (p. 138) "*in propria personam*".

Some of the author's observations on matters of history seem to be novel. Here again there is a lack of citations and it does not appear whether he has made independent research, is stating conclusions reached by others, or is reaching too facile conclusions of his own by way of deduction from well known generalities.

The author states that the forms in the second part of the volume have been taken from Maryland, District of Columbia and Virginia precedents. Collaboration of John A. Bresnahan of the District of Columbia Bar in preparation of the forms is acknowledged. Sources of the forms are not cited "because they are not considered necessary to the purposes of this work". Why? Because it is intended for students? Even if students should not be interested in these sources, is it not likely that instructors would be interested?

—LEO CARLIN.

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THE HOUSE OF ADAM SMITH. By Eli Ginsberg. New York: Columbia University Press. 1934. Pp. 267.

This book attempts in Part One "to reconstruct and interpret the *Wealth of Nations* without constant recourse to direct quo-