BOOK REVIEWS

CASES ON THE LAW OF NEGOTIABLE PAPER AND BANKING By Ralph W. Aigler, Professor of Law, University of Michigan. American Casebook Series. St. Paul: West Publishing Company, 1937. pp-XVI, 1157.

Perhaps the most controversial field of discussion in reviewing legal publications intended for student use is that encompassing the scope and method of exposition of the subject concerned. Writers have indulged in endless controversy over the relative merits of the text and case methods.[1] The latter seems to be firmly entrenched as standard procedure,, except, perhaps, for such subjects as pleading and practice. Recently, however, it has become apparent that there is no valid reason why one system should be employed to the exclusion of the other. Each has its superior qualities. The text system permits of more lucid explanation of a particular doctrine, while the case method affords a wholesome development of the technique of legal reasoning, approximating in character the now familiar scientific method of induction and deduction.[2]

Fundamentally, we are most concerned with determining not which is the better system, but rather that which is most efficient. It is, therefore, unquestionable, that those treatises devoting a proper balance to both text and case material are superior for teaching purposes than those in which one or the other predominates.

Unfortunately, the present volume is, almost exclusively, a casebook, only sixty-three of the thousand-odd pages being devoted to explanatory text. Nor has the author seen fit to employ footnotes for this purpose, being content to employ them primarily for the citation of decisions, or a brief resumé of their

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1. It is interesting to note the reaction of the late Mr. Justice Holmes in his review of the first casebook ever published, Professor Langdell's "A Selection of Cases on the Law of Contracts" (1871):

"We do not agree with him, however, in his seemingly exclusive belief in the study of cases, we should not shut our eyes to a rapid and continuous view of the principles deduced from them. And this can only be got in the text-books. . . . Moreover, to put a beginner upon the cases without aid or introduction, seems to unnecessarily increase difficulties which he is sure to find great enough, however assisted." A Book Notice in 6 AM. LAW REV., p. 353 (1872).

2. "It is the merit of the common law that it decides the case first and determines the principle afterwards. . . But in fact lawyers, like other men, frequently see well enough how they ought to decide on a given state of facts without being very clear as to the *ratio decidendi*. . . It is only after a series of determinations on the same subject-matter, that it becomes necessary to 'reconcile the cases' as it is called, that is, by a true induction to state the principle which has until then been obscurely felt." Holmes, *Codes and the Arrangement of the Law*, 5 AM. LAW REV. 1 (1870).

The student's next step, of course, is to decide his hypothetical problem by deduction from the principle so induced.

facts and holding, or to raise problems for discussion. Proper presentation of an entire subject by cases exclusively, with reasonable allowance for the predilections of each professor, necessarily results in the tremendously terrifying tomes which seem to be the order of the day. It requires a Gargantuan appetite to digest the plethora of material included in these monumental works. But simply, they're too long.

Carried to its extreme, the case system can become objectionably bulky, and tends to result either in hasty and inadequate consideration of each case, or else in an incomplete coverage of the subject as a whole. The use of text material alone, on the other hand, tends to develop a rigid viewpoint, and a repetitious understanding of the legal concepts involved, making it difficult to analyze unfamiliar fact set-ups. But the use of text material is essential in building a foundation for more thorough analysis of a smaller number of cases, and is useful to fill the gaps necessarily created by intense classroom discussion of a few cases.

Negotiable instruments law, of itself, is not a difficult subject. But having its roots, as it does, in a concept of relationships differing from the common law in which students are grounded, it becomes difficult, in that technical commercial practices and their legal effects must first be mastered. Professor Aigler seeks to ease this problem by starting with banking law, in order to give the student some understanding of the common situations in which negotiable instruments are made and negotiated and protested and sued on. It is a new approach, and not without its merits, though there are some who believe the subject can best be exposed with reference to the rules of evidence.[3]

It is in the portion dealing with banking law, and the relationship of bank and depositor, however, that Professor Aigler is in greatest default in failing to include text material. The entire sixty-three pages devoted to text are confined to the portion dealing with negotiable instruments. But if anything requires textual explanation, it is the banking law portion of the book. Students are notoriously ingenuous in commercial matters, and the inclusion of banking cases involving technical practices cannot help but result in confusion.[4] A highlighted glimpse of such commercial subjects is more likely to flicker than to provide an even illumination. Perhaps the glare of the author's own brilliant under-

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3. As an illustration of the way in which the two subjects are entwined, see an article entitled *Some Phases of Presumptions, Particularly Regarding Negotiable Instruments*, by Warren Dixon, Jr, III MERCER BEASLEY LAW REVIEW 123.

4. Even the mutual rights and duties created by a bill of lading, certainly a widely used instrument in commercial transactions, are mystifying to the ordinary student. Perhaps the most difficult concept to understand is that of the draft or bill of exchange, many finding it difficult to understand how *A* can possibly pay *B* by telling *C* to do so for him. As has frequently been said, the law of negotiable instruments is simple in itself—but becomes difficult by failure to grasp and understand the factual set-ups involved, which are usually expressed in unfamiliar commercial language.

standing of the subject prevented him from perceiving the darkness in which others grope.

Whatever the cause, the book gives the impression of a worthy inspiration not quite worked out—of a matchless symphony, ending with the overture.

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JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES. By Reynolds Robertson and Francis R. Kirkham. St. Paul, Minn., West Publishing Co., Kansas City, Mo., Vernon Law Book Company. 1936. pp. vvi, 1048, $15.00.

"I haven't anything against judges," remarked Lawyer Pennypacker, "I just don't like the way they decide cases!"

As these sage words fell upon the ears of the learned group assembled in the bar of the Counsellor's Rest, every head turned inquiringly toward the speaker. Conscious of his increased audience, Lawyer Pennypacker moved his chair to face his new listeners and raised his voice to a more forensic pitch.

"Now, take this Supreme Court business," he continued. "I was never one to hold with those lawyers who undermine the prestige of their profession by criticising the bench. And I think we have got to take a firm stand against any politician monkeying with our courts. But that doesn't keep me from nursing a little private grudge of my own."

A murmur of approval ran around the room. Pennypacker sipped contentedly at his gin-and-bitters

"I don't mind telling you," he went on, "just between ourselves, that I think those nine gentlemen down there in Washington are just a bit arbitrary at times. It's almost as tough to get a writ of certiorari out of them as it is to get a fee out of the average client. 'Course, I know that they are interested in the law and not in individual litigants, but that's a pretty hard thing to explain to a client when your petition for certiorari is denied. And from our standpoint, too, it is difficult to swallow the idea that even though the local judicial luminaries may have gone all haywire, no review is to be had because no matter of general public importance is involved. Now, I have read the Supreme Court opinions pretty diligently for many years and I confess I don't know yet what a matter of general public importance is. Naturally, there are a few I can spot immediately, like the New Deal legislation cases. Outside of that the closest I can come to a rule is that a matter of public interest is one in which at least one large corporate party is concerned. Yes, sir, my friends, I would rather play a three horse parlay than bet on what the Supreme Court will do with a petition for certiorari."

At this point an unobstrusive figure that had been seated at the side of the room rose quietly and deprecatingly cleared his throat. As the pendulum of attention swung his way, he began to speak:

"Gentlemen, I have listened with great interest to the discourse of—thank you—Mr. Pennypacker, and if I might presume upon your kindness for a few minutes, I believe I might be of some help on the problem under discussion. I am connected with the Tryhard Book Company. It just so happens that we are handling a book on Supreme Court jurisdiction at the present time. The volume is Robertson and Kirkham on *Jurisdiction of the Supreme Court of the United States*. From what Mr. Pennypacker had said you gentlemen realize that invoking the jurisdiction of our highest court by certiorari is a highly specialized and artful task, requiring both a thorough background of the rules, statutes and decisions governing the practice and an appreciation of the psychology of the court itself. The background and experience of Messrs. Robertson and Kirkham fit them peculiarly for a work of this kind. Mr. Robertson spent six years as assistant clerk of the United States Supreme Court, followed by a year as law clerk to Chief Justice Taft, and four years in the same capacity under Chief Justice Hughes. Mr. Kirkham also served for a time as law clerk to the present Chief Justice. Their book is, therefore, the product of both learning and experience. It is probable that in their experience in the court these gentlemen have had occasion to consider and investigate the large majority of the jurisdictional problems which arise in the court. One embarks, therefore, on a perusal of their book with an unusual feeling of confidence in its authority.

"In line with what I have just said, I particularly commend to your attention Part 4 of the book, which deals with the principles and precedents governing the exercise of the discretionary jurisdiction of the Supreme Court on writ of certiorari. That portion of the book, far from being a mere recital of rules with citation of authority, is a pragmatic exposition of the methods to be followed in invoking the certiorari jurisdiction of the Supreme Court. One obtains from it a 'feel' for the subject that is far more important than a copy book acquaintance with statutes, rules and decisions.

"Part 5, too, dealing with jurisdictional problems of procedure, is worthy of particular mention. Lawyers, present company excepted, of course, are all too prone to gloss over the importance of an exact compliance with the procedural steps in an appeal. It might also be noted that it is sometimes difficult to obtain a precise understanding of procedure from the rules of court themselves. The book of which I speak, presents the problems of Supreme Court appellate procedure in so clear a manner that no one who possesses it should find himself in the unhappy plight of losing an appeal in the making, so to speak.

"In closing, gentlemen, may I say that if you will use *Jurisdiction of the Supreme Court of the United States* as the guide book of your practice before the United States Supreme Court, I am sure that the attitude so cogently ex-

pressed by Mr. Pennypacker will undergo a complete change and that you will find Supreme Court practice the most logical, reasonable and satisfying of all."

The purveyor of books resumed his inconspicuous seat. After a moment, Mr. Pennypacker took up his discourse at the point where he had been interrupted. His words were lost in a scraping of chairs and shuffling of feet as the members of the group arose and clustered around the salesman of books. Mr. Pennypacker soon bowed to the inevitable, and after swigging the last of his gin-and-bitters, joined his friends in the corner.

Sometime later, Mr. Pennypacker and his colleagues might have been observed leaving the Counsellor's Rest, each carrying a large red volume under his respective arm.

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