# BOOK REVIEWS

*Cases on Code Pleading.* By Edward W. Hinton. Second Edition. Chicago, Callaghan & Company, 1922. pp. viii, 690.

The publication of this excellent casebook may well serve as a stimulus to renewed consideration of the pedagogical possibilities of this subject. The first edition was published when Professor Hinton first began to teach code pleading and with engaging frankness he discusses in his present preface the limitations of that book and how he has attempted to improve it. The reviewer has subjected this edition to the final test of a casebook—classroom use—and has found it eminently satisfactory.

It has been urged by many, and quite recently by an especially eminent jurist, that code pleading cannot be taught as a general subject, but that it is only possible to study the particular code of one state.[1] The conclusion usually drawn is further that such local and "practical" knowledge can better be acquired by the lawyer in actual practice than by the student in the law school. To the reviewer's mind a casebook such as this, or as that other excellent code pleading casebook by Professor Sunderland, demonstrates that such a view is not alone unsound but is of positive harm. Pleading has always been one of the least successful parts of our judicial machinery, a part where inefficiency and waste have been especially conspicuous. Lawyers who have had the welfare of their profession most at heart and who have had the keenest sense of their duty to the public have striven and will continue to strive to improve it. Should our hopes of future improvement rest in lawyers whose knowledge of the problem is limited to the local procedural methods to which they may have been introduced by their own practice, or should it rest in those who have endeavored to discover how identically the same problem has been treated in other jurisdictions or under other systems? Why for example has such a simple and practical reform as pleading in the alternative, a reform adopted in England in 1873, in Rhode Island in 1876, in Connecticut in 1879, and in New Jersey in 1912, remained apparently unknown in a state like New York until the last Practice Act of 1920, and in most jurisdictions unknown even now?[2] The answer would seem to be a lack of any adequate *general* knowledge of the subject. It is not only the reformer who desperately needs such knowledge; it is the ordinary practitioner and the trial and appellate judge. True, the codes have minor differences, but they all are aimed at the same problems. It is usually not the wording of the code which leads to the narrow and illiberal decision; it is the failure of the lawyer to appreciate the applicability of liberal precedents from other jurisdictions, and the failure of the judge to understand how in the light of its history and the history of other like codes, his code is intended not as a tablet of stone giving the law, and all the law, but merely as a convenient tool for getting court work done efficiently. Precedents from liberal code states, and even from the

[1] Cuthbert W. Pound, *The Law School Curriculum as Seen by the Bench and Bar* (1922) HANDBOOK OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS, 99, 106; *Teaching Practise and Procedure* (1919) 4 CORN. L. QUART. 143.

[2] *Payne v. British Times Recorder Co.* [1921, C. A.] 2 K. B. 1; *Eames v. Mayo* (1919) 93 Conn. 479, 106 Atl. 825; *Reinfeld v. Laden* (1923, N. J. Sup. Ct.) 121 Atl. 445; *137 East 66th St. v. Lawrence* (1912, Sup. Ct.) 118 Misc. 486, 194 N. Y. Supp. 762; *S. L. & Co. v. Bock* (1912, Sup. Ct.) 118 Misc. 756, 194 N. Y. Supp. 773; (1922) 35 HARV. L. REV. 166; (1918) 31 *ibid.* 1034; 51 L. R. A. (N. S.) 640, note.

common law and its modern liberal successors, as in Massachusetts, should be even more weighty than some local judge's unduly legalistic interpretation of the code. I do not speak of the opportunity which has been recently claimed for it by an eminent authority as a place peculiarly fitted for the teaching of legal ethics,[3] for I have been unable to follow the argument to its conclusion, that a lawyer may in justice to his client refuse procedural advantages which have accrued to the client. But in a wider sense at any rate the ethical appeal may be made, for it is to the shame of our profession when procedural rules are instruments not of justice but of injustice. It seems to the reviewer that the law schools at least ought to do their part towards supplying the kind of knowledge which alone makes improvement possible.

The two casebooks mentioned, both by successful teachers of the subject, afford an interesting comparison of teaching methods. Messrs. Hinton and Sunderland may not have had different purposes in mind but, whether consciously or not, their casebooks seem constructed on different principles. Professor Sunderland's work is widely informative and illustrative; Professor Hinton's is less complete from the standpoint of code provisions treated but rather aims at intensive scientific study of the more difficult problems. Thus Professor Hinton, unlike Professor Sunderland, has no separate chapters dealing with subjects such as Amendments and Motions; but again unlike Professor Sunderland, he devotes many pages, under the topic "One Form of Action," to the difficulties the courts have found or have thought they found in the union of law and equity and in the abolition of forms of action. Possibly Mr. Hinton has gone too far. The reviewer was surprised at the absence of what seemed to him any adequate material on amendments after the statute of limitations has run, or on the effect of assignments on counterclaims. But on the whole the reviewer prefers Mr. Hinton's method. The study of pleading which we need is the careful, scientific, intensive study of the difficult problems. This book shows it can be done, and what is more that it is worth doing.

It is thought that if this is the way in which the subject is to be treated, Professor Hinton's method may be developed still further with excellent results. More careful study of particular problems may lead to a more suggestive classification of the material. For example, in discussing the very difficult subject of stating a cause of action under the codes Mr. Hinton attempts to follow the traditional distinction between the "law" and the "facts," and again the distinction between the facts and the evidence. It has been well demonstrated that these are only distinctions of degrees,[4] and an attempt to classify the material in this manner seems to lead to repetition and not to clarification of the subject. Here experiments in classification may well be attempted. It is possible that our most suggestive classification might well be according to the kinds of breach of duty, a classification which would somewhat approximate that usual under the common law.

In the matter of notes, Professor Hinton seems to have struck a happy medium between paucity and abundance of material. The notes in general are suggestive rather than encyclopediac. Certain errors which have been noticed are collected below.[5] The reviewer regrets the absence of an index.

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[3] Edson R. Sunderland, *An Inquiry Concerning the Functions of Procedure in Legal Education* (1922) HANDBOOK OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS, 169.

[4] Cook, *Statements of Facts in Pleading under the Codes* (1921) 21 COL. L. REV. 416.

[5] Page 48, note 6, *Mulholland v. Rapp*, 50 Mo. 42 (note 52); page 331, note 8, *Thompson v. St. Charles*, 227 Mo. 220 (1910), not (1919); page 362, note 5, *Thayer v. Ry.*, 21 N. M. 330 (not 380). Pages of cross-references are omitted on pages 68, 78. page 97, *"seperate."*

To any who doubt the wisdom and utility of a "general" course in modern pleading, the reviewer would recommend this book as a practical demonstration of how that which they think is impracticable and undesirable is both possible and highly desirable.

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*A Guide to Diplomatic Practice.* By Sir Ernest Satow. In Two Volumes. Second Edition. New York, Longmans, Green & Co., 1922. Vol. I, pp. xix, 419. Vol. II, pp. ix, 438.

Sir Ernest Satow's *Guide to Diplomatic Practice* was first published in 1917. It was the first systematic treatise on the practice and procedure of diplomacy to be printed in the English language, covering a field already occupied in other languages by such well-known works as the *Guide Diplomatique* of Charles de Martens, the *Cours de Droit Diplomatique* of Pradier-Fodéré, and many others. In the new edition, in addition to incorporating numerous minor revisions and corrections, the author has eliminated matter pertaining to Russian court ceremonial, amplified his account of the diplomatic archives in European countries, rewritten the history of the British Foreign Office, enlarged the chapter on Conferences to include the recent Peace Conference of Paris and the Washington Conference on Limitation of Armaments and Far Eastern Questions, and at various points has brought the content of the volumes down to date.

It will be evident that changes in content have not been radical enough to justify a new essay in detailed comment or criticism, even if the present reviewer were inclined to attempt it. For that the reader may still refer to reviews of the earlier edition and especially to the exhaustive review by Sir A. W. Ward in 32 ENGLISH HISTORICAL REVIEW, 418, an estimate which appears to have had considerable influence in determining the changes made in the new edition. The present reviewer will confine his comment to observations somewhat more general in character.

Sir Ernest Satow's qualifications are most notable. He presents a rare combination of scholarship, taste for research, and long experience as a professional diplomat. His viewpoint, the reader will soon discover, is the viewpoint of the professional diplomatist of the nineteenth century. The necessary qualifications for the diplomatic career are summarized as follows: "Good temper, good health and good looks. Rather more than average intelligence, though brilliant genius is not necessary. A straightforward character, devoid of selfish ambition. A mind trained by the study of the best literature, and by that of history. Capacity to judge of evidence. In short, the candidate must be *an educated gentleman.*" (sec. 224) There is an apology in detail for Sir Henry Wotton's famous witticism (sec. 200), but times are not much changed, we may infer, for the young diplomatist is counselled that among other things he "must be able to listen to a travesty of the truth, without giving any indication of his disbelief." (sec. 166) The author does not admire the "dollar diplomacy" which has become so characteristic of the twentieth century. (sec. 147)

From such a viewpoint, the author compiles a wealth of data accumulated in research and long experience in what may perhaps be described as the professional diplomatist's book of forms and precedents. There is a good deal of history in it, but it will hardly appeal to historians. There is international law in it, particularly in the chapters which treat of diplomatic immunities, but it will not be of much interest to international lawyers. It is chiefly a digest of diplomatic data intended to afford practical guidance in the routine of diplomatic organization, precedence and ceremonial, procedure, immunities, international