

BOOK REVIEWS

JUDGE AND JURY, by Leon Green. Vernon Law Book Company, Kansas City, Mo. 1930. 417 pp.

This book represents Dean Green's latest views upon the law of Torts and especially the problems connected therewith that he has been most interested in. Although the book consists, in part, of a collection of articles published within the past two years in various legal periodicals, there are several chapters heretofore unpublished. As the title suggests, the unifying thread of the collection is the allocation of work to the judge and jury in tort cases which Dean Green regards as the end to which all doctrines, rules and formulæ in current use in such cases are directed.

The essays collected under this title emphasize the "judging" problem in the judicial process. The author realizes full well that this is the vital phase of the administration of justice. Rules, formulæ, theories and doctrines, as well as mechanical apparatus are all instruments to assist in the performance of this all important function. Nowhere in the law is the function of passing judgment more intricate and involved and the rationalizing opportunities more varied than in what lawyers call "tort law." Accordingly, nowhere is legal science presented with such an opportunity for adjusting conflicting interests. As the author lays bare the wealth of instrumentalities which Anglo-American law has concocted to perform this function, one may apprehend with clearer vision the real genius of the common law and can understand the long story of its satisfactory place in the social order. The practical, utilitarian, often high-handed though with all subtle methods of the common law are revealed here in a manner that is most startling to the naive generally cultivated by members of the legal craft. The analysis is most illuminating and cannot fail to afford a larger comprehension of the judicial process to anyone interested in that technique of social control.

For practical purposes, to the practicing branch of the profession, the views here represented are of the highest value. The author's master analysis of a "tort" is helpful. There is, he demonstrates, in all tort cases the following problems:

- (1) The right-duty problem.
- (2) The violation of duty problem.
- (3) The casual relation problem, and
- (4) The damage problem.

He points out how much is comprehended in the first phase of a tort, the right-duty problem. Many cases are incomprehensible because the court has misconceived the actual difficulty involved. Sound (desireable) results are sometimes reached, by instinct or accident, by groping for the answer through a violation of duty formula or a causal relation doctrine when the difficulty could and would be vastly reduced if it were recognized in its actual form. Much of the clutter and confusion found in the law is obviously due to faulty or defective analysis. A problem cannot be intelligently presented by counsel or determined by the court without accurate and scientific analysis. The case will not be solved by analysis, but it can at

least be presented so that it can be attacked and, when the judgment is passed, it can be articulated in intelligible terms.

The book is attractively bound, printed in large readable type upon a fair grade of paper. It is recommended to all attorneys who try "tort" cases.

FOWLER VINCENT HARPER

Indiana University Law School.

À TREATISE ON THE LAW OF SALES, by Irving Mariash. Albany and New York, Matthew Bender & Co. 1930. Pp. XXII, 926.

This new treatise on a subject much written about but of corresponding importance is to be regarded primarily as a reference work for the use of practitioners. It in no way takes the place of such works as that of Professor Williston on this subject and will probably not be of any great value to students. But for the practitioner—especially the New York lawyer—the book will undoubtedly be very useful.

The difficulties for the student who attempts to use the work are somewhat numerous. In the first place it is extremely difficult to read, particularly because of the numerous and very lengthy footnotes. It is not unusual for a single sentence of the text to have four or five references to footnotes. The footnotes themselves consist for the most part of somewhat lengthy excerpts from court decisions, and it is not unusual for a single footnote to extend over several pages. It is, therefore, apparent that the actual amount of reading matter in the footnotes greatly exceeds that of the text. All of this makes the work very poor reading, though, of course, not in any way affecting its usefulness as a book of reference.

Another rather obvious defect from the standpoint of the practitioner as well as of the student is that the work is confined too largely to the law of the state of New York. Most of the references in the footnotes are to New York cases and in a number of instances other references are merely to the National Reporter System without any statement of what state is involved. The author is obviously primarily interested in writing a text book of the New York law of Sales and indeed this intention is rather frankly indicated by having the introduction written by Mr. John Kirkland Clark, who is well known as the Chairman of the New York State Board of Law Examiners. But even this is not a fatal objection to the book from the standpoint of most practitioners, since New York has adopted the Sales Act and so have most of our American jurisdictions—including, of course, Indiana. The New York decisions construing the Act are, of course, of considerable persuasive authority in other jurisdictions particularly such a state as Indiana which is just beginning its experience under the Sales Act.

The text is arranged as a commentary on the Sales Act. The book purports to include the common law as well as the statutory modifications but in fact comparatively little attention is given to the common law phase of the subject. However, for the reasons already indicated this omission is not serious. Due reference is made to, and proper account is taken of, changes in the law made by subsequent uniform acts such as the Conditional Sales Act, the Bills of Lading Act and the Warehouse Receipts Act. All of these statutes, together with the English Sale of Goods Act (some-