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BOOK REVIEWS

North Carolina Practice and Procedure in Civil Cases, by Atwell Campbell McIntosh. West Publishing Company, 1929. Part 1, pp. vii, 682; Part 2, pp. viii, 1228.

North Carolina Practice and Procedure in Civil Cases, edited by Atwell Campbell McIntosh, Professor of Law, University of North Carolina, is a book of such unusual merit that it may be fairly said to be the most important publication in the history of the legal profession in this state.

The importance of the book itself is best described by the quotation from *McLaurin v. Cronly*:¹

"An important part of every code of law is that settling and defining the methods of legal procedure. In this rest the life, vigor and efficiency of the law. It is, therefore, unwise to underrate its importance. It is of the highest moment to observe and uphold it with consideration and care. It is dangerous to allow and tolerate careless practice under procedure law. Such practice never fails to impair the due administration of justice, and sometimes results in defeating the ends of the law."

The legal profession in North Carolina, as well as the students who aspire to be admitted to the bar, have long needed just such a book as Professor McIntosh's *North Carolina Practice and Procedure in Civil Cases*.

Professor McIntosh has performed a difficult task exceedingly well. His book is the first complete text ever published on the North Carolina Code of Civil Procedure. All previous efforts have been confined largely to the publication of the Code of Civil Procedure together with a digest of cases construing the various sections. Professor McIntosh has departed from this practice, heretofore prevailing in North Carolina, and presents in his book a complete text on the entire Code of Civil Procedure. Occasionally he quotes sections of the Code where it is necessary to make the text clear, but in the main, the book consists of concise, definite and remarkably clear statements of the meaning and application of the Statute with abundant footnotes citing decisions of the North Carolina Supreme Court, and sometimes other authorities. The book is remarkably free from argumentation, and even in the few instances in which certain

¹ 90 N. C. 50 (1884).

provisions of the Code of Civil Procedure have not been fully clarified by decisions of the Supreme Court, the author is content with a statement of what appears to him to be the reasonable interpretation.

The author has happily followed throughout the book the plan of comparison of the Code Procedure to the former common law and equity practice which affords a ready understanding of the Code practice. While no effort has been made to cite all of the cases construing the various provisions of the Code, enough are cited to enable the lawyer or student to find all of the decisions on the point in question.

The book is composed of twenty-one chapters under the following titles: Courts and Jurisdiction; Change in Procedure; Limitations of Actions; Parties; Venue and Removal of Actions; Commencement of Actions; Pleadings—Form and Allegation; Complaint; Election of Remedies and Joinder of Causes of Action; Demurrer; Answer, Reply, and Amendments; Preparation for Trial; Trial without a Jury; Trial by Jury; Verdict and Motions before Judgment; Judgments; Appeal and Error; Enforcement of the Judgment; Provisional Remedies; Special Proceedings; Special Remedies, Motions, and Costs. There is also an Appendix containing the rules of the Supreme Court and the rules of practice in the Superior Courts. Under each chapter head there is an analysis of the subjects treated in the chapter, and by no means the least valuable part of the book is the most excellent Index.

On account of the fact that there have been very few important changes in the code during the sixty years since its adoption, and that it is unlikely that there will be many material changes in the early future, this book may be expected to remain the "last word" on North Carolina Civil Procedure for many years to come. It is indispensable to the student, and is far superior to any available digest on the subject of Civil Procedure.

The book consists of more than 1200 pages, printed in good readable type, well arranged, and is published by The West Publishing Company of Saint Paul, Minnesota, and sells at the price of \$15.00. Although the book has been off the press only a short time, it has met with an enthusiastic reception from the lawyers of the state, such as the reputation of its author merits. Perhaps no man in the State of North Carolina has had a better opportunity to acquaint himself with the subject of North Carolina Civil Procedure than has Pro-

fessor McIntosh. The author was an active practitioner for sixteen years, and for more than a quarter of a century has been teaching law at Duke University and the University of North Carolina, and during those years, he has found time to edit a case book on Contracts, and in association with the late Dean Mordecai of Duke University, a case book on Remedies.

The legal profession in North Carolina hopes that Professor McIntosh will make still further contributions to our jurisprudence, but whether he does or not, his *North Carolina Practice and Procedure* will remain an achievement upon which he could well afford to rest his fame.

L. P. McLENDON.

Durham, N. C.

Questioned Documents, Second Edition, by Albert S. Osborne. Boyd Printing Company, 1929. Pp. 1027.

Suppose you are considering a typewritten will and have reason to believe that it has been tampered with and that one of the sheets of the original has been removed and another sheet has been fraudulently substituted. How are you to go about determining the genuineness or falsity of the sheet in doubt? The answer is, wire for this book. In the chapter on questioned typewriting you will find described and illustrated so many peculiarities and differences of typewriting that the proof you seek will fairly jump at you from the page. It does not matter that the sheets have been typed by machines of the same make (assuming that the fraud you suspect has actually been committed). The length in millimeters of the hyphens, the degrees of curvature of the arcs of the parentheses when photographed and enlarged, the curly-cue on the end of the "r's," the angles in the apexes of the "A's," the alignment of the type, the kinds of ribbon and a hundred other tell-tales that you never dreamed existed will make the proof complete.

Questioned typewriting is, of course, only one of the many topics discussed. Every sort of device and method useful in distinguishing between the false and the genuine is elaborately explained. The book is illustrated with immense profusion. One of the most interesting illustrations is a photograph of an exhibit in the recent case in New Jersey involving the bequest of James B. Duke to his collateral relatives. A group of heirs showed up from away out west with a family

Bible. There were entries of the alleged births of a couple of Dukes that bore dates as though made in the years 1887 and 1888. Alas and alack, the Bible on the fly-leaf bore the fateful inscription "Entered according to act of Congress in the year 1890."

Once or twice we have had occasion, in our practice, to challenge the validity of a writing. On those occasions we have been guilty of what the author calls "incessant but utterly purposeless staring at the document as though it would in some mysterious way proclaim itself as false or true." As a first aid to lawyers in such a predicament, he lists fifty different things to look for as a starter. Later in the book he subjects each of these fifty to a minute analysis. There are seventy-six points to examine when questioning handwriting. There are twenty-six ways to cross a "t." In fact, one of the most individual of handwriting characteristics is the way one crosses a "t." There is the tremor of age and the decidedly different tremor of anxiety typical of the forger. The shading as it appears on the vertical strokes indicates that the pen was held in one position and if it appears on the horizontal strokes it indicates a different position. The microscope and the camera play a large part in the detection of frauds connected with documents. The photograph of a document made with the light coming only from one side often discloses tiny shadows that point to erasures or overwriting. These are a few of the hundreds of ways to study a document that is in doubt.

The book contains an exhaustive digest and discussion of cases arranged by states; also citations to text books, encyclopedias and annotations in L. R. A., A. L. R. and other similar sets. There is also a bibliography in which are listed and described practically every book that has ever been written about any matter that could be involved in the questioning of a document. You can find described books discussing the history of ink, the history of the alphabet, rhythm in handwriting, the chemistry of paper making and everything else.

The book will also serve as a refresher for your exhausted supply of legal anecdotes. A perusal of any one of the chapters will without a doubt fit you out to be a first-class entertainer at a dinner party where it is always supposed to be the duty of lawyers to regale the assembled group with tales of smart work in the court house. In view of the fact that none of your auditors will have read the book, you will be perfectly safe in letting it be supposed that you were the chief actor in all of your stories.

The author plays up with considerable emphasis a truly remarkable quotation from Quintillian written about 88 A.D., remarkable for its truth and applicability to the trial of causes in this the Twentieth Century: "It is therefore necessary to examine all the writings relating to a case; it is not sufficient to inspect them; they must be read through; for very frequently they are either not at all such as they were asserted to be, or they contain less than was stated, or they are mixed with matters that may injure the client's cause, or they say too much and lose all credit from appearing to be exaggerated. We may often, too, find a thread broken, or wax disturbed, or signatures without attestation; all which points, unless we settle them at home, will embarrass us unexpectedly in the forum; and evidence which we are obliged to give up will damage a cause more than it would have suffered from none having been offered." No better advice than the foregoing could possibly be given to young lawyers or, for that matter, to older lawyers also in connection with the trial of cases wherein written instruments constitute a part of the evidence, and it might be added, by way of amplifying the ancient Roman's advice, that it is not only important for a lawyer to examine his own documents before he carries them into court, but he should also with the same care scrutinize the documents put in evidence by his opponent.

One chapter is devoted to advice as to how written instruments should be executed so as to make it sure that their genuineness can never be challenged. Among other things the author suggests that only those persons be used as witnesses for wills and important documents who are well known and whose testimony will have weight before a jury. He recommends against the use of trained nurses as witnesses for wills not because their testimony would be particularly subject to attack, but because it is sometimes difficult to locate them. We can heartily second that piece of advice. We used a trained nurse once as a witness to a will and upon the death of the testator could, at first, find no trace of her and could find no one who could prove her handwriting. For a few days it appeared that we were not going to be able to probate the will and an important legacy was in serious jeopardy. By the merest chance we finally located her in a distant city and procured the necessary affidavit from her the day before she left for parts unknown. Ever since then we have insisted

on using as witnesses to wills only those persons whose whereabouts and handwriting are well known.

We recommend the book as good reading and as a splendid work for every lawyer to have on hand against the day when he will have a case in some way involving a questioned document.

C. W. TILLET, JR.

Charlotte, N. C.

The Law Library in the Capitol, Washington, D. C., by Roland Williamson. Washington: John Byrne & Co., 1929. Pp. viii, 281. \$3.00.

Dr. Johnson on a certain occasion, when visiting the library of a friend, was observed to run eagerly to one side of the room intent on poring over the backs of the books. His host politely expressed his wonder that one should have such a desire to look at the backs of books. "Johnson, ever ready for contest, instantly started from his reverie, wheeled about, and answered, 'Sir, the reason is plain. Knowledge is of two kinds. We know a subject ourselves, or we know where we can find information upon it. When we enquire into any subject, the first thing we have to do is to know what books treated of it. This leads us to look at catalogues, and the backs of books in libraries.'"¹

It must be confessed with regret that in this age of machine-crammed erudition, many scholars in the race to extend the length of a subject's bibliography, and most librarians by the very nature of their profession, seldom get beyond the backs of books. This modest little volume clearly shows, however, that its author, who is himself a lawyer, has opened and read freely in the books given into his care. He is the Assistant in Charge of the Supreme Court Law Library and the present book is based on a series of lectures delivered at the Georgetown University Law School.

This last fact does much to explain the treatment given the subject, for the book's title is likely to suggest a critical analysis of the collection or an historical outline of its growth, but its history is only faintly adumbrated while the collection itself is not calculated either by its completeness or the rarity of its contents to stimulate the legal bibliographer. The reader will not find here any careful collation,

¹ Birkbeck Hill's *Boswell*, II, 365.

such as contained in Professor Beale's recent volume,² of ancient treatises, statutes and reports. It is a working collection placed where it is for the convenience of the Supreme Court and lawyers who have occasion to use the library when pleading at that court's bar. It may be taken, therefore, as a typical law collection such as might belong to any reasonably good law school or bar association in America. And it is for this reason that the book fills a place of considerable usefulness to many practicing lawyers who will have no need or opportunity to read in the Supreme Court Law Library itself; and for the same reason should prove a valuable guide to law students who are learning to use the daily tools of their profession. It should be added that the author's aim is modest and that no attempt is made to deal critically with the various reporters in such a way as has been done by Wallace,³ much less to evaluate the treatises which the library contains beyond indicating here and there that a certain work has become established as authoritative. The author's method is almost wholly expository, but he displays well his wares, both "the backs of books" and their contents.

The first chapter treats of the Constitution and of the Federal laws. Here it is pointed out that in the very room where the collection is now housed much of the law of the Constitution was made, for here the Supreme Court sat from 1809 to 1859 before moving to the present court-room which had formerly served as the United States Senate Chamber. As you enter you see an engraved portrait of Marshall and a marble bust of Story. The memories that cling to the room give one a vivid sense of our constitutional growth and do much, therefore, to mitigate the feeling that the room is inadequate for the library, as the library itself seems inadequate for a court whose writ runs over a greater territory than any other's in the civilized world, excepting perhaps that of the Judicial Committee of the Privy Council. In this chapter are considered the various compilations of Federal statutes and the past and present efforts to codify them; as well as works on Federal procedure and practice.

The next chapter takes up the Federal Reports and digests. This is one of the most readable parts of the book, for the author in his consideration of the United States Reports through the 90th volume has given interesting pictures of the reporters as lawyers and

²J. H. Beale, *A Bibliography of Early English Law Books*. Cambridge, 1926.

³J. W. Wallace, *The Reporters* (4th ed. by Heard). Boston, 1882.

men, interspersed with comments on the Supreme Court's leading cases. We become so accustomed to the reporter's names as mere names that we discover with surprise and pleasure, for instance, that "Wheaton" is no other than Henry Wheaton, the eminent publicist and first important American writer on international law. To awaken the students on the back benches the author has introduced here some admiralty cases which read more like Conrad than law reports, such, for instance, as the case of *The Appam*, a British ship taken as a German prize.⁴

Chapter III deals with state laws and reports, and with Shepard's Citations. Here again the author's lively sense of the past and of the law as an institutional organism, stimulated, retarded, or diverted in its growth by individual men has led him to introduce biographical matter of interest such as his sketches of Judge Blackford of Indiana and Judge Gray of Massachusetts, both state reporters. Of especial interest to North Carolina lawyers should be the notice given to François Xavier Martin, sometime Chief Justice of Louisiana who for years was both printer and publisher, as well as lawyer, at Newbern. A native of Marseilles, he came to North Carolina at about the age of twenty, and was admitted to the bar in 1789. He published at Newbern in 1804 his own translation of *Pothier on Obligations*, the first English translation of that classical treatise, ". . . a book for which he had a profound respect; and at this time so complete was his skill as translator and typesetter, that in executing the work he used no manuscript, but rendered the French directly into English type in the composing stick" (p. 98, quoting W. W. Howe).⁵ The student may see a copy of this treatise and of several others of Martin's early imprints, including his *Justice* (Newbern, 1791), his *Treatise on Executors* (Newbern, 1802) and a rare edition (1795) of North Carolina session laws, in the Weeks Collection of Caroliniana in the University Library at Chapel Hill.

In the same chapter Mr. Williamson explains the use of Shepard's Citations, and while this may seem a work of supererogation to the experienced lawyer, it is one of those features of the book that make it especially useful to the law student and beginner in practice.

Chapter IV discusses the Reporter System, compilation of selected cases, and encyclopædias. In revealing the mysteries of the Re-

⁴243 U. S. 124 (1917).

⁵See also W. W. Howe, "François Xavier Martin," in Lewis, *Great American Lawyers* (Phila. 1907), II, 411.

porter System, the author might well have taken occasion to point out the service which law publishers could render to the eye-weary lawyer already weighed down by the burden of *stare decisis*, by printing the reports in sufficiently large type and on sufficiently opaque paper to make them readable instead of compressing the cases into double-column pages as one such publisher has recently done in an important series of reports. Mr. Williamson's demonstration of how a legal point may be traced through "Cyc." and Corpus Juris illustrates well the practical aid which he seeks to render lawyer and law-student.

The fifth chapter has to do with text-books—by which term is understood treatises—and legal periodicals, and contains some interesting strictures by Mr. Joel Prentiss Bishop, the learned author of many treatises, on Professor Gray and the case-system, made, it would seem, at about the time that Gray, Langdell, Ames and the elder Thayer were giving that inductive method its first trial at Harvard. In noting omissions, some of a notable character, of titles which one would ordinarily expect to find in such a collection, the reviewer is forestalled by the author's disarming remark that "no attempt has been made to give a complete list of the important books in the treatise alcove" (p. 215). It may be a matter of wonder, however, that in such a work the name of Maitland does not even receive mention.

The sixth and final chapter considers British laws, reports, and digests. Frequent quotations are made from the late Mr. Leaming's delightful book⁶ and from leading cases to make clear the operation of the English courts to illustrate the growth of the English system of jurisprudence.

As already said, it is believed that this volume will prove of real value to many. While the fact that no matter has been relegated to footnotes or appendices renders the book's reading at times tedious, the exposition of the library's resources is enlivened throughout by a very real appreciation of the builders of the law and of the principles on which it rests. The interpolation of biographical bits, such as the manner in which Mr. Justice Miller, of the United States Supreme Court, studied law while actively engaged in the practice of medicine, or of how and why Chief Justice Shaw of Massachusetts abandoned a lucrative practice at the bar to go upon the bench; add to the book's

⁶ Thomas Leaming, *A Philadelphia Lawyer in the London Courts* (2d ed.), New York, 1912.