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## Recent Legal Literature

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## RECENT LEGAL LITERATURE

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### JURISDICTION AND PROCEDURE OF THE SUPREME COURT OF THE UNITED STATES.

By Hannis Taylor, LL.D., author of "The Origin and Growth of the English Constitution," etc. Rochester: The Lawyers' Co-operative Publishing Co., 1905. pp. lxvi, 1007.

This book is exactly what its title indicates, and covers the whole law within its scope. Indeed it does more, for the author has prepared a very interesting preface of more than sixty pages giving an outline of leading cases from the organization of the court to the present time. We know of no other brief treatment which impresses one so vividly with the enormous range, intricacy, and importance of the questions which have come before this great tribunal. The four distinctive periods of the court's history,—that before the advent of Marshall, that during which Marshall sat as chief justice, the period of Taney, and the period since the war, with its great issues growing out of reconstruction and the implications of the fourteenth amendment,—these are all reviewed as portrayed in the cases. One never ceases to be astonished at the vast amount of pioneer work of the court in an infinite number of vital questions affecting the national welfare, not only questions of law, but of politics and national policy; and one cannot read this preface without a renewed respect for the independence of the court in keeping so free from party strife and party prejudices, while meeting and dealing with many of the very problems which the political agencies of the nation were at work upon. No other court ever passed judgment upon the merits of rival political theories, and yet it took such broad views that its earliest decisions seem almost to have been framed in the light of subsequent events.

The chief and more technical part of the book consists, first, of an introduction, wherein is discussed the genesis of the Supreme Court, and the changes in its organization and jurisdiction which have taken place down to the present time, including an account of the appellate jurisdiction drawn off from the Supreme Court by the Circuit Courts of Appeals, under the Judiciary Act of 1891. Then follow, in order, Part I, covering the original jurisdiction of the court, and the questions when a state may sue and be sued and the procedure in such suits; Part II, dealing with the appellate jurisdiction over ordinary federal courts, including direct appeals from district and circuit courts, questions of law certified by circuit courts of appeals, certiorari to and appeals from circuit courts of appeals, and writs of error and appeals; Part III, dealing with appellate jurisdiction over special federal courts, including the Interstate Commerce Commission; Part IV, dealing with appellate jurisdiction over state courts and the procedure involved therein; Part V, discussing the great writs as they are issued out of the Supreme Court; and Part VI, covering the general subject of procedure in the Supreme Court. An appendix gives the rules of the Supreme Court, and a hundred carefully drawn practical forms for pleadings, motions, writs, orders, bonds, and numerous other papers incident to original and appellate proceedings.

The citation of authorities is very full, and appears quite exhaustive, all

placed in the body of the text instead of in the form of notes. No notes as such are found in the book. This is somewhat novel in a text-book, and is of course an adoption of the form employed in the judicial reports. It has much to commend it. There is a distinct disadvantage in being obliged to refer back and forth from text to notes, and since the cases are practically the most important part of a legal text-book, it hardly seems entirely appropriate to subordinate them to the author's generalizations. There is the further consideration that the tendency of text writers is to dump cases rather promiscuously into note columns, whether strictly in point or not, on the theory that it is better to cite too much than too little. Placing the citations in the text immediately following the legal propositions which they support, would seem to encourage a more discriminating use of them; though we do not suggest that so accurate and accomplished a writer as the author of the book under review was in need of any such stimulus to precision in the use of cases. Indeed this book is distinctly superior to the ordinary legal text-book of the present day.

Naturally the number of lawyers who find it necessary to familiarize themselves with the procedure of the United States Supreme Court, is relatively not very large. But those who do need a work on this subject will find Mr. Taylor's treatise the best one available, so far as we are able to judge.

EDSON R. SUNDERLAND.

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THE AMERICAN STATE REPORTS. Containing cases of general value and authority, etc. Selected, reported and annotated by A. C. Freeman. Vols. 99, 100, 101. San Francisco: Bancroft-Whitney Co., 1905.

DIGEST OF THE DECISIONS OF THE COURTS of last resort of the several states from 1887 to 1904, contained in the *American State Reports*, Vols. 1 to 96, inclusive, and of the notes to the cases reported therein. Three volumes. By Edmund Samson Green. San Francisco: Bancroft-Whitney Co., 1904.

TABLE OF CASES alphabetically arranged as to the several states in the *American Decisions*, 100 vols., *American Reports*, 60 vols., *American State Reports*, 100 vols., showing the cases to which notes are appended, also what cases in these series have been Affirmed, Reversed or Dismissed by the United States Supreme Court. By Wm. S. Torbert, of Washington, D. C. Also a list of Notes in the above 260 volumes, alphabetically arranged, by A. C. Freeman, Editor *American State Reports*. San Francisco: Bancroft-Whitney Co., 1905.

A practical recognition of the value of these reports of selected cases is found in the fact that in the preparation of most of the late text-books pains are taken by authors and publishers to cite decisions from them. The frequent references thus made in works on very different topics of the law indicate the variety of the subjects passed on in the cases included in these volumes. The usefulness of the American State series increases as time goes on, and indeed the set seems now indispensable to the lawyer who wishes to keep up with the recent leading decisions of the courts outside his own state.

In the last three volumes (99, 100, 101) appear over 350 cases selected

from 56 volumes of the official reports of 38 states. Each case is annotated to some extent: even the shortest notes, making reference simply to analogous cases reported in the earlier volumes of the series and elsewhere, are of great value to the investigator, while the more extended notes are often complete essays on the particular topics discussed.

Is it too much to hope that the increasing use of these reports will tend greatly to harmony in the expression of legal doctrines, by making the leading decisions of many courts, thus carefully annotated, more accessible to all who are discussing similar cases in other courts?

The scope of the editorial work may be indicated by a reference to a few of the notes in these later volumes. In Volume 99 about 50 pages are given to a discussion of the *Liability of Common Carriers for Baggage of Passengers*; 28 pages to *Gifts Causa Mortis*; 60 pages to the *Right to Subrogation*; 22 pages to *Injunctions Against Trespass on Realty*.

In Volume 100 *Accord and Satisfaction* occupies 66 pages; *Idem Sonans*, 32 pages; *Fidelity Insurance*, 17 pages; *Duties and Liabilities of Electric Corporations*, 24 pages. Volume 101 contains: 44 pages on *The Maxim "Nullum Tempus Occurrit Regi"*; 42 pages on *Possession of Stolen Property as Evidence of Guilt*; 42 pages on *When an Employer is Liable in Exemplary Damages for the Act of His Employee*; together with many other notes covering a great variety of subjects.

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The value of these reports is increased by GREEN'S DIGEST of the decisions contained in the American State Reports, Volumes 1 to 96, inclusive. This work is not only a well-made digest of all the decisions, but is also an index to the notes. So judicious has been the selection of decisions for publication in this series that no title of the law seems to have been omitted, hence this digest, while of course necessary to the owner of the series, may be used advantageously by one who is deprived of access to it. A complete table of cases reported and digested is to be found in Volume III.

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The *American State Reports* are, as is well known, but a part of the AMERICAN SERIES—the *American Decisions*, *American Reports* and *American State Reports*—now published by Bancroft-Whitney Company, and numbering 261 volumes.

Nearly 41,000 selected decisions are reported in these three sets of reports, and to place them, and the notes accompanying them, more readily within reach of all, the publishers have just issued, in inexpensive form, a *Table of Cases and List of Important Notes* in the 100 volumes of *Decisions*, 60 volumes of *Reports* and 100 volumes of *State Reports*. The cases in this table are arranged alphabetically under the several states and the practitioner is thus enabled to ascertain at a glance what cases of his state are reported in any of the 260 volumes.