

KF 5914  
S 84  
1924

## PREFACE

A dozen years ago the present editor published a case-book for law school use on Trial Practice. It was then a subject unknown in the law school curriculum, and the presumptions were perhaps, for that reason, generally thought to be against its usefulness and practicability. But in the years that have passed the teaching of trial practice has become a common feature in American legal education. The once prevalent idea that the subject was primarily local has been quite generally dispelled, and the principles of trial practice are now seen to be of wide application. Variations found in different jurisdictions are mostly on minor points. The major problems, involving the elements of jurisdiction and the correlation of functions between judge, jury, attorney and witness, have been solved by the different American courts along almost identical lines. The result has been the development of a systematic and well-ordered body of principles suited to the needs of modern American courts of justice. Such a subject is obviously of the highest importance to those who are being trained to enter the practice of law, and its place in the law school course has become secure.

It now seems desirable to take a further step in the same direction, and to bring the subject of Appellate Practice into the law school field. Every argument made against the teaching of trial practice may be equally employed against extending the course into the realm of appellate review. But the arguments in favor of one are equally cogent in behalf of the other. There is the same mass of litigation over points of practice, and the same uniformity in the fundamental principles involved. As a matter of statistics, the subject of Appeal and Error fills a larger section in the current digests than Trials. And while local statutes play an important part in determining the minor technical requisites for review, there is a striking uniformity in those underlying principles according to which appellate proceedings are instituted and conducted in American courts. In making a general study

(iii)

of the subject with material gathered from many jurisdictions, the essential elements necessarily become emphasized and clarified among the incidental details and the diverse nomenclature, resulting in a sounder appreciation of fundamental principles than could well be obtained from a study of the practice of a single jurisdiction.

The editor's earlier volume on Trial Practice has not been incorporated in the present book, but that subject has been entirely reorganized and rewritten. The material on Jurisdiction has been greatly extended. Legal Ethics in connection with trial work has been treated more adequately, new sections on the Verdict and Judgment have been added, certain topics, such as Instructing the Jury and New Trials, have been considerably condensed, new cases have been freely used whenever experience indicated the advisability of such changes, and the whole subject has been annotated more liberally than before.

Appellate Practice, which fills substantially half the present volume, is doubtless more technical than the practice relating to trials, and there is more variety and complexity in the application of the rules. It seemed desirable, however, to restrict the case material to the main principles involved, and to exhibit subordinate variations and special applications in the form of notes. This has required rather heavy annotation, but the notes merely amplify the scope of the text or show its implications and limitations, without undertaking to present exhaustive lists of authorities.

The two topics, Trial and Review, are in fact but two aspects of a single subject. Every trial must be conducted with a view to a possible appeal, and every appeal is based upon the proceedings below. Reviewing cases in appellate courts has become such common practice that lawyers must always be prepared to carry their cases through to the highest courts. This has greatly increased the need for teaching the principles of appellate review, and the fact that every step taken in either court relates immediately and vitally to the procedure in the other, makes it almost indispensable that the two stages of litigation be studied as counterparts of one another. The present book is designed to develop the subject in this way as an organic whole.

Since procedural questions are likely to accompany every kind of case as incidental to problems of liability, it is par-

PREFACE.

v

ticularly necessary in dealing with material of this kind to freely omit portions of the opinions when irrelevant to the subject matter in hand. Such omissions have in all cases been indicated. But it has been the constant aim of the editor to preserve in every case a full statement of all facts bearing upon the procedural problem involved. These are frequently given in the form of condensed statements by the editor, and such statements will always be found marked by inclosing brackets.

EDSON R. SUNDERLAND.

Law School,  
University of Michigan,  
Ann Arbor,  
January, 1924.

