BOOK REVIEWS

CASES AND OTHER MATERIALS ON NEW FEDERAL AND CODE PROCEDURE—by James A. Pike.† Callaghan and Company, Chicago, 1939. Pp. xviii, 857. $6.00.

This is a streamlined casebook for modern streamlined procedure. The title fairly describes the contents, for the new federal rules are given preëminence in the book, and material dealing with ordinary code procedure is inserted but to amplify, if not to horrify. Possibly the remainder of the title should be changed to place the "other materials" before the "cases," for the editor has not hesitated to prefer various forms of other material to the cases, particularly where the latter are lacking to explain some of the newest of reforms. Hence especially stressed are the explanatory addresses and articles dealing with the new federal rules.

The first introductory chapter shows clearly the tone of the whole book. Here, after a very brief statement along broad historical lines of various systems of pleading, the editor turns to the background and scope of the new federal rules, presenting such matter as the text of the Court order appointing the committee, the statements of the Attorney General, the president of the American Bar Association, and of an objecting congressman before the Judiciary Committee of the House at the hearing on the rules, and the discussions had at the various bar institutes on the rules. Thereafter the volume follows largely the schematic arrangement of the rules. First we have the topic of pleading, with discussion of the one civil action, the complaint, defenses, and the reply. Then comes a book on parties and actions, wherein are included all the problems of joinder and splitting, with a special chapter on the new intervention and class action rules. Finally, Book III, denominated in the new manner, Pre-Trial (shades of Stephen and Chitty!), deals with objections to pleadings, depositions and discovery, pre-trial hearings, and summary judgments.

Of the case material actually used a large amount consists of the decisions on the federal rules by the district courts during the year between their enactment and the completion of the book, including many then only reported in the various services on the rules.

It will be seen, therefore, that this is an up-to-the-minute casebook,

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indeed. So far as I know there is no other casebook in existence which even purports to be as wholly modern and advanced as this. For while most new case collections in the field are including general references to the federal rules, they appear only as the more or less graceful superstructure, not the foundation of the temple itself.

Indeed, one may see this contrast by comparing this book with the new scholarly and complete casebook on *Judicial Remedies* by Messrs. Scott and Simpson of Harvard. (This I had the honor of reviewing in (1939) 8 FORDHAM L. REV. 293.) The latter, too, is a modern casebook in that it rejects for a single course covering past and present procedure the old division of the subject along lines purely historical, which gave us separate courses in common law, code, equity, and federal pleading, not to speak of trial and appellate practice and a few other things. These two books may be taken as fairly representative of the conservative and radical wings of the present-day movement for all-inclusive procedural courses. True, Mr. Pike's volume does not exclude the possibility of a prior historical study, but one may conclude that he does not think it necessary, for his appendix contains a brief "summary of common law pleading"—the past compressed in a reference section almost a glossary of terms.

As I have already indicated in my review of the Harvard casebook, I am doubtful of the bird's-eye view course, and if there must be a choice between the two extremes, I much prefer the modern approach of the present volume. At least we are then attempting to teach the students the law as it now actually is in some important courts. In Scott and Simpson's casebook we find a wealth of historical material through which the student passes, but, to my mind, with serious question as to his proper orientation. For he has spent much time on battles glorious in their day, but already receding into the past, or on the side issues—the auxiliary proceedings—with constant tendency to minimize the more vital problems.[1] With the new casebook, however, one may feel he is on the firing line of advancing reform and in the midst of what courts are now doing—shaping theories of examination before trial and impleader of third parties, minimizing motions, demurrers, and other

[1] I have discussed this further in (1939) 8 FORDHAM L. REV. 293, and referred to such examples as the extensive space devoted to the history of equity jurisdiction and the limited treatment of jury trial and waiver under modern united procedure. I think I see such a singling out for special treatment of matters of constantly lessening importance under modern procedure in Simpson, *A Possible Solution of the Pleading Problem* (1939) 53 HARV. L. REV. 169.

dilatory objections, developing pre-trial limitation of issues, and so on. This means, I believe, a decided gain in actuality, in interest, and in resulting equipment for present-day practice.

Hence I am delighted, indeed, to see a casebook as advanced as this and shall watch with interest its reception. I think we need experience in the law schools of the use of the latest materials in a field such as law administration, where reform has been most active and fruitful. Probably in a few years we shall all come willingly to books of this type. It is true that for the moment I find myself still with a few twinges of, I fear, rank conservatism. Certainly I do not think there is any argument for going back to the separate and purely historical courses in procedure (unless we are making a direct study of legal history), nor do I like the historical survey. On the other hand, one must remember that the states have not yet adopted the federal rules in toto, and that even with the rapid growth in federal jurisdiction most lawyers in common practice still have to deal with their state court procedures.[2] I am inclined to think that for some time yet one needs somewhat greater emphasis upon this local procedure, with some further explanation of how it got that way (i.e., in the later common law and early codes), and with the new federal rules used as illustrations of developments to be devoutly prayed for, rather than completely here. This casebook, persuasive as it is, would lead the students going to metropolitan New York or Chicago to assure to their seniors and the courts, if they ever see the latter, what the procedure should be (*exempli gratia,* the federal rules), rather than "what it is." Well, after all, perhaps that is not such a bad idea, though it is not conducive to the practitioner's first reaction, "Let's make a motion anyhow—we may pick up something." At any rate it is grand propaganda for the best present ideas in law administration and should be good fun to teach. And no student is permanently harmed by being a reformer in his law school days—he loses that quickly enough in any event.

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[2]It may still happen, as it did at one of the bar institutes on the federal rules, that a lawyer can say, "I don't know why I'm here—I haven't had a case in the federal courts in the last 20 years and don't expect one in the next 20."

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