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Robinson's Practice: Book Review of The Practice of Law and Equity in Virginia

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ROBINSON'S PRACTICE.

The Practice in Courts of Law and Equity in Virginia. By Conway Robinson. Vol. II, containing Practice in suits in Equity. pp. 648. *Richmond: Printed by Samuel Shepherd.* 1835.

The first volume of this work came out about three years ago; and received so earnest a welcome from the legal profession, that the author's tardiness in producing the second might be matter of wonder, were not his devoted attention to an unusually large practice well known. The present is destined, because it deserves, to be a much greater favorite with the law-book-reading public, than the former volume was. The arrangement is after a better classification of subjects; rendering it easier to find the doctrine desired, on any given point: and there is a larger proportion of valuable matter—matter not to be found in the Revised Code, or in Tate's Digest. Indeed there are few works, more copiously filled with useful, and *not-too-obvious* learning. Industry and research are the author's manifest characteristics. He is a real *brownie*—if not for supernatural speed of workmanship, at least in the world of trouble he will save his brethren. Here, within 442 pages (for the other 206 of this tome—*horresco referens*—are *index*,) he has compressed matter, and inestimable matter too, for which the practitioner would otherwise have to hunt through, not only the thirty volumes of Virginia Reports (counting Chancellor Wythe's) but the numberless ones of New York, Massachusetts, the Federal Courts, and England.

In his *abstracts of cases*, the author is, in the main, particularly successful. Not only does he give them with a clearness, (the result of brevity, effected by discarding non-essentials) which we would gladly see judges and reporters emulate,—but he sometimes gathers from them doctrines, which the reporter has overlooked, and which a cursory reader would therefore be little apt to discover. For example, in pp. 20, 21, he states these two points, as decided in the case of *Blow* v. *Maynard*, 2 Leigh, 21: 1st, That a fraudulent donee of personalty is accountable for it and its increase, and also for hires, and profits, accruing since the donor's death, as executor *de son tort*; just as a rightful executor would be, who had taken possession at the donor's death: and 2d, That a *privy* to the fraud, who shared with the donee the profits of the property fraudulently conveyed, is accountable jointly with the donee. Now the reporter in his marginal summary of the case, does not mention these as among the points decided; though in the decree of the court (2 Leigh, p. 67,) they manifestly appear. Again—in the case of *Tod* v. *Baylor*, (as now reported in 4 Leigh, 498,) it is not said, at all, that *only two of the judges concurred* in the third point there stated as adjudged. But our author tells us so, (p. 10,) and we are thus enabled to estimate the authority at its true value—as *persuasive* only,—not *obligatory*, in other cases.

The mechanical execution of the book does infinite credit to the printer. The typography is unsurpassed; and the paper is white, pure, and firm, so as to receive notes of the pen without blotting—a great merit in law books.

If it were only to shew that we are free of our craft as critics, we must find some fault with this work: promising, that *merit* is its *staple*; and that, if more of the criticism be occupied with its faults, it is chiefly because they are somewhat hard to detect, amidst the pile of excellences. The chaff, this time, is hidden by the wheat.

There is *not enough compression* in some parts. In this volume, it is true, not a tithe of the statute law is quoted, that over-burthens the former one: but when he does cite a statute, the author still gives it to us in all the exuberance of legislative verbosity. Thus, he fills the third part of a page with the law of *lapsing legacies*; (p. 91) when, considering that only the *substance* was essential—especially as every owner of the book may be supposed to have the Code also—it might more clearly, and as satisfactorily, have been couched in five lines, as follows: "When a legatee or devisee, descended from the testator, dies before him, leaving any descendant who survives him; the legacy or devise shall vest in such surviving descendant, as if the legatee or devisee had survived the testator, and then died unmarried and intestate." And he takes *three quarters of a page* (copied from the Revised Code) to say that "a surety may in writing notify the creditor to sue upon the bond, bill, or note, which binds the surety; and unless the creditor sue in reasonable time, and proceed with due diligence to recover the sum due, the surety shall be exonerated." (pp. 132, 133.) In the name of all that is reasonable, why should not a writer disencumber his pages of the rubbish of *howbeit*, *provided*, *nevertheless*, *notwithstanding*, and *aforesaid*, when, by doing so, he might save himself and his readers so much time and toil?

Some quarrel, too, we have, with the *judicial* law, which principally fills the book. It is too *mere a digest of cases*. A head in the Table of Contents refers us to a page, where we expect to find a full elementary exposition of at least the leading doctrines that fall under that head: but we see perhaps only a single *case*, or a judge's *dictum*, not at all realizing the promise of the reference, by unfolding all pertinent general principles. Thus, under the caption, "WHEN STATEMENT OF A TRANSACTION MUST BE TAKEN ALTOGETHER," instead of finding a general rule laid down on the point indicated, we find only a case briefly stated, from which we are left to deduce a rule, *if we can*. (pp. 329, 330.) Under the very next head, the well established principle, that 'an Answer is no evidence for the defendant, as to any thing it affirms, not responsive to the allegations of the Bill, but that it *is* evidence, so far as it responds to those allegations'—is whittled away to the position, that it is not evidence as to any affirmative matter, touching which the Bill *seeks no discovery*. Now, if the Bill positively alleges one thing (whether it calls for a *discovery* or not,) and the answer as positively alleges the reverse; such denial stands for proof, and must be rebutted by testimony: and so, we conceive, do the cases clearly evince, which are cited by our author himself; *Beckwith* v. *Butler*, *Paynes* v. *Coles* (see 1 Munf. 379, 389, 397,) and even *Taylor* v. *Moore*, whence he quotes (and quotes truly) in the form of a judge's *dictum*, the position in question—not to speak of 1 Call, 224, 390; the *dicta* of Roane and Carrington in the case of *Rowton* v. *Rowton*, 1 Hen. and Munf.; and many other authorities. The principle, in its true extent, is well illustrated by the case cited from 1 John-

son's Reports, 580, where an Answer alleging usury, of which the Bill had said nothing, was held *no evidence*. The case from 2 Leigh, 29, is infelicitously adduced. The *point* professedly quoted from it was not there adjudged: it was only maintained by *one judge*, who (we say it with a deference heightened by affection, as well as by respect) seems to us to have therein gainsayed the well settled doctrine we have referred to, and therefore to have *erred*. The Answer, there, (see 2 Leigh, 35, 36) was responsive to the Bill, and must have prevailed against it, but for the numerous and weighty countervailing circumstances detailed by that judge himself. (pp. 49 to 53.) The *deed* in controversy was stamped with more badges of fraud than are enumerated in the celebrated *Twyne's Case*. These, doubtless, and not any doubt as to the legal effect of the Answer, satisfied the minds of the other judges, who merely agreed in pronouncing the deed fraudulent, without assigning reasons.

Some omissions in so comprehensive a work, were to be expected—indeed were unavoidable. Not in the spirit of censure, therefore, but merely to awaken the author's attention in his next edition, or in his next production, we remark, that he has overlooked an important decision; (in 2 Leigh, 370,) 'that a tenant, whose goods are wrongfully distrained, cannot obtain relief in equity, unless he shew good reason for not having brought his action of replevin.'

Divers other topics we were minded to discuss with our intelligent author: but on glancing over our two last paragraphs, we are struck with fear lest our unprofessional readers may have been already offended at the strong *smell of the shop*, discernible in what we have produced; and stop their ears against the technical dissonance of

> ——"sounds uncouth, and accents dry,
> That grate the soul of harmony."

But we cannot let the *Index* pass unreproved. Its length—the length of its *indicating* sentences—and the utter absence of any *sub-alphabetical* arrangement—in a great degree frustrate its use as an index. We can find what we want nearly as well by the 'Contents.'

After all our censures, however—or cavils, if the author pleases—there remains to him so large a residue of solid desert, that he cannot miss the small deduction we have made. His book is one which we would advise every lawyer, in Virginia at least, to buy; and even those in other states—the Western, especially, whose Chancery systems most resemble ours—can hardly find one that will aid them so much in disentangling the intricacies of Chancery Practice. Never have we paid the price of a commodity more ungrudgingly.

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