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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.

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 favor than 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 lawyer—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 200 of this tome—hence referred—see Index,) he has compressed matter, and inestimable matter too, with due diligence to recover the sum due, the surety matter not to be found in the Revised Code, or in Tate's.

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. Megnard, 2 Leigh, 21: 1st, That a fraudulent donee takes, under the caption, "WHEN STATEMENT OF A TRANSACTION MUST BE TAKEN ALTOGETHER," instead of position or at least the leading doctrines that fall under the reporter in his marginal summary of the case, does not mention these as among the points decided; though we find only a case briefly stated, from which we are instructed, not with the fraud, who shews the very next head, the well established principle, 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. 139, 153.) In the name of all that is reasonable, why should not a writer discard the rubbish of his pages of the rubbish of Bound, provided, nevertheless, notwithstanding, and afterwards, when, by doing so, he might save himself and his readers so much time and toil?

Some queried, 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 note, or a judge's dictum, not at all realizing the promise of the references, 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; Basketh v. Buller, Page v. Coles (see 1 Mont. 379, 389, 397,) and even Taylor v. Moore, where, he quotes (and quotes truly) in the form of a judge's dictum, the position in question—not to speak of 1 Call, 284, 399; the diodes of Roane and Carrington in the case of Roane v. Rowton, 1 Hen. and Mun.; and many other authorities. The principle, in its true extent, is well illustrated by the case cited from 1 John-
son's Reports, 380, where an Answer alleging usury, of which the Bill had said nothing, was held no evidence. The case from 2 Leigh, 29, is infectiously 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 all doubts 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 his next production, we well ask, 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 stop, discernible in what we have produced; and stop their ears against the technical dissonance of

"ounds uncouth, and accents dry,
That grot 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-alphabetized 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.