1835

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

Lucian Minor

Repository Citation

Copyright © 1835 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository. http://scholarship.law.wm.edu/facpubs
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 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 brazeur—if not for supernatural speed of workmanship, at least in the world of trouble he will save his brethren. Here, within 449 pages (for the other 200 of this tome—hence reformers—see Index), he has compressed matter, and inestimable matter too, for with due diligence to recover the sum due, the surety shall not lose his security; the executors shall be exonerated.” (pp. 132, 133.) In the name of the Reporter, 206 of this work is highly commended.

The author is, in the main, much time and toil?—not to lessen the credit to the printer. The typography is thus sufficiently explained. If it were only to shew that we are free of our craft many other authorities. The principle, in its true essence, is well illustrated by the reader, if he will but consider the cases set down. Finding a general rule laid down on the point indicated, we find only a case briefly stated, from which we are not 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; Ballantyne v. Buller, Paugus v. Coles (see 1 Munt, 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, 284, 390; the diets of Roane and Carrington in the case of Rowton v. Rowton, 1 Hen. and Mumf; and many other authorities. The principle, in its true extent, is well illustrated by the case cited from 1 John-

Robinson's Practice.
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 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 Twyg's Case. Those, 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 his next production, we well seek, 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 grieves 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-alphabetted 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 caviats, if the author pleases—there remains to him so large a residuum 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.