

CASES  
ON  
ADMINISTRATIVE LAW

SELECTED FROM DECISIONS OF  
ENGLISH AND AMERICAN COURTS

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AMERICAN CASEBOOK SERIES

JAMES BROWN SCOTT  
GENERAL EDITOR

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# THE AMERICAN CASEBOOK SERIES

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THE first of the American Casebook Series, Mikell's Cases on Criminal Law, issued in December, 1908, contained in its preface an able argument by Mr. James Brown Scott, the General Editor of the Series, in favor of the case method of law teaching. Until 1915 this preface appeared in each of the volumes published in the series. But the teachers of law have moved onward, and the argument that was necessary in 1908 has now become needless. That such is the case becomes strikingly manifest to one examining three important documents that fittingly mark the progress of legal education in America. In 1893 the United States Bureau of Education published a report on Legal Education prepared by the American Bar Association's Committee on Legal Education, and manifestly the work of that Committee's accomplished chairman, William G. Hammond, in which the three methods of teaching law then in vogue—that is, by lectures, by text-book, and by selected cases—were described and commented upon, but without indication of preference. The next report of the Bureau of Education dealing with legal education, published in 1914, contains these unequivocal statements:

"To-day the case method forms the principal, if not the exclusive, method of teaching in nearly all of the stronger law schools of the country. Lectures on special subjects are of course still delivered in all law schools, and this doubtless always will be the case. But for staple instruction in the important branches of common law the case has proved itself as the best available material for use practically everywhere. \* \* \* The case method is to-day the principal method of instruction in the great majority of the schools of this country."

But the most striking evidence of the present stage of development of legal instruction in American Law Schools is to be found in the special report, made by Professor Redlich to the Carnegie Foundation for the Advancement of Teaching, on "The Case Method in American Law Schools." Professor Redlich, of the Faculty of Law in the University of Vienna, was brought to this country to make a special study of methods of legal instruction in the United States from the standpoint of one free from those prejudices necessarily engendered in American teachers through their relation to the struggle for supremacy so long, and at one time so vehemently, waged among the rival systems. From this masterly report, so replete with brilliant analysis and discriminating comment, the following brief extracts are taken. Speaking of the text-book method Professor Redlich says:

"The principles are laid down in the text-book and in the professor's lectures, ready made and neatly rounded, the predigested essence

of many judicial decisions. The pupil has simply to accept them and to inscribe them so far as possible in his memory. In this way the scientific element of instruction is apparently excluded from the very first. Even though the representatives of this instruction certainly do regard law as a science—that is to say, as a system of thought, a grouping of concepts to be satisfactorily explained by historical research and logical deduction—they are not willing to teach this science, but only its results. The inevitable danger which appears to accompany this method of teaching is that of developing a mechanical, superficial instruction in abstract maxims, instead of a genuine intellectual probing of the subject-matter of the law, fulfilling the requirements of a science.”

Turning to the case method Professor Redlich comments as follows:

“It emphasizes the scientific character of legal thought; it goes now a step further, however, and demands that law, just because it is a science, must also be taught scientifically. From this point of view it very properly rejects the elementary school type of existing legal education as inadequate to develop the specific legal mode of thinking, as inadequate to make the basis, the logical foundation, of the separate legal principles really intelligible to the students. Consequently, as the method was developed, it laid the main emphasis upon precisely that aspect of the training which the older text-book school entirely neglected—the training of the student in intellectual independence, in individual thinking, in digging out the principles through penetrating analysis of the material found within separate cases; material which contains, all mixed in with one another, both the facts, as life creates them, which generate the law, and at the same time rules of the law itself, component parts of the general system. In the fact that, as has been said before, it has actually accomplished this purpose, lies the great success of the case method. For it really teaches the pupil to think in the way that any practical lawyer—whether dealing with written or with unwritten law—ought to and has to think. It prepares the student in precisely the way which, in a country of case law, leads to full powers of legal understanding and legal acumen; that is to say, by making the law pupil familiar with the law through incessant practice in the analysis of law cases, where the concepts, principles, and rules of Anglo-American law are recorded, not as dry abstractions, but as cardinal realities in the inexhaustibly rich, ceaselessly fluctuating, social and economic life of man. Thus in the modern American law school professional practice is preceded by a genuine course of study, the methods of which are perfectly adapted to the nature of the common law.”

The general purpose and scope of this series were clearly stated in the original announcement:

“The General Editor takes pleasure in announcing a series of scholarly casebooks, prepared with special reference to the needs and limi-

tations of the classroom, on the fundamental subjects of legal education, which, through a judicious rearrangement of emphasis, shall provide adequate training combined with a thorough knowledge of the general principles of the subject. The collection will develop the law historically and scientifically; English cases will give the origin and development of the law in England; American cases will trace its expansion and modification in America; notes and annotations will suggest phases omitted in the printed case. Cumulative references will be avoided, for the footnote may not hope to rival the digest. The law will thus be presented as an organic growth, and the necessary connection between the past and the present will be obvious.

"The importance and difficulty of the subject as well as the time that can properly be devoted to it will be carefully considered so that each book may be completed within the time allotted to the particular subject. \* \* \* If it be granted that all, or nearly all, the studies required for admission to the bar should be studied in course by every student—and the soundness of this contention can hardly be seriously doubted—it follows necessarily that the preparation and publication of collections of cases exactly adapted to the purpose would be a genuine and by no means unimportant service to the cause of legal education. And this result can best be obtained by the preparation of a systematic series of casebooks constructed upon a uniform plan under the supervision of an editor in chief. \* \* \*

"The following subjects are deemed essential in that a knowledge of them (with the exception of International Law and General Jurisprudence) is almost universally required for admission to the bar:

Administrative Law.	Equity Pleading.
Agency.	Evidence.
Bailments.	Insurance.
Bills and Notes.	International Law.
Carriers.	Jurisprudence.
Code Pleading.	Legal Ethics.
Common-Law Pleading.	Partnership.
Conflict of Laws.	Personal Property.
Constitutional Law.	Public Corporations.
Contracts.	Quasi Contracts.
Corporations.	Real Property.
Criminal Law.	Sales.
Criminal Procedure.	Suretyship.
Damages.	Torts.
Domestic Relations.	Trusts.
Equity.	Wills and Administration.

"International Law is included in the list of essentials from its intrinsic importance in our system of law. As its principles are simple in comparison with municipal law, as their application is less technical,

and as the cases are generally interesting, it is thought that the book may be larger than otherwise would be the case.

"The preparation of the casebooks has been intrusted to experienced and well-known teachers of the various subjects included, so that the experience of the classroom and the needs of the students will furnish a sound basis of selection."

Since this announcement of the Series was first made there have been published books on the following subjects:

*Administrative Law.* By Ernst Freund, Professor of Law in the University of Chicago.

*Agency.* By Edwin C. Goddard, Professor of Law in the University of Michigan.

*Bills and Notes.* By Howard L. Smith, Professor of Law in the University of Wisconsin, and Underhill Moore, Professor of Law in Columbia University.

*Carriers.* By Frederick Green, Professor of Law in the University of Illinois.

*Conflict of Laws.* By Ernest G. Lorenzen, Professor of Law in Yale University.

*Constitutional Law.* By James Parker Hall, Dean of the Faculty of Law in the University of Chicago.

*Contracts.* By Arthur L. Corbin, Professor of Law in Yale University.

*Corporations.* By Harry S. Richards, Dean of the Faculty of Law in the University of Wisconsin.

*Criminal Law.* By William E. Mikell, Dean of the Faculty of Law in the University of Pennsylvania.

*Criminal Procedure.* By William E. Mikell, Dean of the Faculty of Law in the University of Pennsylvania.

*Damages.* By Floyd R. Mechem, Professor of Law in the University of Chicago, and Barry Gilbert, of the Chicago Bar.

*Equity.* By George H. Boke, Professor of Law in the University of Oklahoma.

*Evidence.* By Edward W. Hinton, Professor of Law in the University of Chicago.

*Insurance.* By William R. Vance, Professor of Law in Yale University.

*International Law.* By James Brown Scott, Professor of International Law in Johns Hopkins University.

*Legal Ethics, Cases and Other Authorities on.* By George P. Costigan, Jr., Professor of Law in Northwestern University.

*Partnership.* By Eugene A. Gilmore, Professor of Law in the University of Wisconsin.

- Persons* (including *Marriage and Divorce*). By Albert M. Kales, of the Chicago Bar, and Chester G. Vernier, Professor of Law in Stanford University.
- Pleading* (*Common Law*). By Clarke B. Whittier, Professor of Law in Stanford University, and Edmund M. Morgan, Professor of Law in Yale University.
- Property* (*Titles to Real Property*). By Ralph W. Aigler, Professor of Law in the University of Michigan.
- Property* (*Personal*). By Harry A. Bigelow, Professor of Law in the University of Chicago.
- Property* (*Rights in Land*). By Harry A. Bigelow, Professor of Law in the University of Chicago.
- Property* (*Wills, Descent, and Administration*). By George P. Costigan, Jr., Professor of Law in Northwestern University.
- Property* (*Future Interests*). By Albert M. Kales, of the Chicago Bar.
- Quasi Contracts*. By Edward S. Thurston, Professor of Law in Yale University.
- Sales*. By Frederic C. Woodward, Professor of Law in the University of Chicago.
- Suretyship*. By Crawford D. Hening, formerly Professor of Law in the University of Pennsylvania.
- Torts*. By Charles M. Hepburn, Dean of the Faculty of Law in the University of Indiana.
- Trusts*. By Thaddeus D. Kenneson, Professor of Law in the University of New York.

It is earnestly hoped and believed that the books thus far published in this series, with the sincere purpose of furthering scientific training in the law, have not been without their influence in bringing about a fuller understanding and a wider use of the case method.

WILLIAM R. VANCE,  
General Editor.

JUNE, 1921.

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