Three Book Reviews of Benjamin J. Shipman's

"Hand-Book of Common-Law Pleading" (2d ed. 1895).

1.

8 *Harvard Law Review* 185 (October 1894).

"Mr. Shipman's work contains, what its title does not suggest, a great deal of general information as well in questions of practice as of pleading. The book is written in a clear and simple style, well adapted to a student's needs, and ought to serve its purpose of making students understand the common-law procedure. In a book of so much merit of simplicity and fulness it is to be regretted that the leading principles in black letter type do not at all show the effect of thorough testing and revision, such as is advisable when an author undertakes the dangerous and difficult task of supplying multum in parvo. For instance, one "leading principle " is "Evidence is relevant to an issue which tends in any degree to prove it," and the needless warning is given in "elucidating" commentary on this that relevancy is "a matter often difficult of determination." But these, although not the only serious slips are, perhaps, not fair samples of the general run of the book, which is on the whole apt for its purpose. R. W. H."

2.

42 *The American Law Register and Review* 830-32 (November 1894).

"This volume is another of the deservedly popular Hornbook Series, and possesses in an eminent degree all the peculiar excellences of that system of text-books, already described in a review of Clark's Criminal Law, published in the August number of the current volume of this magazine. It will, therefore, as well as by its individual merits, add to the prestige that series has already acquired, and is enhancing with each successive volume. Books of this kind are eminently adapted to the needs of students, who should acquire a firm grasp of the fundamental principles of the law, before burdening

their minds with the mass of trivial and often inconsistent detail that disfigure so many so-called text-books, and makes them little else than a disorderly digest of cases. To disinter the underlying principles from the superincumbent mass of chaff, is a task equally beyond the inclination and the power of a student, and often proves a task to the experienced lawyer. On all sides, therefore, a text-book which clings closely to the central idea which its name represents, is sure to be gladly welcomed.

"The subject of this volume is a most important one. In spite of the prevailing mania for innovation and for the cultivation of ignorance and carelessness, which has nowhere displayed itself to better advantage than in legal matters, the knowledge of the principles of common-law pleading is an absolute essential to the mental equipment of every lawyer, as essential under a code as under the old system to which they owe their origin. No omission of a material averment, no duplicity in the strict sense of the term, no negative pregnant, is allowable in a "proceeding called an action," any more than in a common-law declaration. Thousands of lawyers are daily paying the penalty of their wanton disregard or wilful ignorance of that fact.

"But while the main principles of pleading are thus essential, the minutiae of the old system are no longer applicable in most of the United States; and our book accordingly does not attempt to give them. To do so would indeed be beyond its scope. But it will be difficult to find any important point that the author has overlooked, or any important case that he has neglected to cite. The accuracy of his statements of principles also seems to be unexceptionable, though the wording might, perhaps, in rare instances, be improved. As possessing special value may be mentioned the discussion of pleading in assumpsit, the statement of parties, the special traverse, and negatives pregnant. On some of these the author's treatment, while not so scientific as that of Stephen, is decidedly clearer to the average student, from its very want of technicality.

"The index might have been made a little fuller, for with a new arrangement of the subject, such as in this book, comes a corresponding difficulty in finding the subject wanted, and then

some branches of pleading are so well known under pet names that it is never well to omit them. The lawyer will search the index in vain, however, for his old friend, "absque hoc," though he will find it safe and sound under its more technical, though less familiar, name of "special traverse."

"There are some matters treated of in the book, such as verdicts and new trials, that would seem to belong rather to practice than to pleading; but these imperfections are but slight when compared with the substantial value of the work. There is every reason to believe that it will to a large extent supplant the work of Mr. Stephen, so well-known to older generations, as a practical text-book for the student of law, and it will certainly serve as a useful book of reference for the busy practitioner. R. D. S."

3.

The Counsellor 146 (February 1895), a publication of the New York Law School.

"The author of this treatise states in his preface that "the arrangement of the book is mainly that of Mr. Stephen, and the rules given are those found in his admirable work." Few legal text-books have ever stood the test of time so well as Henry John Stephen's treatise on the Principles of Pleading. Chancellor Kent commended it as the "best book ever written in explanation of the science." Mr. Shipman has, therefore, made a good choice in following such a model. The statement of essential rules, as Mr. Stephen framed them, could hardly be bettered, but Mr. Shipman has presented them anew, illustrated by modern as well as by the earlier cases, and so has rendered a valuable service to students and to lawyers, who naturally desire to know whether a rule of former days still remains operative, and how far it has retained its original scope and effect. The explanatory matter to show the meaning and application of the different rules is usually clear, succinct, and well adapted to the comprehension of students, for whom it is chiefly intended. It would

have been well, we think, if forms of pleading had been introduced into the book to a moderate degree by way of illustration. It is difficult, for example, to make a student understand the nature of a "traverse with an absque hoc" without giving him the form of such a traverse. Such forms might easily be inserted in an appendix in future editions, and would impart an increased value to the work. Some of the rules, also, might well have fuller illustration and explanation. Thus the rule that "it is not necessary to allege matters necessarily implied," sometimes leads to perplexing questions in practice. In pleading a contract, for example, may the pleader ever omit the averment of a consideration, on the ground that a consideration is implied? Or in alleging that an injury was caused by defendant's negligence, must plaintiff also allege that he was himself free from contributory negligence, or is that implied in the averment concerning the defendant? These and others like them are plainly practical questions, as to which a treatise might give valuable help. In the main, however, this treatise does give help of this kind as to most of the rules and principles stated. It may safely be commended as an excellent manual on the subject of which it treats."

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