

An Introduction to the "Treatises/Textbooks"
Category in the Archives of the
Minnesota Legal History Project

Jaggard on
Torts (In the
Hornbook Series)

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tion into

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COMMENTARY, AND
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The American Lawyer (January 1896) (enlarged)
Edwin A. Jaggard (1859-1911) served on the Minnesota Supreme Court, 1905-1911.

In the late nineteenth and early twentieth centuries, hundreds of treatises were written and marketed to the legal profession. Some covered the broad landscapes of torts, contracts or evidence while others focused on narrow topics such as Ellery H. Clark's *Street Railway Accident Law* (1904) and Harrison A. Bronson's *Bronson on Fixtures* (1904) or trial tactics such as Alva R. Hunt's *Hunt on Tender*, subtitled "Bringing Money into Court and Offer of Judgment" (1903). In addition large numbers of digests and textbooks were published annually and consumed by the bar. These books aimed to help practitioners who were overwhelmed by countless and sometimes conflicting appellate court decisions that were included in ever expanding sets published by states and private concerns such as West Publishing Company, The Lawyer's Co-operative and others. Here is an ad in the February 1905 issue of *Case & Comment*, a popular monthly magazine for lawyers:

IF YOU ARE INTERESTED IN UP-TO-DATE LAW BOOKS AND WILL WRITE US TO-DAY, WE WILL TELL YOU HOW TO SECURE ABOUT 425 COMPLETE TEXT-BOOKS, WRITTEN BY THE GREATEST AUTHORS IN THE COUNTRY, AT A COST OF 50 CENTS EACH, AND ON VERY EASY TERMS.

IF THIS APPEALS TO YOU, SEND US YOUR NAME AND ADDRESS. A POSTAL WILL DO — BUT DON'T PUT OFF DOING IT.

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THE AMERICAN LAW BOOK CO.,
76 WILLIAM STREET, NEW YORK.

The torrent of treatises, digests and textbooks was one more sign that the practice of law was changing—from a trade to a learned profession. Other evidence of this transformation was the bar association movement, which sought to improve the ethics, education and reputation of the bar, the rise in standards for admission to the bar and the recognition that education in a law school was preferable to clerking in a local lawyer's office for a few years. In short order, treatises replaced Blackstone, something not all commentators welcomed. The following lament appeared in the November 1910 issue of *Case & Comment*:

Study of Blackstone

"Swift changes have come in the last half century," says the Richmond (Va.) Despatch, "in the ideals of legal education. In the old days, the embryo lawyer was indoctrinated in the office of some experienced barrister, doing the odd jobs of the office, spending laborious hours in penning long documents of a legal nature, and reading the ancient masters of the law under the kindly guidance of the old-fashioned practitioner. Now, it is different. Law Schools have cropped up in many places; the "case system" is making great strides; and in a theoretical course on "practice" the law student is taught a great deal of the work which he once learned in the office. The lawyer who "mastered" his profession in an office is becoming a less frequent type at the bar.

"Along with this new form of legal education has come the decadence of the study and reading of the old legal authors, whom the old-fashioned lawyer would not have dreamed of leaving out of the course for his office student. No

longer does Coke have almost imperial sway, and Blackstone is only referred to now and then. In the old days, Blackstone was the first author read by the law student; now, in most instances, he is referred to for sundry minor points, and a knowledge of his masterful work is not deemed necessary.

"Yet there are good lawyers living who find it refreshing and instructive to read Blackstone through every year. They realize that his "style is superior to that of any other law book ever written." In his clearness and logic and conciseness they find a volume without a peer in legal literature. Years ago, when a knowledge of the law was considered almost an indispensable part of the education of a gentleman, Blackstone was known and quoted widely.

"In these days of voluminous legal treatise, confusing and poorly arranged, it would be a good thing if the law writers would, at least, turn to Blackstone as a model of what a law book should be."



Treatises were written by lawyers, judges and law professors. Professors at the University of Minnesota College of Law, the St. Paul College of Law and members of the bar and bench of the state contributed to the deluge. Indeed, so many law books were written by local authors that they became the subject of

jest at conventions of the Minnesota State Bar Association. At the 1912 convention, Charles R. Fowler, a Minneapolis lawyer, had the delegates convulsed in laughter as he described an invitation to make a speech by Rome Brown, a past president of the organization:

I presume, Mr. Toastmaster and Gentlemen, that my speaking this evening is a pure accident. We have in our midst, and we gentlemen in Minneapolis are all acquainted with him and no doubt you from abroad will be before you leave the city, a certain party by the name of Rome Brown. Rome usually conducts these affairs, but he always forgets them until a few minutes before they take place. Rome came to me and said, "I haven't had an opportunity of speaking to you about making a speech, but Minneapolis ought to be represented on the program. You are the only man that I know of that can do it right." I said, "Rome, that is very nice of you. What's the matter? Can't you think of somebody else? He said, "I can't think." "Well," I said, "where can I get a few light jokes and a pointer on what to talk about?" He said, "Have you looked at my 193d Edition on the Waterways?" "No," I said, "I haven't, Rome; but I got your 192d edition yesterday." "Well," he said, "you will get the 193d in the morning." (Laughter.) I said, "I ought to have it to look over tonight." "Well," he said, "there's Mercer's 97th Edition on Workingmen's Compensation. You can find something humorous in that." "Well," I said, "I have taken that as more or less of a joke, (Laughter) but is it humorous enough for an occasion of this kind, especially when we are located outside of the patrol limits?" I said, "Rome, I can't be funny. It is absolutely impossible. (Applause.)"¹

At the Bar Association's convention the following year, Benjamin Taylor, a Mankato lawyer, returned to the subject:

Then we are improving considerably in the matter of advertising although credit for this is due, I think, rather to the publishing

¹ Charles R. Fowler, *Proceedings of the Minnesota State Bar Association* 265-66 (1912).

houses, than to the members of the profession. For many years the pamphlets advertising the text-books were just plain printed matter, like the "Atlantic Monthly"—no pictures. That is now being changed.

Take the pamphlet advertising "Chamberlyne's Modern Law of Evidence," for example. That is now illustrated with a picture of Mr. Chamberlyne bowed over in an intellectual attitude, with his index finger indenting his expansive brow. Of course that attitude is not new nor original with Mr. Chamberlyne. (Laughter.) But its application is promising.

Then there is "Elliott on Roads and Streets." It is advertised by a pamphlet having at the top of the page the picture of the elder Elliott, with mustaches and long, old-fashioned, flowing whiskers. Below that is the picture of the younger Elliott with mustaches but no whiskers, typifying the improvement in the later edition. (Laughter.) "Abbott's Municipal Corporations" is advertised by a picture of Bugville. "Abbott's Municipal Corporation" is represented as the sun shining down on the bugs. (Great laughter.) I do not know just what the effect is supposed to be on the bugs, but at eighteen dollars for the set, I can hardly see how it can hope to successfully compete with the bugicides of the drug stores. (Great applause and laughter.) Then there is "Joyce on Indictments." You will remember the advertisement. It is illustrated by a picture representing the king's jester poking a stick into a beehive. Opposite the picture are these words: "You can't be too careful how you draw the indictment." (Laughter.) But I think the real meaning intended to be conveyed is that if you buy the work, you will be stung again. (Laughter and applause.)

While I am speaking of text-books, I want to take occasion to commend the publishing houses for getting out so many of them in the thin, India paper editions. It makes a fine book, light, easy to handle and a pleasure to work with. It almost gives one the impression, at times, that he is perusing the Bible. (Laughter.) It has this additional advantage that when the book has outlived its

usefulness as a text-book, the thin, strong velvety paper still has a certain value for domestic purposes. (Great laughter.)²

It is important that those interested in the legal history of the state know that many treatises and textbooks by Minnesota lawyers, judges and law professors were published during this period. Accordingly, the texts of some of these books will be posted in the “Treatises/Textbooks” Category in the Archives of the Minnesota Legal History Project. Prefacing each will be a contemporaneous blurb or review of that book from a journal or law review.

It is not expected that viewers will read these treatises, an activity Lawrence M. Friedman warns would be “sheer torture.”³ But the more curious may read the author’s Introduction where he describes why he wrote it.



Posted MLHP: May 17, 2015;
July 6, 2016 (added reference
to St. Paul College of Law).

² Benjamin Taylor, *Proceedings Minnesota State Bar Association* 110-111 (1913).

³ Lawrence M. Friedman, *A History of American Law* 477 (Simon & Schuster, 3rd ed. 2007) (“Most nineteenth-century treatises were barren enough reading when they first appeared and would be sheer torture for the reader today.”).