

McCormick: Cases on Damages

Vernon X. Miller

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the Constitution of the United States that has yet appeared. It is admirably organized to serve as a basic text for university and college courses in American constitutional history. The footnotes which contain amplifying and illustrative materials are well designed to encourage further investigation and study. Some 300 cases are listed in a special index with citations and dates. A full index adds to the usefulness of the volume. It is the opinion of the reviewer that this work by a recognized authority is not only timely but suitable to anyone who wishes to know something about the development of American constitutional principles.

HERBERT WILLIAM RICE.*

Cases on Damages, by Charles T. McCormick, Foundation Press, Chicago, 1935. 789 pages.

Professor McCormick's casebook is by far the best in its field. It is a casebook on "damages" and not a book on "legal liability." The cases are well edited, the footnotes suggest helpful inquiries, and the book is moderate in size.

There is, perhaps, in most law school curricula little room for damages as a separate course. And that is not because the process of estimating compensation and calculating relief in dollars and cents is not an important problem in most law suits. It is frequently suggested that the problems covered in a course on damages are covered incidently or directly in the regular courses in torts, contracts and property. Those of us who teach these other course must be conscious of the fact that we refer to such matters as "value at the date of conversion," "difference between the contract price and the market price," "difference between the value of the chattel before and after the accident," as if by such references given as answers we have settled the problems troubling the parties in our hypothetical law suits. Whether we are law teachers, practicing lawyers, or judges, we are academic and impractical when we assume that "market value" has a definite meaning and is a descriptive phrase.

In his first chapter Professor McCormick sets out a number of cases to illustrate this matter of estimating "value." The selection of cases is good. There are cases concerning the conversion of household goods, the destruction of grain, the burning of buildings and the destruction or impairment of heavy equipment and machinery in which a substantial sum originally has been invested. The possibility that there may be a choice between "markets" in getting at a particular estimate is emphasized. And the editor has, too, a chapter on "Eminent Domain" to illustrate the problems incident to the process of estimating values of real estate to be taken for public use.

A clue is disclosed in the preface to the editor's main purpose in picking and arranging his selection of cases. In his opening sentence he says that the difference between "questions of liability and questions of the measure of damages is a difference of degree." Perhaps he is right. This reviewer has been inclined to stress the differences, to point out that the process of fixing the limits of responsibility and the process of estimating compensation are two separate processes and that these two processes must be considered apart from each other to permit one to make anything approaching an adequate analysis of the adjustments already made or to be made in any particular law suit. Perhaps these differences can be overemphasized. The purpose of the lawsuit is ultimately to

* Professor of History, Marquette University.

assure the injured person's getting something in the way of effective relief. The imposition of responsibility in many cases ought to depend on the realities to be faced in the process of fixing compensation. Who can say that the process of assessing damages can be separated from the process of fixing the limits of responsibility in actions for defamation where the plaintiffs claim compensation for special "damages," and in actions for damages based upon some claimed injuries to relationships between the plaintiffs and members of their families? (The word "injury" used in these sentences is obviously not meant to suggest physical injuries to the person.) Perhaps it is because the two processes cannot be separated that the literal bases upon which the computations rest in these actions, or in any actions for damages because of permanent injuries to human beings, seem so artificial. Perhaps, too, that is why the cases about conversion and fluctuating value have seemed so arbitrary to this reviewer. The evaluations in those cases depend rather upon the relationships between the parties, as bailors and bailees, for terms or at will, upon the conduct of the several defendants that can be described as tortious as well as "contract-breaking," rather than upon the characteristic of fluctuating changes in "market value" which is typical of staple consumable commodities and speculative securities. In any event the chapters on "Avoidable Consequences," "Certainty," and "Foreseeable Losses" in contract actions, contain enough cases to permit any instructor to illustrate the realities about the two intertwining (to use a compromise term) processes.

A glance at the table of contents should stimulate an immediate interest in the book. It is so well edited and the subjects covered seem so important to this reviewer at least that he is looking forward hopefully to the opportunity to use this casebook in his classes—and to use it in a course on damages.

VERNON X. MILLER.

BOOK NOTE

Cases and Statutes on Business Associations, by Alexander Hamilton Frey. Callaghan and Company, Chicago, 1935. 1331 pages.

This casebook is one of the newer books purporting to include within one scheme of classification the materials covered in several of the usual law school courses. It is a bulky volume with more than enough material for a course of six credit hours. Whether six hours can be spent more effectively in the study of the separate groups of problems associated traditionally with "corporations" and "partnership" or whether the work can be done better in a more comprehensive all-inclusive course described as "business associations" is a matter of opinion. It depends on the personal preferences of the instructor and the convenience with which such a course can be fitted into the law school curriculum. This particular field of commercial law is deserving of a large place in the law school. Six hours is not too much time to spend on it. As it is, today, law students are required to "take" corporations and they are permitted to study partnership by choice. There is much to be said for the one course.

Professor Frey is much more concerned with accounting problems than the editors of the traditional casebooks on corporations have been so concerned. The chapter on "Computation and Distribution of Profits" is quite substantial with some excellent explanatory material included as introductory to the cases. There are a number of cases in the book on the subject of conflicting claims between