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The New Annotated Federal Judicial Code, by James Love Hopkins; The New Federal Equity Rules, by James Love Hopkins

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BOOK REVIEWS

THE NEW ANNOTATED FEDERAL JUDICIAL CODE AND THE NEW FEDERAL EQUITY RULES.*

Nearly every lawyer in active practice is frequently concerned in litigation in the Federal Courts. Accordingly, reference works to which one may turn for the solution of the many problems of procedure arising in connection with such suits, are increasingly useful. It is to this class of reference books that the compilations under review belong, although both contain helpful introductions by the editor, which outline the history and purpose of the present enactments.

The new edition of the work on Judicial Code is practically necessitated by the Act of February 13, 1925, which was a distinctly major operation upon that statute, intended to simplify the practice upon appeals from the District Courts. Previous to this last enactment, not only was the procedure upon appeals uncertain but it was often difficult to tell even to what court to appeal—i. e., to the Circuit Court of Appeals or directly to the Supreme Court. As the editor remarks, it is not yet possible to tell whether or not the 1925 amendment will effectively remedy the difficulty, but it seems to tend in the right direction.

The book opens with an introduction outlining the previous practice, and stating as the editor's opinion as to the principal reason for the adoption of the Judicial Code that it was the abolishment of the Circuit Courts. This seems entirely correct though the reason given as back of the desire for this action—viz., that the judges were unwilling to sit in the Circuit Courts because of the danger of having to review their own decisions on appeal—does not seem quite adequate, or at least was not the sole reason for this action. Another reason of great practical importance was the extreme difficulty experienced by the bar in determining whether the Circuit Courts or the District Courts (or both) had jurisdiction of any particular case. The abolishing of the Circuit Courts was therefore in the interest of simplicity and certainty in practice—the same purpose, it will

**The New Annotated Federal Judicial Code*, by James Love Hopkins, Section Edition. Cincinnati. The W. H. Anderson Company. 1925. Pp. 275.

The New Federal Equity Rules, by James Love Hopkins. Fifth Edition. Cincinnati. The W. H. Anderson Company. 1925 Pp XVI—335.

be noted, which brought about the Act of February 13, 1925, already referred to.

The Code itself (together with a few other statutes having a direct bearing on the same subject matter) follows the introduction, the annotations appearing under the sections to which they refer. The annotations consist usually of a brief reference to the source of the provision, and references (with an occasional quotation from an opinion) to the more important cases. No attempt is made to refer to all of the cases bearing on the particular section of the Code under consideration, but by reason of the topical arrangement, and the summary statements of the holdings of many of the cases, it will often be possible to obtain a satisfactory answer to a specific question directly from the book, without consulting the cases. Where a further investigation is necessary—and, of course, such investigation is always desirable if time permits—the cases cited will generally cover the matter adequately, especially as a number of them are selected from opinions which outline the history of, and cite the previous decisions under, the section and its predecessors.

The book concludes with outline maps of the various judicial circuits, showing where Federal courts are held, an alphabetical list of cases cited, and an adequate index.

With respect to the other work—the Federal Equity Rules—less needs to be said, not only because it follows generally the plan of the book on the Judicial Code, but also because the changes in the Equity Rules since they were promulgated in 1912 are not so extensive or vital as those made in the Judicial Code.

The introduction to this book sets forth the history and effect of the rules, laying especially emphasis on the similarity to the English practice. The editor points out that these rules cannot follow the English precedents fully, because of the ruling of the Supreme Court that section two of Article III of the Constitution prohibits the combining of legal and equitable procedure and remedies in the Federal courts. The editor seems to approve this rule (page three of the introduction) but perhaps only because it is so well settled. It is submitted that as an original question, this ruling is unnecessary under the terms of the Constitution and it is certainly most unfortunate in practice. The Court by these very Equity Rules has attempted to remedy the difficulty so far as possible (see especially Rules 22 and 46) but it cannot, of course, be wholly overcome and the old precedents are likely to continue indefinitely to plague the courts and the bar.

After the introduction, there follow in order the original rules promulgated in 1822, the rules of 1842, the rules as in effect from 1866 to 1911 (with historical notes and a few annotations) and the present rules with full annotations. Many English cases are cited because of the similarity of practice already referred to. The annotations are somewhat more complete than those of the Judicial Code, but have the same helpful features. The book also contains forms for the formal parts of pleadings, motions, etc., as well as a table of cases and an index.

Both of the books are carefully edited and can not be otherwise than helpful for the purpose for which they were prepared—viz., to answer, or point the way for obtaining an answer to, the practical questions of procedure which constantly arise in connection with litigation in the Federal courts. They have no broader scope than this, but nothing more was intended. Both of the books will be useful and almost necessary tools in the office of the practitioner, and they are unhesitatingly recommended for that purpose.

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EXTRAORDINARY LEGAL REMEDIES.*

The task of treating Habeas Corpus, Quo Warranto, Certiorari, Mandamus and Prohibition in one volume is a difficult one. As a result, no attempt has been made to cite the cases exhaustively, the expressed intention of the authors being to cover the field generally, supporting the text by leading cases and recent authorities where possible. Unfortunately, there is a failure to go into the more involved legal questions, and the work does not contain sufficient references to legal periodicals, texts or recent notes to cases to be of great assistance to the lawyer.

The method of treatment of each of the five subjects is similar. The book is divided into five parts, one for each subject. Each part generally contains a chapter on the nature, history and office of the writ, a chapter on grounds for issuance or refusal, one on jurisdiction, pleading, practice and procedure, and a final chapter containing illustrative cases. The work is inadequate in its treatment of many subjects, and wholly fails to discuss many questions of importance. Altogether, the work is more of a condensed narrative of the main features of the law of the five extraordinary legal remedies discussed than an illuminative treatise.

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**Extraordinary Legal Remedies*, by Forrest G. Ferris and Forrest G. Ferris, Jr. St. Louis, Mo. Thomas Law Book Company 1906, pp. 531.