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Judge and Jury, by Leon Green

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BOOK REVIEWS

JUDGE AND JURY, by Leon Green. Vernon Law Book Company, Kansas City, Mo. 1930. 417 pp.

This book represents Dean Green's latest views upon the law of Torts and especially the problems connected therewith that he has been most interested in. Although the book consists, in part, of a collection of articles published within the past two years in various legal periodicals, there are several chapters heretofore unpublished. As the title suggests, the unifying thread of the collection is the allocation of work to the judge and jury in tort cases which Dean Green regards as the end to which all doctrines, rules and formulæ in current use in such cases are directed.

The essays collected under this title emphasize the "judging" problem in the judicial process. The author realizes full well that this is the vital phase of the administration of justice. Rules, formulæ, theories and doctrines, as well as mechanical apparatus are all instruments to assist in the performance of this all important function. Nowhere in the law is the function of passing judgment more intricate and involved and the rationalizing opportunities more varied than in what lawyers call "tort law." Accordingly, nowhere is legal science presented with such an opportunity for adjusting conflicting interests. As the author lays bare the wealth of instrumentalities which Anglo-American law has concocted to perform this function, one may apprehend with clearer vision the real genius of the common law and can understand the long story of its satisfactory place in the social order. The practical, utilitarian, often high-handed though with all subtle methods of the common law are revealed here in a manner that is most startling to the naive generally cultivated by members of the legal craft. The analysis is most illuminating and cannot fail to afford a larger comprehension of the judicial process to anyone interested in that technique of social control.

For practical purposes, to the practicing branch of the profession, the views here represented are of the highest value. The author's master analysis of a "tort" is helpful. There is, he demonstrates, in all tort cases the following problems:

- (1) The right-duty problem.
- (2) The violation of duty problem.
- (3) The casual relation problem, and
- (4) The damage problem.

He points out how much is comprehended in the first phase of a tort, the right-duty problem. Many cases are incomprehensible because the court has misconceived the actual difficulty involved. Sound (desireable) results are sometimes reached, by instinct or accident, by groping for the answer through a violation of duty formula or a causal relation doctrine when the difficulty could and would be vastly reduced if it were recognized in its actual form. Much of the clutter and confusion found in the law is obviously due to faulty or defective analysis. A problem cannot be intelligently presented by counsel or determined by the court without accurate and scientific analysis. The case will not be solved by analysis, but it can at

least be presented so that it can be attacked and, when the judgment is passed, it can be articulated in intelligible terms.

The book is attractively bound, printed in large readable type upon a fair grade of paper. It is recommended to all attorneys who try "tort" cases.

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