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BOOK REVIEWS

JUDICIAL OPINIONS OF OLIVER WENDELL HOLMES

By Harry C. Shriver. Dennis & Co., Inc., Buffalo, N. Y., 1940. Pp. lvi, 320.

A few years ago Mr. Shriver collected and published a miscellanea of "uncollected" letters, papers, book notices, and other writings of the late Justice Oliver Wendell Holmes. That volume served to show that the material therein had foreshadowed and reflected the philosophic and jurisprudential ideals which undergirded and immortalized the judicial pronouncements of Justice Holmes while on the United States Supreme Court.

Mr. Shriver's present effort complements his first volume by gathering some sixty of the judicial opinions prepared by Justice Holmes as a member of the Supreme Judicial Court of Massachusetts. These are reproduced in full, except that to facilitate easy reading, many citations of cases are omitted. In addition, almost one hundred excerpts and epigrams taken from other of Holmes' Massachusetts opinions are reprinted. Nothing is included of his writings while a member of the United States Supreme Court.

The opinions reported in full consist principally, but not entirely, of constitutional decisions. This emphasis upon constitutional cases for this compendium appears appropriate enough, for, at least in the opinion of the reviewer, it was in the domain of constitutional law that the great Justice made his most memorable contributions. Of the non-constitutional opinions the most important, perhaps, are those found in chapter three entitled "Capital and Labor," and include Holmes' famous and classic dissents in *Vegeahn v. Guntner*¹ and *Plant v. Woods*.²

As in the case of his earlier book, the author's present selection of material indicates that as a state judge Holmes had not merely the "germinal ideas which a generation later were to come to full flower,"³ but that before leaving the Massachusetts court he had already and for all time taken hold of the basic tenets of his philosophy regarding constitutional law. In this regard Mr. Shriver makes a significant observation in noting, with the reprint of *Lorden v. Coffey*,⁴ that this was the only instance during the twenty years of Holmes' state court career that he held a Massachusetts statute unconstitutional. Aversity to judicial invasion of the legislative sphere was already a fixed characteristic of the man before he went to the United States Supreme Court. As a member of the latter Court, he struck a characteristic note when, dissenting in *Lochner v. N. Y.*,⁵ he said:

¹167 Mass. 92, 104; 44 N.E. 1077, 1079 (1896).

²176 Mass. 492, 504; 57 N.E. 1011, 1015 (1900).

³See Justice Stone's introduction to Mr. Shriver's first volume, *Justice Oliver Wendell Holmes* (1936).

⁴178 Mass. 489; 60 N.E. 124 (1901).

⁵198 U. S. 45, 75; 25 Sup. Ct. 539, 546; 49 L. Ed. 937, 949 (1905).

"This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. It is settled by various decisions of this court that state constitutions and state laws may regulate life in many ways which we as legislators might think as injudicious, or if you like as tyrannical, as this. . . . But a Constitution is not intended to embody a particular economic theory. . . . It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar, or novel, or even shocking, ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States."

However, what is this statement but a re-affirmation of views expounded by Justice Holmes as a member of the Massachusetts court in the *Opinion of the Justices*⁶ when he said:

"In my opinion the Legislature has the whole law-making power except so far as the words of the Constitution expressly or impliedly withhold it, and I think that in construing the Constitution we should remember that it is a frame of government for men of opposite opinions and for the future, and therefore not hastily import into it our own views, or unexpressed limitations derived merely from the practice of the past. I ask myself, as the only question, what words express or imply that a power to pass a law subject to rejection by the people is withheld? I find none which do so."

Although difficult to avoid, it is not intended to make this review a dissertation on Holmes and his writings in lieu of a consideration of Mr. Shriver's efforts. The point is that he succeeds in his endeavor to show that one familiar with the United States Supreme Court opinions of Holmes will find himself quite at home and on familiar ground when reading the Justice's Massachusetts opinions, even for the first time.

In an Appendix, the book includes a number of interesting and informative tables which briefly set forth facts concerning the personal history, judicial experience, the number of opinions and dissents of Holmes and each of his contemporaries on the Massachusetts Supreme Judicial Court. These are followed by a chronological list of all opinions written by Holmes while on that Court, and by a table of the cases included in the collection. For lawyer and layman alike, this book will prove a delightful and interesting addition to our existing Holmesiana.

D. J. FARAGE

⁶160 Mass. 586, 594; 36 N.E. 488, 491 (1894), reprinted in Mr. Shriver's book at page 5.

SUMMARY CONVICTIONS IN PENNSYLVANIA

By M. A. Carringer, Philadelphia, Pennsylvania. George T. Bisel Co., 1940, pp. 123.

This book is admirably suited for the purpose for which it was intended. While of practically no value to the legal scholar or law student, it is a very valuable aid to the general practitioner, especially the young attorney seeking to build up a general practice.

The words "Summary Convictions" embrace the body of the law and the procedure concerning the prosecution of and punishment for petty criminal matters in which the guilt or innocence of the accused is determined by a magistrate or Justice of the Peace. Most frequent summary convictions are for minor violations of the automobile, game, and pure food laws. As the author states in his preface, trials by summary conviction are of small importance if only the amount of the penalty is considered, but such a case may be of great importance to the defendant in a particular case. Since the amount is small and the offense trivial, practice in summary cases is not lucrative, but the general practitioner frequently finds himself compelled to handle such cases for his clients. It is fundamental that practice in summary cases is indispensable to the young lawyer. Such practice not only gives him the poise and ability which is the result of actual trial experience, but the successful handling of such cases by a young attorney can greatly enhance his reputation.

In the handling of such cases there has heretofore been no ready and usable guide, and since the number of such cases reaching the appellate courts has been negligible, the rules of procedure governing such cases have been almost impossible to find. Since days of research on a summary cases are not justified, practice has been sadly neglected, and many an unjust decision has been suffered. The instant book, a self-professed manual of procedure, furnishes this much needed guide, and is to be highly commended for the manner in which it does its work.

Clearly and precisely the author outlines the rules of procedure in summary cases from their institution to their appeal through the Quarter Sessions or Common Pleas Court to the Superior Court. There is a very pleasing absence of confusing detail and dicta, and yet the citations enable the reader to pursue any particular point further. The forms contained in the appendix to the book are of inestimable value to the busy practitioner.

The reviewer believes that this manual gives the average general practitioner the means of adequately representing his client in petty criminal matters before a magistrate or Justice of the Peace, and nowhere else without tremendous research can such ability be obtained.

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BOOK NOTICE

Legal Effect of Military Service. By Ganson T. Baldwin and John Kirkland Clark, Jr. Price \$1.00.

This little booklet of forty-four pages is an analysis of the Federal Soldiers' and Sailors' Civil Relief Act of 1940, which, like its predecessor, the Soldiers' and Sailors' Civil Relief Act of 1918, extends a degree of economic protection to those inducted into military service, by deferring the duty to meet certain debts and contractual obligations and creating certain exemptions and immunities from civil process. In addition to publishing the original text, the essential features of the act have been condensed in hornbook "blackletter" fashion and indexed for ready accessibility. Comments found under the "blackletter" summaries help in considerable measure to clarify them, but most of the matter in the comments consists of verbatim quotations from sections of the statute and the greater part of the ambiguities in the act must still await court decisions.