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Book Review

Joy Seth Hurd

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Book Reviews

Reviewed by Judge Joy Seth Hurd*

SKEEL'S APPELLATE LAW, PRACTICE AND FORMS (A COMPLETE OHIO APPELLATE MANUAL), by Lee E. Skeel. Published by Banks-Baldwin Co., Cleveland, Ohio; IV, and 400 pp.; 1958.

Some time ago, while reading a short article on the great Chief Justice John Marshall, I was impressed by a statement that he knew little about precedent and cared less; that he was wont to say to his well-read associate, Justice Storey, after concluding an argument in chambers, "There, Brother Storey, that's the law; now you find the precedents." It occurred to me that the great Chief Justice, who wrote the opinions in the famous cases of *Marbury v. Madison*, *McCullough v. Maryland*, *Gibbons v. Ogden*, and the *Dartmouth College* case, and who first established the power and jurisdiction of courts to review the constitutionality of any federal or state statutes, would feel somewhat "fenced in" by the number of precedents which a judge of the present day must consider before arriving at a decision, and which present day lawyers must consider in conforming to appellate procedure and practice on appeals from trial courts to the Court of Appeals and the Supreme Court. This observation, I think, might have special application to the welter of cases which have arisen with respect to the laws and rules promulgated by the so-called "new" appellate procedure act. It is now some twenty-two years since the "new" appellate procedure act became effective. The manifest intention of the legislature was to simplify the old law of appeals and proceedings in error, which had previously been in existence some ninety years in statutory form in our state as an outgrowth of the error proceedings in England.

The simplification of procedure intended by the advocates and framers of the act was not immediately realized. It was, of course, the purpose of all concerned to secure, as adequately as possible, fair and impartial trials with every litigant having "his day in court" as well as decisions based solely upon the merits. But this purpose was not always achieved. Instead, the first

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years of experience with the appellate procedure act were filled with perplexities and difficulties. Differences of opinion with respect to its interpretation, construction and correlation with other sections of the General Code soon rose among the members of the bench and bar. As a result, the number of cases decided other than on the merits was too great to allow for any feeling of complacency over the so-called simplification. The pathway of litigation from trial courts to courts of last resort was strewn with the wreckage of lost causes because of the difficulties of a technical procedural nature. Within the past few years some of these difficulties have been cleared up, and the bench and bar have been gradually emerging from the fog of doubt created by authoritative court decisions and by reason of some new legislation which, if not entirely adequate, has at least been helpful.

The need for a truly authoritative work on the subject of appellate practice and procedure has finally been filled by the publication of Judge Skeel's *Ohio Appellate Law, Practice and Forms*. This volume should be of inestimable value both to the bench and bar, because it affords a quick and ready reference to statutes and authoritative decisions relating to all forms of appellate procedure in Ohio. While other works have been published on the subject from time to time, it has been difficult to achieve a complete and adequate delineation of procedures relating to all of the aspects of appellate procedure. Judge Skeel is peculiarly well qualified, by study and experience, to be the author of such a necessary guide in the adequate preparation and presentation of cases where appeals are taken to the Court of Appeals and to the Supreme Court of Ohio. Judge Skeel has been a member of the Court of Appeals for seventeen years, and is now in his eighteenth year of service upon that court, of which he is presently presiding judge. Prior to that he was a member of the Court of Common Pleas for ten years, and prior to that time he served as judge of the Municipal Court of Cleveland for a period of seven years. This was preceded by intensive experience as attorney and general counsel for the Cleveland Automobile Club, a period in private practice, and also a term of two years as Chief Police Prosecutor for the City of Cleveland.

Judge Skeel begins his treatise on appellate procedure with a brief constitutional history of Ohio appellate courts and their statutory development. Then follows a thorough but succinct discussion of the statutory and case law of Ohio as to practice and procedure on appeals.

Each chapter of the treatise contains a complete analysis of the subject matter under consideration. For example, under the chapter entitled *Extraordinary Writs*, Judge Skeel examines the common law beginnings of each writ, the nature thereof, who may seek the writ, the constitutional provisions involved, and the statutes passed pursuant thereto. He then carefully discusses and comments on the significant cases which merit attention.

Judge Skeel then considers the various administrative boards and agencies, the sources and limits of their powers, and the methods of appeal from and review of their orders and decisions. The author stresses the trinity of their nature, and the necessity for constant vigilance by reviewing courts when confronted with questions which involve the extent of their quasi-legislative and quasi-judicial powers.

Since it is axiomatic that a party can only appeal from a final order, Judge Skeel discusses in detail the problem of what constitutes a final order. He then discourses on the problem of when an appeal on law lies and when an appeal on law and fact is proper. Then follows a detailed dissertation on appeals from County courts, Municipal courts, the remaining Police court, Juvenile courts, Probate courts, Common Pleas courts and Appellate courts, to the courts of higher jurisdiction, including appeals to the Supreme Court. Appeals in civil and criminal cases each are considered separately.

Each chapter in the work has its own separate paragraph headings. There is a good descriptive word index at the end of the treatise as well as the usual topical index at the beginning. Also included is a complete model appellant's brief, a table of cases, rules of both the appellate and supreme court, an index to the revised code sections referred to, and a complete set of forms for appellate practice including an index to the forms.

This work has been painstakingly compiled and is a scholarly and lucid presentation of a difficult subject. It obviously is the product of long and arduous labor. It is a credit to the author and to the legal profession.

Judge Skeel presently is President of Cleveland-Marshall Law School, a position which he has held since 1946. There he has taught such subjects as the law of bailments, personal property, sales, and criminal law, and has lectured on the subject of appellate procedure. In addition to the new volume here reviewed, Judge Skeel is also the author of *Skeel's Revision, Ohio*

Criminal Manual, 4th Edition, published by Banks-Baldwin Law Publishing Co.

Skuel's Ohio Appellate Law, Practice, and Forms will prove to be a book of inestimable value for the bench and bar for many years to come.

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*Reviewed by Andrew R. Field**

ESTATES IN EXPECTANCY. By Harold Klorfein. Published by Simmons-Boardman Publishing Corporation, New York, N. Y., 83 pp.; 1958.

Estates in Expectancy deals with the subject of future estates, which embraces reversions, remainders (vested and contingent), and shifting and springing uses; the latter two also known as executory interests.

This book by Harold Klorfein, Professor of Law at New York Law School, was written primarily for the student and to present to him "as simply, clearly, and concisely as possible" the basic principles of the law as it pertains to future estates. It is anticipated that the use of the book will be primarily as an aid in the study of the law from case material. It is not intended to afford an exhaustive study of a particular topic or of the subject itself. This limited work does in fact accomplish its expressed purpose.

Briefly, the author reviews the nature and quality of estates, both legal and equitable; the historical growth of future estates and their relation to modern law; the creation and exercise of powers, and the types and duration of trusts, both of which may affect the validity of future estates; and the rule against perpetuities.

Unfortunately, references to future estates, "The Rule in Shelley's Case," the Statute of Uses and Wills, and the Rule Against Perpetuities generally suffice to instill in many students

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