

**ELLIOTT'S GENERAL PRACTICE.**—A Treatise on General Practice, containing Rules and Suggestions for the Work of the Advocate in the Preparation for Trial, Conduct of the Trial, and Preparation for Appeal. By **BYRON K. ELLIOTT** and **WILLIAM F. ELLIOTT**. Indianapolis and Kansas City: The Bowen-Merrill Company. 1894.

This work comprises two volumes of about 620 pages of text each. Volume one is devoted exclusively to the work of preparation, and the plan is admirably conceived and worked out, and with a precision which speaks well for the author's practical knowledge of the rules governing classification and arrangement. Mr. Mill, in his great work on Logic, preparatory to entering upon his discussion of Induction, says that a complete logic of the sciences is a complete logic of practical business or common life. "True it is," says he, "that in the case of the practical inquirer, \* \* \* such, for instance, as the advocate or the judge, the difficulty lies not in the making of his inductions, but in the selection of them; in choosing from among all general propositions ascertained to be true, those which furnish marks by which he may trace whether the given subject possesses or not the predicate in question. In arguing a doubtful question of fact before a jury, the general principles to which the advocate appeals are mostly in themselves, sufficiently trite, and assented to as soon as stated: his skill lies in bringing his case under those propositions or principles, in calling to mind such of the known or received maxims of probability as admit of application to the case in hand, and in selecting from among them those best adapted to his object."<sup>1</sup>

<sup>1</sup> Mill, Logic, Book III., Chap. I, § 1.

The work of preparation for trial is an inductive process, and the rules of the elementary treatises upon logic are of inestimable value in teaching how to arrive at correct premises. First of all, the advocate must learn and prepare the facts of the case for proper presentation. This subject is fully discussed in the first chapter of the work under review. To get at the facts, to arrive at the truth of the matter in controversy, requires great skill and perseverance. When the facts are firmly fastened in the mind, for the lawyer must *know* his case as it is, and not as he thinks it should be, his next step is to find out the rules of law bearing upon the conditions of fact in hand. By perusing Chapter II., he will find numerous valuable suggestions leading to the proper and efficient accomplishment of this purpose, such as framing his hypothesis and ascertaining the proper means to get track of the law. If the case is not brought upon the right theory, and the theory selected must be followed throughout the case, the chances of success are bad. To formulate a theory and follow it out to verification forms the third chapter. Chapters IV., V. and VI. discuss "Courts," "Judicial Officers," and "Jurisdiction"—the proper forum being a subject of great importance. "The time of Bringing the Action" is discussed in the eighth chapter, and Chapter IX. suggests many precautionary steps which it is well to have always in mind.

The work of preparation is a work of discovery, involving the ascertainment of the facts which constitute the minor premise, and the law which forms the major. To secure the conclusion, the judgment of the court, or the verdict of the jury, is where the real struggle begins. To get the preliminary papers, including the summons, in proper form, and to get the case before the court, is treated in the tenth chapter, and "Auxiliary Proceedings" in the XI. The remaining chapters of the first volume are devoted to a discussion of "The Instruments of Evidence," "Questions of Law and Fact," and "Arbitration and Award." This finishes the work out of court, or the Preparation.

After the facts are properly colligated, the rules of law bearing thereon sufficiently mastered, and the proper theory formulated, or induction chosen, the work of putting the complete case before the court, or jury, or both, as the case may be, remains. The second volume discusses the various phases of a trial of an issue of fact, somewhat after the style this subject has been already discussed in a leading work. The subjects of "Impaneling the Jury," the "Right to Open and Close," the "Statement of the Case," the "Delivery of the Evidence," and the "Examination of Witnesses," are all treated, but not at the length which the importance of those subjects deserves. Interspersed with the various doctrines and rules are valuable suggestions concerning the expediency of certain courses of conduct in regard to the examination of witnesses and in the general conduct of the trial.

The logical and rhetorical phases of argument of counsel are treated at great length in chapters XXIX., XXX. and XXXI. While this discussion may hardly come under the term "practice," as understood in its strictly legal sense, still it is not effort wasted. The reviewer, in his observations and experience with the bar, has noticed, especially among country lawyers, a lack of that knowledge which would enable them to formulate and expound a question upon scientific lines. A study of these chapters in connection with such standard works on Rhetoric as those of Archbishop Whateley, Dr. Campbell, and Mr. Hill, and with those such on Logic as Mill, Davis, Whateley, and

others, will find its possessor in control of a power which will command the respect of jury, court and opposing counsel. But many lawyers lack either the time or the inclination to pursue any study outside of the strict limits of their profession; and hence the three chapters last alluded to will not be out of place in this work.

Chapter XXIX. is devoted to the argument to the jury, and discusses matters chiefly of a rhetorical nature. Chapter XXX. tells us how to present an argument to the court in proper form. Chapter XXXI. treats of fallacies and artifices in the various stages of the trial and in the argument of counsel. This chapter is particularly interesting and instructive, as it embodies a coalescence of the thoughts of a great number of eminent logicians, together with those of great trial lawyers.

The remaining chapters are devoted to trial practice, properly so called. We find set forth the subjects of "Withdrawing the Case from the Jury," "Instructing the Jury," "Special Interrogatories," "Special Verdicts," "The Verdict and its Incidents," "Trial and Findings by the Court," "Proceedings after Verdict and Finding," "Judgments and Decrees," and "Preparations for Appeal," all ably discussed.

The index is exceptionally large and comprehensive, embracing over two hundred pages, and the enormous number of cases cited shows that the authors have spared no pains to give the profession a valuable and useful work. The paper, printing and binding are fully up to the average, if not above it.

Now to sum up, about one-half of the subject-matter of this work is devoted to the discussions of "Practice" properly so called. The remainder, to questions of expediency, and suggestions as to the courses to be pursued in order to win.

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