

Washington University Law Review

Volume 11 | Issue 4

January 1926

Review of “The Law of Extraordinary Legal Remedies,” By Forrest G. Ferris and Forrest G. Ferris, Jr.

Tyrrell Williams
Washington University School of Law

Follow this and additional works at: https://openscholarship.wustl.edu/law_lawreview



Part of the [Law Commons](#)

Recommended Citation

Tyrrell Williams, *Review of “The Law of Extraordinary Legal Remedies,” By Forrest G. Ferris and Forrest G. Ferris, Jr.*, 11 ST. LOUIS L. REV. 326 (1926).

Available at: https://openscholarship.wustl.edu/law_lawreview/vol11/iss4/15

This Book Review is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.

BOOK REVIEW

THE LAW OF EXTRAORDINARY LEGAL REMEDIES. By Forrest G. Ferris and Forrest G. Ferris, Jr., of the St. Louis Bar. St. Louis, Mo.: Thomas Law Book Company. 1926.

This is a well-manufactured book of 530 pages, including an unusually complete index and a table of fully 1500 separate cases. The evident purpose of the authors was to present in one convenient volume an adequate treatment for the American practitioner of the five extraordinary remedies of the common law, namely, habeas corpus, quo warranto, certiorari, mandamus, and prohibition. The historical origin in England of each writ is briefly indicated with a few references to leading cases and classic text-books. Much attention is paid to the recent and practical application by American courts of these ancient writs to the exigencies of our own governmental system. Whether we Americans like it or not, our governmental system, in both its federal and state aspects, has been enormously extended in its executive branch. In order to get results under new and experimental statutes it is necessary for the executive officials to interpret law, to formulate rules, and to make decisions. What follows is a mass of quasi-judicial and quasi-legislative activity on the part of executive officials. These are the "bureaucrats" of whom so many newspaper editors complain. When these executive officials act in a quasi-judicial or a quasi-legislative manner, and in possible violation of private rights, we have a situation where very naturally a judicial remedy of some sort will be sought for in the regular courts of justice. Sometimes, but not often, there will be found a statutory method of review. Sometimes a suit for damages or an injunction will furnish adequate relief. Most frequently the careful attorney will find that his safest plan is to resort to one or another of the extraordinary remedies of the common law. More than half of the book under review is devoted to habeas corpus and mandamus. These are the favorite remedies in testing out the power of modern American executive officials. The authors have made no attempt to be exhaustive in the citation of cases. Not much attention has been paid to the statutory modifications of the historic writs in particular states. The work is prepared from a national and not from a local viewpoint. With this handbook, and also the statutes and law reports of his own state, the average American lawyer should be abun-

dantly able to protect his client's interests whenever litigation follows the traditional proceedings of these ancient and invaluable writs invented by sagacious lawyers of the middle ages and developed by the judges of the common law courts in England.

TYRRELL WILLIAMS.

MODERN JURY TRIALS AND ADVOCATES. By Judge Joseph W. Donovan. New York: G. A. Jennings Co., Inc. 1924. Fifth edition, enlarged, pp. 740.

This collection of items of advice to attorneys and illustrative selections, is probably intended, as part of the title page indicates, to aid attorneys-at-law in "the art of winning cases." The selections for the most part are examples of that type of oratory the aim of which is to get a verdict. This aim is repudiated in the section on "the duty of the advocate—the old question of the ethics of the profession"; but the tenor of the selections and the citation of the alleged humane maxim "better that ninety-nine guilty men should escape rather than one innocent man should suffer," p. 169, seem to laud only clever manipulation of the jury through forensic ability. The modern trend toward reform in the handling of criminal causes has awakened the bar and the public to the ill effects of appeals to the sympathies, passions, and prejudices of juries. It is to be feared that the bulk of the material in this book would appeal to the type of attorney who would not be in sympathy with such reforms; and this despite the high standard of ethics set forth on pp. 180 to 184. The author holds a brief for eloquence as a sine qua non in advocacy (p. 179 and the chapter on orators and oratory, pp. 1 to 9). The purpose of practically every selection, however, seems rather to hold up as an example to be studied the tricks of oratory, the clever citation from the Bible, the poets, and the classics, and the clever phrasing of situations arising out of the family, marital, or class relationships of the client, appealing to the sympathy rather than to the sense of the jury. The language and methods employed in the selections may have been adapted to "winning cases" by the forensic advocates of a passing period and some survivors illustrated by selections from the Haywood and Leopold-Loeb cases. It is believed, however, that their use has given the public a false impression of the attorneys function and encouraged a belief that