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Cases on Federal Procedure (Book Review)

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In the famous *Dartmouth College* case,¹⁸ the Supreme Court held that the charter of a private corporation constitutes a contract, protected by the constitutional provision forbidding the passing of any law impairing the obligation of contracts. This provision is, however, inapplicable to municipal corporations. But the due process clause of the Fourteenth Amendment may be implemented to prevent the compulsory transfer of municipal property to private agencies.¹⁹

Legislative control, practically unlimited, and variously exercised over municipalities, afforded occasion for favoritism, discrimination and undue meddling. In consequence, many states resorted to constitutional limitations. Among those examined by Prof. Stason are the following: (1) provisions requiring consent of local authorities or electors as a condition precedent to the exercise of franchise rights upon local streets and highways;²⁰ (2) provisions requiring the selection of local officials by vote of local electors;²¹ (3) provisions prohibiting special legislation;²² (4) municipal home rule by constitutional amendment.²³

A different type of constitutional limitation is that which imposes debt and tax restrictions upon the municipality. These Prof. Stason considers in connection with municipal indebtedness. They do not primarily secure the municipality against legislative interference.²⁴ They are intended to secure the municipality against its own extravagance and waste. Recent events point to their inadequacy.

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Prof. Stason's volume is an excellent aid to students and teachers of the law of municipal corporations.

LOUIS PRASHKER.*

CASES ON FEDERAL PROCEDURE. By Armistead M. Dobie. St. Paul: West Publishing Co., 1935, pp. xxxix, 803.

Back in 1928, a handbook of Federal Jurisdiction and Procedure, of which Dean Dobie is the author, appeared upon the market. Although the work was

¹⁸ *Trustees of Dartmouth College v. Woodward*, 4 U. S. 518 (1819).

¹⁹ *Proprietors of Mount Hope Cemetery v. City of Boston*, 158 Mass. 509, 33 N. E. 695 (1893), p. 35, note 3.

²⁰ N. Y. CONST. art. III, § 18.

²¹ N. Y. CONST. art. X, § 2 (amd. 1935).

²² *Supra* note 20.

²³ N. Y. CONST. art. XII; art. III, § 26 (amd. 1935); art. X, § 2 (amd. 1935).

²⁴ Dean McBain quite properly reminds us "that many of the debts of municipal corporations were incurred at the direct command of the legislature. Viewed in the light of the usual legislative practice in this respect, these constitutional provisions were certainly in the nature of limitations in behalf of the city. The probable truth of the matter is that they were directed to the legislature and to the city with the taxpayer chiefly in mind." MCBAIN, *op. cit. supra* note 17. See N. Y. CONST. art. VIII, § 10 (forbidding the giving or loaning of any money or property to, or in aid of any individual, association or corporation); N. Y. CONST. art. III, § 28 (forbidding the giving of extra compensation); N. Y. CONST. art. VIII, § 10 (forbidding incurring of indebtedness to amount exceeding 10% of assessed valuation of real estate and restricting amount to be raised by tax).

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primarily intended for the use of federal court practitioners, its contents were so clearly set forth, and arranged in such logical sequence, as to make the text highly desirable for class-room instruction. And in many classes, the book has rendered excellent service. So elaborate were its notes and cross-references, many of which were credited to Medina's "Cases on Federal Procedure" (1926), that the production of a collection of authoritative decisions, selected by Dean Dobie, was strongly indicated, if not actually promised. The shadow of a coming event that then was cast has materialized in Dobie's "Cases on Federal Procedure." No sooner was the book off the press than I secured a copy, and found it to be all that might reasonably be expected. Without hesitation, I chose Dobie for use in my class in Federal Practice and Procedure at St. John's University Law School. A more intimate acquaintance with the work that was acquired in the course of the recently ended semester, confirmed my first impression of its worth.

One of Dobie's principal objects was to give students "a realistic picture of the jurisdiction and actual functioning of the Federal Courts." One way in which this object is accomplished is by stressing the historical and political backgrounds against which some of the more important decisions came into being. Actual determinations are thus made more comprehensible to neophytes in the law. Far be it from me to suggest that federal courts, in rendering judgments, are moved by partisan politics—indeed, I am prepared to maintain that such considerations ordinarily play little part, if any, in what comes about. But this much is certain: the broader aspects of the nation's development along political, economic and social lines, must necessarily exert strong influences upon cases that go to the fundamentals of government. Hence, it seems entirely appropriate that students should have some understanding of the country's state of mind as of the times when the courts undertook to declare the national law. If any criticism is fairly to be directed to what Dobie has done in this regard, it is that he did not treat this subject matter more extensively. Aside from the broader understanding that students may acquire from an appreciation of the significance of political considerations in judicial decisions, the presentation of such influences adds zest and interest to study that otherwise would be lacking.

Another feature of the book is that it is down to date, a number of 1935 decisions being included. Some of these are pronouncements of the lower federal courts. Even though it may be that none of the latter will hereafter be recognized as landmarks in the development of our national jurisprudence, they set forth, for the moment at least, the rules by which the land must chart its course. Then, too, it should not be forgotten that, upon more than one occasion, the thought of an obscure district judge has met with the approval of the court of last resort, and has been accepted by the public as wisdom.

For this reason, students should have ample opportunity to know something, not only of the last, but also of the first word in the growth of a legal principle.

The cases to which Dobie invites attention are carefully arranged. This, in my judgment, is of inestimable value to the student who, were the grouping otherwise, would be much bewildered and confused by the narrow and sharp technicalities, that are all too frequent in the federal system of procedure.

In short, the work under discussion will be of real benefit to the student fortunate enough to become acquainted with it.

JOHN C. KNOX.*

NEUTRALITY. ITS HISTORY, ECONOMICS AND LAW. VOLUME 1: THE ORIGINS.
By Philip C. Jessup and Francis Deak. New York: Columbia University Press, 1935, pp. xiv, 294.

This is the first volume of a proposed trilogy on neutrality and its history.† A more important subject would be difficult to think of, and a more timely book could hardly have been published. These are the days when war talk is in the air and when neutrality is foremost in the minds of all Americans. Situated far from scenes of possible conflict, the rights of neutrals and their obligations hold special interest for the inhabitants of this hemisphere. We need only read the debates in Congress from time to time to realize how staunchly held are the various opinions with regard thereto, and how completely divided are the exponents of different schools of thought.

Writing about the history of this phase of international law is like discussing the history of chaos—in the beginning there *was* nothing, and in the end there *is* nothing. Yet the authors have managed to fill a large-sized volume with interesting data about this chaotic branch of the science of the law of nations. They would be among the first, however, to recognize how void of real substance this history has been. There, of course, have been numerous articulations from authoritative sources with regard to the rights of neutrals in dealing with belligerents and with regard to the risks that neutrals run in such situations. But these voluminous materials, which the authors have finely combed, cannot avoid the conclusion which they reach that those who sought safety in the enforcement of neutral rights frequently found their hopes shattered. On the other hand, those who hoped to enforce to any extent the duties of neutrals, were likewise led to the path of disappointment.

It is perhaps asking too much of sweet reasonableness to expect belligerents to refrain from attacking trade with neutrals by their enemies, and the result that "ingenious frauds", as the authors term them, are frequently resorted to is no doubt unavoidable. The reality of the situation is that without some form of voluntary self-abnegation such as is contained in the Neutrality Act passed by Congress, and in the absence of some international sanctions to enforce the rights and duties of neutrals, it is not to be expected that nations will voluntarily forego opportunities presented by war to gain every possible advantage over their enemies.

A striking illustration of the lack of progress in this aspect of international law is afforded by a comparison of two historic incidents, separated by more

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† Ed. NOTE—A fourth volume on neutrality, dealing with the problems of today and tomorrow, has been added to those previously announced.