

Restatement of the Law of Conflict of Laws (Book Review)

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every detail of what happens. Statements are procured from the District Attorney and the defense counsel, much as if they were contenders for pugilistic honors. The details of the day-by-day battle between counsel, the stratagems and expedients resorted to by both sides, the emotions of witnesses and of the defendant are all set forth with melodramatic exaggeration. This type of reporting, whatever its circulation-getting possibilities may be, is not good journalism; it is a plain violation of ordinary standards of decency. Placing the defendant in the position of a person waging a desperate fight against odds, represents not only a distortion of the fact, but is likely, in the interests of good government, to call forth the statutory regulation which the Press has fought so long to avoid.

Although the authority of the courts to punish interference with the administration of justice by exercise of the power of contempt is conceded, it has not been frequently exercised in this country. In the instances in which the contempt power has been invoked, the contempt most frequently involved criticism of the judiciary. There is at least one instance, however, in which an editor was held guilty of contempt for publishing articles in advance of a trial which purported to set forth the evidence which was to be produced, and commenting thereon.¹ That case might be followed with highly salutary results.

The leniency of judges and prosecuting officers, in their attitude towards the Press, is undoubtedly due to the political influence which the newspapers may exert and which judges and prosecuting officials cannot afford to disregard. The Press itself has recognized the need for reform. An editorial printed in the Chicago Tribune and set forth by the author² refers to trial by newspaper as an "abomination." The entire problem needs investigation and vigorous action.

The book, therefore, is to be commended, not only for its competent treatment of a complicated set of rules, but for its tendency to stimulate discussion of the many problems which the Press must solve in adjusting itself to the needs of the community.

GEORGE SYLVESTER.

New York City.

RESTATEMENT OF THE LAW OF CONFLICT OF LAWS. St. Paul: American Law Institute Publishers, 1934, pp. xli, 814.

The advent of this restatement marks the culmination of eleven years of research undertaken by the American Law Institute and a staff of eminent scholars. The completion and publication of the results of this great effort are peculiarly fitting at this time in that this work may be considered as a tribute to one of America's foremost jurists, Joseph Story. It comes just one hundred years after the publication of Story's "Commentaries on the Conflict

¹ State v. McGee, 80 Conn. 668, 69 Atl. 1059 (1908).

² P. 54.

of Laws."¹ In a current article² Ernest G. Lorenzen pays his tribute to Story and his epoch-making work in Conflict of Laws. After summarizing the Anglo-American law on the subject of Conflict of Laws, Lorenzen makes this comment:³

"If we compare this summary of Anglo-American law on the subject of the conflict of laws as it was one hundred years ago with the law of today, we find that it has changed only in minor respects. Its fundamental views and conceptions are the same. Story first formulated them, and where they were not firmly established at the time, they became so, thanks to the great esteem in which his work was held."

In the light of this summary it is interesting to note that this Restatement nevertheless took about eleven years to complete, the work having been commenced in June, 1923. The work undertaken by the American Law Institute was under the able direction of Joseph H. Beale. William Draper Lewis, the Director of the American Law Institute, in the introduction to the official draft of the Institute's Restatement⁴ accounts for what might seem to be such a long time spent on the compilation, by referring to the very great special difficulties of the subject. He feels that until recently the legal profession has failed to recognize the great practical importance of the subject; law schools have not universally set courses in the subject; no general critical study has been given to the subject of conflicts; and courts have not brought to the solution of questions involving conflict of laws, an adequate background of knowledge. For the reason that Conflict of Laws involves also every branch of the law, it was necessary for the reporters working on this Restatement to consult the reporters working on the restatements for other branches of the law.

- Much has been accomplished in this compilation and the natural interest in the subject of Conflict of Laws will be even further stimulated by the results of the Institute's labors. Law schools in particular will find in this volume a most adequate set-up for a thorough study of the subject. For quite a number of years schools were dependent almost entirely on Professor Beale's case book⁵ backed up of course by his lifelong scholarly devotion to the subject. Latterly, Professor Lorenzen's case book⁶ offered a prop for those who preferred a slightly different arrangement of the topics treated. The Restatement reflects the classic approach, one might say, to the subject, and both Professor Beale and Professor Lorenzen may look upon this work with approval and say it is good. The critical study of the subject of Conflict of Laws, to which William Draper Lewis refers, could not appropriately be reflected in a restatement, but at least there is now available some basic material for scholars like Hessel Edward Yntema and Walter Wheeler Cook to continue their critical researches.

¹ Story published the first edition in 1834.

² *Story's Commentaries on the Conflict of Laws—One Hundred Years After* (1934) 48 HARV. L. REV. 15.

³ *Ibid.* at 26.

⁴ P. xiii.

⁵ A SHORTER SELECTION OF CASES ON THE CONFLICT OF LAWS (2d ed. 1928).

⁶ Cases on Conflict of Laws.

Incidentally, these names might well have been among those members of the committee who had worked on the restatement.

The topics treated in this compilation are based upon Professor Beale's classification of the subject, with the arrangement and emphasis modified somewhat. Throughout the book there are warnings (caveats) where the Institute did not wish to express positive opinions that might break too sharply with classic traditions. For example,⁷ may a state in which a chattel is habitually kept impose a tax upon the chattel even though it is temporarily outside the state on tax day and subject to the legislative jurisdiction of the state where the chattel is? The Committee prefers to leave it to the courts to determine the law on this question of jurisdiction to tax.

Again,⁸ in administering intangibles in a state other than the domicile of the decedent, does the Constitution of the United States require that the rule of the domicile be followed in determining preferences in the payment of claims? The decision in *Frick v. Pennsylvania*⁹ holding that the state of the situs of tangibles has plenary jurisdiction to tax such property, may well make questions governing the administration and distribution of both tangibles and intangibles something for the courts to determine. At any rate the Committee prefers not to be positive in its opinion.

On the question of a married woman's power to have a separate domicile,¹⁰ the Committee goes no further than to permit the wife to acquire a new domicile apart from the husband only if the wife lives apart from her husband without being guilty of desertion. It issues a caveat and expresses no opinion on whether she may acquire a separate domicile even if she is guilty of desertion.

Apparently the chapter on Administration of Estates presented the greatest difficulties. No less than sixteen successive preliminary drafts were developed on this subject. The Committee calls attention¹¹ to the gaps in adjudicated cases on this subject and their inability to cite direct case authority for all statements made. "The treatment * * * has emphasized the unitary character of the administration of the estate." Courts will undoubtedly be guided by the work of the Committee especially on this chapter.

The American Law Institute is to be congratulated on a great accomplishment. Undoubtedly, the Restatement will receive universal approval in this country. Mention should also be made of the American Law Institute publishers who have set up the material in a most pleasing format. The Director of the Institute informs us that annotations setting forth the pertinent local decisions and statutes for all subjects in relation to each section of the Restatement are being prepared. This will undoubtedly be helpful to students, practicing attorneys and courts.

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⁷ P. 80.

⁸ P. 603.

⁹ 268 U. S. 473, 45 Sup. Ct. 603 (1925).

¹⁰ Pp. 51-54.

¹¹ Pp. 559-561.