

# The Administrative Control of Aliens (Book Review)

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This volume prepared by Dean Clark of the Yale Law School breathes the breath of life. It is the second and concluding volume of cases and materials on Pleading and Procedure. It is not orthodox. It constitutes "an attempt \* \* \* to indicate the philosophy behind the procedural rules, to emphasize the modern aspects of law administration, and to employ history not as an end in itself, but for the light it casts on present day rules"<sup>2</sup> (p. V). Objections to the functional approach to substantive law, there may be. In procedural law, however, I feel convinced that it represents the sound method. Here our task is to engineer a mechanism that will achieve justice in the concrete. The acid test of any procedural rule is, will it work? Little else matters.

I think that with some such conceptions Dean Clark planned these volumes. The proper rule of law is here often developed by the method of comparison. Reported cases, briefed cases, notes and questions all serve to bring to a focus the issue, does the rule of the case work? Highly significant too are the constant references to valuable law review articles and notes.

The author devotes half of the present volume to material concerning the granting of specific remedies, with special reference to the injunction and specific performance, and with briefer reference to bills to quiet title, bills of peace, reformation and cancellation of instruments, and actions for declaratory judgments. The other half of the volume is devoted to material dealing with parties, splitting actions, *res judicata*, joinder of causes of action, counterclaims, objections to pleadings and amendments thereof, and summary procedure.

In respect to one matter, I must resort to the judge's expedient of "decision reserved." Experimental teaching may in the future overcome my present feeling that the author is too sanguine when he writes these "two volumes are intended to provide courses taking the place of the Common Law Pleading, Code Pleading, and Equity Pleading courses and parts of those on Equity."<sup>3</sup> My a priori judgment is that Equity deserves its own niche in the law school curriculum. Witness the six volumes of Pomeroy's "Equity Jurisprudence," and Cook's three volumes of "Cases on Equity." Experience—those who are familiar with the scope of my professional teaching might say class interest—makes me feel that Code Pleading and Practice require a more extended treatment.

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THE ADMINISTRATIVE CONTROL OF ALIENS. By William C. Van Vleck. New York: The Commonwealth Fund, 1932, pp. IX, 260.

Students of immigration have reason to be grateful to the Legal Research Committee of the Commonwealth Fund for having sponsored this study and to Dean Van Vleck of the George Washington University Law School, for having made it. Aliens, the world over, are always in need of spokesmen, and too often of champions.

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<sup>2</sup> P. V.

<sup>3</sup> P. VI.

In making this study, the author spent two weeks at Ellis Island and attended hearings before the Board of Review of the Labor Department at Washington. He examined the records of more than 1,000 administrative Immigration cases on file at Washington, and of immigration court decisions, immigration Rules and Statutes, reports of the Secretary of Labor and of the Commissioner General of Immigration.

In the first part of the book, the author traces the growth of immigration legislation in the United States. He analyzes the short-lived Alien Act of 1798, the open-door policy thereafter pursued until the passage of the Act of 1875, the more recent Quota Act of 1921, the National Origins Act of 1924, the Deportation Act of 1926, and the Executive Orders of 1928 and 1930. Changes in immigration policy are summed up thus by the author: "Two significant facts appear in the history of immigration legislation. One is the complete about-face which has taken place in the policy of this country as to immigration restriction. The United States started with the policy of the open door, of encouragement of immigration. It especially extended hospitality to persons suffering from religious or political persecution in other lands. Under the pressure of agitation by particular groups and the public opinion which has been the result, this policy has been abandoned. The other fact is that the extensive use of the power to expel is a comparatively recent thing. From being a mere incident of the power to exclude as a measure to correct errors made in inspection, it has become one of the chief activities of the immigration service in some of the immigration districts."<sup>1</sup>

The author then considers the administrative organization of immigration service and the two processes of administrative control, viz: exclusion and expulsion. Exclusion involves stopping aliens at our borders or ports of entry, and denying them the right to enter. Expulsion or deportation "is the procedure by which aliens already within the country may be arrested, examined as to their right to remain here, and deported if their presence has been found in violation of the law."<sup>2</sup>

At this point, the author notes some cases of hardship resulting from unjust expulsion. In one of the cases cited, an alien had been brought here at the age of six months. After a continuous residence of many years, he was ordered deported because he had served two terms for burglary. Court intervention failed. Of this case, Circuit Judge Learned Hand wrote: "We think it not improper to say that deportation under the circumstances would be deplorable. Whether the relator came here in arms or at the age of ten, he is as much our product as though his mother had borne him on American soil. He knows no other language, no other habits than ours. He will be as much a stranger in Poland as anyone born of ancestors who immigrated in the seventeenth century. However heinous his crimes, deportation is to him an exile, a dreadful punishment abandoned by the common consent of civilized peoples."<sup>3</sup>

To the lawyer, the most valuable chapter is the one entitled "Judicial Review." "Due process of law" and the *habeas corpus* writ are implemented

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<sup>1</sup> P. 21.

<sup>2</sup> P. 27.

<sup>3</sup> P. 31.

in behalf of the alien facing exclusion or expulsion. The author, in a brief compass, gives an excellent review of the important decisions. He discusses the unfortunate decision made in *United States v. Ju Toy*,<sup>4</sup> holding in an exclusion case, that the decision of the Secretary of Labor is final even in respect to the question of citizenship. The author quite properly says: "The refusal of the Supreme Court to extend in exclusion cases the protection of a judicial hearing to a claim of American citizenship even when it is based on substantial evidence, has left citizens who travel abroad subject to the potential danger of having their citizenship denied by the administrative officers without any redress."<sup>5</sup>

"Conclusions" is the title of the final chapter. A few excerpts will serve to illustrate its high significance. Of our expulsion procedure, the author says: "For the important task of enforcing this system of what has been called quasi-criminal justice, we have devised a system of administrative procedure, of executive justice, with a maximum of powers in the administrative officers, a minimum of checks and safeguards against error and prejudice, and with certainty, care and due deliberation sacrificed to the desire for speed."<sup>6</sup>

Respecting the problem presented by the *Ju Toy* decision,<sup>7</sup> the author says: "In cases where applicants for admission present substantial evidence to support a claim to American citizenship, they should have secured to them by statute the right to a judicial review of the evidence on the issue of fact."<sup>8</sup>

In my judgment, the stage of civilization achieved by a nation may be measured by the justice it accords to its aliens. Thus viewed, this volume is a significant contribution to the study of administration of justice to the alien.

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CASES AND MATERIALS ON THE ADMINISTRATION OF DEBTOR'S ESTATES. By Wesley A. Sturges. St. Paul: West Publishing Company, 1933, pp. XIV, 1141.

It is unfortunate that it is the practice in our law schools at the present time to treat too lightly the subject of the administration of debtor's estates. Of those schools in which this branch of the law receives any consideration, the study is usually confined to that phase which is embraced by the National Bankruptcy Act. Often it is not one of the prescribed courses, but is left to the choice of the student, and, as is so frequently the case under such circumstances, it does not receive the necessary attention from the student.

As an aid to the student during his attendance at law school or for the practicing attorney, Professor Sturges of the Yale Law School offers a collection of cases and materials on the administration of debtors' estates which satisfactorily covers not only matters in bankruptcy but also affords ample

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<sup>4</sup> 198 U. S. 253, 25 S. Ct. 644, (1905).

<sup>5</sup> P. 240.

<sup>6</sup> P. 224.

<sup>7</sup> *Supra* note 4.

<sup>8</sup> P. 248.