

June 2014

Handbook of Federal Jurisdiction and Procedure (Book Review)

H. H. Breland

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

This Book Review is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

mission in other compilations on this subject would indicate that they have often been regarded as unworthy of study. The railroad bar, however, would probably hold that the rulings of the Interstate Commerce Commission affect the conduct and administration of the railroads as intimately as the decisions of the Supreme Court.

The student of this subject knows that the nine personalities of the Supreme Court have never been blended into a single unit of thought reactions and he likewise should know that the members of the Interstate Commerce Commission do not represent a unified principle of judgment. In fact, Commissioner Eastman often speaks a language that some of the others on the Commission regard as incompatible with economic stability. These individual reactions to the diverse situations, the student will find indicated for his benefit by groups of quotations, references, and cross-references; and these in turn lead to a thorough understanding of the human motivation in the reasoning of these fact finders, who in reality are law declarants.

The compilation emphasizes its presentation of important decisions by allowing them to appear under various interrelated aspects of the subject. For instance, the Dayton-Goose Creek case is cited, with discussion in a footnote under confiscatory rates, and this is followed by a masterful analysis of the same case under a later subdivision, "Recapturing the Surplus and Subsidizing the Deficiency."

In conclusion, it seems to the reviewer that the chapter on "Fair Value," consisting of only 99 pages, merits and compels recognition as a great accomplishment in legal literature.

NATHAN PROBST, JR.

St. John's College School of Law.

HANDBOOK OF FEDERAL JURISDICTION AND PROCEDURE. By Armistead M. Dobie. St. Paul: West Publishing Co., 1928. pp. 950.

Writers on legal subjects and professors of law have generally treated with well-bred indifference the so-called "Hornbook Series." Perhaps it has seemed to them that they were entirely too easy to read to possess any real merit as law books. The most recent addition to this series, Professor Dobie's work on Federal Procedure, while fully as readable as the other volumes, should also dispel any doubt as to the usefulness of these books, both to the student of law and to the practitioner.

This volume on Federal Jurisdiction and Procedure is especially timely in view of the Act of Congress of February 13, 1925, which made sweeping changes in this branch of the law and renders it necessary to use with caution the standard works on Federal Procedure written prior to the enactment of this statute. Professor Dobie's work contains a thorough analysis of the purpose and effect of this statute.

It would be difficult to find a more rational discussion of the troublesome question of Federal jurisdiction in *habeas corpus* cases than is contained in this treatise. The alleged abuse of this writ by the Federal Courts, "under which the judgments of the highest courts of the states are sometimes subjected to reversal by the lowest courts of the United States," is sanely discussed by Professor Dobie and the conclusion reached that, notwithstanding the possibility of such abuse, the writ of *habeas corpus* has, in the hands of

Federal judges, done far more good than harm, and will continue to do so, "if they use it, as a famous English painter once said, he mixes his paints, 'with brains'."

The citations in the footnotes of this volume are brought almost to the day of publication, containing discussions of such timely problems as the Virginia Sterilization Statute, recently upheld by the Supreme Court. The problem of one corporation chartered by two or more different states, the oft-discussed question as to whether there is a "Federal common law," the question as to whether practice on the law side of the Federal Court should be regulated by rules promulgated by the United States Supreme Court, instead of in conformity to the practice of the State Court in which the Federal Court is sitting—all these problems are interestingly treated, with comprehensive references to appropriate articles in various legal periodicals. The somewhat acrimonious debate between Senator Walsh and Dean Pound upon the last mentioned question is handled judiciously; but the writer does not hesitate to express his own view in favor of giving control of Federal practice to the United States Supreme Court.

The Eighteenth Amendment and the Volstead Act have given greatly increased importance to the constitutional prohibition against unlawful searches and seizures. The decision of the Supreme Court that evidence obtained by an unlawful search can not be used, over the defendant's objection, has been caustically criticized by Professor Wigmore. Professor Dobie rather effectively defends the criticized rule with the statement that "only the inadmissibility of that evidence can properly safeguard the rights guaranteed by the constitution," since "civil suits, or other proceedings, against the offending officers, would afford scant balm to the accused if convicted on the illegally obtained evidence."

The usefulness of this volume is unnecessarily impaired by the omission of a table of cases cited. There seems to have been one serious oversight in quoting Equity Rule 58 (p. 724) by omitting from the Rule the entire first paragraph, which is the most important part of the Rule, and which is the part sustaining the headnote under which it is cited.

H. H. BRELAND.

New York City.

OUTLINES OF THE LAW OF TORTS. By David Stewart Edgar and David Stewart Edgar, Jr. New York, 1927, pp. 123.

To review an outline of the law of torts, intended for the use of students, after its utility and value have been proven by actual use in the class-room is largely a work of supererogation. The dilatory reviewer must plead unfamiliarity with the subject-matter as well as lack of opportunity; feeble if, indeed, acceptable excuses.

No one who knows the authors, the zeal and earnestness of the father, implanted and instilled in the son, will fail to realize that the crispness of expression and the paucity of words is a result of a long and patient effort succinctly to state and clearly to express basic legal principles. The problem of the uninitiate is ever before them. The student is being introduced not only to the law of torts—a task of no small moment—but to the law generally. He is learning for the first time the language of a new science. Its