St. John's Law Review

Volume 15
Issue 1 *Volume 15, November 1940, Number 1*

Article 39

July 2013

Cases on Federal Jurisdiction and Procedure (Book Review)

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in Chapter V. Thereafter, the book is concerned with specific taxes, the property tax, inheritance, estate and gift taxes, the income tax, and franchise and excise taxes. In other case books, the franchise tax has not received the special treatment it deserves. States lean heavily on this type of tax and the extent to which states may tax foreign corporations is still in a condition of uncertainty. In this chapter should properly belong the case of *Hans Rees' Sons* v. *State of North Carolina*, 283 U. S. 123 (1930), and the notes following, which the author includes in the Income Tax chapter. The case deals with the problem of apportioning the income of a foreign corporation engaged in interstate commerce to determine what portion of its income should be considered by a state as representing intra-state business for the purpose of assessing a franchise tax.

It is evident from an examination of the book that the law of taxation has been in its greatest period of development in the past five years. Most of the cases are recent decisions of the Supreme Court. The cases are well selected, each case being adequately amplified by notes indicating collateral issues and earlier decisions. In the chapter on jurisdiction, the author relegates *Blodgett* v. *Silverman*, 277 U. S. 1 (1927), to a note. This reviewer has considered the case important in the light it throws on the question of the nature of intangible property. On the other hand, *Green* v. *Frazier*, 253 U. S. 233 (1920), is quite properly given a prominent place as a leading case, although other case books mention the case only in footnotes. The state of North Dakota attempted a program of far-reaching economic significance involving the raising of revenue by taxation. The Supreme Court gave its seal of approval to the state's experimentation in elementary planned economy on the ground that the legislature and the highest state court considered this to be a public purpose.

It is rather surprising that the author included only two main cases on the gift tax. In spite of the paucity of gift tax decisions, the student would wish to be somewhat more fully apprised of some of the issues taxpayers are raising under this tax. The author relegates to a note the case of *Hesslein* v. *Hoey*, 91 F. (2d) 954, *cert. denied*, 302 U. S. 765 (1937), on what constitutes a gift, and only a note on the issue of valuation of gifts.

This edition is a vast improvement over the earlier attempts to put together material for a course on taxation. It should prove to be a pattern for subsequent revisions made necessary periodically by new decisions. The book will unquestionably be used widely in the law schools.

BENJAMIN HARROW.*

CASES ON FEDERAL JURISDICTION AND PROCEDURE. By Armistead Dobie and Mason Ladd. St. Paul: West Publishing Co., 1940, pp. lxiv, 1091.

United States Circuit Court of Appeals Judge Armistead M. Dobie, with the aid of Mason Ladd, Dean of the College of Law of the State University of Iowa, has again written an invaluable treatise on Federal Jurisdiction and Procedure.

In 1935, when Dean of the University of Virginia Law School, Judge

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Dobie presented students of federal practice courses with his case book *Federal Jurisdiction and Procedure;* it met with instant approval, and was availed of by many leading law schools for use by their students in federal practice courses. That book contained a running descriptive text consisting of a number of extracts from the text on Federal Jurisdiction, prepared by the jurist in 1928. Use of the text has once more been availed of in the latest work by Judge Dobie and Dean Ladd, where such material appears to be called for. It is a great time-saver to the student, inasmuch as he need not search for elementary text material in any of the well-known textbooks.

An examination of the case book reveals that one of the purposes for the publication of the present book was the promulgation by the Supreme Court of the United States of the new Rules of Civil Procedure. Except in admiralty, equity, and for certain changes in criminal practice made by federal statute, the federal courts in each state followed the procedure of that state. For many years the American Bar Association was endeavoring to bring about the passage of legislation which would give to the courts the power to make rules in certain classes of cases. The original Committee of the Association on Uniform Judicial Procedure was appointed in 1912. The struggle seemed so hopeless that at the American Bar Association Convention held in Grand Rapids, Michigan, the Committee was discharged.

The necessity for a uniform set of rules of federal procedure in the federal courts was recognized by former Attorney General Homer S. Cummings. The Connecticut Cabinet officer formulated a very simple statute, which was eventually passed on June 19, 1934 (Title 28, U. S. Code, Annotated, §§ 723b, 723c). By this Act the Congress gave the Supreme Court the power to prescribe rules for the federal district courts. An advisory committee of distinguished lawyers and law professors was appointed. The rules were submitted to Congress on January 3, 1938, and they became effective on September 16, 1938. They prescribed for actions at law the general rules for cases in equity, so that there would be one form of civil action and one procedure for both.

The conduct of a lawsuit in district courts of the United States is covered by eighty-six rules. Attorney General Robert H. Jackson, in an address broadcast November 21, 1938, declared that "the lawyers have never been able to achieve such sublime simplicity in their codes * * *. The New York Civil Practice Act, itself, considered something of an accomplishment in reform, has 1578 sections, and in addition, the New York Supreme Court adopted 301 court rules to try to explain what the 1578 sections mean." The new case book, in the judgment of your reviewer, has been prepared by its authors so that the new Rules have been treated in the part where they most naturally dovetail into a case book on Federal Jurisdiction and Procedure. In general, the book has made use of the text of the prior books, where such material appears to be called for, and has presented an excellent selection of new cases, so that, in fact, the present book is an entirely new work. A wide range of subject matter is covered, including an exhaustive analysis of the federal judicial system. Cognizance is taken of the new commissions and boards that have been set up in recent years. In addition there are extracts from the leading cases dealing with what is a legislative or a constitutional question. The *O'Donoghue* case, 289 U. S. 516, is followed at page 36 of the text by *Williams* v. *United States,* 289

U. S. 553. Likewise, there are extracts from *Cohens* v. *Virginia* at page 53 of the text. This opinion of Chief Justice Marshall is a landmark in defining the classes of cases wherein the district courts have original jurisdiction of suits of a civil nature. Two recent cases have been added on the nature of jurisdictional questions, namely: *Norman* v. *Consolidated Edison Company of New York,* at page 68, and *Ashwander* v. *Tennessee Valley Authority,* page 73.

The new Federal Declaratory Judgment Act, page 103, has been treated in greater detail than in the case book published in 1935. The authors have included a reference to Rule 57 of the Rules of Civil Procedure, and have illustrated the Act by the Supreme Court opinions in *Aetna Life Insurance Company* v. *Haworth,* decided in 1937, and a leading case in which Circuit Judge Parker of the Fourth Circuit wrote, *Aetna Casualty & Surety Company* v. *Quarles.*

Beginning with page 127 is an extended discussion from the text of Judge Dobie, dealing with the original civil and appellate jurisdiction of the district court. The authors, beginning at page 129, have set forth the cases governing the law in a situation where the United States, or an officer thereof authorized by law to sue, is plaintiff. There is one recent case on the situation involving a federal question at page 139, *Gully* v. *First National Bank of Meriden,* where the authors have set forth in full one of the many admirable opinions of the late Mr. Justice Cardozo.

The cases covering controversies between citizens of different states are considered from pages 163 to 170. They in general point out the importance of stating in the pleadings the fact that the plaintiff is a resident and citizen of one state, and that the defendant is a citizen of another state of the United States. The law regarding a corporation and a partnership as a citizen is considered in the following ten pages (170–180). Plurality of parties in diverse citizenship cases, and joinder of parties, are the next points of federal practice that are covered. Reference is made to the Federal Rules of Civil Procedure governing joinder of parties, and the latest cases on the aforementioned problem are included.

The restriction on assignment of actions is considered at page 220, and the Assignment Statute itself is set forth in full. The inclusion of a recent case, *Goldstone* v. *Payne,* page 225, shows the meticulous care with which the authors have kept their presentation of decisions up to date. Likewise, the cases dealing with the jurisdictional amount necessary in suits involving a federal question and diverse citizenship cases are well chosen and admirably edited, and contain the so-called *Red Cab* case, 303 U. S. 283, and *Kvos, Inc.* v. *Associated Press,* 299 U. S. 269.

A limited amount of space is given to cases and memoranda dealing with admiralty, criminal and *habeas corpus* jurisdiction of the federal courts, pages 277 to 313. Interpleader jurisdiction, page 314, Intervention, page 346, and Third-Party Practice, page 351, are illustrated by extracts from cases, and the new Rules, and a law review article. Also under the heading "Miscellaneous Jurisdiction of the District Court" is a reference at page 363 in a footnote to the Johnson Act of 1934. This Act limits the jurisdiction of the court in granting an injunction in public utility rate-making cases.

The removal of suits from state to federal district courts is amply treated

in a number of extracts from Judge Dobie's textbook on Federal Jurisdiction. Most practitioners and law students have a vague idea that a non-resident defendant in a state court action can remove a suit to the Federal Court. Anyone who reads and studies the section of the book covering "Removal" from page 385 to page 493 will be amply rewarded with the knowledge gained of the intricate steps governing removal and remand procedure.

One chapter deals with the problem of venue and process, and includes cases handed down by the courts in 1939. Of course, extracts from the crucial language of the *Neirbo Company* v. *Bethlehem Shipbuilding Corporation* case, page 504, has been included. This opinion holds that the appointment by a foreign corporation of a local agent for the service of process under a state statute so requiring, constitutes a waiver by the corporation of its right when sued in a federal court to be sued in the district of its incorporation. The Federal Rules of Civil Procedure governing venue and process, and the issuance of subpoenas, are set forth in full in this chapter.

Besides the adoption of the Federal Rules of Civil Procedure, the year 1938 was the occasion for the Supreme Court's reversal of the ninety-six year old doctrine of *Swift* v. *Tyson* (16 Pet. 1), when the Court, by a vote of six to two, in *Erie Railroad Company* v. *Tompkins* (304 U. S. 64), disapproved the doctrine of *Swift* v. *Tyson,* that federal courts exercising jurisdiction on the ground of diversity of citizenship need not, in matters of general jurisprudence, apply the common law of the state as declared by its highest court, but were free to exercise an independent judgment as to what the common law of the state was or should have been. Since the Supreme Court promulgated the *Erie Railroad* opinion, the state law governs all substantive rights in cases coming before the federal courts on the ground of diversity of citizenship. Judge Dobie and Dean Ladd comment on the new Rules and the Erie case at page 574 of the text. Chapter V of the text, "The Substantive Law Applied by the Federal Courts", takes cognizance of the effect of the *Erie* case, and includes reference to cases decided down to the very eve of publication. At the same time, the authors did not overlook the leading cases of the earlier years, showing the development of the doctrine first outlined by *Swift* v. *Tyson.*

Chapter VI is entitled "Civil Procedure in the United States District Court". This chapter covers the new Federal Rules not covered in other parts of the book. It includes cases prior to the adoption of the Rules in 1938. For the most part, however, it includes cases decided in the years 1938 and 1939, interpreting the new Rules. There are references not only to the Rules themselves, but also to some of the recent works on federal practice under the new Rules.

Chapter VII deals with those situations where there may exist a conflict between the state and federal courts as to jurisdiction in a litigated matter. It contains cases involving a situation where state statutes have been enacted in an endeavor to limit the jurisdiction of the federal courts. We also find the two more recent opinions governing the issuance of federal injunctions against proceedings in the state courts.

The Appellate jurisdiction of the Circuit Court of Appeals and of the United States Supreme Court is dealt with in great detail in Chapters VIII and IX, pages 817 to 1013. Included herein is a reference to the steps in taking an

appeal in a bankruptcy case. At pages 910 to 918 is a reprint of the Rules of Civil Procedure governing the proper method of perfecting an appeal from the District Court to the Circuit Court of Appeals.

The concluding chapter covers the cases involving the original jurisdiction of the United States Supreme Court, including cases where the state, ambassadors or ministers, is a party.

In conclusion, your reviewer is of the opinion that the distinguished jurist, Armistead M. Dobie, and Dean Mason Ladd have presented an excellent selection of cases, relevant statutory material, valuable editorial notes and well-chosen law review references so as to make their case book one of the outstanding volumes of the American Casebook series.

HAROLD M. KENNEDY.*

THE JUDICIAL PROCESS IN TORT CASES. By Leon Green. St. Paul: West Publishing Co., 1939, pp. xxvi, 1356.

In 1931 the first edition of this book appeared, and although its editor was not the first scholar to conceive a law book which would do more than teach the cant of the legalists, he was certainly the earliest to bring out, through the medium of the West Publishing Company, a workbook designed to stimulate the law student to read between the lines of a judicial opinion as part of the technique of learning what unexpressed thought and feeling on the part of the judges is the real basis of the decisions to which they come.

The imposing title, the Foreword, the Preface to the First Edition, and the opening chapter of four pages stirred this reviewer to enthusiasm, which was gradually dissipated as he plowed through the remaining 1338 pages of hardly more than cases, which, however, go far toward carrying the design into effect. The book contains little else which does so, although Mr. Green was undoubtedly inhibited by the still prevailing convention of law book form and content rather than by lack of space or want of inclination to perform his task completely. Except for a very few pages of topic introduction, here and there, written by Mr. Green, one discovers in the book an absence of materials other than cases and notes so orthodox as to be altogether inadequate and too legalistic for a workbook in the law's function. An exception to the foregoing is seen when the reader arrives at page 1301 of the text. There commences a thirty-nine page textual outline of relational interests, followed by twenty-one lines of comment upon abuses of governmental power and process. Even here, so one judges by what Mr. Green says, cases rather than his summary essay would have been used if space had permitted.

Except where exists that unhappily rare combination—the student mind which blends extraordinary native ability with disciplined critical technique, and another mind, fit to be the teacher of the former—the book will fulfill its function less well than if there were fewer cases and more of other materials including stimuli to critical evaluation.

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