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Cases on Federal Procedure

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REVIEWS

CASES ON FEDERAL PROCEDURE*

During the past decade several law schools have introduced courses in the jurisdiction and procedure of the Federal Courts. This innovation resulted not only from the fact that a number of the larger schools have so cosmopolitan a student-body as to make the study of the judicial procedure of any particular state practically useless, but also because of the large and increasing volume of litigation which is by necessity or choice taken into the Federal Courts. A course in this subject is not a mere duplication of matters covered in constitutional law since its scope is more definitely practical. It should give students considerable insight into the problems of getting cases into the Federal Courts (or perhaps keeping them out, if this is desired) and of handling the procedural details when they are in these courts.

The case-book under review is intended to be used for such a course and the editor's wide experience in procedural matters, including many years of preparing candidates for the New York State Bar examinations, abundantly fits him for his task. As might be expected, the cases are selected with due regard to their practical as well as theoretical bearing and a student who has gone through the book should have acquired considerable knowledge of how to actually conduct a case in the Federal Courts. The book includes cases on the nature and extent of the Federal judicial power, the effect of state laws, both as rules of decision and in governing procedure under the Conformity Act, the division of law and equity in the Federal Courts, the jurisdiction of the District Courts (including removal of causes), the Circuit Courts of Appeals and the Supreme Court. At the end there is a reprint of the pertinent provisions of the Constitution and of all of the important statutes relating to the Federal Courts. There is also a good index.

In general, and with the possible qualifications here after discussed, the cases are well selected and adequately cover the subject. Especially commendable is the full collection of authorities on the Conformity Act. The reviewer is compelled to confess that he never previously realized the full extent of the absurdities of judicial decision which have arisen under this unfortunate statute. It might be well if those few members of the United States Senate who oppose the Uniformity of Procedure bill on the alleged ground that we have under the Conformity Act only one system of procedure in each state, were compelled to read the cases collected in this book. They demonstrate that what we actually have is a federal system of procedure which is in theory somewhat similar to the proced-

*Cases on Federal Jurisdiction and Procedure. By Harold R. Medina. West Publishing Co., St. Paul, 1926. pp. x, 674.

ure in each state but in practice is very different and yet so inextricably mixed with the state procedure that it is several times more complicated and infinitely harder to learn and administer than an entirely separate procedure would be. No doubt the courts have been somewhat to blame for this situation; they have always shown great hostility to the Conformity Act. But such hostility is not without just basis, since the act itself is an absurd and unworkable piece of legislation. It is to be hoped that before this review appears, the baneful effect of this statute upon our Federal judicial system will have been eliminated so far as possible at this late date, by the enactment of the Uniformity of Procedural bill which is reprinted in the book under review at the close of the chapter on the Conformity Act.

The selection of cases with respect to the other well known labyrinth of Federal procedure—that of the removal of causes—is also very well done and leads one to wish that these complexities could be as easily removed as can those relating to the Conformity Act.

As already indicated, procedural matters are very adequately covered in this book and the same is true of most of the technical questions with respect to Federal jurisdiction such as the amount in controversy and Federal questions as contrasted with jurisdiction through diversity of citizenship. It is suggested, however, that the selection of cases is rather too closely limited to those illustrating purely technical problems. In particular, the somewhat troublesome question of what constitutes “cases and controversies” under Article III, Sec. 2, of the Constitution is not very adequately covered. On page 552 there is a reference in a note to *Muskrat v. United States*, 219 U. S. 346, a case which has an adequate discussion of the problem of moot cases. It would seem, however, that this case might well have been reprinted substantially in full. It is also suggested that such cases as *Interstate Commerce Commission v. Brimson*, 154 U. S. 447, and *La Abra Silver Mining Co. v. United States*, 175 U. S. 423, might well have been included as throwing considerable light upon the nature of the controversy which must exist in order that the matter will be cognizable by the Federal Courts.

The book does not include any cases on what constitutes a suit against a state as distinguished from suit against officials of the state. It does, however, include some of the more important cases with respect to corporations as citizens for jurisdictional purposes and the famous “conclusive presumption” that all of the stockholders of a corporation are citizens of the state where the corporation is organized. But it would seem that the enjoyment of the students taking the course, if not its value to them, would have been increased by including *Doctor v. Harrington*, 196 U. S. 579, where the ridiculousness of the presumption was demonstrated to the court itself in a manner which the latter could hardly have relished.

It must be conceded, however, that all of these omissions are perhaps justifiable, on the ground that these matters are more properly within the scope of a course on constitutional law.

There is certainly much to be said in favor of the general attitude of the editor in confining his selection fairly rigidly to cases involving the technicalities of federal jurisdiction and procedure. And laying aside all questions of general jurisprudence or constitutional law such as it is here suggested might properly have been covered a little more fully, it must be said that within the scope which the editor has set for himself, his work is very well done, his selection of cases is good and his arrangement logical. Although it is a truism that the value of a casebook can only be determined through actual use in the class-room, the reviewer ventures to predict that this book will prove a very satisfactory text for a course in the subject covered by it.

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