1928

Book Review. Federal Appellate Jurisdiction and Procedure by Elijah N. Zoline

Robert C. Brown

Indiana University School of Law

Follow this and additional works at: http://www.repository.law.indiana.edu/facpub

Part of the Civil Procedure Commons, Courts Commons, and the Jurisdiction Commons

Recommended Citation
http://www.repository.law.indiana.edu/facpub/1725

This Book Review is brought to you for free and open access by the Faculty Scholarship at Digital Repository @ Maurer Law. It has been accepted for inclusion in Articles by Maurer Faculty by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.
BOOK REVIEWS


This book is intended mainly for the practitioner rather than the student, and is essentially a reference work. This purpose is effectuated with the aid of a full table of contents, a table of cases and an excellent index. The value of the book to the practitioner is likewise greatly increased by a full list of forms used in appellate procedure in the Federal Courts and by the inclusion of the rules of the Supreme Court and the various Circuit Courts of Appeals. The book is not without value to the student but its primary purpose is as a useful tool to the practicing lawyer.

The book begins with a discussion of somewhat general matters such as the nature and methods of review, what court action is subject to review, and the limitations on the right of review. The chapter on the orders, decrees and judgments which are subject to review is concerned especially with what constitutes a final determination. It would certainly take the proverbial Philadelphia lawyer to reconcile the various procurements of the higher Federal Courts on this subject and the author does not attempt to do so. He confines himself largely to illustrative examples, in an attempt to indicate what line the Courts have actually drawn. The chapter with respect to the limitations on review is especially important in showing the extremely restricted nature of such action where the trial has been before the court or where both sides have requested the direction of a verdict.

Next comes a consideration of the proper parties to appellate proceedings. Following this, there is a full discussion of the jurisdiction of the Supreme Court in appeals directly from the District Courts, from the Circuit Courts of Appeals, and the Court of Appeals of the District of Columbia, from the Court of Claims, from the State Courts, and from the Territorial Courts. It is, of course, pointed out that under the 1925 Act the only appeals of much importance are those from the Circuit Court of Appeals and from the State Courts, and even with respect to these, the right of appeal is now distinctly limited.

Following this discussion of the appellate jurisdiction of the Supreme Court there is a like consideration of the jurisdiction of the Circuit Courts of Appeals. This is divided into several chapters, one relating to the general and bankruptcy jurisdiction, another to habeas corpus and similar proceedings, another to contempt proceedings, and others to appeals from the Board of Tax Appeals and the Federal Trade Commission. The chapter with respect to the appeals from the Board of Tax Appeals is very brief and obviously not adequate, but the procedure in tax cases is so technical and differs so largely from most other sorts of cases that it could hardly be fully discussed in a book of this general nature.

Following the discussion of the Circuit Court of Appeals there is a short
chapter on the jurisdiction of the Court of Customs Appeals, and then follows a rather detailed discussion of the methods of taking an appeal in all the Federal Courts. This is begun by a chapter merely listing the time for taking appeals in the various courts—this being avowedly repetitious and merely for convenience in reference. Then follows a detailed discussion of the preliminary steps for taking an appeal. In this chapter, as elsewhere, it is pointed out that the original act of January 31, 1928, purporting to abolish writs of error, left it somewhat uncertain as to exactly what papers should be filed in an appeal from a judgment at law. The author has attempted to spell out what seems to him the most reasonable solution of these doubtful points, but the matter has been largely cleared up by the amendatory act of April 26, 1928 which is inserted in the book at page 277. Obviously there was not time to correct the text in accordance with this new act, but this should not cause any serious difficulty, since the text points out the doubtful points to which the amendment refers. Following the discussion of these preliminary steps is a full explanation of the nature and method of filing bills of exception and the record in the appellate courts, and of the procedure in the appellate courts.

The book purports to be purely procedural but a considerable amount of substantive law is necessarily included, especially in connection with the right of appeal to the Supreme Court from the State Courts. Of course, these substantive law discussions are not very complete, but it was not the purpose of the author that they should be.

It may be hypercritical to call attention to merely minor lapses, but there are at least two statements which might be misleading although perhaps correct enough if understood as purely bearing upon the procedural aspects of the matter. On page 243 in connection with contempt cases, it is stated “If a prima facie case is shown for the prosecution, the defendant must answer and prove his innocence in the same manner as in any other criminal case.” (Italics are the reviewer's.) While it must be admitted that the courts have gone rather far in their claims to punish for contempt, it is not believed that they have actually abolished the presumption of innocence in such cases.

On page 299 the assertion is made that an affirmance of a judgment is an adjudication “that none of the claims of error are well founded.” This is literally true, but might give rise to an incorrect impression. A claim of error might be well substantiated by precedent and yet not lead to a reversal in the particular case, because not deemed by the reviewing court to have been actually prejudicial. Such an affirmance is, of course, an adjudication that the claim of error is not well founded as respects this particular case but it is not determined that no error was committed.

A more substantial criticism, for which, however, neither the author nor the reviser is presumably to blame, is that the actual printing of the book is not as carefully done as would be desirable. Several instances are noted where a number of lines (in one instance an entire paragraph) are out of place. Fortunately such glaring defects are comparatively rare.

This book has been for many years the standard work on its subject. It fully deserves its reputation and it is a pleasure to say that the work of the reviser in preparing this edition seems to have been fully up to the original standard of the author. No hesitation is felt in strongly recommending the book to any practitioner who has any considerable amount of work in the Federal Courts. Indeed, it is practically the only comprehensive work on
appellate procedure in these courts and is, therefore, really indispensable to any one who has practical dealings with this highly complex subject.

ROBERT C. BROWN.

Indiana University School of Law.


During the winter semester of 1924-25 Professor Mattern delivered a course of lectures at the Johns Hopkins University. The popularity of this course induced the author to produce a more elaborate study for the use of a much wider student public, and the result is this splendid text book on the national German Republic.

The work is not a commentary on the provisions of the German Constitution, but it does present in simple and understandable language the general juristic principles upon which the constitution makers based this fundamental law. The American student is constantly kept in mind, and frequent references are made to the corresponding analogies in the American Constitution. The terminology is far less technical than one might expect, and German words are used effectively and where the meaning is to be more clearly emphasized. Problems are not solved, but they are presented to the student in a way that challenges and stimulates his own thinking and further investigation.

Frankness, tolerance, and moderation are apparent in the author's work. He has delved deeply into the sources, and writes from experience as well as study in books. His bibliography while not exhaustive, selects with the preceptor's zealous care the essential within the limits of the obtainable by the American student.

Here is a work of outstanding present value in the field of comparative government. It is prefaced by a thorough understanding of the American Constitution, and is planned so that even a beginner can follow it with interest and ease.

The work is planned historically and analytically as a study of constitutional history and law. Part one concerns the juristic concept of the State in its historical and theoretical background. The German tribunal organization is traced to pre-Roman times when the people were sovereign and voted their approval of leaders and laws. Monarchy in Germany was not original, but came in the confusion of feudalism as a usurpation of the people's rights. Hence flourished for a thousand years the Holy Roman Empire. This was ended by Napoleon in the break-up of the artificial hereditary states and the establishment of the Rhine Confederation. In 1815 came the reaction monarchy under the leadership of Austria. The national democratic spirit sought a vent for expression in the Constitution of 1849. An imperial unity developed through the Zollverein and the North German Confederation of 1867 into the Hohenzollern empire of 1871. But all of this was a process of artificial organization, reaching its climax in the World War, and giving way at last under stress of revolution to the national German Republic.

The events in that transition from monarchy to republic take us through