The Avalanche of Case Law

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THE AVALANCHE OF CASE LAW

By D. J. MORAN*

For a number of years the writer has been asserting to the courts that if one seeks long enough and broad enough he can find a case on any side of any question of law.

A few weeks ago he decided to ascertain if possible the probability of the truth of the above assertion. To do this he had to ascertain the scope of the field and the time it would take to search it.

Since the National Reporter System began, an average of fifty-four years, it has reported 1,200,000 opinions of the courts covered by its system. This represents 75 per cent of all the case law now extant in the United States. The total number of opinions is 1,607,000.

To digest these cases it would take a highly trained law editor, working six hours a day, 765 years.

Assuming that the opinions will continue to multiply in like manner, in 108 years we will have then 1,200,000 decisions multiplied by 27, or 32,400,000 opinions.

To digest these cases in the year 2045 it would take the expert law editor 20,355 years.

The necessity for the preservation of our case law for 108 years is to be assumed because cases 100 or 150 years old are often cited and used as binding law. Indeed a case seems like Tennyson's Brook to "go on and on forever."

Peering into the future and assuming we go on and on, in the year 2477 here it is. We will then have 318,864,000,000 opinions in the case books and it would take the expert law editor 263,165,800 years to digest them. It would take a million such editors 263 years to do the job. Since they cannot live that long and allowing forty years of working life, it would require 6,500,000 experts all their life to do the stupendous job.

It is amazing! It is appalling! 1,200,000 opinions handed down and printed in fifty-four years! It looks like a dust storm or a grasshopper plague.

Is all this science, art or just the most alarming type of boondoggling?

Assuming 450 opinions per volume, it now takes 2,666 volumes to complete the West Publishing Reporter System and at $4.00 per volume the cost is $14,664.00. In 2045, if we lawyers can survive the plague long, a set of the Reporter System will cost $395,928.00.

Clearly the cost of law is getting unbearable and its mass worse than unbearable. There is gold in them thar hills if you can only find it.

* Of the Hammond Bar.
The writer concludes that he is correct because in 1,200,000 specimens of the species of Judicial Opinions you can find anything you want if you live long enough to find it.

Note: The data used is that put out in the West Publishing Company's "Manual of National Reporter System and All Key Number Digests" for 1936.

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RECENT CASE NOTES

TAXATION OF STATE AGENCIES AND INSTRUMENTALITIES.—For many years New York City has operated municipal waterworks, supplying water for public and private purposes. The inhabitants are charged for the water they use; but the City does not make a profit. Petitioner holds the office of chief engineer of the water system by statutory authority, with a fixed salary of $14,000 a year. He supervises and exercises control over the operation of the system. The Commissioner of Internal Revenue assessed an income tax against him in respect to his salary; and he seeks to have the assessment set aside. Held, the supplying of water by a city to its inhabitants is a governmental function, and a person regularly employed therein is a state agency exempt from federal income tax.¹

In the classic case of McCulloch v. Maryland,² Chief Justice Marshall decided that the States could not tax the agencies and instrumentalities of the Federal Government, because "the power to tax involves the power to destroy." From that time on both the Federal Government and the States, including their political subdivisions, have been considered free from any burden of taxation attempted to be imposed by the other. Following Marshall's reasoning, the Supreme Court in Collector v. Day³ definitely established the converse of McCulloch v. Maryland, i. e., that state instrumentalities are exempt from federal taxation, including income taxes. The Sixteenth Amendment⁴ did not affect this holding, for the Court has decided that the Amendment was not intended to extend the taxing power to new or excepted subjects, but merely to remove the requirement of apportionment.⁵

¹ Brush v. Commissioner of Internal Revenue (1937), 57 S. Ct. 495. Mr. Justice Roberts and Mr. Justice Brandeis dissented. Mr. Justice Stone and Mr. Justice Cardozo concurred with the majority upon the ground that petitioner brought himself within the terms of the exemption prescribed by Treasury Regulation 74, Article 643, the validity of which was not challenged by counsel for the Government. Compare this with Helvering v. Powers (1934), 293 U. S. 214, 55 S. Ct. 171, where the Court, in dealing with the same treasury regulation, said, "But the Treasury Department could not by its regulation either limit the provisions of the statute or define the boundaries of their constitutional application."

² (1819), 4 Wheat. 316.

³ (1871), 11 Wall. 113, 20 L. Ed. 122. Here Day, a state judge, was held to be exempt from the federal Civil War income taxes.

⁴ The Sixteenth Amendment to the United States Constitution provides, "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."