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Book Reviews

Dudley G. Wooten

Joseph P. McNamara

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BOOK REVIEWS

COURT PROCEDURE IN FEDERAL CASE., By Hugh C. Bickford, LL.M., Member of the Washington, D. C., Bar, etc. 1928, New York. Prentice-Hall, Inc.

The entire subject of Federal taxation has always been more or less of a mystery to the average legal practitioner, shunned as in itself a complicated and disagreeable maze of technical and administrative details, and removed by the policy of the Government from the usual domain of legal and judicial proceedings. Until within recent years the imposition of taxes by the Federal Government was controlled by Congress or by Departmental agencies under the direction of Congress. Their distribution and collection were exclusively in the hands of the Treasury Department through the Commissioner of Internal Revenue, and there was no appeal or review except through the channels and under the regulations prescribed by the Revenue officials. However, there was no recognized and adequate relief against the collection of the taxes, however unjust or even unconstitutional they might be, but the taxpayer must pay them promptly and seek his relief afterwards by an action at law for the recovery of amounts illegally assessed and collected. It was the method traditionally ascribed to Rhadamanthus, judge of Hades, who damned a man first and tried him afterwards. But the courts upheld the validity of these proceedings upon reasons of public necessity, holding that the punctual payment of taxes was indispensable to the operation of the Government, and that to permit obstruction and delay by litigation in advance of payment would paralyze the the functions of all governmental agencies. This was the effect of the decisions in *State Railroad Tax Case*, 92 U. S. 575, *Dow v. Chicago*, 11 Wall. (U. S.) 108, and a number of other adjudications by the Supreme Court. Under the Act of 1867 (Rev. Stats. Sec. 3224) Congress sustained this line of decisions by enacting that "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court". The manifest tyranny and injustice of this rule, however, was relaxed by the equity courts in certain very extraordinary cases, where its enforcement would result in irreparable injury not capable of being repaired or indemnified by legal remedy. The practical

result of this policy was to establish an almost arbitrary and unlimited authority in the Treasury Department, to arouse a general prejudice against the Internal Revenue officials, and to create in the minds of the legal fraternity a natural and not illogical aversion to having any sort of contact with such an extrajudicial system as that of Federal taxation. The legislation of later years has to a large degree altered that situation, by making the assessment and collection of taxes subject to the ordinary rules of notice, hearing, appeal and a judicial determination of the issues involved, and this in a way to avoid the arbitrary methods formerly in vogue.

By the "Revenue Act of 1924" Congress created the United States Board of Tax Appeals as "an independent agency in the executive branch of the Government", and invested it with the usual attributes of a court, without, however, making its decisions final or effective, and thus greatly impairing its functions as a judicial tribunal. But in the two years that intervened before the Act of 1926, the Board transacted a vast volume of business, disposing of over 16,000 appeals, involving many millions of dollars, so that a committee of the American Bar Association reported that it "had the largest judicial business in the United States". The rules of practice were substantially those already established in the Federal courts, and the decisions were accepted as good authority. The "Revenue Act of 1926" reorganized and strengthened the Board of Tax Appeals and made it in all respects similar to a District Court of the United States, except that its jurisdiction is limited exclusively to controversies arising under the revenue laws, as administered by the Commissioner of Internal Revenue and appealed from to the Board; and the provisions of Sec. 3224 of the Revised Statutes are declared not to govern such appeals. The result is that the administration of the tax laws and regulations is placed upon the same footing as other departments of Government, subject to be restrained and corrected in the same manner and to the same extent as other official agencies. The right is secured to have the decisions of the Board reviewed by petition to the Circuit Court of Appeals, or the Court of Appeals of the District of Columbia, with final review by the U. S. Supreme Court by writ of certiorari. Thus the proceedings and judgments of the Board, and in Federal Tax cases generally, have become part of the judicial

system under the Constitution, and lawyers may study them with some degree of satisfaction as to the application of legal and equitable principles thereto. There are also removed from that class of cases the long-settled obscurity and antagonism heretofore existing in the profession at large.

These changes and improvement in the methods of Federal Tax enforcement have rendered a good text-book on the subject a real necessity, and have given to such a treatise a value and interest for lawyers in all parts of the Union and in whatever branch of the law they may be engaged. The author and publishers of the above named volume have succeeded in presenting an admirably conceived and thoroughly executed plan for studying and understanding the procedure and the law of decision in all Federal Taxation litigation. It covers pretty much the whole field of Federal practice in such cases, not merely before the Board of Tax Appeals, but before all of the Federal Courts, and is therefore of immense value to the Federal practitioner generally and in other litigation than that involving taxes. The Revenue Act of 1928 has created new aspects of the subject, and it is believed that it will enlarge the volume of tax appeals, as well as original cases in the revenue department and before the Board of Tax Appeals. This book is not a mere manual of rules and of decisions, but discusses the reasons and principles involved in the tax cases, explaining historically and fundamentally the origin, development and application of both legislative and judicial policies. Especially important are the section devoted to "Recovery of Taxes Illegally Collected", and the one on "Appellate Review of Decisions by U. S. Tax Board of Appeals". The methods of appeals to the Circuit Court of Appeals and to the Supreme Court are fully set out and reduced to a simple and practical system. In one part of the treatise there is contained also the practice in tax cases before the U. S. Court of Claims, something unknown to the average lawyer. In *Appendix A* are given a complete set of Forms for all phases of tax litigation in Federal tribunals; *Appendix B* contains the Revised Rules of the Supreme Court of the United States; and *Appendix C* gives all of the portions of the Federal Code and Statutes that apply to Tax Cases.

The work has been well done and in the briefest possible space, since the volume contains less than 450 pages, and hardly

anything of value has been omitted. It can be heartily commended for its practical use and timely appearance, since the subject has acquired new and universal interest for the profession.

—DUDLEY G. WOOTEN.

CASES ON FUTURE INTERESTS. By Richard R. Powell. Assisted by Lewis M. Simes. The West Publishing Company. Saint Paul. 1928.

The construction of conveyances to charities, of trust agreements, of option contracts, of wills, has made the question of future interests one with a very pertinent present as well as a particularly interesting future. Despite the fact that this division of the law has a very rich past, (the historical significance of which one must be aware before the present day rules can be understood), nevertheless it would appear that it is a subject which will be developed quite extensively in the next decade or so. But to understand the development that is to come the student should be in touch with the law as it is today.

The scope of this volume of cases selected by Professor Powell of Columbia University is almost the same as that covered by Professor Kale's *Cases* which has been used in law schools for some years. It is believed, however, that this book will displace the earlier work of Kale because it has marked advantages in several respects. One of these is the selection of cases. Where Kale's cases were thought to be a little too old and too predominantly English, Powell's work gives the modern opinions of the American courts in a truly admirable fashion. In fact the selection of cases has been done with more than ordinary skill. Forty-seven per cent of the cases in Powell's work were handed down since 1900 as compared to six per cent in Kale's volume which were dated subsequent to that time. Moreover Kale has some one hundred and seventeen English cases in his collection of two hundred and one cases while Powell has but sixty-five of his two hundred and fifteen drawn from English sources.

The reviewer believes that this is an important matter. It tends to create a greater interest in the student because he believes that he is studying matter which is of practical value and at the same time he is receiving the historical background that is so necessarily tied up with any consideration of a problem in

future interests. It also affords an excellent summing up or collecting of modern authorities for the teacher who may be using some other work in his class.

Another feature that stamps this casebook as particularly deserving of praise is the placing of from four to seven questions at the end of each case dealing with the problems which the case may bring up. In this manner the student is provoked to thought and it is felt that a more intelligent discussion will result in the class room if the student has thought out these problems before coming into the lecture chamber. It is well to note that these questions are not intended to cultivate a laxity on the part of the student by analyzing the cases for him; rather they are so drawn up as to be provocative of as much study and thought as the case itself originally made necessary. This device of discriminate questioning has proven so successful as to lead one to hope it will be the practice in the future.

Many of the citations of the editor of the work are contained in the suggestive questions placed at the end of each case. It might be suggested that some method should be introduced in later editions where, when several citations are given on the same point, the student could be instructed as to which of the citations would be most profitably read.

The first chapter of the book gives an excellent development of the historical growth of the various forms of future interests. Since many of the rules of law applying to this subject are the same as they were many years ago and since many of the rules have little explanation except upon this historical basis, the treatment of this phase of the work, usually untouched is most commendable. It serves to give the student an excellent perspective of the field. The seventh chapter introduces new matter in the effect of partition in its relation to future interests in land; the equitable rules of representation; the protection afforded the owner of an interest against misconduct (active or passive) of the tenant in possession or of a third person. Chapter ten is upon the expectancies of the heir or devisee. A subject of particular import in the work-day sense, that of statutory provisions enabling a tenant in possession to extinguish future estates through judicial sale is taken up in the eleventh chapter. The addition of the matter usually not included in casebooks on this subject is a feature which calls for praise.

The compiler's thorough research has been mirrored in every section of this work and it is doubtful if a better selection of cases on the subject could be gathered together. Having seen the book used in one class devoted to this subject the reviewer believes that this work is one which stands very high in the ranks of present day casebooks. Professor Powell has demonstrated great skill and while his collection of cases dealing with *The Rule In Shelley's Case* leaves something more to be desired this one imperfection does not materially detract from the scholarly standards the remainder of the book. Professor Powell is to be congratulated upon this splendid work.

—J. P. M.

HANDBOOK OF FEDERAL JURISDICTION AND PROCEDURE. By Armistead M. Dobie. West Publishing Company, St. Paul, 1928.

To treat of a topic so large and so extensive in the narrow scope afforded by the limits of a text of the Hornbook series size calls for conciseness and the whittling of phrases. Such a work presents the possibility of falling into either of two traps: being too brief and thereby losing the material portion or in expanding too much on certain topics to the detriment of others. It is notable then, that Mr. Dobie has not been guilty of either of these alternatives. He has been very judicious in his choice of words and most clear and concise at all times. His statements are actually artistic in that they present a satisfying finish instead of a bewildering incompleteness. Thus it is that the paragraph headings printed in bold type stir up the reader and make the volume one of value both to the law student and to the practitioner.

Short lists of "representative cases" alluded to in the footnotes form the most outstanding feature of this work. These are supplied not because they construe the statute in the text, but rather because they instruct the practitioner how to proceed under the statute. In this way the practical side of the problem is brought to the fore and the value of the work enhanced.

There is another feature which is well worth calling the reader's attention to. That is that upon problems of great difficulty this author does not hesitate to quote his co-authors—in fact on some problems a veritable symposium of legal writers is held.

There is one fault with this work that the reviewer does not hesitate to call material. This is, that for some reason or another, the publisher (or it may be the author) has failed to include a list table of cases in the volume. The practical aspect of such a table, especially in these crowded days, is quite apparent. It serves admirably to allow the student or the practitioner to cut over into the text or from the text into the cases in an admirable fashion. The device is a valuable one and is one calculated to be a real time-saver for those using the work. In subsequent editions of Professor Dobie's work it would be gratifying to see the splendid volume enhanced by such a table of cases.

—J. P. M.

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