

BOOK REVIEWS

CASES AND AUTHORITIES ON CONSTITUTIONAL LAW (2d ed.). By Oliver P. Field. Callaghan & Co., Chicago, 1936. Pp. xxxvi, 1097. Price: \$6.00.

The reviewer of a second edition may assume that the first edition has disclosed the general plan of the editor. His concern is with the question of improvements, real or fancied, additions and omissions. In the preface to the volume under review, Professor Field tells us that most of the "major changes" are the result of suggestions by fellow teachers, presumably of those who have made use of the book. These changes fall into several classes: changes in the character of the material, changes in organization, added and omitted cases, and substitutions.

The most noticeable change in the character of the material is the omission of the expository extracts, taken from texts and law reviews, which occupied so large a portion of the first edition. The prefatory comment relieves us from inquiring why. Experience showed that they were not so valuable as case materials as the basis for class discussion. Whether this is because teachers accustomed to the technique of the case method employed them inexpertly probably is beside the point. The test of a casebook doubtless should be its fitness as a pedagogical tool in the hands of those available to teach from it. Also, it may be noted, the present compilation, even more than the first, is almost exclusively composed of decisions of the Supreme Court of the United States. The opinions of the attorneys-general and the decisions of the state supreme courts have been banished.

Changes in organization are numerous. Chapter III on the Separation of Powers has become Chapter X, dealing with both separation and delegation, remedying a defect in the former edition. The chapter on Suffrage has been combined with the chapter on Congress-Election, a distinct gain. Interstate Relations disappears as a separate grand division, the material going for the most part to the section dealing with the Union and the States. The chapter on Territories is merged into that dealing with the miscellaneous powers of Congress. Religious Freedom disappears altogether. Slavery and Involuntary Servitude are relegated to a mere footnote in the chapter on Police Power and Due Process of Law, a questionable change. The chapters on the Introduction to Due Process of Law and on the Procedural Aspects of Due Process have been merged. The various aspects of the commerce clause are presented through three chapters instead of in one—a mere detail of organization that need cause no one deep concern.

There is a considerable amount of change in location, both of chapters and of cases within chapters. The National Judiciary is advanced from fourth place to second position. Due Process of Law steps ahead of a number of other topics. Doubtless pedagogic expediency was thought to dictate these changes. It may do so. The reviewer is a bit skeptical, but that is chiefly because he does not attach great importance to the exact order in which topics of constitutional law are presented. He feels it possible to teach from one outline about as well as from another.

Additions, omissions, and substitutions seem to me a far more important matter. They go to the heart of the book's usefulness. I am inclined to favor the cafeteria type of casebook. The topic of constitutional law has become so large that it is inevitable that teachers should disagree as to the matters to be included in their courses and as to what points should receive special emphasis. The presence or absence of separate courses in taxation, administrative law, public utilities,

or federal jurisdiction also affect the question of what to teach. The most useful constitutional law casebook, therefore, will give the teacher a rather wide opportunity for the selection of cases. The present book does fairly well in that respect, but is handicapped by its restricted size. The most significant New Deal cases are included, and there is reason to be grateful for the inclusion of a number of the old landmarks that were omitted from the old. One is inclined to deprecate the paucity of material in the chapters on the separation and delegation of powers, on the executive, on citizenship, and on the police power and due process. The selection of cases on due process of law in taxation has been improved, taken as a whole, though there is still inadequate coverage of jurisdiction to tax. Obligation of contracts, *ex post facto* laws, and searches and seizures show signs of excessive pruning, while one wonders at the continuance of the title, "Criminal and Civil Procedure in the Federal Courts", in the light of the present content of the chapter so labeled.

It is to be regretted that a more complete citation to material in the legal periodicals was not attempted and that a table of articles and notes cited was not included.

The material for a reasonably adequate course can be found here; the reviewer's strictures mean merely that he would prefer a wider choice.

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**SUBSIDIARIES AND AFFILIATED CORPORATIONS.** By Elvin R. Latty. Foundation Press, Inc., Chicago, 1936. Pp. 220. Price: \$5.00.

"Philosophy may have gained by the attempts in recent years to look through the fiction to the fact and to generalize corporations, partnerships and other groups into a single conception. But to generalize is to omit, and in this instance to omit one characteristic of the complete corporation, as called into being under modern statutes, that is most important in business and law. A leading purpose of such statutes and of those who act under them is to interpose a nonconductor, through which in matters of contract it is impossible to see the men behind." Holmes, J., in *Donnell v. Herring-Hall-Marvin Safe Co.*<sup>1</sup>

It is believed fair to say that this book, although it does not single out the dictum, is dedicated to the proposition that the foregoing statement by the late Justice Holmes is a misty metaphor, a delusion and a snare.

The first three chapters are devoted to an analysis of certain cases and the development of the thesis that the entity concept of corporations is, for the most part, irrelevant in the consideration of legal problems in corporation law, and that the determination whether the creditor of an affiliate or a subsidiary may recover from the parent corporation turns upon many considerations, "but the regard or disregard of the corporate entity is not one of these". Many cited "Unauthoritative Precedents for Intercorporate Liability" are not considered in the least relevant to the intercorporate problem or that of separate entity.

In Chapter IV the author discusses decisions which he thinks turn upon "principles peculiarly applicable to the specific situations there involved,—often quite remote from that of stockholders' liability".

In Chapter V he reviews cases where one corporation through various devices such as lease, mortgage, etc., has attempted to reduce the hazards of business by operating through another corporation the capital structure of which was obviously inadequate to the size of the business in hand. While the author

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i. 208 U. S. 267, 273 (1908).

seems to find little or no logical relation between liability and the entity or agency concepts, but rather that the obligation rests on a duty to pay for the privilege of limited liability by putting adequate capital into the venture, one is tempted to suggest that there is here presented the case of a corporate stockholder attempting to abuse or pervert the privilege of doing business in the corporate form in a way which amounts to fraud on those who deal in justifiable reliance upon the validity of all the appearances.

Chapter VI deals with the intercorporate creditor—often differing in form only from the cases of vicarious liability, for if the claim of one corporation against a subsidiary or affiliate is postponed to the claims of creditors generally the result often approaches closely what follows when it is held that the parent must pay claims against its subsidiary. Inadequate grounds of distinction exist between decided cases where one corporation is permitted to share *pari passu* in the estate of a related corporation, and those cases where the claim is postponed to the claims of all creditors.

In Chapter VII he comments on the "ratio decidendi in the cases" where the statements are mostly "couched in language about 'instrumentality' and 'control'". He does not think well of the oft quoted instrumentality doctrine found in *Chicago, etc., v. Minneapolis Civic Ass'n*,<sup>2</sup> partly because it gives no clue as to when a corporation is an instrumentality, a criticism which may be directed with equal force against many a generalization in other fields of law. He says the term is "meaningless" and that the cases should talk "directly in terms of these factors (which make up instrumentality) without the introduction of an additional term". It is suggested that this criticism is of doubtful value, for does it not parallel a complaint that the courts should not use the phrase "public policy", or "police power" but each time speak only of the "factors" which make them up?

In the final chapter the author says that "so long as recovery is limited to the pool of assets of the entire unit and *only* to that pool the individual-stockholders of the entire incorporated unit (parent, subsidiaries and affiliates) are enjoying limited liability, however much the obligations of particular divisions of the single economic enterprises are shifted about within the enterprise". This approval of the "single economic unit" idea is not wholly shared by the courts. In *Kingston, etc., v. Lake Champlain, etc.*,<sup>3</sup> Judge Learned Hand said: "All that has really happened is that the libellant, being dissatisfied with the credit of the company with which it dealt now seeks to involve its creature, on the notion that the whole enterprise was single in all aspects. So long as the law allows associated groups to maintain an independent unity, its sanction is not so easily evaded, and persons dealing with either do so upon the faith of the undertaking of that one which they may select."

This book has its good points and its weaknesses. This is to be expected. The subject is not simple and the reasoning of the decisions is not satisfactory. The author has a predilection for the unusual phrase. We find "intransigent conceptualism", "epithetical jurisprudence", "subsume", "exceptis excipiendis", etc., some of which will probably cause the reader, howsoever well versed he may be in philosophy or the Latin classics, to sit up and rub the legal eye in the hope that some things will prove clearer than they seem. If the author had taken more pains to state the legal doctrines, classify or group the cases in a slightly more orthodox way, followed by his own usually penetrating analysis of type cases, the book would have been a tool more helpful to the lawyers and the courts, and its value to law students would have been enhanced. The author's aversion to

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2. 247 U. S. 490 (1918).

3. 31 F. (2d) 265, 267 (C. C. A. 2d, 1929).

legal labels, intended to be descriptive of legal rules, is not likely to be shared by the courts for some time to come, for, after all, they must record their conclusions in *words*.

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PRINCIPLES OF LABOR LEGISLATION (4th ed.). By J. R. Commons & J. B. Andrews. Pp. xviii, 606. Harper & Bros., New York, 1936. Price: \$3.25.

The new fourth edition of this standard work will be useful to attorneys chiefly as a "finding list". The data are grouped under the same headings as in the last edition, viz., unemployment, minimum wages, hours, safety and health, social insurance, individual and collective bargaining, the administration of labor laws and constitutional aspects. There are some 360 cases cited, most of them from appellate courts. There is also a bibliography which, however, includes many older books and not a few which are remote from the subject. The new edition is frankly aimed almost exclusively at the needs of the academic student. In it one gathers the latest and most up-to-date summaries of federal and state legislation on all the subjects noted above. One is impressed by the meager results of public works as an unemployment reserve remedy, by the breadth and strength of the legislative movement to set up a fair living wage, by the encouraging progress in the reduction of hours of employment, by the widespread development of standards of safety and health protection in factories, and by the important growing cooperation between administrators, employers and employees in the working out of these standards.

The authors are to be especially congratulated upon their effort to give a calm, dispassionate presentation. This effort has been more successful at some points than at others. It would be hard to find a fairer, more scientific treatment of minimum wages than that given in the forty pages of Chapter II.

Less fortunate is the treatment of collective bargaining in Chapter VII, where one gathers the impression that the form of collective bargaining regardless of its substance or of its cost, is the summum bonum. The treatment of the law of strikes, picketing, boycotts and injunctions is not up to the standard of the rest of the work either as to completeness or impartiality. It may be hoped that in subsequent editions this section will be greatly reinforced.

Again inserted in the description of laws and their interpretation is the chapter on Administration. This is somewhat above the background and general grasp of the ordinary student but it should be found invaluable by legislators and public executives. It deals, as did the earlier editions, with the principles and maxims which should be followed not only in drafting labor laws but in organizing the administrative machinery for their enforcement and the administrative policies to be followed. Particularly valuable are the observations here made on the importance of administrative inquiry and investigation not only to the judge but to the lawmaker himself. These sections deserve to be printed separately and placed in the hands of every congressman and legislator in the country. The outstanding feature of our present and recent labor legislation is its complete lack of a factual basis. Instead of thorough careful investigation of exact needs we have had emotional urges and slogans. Small wonder that our labor law, both state and national, instead of being an effective, scientifically drafted code is a mixture of emotion and prejudice. Is it too much to ask that the authors of this standard work may in future editions more clearly point out the weaknesses of the situation and give some hint of the way out?

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Judging the work as an academic textbook one naturally asks, what should such a book do for the student? First, it should give comprehensive and fairly complete information on labor laws. Second, it should inform at least briefly as to the practical effects of such laws. Third, it should give an appraisal from the social viewpoint of the wisdom and justice of the measures described with occasional suggestion of further needs.

The new fourth edition, like its predecessors, admirably satisfies the first of these tests. On the second and third it greatly needs strengthening. Future editions should contain some presentation of the *effects* of important statutes, such as is given for the minimum wage.

After all, the National Labor Relations Act was in operation for a year when this book was published. In that time the National Labor Relations Board had fairly settled its general lines of policy and interpretation. The Federal Anti-Injunction Act of 1932 had been on the statute books for four years and a half. The extent to which needed protection can or cannot be secured would seem worthy of inquiry. The chapter on social insurance likewise omits some important data offered by recent state investigations on the effects of workmen's compensation. The discussion of contributions to unemployment compensation funds leaves the reader in an uncertain frame of mind, after a not too clear presentation of employee contributions.

Likewise, as an appraisal of labor laws from the broad social viewpoint the book leaves even more to be desired. Should the student approach this subject with the naive, semi-propagandist bias that all labor legislation is good and that the chief aim is to get more? Or should he start from the broader viewpoint of society as a whole including even the public, the nonunion man and the employer himself?

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CASES ON PRIVATE CORPORATIONS. By Harry Sanger Richards (3rd ed. by Sveinbjorn Johnson). West Publishing Co., St. Paul, 1936. Pp. lxiv, 968. Price: \$6.00.

Although the new edition contains a fewer number of principal cases than did the second edition, it contains far more additional material. This material is scattered throughout the book in the form not only of footnotes but of notes in the text itself. Of particular importance are the statutory excerpts. The trend of the times is to control corporate activity by statute. A student using an older style casebook tends to visualize the field of corporation law as a common law meadow. The present casebook shows him the complicated and artificial structure which legislatures have built upon that meadow. This is a distinct advantage since it teaches the student to approach the subject realistically and in a way typical of the practicing lawyer.

To show the relative amount of material contained in the notes, the following rough comparisons are made between the new edition and the second edition.

In the second edition, the footnotes numbered something over three thousand lines. In the new edition, the footnotes number approximately six thousand lines. In addition thereto, the new edition contains enough notes in the text itself to make about eighty or ninety pages of text if these notes were printed without break. The second edition contained only a negligible number of such text-notes.

It is obvious that these annotations contain a wealth of material. They do so to such an extent that the new book probably will require more class-room time to complete than did its predecessor.

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The new edition contains an appendix containing specimen forms. In addition to the tables found in all casebooks, it has a very complete and convenient list of law review articles dealing with corporation subjects.

In a qualitative sense, the new edition reaches the high level of scholarship set by Dean Richards. As to the choice of cases, there will be the usual diversity of opinion, which means nothing since no two lawyers will have the same list of favorite citations. For example, one wonders whether it is well to include that old and disreputable acquaintance, *Hibbs v. Brown*,<sup>1</sup> in any casebook on corporations. Its only value is to show the student a specimen of that "bad law" which is traditionally the offspring of "hard cases". As a practical matter, most students study *Hibbs v. Brown* in their course in Negotiable Instruments.

Perhaps the weakest part of the book is the part which treats of reorganization under Section 77B. This is not the fault of the editor but of the subject matter. As he says in the preface, "the new matter is limited in extent and much of it is of uncertain value." He gives the student a bird's-eye view of reorganization under 77B and that is all that can be expected in a book of this kind.

The chapter on finance more than counterbalances any weakness in the chapter on reorganization. None of the cases in this chapter were in the second edition and they introduce the student to this tedious but important specialty.

No book is perfect. To paraphrase Cervantes, books are as men make them and usually a little worse. This new casebook, on the contrary, is conspicuously better.

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1. 190 N. Y. 167, 82 N. E. 1108 (1907).