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Cases on Code Pleading (Book Review)

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BOOK REVIEWS

CASES ON FEDERAL TAXATION—Joseph Henry Beale and Roswell Magill, N. Y., Prentice Hall, Inc., 1926. pp. 719.

Any one who has had anything to do with the construction of the various Income Tax Acts and the Regulations of the Treasury Department thereunder will appreciate the enormous difficulty that arises from any attempt to present the material to students in any orderly fashion. The steady stream of rulings of the Treasury Department and the decisions of Administrative Boards as well as decisions of various courts have defied classification. It is therefore very gratifying to notice the helpful arrangement of cases which the present volume presents for the student's consideration. The writer of this review had the privilege of listening to one of Professor Beale's first courses in taxation at Harvard and Professor Beale was himself among the first to recognize the difficulties of classification.

The instant book has achieved its greatest usefulness in following the arrangement of the income tax statute. It sometimes occurred to the writer that a classification of the subject matter differently from that attempted by the statute might be helpful. Thus it might have been useful to collect the rules with regard to deductions both as to individuals and corporations and with regard to gross income. Reflection, however, indicates that in view of the continuing quantity of decisions and rulings, any arrangement which cut loose from the statute would probably tend to confuse. The legal student who is eternally seeking to find a thread of principle running through the cases and decisions will find great difficulty in Federal taxation. We must remember that the income tax is new in this country; that it will take years of practice in collecting income tax to develop consistent theory and logical arrangement. The situation is of course further complicated by the fact that the tax is imposed by the Federal Government upon a people whose income is diversified among 48 independent states. The book is, of course, very helpful in printing portions of the regulations of the Treasury Department and of the statutes. These are the substantive material out of which the subject is being created.

The only portion of the book which has theoretical interest is the first chapter which deals with the constitutional aspects of Income Tax. The teacher is apt to pay too much stress to this portion of the subject matter.

M. F.

CASES ON CODE PLEADING—Archibald H. Throckmorton.
St. Paul, Minn., West Pub. Co., 1926. pp. xiii, 899.

A compiler of cases on code pleading has a difficult task. In addition to the problem of general classification, he is immediately met with the question of whether he will present the material in chronological order,

that is, according to the successive steps of an action, or, the logical order, that is, according to the reasoning processes which one must undergo before and after an action is commenced.

If a chronological order is to be followed the cases selected might well be in the following order: those dealing with the summons; those dealing with the complaint or petition; and then those dealing with the answer, thus following out the simple steps of the ordinary action. If the logical order is to be followed there are many things to be considered before the summons is drawn or served. The first inquiry that would come to a lawyer's mind is jurisdiction, then the underlying rules involving the joinder of parties plaintiff and defendant, the joinder of causes of action, and a consideration of the dangers of splitting causes of action and election of remedies.

Professor Throckmorton in his *Cases on Code Pleading* has happily selected a series of cases beginning with parties plaintiff who may join, then those who must join, then the same as to the defendants, etc.; then proceeding to the joinder and splitting of causes of action, then to complaints or petitions, demurrer, answer, reply, motions, and lastly, amended and supplemental pleadings. He chose the logical order. This method of treatment is very fortunate; it brings into play the analytical processes of the student's mind at the most opportune time, i.e., the commencement of the action.

The cases selected contain excellent discussions of the salient principles of pleading. They have been well edited, with a view to a full statement of fact in each case. In a study of such a technical branch of the law as Code Pleading, this is extremely helpful to both instructor and student, because a statement of the rule of law without a full knowledge of the fact-situation which the case involves, lacks real value. The cases cover the decisions of the various states which now follow the system of code pleading first adopted in New York; and the book contains the text of the codes of several of the states. The notes and references are useful and well placed.

An effort has been made by Professor Throckmorton to insert, in outline, some few forms. In a book of this kind, this is commendable. But it is to be regretted that the author did not follow and develop his thought as to the forms, on a larger and more comprehensive scale. A well-rounded and complete set of all the simple forms is of untold value to a student as he attempts to work his way through a maze of subject matter hitherto unexplored by him. To the student untrained in the law, pleading at best is a dry and uninteresting subject; yet it is most essential and of extreme importance. Because of its difficulty and practical value, it is necessary, well-nigh indispensable, that the "sense of reality of the subject matter" be made as dominant as possible. One excellent method of doing this is by the use of practical forms, showing the utilization of the rules laid down in the leading cases. This would not appreciably increase the size of the book, but would add immeasurably to its value.

The book is another step in the right direction for a case book. It covers Code Pleading in a thorough and exhaustive manner. It brings before the student's mind a complicated subject in the most understandable fashion.

JAMES B. M. McNALLY.