

4-1933

The Commerce Clause of the United States Constitution, by Bernard C. Gavit

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Recommended Citation

Richman, Frank N. (1933) "The Commerce Clause of the United States Constitution, by Bernard C. Gavit," *Indiana Law Journal*: Vol. 8: Iss. 7, Article 10.

Available at: <http://www.repository.law.indiana.edu/ilj/vol8/iss7/10>

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BOOK REVIEWS

The Commerce Clause of the United States Constitution. By Bernard C. Gavit. The Principia Press, Inc. 1932. Pp. iv, 566.

One clause containing sixteen words in the Constitution of the United States, giving Congress the power "to regulate commerce with foreign nations and among the several states and with the Indian tribes," has been involved in 839 cases decided by the United States Supreme Court, each of which, in chronological order is abstracted in not more than three sentences in Appendix A occupying 142 pages of Professor Bernard C. Gavit's new book entitled "The Commerce Clause of the United States Constitution" (The Principia Press, Inc., Bloomington, Indiana, 1932). Appendix B lists 250 Supreme Court cases in which congressional regulation was upheld, Appendix C 22 cases in which congressional regulation was not upheld, and Appendix D 355 cases in which state regulation was upheld. These appendices are an unusual and valuable addition to the text which itself is well annotated.

The author states in the preface: "For the most part only the cases from the United States Supreme Court reports have been cited and discussed. When dealing with the theories of the Commerce Clause the utterances of the Supreme Court are necessarily paramount, and it is useless to attempt to deal with state court or lower Federal Court decisions on the same subject. In that field, too, the Supreme Court utterances are now so conclusive that lower decisions become unimportant."

The book contains thirteen chapters, each a separate well arranged treatise upon a subdivision of the general subject. For instance, there are chapters entitled "What is Commerce," "What is Regulation," "Regulation of Foreign Corporations," "State Regulation of Interstate Commerce by Taxation."

One of the chapters discusses the due process clause in the Fourteenth Amendment and attempts to rationalize the Supreme Court's decisions reaching different results under that clause and the commerce clause. The author contends that there should be no difference in result and presents adequate argument for his conclusion.

Lawyers engaged in prosecuting or defending personal injury cases against common carriers whose lines run through or who have agents in several states, will be interested in the jurisdictional question discussed in Section 41 and the author's criticism of the opinion in *Michigan Central Ry. v. Mix*, 278 U. S. 492 (1929). This section ends with the sentence: "It seems most surprising that the person who is credited with blazing the trail for a decision of the due process cases upon

the facts, should here, as in the case of *Buck v. Kuykendall* (267 U. S. 307-1925), decide a commerce clause case without regard to the facts."

Running through the book is the argument, by which apparently the court itself is moved in the later decisions (see *Hygrade Provision Co. v. Sherman*, 266 U. S. 497, 503), that the test of the validity of state action under the Commerce clause is the reasonableness of the regulation. "The court is really engaged in weighing the reasonable necessity for state regulation of action which takes place within the confines of the state, as against its reasonable or unreasonable effect on interstate commerce."

Professor Gavit's book is a distinct and a new contribution to the legal literature on this troublesome little clause in the Constitution. It will aid the lawyer and the court not only in determining whether his case involves the Commerce Clause but also in distinguishing and harmonizing the many decisions so that the real issue may be defined and decided.

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