

# American Constitutional Law; Cases on Constitutional Law - Henry Campbell Black

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## BOOK REVIEWS

**American Constitutional Law**—Henry Campbell Black. Fourth edition. West Publishing Company, 1927.

**Cases on Constitutional Law**—Henry Campbell Black. Second edition. West Publishing Company, 1927.

Sixteen years have elapsed since Mr. Black's last edition of the text came out, a period quite long enough to make obsolete a treatment of constitutional law in these changing times. Four important amendments have since been attached to the Constitution dealing with income taxes, the election of senators, manufacture, sale and transportation of intoxicating liquors, and the right of voting. The text is brought in line with the decisions pertaining to these matters.

Further, the effect of the World War was to call into activity vastly important powers of the national government, latent in the constitution but largely dormant, which powers have been tested in the courts and the broad outlines of the results are here recorded revealing even to the casual student that our legislatures may legally do many things which were formerly considered outside their power. An enormous number of new laws have been passed applying legislation as a remedy to an almost infinite variety of subjects and nearly all of them have been attacked on constitutional grounds necessitating a statement of the court's present position.

For example, considering merely the power to regulate interstate commerce, some dozen or more laws have been passed legalizing interstate monopoly or restraint of interstate commerce in connection with labor organizations, farmers, horticulturalists, planters, ranchmen, dairymen, nut and fruit growers, and associations of each of them, exporters, national banks, railroads as to consolidation, packing industries as well as others. Of course it is not to be implied that Mr. Black deals exhaustively with all these matters for that would be impossible in a one volume text. But this does indicate how legislation of a decade or two will alter the fundamental law of the land. The courts have been disposed to hold these laws valid if they could be reconciled with constitutional limitations broadly interpreted. Along with this has gone a larger removal than ever of many practical restrictions upon the police power except that indefinite requirement that it shall bear some reasonable relation to the public welfare in some of its aspects. A final tendency of which Mr. Black has been aware is that of a further centralization often at the expense of the states.

The first book has the defect which is common to all texts which are mere crystallized statements of court decisions resulting in frequent misrepresentations and unwarranted certainty as to what the law is. For instance, the author states (p. 203) that, "coal mining is not interstate commerce, though the coal is to be shipped into other states." He derived this conclusion from the first Coronado Coal case (259 U. S. 344). He does not mention that in the second Coronado case (268 U. S. 295) the Court said that coal mining, or rather the refusal to mine coal, was an interference with the interstate commerce. In this case testimony showed that the strike of the miners reduced the production of coal to the amount of 5,000 tons a day, instead of 5,000 tons a week as claimed in the first case. The Court took the rather ambiguous position that while this difference

in the evidence would not in and of itself affect the conclusion reached a different significance is given the situation, "in view of the direct testimony as to the moving purpose of District No. 21 to restrain and prevent plaintiff's competition." Does the presence of a given motive lying in men's minds make their acts an interference with interstate commerce which acts, in the absence of such motive, are not interference? Mr. Black does not go into this matter, omitting entirely the second Coronado case. This is true of the Text as well as the Case Book.

Throughout, the author aims to state the law as it stands, gleaned from certain important cases, making no effort to go beyond into the facts of economic struggles lying behind most of the cases. Hence he is troubled little by the inconsistencies of court decisions or the variegated economic phenomena which scarcely lend themselves to categorical treatment. He gives no evidence that the case system using precedent for determining rights and duties is proving more and more inadequate under the new industrialism. If he is writing for practitioners all this is excusable but students should be informed of the struggles going on.

EMERSON P. SCHMIDT

**Equity Jurisprudence**—Edited by Sherman Steele, Loyola University School of Law, Chicago. Published by Prentice-Hall, Inc. New York. 897 pages.

The study of equity has usually been a source of discouragement to the average law student. One of the greatest contributions to the difficulties of this subject has been the lack of a good, modern textbook. To Sherman Steele goes the honor of overcoming this difficulty.

Heretofore the textbooks have featured old English cases which at best are hard to understand and because of their archaic phraseology one has had to dig down and pull out the law by the eye teeth. While a certain number of leading English cases are essential for a proper foundation of the subject, the need of a modern case book which would bring the law down to the present, has been apparent for several years.

This book is a careful and thorough compilation of cases down to the present time, with the great emphasis upon American decisions. In a cursory glance one will find a great many cases which have been decided in the last ten years.

The author has avoided those cases which are greatly involved and has so arranged them as to leave out a great deal of extraneous material. He has slightly restated the facts in some of the cases so as to make them more easily understandable, but at the same time has impaired nothing of importance to a complete understanding of the case.

Another important innovation, which will be welcomed by every student, is a brief text which precedes each chapter. This text is just sufficient to correlate the cases which immediately follow, and gives the student a general view of the subject about to be taken up. To the writer, this is an ideal method of handling the study of law by the use of case books. It is an unvaluable aid to an intelligent understanding of the subject.

It is the writer's firm opinion that this book fills a gap in the study of equity which heretofore has been a stumbling block to students in their endeavor to master this difficult phase of the law.

ELMER D. GOODLAND