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Book Reviews

READINGS IN JURISPRUDENCE. Selected, edited and arranged by Jerome Hall. Indianapolis: The Bobbs-Merrill Co., 1938. Pp. xix, 1183.

Professor Hall has done an excellent piece of work in bringing together, within the compass of one thick volume, a representative selection of ideas about the nature of law and its place in the modern state. His excerpts range from Plato and Aristotle to the twentieth century theories of the social scientists and the neorealists in jurisprudence. Professor Hall has evidently selected ideas on the basis of their present vitality, their continuing effects upon the ideas about law which play a part in American society of the present day. Professor Hall is right in believing, as I understand him to believe, that a selection of readings on jurisprudence for law students should emphasize the ideas which are likely to influence the next generation of lawyers and judges, legislators and administrators. The large amount of space given to juristic and sociological writings of the twentieth century is explained as resulting from this belief. The relative brevity of the excerpts from the older writings on jurisprudence is justified on this ground, as well as on the ground that selection of the significant ideas is comparatively easier. One needs only a few penetrating lines from Aristotle to exhibit the significant ideas which he has contributed to modern thought. The law student is likely to find that Aristotle, like "Hamlet," is "too full of quotations". With the newer theories of law selection is not as easy, for how can one tell, in the midst of a change, who will ultimately survive to be the leaders of a later generation? Yet Professor Hall has scrupulously tried to represent all points of view (even some that I might have left out) and I can think of no significant movement or set ideas about law, whether of major or minor importance, which is not in one way or another represented in his Readings. The only omission worthy of mention is political philosophy, the theory of the state, which by a conventional division of labor is in this country taught by faculties of political science rather than faculties of law. Professor Hall has wisely minimized this type of material, which is adequately represented in other compilations designed for political scientists. The practitioner and judge, the law student, and possibly even the layman who reads with persistence and perspicacity, can find here an adequate and stimulating introduction to the general theories of, or about, law.

Without guidance, the uninitiated reader will find this book tough reading. Professor Hall has furnished a good deal of guidance in his table of contents and in his excellent supplemental bibliographies. The table of contents divides the excerpts into three main parts: I. Philosophy of Law. II. Analytical Jurisprudence. III. Law and Social Science. The first two parts have 335 pages each, while the third occupies 500 pages. Yet a good deal of the material in the third part may be classed as definitely "legal" (*e. g.*, the selections on the Judicial

Process) and the bias in favor of social science material is not as great as might first appear. Another guide to the general reader is in the chapter headings. Thus the first six chapters are entitled, respectively, Natural Law, Historical Jurisprudence, Transcendental Idealism, Utilitarianism, Social Functionalism, and Pragmatism. One may quarrel with some of the chapter headings, but it is not easy to find better ones. Thus, "Transcendental Idealism" may seem to include more than Kant, Stammler and Kelsen; yet there seems to be no particular gain in labeling this group of writers as "Kantian and neo-Kantian." In other instances the chapter heading is such that excerpts under other headings might as well be included here. Yet this difficulty is inherent in the cross-grain character of the excerpts themselves, and in the editor's broad conception of the scope of jurisprudence.

Professor Hall has taken jurisprudence to embrace all general theories of, or about, law. To one who was introduced to jurisprudence, as I was, through the writings of Austin and Holland, it may seem an undue extension of the term to include the philosophy and sociology of law as a part of jurisprudence. Yet the more inclusive use of the term is justified by good usage (such as Professor Pound's course in Jurisprudence) and by those considerations of practical expediency which should be the test of linguistic usage. The growing and now maturing body of American law needs the guidance of general ideas about law, and jurisprudence, like the magic tent of the Oriental tale, should be broad enough to include them all. If we must dispute (as I hope we shall), it is better to dispute about whether an idea is a good idea or a poor one, rather than about whether it is entitled to come under the tent of jurisprudence.

The result, of course, is that Professor Hall's selections do not present any sustained theory of jurisprudence. They cannot, without a good deal of mangling and face-lifting, be squeezed into any unified scheme of subordination and super-ordination. This I take to be a virtue rather than a defect in a selection of readings. The ideas which move men in our legal and political world are a pluralistic set, and the mature student of jurisprudence should be exposed to these ideas in all their diffuseness. From them he can select and order his own philosophy of law. The best kind of philosophy for him to have is one that he makes his own. For these reasons, a wide-ranging set of excerpts seems to me preferable to one or two complete "systems" of legal theory as a means of introducing the student to jurisprudence. Limitations of time and expense make it impossible to present fully the theories of each of the dozen or more men who have most influenced jurisprudence, and there is the further objection, alluded to above, that current movements would have to be left out.

Of course this selection of readings will not teach itself. It needs to be supplemented by lectures or discussions which will help the student to understand the various writers in relation to each other. The shift in interest and emphasis from one writer to another can be detected only if one notes that one writer pays little or no attention to what another considers to be essential. In two respects I could wish that Professor Hall had given the teacher more help in using the book. One is a set of biographical notes on the most important men. One can understand Kant's stern idealism better, I think, if one knows that he had a

Scotch grandfather, was a bachelor, and never traveled more than a hundred miles from Koenigsberg. Another aid would have been a few footnotes pointing out that the same words are used in different senses by different writers. Yet these are counsels of perfection.

To correct the impression that the book consists wholly of excerpts from books and articles previously published, I must add that Professor Hall has included some judicial decisions, and several essays not previously published. The selection of cases on custom (pp. 878-896) and on "idealism in the judicial process" (pp. 287-306) are well chosen. The article on the syllogism by Mr. Treusch (pp. 539-560) is an excellent adaptation of logical theory to legal propositions. Miss North's note on judicial fact-finding (pp. 1138-1150) should prove valuable to practitioners and judges as well as to students. The book has a very good index. On the whole, Professor Hall has produced a scholarly and useful compilation which may not only help the law student and the lawyer to understand better his daily tasks, but may also enable him, as Holmes said, to "catch an echo of the infinite."

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HANDBOOK OF AMERICAN CONSTITUTIONAL LAW (HORNBOOK SERIES). By Henry Rottschaefer. St. Paul: West Publishing Company, 1939. Pp. xxxv, 982.

A hornbook in constitutional law is essentially a contradiction in terms, and this reviewer has serious doubts about the value of any hornbook on so complex, so controversial, so elusive, and so rapidly changing a field of the law. Because of the inevitable inadequacy of the treatment of such a subject in hornbook fashion, the product is certain to be something less than a satisfactory tool in the hands of the beginning student, while the more mature will be fully aware of the necessity for more exhaustive study. Perhaps the possibility that this sort of presentation will reach more people than a more exhaustive treatise and thus diffuse somewhat more widely even a limited understanding of this difficult and important field of the law amply justifies the effort. It is, of course, of no little value, as a source from which to start working, to have collected statements of the principles of constitutional law as set forth in the decided cases, with appropriate case citations. But if those principles are to be regarded as ultimate, without any consideration of the many and varied factors that lie back of the cases, as it is the wont of the hornbook student to do, the tool may, in many cases, become a two-edged sword. Constitutional law just does not lend itself to the hornbook method of study.

It should be said in this connection, however, that Mr. Rottschaefer has done much—perhaps as much as anyone could do and yet stay within the confines of hornbook publication—to avoid the dogmatic and categorical statements of principles which make up the "horns" of the typical hornbook. The reader is adequately warned of this danger in the introduction. Reference to a single passage may suffice to make this clear.

"The language of the due process clause of the Fourteenth Amendment to the federal Constitution has remained unchanged since its adoption, but the actual extent to which it has limited activities of the states has varied so greatly that doubts have sometimes arisen as to the possibility of discovering in it any limiting principle other than that constituted by judicial conceptions of the desirable social order."[1]

Perhaps the implications in that passage alone would have been sufficient to frighten a less bold individual from his task. The introduction is an excellent one and does much to warn the reader of the complex nature of the problems to be considered and to convey an appreciation of the fact that no adequate notion of the subject matter can be formed by a superficial study of the bold-faced type. Perhaps it might better have been labeled "Chapter I" instead of "Introduction" as a possible means of assuring that it would be more widely read.

Even before the introduction the author gets off to a good start by printing in readable type at the front of the volume a copy of the Constitution with the formal amendments thereto. Any subject concerning which so many people are willing to speak with an appearance of authority, and about which so few people are really well prepared to speak, is properly introduced by placing the document itself in a position to encourage reading. The average individual too frequently goes on the assumption that he knows "in a general way" what the Constitution contains. The situation is somewhat comparable to that of the average college sophomore entering upon a course in American Government. He is likely to make the almost always violent assumption that he has a fair working knowledge of the principles on which our governments, state and national, are based. Events in recent years amply have testified to the existence of an assumption on the part of substantially everyone—of sophomore rank or otherwise—that he has a considerable knowledge of constitutional law which he is willing to parade on the platform or in the press on the slightest provocation. If Mr. Rottschaefer's device of printing a copy of the Constitution first has the effect of causing more people into whose hands this volume comes to read that document at least once, the device is greatly to be commended.

What has been suggested above as to the utter inadequacy of hornbook treatment of this subject may be illustrated by many passages from the book. In the section dealing with reciprocal immunity of the state and national governments from taxation by each other, the status of officers and employees is disposed of in a single sentence.

"Its officers and employees are held to constitute so integral a part of the governmental machinery through which it directly exercises its powers that their income from their office or employment may not be taxed by the other."[2]

For this authoritative proposition the author cites *Dobbins v. Commissioners of Erie County*,[3] and *Collector v. Day*.[4] This cannot be charged to have been incorrect, since the case of *Graves v. New York ex rel. O'Keefe*,[5] repudiating the

1. P. 2.
2. P. 101.
3. 16 Pet. 435 (U. S. 1842).
4. 11 Wall. 113 (U. S. 1871).
5. 306 U. S. 466 (1939).

doctrine and overruling earlier cases was not decided until March, 1939, while the preface of this book is dated January of the same year. However, the handwriting on the wall was sufficiently plain that all who ran might read the impending doom of these cases long before January, 1939. Any such categorical statement could not fail to mislead the uninitiated in this field of the law.

It is probable that the black letter principles asserted, that

> "Congress may not use its power to levy taxes for the primary purpose of regulating a matter whose regulation lies within the exclusive competence of the states" and "the mere fact that Congress may have had an incidental motive in levying the tax other than the raising of revenue does not invalidate it if its primary purpose was the raising of revenue,"[6]

though probably gleaned from the language of some Supreme Court opinion, are calculated to be misleading in view of the absence of any attempt to explain such cases as *McCray v. United States*,[7] and *United States v. Doremus*.[8]

Section 127, headed "Taxation of Federal Judicial, and Presidential, Salaries,"[9] certainly invites criticism, though perhaps it is more largely a criticism of the hornbook method than of the accuracy of the author's treatment. It is true that the law of the Supreme Court as evidenced in the opinions in *Evans v. Gore*[10] and *Miles v. Graham*,[11] corresponded with the teachings of this section, and had not yet (by four months) been repudiated by *O'Malley v. Woodrough*,[12] but the doubtful soundness (to put it mildly) of the doctrine, and the refusal of most other courts[13] to accept it might well have been pointed out in any treatise intended to guide beginning students in this treacherous field of the law.

The author's discussion of *Colgate v. Harvey*,[14] and the privileges and immunities of national citizenship,[15] with a bare admission that there was a dissenting opinion, is probably calculated to create the erroneous impression of a well established and accepted doctrine, instead of one widely regarded as of doubtful soundness which has since been completely repudiated by the Court.[16]

Section 283, entitled "State Jurisdiction to Impose Taxes,"[17] is for the most part a very useful discussion, but certain passages therein appear calculated to convey an erroneous impression to the beginning student who is likely to make use of such a text book. On page 639 occur the following statements:

> "It (the Court) has stated that, whereas the taxing power of a state encounters that of other states at its borders, there is no such limitation

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6. P. 175.
7. 195 U. S. 27 (1904).
8. 249 U. S. 86 (1919).
9. Pp. 202, 203.
10. 253 U. S. 245 (1920).
11. 268 U. S. 501 (1925).
12. 307 U. S. 277 (1939).
13. See cases collected in the dissenting opinion of Chief Judge Bond of the Court of Appeals of Maryland in Gordy v. Dennis, 5 A. (2d) 69, 82 (Md. 1939), and notes 6 and 8 to the opinion of Mr. Justice Frankfurter in O'Malley v. Woodrough, 307 U. S. at 281.
14. 296 U. S. 404 (1935).
15. Pp. 448, 449.
16. In the recent case of Madden v. Kentucky, 60 Sup. Ct. 406 (U. S. 1940), the case of Colgate v. Harvey is expressly overruled.
17. Pp. 638-663.

upon the national power.[18] This has led a few state courts to adopt the position that the due process clause of the Fourteenth Amendment does not prohibit a state from subjecting to its inheritance tax the transfer of intangible personalty owned by an alien decedent dying domiciled in a foreign country under circumstances under which that clause would prohibit such tax in the case of a decedent dying domiciled within another of the states."[19]

These statements appear to be correct. But they are followed by the assertion that

"the theory implicit in these decisions is that protection of the taxing power of one state against encroachment by another state is the sole premise from which the jurisdictional limits on a state's taxing power are to be derived. It also necessarily implies that the due process clause protects an alien taxpayer who is a resident of a foreign country against arbitrary exactions through purported exercises of a state's taxing power only so far as necessary to protect the taxing power of another state having a superior claim to impose a like tax. There are many situations in which a state might tax a resident alien or a resident citizen in a wholly arbitrary manner without trenching upon the superior claims of another state to tax him or his property, such as taxing him on his realty owned in a foreign country. If the sole purpose of the due process clause is to protect the taxing power of other states, such a tax would not violate it."[20]

With all due deference to a scholar of Mr. Rottschaefer's standing in the field of constitutional and taxation law, it is submitted that the cited cases imply no such absurd doctrine. Both the *McCreery* and *Lloyd* cases, to which the above criticism is directed, are based upon the interpretation which the California and Washington courts placed upon the opinion of the United States Supreme Court in *Burnet v. Brooks*,[21] which latter case is nowhere adequately discussed in the treatise under review.[22] This interpretation seems to the reviewer to be an entirely reasonable one and gives rise to no such implication as the above quotation sets forth.

A proper understanding of this matter requires a brief resumé of the development of the doctrines of the United States Supreme Court with respect to state jurisdiction to tax prior to the decision of the case of *Burnet v. Brooks*. In 1905, in the case of *Union Refrigerator Transit Co. v. Kentucky*,[23] the court held that it violated the due process clause of the Fourteenth Amendment for the state of the owner's domicile to impose a property tax on tangible personal property with an actual physical situs outside the territory of the taxing state. The reasoning of the court was primarily in terms of the existence or non-existence of jurisdiction as that term was then understood. The emphasis was placed on the proposition that when the property has a permanent situs outside the taxing state such state is not in a position to afford any of the protection for which a property tax is supposed to be paid, which protection can be afforded only by the state wherein the property is located. Inability of the domiciliary state

18. Citing United States v. Bennett, 232 U. S. 299 (1914), and Cook v. Tait, 265 U. S. 47 (1924).
19. Citing *In re* McCreery's Estate, 220 Cal. 26, 29 P. (2d) 186 (1934), and *In re* Lloyd's Estate, 185 Wash. 61, 52 P. (2d) 1269 (1936).
20. Pp. 639, 640.
21. 288 U. S. 378 (1933).
22. See pp. 207, 208.
23. 199 U. S. 194 (1905).

to afford protection negatived the existence of jurisdiction to tax. Only minor emphasis was placed on the matter of the desirability of getting away from multiple state taxation of such property. In 1925 the Court applied the same doctrine, with similar emphasis, to state inheritance taxation.[24] In 1930 to 1932 the court set forth its doctrine of the invalidity, under due process, of multiple state taxation of intangibles in three inheritance tax cases.[25] The emphasis of the court was shifted in these cases from one of jurisdiction based on relationship to the subject of the tax, to the evils of multiple state taxation entirely. In the last of these three cases, *First National Bank of Boston v. Maine*, the Court did not look into the relationship of the taxing state to the subject of the tax—the transfer by inheritance of shares of stock in a domestic corporation on the death of a non-resident shareholder—to see whether a sufficient basis existed to justify the tax, but made the broad assertion that "shares of stock, like the other intangibles, constitutionally can be subjected to a death transfer tax by *one state only*."[26] The remaining question, then, was merely to determine which of those states claiming the right to tax had the better basis. This was done in favor of the state of domicile by applying the maxim *mobilia sequuntur personam*, as in *Farmers Loan & Trust Co. v. Minnesota* and *Baldwin v. Missouri*. In none of these cases was it determined that the state attempting to tax did not bear such a relationship to the subject of the tax as to constitute a reasonable basis for taxation, but rather that, as matter of policy and desirability—justice to the taxpayer, if one prefers—only one state should be permitted to tax, and it was the business of the court to pick out that one. Necessarily that must be the approach, or a different conclusion would see to be inevitable, at least in *Baldwin v. Missouri* and *First National Bank of Boston v. Maine*. In *Baldwin v. Missouri*, the property, to the transfer of which Missouri sought to apply her inheritance tax, consisted of promissory notes made by residents of Missouri and secured by mortgages upon Missouri real estate, which notes were kept in Missouri; United States bonds kept in Missouri; and deposits in Missouri banks. The owner died domiciled in Illinois. Since this property enjoyed the protection of Missouri laws, and since it was necessary to take out ancillary letters of administration in Missouri and thus invoke the laws of Missouri in order to effectuate the transfer, it would have been very difficult to conduct an inquiry into the relationship of Missouri to the subject of the tax in terms of previous conceptions of jurisdiction and fail to arrive at the conclusion that jurisdiction for tax purposes existed. In view of the relationship of the property and its transfer to both states, the other proposition, that it is so far arbitrary for two states to tax at the same time as to call for invalidity of one tax under the due process clause of the Fourteenth Amendment, met with vigorous protest at the time as being constitutionally unsound, and has never been acquiesced in by the full court.[27]

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24. Frick v. Pennsylvania, 268 U. S. 473 (1925).
25. Farmers Loan & Trust Co. v. Minnesota, 280 U. S. 204 (1930), Baldwin v. Missouri, 281 U. S. 586 (1930), and First National Bank of Boston v. Maine, 284 U. S. 312 (1932).
26. 284 U. S. at 328. Italics supplied.
27. Witness the dissenting opinions of Justices Holmes, Brandeis and Stone

The case of *Burnet v. Brooks*[28] involved facts almost identical with *Baldwin v. Missouri* except that the decedent was an alien who died domiciled abroad and the problem involved was the application of the federal estate tax rather than a state inheritance tax. The securities involved were being kept in New York but were not connected with any business conducted there on behalf of the decedent. The Court there pointed out that the statute involved was passed several years before the cases of the 1930-32 period[29] limiting state power to tax and at a time when the doctrine was well established that presence of the paper evidence was sufficient basis for the taxation of such securities, and that the statute in terms embracing all property "situated in the United States", must be construed to include them. The Court then asserted that these securities must be regarded as being "within the jurisdiction of the United States",[30] and expressly recognized that "jurisdiction may exist in more than one government . . . based on distinct grounds."[31] The contention was made that the due process clause of the Fifth Amendment had the same force as that of the Fourteenth with respect to the states and that cases like *Baldwin v. Missouri* and *First National Bank of Boston v. Maine* required a denial of the taxing power in this case. This the Court rejected saying that

> "the limits of State power are defined in view of the relation of the States to each other in the Federal Union", and that "these decisions established that proper regard for the relation of the States in our system required that the property under consideration should be taxed in only one State, and that jurisdiction to tax was restricted accordingly."[32]

Then the Court asserted that

> "this principle . . ., limiting the jurisdiction of the States to tax, does not restrict the taxing power of the Federal Government."[33] And again, "the decisive point is that the criterion of state taxing power by virtue of the relation of the States to each other under the Constitution is not the criterion of the taxing power of the United States by virtue of its sovereignty in relation to the property of nonresidents."[34]

Thus, since the Court asserted that the property was "within the jurisdiction of the United States," and "was property within the reach of the power which the United States by virtue of its sovereignty could exercise",[35] and this by virtue of the presence of the securities in New York; and if the difference in limitations on state and national government as to taxation rests on the relationship of the states to each other so that two states may not tax at the same time; may it not reasonably be concluded that New York, where the securities were located, under whose laws they were being protected, and whose laws must be

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in Baldwin v. Missouri and First National Bank of Boston v. Maine, and that of Justices Holmes and Brandeis in Farmers Loan and Trust Co. v. Minnesota, as well as the concurring opinion of Mr. Justice Stone in this last mentioned case.

28. 288 U. S. 378 (1933).

29. Farmers Loan & Trust Co. v. Minnesota, 280 U. S. 204 (1930), Baldwin v. Missouri, 281 U. S. 586 (1930), and First National Bank of Boston v. Maine, 284 U. S. 312 (1932).

30. 288 U. S. at 396.

31. *Id.* at 399.

32. *Id.* at 401.

33. *Id.* at 403.

34. *Id.* at 405.

35. *Id.* at 396.

invoked in order to effectuate the transfer, might likewise tax, no other state being in a position to advance a claim to the right to tax. Such was the basis of the reasoning in the *McCreery* and *Lloyd* cases[36] criticised in the text. So far from intimating that there were no limits on the state's taxing power aside from the superior claim of a sister state and the invalidity of multiple state taxation, as suggested in the treatise under review, these courts were both at some pains to point out that a basis of jurisdiction identical with that in *Burnet v. Brooks* existed; that prior to the 1930-32 cases that was a recognized basis of state taxing jurisdiction; and since, according to the Supreme Court opinion in *Burnet v. Brooks*, the limitations set up by those cases on state power were based entirely on the conflict with the taxing power of another state, the former doctrine of jurisdiction for state taxation should still exist where no other state was in a position to claim a right to tax. That process of reasoning with respect to state taxation appears to the reviewer to be the only one consistent with the opinion in *Burnet v. Brooks*. The broader jurisdiction of the national government based on citizenship which sustained the taxes in *United States v. Bennett*[37] and *Cook v. Tait*[38] cannot explain *Burnet v. Brooks*. It is merely a recognition of jurisdiction to tax based on the presence within the territorial jurisdiction of the securities, a basis that had never been questioned by the Supreme Court except in the case of a state where the decedent died domiciled in a sister state and multiple state taxation would result. The state in the situation here under consideration was resting its claim to jurisdiction on exactly the same basis as did the national government in *Burnet v. Brooks*. That such a claim is not likely to be denied in the future is strongly indicated by a passage in Mr. Justice Stone's opinion in the recent case of *Curry v. McCanless*, asserting that,

> "if the 'due process' of the Fifth Amendment . . . does not require us to fix a single exclusive place of taxation of intangibles for the benefit of their foreign owner, who is entitled to its protection (citing Burnet v. Brooks), the Fourteenth can hardly be thought to make us do so here. . . ."[39]

This case and *Graves v. Elliott*,[40] both involving two states applying their inheritance taxes to the transfer of the same trust property, certainly very drastically restrict, if they do not presage the complete repudiation of, the doctrine set up by the 1930-32 cases discussed above.

It is probable that the discussion of "Property Taxes—Intangible Property"[41] is calculated to leave some confusion in the mind of the uninitiated. It is asserted that,

> "it has never yet been decided that a state may always tax intangible personalty on the sole basis of the owner's domicile therein. It has, however, been stated that it may generally be taxed on that basis but that

36. *In re* McCreery's Estate, 220 Cal. 26, 29 P. (2d) 186 (1934), and *In re* Lloyd's Estate, 185 Wash. 61, 52 P. (2d) 1269 (1936).
37. 232 U. S. 299 (1914).
38. 265 U. S. 47 (1924).
39. 307 U. S. 357, 369, 370 (1939).
40. 307 U. S. 383 (1939).
41. Pp. 647-650.

> there is an exception thereto in favor of the state in which intangibles are kept and used."[42]

Perhaps the restrictions of hornbook mechanics are responsible for the failure to cite and discuss such cases as *Cream of Wheat Co. v. County of Grand Forks*,[43] holding that the state of a corporation's domicile may tax all of its intangible property value although the corporation owns no real or tangible personal property in, and does no business in the domiciliary state, and to explain that of the cited cases—*Wheeling Steel Corp. v. Fox*[44] and *First Bank Stock Corp. v. Minnesota*[45]—only the first contains *dicta* to support the text statement, and the second, expressly avoiding any commitment on the matter, appears to intimate that probably such intangibles may be taxed in both states.[46] What appears to be intimated in that case is expressly asserted in Mr. Justice Stone's majority opinion in *Curry v. McCanless*[47] where he expressly reasserts the doctrine of the *Cream of Wheat* case.[48] While the text statements were not technically incorrect when written, they certainly portrayed something less than an adequate picture of a rather troublesome problem.

The numerous criticisms suggested in this review are, no doubt, primarily due to the restrictions imposed by the necessity of conforming to hornbook treatment. Any adequate presentation of the troublesome and controversial problems of constitutional law requires a rather complete analysis of the various factors involved in many decisions and the varying points of view responsible for majority and dissenting opinions. Undoubtedly the research involved in the preparation of the present volume included the making of such analysis in most cases and a consideration of those varying points of view. It is unfortunate that Mr. Rottschaefer did not direct his recognized ability and wide experience to the task of writing a more exhaustive treatise which would have been of vastly greater value to the profession.

The present work is to be commended for its high degree of freedom from inaccuracies in a field where inaccuracies are extremely difficult to avoid, and is, perhaps, as good as any hornbook in constitutional law could be expected to be.

A rather valuable, though not exhaustive, bibliography of law review materials is included in the back of this volume, arranged according to chapters to enhance its usefulness. It is unfortunate, however, that footnote citations to these materials were not made throughout the volume. In this way the inadequacies of hornbook treatment could have been measurably overcome.

A pocket is attached to the back cover of this volume indicating a purpose

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42. P. 647.
43. 253 U. S. 325 (1920). While this case was decided before the 1930-32 cases restrictive of state taxation, its holding has never been repudiated by the court.
44. 298 U. S. 193 (1936).
45. 301 U. S. 234 (1937).
46. 301 U. S. at 237, 239, 240, 241.
47. 307 U. S. 357 (1939).
48. 307 U. S. at 368. The Cream of Wheat case is also cited with approval in First Bank Stock Corp. v. Minnesota.

to provide periodic supplements in an effort to keep the treatise abreast of change. This should add very materially to its value. A sizeable supplement is already due to take account of the many changes during the first year.

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