

ing for work—that the claimant should make some effort to terminate his unemployment. This evolved into a rule that the claimant should make reasonable efforts to obtain work. Finally, during the period 1946-1947, some sixteen jurisdictions sought to make the availability requirement more restrictive by requiring that the claimant be “actively seeking work,” or that he simply be “seeking work,” or that he make “reasonable efforts to obtain work.” Today, 20-odd jurisdictions have amended their laws to make this requirement more restrictive.

Mr. Altman favors a middle of the road policy. He recommends what he calls an *active but guided search for work*. He points out that the Employment Service is not the only channel for job openings, that some jobs are normally handled through the Employment Service while others are usually handled by private employment agencies. Still other jobs are normally filled by the employers who “hire at the gate.” So long as such a condition prevails the claimant should be given labor markets information and job counseling. Specifically, he should be helped in mapping out a definite plan for his job search. The author seems to make out his best case on this point. This is understandable inasmuch as most unemployment compensation authorities agree that the independent search for work means nothing. It neither tests the worker’s availability nor, in most instances, finds jobs. On the other hand, the requirement that the claimant make reasonable efforts to obtain work is indefinite. In truth, however, his concept of an *active but guided search for work* could fit into the reasonable-efforts-to-obtain-work rule. The author also presents a great deal of material on other factors relating to availability, including ability to work, hours and other time limitations and self-employment.

This book is primarily a reference book and is recommended for all administrators, appeals referees and attorneys practicing in the unemployment compensation field.

EMMETT CONNER*

CHARLES K. COSNER†

FORRESTER’S EDITION OF DOBIE AND LADD’S CASES AND MATERIALS ON FEDERAL JURISDICTION AND PROCEDURE. By Ray Forrester.¹ St. Paul: West Publishing Co., 1950, Pp. vii, 990. \$8.50.

In 1940, Messrs. Dobie and Ladd published their monumental Cases and Materials on Federal Jurisdiction and Procedure. It was a fine book with a wealth of materials in a field already overcomplex. If any criticism at all was

*Director, Unemployment Compensation Division, Tennessee Department of Employment Security.

†Assistant Chief Counsel, Tennessee Department of Employment Security.

1. Dean, Vanderbilt University School of Law.

proper, it would be that the volume was too encyclopedic. True, there is much to be said for a profusion of materials from which the instructor can make his own selection as need appears to him to require. But also involved are matters of perspective and emphasis which may be thrown somewhat askew for the student, unlike the practitioner, by an exemplification of detail. At any rate the passage of time and the further deterioration of federal procedure under the twin blows of legislative reform and judicial states' rightism made a new edition imperative. That Dean Forrester has given us with fine craftsmanship in the new volume.

What we have, therefore, is a fully revised and quite modernized book. Dean Forrester has retained the old chapter divisions, but has combined or omitted a considerable number of section topics. Moreover, he has apparently revalued the teaching worth of all the cases reprinted, for he has omitted some and re-edited others. This gain in condensation seems to me all to the good. Thus he has been able to include a goodly number of the very important, albeit very lengthy, new Supreme Court cases in the field and yet his edition is nearly a hundred pages less in bulk than the old one. At the same time in revising he has occasionally lengthened the extracts from the old landmarks and has even added others of the ancient precedents. Of course the material is still considerable, too much for any ordinary course, as he concedes in his preface and in his suggestions for omissions.

Thus I think what he has done is a real gain, adding realistically to the teaching value of this already useful collection. Such subjects as original and diversity jurisdiction and venue have now an impact on and indeed an interest for the student which is obtained by thorough plowing into the subject. If anything, I think this editorial trend may well be carried further. Indeed, force of circumstances may compel such a result in new editions. What the new Judicial Code has done to problems of removal, and to venue in such matters as transfer under the doctrine of *forum non conveniens*, and what the courts are now doing to the Judicial Code² will require intensive treatment, at least. I suggest that for pedagogical purposes, as well as for practitioners' needs, such treatment will be more important than a complete coverage of all, even the more esoteric, details of federal jurisdiction. Casebook editors, as well as teachers, in my view, should resolutely steel themselves against "covering a subject." It is not merely impossible; it is undesirable. For it turns the attention from the battlefields to the bypaths of the law.

This brings me to a point where my views apparently diverge from not only the editor here, but the editors of that other valuable casebook in the field, Messrs. McCormick and Chadbourn, in the second edition just published of

2. I have mentioned just a few of these developing problems in my review of *MCCORMICK AND CHADBOURN, CASES AND MATERIALS ON FEDERAL COURTS* (2d ed. 1950), 36 *CORN. L. Q.* 181 (1950).

their *Cases and Materials on Federal Courts*. Both these new editions call special attention to the rather complete revision now made of the material on the Federal Civil Rules and its amplification with respect to important topics thereof, such as deposition and discovery. I can see that much time and thought have been put upon this topic in each volume, in this one indeed comprising more than 200 pages in addition to the 130-page reprint of the rules themselves. And I expect I hardly need to say that I am vastly interested in the rules. Nevertheless I wish the editors had not done it. And it is because of my interest that I say this. I think the pleading principles set forth in the rules are more pervasive than merely the federal judicial establishment itself and they should certainly be taught in, indeed be at the basis of, present law school courses in pleading. But they cannot be taught in the interstices of a course so full of general technicalities as the subject of federal jurisdiction. Even the valiant attempt of this casebook gives me some distress by its sketchiness on many vital problems. Thus I find hardly adequate the undertaking to set forth the modern philosophy of pleading by textbook suggestions by even so good an author as Professor Moore and by a few decisions, among which is included one of my own now having a rather surprising posthumous fame in the casebooks,³ in truth, it seems if too little, then too much. Moreover, the editor has still found it necessary, as is indeed appropriate, to include portions of the rules under other topics, as, for example, the rules of party joinder in the section on diversity jurisdiction. Here, too, I believe rigorous self-denial would assign to the pleading courses all material on the civil rules of equal and general significance to the development of pleading in the states as well as the federal system, and would retain here only those which may affect the peculiarities of federal jurisdiction.

The reference I have made to the book of Messrs. McCormick and Chadbourn may suggest some obligation upon a reviewer to make a comparative evaluation of these two new editions appearing so contemporaneously. But just as in the past I have found points of value in the earlier editions,⁴ so I should be hard put to it to make a choice, because each book has interesting suggestions and ideas. Thus I somewhat prefer the greater compactness of McCormick and Chadbourn, while, on the other hand, I like individual treatment of certain topics, such as venue, of Forrester. No teacher can go far amiss with using either book. Ultimate choice must depend largely upon the impact upon the individual teacher of particular topics and their treatment in each volume. The difficulty now is not with the law teaching possibilities in this field. They are attractive indeed because of the competent authorities, casebook

3. *Dioguardi v. Durning*, 139 F.2d 774 (2d Cir. 1944), which still does not strike me as so unusual as to deserve its apparent notoriety.

4. See, in addition to the review cited in note 1 *supra*, my earlier review in 55 *YALE L.J.* 853 (1946).

and textual, at hand and because of the appealing intricacies of the subject matter. The difficulty, on the other hand, in a wider sense is with the subject itself and with the pitfalls for the possible litigant which are developing at an apparently accelerating rate.

I have stated elsewhere⁵ my pessimism as to the present and future of this field in the law and need not repeat it here at length. In my judgment it is a reflection upon the lawyer that operation of the dual system of courts known as federalism is of necessity developing and even adding to friction as time goes on. The hope of reform stimulated by the pendency of a new Judicial Code has now been exhausted in the considerable confusion resulting from the enactment of what boldly started as a major reform, and is still an accomplishment in spots, though it has projected so many new problems as on the whole to increase the murkiness of the federal judicial atmosphere.⁶ Along with this has been the constant encroachment on federal uniform procedure of state technicalities through the increasing impact of the *Erie-Tompkins* doctrine, which step by step, hardly perceived as each is taken, is now having the usual procedural consequence that the technical drives out the less technical procedure.⁷ In my review just cited of the competing volume I suggested to the editors that, the problem being of such major importance, they consider the possibility of stepping somewhat more than usual out of editorial calm to try to bring its unnecessary complexities more acutely home to the students and the profession. I am disposed to repeat that suggestion here, although I must confess that I am not at all sure how much casebook editors can be expected to accomplish on an issue of such social significance. Perhaps the best we can do is to await the inevitable reaction toward a new burst of federal reform which many of us feel is now again overdue.

CHARLES E. CLARK*

5. See note 2 *supra*.

6. Obviously these questions cannot reach the Supreme Court for solution with anything like the rapidity of their arising. One such, the "separate cause of action" newly imported in the removal statute, 28 U.S.C. § 1441, with consequences which I think are implied in a case such as *American Fire & Cas. Co. v. Finn*, 181 F.2d 845 (5th Cir. 1950), may perhaps be settled by the forthcoming Supreme Court decision therein, although I fear that no one decision can now close the Pandora's box which the unfortunate phrasing has reopened.

7. As suggested in a sophisticated comment such as Note, *Federal Procedure: The "Outcome" Test Applied in Actions Based on Diversity of Citizenship*, 35 CORN. L.Q. 420 (1950). See also other citations in my review note 2 *supra*, at n.8; and for the impact of a Gresham's Law of pleading, whereby the poor drives out the good, see my article, *Special Problems in Drafting and Interpreting Procedural Codes and Rules*, 3 VAND. L. REV. 493, 498, 505 (1950).

*United States Circuit Judge, Second Circuit; member and reporter, Advisory Committee of United States Supreme Court on Federal Civil Procedure.