

HARVARD  
~~HARVARD~~

# LAW REVIEW

APRIL, 1941

## LEADING ARTICLES

THE MODERN CORPORATION, PRIVATE PROPERTY, AND RECENT FEDERAL LEGISLATION	<i>E. Merrick Dodd, Jr.</i>	917
STATE TAXATION IN A NATIONAL ECONOMY	{ <i>Jerome R. Hellerstein</i> <i>Edmund B. Hennefeld</i> }	949
MR. JUSTICE BRADLEY'S APPOINTMENT TO THE SUPREME COURT AND THE LEGAL TENDER CASES . . . . .	<i>Charles Fairman</i> . . . . .	977

COMPLETE TABLE OF CONTENTS OF THIS ISSUE  
ON PAGES V AND VI

Published Monthly November to June Inclusive. Entered at Norwood Post Office as second-class matter  
\$4.50 PER ANNUM IN ADVANCE - - - - - 75 CENTS PER NUMBER  
FOREIGN SUBSCRIPTIONS, \$5.00, 85 CENTS PER NUMBER

Copyright, 1941, by THE HARVARD LAW REVIEW ASSOCIATION

Printed at . . . . . 161 Lenox Street, Norwood, Mass., U.S.A.  
Editorial and Executive Office . . . . . Gannett House, Cambridge, Mass., U.S.A.

# HARVARD LAW REVIEW

VOLUME LIV

APRIL, 1941

NUMBER 6

## CONTENTS

LEADING ARTICLES	PAGE
The Modern Corporation, Private Property, and Recent Federal Legislation. . . . . <i>E. Merrick Dodd, Jr.</i> . . . .	917
State Taxation in a National Economy . . . . . { <i>Jerome R. Hellerstein</i> <i>Edmund B. Hennefeld</i> } . . . . .	949
Mr. Justice Bradley's Appointment to the Supreme Court and the Legal Tender Cases . . . . . <i>Charles Fairman</i> . . . .	977
NOTES	
Improvement in Terms of Employment as an Unfair Labor Practice. . . . .	1036
Limitation of Actions in New York in Stockholders' Derivative Suits against Directors . . . . .	1040
Parent Corporation's Claims in Bankruptcy of Subsidiary: Effect of Fiduciary Relationship . . . . .	1045
Government Use of Patented Inventions . . . . .	1051
RECENT CASES	
Conflict of Laws -- Jurisdiction of Courts: Divorce -- General Appearance in Foreign Divorce Held to Preclude Collateral Attack Based on Unlitigated Facts ( <i>Frost v. Frost</i> , N. Y. App. Div. 1940) . . . . .	1060
Constitutional Law -- Due Process -- State Statute Requiring Payment of Full Commission to Resident Insurance Agent Held Constitutional ( <i>Holmes v. Springfield Fire &amp; Marine Ins. Co.</i> , Sup. Ct. 1940) . . . . .	1062
Corporations -- Rights of Stockholders -- Cestuis Held without Standing to Bring Stockholders' Suit although Trustees of Stock also Directors ( <i>Plug v. Dietz</i> , N. Y. App. Div. 1940) . . . . .	1063
Due Process of Law -- Labor Law -- Peaceful Picketing Made Coercive by Prior Violence Held Enjoinable ( <i>Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc.</i> , Sup. Ct. 1941) . . . . .	1064
Due Process of Law -- State Court's Determination of Substantive Common Law Held Violation of Fourteenth Amendment ( <i>AFL v. Swing</i> , Sup. Ct. 1941) . . . . .	1066

Executors and Administrators — Claims — Fund to Protect Contin- Claimants of Estate Held Unnecessary if Creation Would Require Sa- Devised Realty (In re <i>Reilly's Will</i> , N. Y. Surr. Ct. 1940) . . . . .	1067
Fair Trade Acts — Blanket Injunction Restraining Retailer from Further Violation of Price Restrictions Denied notwithstanding Threatened Price Cutting ( <i>Iowa Pharmaceutical Ass'n v. May's Drug Stores, Inc.</i> , Iowa 1940)	1068
Federal Courts — Authority of State Law — Federal Law Held Controlling in Suit against the United States under the Tucker Act ( <i>Byron Jackson Co. v.</i> <i>United States</i> , S. D. Cal. 1940) . . . . .	1070
Income Taxes — What Is Income — Cancellation of Portion of Mortgage Debt where Land Depreciated in Value Held Not Income to Solvent Mortgagor ( <i>Hirsch v. Commissioner</i> , C. C. A. 7th, 1940) . . . . .	1071
Income Taxes — What Is Income — Money Received in Compromise of Suit to Recover Alleged Gift of Realty Held Taxable Income ( <i>White v. Thomas</i> , C. C. A. 5th, 1940) . . . . .	1072
Inheritance Taxes — Collection and Enforcement — Life Insurance Com- panies Administering Insurance Trusts Held Liable for Estate Tax as "Transferees" of Insured Decedent ( <i>John Hancock Mutual Life Ins. Co.</i> , B. T. A. 1940) . . . . .	1074
Insurance — Automobile Liability Insurance — Reimbursement Clause in a Liability Policy Required by Compulsory Insurance Statute Held Enforce- able ( <i>Travelers Mutual Casualty Co. v. Herman</i> , C. C. A. 8th, 1940) . . . . .	1075
Judgments — Federal Court Required to Give Full Faith and Credit to Garnish- ment of Its Judgment by State Court ( <i>Huron Holding Corp. v. Lincoln Mine</i> <i>Operating Co.</i> , Sup. Ct. 1941) . . . . .	1076
Labor Law — Fair Labor Standards Act — Computation of Overtime on Basis of Nominal Hourly Rate Held Valid although Employer Guaranteed Higher Weekly Wage ( <i>A. H. Belo Corporation v. Street</i> , N. D. Tex. 1941) . . . . .	1077
Statutes — Construction — Unconstitutional Discrimination of Exemption Clause Remedied by Adding Plaintiff to Class Exempted ( <i>Burrow v. Kapf-</i> <i>hammer</i> , Ky. 1940) . . . . .	1078
Taxation — Collection and Enforcement — Action against Collector Held Not Res Judicata in Suit against United States ( <i>Nunnally Inv. Co. v. United</i> <i>States</i> , Ct. Cl. 1941) . . . . .	1080
Tenancy in Common — Restraints on Alienation — Contract Restricting Sale of Undivided Interest to Purchaser Who Accepts Contract Terms Held Void ( <i>Roberts v. Jones</i> , Mass. 1940) . . . . .	1081

## BOOK REVIEWS

Garrison and Hurst: Law in Society: A Course Designed for Undergraduates and Beginning Law Students . . . . .	<i>Max Radin</i> . . . . .	1082
Levy: Our Constitution: Tool or Testament? . . . . .	<i>Mark DeWolfe Howe</i>	1087
Bodenheimer: Jurisprudence . . . . .	<i>Sidney Post Simpson</i>	1088
Loring: A Trustee's Handbook . . . . .	<i>Gilbert T. Stephenson</i>	1092
Horack: Cases and Materials on Legislation . . . . .	<i>David F. Cavers</i> . . . . .	1093
Blachly and Oatman: Federal Regulatory Action and Control . . . . .	<i>Harry Shulman</i> . . . . .	1096

BOOK NOTES . . . . .	1100
----------------------	------

BOOKS RECEIVED . . . . .	1102
--------------------------	------