Fordham Law Review

Volume 25 | Issue 4 Article 10

1956

Obiter Dicta

OBITER DICTA

"An *obiter dictum,* in the language of the law, is a gratuitous opinion, an individual impertinence which, whether it be wise or foolish, right or wrong, bindeth none—not even the lips that utter it."*

Take Me Out to the Ball Game

"In me younger days 't was not considhered rayspictable f'r to be an athelete. . . . Fractions dhruv him fr'm school an' th' vagrancy laws dhruv him to baseball." Dunne, *Mr. Dooley.*

The arrival of Spring is of significance to only two types of individuals: lovers and baseball fans. It is a moot question as to which group is more fanatical in their pursuit of happiness, but, as thousands of "baseball widows" will testify, there is little doubt as to where the erstwhile Lothario's allegiance lies once the honeymoon is over.

For eight months of every year the cry of "play ball" rings throughout the nation, and it is a well known fact that most American males are far more conversant with the baseball rules than they are with the Constitution. Most sages now agree that the national pastime is one of the cornerstones of the Republic, but it was not always thus. For a while it was touch and go, with one group of so-called Americans circulating the heresy that baseball was merely a modified form of the English game of "rounders". A righteous citizenry quickly moved to meet this impertinence, and, speaking through a special committee "consisting of a number of eminent men," staunchly proclaimed the obvious, to wit: " . . . that baseball is distinctively an American game. . . . " *State v. Prather,* 79 Kan. 513, 100 Pac. 57 (1909). It is submitted that in this enlightened age such a proposition is a matter of judicial notice and will remain unchallenged unless, of course, the Russians discover their omission of claiming priority.

Anglophile Beware

Nor can baseball be properly classified as just another game. Anyone harboring such a misapprehension should be instantly referred to *Ex parte Neet,* 157 Mo. 527, 57 S.W. 1025 (1900), where the court lays such nonsense to rest by noting that: "Baseball does not belong to the same class, kind, species or genus as horse racing, cock fighting, or card playing. It is to America what cricket is to England." The next time the little woman berates you for wasting your time at the ball park, you can assert this judicial pronouncement, pick up your score card and walk to the bleachers, head erect, with pride and dignity, a devotee of a truly noble sport.

The Noblest Game of All

In the same vein is *Ex parte Roquemore,* 60 Tex. Cr. 282, 131 S.W. 1101 (1910), which states: "It is known, of course, that baseball is the most generally practiced, patronized, and approved of all the games of exercise, and that it is the cleanest and fairest of all manly sports and excites rivalry in the youths of our land, and that every village and hamlet has its favorite nine, and that in every village and hamlet many ambitious youths dream of the day when they shall equal if not

Hooray for Our Side

* Birrell, Obiter Dicta (1885) title page.

excel Matthewson, Speaker, Cobb, Napoleon La Joie and Honus Wagner." This case could also be cited to the sophisticated urbanite who maintains that the Big League fan is the only fan, or to an adherent of the squared circle who is inclined to sneer at less virile sports.

Yer Out!

Picture now the avid fan, clothed in the robe and wig, when one of his idols stands before the bench. Though conflicting loyalties may cause momentary hesitation, judicial impartiality frequently dictates an adverse call. But once a fan always a fan, as witness *Livingston v. Shreveport-Texas League Baseball Corp.*, 128 F. Supp. 191 (D. La. 1955), where, in dismissing a manager's suit against the club for breach of contract, it is noted that: " . . . plaintiff has had his turn at bat and struck out." It might be interesting to determine whether the court was speaking here *ex cathedra* or as a disgruntled fan tired of last-place finishes.

Off Base

The next pitch comes from the International League. In *Sterling Distributors, Inc. v. Keenan*, 38 A.2d 570 (N.J. Ch. 1944), the court saved an off-season substitute for hot-stove leaguers from confiscation by holding that a machine representing a baseball field and played (after depositing a nickel in the slot) by one participant pitching and the other batting, could not be seized by a city official as a gambling device, correctly noting that there is more skill than chance in such an amusement. This case is illustrative of the protective attitude the courts adopt towards baseball in any form. Mindful of the havoc a contrary opinion would have wrought, baseball enthusiasts can be thankful that judges and sheriffs do not always see eye to eye.

Ladies' Day

And lastly a bit for the ladies. The next time "he" is tying up the T.V. watching a ball game, hand him his hat and a copy of the opinion in *Territory v. Davenport*, 17 N.M. 214, 124 Pac. 795 (1912), which observes: "What could be more restful or helpful to a man who spends his week in an office . . . than to engage in an invigorating, clean, and wholesome exercise such as baseball. . . . " All members of the distaff side, desirous of having the screen available for "John's Other Wife" or the racing results, should quote this case as authority for the proposition that baseball should be enjoyed in the great-outdoors.

Play Ball!