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EDITORIAL NOTE

The University College, in conjunction with the School of Law is offering a new course in Trial Technique for Practicing Lawyers. The class is conducted by Judge J. Wesley McAfee, who has had a distinguished career as trial lawyer and Judge of the

Circuit Court in St. Louis. The course is designed to instruct lawyers, particularly younger lawyers, in the technique of preparing and trying civil and criminal cases. The size of the class has been limited so that each student may have an opportunity to participate in the laboratory work planned.

NOTES

BURDEN OF PROOF IN FEDERAL CONFLICT OF LAWS SITUATIONS—SAMPSON v. CHANNELL

The case of *Swift v. Tyson*,[1] as interpreted by the Supreme Court of the United States in subsequent decisions, construed the Federal Judiciary Act of 1789[2] as requiring that federal courts apply the decisions of state tribunals only in local actions. Thus was originated the doctrine that, in general, federal courts would declare and apply federal common law. When the facts of the case arose entirely within one state, the federal court applied state common law rules in local actions and in other cases applied its own federal common law. In a two-state transaction the same procedure was followed, with the federal court extending its general federal rule to a conflict of laws situation. Recently the decision in *Erie R. R. v. Tompkins*[3] overturned the doctrine of the *Swift* case and held that in diversity of citizenship cases federal courts are to follow the decisions of state courts. When the facts arise wholly within the state in which the federal court is sitting, the common and statutory substantive law of that state is to be applied. In a two-state transaction the case has been interpreted as meaning that the federal court shall follow the conflict of laws rule of the state in which it is sitting to determine the appropriate substantive rule to be applied.[4] It is the purpose of this note to examine the problems incident to determining the proper rules as to burden of proof.

The rule of law which is applied by a forum to facts arising wholly within its state is called its internal law rule; that applied when important facts have a connection with other states is called the conflict of laws rule of the forum. In a conflict of

1. (U. S. 1842) 16 Pet. 1.
2. (1789) 1 Stat. 92, c. 20, 28 U. S. C. A. (1928) sec. 725.
3. (1938) 304 U. S. 64.
4. Schram v. Smith (C. C. A. 9, 1938) 97 F. (2d) 662, 664; New England Mut. Life Ins. Co. v. Spence (C. C. A. 2, 1939) 104 F. (2d) 665. See also McCormick and Hewins, The Collapse of "General" Law in the Federal Courts (1938) 33 Ill. L. Rev. 126, 139.