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Book Reviews

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HANDBOOK OF ADMIRALTY LAW IN THE UNITED STATES. By Gustavus H. Robinson. St. Paul. West Publishing Co., 1939. Pp. 1025. $5.00.

In the desert of case-books which have appeared in increasing numbers in recent years, Professor Gustavus H. Robinson's new text-book, called a "Handbook of Admiralty Law", appears as a refreshing oasis. Dealing with a salt water subject, the book performs the miracle of making that water both potable and stimulating.

The present reviewer, who has for some years used the case-book method of teaching the law of Admiralty in his classes at the University of Maryland, is delighted by the appearance of a competent text-book, long enough to treat the divisions of the subject adequately, short enough to be usable in the class room.

Although a well compiled and adequately noted case-book offers certain advantages in the method of teaching, it has always seemed to this reviewer that it fails to complete its own job by rounding out the inductions which the student is supposed to make in a concise and balanced synthesis of the subject in hand. While the cases are, under our system, the ultimate authority, they are not the source to which one should turn for a statement of the elementary principles of any branch of the law. Every practising attorney at law (and proctor in admiralty) has had the experience of looking in vain through the reports for a clear statement of a simple but fundamental principle.

Professor Robinson's new volume is published as part of the Hornbook Series, in succession to Hughes on Admiralty, the standard for many years, the last edition of which was published in 1921. But Robinson's book is a far better book than Hughes' ever was. It is longer; it is better arranged; it is more complete in every way. While pretending to no dignity higher than that of an elementary textbook, it is in fact a full and up to date outline of the whole substantive law of Admiralty. The text is complete, and the notes are astonishingly full and varied, ranging from citations of foreign cases, through adminis-

trative decisions and legislative reports, to newspaper accounts of recent occurrences and policies.

Although Admiralty is one of the oldest branches of the law, it has undergone great changes in the last few years. These changes have been made by statute more than by judicial interpretation, and Professor Robinson's treatment has emphasized this aspect of maritime law throughout the book. The Maritime Lien Acts of 1910 and 1920, Section 33 of the Merchant Marine Act of 1920, the Ship Mortgage Act of 1920, the Public Vessels Act, 1925, the Longshoremen's Compensation Act, 1927, the Limitation of Liability Acts, 1935 and 1936, and the Carriage of Goods by Sea Act, 1936, have changed many of the fundamentals of the old admiralty almost beyond recognition. All of these changes are dealt with by Professor Robinson in the light, not only of the reported decisions, but also of the underlying and conflicting economic and personal interests and public policies reflected in them.

The style of the author reflects his realistic and practical point of view. The book makes good reading, and is enlivened by comments in non-academic phrase. For example, in discussing the priority of maritime liens for personal injury over those of supplymen, the reason for preferring the tort lien is summed up in the untechnical statement that

> "the reaction (of the courts) is in favor of the poor fellow who was hurt over the man who sold goods for which he was not paid."

To the proctor practicing in Maryland, it is gratifying to note how much of the law has been made in this District and in this Circuit. While we must acknowledge the pre-eminence of New York both in amount and importance of litigation, the present volume indicates that Maryland ranks high in the significant and important decisions of recent years.[1]

[1] Among those which have had important influence are Judge Rose's opinions in Virginia, 266 Fed. 437 (D. Md. 1920); Atlantic Transport Co. v. Imbrovek, 193 Fed. 1019 (D. Md. 1912), affirmed 234 U. S. 52, 34 S. Ct. 733, 58 L. Ed. 1208 (1914); Yaye Maru, 265 Fed. 850 (D. Md. 1920), affirmed 274 Fed. 195 (C. C. A. 4th, 1921); and Acme Operating Corp. v. U. S., 283 Fed. 449 (D. Md. 1922); Judge Soper's in Nivose, 1923 A. M. C. 947, 291 Fed. 412 (D. Md. 1923); Liberator, 1924 A. M. C. 684, 298 Fed. 159 (D. Md. 1924); and Eastern Shore, 1926 A. M. C. 899, 15 Fed. (2d) 82 (D. Md. 1926); Judge Coleman's in William Leishear, 1927 A. M. C. 1770, 21 Fed. (2d) 862 (D. Md. 1927); Little Charley, 1929 A. M. C. 298, 31 Fed. (2d) 120 (D. Md. 1929); Emilia S. de Perez, 1927 A.

This reviewer looks forward to using Professor Robinson's book in his Admiralty class next year. He also recommends it to all who are interested in maritime law as a clear, accurate and condensed statement of the subject. There is no other book extant which offers or pretends to offer so much to the student or to the practising proctor.

EMORY H. NILES.*

A HISTORY OF CRIMINAL SYNDICALISM LEGISLATION IN THE UNITED STATES. By Eldridge Foster Dowell. Baltimore. The Johns Hopkins Press, 1939. Pp. 176.

This book dealing with the criminal syndicalism laws passed by more than twenty western and mid-western states during and immediately following the World War strikes a particularly pertinent note at the present moment when the world is teetering on the brink of another holocaust. In the United States, an argument to the effect that we must remain neutral at all costs is that if we should happen to be drawn in, even our ultimate victory would not prevent our cherished democratic institutions from falling by the wayside. Dr. Dowell's study of the syndicalism laws gives us an interesting insight into one example, at least, of repressive legislation which results from the harsh judgments engendered by war. Here is one instance of the philosophy of dictatorship, a philosophy which would stifle every unpopular expression of opinion. Here is, moreover, an instance of how such legislation will outlive whatever occasion there might be for its existence and remain an instrument of repression in normal times.

The book under review is the result of an intensive piece of research undertaken by the author at the Johns Hopkins University. The printed volume, however, is only the condensed version of a work of some thirteen hundred pages of manuscript. It represents what was obvi-

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M. C. 1839, 22 Fed. (2d) 585 (D. Md. 1927); Danielsen v. Entre Rios Rys. Co., 1927 A. M. C. 1800, 22 Fed. (2d) 326 (D. Md. 1927); Oakmar, 1937 A. M. C. 1135, 20 Fed. Supp. 650 (D. Md. 1937); and Losmar, 1937 A. M. C. 1295, 20 Fed. Supp. 887 (D. Md. 1937), and Judge Chesnut's in Calvin, 1935 A. M. C. 155, 9 Fed. Supp. 411 (D. Md. 1935); Emma Giles, 1936 A. M. C. 1146, 15 Fed. Supp. 502 (D. Md. 1936); Algic, 1937 A. M. C. 1611, 95 Fed. (2d) 784 (D. Md. 1937).

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ously a thorough investigation of a subject about which detailed information was not to be gleaned from books in a library. As a matter of fact, much of the author's material came from a voluminous correspondence which he carried on with many of the principals who had first hand knowledge of the subject. These original sources are used to great advantage. The fact, however, that he was obliged to summarize his findings and to utilize footnotes to such an extent has made the book less readable than it might otherwise have been. Nevertheless, it remains an interesting picture which amply repays the reader for the time spent in digesting the story it tells.

As Dr. Dowell points out in his preface, he is not primarily concerned with the administration of the criminal syndicalism statutes nor with the interpretation given them by the courts. His is a study of the forces involved in the enacting, amending or repealing of such laws and the attempts made in these directions.

The work is divided into four principal parts. Chapter I devotes itself to a discussion of the organization against which the syndicalism laws were chiefly directed, namely the I. W. W., and deals with the theories and practices of this group and the treatment it received in the press. It is a story of the violence directed against a radical labor organization, due to a considerable extent to the misunderstanding created in the public mind by the vilifying campaign that the press conducted. This antagonistic "public opinion" was apparently fostered and molded by the industrial interests which the I. W. W. opposed.

The results of this "red baiting" campaign are described in Chapter II, which, incidentally, might well serve also as a text on pressure politics. By various methods, criminal syndicalism bills were introduced and promoted in the several legislatures, the members of which

> ". . . were average middle class Americans . . . usually uncritical of what they read in the newspapers and endowed with a deep antipathy or distrust for groups or individuals labeled as radical or unpatriotic. Due to this situation, the existence of special interests who desired a criminal syndicalism bill and were represented in or before the legislature, and the usual rush in which the legislature worked, the result was usually a foregone conclusion. Either the bill was passed with breath-taking swiftness and little debate, or with a great outburst of oratory character-

> ized more by passion, prejudice, and misinformation than by a reasoned effort to get at the facts or a calm consideration of the issues involved. Only a few groups of individuals, such as labor representatives or liberals and progressives, opposed, because of fear of harm to the trade unions or of an infringement upon freedom of speech, the press and assemblage, etc., the popular clamor for such legislation. And after the criminal syndicalism bill was enacted a close examination of its terms revealed that it went much further than outlawing or restricting radical groups, and constituted a potential menace to the rights and activities of labor, to the civil liberties of the ordinary citizen, and to the free expression and circulation of certain doctrines and thoughts."[1]

Chapter III deals with those instances in which efforts to enact syndicalism laws were unsuccessful. The time element was undoubtedly an important factor in these cases, since they occurred mostly at a considerably later date, namely between 1927 and 1933. Moreover, attention is directed to the fact that the press was not nearly so favorable to these bills failing of enactment as in the earlier period.

Chapter IV describes the attempts which have been made to moderate or repeal the criminal syndicalism statutes. Three states are listed as having repealed their laws, two of them in the legislative sessions of 1937. If anything, the trend would seem to be towards repeal, although the present unsettled state of affairs in the world will probably have an unfavorable reaction upon any such movements.

From his study of the criminal syndicalism laws, the author concludes that there is much danger to our free institutions in this type of legislation. These particular statutes, he emphasizes, go much further than to punish the committing or advocating of *acts* of violence against life, property or the government, since they make criminal "the advocacy or suggestion of *doctrines*" of revolutionary character. This significant distinction has been pointed out by Mr. Justice Brandeis, in his concurring opinion in the *Whitney* case,[2] as follows:

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[1] P. 47.

[2] Whitney v. California, 274 U. S. 357, 372 ff., 71 L. Ed. 1095, 1104 ff., 47 S. Ct. 641, 647 ff. (1929).

> "The felony which the statute created is a crime very unlike the old felony of conspiracy or the old misdemeanor of unlawful assembly. The mere act of assisting in forming a society for teaching syndicalism, of becoming a member of it, or of assembling with others for that purpose is given the dynamic quality of crime. There is guilt although the society may not contemplate immediate promulgation of the doctrine. Thus the accused is to be punished, not for attempt, incitement or conspiracy, but for a step in preparation, which, if it threatens the public order at all, does so only remotely. The novelty in the prohibition introduced is that the statute aims, not at the practice of criminal syndicalism, not even directly at the preaching of it, but at association with those who propose to preach it. . . . Even advocacy of violation [of law], however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on. The wide difference between advocacy and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind."[8]

The reading of this book invites at least one comment. In the American constitutional system, courts of law are reluctant to invalidate a law unless it violates an express or implied principle of a constitution. The negation of a statute merely because it is perhaps repugnant to the "spirit" of a constitution is usually frowned upon as an improper exercise of the power of judicial review. But legislation violative of the "spirit" of a constitution obviously approaches the periphery of legislative discretion. Since it is judicially "constitutional", legislation within this twilight zone finds its limitation only in the legislature's own sense of self-restraint. Dr. Dowell's study makes it

[8] Professor Chafee has said regarding the question: "These statutes are not directed against those who commit or actually plan violence, but against those who express or even hold opinions which are distasteful to the substantial majority of citizens. . . . These acts have been drafted by men who are so anxious to avoid any disturbance of law and order that they have punished by long prison terms and heavy fines not only provocation to the use of force, but also the promulgation of any ideas which might possibly, if accepted, cause someone to use force. . . . The difference between the expression of radical views and direct provocation to revolution is only a difference of degree, but it is a difference which the normal criminal law regards as all-important." Freedom of Speech (1920) 174-175, quoted in Dowell, 145.

evident that our criminal syndicalism laws in most instances represent an utter disregard by state law-making bodies of this responsibility.

Except possibly during periods of actual emergency, the best course, and the one most faithful to our fundamental concepts as a free nation, would appear to be that expressed over a century ago by Thomas Jefferson:

> "If there be any among us who would wish to dissolve this union or change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left to combat it."[4]

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[4] 1 Richardson, Messages and Papers of the Presidents (1897) 310.

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