

BOOK REVIEWS

A TREATISE ON THE LAW OF PRIZE. By C. John Colombos, LL.D. Introductory chapter by A. Pearce Higgins, C. B. E., K. C., LL.D. Grotius Society Publications No. 5. Sweet & Maxwell, Limited, London, 1926, pp. xxx, 384.

One who believes that prize law is what it seemed to be before the War of 1914-1918 and seeks to find its details in this book will be put to some trouble and had better turn to a pre-war treatise. If he believes also that that law was then fixed for good, and that all war decisions departing from old rules laid down in cases and conventions were violations of existing international law, he will find much to irritate him. Mr. Colombos' interest is centred on these departures, and his tendency is to regard many of them as showing a change in the law of prize rather than a violation of it. Because he does not limit himself to British decisions and regulations, but has examined and presents very fully the prize law of the other belligerents on both sides, all of which show a surprising uniformity of view, he carries conviction that in many of the instances which caused so much indignation in neutrals and others, international law as to prize had by common consent changed as a result of different conditions, rather than had been violated. As a study of these changes, his book, covering the law of so many countries as it does, scholarly, impartial, and written without war heat or bias, is timely and valuable, and will save the occasional investigator of prize law, as it has come to be, the trouble of searching through periodical literature, scattered documents, and separated cases and of coordinating a large mass of material.

Of these changes, to mention only one among many, those relating to contraband are perhaps the most interesting. Goods to be contraband must not only be inherently susceptible of war use but must also be destined for such use by the enemy, or rather for transportation to enemy territory. Mr. Colombos shows that not only has the distinction between absolute and conditional contraband become unreal under modern war conditions and tended to disappear, but that the classes of goods susceptible of war use have enormously increased and that the rules of proof as to hostile destination have been greatly liberalized in the interests of the captor. It may come as a surprise to some that these extensions were being contemporaneously made in German prize courts as well as in English. He cites an interesting German case to the effect that raw material delivered in a neutral country for manufacture there and sale in a changed and finished form to a belligerent should be regarded as contraband, a view to which the British courts after some doubt had ultimately come (pp. 175-177). Again, though Great Britain had perhaps the most to lose by a liberal attitude towards neutrals, we frequently find her attitude towards neutrals more injurious to herself than that of her allies and her enemies (pp. 202-207).

The new prize law that has developed is, to say the least, a captors' law, and developed under conditions where as Mr. Colombos states, . . . "practically the whole population of the belligerent countries was in arms, organized for warfare, and able to contribute materially to the national resources." In such circumstances perhaps, as he suggests, the rights of belligerents are greatly

increased at the corresponding expense to neutrals. Yet, even so, neutrals may even then complain, for example, of rules that shift the burden of proof of non-contraband to them (pp. 184-191). Mr. Colombos also suggests that in little wars, where combatants and non-combatants remain distinct, the former rules with their greater regard for the interests of the neutral may still be valid (p. 198). But how tell a little from a great war?

In this connection, that is with regard to the rights of neutrals the position of the United States is curious. The belligerents other than ourselves developed a new and fairly uniform prize law. We became a belligerent, but few, if any, prize cases were decided in our courts. Mr. Colombos found none. Our attitude towards this new law, as officially expressed, is to be found in our protests to belligerent countries before we entered the war. Some practices we inveighed against we later adopted, for example, that as to "Black Lists" (p. 225), but those with regard to contraband did not come up in our courts with ourselves appearing as captor. Had this happened, it is possible that they would have decided as others were doing, but it did not happen, and it leaves us still free to protest with some show of grace that the many "changes" which Mr. Colombos so ably discusses are after all "violations."

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CASES ON CONSTITUTIONAL LAW WITH SUPPLEMENT; SELECTED FROM DECISIONS OF STATE AND FEDERAL COURTS. By James Parker Hall, Professor of Law and Dean of the Law School in the University of Chicago. American Case Book Series. West Publishing Company, St. Paul, 1926, pp. xlv, 1867.

This edition of Professor Hall's Cases on Constitutional Law is made up of a reprint of his first edition—table of cases, list of cases, text of the cases, index, just as they first appeared—plus a supplement containing about one hundred cases decided since 1913. Dean Hall has evidently found his original list of cases satisfactory for his purposes since the added cases do not include a single one that was available when the first edition was published.

As this is a review of the new edition and not of the original publication, it is not proposed to discuss the general features of this collection of cases. It is sufficient to observe that the new cases are arranged in accordance with the original plan of classification so that the book can be used almost as satisfactorily as though the new cases had been inserted at their proper places in the original text. One new topic—National Prohibition—has been added; and three cases are included under this head.

All of the new cases are decisions of the Supreme Court of the United States, a fact that tends, perhaps through no intention of the editor, to indicate how seldom it is that a State court deals adequately with a question of constitutional law arising under the Federal Constitution.

As in the original volume, the cases are well documented with notes, and the citations are abundant.

The selection is excellent, as might have been expected from Dean Hall; although to this reviewer it would seem that some cases have been included that might have been omitted, in the interest of a more compact collection, since they

disclose the application rather than the growth of a principle sufficiently illustrated in other cases.

As in the original edition, there is some very serious condensation of the opinions, and frequently summaries of the facts are inserted by the editor in lieu of the statements of the cases appearing in the reports. This is believed to be a serious fault. The discipline involved in the analysis of the facts is too valuable to be sacrificed except occasionally. Some years' experience in teaching this subject has convinced the reviewer that it is seldom of advantage to edit the opinions of the Supreme Court for the purpose of Law School study by such extensive omissions as, at times, are made in this case book.

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THE NEGOTIABLE INSTRUMENTS LAW ANNOTATED. By Joseph Doddridge Brannan. Fourth edition, by Zechariah Chafee, Jr. The W. H. Anderson Co., Cincinnati; 1926. pp. cxlviii, 1041.

The fourth edition of Brannon's Negotiable Instruments Law contains all of the beneficial elements of the previous editions as well as several distinct improvements which increase the general value of the book to the student and lawyer. The cases collected under the sections and subsections of the Negotiable Instruments Law are more intelligently analyzed, compared and criticized than in the previous editions. The edition has the natural advantage of later case law with further and more thorough reflections of the editor. The use of marginal notations to indicate the text content is an added feature which facilitates the use of the book. While the memorable articles of Dean Ames, Judge Brewster, and Mr. McKeehan on the Negotiable Instruments Law have been omitted from this edition, nevertheless the substance of these able articles has been retained by frequent use in various parts of the book as in previous editions. More liberal references to legal periodicals have placed at the ready disposal of the reader masses of hitherto unassimilated material dealing with the common and statutory law of negotiable instruments. The new edition comes as a timely revision of a noble contribution.

J. D.

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