

BOOK REVIEW

FEDERAL TAXES ON ESTATES, TRUSTS AND GIFTS 1942-43. By Robert H. Montgomery. The Ronald Press Company, New York, 1943, pp. 769. Price: \$7.50.

To the general practitioners Mr. Montgomery's latest book is of inestimable value. Within the rather brief compass of 769 pages he has contrived to set forth a surprisingly complete picture of this complex legal field. Such a work is of special assistance in dealing with this phase of taxation because the Revenue Act of 1942 is merely an amendment to the codification of 1939. As long as the general tax structure is overhauled in principle each year this practice of amending the basic code is more confusing than any other procedure.

The scope of this book is not limited to an exposition of the Revenue Act of 1942. It covers most of the important decisions of the Federal Courts including the Tax Court of the United States.¹ Like all summaries of legal fields the experts will probably find this book too condensed to be of great assistance. But even they should find it a convenient handbook.

Perhaps the most interesting part of this book for the casual reader is the Chapter entitled "Planning the Distribution of an Estate". Anyone writing a will involving a substantial sum of money will find any number of valuable suggestions. Even aside from that this chapter contains sufficient data from which one may properly speculate on the future of many eleemosynary organizations whose very existence has depended upon receiving not 15% of an estate—but more substantial percentages. One cannot help but be impressed with the fact that the future of such charitable institutions as universities and hospitals depend largely upon the Federal and State tax programs.

James R. Withrow, Jr.†

1. Formerly the Board of Tax Appeal until amended by Sec. 504 (b) Revenue Act of 1942.

† Member of the New York Bar.

BOOK NOTES

JUDAH P. BENJAMIN: CONFEDERATE STATESMAN. By Robert Douthat Meade. Oxford University Press, New York. 1943. Pp. ix, 432. Price: \$3.75.

One of the most colorful characters in an equally colorful and decisive scene of American history, Judah P. Benjamin was an influential and important figure even in a period which starred Abraham Lincoln, Robert E. Lee, Jefferson Davis, William Seward, and in contemporary England, Pollock, Selborne, Gladstone, and Disraeli with whom he often has been compared. Yet today he is familiar to the average person merely as a name in the Confederate cabinet. Not until fifty-four years after his death was a marker placed upon his grave; and it was fifty-nine years before anyone attempted to write a complete biography of his entire life. Professor Meade has accomplished this in the present volume, which is a comprehensive and authentic account of what the *London Times* in 1884 described as "one of the most remarkable of modern careers." In so doing he has made a worthwhile contribution to political, military, and legal history.

The book is divided into three major themes to correspond with the three "careers" in Benjamin's life, American lawyer and statesman, Confederate leader, and English barrister. The first portion, which begins with the immigration of young Judah to North Carolina from the West Indian Islands, and the subsequent events which culminated in his becoming one of the wealthiest and most renowned leaders of the bar, and United States Senator from Louisiana during the critical years preceding the Civil War, reveals careful research and analysis. However, the author's treatment of this phase is a bit too academic to awaken on the part of the reader more than a casual interest in Benjamin as a personality, but is rather more interesting as an account of legal decisions of cases in which he was counsel, Louisiana politics, and the corresponding political trends of the rest of the nation. Yet during these years occurred events which singly would have high-lighted the life of an ordinary individual—acquisition of more than one fortune, participation in several of the most controversial lawsuits of the time, nomination as an associate justice of the United States Supreme Court, which he declined, to pursue his more remunerative legal and political career, and an offer to be minister to Spain which he likewise rejected.

The chapters devoted to the period of the War more strikingly illustrate Benjamin's forceful personality. Conceded to have been the most influential member of the Davis Cabinet, Benjamin demonstrated his legal training both as Secretary of War and later as Secretary of State. Indeed, General Beauregard once complained that Mr. Benjamin "would only view the legal aspect of things . . . insensibly this army and myself will be put into the straitjackets of the law . . ." Yet despite his limited knowledge of military strategy, opposition from the military leaders, and increasing economic handicaps, he succeeded in doing what few others could have accomplished, and Professor Meade speculates as whether or not the War would have had a different result had more of Benjamin's suggestions been followed.

Perhaps the most notable and amazing years of Benjamin's life, and those of most interest to the legal minded reader, occurred after the Con-

federacy was crushed, when Benjamin escaped to England. Over fifty years old, with means for but a bare subsistence, he achieved a mastery of English law, and began the practice which commanded the praise of his fellow barristers. During this time he wrote *Benjamin on Sales*, which is recognized as a legal classic, and amassed a fortune. Credited with introducing large fees to England, he would never bargain about his fees, and even in his early days in England he never cheapened his legal services. The author relates that on one such occasion a leading firm sent him some work to do and attached a small fee. When several days later the clerk discovered the papers on Benjamin's desk still unopened, and asked if there had been some mistake, Benjamin replied, "Not at all; the fee proffered covered taking in the papers, but not examining them."

Indicative of the esteem he had gained in the legal profession was the banquet given by the bar of England in his honor upon his retirement, the first time such recognition had ever been accorded an American.

Unlike too many biographers, Professor Meade has not sought to canonize his subject; instead he has given a faithful account of "a man, whose life, despite its share of human weaknesses, offers one of the most remarkable examples in modern history of successful struggle against adversity."
P. K.

CHALLENGE TO FREEDOM. By Henry M. Wriston. Harper and Brothers, New York, 1943. Pp. x, 240. Price: \$2.00.

"Challenge to Freedom" persuasively presents the argument that our country has swung too far toward centralization and executive power. Mr. Wriston was motivated by a deep conviction that we, by our inaction, are in the process of surrendering our American heritage of freedom. He approaches his discussion from an historical point of view, and finds that our present tendencies are "stark reaction."

His economic thesis is that "the government of the United States . . . was not dedicated to the *laissez faire* doctrine or the totalitarian technique," but to an elastic and variable *via media*. He criticizes *laissez faire* as "needlessly cruel" and totalitarianism as necessarily resulting in "universal management." The conclusion drawn is that "the situation now calls simply for a restoration of balance."

Of particular interest to lawyers and law students is the chapter entitled "Administrative Management." First, he attacks the mushroom growth of administrative agencies. The argument is ably presented that they constitute "a grave danger to American liberty" because government by them "cannot be said to be government *by* the people at all." His desire is to keep administrative agencies from infringing on other fields without legislative authority, and to subject their decisions and orders to ultimate review by the judiciary. Illustrations are presented of their extra-legal method of obtaining compliance with administrative orders; the way they are used to increase the power of the executive branch of the government at the expense of the legislative and judicial branches; and their freedom from restriction in hiring and firing employees. Likewise, government corporations are subjected to his scrutinizing inquiry. Our attention is drawn to the fact that their "operations [are] very much larger than all the costs of government only ten years ago"; that they are an effective means of eliminating the control of the Comptroller-General; and that their control lies in the hands of "a very small group of men." His thesis

in this chapter remains the same: that we are riding the road to concentration of power in the hands of the executive branch of the government, and that the road leads ultimately to tyranny.

Throughout, he places the blame for this trend on our citizens, believing that we have, to a large extent, lost faith in the processes of democracy and in ourselves. The author criticizes the mood of lethargy and impotence in the face of national and international problems and the tendency to rest the solution of them in the hands of the government.

Regardless what one may think of the author's thesis, the book is well worth reading. His style is direct, forceful and succinct. His conclusions are clear and unequivocal and their presentation is certainly thought provoking. The only criticism is that the book is too short. The chapter on "Administrative Management" itself could be expanded to a good-sized work. A by-product of this brevity is an apparent lack of documentation. On the other hand, many persons will undoubtedly read it, who might otherwise have turned away, had it been expanded to the size the subject matter merits.

F. G. K., Jr.

ROY BEAN: LAW WEST OF THE PECOS. By C. L. Sonnichsen. The Macmillan Company, New York. 1943. Pp. viii, 207. Price: \$2.50.

This is probably the most authoritative biography to date of that fabulous figure of our Southwestern frontier, Roy Bean. Yet "Judge" Bean's life, as presented here, is still little more than a fragmentary account pieced together from the countless legends that have been told about him for the past half a century. The lack of any greater degree of authenticity does not detract from the appeal this book should have to readers who are interested in the administration of justice on the American frontier.

In 1882 Roy Bean was appointed a Justice of the Peace in order that there be some semblance of law along the railroad then being built in West Texas. Shortly thereafter he evolved his system of "saloon-style" justice. His court-room was his saloon; the judicial bench was the bar over which he dispensed his beer; his jury was composed of the bar-flys; and his six-shooter served the dual purpose of maintaining order (both of the tap-room and of the court-room) and of seeing that his judicial decrees were enforced. He was, therefore, not guilty of any misrepresentation when he posted his famous sign across his saloon: *Judge Roy Bean Notary Public. Law West of the Pecos. The Jersey Lilly*. The primary interest of this book, therefore, is the way it demonstrates that Roy Bean was the "law," which was merely "another name for his will."

The library of this unique court consisted of one thirty year old volume of the Texas Statutes. This was the sole authority that governed the operation of the court, and was referred to on but very few occasions. Once a local Irishman appeared before Judge Bean charged with the murder of a Chinese coolie who worked on the railroad. In ruling on the matter, he said that he had gone through his book and found that it was homicide to kill a human being, "but", he concluded, "I'll be damned if I can find any place where it says it is against the law to kill a Chinaman."

His "rough-and-ready" justice is illustrated in countless anecdotes, all of which demonstrate why this biography is so aptly subtitled *The Law West of the Pecos*. As a Justice of the Peace he was permitted to perform marriage ceremonies, but he certainly never had the legal authority to dissolve any marriage. Nevertheless, on the rather common-sense theory

that a man should always be willing to rectify his own errors, he continually granted divorces to those whom he married upon mere request.

The book obviously does not add, in any way, to the fund of common law background. None of the rulings of the "saloon-court" ever found their way into the printed reports (although they would have made interesting reading), and certainly a good many could have never withstood the scrutiny of an appellate court. But on the frontier, over two hundred miles from any other organized justice, Roy Bean was indeed the "law," and how his rulings controlled that community makes interesting and enjoyable reading, particular for anyone acquainted with our present day legal system.

B. E. F.