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Progress in the Law in the U. S. Supreme Court: 1930-1931

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BOOK REVIEWS

PROGRESS OF THE LAW IN THE U. S. SUPREME COURT: 1930-1931. By Gregory Hankin and Charlotte A. Hankin. New York and Washington, D. C. The MacMillan Company and Legal Research Service 1931. Pp. xv, 525.

The yearly appearance of these volumes is no doubt serving a useful purpose in summarizing and classifying along social, economic and political lines the cases decided by the Supreme Court. It contains a table of cases and an index.

The book opens with a chapter on Liberalism and Conservatism, devoting twenty-five pages to Chief Justice Hughes and the remaining five to Roberts and Holmes. This discussion is of doubtful practical value, and is, of course, unflattering to the United States Senate. The failure of the Court to assign reasons for denying writs of certiorari is, in the opinion of the authors, a serious source of uncertainty in the law, and one feels that this opinion is correct. But it would seem that the practice is no more conducive to uncertainty than are the actual decisions themselves. One is tempted to say that the title of the book is misleading. It is with difficulty that the reader can observe any "progress" of the law, if that word is meant to be synonymous with improvement, enlightenment, predictability, or closer approximation to justice according to legal principles. Let us give a few examples. In *United States v. Felt and Tarrant Mfg. Co.*[1] the Court held that a taxpayer filing a claim for refund must specify the ground of his claim. But the ground of such claim is often uncertain, and, as the authors observe, "This requirement . . . . makes the refund depend not upon the obligation of the Government to return amounts collected without authority of law, but upon the taxpayer's ability to choose a tax expert who can assign proper reasons for his claim, or sometimes guess correctly why the taxpayer should be refunded . . . . We say *guess correctly* for in some instances the Bureau of Internal Revenue itself is in the dark as to what constitutes a sufficient claim for refund."

The reader leaves the chapter on Taxation with the feeling that the Court is becoming very nimble in legal gymnastics, the net result of which are to resolve most contentions against taxpayers who have been compelled to resort to expensive and futile litigation because of the stupidity of Congressional enactments.

[1] 283 U. S. 269, 51 S. Ct. 376 (1931).

The intensity of this feeling increases with the decision in *Farmer's Loan and Trust Co. v. Minnesota,*[2] overruling *Blackstone v. Miller*[3] (with the former of which this reviewer happens to agree). The reasoning of Justices Holmes and Brandeis, in dissenting, seems to be pure rationalization in an effort to sustain burdensome double taxation. And, finally, the business achieves a comical effect in *Coolidge v. Long,*[4] wherein both the majority and the minority rely upon the same cases in support of their respective views. One must note, too, *Board of Tax Comm'rs. of Indiana v. Jackson,*[5] the "Indiana chain store tax case", with the result of which this reviewer cannot agree. It seems that, as the authors remark, "behind this classification for taxation lay the purpose to curb the competition of the chain stores".

One discovers anew that in all but a few cases, state supreme courts are loath to declare the unconstitutionality of state statutes imposing taxes. In explanation of this tendency it is possible that the state courts are composed not so much of inferior judges as of astute politicians, particularly in those states having an elected judiciary.

On the whole, the most interesting and instructive chapter in the book is that dealing with labor problems. Particularly in those cases arising under the Federal Employers' Liability Act, the statement of the authors seems accurate: "This is a very fruitful field for hairsplitting distinctions as to what constitutes intrastate or interstate commerce." Their suggestion, upon which this reviewer makes no comment, is that the Court should reverse its former decisions and hold that any employee of an interstate carrier may come under its provisions, regardless of whether he was engaged in interstate commerce at the moment of injury.

The analysis of the actions instituted under this law shows that recovery is not governed by principles or standards but rests with the juries, which invariably find for the plaintiff. It is impossible to discover definite principles of law. Apparently recognizing this rather cheerless state of affairs, the Supreme Court avoids difficulties by refusing to review the cases.

The authors present an illuminating statistical commentary on even-handed justice in a tabulation of "Federal Crimes and Punishments", wherein one notes that while Mr. Albert B. Fall received a sentence of one year for his oil-scandal activities, the

[2] 280 U. S. 204. 50 S. Ct. 98 (1929).
[3] 188 U. S. 189, 23 S. Ct. 277 (1903).
[4] 282 U. S. 582, 51 S. Ct. 306 (1930).
[5] 283 U. S. 527, 51 S. Ct. 540 (1931).

defendant in Case No. 998 received five years for selling thirty gallons of liquor.

Other notable cases which should be mentioned are those involving the "Minnesota Gag Law"[6] and the "California Red Flag Law,"[7] supported by good, meaty oratory, and commendable in principle if not in result. Finally, the much-debated naturalization cases of Macintosh and Bland are discussed fully. The familiarity of the reader with these cases makes comment unnecessary.

This is, perhaps, a dangerous book. It is fortunate that it will not be read except by students of the law, professional or non-professional. It will be a serious blow to our democratic dream when the average man comes to observe, as he ultimately will, the vagaries, the legerdemain, the uncertainty, inherent in the nature of the judicial method of handling modern social and economic problems of great magnitude. The Supreme Court is gradually being divested of its garment of mystery, tradition and infallibility, as the speed and accuracy of transmitting intelligence of its decisions increases; and as the public through editorials, essays and books such as this feels a growing power and right of criticism. The quality of such criticism is not so important as its volume and spirit of freedom.

And this fact is not derogatory to the Supreme Court. Competent as it is, it is powerless to advance beyond the medium through which, perforce, it must do its work. The ultimate difficulty we shall have to face is the invention of some modern machinery to meet the economic and social problems which modern civilization, willy-nilly, has evoked. Until then, it is the business of lawyers solemnly, and with inscrutable countenances, to reassure themselves and their clients that Reason Is The Life of The Law.

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PATENT RIGHTS FOR SCIENTIFIC DISCOVERIES. By C. J. Hamson. Indianapolis: The Bobbs-Merrill Company. 1930. Pp. 286.

The Constitution provides that Congress shall have power "to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their

[6] Near v. Minnesota, 283 U. S. 697, 51 S. Ct. 625 (1931).
[7] Stromberg v. California, 283 U. S. 359, 51 S. Ct. 532 (1931).