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Patent Rights for Scientific Discoveries

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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.

—ROBERT T. DONLEY.

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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).

respective writings and discoveries.'"[1] President Washington, in his first message to Congress, suggested "the expediency of giving effectual encouragement as well to the introduction of new and useful inventions from abroad as to the skill and genius at home." In response thereto Congress enacted the first patent act in 1790. As far as the patent statutes are concerned substantially no attention has ever been given to science or discoveries as such although both terms are used in the Constitution. The present statute[2] provides for a patent for a new and useful art, machine, manufacture or composition of matter or plant, with certain limitations. From the beginning the courts have interpreted these terms as relating to practical embodiments and not to merely scientific discoveries.[3] The person working in pure science may discover a new fundamental fact, material or law, which will enable subsequent developers to reap great rewards, but the patent system makes no effort to compensate the original scientist. Indeed, most scientists do not care for monopolistic compensation and in general the scientific societies throughout the world frown down on the proposal; this is particularly true in the United States where the movement is not advocated by any organization. There are some instances in recent times in which physicians have obtained patent protection for new medicinal compositions but chiefly to insure proper manufacture and use rather than for personal gain.

The matter has been broached from time to time for a good many years. Since the World War there has been some acutely renewed agitation, mainly in Europe, toward a scheme which might in some way require the public or the individual who benefits by a scientific discovery to compensate the discoverer for the use of the discovery in a practical or commercial embodiment. No nation has done this although the League of Nations has given the matter consideration and there has been a considerable literature built up about the idea. Little has been written in English on the subject and for that reason the present book is especially welcome. English-speaking nations as a rule have met the matter without enthusiasm. In order to stimulate interest in the subject the Linthicum Foundation at Northwestern University Law School offered a prize for the best essay relating to the protection of scientific discoveries and the author of the present volume won the first prize. He is an Englishman so that much of

[1] U. S. Const., art. 1, § 8, par. 8.
[2] 35 U. S. C. A. § 31 (1926).
[3] See O'Reilly v. Morse, 15 How. 62, 14 L. ed. 601 (1853).

his text bears an English rather than an American slant. He presents, however, a fair review of what has been written on the subject and follows it with his own proposal of a comprehensive scheme for compensating those who make scientific discoveries. Appendices contain essays by American lawyers so as to more clearly tie the matter into attitudes on this side of the Atlantic. Anyone interested in the subject will find here collected in a single volume sufficient information to let him make up his mind upon the desirability and possibility as a practical matter of compensating those working in pure science.

In general those having to do with patents and inventions are less than lukewarm on the subject, not as a matter of sentiment but because the difficulties of working out a satisfactory scheme seem insurmountable. Possibly a Constitutional amendment would be necessary since the courts in the United States seem to have defined the term inventor used in the Constitution in such a limited way as to exclude those working in pure science whose discoveries as such are not immediately practically useful.

—KARL FENNING.

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THE PROVINCE OF THE LAW OF TORT. By Percy H. Winfield. Cambridge: At the University Press; New York: The Macmillan Company. 1931. Pp. xii, 254.

In this small volume, which embodies the Tagore lectures for 1930 delivered by Professor Winfield at the University of Calcutta, an eminent legal historian undertakes "to trace the *liaison* between tortious obligation and other regions of the law".[1] It is not a treatise on the law of tort. It is merely an attempt "to separate liability in tort as sharply as possible from liability arising from crime, from contract, from trust, from bailment, from the law of property, from quasi-contract and from quasi-tort".[2] The author is not the first to attempt this task, but certainly no one has performed it with more care and thoroughness.

With some of Professor Winfield's views the reader may not agree. If he belongs to the "pessimistic school" which denies the existence of any general principle of liability in the law of torts and consequently has abandoned hope of defining it, he will dis-

[1] P. V.
[2] Pp. 2, 3.