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Progress of the Law in the U.S. Supreme Court

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It would be impossible even to mention the subject matter of the articles contained in this book, but to say the least, they are all interesting and the probation worker will find this little book most valuable as a constant reference work.

—Charles G. Baker.

Judge of the Circuit Court for the Seventeenth Judicial Circuit of West Virginia.


This is the second annual review of the work of the Supreme Court by the Hankins. Though more pretentious than the 1929 volume the later one is little changed in plan and scope. A distinct improvement is found in the more critical presentation made of the cases discussed in the 1930 book. Brief statements of cases without more do not constitute interesting reading. Moreover the authors have demonstrated that their observations are sane and to the point.

The purpose is avowed "to give the reader a bird's eye view of the work of the Court as an institution of government in a highly complex society". The authors' difficulty, of course, is to keep the reader on the wing above the judicial machinery rather than drag him through the mill by stating case after case. It is fairly impossible to review a great series of cases involving problems of varied character and hold the sustained attention of the reader. This has no bearing on the book as a reference work but it does refer to its appeal as legal literature. The reviewer ventures to suggest that, from that standpoint at least, it would be better to present only the more striking cases in a given field rather than cover the whole ground and thereby burden the piece with heavy, relatively unimportant matter.

The first chapter tells the story of the recent changes in the personnel of the Court. The authors are impressed with the importance of the economic views of the judges in their judicial activity. Here they concluded that the nominations of Mr. Chief Justice Hughes and Judge Parker were intelligently considered. It is probably desirable that the Senate consider the qualifications of Supreme Court nominees thoroughly but that it was done in the case of Judge Parker intelligently as well is another matter. The
authors themselves indicate the superficial proponency of Parker on the merits of his record in college.¹

A second chapter is devoted to a discussion of the Administrative Problems of the Court. It is an illuminating description of the notable achievement of the Court in gradually cutting down its judicial load to cases of paramount and widespread interest. As indicated by another pair of authors in a similar discussion the work of the Court is becoming more a process of eliminating cases it ought not to hear than in hearing those it deems it should consider.²

The remainder of the book is devoted to the actual work of the court in the cases. The authors attempt an economic and social rather than a legalistic classification of subject matter. However, the analysis followed shows no tendency to be entirely consistent in this regard. The shift from functional to legalistic classification in places appears quite a conscious one. Thus from political and ethnic problems the reader is led into a chapter on judicial review, many of the cases thereunder having already been considered in the earlier chapters.³ This treatment finds some justification in the fact that judicial review has lately been the object of attack both in state and federal councils. The Supreme Court was called upon last year to pass on the validity of the Ohio constitutional amendment limiting the power of judicial review.

A most significant fact, it seems to this reviewer, is that the longest chapter in the book deals with the subject of compensation for industrial accidents. This suggests that the Supreme Court is overburdened with litigation, which should be settled in lesser tribunals.⁴ The cases treated fully sustain the authors' criticism of the Federal Employers' Liability Act as a slipshod attempt at socializing the risk of industrial accidents, which has not been improved in its administration. A review of the cases such as that presented by the Hankins should tend to focus attention on the deficiencies of this legislation.

That there is value in the work of our authors is not long in appearing as one reads their product. Those interested in the

¹ At p. 14.
² Frankfurter and Landis, The Business of the Supreme Court at October Term, 1929, (1930) 44 Harv. L. Rev. 1, 2-5.
³ Thus the important case of Baldwin v. Missouri, 281 U. S. 586, 50 S. Ct. 306 (1930) first discussed under the topic, state inheritance taxation, at p. 224, is reconsidered with respect to judicial review at p. 434.
⁵ Probably the harmonizing function of the Supreme Court should be the limit of its activity in this field.
work of the Supreme Court in specialized fields may readily gain from this book a good impression of what has been going on. It would doubtless be more of a task to dig this out of the primary material for one's self. Moreover, the discussion is aided by the too-rare comment of the authors.

The presentation of the material reviewed in the volume is quite reliable. However, it carries one misconception relative to a distinctly important opinion which may fairly be indicated here, it is believed. In a case from Oklahoma, one Lowe, who operated a cotton ginning business sought to prevent the licensing of a cooperative ginning company in his territory on the ground that the statute permitted it to grant rebates which he could not do in his business since it was a public utility. The statute allowed co-operatives to distribute part of their profits to member-customers according to business done with them. Our authors give the impression that the Chief Justice declared that the profit-sharing was not a rebate and that Oklahoma law did not deny Lowe that privilege. He, in fact, expressly avoided the rebate difficulty by relying on Lowe's failure on the oral argument to make out the point that Oklahoma law denied him the privilege. Thus consideration of the substantial question sought to be presented was side-stepped.

—JEFF B. FORDHAM.

7 At p. 115.