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Book Reviews

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Barnes' Federal Code. Edited by Uriah Barnes. Henry Craig Jones and Ira E. Robinson, Associate Editors. Virginian Law Book Company, Charleston and The Bobbs-Merrill Company, Indianapolis. 1919. pp. civ, 2831.

Barnes' Federal Code is a handy edition of the federal statutes of a public and general nature, revised to date. It is the only revision in a single volume, and the only one of any character since 1916. The book is neat, and in appearance and mechanical detail might well pass for a *de luxe* edition.

The statutes now in force are classified according to subject matter, on the basis of the Revised Statutes and Statutes at Large, but the order of treatment of these subjects is more like that in the United States Compiled Statutes. The sections are given serial numbers, but at the end of each section are references to the original and amendatory acts, and to the corresponding sections in the Statutes at Large and Revised Statutes, if they appear therein. There are a number of tables which further aid in the finding of statutes printed elsewhere. In a Parallel Reference Table are arranged in three parallel columns the serial sections of this compilation, the volume and page of the same matter in the Federal Statutes Annotated (2d ed.), and the corresponding section numbers in the United States Compiled Statutes. A Table of Statutes gives in the first column the section numbers in the Revised Statutes, and in a parallel column the section numbers of this compilation. This table is brought down to date by an arrangement of the laws since 1874 in chronological order, placing under each year, in parallel columns, the day of enactment, the chapter and section of the original law, the volume and page of its inclusion in the Statutes at Large, and its serial section in this compilation. The Judicial and Criminal Codes have separate parallel column references to the sections in Barnes' Code. There is still another table of important acts by their popular names, such as the Mann Act, the Webb-Kenyon Act, the Hepburn Act, etc. The statutes are also very thoroughly indexed, the index appearing to be a decided improvement over most indexes in works of this type.

Throughout the compilation appear many valuable historical and explanatory notes. The Declaration of Independence, the Articles of Confederation, the Northwest Territorial Government Ordinance, and the Constitution of the United States, with its seventeen amendments, are also included.

The editorial work shows care, skill and scholarship.

O. L. McCaskill.

Constitutional Power and World Affairs. By George Sutherland. Columbia University Lectures on the George Blumenthal Foundation for 1918. Columbia University Press, New York. 1919. pp. vii, 202.

The book consists of eight chapters or lectures devoted to a study of the Constitution of the United States with reference to the powers of

external sovereignty as distinguished from the powers of internal sovereignty of the national government. It is admitted that the powers of internal sovereignty are subject to limitations, but the contention of the author is that "we must be able to assert and maintain for that government the unimpaired powers of complete external sovereignty. * * * The complete powers of the governments of other nations must be matched by the complete powers of our own government. * * * Our government must come to its new tasks not only with full, but with unquestioned powers."

In the course of the development of this theme the author discusses The Great War—Democracy and the Constitution; The Powers of the National Government; The External Powers—Extent and Limitations; The War Powers—Nature, Basis and Distribution; The War Powers—Extent and Limitations; The Treaty-Making Power—General; The Treaty-Making Power—How Far Limited; and After the War.

Although the chapters on the Treaty-Making Power cover ground already covered by innumerable papers and books of the last fifteen years they may still be said to be among the best in the book and they serve clearly to illustrate the author's point of view. No competent student of public affairs has risen to deny that in treaty-making the national government has full powers, although states have found reason to protest against some of the practical results of treaties, but the author's treatment of the matter is clear, satisfactory, and at times learned. The chapters on the War Powers likewise deserve favorable comment and it is possible that they may have interest for even the casual reader.

Other chapters, notably the opening and closing chapters, are less satisfactory. They are of the expansive type of utterance so commonly heard in Congress, and they are not so convincing as those devoted to legal and historical treatment of constitutional matters. Throughout the entire book there is a considerable lack of understanding as to what readers may be expected to know about the Constitution, about the Constitutional History of the United States, and about political theory in general. The ex-Senator has the customary stock of History and Political Science of the lawyer of the old school and much that he labors with so painfully is neatly disposed of by the average collegian in three lines.

Perhaps the most gratifying thing about the book is the evidence of constant and careful attention to matters of this sort during a Senatorial career of considerable length. There are abundant signs of real application to the materials of our history. One ean not fail to find a certain encouragement in this fact. *Julian P. Bretz.*

The Development of German Prize Law. By Charles Henry Huberich and Richard King. Baker, Voorhis & Company, New York. 1918. pp. 61.

This is in the main a reprint of an article which appeared in the Columbia Law Review, June, 1918. The pamphlet is not a historical treatise as the name might imply, but simply brings down to date an earlier work of the same authors, "The Prize Code of the German Empire" as in force July 1, 1915.

The purpose of the study, as stated by the authors, is the consideration of some of the more important decisions of the German Prize Courts substantially in the order of the articles of the Prize Code. The Prize Code follows the order of presentation of the Declaration of London and an attempt was evidently made to incorporate the main provisions of the Declaration into the Code. Proclamations relating to submarine warfare are not discussed for these are considered as purely military and political in their nature.

Is the Prize Code itself a law or is it merely a set of instructions to naval commanders? In the light of court decisions and legal authorities the conclusion is reached that it has in part the force of substantive law, while certain articles are clearly in the nature of instructions to commanders.

The law administered by German Prize Courts is municipal law even if in conflict with the principles of international law. This, however, is not peculiar to Germany. Prize courts are national courts functioning as directed by the customs, statutes or special regulations of their state; but in some states the courts exercise greater discretion than in others in deciding such cases.

The jurisdiction of German Prize Courts is more limited than that of the English. Seizure, or at least an intent to seize, as a prize, a neutral or enemy vessel or cargo is considered essential to confer jurisdiction. Jurisdiction does not extend to enemy goods on German vessels, nor to German vessels engaged in prohibited commerce or in aiding the enemy, nor to German goods on board any vessel, nor to public vessels of any state. Capture is in general made by war vessels, but may also be made by land forces or by port authorities.

Under the heading Enemy Destination it is interesting to note that in the Ordinance of April 18, 1915, is found the beginning of the adoption of the doctrine of continuous voyages in the case of conditional contraband and that later this doctrine was materially extended so that the burden of proof came to rest on the claimant to show innocent destination. In all cases it is the destination of the cargo and not of the vessel that is regarded as material.

The Prize Code followed the Declaration of London in its provisions concerning Unneutral Service, but later ordinances made radical changes. The Ordinance of April 24, 1918, provided that unless the facts show the contrary, a neutral vessel shall be regarded as navigating in the interest of enemy warfare, if the state whose flag the vessel is entitled to fly has concluded an agreement with an enemy state respecting the use of cargo space, or if the greater part of the merchant marine of the neutral state in active service is navigating on behalf of the enemy.

German Prize Courts allowed no compensation to neutral owners for property on board destroyed prizes if the destruction was held justifiable. The code permits destruction if the bringing in of the vessel appears to the commander to be inappropriate or unsafe. Cases of vessels and eargoes sunk by submarine would of course not come within the jurisdiction of the Prize Court, as has already been noted.

The authors have made good use of German source material which has not been generally available and have presented the results of their study in compact and systematic form. These results will undoubtedly be incorporated in a revision of the carlier volume.

R. S. Saby.

A Treatise on the Law of Public Service Companies. By Needham C. Collier. The F. H. Thomas Law Book Co., St. Louis. 1918. pp. xvi, 727.

We have in this book a most confused mixture of material, entirely innocent of scientific arrangement, and giving no evidence of scholarship. The author seems ignorant of the history of common callings, and quite oblivious of the part played in the law of public service by the grant and receipt of franchises. Furthermore, he asserts that police power "confers no right to fix rates" (p. 187). His chapter on "Valuation in Rate Making" is fairly typical of the whole book. It covers only fourteen pages. It contains no discussion of the advantages of measuring value by cost of reproduction less depreciation, over the advantages of measuring value by original investment; or of the proper method of valuing land; or of the proper treatment of appreciation, piecemeal construction and cost of engineering and promotion; or of the propriety of giving a value to franchises for rate purposes. The chapter contains a section on "going value," which, the author concludes, "if not good will is nevertheless in the nature of good will." (p. 324.)

The English in the book is careless, and throughout the sentences are confused and awkward. A few instances picked at random will suffice as illustrations: "Society is so constituted that some of its members in pursuing their avocations [*sic*], need the special use of facilities which are intended for the equal advantage of all." (p. 1.) (See also twelfth line, p. 185.) "Common rights in trade and traffic is one thing. Common rights in what belongs to the public is another." (p. 17.) "At present consideration is confined to what were deemed public landings at common law. These were places to which access was had by reason of their relation to the navigable waters of the British realm. They were places in its public ports, to establish which it was the prerogative of the King." (p. 35.) "The fact that this is the creation of a monopoly, and, therefore, a business which enjoys a monopoly which is affected with a public use, it is not a monopoly in the sense spoken of in the Case of Monopolies." (p. 39.) "To be more precise as to the beginning of this development reference is made to the Munn case decided in 1876. This case and another, decided in 1913, is, as said in a dissent by Justice Lamar, concurred in by the Chief Justice and Justice Van Devanter, a 'land mark in the law * * *'." (p. 182.) "The right has so to speak, been woven into our system, as we inherited that from our common law origin. Its adoption [*sic*] to our new conditions has passed beyond theory and has become a part of our legislative and practical experience." (p. 243.) "It is shown that the majority of the English opinion and two American cases that the principle of reasonableness of charge does not compel the conclusion that this means equality of charge. But independently of statutory regulation this has been derived. The effect of the state taking over regulation is to commission a public service company to perform a public duty. It is clothed like a public officer to execute the law with absolute impartiality for all." (p. 298.)

The book contains an appendix of over two hundred pages containing the procedural parts of the commission laws of the various states, annotated. *C. K. B.*