

# BOOK REVIEWS.

THE LAW OF INTERSTATE COMMERCE AND ITS FEDERAL REGULATION, By Frederick N. Judson (3d Ed.). Chicago: T. H. FLOOD & COMPANY, 1916.

Our attention has lately been called to an editorial which appeared in one of our leading periodicals in regard to the effect of legislation.

The editorial writer stated that there had only been, since the Proclamation of Emancipation, three acts of Congress which had directly and positively affected the progress of the people of the United States, the first of which he considered the Interstate Commerce Act. It is unnecessary for our purpose to mention the others. If this be true, and in a large measure we hold that it is, an author could scarcely devote his time and thought to a more important subject than interstate commerce, and any law or laws pertaining thereto.

Mr. Judson first published his work on interstate commerce in 1905. This edition soon becoming exhausted, the second edition was published in 1912. On account of the exhaustion of the second edition, the growing importance of the subject and the enactment by Congress of amendments to the Interstate Commerce Act, the Trades Commission Act, and the Clayton Anti-trust Act, a third edition was made necessary, according to the statement made in its preface by the author. It is also true that in the second edition, some of the conclusions reached by the author based on decisions of the Circuit Courts of Appeals, had ceased to be the law after the Supreme Court had announced its decisions. But the second edition was published before the Supreme Court had had an opportunity to settle the law. We agree with Mr. Judson that there was apparently a need of a third edition.

We will now examine the structure and the matter of this book. The author starts with the Constitution of the United States, selecting therefrom those articles and sections and amendments thereof which apply to the subject of commerce. He then proceeds to give us the political and judicial history of the incorporation into the Constitution of these provisions, and gives us some of the political history of the necessity of such provisions in the Constitution and points out how essential they were to the success of the Government as projected by the framers of the Constitution. Then follows a discussion of the *vexata quaestio* of the power of the State to legis-

late affecting interstate commerce when Congress had not legislated upon the subject. This discussion is full and final. That is to say, as final as any question of law can ever be, because the author has relied for his conclusions upon the latest decisions of the Supreme Court of the United States. It is not to be inferred from this that there has been any shirking on the part of the author in reading and digesting all of the cases on the subject, because the book abounds with citations from courts of all jurisdictions. But certainly it is a work of supererogation and would tend to confusion to give all the State and Federal authorities when the Supreme Court has finally announced a rule of law.

The author then passes to the discussion of the Federal power of regulation in interstate commerce, and takes the view that fortunately the framers of the Constitution wisely stated the Federal power in language so broad and comprehensive that it is as clearly applicable to the complex conditions and agencies of the present day as it was to the simple conditions and agencies when the Constitution was adopted. Mr. Judson believes "that the Constitution of the United States marks only the great outlines of power to be possessed by the government, without attempting to enumerate in detail and to specify each and every one," and says, "this great principle of Constitutional law is happily illustrated in the simple and comprehensive phrase of the Commerce clause."

It is pointed out that the Supreme Court has refused time and again to formulate a general rule or the precise lines where the power of Congress begins and the power of the State ends, and after an ample discussion of this subject, we are pointed to the conclusion reached in the Shreveport Rate Case (*Houston E. & W. Texas R. Co. v. United States*, 234 U. S. 342, 58 L. Ed. 134, in 1914), where the Court said: "Whenever the interstate and intrastate transactions are so related that the government of one involves the control of the other, it is Congress, and not the State, which is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied its constitutional authority, and the State and not the Nation would be supreme in the national field."

Succeeding this discussion of the Federal power to regulate, we have a treatment of business combinations in interstate commerce, or "Trust" legislation and decisions. There we not only have reaffirmation of the law as laid down in the Standard Oil case, the Bath tub Trust case, the Tobacco Trust case and all of the trust cases decided

by the Supreme Court of the United States, but a discussion of the recent Clayton Act and the Federal Trades Commission Act, and their relation to the Sherman Anti-trust Act, and to the body of law which has grown up in construing the Sherman Anti-trust Act. Of course, the decisions under the Clayton Anti-trust Act and the Federal Trades Commission Act are few, owing to the fact that they have been so recently enacted. But Mr. Judson has not shrunk from the responsibility of a construction of these laws, and in fact questions the validity and constitutionality of those sections in the Trades Commission Act which would seem to confer judicial authority on the Commission, or those sections such as Section 9, which would seem to violate the constitutional immunity of the citizen from unreasonable search and seizure. But the author points out that although these sections may be declared unconstitutional, yet the sections are separable, and if they are repugnant to the Constitution, the act as a whole is not necessarily thereby affected.

We wish that the limitations of this review permitted us to follow Mr. Judson in the discussion of the many interesting and vital questions presented, when one considers the importance of the subject; but we cannot. It should be pointed out, however, that after discussing in a general way the regulation of interstate commerce, the several acts regulating interstate commerce are taken up and section by section, annotated and discussed. This is not only true of the Interstate Commerce Act, but the same treatment has been given the so-called "Police Acts" relative to interstate commerce, such as the Employers' Liability Act, the Safety Appliance Act and the amendments thereof, the Hours of Service Act, the Twenty-eight Hour law, and all the recent decisions construing these acts are discussed and harmonized, or placed in striking antitheses.

We cannot close the review of this book without calling especial attention to what we consider its *usefulness* as a publication, not only to the student of the subjects discussed, but to the practicing attorney. In the first place, Mr. Judson has given the date of every case cited, which in itself is a wonderful guide to the growth of the law of interstate commerce. Then, too, nearly every decision of the Supreme Court shows whether or not the Court below was affirmed or reversed. The citations are given, not only to the official reports, but to the Lawyers' Edition, and often to the L. R. A. The Appendix of the book contains the rules of practice before the Interstate Commerce Commission, the rules of practice before the Federal Trade Com-

mission, the Federal Trade Anti-trust Act *in haec verba*, the Clayton Anti-trust Act, the Interlocking Directors' Act, the Ash Pan Act, the Report of Accidents Act, the Locomotive Boiler Inspection Act and the forms of pleading before the Interstate Commerce Commission. The book itself is based upon some 1650 citations of authorities; but this does not include decisions of the Interstate Commerce Commission which are numerous and illuminating.

Mr. Judson has written an able and useful book on an important subject. It has been a pleasure to read it and a pleasure to review it. In his preface Mr. Judson acknowledges his appreciation of the "very efficient assistance" rendered by Mr. Eustace C. Wheeler of the St. Louis bar in the general revision of the text, and in the important work of preparing the index which is exceptionally complete, consisting of no fewer than 100 pages.

INTERNATIONAL LAW AND THE GREAT WAR. By Coleman Phillipson of the Inner Temple), with an introduction by Sir John MacDonell. New York: E. P. DUTTON & Co., 1916.

Is so-called international law truly law at all? This question, so long debated by lawyers, is answered with an emphatic affirmative by Mr. Phillipson. Those who disagree with him on this point are designated "arrogant and capricious," and are always Germans—if we are to rely on his book alone. This shows how war affects the judgment of a scholar. No German ever was more dogmatic than the 3rd Marquess of Salisbury, or more plausible than Professor Thomas Erskine Holland, in denying the legal nature of what is called international law. The names of these eminent Englishmen are not mentioned by Mr. Phillipson when he denounces Treitschke, Von der Goltz, and Bernhardi. Although written by a biased and immoderately patriotic Englishman, the book is interesting and valuable throughout. The viewpoint is supposed to be the viewpoint of international law. The inherited principles and ideals of international relationship, the language of treaties, and the rules of the Hague Conferences are set forth clearly and accurately. And in connection with these things the actual events of the European war are narrated—by an Englishman who honestly thinks that international law is an inestimable boon for humanity and is being rigidly adhered to by England. It is to be hoped that similar books are now being written by Germans and Frenchmen, by Swedes and Americans. After the war is over, these books, written by idealists in the heat of controversy, ought to be of much use in the revaluation of international law, and