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Book Reviews

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probable, even the most skeptical must admit that the present trend in the United States is toward centralization, and away from states rights.

For a remedy to this present trend, if one be desired, the procedure seems to be political rather than judicial as the Supreme Court will probably continue to adhere to the present policy of increased federal powers.

James H. New.

BOOK REVIEWS

DEMOCRACY OR ANARCHY.*—A study of proportional representation. By F. A. Hermens, University of Notre Dame. Published by The Review of Politics, University of Notre Dame, 1941. With an introduction by C. J. Friedrich, of Harvard University. Pp. xxx, 447. Index. \$4.00.

Even the most passionate believers in Proportional Representation as a cure for most, if not all, evils of democracy, will admit that Dr. Hermens' treatise is a work of exceptional industry and research. Those friends of P. R. who are objective enough to reconsider their premises in the face of a strong presentation will undoubtedly concede that Dr. Hermens has advanced a case which will require a powerful answer if their cause is not to be seriously weakened and possibly destroyed. To a man who was elected to Parliament under the P. R., but on a platform of opposition to it in its most dangerous form to democracy, the list system, P. R. itself being established by the Constitution, the accuracy of Dr. Hermens' conclusions is almost startling. For while Dr. Hermens did not find it possible to examine the effects of P. R. on the fate of the Czechoslovak Republic, no candid observer, familiar with the political life of that country, can deny that the seamy side of the political life of Czechoslovakia was to a considerable extent due to an uncritical adoption of P. R. by a so-called Constitutional Assembly which was not even elected, but was composed of delegates of pre-war Czech political parties on the basis of their strength in the old Austrian parliament with the addition of Slovak representatives, really coopted but not elected.

When Dr. Hermens points out that P. R. destroys leadership and prevents the rise of outstanding personalities as leaders, he describes Czechoslovak experiences without perhaps being aware of the fact. Speaking of the Czech delegations only and not of Austrian parliamentarism generally, candid Czech patriots always admitted that the level of Czech parliamentarism during the Republic did not compare

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with Czech pre-war representation in Vienna, due largely, if not entirely to the fact that members of parliament owed their seats to a great extent, if not completely, to party — its executive committees — and not directly to the electorate. Indeed, parliament was composed chiefly of party routineers, more interested in fate of party than of state, not perhaps consciously, but effectively just the same.

Under the system, as Dr. Hermens points out, "passing the buck" became common. The National Democrats, by word and printed letter, always opposed the nebulous foreign policies of Dr. Benes, but cast their votes for them, claiming, quoting Dr. Hermens, "that they are only one of several elements in the combine and insisting that it is the fault of others if things are not as they should be."

Even among the Czechs themselves there were too many parties, such as the small traders or businessmen party which never could have arisen under the majority system, with a parliamentary representation restricted to the narrowest of group interests.

With certain exceptions parliamentary debates became mere recitals of written mediocre speeches. This was particularly evident in the field of foreign policy. The long tenure of Dr. Benes in the foreign office was largely made possible by a parliament more interested in petty party or group advantages than in great questions of state with the result that real criticism was extremely rare and the public was never adequately informed of dangers surrounding the state. A Gladstone never enjoyed such terms.

The Sudeten area was never purely German, except in spots, but P. R. resulted in giving German nationalists a much larger representation than they could have obtained under the majority system. These nationalists were enemies of the state, as became clearly evident following the rise of Hitler to power in Germany, and their power was undoubtedly enhanced by the P. R. list system. When Dr. Hermens says that P. R. weakened the Weimar republic, the same observation applies to the Czechoslovak republic, perhaps more so.

To describe the political life of Czechoslovakia as developed under the P. R. would require a treatise as extensive as that of Dr. Hermens, a task left for another occasion. I have touched upon it here only because Czechoslovak experience lends much support to Dr. Hermens' thesis. Proportional representation to any one of democratic persuasion is an attractive idea, especially if we forget that representation is only one aspect of the democratic process. But in the light of experience of European democracies and near-democracies, its validity requires re-examination before more serious attempts are made to adopt it in Anglo-Saxon countries.

Charles Pergler.

Washington, D. C.

IN AND OUT OF COURT. By Francis X. Busch. De Paul University Press, Chicago, Ill. 1942. \$3.00. Pp. xii, 306.

In and Out of Court is a captivating story of the law in practice. Its outstanding characteristics to the reviewer is the author's simple yet spirited portrayal of his many legal cases and the intensive amount of local color packed into each chapter of the work. The combination of each of these characteristics throughout the entire book invigorates the reader's imagination and instills a true appreciation of courtroom scenes even to a person not well acquainted with trial technique.

The book is so constructed that each chapter is a story in itself, portraying interesting situations in both civil and criminal cases, and exemplifying the methods and practices used by the trial lawyers handling the cases. It is a practical and entertaining book not in the least theoretical. It combines the drama of the trial, exciting and strange situations with humor and the brilliance of sparkling personalities, and draws its descriptions from the vast background of the author's forty years of intimate experiences in the legal profession.

In addition to the wealth of entertainment that it provides, there are presented many practical lessons in the phase of gathering and presenting evidence in trial work.

The work should be light and pleasant reading for older attorneys, and an inspiration for younger ones. It should be read by all who believe the legal profession lacks color, is drab or is not up to the times in wit, humor or fascination.

William J. Syring.

RESTATEMENT OF THE LAW OF SECURITY. American Law Institute Publishers: St. Paul.

For many years prior to 1932 the subjects of Mortgages and Suretyship were dealt with in separate casebooks, and still are so dealt with for that matter. Such subjects as Chattel Mortgages, Pledges, Conditional Sales, Warehouse Receipts, and Trust Receipts received scant, if any, attention, and then only in the casebooks on Mortgages and other subjects. But in 1932 Professor Hanna's casebook on Security was published (the second edition was published in 1940), in which he dealt with Real Estate Mortgages, Suretyship, and Personal Property as Security (including chattel mortgages, pledges (paying special attention to the relation of broker and customer), small loans, trust receipts, letters of credit, and warehouse receipts). In 1940 Professor Osborne's casebook on Property Security was published. Most of this book is devoted to real estate mortgages. About one-third of it (242

pages) deals with personal property as security (including such subjects as pledges, chattel mortgages, conditional sales, and trust receipts). A one-volume casebook on Suretyship and Personal Security Transactions (including Chattel Mortgages, Conditional Sales, Pledges, and Trust Receipts), in preparation by Professor Simpson, has been advertised by the West Publishing Company. I am not informed as to whether or not this casebook has been published. These casebooks show a trend towards shortening the space that may ordinarily have been devoted to Suretyship and dealing with other subjects within the time usually allotted to Suretyship, in an effort to acquaint the student with the variety of security devices used by the commercial lawyer.

In the Restatement of the Law of Security we have for the first time one text dealing with many of the subjects included within the modern casebooks mentioned above. This work is a statement of the "general common law" of Personal Property as Security (including Pledges, and Possessory Liens) and of Suretyship. The chapter headings are: Nature and Requisites of Pledges; Incidents of the Pledge Relationship; Enforcement of a Pledge; Possessory Liens; Nature and Creation of Suretyship; Surety and Principal; Surety and Creditor; Cosuretyship and Subsuretyship; Third Party Beneficiaries in Construction Contracts; Official Bonds; and Judicial Bonds. Chattel Mortgages, Conditional Sales, Trust Receipts, the relationship of broker and customer, and security interests in land are not included as general subjects, but receive some attention. Priorities between a chattel mortgage and a possessory lienor are dealt with in sections 76 and 77. The question of priority as between a pledgee and a chattel mortgagee is dealt with in Section 35 (a). Fifty-eight sections are devoted to "pledges," twenty-two sections to "possessory liens," and one hundred and thirty sections to "suretyship" (including "official bonds" and "judicial bonds"). There is some discussion of the relationship of broker and customer in connection with sections 12, 41, 42, and 44. A Special Note to section 43 sets forth the provisions of the Chandler Act concerning administration of the estate of a bankrupt broker. A Special Note to section 10 sets forth section 60 of the Chandler Act concerning "Preferred Creditors." There is some consideration of the Uniform Sales Act under sections 2 and 10. A few references are made to other uniform acts (the Uniform Warehouse Receipts Act and the Uniform Bills of Lading Act, under section 13) and to other restatements. In defining the remedies for breach of contract by a pledgor, section 326 of the Restatement of Contracts is set forth on page 55. The ways in which a conversion may be committed, as stated in section 223 of the Restatement of Torts, are set forth under section 22. These repetitions can hardly be avoided, because of the overlapping necessarily involved in this work. So, in regard to the repetition, under "Suretyship," of several of the rules set forth in the Restatement of Contracts and, to a lesser extent, of rules set forth in the Restatement of Restitution. The

sections of the Restatement of Contracts dealing with the Statute of Frauds are largely derived from "suretyship," and so have peculiar applicability to "suretyship." Little space is devoted to such contract matters, in creation of the suretyship relation, as capacity to become a surety, acceptance of an offer, revocation of an offer, and interpretation of suretyship contracts. Important application of rules in connection with these matters are dealt with sufficiently.

In a Caveat to section 129, the Institute refuses to take a position as to whether a maker of a negotiable promissory note who is a surety for another party to the same instrument is discharged by a binding extension of time on the instrument without his consent. A definite position might have served to eliminate the conflict of judicial opinion on this subject.

Chapter 7, dealing with "Third Party Beneficiaries in Construction Contracts," is especially valuable in connection with public and private construction enterprises. This chapter alone makes this Restatement worth many times its cost to all persons interested in construction enterprises where there is a surety for the contractor on a construction contract.

Chapter 6, dealing with "Cosuretyship and Subsuretyship," contains an excellent analysis of the subject of "contribution."

Many other valuable features of this Restatement could be detailed. In view of the scope of the subject and the apparent plan of those who prepared this work, I think it is "a difficult task well-done."

W. D. Rollison.