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Contemporary Religious Jurisprudence by J. A. Rubenstein

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BOOK REVIEWS

CONTEMPORARY RELIGIOUS JURISPRUDENCE, J. A. Rubenstein, Waldman Press, P. O. Box 97, Chicago 90, Ill. 1948, pp. 120. \$2.25.

"Contemporary Religious Jurisprudence" is a rather high-flown title for what is basically an undigested collection of cases involving fortune-tellers, faith healers and pacifists.

The author thinks the tenets of these people seriously threaten the public morals, health, welfare and safety and that it is absolutely necessary to impose and enforce legal restrictions and limitations upon their practice. That he is not concerned solely with extremes of conduct is best evidenced by his statement that "These tenets, one or more, and in various forms, are exploited by most, if not by all, of the contemporary sects," (i.e. religious denominations?). This seems to be a rather broad statement if the words fortune-telling, faith-healing and pacifism are taken in their ordinary sense. The author is not inclined to make fine discriminations, however, and in one sentence lumps Christian Science practitioners and Seventh Day Adventist clergymen along with conjurors.

The author seems equally unable to make discriminations when it comes to the question of the border line between police power of the state and religious liberty of the individual. The formula "The law can punish religious practices which are criminal offenses" solves all problems whether of prophecy (p. 23), faith-healing (p. 64), or pacifism (p. 107) As long as the legislature has pronounced something criminal, he implies, no further question of constitutionality can arise. One feels that the author has little patience with any assertion of religious belief that does not satisfy *his conception* of what is good for society as a whole—in short, that he is just a little intolerant. He seems to be basically out of step with the feelings of Mr. Justice Holmes in regard to freedom of speech which so influences the majority of the present Supreme Court in its handling of problems of freedom of speech and religion. Surely one can believe that prophecy faith-healing and pacifism are delusions without insisting so strenuously on the duty of law to take active measures to check their every manifestation. In a country with such variation in religious belief as the United States, our national existence demands that we act on Mr. Justice Holmes' belief that "the best test of truth is the power of the thought to get itself accepted in the competition of the market" and his warning that "we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country"¹ Necessarily this limitation is not a mat-

¹ *Abrams v United States* 250 U.S. 616, at 630 (1919)

ter of absolutes but of degree; it is just at this point that Mr. Rubenstein's dislike of these practices leads him to the same sort of absolutism that he so denounces in "religious zealots."

One wonders whether his own zealotry has not caused him to misread some of his cases. For instance, he reads the case of *Lange v. Hoyt*,³ as holding that although an infant Christian Scientist, entirely dependent upon her parents for care, can recover for all her injuries which were inflicted by defendant's automobile, including aggravation resulting from failure to obtain proper surgical care during a 25 day period, the adult Christian Scientist parent could not recover for medical expenses resulting from the aggravated injury. Says Mr. Rubenstein: "The trial judge had instructed the jury favorably for the defendant insofar as the claim of the mother was concerned. In reviewing this point, the Connecticut Supreme Court intimated that such instruction was justified by the facts in this case." (p. 72)

The reviewer's reading of the case is quite to the contrary. The plaintiff's mother, Minette B. Lange, sued to recover expenses incurred by her as a result of injuries to her daughter. The court instructed the jury that:

"the conduct of both plaintiffs with reference to the presence or absence of reasonable care was to be judged in the light of all the surrounding circumstances including whatever belief as to methods of treatment the jury might have found they conscientiously held."³

The jury found for the plaintiff, Minette Lange, as well as for her daughter and the trial court refused to set aside the verdicts. In approving the instruction given by the trial court, the Supreme Court of Errors of Connecticut said:

"While the test of conduct on the part of a plaintiff in promoting a recovery from injuries suffered is one of reasonable care and cannot be made to depend upon the idiosyncrasies of personal belief no matter how honestly held, courts cannot disregard theories as to proper curative methods held by a large number of reasonable and intelligent people. Reading the charge in the light of the facts claimed to have been proved, it went no farther than saying that, in determining whether the plaintiff Minette B. Lange exercised a reasonable degree of care, the jury were entitled to consider with all the other evidence her conduct in the light of her belief in the doctrines of the Christian Science Church and the extent to which she acted in accordance with them."⁴

It seems to the reviewer that this statement in effect leaves to the jury, under the general concept of reasonableness, the question

114 Conn. 590, 159 Atl. 575 (1932)

³ *Id.* at —, 159 Atl. 577.

⁴ *Id.* at — 159 Atl. 576-578.

of whether or not the adult plaintiff is to be barred from recovery for medical expenses incurred by reason of the aggravation of the injuries of her daughter due to the parent's insistence on treatment by a Christian Scientist practitioner instead of by a regular medical doctor. This is far from a rule of law imposing upon adult Christian Scientists the duty of obtaining exactly the same care that a non-Christian Scientist would obtain for the same injury. Whatever one may think of the desirability of the holding in the *Lange* case, it is submitted that the author has misstated it.

The book's only value is in its collection of cases, under three novel headings. Its utility for this purpose is unfortunately impaired because of the failure to insert a table of cases.

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THE FEDERAL INCOME TAX: A GUIDE TO THE LAW, Joyce Stanley and Richard Kilcullen, The Tax Club Press, 822 Madison Avenue, N. Y. 21, N. Y. pp. xv, 344. \$6.

This book is not a treatise on the income tax. The authors do not profess to attempt more than a guide to the Federal income tax. It is therefore written in lay language for the guidance of the non-expert in both the general public and in the legal profession.

This book follows its subject through the Internal Revenue Code, section by section. There is in addition under each section an attempt to bring to bear the more important features of the administrative regulations and the leading cases. Where there is controversy concerning the application of a specific section the problem is indicated, without any attempt to give a reasoned answer to that problem.

An interesting and helpful feature of this work is the careful phrasing of the sentences which explain the scope and purpose of many of the important sections. In addition the discussion of many sections is clarified and simplified by the inclusion of practical illustrations.

The material in the book is quite current and illustrated by the presence of a discussion of the "income splitting" additions made by the 1948 Revenue Act. It is possible that subsequent changes may be supplied by the authors since the book's construction permits the addition of a pocket supplement. The index appears adequate for the purposes of a guide.

This book will be a substitute for the elaborate tax services so indispensable to the initiate in this field. The authors recognize this in their conclusion when they say: "The book is planned as a guide for those who wish to understand income tax law. As stated in