

Yet the author devotes no space to them. Nor are many important decisions of the last quarter century even cited, e. g., *Citizens Banking Company v. Ravenna National Bank*, *Richardson v. Shaw*, *Clarke v. Rogers*—veritable landmarks. Further, the text of the book for the most part merely quotes the sections of the act and amplifies thereon, citing a few cases and giving an occasional simple illustration. It contains little analysis or light that will aid the perplexed student or puzzled lawyer who is wrestling with a problem that defies solution. He has read the book and knows the formula; but the formula fails to make sense. He wanted analysis and got definitions.

The reviewer would not discard the book entirely. It has its function. Students might be better students of bankruptcy if they read the book. It quite accurately pictures to them the wheels going 'round, and seeing wheels go 'round may make a mechanic a more intelligent mechanic. But it stands to reason it does not make a mechanic.

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THE DOCTRINE OF CONTINUOUS VOYAGE. By Herbert W. Briggs.
Baltimore: Johns Hopkins Press, 1926. Pp. 226.

This is an excellent monograph, well organized and balanced, on a so-called doctrine of international law which enables a belligerent to seize neutral ships or goods for violation of (a) trades forbidden to neutrals, (b) restrictions on the carriage of contraband, or (c) blockade, even though the ship or cargo is not directly destined for a belligerent port. It is a comparatively modern doctrine, not known before the eighteenth century. So important is it, that the legal system involved in the compromise between belligerent and neutral rights, known as international maritime law, may be destroyed if the doctrine is not strictly limited to its historical and consensual scope.

The author, by an analysis of the decisions of prize courts, prize regulations and Orders in Council traces the development of the doctrine since the "rule of the war of 1756," forbidding neutrals to participate in colonial trade necessarily closed to them in time of peace, its application by Great Britain to blockade and contraband, its unusual extension in the Springbok case in the Civil War and its expansion through other wars down to the European War. At that time, the rules of international law having the concurrence, it is believed, of the majority of the Powers, limited the application of the doctrine to absolute contraband and denied its application to blockade or to goods conditionally contraband, like foodstuffs; though it must be conceded that the ill-considered criteria for conditional contraband established by the Declaration of London left the matter of military destination not altogether clear. Many writers, as well as prize courts, have contended, in support of the abuses of the doctrine perpetrated during the European War, that these limitations were not "logical" (*The Kim*). Of course, they were not. In the delimitation between two

conflicting claims, the claim of the neutral to trade with the belligerents without restriction, and the claim of the belligerent to shut off as much of his adversary's trade as possible, a compromise must be and had been struck. This represents the rule of law. Either claim driven to an extreme would extinguish the other. The conflicting claims between state and federal power, e. g., under the commerce clause, and between the police power and the Fourteenth Amendment, are not logical; they are compromises between otherwise irreconcilable claims, and the line must be observed, otherwise the rule of law is a myth. The boundary line determines the limits of the legal rights of the two parties in interest. Any breach of the line by mere physical force is a violation of law.

International law had developed and established this line in 1914, with respect to maritime war, at a point fairly ascertainable and recognizable. Ever since the Armed Neutrality of 1780, neutrals, in the endeavor to restrict the devastation wrought by war and in the commendable desire not to be involved in and suffer from other people's quarrels, had compelled belligerents to concede as a rule of law, that they could stop or interfere with neutral trade, even with the other belligerent, only when there was an attempted breach of blockade, a carriage of contraband, or other unneutral service, and these terms were moderately well, though not completely, defined. Continuous voyage was recognized within the definite limitations mentioned.

Chapters 7 to 10 of the work under review are devoted to an analysis, by topic, of the gradual break-down of these limitations on belligerent rights in favor of neutrals, mainly by the British government and prize decisions, during the late war. In the abuse of the doctrine of continuous voyage the major wedge was inserted for this work of destruction. The course was marked by its extension first to goods conditionally contraband, like foodstuffs, leading up gradually to the abolition of the distinction between absolute and conditional contraband, with the implicit erasure of the distinction between combatants and non-combatants; the so-called "measures of blockade," preventing legitimate trade between neutrals, and preventing ordinary trade between neutral countries contiguous to Germany and Germany; the practical prohibition of all trade direct or indirect with Germany by extending the lists of contraband to include almost everything usable by a human being; the invention of new presumptions as to hostile destination; the admission of inferences, extrinsic evidence and statistics from which further inferences of hostile destination were indulged; the shifting of the burden of proof—perhaps the most effective abuse of all—from the captor to the shipper, compelling him to prove that ultimately the goods would not reach enemy territory, a burden practically impossible to meet; the alleged justification of these abuses on the ground of retaliation; the taking of neutral ships into British ports for examination, thus wiping out the legal restrictions laid on visit, search and capture; and finally, the practical prohibition of all trade with continental neutrals without British or Allied

consent. These measures are examined by the author in the light of the British measures and of the American protests. In the abandonment of American neutrality, practically the last substantial defense against violations of neutral rights, including American, was broken down. It may have serious consequences for the world's future.

In his Conclusions (Ch. XI) the author questions whether "the doctrine of continuous voyage . . . can continue to exist without gravely imperiling international maritime law." The doctrine can, but not its abuses. Its abuses are irreconcilable with law, and one or the other must give way. The author, though admitting that "the neutral . . . has international law on his side in this matter" seems discouraged about the possibility of rescuing the law, for he deprecatingly suggests that there may be no solution short of a new rule of international law "forbidding neutrals to trade at all with any belligerent." Shades of Washington and Jefferson! When the law is violated, abandon the law; when neutral rights are violated, surrender them! This would be a genuine revolution and would not make the future secure. All that neutrals have fought for since 1780 is thus to be surrendered, and worst of all, only "when the belligerents are the big Powers" shall this abandonment of neutral rights be tolerated. We would thus have two sets of rules—or rather practices—one for the powerful belligerents and one for the lesser belligerents. Apart from the abandonment of law involved, the chaos thus invited presents no hopeful future to the race. As a matter of fact, the excellent text does not justify or indicate the author's hopeless conclusion. The British government occasionally admitted that it was not complying with the rules of international law, but sought to justify the departures on retaliatory or other grounds. A submission of the neutral claims to arbitral adjudication and the payment of compensation would do much to restore confidence in the rule of law. That would be in the British interest, for an island empire can be strangled by the precedents established in the recent Orders in Council.

There are only slight criticisms to make. Sir William Scott probably did not change his mind (p. 38) as the complete dictum in the *Twende Brodre* indicates; the *Frau Houwina* (42, 62, 83, 88) was probably condemned for (allied) trading with the enemy rather than for contraband carriage; Sir Samuel Evans himself stated in the *Hakan* that the so-called "measures of blockade" were "not a blockade at all, except for journalistic and political purposes"; John Bassett Moore predicted the weakness of the Declaration of London in the matter of "conditional contraband" (Ch. II of his "International Law and Some Current Illusions"), which the author apparently overlooked, together with Mr. Moore's important review of Hyde in 23 *Columbia Law Review* 83. The Kim's cargo was ultimately paid for by the British government. Occasional grammatical mistakes occur (139 and elsewhere). For "constitutional" (121) read "conditional," for "he" (217) "be." But these

criticisms are minor. Apart from the conclusion above mentioned, with which the reviewer finds himself in disagreement, the monograph is to be highly approved as a serious and weighty contribution to a difficult subject. By defending the rule of law, instead of accepting abuses and violations as evidence of "changed conditions," the author has rendered a service which deserves emulation.

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THE MILLER AND THE LAW. By Arthur L. H. Street, of the Minnesota Bar. Minneapolis: The Miller Publishing Co., 1926. Pp. xii+734.

This work is a well printed and attractively bound volume of handbook size compiling and classifying a great mass of extracts from court opinions selected from current litigation growing out of the milling industry and the flour and feed business. The compiler is an active practitioner at the Minnesota bar, with long and varied experience in litigation connected with these lines of business, and for years a contributor of legal materials to the *Northwestern Miller*. The book is therefore intended as a practical compilation of current practical problems in the milling and the flour and feed trades, adapted for the use of practical men in their practical affairs.

The preface candidly disclaims any purpose to enable the miller or dealer to become his own lawyer, avowing that "where the layman in the beginning saved paying a lawyer the price of a new hat, he may deem himself fortunate in the end if he gets off for the price of an automobile." The book is neither a laymen's law book nor a lawyers' treatise on law. Its scope is avowedly the much more limited and practical one of affording information to laymen which will reduce the hazards of litigation and of affording to lawyers engaged in milling or flour and feed litigation convenient access to court decisions on a wide variety of pertinent trade facts. This limited but double purpose the book seems well designed to serve.

The first purpose of the book is to supply suggestive legal information to reduce the hazards of litigation for millers and dealers in the flour and feed trade. The book opens with a chapter on the interesting and delicate question of governmental regulation of business, covering by extracts from court opinions from milling and feed cases such matters as price-fixing, misbranding, imitating foreign labels, etc. As complete exposition of the legal principles involved these extracts are of course inadequate and unrepresentative, there being opportunity neither to explain the relative bearings of police power on the one hand and constitutional guarantees under the bill of rights on the other, nor to examine the leading constitutional cases thereon, most of which happen to have grown out of other lines of business. The chapters which follow cover in the same way and subject to similar limitations a vast array of legal problems relating to the making, operation and performance of sales contracts in the trade, touching in that manner a great