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La Conscription des Neutres dan les Lultes ole la Concurrence Economique

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example, take the New York rule for unlimited damages for death by wrongful act, and the rule elsewhere for a limit of \$5,000 or \$10,000; by observation it may some day be possible to compare the different results of these two rules as to, say, careful operation of industries, fraud in trials, family welfare, etc., etc. Certainly, we ought not to be satisfied to argue finally for or against either of these rules without knowing how they work in their results. Certainly also, we should proceed to make those observations, exactly and fully. But this method of judgment is not the only one; moreover, it is not yet feasible, even for such a common rule of law; and, finally, we must also settle our ethical standards for valuing the data when we do get them. And so on for hundreds of other examples. Let the movement go on. It is a remarkable enlargement of the scope of legal thought, and a needed example of the scientific possibilities in nomology. But let this movement not be taken as involving the discard of what we have gained to date.

However, *Il Diritto Sperimentale* does not descend to concrete aspects of experimental law, like the above example. Rather, it surveys first the cosmos of legal ideas, and clears the ground for thinkers in the practical field. Chapter I deals generally with the experimental method as applied to the science of law, and herein refers to the possibility of using statistical measurements. Chapter II analyzes the concept of law. Chapters III and IV explain the author's distinction between heterogeneous and homogeneous uniformity, 'uniformity' here being used of behavior, and the text going fully into the behavioristic aspects of law. Chapter V studies the "constitution of uniformity," i. e., the various modes in which uniformity of behavior is secured. Chapter VI deals with the evolution and transformation of uniformity (by the principles of equality, liberty, revolution, progress, etc.) Chapter VII examines the idea of justice. And Chapter VIII closes with "the possibility of practical applications of the experimental method in the study of law." It was here, alas! that we expected to find concrete guidance for testing in the practical manner above suggested. But we recommend this chapter to all who expect to tread the experimental path. It will perhaps open larger and deeper vistas of speculation than heretofore. We note only that as the author cites (p. 237) the *Journal of Criminal Law and Criminology* for 1919, he is probably more progressive in his reading than many professors of criminal law in American law schools.

JOHN H. WIGMORE.

LA CONSCRIPTION DES NEUTRES DANS LES LUTTES DE LA CONCURRENCE ECONOMIQUE. By Mohamed Abdullah El-Araby. Paris: Marcel Giard. Pp. xxx + 328.

This volume is the latest addition to the growing list of the publications of the Institute of Comparative Law established at Lyons through the efforts of Professor Edouard Lambert. It undertakes to present a study of the English law of today, with regard to the legality of pressure brought to bear on persons not parties to an

industrial or economic dispute to induce them in turn to exercise a desired pressure on the adverse party—more specifically the secondary boycott as a trade weapon. The discussion is centered about the recent case of *Sorrell v. Smith*, which was decided in the Chancery Division on March 28, 1923.¹ To state its facts very briefly, Sorrell, a retail newspaper dealer, had purchased his papers from R., a wholesaler, but decided to do so from W. thereafter. Thereupon the defendants, a committee of newspaper directors, notified W. that if he continued to sell papers to the plaintiff, Sorrell, the defendants would cease to furnish him with any of their publications. At the same time Sorrell was informed that he must resume purchases from R. While the purpose of the defendants is not made clear, it may be guessed that they aimed at such a control over the retail distributors as would enable them to fix the number of distributors at whatever they might find most desirable. The present proceedings were by Sorrell, to secure an injunction against such an interference with his freedom of purchase from whom he liked. Thus the case raises once more those problems which were so far from settled by *Allen v. Flood*² and *Quinn v. Leatham*.³ Perhaps the instant case is destined to reach equal heights of fame with these two, as it has already passed through the Court of Appeal⁴ and will probably be carried to the House of Lords. The same conflict of views which the two cases just named represent, has, of course, arisen in other countries also, and the central purpose of M. El-Araby's study is to render available for continental European readers a general survey of the manner in which English judges have handled it. There is, therefore, a description in great detail not only of *Allen v. Flood* and *Quinn v. Leatham*, but also of *Pratt v. British Medical Association*⁵ and *Ware and De Fréville v. Motor Trade Association*⁶; indeed, about eighty pages are given to a synopsis of their holdings, for the benefit of readers who almost without exception will be unable to gain access to the original reports. In the same way much of the subsequent material represents an abridgement of the opinion of Russell, J., in the case under consideration. To this extent naturally M. El-Araby's work fills no need of the average American reader. In much less degree this is also true of his analysis of the meaning of the various cases and the arguments used by the successive judges. Their attempts to reconcile hopelessly divergent decisions do not merely appear vain to him—a view he only shares with Scrutton, L. J.,⁷—but utterly useless. No formula can be, or should be, discoverable by which a mechanical jurisprudence is enabled to obtain the solution of a problem by merely applying a rule of thumb to it. Some have tried to crystallize this illegal ele-

1. L. R. (1923) 2 Ch. Div. 41.

2. (1898) A. C. 1.

3. (1901) A. C. 495.

4. (1924) 1 Ch. Div. 506.

5. (1919) 1 K. B. 244.

6. (1921) 3 K. B. 40.

7. "I have read these cases, some of them several times, and find it quite impossible to harmonize them": *Ware and de Fréville v. Motor Trade Assn.*, supra note 6.

ment, which poisons the entire situation, in the existence of a conspiracy, others in an intent to injure others rather than in a desire to further one's own self interest. Some again have urged that there is a freedom to work without any outside interference, while at the opposite extreme others can see no possibility of a wrong where, as they insist, there is simply a combination of means legal in themselves and an end which likewise is legal. The unsatisfactory state of the English law, the mass of casuistry and complexity which the courts have loaded on themselves, are all demonstrated forcefully. The author concludes with a plea that the House of Lords should do what it has frankly admitted to in the cases involving agreements not to compete, that is, recognize that it is passing on a question of public policy where one decision cannot furnish an absolute guide for another but, at most, merely point the way. Doubtless, it would promote clearer thinking and hence lead to more satisfactory results if the mass of theorizing and hair-splitting referred to by him could be wiped away. To a large extent, however, the same questions would remain, merely dressed in new garments. We would still have to inquire as to the conclusions to be drawn from those magic words, "public policy." M. El-Araby recognizes this but answers that the solution would be much easier, as the searcher would really know what he was after by reason of such a realistic statement of his task. He makes no attempt to carry on the inquiry into the practical considerations which actually are to control the decision. With the exception of Mr. Williston's work on Contracts, American scholarship receives scant attention. It is an especial pity that no use has been made of Kales's monograph on "Contracts and Combinations in Restraint of Trade." The latter study has perhaps come nearer than any other, to success in the attempt to construct a formula which would at once explain past cases and provide a guide to the policy to control future holdings. It would have been interesting to see whether or not Mr. Kales's efforts seemed to have more substance and meaning than those of others, in the eyes of a critical and intelligent foreign observer.

E. W. PUTTKAMMER.

ARBITRATION TREATIES AMONG THE AMERICAN NATIONS TO THE CLOSE OF THE YEAR 1910. Edited by William R. Manning. Publications of the Carnegie Endowment for International Peace, Division of International Law, Washington. New York: Oxford University Press. 1924. Pp. xl + 472.

The editor of this volume, now with the Latin American Division of the State Department, states that it is designed to include "all arbitration treaties and all arbitral clauses of other treaties which were signed between or among American nations before the close of 1910 and duly ratified," but he clearly recognizes the difficulty of guaranteeing its completeness. He includes not only general arbitration treaties but the protocol or 'compromis' by which specific claims have been submitted whether such documents are in the form of treaty or executive agreement. Where the 'compromis'