REVIEWS AND NOTICES.

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CONSTITUTIONAL LAW.*

This book betokens two facts. The British Empire has been rapidly developing since 1926 and, likewise, Professor Keith during the past few years has moved forward. He has shown a capacity, surprising to his readers, to assimilate accepted views and doctrines which he had treated as absurd. He has shaken off a part of the mantle of the doctrinaire and he has the good sense to see things as they are. He discusses in his latest work contentious points with a scholarly detachment and impartiality which are essential to sound thinking and tenable conclusions. In his earlier books on the constitutional development of the Empire he exhibited a journalistic dogmatism inconsistent with, or even fatal to, the pursuits and aims of the true scholar. The learned reviewer of Professor Keith's *Responsible Government in the Dominions* published in 1928 confessed to "a disgust in encountering the rancour of the partizan in what ought to be the dignified and unimpassioned pages of history," and he pointed out "the necessity of drastic expurgation if Mr. Keith ever contemplates a further edition of the book" (6 C.B. Rev. 485). The decline of the nauseous egotism in Professor Keith's writing has spelt an increase in power. As perfection in this world cannot be expected, we may congratulate the learned author upon his rational approach to mooted questions and forgive, in him, the older man because he has not entirely shaken off the emotional habits of his younger days. The lapses in good taste in the book under review add nothing to his particular theses. On the contrary, they detract from the value of the work as a whole for the reader must feel that the submissions and conclusions in other parts of the work may also be coloured. The following statements from the text are some instances of unnecessary and inept excursions into controversial fields: "The Chuch of course dominates Quebec" (p. 174). "The church dominates Quebec life, and its attitude towards Protestants is not badly revealed in the provincial Act of 1903, which classed Jews with them in school matters, or the argument of one judge in the case arising out of that action, that Jews were in the same religious category as Protestants, a rather interesting revelation of Christian charity" (p. 440). (Speaking of Church Union), "In the eastern provinces where religion takes on a more particularistic type" (p. 437). "And last not least Mr. Bennett, whose Cabinet has been freely derided as wholly subservient" (p. 167). "The removal of Mr. Ferguson from Ottawa was a considerable convenience to the administration which regarded with complacency the efforts of the opposition to censure his excursions into the political field" (p. 191). It may be that Mr. Keith's acquaintance with Canadian affairs is sufficient to qualify him in respect of these and other items to play the part of pamphleteer.

* *The Constitutional Law of the British Dominions.* By Arthur Berriedale Keith, D.C.L., D. Litt. Toronto: The Macmillan Company of Canada, Ltd. 1933. Pp. xxvi, 522.

It is difficult to assign a place to this book among the author's various works in the field. It appears to be an attempt to bring up to date his two volume work, *Responsible Government in the Dominions,* particularly in view of the effect of the *Statute of Westminster, 1931.* The Canadian practitioner, who in his office needs primarily on constitutional law a treatment of the division of legislative powers in Canada, will find little help from this work. Only twenty-one pages are devoted to this topic, and it would be impossible for any author to deal systematically and analytically with the cases arising out of sections 91 and 92 of the *British North America Act* within this compass. The book undoubtedly will be of inestimable value to the student of political science.

Part I contains an admirable sketch of the development of Dominion autonomy in which Mr. Keith now gives full credit to the labour and achievement of the Conference of experts in 1929. In a chapter entitled Internal Sovereignty and the Statute of Westminster, he recognizes that the statute was not a revolutionary measure as it served to reconcile legal forms with established political theory. His general conclusion is that from the internal aspect the Dominions are not subordinate to the British Government or Parliament. Even with respect to the hallowed rite of affixing British seals to documents relating to a Dominion, Professor Keith states that, in view of the action of the Irish Free State in the creation and use of the Green Harp Seal, "when the Great Seal of the Realm is still used, the use is obviously now subject definitely to Dominion control, and it would be unreasonable to regard its employment as any proof of inferiority of status." In a critical study of the *Statute of Westminster* the author dismisses the bugaboo of the absolute sovereignty of the Imperial Parliament, and he admits that the convention inhibiting that Parliament from legislating for the Dominions, which is now embalmed in a statute, is a vital part of the constitution of the British Commonwealth. The possibility of a violation of it he regards as negligible. He assumes that the Canadian Parliament may repeal, with two exceptions, any Imperial statute in force in Canada if its subject-matter is allotted by the *British North America Act* to that legislative body. The exceptions are the *British North America Acts* and the *Statute of Westminster* itself. No doubt, that was the assumption of the framers of the Statute. Has that object been attained? Section 2 of the Statute provides, *inter alia,* that the powers of the Parliament of a Dominion shall include the power to repeal or amend "any existing or future Act of Parliament of the United Kingdom." So far, so good. But section 7 reads, "Nothing in this Act shall be deemed *to apply to* the repeal, amendment or alteration of the *British North America Acts,* 1867 to 1930 . . ." It would seem to follow that the *Statute of Westminster* did not itself affect the *British North America Act,* and it did not give power to the Canadian Parliament to affect it. Section 129 of the *British North America Act,* after providing for the continuance of existing laws, courts, officers, etc., in Canada, Nova Scotia and New Brunswick at the Union, reads: "Subject nevertheless (*except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland*) to be repealed, abolished, or altered by the Parliament or Canada, or by the Legislature of the respective Province, according to the Authority of the Parliament or of that Legislature under this Act." This declaration contained in the constituent statute, it is submitted is still intact, and, therefore, it follows that

the Canadian Parliament has not been enabled by the *Statute of Westminster* to repeal pre-confederation statutes applicable to Canada and passed by the Imperial Parliament. It is significant that the draft statute prepared by the Conference of experts in 1929 reads in this regard as follows: "Nothing in this Act shall be deemed to confer any power to repeal or alter the Constitution Act of the Dominion of Canada," etc. This drafting would leave it clearly open, as a matter of interpretation, to decide that the *Statute of Westminster* itself repealed the declaration in section 129 which is italicised above. The Statute, however, in express terms now provides that it does not apply to the *British North America Act*.

In respect of external sovereignty the author is of the opinion that the Dominions are probably not in a position to declare war or make peace or adopt an attitude of neutrality as distinct members of the Commonwealth. He points out that for many important purposes, including the right of legation and treaty-making, the Dominions are distinct units or States from the point of view of international law. He is unable to classify the Dominions as conforming absolutely to any type hitherto recognized. The relationship within the Commonwealth is not that of a personal union; it lacks essential features of a real union. It may approximate to a confederation (*Staatenbund*) but that term connotes a system of treaty relations between the States making up the confederation. Those who advocate that a personal union exists, such as that between England and Hanover, are faced with the practical problem, how the King can act separately in international affairs without reaching a point where such action would be inconsistent with the unity which he undoubtedly symbolizes. Could he declare war for the United Kingdom and at the same time declare neutrality for Canada? Assuming that foreign recognition would be accorded to these acts, there would be involved a disseverance of the imperial bond.

The author views the changes since the Balfour pronouncement of 1926 in their true perspective when he insists that autonomy and co-operation must go hand in hand.

Part II, the larger portion of the book, deals with such topics as the Crown in the Dominions, executive and legislative functions and powers, the judiciary, defence, and honours and precedence. These chapters are interesting and informative. The fact-gathering has been well done, and the material relates both to the past and the present.

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International Servitudes in Law and Practice, by Helen Dwight Reid, Chicago 1932. University of Chicago Press. Pp. XXII, 254. Price $3.00.

Dr. James Brown Scott, who writes the foreword to this excellent study of International Servitudes, is still annoyed that the Hague Tribunal of 1910 did not accept the views of the United States in the North Atlantic Fisheries dispute and prefers the opinion of Professor Ulbruan cited with approval by a German court that "International servitudes can only be established between independent nations and constitute a restriction of the territorial sovereignty of the servient nation"—to that of the Hague Tribunal which "condemned the existence of international servitudes as unsuited to present conditions and the modern form of government."

As a Canadian one is tempted to take issue with Dr. Scott in this matter, and to deal with it at some length. But in the space allotted to a review this would not be fair to the author, Professor Reid.

Two of the objections to the doctrine of international servitudes are (a) that it is alleged to be perpetual, and (b) that as Professor Potter states "it is essentially a portion of proprietary law and public law is tending to dispense with proprietary modes."

It would seem much simpler to consider the rights and privileges that are granted by one State to the use of its property by another State or States as a contractual right, which may be abrogated or altered by consent of all the interested parties, or in case of war or the application of force without consent of all the interested parties, or in case of war or the application of force without consent. The only objection to this seems to be that there are certain rights such as "innocent passage," and of "riparian owners," which from their very nature seem to be universal and perpetual, quite apart from treaty or agreement. However, the term International Servitude exists, and is in current use, so it is essential to examine it as Professor Reid has done in order to understand the characteristics that have been ascribed to it. This the author does in a general way and decides that "an international servitude is a real right, whereby the territory of one State is made liable to permanent use by another State for some specific purpose." She then proceeds to examine this definition in the light of international practice as instanced by examples of the distribution of physical resources (pasturage, timber, mining and fishing servitudes) including the French and American rights in Newfoundland; as factors in the improvement of transit routes (railway, telegraphic, waterway, interoceanic and aerial servitudes); and strategic servitudes providing for security.

The book is an unusually good piece of work showing evidence of years of careful and intelligent investigation of "source materials," and of the general literature of international law. It contains a useful index, and an excellent bibliography, and can be recommended not only as the best but practically the only contemporary treatment of the subject in English.

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NOTICES BY THE EDITOR.

The Medico-Legal Journal and Criminological Review, Vol. I, Part I. London: Ballière Tindall & Cox. Toronto: The Carswell Company, Limited.

This is the initial number of what promises to be a most useful publication to the two professions of law and medicine. It is published under the auspices of the Medico-Legal Society which has its headquarters in London. The joint honorary Editors are Dr. Gerald Slot and Mr. Everard Dixon. The subscription rate is 12 shillings, post paid. Sir John Collie, C.M.G., M.D., contributes to this number a most instructive paper on Medico-Legal Practice. He advises members of his profession to dispense with their "bed-side manner" in discussing a medico-legal case, because that is a business transaction. When in the witness-box he adjures them not to trust to their intuitions, and he adds: "Only facts, bare, stubborn facts, pass muster in the Law

Courts." In the discussion that followed upon the presentation of the paper Mr. Maitland Walker expressed the view that discussion before trial with medical witnesses should take place in solicitors' chambers and not in their consulting rooms, because the atmosphere of the former is a more desirable approach to the Law Courts.

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Cases in Constitutional Law. By D. L. Keir, M.A., and F. H. Lawson, M.A. Second edition revised. London: Humphrey Milford. Toronto: Oxford University Press. 1933. Price $7.50.

In 1928 the authors of the book in hand published the first edition. They then expressed the hope that the work would prove of service not only to lawyers but also to the constantly growing number of laymen who desire a knowledge of English political institutions as they have been expounded by the courts. That their hope has been realised is apparent from the fact that a second edition has been published within five years, only adding one new document to the original text, namely, the Statute of Westminster, 1931.

Philip Guedalla recently spoke, in the reviewer's hearing, of the British Constitution as "an invisible thing." The purpose of the authors of this work is to make that constitution visible so far as it is given form and substance by judicial decision. They present us with the text of a selection of leading cases illustrating the constitutional status and powers of Parliament, the Crown, the Executive, the Courts and Public Authorities as they exist at the present time. Where it was found necessary to abridge the text of any case as reported a short *précis* of the omitted passage is supplied by the authors, printed in italics between square brackets. The cases illustrative of the principles governing the several divisions of the law as grouped in the book are preceded by introductory comments of the authors which are interesting if not always instinct with a defence of legal idiosyncrasies that would satisfy the lay mind. For instance their explanation of the modern departure from the doctrine denying the competence of Parliament to legislate in contravention of natural law as laid down in *Day* v. *Savadge* (1614, Hob. 87), while acceptable to the lawyer trained in the ways of legal fiction, is curious logic to the layman. The authors say the doctrine in question still survives "in an attenuated form," and add "We cannot say that Parliament cannot do any of these [prohibited] things, but we can still say that there is a presumption against its doing them."

The portion of the work dealing with the present relations between the British Crown and Parliament and the Dominions contains the outstanding cases on the subject, and the comments thereon by the authors are not such as would meet with serious challenge by Canadian lawyers.

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The Crisis in the World's Monetary System. By Gustav Cassel. Second edition. Toronto: Oxford University Press. 1932. Price $1.35.

It would be difficult to find within the compass of 117 pages of type a more instructive book for the times than that which Professor Cassel has produced. It embodies the views of an economist of international fame as to the primary cause of the world disturbances that have led up to the economic crisis that developed in 1929 and is continuing its assault upon the courage of men. Professor Cassel is of the opinion that the present crisis is a direct

consequence of the war debts and of the maldistribution of gold connected with their payment. He cannot see how the effect can be overcome unless the cause is removed. More than that he forsees a new spate of tribulation for the world if the war-debt payments are resumed, and therefore declares that cancellation is imperative. With the war debts out of the way, the restoration of an international gold standard system would be conditioned upon a reasonable freedom of international trade and some guarantees of the stability of that reasonable measure of freedom. To ensure the latter there must be no tariff walls of super-protection for trade to surmount, and there must be a free movement of capital between the nations. Furthermore, the restoration of the gold standard will require, in Professor Cassel's opinion "a radical reduction in the demand for Central Banks gold reserves." Speaking of the reduction of legal reserve requirements as proposed by the Gold Delegation of the League of Nations, the author thinks that not only would it be insufficient but that it would be almost impossible of attainment by international agreement. Opinions, we think, might differ as to that, but those who have given much attention to the problem will agree with the author that any international co-operation for the stabilisation of the value of gold must be attended by an undertaking between the leading Central Banks to keep their gold reserves so low that the scarcity of gold will never be unduly increased.

Failing the restoration of the gold standard, the author suggests co-operation between the "paper" countries. They have already shown that their paper standards can secure "a fairly stable purchasing power in terms of commodities," therefore if a group of them were formed under the leadership of Great Britain a way might be opened up for an economic recovery over a very important part of the commercial world.

A most interesting portion of the second edition of the book is the added Chapter entitled "The Nature of the Crisis in America," designed, as the author explains, "to dispel the false view on it particularly propagated in some recent writings." He thrusts aside the opposed theories of under-consumption and over-consumption, and the lack of equilibrium between saving and real investment, and finds that the present fly in the ointment of American prosperity is not there because of the ordinary cycle of economic change, but is the result of an unusual process of deflation which began as far back as 1929, "and which has afterwards developed with such momentum that it is grinding to pieces the entire national economy." This deflation was introduced by the campaign against stock-exchange speculation which the Federal Reserve system began, as a matter of fact, in the Spring of 1928, in defiance of warnings that this proceeding would invoke rather than avert a crisis. It not only handicapped productivity by the restriction of credits but also started a decline in the level of commodity prices and set public opinion in the direction of deflation. What the repercussion of all this would be upon the banking system of the United States was foreseen by Professor Cassel, but its full effect was not felt until after he added the new chapter to his book.