


## REVIEWS AND NOTICES.

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### THE LAW OF NATIONALITY IN THE BRITISH EMPIRE.\*

There is undoubtedly a place for a monograph, informed by learning and insight, on the law of nationality in the British Empire, which would widen the discussions such as exist in Dicey or in Foote, and Dr. Van Pittius had an excellent opportunity to benefit the profession and citizens at large. We cannot think that he has taken as much advantage of it as he might. The first two parts of his book follow the general well-known lines, and are largely a common-place commentary on the present law. They contribute little if anything to our knowledge, and will be of little use to the profession, though they may serve some purpose for the general reader. In the third part, covering certain problems, we naturally turned to the chapters dealing with the Dominions and "Dominion Nationality" and with Mandates; for here at least was an excellent opportunity for much careful and informative writing. On the whole, we have been disappointed, as Dr. Van Pittius's review is almost painfully meagre. For example *Rex v. Christian* (1924, A.D. 101) is discussed inadequately, and the limitations of the author further appear when we find no references to *Attorney-General v. Goralaschwili* (Ann. Dig. Public Int. Law Cases, 1925-6, p. 47). Dr. Van Pittius's limitations are also apparent in the discussion of Canadian "nationals," when he says (at p. 216) of our legislation that "the above provisions are so clear that they call for no explanation." He does not realize how hard they are to work, and indeed the present reviewer has been employed by the government of Canada in attempting to iron out great difficulties.

There are other aspects of the book which deserve severe criticism, and indeed make us somewhat dubious about any of its statements. The author seems to have a constitutional incapacity for correct quotation. It would be painful to draw attention to all his errors in detail, but we have noted, *passim*, some twenty-nine inaccuracies in this connection. Some of them may be unimportant,

\* *Nationality Within the British Commonwealth of Nations*. By E. F. W. Gey Van Pittius, M.A. (S.A.), Ph.D. (Lond.) London: P.S. King & Son. 1930. Price 10s.

but their cumulative force is such as to produce a lack of confidence in the book and a necessity, for which life is too short, if the book is to be used for reference, to verify every statement. Some of the errors are serious. For example, Professor Keith is made meaningless at pp. 7 and 169. The important word "capitulations" is left out at p. 36; in note 2, p. 39 the essential words "of origin" are omitted; the essential words "if he is domiciled" are omitted from the Draft Convention at p. 104; the important "or" is omitted in the last line of the quotation from our Immigration Act, at p. 166; the quotation from the proposals of the Imperial Conference in 1926 are seriously garbled at p. 191; our Canadian definition of "domicile" is made ridiculous at p. 216. It would be wearisome to go into further details; but the author's limitations may be further illustrated by another reference. He says (at p. 224) "the term 'citizen' employed in connection with a monarchy is somewhat peculiar for, surely, persons who owe allegiance to a king are 'subjects' and not 'citizens'." We might refer him to the use of "gouvernement monarchique" and "citoyens français" in the French constitution of Sept. 3, 1791; to the use of "sujets français" in the Treaty of Frankfurt of May 10, 1871; to the use of "citizenship" in the convention relative to naturalization of May 13, 1870 between the United States and Great Britain. Indeed the Secretary of State for the Colonies has used the term "citizenship" in correspondence with Canada; and Foulke and Calvo, among others, might be called in aid.

We understand that the work constitutes substantially a thesis for the doctor's degree. In these circumstances we wish to give the author credit for a vast amount of work. On the other hand, we know at least one university where the degree would have been deferred until the thesis had been submitted to exacting revision. As it is, no interested author need fear to produce a competent work on the law of nationality in the British Empire, as the necessity for it still remains.

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#### THE ADMINISTRATION OF JUSTICE FROM HOMER TO ARISTOTLE.\*

The present volume is a series of studies in a field which Dr. Bonner (formerly of the Ontario Bar) has made peculiarly his own. From his class room have gone out to carry on studies on like lines such well known workers as Dr. G. M. Calhoun of the University of

\* By Robert J. Bonner, Ph.D., Litt D., Professor of Greek, and Gertrude Smith, Ph.D., Associate Professor of Greek, University of Chicago. Vol. 1. 378 pp. and Index. University of Chicago Press, 1930.

California, Dr. J. O. Lofberg of Washington and Lee University, Dr. H. G. Robertson of the University of Toronto, and Dr. Smith who under the aegis of Dr. Bonner has previously published an excellent review of *The Administration of Justice from Hesiod to Solon* and now joins her distinguished senior in the production of this comprehensive and noteworthy book.

The publication by Dr. Bonner of his *Lawyers and Litigation in Ancient Athens*, University of Chicago Press, 1927, evoked a certain amount of criticism from scholars who were inclined to deplore the absence of references, and to detect a certain superficial quality in treatment. Personally the reviewer has failed to see the weight of such criticisms directed against a work which was specifically intended to give, and which brilliantly succeeded in giving a graphic and entertaining picture of a phase of Athenian life for the general reader and for the lawyer interested in the history of his profession. To those who have some knowledge of the extent of Dr. Bonner's contribution in his chosen field such criticisms seemed to be uncalled for—and as if in reply to them the present books comes armed with citations and references and evidences of the most minute and exhaustive research. On this score one can find nothing to object save that the reviewer regrets the absence of an appended bibliography and suggests that a bibliography be added to the further volume which is promised us.

There is an underlying unity of treatment in the present volume, indicated generally as to its scope by the title, but the book is not from first chapter to last one consistent and successively developed theme. The earlier part is devoted to a detailed discussion of the origin and development of legal processes among the Greeks, from the Heroic Age, across the period of unification of Attica, and through the age of the law givers. An exhaustive analysis is made of the pre-Solonian judiciary to which is appended an excursus on the so-called Draconian constitution (see Aristotle, *Ἀθηναίων πολιτεία*, iv.); the authors make a careful examination of all the available evidence on this vexed subject, review the arguments which have been advanced, and adhere to the view that the document is an anachronism found by Aristotle in some pamphlet written by the party politicians of the time of the Four Hundred and purporting to give the provisions of the ancient constitution (*πάτριος πολιτεία*) Aristotle incorporated it in his treatise as the constitution of Draco.

Chapter IX on the Judicial functions of the Magistrates has a lengthy discussion of the *ἀνάκρισις* or preliminary hearing. The student of Roman law, familiar with the clear cut distinction between

proceedings *in jure* and *in judicio* under the formulary system, is struck with the similar sort of dualism in Greek procedure and will ask to what extent the Athenian magistrate was able to settle and determine the future proceedings or to fore-ordain the questions to be tried in the heliastic court. This important question hardly receives in the present volume the attention which it merits. Vinogradoff in his *Historical Jurisprudence*, Vol. II, p. 145, f. points out that in the *διαδικασία* as to the succession of Hagnias it is evident from the argument of the parties that the archon who instructed the case, and who presided at the trial had settled the question as to the persons to be admitted and the formula at issue in a manner which established a definite line of prejudicial settlement for the various parties (*Isaios xi. cf. Wyse, p. 673, Demosthenes XLIII, 8-10*). Certain it is that the magistrates were no mere ministerial officers. *εισαγώγιμος* was extremely important to the eventual outcome of the trial, so important that the principal magistrates who had to act in the law were regularly helped by legal advisers (*συνήγοροι*).

The next succeeding chapters are an account of the judicial reforms of Solon and the development of the organized machinery of Attic justice, a development in which the essential feature is the evolution from the Solonian Heliæa of the highly complex dicasteries of the fourth century. One may be permitted to express a regret that the authors have seen fit to refer to the *βουλή* as the 'Senate' of Four Hundred, the 'Senate' of Five Hundred: surely the more usual term 'Council' is to be preferred in view of the special significance which the term *Senate* came to have in Roman law for an institution very different in character from the Athenian Council.

The remaining chapters are devoted to the Athenian system—their main theme being the machinery employed for administering justice. The varied subjects are discussed under the headings of Judicial Functions of the Magistrates, *Eisangelia* (*εισαγγελία*). The Judicial Organization of the Athenian Empire, Administration of Justice in Rural Attica, The Oligarchic Reaction, The *Boulé* of Five Hundred. The authors conclude with a general review of the judicial system of the fourth century in which reference is made to varied aspects of the heliastic courts which have been treated fully and most entertainingly in Dr. Bonner's earlier volume on *Law and Litigation in Ancient Athens*.

One or two general criticisms have to be made. Much of the material of this book has already appeared in articles in the *Jour-*

nal of Classical Philology and while the subject-matter has been reorganized, we find, as is usual in such cases, a certain amount of repetition. Some chapters, notably Chapter IV on The Pre-Solonian Judiciary, would have benefited by compression. A section of Aristotle's *Αθηναίων πολιτεία*, iii, containing a description of the Council of the Aeropagus, and very familiar to all students of Greek history, is repeated, *totidem verbis*, at pp. 84, 89 and 108; and other instances might be cited of an unnecessary diffuseness.

A word deserves to be said in praise of the style of the book: a subject which in the hands of many writers might well be dryly technical has been treated in a refreshing manner enlivened not infrequently with a subtle humour.

The index which is supplied is well made, so far as it goes, but might have been made more comprehensive, *e.g.*, the reviewer found it difficult to track down the numerous references to the *βουλή* of Five Hundred which appear in the text.

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*Canadian Encyclopedic Digest*, Ontario Edition, Toronto, Burroughs & Co. (Eastern) Limited.

It is some time since mention has been made of the progress of this very valuable work, and it is interesting to note that it has now reached the end of its eighth volume, subject only to a delay in the completion of the seventh volume by reason of inability of Mr. F. B. Proctor, K.C., City Solicitor of Ottawa, to complete an article on Municipal Corporations. Incidentally, it is interesting to note that this exceedingly important subject has been entrusted to Mr. Proctor, whose work on the Municipal Drainage Act, published several years ago now, was extraordinarily well done.

The publishers' estimate is that two more volumes of one thousand pages each will complete the Digest. This statement is important in view of the fact that so many lawyers have to count the cost of their libraries, and it is a tribute to the ability of the Editors that they have been able to condense the work into such a small compass.

It would be practically impossible to attempt to review a work of this kind, but it is a very great pleasure to be able to say that it is keeping up its record and is now in practical use throughout the Province and elsewhere.

Ottawa.

G. F. H.