MARGINAL NOTES

PIRACY IN INTERNATIONAL LAW.—The doctrine of Piracy in International Law has been brought to the front by what has been taking place in Mediterranean waters during the past few months. Some three years ago the Judicial Committee of the Privy Council was called upon to decide the question whether actual robbery was an essential element of the crime of piracy *jure gentium*. The question was made a subject of reference to the Judicial Committee by His Majesty in Council. The case as submitted is reported in (1934) 103 L.J.P.C. 153, from which it appears that the reference followed upon a decision of the Full Court of Hong Kong in a case where a number of armed Chinese nationals cruising in two junks chased and fired upon, but failed to capture, another Chinese junk which was carrying cargo at the time. The offenders were taken in charge by the commander of a British warship, which had arrived on the scene of the attempted capture in response to a call by wireless, and brought to Hong Kong and indicted for the crime of piracy. The jury found them guilty subject to the following question of law : " Whether an accused person may be convicted of piracy in circumstances where no robbery has occurred ? " After considering the question as so stated the Full Court reached the conclusion that robbery was necessary to sustain a conviction for piracy, and in the result the accused were acquitted.

In delivering the judgment of their Lordships, Viscount Sankey L.C. pursued a course which very happily serves the purpose of those who may be upon occasion pressed for time in their examination of case-law, that is to say, he stated the answer of their Lordships to the question submitted before reviewing the grounds upon which that answer was based. The answer was in the following concise terms : "Actual robbery is not an essential element in the crime of piracy *jure gentium.* A frustrated attempt to commit a piratical robbery is equally piracy *jure gentium.*"

In considering the grounds upon which their conclusion was arrived at their Lordships expressed the view that they were permitted to consult and act upon a wider range of authority than when a question before them was one of municipal law only. Inasmuch as the sources of International Law include treaties between States, State papers, municipal legislation, decisions of municipal Courts, as well as opinions of jurisconsults

and text-writers, the solution of the question referred involved a process of inductive reasoning. Speaking generally with regard to crimes as defined by International Law and the lack of means provided by that law for trying or punishing them, the judgment proceeds to say that—

> The recognition of them as constituting crimes and the trial and punishment of the criminals are left to the municipal law of each country. But whereas according to international law the criminal jurisdiction of municipal law is ordinarily restricted to crimes committed on its terra firma, or territorial waters or its own ships, and to crimes by its own nationals wherever committed, it is also recognised as extending to piracy committed on the high seas by any national on any ships, because a person guilty of such piracy has placed himself beyond the protection of any State. He is no longer a national, but *hostis humani generis*, and as such he is justiciable by any State anywhere. (Grotius, *De Jure Belli et Pacis*, vol. 2, c. 20, 30).

In summing up their exhaustive examination of the authorities expository of piracy as it finds a place in the *jus gentium* their Lordships are disposed to find in them "a gradual widening of the earlier definition of piracy to bring it from time to time more in consonance with situations either not thought of or not in existence when the older jurisconsults were expressing their opinions."

But while in their consideration of the question referred to them their Lordships have apparently traversed the whole field of doctrine pertaining to piracy in International Law, and in doing so conferred a benefit upon all who seek for knowledge not easily obtained in that behalf, yet they have adhered to the established practice of the Board and simply answered the question as submitted without enunciating any general definition of piracy in the terminology of the law.

But it may be asked what boots it to know what piracy is when so-called civilized nations have defiantly revived its practice and in reviving it have added to its old-time horrors as recorded on the pages of history? Perhaps the only reply to this challenging query is to be found in the words of one of the characters in Molière's plays — "Le monde, chère Agnès, est une étrange chose !"

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THE MODESTY OF MR. BIRRELL.—No one who regrets the threatened extinction in our time of modesty as an attribute of *le genre humain* will fail of pleasure in reading the recently published autobiography of the Rt. Hon. Augustine Birrell, K.C., who died some four years ago at the age of eighty-three. It is

entitled "Things Past Redress", and reveals him as one of those persons we are rarely privileged to meet who think with Socrates that there is nothing more lamentable than self-conceit, and who value lightly their own gifts while practising a charity that suffereth long and is kind in the praise of other and lesser men. As one reads him the impression grows that Birrell was born with a quality of modesty that approaches the humility which Spinoza said might be manifested by one who is essentially a proud man. Be that as it may, Birrell's playful sallies at the expense of his inability to achieve fame in any of his three fields of honest endeavour — the law, politics, and literature — do indeed remind us of the subtle humour underlying the unceasing cry of Montaigne, *Que sais-je?*—for, in the opinion of Sainte-Beuve, Montaigne was the wisest Frenchman who ever lived.

Concerning his failure in the practice of law Birrell could say, "I was, I confess, somewhat piqued at this failure, for I was far more genuinely fond of the law, even of Case Law, than were several of my competitors who outstripped me, but there was a weakness somewhere that must have made itself felt." Are we accustomed to such extremely frank confessions by men of smaller native gifts and professional learning than Birrell? On the most important office he held in public life — the Chief Secretaryship for Ireland, from 1907 to 1916— he has this comment: "What this lengthened tenure of a disagreeable office proves, it is not for me to say. Still I think it shows that though I have been an unlucky politician, I have never been a self-seeking one. . . . . . "I came back from Ireland much battered and bruised in spirit, a solitary figure." Do we hear much of this sort of thing from those who have failed much more egregiously than Birrell did in public office? His counsel to politicians is worth quoting here for its appositeness: "As a maxim of behaviour it may be said that it is better for a politician to magnify his office than to minimize it. He may possibly be taken by those who do not know him personally at his own face value."

As to his opinion of the value of his contributions to the literature of his age, it has to be learned from such observations as these:

> I see I have forgotten to say anything about the 'style' of my essays. The style has, I know, been animadverted upon by purists and pedants, two classes of men on whom I have fawned all my life, but who disapprove of me all the same. Their complaints amount to this. My sentences, so they say, go slithering along, half

> down a page, and then end up with a cracker tied to their tails; and it also appears that I am guilty of horse-play, and am often, after a concealed sneaking fashion, malicious to my betters and am sadly lacking in reverence and godly fear. As against this, I have admirers, good honest fellows, who like me for these very faults.

Space forbids any further exposition here of the fascinating modesty of Augustine Birrell. Whatever we think of his claims to remembrance as a lawyer or statesman, his seat in the galley which Montaigne launched on literary waters will surely be extolled by posterity. So far as his books are concerned the title of the one in hand has a meaning which would not likely have occurred to the author himself—let us all rejoice and be glad that they really are "things past redress."

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COURT DRESS FOR LADIES.—In the English Divorce Court recently a fair petitioner, who apparently agreed with the poet that "woman's crowning glory is her hair", appeared with uncovered head before the Judge, and was required by him to put on a hat before entering the witness box. But it was reserved for one of the lady exponents of the Thespian art in Hollywood to function as "The glass of fashion and the mould of form" touching the propriety of apparel for women having business in the courts. We learn from the press that in the course of a trial before the Superior Court in Los Angeles one of the Hollywood ladies appeared clad only in pyjamas. On beholding her so habited the Judge is said to have exclaimed in a tone of resignation : "When my dad was on the Bench you probably would have been held in contempt of court. But with the modern generation I guess pyjamas are all right !"

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