

## REVIEWS AND NOTICES

✎ Publishers desiring reviews or notices of Books or Periodicals must send copies of same to the Editor, Cecil A. Wright, Osgoode Hall Law School, Toronto 2, Ontario.

*Recognition and Enforcement of Foreign Judgments in the Common Law Units of the British Commonwealth.* By HORACE EMERSON READ, Professor of Law, University of Minnesota. Cambridge, Massachusetts: Harvard University Press. 1938. Pp. xiv, 371. (\$4.00)

This volume is dedicated to "John Delatre Falconbridge, K.C., Scholarly Architect of Law." It is an appropriate tribute to one whose contributions in the field of conflict of laws have been so notable.

Mr. Read's book is at once scholarly and practical. He has undertaken "a journey of exploration through all of the Anglo-Dominion authority, judicial and statutory, that he could find on this subject," and it would seem that he is warranted in his belief that "no significant precedent or enactment has been overlooked" (p. 256). The result is not merely a collection of materials but also a discussion and analysis which must be of help to anyone who is concerned with a problem in this field. The materials of the study are almost exclusively British, but the author's investigation of them in terms of general principles gives the book interest outside of the territorial limits which he has fixed for himself.

The author finds that the effect given to foreign judgments seems to fit into a territorial and vested rights view of law. He says that he has "demonstrated that the basis for recognizing a foreign judgment is that it proves that a vested right has been created through the judicial process by the law of a foreign law district" (p. 126). One may think that "demonstrated" is a rather strong word, and that it might be possible to phrase the result in other terms. We are told, too, on several occasions that "the doctrine that law is territorial in application is fundamental to Anglo-Dominion common law," (p. 253). These two statements are not easy to square with the rule that a judgment, though valid where rendered, cannot be enforced abroad, unless it was rendered by a court which had "jurisdiction." But this does not trouble the author greatly; for "international jurisdiction" is said to be a limitation on the power of courts "which is inherent in the territorial system of the application of law and its derivative doctrine" (p. 132). Does this mean that our present standards of "jurisdiction" are a part of a super-law, beyond the power of any state to change? Is it inconceivable that when statutes like that involved in *Schibsby v. Westenholz* (1870), L.R. 6 Q.B. 155, are more widely adopted and generally accepted our notions of the requisites of "international jurisdiction" may change? May it be that "vested rights" and "law is territorial" are phrases which aid in the achievement of one very important aim or end of law, and which therefore must not be ignored, but which cannot be regarded as logically excluding other elements in legal problems in all conceivable situations?

These theoretical questions, despite the attention which Mr. Read gives them, do not greatly affect the substance of the book. It remains a

clear and complete exposition of what British courts have done with foreign judgments. The heart of the book is in the chapters setting forth the bases which the courts have developed for determining jurisdiction. Here the Chapter on "Jurisdiction over Marital Status" is of particular interest. An outlander cannot repress a smile at the persistence with which the "amiable fiction of the common law" (Mr. Justice Sutherland in *Tyler v. United States*, 281 U.S. 497, 503) that husband and wife are one has been adhered to in the rule that a wife cannot have a separate domicile. Even the statutes now slowly being adopted after all these years, do not remove the straight-jacket of the fiction, but rather provide that the deserted wife may obtain a divorce despite the absence of domicile. Under prevailing notions of "international jurisdiction," this makes the validity of any divorce so granted a matter of doubt in any other jurisdiction. The author suggests that "treaties" between the British states may be the solution. It seems too bad that resort must be had to so cumbersome a process, when the difficulty could be entirely obviated by a mere recognition of the fact that the essential basis of domicile is "home," and that some wives do have homes apart from their husbands.

The final part of the book deals with the Enforcement of Foreign Judgments. One may question here the wisdom in the present day of the rigid British rule which forbids the enforcement of a judgment for taxes. The author points out that the Supreme Court of the United States has recently held that such judgments are within the full faith and credit clause of the Constitution and must be enforced by state and federal courts. (*Milwaukee County v. M. E. White Co.* (1935), 296 U.S. 268.) There seems to be little basis in reason for a rule which makes every area of the supposedly united British Commonwealth a tax haven against all the rest.

One of the most useful developments in the law of foreign judgments is the gradual enactment of a body of legislation providing for enforcement through registration rather than by suit. The author's concluding pages are devoted to these statutes. Despite their obvious utility, it is surprising how narrow in scope these are, and how little they are actually in effect. Nevertheless, these statutes are far in advance of anything in the United States. An effort was made to incorporate a provision for the registration of Judgments of federal district courts in the new Supreme Court Rules of Civil Procedure, but the section was omitted by the Court, doubtless on the ground that it was substantive in its nature rather than procedural. It is along this line, it would seem, that legislation can make its greatest contribution in the field of foreign judgments.

Mr. Read's book is interesting, well organized, well written, and thorough. We may well hope for more work from his pen.

ERWIN N. GRISWOLD.

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*The Law of Nations — Cases, Documents, Notes.* By HERBERT W. BRIGGS. New York: F. S. Crofts & Co. 1938. Pp. xxix, 984. (\$8.00)

As the sub-title suggests, this is more than a case-book, in that it contains the texts, or extracts from the texts, of some fifty international treaties, diplomatic documents, and national legislation, and in addition

over ninety "notes" written by the editor himself. It is thus an admirable volume for the university or law school classroom. As far as "cases" and "documents" are concerned, the only proper criticism must be directed to the selection and arrangement of the cases included. This choice in turn is determined, or should be, by the use to which it is intended that the collection should be put. The practising lawyer or responsible official is usually concerned to discover what the law is and a case book for his use should give "*the law*" as it is set forth in the judgments of competent courts. The teacher, however, because he attempts to interest the student and to develop his thought processes and critical qualities, is less concerned with what the law is, than with exhibiting to the student illustrations which will enable him to compare conflicting or contrasting opinions, and thus assist him in respect of problems that he may have to deal with in the practice of his profession. As the author himself states in his Preface, "*Cases like The Palmos Island Arbitration, In re Piracy Jure Gentium and Techt v. Hughes* were selected because they constitute in themselves small treatises on the subjects with which they deal. Cases like *The North American Dredging Company Claim, Engelke v. Musman*, and many of the Russian "recognition" cases were included because of the controversial questions they raise. Other cases, such as *La Jeune Eugenie, The Paquete Habana, The Eastern Extension, Australia and China Telegraph Company Claim, and The Janes Claim*, were chosen as illustrations of the judicial technique whether good or bad, in the application and development of the law of nations.

For pedagogical purposes it was considered desirable to present cases contradictory to one another, and to include some legal monstrosities like *Davis v. The Police Jury of Concordia* and tendentious decisions like *The Stigstad*.

In general, decisions of international tribunals—the Permanent Court of International Justice, the Hague Court of Arbitration, the Mexican-American, British-American, German-American, and Pan-American—American Mixed Claims Tribunals—were preferred to decisions by national courts; but the book contains, in addition to many American cases, decisions by British, French, German, and Swiss courts. On the other hand, many "leading cases" of national courts—for example, those interpreting the nationality statutes of the United States—have been omitted from a book devoted primarily to the public law of nations. The arrangement of the book is in the usual orthodox form. The Law of Nations: Nature, Sources, Subjects; Recognition; Succession; Nationality; Territory, Jurisdictional Rights and Immunities; Jurisdiction over Persons; Extraterritoriality; Extradition; Diplomats and Consuls; The Law of Treaties; Aliens; State Responsibility; Pacific Settlement; Hostile Measures Short of War; War; Neutrality. There are some 210 cases in all, and within the limits described by the author above they seem to contain the most suitable available material. There do not appear to be any cases decided in Canadian courts, which is perhaps not surprising in view of our limited experience as a member of the family of nations, but there are a number of cases which involve Canadians or Canadian interests. Among these *The Cayuga Indians, The North Atlantic Fisheries*, and *The "I'm Alone"* figure prominently, but the *Karnuth Case*, and the proceedings in respect of the Chicago water diversion though interesting and important are omitted. The "*I'm Alone*" is a difficult case to report, and for this reason the author

has prepared and inserted a digest of it. In this digest he accepts the opinion of the United States Coast Guard authorities—that the “*I’m Alone*” was within one hour’s sailing distance of shore, although the crew of the “*I’m Alone*” denied this. As the decision did not turn on this point, however, it is not important.

The ninety “notes” written by the editor himself on the various topics or headings included make this case book unusual and particularly interesting. Obviously they are the opinions of the author, and have no particular binding effect. But they provide student and teacher with a short statement of what the law is believed to be, and enable them to consider this analytically and critically in the light of all the other materials or opinions that they may discover. For this reason, they add to the usefulness of the book for class room purposes. While mention is made in the introduction and in the table of contents of the extracts from “treatises” and articles on international law, it would have been useful had these been listed separately after the fashion of the “cases” and “notes”.

NORMAN MACKENZIE.

University of Toronto.

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*The Administration of Justice from Homer to Aristotle.* Volume II. By ROBERT J. BONNER, PH. D. and GERTRUDE SMITH, PH. D. The University of Chicago Press. 1938. Pp. vii, 320. Price, \$3.50.

The main theme of the first volume of this scholarly work related to the growth and development of the Athenian judiciary. The present volume is devoted to the exposition of certain aspects of the Athenian courts.

The authors explain that its purpose is to “bring conveniently together in one volume the results of various articles, monographs and books in which the work of Lipsius and other scholars working in this field has been criticized or amplified.” While treating in detail certain features of Athenian litigation the authors declare that their choice of topics has been more or less arbitrary and disclaim any attempt to describe “all the suits, civil and criminal, and their distribution among the various magistrates, judicial officers and boards, and the process of litigation from the initiation of a suit to the verdict.”

In abstaining from so prodigious an undertaking the authors show a proper regard for the size of their book and the patience of their readers. The Athenians were a litigious people, and the multiplicity of remedial proceedings allowed to be taken in respect of one and the same wrongful act is a matter of astonishment to the modern lawyer. In one of his speeches Demosthenes said that Solon “did not grant to those who sought redress from injury some single course of procedure in each case, but many and divers.” This variety of procedure obtained in civil as well as in criminal cases. Each of the many courts and boards had a distinct system of procedure, but in each the litigant had a right to launch several proceedings for the enforcement of a single cause of action. This promiscuity of judicial remedies is satirized by Aristophanes in his *Acharnians* where the sycophant Nicarchus threatens a Theban rustic with all sorts of law-suits for having

brought certain fowls and other wares into the Athenian market. It is true that the system of judicial procedure as established by the Solonian constitution was designed to benefit the poorer classes by giving them access to the courts for the enforcement of their rights. To this end every qualified citizen of Athens was empowered and encouraged to prosecute wrong-doers. Solon adopted this system because he was persuaded that "the best governed State was that in which those who were not wronged were no less diligent in prosecuting wrong-doers than those who had personally suffered." But while Solon raised the quality of Athenian citizenship by opening the doors of the courts to the poor as well as the rich, a corresponding cultural loss to the community emerged from the opportunity thus afforded to the unscrupulous citizen to revenge himself on his personal and political foes by launching criminal process against them. Even citizens of honour and renown, such as the orator Lysurgus, thought it right to regard as their personal enemies those whose conduct endangered the public welfare. Naturally in process of time the Athenian statesman beguiled himself into thinking that whatever injury was done to him was done to the State—thus anticipating the ingenuous theory of sovereignty espoused by Louis XIV of France. One may recall in this connection the litigious feud between Demosthenes and Aeschines, which began with an unsuccessful prosecution of Aeschines by Demosthenes for treason, and ended with the futile attempt of Aeschines to prevent Demosthenes being crowned by the popular assembly for his services to the State. To achieve his purpose Aeschines had prosecuted Ctesiphon, who had moved the assembly to so honour Demosthenes, on the ground that the proposal violated certain provisions of the law regulating the time and place of such a decree being validly made by the assembly. In addition to this technical objection, Aeschines cited certain disasters suffered by Athens as the result of Demosthenes' leadership. Demosthenes in defending Ctesiphon quibbled majestically over the legal point raised by his adversary, and then launched upon a massive vindication of his own public career in a speech that is known to history under the title of "On the Crown." In the result Ctesiphon was acquitted, and Aeschines was fined 1,000 drachmas for not obtaining a fifth part of the votes cast by the jury.

The Solonian system of entrusting criminal prosecutions to volunteers instead of a class of trained officials not only led to the abuse pointed out above, but in the end produced the "sycophant," graphically described by an English classicist as "a happy compound of the common barrator, informer, pettifogger, busybody, rogue, liar and slanderer."

The sycophant and his ways and works are discussed in detail in Chapter III of the book in hand, and received some attention from Dr. Bonner in his "Lawyers and Litigants in Ancient Athens," published in 1927. On reading what these and other learned modern commentators have to say about the maladministration of justice in ancient Athens, one is prone to recall Plato's words: "If a well-ordered city superadd to good laws unsuitable officers, there will be no use in having good laws; not only are they ridiculous and useless, but the greatest political injury and evil accrues from them." (*Laws*, iv. 273).

Modern lawyers will find what the authors have to say about "Special Pleas" (Chap. IV) extremely interesting. There we are told that when the defendant appeared and joined issue with the plaintiff on the merits of the case, the proceeding was known as *euthydikia*; but if he claimed that in law the issue was not actionable, under the practice which obtained in

early times he might set up a special plea that was tried separately. In Attic law there were pleadings under the name of *antigraphé*, *paragraphé* and *diamartyria* which more or less corresponded to the special pleas and demurrers of English law and the *exceptio fori* of Roman law. The *paragraphé* would cover both the special plea and the demurrer as they existed in England before reforms in procedure were attained in the latter part of the nineteenth century. It came into vogue early in the fourth century after the expulsion of the Thirty Tyrants and the amnesty that was arranged between the opposing factions in Athens. If a defendant who was within the protection of the amnesty was indicted contrary to its provisions he was permitted to enter a *paragraphé* to the effect that the case was not cognizable in the court in which the proceedings were taken. Subsequently this special plea became generally available in civil suits except those relating to the devolution of estates, wherein the special plea of *diamartyria* was the proper resource of the defendant.

What has been said above sufficiently indicates that the Athenians had a systematized conception of procedural law, and that while it may be objected that its formal expression is of small comparative value to the jurist of the present day, the cultural value of its study is in nowise exiguous to the lawyer who looks upon his profession as something more than a craft.

The authors say that it was suggested to them that they should discuss in this volume both the merits and demerits of the Athenian judicial system, and they confess that it was with some misgiving that they attempted to do so in the last chapter of the book. This confession is a gesture of modesty that delights us when exhibited by those who are possessed of sound scholarship. That the authors have achieved in good measure what they set out to do, not only in this particular chapter but throughout the book, will be acknowledged by all whose taste and training prompt them to read it.

CHARLES MORSE.

Ottawa.

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*The Lawyers of Dickens and Their Clerks.* Second Edition. By ROBERT D. NEELY. Boston: The Christopher Publishing House. 1938.

In this little book of some 61 pages, which has reached its second edition, Mr. Neely has collected for review the characters — mostly disreputable and repulsive — known to the world as the lawyers of Charles Dickens and their clerks.

The names of these lawyers and their clerks are household words. The man on the street knows Uriah Heap, "whose name is synonymous with false humility"; William Guppy of Kenge & Carboy, "the perfect type of cockney"; Serjeant Buzfuz, "remarkable for his brutal and bullying insolence to the witnesses" and for his opening statement to the Court at the trial of the *Bardell v. Pickwick* action; Dodson and Fogg "the rascally solicitors" who persuaded Mrs. Bardell to institute the action, and others. The same man in the street would find it hard to name three lawyers from the works of Scott or Balzac; yet the works of these authors are full of interesting legal questions, legal trials and legal portraits. In Balzac's works alone there appear over a score of barristers and a correspondingly

large number of attorneys, notaries and clerks. If the reader desires an antidote for the rascals of Dickens let him read *The Antiquary* (chapter 43) where Scott pays tribute to his brother lawyers; "In a profession where unbounded trust is necessarily reposed, there is nothing surprising that fools should neglect it in their idleness, and tricksters abuse it in their knavery. But it is more to the honour of those (and I will vouch for many) who unite integrity with skill and attention, and walk honourably upright where there are so many pitfalls and stumbling blocks for those of a different character."

Dickens heartily disliked the legal profession and in his books caricatured it unmercifully. As is usual, his caricatures remain in the memory when the portraits by Scott and Balzac have been forgotten. Assuming, but not deciding, that for scores of years Dickens has been read by everyone, it is very probable that the suspicion and distrust which one finds prevalent among the general public towards the legal profession is to some considerable extent traceable to his influence.

The subject matter of Mr. Neely's book is hardly a novelty. Judge J. M. Gest dealt with "The Law and Lawyers of Charles Dickens" in a lecture at the Law School of the University of Pennsylvania in 1905; W. S. Holdsworth K.C. in 1927 delivered a lecture at the Law School of Yale University on the subject of "Dickens Lawyers, Law Clerks and other Satellites of the Law", both of which lectures have been printed in book form. We could have wished that Mr. Neely had appended his authorities and also furnished references for the quotations which constitute one-half of the book.

H. W. A. FOSTER.

Toronto.

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*The Canada Year Book 1938.* Published by Authority of Hon. William D. Euler, Minister of Trade and Commerce, Ottawa: The King's Printer. Pp. xli, 1141. Price \$1.50.

This annual publication long ago took its place as a reference book of outstanding value to the publicist as well as to the ordinary student of current affairs in Canada and abroad. It traces its origin to the year when the *Dominion* came into being, and was then known as a semi-official publication under the name of "Year Book and Almanac of British North America." In 1886 it was taken over as a governmental publication and issued under the title of the "Statistical Abstract and Record of Canada." In 1905 the plan of the work was remodelled by Dr. Archibald Blue, Chief Officer of the General Statistical Office, and appeared in print as "The Canada Year Book, Second Series." When the Dominion Bureau of Statistics was established in 1918 the preparation of the work was assigned to the staff of the Bureau, with the result that its contents were materially enhanced in scope and value to all who sought access to it.

In the Preface to the volume in hand it is explained that owing to the growth of the administrative functions of government and consequent increase in the content and variety of statistical data made available, it has become difficult to keep the Year Book within convenient limits. For that reason the policy has been adopted of making adequate reference only to

matter of a permanent character appearing in earlier editions instead of reprinting it in the present edition. Part of the space thus obtained is used for revision and necessary additions to the permanent matter, while the remainder is utilized for the publication of important new material and for the introduction of special features of an interesting and informative character.

While the work purports to be a statistical summary of all phases of the national life of the Dominion, it is something more than an embodiment of information expressed in the form of tabulations—things which are popularly regarded as the limbs and outward flourishes of the “dismal science.”

Having regard to the approach of the lawyer to the work under notice, he will doubtless be moved to read the commentary on the Constitution and Government of the Dominion which appears in Chapter III, Part III. He will also find matter of informative value to him in Chapter XXVII (Judicial and Penitentiary Statistics) and in Chapter XXX, the latter presenting a review of Dominion legislation passed in the year 1937 relating, *inter alia*, to Finance and Taxation, Immigration, Provincial Insurance Companies, and the administration of the Combines Investigation Act. These are matters naturally of importance to the lawyer in his daily practice, but as the Year Book supplies a comprehensive survey of the condition in a given period of the social and economic affairs of Canada, and as the law in motion has to do with both these affairs, it behoves the lawyer to devote some portion of his ordinary reading time to familiarizing himself with the contents of the volume as a whole.

C. M.

Ottawa.



*The Sources of Modern International Law.* By GEORGE A. FINCH.  
Washington: Carnegie Endowment for International Peace.  
1937. Pp. vii, 124.

Mr. Finch is the Assistant Director, Division of International Law, Carnegie Endowment for International Peace; Secretary, American Society of International Law; and Managing Editor, American Journal of International Law. Every student of International Law is familiar with his executive ability and many of them are indebted to him for the practical assistance that he has given them in their work. The present volume contains a series of six lectures which Mr. Finch delivered in 1935 at the "Académie de Droit International" at the Hague, and on different occasions at the "Summer Session for the Teaching of International Law" at Ann Arbor. This is Mr. Finch's first contribution to the literature of international law, beyond the occasional article and editorial comment which he has written for the American Journal of International Law. It contains chapters on "Factors which Have Contributed to the Growth of International Law"; "Natural Law as a Source of International Law"; "Modern Text-Writers on International Law"; "Custom as a Source of International Law"; and "International Law in the Courts". Mr. Finch's treatment of these topics is historical and descriptive rather than analytical and critical, in that he records the views of others, text writers, governments, etc., rather than propounding his own. But there is merit in this, particularly in view of the purposes for which these lectures were prepared and the audiences to whom they were delivered. The "Modern Text Writers" end with Lassa Oppenheim (1858-1919). It would have added interest to the volume had some of our contemporary "authorities" been included, but it would, no doubt, have stirred up controversy and have occasioned some measure of resentment upon the part of those ignored. Mr. Finch is probably wise in confining his attention to those who have departed this world. Altogether, this is a useful and interesting monograph and it is to be hoped that Mr. Finch will continue to explore the field of international law and to make the results of his explorations available in other volumes of this nature. Incidentally, as one might have expected, Mr. Finch includes an extensive and useful bibliography. Some evidence of the thoroughness of his work is apparent from the fact that this bibliography is limited to works and articles cited or mentioned in his lectures.

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## BOOKS RECEIVED

*The inclusion of a book in the following list does not preclude a detailed review in a later issue.*

- The Ontario Statute Citator. 1927-1937 Consolidation.* By HENRY L. CARTWRIGHT. Toronto: Canadian Law List Publishing Company. 1938. Pp. xxxvi, 478. (\$10.00)
- Annual Digest of Public International Law Cases.* (Being a Selection from the Decisions of International and National Courts and Tribunals given during the Years 1931 and 1932.) Edited by H. LAUTERPECHT. London: Butterworth & Co. 1938. Pp. xlv, 464. (\$14.00)
- Annotations on Small Loan Laws.* By F. B. HUBACHEK. New York: Russell Sage Foundation. 1938. Pp. lxv, 255. (\$3.00)
- A Digest of the Mercantile Law of Canada and Newfoundland.* Fourteenth Edition. By HARRY D. ANGER and FREDERICK R. HUME. Toronto: Canadian Law List Publishing Company. 1938. Pp. viii, 510. (\$5.00)
- Mining Law of the Province of Quebec.* By E. STUART MCDUGALL. Toronto: The Kingsland Company. 1938. Pp. 247. (\$6.00)
- Readings in Jurisprudence.* Edited by JEROME HALL. Indianapolis: The Bobbs-Merrill Company. 1938. Pp. xix, 1183. (\$7.50)
- Annual Survey of English Law 1937.* Compiled by various members of the Department of Law at the London School of Economics and Political Science. London: Sweet and Maxwell. 1938. Pp. xxxix, 419
- Libel and Slander.* By the late CLEMENT GATLEY. Third Edition by RICHARD O'SULLIVAN. London: Sweet and Maxwell. 1938. Pp. cxlix, 962. (£3. 3s.)
- The Law of the Indian Constitution.* By M. RAMASWAMY. With a Foreword by A. BERRIEDALE KEITH. London: Longmans, Green and Co. 1938. Pp. xlii, 450. (21s.)
- Canada Today.* By F. R. SCOTT. With a Foreword by E. J. Tarr. Toronto: Oxford University Press. 1938. Pp. xii, 163. (\$1.25, paper .75)
- Canada and the Law of Nations.* Edited by NORMAN MACKENZIE and LIONEL H. LAING. Foreword by The Right Honourable Sir Robert Borden. Toronto: The Ryerson Press. 1938. Pp. xxvii, 567. (\$6.00)
- Essays in Jurisprudence and Legal Philosophy.* Selected by JOHN C. H. WU and M. C. LIANG. Shanghai: Soochow University Law School.