Book Reviews

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BOOK REVIEWS


Among the many new works and revisions of old works on the subject of international law that have come from the press since the World War none is more scholarly and readable than that of Professor Fenwick. The author in his preface states that his purpose is "to set forth in as clear and concise terms as possible the existing state of things. The attempt has been made, therefore, to present international law as a positive system, and to distinguish as sharply as is feasible between such rules as have legal validity, in the sense that they are generally accepted, and such other rules as individual governments or writers, guided by altruistic or by selfish motives, have asserted are or should be the law." This task he has in the main accomplished.

As the book is intended to be a text for college classes rather than a general treatise, the author has stuck closely to fundamental principles and made frequent references to the works of Grotius and Vattel.

Throughout the book the author maintains a judicial attitude in stating what has been the practice in the past when certain facts and circumstances have been presented and refrains from laying down the law ex cathedra as being so and so.

This inability to point out definitely what the law is in each instance is due to the method of its enactment. To use his own words: "Owing to the fact that the consciousness of unity among the nations has never been so strong as to lead them to set up an agency having the power to command over the members of the organization and able to enact rules similar to the statutory legislation of national parliaments, by far the larger part of international law has had its origin in common usages which have developed from the more limited practices of a group of nations or from the uniform application of general principles to concrete cases. This growth of international customary law bears a close analogy to the formation of the common law of Great Britain and the United States." When one recalls that the American Law Institute has already spent over two years in an attempt to de-
finely state what the common law is and has as yet scarcely made a beginning, he will concede that the author's position as to international law is sound. His judicial attitude is also shown in dealing with events of the World War. He has stated the position taken by both sides in an impartial manner.

A feature of the work that makes it up-to-date and of special value is reference to the position of the League of Nations in each case.

It seems to the reviewer that Professor Fenwick is to be highly commended in the advanced position he has taken in assigning to laws of war a minor place, about one hundred fifty pages out of five hundred eighty. In his preface he says: "The author regrets that a less conspicuous place could not have been assigned to the laws of war and of neutrality, or that treatment of them might not have been omitted altogether as unworthy remote it seems impossible to omit discussion of those paradoxical rules which mark the failure of the community of nations to develop a more adequate system of law. If in the coming years their importance should be diminished or quite nullified, they will still remain as instructive lessons in the history of the slow progress of mankind from lower to higher forms of law."

Professor Fenwick's book is scholarly and assured of a high position among the leading American works on international law.

W. Lewis Roberts.


The revised edition of _The Law: Business or Profession?_ is timely. It should be especially welcome to members of the Kentucky Bar Association who at their last meeting went on record for higher standards and appointed a committee to confer with the Court of Appeals in regard to more stringent requirements for admission to the practice of law in the state.

In regard to the purpose of the book the author in his preface says, "It is intended to present the matter in readable fashion for both laymen and lawyers. This necessarily resulted in departure both from the style and substance of a textbook."
"Primarily this book is written so that layman as well as lawyer may grasp the deeprooted and historically well-founded conviction that the profession has a value to the community, that a sound public policy underlies the limiting of the practice of law to those specially trained and qualified, and that in carrying out the principle of personal and direct responsibility of lawyer to client and to court a wholesome result is achieved for society."

A glance at the topics covered will give an idea of the content: Disbarment, As Layman Sees Lawyer, As Lawyer Sees Layman, An Officer of the Court, The American Lawyer, Our Bar 1850-1880, A Thirty Year’s War for Preparedness, A New Impulse and an Old Tradition, "It Pays to Advertise," Does It? A Commercial Invasion, The Practice of Law by Title and Trust Companies, The Practice of Law by Collection Agencies, and What Shall It Be? An appendix of nearly two hundred pages contains the Code of Ethics adopted by the American Bar Association, selected questions and answers on professional ethics prepared by the New York County Lawyers’ Association, cases showing what constitutes the practice of law, and opinions of the Committee on Professional Ethics of the New York County Lawyers’ Association. In fact, the volume is a storehouse of material on the subject of legal ethics and is certain to inspire the reader with high ideals for the profession of law.

If one were inclined to be critical he would take exception to the author’s failure to really revise the body of the book. The account of the position of lawyers in Russia and Germany, for example, gives their standing before the World War and therefore is misleading. Then, too, the thought content of the book is small as compared with the piling up of examples and illustrative matter. The spirit and purpose of the volume, however, leads one to overlook the lack of some of the finer marks of scholarship.

W. L. R.


Professor Dutcher in his new book on the Political Awakening of the East has given us a very interesting account of present day conditions in the Orient. As to why every American is vitally interested in problems of the East he says: "Though
the dispute with Spain had distracted the attention of the United States from China at the critical period of the European infringements upon that nation's (China's) territorial integrity, a lucky chance afforded by the Spanish War enabled the Americans to establish themselves in the Philippine Islands. This advantage offset the gains of the European powers without antagonizing either China or Japan. The further annexations of Hawaii and Guam gave a strategic line of communications, and clinched the position of the United States as the most important power in the northern Pacific. Henceforth the United States was irrevocably committed to a policy of active participation in the affairs of eastern Asia.

Professor Dutcher's training as a student of history makes him well qualified to speak with authority and renders of special value his observations made while on his sabbatical leave in 1921-22 in Egypt, India, China, Japan and the Philippines. The book is the outcome of a series of lectures delivered by the author on his return from the East, under the auspices of the Bennett Foundation at Wesleyan University. The result is a careful, conservative study of the five countries. An historical foundation is laid in each case leading up to present conditions.

The author is considering the future of the three nations that now seek self-government, Egypt, India and the Philippines, mentions the fact that at the peace conference at the end of the World War it was the idealism of President Wilson backed by that of the British premiers, Asquith and Lloyd George, that injected into the conference the doctrine of self-determination of peoples and "by strange irony these two nations (the United States and Great Britain) were the very ones that were controlling the destinies of Egypt, India and the Philippines in apparent violation of the doctrines of national independence, and democratic self-government.

In Egypt the British have granted self-government. In recent years the British, the author believes, have been annoyed by Italian activities in Egypt and that if the Egyptians do not make a success of self-government Italian domination there will follow.

In India, too, the British have made provisions looking forward to self-government. In India the great handicap is
the lack of practical leaders. The education of most of them
"has unfortunately been of the sort that passes examinations but
not of the kind that trains the mind to grapple with problems
and face situations involving hard facts."

In China, "the revolution will continue until individualism,
social consciousness, and national consciousness have developed
among the thinking people of China the sense of personal re-
sponsibility and obligations: or in other words, until there has
developed an enlightened public opinion. . . . . It is not
the westernizing of China, it is the self-moderization of China."

"For the immediate future the fortunes of Japan are in
the hands of the generation which has been trained under the
Constitution of 1889, (modeled on that of Germany under Bis-
march) but also under the regime of militarism. It is too soon
to determine whether its dominant desire will be for political
progress or for military achievement. Happily, present indica-
tions point to the former alternative." They have thus far
shown a lack of ability to adapt themselves to new physical sur-
roundings, except in Hawaii and California; and do not possess
the imagination, tact and sense of humor to enable them to
govern successfully other people such as the Koreans."

In the Philippines the author feels that "American control
or protectorate is essential unless similar control by some other
nation is to be substituted." "The American people may justly
pride themselves on their achievements in the Philippines. They
have made enormous advances toward molding the diverse tribes
into a single, united people, and for the first time have actually
established the supremacy of a single government over them all."

W. L. R.

**Cases on Equity, Volume Two.** By Walter Wheeler Cook.
American Casebook Series, St. Paul: West Publishing Com-
pany, 1925, pp. XVI, 838.

It is very difficult for one to give a good review of a case
book without first trying it out in the classroom. One can, how-
ever, form a fair estimate of the value of the book from the selec-
tion of the cases, the arrangement, and the material used in the
footnotes.

Volume two is one of three casebooks covering the entire-
The greater part of the cases chosen have been those decided by the English courts and the so-called commercial states of this country, namely; New York, Massachusetts, New Jersey and Illinois. This seems a wise policy for it is fair to assume that in these jurisdictions where the great bulk of commerce has been carried on, the law as to specific performance of contracts will be more carefully worked out.

While many of the old familiar cases that appeared in Ames, some fifty or so, are used, as many more are relegated to the footnotes. Many of these old cases that were contained in Dean Ames, book have been replaced, as the author points out, by cases decided since Ames' casebook was published in 1904. In fact half the cases used in Professor Cook's work were decided since that date. This fact does not necessarily commend the book for the newer cases are not always as thought-provoking and well reasoned as the older cases that are replaced.

For instance Rayner v. Preston with its dissenting opinion by James, L. J., is supplanted by Brownwell v. Board of Education with an opinion by Pound, J. A third of this opinion is taken up with a statement of the case and the other two-thirds is much less likely to create discussion than the opinions in the earlier case because it deals more with conclusions of law than with the reasons by which those conclusions are reached. It is a good opinion but not so valuable for class purposes, however, as the earlier English decision.

The arrangement of the book seems admirable. The time-honored divisions of positive and negative contracts is dropped. The consideration of the subject of mutuality and lack of mutuality is taken up near the beginning rather than at the end of the course.

The editor has been very much more generous with his footnotes in this second volume of his series than he was in the first. They contain not only reference to cases bearing upon the subject under discussion but have frequent references to law review articles and text books. These references make the notes not only valuable to the student but to the instructor as well.

W. L. R.
In view of the fact that the entrance of the United States into the World Court is one of the foremost issues now before the Senate, the publication of Mr. Fachiri's book is most opportune. This book, however, is not "propaganda," it is as the author says, written with two classes in view: lawyers, diplomats and those concerned with cases before the Court and that section of the public which is interested in international questions.

It is a practical manual of the World Court and after taking up the organization, jurisdiction and procedure of the Court, each case that has been heard by the Court is carefully considered. The appendix contains the covenant of the League of Nations, the status of the Court, the rules of the Court, the draft scheme prepared by the jurists, and the reports of the committees of the Assembly—and the Council of the League of Nations.

The origin of the court the author traces to the second Hague Conference of 1907 where the United States sought to supplement the work of the first Hague Conference in establishing the Permanent Court of Arbitration by creating a "Court of Arbitral Justice." The effort, however, failed because the Conference could not devise a method of appointing judges that was satisfactory to the various countries, the Great Powers insisted upon permanent representation and the small countries demanded equal rights.

A review of the decisions of the Court, both under its compulsory powers and under its advisory powers shows the growth of confidence in the Court and amply justifies the expectations of its early advocates. The author makes it clear that the Court is a real law court and not a mere board of arbitrators, and is gradually building up a body of law for guidance in future cases.

In a chapter on the Court and the League, Mr. Fachiri makes it clear "that the Court is an institution distinct from the League. It is only through the election of the judges that the League exercises any control over it, and in that respect the
relation is momentary—once the election is over and the Court is constituted, its members are entirely independent and in no wise responsible to the League or either of its constituent organs."

W. L. R.


Mr. Birdseye's new book of forms, altho designed primarily for law school students, is well adapted to meet the needs of those practitioners who desire to have at hand a great number of standard forms in a single compact volume.

Before compiling the book the author sent a questionnaire regarding the use of forms in office practice courses to one hundred fifty law schools of the country. The answers seemed to verify his position that graduates of law schools today lack that familiarity with legal forms which the office trained youth of former years attained in copying deeds, mortgages, wills and other legal documents for his patron. The author's aim in producing the book has been to supply a "Vade Mecum (constant companion)" for every law student. He has succeeded admirably.

The author has used material from several early collections of common law forms, that gathered by Benj. V. Abbott and Austin Abbott prior to 1865 and those he has himself collected since 1874. As he points out, "the generic common law origin and similarity of the forms have been steadily kept in mind, and almost every instrument may safely be used in every jurisdiction."

An interesting feature of the book is the preliminary explanation at the head of each chapter. It goes into the history of forms and throws much light on their development. Perhaps the most unique thing about the whole book is the very elaborate index, covering one hundred eighty pages out of the total nine hundred forty. Its great length is due to the fact that, to use the words of the author, "many important documents and notes are fully digested in the index to give the student a conception of the whole instrument or subject. The collection and
collating of words, phrases, sentences and covenants seeks to indicate the comprehensive but exact use, by the best craftsmen, of words and their proper combination."

W. L. R.


The act of February 13, 1925, effected very material changes in regard to the jurisdiction of the United States Supreme Court and the Circuit Courts of Appeals. Therefore, Mr. Hopkins' New Annotated Federal Judicial Code is certain to fill an immediate want for a handbook embodying the new rules. The code is carefully annotated. The book is put out in excellent form, printed in clear type, on a high quality paper, and bound in dark blue fabricoid.


The new addition to the American Casebook Series, cases on Trusts by Professor Costigan, is very carefully edited. It is a scholarly piece of work.

The editor has followed a conservative course and, as he says, has accepted the judgment of Dean Ames and Professor Scott as to the topics to be covered in a casebook on Trusts. It seems to the reviewer that he has improved upon the outline of either and worked it out much more logically. For instance, he has dealt fully with express trusts before going into constructive and resulting trusts and kindred relations. Professor Costigan on the other hand seems not to have proportioned his material as well as either Dean Ames or Professor Scott. He devoted nearly one-third of his book to distinguishing a trust from other relations, whereas Dean Ames devoted about a seventh to this phase of the subject and Professor Scott about an eighth. Of course it may be said that not all the cases are supposed to be taken up in class and in the time ordinarily devoted to the subject of trusts, this is an impossibility in the case of Professor Costigan's book with its ten hundred pages. The difficulty with such a procedure is that the student feels that he
is not getting a thorough treatment of the subject where any very great portion of the book is omitted. After all it is the task of an editor of a casebook to make a selection of cases that will meet the needs of the ordinary course on the subject.

In selecting cases Professor Costigan has not confined himself to the earlier decisions. He has taken nearly as many that have been decided since 1900 as he has of those decided before that date, nearly a third are taken from the decisions of the English courts. This is as it should be. Among the old "landmarks" cases that have been included are the following: Tyrrel's Case, Sharington v. Stratton, Callard v. Callard, Doe d. Lloyd v. Passingham, Rayner v. Preston, Giles v. Perkins, In re Barnard's Banking Co., In re Board, Moore v. Darton, McFadden v. Jenkyns, Hamer v. Sidway, Scott v. Jones, Ex parte Pye, Fogg v. Middleton, Graves v. Graves, Adams v. Adams, Morice v. Bishop of Dunham, In re Dean Wetmore v. Porter, Clafin v. Clafin, Eyre v. Burmester, Phillips v. Phillips, Reed's Appeal, Dearle v. Hall, In re Boyes, Shropshire v. Queen, and Allen v. Impett.

Among those that do not appear or that have received mention in the footnotes only are Mackersy v. Ramseys, Fowler v. Martin, Donaldson v. Donaldson, Milroy v. Lord, Tierney v. Wood, Juniper v. Batchelor and Dobbs v. Hills. The more recent cases that have taken the places of these just mentioned are well chosen.

Professor Costigan has supplied an abundance of footnotes. These contain abstracts of cases bearing upon the points under discussion, excerpts from opinions from the various courts, citations of cases, and references to articles in the leading law reviews. These notes are very carefully edited and should be of great help not only to law students and instructors but also to practicing attorneys.

W. L. R.


The rule that many have applied to the reading of Scott's novels, to skip the first chapter, might well be applied to Mr. Train's latest publication, "An the Trail of the Bad Men." An addition might be made to the rule in this particular case,
Tax Commissioner; George E. Holmes, of the New York bar; The Workmen’s Compensation Act of New York State, Edward P. Lyon, of the New York bar, formerly of the Workmen’s Compensation Commission; Harry B. Bradbury, of the New York bar; New York State Criminal Practice, Alfred J. Talley, Justice of the Court of General Sessions, New York county; Robert C. Taylor, Assistant District Attorney, New York county; Federal Criminal Practice, Benjamin A. Matthews, of the New York bar; Robert P. Stephenson, of the New York bar; Admiralty, Charles R. Hickox, of the New York bar; D. Roger Engles, of the New York bar; Roscoe H. Hoffer; W. Davis Conrad, of the New York bar; The Office of the Attorney-General, George W. Wickersham, former Attorney-General of the United States; State Taxation of Corporations Engaged in Interstate Commerce, Frank L. Crawford, of the New York bar; and the Encroachment by Corporations on Private Practice, Charles A. Boston, of the New York bar; Clarence H. Kelsey, of the New York bar, and Julius Henry Cohen, of the New York bar.

Most of these lectures are exceedingly interesting and instructive; a few, however, are exceedingly poor and one wonders how they ever got into such company.

Publishing the book is an experiment on the committee’s part and should it prove a financial success the lectures of the past three years will be put out in like form. Let us hope that every lawyer purchases a copy of the first volume so that we may soon have the second and third.

W. Lewis Roberts.

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