NOTICES OF NEW BOOKS.

THE LAW OF FREEDOM AND BONDAGE IN THE UNITED STATES. By JOHN CODMAN HURD, Counseller at Law. Vol. 1. 1858. pp. xlviii. & 617. Vol. 2. pp. xlv. & 800. 1862. Boston: Little, Brown & Co.

The first volume of Mr. Hurd's work has been for several years before the public; the second has been published during the present year. It purports to be strictly a law book, and to discuss the principles of jurisprudence applicable to the subject of freedom and bondage in the United States.

The author lays a broad foundation for his special topic by an examination of certain general principles which underlie it. His work may be regarded as divided into three parts: the first is elementary or abstract; the second, historical; the third, practical. In the elementary portion, the primary and secondary meanings of the term *law* are stated, and jurisprudence is defined as the science of a rule identified with the will of a state. After distinguishing between international and municipal law, each is divided into public and private. Private municipal law determines the relations of individuals towards each other; public municipal law consists in the definition and assertion of the nature, bounds and purposes of the supreme power in any given state; private international law determines the relations of individuals towards national jurisdictions other than that to which they are primarily subject; and public international law determines the mutual relations of sovereign states, as such.

The method in which law is generated is then touched upon, and shown to be the same both in municipal and in international law. So far as it is applied by judicial tribunals, international law is to be distinguished from municipal law only by the nature of the relations which it affects; they are identified in respect to their authority over all persons within the jurisdiction of the state.

There has grown up by the assertion and acknowledgment which all states or nations have made of principles of natural reason a *universal jurisprudence*—a law *of* nations (*jus gentium*) as distinguished from a law *between* nations (*inter gentes*). These two divisions of international law have been changing and extending their principles during the time of recorded history, according to altered views of natural equity. The inquiry at any particular time is purely historical. *Universal jurisprudence* cannot be spoken of abstractly as being a fixed system of law, or one which

a thinker would elaborate by a process of reasoning *a priori*. The question is, what did the nations, as a matter of fact, recognise as principles at any given period in the world's history? In other words, the honest inquirer into "universal jurisprudence" would adopt the same *method* as the student of the common law of England. He would seek to ascertain from standard authorities what principles were admitted by the nations at the time to which he directed his investigations.

The great maxims of private international law are next stated and expounded, and application made to the subject of personal condition, or *status*. In the absence of all positive legislation, the condition of persons once domiciled in a country different from the one where the question of *status* arises, would presumptively be determined by the "universal jurisprudence" already described. Still any state may, if it see fit, disallow the principles of universal jurisprudence. This part of the work is closed by an inquiry into the legal duty of a nation which does not recognise chattel slavery, to enforce within its jurisdiction, by means of its judicial tribunals, relations of this kind existing in a foreign country.

In this elementary part of Mr. Hurd's book clear distinctions are made, and accurate and exhaustive definitions given. The first chapter, by its learned and elaborate foot-notes, furnishes ample means to the legal inquirer for a satisfactory and independent examination of every topic embraced within it.

The *second* part of the book, commencing with the third chapter and closing with the eleventh, contains an historical examination of the law of *status*, or personal condition. After examining how far the English law of *status* was in legal view applicable to the American colonies before the Revolution, Mr. Hurd discusses the principles of universal jurisprudence relating to freedom and its contraries, entering into and forming a part of the common law of England. In taking this view, he examines chattel slavery under the Roman law, the modifying effect of Christianity upon it, and the extent to which "universal jurisprudence" at and before the period in question sanctioned the slavery of negroes and Indians. The recognition by England of these universal principles is then noticed, and the decisions of her courts examined and criticised, including the judgment of Lord MANSFIELD, in Somerset's Case. It having been previously shown that universal jurisprudence is based upon the general recognition by the nations of certain legal principles, and is in a continual state of transition, it is claimed as the result of an extended historical investiga-

tion, that when the United States government was formed chattel slavery was not generally recognised, but rested upon local law.

The principles thus obtained are then applied to an examination of jurisprudence during the colonial period of the United States. The doctrine is advanced that though the colonists claimed the rules of the English common law regarding personal rights as applicable to themselves, yet that these did not extend to persons coming from other countries. As to them, the doctrines of universal jurisprudence were applicable. Especially, the *status* of the negro or Indian, where no imperial legislation existed, was regulated either by the customory local law of the colony or by positive local legislation. An extended statement of the legislation of the colonies is then made, setting forth each statute and its date, with full references to original authorities. This digest of statutes occupies nearly one hundred pages, and is of great historical value. We know of no other work where so perfect and accurate a statement of the early statutes upon this topic can be found. This branch of the subject is concluded by an examination of the principles of private international law, existing for the several parts of the British empire during the colonial period, and relating to freedom and bondage.

In the third and practical part of the work the law of freedom and bondage in the United States is considered both with reference to the public law of the United States and the laws of the several states.

The second volume opens with an examination of the legislation of the several states, &c., since the Revolution. These are divided into three classes: *first*, the original thirteen states; *second*, those states which were formed from territories ceded to the general government by members of the first class; *third*, states and territories obtained by the general government through treaties and by conquest. This elaborate historical statement occupies more than two hundred pages, and is replete with interest and instruction. With the exception of a chapter upon the conditions under which private international law may exist between the several states embraced within the United States, the residue of the volume is devoted to a discussion of the first and second sections of the fourth article of the United States Constitution. The collation of authorities is extensive and thorough, and the author's own discussion and analysis searching and acute.

We give a hearty welcome to Mr. Hurd's able book. It will undoubtedly be recognised as a standard authority. Did our space permit, we

would gladly give some extracts from it as showing its method, and the breadth and fulness of its research. It is the only successful attempt to treat the law of "freedom and bondage" from a juristical point of view. Upon questions which border so closely upon the domain of politics, there will naturally be divergences of opinion. All enlightened and impartial members of the profession will cheerfully award to the author the merit of having made, for the first time, an exhaustive and systematic collection of authorities, and of having discussed a question in regard to which much loose declamation has existed, with the calm and impartial tone of a logician and a jurist. Mr. Hurd's first volume attracted favorable notice in foreign legal periodicals.[1] It may be safely predicted that the second volume will not fall behind the reputation of its predecessor.

T. W. D.

CIRCULAR AND CATALOGUE OF THE LAW SCHOOL OF THE UNIVERSITY OF ALBANY, for the year 1861–2. Albany: J. Munsell, 78 State Street. 1862.

The law school at Albany, from the great advantages which it offers to students, is acquiring a growing popularity. The list of undergraduates for the current year is nigh a hundred, which, in times such as the present, is doing extremely well. There can be no doubt that the elements of law are best taught as a science, by lectures and systematic instruction. The old plan of studying in a lawyer's office, had some advantages, by combining theory directly with practice. But it produced inevitably a desultory mode of reading, and, except with very superior minds, tended to develop only case lawyers, whose learning had to be got up *pro re nata*. A judicious blending of the two methods, during the course of the student's probationary term, will give, no doubt, the highest results.

It is needless to say that the standing of the faculty of the Albany school is of the first class. The name of Chancellor Walworth, the President of the Faculty, is, in itself, a tower of strength. The plans of instruction appear to be very judicious and well arranged. Stress is properly laid in the circular on the advantages conferred by the moot courts, and the practice of requiring written opinions or judgments from students on the questions therein discussed. Finally, in the well chosen law library of the school, and particularly in the remarkable one of the state, auxiliaries to instruction exist, which are not elsewhere surpassed.

[1] See London Law Magazine and Review. Vol. 8, p. 31. (1859-60.)