

## BOOK REVIEWS

A HISTORY OF DIVORCE. By S. B. Kitchin. Cape Town: J. C. Juta & Co., 1913.

*Cessante ratione legis, cessat lex*, is a legal maxim the application of which, though frequent, is almost invariably too long delayed. Anachronisms which so often underlie rules of law and procedure are preserved not only through the inherent conservatism of the people interested in their operation, but through an actual ignorance of the source and history of their growth. The progress of legal reforms, hindered by such conservatism, can best be aided by a clear and simple exposition of the history behind the subject of attack. After such an analysis the absurdity of an outworn law or rule becomes so apparent that its complete rejection can be more hopefully expected. Mr. Kitchin, who is the editor of the South African Law Journal, has done this service for the law of divorce. By tracing its history from early Roman times down to our own, he shows that much of the modern "problem" of divorce is a fabrication of our own, and that many of the measures adopted in civilized countries to improve conditions are still almost medieval in concept. According to him, the doctrine of the indissolubility of marriage was a creation not of the early Christian fathers, but of the ecclesiastics who elaborated the Canon Law in the early Middle Ages. Out of the ecclesiastical courts grew the opposition to divorce which has been transmitted to us as an inherited prejudice. The Reformation had no improving effect on the law of divorce, and most of the present-day machinery of divorce is still built on the patterns of that age. Our "judicial separation" is the modern form of the decree of enforced chastity,—both breeders of immorality. The publicity of a law suit and the unnecessary fiction of parties nominally adverse in cases where both agree a divorce is necessary are also legacies from a past when clerics made laws to fit theological dogma but not the popular will. When Rome flourished, divorce, like marriage, was allowed by the mutual consent of the parties; to return to that simple procedure and repudiate the fantastic interpretations of scriptural phrases which have been enacted into the laws of divorce is the only means by which, the author believes, the confusion and injustice of the divorce laws of today can be eradicated.

Mr. Kitchin's style is spirited and lively, without descending to what a scientist would term the popular level. He is evidently in thorough sympathy with the modern feminist movement, and writes as the champion of women, attacking an institution which has worked them untold injustice for centuries. His review of the subject is comprehensive, drawn from a wide variety of authorities, and especially valuable as the first history of divorce from the modern viewpoint. It will be valuable to legislators (if they can be got to read it), and to students of comparative law.

Perhaps it is ingenuous to remark upon it, but an American reader cannot help being struck with the excellence of form in which the work appears, despite the distance of the land of its origin from the metropolis. The external design, as well as the matter within, convey the impression of dignity that is associated with the best books from this side the equator. Standing on one's shelf the book is a visible reminder of the remarkable unity of ideas among all the English speaking peoples, though vast oceans lie between them.

S. R.

REGULATION, VALUATION AND DEPRECIATION OF PUBLIC UTILITIES. By Samuel S. Wyer. Columbus, Ohio: The Sears and Simpson Company, 1913.

It would, perhaps, have been better if this recent publication, dealing with some of the important questions of public utility regulation, had been reviewed by one experienced in the engineering problems of the valuation of public service companies, rather than by one who can only judge of the usefulness of the work

to the legal profession. The author is a consulting engineer, and has written for members of his profession rather than for those interested in the strictly legal questions involved. The book is largely a collection of quotations from many sources both judicial and scientific. The clearness and simplicity of the definitions and explanations of the engineering problems involved in depreciation and rate regulation makes the book valuable to a lawyer engaged in public utility work; but the numerous citations of decisions of courts and commissions will only be of value to engineers. Since the best manner of dealing with public service companies is more an economic than a legal question, the author has done well to discuss both elements of the subject; though the necessarily superficial manner in which each is treated prevents the solutions of the problems involved in a satisfactory manner.

The reader was constantly annoyed by having to refer to the end of the book for the authorities quoted in the text. However, the completeness of the bibliography is to be commended; and the apt quotations at the head of each chapter are refreshing. The work should prove interesting to the layman who reads it merely to get some knowledge of the much mooted question of public utility regulation.

C. L. M.

REPORT OF JAMES BROWN SCOTT, DIRECTOR OF THE DIVISION OF INTERNATIONAL LAW OF THE CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE. Washington: Year Book of the Endowment, 1912.

Though couched in the curiously sesquipedallian circumlocutions that seem to characterize the interchange of ideas in the field of international diplomacy, the Report of the Carnegie Endowment's work in international law shows that there is an energetic directing force behind it which is bound to produce, in time, results of inestimable value. This is now demonstrating itself in the nature and variety of the projects it has undertaken, with a view to fulfilling its duties under the Endowment's charter. Its purpose is "to aid in the development of international law, and a general agreement on the rules thereof, and the acceptance of the same among nations." Toward this end it is enlisting the active aid of all agencies that are now working efficiently with international law, and creating new ones to take up tasks left untouched by the others. Both hemispheres are included in the scope of its operations, which are world-wide in extent.

Aided by a consultative committee from the Institute of International Law, the following topics were, at the outset, decided upon as proper for the Division to investigate: To compile and publish a collection of the provisions of the treaties of all countries of the world containing international agreement upon matters which, if universally assented to, would constitute international law; the founding of an Academy of International Law at The Hague, to be conducted during the summer or vacation periods, and to include a regular course of international law and special lectures on important and current topics, the professors and lecturers to be the most eminent authorities of the different countries; the founding of paid scholarships at the Academy at The Hague so as to secure students from all parts of the world, the scholars to be selected either by the governments or as the result of competition by means of theses on subjects to be assigned; the collection and publication, in a uniform series, and in several languages, of the judicial decisions of national courts interpreting and applying the principles of international law; the exchange of professors of international law and diplomacy between various countries; the exchange of students of international law; the translation, reprinting and dissemination, at a nominal price, of the best works on international law, and especially of works written in languages which reach but a limited circle of readers; to give encouragement and assistance to magazines and periodicals to devote themselves to the development of international law and to the cause of international justice; to establish lectureships and professorships of international law in colleges and universities, after a careful preliminary study of the present state of the teaching of international law in the different countries; the preparation and publication of a scientific and accurate history of arbitration; the preparation of a bibliography of international law, public as well as private; and the encouragement, by means

of subventions, of the publication of works or of collections relating to international law which, notwithstanding their evident scientific interest, are not, by reason of their limited commercial market, of interest to publishers.

Work has either been begun or planned under almost all of these heads, and in many cases has been carried forward to a very satisfactory stage. Plans are ripe for the opening of the Hague Academy of international law in the summer of 1914, when the new Peace Palace, with its extensive library, will be available. Half a dozen of the various reports contemplated have either been completed or are now being worked on. Subventions are being granted to journals of international law, including the French *Revue de Droit International*, the Italian *Rivista di Diritto Internazionale*, the Japanese Review of International Law, and the Spanish edition of the American Journal of International Law.

From the American lawyer's point of view particular interest attaches to the project to collect and publish all English and American decisions involving public international law. In no other country in the world is the volume of decisions on private international law (conflict of laws) so great as in the United States, so that, while the subjects are not strictly the same, there is at least a certain familiarity among American lawyers generally with the sort of problems that have to be solved.

Scholarly researches of the character of those being pursued under the direction of Mr. Scott cannot be expected to come to fruition in a single season. But from the indications given in the 1912 Report, it will not be very long before the nations who are interested in the progress of the Endowment will have reason to be satisfied that the Division is a real power for international peace.

S. R.