BOOK REVIEWS

A PANORAMA OF THE WORLD'S LEGAL SYSTEMS. In three volumes. By John H. Wigmore. West Publishing Co., St. Paul, 1928. Pp. xxxi, xv, xiv, 1206.

The publication of a book by Dean Wigmore is always an important event; for the Dean is famous as a great lawyer, a great historian of the law, and a great teacher of law. The publication of this book is an especially important event; for it shows that he is also a great master of comparative law, and that, as a teacher of law, his originality is equal to his effectiveness. The central idea of this book, that pictures can be used to aid the teaching of the history of the great legal systems of the world, is as original as the idea which Mansfield suggested to Blackstone in the middle of the eighteenth century, that English law could and ought to be taught at Universities—may it be as fruitful of beneficial results to the cause of legal education. If it is, I can imagine that later authors who developed Dean Wigmore's idea, and follow the track which he has blazed, will place as a frontispiece to their books Dean Wigmore's portrait, and a picture of his study in that beautiful law school at Northwestern which bears upon it the impress of his personality.

The author's note at the beginning of volume I describes the genesis and scope of the book. Its genesis was his idea that the outlines of the history of the law could be taught pictorially by a series of lantern pictures. He has proved that this was a practical idea by giving a series of lectures, illustrated by these pictures, "to successive classes of law students, as well as to several thousand lawyers in cities from Massachusetts to California." The scope of the book is thus defined by him:

> "The sixteen principal legal systems, past and present, form the subject—Egyptian, Mesopotamian, Hebrew, Keltic, Slavic, Germanic, Maritime, Ecclesiastical, Romanesque, Anglican.
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> "For each series are shown between twenty and fifty pictures, connected by a concise narrative exposition. In each series, the pictures present the *edifices* in which Law and Justice were dispensed (whether temples, palaces, tents, courthouses, or city-gates); the principal *men of law* (whether kings, priests, legislators, judges, jurists, or advocates); and the chief types of *legal records* (whether codes, statutes, deeds, contracts, treatises, or judicial decisions). By these aids, the narrative attempts to reconstruct some realistic impressions of the legal life of these peoples. Subsequent study of the book-learning about the details of these systems can thus be made more attractive and intelligible."

I had the privilege of attending one of these picture lectures at Northwestern. Both that lecture and this book convince me that this method of teaching legal history has a future before it. It presents to the mind of the student the salient external features of any given period—the places, the men, the records—with a vividness that no other method could present. This book will give to a larger public the essence of these lectures. If law teachers in other universities follow the program mapped out in these volumes, they will teach their students the lesson which should be taught by a university training

in law—the lesson that the great principles of the law have a universal moral basis, and that it is this universal moral basis which has in the past given a dignity to the exponents of these principles which their successors must maintain. I know of no book which will more effectively teach law students the essential truth of that eloquent passage in which Mr. Justice Holmes describes the age long yet never-ending task to which they, if they are true votaries of the law, are called to dedicate their lives:

> "When I think of the law, I see a princess mightier than she who once wrought at Bayeux, eternally weaving into her web dim figures of the ever lengthening past,—figures too dim to be noticed by the idle, too symbolic to be interpreted except by her pupils, but to the discerning eye disclosing every painful step and every world shaking contest by which mankind has worked and fought its way from savage isolation to organic social life."

The tapestry which Dean Wigmore has woven in this book has brightened the dim and interpreted the symbolic figures, which disclose the ways and means by which, in all ages and countries, the law has civilized, and, by civilizing, has made possible for the individuals which it controls a life of moral and intellectual and artistic achievement.

In all ages in which great changes in intellectual outlook have taken place men are apt to think and say that the old forms and ideas are worn out. Our lives are so different from those of our fathers, they say, and we live in such different conditions that we must discard the old forms, and construct a new synthesis for ourselves, based on the new modern phenomena which we see around us. Dean Wigmore's panorama of the world's legal systems should lead us to pause before we wholly commit ourselves to such views as these. Throughout the world's history we see, amid all the many changes of social and intellectual conditions which are here portrayed, men of a very similar nature to our own, confronted with similar problems, making similar contracts, committing similar wrongs, dealing with their property in similar ways. The spectacular changes which, in our own days, man's control over the forces of nature has made in his social and intellectual life, should not blind us to the fact that these changes have left his nature, both physical and intellectual, fundamentally the same. And, if this is so, men in this age, as much as in the past, need the guidance of the past experience of their own and other races. They need that science of jurisprudence which Burke called "the collected reason of the ages"—without which, as he rightly said, "no one generation could link with the other," and "men would become little better than flies of a summer."

Dean Wigmore draws a moral from his comparative study of legal systems with which Burke would have agreed. He says:

> "The principal feature that controls the creation or the survival of a legal system is the rise and persistence of a body of technical ideas; and this body of legal ideas is itself the result of the existence of a professional class of legal thinkers or practitioners, who created and preserved the body of ideas independently of the identity of the political system and independently of the purity of the race stock. In short, the rise and perpetuation of a legal system is dependent on the development and survival of a highly trained professional class."

This is, I think, an important truth. It was the professional class which gave to the Roman and the Anglican systems their world-wide influence. They supplied that ballast of trained intelligence which enabled them to mould into a logical and yet practically convenient system the technical principles, and the legislative changes in and additions to those principles, which were demanded either by experience or by altered social and political conditions. The layman may chafe at the lawyer's reliance on precedents. Democratic assemblies, animated by the inexperience and impatience of youth, may deride objections which they are unable to understand or unwilling to consider. But the truth remains that without a due regard to those precedents stored up by a legal profession, and to that experience which is given by the knowledge of those precedents and of the affairs of a nation and its citizens, there can be no legal system of an enduring kind; and, without such a legal system, it is difficult to see how a nation can acquire that respect for law which is the condition precedent of an ordered liberty. That the creation and the maintenance of a legal system, which is respected by those who live under it, is the most priceless asset which any state can possess, is the first and most obvious of all truths taught by the study of legal history. But no state will get or will keep such a system unless it has lawyers who can apply the wisdom and experience of past ages to the needs of their own time, and unless the sovereign—whether he be an assembly or a person—is willing to be guided by the counsels of such men. If Dean Wigmore's book helps, as I think it will help, to impress these truths upon lawyers and laymen, it will not only further the cause of a liberal education in the law, but also improve the quality of the legislation of the state.

W. S. Holdsworth.

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THE COURT OF APPEALS OF MARYLAND, A HISTORY. By Chief Judge Carroll T. Bond. The Barton-Gillet Co., Baltimore, 1928. Pp. iii, 214.

"The Court of Appeals of Maryland, A History," written by its Chief Judge, Carroll T. Bond, will prove good reading for those interested in the development of our American judicial system. It is carefully compiled from records which, the author explains, "have not been generally accessible." Comparatively speaking, the high court described by Judge Bond is one of the oldest tribunals of our country, its antecedents running back to 1638, when the Governor of the Province of Maryland and the members of his Council began to hold, at St. Mary's, "a general court of the Province." This was first called the County Court, but after 1642 it was termed the Provincial Court, and was the "local equivalent of the Court of King's Bench." The tribunal remained in that form until almost the beginning of the eighteenth century, when it was organized as a separate institution, with judges appointed irrespective of membership in the Council.

In those early days, when the court was composed of judges not required to be learned in the law, it seems to have been the custom in Maryland for this appellate tribunal, when it had a nice legal question before it, to ask the opinion of the bar. As Judge Bond points out, "The House of Lords, prototype of

the Maryland Court of Appeals, regularly resorted to the common law judges for guidance, and the same need was met in Maryland in the next best way, by resort to opinions from members of the bar not engaged in the particular case."

It is an interesting fact that a like custom at one time prevailed in the Supreme Court of Pennsylvania, under Chief Justice Tilghman, who came to us from Maryland. In *Jack v. Shoemaker*,[1] a case heard on appeal in 1810, the report reads, "The court, being desirous to ascertain what the practice had been, . . . appealed to the gentlemen of the bar . . . ; they concurred in stating," etc. This case also shows that one of the members of the bar, whose opinion was taken by Chief Justice Tilghman, was Mr. Edward Tilghman, whose experience, the report says, "went back to *1767*."

Another interesting coincidence: The year *1722* marks the time when it became established in both Maryland and Pennsylvania that their respective high courts possessed authority similar to the King's Bench of England. Judge Bond states that in *1722* Daniel Dulany, the elder, as Attorney General, gave his opinion to the Governor and Council of Maryland that its high court had the powers of the King's Bench. Our own famous Act of *1722*, organizing "The Supreme Court of Pennsylvania," conferred on that tribunal, in express terms, "the jurisdiction and powers, for all purposes whatsoever, exercised by the justices of the Court of King's Bench at Westminster"; and, as shown by the recent case of *Carbon County Judicial Vacancy*,[2] *292* Pa. 300, 303, those rights are still exercised.

To show that, on the administrative side of the law, Pennsylvania continues to stand with Maryland, it is interesting to note that a bill pending in our present Legislature, provides that criminal cases, other than those involving charges of murder, may be tried by the courts without a jury; a practice which, the author informs us, has existed in Maryland "from near the founding of the Province."

Judge Bond points out that "both in England and America, written opinions were developments of the last few years of the eighteenth century and the first of the nineteenth"; that, during the period prior to that time, "there were never any written opinions or statements of reasons for decisions" filed by the judges of Maryland. Some Pennsylvania jurists and many of our busy lawyers believe that it might be well to consider the advisability of re-establishing this practice, at least to a limited extent.

A surprisingly long list of eighteenth century Maryland lawyers who were educated at the Inns of Court is shown in this book, and, as indicating how proud they were of this distinction, it appears that when Edmund Jennings, in *1727*, came up for admission in his native state, he prayed that he might "be understood, in taking the oath of attorney, that his taking the said oath may not prejudice any of the rights and privileges of the Honorable Society of the Middle Temple, of which he alleges himself to be a member, and which he has sworn to preserve." Mr. Jennings was allowed to take the oath with this reservation.

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[1] 3 Binney 280, 281 (Pa. 1810).

[2] 292 Pa. 300, 303, 141 Atl. 249, 250 (1928).

Judge Bond tells us that, after 1776, "the Governor and Council never again sat as the Court of Appeals in Maryland." In that year, a constitutional convention reorganized the judicial system, and formed the Court of Appeals, "composed of persons of integrity and sound judgment in the law." The head of this tribunal assumed the title of Chief Judge, which previously had been borne by the Governor as presiding officer of the old court.

There appears to have been considerable difficulty at first in getting men to serve on the newly organized court, since there was little work to do and the salary was the equivalent of only about $500 a year. Finally, however, "five lawyers of ability and men with experience in public affairs," all of whom owned and farmed "large tidewater plantations" and none of whom had been "regular attendants upon the courts," accepted these judicial offices. Thus the present high court was organized.

Through the intervening years, Judge Bond traces the history of the appellate court of Maryland down to the last part of the nineteenth century, and mentions many interesting incidents and characters figuring in its development.

The book proper is composed of 200 pages, with a short preface, an appendix stating the names of the members of the court chronologically from 1778 to 1926, and an excellent index, which will be very helpful in making the work a valuable book of reference.

Robert von Moschzisker.

Philadelphia, Pa.

CORPORATE ADVANTAGES WITHOUT INCORPORATION. By Edward H. Warren. Baker, Voorhis & Co., New York, 1929. Pp. x, 1012.

Professor Warren's long and brilliant career as a teacher of corporation law in the Harvard Law School made the announcement of a treatise from his pen an event of unusual interest to students of corporation law, and the legal profession generally. It is not, however, strictly a treatise on corporation law, but rather a prelude to such a treatise. It is an exploration in a twilight zone, and in consequence deals with much-controverted themes. The title, while striking, does not give a clue to the real emphasis of the book. In the introductory chapter, the author states, "The primary purpose of this treatise is to inquire whether today it is proper for the courts to treat a body of men, who have united to further their financial interests, as a legal unit, when there is no legislative authority for so doing." The thesis suggested in the title is consciously subordinated to the one just quoted, since the author says, "Consideration is also given in the treatise to some other questions affecting bodies of men, which are closely related. Thus we shall inquire to what extent two or more human beings, who join to further their financial interests can without being regarded as members of a legal unit nevertheless attain by force of agreements advantages approximating the corporate advantages."

The material is elaborately classified. The scope of the treatise is indicated in an introductory chapter of some fifteen pages. Each important chapter is also introduced by a summary statement indicating the scope of the chapter. The style is informal, vigorous, and somewhat dogmatic. The impersonal form

of statement customary in legal treatises is abandoned. "We think," "we submit," "we conclude" frequently occur. This form of statement makes the reader feel the personality of the writer in a way that intrigues his interest. No doubt the author's old students will be stirred by classroom memories as they read the book. Over one-third of the book is devoted to a consideration of the question, whether the ordinary partnership is a "legal unit" except by force of statute. The term "legal unit" is apparently chosen rather than "juristic person" or "legal entity" as a means of avoiding philosophical implications. A legal unit in the author's phrase is "whatever has capacity to acquire a legal right or incur an obligation. The law is concerned with rights and obligations, and just as soon as the law holds that X (whether X is a human being or not) has capacity to acquire a right or incur an obligation, X is a legal unit."

The author agrees with Blackstone that legal units other than human beings must be created or recognized by the legislature and not by the Courts. He agrees[1] that there is nothing in the nature of things which prevents a body of persons unauthorized by the sovereign to act as a unit, and being recognized as a unit by the courts except reasons of policy based upon the admitted claim of the sovereign to the sole right of recognizing such units.

Applying this test to the partnership, his conclusion is that the aggregate, rather than the entity, theory is the correct one. The author argues with much force, that the aggregate theory of liability is just as natural a concept as the entity theory. Which is most in accord with reality he leaves to the philosophers. He pays his respects to the *Uniform Partnership Act*, and concludes that while a partnership is defined in accordance with the aggregate theory, many of its provisions are based on *an* entity theory, if not on the orthodox entity theory. The legal unit to the draftsman of the Act is *"the business* and not the body of men associated as partners." In consequence "the act fails to make a clear unambiguous answer to the question,—are partnership rights and obligations the rights and obligations of the human beings who are the partners, or are they the rights and obligations of some other legal unit having rights and obligations, which are distinct from their rights and liabilities?"

Considerable space is devoted to an examination of the legislation of the various states, and of the *Bankruptcy Act* upon which the advocates of the entity theory rely as showing at least an inferential recognition of the entity of a partnership. It seems to be the author's opinion that these statutes are primarily designed to relieve the embarrassment where there were joint parties, some of whom were beyond the jurisdiction of the court. These statutes take various forms such as suing in the partnership name; suing all the partners with service on a resident partner, the resulting judgments to be satisfied out of joint assets and the individual assets of the partners served. The apparent recognition of the partnership entity in the *Bankruptcy Act* by the provision permitting bankruptcy proceedings against the firm and the rules as to the marshalling of assets is also disposed of as a procedural device and not an acceptance of the entity theory. The decision of the United States Supreme

[1] See Warren, *Collateral Attack on Incorporation* (1908) 21 HARV. L. REV. 305, 309.

Court in *United Mine Workers v. Coronado Co.*[2] in which the court held that an unincorporated labor union could be sued in its business or trade name has aroused widespread discussion and the advocates of the entity theory contend that "the court declined to follow the rule advocated by the author with respect to the treatment of bodies of men as legal units and that it belittled the importance of inquiry whether the legislature had or had not directed that a particular body of men should be treated as a legal unit, and therefore the court decided that unincorporated unions were suable at common law." This conclusion is *contra* to the author's theory and he devotes a chapter to demonstrating that the decision does not warrant the conclusion. Section 8 of the *Sherman Act* provides that "the word person or persons wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the territories, the laws of any state or the laws of any Foreign Country." The author contends that the construction of this section is the basis of the decision, and without it, the court would not have held that the union could be sued in its name. The chief justice certainly did not rest his decision on this section alone, since he points to an inferential statutory recognition in various federal acts protecting union labels, embezzlement from unions, representation on labor boards, etc. He also dwells at some length on the grave danger to the public, if such large, highly organized associations with large funds, are not amenable to suit as a unit. This last reason is not touched upon by the author, and he concludes that a discussion of other statutes by the court merely shows "statutory" rather than "common law" reasons. Such a concession, it is submitted, weakens the author's thesis, since an inferential creation of a legal unit is equally a departure from the author's view.

In a chapter devoted to the privileges and immunities clause of the federal constitution, the recent case of *Hemphill v. Orloff*,[3] is considered at some length. In this case the United States Supreme Court affirmed a judgment of the Supreme Court of Michigan, which held that as a prerequisite to doing business in that state, a business trust formed in Massachusetts must comply with the Michigan statutes regulating the admission of foreign corporations to that privilege. The decision has caused a great deal of discussion. At first blush it would seem to be *contra* to the author's thesis, since it treats a business trust which has many of the advantages ordinarily associated with corporations, but which is not treated as a corporation or legal unit in the state where organized as a legal unit. The court said, "whether a given association is called a corporation, a partnership or a trust is not an essential factor in determining the power of a state concernng it. The real nature of the organization must be considered. If clothed with the ordinary functions and attributes of a corporation, it is subject to similar treatment."

The power of a state to exclude an association under the privileges and immunities clause was regarded as limited to incorporated associations, since they are not citizens, and exist apart from the associates in the enterprise. The case would seem to be either a recognition of legal units without legislative

[2] 268 U. S. 295, 45 Sup. Ct. 551 (1925).
[3] 277 U. S. 537, 48 Sup. Ct. 577 (1928).

sanction, or an untenable narrowing of the privilege and immunities clause. The author explains this decision in a way that sustains his thesis. "If entrance should be denied to corporations, then entrance ought to be denied to members of business organizations who had not complied with the laws for the formation of corporations, but who had moulded their plan of organization, so as to assimilate their position as near as might be to the position of shareholders in a corporation and thus to obtain all the corporate advantages without incorporation. If this constitutional provision was not intended to protect corporations, it was not intended to protect the simulators of corporations." This explanation is plausible and if accepted would set a limit to the doctrine. The language of the court will hardly bear this construction. If we accept it as the basis of the decision, is it not a dangerous judicial usurpation? It lays down a rule of policy that groups of citizens, who have done a perfectly lawful thing in seeking to secure through a contract embodied in a deed of trust, advantages usually associated with incorporation, may be excluded from doing business in a state, although the association is not a legal unit, and in the face of a constitutional provision that "citizens of each state shall be entitled to the privileges and immunities of citizens in the several states."

Book III is devoted to the subject of *de facto* corporations. It discusses questions that have already been dealt with by the author in magazine articles. He presents for the first time a new classification of *de facto* corporations. They are divided into three classes. A *de facto* corporation of the first class is a corporation whose charter is subject to forfeiture. Strictly speaking such a corporation is not a *de facto* corporation at all, and is so recognized by the author.[4] It is apparently included in the present classification to throw into sharper relief classes two and three which are ordinarily dealt with under this title. The classification is largely for the purpose of discussing whether collateral attack is always forbidden, as has been asserted and if not true, under what circumstances will it be allowed. The classification justifies itself, however, as under the author's handling, it serves to explain much of the confusion of courts and text writers.

The book is a distinct contribution in a field where there has been too much generalization, and too little critical analysis. The author has laid the profession in his debt by bringing together the important problems that lie at the foundation of all associated action, corporate and incorporate.

The bringing together of the statutes of the various states touching partnership, business trusts, and corporations will be particularly appreciated. The author is a realist and stands squarely for what may be called the orthodox view; at least it is the historical view. He presents it fully, clearly, and in a style inimitable.

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[4] See Warren, *Collateral Attack on Incorporation* (1907) 20 HARV. L. REV. 456.

HOW TO PROVE A PRIMA FACIE CASE. By Samuel Deutsch and Simon Balicer. Prentice-Hall, Inc., New York, 1928. Pp. xxi, 604.

While this book emphasizes New York practice, procedure and rules of evidence, its clear and simple illustrations of the manner in which almost any kind of a prima facie case may be proved, make it of general interest.

Every conceivable case from Account Stated down the alphabet to Work, Labor and Services is illustrated by showing the questions and answers which satisfy the plaintiff's original duty of producing evidence and shift that duty to the defendant. From the skeleton forms thus shown, the novice should be able to build up the most complicated case by elaborating the typical situations used as illustrations.

To further guide the novice a complete trial is set forth showing every step from the calling of a typical case to the verdict of the jury. Intentional errors have been inserted for the purpose of illustrating the manner in which objections are made and exceptions taken. Seemingly out of place, there is an analysis of the causes of divorce in the various states.

The book is practical and of equal value to the law school instructor conducting a course in practice and to the attorney preparing a case for trial.

Charles I. Thompson.

Philadelphia, Pa.

CASES ON THE LAW OF BANKRUPTCY, INCLUDING THE LAW OF FRAUDULENT CONVEYANCES. By William Everett Britton. American Casebook Series. West Publishing Co., St. Paul, 1928. Pp. xxi, 769.

In the interesting preface to his volume, Professor Britton argues that the Bankruptcy Act should be stressed in a casebook on bankruptcy: first, because the Act is the basis of the bankruptcy system; second, because stressing it will draw to, and impress upon the mind of the student, a true picture of the creative agencies of the law—legislation and judicial decision; and third, unless the statute be taken for the point of departure, and attention sharply focused upon it, the difference between reasoning from a statute to a result and reasoning from judicial decisions to a result, will not be adequately comprehended by the student. Since a statute constitutes the basis of the system, the student should, where a decision presented to him for study has been made under the statute, examine the statute before he examines the decision—see the statute with his own eyes, at first instance, and "not first and only through the eyes of the court." Since most of the courses he pursues deal almost exclusively with the common law; most of the casebooks he studies are compilations of common-law cases, into which statute law intrudes itself but relatively seldom, and then, perchance, to be dealt with as if it were something inferior. He should be made to realize the true standing of the legislature and its enactments, and to understand the proper method of finding the law of a case that falls within the scope of a statute. As the matter stands now, he is prone to place adjudication above legislation, the court above the legislature, and his view is likely to be that judicial decision is the sole creative agency of the law, and reasoning from decisions the sole method of deciding cases. Besides, the fact that the classroom

recruits the bar, the latter in turn recruiting the bench, tends to perpetuate the view, and to preserve, enlarge and multiply its evil consequences, which involve nullification of the will of the legislature. However, Professor Britton in effect states that he does not charge, even as to any particular statute, that there is anywhere a court that *always* looks upon statute law as if legislation were not the equal of judicial decision as a law-creating agency.

From both the teacher's point of view and the student's, certain reasons of convenience commend the method adopted by Professor Britton in presenting the Act. He has printed each part of the Act in immediate proximity to the cases which deal with that part, and then again in connection with other provisions of the statute to which it is germane. It can hardly be denied that the featuring of virtually all the bankruptcy sections must have the effect of enhancing, in the student's mind, the importance of the study of the Act as a whole. Also, it must be admitted that through featuring practically the entire Act, with a rearrangement of its contents, Professor Britton has been able to produce a vivid and integrated picture of the bankruptcy system. Adjective-law parts of the statute, as well as its substantive-law parts, come in for a share of the featuring, and the text contains several cases dealing with bankruptcy procedure.

Certain well-known cases that Professor Britton has omitted from the book, but which are stated or discussed therein, to some extent, in cases or footnotes, are named in italics in a table of cases in the forepart of the volume. His case material is, as it should be, geared to the views expressed in the preface. Statements of facts of a number of cases might well be revised, so as to compress the statements into narrower compass than they now occupy.

The book contains one hundred thirty cases. Only five of these—two state and three English decisions—antedate the enactment of the existing bankruptcy statute. But although the cases in the main are an exposition of the existing Bankruptcy Act, incidental historical treatment of the subject, so far as warranted in a course to which not a great amount of time is allotted, is not wanting. Professor Britton gives this reason for largely confining himself to the present law: "It would be decidedly worth while, if it were feasible, to develop the subject of bankruptcy historically."

He admirably applies in this work, as in his other casebooks, his argument, stated in the preface, in favor of closely articulating text material and clearly indicating the articulation thereof to the student. Two cases which comprise the first chapter, federal and state bankruptcy legislation, with a copious footnote on *Stellwegen v. Clum*,[1] afford material on which may be predicated all the questions that need be raised and discussed in the classroom in connection with preliminary matters. Conditions precedent to adjudication and the administrative machinery for the enforcement of the Act, including the acts of bankruptcy, but restricted to acts leading to adjudication, are the subject matter of the second chapter. Chapter three takes up accumulation of assets, and freeing them from adverse claims. Included in this chapter are conveyances fraudulent under state statutes, and trustee's avoidance of fraudulent conveyances. In chapter four the bankruptcy sections concerning the distribution of the bankrupt's estate are considered. These two latter chapters are organized upon accountancy concepts

[1] 245 U. S. 605, 38 Sup. Ct. 215 (1917).

"for after all the trustee takes his position primarily as a business man." Discharge with the various matters that fall appropriately under that head is disposed of in the fifth chapter. The sixth, and last chapter, merits hearty commendation in that here all the problems of partnership bankruptcy are gathered together and disposed of. Spreading these problems throughout a text not only hinders the development of that particular topic, but handicaps the development of the general subject. Although all that is requisite for incidental treatment of the subject of fraudulent conveyances in connection with the subject of bankruptcy which is all some of us can ever find time to take up with our classes, is presented by Professor Britton under acts of bankruptcy, and in the third chapter, one may still question whether the second half of the title, *Cases on the Law of Bankruptcy, including the Law of Fraudulent Conveyances,* is well advised.

The book abounds in footnotes, many of which are references to law review articles. Most of the remainder are in the form of questions, citing cases that throw light thereon; their object being to "stimulate and direct—careful word study of the text" and to supply "material which will disclose or make possible the discussion in the classroom of the fundamental problems of statutory construction, whether they appear in connection with a bankruptcy act or involve any other statute." The volume contains an appendix, in which is the Act as officially promulgated, with the sixty-three official Forms in Bankruptcy.

Contrary to what one might expect, the division of the text into so many sections, subsections, and the like, with parts of the Act scattered through it in boldface, and with so much footnote material, fails to give the contents even the appearance of a diffuse arrangement. Of course, the featuring of the Act has required an extensive rearrangement of its parts, but the rearrangement, having been skilfully made, involves comparatively little repetition, and the distribution, through the text, of parts of the statute, is without damage to a proper continuity in the unfolding of the subject. If the fact that the text embraces so many divisions caused any difficulty in allocating the cases to their respective places in the book, the difficulty seems to have been handsomely surmounted.

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THE DOCTRINE OF NECESSITY IN INTERNATIONAL LAW—By Burleigh Cushing Rodick. Columbia University Press, New York, 1928. Pp. ix, 195.

With copious notes covering 25 pages, an excellent bibliography, and an extended index, this very ambitious and excellent book has been published, after, as the writer states, five years of preparation. The book bears every evidence of ripe scholarship and extensive study, and is its own justification for the adoption by the author of Doctor Johnson's famous phrase in dismissing the book from his hands after his labors, ". . . with frigid tranquillity, having little to fear or hope from censure or from praise."

The book is ambitious because it attempts to pursue through the web and woof of the whole texture of international law, a doctrine which has had its growth in the needs and circumstances of various nations at va-

rious times, and which results from over-nice designs and refinements woven into the law by Privy Councilor or Solicitor for the Crown, Statesman and Diplomat, seeking justification for a course of conduct, necessarily begun, while at the same time endeavoring to justify the conduct as being within the points of international justice and right. As Mr. Rodick states, "It has been the chief aim of the writer to discover the extent to which the doctrine of necessity in international law may be said to possess a certain amount of legal validity, and also the extent to which lawful limitations may be imposed upon its exercise. No attempt has been made to give a detailed account of the origin of the doctrine, or to discuss its philosophical and political aspects."

The author regards necessity as the justification for a violation of international law as it stood, which justification is founded on the right of self-defense, which self-defense may either be aggressive or defensive, and bears but slight resemblance to the doctrine of self-defense as generally known by common law lawyers. The doctrine is traced from Grotius and Pufendorf, through successive chapters, in its relation to national jurisdiction, the high seas, pacific intercourse of states, non-amicable modes of redress short of war, war on land, naval warfare, and neutrality. The study of Professor Amry Vandenbosch's book, *The Neutrality of the Netherlands During the War*, will make more evident the value of this book in the consideration of modern problems, when confronted with such definite doctrines as have been laid down in the development of international law.

In itself, international law might be defined in the happy phrase of Mr. Justice Holmes, as not "a brooding omnipresence in the sky, but the articulate voice of a sovereign which can be identified," but it is none the less constantly in a state of flux, and, naturally, therefore, somewhat nebulous. It is this state of flux and nebulosity that constitutes the bulk of the author's difficulty in tracing the doctrine of necessity through the web and woof of the whole fabric, and renders his treatise of value in so far as it presents to the student different aspects of the doctrine in the various fields covered by international law. But it is when the author attempts to lay down rules or set out limitations, that the difficulties become most apparent, and any tangible concept of a rule or its limitation becomes difficult of perception.

A mere statement of the sixth rule of limitation, which the author sets out, makes this more apparent. He states the rule as, "Other things being equal, the equities of the situation must always be considered; the principals of equity do not permit a nation, because it has gone to war, to consider the rights of other nations as having become generally subordinate to its own, or justify it either in employing the doctrine of necessity in defense of its less important rights, or in sacrificing the more important rights, and the safety of an unoffending state to its exigencies." This statement and any definite rule to be derived therefrom for practical use, will indicate how, under various contingencies, different chancellories will arrive at amazing constructions as to its meaning and scope. In time of stress every nation generally deems the equities of the situation to be on its side and deems that the rights which it maintains are its more important, and not its subordinate, rights. It is to be feared, therefore, that these seven limitations, as a pre-ordained rule of law, are somewhat nebulous.

It may be questioned whether the doctrine of necessity, if there be such a doctrine, can best be treated as a general rule of law, or whether it might not be better to discuss the matters which the author sees fit to discuss under the general heading of necessity, under specific subject titles, such as War on Land, or Neutrality, rather than to seek for a general principle cutting across the whole field of international law.

The book might be criticized from the standpoint of what it does not contain, and particular criticism might well be directed to the absence of the political aspect always involved in the application of the doctrine of necessity, as well as in the application of other doctrines of international law, but its outstanding merit as a contribution to the whole subject had better be emphasized.

There has been such an awakening in America in this, perhaps, golden age of American activity, thought and endeavor, that the increase in the bibliography of such a subject as international law should be stressed. When the works of American dramatists, for example, are being translated into every language in the world, and plays by American dramatists are being given throughout the world on every national stage, and when mechanical and commercial ideas, which are strictly American, are receiving the sanction and approval of the world, it is not too much to hope that the patient study and work of American scholarship in the field of international law, will find its place beside the great authorities of the past, such as Grotius and Pufendorf, to whom we still turn.

This book, therefore, is to be commended to everyone having to deal with the difficult subject of which it treats, and its author is to be congratulated upon putting into concrete form, one of the most difficult of all subjects in the general field.

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