

BOOK REVIEWS.

THE EXTERRITORIALITY OF AMBASSADORS IN THE SIXTEENTH AND SEVENTEENTH CENTURIES. By E. R. Adair. Longmans, Green & Co., New York, 1929. Pp. xii, 282.

To the law, there is a historical and a legal approach. Although, in reality, each is complementary of the other and equally necessary to the symmetrical and orderly development of a coherent system of laws, yet, we often find the legal historian and the jurist pursuing divergent and mutually exclusive aims. The only real difference—if such it be—is in the emphasis of each.

In writing on *The Exterritoriality of Ambassadors in the Sixteenth and Seventeenth Centuries*, Prof. Adair has written as a trained historian, and his thesis is admirably presented, for he has avoided, much more so than the ordinary run of legal historians, most of the shortcomings of the strictly historical method of investigation. He has, at any rate, fully apprehended, considered and given due weight to legal conceptions. He has not only discoursed at great length on the theory and history of the ambassadorial office during those two centuries; he has also reached definite conclusions of law relative to the present-day position of diplomatic agents and their suites. The subject is well chosen and well treated: well chosen because it deals with the formative period of diplomatic exterritoriality; well treated because he has given us one chapter on the theory followed by one on the contemporary practice. For his theoretical discussion he has drawn upon and collated the views of the early writers; for his practical analysis he has gone to the documentary origins of the centuries dealt with. The work is presented in a readable style, free from technical nomenclature, and discloses throughout a close, critical and systematic inquiry into a very involved subject. There are thirteen chapters in the book, dealing theoretically and practically with the immunity of the ambassador and his official and personal suites from the criminal and civil jurisdiction of the receiving State; with the immunity of diplomatic couriers and despatches; with the freedom of worship; with the inviolability of the ambassador's residence; and with the enforcement of the ambassador's immunities.

But all cannot be—is not expected to be—praise. In dealing with the privileges of an ambassador in intermediate States Prof. Adair refers to the case of *Wilson v. Blanco*,¹ which held void a writ served in New York on a foreign diplomat who was on his way to Paris, on the ground that he enjoyed immunity from civil suits even in a State to which he was not accredited. The author's criticism of the decision is that it was "undoubtedly wrong; the weight of precedents and opinion are against it". Prof. Adair, in his discussion of this matter has not cited us to any judicial precedents, and the opinions to

¹ 56 N. Y. Super. Ct. 582, 4 N. Y. Supp. 714 (1889).

which our attention has been directed are about equally divided. But the more serious weakness of his conclusion is in this: that he overlooks the fact that the case of *Holbrook, Nelson & Co. v. Henderson*,² cited approvingly in the *Blanco* case, holds substantially the same as the latter case, and that the author has not attempted to refute Mr. Justice Oackley's criticism of the early precedents—precedents which he declined to follow in rendering his decision. We believe that the court's comment on these precedents, that the most that can be said of them is that they are "instances of violence, apparently acquiesced in, or to speak more properly, submitted to, in some cases after remonstrances against their legality, and, in all, from motives which cannot be known," is clearly right. Prof. Adair has also passed without notice the cases of *Carbone v. Carbone*,³ and *New Chile Gold Mining Co. v. Blanco*,⁴ which fully sustain the original position taken in the *Henderson* case.

Chapter XII deals with the Enforcement of the Ambassador's Immunities. Prof. Adair seems to labor under a serious misconception. He comments on the *Statute 7 Anne cap. 12* and the sanctions it prescribes as being "an entirely new departure," and as putting the ambassador and his suite "in a position they had never held before". His contention is that Lord Mansfield's statement in 1874, in the case of *Triquet v. Bath*,⁵ that, "the law of nations, in its full extent was part of the law of England", is inaccurate, and that the enactment of that statute is a refutation of Mansfield's view. Here again, Prof. Adair, the historian, has failed to appreciate the point of view of the jurist. He fails to differentiate between what are technically known in the law as "perfect" and "imperfect" rights. The rights of ambassadors prior to the enactment of 7 Anne were certainly of the latter class; the statute made them "perfect" by prescribing certain sanctions. "Although," as Salmond says, "a legal right is commonly accompanied by the power of instituting legal proceedings for the enforcement of it, this is not invariably the case, and does not pertain to the essence of the conception."⁶ The case of *Respublica v. De Longchamps*,⁷ decided in Philadelphia in 1784, involved an indictment against the defendant for an assault on the secretary of the French legation, as a "violation of the law of nations". The act of Congress of 1790, which prescribed sanctions (and is in substantial conformity with the English act) was enacted subsequent to the decision in the *De Longchamps* case; and yet the court imposed a very severe punishment on the defendant—a punishment that was not to be found at that time or since in the statute books of Pennsylvania, and which certainly could not be predicated on the *Statute of 7 Anne*; and this case, we believe, is a refutation, on all fours, of the position taken by Prof. Adair.

² 4 Sanf. Super. Ct. 619 (N. Y. 1839).

³ 123 Misc. 656, 206 N. Y. Supp. 40 (1924).

⁴ 4 T. L. R. 346 (1888).

⁵ 3 Burr. 1478 (1764).

⁶ SALMOND, JURISPRUDENCE (7th ed. 1924) 239.

⁷ 1 Dall. 111 (Pa. 1784).

These criticisms do not detract from the intrinsic worth of the book as a source of historical data nowhere else accessible to the English reader. They only show, in the reviewer's judgment, that, with Prof. Adair in the instant case as with most of us at some time or other, the thickness of the atmosphere wherein we dwell the most will frequently remove from our ken those other angles of a subject under investigation which should be carefully considered in order to prevent us from reaching the wrong conclusions whether of law or of fact.

The book serves a really useful purpose. It should be studied by all those teaching, practising or in some form or other interested in International Law.

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FEDERAL INCOME AND ESTATE TAX LAWS. By Walter E. Barton and Carroll W. Browning. Fourth Edition. John Byrne & Co., Washington, D. C., 1929. Pp. xlv, 766.

This fourth edition brings down to date, through the *Revenue Act* of 1928, a comparative arrangement of current federal income and estate tax laws with footnote annotations of decisions by the federal courts and United States Board of Tax Appeals. The work does not profess to be a textbook, but is a conveniently arranged compilation of the various provisions of the successive acts, which has admirably satisfied a peculiar need of federal tax practitioners.

The adoption of the income tax as a major source of revenue in meeting and paying off the tremendous costs of the late war, resulted in a quick succession of revenue acts, each succeeding act reflecting changes in the various provisions based upon the experience under or change in policy from the provisions in the preceding act. It often becomes necessary to compare the specific wording of the corresponding provisions in the successive revenue acts, not only for the purpose of direct application, as in the case of audits covering several tax years, but also for the purpose of determining the particular meaning of a provision in one revenue act by comparison with the specific wording of the corresponding provision in another revenue act. Principally to serve that particular need, the authors in their successive editions, have set forth the various current tax laws in six vertical columns across the open double page, three columns on the left-hand page and three columns on the right-hand page, and have arranged the provisions within the columns so that the corresponding provisions in the respective acts appear horizontally opposite one another. Thus, in the present edition, on the left-hand page are the three vertical columns containing, from left to right, the *Acts of 1928, 1926, and 1924*, and on the right-hand page the *Acts of 1921, 1918, and 1917*. And, as above indicated, the provisions are arranged, irrespective of the particular section numbers within the respective acts, so that the corresponding provisions appear opposite one another on the open double page.

This comparative arrangement is all the more helpful with the provisions of the *Revenue Act of 1928*, since that Act has made an entire rearrangement and

consequent change in section numbering of the various provisions, so that one is unable to locate corresponding provisions in other acts by reference to the same section number, as has been usual in examining prior acts.

In addition to the statutory compilation, the authors have endeavored in copious footnotes to digest or, at least, cite the decisions of the federal courts and the Board of Tax Appeals involving the various statutory provisions in the successive acts. While this unquestionably involved tremendous effort and has been commendably done, we doubt the feasibility of giving an adequate detailed compilation of all these materials within the limits of a bound volume. Since the annotation field is adequately served by the loose-leaf tax services, it would seem that the annotation in a volume of this sort should be concentrated toward the assembling of the particular decisions, excerpts from the Congressional Record and committee reports, historical data and editorial comment explaining or throwing light upon the intent and purpose of the various changes in the corresponding provisions of the respective acts. Having in mind the principal purpose of the comparative compilation, this specialization of annotation would seem to be a desirable complement.

Typographically, also, it would facilitate the use of this comparative text to have the typing alinement consistently identical in the corresponding provisions where, or so far as, the respective wordings were identical.

The foregoing suggestions are not made in the spirit of disparagement, but rather in the desire to increase the usefulness of a volume that has abundantly demonstrated its right to favorable recognition.

Irvin H. Fathchild.

Chicago.

THE INTERNATIONAL PROTECTION OF TRADE MARKS BY THE AMERICAN REPUBLICS. By Stephen P. Ladas. Harvard University Press, Cambridge, 1929. Pp. viii, 136.

Dr. Ladas' little study of the problems of Inter-American trade mark protection and repression of unfair competition was published in its present form in anticipation of the conference on the subject recently held in Washington. Following a brief introductory chapter on the international protection of industrial property, in general, he traces the history of Pan-American conventions on industrial property, states concisely the problems involved in the Inter-American protection of business relations, discusses the difficulties of international regulation, and concludes with some valuable suggestions for the Pan-American Conference.

The principal problems are two: first, the problem of protecting the priority of trade marks, and second, the problem of effective protection against infringement and unfair competition. Dr. Ladas believes that the best solution of these problems would be found in the accession of all the American republics to the Industrial Property Union. Failing this, "the next best thing is to make use of the experience of the Industrial Property Union in solving the problems of Inter-American protection." The draft convention which he submits for consid-

eration is principally an adaptation to Pan-American needs of the general International Convention of 1883-1925.

The Convention of Buenos Aires of 1910 for the Protection of Trade Marks, the Convention of Santiago of 1923 for the Protection of Trade Marks and Commercial Names, the International Convention of 1883-1925, and the Arrangement for the International Registration of Trade Marks of 1891-1925 are printed as appendices. While the book bears some evidence of hurried preparation, it will be found an accurate epitome of the problem. The author's comments are wisely directed. His suggestions are constructive. The more comprehensive study of the international protection of industrial property in general, which the preface promises for early publication, will be awaited with the keenest interest.

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ANSON'S PRINCIPLES OF THE LAW OF CONTRACTS. Edited by Charles J. Turck. Callaghan & Company, Chicago, 1929. Pp. lvii, 654.

It has been said that the legal literature of the decadent post-Justinian empire consisted of a series of epitomes descending ultimately into epitomes of epitomes. Something of the reverse process has happened to Sir William Anson's noteworthy treatise on Contracts. It was admirable for its brilliant terseness, its few but pointedly chose citations, and its absence of irrelevancies, qualities that have entirely disappeared from the latest American edition. Building upon Professor Knowlton's edition of Anson in 1887, President Turck has succeeded in making of Anson's concise text a tome of some 600 pages weighted with footnotes that cite approximately 2750 cases, frequently stating them in detail.¹

The diligence of the editor cannot but be applauded. To collect cases is always a drudgery, but to collect them to illuminate another's text bespeaks a patience that the early glossators can only equal. Of course, opinions will vary as to the value of such efforts. If they be for "students beginning the study of the law", inasmuch as this is said to be the purpose of this edition,² one cannot but admire the Promethean hope of the editor. If they be for the advanced investigator or practitioner, he will naturally turn to where authorities are collected with even more completeness.

¹ Occasionally the facts of the same case are detailed more than once. See pp. 33 n. and 74 n.; pp. 60 n. and 78 n.

² P. iii. The editor's 2750 cases contrast strangely with his avowed purpose: "The editor adopts as the correct statement of the purpose that should control one writing a textbook in law for first-year students the following principle set forth by Sir William Anson in his Preface to the sixth English edition: '. . . So I have cited few cases, not desiring to present to the reader all the modes in which principles have been applied to facts, and perhaps imperceptibly qualified in their application, but rather to illustrate general rules by the most recent or most striking decisions.'"

This edition has one serious defect. In the reviewer's judgment a re-edited text, if it be worth re-editing, should preserve the original and indicate textual additions in some distinctive fashion. In such a manner, Mr. Justice Holmes' edition of Kent's Commentaries uncovered the dignified original beneath the accumulated coats of varnish. Knowlton had already disregarded this canon, and the present editor pays it no respect, with the disconcerting result that the reader cannot determine whether at any particular moment Anson, Knowlton or Turck may be "on the air". Not every virtuoso is equally tempting.

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CASES ON THE LAW OF BAILMENTS AND CARRIERS AND OF SERVICE BY PUBLIC UTILITIES. By Edwin C. Goddard. Second Edition. Callaghan & Co., Chicago, 1928. Pp. xxvii, 1033.

Professor Goddard issues his new edition twenty-four years after the first edition, and it bespeaks that growth which time alone generates and study perfects. Bailments, Carriers, and Service by Public Utilities have been combined in this volume because time allotments do not permit separate intensive courses. Although many are of the opinion that Public Utilities should be relegated to a separate course, the inclusion of this subject in the same volume in which Bailments and Carriers are treated is perhaps justifiable on the ground of convenience and for that reason will probably not occasion serious objection.

A cross section of the cases in this volume exposes a variety of interesting factual situations. Thus, there is the case in which a constable, having converted to his own use \$400 placed by an insane person upon a railway track, was properly held guilty of larceny by a bailee,¹ and the celebrated case allowing recovery for a cask of brandy damaged while being transferred from one cellar to another—which latter case includes Lord Holt's sextuple classification of bailments.² Then there is the case involving trespass for seizing a horse,³ in which case Abraham Lincoln appeared as counsel and upheld his contention by citing Chitty on *Pleading*, Bacon's *Abridgement*, Montagu on *Liens*, Starkie on *Evidence*, Espinasse's *Nisi Prius*, etc. A word ought also to be said of the leading case of *Armory v. Delamirie*, which Sir Frederick Pollock turned into a verse introduced in this manner:

"The Argument. This tale showeth how a poor chimney-sweep found a goodly jewel, and by the guile of a goldsmith's prentice was like to lose all fruit thereof; yet afterward, in Hilary Term of the eighth year of George the First, brought trover for the same and had his damages, and moreover wrought thereby a perpetual memory of his name, and an occasion for excellent learning."⁴

¹ Burns v. State, 145 Wis. 373, 128 N. W. 987 (1911).

² Coggs v. Bernard, 2 Raymond 909 (1701).

³ Cannon v. Kinney, 3 Scammon 9 (1839). See WILLIAM H. TOWNSEND, LINCOLN'S LAW BOOKS (1929) 15 A. B. A. J. 125.

⁴ The complete verse may be found in 2 BARTLETT, CORNHILL BOOKLET (1901).

The second part of the volume is devoted to Public Utilities and includes chapters on "The Nature of the Public Calling", "Legislative Determination of Public Interest", "Legislative Permission to Operate", "Obligation to Render Service", and "Withdrawal from Service".

It should be noted that an inexhaustible supply of reference to cases and law review articles supplement the reported cases, and that a table of contents, table of cases reported, table of cases noted, and an index of topics aids the reader in speedily locating any case or subject. However—while the book is excellently set up for law school use—it would not have been amiss to have included an appendix of statutes that are common to the Law of Carriers and also to have added a few typical regulatory statutes governing Public Utilities, for the purpose of reference during classroom discussions or while reading the cases. Thus, for example, in a footnote on page 236, an exceptional case is cited that involved subdivisions of the *Interstate Commerce Act*,⁵ and it would have been of distinct value to have had the relevant portions of the Act readily accessible for purposes of reference.

Nor have Air Carriers been considered by Professor Goddard, although several cases have been decided in which they have been involved. As the establishment of aviation as a method of transportation becomes more secure, the treatment of the subject of Air Carriers becomes increasingly important and advantageous. The absence of such treatment in a case-book of this character is to be deeply regretted.

However, the selection of cases, on the whole, is admirable, and, if the principal texts on Bailments, Carriers, and Public Utilities were freely referred to in this volume, it would be as welcome to the practitioner as Smith's *Leading Cases*.

Although nominally a second edition, this book seems to be really one of first impression, inasmuch as its content so widely differs from that of the volume it supplants. Furthermore, it includes over two hundred cases not reported in the first edition. Because of its scope, its thoroughness, its arrangement, and its excellent selection of cases, it is a valuable contribution as a case-book for law school use.

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THE PRACTICE AND PROCEDURE OF INTERNATIONAL CONFERENCES. By Frederick Sherwood Dunn. The Johns Hopkins Press, Baltimore, 1929. Pp. xiv, 229.

This study is called forth because of "the rapidity with which the conference method has come to the forefront in the conduct of international intercourse" within recent years. Dr. Dunn has examined it essentially as a method of international agreement corresponding to the conditions of current international life, and his first and last chapters are intended to present it in this aspect and to summarize the salient features of its mechanics. Those

⁵Dolan Fruit Co. v. Davis, 111 Neb. 322, 196 N. W. 168 (1923).

two chapters might well be read by everybody who takes an interest in international affairs in order to get the measure of this exceedingly popular and inevitable method.

The eight intervening chapters are a formal study of conferences with particular reference to their procedure. The author has evidently studied the subject extensively and discriminatingly. He writes with a rapid style and a concentration upon the salient point which contributes to legibility. These chapters give a very summary history of the principal conferences since 1815 and adverts to that of Westphalia as the starting point of them all.

The book as a whole is consequently a readable account of the growth of the conference method in international relations and an examination of its character as developed under the League of Nations practice. The present-day world is not to be understood without some comprehension of this phenomenon. Dr. Dunn's book is, therefore, a welcome contribution. It was published almost at the same time as Norman L. Hill's *Public International Conference*, and these two studies supplement each other excellently.

Dr. Dunn has attempted to elucidate the conference method by emphasizing practice and procedure. It is a natural approach in a thesis. He has not, however, gone very extensively into the subject, contenting himself with laying down the main lines of developing rules of procedure, forms of voting, acceptance of delegates, selection of officers, parliamentary procedure, keeping and authenticating records and forms of expressing decisions. On all of these points his narrative is generally accurate, notwithstanding that it is based principally upon study of a very limited number of conferences. The general reader will find the book a useful introduction to the subject; the student is likely to find it scarcely more than suggestive.

On a subject where so little literature exists, the generalities of a writer become of importance. In the opinion of the reviewer, Dr. Dunn's device of dividing conferences into "political" and "non-political" and of further distinguishing them as "bargaining" and "non-bargaining" serves little or no purpose. Dr. Dunn himself adopts the first distinction as a matter of convenience rather than of conviction. He pertinently calls attention to the obvious fact that anything is political when it is worth while for politicians to give it their attention. It is further true that nothing can be handled by states except by their political organs and that, consequently, participation in any conference is an expression of policy. It is now pretty generally recognized that a state exists to promote the welfare of its people and that it is entitled to no consideration except in that relation. If, for the sake of logical distinction, two types of conference are to be considered, it will probably be found, as Dr. Dunn points out, that one type deals with standards of conduct which states as international persons decide for themselves and that the other regulates methods of conducting international business.

Dr. Dunn has by no means exhausted his subject. The present development of the conference method exhibits several changes of significant value. He does not adequately emphasize the extensive preparation which inevitably occurs before a conference. This begins with study by an international com-

mittee of experts, proceeds through the analysis of replies to questionnaires from interested Governments, continues with the submission of a draft convention based on the replies to the Governments, and finally the formal convening of the meeting with this extensive digestion of the subject before it. He does not call attention to the use of the conference to develop international policy. The International Economic Conference was the most interesting demonstration ever given of the fact that states are the servants of their peoples. The Governments paid the expenses of their delegates, but they were appointed without instructions, and their conclusions were in no way binding upon the Governments. The final report is, and was intended to be, the concentrated common sense of the world population in its economic aspect, the Governments having agreed to their citizens giving them this ideal, irrespective of their national interests. The Governments have since convened a number of conferences to put specific parts of the report into formal agreement and are still pursuing that policy.

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