Book Reviews

Maritime Trade in War. By Lord Eustace Percy. New Haven, Published for the Institute of Politics by Yale University Press, 1930. pp. 114. $2.

THIS is quite a remarkable book. It consists of six lectures delivered at the Williamstown Institute of Politics by a distinguished Englishman—lectures in which he undertakes, in a broad sweep, to analyze and explain the legal relations between belligerents and neutrals in time of war, and to propose possible solutions for the present conflict of views. Recognizing what he claims to be confusion and uncertainty in the subject and the fact that the United States and Great Britain seem to entertain different views upon it, he undertakes to discuss the policies and justifications which led to the adoption of the British practices in the late war and indicates how far these might be modified in the future. Without once explaining to the reader the underlying reasons for the whole structure of maritime law in this respect, namely, the distinction between combatant and non-combatant and the necessity for a working compromise between belligerent military and neutral trading privileges, he presents what in the main must be regarded as a defense of the British practices in the late war as the natural and presumably lawful outcome of the "logic" of the existing rules—practices which the British Government, during the War, did not venture to excuse on any other ground than that of retaliation for enemy illegality. He freely admits that Great Britain by these measures—which in fact ultimately wiped out any neutral rights—controlled the trade of the world; but he suggests that she would not resort to these extremes in an ordinary war, but only in an extraordinary war (p. 49). He intimates that the solution of the question of freedom of the seas in the future lies in a distinction to be made between just wars and unjust wars—the "just" belligerent to have a fairly free hand which neutrals shall concede, the "unjust" belligerent to be greatly restricted. Presumably if one cannot tell which is the "just" side—and that would be in most cases—the objective law shall prevail. Lord Percy is not impressed with the practicality of League wars against aggressors or with the possibility of abolishing the status of neutrality. He admits that the conflict (which he occasionally seems to consider, though it is believed incorrectly, one between the continental view and the Anglo-American view) must be settled before a new war breaks out. But he concedes that an international conference would not be appropriate because it would probably make matters worse, and suggests that the better mode of procedure would be for private groups of experts, first an Anglo-American group, endowed with a statesmanlike outlook, to undertake drafts of proposed rules to be submitted for consideration to governmental bodies and public opinion, in order thus to accomplish the desired end with the least friction. He does not think that the United States and Great Britain would easily submit differences which arise in actual cases to an international tribunal until an agreement on the rules has been reached.

The argument of the book is fundamentally influenced by certain misconceptions which make its assumptions and conclusions unacceptable and even jeopardize any international understanding on the question. The learned author seems to believe that inasmuch as the law accords a bel-

ligerent the right to "blockade" and to seize contraband, therefore, if hard pressed the belligerent can in "logic" use any measures he sees fit to keep goods from reaching his enemy, whether directly or indirectly, and can extend at will the contraband lists because anything might be of use to the enemy military plans. He thus explains why the British Government in the late war felt obliged by Orders-in-Council to prevent any goods, particularly foodstuffs, from reaching even neutral countries whence they might find their way into Germany, notwithstanding the fact that neutral traders had a perfect legal right not only to send these goods into neutral countries, but even directly into belligerent countries. The author seems to believe that the certainty of no trade at all is better for the neutral than the uncertainty as to what the belligerent will permit. The law—which is by no means so uncertain as the author seems to think—has developed through several hundred years a protection for non-combatants against starvation, except by a prescribed type of limited blockade, and protection for neutrals of their right to trade in non-military goods even with belligerents. Blockade is a strictly limited military measure of investing a port, analogous to land siege. With such a specific siege or blockade, neutrals may not interfere. Lord Percy at times seems to believe that blockade looks only to a whole coast, and that as this was impossible to the British in the case of Germany, they were therefore justified in adopting other measures to achieve the same end. He does not concede that these "measures of blockade" were illegal, though Jefferson in 1793 and Wilson in 1915 correctly so characterized them. The author admits that the "measures" were an economic weapon against the civilian population, though at times he defends them on the ground that the goods thus kept out of Germany might have reached military forces. Goods always might reach military forces, but that never has justified the exclusion of any except admittedly military goods, such as munitions and their analogues. To justify the seizure of goods conditionally contraband (like foodstuffs) their specific destination for military forces had to be not merely possible, but absolutely proved. Non-combatants also eat. Like Sir Samuel Evans, Lord Percy does not see the "logical" distinction between absolute contraband and goods "conditionally contraband." The emphasis on "logic" in this examination of the subject indicates fundamental misconceptions. The compromise between belligerent rights and neutral rights, of which this distinction is a part, was not logical but practical, and thenceforward became law, which both belligerent and neutral must strictly observe. It is true that the contraband list has never been fully agreed on; the author seems to believe that, by using the privilege of extending the contraband list, the British Government legally escaped the restrictions placed on blockade, and contraband as well. It is hard to defend such a position. The mere fact that no agreement on the contraband list exists does not justify the inclusion of foodstuffs and hundreds of other articles never deemed of primary military use or justify the abolition of the distinction between goods absolutely and goods only conditionally contraband.

The argument that the late war was an exceptional war because all the enemy population was enlisted in it, that the enemy government controlled the food and other supplies, and that the enemy was a particularly unrighteous one was exactly the argument that Washington and Jefferson refused to admit as an alleged justification for similar illegal practices in 1793. Time has not made the argument more valid. The United States submitted to the British blacklist before 1917, but, strange to say, Canada did not; and Canada was right. So long as British spokesmen undertake to maintain the validity of the unheard-of practices adopted in the late war, even though coupled with a promise of self-restraint in employing

them, there is little possibility of an understanding between the United States and Great Britain. In this connection, it is well to observe that the 1927 agreement for the settlement of American neutrality claims against Great Britain indicates the rift by the provision "that the right of each Government to maintain in the future such position as it may deem appropriate with respect to the legality or illegality under international law of measures such as those giving rise to [the neutrality] claims is fully reserved, it being specifically understood that the juridical position of neither Government is prejudiced by the present arrangement." It would be unfortunate if this supposed irreconcilability should tend to become a reality and if the British Government should continue to prefer to conceive itself as a potential belligerent rather than a potential neutral. The author makes no reference to the Swedish settlement, and probably similar settlements with other neutral countries, by which Great Britain paid damages for the injuries inflicted by some of its measures, and thereby presumably implicitly admitted their illegality. Great secrecy attaches to these settlements, which the British Government should lift. The author's suggestion that between just wars and unjust wars there is a distinction which should produce a difference in the reciprocal rights of belligerents and neutrals is hardly practical, it is believed; it would only increase the propaganda and tend to drag neutrals into the conflict, because partiality is the easy road to belligerency, and because not all neutrals may take the same view as to which is the "just" side in any particular war.

One cannot better indicate the author's misconceptions on the relation of logic to law and the effect of "logic" on the respective rights of belligerents and neutrals as built up through the centuries than to quote from John Bassett Moore's review of Mr. Hyde's *International Law*:

"The simple truth is that the distinction between what in very recent years has, inaccurately and unfortunately, been styled 'conditional contraband,' and articles absolutely contraband, never did rest on logic, in the sense that it was imagined that 'conditional contraband,' which includes food stuffs, was not of military value, potentially even of capital military value, to belligerents. Not to cover a wider range, one need not be at a loss for examples, during the past three hundred years, of situations in which the question of food supply was of capital importance in war. And yet, did anyone at the time ever imagine that foodstuffs imported into a belligerent country were not immediately available for military purposes, or that the government of such country could not or would not take and use for its own purposes all foodstuffs, whether imported or of domestic origin, which it might need? That such a supposition was ever indulged, is altogether incredible. The rule, so forcibly stated by Lord Salisbury during the Boer War, that 'foodstuffs, with a hostile destination can be considered contraband of war only if they are supplied for the enemy's forces,' and that 'it is not sufficient that they are capable of being so used,' but that it 'must be shown that this was in fact their destination at the time of the seizure,' was not framed as a logical reconciliation of the right to trade, with a supposed belligerent right to seize whatever might be used by the enemy for the purposes of the war. If framed in this sense, the rule would have made a laughing stock of logic. In reality the rule represented and has continued to represent not a logical reconciliation of, but a practical compromise between two claims either of which, if carried to its logical conclusion, would have destroyed the other, being in this particular like most other legal rules; and it further represented and represents the advance painfully made, through centuries of struggle, toward greater freedom of commerce in time of war.

"Is the recent great war to differ in its effects from previous great wars,

in that extraordinary measures which hard pressed belligerents as the struggle grew more intense, adopted generally on the professed ground of retaliation, are to be considered as having changed the established law, and as having created in its stead a system essentially based on the concession of belligerent pretensions? Is there reason to believe that the recent war will differ in this respect from the wars growing out of the French Revolution and the Napoleonic Wars, whose decrees and orders in council were regarded twenty years later only as the passing expedients of a contest desperately waged? Is it more likely now than it was a hundred or two hundred years ago that nations will find their general and continuing interests to be in accord with what they did in an exceptional exigency?" [1]

New Haven, Conn. EDWIN M. BORCHARD.

Cases and Other Materials on Credit Transactions. By Wesley A. Sturges. St. Paul, West Publishing Co., 1930. pp. xi, 1228. $6.50.

THIS casebook is a new grouping, from the functional approach, of materials customarily covered in courses on mortgages, suretyship and bankruptcy, with the addition of cases on several other topics. The subject matter is short term rather than investment credit. Of the six chapters into which the volume is divided the first and second deal with accommodation contracts, mortgages, pledges, and conditional sales. Each of these chapters takes up *seriatim* (1) the technical contract, (2) consummation of the credit extension, (3) relations and dealings of the parties during the period of the credit extension, (4) payment and discharge of the obligation, (5) extensions and renewals of the obligation, (6) "outlaw" of the obligation—statutes of limitation, and (7) insolvency and bankruptcy. The subject of the third chapter is dealers' financing by accommodation contracts, mortgages, pledges, conditional sales and trust receipts. Chapter four covers the security holder's use of the credit and security documents. Chapter five is concerned with the security holder's protection and priorities. The last chapter is given over to enforcement proceedings, chiefly of mortgages. It is interesting to observe Mr. Sturges' insistence throughout that the student consider the technical contract creating the relationships before considering the incidents of the relationships themselves.

The cases are almost all American, and a great many of them have been decided in the last twenty years. Many cases are obviously chosen because either in the statement of facts or in the court's opinion there is an exposition of the business situation. Numerous divisions of the book are introduced by brief extracts from treatises and many cases are followed by short comments and citations. In this connection the author has inserted throughout the book acutely drafted questions intended to enforce a comparison between the principal case and the cited cases, or between the principal case and the comments or quotations. The total number of the author's questions is rather large, although the distribution is so skillful that the number does not seem excessive. A novel feature is the frequent inclusion of extracts from law review case notes and comments, often arranged as a series of divergent views on the same topic. These extracts, furthermore, are accompanied by copious citations of other law review discussions. Several recent authors have availed themselves generously of law review material, but no one has exploited it more thoroughly than Mr.

[1] (1923) 23 COL. L. REV. 84.

Sturges. An appendix of 133 pages contains the Negotiable Instruments Law, the Bankruptcy Act, and the uniform statutes on real estate mortgages, chattel mortgages, and conditional sales. Each act in the appendix has a title page of stiff colored paper to facilitate its independent use.

One regrets that limitations of space prevent a detailed analysis of a typical section of Mr. Sturges' casebook in order to show how shrewdly he has made each case contribute to his main objectives, and how expertly he has surrounded these main objectives with an aura of the subtlest and most controversial matters in the topics studied.

In his choice of subject matter Mr. Sturges has doubtless been influenced both by his own enthusiasms and by the curricular requirements of his own law school. One may applaud his purpose and his achievement without necessarily agreeing with him in every respect. I find myself dissenting rather curiously in two directions from Mr. Sturges' volume. He concerns himself only casually with procedural problems; he has no strictly non-legal quotations, comments, or even citations.

The grand division of substantive and adjective law is a debatable scheme even for the distribution of material on credit transactions. The workings of the courts are a proper subject for discussion even under a functional approach. The creditor's lawyer is often consulted, and ought to be consulted more, before the credit is extended, but he is also necessarily concerned much with cases where there is no security at all, or where, even if security exists, there is a choice of remedies. The decisive factor in this choice is frequently the relative economy of time and money afforded by the available remedies. Whether a judgment creditor seeks to set aside a fraudulent conveyance or asks for a receiver or petitions in bankruptcy, the substantive law questions may be precisely the same. If the creditor's lawyer is equipped only with a knowledge of the substantive law points, his utility may fall considerably short of what the creditor has a right to expect.

On the other hand, when the lawyer is called in as a business counselor by one who desires a security set-up, it is not enough for him to know, for example, the law of trust receipts. It is futile to tell a creditor how to protect his credit extension if by following the advice further business will become unprofitable, if not impossible. One cannot tell what business facts the student will need to know, but one may guess with a certain accuracy if it is known where the student will practice. Moreover, it is not as important that the student be fortified with a particular business technique, as that he sense in advance the sort of technique that is essential to a business counselor. Mr. Sturges, so far as his casebook shows, is satisfied that he has done enough if he chooses cases that will illustrate the modern scene. It seems to be possible to do even more to correlate the work of the law school with the all-important practice of the business counselor.

Concretely, it seems an arguable alternative to Mr. Sturges' arrangement that the division of a course on credit transactions be roughly, but not completely, into a substantive and an adjective side. On the substantive side the student would consider such relations as those of broker and customer, banker and broker, banker and importer, finance company and motor car dealer, owner and building contractor, real estate corporation and bond holder. These relationships could be illustrated either by the frank use of business materials, as was done in Professor Underhill Moore's revolutionary bank credit course at Columbia, or by choosing cases arising out of a limited number of business situations. In terms of law the objectives would be elementary command of the law of pledges, trust receipts, suretyship, and mortgages. On the adjective side, the student would cover the enforcement of judgments, receiverships, bankruptcy, and fraudulent

conveyances with brief excursions into general assignments, creditors' agreements, and commercial arbitration.

Perhaps in the end, whether a student had taken Mr. Sturges' course or one such as I have outlined, would make no difference to him two years after graduation. What might make a difference would be whether he had taken Mr. Sturges' course or old courses on suretyship and mortgages designed to fit him for a type of practice that exists only in fond retrospect. Not that there is anything heedlessly shocking to the conservative in the new casebook. Mr. Sturges is offering to bridge the gap between radicals and reactionaries. A resourceful teacher could use it as a basis for the existing courses on suretyship and mortgages or, with some additions, it could be utilized by one who believed that a law course might profitably swallow much of a correlative course in a school of business. Students are indeed highly privileged who have the opportunity to read this casebook with a man like Mr. Sturges, who combines so unusually an intimate insider's knowledge of several fields of business activity with the acutest powers of legal analysis and a capacity for stimulating presentation. His casebook is a notable contribution to legal pedagogy.

New York City. JOHN HANNA.

Legal Aspects of Commercial Letters of Credit. By Herman N. Finkelstein. New York, Columbia University Press, 1930. pp. xxviii, 390. $7.50.

THIS volume on the legal aspects of commercial letters of credit, a subject sorely in need of scholarly exploitation, is presented as the second of a series of studies on different subjects edited under the auspices of the Faculty of Law of Columbia University. Not only is this undertaking on the part of the law faculty one to be commended in itself, but it constitutes an excellent introduction to the present volume. In fact, from the author's generous acknowledgments in the preface, one gathers that the work has had the benefit of the best thought of the several able commercial lawyers now and recently at the Columbia Law School.

The main portion of the work, if one may exclude an interesting twenty-eight page general introduction by Professor Llewellyn, comprises only two hundred and ninety-five pages, which might seem unduly brief except for the fact that the subject is relatively new. But even at that there have been cited in the text something over nine hundred cases, most of which deal directly with letter of credit questions. There are also thirty-five pages devoted to modern letter of credit forms, a feature which in itself lends considerable value to the book.

The organization of material is somewhat illusive, although the work starts in a reasonably orthodox manner with a chapter on "History and Analysis," concerned principally with the different forms of credits and their uses. This is followed by two chapters dealing with the forms of action on letters of credit, treated both from a historical point of view and with reference to present decisions. Then follow chapters entitled "Legal Relations Between Respective Parties to Commercial Letter of Credit Transactions," "Conditions in the Letter of Credit," "The Relation Between the Letter of Credit and the Sales Contract," "The Measure of Damage," and a concluding chapter on "The Legal Theory." From a technical viewpoint, however, the two chapters on the forms of action develop the author's entire thesis and the remaining chapters, though containing much important material, are merely by way of amplification.

The burden of the author's argument is that recovery against the issuing bank should not be predicated upon an acceptance theory, nor yet upon ordinary contract principles, but as upon a specialty. The first point was made some years ago in an article published by the author recommending the omission of the two sections of the Negotiable Instruments Law which make promises to accept the equivalent of acceptance.[1] The point that the letter of credit is a mercantile specialty is of more recent origin and in terms, at least, states a position first taken by the reviewer some years ago.[2]

The validity of the author's first contention is perhaps best tested by considering the measure of the recovery against the issuing bank in the event it should purport to revoke a so-called "irrevocable" credit of the type in common use. Although the point is obviously important, it has not been indexed nor, in fact, has it been adequately treated in the text. In the chapter on damages it is stated that in case an issuing bank were to dishonor a properly drawn draft, it would, on the acceptance theory, be liable for the amount of the drawing plus interest (p. 262). But the author hastens to prove that if the action were brought on the contract, additional consequential damages might well be recovered in many cases. It is then sought to show that recovery against the bank should be governed by the rules obtaining in suits by sellers versus buyers on C. I. F. contracts (p. 265).[3] The chapter concludes with the statement that "no basis for the perpetuation of the doctrine of virtual and extrinsic acceptances can be found."

That this misses the whole import of the word "irrevocable" should be apparent. Irrevocable surely means something more than that the seller may go to a foreign country and prove to the satisfaction of a jury what the extent of his damages may be—as in any sales contract. In no real sense is the bank a buyer, although it so describes itself in the letter of credit to lay a foundation for the trust receipt which it may subsequently take.[4] Its obligation is an unqualified promise to honor drawings when certain conditions have been met, and, as the decisions cited in the text show, the courts have in many cases enforced this undertaking without looking to the sales contract, the market value of goods or documents, the consequential damages, if any, to the seller, or to any other buyer-seller consideration.

While the author has done some very good work in pointing out the uncertainties attending the theory that the bank is to be regarded as having

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[1] *Acceptances and Promises to Accept* (1926) 26 Col. L. Rev. 684.

[2] Comment, *Negotiable Instruments—Letters of Credit* (1926) 36 YALE L. J. 245, at 249. The author makes two bare citations of this note without comment of any sort.

[3] See also page 264, note 8, where the author attempts to distinguish the cases denying the bank's power to revoke and requiring it to pay the face of the seller's draft by saying that such a result is possible only in cases of single drawings for the whole amount of the credit, a distinction which at best would seem to have little point. The one case relied upon for the application of a C. I. F., seller versus buyer, recovery of damages, however, did not hold at all that the seller could *not* recover the face of his drawings, but only that if he chose not to ship and sued for damages, he could at least recover compensatory damages. Urguhart, Lindsay & Co. v. Eastern Bank, [1922] 1. K. B. 318.

[4] There is no discussion in the text of trust receipts or of their use in letter of credit transactions.

accepted the seller's drafts by its promise to accept them (pp. 140-141),[5] it does not follow at all that the general conception of the issuing bank as an acceptor should be displaced—certainly not by ordinary contract notions or by unspecified ideas of common law specialties. The reviewer would prefer to consider that the bank, by issuing the letter of credit, in effect assumes the position of acceptor on a payment draft drawn by the buyer to the order of seller.[6] Such a view settles questions of damages and revocation quite satisfactorily: the bank in the ordinary case may not revoke but continues liable for the amount of the seller's drawings, no suit in damages need be undertaken, and the bank is neither given the buyer's contract defenses nor subjected to an action for consequential damages. In lieu of this, the possibility of recovery against the bank on the seller's drafts as accepted by the bank's promise in its letter of credit should certainly be retained—at least until ideas concerning the relation of revocation to the damages question have become more clarified than they as yet appear to be.

There are other points in the work with which the reviewer could cheerfully disagree but this discussion is already sufficiently unfair since almost no mention has been made of the many good points of the book. Not only is it the only work on the subject, but it shows itself to be the result of a considerable amount of research and thought. It undoubtedly should be owned by everyone interested in the law of foreign or domestic trade.

New Haven, Conn. ROSCOE TURNER.

Tenure of Office Under the Constitution: A Study in Law and Public Policy. By James Hart. Baltimore, Johns Hopkins Press, 1930. pp. ix, 384. $3.50.

THE decision in *Myers v. United States* is merely the excuse for this book. The case is chosen from examples of the traditional technique only as a particularly timely victim for immolation on the altar of the Scientific Method. If in the ashes of the sacrifice are found contributions to a better understanding of the problem of tenure of public office they are but accidental by-products of the ritual. The sacrifice is the thing; and for that purpose the victim might as well have been the doctrine of mutuality in equity, or, responsibility for injuries caused by an inherently dangerous article, in torts.

The Scientific Method to which this book is dedicated is indefinite, indescribable, tentative. It is known only by Professor John Dewey and those who know him (p. 4). It is a kind of esoteric empiricism, purged of the hypostatic fallacy (p. 5), fortified by skepticism (non-cynical), enlivened by the leaven of pragmatism. Its home is the school of the concretists whose terminology is filled with abstract nouns. In the realm of public law it calls the Interstate Commerce Commission, "the product of the devising and selecting of variants in the 'block of adjustments' known as 'governmental regulation'" (p. 51). It translates people into a hierarchy of Publics. It adopts the entomological approach toward governmental regulation and asks, "Will this prospective, more intensive socialization be analogous to that of the highest social insects, a condition in which speciali-

[5] As the author suggests, it would seem that the requirement that the bank's promise be unconditional might well be omitted. All that is necessary is that the promise be definite, since it obviously must be conditional, in a sense, upon proper documents being presented.

[6] *Supra* note 2.

zation and constraint of the single organism are so extreme that its independent viability is sacrificed to a system of communal bonds just as happens with the individual cell in the whole organism?" (p. 36). On the matter of administrative tribunals it poses the question ". . . whether the conditioned reflexes stimulated by the term 'court' and associated stimuli can be 'transferred' to regulatory commissions" (pp. 83-84). Policy in government must be determined "by its consequences rather than by its deductibility from the dogma of democracy" (p. 87). So the Scientific Method in public law proceeds from postulates rather than major premises and at length arrives at a constitutional *theory*.[1] The book abounds in abstruse expositions of methodology, needlessly coined words and phrases, hosts of inverted commas and parades of modernistic clichés.

Stripped of its verbalism, the author's thesis seems to be: The complexities of modern government demand an increase in the functions of administrative tribunals. It is important that administrative tribunals be composed of experts whose efficiency shall not be impaired by preoccupation arising from uncertainty of tenure and possibility of interference. The same need is to be found in other governmental bodies. But the decision of the United States Supreme Court in the *Myers* case has placed an obstacle in the path of this development. It is therefore important to determine the accuracy of the decision with the hope of limiting its effect upon future cases. An analysis of the decision depends, of course, upon interpretations of the Constitution, the proceedings in constitutional conventions and the deliberations of Congress. The sound interpretation is that which subserves present needs in government. Constitutional data should therefore be so construed as to delimit the president's power of removal and to exalt the function of the legislative branch to the end that future attempts of Congress to control tenure of administrative offices may be upheld.

It would be idle to deny the basic soundness of Professor Hart's approach. Students of administrative law, with the possible exception of Lord Chief Justice Hewart, will support his demand for a realistic, workable interpretation of constitutional provisions. Everyone wants more science in law, if by that is meant more accurate thinking and rules better designed to serve the needs of a modern world. But it is to be questioned whether the end is to be obtained merely by invoking the Prophets of Hypotheses, or by dwelling solely in the realm of terminology, or by discoursing discursively in legal analysis. It is possible that we need only look for the simple facts of the law's operation. That may be the much sought scientific method.

New Haven, Conn. RICHARD JOYCE SMITH.

Law and Practice of Marine Insurance Relating to Collision Damages and Other Liabilities to Third Parties. By Howard B. Hurd. London, Effingham Wilson, 1930. pp. xvi, 178. 10s. 6d.

THIS work is a monograph dealing with losses suffered by ship-owners, cargo owners, crew and passengers through collisions at sea. It treats of the efforts that have been made to distribute these losses equitably and economically by rules developed in admiralty, by legislation, international conventions, and insurance contracts. Its origin was in a course of lectures delivered by the author before the Glasgow Underwriters' Association Students' Society. The work has the qualities of the purpose for which it was

[1] *Cf.* c. VII, particularly at pp. 272-275.

written. The requirement of oral delivery before an audience of students gives the text a certain vividness and dramatic quality which might otherwise have been missed; but on the other hand the treatment is in places sketchy and incomplete, and the statements made are inadequately supported by authorities. Cases referred to in the text are given by title without the customary citations, which are to be had only by a time consuming reference to the table of cases. The cases in this table number only eighty-three. One should say, however, that even though the cases cited are so surprisingly few, yet these few are used with marked effect. Indeed, the inescapable romance of the seas is faintly apparent, even on the pages of a legal treatise.

Beginning with a very brief but very effective résumé of admiralty jurisdiction, the author passes to a summary treatment of the rules that have been developed in the English court of admiralty for allocating losses resulting from collisions at sea. He brings out with especial clearness those always interesting rules of admiralty which apportion the liability in cases where the negligent acts of both parties have contributed to the accident. In so doing, with broad strokes he sketches the development of the pertinent rules of maritime law through its strange mingling of international customs and accepted maritime regulations of great commercial centers, such as the laws of Oleron, published at Rouen in 1266. We see how the House of Lords in *Hay v. LeNeve*,[1] reversing the Scottish Court, and departing from the generally observed rule in the maritime world, held that if both participants in a collision were at fault, they must necessarily be regarded as equally in fault. Then followed the not less surprising doctrine, finally fixed by the House of Lords in *The Stoomvaart Maatschappy Nederland v. The Peninsular & Oriental Steam Navigation Co.*,[2] that under this rule there did not result cross liabilities whereby each of the participants in the collision owed to the other one-half of the damage inflicted, but a single liability owed by the one suffering the smaller damage to the one upon whom larger damage was inflicted, such liability being measured by taking one-half of the excess of the one loss over the other. Under this rule it was held to follow that the then current collision clause in insurance policies did not indemnify the owner of the ship to whom the balance was thus payable because he had not in fact incurred any liability on account of the collision. These and other decisions opposed to the practices of maritime peoples necessitated much legislation and some international conventions, and attempts at many more that are shown to be sorely needed. In this connection the book discusses with some fullness the development of the Merchant Shipping Act, which corresponds in general to our own Harter Act, from its beginnings in the act of 7 GEO. II, c. 15 (1734), down to the Merchant Shipping Act of 1921. The most significant portions of this Act, as well as the very important Maritime Conventions Act of 1911, are set out in the appendix. The Conventions drafted by the Diplomatic Conference at Brussels, which sits with powers and purposes very similar to those of our own Conference of Commissioners on Uniform State Legislation, are discussed very satisfactorily in the last three chapters of the book. These Conventions, "Limitation of Ship-Owners' Liability," "Maritime Mortgages and Liens," and "Immunity of State-Owned Ships," are as yet unratified except by Belgium.

After showing the varied allocations of collision risks by courts, statutes, and international conventions, the author then treats with admirable directness and lucidity the development of the collision clause in marine insur-

[1] 2 Shaw's Sc. App. Cas. 395 (1824).
[2] 7 App. Cas. 795 (1882).

ance policies so as to give effect to the intention of the parties in spite, one is tempted to say, of the unsatisfactory doctrines announced by the courts. Special attention is given to the collision clause as finally worded and issued by the Institute of London Underwriters now in use throughout the British world.

As already stated, this little book cites but few English cases. While occasional fleeting references are made to American practices and legal doctrines in relation to collision liabilities, no authorities, either by way of judicial decision or text-books, are mentioned. The work, therefore, cannot greatly serve the immediate needs of the American lawyer; but its reading will undoubtedly clarify his understanding of business practice and judicial decision in Great Britain, which must necessarily be of immediate interest to all Americans engaged in foreign trade.

New Haven, Conn. WILLIAM R. VANCE.

Les étrangers et la propriété commerciale. By Charles E. Ronsseray. Paris, L. Chauny & L. Quinsac, 1930. pp. 320.

FEW French statutes affecting alien interests have been subjected to more criticism in recent years than those which were enacted in 1926 and 1927 for the protection of commercial property. Following closely upon the law of prorogation, whose benefits were reserved for French nationals, they have evoked extensive litigation, diplomatic protests, and interpretative statements by the French Government. The problems which the statutes have thus raised are considered by Dr. Ronsseray in his work under two heads: first, a study of the statutes themselves with respect to their legislative history and their relation to Article 11 of the French Civil Code, defining the status of aliens, and the treaties alleged to govern between France and other states alleged to govern the situation; second, a short analysis of the comparable legislation in other states with reference to the requirements of the French statutes.

Holding that the analogous foreign law, whose existence is a condition precedent to the invocation of these statutes by an alien, need not be an identical law but rather a similar law whose purpose and results approximate those of the French enactment, the author contends that the English Landlord and Tenant Act, 17 & 18 GEO. V, c. 36 (1927), is the only analagous statute of which he knows, but that other aliens are entitled to protection of their commercial property in France by reason of the treaties existing between their states and France which provide for assimilation to nationals or for most favored nation treatment in commercial matters. His reasons for this conclusion are derived from the considerations that the statutes are in his opinion definitive and not extraordinary postwar measures whose benefits might properly be confined to French citizens, that the strict reciprocity required by the judicial interpretation of Article 11 of the Civil Code is a rule which has ceased to have practical utility, and that the interpretative statement issued by the French Government on August 13, 1929, which was favorable to alien interests, is binding upon the French courts.

There are two points of discussion which are of special interest in the light of other international events: the author's suggestion for the revision of Article 11 of the Civil Code and his treatment of the treaty-making powers of the French Executive. He suggests that Article 11 should be revised to give to the alien all the private rights enjoyed by French citizens with the exception of those which, in the country of the alien, are by statute

prohibited to French citizens, and those which, in France, are by statute expressly reserved to French citizens. It is not without significance that, while advocating the revision of the Code article governing the status of aliens and the extension to them of the benefit of the statutes on commercial property, the author does not feel that they should be given complete assimilation. His discussion of the binding effect of the interpretative statements of the French Government, issued in answer to inquiries made by other states, includes a treatment of the treaty-making power which, though brief, covers deftly and efficiently not only the usual points but also the efficacy of treaties which have not received the approval of the French Senate. In this connection Dr. Ronsseray's view that the interpretative statements are equivalent to a supplementary convention between the states or the decision of an arbitrator upon the case is perhaps open to debate. Nevertheless the construction of his case is not without interest.

The second portion of Dr. Ronsseray's discussion is devoted to the study of comparable legislation in other states with regard to the requirements of the French statutes. This amounts to little more than the application of his conclusions to the legislation and treaties which may be invoked by the nationals of each state when seeking to secure the protection of the French statutes.

Written entirely from the French point of view and with regard only to the considerations of municipal law, the book gives a brief critical history of the statutes on commercial property. It is of particular value because of the liberal and discriminating use of direct quotations from pertinent official documents, cases which have been tried in French courts, treaties whose interpretation is at stake, and foreign statutes. The frank and critical treatment of the subject by an author who does not hesitate to point out anti-alien feeling is without too frequent an American counterpart in related fields.

New Haven, Conn. PHOEBE MORRISON.

The Territorial Sea. By Antonio Sanchez de Bustamante y Sirven. New York, Oxford University Press, 1930. pp. xxi, 175.

ALTHOUGH much adverse criticism has been directed at the preparatory work for the First Conference for the Codification of International Law which met at The Hague in March, 1930, one of the outstanding results of the Conference is the large amount of literature on the three subjects on its agenda which appeared in anticipation of that meeting. Among the organizations assisting in the preparation of this literature was the American Institute of International Law. The topic of Territorial Waters was confided to Judge Antonio de Bustamante and his study is the most elaborate of those prepared under the auspices of the American Institute. The study originally issued from the press of the University of Havana in Spanish, and has likewise appeared in French and German. In the English version, here under review, the translation is not always too apt, particularly in the suggested text of articles in the author's draft convention.

The volume is arranged with a view to its utility in serving the end for which it was prepared. Book I deals with the historical background, Book II with efforts at codification of the subject, while Book III contains Judge Bustamante's own contributions to the analysis of the problem and its solutions. Aside from his authority as a professor, writer and states-

man, the author's views command particular attention since they are those of a judge on the Permanent Court of International Justice.

Judge Bustamante effectively points out the essential reality of the territorial sea and concludes that each state has "sovereign ownership" (*propriedad soberana*) over such waters. His choice of the word "sovereign" is made with some reluctance and primarily because it is least of the evils. He lists the rights of the coastal state and shows that international law does not negate this concept of sovereign ownership.

There is detailed treatment of the problems of measurement, including those resulting from the situation of islands, rocks, shoals, bays, coves, river mouths, ports, roadsteads, etc. Judge Bustamante properly recognizes that the answer to these largely geographical questions must necessarily be partly unsatisfactory because of the absence of sufficient geographical data. For bays he prefers the twelve mile rule. Although he favors the three-mile limit as the most acceptable in a convention, he does not believe it is established in international law. In this, the reviewer believes, he fails to distinguish between the widely differing juridical bases of various national claims to more extended zones. Judge Bustamante endorses a system under which special national claims to particular areas of sea would be adjudicated before an international tribunal.

As to jurisdiction in the territorial sea, the author logically follows his premise of sovereignty; but he follows also current treaty practice in providing that the coastal state will not interfere in matters which do not affect it. The author's draft convention terminates with the now usual general provisions covering ratification, interpretation by an international tribunal, and like matters.

The Hague Conference of last spring having failed to reach an agreement on this subject, Judge Bustamante's book will continue to serve as an aid to future efforts to achieve an international convention and at the same time will have its place in the permanent literature on the topic.

New York City. PHILIP C. JESSUP.

Magna Carta, A Pageant Drama. By Thomas Wood Stevens. Chicago, The American Bar Association, 1930. pp. 80. $1.50.

THIS is a successful attempt to use the drama as a means of bringing an important incident of English constitutional history vividly before our eyes. A piece written by the producer of a pageant should not be scrutinized too narrowly for its historical accuracy. It is enough to say that the author has found in Chronicle and Plea Roll of the time abundant materials for dramatic representation. He depicts for us with telling force the traditional picture of King John, the cruel tyrant, and the universal joy at his surrender when he granted Magna Carta. In the foreword, Dean Pound writes briefly and brilliantly of English law and the significance of Magna Carta—such a description as a philosopher might give who was thinking only of the fundamental principles that he believes underlie the tough, contradictory, and sordid legal details. The result is in the nature of a panegyric which culminates on a solemn religious note as he says: "The lawyer is justified in his faith that for another seven hundred years that venerable instrument will make for reason and the will of God, as it has done for seven hundred years in the past."

The format of the book is attractive. Inside the cover is printed a facsimile of the Charter. While the characters are clear, they are much too small for ordinary use, but the reproduction demonstrates in striking fashion the brevity of the "Great" Charter. The volume also contains a

complete translation of the document. Unfortunately, it is printed without paragraphing—a method which renders the appearance unattractive and reference to the various articles difficult.

New Haven, Conn. SIDNEY K. MITCHELL.

A Collection of Nationality Laws of Various Countries as Contained in Constitutions, Statutes, and Treaties. Edited by Richard W. Flournoy, Jr. and Manley O. Hudson. New York, Oxford University Press, 1929. pp. xxiii, 776. $4.

UNDERTAKEN in preparation for the recent Codification Conference at The Hague, this compilation of nationality laws of all countries, including certain multilateral and bilateral treaties which affect the municipal law, is the most exhaustive yet published. Earlier compilations such as those by Lehr, Schwartz, Mangus, and those published in several Parliamentary Papers, do not approach it in exhaustiveness nor, so far as the observer can judge, in accuracy. The editorial notes and the bibliographies under each country add much to the value of the work. In its preparation, the editors had the assistance of competent officials in the Department of State, who not only assembled the statutes, but also supervised the translations. In a subject where new statutes are promulgated constantly, particularly since 1919, it is probable that such a compilation rapidly goes out of date. But any one who has attempted to assemble the statutory law of foreign countries on any subject will appreciate the magnitude of the editors' task and the skill with which it has been performed. Although the original texts are not reproduced, it may be assumed that the same editorial care was employed to insure accuracy of translation as is evident in other respects. Administrative regulations, carrying the statutes into effect, are usually omitted, probably intentionally. The analytical index at the end is of decided value; on the basis of the laws reprinted, even more accessible information, on the order of Magnus' comparative data, could be tabulated.

E. M. B.

Die Bereicherungshaftung im anglo-amerikanischen Rechtskreis in Vergleichung mit dem deutschen bürgerlichen Recht. By Wolfgang Friedmann. Berlin & Leipzig, Walter de Gruyter & Co., 1930. pp. 148.

Die Haftung des Verkäuers einer fremden beweglichen Sache in den Vereinigten Staaten von Amerika in Vergleichung mit dem deutschen bürgerlichen Recht. By John Wolff. Berlin & Leipzig, Walter de Gruyter & Co., 1930. pp. 83.

Bibliographie der rechtsvergleichenden Literatur des Zivil- und Handelsrechtes in Zentral- und Westeuropa und in den Vereinigten Staaten von Amerika 1870-1928. By Erich-Hans Kaden. Berlin, Franz Vahlen, 1930. pp. xvi, 295. RM. 12.

THE first two titles, originally written as dissertations for the degree of Doctor of Laws at the Universities of Berlin and Heidelberg, respectively, appear as monographs published by the Institute for Foreign Law and Private International Law which was founded at the University of Berlin in 1926. The first deals with the Anglo-American and German law of quasi-contracts, and the second, with the Anglo-American and German law

of warranties in the law of sales. The third title is an excellent bibliography relating to the civil and commercial law of central and western Europe and of the United States for the years 1870-1928, prepared by E. H. Kaden, Professor of Comparative Civil Law at the University of Geneva with the collaboration of the Berlin Institute referred to. Besides undertaking a comprehensive comparative study of the law of obligations, the Institute proposes to issue a series of monographs relating to the law of corporations, bankruptcy and stock exchange transactions. An interesting and novel feature of the Institute's program is that special emphasis is to be placed upon the law of the United States. Beginning with 1927, the Institute has published also a review devoted to foreign law and private international law, which, from a practical and scientific point of view, greatly excels all others in the field.

Public Utility Control in Massachusetts. By Irston R. Barnes. New Haven, Yale University Press, 1930. pp. x, 239. $3.

ORIGINALLY designed as a critical estimate of the prudent investment theory, Mr. Barnes' book developed into a case-study of public utility control in a jurisdiction which differs notably from other jurisdictions in commission procedure and result. The situation in Massachusetts is in many respects unique. Instead of undertaking a valuation of the property of a utility company, the Massachusetts Department of Public Utilities determines the rate base in accordance with a theory that enables it to disregard the rulings of the United States Supreme Court on fair value and reproductive cost. Yet appeals to the Federal courts have been infrequent, the first one occurring only as late as 1927. These factual peculiarities serve to present the question of public utility control in clearer form than usual.

With the exception of the last two chapters, Mr. Barnes' treatment of the subject is historical. The development of regulatory machinery, control of the security issues, and regulation of rates are taken up in turn. In the last two chapters, the author emphasizes the individual features of the Massachusetts control and suggests possible alterations. The book is a dispassionate presentation of valuable historical material in lucid, expository form. The research has been comprehensive, the work is carefully documented, and there is a complete, serviceable index. The last chapters, addressing themselves to a consideration of variant theories, while on the whole impartial, are necessarily confined to a brief treatment of highly controversial questions.

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