Book Review: British Year Book of International Law, 1927

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chapter nine, on "Opening Statements," logically precedes the material of chapter eight, on "Sufficiency of the Evidence." Chapter thirteen, on "Trials by the Court," could be taught in advance of the material on trial by the Jury. However, the arrangement chosen by the compiler is as teachable a one as any which could be devised.

So far as the cases themselves are concerned, some of them are so outstanding as to require inclusion as a matter of course. A number of others have appeared in earlier casebooks. The large number of cases from the United States Supreme Court, and from the older, stronger state courts, give substance to the book. Generally speaking, the emphasis placed by the compiler upon particular topics is very even. The longest section in the book, containing thirty-six cases and over one hundred pages, is the one entitled "Grounds for Awarding New Trials." The number of points included in this subject, and the valuable review of possible errors in trial methods seem fully to justify the length of the section. Another long section is that on "The Directed Verdict." One wonders a little at this, especially as the compiler recommends this section as one which may well be omitted.

Chapter eight, on "Sufficiency of the Evidence," and section one of chapter ten, on "Province of the Judge and Jury," cover topics sometimes taught in the course in Evidence. Perhaps they belong more properly in the course in Trial Practice. In any event curriculum makers would do well to make teaching adjustments between the two courses if Mr. McBaine's book is used.

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"The British Year Book of International Law" has acquired an established place in the literature of international law. These annual volumes, of which that under review is the eighth, bring together a series of useful articles; a report of some of the principal decisions of international tribunals and of municipal courts (English and American) dealing with questions of international law; book reviews of some of the notable books of the year; a useful classified bibliography; a catalogue of official publications, principally of the British Parliament; and a summary of events of international legal importance, classified by country.

The articles in the volume for 1927 are of exceptional interest: The first by H. W. Malkin, entitled, "The Inner History of the Declaration of Paris," is a learned exposition of the diplomatic history connected with that important Declaration, which has had so much influence on maritime law and particularly on the rights of neutrals. Its standing today, by reason of its violation by European powers in the late war, has been questioned; but no nation has ventured to suggest that it is not legally binding. If it should be so regarded, the chances of any limitation of naval armament would practically evaporate. The author of the article presents Marcy's note declining to approve the abolition of privateering unless the right of capture of private property were also
abandoned, followed by Seward's reversal of this view in 1861, in order to prevent the Confederates from using privateers and to have such vessels treated as pirates on entering neutral ports. France and Great Britain declined the proposal. The United States has not, however, indulged in privateering since the date of the Declaration—1856—and has supported the Declaration in all wars in which it has been engaged since then. Lord Wemyss' statement in the House of Lords November 11, 1927, suggesting that Britain withdraw because the United States was not an adherent, involved certain misconceptions.

An article by John Fischer Williams on "Denationalization" deals, in the light of the Soviet decrees denationalizing some two million Russians, with the question of the power of a state thus to excommunicate its own nationals, and raises the question whether this is not a violation of its international obligation to receive its own nationals if expelled from other countries. It is doubtful whether the Soviet Republic is not a new State, rather than a new government in an old State. The Egyptian nationality "law" of 1926 is only a bill; it has not yet been enacted, and may not be.

The history of "The Doctrine of Continuous Voyage, 1756-1815" is discussed by Mr. O. H. Mootham in the light of certain manuscript notes of prize cases discovered only recently. What happened under the so-called "extension" of the Doctrine during the recent war is not reconcilable with its construction by the prize courts down to 1815.

Professor Brierly, in an able article, answers the question: "Do we need an International Criminal Court?" in the negative. In spite of the considerable number of persons who seem to believe that such a court is necessary, the reviewer is inclined to agree with Professor Brierly that it is not. The demand for it was it was stimulated by certain emotions as to "war crimes" charged during the late war.

Spinoza's rather discouraging doctrine that international law is a mere rule of morality which may be discarded when it becomes inconvenient, is the subject of a study by Dr. Lauterpacht. The article is useful for its analysis of Spinoza's views and for its discussion of political theory and international law.

In an article on "Criminal Jurisdiction over Foreigners," Mr. W. E. Backett analyzes the Franconia case in the light of the then pending case of the Lotus before the Permanent Court of International Justice. The Franconia decision was repudiated by Parliament in 1878. The author approves a dissenting opinion in that case to the effect that a collision with a British ship by another ship is alone enough to give British courts jurisdiction on a "territorial" theory, and believes that the Permanent Court should follow this view. He was sustained in his belief by the decision of that court, and was also supported in that court's evident repudiation of the view that mere injury to a national wherever committed suffices to confer jurisdiction on national courts.

Professor A. Pearce Higgins, in an article on "Retaliation in Naval Warfare," undertakes to defend such decisions as the Stigstad and the Leonora, which announce the doctrine that neutrals could be retaliated upon if they did not adequately defend their neutrality against invasion by the other

\footnote{The British Year Book of International Law 1927, 46.}
belligerent, leaving it to the prize court to determine whether the inconvenience thereby caused was disproportionately harsh. Apart from the question as to which belligerent's measures were the more unlawful and unsustainable, the doctrine itself can hardly be regarded as more than a rationalization of a desire to effect a certain object, and finds little, if any, support in international law.

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It was the custom of those who held high office in England in the Eighteenth Century to retain in their personal custody papers which we now consider public records. Lord Shelburne enlarged his hoard of manuscripts by copies which he caused to be made of other documents to which he had access. Most of the Shelburne Papers which refer to the Eighteenth Century are in the William L. Clements Library in the University of Michigan; and with the Clinton Papers and the Germaine Papers, also owned by that institution, form the most important collection in this country of documents relating to the American Revolution from the British side.

From the Shelburne Papers Dr. Cross has selected a group of documents having no bearing on American History. These are printed in the book under review with introductions by the editor, illustrating them and connecting them with the history of the subjects to which they relate. Shelburne was evidently impressed by the governmental inefficiency and corruption in the midst of which he spent his life, and he aggressively pushed the investigation of the systems of revenue and administration in vogue, for the reformation of which his own brief tenure of office gave little opportunity. The three subjects of the documents selected by Dr. Cross are connected only by the fact that Shelburne was seeking information on which to base measures for the increase of revenue and the prevention of waste in the fiscal administration.

We are told by Holdsworth that "in 1598 the forest organization was already in a state of decay" and "after the Restoration little more is heard of the forest laws." In his very adequate historical introduction to the section on "The Royal Forests" Dr. Cross points out that "toward the end of the eighteenth century increased attention was given to the importance of the forests with the increased need of timber for the maintenance of the navy." It was not, however, until 1817 that the first of the statutes was enacted by which the administration of the forests was entirely remodeled to carry out the purpose at which Shelburne was aiming. The twenty-eight documents in this section consist of reports, memoranda and letters on the extent, condition, use and administration of the forests and show a multitude of curious customs and a deplorable state of inefficiency, neglect and graft. A single illustration will suffice. The owners of thirty-five free hold estates in the Parrish of Widdecombe claimed certain privileges in the Forest of Dartmore, among which was the following: "When a Man comes to his Estate by the Death of