

## REVIEWS.

*Das Internationale Civilprocessrecht auf Grund der Theorie, Gesetzgebung, und Praxis.* F. Meili. Zürich, 1906.

The first and second parts of this work were issued separately in 1904. The third and last appeared last March, and the whole now makes one volume of some 600 pages. To cover the field of suits by or against foreigners, on foreign causes of action, and on causes of action ruled by foreign laws, within that space, was only possible by the method adopted of passing over lightly the details of procedure and emphasizing such general rules as are of wide acceptance. Dr. Meili's attention was specially turned to this subject as one of the Swiss delegates to each of the four Hague Conferences for the advancement of private international law; the *Bundesrat* having especially directed them to press the consideration of questions of conflicting jurisdiction between the courts of different nations. This work is also complementary to a previous one of his, "*Das internationale Civil-und Handelsrecht*" (Zürich, 1902), which was reviewed in the YALE LAW JOURNAL for January, 1905.

Any work of this nature must largely be a statement of differences and judicial inconsistencies. Its main office can only be to point to the sources to which to go in any particular case for information. Thus as to the competence of courts in matters of international concern—the subject his country particularly had at heart—he was forced to begin his treatment of the subject by the statement (page 197) that there is no established and universally recognized rule, but a court must apply, in the absence of a treaty, either such special laws of its sovereign as may cover the case or, if there be none, the ordinary laws governing jurisdiction in other cases.

The author's general mode of proceeding, in the absence of any rule universally received to which he can refer, is to take up the practice prevailing in the principal nations of the civilized world, considering them in order, and referring with respect to each to such treaties, statutes and judicial decisions as may be most helpful, as well as to the opinions of its jurists. For a foreigner to attempt to give the statute law of any country on any point is always difficult. His information is generally of a secondary character, and he is fortunate if he can cite from a book not five years old. But in five years the whole legislative policy of a nation, on a question of international bearing, is often reversed.

Dr. Meili feels hopeful of the submission, as time goes on, of many cases to some tribunal of an international character, which now encumber local courts, or become sources of international controversy, and refers (page 279) to Article 23 of the universal postal union as a serious beginning already made.

American lawyers will take a special interest in reading what the author has to say as to the forensic domicile, which now figures so largely in our own corporation laws. In France, every corporate shareholder under certain circumstances, as in case of the insolvency of the company (pages 311, 327) must elect such a domicile at a particular place in Paris, and answer to all process there served upon him.

France and Switzerland entered into a treaty in 1869 (given on p. 569) which regulates judicial proceedings in which their citizens are engaged. The question arose in the Swiss courts whether a corporation incorporated by one of the powers was to be deemed a citizen of that power. The decision of the Bundesgericht (p. 326) was that the nationality of a corporation was determined by that of its shareholders, and not by the place where it had its corporate seat or its principal establishment. This result corresponds to that announced by the Supreme Court of the United States in the series of decisions culminating in *Ohio & Mississippi R. R. Co. v. Wheeler*, 1 Black. 286, and recently qualified in *Doctor v. Harrington*, 196 U. S. 579. It differs in principle from the project of an international treaty as to bankruptcies, adopted by the Hague Conference of 1904 for the advancement of private international law. That provides (Art. 2) that a corporation is to be thrown into bankruptcy only in the country where it has its corporate seat, provided this be not a fraudulent or fictitious one.

Much of what is said as to jurisdiction over foreigners in penal actions sounds strange to American ears. The Court of Appeals of Milan, for instance, (p. 184) has held that as well in regard to penal jurisdiction as on an appeal by a party damaged by a crime, from the award of damages, a foreigner, not living in Italy, ought to be deemed regularly summoned, by posting up the citation in a public place, without any effort to communicate personal notice. In cases of a judgment for contumacy or by default, this would be particularly unfavorable to the party proceeded against.

The author considers it a settled principle, generally accepted (p. 243), that a business establishment situated in a place other than the domicile of its proprietor, or, if that be an artificial or juristic person, its legal seat must in some practical fashion respond to suits instituted against it there. This he refers, not to any fiction of a domicile or quasi-domicile for the business, but to a necessary implication from its being set up in such a locality, and applies to branch establishments as well as to the principal one. Here our attachment process levied on the goods of non-resident debtors in an *in personam* action answers the same ends, though on a somewhat different theory.

A natural tendency is shown in this treatise to dwell on the practice in the Swiss courts and under treaties to which Switzerland is a party. Every man writes best about that which he knows best, and if the book shows some want of proportion on this account, it is certainly likely to be the more accurate for it. To American readers, also, the relations of the Swiss cantons to each other are of especial interest from their close analogy to those between our own States.

Many of the recommendations made from time to time by the Institute of International Law (of which Dr. Meili is an associate) as to matters of procedure, are mentioned with favor. Undoubtedly they are gradually promoting harmony in international adjudications, and all the more effectively from the absence of any authority not purely intrinsic.

The recent approaches of European States in respect to the execution of foreign judgments, through the work of the Hague Conferences, are clearly described, as well as those previously made by the international convention as to railway traffic, and the agreements as to the force to be given to decisions of riparian tribunals in matters of commerce on the Rhine (pages 461-463). In reference to the American doctrine, he has overlooked (page 488) the decisions of the Supreme Court denying the right of one of our States to impeach a judgment of another of them for fraud, as well as that of *Hilton v. Guyot*, 159 U. S. 113.

The work attempted by the author was such as to render some errors inevitable (See pages 290, 364, Preface IV); but in general it can be taken as a trustworthy statement of such rules and principles as control the disposition of causes of an international aspect in the several countries of the world. It is clearly written and well arranged. The bibliography of each subject treated has received special and careful attention.

S. E. B.

*Due Process of Law.* By Lucius Polk McGehee, Professor of Law in the University of North Carolina. Edward Thompson Company, Northport, Long Island, N. Y. 1906. Cloth. Pages 451.

This contribution of Professor McGehee to a series of "Studies in Constitutional Law" will be welcomed as a clear treatment of one of the most important topics in American law. As is stated in the prefatory remarks: "No richer or more interesting field could offer itself to the student or practitioner." The book is confined to an investigation of the provisions in the Constitution of the United States to the effect that no person shall be deprived of life, liberty or property without due process of law, and the treatment of similar prohibitions in state constitutions is merely incidental.

To a clear understanding of the rights and privileges which are secured to a citizen by such constitutional guarantees, the author at the outset says: "Due process of law implies the administration of equal laws according to established rules not violative of the fundamental principles of private right, by a competent tribunal having jurisdiction of the case and proceeding upon notice and hearing." Having thus defined the term, he proceeds to discuss its essential elements and particularly the matter of jurisdiction, necessarily taking up the subject of divorce and in a most clear manner pointing out the holdings of the federal courts upon this complicated question. The text was written before the rendition of the decision in the case of *Haddock v. Haddock*, but that case is referred to and the doctrine therein laid down criticised in the preface. Then follows an enu-

meration of the rights and persons protected by these provisions, involving a consideration of procedure and its relation to the subject. The author then proceeds to consider the paramount rights of the state under the heads, "Taxation," "Eminent Domain" and "The Police Power" in the discussion of which are cited some of the most noted American decisions. The treatment of the entire subject is most satisfactory.

G. S. V. S.

*The Encyclopedia of Evidence.* Edited by Edgar W. Camp and John F. Crowe. Volume VIII. L. D. Powell Company, Los Angeles, 1906. Pages 1003. Sheep.

The eighth volume of this useful work on evidence has just appeared and fully maintains the high standard set by the preceding volumes. Beginning with the subject of "Kidnapping" this volume covers completely and exhaustively the whole field of evidence up to and including the subject of "New Trial." Owing to the method of treatment the work necessarily includes some matter hardly belonging to a work on evidence, but in general the author has realized his object, viz.: to include all the law of evidence—using the term in its broadest sense—and to exclude everything not naturally included under that head. Instead of presenting original theories the author states the rules as he finds them and then proceeds to cite a few cases which are directly in point on each proposition stated. The citations represent almost all jurisdictions and are supplemented by apt quotations from the leading cases. An excellent feature of the work is the reference not only to the state reports, but also to the National Reporter System and to the American Reports and Decisions.

J. M. F.

*The Law of Automobiles.* By Xenophon P. Huddy. Matthew Bender & Company, Albany, N. Y., 1906. Buckram. Pages 367.

In this volume Mr. Huddy sets forth the principles of the law which apply to the automobile. Although the courts and the legislatures of the United States have been dealing with this particular branch of the law only about seven years there now exists a large amount of statutory law upon the subject. The author states that prior to the year 1899 neither the courts nor the legislatures of America had considered the subject. During the short period which has elapsed since then the courts as well as the legislatures have been called upon to consider questions concerning the automobile and its use and many very important decisions have been rendered. These have been collected and commented upon by Mr. Huddy so that the lawyer, the layman and the judge may now have the law in a convenient and accessible form.

The volume is divided into two parts. The first part deals with the general principles of the common law which define the status of the motor car and the rights and duties of owners, chaffeurs, garage keepers and manufacturers. One chapter of peculiar inter-

est and value is that which treats of proof of speed. Here the author has stated the principles which the courts have recognized and adopted regarding the many phases of this perplexing problem. In the second part of the volume the author has made an accurate compilation of all the state automobile laws in the United States and also the English Motor Car Act of 1903. This part of the volume will prove of great practical value to the tourist.

The book is well arranged and the principles of the law are clearly stated so that the layman as well as the lawyer will find it useful.

C. H. H.

*Trial Tactics.* By Andrew J. Hirschl of the Chicago Bar, author of "Combination of Corporations" and other works. T. H. Flood & Company, Chicago, Ill. Buckram, pages 264.

This work, while evidently intended for the use of the student and young practitioner may well be carefully consulted by all engaged in the active practice of the law. The book is of convenient size for handy reference, the type clear and bold, while the many illustrations of technical points hold the reader's attention on matters often overlooked as unimportant. The young lawyer who has had no office training and is therefore unfamiliar with the make-up of juries, the actual handling of witnesses, cross-examination and general court-room work will find the book of much assistance. The author goes right to the point in his suggestions for the protection of the client and the treatment of opposing counsel, but all through the work will be noticed evidence of a high regard for the ethics of the profession.

F. P. M.