

REVIEWS

The Law of Private Property in War, with a Chapter on Conquest.
By Norman Bentwick. London. Sweet & Maxwell, Ltd.
1907, pp. 147.

Based upon the Essay which won the Yorke Prize at Cambridge University in 1906, this book is a scholarly presentation of a subject which, since the recent wars, has been of great interest and which has been kept "in the air" by the meeting of the Second Hague Conference. "The aim of the book," as the author expresses it, "is to formulate, from a study of the chief authorities, the general principles which underlie modern usages, to point out where particular practices are obsolete and violate those principles and to suggest the lines upon which reform may proceed." The work is a very comprehensive essay on that limited branch of International Law which effects private persons. It is not a digest of any one or many treatises on International Law, but its scope is at once narrower and wider and covers the effects of war in all its relations to private property, as well of enemies as of neutrals, both on land and sea. The works of Westlake, Hall, Wheaton, Oppenheim, Nys and Irsagnet have been freely used where they dealt with this particular phase of the subject and many American decisions quoted the author recognizing the whole-hearted acceptance of the Law of Nations shown by the American courts from the beginning of national life.

H. T. S.

A Code of Federal Procedure. By Walter Malins Rose. San Francisco. Bancroft-Whitney Company. 1907. Vols. 3, pp. 3186.

Final judgment decisive of the merits of a digest constructed on modern, labor-saving lines can be entered only on the response that it makes to extended and daily use in the lawyer's office. If comprehensiveness, logical arrangement of topics, apparently thorough digesting of the vast number of Federal cases which have clarified and confused the practice in the United States courts, and an experimental use of the Code can be taken to forecast the verdict of the profession, the captious critic may sheathe his stylus.

The code is modelled somewhat on the lines of Desty's Federal Procedure, and is intended to supersede that work. As in Desty, the groundwork is the constitutional provisions, acts of Congress, and rules of court bearing on jurisdiction and practice all arranged according to a symmetrical scheme, and each section is annotated with all the court decisions having any bearing on it. The value of the work is greatly enhanced by historical outlines of all statutory provisions; and the same thing is true of the rules—at least, so far

as there have been any changes since their first promulgation by the Supreme Court.

And just here, Mr. Rose having done so well the work that he planned to do, we cannot help feeling a shade of disappointment that he did not set his colter a trifle deeper and plough up for us the English origin of some of the equity rules, together with the English precedents construing them. Few of our judges have made a study of those rules relating to what may be called the "automatic progress" of an equity cause. Questions that arise under the rules are usually referred to the clerk, and as he states the practice to have been in his office, so the decision goes—generally under such conditions as to preclude an appeal. From this have grown diversities of practice in different circuits and even in different districts of the same circuit. Not only does the practice of the High Court of Chancery as it existed in March, 1842, furnish just analogies to regulate the practice of the Circuit Courts in all cases where the rules prescribed by the Supreme and Circuit Courts do not apply, but some of the rules have been adapted from the general orders in Chancery. English applications of the general orders would furnish valuable aids to the interpretation of our equity rules.

But the author of the Code did not address himself to the task of solving problems, and having done so well what he set out to do it would be ingratitude on our part to criticise him for not having done more.

The index to the Code is a very clever piece of work. It is neither a concordance on the one hand nor an impressionist sketch on the other. Either extreme will impair the working value of the best book. It responds with readiness and certainty to every reasonable question.

The Code is exhaustive in its annotations; the compilation of precedents in the third volume is admirable; and in addition to the general rules of court we are given the special rules of many of the Circuit and District Courts.

Mr. Rose is already well and favorably known to the profession through his Notes on United States Reports, and the Code has added to the obligation under which he has placed the members of the Federal Bench and Bar.

J. W.