

REVIEWS

Problems of International Practice and Diplomacy with special reference to The Hague Conferences and Conventions and other General International Agreements. By Sir Thomas Barclay of Lincoln's Inn, Barrister at Law, Member of the Institute of International Law, Vice-President of the International Law Association, Judge of the Supreme Court of Appeals at Brussels, of the Independent State of the Congo, etc. London and Boston (Boston Book Co.) 1907, pp. 383.

Some months before the meeting of the Hague Conference of 1907, Sir Thomas Barclay sent to a number of those particularly interested in studies in international law in different parts of the world, as well as to the foreign offices of the various governments, a considerable body of suggestion and discussion concerning the main topics which were scheduled for the work of that body. Suggestions in return were invited and received from many of his correspondents. Later, on the eve of the meeting of the Conference, he published these and other papers, with some reference to the criticisms upon them which had been sent him, in the volume now under review, and put them at the service of the members as they assembled.

They must have proved of essential service to them, and were by far the most valuable contribution towards facilitating their labors received from any single source. At the same time, being in the English language, they were a sealed book to very many and probably to a majority of the delegates. The leading publicists and diplomatists of the present day may be expected to have at least a reading knowledge of French, but hardly of English.

Of the subjects treated by the author some, as it proved, received scant attention from the Conference, and others, none at all. Several, on the contrary, which he treated in a cursory manner, occupied much of its time.

This was particularly true of the project of an International Prize Court, to which he devoted but four pages. Sir Thomas Barclay naturally approached its discussion from the standpoint of a subject of a great naval power. England is more interested in securing prizes which her ships have captured, than in releasing captures of her own ships; more concerned in protecting belligerents than in protecting neutrals. He, therefore, inclined against a World Prize Court of the first instance (Chapter XVI) and had little to say in favor of one of appellate jurisdiction.

Perhaps the most important work of the Conference, however, was their recommendation of such a court. Following the lead of

the Institute of International Law, they confined its functions to those of appeal, and by an ingenious device have sought to prevent any undue attack upon the dignity of national courts. A party defeated in a court of admiralty of the first instance is given an election to appeal either to the Appellate Prize Court of the same nation or to the World Prize Court. He cannot pursue both remedies, and his own sovereign can deny him either.

Chapter IV of Sir Thomas Barclay's work is devoted to Declarations of War, and he expressed the opinion that, while ethically a declaration prior to the commencement of hostilities was desirable, it was improbable that any State would agree to require it (pp. 53, 58). The Conference, however, going beyond the views of the Institute of International Law, required such a declaration in favor of all neutral powers, before their interests can be affected by a state of war.

"It is the impossible which always happens," but on several points the path to what he may have deemed impossible was illumined by Sir Thomas Barclay's studies, and he may be said, at more than one point, to have builded, like most who work for the future, better than he knew.

S. E. B.

The Law of Suretyship and Guaranty. By Frank Hall Childs. St. Paul. West Publishing Co. 1907. pp. 572.

The subject of this review is a fairly successful attempt to put into understandable and elementary form the principles of the law of suretyship. The law is stated with clearness and appears to be stated in the main with accuracy. The treatment is, of course, along the traditional lines of the Hornbook Series. There is no attempt to show the historical development of the law, and no attempt to give either the reasons for or criticisms of the rules as laid down.

It would seem that the arrangement and outline of the work are in places capable of improvement. Chapter V entitled "Rights and Liabilities as between the Creditor and the Surety," certainly covers a great deal of ground, and might be broken up with advantage, or more helpfully subdivided within itself.

The attempt, peculiar to the Hornbooks, to reduce the law completely to a series of brief general principles, put into black type, leads here, as in other books of the series, to occasional misleading statements. The defect is not always cured in the text beneath. An elaborate attempt is made in Chapter I to distinguish by definition among the various classes of sureties. Such an attempt is bound to be rather unsatisfactory, because of the complicated nature of the relations of a surety, and because the courts have used the various terms in widely various significations. The attempt is not especially successful or useful in this book.

Taken as a whole, the work is well worth its cost. While it bears no resemblance whatever to a digest, there are cited nearly 6,000 cases. After covering general topics of the law, as the formation and construction of the contract of suretyship, statute of frauds,

and the various rights and liabilities of a surety, special chapters are devoted to sureties on negotiable instruments, official and judicial bonds, bail bonds and recognizances. An appendix gives valuable suggestions as to the drawing of suretyship agreements. An extensive index of 88 pages completes the book. *A. L. C.*

Select Essays in Anglo-American Legal History. By Various Authors. Compiled and Edited by a Committee of the Association of American Law Schools. In Three Volumes. Vol. I. Boston. Little, Brown & Co. 1907.

The purpose of the volumes, of which this is the first, is to present in accessible and convenient form those essays in legal history which are most helpful to one who desires to trace the development of Anglo-American law. With the exception of the last inclusion, a letter written by Chancellor Kent to a correspondent in Tennessee, which is not uninteresting, but which is in no sense a study in legal history, this plan has been adhered to. In selecting such essays the committee, of which Prof. Wigmore is the chairman, has chosen from treatises and periodicals those studies which seem to them to merit republication in permanent form. The result is that, with one exception, Mr. Zane's *Studies of the Bench and Bar of England*, all the essays have been previously published.

The subdivisions of this volume are arranged according to periods and when taken together constitute a general survey of Anglo-American law. The essays themselves are carefully and judiciously selected and the writers are, in the main, those who have done the most thorough and lasting work in this field. Among the authors included may be mentioned Prof. Maitland, Sir Frederick Pollock, and Mr. James Bryce. Appended to each essay is a bibliographical note which will be found useful.

In providing for this publication, the Association of American Law Schools, by its committee, has rendered a service to those students and practitioners who are interested in the historical side of their profession. If the two succeeding volumes bear out the promise of the first, this series will contain a systematic and scholarly arrangement of authoritative studies in Anglo-American legal history. *W. P. A.*

Fallacies of the Law. By Henry S. Wilcox. Chicago. Legal Literature Co. 1907. pp. 206.

"Acts criminal should not be punished by fines. This places a price on iniquity." "Many of the rich are therefore not afraid of the laws." "There are laws which forbid the doing of work on the Sabbath day, and thereby industry is made a crime and idleness enforced as a virtue. There are other laws designed to prevent persons from working more than eight hours in a day. These are of the same nature. Both tend to destroy civil liberty." "It is remarkable that the constitution of the U. S. gave to Congress the

unlimited power to declare war. It should have restricted that power to wars necessary for the common defence."

These isolated quotations may be taken as a fair example of the nature of this work. Truly it is unfortunate that the framers of our Constitution, the legislators who have given us our statutes, the learned judges who have expounded the common law, "that nebulous mass of rules and quibbles," could not have had at their elbow this little work to save them from the pitfalls into which they fell.

It is complete and conclusive; not only are many problems, which have troubled our courts for years, settled and laid at rest, but many new difficulties have been found and their remedies attached. Perhaps it does everyone good to have the error of his ways occasionally pointed out to him, but there is a class of persons known as the laity, ignorant, perchance, but none the less entitled to consideration, and in their hands a book of this nature is unfortunate. They may fail to see the joke and if they do, this age of corruption, of governmental and legislative incapacity, of legal injustice, hardship and error may seem very real to them.

The first two hundred pages are devoted to a careful index of legal errors, past and present, which lays bare the entire system of our jurisprudence, while the last six pages constitute a Utopian's dream of halcyon days to follow the adoption of this phantasmic panacea. To quote—"The gallows and gibbet shall bear no human fruit. All forms of governmental murder shall be obsolete. Much of what the foolish and superstitious past hailed as magnificent shall fall and perish utterly. But man shall ascend. From his place in the dust, under the oppressor's heel, he shall arise; his unshackled feet shall stand firmly upon the solid earth. His unfettered mind shall struggle to touch the most distant star. His free soul shall be attuned to that divine harmony of which we occasionally hear a note and call it justice." *Res ipsa loquitur.* H. T. S.