

BOOK REVIEWS

The Law Relating to Trading with the Enemy, together with a Consideration of the Civil Rights and Disabilities of Alien Enemies and of the Effect of War on Contracts with Alien Enemies. By Charles Henry Huberich. Published by Baker, Voorhis & Co., New York. 1918. pp. xxxii, 485.

No branch of international law in time of war is more important to the lawyer and the private individual than the rules governing the effect of war on private rights, privileges, powers and immunities. The complexity of modern business has induced a vast extension of the provisions of the common law governing commercial intercourse with the enemy.

The United States Trading with the Enemy Act, embodying many of these extensions, was approved October 6, 1917. The preface of the work under review is dated February 1, 1918, so that it would appear that this exhaustive and comprehensive commentary on the act was prepared in less than four months. The thoroughness of treatment, notwithstanding the speed of preparation, is doubtless to be ascribed to the erudition of the author and his scientific training. This type of work, an analytical commentary of the provisions of a statute, by word, phrase, clause and sentence, is less familiar to the legal profession in America than it is in Europe, where the author's long residence doubtless impressed upon him the practical utility to the practitioner of commentaries on complex statutes.

Our Trading with the Enemy Act, founded on that of England of 1914, is in large part a codification of rules of the common law prohibiting commercial intercourse with the enemy. The modifications in the common law which the English act and its later amendments introduced were founded on modern experience of the ramifications of international business. In October, 1917, the original English act had been in operation three years and had in that time received considerable judicial construction. The English precedent has also been the prototype of similar legislation and coincidental construction in the colonies. The legal materials thus afforded and the vast field of judicial interpretation under the reign of the common law (which, in the United States, prevailed prior to October 6, 1917) are drawn upon by the author in his elucidation of the provisions of the Trading with the Enemy Act of October 6, 1917. Several important topics not included within, but closely related to the statute and frequently arising in litigation under it, such as the effect of war on contracts, enemy aliens as plaintiffs and defendants, internment of enemies, the status of enemy heirs, and numerous others, are left by the act to be governed by the common law. These topics the author has discussed in what appeared to be an appropriate place in the commentary, and while logical arrangement has thus occasionally been sacrificed, no serious impediment to the use of the book thereby has been discovered.

The introduction includes an account of the Paris Economic Conference, in the resolutions of which some of the more drastic restrictions upon commercial intercourse with the enemy and his interests and affiliations had their inspiration. It also includes a discussion of the rules of international law relating to intercourse with the enemy, apart from statute, the effect of war on private persons and property, and the war legislation on trading with the enemy of the more important belligerents in the present war. Then follows an exhaustive commentary on the sections of the federal act of October 6, 1917. The author's method is to subsume under each section, analyzed into its constituent words

and phrases, the decisions of the courts under the common law and since 1914, (quoting from important decisions at considerable length and paraphrasing others), the opinions of writers (of whom there have been several who have discussed the English law on the effects of war on private business, *e. g.*, Baty, Page, Phillipson, Scott and Trotter) and the author's own conclusions. We do not find references to the British Statutory Rules and Orders giving administrative interpretation to many provisions of the British act. The appendix contains the Presidential Order of October 12, 1917, the several British proclamations and acts now in force, the Canadian Consolidated Orders of May 2, 1916, and the latest Australian and South African acts with their amendments. Tests made in various parts of the book have satisfied the reviewer as to the accuracy of the discussion and as to the correctness of the evaluation of particular judicial decisions in their contributions to a particular doctrine, *e. g.*, contracts of agency, the confiscation of private debts, life insurance contracts, the suspension of the running of statutes of limitation. A comprehensive index completes a work which should prove of inestimable value in the interpretation of the complicated rules of our municipal law relating to intercourse with the enemy and the effect of war on private legal relations.

EDWIN M. BORCHARD

Yale University School of Law

A Treatise on the Law of Personal Property. Fifth edition. By James Schouler. Published by Matthew Bender & Co., Albany. 1918. pp. xci, 886.

The fundamentals of a large part of the law of personal property are here presented in a simple and direct style. This division of the law, once neglected as being of minor importance, has now greatly developed in order to meet the needs of the modern industrial system. The author, recognizing the spacial limitations of a single-volume treatise, has necessarily omitted much detail. The contents have been chosen with great discretion and the author has succeeded well in his aim to present "principles and not details." He has the faculty of setting forth the essential elements and of recognizing the difficult problems involved. Even with the careful discrimination exercised the restrictions of space could not be entirely overcome, and he has not attempted to treat of gift, sale or bailment. The citation of authorities is by no means complete, and it is not intended that the work shall dispense with the necessity for further reference on the subject.

In the short chapter on the conflict of laws relating to personal property there is nothing added to the learning on the subject and there is no more clear nor concise statement of principles than can be found in any one of a number of available sources. The very brevity of the chapter would make it of slight use in the preparation of a case, while as a bibliography it is neither complete nor particularly enlightening. Because of the impossibility of presenting a satisfactory treatment of the conflict of laws in so small a space, it might have been better had the author merely supplied a comprehensive bibliography of this difficult subject.

The classification of personal property into *corporeal chattels personal* and *incorporeal chattels personal*, so strongly emphasized, is to be commended; yet were there an analytical discussion of the constituent elements of ownership with a lucid explanation of rights *in rem* and rights *in personam*, the reader would have a more substantial basis for the solution of such subsequent difficulties as the alienability of *choses* in action and the nature of a corporation shareholder's interest.

While the work is more the result of industry in stating a number of practical rules deduced from a corresponding number of leading cases than the scientific production of an analytical mind, the author has, through his insistence upon certain fundamental classifications and distinctions, developed a treatise that will prove no small aid in the acquisition of accurate concepts. And it is in this that the chief value of the work lies—as a first reference to ascertain elementary concepts and distinctions, and the larger problems involved in the various subjects embraced in the term “personal property.” The many users of the prior editions of this work will find increased value in the present edition.

A Treatise on the Power of Taxation, State and Federal, in the United States.
Second edition. By Frederick N. Judson. Published by The F. H. Thomas Law Book Co., St. Louis. 1917. pp. xxviii, 1144.

This work is a revision of the edition of 1902. There has been no change in the chapter headings or in the general arrangement of the text, but much new material has been added, including a synopsis of the tax laws of the several states and the texts of the federal tax laws, together with the war revenue measures of 1917. The whole volume has been thoroughly revised by including the decisions of the Supreme Court of the United States rendered since the first edition.

The aim of the book is “to show the limitations of the taxing power of the State and Federal Government, so far as these limitations have been declared and expounded by the Supreme Court of the United States.” These decisions show the boundary lines of the taxing power where it has thus been called into question. What the states and the federal government are now taxing appears from the matter in the appendix. Since Mr. Judson is writing the text-book primarily for lawyers he does not discuss the economic or social aspects of taxation.

Seventeen of the nineteen chapters of the book deal with limitations on the taxing power of the states growing out of their constitutional relations to the federal government. Chapters XVII and XIX treat of the taxing power of Congress and of the enforcement of limitations upon federal taxation. About one-half of the book deals with the application of the limitations of the provisions of the first section of the Fourteenth Amendment to state taxation. This is a striking illustration of the rapid expansion of the Fourteenth Amendment as an instrument of federal control over state activity. No discussion of state powers, whether of taxation or otherwise, is complete without full consideration of the limitations placed upon them by “due process of law” and “equal protection of the laws.” Since the first edition of this book the Supreme Court of the United States has handed down about five hundred opinions variously limiting and interpreting state action. Since a large number of these deal with questions of taxation, the need for a restatement of the case law such as Mr. Judson has made is evident.

This edition makes its appearance at a time when the problem of taxation is one of the great questions of the day. It gives to the legal profession and to the legislator a practical handbook on the powers of taxation with full references to the leading and most recent decisions defining and interpreting them. It will be welcomed by the practitioner as an authoritative presentation of one of the most complex problems of law and government.

CHARLES WALLACE COLLINS

Washington