

Mr. Watkins' work was the only arsenal of learning that was sacked. Whether Mr. Watkins' book is cause or effect of such briefs we do not venture to guess.

Still soliloquizing, we wonder why Mr. Watkins has not drawn much more than he has upon "the experience of an active practitioner" who has thought acutely, if we may say so, upon the problems of this book. The field is his, both by reason of his equipment and by the substantial vacuum of its literature. Mr. Drinker's scholarly treatise is largely obsolete; and what else, of strictly legal nature, is there to compel attention? Why, then, does Mr. Watkins content himself with the repetitive process and only an occasional expression of scepticism of conventional phrases? Why does he restrict himself to the rare revelation of the insight of which some of his Law Review papers are evidence? Let him compare his first chapter on "State Regulation of Carriers Engaged in Interstate Commerce" with Prof. T. R. Powell's recent essays on *The Commerce Clause and State Police Power* (1921) 21 COL. L. REV. 737; (1922) 22 *ibid.* 28. Mr. Watkins is fully conscious of the sonorous futilities of "the fundamental rule announced in *Smyth v. Ames*" (sec. 84), yet we are denied his help in working out of the morass of words. He tells us the factors of the problem (sec. 131) but he withholds much that he could suggest in appraising the weight and nature of the contending factors, and the process of their adjustment. Ticklish difficulties, like non-compensatory services, are covered by quotations from authorities that have only served to open Pandora's box.

The importance of the subject, the growing importance, needs not to be labored. The very volume of the litigation results in diluting the professional and judicial output. The eagerness of the courts for guiding treatises—the phrase is not too arrogant—is amply attested by the response to Wigmore's *Evidence* and the quick triumph of Williston's *Contracts*. The influence of independent analysis and wise opinion upon courts, submerged by the daily grind, Mr. Watkins himself illustrates. The Supreme Court's decision in an important case (*Interstate Commerce Commission v. D. L. & W. Ry.* (1911) 220 U. S. 235, 31 Sup. Ct. 392) was surely influenced by Mr. Watkins' discussion of bulked shipments, in his first edition.

Doubtless this work meets a demand. No less certain is it that a demand will be found by a work that aims to help guide the stream of law-making (legislative as well as judicial) and not merely to report its volume and velocity. And the watchers in the lighthouses give warning, that the stream is becoming more and more turgid and turbulent.

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*International Law.* By L. Oppenheim. Third Edition. By Ronald F. Roxburgh. In Two Volumes. London, Longmans, Green & Co., 1920-1921. Vol. I, pp. xliii, 799. Vol. II, pp. xlv, 671.

The standard work of the late Professor Oppenheim now appears in a new edition, the first since 1912. The author's labors upon it were interrupted by death, the edition having been carried to completion by Mr. Roxburgh, who had the advantage of the author's notes on the unfinished parts. The record of events since July, 1919, are the work of the editor. There is little besides this to distinguish the opinions of the editor from the author; the former has apparently taken pains to preserve the author's own thoughts wherever possible. The section numbering of the second edition seems to have been retained, new material being embodied in interpolated fractional sections. Among this new material we find such subjects as the law of the air and aerial navigation, the League of Nations, the "so-called economic boycott or blockade," treaties of peace after the World War, the "so-called long distance blockade," and other topics which the World

War threw into relief. The old sections seem to have been thoroughly revised, though for the most part the author's earlier opinions are retained. One notable exception is found in the author's withdrawal of his advocacy of the ratification by Great Britain of the Declaration of London. Whether the author fully appreciated the fact that nations will not, if their hands are free, permit themselves to be bound by rules which handicap them in time of war or emergency, does not clearly appear. The emphasis placed on such important subjects as Aliens, responsibility of the state and related topics, together with detailed bibliographic references throughout, again distinguish this work from most of the other general treatises in the field.

As a reference work for information on the general facts and history of the science of international law, few books compare with that of Oppenheim. Whether he will rank as high among original thinkers and scholars as the editor and others seem to believe may be more doubtful. As an earnest, careful student and master of research, he has few equals among the English-speaking contributors to the science. But as a critical analytical lawyer, careful to distinguish rules *de lege lata* and *de lege ferenda*, the reviewer believes he will not rank with Westlake or Hall. While one cannot expect in a general treatise that exhaustive analytical treatment of a legal doctrine which the special student demands, it yet seems to the reviewer that the keen testing of alleged rules of international law to determine their actual validity in law, a feature which distinguishes the work of Westlake and Hall, is not always evident in the work of Oppenheim. For example, while the facts connected with the series of measures instituted by Great Britain beginning with the Order in Council of March 11, 1915, and designed to cut off Germany from all foreign trade, are well summarized, there is practically no attempt to consider the validity of these "measures of blockade" from a legal point of view or to contest—as the author evidently felt he could (II, 542)—the American view that they were "illegal and indefensible." No reference is made to Sir Samuel Evans' remark in *The Hakan* (1916) 2 Br. & Col. P. C. 210, that the "so-called long-distance blockade" was "not a blockade at all except for journalistic and political purposes," clearly indicating thereby that it was not legal. See Moore, *Principles of American Diplomacy* (1918) 79. In mentioning its antecedents, the author refers to the German war-zone decree of February 4, 1915, but does not mention the previous British Order in Council of Nov. 3, 1914, declaring the North Sea a closed military zone. For the detailed record of events in the Great War it should be said, however, that the author usually refers to the well-stored work of Professor Garner, *International Law and the World War*.

The occasional unsatisfactory character of the legal treatment is illustrated by the sections dealing with private property of belligerent citizens in the enemy state. After dealing with the rule of international law that such property is immune from confiscation, and pointing out (II, 157) that "the last case of confiscation of private property was that of 1793, at the outbreak of war between France and Great Britain," he goes on (II, 159) to speak of "the readjustment of rights of private property" under art. 297 of the Treaty of Versailles. Not once is it indicated that the measures adopted by the Allies by authority of that article amount to confiscation of private property, and that the result vitally qualifies the statements made on previous pages. In view of these measures of confiscation of foreign investments, the policy underlying which appears difficult to justify on the part of trading and investing nations, it seems at least amusing to find that the Allies, in laying down conditions for the invitation to Soviet Russia to participate in the Genoa Conference, say: "It is not possible to place foreign capital in . . . a country unless the foreigners who provide the capital have a certitude that their property and their rights will be respected and that the fruits of their enterprise will be assured." Too often, in the reviewer's judgment, is the influence of the Great War on the rules of law underestimated, and old rules set out as if they

were still accepted law, e. g. in regard to the position of merchant vessels on the outbreak of war, the doctrine of continuous voyage, and contraband. This defect is hardly cured by the statement in the editor's preface that the "laws of war and neutrality were admittedly in partial suspense."

The invasion of Belgium is dealt with under Intervention for Self-Preservation, because the Germans thus defended it. (I, 220.) There does not seem to be any mention of the seizure by England of the neutral island of Madeira during the Napoleonic Wars to prevent its falling into the hands of the French. There is no notice, apparently, (II, 256-257) of the fact that armament on a merchant vessel has an influence upon the ship's immunity from being sunk without warning by submarines, yet several authorities consider this operative fact as going to the very crux of the legal position. The League of Nations is discussed as an established institution of international law. There is a fairly adequate citation of leading cases, but necessarily few cases are discussed at any length.

In spite of such shortcomings as have been mentioned, the book must be welcomed as the most up-to-date systematic standard work on international law.

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*Handbook of Practice under the Civil Practice Act of New York.* By Carlos C. Alden. New York, Baker, Voorhis & Company, 1921. pp. vi, 340.

As the author states, this book has been prepared primarily for the use of students. It presents in abbreviated form the substance of those portions of the Code of Civil Procedure dealing with the usual proceedings in an action in a court of record, and, in addition, information abstracted from various other acts outlining procedure in courts not of record and in Surrogate's Courts. Much helpful material gleaned from decisions is incorporated. By a study of this treatise a student will acquire an understanding of the relation of the procedural legislation to the actual mechanics of a lawsuit, which he could never gain by the unaided study of the Civil Practice Act and rules of court.

The work has been done so well on the whole that one hesitates to comment upon its faults. These, such as they are, are doubtless due largely to the effort to compress a tremendous bulk of material into so few pages. For example, in speaking of the designation of parties in a summons, the author says on page 44: "The use of a middle initial is proper, and affords identification, but a mistake therein is immaterial." Where the summons is personally served, there is no question as to the accuracy of this statement. But where service is by publication, it is open to serious question. No doubt it is usually said that the middle initial or name constitute no part of a person's legal name and that an error therein may be disregarded. 29 Cyc. 265. And some cases apply this rule to published process. *White v. Himmelberger-Harrison Co.* (1911) 240 Mo. 13, 139 S. W. 553. But there is a tendency in the late cases to recognize the fact that the middle name or initial is frequently the most distinguishing characteristic of a person's name and to hold that publication of a summons designating a defendant by an incorrect middle initial confers no jurisdiction. *Gibson v. Foster* (1913) 24 Colo. App. 434, 135 Pac. 121; *D'Autremont v. Anderson Iron Co.* (1908) 104 Minn. 165, 116 N. W. 357; *Carney v. Bigham* (1909) 51 Wash. 452, 99 Pac. 21. Consequently, it would seem unsafe to inform a student that he might with impunity be careless in the use of middle initials in a summons. Again on page 51 it is said that substituted service is "in its effect substantially equivalent to personal service." It is true that it has been held that a judgment *in personam* may be rendered upon such substituted service. *Continental National Bank v. Thurber* (1893, N. Y. Sup. Ct.) 74 Hun, 632. But rule 49 of the Rules of Civil Practice specifically provides that after proof of substituted service has been properly filed, "the same proceedings