

*Enemy Property in America.* By Arthur Garfield Hays. Albany, Matthew Bender & Company, 1923. pp. xii, 396.

In this compilation, the author deals with those sections of the Trading with the Enemy Act which relate to the seizure of the private property in the United States of German, Austrian, and Hungarian citizens during the late war and with the decisions which have construed the several sections of that Act.

Part I consists of a lightly annotated survey of the provisions of the Act, of which section 9, providing methods, administrative and judicial, for the recovery of seized property under certain circumstances, has been the subject of most of the litigation. Part II deals with "the future disposition of enemy property" and discusses the traditional American policy on this subject, the avowed purposes and policy of Congress at the time the property was taken over, and makes certain alternative suggestions as to the disposition of the property. The author favors the return of the property to its owners, as must every informed person, it would seem, having any historical background of this subject, and an economic or statesmanlike outlook on the future. It would have been interesting had the author shown how two such unrelated subjects as the payment of American claims against the German Government and the return of sequestered private property to its owners became tied together in the Knox-Porter Resolution, notwithstanding the public declarations of Senator and ex-Secretary of State Knox that "in order to follow our traditions and be decent this property should be returned." (p. 365.)

Part III consists of an annotated reprint of the provisions of the Trading with the Enemy Act, as amended. Part IV consists of a "Digest of reported and unreported cases" under the Act, decided prior to February 1, 1923. Part V consists of a reprint of the treaties of peace with Germany and Austria and of those articles of the Treaty of Versailles (252, 253, 296-303) relating to the disposition of private enemy property, "debts," "property, rights and interests," and "contracts, prescriptions and judgments."

An Appendix contains the so-called Winslow Amendment of March 4, 1923, providing for the return of \$10,000 to each owner of sequestered property, with a brief explanatory note thereon, and a verbatim reprint of the committee reports, majority and minority, accompanying that bill to the floor of Congress.

The sequestered private property in the hands of the Alien Property Custodian is one of the legacies of the late war. That Congress in 1917 intended merely to prevent a hostile use of the property during the war and realized that international law and American tradition required a return of the property to its owners at the close of the war is made clear by the assurances of the gentlemen in charge of the bill in October, 1917. But as the war progressed and property came in, new ideas and temptations developed; and in the treaties of peace we find an article that the private property may be retained until Germany and Austria make "suitable provision for the satisfaction of American claims." The foreign Governments have thus contingently signed away their rights, and we are privileged, so far as they are concerned, unless provision is made for paying the American claims, to adopt any policy we choose. The British Government has just informed the United States that by art. 248 of the Treaty of Versailles, the Allies have priority on all German public assets, and that presumably Germany cannot validly promise to pay us anything. It is probably realized by most students of international law that any effort to use the private property to discharge with it claims against the German and Austrian Governments would amount to the confiscation of private property; yet occasionally we find articles like those of Mr. William Campbell Armstrong in the August number of the American Bar Association Journal which seek to rationalize the taking of the private property by attempting to show that the appropriation of this property

by us would merely be the exercise of the power of eminent domain by the foreign government, and if the owner is not fully compensated, that is the fault of the foreign government and not ours. Mr. Armstrong's article is in effect a brief which omits practically all reference to much of the literature, precedents and historical material contradicting the writer's thesis. While many rules of international law are confused or doubtful, the relevant rule in this case is believed to be clear and certain. It is founded on a profound and rational economic principle, the security of foreign private property. An impairment of that principle could only be temporarily and seemingly profitable, for the effect of the precedent would be likely to outlive this generation and would in the long run jeopardize the institution of private property itself. That would be no contribution to the progress of the race, or the nation, nor evidence practical wisdom. It will be interesting to observe which road Congress will take in fixing our final policy.

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*Cases on Trade Regulation.* By Herman Oliphant. St. Paul, West Publishing Company, 1923. pp. xxi, 1078.

It has frequently been observed that the interpretation of the rules and principles applicable to the conduct of business form a rather distinct branch of the law. Recognizing this fact, many nations of Europe and of Latin America have formulated codes of commercial law and not infrequently separate courts are established to apply the special rules relative to commerce and business. Since the merging of the law merchant with the general common and statute law of England no such distinct branch of law has been recognized in Anglo-American countries. That there is a basis in Anglo-American law for separate consideration of cases and materials relating to certain aspects of business relations is the belief of the author of this casebook. Consequently he has presented a unique collection of cases on the law which relates to certain efforts of courts and legislatures to regulate the doing of business. An historical introduction comprises extracts relating to the manorial system and the merchant and craft guilds of the Middle Ages, the beginnings of government regulation of industry, and the changes in economic conditions following the break-up of the feudal system, with a short survey of the industrial revolution and the growth of the *laissez-faire* as an economic and industrial policy.

The cases are grouped under three headings: first, *restrictive contracts* involving contracts not to compete, concerning agreements to restrict the use of skill or enterprise, restrictions accompanying the purchase of property or involved in contracts apportioning business or tending to create a monopoly or combination; second, *competitive practices* involving cases on the privilege of competing and on practices involving intimidating and molesting, disparaging competitors' goods, appropriating competitors' trade values or trade secrets, inducing breach of contract, boycotting, exclusive dealing and various unfair price practices and unfair methods of advertising; third, *combinations* with cases dealing with the object and form of combinations, with efforts to regulate combinations, and with the rights and liabilities under recent federal statutes.

A large part of the cases is concerned with the common-law rule that contracts in restraint of trade and monopolistic contracts are contrary to public policy and therefore void. The change in the rule as to contracts in restraint of trade by which the restriction was held to apply only to a general restraint and to permit a partial restraint for a certain time and place based upon a valuable consideration is traced in detail through the case of *Mitchell v. Reynolds* (1711,