BRITISH INTERNATIONAL LAW CASES

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The appearance of this, the first, volume of British International Law Cases is a signal event. It marks in part the fruition of the hope long entertained by international lawyers that the whole corpus of British judicial decisions on questions of international law should be made readily available to teachers, scholars, and students. On the publication of all the volumes in the present series every single decision (subject to some defined exceptions) on aspects of international law delivered up to 1950 by municipal courts sitting within the British Isles will have been brought together in convenient form. The practical and scientific value of such a collection will be very great. International lawyers owe a real debt of gratitude to Lord McNair for his initial suggestion that the work should be undertaken, to Dr Clive Parry and his team of associates in preparing the series of reports, and to the British Institute of International and Comparative Law and the Trustees of the International Law Fund for their financial support and sponsorship.

The collection and compilation of international law cases may appear to be easy, but the simplicity is deceptive. The task requires the making of many difficult decisions. The range of selection must be clearly demarcated. Here the editor has wisely refrained from including prize decisions except where they happen to have touched upon some general aspect of international law: see *The Ionian Ships* (pp.635-644). The boundaries of inclusion have also been drawn so as to omit private international law cases and, provisionally, decisions on war and neutrality. Those are the defined exceptions to the universality of the present compilation. Even so the net has been cast wide. The qualifications of some of the cases for inclusion are meagre. The classification 'Existence of State: Proof: Beginnings of State's Existence' contains *M'Gregor* v. *Lowe* (1824) Ry. & M. 57 (p.2) – simply a ruling of Abbott C.J.K.B. at *nisi prius* – but the report is silent on the kind of evidence adduced to establish the existence of a state called Poyais and why the plaintiff failed to establish that fact. This is more clearly brought out in the variant report of the same case, *sub nom. MacGregor* v. *Lowe* (1824) 1 C. & P. 200. The decision *In the estate of Chulalongkorn* is included (p.188) under the heading 'Sovereignty and Independence: Foreign State as Plaintiff', but it was a decision on an application for grant of letters of administration (not of probate, as stated in the Index, p. 690) neither by a foreign state nor by a foreign sovereign but by an attorney for a foreign

sovereign. Notwithstanding its great interest there is not a strong case for the inclusion of the report of the reference to the Judicial Committee of the Privy Council in *In re Southern Rhodesia* (pp. 644-663) either as a decision on a question of the international law of peace generally or as a decision on protectorates in particular. On the other hand, the omission of *Rex* v. *Earl of Crewe, ex parte Segkome* [1910] 2 K. B. 576, C. A. is surprising, especially when it was strongly relied upon in *Sobhuza II* v. *Miller,* which is included (pp. 663-668).

Classification poses another difficulty which does not appear always to have been satisfactorily resolved. The decision in *Rex* v. *Bottrill, ex parte Kuechenmeister* [1946] 1 All E.R. 635, D.C. (pp. 9-11), [1947] K.B. 41, C.A. (pp. 11-21) was concerned not with the beginnings of a state's existence, as the classification indicates, but with the end of a state's existence. Nor is it easy in every case to extract the main theme. That delicate editorial task is unavoidable where each decision is reported in full only once. Cross-references, if they are exhaustive, as may be expected from the statement of policy in the Preface, will no doubt assist the reader. Nevertheless, it is doubtful whether the importance of *Molvan* v. *Attorney-General for Palestine* is accurately reflected by confining it to the heading 'Mandated Territories' (pp.674-685). Conversely expectations are disappointed by the omission from any of the classifications in the volume under review of such decisions as *The Charkieh* (1873) L.R. 4 Adm. & Eccl. 59 and, to a lesser extent, *Monaco* v. *Monaco* (1937) 157 L.T. 231.

The final important and difficult editorial question was whether to include every single word of the complete text of the original report or to mould each report so that, apart from the language of the actual judgments themselves, the collection of British International Law Cases would present a picture of uniformity and consistency. The decision to adhere mechanically to the wording of the original reports is a regrettable instance of editorial passivity. The volume under review contains a kaleidoscopic collation of reports, many of them cluttered with the paraphernalia of reporting now scarcely intelligible even to English lawyers. Those reports served an entirely different function from the present collection, to many of whose readers the conventions of private law reporting in previous centuries will remain an incomprehensible mystery. The reporting of the famous case of *Folliott* v. *Ogden* provides a good example. That litigation began, for procedural reasons, in the Court of Common Pleas. The report (pp. 188-196) is full of procedural technicalities and abbreviations which will be a constant source of bewilderment to the reader uninitiated into the esoteric art of common law pleading. The judgment of the Court of Common Pleas was upheld, in proceedings in error *sub nom. Ogden* v. *Folliot,* by the Court of King's Bench (pp. 196-201), which then still retained some appellate jurisdiction. This may be deduced by English lawyers from notes and cross-references in the original reports, but not, as it ought to have been, by explanatory matter aimed at the modern reader in the present

volume. The case ultimately went to the House of Lords on appeal, again in proceedings in error, from the King's Bench. That appears from a note (p.196) appended to his report by Henry Blackstone, the original reporter of *Folliott* v. *Ogden* in the Court of Common Pleas. But the only readers who will understand this are those who know that 'Dom. Proc.' was the Latin abbreviation used by some early reporters for the House of Lords. 'Postea to the plaintiffs' – so ends the report (p.207) of *Wolff* v. *Oxholm:* how intelligible is that piece of procedural prose to the average international lawyer of the mid-twentieth century? And there are many other examples. Imaginative and sympathetic editing would have unravelled these difficulties for the reader.

Occasionally, such slight editorial intervention as there is has only served to darken counsel. The report of *The Pelican* (p.1) – the reference '(1809) Edw. (App.) iv' should be '(1809) Edw. (App. D) iv' – is such a case. The retention of Burke, the name of Pelican's commander, in the title of the case, a convention adopted by some reporters in the Court of Admiralty, will cause some mystification. The reference to the Court as the Privy Council is wrong, and becomes a source of confusion when a few lines later in the report 'the same question' (the reader's query 'The same question as what?' is left unanswered) is said to have occurred in *The Pelican* 'in the Court of Appeal'. The Privy Council did not acquire appellate jurisdiction in prize until the enactment of the Privy Council Appeals Act 1832: before that date appeals in prize matters were heard by the Lords Commissioners of Appeal in Prize Causes, commonly known as the Court of Delegates.

A different editorial policy was called for. A positive and imaginative policy sympathetic to the needs of the modern international lawyer and sensitively aware of the educational equipment of many readers of the collection, both in Britain and abroad, required a bold decision to report the cases afresh, to lift them out of the arcana of private law reports, and to set them in a new context as a relevant and living body of case law showing in intelligible form the contribution which the Courts in the British Isles have made to the development of international law. Such a decision would have called for the ruthless excision of a mass of material having no bearing whatever on questions of international law. Suggestions for the editorial pruning-hook would include the omission or, preferably, the radical re-editing of headnotes and running catch-phrases which (as at pp. 463, 471, where the key phrase is 'Conflict of laws') divert attention from the central theme of the collection; reducing the bewildering variety of idiosyncrasies in the original reports to some standard of uniformity; the deletion of long colloquies between Court and counsel on questions of costs and stay of proceedings (pp.257-9, 504-6, 529-30); the omission of unnecessary detail such as the dates of argument and the names of solicitors for the parties; and the stream-lining of the names of parties: see *Arthur Charles Burnand (on behalf of himself and all the other underwriters upon the policies of insurance on*

tobacco per Lamplighter effected by the Defendants) v. *Rodocanachi, Sons & Co.* (pp. vi, 268) – and why must the Queen of Holland continue to be saddled in this collection with the irrelevant parenthetical status (pp. vii, 398) of a married woman? An enlightened policy would have allowed the intelligent treatment of each piece of litigation as a connected whole. Under the present arrangement the vagaries of the original report govern their treatment in the volume under review. The decision of the Chancery Division and of the Court of Appeal in *Wilson* v. *Church* are treated together (pp.207 - 240) because originally they were reported toge ther: (1879) 13 Ch.D.1. But the proceedings in the same case on appeal to the House of Lords are reported separately (pp. 240 - 259) and even listed separately in the Contents (p. vi) *sub nom. The National Bolivian Navigation Co., The Madeira & Mamore Railway Co., and Llewellyn Nash* v. *William Millar Wilson, J. H. Lloyd, Alfred J. Lambert, and the Republic of Bolivia* without any indication by the present editor that they relate to the report immediately preceding. *The Emperor of Brazil* v. *Robinson and others* (sic) (p.127) and *His Imperial Majesty Don Pedro the Second, Emperor of Brazil* v. *Robinson and others* (sic) (p.128) – the date in the original report was wrong – are decisions on two successive applications for a stay of proceedings in the same litigation, as should have been made clear by explanatory note and cross-reference within the editorial context of the volume under review.

The Contents and Table of Cases Reported are full of irritating inconsistencies: 'In re Visser', but 'In Re Amand' (p. vii), 'Amand, *In re*' (p. xiii); the inclusion of some cases twice and other cases only once in the Table of Cases Reported; on p. xiii the definite article is printed with its initial letter in lower case where, although the first word in the title of a party, it is not printed first in the Table of Cases Reported (thus, 'Colombian Government, the v. Rothschild' – a barbarism), but on the next page a capital letter is adopted for that usage (thus 'Queen, The v. Most' – why not simply Reg. v. Most or R. v. Most, as appears five lines later in the same Table? – and 'Secretary of State in Council of India, The, Appellant and Kamachee Boye Sahaba, Respondent'). Nor is the Index as helpful as it ought to have been pending the detailed Index promised at the end of the series. To index *In re Amand* and *In re Amand* (No. 2) under the heading 'MILITARY SERVICE Liability of Foreign Nationals in England' obscures the real significance of the two decisions: to include them under the heading 'ENEMY OCCUPATION OF TERRITORY' reveals a misunderstanding of the points at issue.

The stated editorial policy (p.x) was that the originals should be 'simply reproduced'. That process ought to have been straightforward, since presumably the printers were furnished with the printed word or photocopies of the original reports. But there is an astonishingly high proportion of typographical error, too high on a

cursory reading to justify the reviewer's blind eye: '(1949) L.T.R. 601' for '[1949] L.J.R. 601' (p. viii); on p. 1 there are seven divergencies from the typography of the original report, including the omission of 'not'; 'hat' for 'that' and 'o' for 'of' (p. 11); '1961' for '1861' (p. 22); '1894' for '1849' (p. 24); 'J.J.' for 'JJ.' (pp. 78, 463, 676); *'Mr. &. R. Grant'* (p. 89); '!' for '?' (p. 131); 'Traynor' for 'Trayner' (pp. 171, 180); *'exeure'* for *'exuere'* (p. 204); '1858' for '1859' (p. 543); 't' for 'it' (p. 622); '[330]' for '[230]' (p. 653); 'Madhaven' for 'Madhavan' (p. 674). Finally Lord Macdonald, Lord Justice-Clerk, is demoted (p. 171) from the senior to the junior position in the Court, sub nom. Clerk L.J. – a fictitious Scots judge created by the solecism of Sassenachs and others.

The printing falls short of the high standard generally maintained by the publishers. The type appears to have been set unevenly in many places. Occasionally bold type is used where it should not have been, and not where it should, and once (p. vi) it is used indiscriminately, thus '(N.S.)' four times, two of them correctly, and '(N.S.)' twice. The binding lacks the solidity and resilience necessary to save the volume from premature disintegration through frequent usage. It is interesting to speculate how the re-binding will be carried out in such a way as to ensure that the already exiguous internal margins do not disappear altogether.

The chorus of welcome for this praiseworthy enterprise must be restrained. Grand in inspiration and design, but deficient in execution the present volume falls short of the excellence which must be the only standard by which it should be judged. Is it too late to hope that future volumes in this same series will be free from the blemishes which have marred the quality of the first?

G. P. B.