'...2. A director must act honestly.
3. A director must exercise diligence.'

It is a great pity that Australian States have not set up any permanent body like the English Board of Trade charged with supervisory functions. Nevertheless, the powers of the Governor-in-Council to order an investigation into the affairs of a company (section 144) are similar to those of the Board of Trade, so that the English practice will prove a helpful guide. There is also a useful little discussion on the origin and development of Unit Trusts and the present strict control exercised over them by the Board of Trade.

The present edition's size is due in no small measure (400 pages) to the valuable collection of Appendices. In addition to the Companies Act, 1948, and the Rules of the Supreme Court (Companies), the authors have included the Stock Exchange Requirements for Quotation, the Prevention of Fraud (Investments) Act, 1958, the Exchange Control Act, 1947, and so on, all of which would be handy references to anyone engaged in company work. Complementing this is a chart at the beginning of the work setting out the 'organisation of business in Great Britain'.

Palmer occupies a mid-position in books on Company Law. It does not contain the systematic and organized discussion of basic principle, say, of Gower. To take one example, *ultra vires* is discussed by Gower as a doctrine in one section, in terms of origin, history, modern application, general effects, *et cetera;* whereas, in Palmer, references to *ultra vires* arise incidentally in the course of discussion of the different aspects or activities of a company. As against this, the current Palmer has an extremely valuable series of Practice Notes (Editor, W. W. Talbot, F.C.I.S., F.T.I.L.) interpolated at the conclusion of many expositions of the statutory position. And yet, the current edition could never be regarded as anything like a mere annotated account of the Act, or as a simplified practical handbook for non-lawyers. The publishers have characterized it as 'The major work on Company Law in narrative form'. Certainly it is invaluable both as a source of reference for lawyers (English and Australian) engaged in Company Law and also as a practice manual for those engaged in everyday company work. The editors are to be congratulated on the comprehensiveness, presentation and accuracy of what is virtually a new major work.

One final feature is that the work is to be kept up by regular Notes in the section on Company Law in the *Journal of Business Law* (Stevens & Sons) of which Dr Schmitthoff is Editor.

F. P. DONOVAN*

Expropriation in Public International Law, by B. A. WORTLEY, O.B.E., LL.D., Professor of International Law and Jurisprudence in the University of Manchester (Cambridge Studies in International and Comparative Law, VI). (Cambridge University Press, 1959), pp. i-xviii, 1-169. Price £2 9s. 9d.

There has been for a long time a regrettable lack of monographs by English international lawyers on the problem of confiscation and expropriation in international law. This is surprising as with the spread of nationalization measures in many parts of the world this problem had during the past forty years become of ever-growing practical im-

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portance. Professor Wortley's new book, *Expropriation in Public International Law,* which, as the author intimates in a concluding note, is to be followed by a companion volume on the problems of private international law arising from expropriation, will do much to remedy this position. Professor Wortley's interest in the international law aspect of expropriation in the widest sense, that is, including confiscation and nationalization dates back to the early days of his academic career, and he has already contributed a number of articles and lectures on special questions in this field. The present volume does not attempt an exhaustive treatment of state practice and case law. This would not be possible within the limited space of little more than 150 pages of text, and might only be achieved today by the co-operation of a team of international lawyers. Professor Wortley's aim is as stated in the Preface 'to provide a systematic framework of those general problems of confiscation, expropriation and nationalization, which mainly concern lawyers, diplomatists, consuls and civil servants advising persons, corporations or states, that have suffered some loss as a result of the action of a Foreign Government'. In this he has fully succeeded.

The preliminary question to any international law claim based on an act of expropriation is one concerning the municipal law of the expropriating state. According to the latter, has the prior owner's title been effectively transferred to the expropriating authority, that is, generally the state? Only if this question of municipal law is answered in the affirmative does the further question arise: has this transfer of title been contrary to principles of International Law? The author shows in Chapter I the ever-widening concept of 'property' as an object of expropriation—a process which is common to both common law and civil law countries. International law has, wherever possible, followed suit; see the wide meaning given to 'property' in the Italian Peace Treaty and other international instruments quoted by the author (page 8). Chapter II deals with the various types of expropriation which, both according to municipal law and international law, do not raise doubts as to their lawfulness. They are first and foremost those acts of expropriation where adequate compensation has been paid before, or—in cases of emergency—after the taking. Chapter III is devoted to those cases where a state may expropriate property without compensation, that is, in the author's terminology, confiscate property—without thereby committing a breach of international law. These are in particular acts of confiscation for certain criminal offences.

Diplomatic claims arising out of a seizure of property are dealt with in Chapter IV. In assessing the value of diplomatic precedents, cases of the Palmerstonian era such as the case involving the taking of Mr Finlay's land in Athens for King Otto's garden (page 59) seem to have little value today. The very useful sections of the book on post-1919 seizures (pages 62-71) can hardly fail to leave the impression how rarely international practice was able to enforce 'prompt, adequate and effective' compensation. How far provisions written into the peace treaties with enemy states can be used as evidence of a general recognition of these provisions as principles of international law must remain open to doubt.

One of the crucial questions involving an international law claim based on an act of expropriation which, although valid under the *lex situs,* is an infringement of international law, is as to the substance of the claim. Is the claim one for restitution of the property wrongfully taken, or is

it a claim merely for damages? (Chapter IV). Failing regulation by treaty—as, for example, in the case of the Italian and Japanese Peace Treaties and the Paris Agreement with West Germany (pages 81-89)—is there really a generally recognized rule of international law? It is true that the Permanent International Court of Justice laid down in the *Chorzów Factory Case*[1] that restitution in kind is the first and foremost remedy in case of an internationally illegal act of expropriation. However, the real difficulty arises where the act of expropriation is not patently illegal in international law. This happens, in particular, in those cases where the expropriating state makes some provision for compensation of the foreign owner, yet by no means provision for full compensation. In Chapter VII ('The Duty to make Compensation') the author has to admit that even if there exists a general rule requiring prompt, adequate and effective compensation to make a foreign act of expropriation valid in the eyes of international law, there has in the past often been little consensus about the measure of adequacy. Were the compensation provisions of Iran's Oil Nationalization Law of 1951 (Articles 2 and 3) sufficient to comply with the rule? Unfortunately the International Court of Justice ruled in the *Anglo-Iranian Oil Company Case*[2] that it had no jurisdiction. Of municipal courts in those countries where the validity in international law of the Iranian legislation was litigated in connection with the title to oil shipments which had run the blockade, only one held that the compensation provisions were inadequate and that therefore the legislation was invalid in the eyes of international law, with the result that the title to the oil still vested in the previous owner. On the other hand, courts in Japan and Italy ruled to the contrary.

Of particular interest in Chapter VIII (Special and Procedural Considerations) are the modern attempts to protect property by a general treaty (pages 148-151). It is only within the framework of the European Convention for the Protection of Human Rights that some advance has been made since World War II towards a protection of property against expropriation. At the same time it is important to recognize even the limitations of that treaty: 'no one shall be deprived of his possession except in the public interest and subject to the conditions provided for by law and by the general principles of international law'.[3] As long as these 'general principles' are not settled to a more definite extent, the reference to them must remain of limited assistance. Whether this Convention protects only nationals of foreign states which are party to the Convention, or nationals of the expropriating state as well, is not clear (page 150). Yet, if international law protection is given to property by general treaty, should such protection be necessarily limited to foreign nationals and foreign states? Rules of interpretation do not demand such a limitation. In another context the author draws the parallel with the Genocide Convention which was designed to protect groups of individuals from extermination by officials of their own state (pages 19-20). With the establishment of the European Court of Human Rights the extent of the protection of property rights within the sphere of the European Convention of 1950 takes on a new significance. If international law can overcome its traditional limitation to foreign states and their nationals a considerable advance toward the rule of law in international relations would be achieved.

[1] [1926-1927] Annual Digest and Reports of Public International Law Cases 268.
[2] [1952] International Law Reports 507.
[3] *Protocol to the European Convention for the Protection of Human Rights*, Art. 1.

From a jurisprudential viewpoint the author considers the principle of 'unjust enrichment' as the basis for the requirement for prompt, adequate and effective compensation in cases of expropriation. However, the extent to which this principle is part of our Western law systems varies. Although I agree with the author's general approach, I feel the difficulties of deciding to what extent an 'enrichment' is 'unjust' in a particular case may be unexpectedly great. The case of a concession granted by a colonial power to a company registered in the mother country comes to mind: if, on achievement of independence, the former colonial country nationalizes the industry in which the concession has been granted, what amount of compensation is 'just' or adequate? If the company has paid dividends which amount to several times the amount of the capital, can it still claim as just or adequate the full value of its enterprise as at the date of nationalization? Should not the 'risk' character of the investment which enabled the payment of the rich dividends be taken into account in deciding on the justness or adequacy of any compensation? In the case of natural resources of a definitely limited character, such as oil deposits, should the loss which the nationalizing state has suffered by a reduction of its resources be taken into account? The fact that many of the most important recent claims (Mexican, Iranian) have been settled finally on the basis of partial compensation lends support to the proposition that 'adequate' compensation may in mid-twentieth century practice of states be very far from 'full' compensation.

The diplomatic practice, case law and other source material referred to is mainly that of Britain and the U.S.A.; in certain parts also that of France and other Continental countries. The book is almost free of typographical errors. On page 92 (footnote 1), the reference should be to the Crown Proceedings Act, 1947 (instead of '1937').

Professor Wortley's book can be warmly recommended to all those who seek up-to-date guidance in the highly topical subject of the public international law aspects of expropriation. The reviewer feels that, in a second edition, a separate bibliography will still further enhance the usefulness of the book.

J. LEYSER*

The Law of Awol, by ALFRED AVINS, of the New York, Florida, District of Columbia and Court of Military Appeals Bars. (Oceana Publications, New York, 1957), pp. 1-288. $4.95.

The author believes this learned treatise will be 'useful for the law student, for the practicing attorney and for the military service school'.

The wealth of detail contained in this masterpiece of research, on a section of military law, contains little matter of real value for the Australian law student, or indeed for the practitioner. However, the military defending officer searching for a technical defence and striving to fill the gaps in his non-legal mind may find Mr Avins' book of inestimable value.

The book is well set out with headings and sub-titles and amply sprinkled with usually hard-to-come-by references, so that the defaulting soldier could well supply a copy to his despairing counsel.

Should a criticism of this work be merited, it is that it showers com-

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