

OCCUPATION IS NINE POINTS OF THE LAW

But Whose Writ Runs in Antarctica?

ADMIRAL BYRD'S third expedition to the Antarctic is giving local students of international law an outsize (and blubbery) bone to pick, for it raises the question whether it will give the United States the sovereignty over the Ross Sea Dependency, now held by New Zealand. The answer may be that occupation, when nations are claimant and respondent, is nine-tenths of the law, and it has been suggested that New Zealand should forestall the American expedition to retain the rights she has so often asserted.

To clarify, as far as possible, an international situation that seems to be vague at the moment, we went to two international law authorities* for their views. Through their books we set up an imaginary court, with supposititious counsel for the United States and New Zealand. And we found that all the submissions could be boiled down to two pithy contentions—and even these would leave the real issue still on the ice. To wit:

Counsel for America: To have sovereignty over the Antarctic you must have occupation. We will seek that occupation.

Counsel for New Zealand: I must remind my learned friend that we have already taken occupation of the Ross Dependency by exercising jurisdiction, inasmuch as we have supervision and control of the whaling industry and collect licence fees.

His Honour: Decision reserved.

THE legal argument that had preceded this decision established certain principles. One was that the discovery of new land gave to the State making that discovery what is called an inchoate title, and the discovery is generally accompanied by the formal act of

* Oppenheim's "International Law."
Wheaton's "International Law."

(continued on next page)

took some thinking out, for exaggeration was needed for greater comedy value, and the music presented a bit of a problem, but that was solved by Laurie Constable, who selects the music for all our productions." Mr. Beeby added that, taken all round, he was very pleased with the result. It was quite a change and he felt that this, his first production for the commercial stations, had widened the studios' scope.

The Adventures of Topper, to be heard once weekly, started at 22B on Sunday, December 8, at 8.0 p.m.; at 32B on Sunday, December 15, at 9.15 p.m.; and at 42B on Sunday, December 22, at 9.0 p.m. It will be heard from 12B and 22A on dates to be announced.

The principal members of the cast are Harry Painter as Topper, Pauline Heany as Mrs. Topper, Sinclair Ronald as Marion Kerby, and Selwyn Toogood as George Kerby. Others include Arthur Heany, Bernard Beeby, Earle Rowell, Joachim Kahn, Laurie Sweetapple, Beryl McMillan, Gordon Grimsdale, and Irene Spidy.

taking possession, such as hoisting a flag. But the title must be consolidated by occupation which, to be valid in law, must be *effective*. The land must be settled by the citizens of the State claiming title, and they must remain in settlement.

In effect, the discoverers cannot stay just for a month or so and say, "It's ours now." Here is what Oppenheim, authority on international law, says specifically on the point:

The inchoate title is a temporary bar to occupation by another State for such a period as is reasonably sufficient for effectively occupying the discovered territory. If the period lapses without any attempt by the discovering State to turn its inchoate title into a real title of occupation, the inchoate title perishes, and any other State can acquire the territory by effective occupation.

Britain has, at the very least, an inchoate title to the Ross Dependency by virtue of Sir James Clark Ross's discoveries there more than 100 years ago.

Acts of Administration

But these hitherto-applied principles of international law have related to habitable parts of the earth, and whether the Antarctic can be included in this category is questionable. Byrd may find out; but it is doubtful at present if the legal requirements of occupation would apply there. Then, some jurists contend that the exercise of effective acts of administration; such as collecting licence fees from whalers operating there, is sufficient to take the place of actual physical residence where the territory is outside regions normally inhabited by humans—which is one up for New Zealand. But a New Zealand student of international law gave the opinion that if any nation sent an expedition to the Antarctic to live there, it would have a strong case.

Polar regions present a sticky problem, but one that will, sooner or later, require the cold light of legal reasoning where ownership is concerned. Hitherto such new lands as have been discovered have been habitable places. Greenland and Spitzbergen are lands in which people live, but it has never even been suggested that we, or anyone else, could make the Antarctic continent habitable. If the Americans can show that they are able to take up permanent residence in the snow, among the icebergs, and the flocks, and govern the penguins and petrels efficiently, then they may be able, also, to over-ride our claim to the region.

These are only the broad considerations. There are others—for instance, the extent of the area that must be occupied. This is vague and in dispute. Effective occupation is interpreted by some lawyers as involving the use of the land in developing mineral resources and governing the natives, if any. It is not sufficient to pitch a tent on the beach and live there; so Byrd's six months' stay as a weather observer did not make the land beneath him American. But a permanent meteorological station near the Pole would give strong rights to the area. We mentioned at the outset that it was all very vague. It still is. Even if the Marines landed the situation would still be in doubt,

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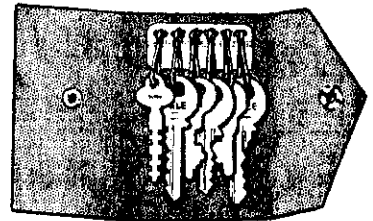
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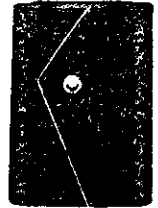
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"Old Father William"—with apologies to Lewis Carroll and Sir John Tenniel

In "Alice in Wonderland" page forty-two

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