


REVIEWS AND NOTICES

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The Army and the Law. By GARRARD GLENN. Revised and enlarged by A. Arthur Schiller. 1943. New York: Columbia University Press. Pp. viii, 203. (\$2.75)

"Military law" often has an almost forbidding sound even to those who should know better. This small book carries much information that the average common lawyer should know in wartime. While its details relate exclusively to the army in the United States, the same stream of principles feeds the basic notions of military law in Britain and Canada and almost the whole English speaking world has taken from the Articles of War its basic rules of military discipline and conduct. (See *Manual Military Law* (1929) 6-14).

It is not surprising how little the average lawyer comprehends the nature of military law and the relationship that the law of the Army bears to the law of the land. For the English-speaking world is, in its fundamental group ideas, a non-military world if not an anti-military world. The Army, as Dicey so powerfully insisted, always was and must remain subordinate. The Anglo-American world standing on its platonic "rule of law", made soldiers the instrument of civilians who alone were given the ultimate powers of the state.

Yet the periodicity of wars in this country should perhaps have encouraged more careful study by lawyers and administrators of the legal and administrative problems posed by Army building and Army activity. The literature of "military law" so called in United States and the British Commonwealth is a small shelf. Clode, Grose, Rankin, Bennett, Dicey on the constitutional aspects, and a few others no doubt so early as to have escaped recent cataloguing, and there almost is the end. The periodical literature seems not to have much more to show. There is almost more in the law of martial rule or "Martial Law" than in military law as such. And the effect of such a casual if understandable neglect on the part of students is to leave large segments of military-civilian relations and military-public law questions quite high in the air until the arbitrary decision of the administrator pulls a rule down to earth to make it part of our working public law.

This short book will help the American, and to some extent the Canadian lawyer better to approach some of the more obvious problems of military law—the constitution of the Army, the character of military law and military courts, the Army's right of self-regulation, the Army in its relations with the enemy, military occupation in matters of Government, military occupation in matters of property, a soldier's relation to the civilian in time of peace, and finally the relation of the soldier and civilian in time of war. And while the authors have made no great concessions to style, the pages are not dull, while the footnotes are full of useful references.

As with every field of public law (and military law is in a real sense a branch of public law, if a highly specialized branch) the problems are without end. The Army Act of the United Kingdom has been made to apply to Canada (R.S.C. 1927, c. 132 s. 69) although there are many sections that were not and could not have been intended to cover North American conditions. Similarly the Militia Act (R.S.C. 1927, c. 132) has many sections in it that do not lend themselves to simple interpretation. A case in point is the interesting question of the liability in the civil courts of an Officer Commanding either in the Service or now retired from the Service, for the loss of public stores that were issued to his unit and were under his command. That he has a responsibility under section 44 (1) of the Militia Act is clear, but is it a "pecuniary" and a personal responsibility and if so what is it based on; bailment, trover, detinue, quasi-contract, negligence or what other legal concept? The Regulations do not help here to solve the lawyer's problem of finding a cause of action. One may wonder whether the Militia Act and the Regulations ever were intended to deal with such questions once an officer had left the Service and when no assessment could be made against his pay and allowances.

In Courts Martial the problems are many. The English rules of evidence prevail because section 69 of the Militia Act makes the Army Act applicable to Canada, as well as other rules of English law governing matters military that are not inconsistent with the Militia Act (Canada) and the Regulations thereunder. So that the Canada Evidence Act does not at all govern the conduct of Courts Martial in Canada and hence we have two sets of evidence rules operating side by side in Canada and both affecting the same person because while the soldier is subject to military law, his status as a soldier in no way detracts from his position as a civilian and he is equally liable under the criminal law of the land. (*Burdett v. Abbott* (1812), 4 Taunt 101; *Heddon v. Evans* (1919), 35 T.L.R. 642).

It is relevant, at this point, moreover to mention, for the benefit of the common lawyer, that Courts Martial on the whole lean far backwards to deal fairly and in most cases leniently with those brought before them. Indeed, so meticulous are the standards of documentation and procedure insisted upon by the Judge Adjutant General that even minor clerical errors may often redound to the advantage of the accused. A Court Martial is a highly involved ritual considering the general simplicity of the cases that are tried under it. In fact the elaborate safeguards of the Court Martial go far beyond the almost casual procedure that the same type of case today experiences in the regular courts of the land,—the police courts and county courts of every province.

What the lawyer and the public often forget, too, is that on the legal level the Army is one vast operation in administrative law, with great areas of discretion vested in those who exercise authority, and that by and large the criteria which guide the administrator in the Army—*e.g.* the Commander—are standards that the Services have worked out for themselves over many years of day to day experience and which, in most cases, they have not reduced to writing but rather have allowed the cumulative customs of the Services to perform the task of a written jurisprudence.

This little book will help those lawyers who wonder about and often raise eyebrows at Courts Martial and things legal among the military in

general, to appreciate the quite scrupulous adherence to well defined standards that on the whole guides administration in military matters in the United States — and to quite the same degree, therefore, in the British Commonwealth.

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Rules and Forms of the House of Commons of Canada (Beauchesne's Parliamentary Rules and Forms). By ARTHUR BEAUCHESNE. Third edition. Toronto: Canada Law Book Company Limited. 1943. Pp. lviii, 899. (\$17.50)

The third edition of the Canadian parliamentarian's "bible" by the clerk of Canada's House of Commons, is an imposing volume for a work of reference. It includes annotations on and the text of the Standing Orders of the House; forms and formulae of various kinds relative to parliamentary proceedings; the texts of certain relevant statutes such as the British North America Act and the Senate and House of Commons Act; and a section, occupying more than half of the actual book, consisting of speakers' decisions in Canada, which go back to pre-confederation days.

This work alone is an impressive reminder of the importance of forms of debate in our parliamentary democracy. While such forms are designed to facilitate the transaction of the country's chief business in an orderly and expeditious manner, it is clear that because they must strike a balance between opportunity for full discussion and exigencies of prompt and regular discharge of governmental duty to both Parliament and the people, periodic amendment is necessary to prevent oppositionist tactics of a hindering character and a clogging of the order paper as well as too autocratic control of the procedure by the government party. Dr. Beauchesne suggests a number of improvements in this connection in the preface.

The dates on which the standing orders were passed and amended are given along with their texts. Comment is to a great extent by way of reference or paraphrase or quotation from such standard works as Anson's Law and Custom of the Constitution, May's Parliamentary Practice, Redlich's Procedure of the House of Commons and Bourinot's Parliamentary Procedure. But there is sufficient material stemming from Dr. Beauchesne's own knowledge, gained from personal experience, to give his book the distinctly Canadian and original flavour which has made it such a valuable reference not only for members of Parliament or of provincial legislative assemblies but for all persons with membership in clubs and associations carrying on according to parliamentary rules of procedure.

The addition to this volume of speakers' decisions on various matters entailed a task of selection and collation which, though perhaps difficult, should prove well worth while. A certain respect for *stare decisis* is inevitable in an elected representative assembly, and it is desirable that interpretations of Standing Orders by various speakers should be classified, at least for the benefit of members of Parliament.

The lengthy introduction to the book (40 pages) is concerned in large part with a discussion of whether the provincial legislatures are "Parliaments". It seems to the reviewer rather a fruitless pursuit, in view

of those provisions of the B.N.A. Act relating to privileges of the Dominion and provincial legislative bodies, and perhaps gratuitous in relation to the purpose of the book. But such additional material is hardly a detraction from the value of a work which will undoubtedly be found on the desk of every member of Parliament.

B. L.

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Quebec Insurance Laws

The revision of the Statutes of the Province of Quebec completed in 1941 and distributed last year has made possible the printing for the first time in almost twenty years of a bilingual edition, with complete index, of the following Statutes:

Quebec Insurance Act,
Husbands' and Parents' Life Insurance Act,
Guarantee Companies Act,
Other Acts related to Insurance, and
Trust Companies Act.

This publication is distributed by the Department of Insurance at the price of \$1.50 per stitched copy and \$2.50 bound, plus sales tax for residents of the Province of Quebec.