

## CORRESPONDENCE

THE EDITOR,  
CANADIAN BAR REVIEW.

*Still More on the Regulation of Insurance*

Dean MacDonald's article on the regulation of insurance<sup>1</sup> and Mr. V. Evan Gray's subsequent critique of it<sup>2</sup> have raised a number of issues to which I should like to allude and upon which (if I state them correctly) I should like to comment. Neither of these able gentlemen require any third-party support nor do I intend to offer any. Their different reactions to the Sirois Report recommendations as to insurance appear to me to be merely manifestations of a more embracing issue—the adequacy of the constitution (B.N.A. Act) in its distribution of legislative power. Mr. Gray may be entirely right that the course of judicial decision has marked off the boundaries of insurance jurisdiction but it does not follow that because such boundaries are satisfactory from his point of view, or from the point of view of the insurance companies, they necessarily must remain untouched. Competitive insurance service to the public can be as easily available through Dominion licensing as through provincial licensing; and Mr. Gray concedes the advantages of central administration, though (somewhat lamely in my view) he argues for centralization through cooperating provinces rather than through the Dominion. It seems wrong to me to suggest as Mr. Gray does that the gist of the insurance cases was the conflict between a restrictive Dominion policy and a freely competitive provincial policy. Have the provinces no licensing standards? And isn't it more correct to say that the insurance cases were litigated to decide who would do the licensing?

It is understandable that there should be a reluctance by business concerns to disturb their settled relations with governmental authority, however negative or affirmative those relations may be. But neither the convenience of business firms nor the inertia induced by a course of judicial decision are in themselves sufficient to justify the perpetuation of constitutional rigidity when such rigidity becomes oppressive to public welfare. On this point there is, of course, wide scope for argument, and Dean MacDonald may have deserved Mr. Gray's criticism that no case for Dominion regulation of insurance was made out save by quoting from the Sirois Report of which Mr. Gray evidently does not have a high opinion.

It is easy to detect in Mr. Gray's article a fear of (federal) nationalization of the business of insurance; or, at least, if I may paraphrase his term "centralization", a fear of greater control federally than is now exercised provincially. One may well pause to ask why this is bad or undesirable. Public policy or interest may require greater control (centralization) than now exists; and the fact that a federal superintendent of insurance may have a hand, under the direction of a responsible minister, in fashioning the control is not only consistent with sound principles of public administration but would probably be of a piece with Mr. Gray's activities when he was Superintendent of Insurance for Ontario.

<sup>1</sup> (1946), 24 Can. Bar Rev. 257.

<sup>2</sup> (1946), 24 Can. Bar Rev. 481.

Let me, in conclusion, appeal to a bit of comparative jurisprudence as Mr. Gray did. Whereas he invoked the judgment of the Supreme Court of the United States in *Paul v. Virginia* in 1869,<sup>3</sup> I offer the judgment of the same court in *U.S. v. South-Eastern Underwriters Association* in 1944,<sup>4</sup> departing from *Paul v. Virginia* and, in my view, offering support to the Sirois recommendations.

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### BOOKS RECEIVED

*The mention of a book in the following list does not preclude a detailed review in a later issue.*

- Arbitration of Labor Disputes.* By CLARENCE M. UPDEGRAFF and WHITLEY P. MCCOY. New York: Commerce Clearing House, Inc. 1946. Pp. xi, 291. (\$5.00)
- Awards to Inventors.* By J. P. GRAHAM, with a foreword by THE RIGHT HONOURABLE SIR STAFFORD CRIPPS, K.C., M.P. London: Sweet & Maxwell, Limited. 1946. Pp. x, 171. (£1. 1s. net)
- Brandeis: A Free Man's Life.* By ALPHEUS THOMAS MASON. Toronto: The Macmillan Company of Canada. 1946. Pp. xiii, 713. (\$6.00)
- Law Office Efficiency: With Notes on Procedure, the Practice of Law and Special Forms.* By L. HAVILL SMITH. Hamilton: Lewell Publishing Company. 1946. Pp. 60. (\$3.50 net)
- Making International Law Work.* By GEORGE W. KEETON and GEORG SCHWARZENBERGER. London: Stevens & Sons, Limited. Second Edition. 1946. Pp. x, 266. (12s. 6d. net)
- Penal Reform in England: Introductory Essays on Some Aspects of English Criminal Policy.* Edited by L. RADZINOWICZ and J. W. C. TURNER, with a foreword by THE RIGHT HONOURABLE THE VISCOUNT CALDECOTE. London: Macmillan and Company Limited. Second Edition. 1946. Pp. x, 192. (12s. 6d. net)

<sup>3</sup> 8 Wall. 168.

<sup>4</sup> 322 U.S. 533; petition for rehearing denied, 323 U.S. 811.