

## REVIEWS AND NOTICES

*The Canadian Abridgment: Index of Cases Judicially Noticed in Canadian Reports.* Vol. I, A-G. Edited by LEONARD G. WRINCH. Toronto: Burroughs & Company [Eastern] Limited. 1946. Pp. viii, 698. (\$13.00)

This is the first volume, A to G, of an index of cases judicially noticed in Canadian reports from the earliest times to June 1st, 1946. It is not restricted to Canadian cases noticed but includes, as well, all other Commonwealth decisions judicially noticed in Canadian reports. It is published in conjunction with the Canadian Abridgment. The full work will appear in three volumes and will be kept up to date by annual, cumulative pocket supplements. The second volume is already printed and it is expected that the third volume will be published in April 1947. A reference to the main text and to the latest supplement will disclose whether any judicial decision has been followed, or overruled, or otherwise judicially considered in any reported Canadian case.

The editor, in continuation of Mr. Cameron's Index of Canadian Cases Judicially Noticed 1823-1910, which appeared in 1912, has published three editions of a similar work for cases 1910-1928, 1929-1936 and 1936-1941. The new index consolidates all these previous publications and brings the work down to June 1st, 1946. The annual supplements will keep it up to date.

A feature that will make this index of great value in private libraries, and in those libraries that do not contain official reports of the Dominion and the provinces, is that Mr. Wrinch does not confine himself to the official reports but gives the reference to all the reports of each case.

A book of this sort is obviously necessary to careful and accurate legal preparation. The approval of the Law Society of Upper Canada and the commendations that Mr. Wrinch has received from leaders of the bar, in the preface to this work and to previous editions, leaves no doubt that his book in the new form will fully meet the need.

J.A.R.M.

Toronto

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*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)

Every now and again a book appears on how to run a law office. One wonders if the average lawyer takes time to read and study such works and endeavours to make use in his office of the various suggestions and systems mentioned in them, which might be of benefit to him and his clients. Most lawyers, being busy men and devoting most of their time to clients, are all too prone to leave the running of their offices to a bookkeeper or, in the larger offices, to an office manager.

Mr. Smith's book is divided into four parts. Part One on "Law Office Efficiency" contains a number of sound suggestions which would be worth-

while putting into effect in any law office. While many large law firms have more detailed and costly systems operated by a large bookkeeping staff, this reviewer believes that there are a number of ideas in Mr. Smith's book which could usefully be adopted by any law firm.

While space does not permit comment in detail upon the various suggestions contained in this part, those regarding "Record of Services", "Procedure Book", "Form File", "Filing", "Tickler System", "Case Book and Brief File", "Abstract File", "Handling of Wills" and "Information File" are extremely important and should be conscientiously followed in the interest of general efficiency.

Mr. Smith suggests that the average lawyer or small firm of lawyers should adopt the single-entry bookkeeping system for the reason that it can be operated by any graduate of a commercial school. This reviewer favours the adoption of the double-entry system and is of the opinion that it is wrong to assume that a single-entry system is simpler to operate. The double-entry system can be used on a very simple basis and it has the advantage that it can be expanded to take care of a business of any size. Most graduates of a commercial school are taught the double-entry system and, in view of the importance of income taxes and governmental regulations, it is best to commence with it. In the long run it saves much money and a lot of headaches.

It is also suggested that wherever possible a card system should be installed in preference to bound books.

Part Two, containing Special and Handy Legal Forms, and Part Three, Notes on Procedure, will be found to be useful and a convenient guide and ready reference.

Part Four, Notes on the Practice of Law, is of particular interest to the younger lawyer or to the student contemplating the study of law.

Apart from this reviewer's comments with respect to the installation of a double-entry bookkeeping system in preference to a single-entry system at the commencement of business, one cannot too highly recommend this book to any lawyer or firm of lawyers who wish to increase efficiency in their office.

H. W. JACKSON

Montreal

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*The Canada Year Book 1946: The Official Statistical Annual of the Resources, History, Institutions, and Social and Economic Conditions of the Dominion.* Ottawa: The King's Printer. Pp. xxviii, 1224. (\$2.00 cloth)

The Dominion Statistician has announced the publication of the 1946 edition of that old standby, *The Canada Year Book*. Comment on this the latest edition would be in the nature of gilding the lily. In the eighty odd years of its history the Year Book has become an indispensable tool in the hands of anyone working in the field of Canadian problems. For a good many of those years reviewers have been hailing succeeding editions as bigger and better than ever before. The 1946 edition is certainly bigger than ever and, with use, will no doubt turn out to be better.

It is a recurring wonder how so much information is compressed between the covers of a single volume. Here are statistics on everything from the number of live births in British Columbia in 1926, to the convictions for indictable offences in Nova Scotia in 1944; from the circulation of public libraries, to the estimated production of offals; from the combined expenditure of all Canadian governments, to the number of radium services in the general hospitals of Prince Edward Island; from the value of exports to the United Kingdom, to the estimated membership of the Industrial Workers of the World.

Besides the statistical information, a feature of the Year Book has always been the regular chapter material and the special articles on a wide range of topics. This year, Canada's wartime accomplishments are dealt with in two special articles on "The Relation of Hydrography to Navigation and the War Record of the Hydrographic and Map Service" and "The British Commonwealth Air Training Plan". The transition from war to peace is represented by three articles: "Canadian Agriculture during the Transition Period", "The Outlook for the Mineral Industry" and "The Report of the Royal Commission on Co-operatives". Many of the regular chapters have been re-written — the Internal Trade Chapter to explain, for example, the wartime controls affecting distribution and trade, the chapter on External Trade to describe the reorganization of the Department of Trade and Commerce, and so on. A description of the Food and Agriculture Organization of the United Nations has been added to the chapter on Agriculture, and of the Canadian Vocational Training organization to the Labour chapter; a completely new chapter on National Defence is included.

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*Penal Reform in England.* With a Foreword by the RIGHT HONOURABLE THE VISCOUNT CALDECOTE, LORD CHIEF JUSTICE OF ENGLAND, and a Preface by PROFESSOR P. H. WINFIELD. Toronto: The Macmillan Company of Canada Limited. Second edition. 1946. Pp. x, 192. (12s. 6d. net)

This volume, Volume I of a series entitled "English Studies in Criminal Science" (promoted by the Department of Criminal Science of the Cambridge University Faculty of Law), aims to give an authoritative but concise summary of the administration of criminal justice today in England. It is a work of twelve experts explaining the legislative trend of the past fifty years, the machinery of justice, the special treatment of juvenile delinquents and the modern methods of educative punishment. The present edition has been brought up to date, revised, and enlarged by the addition of two chapters: "The English Police System: General Development and Outstanding Features" by Sir John Maxwell, C.B.E., formerly Chief Constable of Manchester, England, and "Approved Schools" by Lt.-Col. Sir Vivian Henderson, M.C., D.L., J.P., President of the Association of Managers of Approved Schools and Chairman of the Metropolitan Juvenile Courts of London, England. This volume not only points the way for further improvements in the law but also indicates the great progress penology in England has achieved in modern times.

"Prison Reform: Some Authoritative Recommendations" by I. H. Reekie, Assistant Secretary of the Howard League for Penal Reform, sets forth five very clear-cut suggestions with regard to new buildings, new type of establishments, improved classification of offenders, improvement of the methods of mental treatment in prisons, and organization and selection of prison work for reformatory purposes and improvement in prisoners' after-care.

This first-hand account of English penal reform focuses attention on the continuous need for individualized examination, diagnosis, treatment and follow-up supervision of child, adolescent and adult offender. We learn from it that more discriminating use of probation is needed, that women are responsible for growing numbers of offences, that one really striking feature is the increase of criminality among juveniles, especially among those under sixteen and particularly during the past ten years. Accompanying this increase in crime, there has been a general tendency to substitute truly reformatory and therapeutic methods for what were thought to be deterrent techniques, as well as an increasingly greater desire to replace imprisonment by conditional liberty. Chapter I on "Developments in Crime and Punishment" tells us that "an increase of crime does not necessarily mean that existing penal sanctions are ineffective. There are many factors in this country [that is, England] that may have tended to promote crime, especially juvenile crime, among them being smaller families leading to the spoiling of children, the decay of the apprenticeship system, the shortcomings of our educational and industrial system in regard to the adolescent, and unemployment. In the belief of the writer, the failure, if failure there has been, has lain not in the reformed penal methods themselves, but in the uninstructed use made of them by some of the Courts. Especially has this been so in the case of probation, which by some magistrates has been regarded as a sort of cheap universal panacea, with a consequent overloading of probation officers with unsuitable cases. In the case of juveniles this has been in a considerable measure due to the lack of suitable alternatives." (Pages 15 and 16)

State hostels called Howard Houses, where adolescent offenders could be required to live under discipline and control while going out to factory or workshop, earning their living, paying for their board and leading a normal life, with normal temptations and responsibilities, are recommended on pages 30 and 121. "English criminal law in the 20th century has retained the ad hoc character it assumed in early times. Little attempt at system is made. Every evil is met as it arises. Nothing better illustrates the national genius in both its strength and its weakness." (Page 50). On page 52, "Administration of Criminal Justice", we learn: "'Our laws are still meant for business done by individuals; they have not been satisfactorily adjusted to business done by great combinations, and we have got to adjust them.' The present writer has pleaded for the formulation of a considered doctrine of criminal responsibility of corporations. Provision has, in this century, been made in considerable variety for fixing criminal responsibility on agents, such as directors and officers of limited companies, and machinery has been created for committing a limited company for trial, but the doctrine wanted is in process of judicial elaboration and the process is slow and defective." "Crimes against property comprise the great bulk of all crimes, and of crimes against property a large majority consist of larcenies." (Page 6). "Ninety-five percent of all crimes committed are 'crimes against property', that is,

crimes of acquisition and thus it comes about that any generalisations made about the total volume of crime are generally true only of such crimes. The remaining 5% comprise 'crimes against the person', that is, crimes of violence and sexual crimes, which though cutting no very great figure in the statistics, bulk largely in the public estimation. Approximately the same number of murders are committed now as were committed seventy years ago. . . The trend in crimes against morals (rapes, indecent assaults, and unnatural offences) have been markedly different from that of crimes of violence against person. Today well over a hundred of these offences are committed per thousand population as against forty in 1857-1866. The increase has been most notable in the case of unnatural offences, which have quadrupled in number since the beginning of the century. Part of the increase in indecent assault is probably statistical, since some such offences formerly dealt with as non-indictable assaults, are now dealt with as indictable offences. Actual rapes have decreased, both in absolute numbers and in proportion to the population. The figures quoted above concerning crimes against the person all relate to crimes known to the police. As these are all crimes which are likely to be reported to the police and there is very little inducement to manipulation, they may be regarded as reliable, and the check afforded by the statistics of persons tried is not necessary." (Pages 5 and 6).

Probation is thoroughly discussed on pages 11 and 112 and in Chapter VII. Psychological examinations are exposed on pages 114-115. On pages 145 and 146 Dr. Margery Fry, formerly Principal of Somerville College, Oxford, writing on "The Borstal System", tells us: "Our actual social organisation, whilst denying or thwarting the satisfaction of many of the primitive instincts of man — the wish to roam freely, to win the objects of his desires by skill or speed or strength, to mate as soon as nature urges — gives to the majority of our citizens little in place of this satisfaction. We speak sometimes as though for law-breaking the whole moral blame lay with the breaker: it is well sometimes to remind ourselves that the fault may also be with the law. It is not only the least valuable people who are irked by our overcrowded, machine-made civilisation, where even the pleasure of creative work is a luxury enjoyed by few. The growing human being has to deform himself as well as form himself to fit into the world as he finds it, and he will often knock himself against some hard corners before the process is complete. The child whose home is a happy one will have guidance and consolation at hand, but the matter is made worse where unsympathetic home life thwarts the more intimate instincts as well as those related to active life. It is a commonplace of penal science that broken homes frequently result in broken laws." (Pages 145-146). Dr. Fry faces the fact that Borstals are not all they should be as vocational training-schools (page 153), that prisons should not be used as reception centres for Borstals (page 151), that achievement tests, vocational-interests inventories, aptitude tests and personality-traits tests save time and energy: "It has been found that where these preliminary tests have been made false starts at different trades are less frequent than where the matter has been left to chance or whim". Indeed, Chapter IX on "The Borstal System" is a very well-balanced discussion of the defects and excellences of English Borstals. Possibly, to persons primarily interested in hindering crime and contributing to social welfare in Canada, the very last authoritative recommendation in Chapter XI, the Appendix, by I. H. Reekie, Assistant Secretary of the Howard League for Penal Reform, on "Organisation and Selection of Prison Work for Reformatory Purposes and Improve-

ment in Organisation of the After-Care of Prisoners" contains suggestions of high significance. After all, vocational guidance and training, education in wise use of leisure time and careful follow-up are greatly important to the permanent rehabilitation of late adolescent offenders against social order.

Canadians who have been discouraged by the non-implementation, in any major way, of the Archambault Report of 1938 will be inspired by the realistic attitude everywhere present among penal functionaries in Britain. The United Kingdom is obviously not shelving the question of penal reform by raising the excuse of more pressing issues. Cambridge University has by the publication of this series acknowledged that penology is a science. We are pleased to note that the School of Social Work at the University of Toronto has taken a similar view and that important results should be forthcoming from its pending research programme into this long-neglected field in Canada.

J. ALEX. EDMISON

Toronto

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*Arbitration of Labor Disputes.* By CLARENCE M. UPDEGRAFF and WHITLEY P. MCCOY. New York: Commercial Clearing House Inc. 1946. Pp. xi, 291. (\$5.00)

The authors, Clarence M. Updegraff and Whitley P. McCoy, both Professors of Law at American universities (Iowa and Alabama), have written a book for both lawyer and layman. They have frankly admitted the difficulties of the task but, in spite of them, have succeeded in making a book readable by, and useful to both.

Although the book quotes American authorities only, for all practical purposes the law and the problems are the same in Canada.

The book deals with the selection of arbitrators, then qualification and jurisdiction; the agreement to arbitrate; the procedure on arbitration; the award and grounds for setting it aside; and types of common or recurring labour disputes apt to be subjects of arbitration. In addition, appendices are included containing forms of contract clauses, specimen forms of submission agreements and specimen decisions and awards by arbitrators.

The authors themselves are experienced arbitrators and they take the view that the courts of the United States (and presumably, for the same reasons, the courts of Canada) are not presently fitted to settle labour disputes because:

- (a) court procedure lacks the flexibility for disputes of this nature;
- (b) courts are too formal for labour disputes;
- (c) courts are too slow;
- (d) in many instances the judges are not qualified, whereas arbitrators are often chosen because of special technical knowledge;
- (e) rancour often follows court decisions, whereas the parties agree to abide by the arbitrators' decision.

There is much to be said for this view and the increasing number of arbitrations in labour disputes indicates that both management and labour

agree with it. Arbitration can be speedy, friendly and just, and if agreement to arbitrate can be arrived at and production and wages continue, arbitration may well be the remedy until proper courts and proper procedures are set up for handling disputes of this kind.

There are some parts of the book that will annoy the legal practitioner! — e.g. the references to "claptrap of the law", "deep-seated suspicion of lawyers on the part of unions", suggestions that in many cases arbitrations can be better held without lawyers. In fairness to the authors however they do say that "the safest rule is to retain a lawyer in *all* cases, to give advice as to whether the case should be handled by a lawyer"!

The book, though parts of it may seem elementary to the lawyer, is practical, contains many useful hints on what should be done before and during the arbitration and is indeed a fairly complete code on the law of arbitration. The lawyer may debate with the authors on the suggested manner of receiving evidence and allowing examination and cross-examination again and again until the parties are satisfied that all evidence is in — the authors' answer is that labour disputes should not be technical, that the main thing is to *iron out* troubles and to make sure that the parties are satisfied that their stories have been put forward fully to the arbitrator.

The best chapter of the book from the purely practical point of view is Chapter IV on procedure. Many lawyers may scoff at the suggestions as to getting around "burden-of-proof" and "inadmissible evidence", but labour and management will understand the authors, and perhaps this is the better test.

The book is of undoubted value to the arbitrator and will give to the lawyer interested in labour problems the practical arbitrator's viewpoint.

F. M. COVERT

Halifax

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*Dictionary of Words and Phrases Judicially Defined and Commented on by the Scottish Supreme Courts.* By A. W. DALRYMPLE and A. D. GIBB. Edinburgh: W. Green & Son, Ltd. 1946. Pp. viii, 382. (45/- net)

This book is fortunate in its origins. The publishers had decided, in 1943, to publish a dictionary under the above title covering the period from 1800 to 1943, and in course of preparation by the learned Regius Professor of Law in the University of Glasgow. Shortly after their decision, Mr. A. W. Dalrymple, a distinguished advocate, submitted the completed manuscript of a similar dictionary to the publishers, who invited the two authors to collaborate, and this volume is the result of their collaboration. It may be said at once that the publishers are to be congratulated, for the collaboration has issued in one of the most excellent books of its class. We do not, indeed, mean to damn the book with faint praise, for the class is largely uneven, unreliable and often most misleading. However, dictionaries of this nature appear to have a value in use and this one has certainly been prepared with unusual uniform distinction, scholarship and accuracy.

The work is not a *legal* dictionary — it is a *judicial* dictionary; and it includes the judges' explanations or definitions of words and phrases which have been necessary when they have come under their notice, and it is largely "concerned with lay words and expressions". Nor are statutory definitions dealt with except when the judges have pronounced upon them — the interpretation section of a statute and the Interpretation Act are the lawyer's best guide here; and the latter is printed *in extenso*. Thus, then, with this general purpose, decisions are included as to vagueness of meaning, most words of a defamatory quality are dealt with and many words are included now rare but not entirely obsolete.

The book is first of its kind in Scotland, and it is recommended to Scots lawyers for their daily task. In addition, the learned authors hope that it will appeal to a wider circle of lawyers and legal scholars, who cannot indeed afford to neglect the many valuable contributions made by the Scottish judiciary to legal interpretation of words not necessarily peculiar to the law of Scotland but of ordinary use. We congratulate these Scots lawyers, for the book is compiled in a first-class manner. The case and statutory references in the definitions are adequate and exact; the cross-referencing is excellent; (*o si sic omnes*); the table of statutes is inclusive; that of the cases clear, with no references unfortunately to the reports. This is the only serious defect in the structure and we hope, with great respect, that it will be rectified in a new edition, for nothing is more annoying than to use a table of cases and then be compelled to turn through the text for the report references.

The second group will find the book one of distinct advantage. It will not, as the authors say, take the place of the well-known Scottish legal dictionaries which they already find of value; but it will be a welcome companion volume to them. There is a wealth of learning in this field of law which we cannot afford to neglect; and, for ourselves, this new dictionary has already proved its value. Indeed, the relationship of the House of Lords to appeals from Scotland and the importance of many of these appeals make it inevitable that we should welcome such a book. We need hardly point out its utility for legal scholarship in comparative law.

We sincerely hope that in this review we have not confused "Scots" and "Scottish". If so, we have not done so "wilfully . . . and without thought on the spur of the moment" (*Smith v. Wemyss Coal Co.*, 1928, S.C. 180; *per* Lord President Clyde, at p. 184). We have tried to follow the *Dictionary* (at p. 324) for self-protection; and the nomenclature used by the authors in the Preface (at p. vi), where we find "Scottish judiciary", "Scottish judges", "Scots law". There seem to be some subtle differences which have escaped us. Many learned Advocates (Keith, for example) use "Scottish peers" (they are "peers of Scotland" in the Act of Union), "Scottish judiciary", "Scottish law". We believe that there is still in existence a "Scots Law Society" (there was at least in 1934). Bankton, Erskine, Forbes, MacKenzie, Spottiswood, Stair and the other great institutional writers use "law of Scotland". Lord Dunedin used "Scotch lawyers". Lord Macmillan (in the *Rede Lecture*, for example) and the Stair Society use "Scots law". Other recent writers vary: Sir Charles Findlay and Mr. T. A. Ross use "law of Scotland", but Mr. J. C. Gardner uses "Scots law". We do not wish to labour the point, but in reviewing the *Dictionary* we found no help, so evidently the terms have not



come before the courts. The nearest entry is "Scotch whisky" (at p. 271), but that does not help in our particular confusion.

However, we offer our sincerest congratulations to the authors on the eminent success of this pioneer work, supplied with every facility for reference, clearly printed and excellently bound.

W. P. M. KENNEDY

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### A CHIEF JUSTICE'S OATH

Ye shall swear that well and lawfully ye shall serve Our Lady the Queen and her people in the office of Chief Justice of the Court of Kings Bench in and for the District of Montreal, in the Province of Canada, and that lawfully ye shall counsel the Queen in her business, and that ye shall not counsel nor assent to anything which may turn her in Damage or Disherison by any manner, way or colour; And that ye shall not know the Damage or Disherison of her whereof ye shall not cause her to be warned by yourself or by other; And that ye shall do equal Law and Execution of right to all her subjects, rich and poor, without having regard to any person, and that ye take not by yourself or by other privily or apertly gift nor reward of gold nor silver, nor of any other thing which may turn to your profit, unless it be meat or drink and that of small value, of any man that shall have any plea or process hanging before you, as long as the same process shall be so hanging before you, nor after for the same cause, and that ye take no fee as long as ye shall be chief Justice of the said Court of Kings Bench, nor Robes of any man, great or small but of the Queen herself; And that ye give none advice nor counsel to no man great nor small in no case where the Queen is party.—And in case that any of what estate or condition they be came before you in your sessions with force and arms or otherwise against the Peace or against the form of the statute thereof made, to disturb execution of the common Law or to menace the people, that they may not pursue the Law, that ye shall cause their bodies to be arrested and put in prison.—And in case they be such that ye cannot arrest them that ye certify the Queen of their names and of their misprision hastily, so that he [sic] may ordain a convenient Remedy.—And that ye, by yourself nor by other, privily or apertly maintain any Plea or quarrel hanging in the Queen's Court or elsewhere in the Country, and that ye deny to no man common Right by the Queen's Letters, nor none other mans nor for none other cause, and in case any Letters come to you, contrary to the Law, that ye do nothing by such Letters but certify the Queen thereof and proceed to execute the Law notwithstanding the same Letters—and that ye shall do and procure the profit of the Queen and of her Crown, with all things where ye may reasonably do the same—And in case ye be from henceforth found in default in any of the points aforesaid, ye shall at the Queen's Will of Body, lands, and goods, thereof to be done as shall please her. AS GOD YOU HELP AND ALL THE SAINTS. (The form of oath taken by Chief Justice Vallières de St-Réal at Montreal on June 18th, 1842)