# REVIEWS AND NOTICES.

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## CASES ON EQUITY.*

This selection of cases edited by the Dean and the George Munro Professor of the Faculty of Law at Dalhousie University is the third Canadian case book to be published. Those in intimate touch with the problems of legal education in Canada realize to what an extent the case system of legal study has revolutionized and improved the technique of legal didactics. The successful introduction and utilization of the case system in Canadian law schools is due in no small measure to the intelligent compilation and selection of teaching materials by the editors of those case books which to date have been published. Their work is proving an inspiration to others who have in course of preparation case books on other subjects included in the Law School curriculum. The acid test for any case book is, of course, actual use in the lecture room. This selection of cases has been used in mimeographed form at Osgoode Hall and Dalhousie for several years and, as now published, represents the accumulated experience of the editors in their use of the book. The course called Equity in most Canadian law schools is essentially a residuary course. No attempt is made in that one course to consider and discuss all equitable principles and conceptions. There are separate courses on some aspects of Chancery jurisdiction such as trusts, administration of estates, partnership, mortgages and suretyship. The present case book, of necessity, reflects the residuary nature of the Equity course and it collects those cases which illustrate the equitable principles not dealt with in the mentioned courses. Roughly, the cases collected in this volume are divided between those which deal with problems of specific performance of contracts and those which deal with injunctions restraining torts. But a closer examination of the contents will lead one to the discovery that the book deals with a greater variety of more specific problems. The collection includes cases dealing with the following problems, (1) the nature of equity jurisdiction, involving the power of the Court of Chancery to restrain or direct the doing of an act beyond the limits of the State or to make an order affecting foreign lands, (2)

* By Sidney Earle Smith and Horace Emerson Read. Burroughs & Co. (Eastern) Limited, pp. xiii, 685.

the specific performance of various kinds of contracts including contracts for the sale of goods, land, and company shares, building contracts and contracts for the loan of money, personal service contracts and contracts for the supply of electrical energy, (3) the Statute of Frauds and the doctrine of part performance, (4) the right to decree specific performance against strangers to the contract, (5) the enforcement of restrictive covenants affecting the user of lands and personal chattels, (6) the doctrine of specific performance with compensation, (7) the defences to specific performance, including want of mutuality, inadequacy of consideration, hardship, unfairness, misrepresentation, mistake, laches and default, (8) the affirmative equitable reliefs of rescission and rectification on the ground of mistake, (9) injunctions against trespass, nuisance, waste, violation of patents, copyrights and trademarks. A survey of the specific problems dealt with impresses one at once with the importance of the work. The cases selected by the editors have been chosen with an enlightened discrimination designed to illustrate equitable principles and to raise problems in the minds of the students as to their application, extension, or variation in cognate cases. The editors have properly conceived that the purpose of a law school course, and *a fortiori* of a case book, should not be merely informative, stressing barren legal rules, but should be stimulative, stressing methods of legal thought and application in relation to the mechanics of the modern business and social world. Whether it is time for the Canadian law schools to discard the orthodox curriculum treatment which is arbitrarily analytical for a more modern arrangement with a functional approach, which would emphasize a division of legal problems according to their manner of origination rather than their manner of solution, is a problem which must be dealt with in the near future. When that problem is discussed the question of the place of Equity will arise. It is the reviewer's conviction that Equity should be retained as a separate course. The primary purpose of law is to do justice in individual cases; in a period of strict law from which we are emerging the emphasis has been on the certainty of legal principles rather than on their inherent justice. The desired liberalization of our law can be accomplished by a rationalistic revival and application of equitable principles. The Judicature Act did much to becloud the purity of equitable doctrine and if by teaching equity as a separate course anything can be done to purify the beclouded stream, that result alone justifies the treatment of equitable principles in a separate course through the medium of a separate case book.

The acquisition of knowledge should not be made a dull ordeal. As might be expected by those who know the editors and are familiar with their lecturing methods they have selected, where possible, colourful cases with interesting human or economic backgrounds. As may be apparent from a perusal of the cases collected, one of the charms of lecturing on Equity is that the whole range of human activity is covered, from hockey games[1] to sales of coal,[2] from actor's contracts[3] to moving mountains.[4] Gilbert and Sullivan would have seized with glee upon the Lord Chancellor who disclaimed the power to order a defendant to do the positive act of repairing a gate but who saw his way clear to ordering him not to leave it in a state of disrepair.[5] Because of the absence of any Canadian text-book on the topics dealt with, this collection should be of the utmost practical value to the profession and its utility is enhanced by exhaustive footnotes and a completely thorough index.

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MORE LIGHT ON THE SOVIET UTOPIA.*

This book is based upon a thesis presented in January, 1931, by the author to the Faculty of the University of Pennsylvania Law School in accordance with the requirements for proceeding to the degree of Master of Laws. In the course of its preparation the author visited the Soviet Union and spent some three months observing the practical operation of the legal system which he describes. No pains have been spared to make this study thoroughly comprehensive; additions and changes have been made to bring the investigation down to the time of publication: such a recent development as the Project for a New Code of Criminal Procedure, announced by the Commissariat of Justice of the Russian Socialist Federative Soviet Republic on August 30, 1931, has been here incorporated in an appendix and receives the exhaustive and scholarly treatment which characterises the whole volume.

[1] *Rowe* v. *Hewitt* (1906), 12 O.L.R. 13 (p. 539).
[2] *Dominion Iron & Steel Co.* v. *Dominion Coal Co.* (1908), 43 N.S.R. 77 (p. 36).
[3] *Kemble* v. *Kean* (1829), 6 Sim. 333 (p. 95).
[4] *Kennard* v. *Cory*, [1922] 2 Ch. 1 (p. 600).
[5] *Lane* v. *Newdigate* (1804), 10 Ves. 192 (p. 608).

* *Soviet Administration of Criminal Law.* By Judah Zelitch, LL.M., of the Philadelphia Bar. Sometime Gowen Fellow, University of Pennsylvania Law School Vol. V, University of Pennsylvania Law School Series). University of Pennsylvania Press, Philadelphia: 1931. xix + 418 pp. $5.00.

The author proposes an analytical and objective study of the rise and development of the Soviet judicial system as it has actually been at work administering the criminal law. In this study he has, on the whole, been eminently successful. Dispassionate in tone and temper, he has endeavoured to commend where commendation is due, and to censure where censure is merited. Emphasis has been laid upon the economic, social, and political background, as well as upon the human elements composing the administration. A certain aridity of treatment which can be marked in the early part of the book is tempered by the author's Impressions and Observations (Chapter XII), a graphic and picturesque account of Soviet courts as they appear to the on-looker, and a shrewd and sympathetic account of the cross currents of thought and feeling that lie beneath the surface of this newest of juristic experiments.

The thoughtful lawyer should read this book and learn what strange and terrifying theories are now being advocated and enforced in Russia with fanatical and inexorable persistence. Perhaps the most learned of Soviet jurists, and certainly one of the most dominant figures in Soviet officialdom, N. V. Krylenko, has in his work, *The Judicial System*, boldly challenged our most fundamental conceptions of justice. "The Court," he says, "has always been and still remains as it ought to be according to its nature . . . one of the organs of governmental power, a weapon in the hands of the ruling classes for the purpose of safe-guarding its interests. . . . In principle there is no real difference between a court of justice and any other non-judicial organ of vengeance." He will have none of private rights, for a right is nothing more than a faculty to perform a duty which the ruling social order prescribes. This conception is rigidly applied throughout the whole field of procedure. For example, there is an utter lack of any required formality in the form of affidavit, warrant, etc., before a person may be arbitrarily arrested or held in custody. Anything in the nature of our *habeas corpus* is unknown. True the *Code*, 1927, 3, 5 states: "No person shall be deprived of his liberty or taken into custody otherwise than in the instances and in the manner prescribed by law," but this provision, borrowed from the Tzarist constitution of 1906, has been the butt of cynical ridicule by advanced thinkers. Krylenko stigmatizes it as an attempt to make the code "reflect constitutional forms borrowed from the bourgeois conception of right." How much it really means may be gathered when we read in the Constitution of the R.S.F.S.R. 1925, s. 14 that the "Russian Socialistic Federative Soviet Republic is granted the power to deprive certain individuals or groups of indi-

viduals of rights which they enjoy in opposition to the interest of the Social Revolution."

It is not surprising to learn that a preliminary inquiry is nothing but an inquisition in which the accused has no right to be represented by counsel, in which there is no provision that the presiding officer must explain to the accused his legal right not to testify—where, at the most, no punishment is prescribed for refusal of the accused to incriminate himself, or to say anything at all. Nor is it surprising that the relevancy of testimony elicited from the accused or from witnesses for the state is governed by rules greatly foreign to our way of thinking. "The Soviet system," says the author, "considers that circumstances, environment, and motives are extremely relevant for the proper disposition of a criminal case. It is not only the act itself, but however foreign it may seem to us, the history of the accused which is often to a lesser or greater degree the determining factor."

One is tempted to wish that the jury system had found some place in the Soviet system, so that one might see what strange guise it would assume. In its place is a court composed of a permanent judge and two co-judges who are sole arbiters of law and fact; whose political convictions and whose adherence to the established order are their essential qualifications for office. The necessity for such a court is strenuously defended by Krylenko. "For us, the government of the workers and peasants, there cannot be applicable any other forms of government except such as will, under all circumstances, secure and defend the interests of the workers" (the state). As to trial by jury, he says, "we would stand the risk, in a peasant country, of receiving decisions fundamentally contradictory to the aims of the judicial politik maintained by the vanguard of the proletariat."

*Naturam expellas furca, tamen usque recurret.*

There is a risk, and a very real one, in trial by jury, as there is in *habeas corpus,* and liberty of fair comment on matters of public import; a risk that a bourgeois morality may raise up, in final triumph, fair-play and justice in the face of theory. It is not a new thing for autocracy to provide against that risk: but such efforts have not, in the past, been conspicuously successful.

The Russian experiment in criminal justice is, in its success or its failure, heavy with meaning for us. Mr. Zelitch's valuable survey deserves wide circulation and careful study.

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## Notices by the Editor.

*Maclachlan on Merchant Shipping.* Seventh Edition by G. St. Clair Pilcher and Owen L. Bateson. London: Sweet & Maxwell Limited. Toronto: The Carswell Company Limited, 1932. Price 63 shillings net.

In the first edition of this authoritative work, published so long ago as 1860, the late Mr. David Maclachlan explained that his publisher had suggested that the work should be founded on the fourth edition of *Abbott on Shipping,* but that his development of the subject had convinced him that better results could be obtained by proceeding on an original plan than by attempting to recast the method of his great predecessor's labours. That this decision was a prudent one is justified by the fact that the older work gradually gave place to the new. There have been three editions of Maclachlan issued since the last edition of Abbott, published in 1901. In the present edition the editors have made no change in the arrangement originally adopted by Mr. Maclachlan, nor have they altered the original text except where it had become imperative. The Carriage of Goods by Sea Act, 1924, came into force since the last edition, and its provisions made some material changes in the substantive law In Chapter X this recent body of legislation is expounded, together with the scope and effect of the rules contained in the schedule to the Act, and attention is drawn to such cases as have been decided under the provisions of the Act which involve questions of principle or construction.

Coming, as this new edition does, close upon the passage of the Statute of Westminster, which bears upon the law of Shipping in the Dominions, it affords timely assistance to the legal draftsman in Canada. The Index is one of the best we have seen in lately published works.

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*Gale on Easements.* By F. Graham Glover. London: Sweet & Maxwell Ltd. 1932. Price $10.50.

The last edition of this invaluable work was published in 1925, but before the English Property Statutes of that year came into force. The present edition collates the relevant sections of those Acts with the pre-existing law relating to easements. Portions of the earlier statutes still of importance for such a purpose as the investigation of title are noted by the editor. At pp. 491-500 the question of the implied extinguishment of continuous easements by alteration of user as applied to ancient lights is discussed, and the series of relevant and important cases from *Tapling* v. *Jones* (1865), 11 H.L.C. 290 to *Bailey* v. *Holborn,* [1914] 1 Ch. 598, passed in review. Mr. Glover explains in his preface that the report of the case of *News of the World, Ltd.* v. *Allen Fairhead & Sons, Ltd.,* [1931] 2 Ch. 402,

was not available in time to be included in his text. In that case it was held that a dominant owner cannot so diminish his ancient-light area as to increase the burden on the servient tenement, and that in pursuance of this paramount principle where decreased facilities for receiving light are attributable to the act of the dominant owner himself he cannot ask the Court to measure an alleged nuisance by the owner of the servient tenement by treating a portion of a new window (rendered obstructible by his own act) as blocked up. This would seem to be in accord with the doctrine of the Civil Law. (See Dig. 8, 2, 20, § 5).

Mr. Glover appears to have done his work in a most efficient way, and the eleventh edition of this useful work is well up to the standard of the earlier editions.

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*Stroud's Judicial Dictionary.* Supplement to second edition, by Elsie May Wheeler. London: Sweet & Maxwell Ltd. 1931. Price £2. 2s.

The original edition of "Stroud" met with the highest approval of the legal profession, and this Supplement brings the work up to date. The publisher's announcement of this addition to the second edition states that "Stroud's Judicial Dictionary is not a dictionary of law like Byrne or Wharton. It is a legal Murray or Webster. . . . It is the authoritative dictionary of the English of affairs." We do not regard this by any means as an over-statement of the quality and usefulness of the work. It is assuredly for Bench and Bar an ever present help in time of trouble. Speaking at large, we are glad that it can be compared with Murray or Webster, which mark so great an advance on the old ethics and method of lexicography. For instance, Dr. Johnson in composing his dictionary, felt that he could get away with the following definition of the word *Patron*: "Commonly a wretch who supports with insolence, and is paid with flattery." It is well that lawyers of Johnson's time had the advantage of such a work as *Cowell's Interpreter* when they required a sensible definition of words commonly in legal use. In our time neither Murray nor Webster overlook the needs of the lawyer in the course of their definitions.

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*Law and Language.* By the Right Honourable Lord Macmillan. Published by the Holdsworth Club of the University of Birmingham.

The Holdsworth Club has done well by the legal profession in printing in handsome pamphlet form Lord Macmillan's excellent presidential address to the Club delivered during the past year. It is an earnest appeal to the lawyers of our time to take heed of

their use of the King's English. The lawyer, above all men, may not say with Moses "I am not a man of words." On the contrary Lord Macmillan adjures him to remember that he "may not unfairly be described as a trafficker in words." Hence, it should be his labour and his delight to maintain the gold standard of speech in every branch of his business. Being so minded the legal profession will, to quote the concluding words of Lord Macmillan's address, "merit the proud distinction of being pre-eminently the learned profession."

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*Permanent Court of International Justice.* Ten Years of International Jurisdiction. Leyden: A. W. Sythoff's Publishing Co. 1932.

In a note on the purpose of this brochure the Registrar of the Permanent Court explains that while it affords a general survey of the Court's work during the past ten years, its contents could not "be cited in opposition to the actual words of the Court's decisions or of its constitutional documents; nor is it to be regarded as an interpretation of those documents."

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*The Law of Patents for Chemists.* By Joseph Rossman, Ph.D., Patent Examiner, U.S. Patent Office. Washington: The Inventors Publishing Company. 1932.

This book is written for the instruction of chemists who are without training in the niceties of patent law. The author points out that as foremost chemists are very generally patenting their achievements to-day a knowledge of patent law as applied to chemical invention is necessary in order that they may protect their interests and so profit by their work.

The book will also be of service to lawyers who are engaged in patent cases before the courts.