

Reviews and Notices

The Ontario Corporation Manual. By ROBERT J. CUDNEY and ROBERT A. KINGSTON. A loose leaf service to be completely revised on the 15th of October of each year. Toronto: Richard DeBoo Limited. 1948. (\$25.00; annual subscription, \$10.00)

This is a manual of corporation practice in Ontario, containing a collection of forms and precedents, authors' notes and comments and the complete texts of the principal statutes and regulations affecting corporation practice in the province. Published as a loose leaf service in a ring binder similar to that used by the publishers in their taxation services, it marks a new departure in the literature of legal practice.

Although there seems to be no end to the writing of texts and commentaries on substantive law, our legal literature is meagrely supplied with works on practice and procedure in many of the more important fields of the lawyer's work. In Canada where the limited company is the common form of business organization and a large number of legal practitioners claim to be specialists in company law, remarkably few books on the law and practice of corporations have been written. The books hitherto available have been principally concerned with the Dominion Companies Act and this Manual is the first comprehensive work to be devoted exclusively to the Ontario Companies Act and other legislation governing corporations in that province. The authors, who are both experienced specialists in their field, have made a notable contribution to Canadian legal writing.

The forms are arranged in sixteen sections of the book marked with index tabs for easy reference. At the beginning of each of these sections the authors have included comprehensive notes on the law and practice relating to the forms. These authors' comments occupy about one-quarter of the whole text without the statutes and regulations and, taken together, provide a very complete and readable survey of corporation practice in Ontario. One of the authors is a Deputy Provincial Secretary, a fact that gives considerable authority to the notes on departmental practice as well as to the precedents for objects clauses and many of the forms.

The arrangement of the book can perhaps be illustrated best by enumerating the titles to the sections as they appear on the index tabs: Incorporation, Organization, Name — Head Office, Purposes and Objects, Share Capital, Borrowing, Directors — Officers — Dividends, Shareholders, Books — Audits — Returns — Prospectuses, Supplementary Letters Patent, — Revival — Amalgamation, Dissolution, Licences — Mortmain and Extra Provincial, Private Companies, Mining Companies, Corporations without

Share Capital and Special Corporations. As well as a general index, each section contains an index to the forms in the section. The complete texts of the following statutes with the regulations passed under each are included at the end of the book: The Companies Act, The Extra Provincial Corporations Act, The Companies Information Act, The Mortmain and Charitable Uses Act, The Corporation Securities Registration Act, The Corporations Tax Act, 1939, The Security Transfer Tax Act, 1939, and The Securities Act, 1947. The practice under each of these statutes is fully dealt with in the authors' notes.

Within the comparatively narrow compass of a collection of two hundred and fifty various corporation forms, as well as precedents for one hundred and fifty different objects clauses, the authors have naturally had to confine their selection to those forms generally required in the ordinary affairs of corporations. But they have succeeded in providing a remarkably complete and thoroughly practical manual for the corporation lawyer with the forms, authors' comment, statutes and regulations available in a readily accessible form. The greatest proportion of the text is devoted to limited companies, but forms for corporations without share capital, public utility companies, cooperative corporations, joint stock insurance companies, pension fund and mutual benefit societies, as well as other types of incorporated bodies, are also included. The more complicated precedents for the specialised field of corporation finance have been purposely omitted as being beyond the scope of the book. It is tempting for a reviewer to take it upon himself to point out what the authors of a legal handbook of this kind might have included but any manual of corporation law that would completely satisfy the requirements of every corporation lawyer in Ontario would require a work of encyclopedic proportions.

In turning the pages of the Manual, one is struck with its carefully planned arrangement designed for quick and easy reference. In their text the authors have not attempted a commentary on the case law, although there are some references to leading cases. Without adding substantially to the bulk of the book, the separate sections of the statutes might have been usefully annotated in the manner of a citator with references to cases decided under the particular provisions of the Act. In some places the authors have included check lists which are really memoranda of the procedure to be followed in a particular phase of corporation practice. Such practice guides are invaluable to the busy or the inexperienced practitioner and their use throughout the various sections of the book might well be expanded in future editions. A similar work covering Dominion corporations would be a useful addition to the Canadian lawyer's working library.

The decision of the publishers to produce the Manual as a loose-leaf service has given this work a form that is scarcely suited to constant use and handling. The pages in a three-ring binder tear out easily, which is annoying and inconvenient and, unless there is a large amount of new legislation or the authors intend to add a substantial number of new forms each year, one annual revision does not seem to justify the cumbrous and expensive loose leaf binder. It might have been better to publish the work as a bound volume.

WILMOT H. BROUGHALL

Toronto

Policemen and People. By ELIJAH ADLOW, Associate Justice of the Municipal Court of Boston, Mass. Boston: William J. Rockfort, Publisher. 1948. Pp. 89. (\$1.50)

"This volume", says the author in his preface, is directed towards broadening the police viewpoint, and to improving the judgment of the officer in the exercise of his discretion". Although the subject matter was originally presented in a series of lectures given at the Police Academy of Boston, it is apparent that the basic principles involved transcend any international boundary and concern as much the policemen on the streets of Calgary as those patrolling Boston Common.

Clear issue is made of the "variety of talents" required to make up a good police officer. Brawn, yes, brains, certainly — but over all "that God-given talent for exercising common sense in the discharge of duty". It is pointed out that, unlike the judge or the business man who can, quite properly, take matters under advisement and defer decisions, the policeman usually has to make up his mind quickly, since "Police problems are immediate. Haste is indispensable to appropriate action, and action depends on his judgment."

The author is justifiably concerned over the contemptuous attitude of the public towards policemen in general ("A myth which enjoys a current vogue is that the policeman is engaged in a continuous offensive against society"). He calls this "one of the tragedies of contemporary life", which "has in no small manner contributed to the wave of lawlessness and delinquency". He concedes that corrupt officers, and bullying ones, and those of the ignorant, persecuting breed, have a heavy responsibility for this attitude. ("If a policeman acts arbitrary and officious, if he bothers people over trifles, and establishes a reputation for being a persecutor, the neighborhood gets down on him, and his value becomes questionable.") However, he also blames an unthinking public for having no proper evaluation of the difficult and complex police function. (In Canada, the widespread public relations programme of the R.C.M.P. in the schools should have a beneficial long-term effect.)

There are illuminating sections on the policeman as a peacemaker (sometimes he "needs the strength of a Samson and the wisdom of a Solomon"); as agent of the law ("a policeman should know the conduct or rather misconduct which is embraced by a particular law"); and as a witness in court. There are guides also to his private and official conduct, to police ethics in general, and a stern warning against exhibitionism.

This little volume should serve a useful purpose. It could be read with profit by all our Canadian police officials, whether or not each one would have full understanding of its deeper implications. Here, however, we, as citizens, must share responsibility. Small right have we to be too critical, as long as we permit civic politics to select policemen and as long as we pay them so poorly that few with higher educational qualifications are willing to apply. It is about time that our Canadian police had the same public confidence and support as their counterparts enjoy in Britain. This they have in some Canadian sections, but unfortunately not generally in the Dominion.

J. ALEX. EDMISON

This New Canada. By MARGARET MCWILLIAMS, B.A., LL.D.
Toronto: J. M. Dent & Sons (Canada) Limited. Pp. 328.
(\$3.75)

If the art of composition is the art of elimination, then Mrs. McWilliams has composed her book well. With the strong sense of narrative that must be a legacy from her newspaper work the authoress has dwelt upon a single dominant theme and has marvellously freed herself from the bogs and sands in which many a worthy effort in Canadian history has perished.

The story is of the increase in the stature of British North America in the world. It is my personal impression that Winnipeg is the most internationally-minded centre in Canada. This lady of that city, personally and practically qualified as she has made herself at all government levels, has chosen her point of view above and beyond that of the local historian. The result is a gain in significance for the old story, here addressed to teachable people.

Even the statistical data is made acceptably graphic. The illustrations depart from the hackneyed line. There are some stimulating sentences: "The Canadian Constitution was remarkably successful. It fitted the conditions in Canada excellently for about forty years. During the last forty years, however, conditions in Canada have changed so greatly that the Constitution no longer fits the times." (p. 217) "Thoughtful Canadians are not happy about the treatment of criminals in this country." (p. 264)

But there are also some defects which will be corrected in the second edition of the work: "Kingston . . . the native city of Sir John A. Macdonald" (p. 121); "the United Nations is made up of governments of nations which profess to follow democratic practices" (p. 288). One's accounting sense might wish for a more guarded statement than the following: "Thus the Canadian National Railways and the Canadian Broadcasting Corporation have been operating in such a way as to produce surpluses, used in reduction of the debt to the Government, or to enlarge the operation of the service" (p. 212), and one's legal sense might wish for another description of administrative law than "a third kind which lies midway between the civil and criminal law . . . for example, the liquor laws of the various provinces" (p. 260). The seven pages lavished on the ritual of opening Parliament are redeemed by the nineteen pages of sound sense at the conclusion of the book where practical applications are advanced.

This study roughs in "the machinery of national life" very capably for its purpose and audience. Such blemishes as have been mentioned and such, for a last example, as the failure to identify quotations in the customary academic fashion, merely indicate that this piece of writing compelled this reviewer's close reading. Nothing can detract from the cardinal success of the composition — its achievement of freshness.

CAMPBELL CALDER

London, Ontario

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Marriage, Separation and Divorce. By H. B. GRANT. London: Stevens and Sons Limited. 1948. Pp. vii, 124. (4s. net)

This booklet is one of a series of popular handbooks entitled "This is the Law". It is written chiefly for the general reader rather than for members of the legal profession. The law described is the law of Great Britain. In it the man in the street will find information as to what he must do in England if he wishes to be married; he can also learn something of what he risks by getting engaged if he is not certain that he wants to go through with the marriage; there is a chapter on the reciprocal duties of husband and wife and of the wife's position in law; and, finally, there are chapters devoted to separation, divorce and nullity. The law is demonstrated by reference to the facts of certain decided cases, but the citations in the reports are not given. Some specimen agreements and orders are also included.

Although written for the ordinary man, the booklet is not without interest to members of the profession, even though they may be practising in Canada where church and state are separate and one does not have to apply to the Archbishop of Canterbury if one wants a special licence.

H. A. PORTER

Saint John, N.B.

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Handbook on Mexican Mercantile Law. By ROSCOE B. GAITHER, with a Foreword by Paul P. Rogers. Oberlin, Ohio: The Academy Press. 1948. Pp. 46. (No price given)

The scope of this pamphlet is not as broad as its title would indicate since it is limited to a consideration of the General Law of Mercantile Companies enacted in Mexico in July 1934 and does not deal with Mexican mercantile law in general. The author has given a fairly detailed outline of this particular section of the Mexican Code which will give some assistance to the reader who is puzzled by the bewildering varieties of *sociedad* or company provided for by the Mexican law; these range from the *Sociedad en Nombre Colectivo*, which in most respects is similar to our partnership, to the *Sociedad Anónima* or stock corporation. Between these two lie a number of forms of organization that partake in varying measure of the characteristics of both partnership and corporation. The author concludes with a brief note on registry of foreign companies. Although useful as background material the handbook will not be of much assistance in cases where detailed study of the law is required, since it contains neither quotations from the Code nor references to particular sections. There is no index.

DAVID G. GUEST

Toronto

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The Export Trade. By CLIVE M. SCHMITTHOFF. London: Stevens and Sons Limited. 1948. Pp. xxxii, 393. (\$5.25)

This admirable book gives a concise account of the law and practice of the United Kingdom export trade, a subject that gives rise to questions of great legal difficulty extending over the whole field of mercantile law and, beyond

this, into conflict of laws, tax law, exchange control law and customs law. As a result of his effort to write a book for both businessmen and their lawyers, the author has also succeeded in producing, as he hoped, a first-rate book for students of mercantile law. His distinctive contribution is that, although practical businessmen have written books and monographs on what they do when they export goods, and learned lawyers have written texts and law review articles on the pathological aspects of particular phases of the export transaction, he has familiarized himself with both "practices" and "law" and applied his knowledge to the illumination of the practical problems arising in the course of the export transaction as a whole.

The book is divided into four parts. Part I deals with the sale of goods abroad. From a legal point of view it covers, of course, such matters as the passing of the property and the risk, the rights of the unpaid seller, frustration and the proper law of the contract. But the law is placed against the background of the normal day-to-day methods of carrying on business and the legal problems are only mentioned for the purpose of advising the businessman what he should do in order to avoid running into them. Chapter 2, for instance, the longest single chapter in this Part, contains an immensely valuable exposition of the meaning of most of the standardized special trade clauses dealing with method of delivery and calculation of price, such as *c.i.f.*, *f.o.b.*, *ex ship*, etc.; although reference is, quite naturally, made to decided cases on these clauses, the bulk of the chapter is concerned with setting out the authoritative definitions of their meaning in terms of the responsibilities of seller and buyer given by the International Chamber of Commerce and approved by the British National Committee.

Part II deals with the problems peculiar to the exporter who in order to secure a steady flow of orders from a foreign country decides to set up in that country a permanent sales organization and takes up in turn an exclusive sales agreement with an importer there, representation by an independent agent, establishment of his own branch office and the incorporation of a subsidiary company. Again the author's approach is practical in the best sense of the word; he explains not only what the experienced exporter does but also why he does it. For the exporter who decides that his present volume of business will not justify more than an exclusive sales arrangement, he sets out in Chapter 13 the main points to be considered in drafting this type of agreement and illustrates them by contract clauses where necessary. He even prefaces his lengthy summary in Chapter 14 of the matters to be considered in concluding an agreement with an independent concern which he wishes to represent him in the foreign country with a statement of the absolute necessity of making searching inquiries about the personal reputation and financial standing of the agent before reposing trust in him. And in Chapter 18, relief from double taxation, he points out that the choice of form of an export organization abroad is greatly influenced by the incidence of taxation and, after taking up in each case very briefly the history, he sets out the arrangements at present in effect under the very recent International Conventions with respect to taxation of persons doing business through independent agencies, branch offices and subsidiary companies abroad. All these topics are complicated and can be confusing, but the author has separated essentials from details and laid them out with a clarity that comes from mastery of his materials.

With Part III, matters incidental to exporting, the author returns to topics which all lawyers know are peculiarly related to international trade, bills of exchange and bankers commercial credits ("the finance of exports"), marine insurance and carriage of goods by sea. In addition to these however — of which more in a moment — he takes up in Chapter 23 the protection of patents and trade marks abroad, and couples with a brief description of the international patent and trade mark system (or lack of system) a number of suggestions on how the exporter may most cheaply and effectively protect his position in this field; and in Chapter 24, one of the most interesting chapters in the whole book, he sets out the various methods open to an exporter of settling disputes with his foreign buyer, including arbitration, both English and international, with suggested arbitration clauses, and court proceedings in England, and winds up with a statement of the present unsatisfactory situation of the law on the enforcement of arbitration awards or judgments outside the jurisdiction. Chapter 19, the finance of export, is an appropriate occasion for mentioning that the author does not in any part of the book purport to go into great detail — it is a panoramic practical handbook for businessmen and their lawyers that he is writing — but does give references to the most important literature on each topic; his treatment of the law of drafts and bankers commercial credits is therefore of necessity very compressed, but he gives references to the leading works and law review articles. Chapter 20, marine insurance, and Chapter 21, carriage of goods by sea, will be particularly useful for students; they summarise the leading principles and refer freely for further information to *Arnould on Marine Insurance* and *Scrutton on Charterparties and Bills of Lading*; with *Schmitthoff's* summary firmly fixed in his head a student will be in a position to tackle *Arnould* and *Scrutton* who were, quite definitely, not writing for tyros. Pages 218 to 224 give a particularly clear step-by-step account of the way in which goods normally come to be shipped on board a vessel and a bill of lading issued for them, and are a useful introduction to pages 238 to 268 which describe *inter alia* the legal nature of a bill of lading, its "negotiability" and the effect of the Carriage of Goods by Sea Act on the responsibilities of the shipowner who issued it.

Part IV, pages 304-344, is entitled government regulation of exports and summarizes the United Kingdom law at present in force with respect to export licences, exchange control and customs regulations. This is not, of course, the whole extent of "interference", national and international, with the trading by private persons in one country with their opposite numbers in another country; a glance at any of the other three parts of the book will show that. Unlike most of the rest of the law, the law of international trade consists to a large extent of statute law, some of it codifying the crystallized understandings of businessmen, *e.g.* bills of exchange, sale of goods, marine insurance, but some of it opposed to those understandings, *e.g.* the Carriage of Goods by Sea Act which was the answer of governments to the monopoly position of the shipowners. Unlike the rest of the law, again, national legislation on international trade is powerfully influenced by what may be called international legislation by means of Conventions; thus the various national Acts on carriage of goods by sea are the product of the internationally agreed upon Hague Rules, and the recent national Acts on relief from double taxation are derived directly from the labours of

the League of Nations between the two wars. The effect of "international legislation" on national laws relating to international trade is likely to increase rather than diminish; the governmental regulation of exports, for instance, described in Part IV is itself regulated as to exchange control by the obligations undertaken by the United Kingdom under the Agreement constituting the International Monetary Fund.

Enough has been said in the course of this review to show the immense field covered and the skill with which the author has welded law and practice together. In this field, of all fields, practical background is all important, and as a by-product of a book for businessmen he has produced a law book for students — a book that might well serve as a model for all student books on law. What an admirable student book on the law of wills, for instance, Bailey's little book would be, if only it added to the strict law some statement of the ordinary ends that an ordinary testator of a given income level expects to accomplish and made suggestions as to how his lawyer might accomplish them!

JOHN WILLIS

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Meeting of the Inter-American Bar Association

The Sixth Conference of the Inter-American Bar Association will be held in Detroit, Michigan, from May 22nd to June 1st, 1949, with the State Bar of Michigan as the host organization. The Canadian Bar Association is a member of this well-known international body and our members are therefore entitled to attend. It is hoped that a strong delegation from Canada will visit Detroit for the occasion. Those planning to be present should at once advise Mr. Milton E. Bachmann, 412 Old Tower, Lansing 8, Michigan, of their intention, enclosing a certificate from the Secretary-Treasurer of the Canadian Bar Association evidencing that they are members in good standing. The headquarters of the conference will be at the Book-Cadillac Hotel and, since accommodation will probably be at a premium, it would be advisable to make early reservations there or at some other hotel. A full programme of meetings and entertainment is promised. The topics on the programme assigned particularly to the Canadian Bar Association for the preparation of papers are (1) Proposals of principles of law to be incorporated in uniform measures for the protection and preservation of fisheries; (2) Principles of free navigation to be observed in international rivers, such as the projected St. Lawrence seaway; (3) Recent developments in control of monopolies in North America (United States and Canada); and (4) Proposals for uniform trade mark laws. Additional details can be secured from Hon. Lucien Moraud, 126 St. Peter St., Quebec, or Mr. D. L. McCarthy, K.C., 50 King Street West, Toronto 1.