Reviews and Notices

The Elementary Principles of Jurisprudence. By G. W. KEETON, M.A., LL.D. Second edition. London: Sir Isaac Pitman & Sons, Ltd. 1949. Pp. xxxvi, 484. (30s. net)

This work bears the imprint of that authority which we expect from English scholarship. In it the author examines the structural elements of the science of jurisprudence, the nature and sources of law, its fundamental conceptions, and its main divisions; in concentrated form he presents to the reader a field of thought that seems almost boundless for cultivation by thinkers. The generalizations are dealt with not only in their historical perspective but with an analytical relevance to present times that is unusually arresting through the sense of competence which is communicated to the reader.

The chief merit seems to lie in the clarification of terms and conceptions which, to our great profit, Professor Keeton presents. Familiarity with the external features of these ideas and concepts is one thing but an intimate appreciation of their inner refinements is quite another. Particularly is that so in those general terms which connote the more elusive realities, and the effort to visualize which is correspondingly greater.

At the outset is the question, What is jurisprudence? and the answer justifies putting it. Originally the term meant knowledge of law, and in that sense covered the whole field of legal study. Then, as the development of that study advanced, it came to indicate the elucidation of general principles underlying legal rules, to which the drive to analyze and classify inevitably led. This meaning is not older than the publication of the first edition of Holland's *Elements of Jurisprudence* in 1880. A further abstraction signified the nature and functions of law, a theoretical inquiry aiming ultimately at the nature of justice. In this sense it would be equivalent to the philosophy of law and in an era of "social change and national and international instability" that inquiry is plainly becoming of increased importance. Still again the word has been used to describe the laws of a country, for example, French jurisprudence, or of a particular court or system of courts. This sense corresponds largely with the first, but it does not appear to be sanctioned by modern usage.

Professor Keeton does not omit the warning that some writers deny jurisprudence to be a science at all. They deny that the material with which it deals can be arranged into any intelligible pattern or can yield any general principles. It is matter that arises from the life and behaviour of human beings of such infinite variety, make-up, outlook and background, and subject to the manifestations of such a mystifying principle as the human will, that it can be considered only as an irrational mass of behaviour that would defy even a quantum theory of prediction.

But accepting this initial skepticism, clarification of ideas can proceed apace. In a survey of legal principles, we begin with the social structure within which, ordinarily, they operate: the state; and in these days it is the sovereign state, signifying a complex of attributes formulated within the last 400 years. During the feudal era Europe was within a hierarchy of rank and relation which under Emperor and Pope constituted a united domain of Christendom. But the impact of the Renaissance and the Reformation shattered both the conception and the reality; and principalities, large and small, found themselves only under the vault of heaven. Creative minds set themselves to descriptive vocabulary of their new political estates. Sovereignty, both political and legal, became an exclusive and absolute earthly power installed on a clearly delimited territory, drawing both ultimate temporal and spiritual authority from divine sources. This mosaic was the condition of the international law of Grotius and his contemporaries, and of the law of conflicts, leading to its dimensions of today.

In the legal aspect, sovereignty has been forced to adapt itself to a new mould by the federal state, as in the Dominions of the Commonwealth and in the United States, and we are apt to forget that this development has been proceeding for only a century and a half. A distribution of legislative power, plenary or constitutionally restricted, in strictly limited fields, with a residue of co-operating authority, calls for the highest intelligence in political action that communities have yet been called upon to exercise.

The modern democratic state, to a remarkable degree, realizes the political philosophy of Locke; ultimate power in the people and when those to whom it is committed fail in their trust, to be resumed and recommitted. But the conception of state and legal order itself is within the boundaries of certain unexpressed assumptions: there shall be constitutional rule of law; it shall be prescribed by accountable organs; government shall rest ultimately upon the free voice of the majority. What of minorities? What of those understandings which Dicey has called the conventions of the constitution? What of limits to which legislative power of the majority in practice is tacitly restricted? What of the disregard of these conventions or understandings? Such speculations are not idle in a day when we have forces and movements engaging the machinery of democratic government for the purpose of destroying it. Would democrats accept a rule of dictatorship achieved by the mechanism of Parliament? This does indeed indicate a fundamental "provisionalism" in government; but the alternative of absolutism, although seemingly bearing an eternal character, becomes, certainly in most cases, the equivalent of the provisional in the course of its interpretation and application.

In the larger setting of internationalism, states are being caught up in the network of relations — legal, social, economic — that cross their boundaries. In uniformity of laws and regulations, in social groupings and organizations such as the church, labour unions, fraternal organizations, in the agencies of the United Nations and that world forum itself, we see the web being woven which implicates the whole of humanity. They are mentioned here only to point the delusion of ultimacy in present political relation and power within the state which these new realities reveal.

Within the framework of the state remains the intensive realization of juristic principles in action, and it is in this area that the interested lawyer will probably draw the greatest benefit from Professor Keeton. What, for

instance, are the essential characteristics of ownership and of possession? What is the nature of legal personality? the true conception of corporations sole? What is the law of judicial precedent or stare decisis? What its historical development? What are current considerations that point to a modification? What do we mean by the rule of law? What is the nature of criminal law and the position of mens rea in the vast modern regulation? What are to be the rules of family law tomorrow in marriage, property, succession? In the minds of too many of us, these ideas idle in brilliant opacities.

Professor Keeton devotes a most profitable chapter to "Facts, Events, Acts and Forebearances". It recalls a wish of the late Professor Whitehead that he might be able to possess a "complete fact". This chapter, by analysis and subtle perception, demonstrates the singleness of the texture of human experience. To take what we call a fact out of that texture is to tear out a part from the whole. The roots taper into infinitesimal influences; but the fact is a focal point of aspects, the totality of which is the matter significant to law. There is also an analysis of motive, purpose, desire, volition and intention which reflects their importance to legal determination. These we have only to view in the mass to apprehend that invisible universe of mind, will and passions, in which the character of conduct and the significance of so many rules are to be found.

In this portion of the exposition, we see the various divisions of the body of law to be facets of activity sufficiently important to call for individual consideration. In one aspect, we form a principal conception to which other facts are incidental, and in another, the original becomes the incidental. It recalls Mr. Baldwin's epigram about "the manysidedness of truth and the infinite number of points of view".

Of immediate relevance is Professor Keeton's treatment of negligence. This to him illustrates in England the transition from the self-sufficient maturity of the law of the 19th century to a creative stage in which again the realities of experience are drawn into the processes of judgment. The conception of the duty of care could not have been elaborated as in *Donoghue* v. *Stevenson*, [1932] A.C. 562, from the limited materials which the purely individualistic notions of the earlier century furnished. The contrast between that individualism and social interdependence appears in the dissenting speech of Lord Buckmaster. In the felicitous language of Lord Macmillan, "The criterion of judgment must adjust and adapt itself to the changing circumstances of life. The categories of negligence are never closed."

To any one who has struggled with the precise nature and application of the notion of the "reasonable man", Professor Keeton's examination, while perhaps not dissipating all shadows, at least augments the light. Is that being, in the technique of application, to be apprehended as an abstract creation compounded of those faculties of alertness, care, consideration, fairness, open-mindedness, prevision, which "reasonable" men exhibit? Or does it visualize the average man in the particular circumstances? In practice the ordinary juror would probably ask himself what, in such circumstances, he himself would have done; or he might select an acknowledged "fair" or "prudent" man and imagine his course of action. An abstraction of all virtues is a conception of characteristics, not of a man. Realistically, the device is a bit artificial and risks failure in appreciating the legitimate subjective elements of a situation. What is in question is the imaginative application of the standard. The description of the reasonable man by Sir Alan

Herbert, in his *Uncommon Law*, sums up the repulsive completeness in the last sentence: "Devoid, in mind, of any human weakness, with not one single saving vice, sans prejudice, procrastination, ill-nature, avarice, or absence of mind, as careful for his own safety as he is for the safety of others, this excellent but odious character stands like a monument in our courts of justice, vainly appealing to his fellow citizens to order their lives after his own example". That the question raised is not academic is exemplified by the exchanges between judge and counsel quoted by Professor Keeton in the case of *Lea* v. *Justice of the Peace* which, as will be remembered, arose out of the report in the press of a private wedding by an uninvited reporter.

A matter of special interest is Professor Keeton's examination of administrative law. We are in Canada only at the threshold of this branch of public law, but we have as guide the experience of both the English and American developments. In the author's view, the reception of administrative law in England as a new and important phenomenon in government was prejudiced at the outset by the misconception by Dicey of the expression "droit administratif" in the law of France. He took it to have as its end the withdrawal of administration officers from the ordinary law to a privileged position, and it was this breach in "the rule of law" that led him to a critical attitude towards the creation of special courts. But in this, as in other matters, Professor Keeton exhibits clearly the basic factors constantly to be kept in mind. Among them is that of the separation of investigating or prosecuting functions from that of adjudication; the distinction between purely administrative acts, carrying out matters of policy, and the quasi-judicial rôle in making findings of fact or in giving them weight or value; the principle that procedure affecting rights of individuals should be according to law and to what we vaguely but nonetheless confidently conceive to be natural justice. There are the important questions of discretionary action. A tribunal empowered to come to a judgment of fact within certain legal limits must deal primarily with the consideration of what is relevant matter. It may be that the statute itself prescribes what may be taken into account, as, for example, whatever the authority may deem relevant, in which case the only question would be that of good faith. But, in the absence of that, how far are the ordinary courts to say when matter is beyond relevancy? or what cannot be omitted? It seems to be settled that the weight to be attributed is exclusively within discretion. These multiplying adjudications represent in the legal aspect a contest between departmental action, intolerant of formal restriction, and the protection of individual interests by the general courts. The danger of government, exemplified over the centuries, the relentless tendency to arrogate and to accumulate power, is a threat which it would be foolish, in the interests of what is misconceived to be efficiency, to overlook. The danger results from an exclusive concentration of exigent egos upon a limited field, the absorption of which distorts the relations and proportions of the single interest toward social interests as a whole. The merit of the general courts is that, for the purposes of rough justice, they see the life of government steadily and whole. It is the conflict between the specific and the general judgment; and the increasing tension, which is bound to follow the impact of delegated legislation and executive discretion upon the individual, demands more imperiously than ever before first-class competence in the imaginative application of general principle to the vast multiplicity of subordinate social adjustments.

Perhaps the total effect of this volume is to make salient the rôle in law and government of philosophical concepts. Their value is being fiercely denied today by schools of "realists", particularly in the United States, and their attitude may be summed up in the words of John M. Zane, writing in 25 Yale Law Review 1026, in which, after speaking of "the old worthless chaff of what they call the analytical or the historical or jus naturale school" and "classifying, reclassifying, sub-dividing, . . . conceptions, which have never had the slightest influence on the actual development of law", which "are still the stuff of which legal philosophical dreams are made", he concludes: "What has always been needed is scientific study. That study asks for facts and facts alone, unclouded by hasty generalizations." To this Professor Keeton replies: "No pronouncement upon Jurisprudence could be more misconceived than this, and it would be unnecessary to pause to refute it, were it not for the fact that many practising lawyers consciously or subconsciously assume a similar attitude". This reviewer humbly enrolls himself under the banner of Professor Keeton.

The indications of this rich mine of commentary are already beyond the scope of review. In suggesting the quality and value of what is offered the reviewer necessarily draws upon his own reactions and in this case he must say that here is a wealth of stimulating and provocative thought comprehensively organized and marshalled, and expressed in direct and weighted language to which no reader, after once engaging himself in it, can fail to feel a deeply increasing attraction. Its condensed scope is made possible by the elimination of everything except substance, and its demands upon the reader are properly to be taken as the author's compliment.

Ottawa I. C. RAND

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Crime and Abnormality. By CECIL BINNEY, M.A. Toronto: Oxford University Press. 1949. Pp. viii, 176. ($1.25)

The author states that his object is to furnish answers to two questions: "first, in what circumstances does English Law accept a person's mental condition as a ground for exempting him from conviction or punishment for an act prohibited by criminal law which he has done? and secondly, in what respects, if any, ought the law to be altered to bring it into accord with modern views on mental abnormality?"

As to the first question, the book contains an interesting discussion on the interpretation and application of the Macnaughton Rules, on which the controversy as to legal responsibility for crime largely centres. Since section 19 of the Criminal Code of Canada is a summarized statement of those rules, this subject obviously is of interest to Canadian lawyers. In both countries the tests laid down by the Macnaughton formula in 1843 have withstood adverse criticism and are still applied whenever the insanity defence is raised.

But the book is not restricted to discussing the Macnaughton Rules. The author deals, *inter alia*, with mentally defective criminals who have committed offences punishable by penal servitude or imprisonment, and whose cases may fall within the provisions of the Mental Deficiency Acts.

Such offenders, although abnormal, are not necessarily insane within the meaning of the Macnaughton formula. The author points out that the procedural difference between the defence of insanity and finding a prisoner mentally defective is that "while insanity constitutes in a sense a defence, mental defect is only a question affecting punishment and is therefore a matter for judge not jury".

Due attention also is given to the serious question of sexual offenders who, although not so insane as to satisfy the Macnaughton formula, may be mentally abnormal. Citing the latest available statistics, Mr. Binney states that of about 19,400 prisoners serving sentences in England for indictable offences, 800, or about one in twenty-four, had been found guilty of a sexual offence. The Criminal Justice Act of 1948 (section 4) provides for compulsory treatment of mentally disordered offenders, and the author predicts that the chief application of that section is likely to be to sexual offenders. This provision is of interest to Canadian lawyers in view of the recent addition of section 1054(a) to the Criminal Code, which provides for detention of criminal sexual psychopaths for an *indeterminate* period. The English statute, on the other hand, appears to limit the term of confinement to one year, and because of the real danger of this type of criminal to the community, the Canadian law should deal with the situation more adequately once the necessary legal machinery has been set up.

The book includes chapters on Drunkenness and Crime (the law on which is similar in Canada), Infanticide and Suicide, and a final chapter entitled "General Conclusions" in which several topics are discussed. It is pointed out that the Infanticide Acts provide the only instance where the criminal law of England has been altered by statute "so as to make the mental condition of the prisoner a defence although insanity cannot be established".

As to the second question — in what respects, if any, the law should be amended — the author draws attention to various defects in the present system: for examples, the fact that (except on the issue of unfitness to plead) the Crown is not entitled to raise the question of the prisoner's insanity; the "absurdity" of the present law by which the prisoner has virtually an option whether or not to plead insanity; the traditional but "antiquated" division of crimes into felonies and misdemeanors (a distinction abolished in Canada in 1892); the sometimes inconsistent course adopted by the courts in homosexual cases; the need to extend the scope of the Infanticide Act. Mr. Binney also comments on the power of the executive to reprieve a condemned murderer and commit him to an asylum, notwithstanding the fact that a jury has found him insufficiently insane to be acquitted. Such cases, he observes, provoke the suggestion that the medical advisors of the Home Office do not apply the same rules as are prescribed by the law for juries, and, in effect, they are "constituting themselves an additional Court of Appeal". The same situation exists in Canada, although it must be admitted that to hang a man who is mentally incapable of appreciating his situation would be contrary to the principles of justice.

Finally it is interesting to note that when an insanity defence succeeds the verdict now in England is "guilty but insane" instead of (as it was before 1888 and as it is in Canada) "not guilty on the ground of insanity". That illogical verdict is believed to have been due to Queen Victoria's indignation at the acquittal of a lunatic who had shot at her. She insisted that it was impossible for the man not to be guilty, for she had seen him do it!

This book is a well written, entertaining and instructive summary of the English law on a subject of great importance to the community. It is not recommended as a text reference (the index including only 34 cases) and presumably the author never intended it as such. But for light and interesting reading it should have a ready appeal to lawyers, doctors and criminologists, and its intriguing qualities should make it attractive to the layman as well.

W. C. J. MEREDITH

Montreal

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Private International Law. By G. C. CHESHIRE, D.C.L., F.B.A. Third edition. Toronto and London: Oxford University Press. 1947. Pp. lii, 884. ($10.00)

I had the privilege of reviewing in (1936), 1 U. of Tor. L. J. 390 and (1938), 16 Can. Bar Rev. 501 the first (1935) and the second (1938) editions of Cheshire on Private International Law, and, although the present notice of the third edition is somewhat belated owing to the publishers' delay in submitting the book for review, it is still a pleasant duty respectfully to say something in appreciation of Dr. Cheshire's work. The appearance of the first edition was an event of considerable significance in the history of English conflict of laws because of the freshness of the author's approach to conflict problems and the vigour of his criticism of judicial treatment of those problems. It is only fair to the author to record the impression that the first edition of his book made an important contribution to a veritable renaissance of English writing on the conflict of laws. The later editions have preserved the essential features of the original work. The 584 pages of the first edition became 692 pages in the second, and nearly 200 pages have been added in the third edition. The result is that the book has now become a treatise impressive both in range and in detail. One admirable feature is the author's open-mindedness. Some of his changes of opinion have been remarkable. My observations will be chiefly confined to the changes made in the third edition, in which the author has expanded the scope of the book and has elaborated his exposition and discussion of the case law.

The discussion of the "historical antecedents" has been elaborated and notably improved (pp. 22 ff.). Especial reference has been made in the preface to the writings of Walter Wheeler Cook, and Cook's influence is manifest in several places in the book, particularly as regards the meaning of the *lex rei sitae* (pp. 713-715). The statement of the consecutive stages in a conflict of laws case (pp. 58 ff.) is valuable, and includes a rearranged and improved exposition of the topic of classification (characterization). I must, however, with respect, record my disagreement with his theory of primary and secondary classification, which would seem to be difficult to reconcile with his rejection of the doctrine of the *renvoi*.

Rather oddly placed under the general heading of "preliminary topics" is the chapter on capacity (pp. 255 ff.). The discussion is valuable, but it is submitted that its subject matter might more conveniently and logically be subdivided and distributed in later chapters dealing with the various transactions to which capacity relates. Under the strange heading "contract

to marry" (meaning "marriage", and not, as one might suppose, "promise to marry") the author valiantly, though with doubtful success, defends his theory that capacity to marry is governed, not by the law of the pre-marital domicile of each of the parties, but by "the law of the place where the parties intend to establish their matrimonial home" (p. 269). He has abandoned in this connection the expression "matrimonial domicile" (p. 272), used in the second edition, but the latter expression has more recently received judicial approval in *obiter dicta* occurring in the *De Reneville* case, [1948] P. 100. As regards annulment jurisdiction and law (pp. 440 ff.) the author of course did not have the advantage of reading the judgments in the Court of Appeal in this case, which have compelled the rewriting of a good deal of earlier writing on this topic.

The author has "attempted to give a more comprehensive and accurate description of the part played by intention in the formation of the proper law of a contract", and confesses that too late he realized "that the subject requires to be broken down into separate fragments" (preface and pp. 311 ff.). More recently the author has developed this breaking-down treatment in his lecture on International Contracts delivered on March 4th, 1948, in the University of Glasgow (reviewed in (1949), 12 Mod. L. Rev. 263).

The section relating to legitimacy (pp. 497 ff.) has been "almost entirely rewritten". Especially on pp. 506 ff., in the discussion of *Shaw* v. *Gould* (1868), L.R. 3. H.L. 55, it is submitted that there is some confusion between status on the one hand and capacity or the incidents of status on the other hand. In my recent article on Legitimacy or Legitimation and Succession in the Conflict of Laws (1949), 27 Can. Bar Rev. 1163, I have attempted to find a trail through the cases in pursuit of a general principle, and the topic cannot be further discussed here.

The book contains many new and valuable features. If I have seemed to select for special mention points on which I am not in agreement with the author, I desire to emphasize my appreciation of the stimulating character of the author's work. Whether one agrees with him or not the reading of his book affords useful arguments and suggestions, and serves to guard against the acceptance of conclusions which have sometimes been reached too hastily or without due consideration of the pros and cons of particular problems. As Graveson, in the Journal of the Society of Public Teachers of Law, N.S. vol. 1 (1948) 228, remarks, the book "still retains its characteristic admixture of law as it is and law as it would be if it were better than it is". He suggests that occasionally the distinction between the "actual" and the "ideal" is not clearly drawn.

JOHN D. FALCONBRIDGE

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Final Legal Fictions: A Series of Cases from Folk-Lore and Opera. By A. LAURENCE POLAK. Illustrated by DIANA PULLINGER. London: Stevens & Sons Limited. 1948. Pp. iv, 117. ($1.50)

This book is the third and unfortunately the last of a series in which Laurence Polak has added considerably to the all too thin shelf of lighter legal literature, of which *Scintilla Juris* and *Forensic Fables* are perhaps the best known.

The lawyer-reader will find the author's highly original idea of taking well-known stories of Hans Andersen and operatic works of Mozart, Gounod and others as the bases for a number of intricate legal situations both bright and entertaining. The student will find the series of judgments a most absorbing and satisfactory way of digesting a few legal principles.

Each "judgment" is based on the peculiar circumstances, and consequent legal situation, in which the dramatis personae of these familiar stories found themselves. The law cases range from a tort action brought by Hansel and Gretel against a witch, in which the question of whether a gingerbread house constitutes an allurement is considered, to a claim for damages for nuisance made by an ogre against one Jack, said nuisance having been caused by a rapid-growing beanstalk, and a counterclaim for trespass committed by the plaintiff when he attempted to abate the nuisance.

Each case discusses legal principles both old and new in a most witty and engaging fashion and represents a most palatable way in which to refresh one's knowledge. *Final Legal Fictions* is a book that lawyers and law students alone can appreciate and it will provide some amusing moments for them.

NORMAN MACL. ROGERS

Toronto

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Shawcross on the Law of Motor Insurance. Second edition. By CHRISTOPHER SHAWCROSS and MICHAEL LEE. Toronto: Butterworth & Co. (Canada) Ltd. 1949. Pp. LXXXIX, 752, 92. ($22.50)

The Canadian legal practitioner is apt to view the works of English authors with some reservations, particularly when they deal with fields of law that have been the subject of recent English legislation. Such un-British sentiments, let it be said at once, cast no reflection upon the integrity of British scholarship but rather arise from the purely practical consideration that their textbooks may have a limited use for practitioners in this country. Furthermore, in insurance law generally, Canadian policy forms in fields other than marine are showing a growing similarity to American forms and a commensurate dissimilarity to English forms.

In these circumstances, the greatest compliment I can pay to the work under review is to suggest that every practitioner is this field ought to consider his library incomplete without it. The impact of the motor vehicle upon modern society has produced in England and Canada the same result. The result is legislation and voluntary arrangements to ensure that there shall be in existence a fund of money available to protect innocent parties, including third parties, from the wrongs of insolvent tortfeasors. It is this similarity in the evolution of the law on motor vehicle insurance which maintains the usefulness of Shawcross for the Canadian reader, notwithstanding that individual cases cited may depend upon the wording of particular English statutes.

The arrangement of the work is logical and the general exposition is clear and concise. The chapters on general principles of motor insurance law, principles affecting liability, the making of the contract, the policy, operation and termination of policies are for the most part applicable to the

insured and insurer in Canada. There is also a useful chapter entitled "Position of Parties in regard to Legal Proceedings" dealing specifically with matters not usually found in books of this kind, such as liability for assureds' costs in litigation between assured and third parties, confidential communications between insurers and assured, and the duty not to mention insurance to juries. Those who have had to rely on Mr. A. P. Herbert for legal humour will be surprised to find in this chapter the humourous origin of the non-disclosure rule. It is stated that a barrister once exhorted a jury that they need waste no sympathy upon a rascally motorist since he had proved his depravity by insuring with a large and wealthy insurer. When the commotion in court had subsided, the barrister informed the judge that he had carefully ascertained before making the announcement that such disclosure was not a ground for a new trial but merely a gross breach of professional etiquette.

This book deals more extensively than any other English text with the relationship between an insured and insurer and the solicitor selected by the insurer. There have not been many Commonwealth decisions on this subject and the principles laid down in *Groom* v. *Crocker*, [1937] 3 All E.R. 844, are assuming an increased importance. The effect of this decision is adequately dealt with.

The first edition of Shawcross was published in 1935 and there have been numerous important decisions reported since that date. The principles enunciated in the latest decisions are exhaustively commented upon and, notwithstanding that they may depend upon particular statute or policy forms, the general practitioner in Canada will find many of them to be directly applicable or, at least, to have value by analogy. Those who prefer their texts with a minimum of footnotes will not be too offended by the general arrangement of this volume, because, although the footnotes are numerous, the facts of each important decision are sufficiently set out in the text at the place where the important principle of the case is discussed. The editing has been careful, although footnote (f) at page 441 should read 1934 instead of 1933. The reader will be greatly assisted by the comprehensive index.

In Canada we lack definitive works on insurance law by Canadian authors. Mr. Laverty's work covers too much territory for a one-volume text and, in any event, it is now out of date. I suggest that the Canadian practitioner will find most of the answers to his motor insurance problems by using this latest edition of Shawcross with Mr. Chitty's handy volume (*The Law of Motor Vehicle Liability Insurance*, by R. M. Willes Chitty) as a companion piece.

DOUGLAS MCK. BROWN

Vancouver

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Labour Relations and Precedents in Canada. By ALFRED COSBY CRYSLER, B.A., LL.B. Toronto: The Carswell Company, Limited. 1949. Pp. viii, 504. ($9.50)

This book constitutes a ready reference to Canadian labour laws and is particularly adapted for use by the general practitioner. The author reviews

objectively the growth of labour relations and labour laws in Canada, with emphasis on the wartime period and post-war legislative changes. There is a comprehensive digest of the decisions and recommendations of various administrative boards, which now represent the main body of current labour jurisprudence apart from arbitration cases. The text is replete with case references, both civil and criminal, and also treats the background of English case law. The leading decisions concerning strikes, picketing, intimidation and other related issues are reviewed and analyzed.

The work represents the first complete digest of collective bargaining legislation in Canada and, indeed, should become enhanced in value, with the development of labour law, as a convenient reference to the important principles established by the National War Labour Board and numerous boards of conciliation in their respective decisions on wages and other working conditions. Although the summary chart of typical clauses in recent collective bargaining agreements is not strictly current, since the book was published some six months ago, it is useful as a guide to the various practices prevailing in the thirty-one different industries the chart embraces. The author's connection with trade associations and service industries well qualifies him for a work of this nature.

ROBERT V. HICKS

Toronto

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The English-Speaking Peoples. By EDGAR MCINNIS and J. H. S. REID. Toronto: J. M. Dent & Sons (Canada) Limited. 1948. Pp. vi, 509. ($5.00)

When Bismarck, the only sage aggressor whom the Reich has had, was once asked what was to him the most important fact in the world his reply was, "The fact that North America speaks English". Bismarck would surely approve this modern history because it is much more than a panegyric. This quiet work of art (in that its art is unobtrusive) commands respect. Especially it should be medicinal for imperialists of the Blimp type who in these days of "retrenchment" cannot appreciate all the forces to which our novel empire is subject. It is not history in popular vein. The authors have consolidated the events of our world since 1689 in masterly order, in a style that will commend itself to pre-occupied lawyers who will be amazed how many fundamental facts require refreshment in their minds.

What is the scope and purpose of this book? By "the English-speaking peoples" the authors mean the major British Dominions, including the subcontinent of India, and that famous fugitive from the First Empire, the United States of America. In this "modern history" of those language-related communities is their story from 1689 to 1948. It is general history containing all that one expects under that title — and more than the customary degree of objectivity — except that it is uncluttered with military manoeuvres. Only the American Civil War and World War II are considered at any length in 5.4 and 7 pages respectively. The Boer War is disposed of in a page whereas the analysis of the issues before the United Kingdom in its crucial election of 1906 runs to 3.3 pages. One may hail the new departure. The spotty accounts ordinarily given of warfare must make professional soldiers weep just as barristers become exasperated at many a headnote.

Moreover less competent historians pretend to find new governments under a cabbage leaf. These writers, with full acknowledgment of the part working people exercise in elections, are not afraid to handle the real stuff of politics with a pretty fair ability to call spades by their right names.

The treatment of the subject matter has been criticized for being episodic. It has its limitations. One often has a sense of being left hanging in mid air, something like the heroine in those early dreadful Western movie serials. The villain would have her suspended over a buzz saw when all of a sudden the next scene would be, not death or release, but the injunction, "Don't miss next week's thrilling instalment!" So for one of scores of examples the reader is keyed up by such a sentence as this on page 339:

> "The new Sinn Feinn organization was pledged to complete independence; its members were motivated by a burning resentment against all things British, including the British parliamentary procedure; and its tactics were to wait until the moment was ripe for a full scale revolutionary outburst."

And just as he braces himself for Tommies being dropped to the pavements of Dublin, the story switches in the next sentence to India.

Yet is there any alternative to concurrent narratives? If a tabulation had been made of the many cross-currents that went toward shaping the offspring bodies as they grew up beside the aged parent, would it not have assumed a knowledge in the reader of most of the data the book has to record?

The relations are there. A Canadian has only to have 1867 in his mind, for instance, to be struck by such an observation as this: "The Jamaica planters . . . aroused by a Negro insurrection in 1865 and anxious to avoid the responsibility of continued subjection of the black population, petitioned for the abolition of the representative government they had enjoyed since the Seventeenth Century, and their petition was granted in 1866" (p. 284). The authors indeed have made the most of their method. They have been light-fingered when they must have been subject to an almost uncontrollable impulse to be heavy-handed in moralizing.

From such a range of material the reader is rewarded in many ways. The solicitor is reminded of rent control in Ireland back in 1881 (p. 274) and of labour courts being established in South Australia as early as 1894 (p. 411). Now that constitutional conveyancing is in vogue again draftsmen may ponder for national application this paragraph (p. 177):

> "There was also a refusal to draw a distinct line between local affairs and imperial matters. In the end this was probably beneficial. It allowed, not only Canada, but the other self-governing colonies to acquire steadily broader powers, and preserved that flexibility that has been a salient feature of the evolution of the Commonwealth. But at the time it represented a reluctance on the part of Britain to relinquish her discretionary power of interference; and it involved a rejection of the most important of Durham's recommendations — the concession of responsible government."

From their Olympian viewpoint the authors, like skilled diagnosticians, touch — and only touch — upon the sore spots around which history seems to gather. And if apt quotation covers the point, it is employed without elaboration. Is any needed for these two relics from the Deep South? The first

occurs in 1861: "the corner stone of the Confederate States is this great and moral truth, that the Negro is not the equal of the white man; that slavery is his natural and normal condition". The second comes in 1924: "This is a socialistic movement [child labour regulation] and has for its end purposes far deeper and more radical than appear on the surface. It is part of a hellish scheme laid in foreign countries to destroy our government". Here is Sir Robert Borden tartly telling an English audience, "I would like you to understand that Canada does not propose to be an adjunct even of the British Empire". There is a New Zealand observation upon the 1938 election in those islands: "Electors who read both party platforms found that the detailed means by which the Nationalists proposed to preserve existing society were almost identical with those by which Labour hoped to lead the country painlessly toward the joys of Socialism". And harking back to the days of the Anti-Corn Law League brings the sharpest quotation of all. The League brought to its platforms the wasted figures of farm labourers to utter their plaintive: "I be protected, and I be starving!"

Of the literary departments, one must first say that the writing itself *flows*. The reader has been carried a long way into the book before he quite realizes how smooth is his vehicle. This tribute to level excellence of style is doubled as one recalls that each of the two authors composed his own section of the work. The problem of documentation, which could have been appalling, has been solved by elimination. When one is in such good hands he need not be concerned. The proof reader nodded only once and then not until page 495.

As one lays down the treatise two impressions prevail. One is that of the desperate slowness with which the Juggernaut car of history rolls over the lives of people. The other is that of renewed admiration for John Bull, pestered with conflicting counsel from every quarter, glumly contriving from wildernesses the grandest institution to arise in world politics. This association which Britain has raised about herself shall continue to be maintained, as Radical Jack (Lord Durham to school children) put it, by "the *participation* of freedom, that sole bond, which originally made, must still preserve, the unity of the Empire".

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Semaine Internationale de Droit

The Société de Legislation Comparée and the Association Henri Capitant have decided to organize in collaboration a Semaine Internationale de Droit in Paris from the 16th to the 21st of October, 1950, at which will be discussed questions of comparative law and legal scholarship. A similar gathering was last held in 1937. The president this year will be Judge J. Basdevant, of the International Court of Justice, and the secretary-general, M. Marc Ancel. The offices of the secretariat are at the Institut de Droit Comparé, 12, Place du Panthéon, Paris V^{e}.