

## Reviews and Notices

*Le Centenaire du Barreau de Montréal: 1849-1949.* Edited by PIERRE BEULLAC, C.R., and the HONOURABLE E. FABRE SURVEYER. Montreal: Librairie Ducharme, Ltée. 1949. Pp. 236. (\$2.00)

The distinguished editors of this handsome *quarto* memorial volume, and the members of the Bar who, the editors acknowledge, "ont rendu possible la publication de cette brochure en souscrivant les sommes requises pour son impression et sa distribution", have earned the lasting gratitude of the Bar of Montreal, indeed of the Bar of the Province. One hundred years of organized existence, gradually modified and improved by statute and internal discipline for larger service, better training, wider horizons! — not so long a time, when one can look back through forty-four years of that century and remember clearly the face and the voice of many of those here recalled with such nostalgic effect; yet relatively long, for the first fifty years, and those who then flourished in their prime and laid the firm foundations of our Order here, seem to come back to us from an antique age of less strain and hurry, more leisure to do a few things well, more *camaraderie*, even more devotion to the law itself.

The modesty of the editors in introducing their work is disarming. "Its purpose", they say, "is to commemorate the 100th anniversary of the Montreal Bar, and it contains: biographies of those who served as 'batonniers' during the first fifty years; the list of 'batonniers' since; pen pictures of some eighteen members of the Bar chosen among those who have left a deep impression upon their contemporaries; a short history of the Montreal Court House and its surroundings; also articles on the Junior Bar Association and the Montreal Advocates Benevolent Association". That is but the skeleton, the mannikin, which the various essays and pen pictures, biographies, and historical summaries clothe firmly and fully so that the past, like a cavalcade, comes to life again before the inward eye of the reader. The sketches of the earlier "batonniers" are largely a reproduction of records of their careers drawn from many documentary sources, archives, genealogies, and obituary eulogies, which it is of the utmost importance to have gathered here. But in them it is plain to see from what humble origins, through what struggles for an education and an opportunity, many of the leaders of the Bar glimpsed and followed their star to success and fame. Someone, with insight and a revealing touch in his pen, indeed several writers, anonymous all, have with tact and sympathy led us back through those fifty years.

Anonymous, too, are the authors of the thumbnail pen pictures of the eighteen lawyers "who have left a deep impression upon their contemporaries" of the last fifty years — all of them now, alas, dipped down behind

life's stage. It would be a pleasure to be able to announce them, for the sketches have about them, in several instances at least, some of the charm of Lamb's "The Old Benchers of the Inner Temple". Yet for us who knew some or all of the eighteen, it is difficult to think of them as old, to realize even that they are gone — grateful as we are that in this book they have found an immortality. "Jack" Cook, Simeon Beaudin, Aimé Geoffrion, N. K. Lafamme, "Sam" Jacobs, Eugene Lafleur, Donald Macmaster, Mignault, "Bob" Smith — the names ring a full-toned bell in the memory of all of us who are out of our professional "teens"; for they were our friendly elders, our counsellors in anxiety, our exemplars in practice, sometimes our opponents.

Not a little striking is the fact that, taking all the biographies and the sketches together, it so often is the likeable humanity, the essential kindness, the professional generosity of the individual, rather than his mere forensic success or the size of his practice, that the writer almost unconsciously makes the overtones of his tribute — and the overtones linger and are heard, always, in memory's ear. There are sketches of several older members who, though of genuine ability, because of their personal oddity or of their unexplained failure in mid-career, missed their way and fumbled — yet they too are remembered kindly and saved from undeserved oblivion. These implicit contrasts convey their unspoken moral; and of each member of the Bar whom this book records, and of us all, it may be said with Robert Louis Stevenson: "Life is not designed to minister to a man's vanity. . . . When the time comes that he should go, there need be few illusions about himself. 'Here lies one who meant well, tried a little, failed much':—surely that may be his epitaph, of which he need not be ashamed."

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*Buckley on the Companies Acts*. Twelfth edition. By THE HON. D. B. BUCKLEY, M.B.E., M.A.; assisted by NIGEL WARREN, B.A., and G. BRIAN PARKER, M.A., LL.B.; Consulting Editor, CECIL W. TURNER. London: Butterworth & Co. (Publishers) Ltd. Toronto: Butterworth & Co. (Canada) Ltd. 1949. Pp. ccxxiii, 1236, 140. (\$26.25)

Canadian lawyers will welcome the arrival of the twelfth edition of *Buckley*. It is nearly two decades since the appearance of the eleventh edition, and the practitioner will find it interesting and informative to see how the editors treat the many important decisions which have been reported since 1930.

This is the first edition to be published since the death, in 1935, of the author, Lord Wrenbury, and the third edition to be published without more than "the author's solicitous parental eye". The twelfth edition is under the editorship of Denys B. Buckley, son of the author and one of the editors of the eleventh edition.

The causes for the great lapse of time between the publication of the eleventh and twelfth editions were wartime conditions, the appointment in 1943 of the Cohen Committee on Company Law Amendment culminating in

its report in 1945, and the resulting enactment of the Companies Act of 1948, which effected numerous changes in the law in the United Kingdom.

The editors have adhered to the original form of *Buckley*. The text is essentially a sectional commentary on the United Kingdom Companies Act, each section being set out in full and followed by a statement in smaller print of the results of relevant decisions. This organization of the text following the sections of the Companies Act does not lend itself well to the treatment of "concepts": for instance, the discussion of the doctrine of *ultra vires* is scattered throughout the text, falling on pages 22-24, 168, 210-213, 459, 775, 824, 862 and 863. The problem of alteration of the articles of association receives the same treatment. It will thus take the student some time to master the use of the book. It is essentially a practitioner's text. It includes in supplementary form, either with or without comment, such allied material as the Rules of the Supreme Court (Companies), the Companies (Winding Up) Rules, the Companies (Forms) Order, the Companies (Fees) Order, the Companies (Board of Trade) Order, and, for the first time, the Supreme Court Fees Order, the Companies (Unregistered Companies) Regulations and certain non-statutory regulations.

A few changes have been made. The names of the cases in the footnotes are now given in full. The Table of Cases now contains complete references for all cases noted, including references to the *English and Empire Digest*. A welcome innovation is a comparative table of United Kingdom and Dominion statutes, supplied with the text by the Canadian distributor. These tables cover the United Kingdom Companies Act, the Dominion Companies Act and the Dominion Winding Up Act. While the policy of *Buckley* is stated to have "always been to confine comment as far as possible to stating the results of decided cases", the editors have stated and discussed numerous points of doubt, largely with respect to problems arising out of the new Act.

It must be kept in mind that *Buckley* deals with a statute the nature of which is indigenous only to the "registration system" provinces of British Columbia, Alberta, Saskatchewan and Nova Scotia. Secondly, it deals with a new statute, decisions on the effect of which may or may not be applicable to Canada. Thirdly, the only Canadian cases included are ones which were heard by the Judicial Committee of the Privy Council. Thus, although the *Bonanza Creek* case is listed in a footnote, there is no mention whatever of the incompatibility of the decision of the Supreme Court of Canada in *International Power Co. Ltd. v. McMaster University et al. and Montreal Trust Co.*, [1946] 2 D.L.R. 81, with the recent decision of the House of Lords in *Scottish Insurance Corporation v. Wilsons & Clyde Coal Co.*, [1949] 1 All E.R. 1068, with respect to the *prima facie* rights of preference shareholders on a winding up. The decision of the House of Lords in the latter case was not available at the time of the preparation of the text, and is inserted by way of addendum to the decision of the First Division of the Court of Session (Scotland), which it affirms. There is no consideration of the problem of no par value shares, a concept still foreign to the United Kingdom Act.

In spite of these "non-Canadian" features, practitioners, particularly in the "registration system" provinces, will welcome the new arrival for the reason that existing Canadian texts are either out of date or are essentially studies of the "letters patent" system. Wegenast on *Canadian Companies*, it will be remembered, is practically as old as the eleventh edition of *Buckley*;

Masten & Fraser on *Company Law of Canada* (4th ed., 1941) deals mainly with the Dominion type company; and Fraser's *Handbook on Canadian Company Law* (4th ed., 1945) is not a case text.

A book of this size invites quantitative description. Of its sixteen hundred pages, the Table of Cases alone consumes one hundred and eighty-four pages, well over twice the size of the Table in the eleventh edition. The sections of the Act and their commentaries extend for nearly a thousand pages, and the Rules, Forms & Fees, Orders, etc., for some two hundred and fifty pages. The excellent index takes another one hundred and forty pages.

The twelfth edition of *Buckley* is an exhaustive work: if Halsbury's *Laws of England* can rightly claim to be "a complete statement of the whole law of England", the publishers of *Buckley* can hardly be denied the right to describe this comprehensive text as presenting "in one volume the whole of the law and practice relating to companies under the Companies Acts".

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*Traité Technique et Pratique des Brevets d'invention.* By ALAIN CASALONGA, Docteur en Droit. Paris: Libraire Générale de Droit et de Jurisprudence. 1949. Vol. I, pp. 463; and Vol. II, pp. 590.

An earlier work by this author was reviewed some years ago by that distinguished Canadian lawyer, the late O. M. Biggar, C.M.G., K.C., whose passing we have all so deeply mourned (*Traité de la brevetabilité: Le concept de cause et le brevet d'invention*, 4 University of Toronto Law Journal 196). The present volumes continue the high standard of the author's earlier work and serve to add lustre to his already distinguished reputation.

This substantial work is divided into four main parts, each of which treats a general division of the subject in a scholarly and definitive manner that can only be described as wholly admirable. Part I deals with some general considerations concerning patents, the object of a patent of invention, novelty and the industrial character of the subject-matter, the latter being a principle of French patent law which the Anglo-Saxon patent lawyer salutes with respect and a vain wish that it could be substituted, in our law, for our bedevilling and frustrating principles of "invention" and "subject-matter".

Part II discusses validity and, of course, treats that subject from the standpoint of French law, which is so much more simple and reasonable than our own. As provided in the *Loi du 5 juillet, 1844*, Art. 2: "Seront considérées comme inventions ou découvertes nouvelles: L'invention de nouveaux produits industriels; L'invention de nouveaux moyens ou l'application nouvelle de moyens connus, pour l'obtention d'un résultat d'un produit industriel."

These provisions of the law Me. Casalonga proceeds to discuss with a clarity and thoroughness that are both scholarly and practical. We are led through a discussion of the meaning to be placed upon the terms "new means",

“new industrial product” and “the new application of known means” — terms which are, in many respects, familiar to us but the effect of which is considerably different in the law of France. There, it would seem, the spectre of “invention” does not stand before every patentee, ready with its scythe to cut down and destroy the reward of labour and technical effort on the accepted principle of Anglo-Saxon law that the “value” judgment of a court may class an invention as being obvious or merely the result of mechanical skill — a principle which presently serves to invalidate two out of every three patents litigated.

Me. Casalunga, in this Part, discusses inventions which are contrary to law, inventions which do not possess an industrial character, such as schemes and plans, and points out with clarity the distinction between patent property on the one hand and property by way of copyright, trade marks and designs on the other. Insufficiency of the specification and lack of novelty are also treated and a full discussion is given of procedure on application, including the rights accorded under the International Convention, the latter subject forming the basis of a historical survey of the Convention which is of inestimable value.

Causes of nullity and forfeiture and the relevant actions are discussed and there is a thorough treatment of the law covering the property in patents, including the law of master and servant, assignments and licences.

Part III deals with infringement and the action for infringement, including the applicable procedure.

Part IV consists of a sort of catch-all entitled “Questions Diverses”; it discusses such various matters as arbitration, temporary protection at exhibitions, trade secrets and war measures respecting patents during the second world war.

One of the most valuable aspects of this work, in harmony with the practice employed by the learned author in his earlier work, is the recurrent treatment of comparative law on the various points involved in the discussion. To a Canadian lawyer this is a most valuable addition to the utility of the work. The learned author supplies, on almost all the broad points involved, a comparison not only with the law of Great Britain and the United States, but also of Germany, Switzerland, Belgium and Italy. There is no work available in the English language which gives this useful information and it is probably a commentary not only on the arrogant insularity of the Anglo-Saxon but upon his lack of scholarship and interest in the field of comparative law that we must turn to works in foreign languages to supply our deficiency. It may be partly on this account and partly on account of its relevant unimportance in the international field of legal scholarship that there appears in Me. Casalunga’s work no discussion of the Canadian law and no reference to Canadian works or decisions in this field. Perhaps in the next edition of his work Me. Casalunga may feel that a comparative discussion of the law of Canada may add something to his work. We may be permitted respectfully to hope so.

Altogether this work is one which is entitled to the highest respect. It is scholarly and at the same time useful. The appendices, containing the relevant statutes and orders both in the domestic and in the international field, supply much information not easily obtained elsewhere. There are a number of minor defects in typesetting and proof-reading but these are so infrequent as to be immaterial. They do not in any way detract from the

work of this eminent author, and one puts it down with a sense of deep admiration for the brilliant and scholarly mind of its author and of envy of his powers of clear exposition and application to a difficult task.

Toronto

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*Rent Control.* By DENNIS LLOYD, M.A., LL.B., and JOHN MONTGOMERIE, B.A. Toronto: Butterworth & Co. (Canada) Ltd. 1949. Pp. xlix, 454. (\$6.25)

*The Rent Acts.* Fourth edition. By R. E. MEGARRY, M.A., LL.B. London: Stevens & Sons Limited. 1949. Pp. xlvii, 293, 13. (\$7.75)

These are practitioner's books, and excellent for the purpose. But only British legislation is considered and, apart from the handful of Canadians who may be interested in the academic comparison of British and Canadian rent control, only the British practitioner will be likely to purchase them.

On a cursory perusal one might be struck by the seeming similarity of our Wartime Prices and Trade Board orders and some of the British statutes, but the differences, though insidiously minute, are very real. Such vigorous opponents of Canadian rent control as the Canadian Federation of Property-owners' Associations will heartily agree with the statement in the preface to *Rent Control*, "The complexities of rent restrictions have been the subject of very forcible criticism from the Bench and elsewhere, and it is unfortunate that legislation which so intimately affects the lives of millions of ordinary citizens should be in so chaotic a state", but less likely to agree with the next sentence, "But despite their patent defects the Rent Acts do make a contribution to social justice which should not be underrated".

Some may think more apt the observations in the introduction to the same book: "Rent control has . . . continued to be regarded as a subject for emergency measures, with the result that the relevant legislation has emerged in the form of a string of miscellaneous and hastily drafted statutes, devised to meet particular points as they arise, with little if any attempt to integrate the whole into a consistent system or to bring about even a minor degree of consolidation. The consequent welter of confusion has been exposed to ceaseless criticism from judges, practising lawyers, and laymen alike . . ." <sup>1</sup> British rent control, initiated in 1915, revised in 1920 and greatly extended since 1939, is still expressed to expire six months after an order in council declaring the "emergency" at an end; no such order has been made, and the authors see no sign of its imminence.

Mr. Megarry, who will be better recognized in Canada as the editor of the 23rd edition of Snell's Equity and the Assistant Editor of the Law Quarterly Review, has collected in his introduction a series of comments upon the legislation, each duly supported by the citation of the case in which it appears, which cannot help but intrigue anyone who has followed the judi-

<sup>1</sup> Cf. W.P.T.B. Order 813, passed November 10th, 1949, to come into effect December 15th, 1949. On December 14th, 1949, before Order 813 had even come into force, Order 818 was passed, amending twenty-two separate subsections or sections.

cial and editorial criticism in Canada of our own legislation. Putting these comments together in six sentences, he has produced the following: "In this 'extraordinary and unique legislation' the Acts were passed in a hurry; the language used was often extremely vague, and resembles popular journalism rather than the terms of the art of conveyancing. It is patchwork legislation, has not been framed with any scientific accuracy of language, and presents great difficulties of interpretation to the Courts that have to give practical effect to it. Parliament has thus left it to litigants to establish much of the law, and they have not failed in their duty; thus in one case it was said of the parties 'The sum in dispute is only £10 . . . but, with a zeal for the elucidation of the law which the legal profession will commend, they are now fighting the matter in the third Court.' In construing the Acts, the Court must endeavour to place a reasonable interpretation upon the statute if the language used admits of such an interpretation; nevertheless, not the least of the difficulties of the Acts is the uncertainty as to which of the two principal attitudes to the Acts the Court will adopt in any case of doubt. One approach is to try to construe the Acts so as to produce a workable and just system, even if this puts some strain on the literal meaning of the words in the Acts. The other approach is to construe the Acts literally, regardless of the often strange results, and leave it for Parliament to remove the anomalies, a task for which the legislature has shown no undue avidity."

Nothing is more calculated to make the Canadian practitioner rejoice that he does not practise in England than the reading of the statutory provisions and the comment appearing in these two books. Indeed one can scarcely refrain from thinking that Sir A. P. Herbert himself must have had a hand in drafting some of the sections which are reproduced in the books, and which are analysed by the learned authors. Rent control, now divided into "old control" and "new control" (the dividing line falling in the year 1939), is sub-divided still further by classification within "old control", consisting of class A, upper class B, lower class B, and class C. There is also a variety of leases which are decontrolled under various statutes running back before 1925.

There are, however, in *Rent Control* four chapters which are valuable to Canadian practising lawyers, three of them on "recovery of possession", and one on "assignment, subletting and devolution". These open with a theme whose truth the Wartime Prices and Trade Board finally managed to demonstrate to Canadians: "The corollary of rent control is security of tenure, without which it would be ineffective". Particularly interesting is the collection of English cases on determination of tenancies. From these it appears that the English courts have been considering a number of tricky points which have proved most troublesome in Canada but upon which virtually no Canadian case law can be found.<sup>2</sup> There is also an interesting section on "statutory tenants" (whose contractual rights have been determined but who are entitled under the Acts to remain in possession). The doctrine of "statutory tenancy" has not been developed in Canada to any great extent, although the judgment of McRuer J.A. (as he then was) in *Burns v. Hodgson*<sup>3</sup> left the door ajar.

<sup>2</sup> *E.g.*, length of notice where the present landlord is not sure of the precise terms of the tenancy; the effect of a tenant's representation as to this; giving a second notice falling in *prior* to the first; waiver of continuous breach of covenant; whether a tenant can have two "residences"; "ceasing to occupy"; revival of rent control protection; employee-tenants; "greater hardship". There are statutory provisions as to notice to quit where the tenant dies intestate and there is no administrator. Cf. *Colonial Coach v. Nicholson*, [1949] O.R. 822.

<sup>3</sup> [1945] O.R. 876.

These four chapters are written in that lucid, succinct way which so delights the practitioner and would well repay study by anyone who is seeking to run down a particularly intricate point on which Canadian authority is scant.

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### Books Received

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

*Court Over Constitution: A Study of Judicial Review as an Instrument of Popular Government.* By EDWARD S. CORWIN. New York: Peter Smith. Reprinted, 1950. Pp. xi, 273. (\$3.25)

*The Export Trade: A Manual of Law and Practice.* By CLIVE M. SCHMITT-HOFF. Second edition. London: Stevens & Sons Limited. 1950. Pp. xxxii, 393. (25s. net)

*Federal Income, Estate and Gift Tax Laws Correlated.* By WALTER F. BARTON. Tenth edition. Washington: Tax Law Publishing Company. 1950. Pp. xxv, 893. (\$35.00)

*The Formative Era of American Law.* By ROSCOE POUND. New York: Peter Smith. Reprinted, 1950. Pp. xi, 188. (\$3.00)

*The Law of Income Tax: A Treatise Designed for the Use of the Taxpayer and His Advisers.* Eleventh edition by E. M. KONSTAM, K.C. London: Stevens & Sons Limited. 1950. Volume 1, Text, pp. lxxvii, 529-82. Volume 2, Statutes, etc., pp. 1005-2219. (£8, 8s. net; annual service subscription, 30s.)

*Manual of German Law.* Volume 1, General Introduction, Civil and Commercial Law. London: His Majesty's Stationery Office. 1950. Pp. xxvi, 297. (£1, 5s. net)

*Majority Rule and Minority Rights.* By HENRY STEELE COMMAGER. New York: Peter Smith. 1950. Pp. 92. (\$2.50)

*Pollock's Principles of Contract.* Thirteenth edition by SIR PERCY H. WINFIELD, K.C., F.B.A., LL.D. London: Stevens & Sons Limited. 1950. Pp. v, 610. (£2 net)

*Ratification of International Treaties.* By JOSÉ SETTE CAMARA, LL.B., M.C.L. Foreword by HANS KELSEN. Toronto: The Ontario Publishing Company Limited. 1949. Pp. xii, 173. (No price given)

*Sexual Deviations.* By LOUIS S. LONDON, M.D., and FRANK S. CAPRIO, M.D. With a foreword by NOLAN D. C. LEWIS, M.D. Washington: The Linacre Press, Inc. 1950. Pp. xviii, 702. (\$10.00)

*Social Meaning of Legal Concepts: No. 2, Criminal Guilt.* Edited by EDMOND N. COHN. An Annual Conference Conducted by the New York University School of Law in association with the Division of General Education. New York: New York University School of Law. 1950. Pp. iv, 93-188.