Reviews and Notices

Government by Decree: A Comparative Study of the History of the Ordinance in English and French Law. By MARGUERITE A. SIEGHART, L.L.B., Dr. Jur. With a foreword by C. K. ALLEN, M.C., K.C., D.C.L., F.B.A. London: Stevens and Sons Limited. 1950. Pp. xxix, 343. (30s. net)

In view of the greatly increased interest in the study of administrative law during the past quarter century, and of the growing awareness among English scholars that French *droit administratif* is a functioning system which in many respects far surpasses the "administrative lawlessness" of countries with the British type of constitution, it is surprising that we should have had to wait till the publication of this admirable volume for a clear and succinct account in English of just how the French administrative tribunals operate and of the principles of law which they apply. Perhaps it is to be expected that the study should be made, not by any English author, but by one who combines a native knowledge of continental practices with a first-hand experience of English legal institutions gained during her recent residence in that country. For, as C. K. Allen points out in his foreword, the subject is difficult for an English lawyer because he is constantly met with principles and procedures which are unfamiliar to him. Dicey's well-known incursion in this field, with its attendant legacy of error, may well have frightened off less positive characters. Though English authorities such as Port, Robson and Jennings have ventured to illuminate their writing with French comparisons, they cannot claim the depth of specialised knowledge that Mrs. Sieghart evidences in this book.

But *Government by Decree* is more than a description in English of French administrative law. It is also a study of the ordinance and its uses in English law and in French law from the earliest times till today. The book contains two parts, one devoted to English practice, the other to that of France. Part one deals with the history of the ordinance in England — the ordinance being defined as any general rule of law not emanating from a legislature, and excluding rules made by local authorities and courts. This part covers ground that will be familiar to English students, though the historical approach gives the account a direct relationship to English constitutional evolution that sets it forth in most helpful perspective. Mrs. Sieghart is thus able to show that many of the characteristics of English administrative law, such as its piecemeal character and unplanned growth, are due to the victory of Parliament over the Royal claims to absolutism, which denied the executive any general legislative authority such as it possessed in the continental states. She makes clear that we are dealing with something perennial in the life of states; there is nothing new today in the use of the ordinance

save the degree. In its rapid extension she sees an ominous danger; indeed, one of the purposes of the book is to awaken Englishmen to the realisation that other countries have started along this road only to end, as France ended under Pétain, in dictatorship.

While admitting the validity of the parallel, one cannot escape the feeling that the author is unduly perturbed. She belongs very definitely, like Mr. C. K. Allen, to the more conservative of the two camps into which all writers on administrative problems seem to divide themselves. The only books she refers to in her preface as having called the attention of the public to the importance of the new administrative rôle of the state are Allen's *Law and Orders* and Hayek's *Road to Serfdom*. She declares that it is "a natural consequence of the character of collectivistic legislation that it tends to transfer the task of making decisions from a democratic Legislature to an autocratic Executive". Any notion that it might be more accurate to say that such legislation transfers the making of decisions from irresponsible private executives to a responsible public one seems never to occur to her. She expresses something akin to horror at the thought that law "thus becomes a means for political experiment". One would have thought that any attempt to disassociate law and politics, even experimental politics (whatever that may mean), had long since disappeared. She seems not to appreciate the very large area over which the common law courts have in fact preserved a judicial control. But these indications of personal preference neither warp her history nor weaken her conclusions, for she rightly says that the problem today is not to try to get rid of the inevitable process of government by decree, but to bring it under reasonable control.

The second part of this book is, like the first, treated historically, but the bulk of the text deals with contemporary French practice in respect of administrative law and ordinances. The description is lucid and concise, and the cardinal principles are kept well in the foreground. Many of these principles are so radically different from those of English law that at first one is startled to find that the end results are somewhat similar, in the sense that in most cases where there is a recourse in France there is also a recourse in England, different though it may be. The French system gave greater responsibility to the state, less to the agent; English law held the Crown servant to a personal liability even when the Crown could do no wrong. In practice this meant a better protection in France, for the public purse makes a more solvent defendant than the private pocket. In France, as in other continental countries, the evolution proceeded from absolutism and centralisation towards a growing legal protection for the individual through administrative tribunals, which built their democratic structure upon the increment of decided cases. In England the evolution was from an initial decentralisation toward the present very large state authority, with the ordinary courts being slow to move but gradually creeping up on the bureaucrats through new principles of statutory interpretation and new concepts of "natural justice".

A recent writer in the Modern Law Review has ventured the opinion that English courts now provide almost as complete a protection for the individual as do the French tribunals; a reading of this book makes this view seem hardly tenable (*e.g.*, French liability for "social risk", or for damages caused by the execution of a law which with us is not actionable unless there is negligence). Such generalisations are dangerous and Mrs. Sieghart

does not indulge in them; she merely points out that "the difference which existed in the past between the English and the French systems of administration tends to decrease in modern times under the impact of social and economic forces". It is interesting to follow her account of how, despite a formal theory of the separation of powers, France has been obliged, like the United States, to tolerate a wide legislative power in the executive — so wide, indeed, that she fears that by introducing this method over so broad a field Parliament has gradually surrendered its function as a legislature and paved the way to its ultimate abdication.

The last chapter in this volume contains the author's general conclusions. Here we enter upon constructive if contentious ground. She comes out wholeheartedly for an administrative Court of Appeal. She thus follows Robson, though she considers that he would too strictly limit this appeal. This court should, she thinks, consist of a combination of judges with special training in constitutional and administrative law, and administrators with a wide and practical experience of administrative requirements. Among its most important functions would be the control of discretionary powers, in order to maintain "administrative morality". The judge would inquire into motives, to make sure there was no *détournement de pouvoir*, no misapplication of authority. This is the purpose of the present concepts which English and Canadian judges designate as "natural justice", but there is all the difference between a common law court and this mixed body of judges *cum* administrators. It is indicative of the movement of opinion on this subject that Mr. Allen himself, in his foreword, admits that he has been converted to the belief that special courts are now necessary to fulfil this function, after having hoped for many years that administrative law could be fitted into the existing framework of our judicature. Mr. R. C. FitzGerald, in his article in the May issue of this journal, also supports this proposal. Perhaps not many Canadian lawyers will be willing to follow them. This may be due simply to our greater distance from the welfare state; in such questions it is politics which gives the lead and legal institutions which follow. Whatever may be the outcome, *Government by Decree* will have made a notable contribution to our understanding of administrative problems and their alternative solutions.

F. R. SCOTT

Faculty of Law,
McGill University

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The 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)

This erudite little publication reproduces in book form a thesis submitted to the Faculty of Graduate Studies and Research, McGill University, in partial fulfilment of the requirements for the degree of Master in Civil Law. It discusses ratification — the major step in the process of formal treaty-making — in its conceptual and formal aspects and from the points of view of history and jurisprudence. Throughout, the author reveals an easy familiarity with the classical sources of public international law: the book is liberally strewn with references to these sources.

At the same time, some readers will gain the impression that the author, while paying a good deal of lip-homage to the idea, has to some extent obscured the fact that international law is *in statu nascendi* and that the utterances of jurists have often a hollow sound in the face of practice. To cite an instance, the author affirms that ratification must be unconditional and that reservations must be attached at the time of signature. Yet he observes that there have been many modern cases in which instruments of ratification have been made subject to reservations. *Quid juris*, the author asks? Sometimes modifications of theory are more becoming than adjustments of facts.

Two further observations might be appropriate. The author has of necessity accepted statements of "present" practice at their face value and has in several instances been innocently misled. (Thus, Dr. N. A. M. MacKenzie, the distinguished President of the University of British Columbia, would be the first to assert that his summary of Canadian treaty-making practice is in serious need of revision.) Again, the author often succumbs to the temptation of using a Royal "we" that is outmoded even in modern monarchical practice. These observations are not made in a spirit of carping criticism. It is refreshing to see a serious endeavour in international legal scholarship made under Canadian auspices. Mr. Camara, and Professor Maxwell Cohen under whose direction the work proceeded, are to be congratulated. And this reviewer hopes that the author will continue to contribute to the enrichment of the international jurisprudence upon which international peace and security must ultimately rest.

E. RUSSELL HOPKINS

Ottawa

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Annuaire de Jurisprudence du Québec, 1949. Sous la direction de Robert Lévêque. Montréal: Wilson & Lafleur Ltée, éditeurs. 1950. ($7.00)

L'Annuaire 1949 marque un certain progrès par rapport à celui de l'année précédente: typographie améliorée, suppression de l'inutile énumération des titres à chaque lettre de l'alphabet, renvois plus détaillés et plus complets. L'oeuvre reste néanmoins bien imparfaite.

Le rédacteur a bien voulu consentir quelques dérogations à sa règle de ne reproduire les sommaires qu'une seule fois. Malheureusement il ne l'a pas fait à bon escient. Ainsi, au titre "*Péremption d'instance*", il a répété le même sommaire dans deux colonnes voisines sous des sous-titres différents. Sous le titre "*Pension alimentaire*" il a reproduit deux des sommaires déjà imprimés au titre "*Aliments*". Voilà deux titres synonymes. En ce cas, fréquent d'ailleurs, il faut opter pour l'une des classifications et ne mettre à l'autre qu'un simple renvoi à la première.

Il y a nécessité de résumer une même décision sous plusieurs titres, quand elle porte sur des problèmes de diverse nature, *v.g.*: une question de juridiction et une question de prescription. En pareil cas, un sommaire approprié devrait se retrouver sous chaque titre avec un renvoi précis à l'autre.

Il faut bien dire que les titres ont été multipliés sans discernement. Les catégories trop générales sont à éviter, soit. Mais il faut tout de même ne pas oublier qu'il s'agit d'un répertoire de jurisprudence et non pas d'un

dictionnaire. D'où vient que l'on y trouve des titres comme les suivants: *"Amputation de trois doigts"*, *"Antagonisme"*, *"Cas réservé"*, *"Chalets d'été"*, *"Chute dans un tranchée"*, *"Chute sur le plancher"*, *"Détonateur à dynamite"*, *"Enfant de 11 ans"*, *"Enfant de 12 ans"*, *"Fusil à plomb"*, *"Perte de trois doigts"*? Dans tout ouvrage de ce genre le choix des titres est d'importance capitale. Il ne faut pas qu'ils soient trop vastes, mais il ne faut pas non plus qu'ils soient la négation de tout esprit de classification juridique.

Les renvois ont été améliorés, mais ils restent insuffisants. On les a placés à la suite des sommaires en un seul paragraphe. A mon avis, ils devraient se trouver sous des sous-titres, tout comme les sommaires. De plus, les renvois à des sommaires devraient comporter une indication suffisante de l'objet de l'arrêt. L'Annuaire 1949 manifeste un effort en ce sens, mais les indications fournies sont en général inadéquates.

Quand un même arrêt a été reproduit dans plus d'un recueil, les deux sommaires ont été parfois imprimés dans l'annuaire sous des sous-titres différents (*v.g.*, *Bennett* v. *Fortin* au titre *"Faillite"*). En pareil cas l'on ne devrait imprimer qu'un seul sommaire tout en citant les deux recueils. De même quand plusieurs jugements rendus dans une même affaire ont été successivement reproduits, chaque sommaire devrait comporter un renvoi aux autres.

Dans son avant-propos le rédacteur dit: "Un sommaire, par définition, doit contenir assez pour dispenser le chercheur de lire le jugement en entier pour savoir ce dont il s'agit dans la cause". En ignorant la forme, on peut admettre cet énoncé de principe. Cela ne signifie pas que l'on doive continuer à reproduire des sommaires rédigés sous forme de rècits complexes bourrés d'inutiles détails. A moins d'être complètement dépourvu de tout esprit de synthèse, il suffit de lire un sommaire comme celui que l'on trouve dans l'Annuaire 1949 au titre *"Vente à tempérament"*, pour apercevoir l'abondance de détails inutiles dans laquelle l'énoncé des questions en litige est enfoui. On exprimerait facilement en cinq lignes toute la substance juridique qu'on y a délayée dans une trentaine de lignes. Tant que l'on trouvera dans nos recueils de jurisprudence des sommaires ainsi rédigés, on ne pourra faire un répertoire convenable en les reproduisant textuellement.

LOUIS-PHILIPPE PIGEON

Québec

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Employer's Liability at Common Law. By JOHN H. MUNCKMAN, LL.B. Toronto: Butterworth & Co. (Canada) Ltd. 1950. Pp. xxxvi, 339. ($5.25)

To the Canadian lawyer, over half of this book has little or no practical value, dealing as it does with the English Factories Act, the Coal Mines Act and the regulations on mines, buildings, railways and merchant shipping. However, the first four chapters will be read with interest by the Canadian practitioner and student alike. Here, Mr. Munkman succinctly and clearly traces the historical development of employer's liability law, of the law relating to personal negligence of the employer, of his vicarious liability for the negligence of fellow servants to one another and of the general principles underlying the master's breach of statutory duty.

The references to the many decisions cited are short and very much in point, and it is obvious that the writer has read widely on his subject and has used great discrimination in the selection of his cases in a field where the reported decisions are numerous. The result is an illuminating survey of the development from the laissez-faire, let-the-servant-look-out-for-himself, attitude of the English law as exemplified in *Priestly* v. *Fowler* (1837), 3 M. & W. 1, to the present collectivist approach, which makes the employer practically an insurer.

The author's pointed comments on some of the judgments to which he refers contribute to the readability of the book. To cite but one example, in referring to a statement of Lord Abinger in the *Priestly* case that if liability were imposed on the defendant it would mean that a master is responsible for such acts of his servants as the act of the chambermaid in putting damp sheets in the bed, of the upholsterer in providing a rickety bed, or of the butcher in supplying bad meat, Mr. Munkman comments: "one cannot help feeling that Lord Abinger's thoughts were dwelling on his own extensive pre-Victorian household and the liabilities to which he himself might be subjected".

Three other chapters will be especially appreciated by lawyers interested in litigation, whether they are or are not interested in the law on employer's liability. They are those chapters which deal with contributory negligence, voluntary assumption of risk and damages for personal injuries. Here are three branches of the law of tort that are treated comprehensively, in a minimum of space, and are so lucidly written that they might well be regarded as a handbook on the topics covered. Even the most experienced lawyer is certain to find them informative.

R. G. PHELAN

Toronto

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Digest and Index of Tax Cases. By SIR EDWARD R. HARRISON, LL.B. Sixth edition by C. E. GARLAND of the Middle Temple, Barrister-at-law, and of the Inland Revenue Department, Somerset House. London: His Majesty's Stationery Office. 1949. Pp. lix, 1204. (£2, 12s. 6d.)

An anomaly of Canadian income tax law is that a statute of very mixed ancestry, English, American and Canadian, has been interpreted chiefly by reference to cases decided in the courts of Great Britain. As Messrs. LaBrie and Westlake in their study of deductions under the income War Tax Act were able to demonstrate, the results have been something less than satisfactory. There has been considerable distortion of the principles underlying the English decisions and more than a little offence has been given to business commonsense. As late as 1947, Mr. Justice Thorson stated that the English decisions on the meaning of the sections analogous to but not identical with sections 6(1)(a) and (b) of the Canadian Act are acceptable guides to an understanding of their meaning.

The influence of English decisions being so all-pervading, there is no more efficient way of tracking down judical comment on any particular point than to refer to *Harrison's Digest and Index of Tax Cases*, the sixth edition of which has recently been published. Although designed to be used

in conjunction with a full set of the *Tax Cases*, now in their thirtieth volume, the digests of the cases usually provide enough information on both facts and law to allow the busy practitioner to decide whether he should read further. To the lawyer in this country whose simple concern is to find out if a particular question has received an answer, *Harrison's* is, if anything, more helpful than the standard texts on the English law which, as likely as not, will lead the reader into the maze of the statutes. No doubt there are practitioners in England who can skip nimbly about among the Schedules, the Cases and the Rules, but the *Digest* mercifully does not emphasize these mysteries.

Both the *Tax Cases* and *Harrison's Digest* are published under government auspices and are edited by officers of the Inland Revenue Department. In the face of the growing volume of Canadian decisions, particularly from the Income Tax Appeal Board, a similar effort on the part of the Department of National Revenue at Ottawa would be very welcome. A start was made several years ago, although nothing more seems to have come of it. Buried in the proceedings of the Special Committee of the Senate, which in 1946 examined into the provisions and workings of the income tax law, will be found as an appendix to Part 3 an alphabetical list of the Canadian cases up to March of that year and, of even greater interest, a table of subject matters dealt with in those cases, also arranged alphabetically. It might be too much to say that the Department has any duty to the tax-paying public to provide enlightenment, but it might be a worthwhile investment of time and money notwithstanding.

STUART THOM

Toronto

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Patents for Inventions and the Registration of Industrial Designs. By T. A. BLANCO WHITE. London: Stevens & Sons Limited. 1950. Pp. lix, 389. (£2, 5s. net)

This volume contains much useful material for anyone concerned with the patent and design law of Canada, and will be a particularly timely and valuable addition to the library of the Canadian patent attorney whose practice includes the prosecution of British patent and design applications. It is the first text written around the Patents Act, 1949, and the Registered Designs Act, 1949, by which substantially all the existing statutory provisions have been rewritten, and the effect of decisions upon those provisions has been incorporated. Although these two Acts make few substantial changes in the law, they constitute the first major re-casting of the form of the law in Great Britain since 1883. Apart from the British statutory law, the book is notable for the author's practical treatment of such matters as patentability, infringement and interpretation of patent specifications and claims, with respect to which our courts tend to follow British case law fairly consistently.

Less than four hundred pages may seem a brief space in which to deal with so wide a subject. The apparent brevity of the author's treatment results in part from the omission of the numerous and often lengthy quotations frequently found in texts on patent law. Much is gained in clarity and conciseness by this simple device, and little is lost; in the field of patent and design law the facts of the particular case have such significance that ex-

tracts from decisions, unless accompanied by a detailed statement of the facts and an explanation of the context from which the quotation is taken, are likely to be more misleading than useful. Again, the author's restraint in refraining from citing authorities that turn on the wording of earlier statutes has enabled him to compress a more convenient and accurate treatment of the usual material into less than the usual space. Most texts in this field quote, for example, the law on scope of invention as set forth in the older cases (such as *Curtis* v. *Platt* and *Proctor* v. *Bennis*) without pointing out that modern claiming practice has made them obsolete.

Mr. Blanco White's opening chapter, dealing generally with the English patent system and containing his views on the question of the adequacy of the system under modern economic conditions, is of particular interest to those who are presently concerned with the defects in the patent systems of Canada and the United States. The history of patents in Great Britain is given a less detailed treatment than usual and references to the statutory law before the Act of 1949 have been reduced to a minimum. The material on the construction of patent claims and on infringement includes a careful treatment of the difficult concept of "mechanical equivalent", accompanied by an unusually complete list of cases dealing with this problem. The inclusion of a detailed statement of Patent Office practice in claims for alloys is a further indication of the thoroughly practical nature of the work.

The book, which is professionally competent and accurate, is primarily intended for the experienced practitioner. To assist the student or layman, the more advanced material, which assumes a background of familiarity with the subject as a whole, has been set apart by printing it in smaller type. The author has incorporated useful annotated tables of statutes, and the appendices include the texts of the Patent Act, 1949, and the Registered Designs Act, 1949, as well as a list of Convention countries.

Although this book should be regarded as complementing rather than superseding the established textbooks on the subject, Mr. Blanco White's new and practical approach to the traditional problems, and his careful study of the most recent legislation and cases, provide practitioners with valuable reference material that is unavailable elsewhere.

ROY V. JACKSON

Toronto

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Learning the Law: A Book for the Guidance of the Law Student. By GLANVILLE L. WILLIAMS. Third edition. London: Stevens and Sons Limited. 1950. Pp. xiv, 192. (12s. 6d.)

The success of Dr. Williams' book is borne out by this the third edition within five years. In addition two extra impressions of the second edition should not be overlooked. What is behind this success? *Learning the Law* was the first book directed to law students in their first and second years and devoted to the problems of studying law, not to law itself. It is written in such a logical and simple manner, and with such a knack for accuracy within the confines of less than 200 pages, that it can be, as it has been, recommended without hesitation or reservation to all beginning students of the common law. An earlier edition was reviewed in this journal (1946), 24 Can. Bar Rev. 640. But we cannot allow this opportunity to pass without

recalling to readers the importance of chapters 3 (the law library — the lawyers' tools) and 6 (case-law technique) for the opening of term in the first year of law.

This edition is prefaced by a note that the publishers wished to reset the type in order to improve the appearance of the book. The type is larger and less crowded, but the footnotes are smaller. The author takes the opportunity to add a new chapter "General Reading". The increasing importance of periodical literature, particularly the advent of United States periodicals in English materials, is again evident by the references in the preface to two articles from this side of the Atlantic. The new chapter is intended as a guide to legal literature and to works on "the periphery of law". The selection covers works of drama, fiction, biography, trials, essays, humour, history, constitutional problems, jurisprudence, logic, philosophy and economics, criminology and penology. This reviewer likes the selections made. Some may think there is too much of the lighter side of the law. We do not.

Very few other changes are made. We are somewhat dubious of the value of the long lists of "legal shorthand" again appearing in the appendix. Some abbreviations of legal words do become standardized, but this reviewer questions the usefulness of the long lists set out under various headings, depending upon the method of contraction.

There is one chapter upon which some comment will be made, chapter 6: "case-law technique". This chapter is reprinted, with one important exception to be discussed below, almost verbatim from the earlier edition. The main purpose of this chapter is, I believe, to show the student how to use cases. *Ratio decidendi* and *obiter dictum* are discussed. And then there appears a very full and excellently analysed illustration of how the common-law technique works. The case used is *Regina* v. *Franklin* (1883), 15 Cox 163. The case actually found Franklin guilty of manslaughter in circumstances where he had, without the owner's consent, taken up a box from a refreshment stall on a resort town pier, and thrown the box into the sea. Unknown to the accused, *T* was swimming below the end of the pier. *T* was hit by the box and killed. Counsel for the Crown argued that proof of the civil wrong — the tort to the refreshment stall keeper — was sufficient. The court rejected this argument and directed the jury that it must find negligence if Franklin was to be found guilty of manslaughter. The jury found him guilty. Dr. Williams' use of this case is to illustrate how the *ratio decidendi* is obtained. To do this he uses as his *ratio decidendi* (p. 59):

> "A person who kills another in the course of or as a result of a civil wrong is not for that reason alone guilty of the crime of manslaughter."

To this statement is added a footnote reference to a second *ratio:* "A person who kills another by gross negligence is guilty of manslaughter. It was under this rule that Franklin was actually convicted." The learned author explains that he is not concerned with this "second" statement because it was laid down long before 1883 and because the *Franklin* case usually stands for the first proposition. This reviewer has had difficulty in his first year classes in attempting to explain why this case was used to illustrate *ratio.* Is the first rule given a *ratio decidendi* of the case? Was it necessary for the court to decide anything about the Crown's submission? Was the ruling as to the irrelevance of the tort necessary to the decision? Or would Franklin have been convicted just the same in the absence of the ruling as to the tort? It is true that a higher court might then have had to decide whether the con-

viction could stand in the light of the direction given. But it is conceivable that the direction might have been given in double-barrelled form (a) on negligence as necessary and (b) on tort as sufficient, so that if the jury found no negligence, then the court would have to decide whether the tort was sufficient. But the jury *did* find negligence. Why then is not everything that was said with respect to the tort *obiter*? The whole implication of the opening discussion as to what is the *ratio decidendi* ("the rule of law upon which the *decision* is founded", p. 57) is that the "decision" refers not to the decision on various arguments put forward, regardless of how those decisions affect the final result, but to the ultimate decision of the case for or against a litigant. See particularly pages 57-8, 66. At the last mentioned page, we are given an example of an *obiter dictum:* "a rule of law stated merely by way of analogy or illustration, or *a suggested rule upon which the decision is not finally rested*" (italics added). Can it be said that the decision in the *Franklin* case is finally rested on the ruling with respect to the immateriality of the tort?

Apparently this problem has also occurred to Dr. Williams. He has added on page 67 of this edition one paragraph in which he explains that where a decision upon an "objection in point of law" takes place before trial upon assumed facts (*i.e.*, upon the assumption that the opposite party's statement of the facts is true), that decision is not *obiter*, even though the court ultimately finds that the facts were not as assumed and that the decision upon the "objection" was therefore not necessary. The author then adds:

> "Similarly, the decision of Field, J. in *Franklin* was a decision on assumed facts. . . . This is not a mere *obiter dictum*, and it may not unfairly be termed *ratio decidendi*. It would still, it is submitted, be *ratio decidendi* even though the jury subsequently found that the prisoner never threw anything." (p. 67)

This is a rather thin thread, it is submitted, upon which to justify the whole illustration of *ratio decidendi*. Assuming it is valid, is the case a good illustration to use where the students are being directed to distinguish between what is binding under our precedent rules (*ratio decidendi*) and what is merely of more or less persuasive value (*obiter dicta*) — between a rule upon which the decision is finally rested and one upon which it is not.

It is admitted that the *ratio decidendi* of a case is difficult to define. Where a case is finally rested on two or more rules, any one of which is in itself sufficient to determine the case, and each of which determines it in the same way, each is a *ratio* of that case: cf. *Jacobs* v. *L.C.C.*, [1950] 1 All E.R. 737 (H.L.), where Lord Simonds, in giving the only speech in the house, said at pages 740-41:

> "It is not, I think, always easy to determine how far, when several issues are raised in a case *and a determination of any of them is decisive in favour of one or other of the parties*, the observations on the other issues are to be regarded as *obiter*. . . . However this may be, there is in my opinion, no justification for regarding as *obiter dictum* a reason given by a judge for his decision, because he has given another reason also." (italics added)

But this question is an entirely different one from that arising out of the *Franklin* case. Can it be said that either one or the other of the two rules given on page 59 is decisive for or against Franklin? The negative answer

does not of course conclude the problem we have raised in this review, but it does help to show the nature of the *ratio decidendi*.

We have taken some time over this problem because of its place in what is, in the reviewer's opinion, the best and most valuable chapter in Dr. Williams' masterpiece. One other point with which we have difficulty is getting across to students the idea that just because a rule in a classroom case is *obiter*, it is not to be overlooked. *Obiter* is very valuable.

The book still lacks an index, but the table of contents has been expanded. There is likewise no table of cases. These omissions are mentioned not because of a desire for uniformity, as such, in a law textbook, but because of the many occasions when the absence of one or the other from the second edition has been annoying. We heartily concur in one suggestion, contained in this edition at page 71, that the court is more important than the name of a case. We suggest that the citation of a case should include, where the orthodox citation itself does not disclose it, the name of the court in which the case was decided. We regret, however, the method of writing a judge's name set out at page 54 as "Smith, J. means. . .". Should it not be either (and we prefer the first) "Smith J. means . . ." or "Smith, J., means . . ."? The Law Journal Reports are included in "still current" series. We are curious as to how much the origin of the law administered in the three branches of the Probate, Divorce and Admiralty Division of the High Court of Justice, stated on page 9 to lie to some extent in Roman and canon law, had to do with the presence of those three branches in one division. Would the statutory form of the courts consolidated into this division have had anything to do with the grouping?

The whole spirit of the book is one of helpfulness to the student. The warning about headnotes on page 33 is illustrative. So too the mention of leading periodicals not only in England but in this country and the United States. We hesitate to think, however, that the old rule in England whereby periodicals were for those "keen on your work" (p. 38) still prevails in English legal education to-day, at least in that institution where the learned author is professor of public law. These are small matters, however, and do not detract from the continued value of this book as a primary guide for all beginning law students.

GILBERT D. KENNEDY

Faculty of Law,
University of British Columbia

Books Received

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

Bullen & Leake's Precedents of Pleadings in Actions in the King's Bench Division of the High Court of Justice. Tenth edition by GEORGE KIRKHOUSE JENKINS. London: Stevens and Sons Limited. 1950. Pp. clxxxiv, 973. (£5 net)

Cases and Other Materials on World Law: The Interpretation and Application of the Charter of the United Nations and of the Constitutions of Other Agencies of the World Community. Edited by LOUIS B. SOHN. Brooklyn: The Foundation Press, Inc. 1950. Pp. xxii, 1363. ($8.00)

Case Studies in the Psychopathology of Crime: A Reference Source for Research in Criminial Material. By BEN KARPMAN, M.D. Washington: Medical Science Press. 1948. Volume III, Pp. xxxv, 834. Volume IV, Pp xxv, 875. (No price given)

The Court of Appeal in England. By THE RT. HON. SIR RAYMOND EVERSHED. University of London: The Athlone Press. 1950. Pp. 32. (2s. 6d. net)

Death Duties. By K. MCFARLANE, K.C. Second edition. London Stevens & Sons Limited. 1950. Pp. viii, 110. (4s. net)

A Form for an Oil and Gas Conservation Statute. By a Drafting Sub-committee of the Legal Committee, The Interstate Oil Compact Commission. Oklahoma City: The Interstate Oil Compact Commission. 1950. Pp. 33. (No price given)

An Introduction to Administrative Law with Selected Cases. By JAMES HART. Second edition. New York: Appleton-Century-Crofts, Inc. 1950. Pp. xxviii, 819. ($7.00)

Inventions, Patents and Monopoly. By PETER MEINHARDT. With a foreword by JAMES MOULD, K.C. Second edition. London: Stevens & Sons Limited. 1950. Pp. xvi, 320. (30s. net)

Judge Jeffreys. By H. MONTGOMERY HYDE, D. LIT. With a foreword by the RT. HON. SIR NORMAN BIRKETT, P.C. Second edition. Toronto: Butterworth & Co. (Canada), Ltd. 1948. Pp. 328. ($5.25)

The Law List 1950. Edited by LESLIE C. E. TURNER. London: Stevens & Sons Limited. 1950. Pp. xxiv, 1809. (17s. 6d. net)

The Law of Real Property. By RICHARD R. POWELL. Volume 1. Albany: Matthew Bender & Company. 1949. Pp. xiii, 791. ($16.50)

The Law of the United Nations: A Critical Analysis of Its Fundamental Problems. By HANS KELSEN. Published under the auspices of The London Institute of World Affairs. London: Stevens & Sons Limited. 1950. Pp. xvii, 903. (£5, 5s. net)

The Legal Status of the Church in the Philippines. By JORGE R. COQUIA, A.B., LL.M. Washington: The Catholic University of America Press. 1950. Pp. xiv, 224. (No price given).

Limited Interests in Muhammadan Law. By KAMILA TYABJI, M.A., B.C.L. (Oxon). With a foreword by the RT. HON. SIR JOHN BEAUMONT, P.C. London: Stevens & Sons Limited. 1949. Pp. xv, 222. (25s. net)

Money in the Law National and International: A Comparative Study in the Borderline of Law and Economics. By ARTHUR NUSSBAUM. Brooklyn: The Foundation Press, Inc. 1950. Pp. xxxii, 618. ($8.00)

The Office and Duties of the Director of Public Prosecutions. By SIR THEOBALD MATHEW, K.B.E., M.C. University of London: The Athlone Press. 1950. Pp. 16. (1s. 6d.)

Phipson's Manual of the Law of Evidence for the Use of Students. Seventh edition by SIR ROLAND BURROWS, K.C. London: Sweet & Maxwell, Limited. 1950. Pp. xxvi, 307. (£1, 2s. 6d. net)

Rating Valuation Practice. By PHILIP R. BEAN, F.R.I.C.S., F.A.I., F.R.V.A., and ARTHUR LOCKWOOD, M.B.E., F.R.I.C.S., F.A.I., F.R.V.A. With a foreword by HAROLD B. WILLIAMS, K.C., LL.D. Second edition. London: Stevens & Sons, Limited. 1950. Pp. xvi, 343. (30s. net)