

A BIBLIOGRAPHY OF CANADIAN MINING LAW.

The literature of Canadian mining law is not extensive, nor is it very well known outside a relatively small group of lawyers and government officials. On the other hand, a great deal has been written on mining law both in England and in the United States, and we find the works of MacSwinney, Lindley, and Morrison as well, if not better, known in Canada as those of our own writers.¹ The reason for this apparent lack of interest is not hard to find. It is referred to by McPherson and Clark in the preface to their "Law of Mines" in the following terms:

"It cannot be pretended that the present work supplies a long-felt want, *for, but recently has it been realized* that Canada, particularly the Provinces of Ontario, Nova Scotia and British Columbia, and certain portions of the Northwest Territories, are marvellously rich in minerals."

As McPherson and Clark's book was not published until 1898, the paragraph just quoted is of some significance. Although systematic mining began in Canada as early as 1720, and has been carried on continuously since that time,² it was not until the beginning of the present century that any great industrial progress in mining was recorded. It is, in fact, the discoveries and developments of the past thirty years that have placed the Canadian mining and metallurgical industries in the outstanding position they now hold in the industrial life of the Dominion. In England and the United States, of course, the development of mining and its allied industries came much earlier.

Consequently, as late as the days of the Klondike excitement, we find members of the legal profession in the United States extending the field of their writings to include the mining laws and regu-

¹ The following is a partial list of modern works on mining law published since 1870 in the United States. Copp's Mining Decisions, 1874; Weeks' U.S. Mining Law and Practice, 1880; Sickel's Mining Laws and Decisions, 1881; Copp's Mineral Lands (2nd ed.), 1882; Morrison's Mining Reports (22 vols.), 1883-1906 Barringer and Adams, The Law of Mines and Mining in the United States, 1897; Copp's American Mining Code, 1897; Clark, Hillman and Consaul, Mineral Law Digest, 1897; Snyder, Mines and Mining (2 vols.), 1902; White, Mines and Mining Remedies, 1903; C. H. Shamel, Mining, Mineral and Geological Law, 1907; Martin's Mining Law, 1908; Costigan's American Mining Law, 1908; Kerr's Mining and Water Cases, Annotated, 1912; Lindley on Mines (3rd ed., 3 vols.), 1914; Morrison's Mining Rights (15th ed.), 1917; Ricketts' American Mining Law (3rd ed.), 1931. A list of publications on mining law issued by the United States Government is given in note 4 below.

² Article by H. C. Cooke of the Geological Survey of Canada in The Mining Magazine, August, 1929.

lations of Canada. These take the form, largely, of handbooks intended for the use of the prospector and working miner, although Canadian law and decisions are also included in works of wider scope and importance. Of the early handbook type of publication the following are fair examples:

Klondike. Mining Laws, Rules and Regulations of the United States and Canada applicable to Alaska and Northwest Territory. With Forms.

This little book (144 pp.) was compiled and published in 1897 by W. J. Hills and B. M. Ausherman, Mining and General Attorneys, Seattle. It contains the more important laws and regulations affecting mining in Alaska, British Columbia and the Yukon, brought together under one cover for the benefit of those entering or interested in the Klondike region. It was in keeping with the spirit of the time, was sold by all news agents for a remarkably small sum, and must have brought a deal of business to the publishers.

A more ambitious effort, the scope of which includes the whole mining law of the two countries as it then stood, is Reynolds' Handbook of the Mining Laws of the United States and Canada, arranged with reference to Alaska and the Northwest Territories, also including the laws of British Columbia and Ontario. Forms and Glossary. Parts I and II. By Joseph Ward Reynolds of the Minnesota Bar. (360 pp.) Chicago, W. B. Conkey Company, 1898: The arrangement of Mr. Reynolds' book covers "Alaska, the Northwest Territories, British Columbia, Ontario, and the Rainy Lake Districts." The author points out that the statutory enactments are not extensive in either country, the great body of the mining laws existing in the "regulations" of the Departments of the Interior and the judicial decisions of the respective countries. All statutes and governmental regulations on the subject, with reference to the judicial and departmental decisions construing such statutes or regulations, are set out at length.

Of the more important American collections of reports in which Canadian mining cases figure, mention must be made of Morrison's Mining Reports, Containing the Cases on the Law of Mines found in the American, English and Canadian Reports. (Callaghan and Company, Chicago.) 1907. Morrison's is a monumental work in twenty-two volumes. It covers the period 1883-1906, and is possibly the largest collection of mining decisions yet published in England or America. Another collection of American reports, which includes Canadian decisions,

is Kerr's Mining and Water Cases, Annotated. Vol. I. (Callaghan and Company, Chicago.) 1912, a collection of leading American, Canadian and English cases, especial attention being given to the law of Canada. Only one volume has been published.

We now come to works of an all-Canadian character, the earliest of which would appear to be Adolphus M. Hart's Practical Suggestions on Mining Rights and Privileges in Canada, with an Appendix containing the Gold Mining Regulations, &c. (56 pp.) Printed by John Lovell, Montreal, 1867. The title page shows Mr. Hart to be a "Barrister at Law of Lower Canada, and Counsellor at Law of the State of New York." His booklet, which is dedicated to Sir William Logan, the first Director of the Geological Survey of Canada, is really an essay on mining rights as they obtained at that time in Lower Canada. His authorities are French for the most part, although a few references to English writers are noticed.

In 1885 another essay on Canada's mining law was published in the Annual Report of the Geological Survey. This was entitled Observations on Mining Laws and Mining in Canada, with Suggestions for the Better Development of the Mineral Resources of the Dominion, by Eugene Coste, M.E. Montreal: Dawson Brothers, 1885. Mr. Coste's paper is a plea for a revision of the mining laws to provide for the complete separation of mining from surface rights, and for the leasing instead of the selling of mineral lands.

It was not, however, until 1898 that a volume on Canadian mining law of practical value became available to Canadian lawyers. This first practical volume was The Law of Mines in Canada, by Wm. David McPherson and John Murray Clark, Barristers-at-Law (Toronto, The Carswell Company), a substantial book of 1294 pages and a most comprehensive work, covering every branch of the law in connection with mines. The various chapters deal thoroughly with title, contracts, leases, licenses, working of the mines, sales, the interpretation of contracts and grants, rights of support and rights respecting water, both surface and subterranean, and other subjects of practical value in mining. Current developments in the mining industry made this book particularly timely and assured its adoption by the legal profession. It became and continued for many years to be the standard Canadian reference-book on mines and minerals, and it may truly be said that no other Canadian book on mining law has helped so much in the development of the Canadian mining industry.

In the ten years following the publication of McPherson and

Clark's book, the mining industry made remarkable progress. As might be expected, some important decisions were given by the Courts during this period, and many amendments were made to statutes and regulations. In Ontario, after a period during which there were frequent amendments in legislation, a considered policy had been embodied in the Mines Act, 1908. These various changes, together with important amendments then being made to the mining law of Quebec, made the publication of a new general statement of the position of Canadian mining law highly desirable. This need was met with the appearance of *The Mining Law of Canada*, by Alfred B. Morine, K.C., LL.B., of the Bar of Nova Scotia, Newfoundland and Ontario, published in 1909 by the Canada Law Book Company, Toronto. By the omission of a number of provincial statutes,³ Mr. Morine was able to produce a volume of moderate size (701 pp.) and of great practical value.

A reference might here be made to the various short articles on Canadian mining law which have been published since 1890. The larger group of these, eighteen or twenty in all, have appeared in the *Journal of the Canadian Mining Institute* and in those of its predecessors, the *Federated Mining Institute* (1896-97), and the *General Mining Association of the Province of Quebec* (1891-95). The latter organization had its origin in a meeting of mining operators convened in Montreal "to consider the new Mining Act introduced into the Quebec Legislature (the Mercier Act), and to discuss ways and means by which the interests of the mining community might be protected against such a pernicious and retroactive measure," and had as its first president the Honourable George Irvine, Q.C., of Quebec. It has already been suggested that this was a period of discovery and rapid expansion. It was also noteworthy, in Canada and elsewhere, for critical and constructive discussion of existing mining laws, and in Canada a leading part was taken in these discussions by the Mining Institute. The various papers are by Price, Clark, Lorn McDougall, Loring, Coste, Raymond, Tyrrell, Winchell, and other well-known lawyers and mining engineers and still make interesting reading. Although interest in the subject seems to have lagged during and since the war the Mining Institute, now the Canadian Institute of Mining and Metallurgy, still publishes an occasional paper on mining law. A recent study by Mr. H. F. Maulson, K.C., of the Pas, entitled "Some Notes on the Mining Law of Manitoba, and on the Mines Act of 1930," appeared in the August, 1930, number of the Institute's Bulletin.

³ The reprinting, in a general work on mining law, of a large number of Dominion and Provincial statutes and regulations that are subject to frequent amendment, is of doubtful utility.

Mention should also be made of two articles published in 1910 and 1911 in the *Canadian Law Times*. These are *The Mining Law of Ontario*, by Samuel Price, K.C., Toronto, 30 C.L.T. 863, 965, and *Canadian Mining Law*, by J. Murray Clark, K.C., Toronto, 31 C.L.T. 376. The first of these papers is a complete and authoritative historical and analytical review of the Ontario law by the Mining Commissioner of that province. The paper by Mr. Clark, who was then engaged in drafting an all-embracing Dominion Mining Act (which, as it happened, was never enacted), was presented by him to a meeting of the American Institute of Mining Engineers at Wilkesbarre, Pennsylvania. The discussion that followed was marked by an interesting contribution from Dr. Rossiter W. Raymond of New York, a distinguished mining engineer, editor, and member of the Bar of the State of New York. Numerous notes on various phases of the law relating to mines and mining are also to be found in the pages of the *Canadian Law Times*.

Nearly a quarter of a century has elapsed since Morine's "Mining Law of Canada" was published. In this period the statutory law of most of the provinces, as well as Dominion enactments and regulations, has been almost entirely revised, and the size and importance of the mining industry itself have increased tremendously. Yet no later general work on the mining law of Canada has since been published. The reason is, probably, because the field has become too large to be cramped within the covers of any one book. We find practitioners specializing in the mining law of their own provinces publishing books dealing with those laws. Of these the following are fairly recent publications: *Summary of Laws of the Province of Ontario pertaining to Mining*, by W. B. McPherson, B.A.Sc., Barrister-at-Law. (74 pp.). Toronto, 1925. *Laws Concerning Mines of the Province of Quebec*, by J. H. Paré, K.C. (195 pp.). Quebec, 1926. *Mines and Mining Laws of British Columbia*, by Arthur Fleming Crowe, of the British Columbia Bar. Calgary, (Burroughs and Company), 1930.

The first two of these three books are brief statements or digests of the mining laws in force in Ontario and Quebec, respectively. Mr. Crowe's book is a solid little volume of 386 pages carefully prepared with a desire to meet the requirements of the general mining fraternity for a plainly expressed treatment of all metalliferous mining provisions (coal, petroleum and natural gas are not dealt with) relating to British Columbia mining, and in the hope that it will also be of value to the profession. A similar statement of the law of each of the other mining provinces would be of the greatest practical value.

Of particular value to practising lawyers are the collections of decisions in mining cases rendered by Canadian Courts. These are unfortunately few, and their number could usefully be extended to provinces in which reports of mining cases have not yet been separately collected. The largely increased number of mining cases being handled by the Courts, and the rapidly increasing importance of the mining industry within the Dominion may soon justify the publication of a continuous series of reports of Canadian mining cases.

Present available collections of mining decisions are restricted to British Columbia and Ontario. The pioneer collection in this field is Martin's Mining Cases, the full title of which is Reports of Mining and Water Cases decided by the Courts of British Columbia and the Courts of Appeal therefrom, with an Appendix of Mining Statutes from 1853, etc. By the Honourable Archer Martin of the Supreme Court of British Columbia and Judge in Admiralty for that Province. (Carswell, Toronto). Volume I. To October 1st, 1902. Volume II. (Parts I and II) To December, 1907. (Part III) 1908-1915. (In preparation).

Selected cases bearing upon the Mining Act of Ontario and mining laws in general have been published as Mining Commissioner's Cases (Ontario) of which the following two volumes have been issued: Mining Commissioner's Cases, 1906-10, by Samuel Price, K.C. Toronto (Carswell) 1910. Mining Commissioner's Cases, 1911-1917, by T. E. Godson, K.C. Toronto (Carswell) 1919. These are decisions on cases heard by the Mining Commissioner of Ontario (now the Judge of the Mining Court). It is to be hoped that this valuable series will be continued.

In the various general law digests published in Canada collections of the more important decisions relating to mines and minerals are usually grouped in a separate section. Of the many Canadian works of this kind in which are included sections on mines and minerals or mining law the writer has had occasion to refer to the following: Cameron's Supreme Court Digest (Carswell); Digest of Ontario Case Law, 1823-1900, (Carswell), which is followed by the Canadian Ten-Year Digest, 1901-11, (Canada Law Book Company); Lear's Digest of Canadian Case Law, 1900-11 and 1911-14 (Carswell); Canadian Consolidated Ten-Year Law Digest, 1911-20, (Canada Law Book Company) and the Six-Year Supplement, 1920-25, thereto; Digest of British Columbia Case Law, 1849-1904 (Carswell) and 1849-1916 (Mayers); Congdon's Nova Scotia Digest, 1890, (Carswell) and Geldert's Nova Scotia Digest, 1888-1907, (Carswell). The list is by no means exhaustive.

Concise and valuable statements of the case law of Ontario and of the western provinces relating to mines and minerals are included under this head in the Canadian Encyclopedic Digest. Volume 7 of the Ontario edition contains a 69-page statement of the mining law of Ontario by A. K. Roberts, Barrister-at-Law of Toronto (formerly of Cobalt) which is complete to May 1st, 1929. A similar statement of the mining law of Alberta, British Columbia, Manitoba and Saskatchewan, by W. S. Buell, Barrister-at-Law, Vancouver, covers 52 pages of volume 6 of the Western edition and gives the law as it stood at October 1st, 1922. Both these articles are kept up-to-date by the supplements issued periodically by the publishers of the Digest (Burroughs and Company).

The Dominion government and the provincial governments of Canada have, of course, published the mining enactments of their respective legislatures. They have also, in some cases, published brief statements or summaries of their laws and regulations respecting mining for the use of prospectors, mine operators and others. In 1924 the Department of Mines at Ottawa issued a digest of the Dominion and provincial laws and regulations affecting mining throughout the Dominion. A second and improved edition of this handbook was issued last year. The Federal Government at Washington, which controls a considerable part of the mineral lands of the United States, has issued a large number of publications on mining law, some of which are of interest to Canadians.⁴

To attempt to include in this paper a complete list of the numerous works on mining law and its related subjects published during

⁴The following list of publications of the U.S. Bureau of Mines may be of value to those interested in the subject of mining law:

Abstracts of Current Decisions on Mines and Mining, by J. W. Thompson. Bulletins 61, 79, 90, 101, 113, 118, 126, 143, 147, 152, 159, 164, 174, 179, 181, 183. These abstracts cover decisions rendered by all the Federal and State Courts of last resort during the period October, 1912 to August, 1919.

Mining Statutes, Annotated, by J. W. Thompson:

U.S. Mining Statutes, Part I. Statutes relating to metalliferous and coal mining. Bulletin 94, 1915.

U.S. Mining Statutes, Part II. Miscellaneous mining subjects. Bulletin 94, 1915.

California Mining Statutes. Bulletin 161, 1918.

Illinois Mining Statutes. Bulletin 169, 1918.

Pennsylvania Mining Statutes. Bulletin 185, 1920.

Petroleum Laws of All America, by J. W. Thompson. Bulletin 206, 1921.

Also, a series of digests of foreign mining legislation and court decisions is being prepared and distributed in advance of a general report relative to the rights of American citizens to explore for minerals and to own and operate mines in various foreign countries. The number of this series dealing with Canadian mining law was issued in September, 1930, as Information Circular No. 6346.

The recent (third) edition of Rickett's (A. H.) American Mining Law, 1931, is published by the Government of the State of California, Division of Mines, San Francisco.

the same period in the United Kingdom would be to stray from the straight and fairly narrow path of this survey. There is in this no suggestion that the works of English writers on mining law can be overlooked. On the contrary, the writings of English authors and the decisions of English courts should be of the greatest value in the study and in the practice of mining law in this country. As references to the better known English writers are to be found in any comprehensive law catalogue, they need not be given here.

Special mention should be made, however, of a series of monographs of particular interest now being published by the Imperial Institute of London on the Mining Laws of the British Empire and Foreign Countries. Twelve volumes have been issued to date, one of which (Volume IV) deals with Canadian mining law. Volume IV is in three parts: Part I (1922) dealing with British Columbia; Part II (1928) with Ontario; and Part III (1926) with Dominion laws and regulations. Newfoundland's mining law is considered in Volume IX (1930). The publication of this series was undertaken immediately after the war and was continued until 1930 by Mr. Gilbert Stone, Barrister-at-Law and Legal Consultant to the Advisory Council on Minerals of the Imperial Institute. In 1930 Mr. Stone was appointed to the Bench of the High Court of India, but the publication of the Mining Laws series is being continued by Dr. Arnold D. McNair, his successor as Legal Consultant to the Advisory Council on Minerals.

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