Reviews and Notices

Le Nom patronymique dans le Droit québecois. By SIMON GEORGES PARENT. Quebec: Charrier & Dugal Limitée. 1951. Pp. 182. (On application)

This is our first detailed and exhaustive study of the law creating and protecting the family name under Quebec law. It is the *thèse* presented by Lt. Colonel Parent to the Graduate School of Laval University for his degree of *docteur en droit,* which he duly obtained after sustaining his work *viva voce* before a distinguished examining jury. Similiar theses presented over many years have greatly enriched our legal literature by their sound and often original dissection of special problems.

The Civil Law has always taken very seriously this matter of the family name, the patronymic, the father or ancestor name (Greek, *pater,* father + *onoma,* name), and in France many books and articles have been devoted to various aspects of the subject—the sources of family names, the right and the nature of the continuing right to such names as an integral part of one's civil status and as a right of property, the mechanics and the effect of a change of name, the name given upon adoption, the right to do business under one's name. Colonel Parent has dealt carefully and fully with the many facets of his subject, including a comparative review of the English law and that of the English-law provinces, especially as to changes of name.

At the heart of the French civil law, however much disputed, is the conviction that the family name, once it has become hereditary and fixed in an ancestral line (of course in the paternal line), has thereby become immutable —it is transmitted "in its integrity, with its own spelling and particular signs, its accents, apostrophes, capital letters, diaeresis, hyphens". Those who contest the rightness of such severity point to the frequent practical need of a change—where a donor or testator imposes a condition that his name be assumed by his beneficiary, where one wishes to get rid of a ridiculous name, or to simplify the spelling and possibly with it the pronunciation of a complicated name, or, on the part of a foreign settler, to further his assimilation by adopting a local name, and so on.

The Common Law, says Colonel Parent, is opposed to the principle of immutability—seeing in the patronymic only a simple surname which at common law one can change at will or use or not use—on the principle, as explained in Halsbury, that as surnames were in the first instance arbitrarily assumed, so they could be changed at pleasure—usually by a private act of Parliament, or a royal licence, or by executing a deed poll. And yet, as Colonel Parent acutely notes, even the patronymic, in the civil law sense, was originally a chosen, or perhaps popularly inflicted, surname, so that the English concept has its *raison d'être*—as most English concepts have.

Most of the English-law provinces have by special legislation provided for a change of name, the procedure varying—in Nova Scotia, Manitoba, Saskatchewan, Alberta and British Columbia, a request is addressed to the registrar of acts of civil status; in Prince Edward Island, a change is made by deed poll registered in the office of the registry of acts of civil status—in all cases accompanied by public notice of intention to apply, and by formalities peculiar to each province. British Columbia and Ontario prohibit a change of name by any other than the prescribed procedure. In Ontario, a petition must after public notice be presented to the county court judge, and third parties may contest the petition. The jurisprudence that may gradually develop will be of great interest.

Until March 14th, 1951, Quebec had no clear law or rule as to change of name. Changes were effected by private acts, by declaratory deeds before a notary, by public notice in a newspaper, even by accretion of reputation. Where the Civil Code means patronymic, in the French text it uses "nom", in the English text "surname"— the "nom" having about it the old civil law aura but hardly the reality of a property right. On March 14th, 1951, the Quebec legislature added article 56a to the Civil Code. The French and English texts are of great interest for comparison:

56a. Les nom et prénoms donnés à une personne dans son acte de naissance, ou qui sont réputés être ses véritables nom et prénoms d'après la loi ou l'usage du lieu de sa naissance, ne peuvent être changés que par une loi de la Legislature et ses droits civil ne peuvent être exercés que sous ce nom et sans l'un ou plusieurs de ces prénoms, à moins qu'ils n'aient été ainsi changés.

56a. The surname and names given to a person in his act of birth, or which are deemed to be his actual surname and names according to the law or custom of his birthplace, may be changed only by an act of the Legislature and his civil rights may be exercised only under such surname and under one or more of such names, unless they have been so changed.

Colonel Parent criticizes these texts on several grounds. The "surname and names" of the English text leave standing a difference between the French and the English law as to the value of the "nom". In current French, *surnom* means, as it has always meant, something less than the patronymic hereditary *nom*, the *surnom* having been the public's way of distinguishing among various individuals of the same name—as William's son the Baker, though out of the *surnom* grew in time by filiation the true patronymic or *nom*, "Baker". Again, the new article does not emphasize, as it should, that the *nom* is determined and fixed by filiation, *ipso facto;* whereas the words "given to a person in his act of birth" suggest the intervention of some exterior agency. In practice, the act of birth (that is, the baptismal entry in the register) records only that "John Edgar, son of William Jones and Martha Jones his wife," was baptized. It is only by inference from an unstated principle of a right by filiation that the child's patronymic is seen to be Jones. At best, that affords means of ascertaining the child's patronymic—it does not literally establish it. In a word, it gives the so-called Christian and middle names by which he is known, but does not give him a patronymic.

However, it is good to know that Mr. Stalinovskiovich or Mr. Czczschc, lately arrived from the jungles of Eastern Europe, anxious for rapid assimilation, cannot of his own choice set up in business under the name of

Molson, Rennie, Stanley, Douglas, Dufferin, Falconbridge, or of Johnson —a name that has come down in my family in Yorkshire and Canada since at least the Battle of Brunanburgh—without approaching the legislature after due public notice and affording me a chance to "lobby" for my threatened rights.

WALTER S. JOHNSON*

* * *

British Nationality including Citizenship of the United Kingdom and Colonies and the Status of Aliens. By CLIVE PARRY, M.A., LL.B. (Cantab.). London: Stevens & Sons Limited. 1951. Pp. xix, 216. ($7.75)

The editors of the sixth edition of Dicey's *The Conflict of Laws* had planned to include in it a chapter on British nationality law, as the earlier editions had done, and had assigned the task of preparing it to Mr. Parry. However, it eventually had to be omitted when the British Nationality Act, 1948, was passed while the book was in the press. Not only was there no time to rewrite it before publication: the law also was so changed and complicated by the new Act that it could no longer be stated in a single chapter of reasonable length. To compensate for the loss of this chapter in *Dicey* and to provide a statement of the law in the light of the changes introduced by the 1948 Act, Mr. Parry has rewritten and greatly expanded what he had done for the sixth edition and has published it as a separate book.

The close connection between this book and the Dicey chapter is evident throughout its pages. In particular, Mr. Parry has used the Dicey method. That is to say, he has reduced the law of British Nationality to a minimum number of concisely stated principles or rules (48 rules), sub-rules and exceptions. The statement of each rule is followed by an explanatory comment, if comment is necessary; and the commentary is usually followed by some illustrations in the form of hypothetical cases. This method of writing a textbook has its merits. If a lawyer needs to know quickly what the law is on a given point, it is undoubtedly helpful for him to have at hand a book which presents the law in a few pithy, general sentences. He can see at once the conclusion that the author has reached without having to follow him through the intricate process of sifting cases and interpreting statutes in search of the law. But for students, certainly, it is undesirable for two reasons. Firstly, it fosters the idea that the principles of our common law system can be expressed with certainty. The idea is regrettably, but truly, a delusion, for the common law does not easily lend itself to generalization and regimentation. And, secondly, it focuses attention upon the rule and not upon the process by which the rule is evolved. I do not, however, condemn its use in this book. British nationality law is almost entirely statutory and so is more readily treated in this way than most other branches of our law would be. In any case, the author has used it very skilfully. He has combined the statement of the principle, the comment and the illustration in such a way that we have a clear picture not only of the certain but also of the uncertain parts of the law of British Nationality. And everywhere he has expressed himself in language so simple and lucid that the reader loses no time in searching for a meaning.

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This book is of particular importance at the present time because it sets out the new and complex law introduced into the United Kingdom by the British Nationality Act, 1948. This new law was really made necessary by the evolution of the Commonwealth countries into full-fledged independent states. In 1946, for example, the Canadian Citizenship Act had created the status of Canadian citizenship. And so some radical changes in the United Kingdom law of nationality were needed to make it fit the facts. As Mr. Parry writes at page 66:

> "The Act of 1948 . . . represents the consummation of a process which the Act of 1914 was unable to arrest: the growth, parallel with the progress towards complete internal and external independence of what are here styled the Commonwealth Countries (and the Republic of Ireland), of distinct nationalities for each and, as a corollary, distinct nationality for the United Kingdom and such overseas territories as remain under its legislative sway."

The principal change, therefore, that this act made in the law was "the division of the status of a British subject into a series of citizenships, corresponding to the different communities within the Commonwealth", and the creation of a new status, namely, citizenship of the United Kingdom and Colonies. The result is this, to quote Mr. Parry's words: "The status of a British subject is . . . now no longer, in strictness, a nationality but a status involving the possession of the nationality of one or more of nine countries: the United Kingdom and Colonies, and the eight Commonwealth Countries".

There are other important changes in the law. The provisions relating to married women have been greatly altered. Marriage, under the United Kingdom law since 1948, has no effect upon the nationality of a woman; and further, under the transitional provisions of the 1948 Act, all those women who had lost British nationality by marriage under the old law were reinvested with British nationality by being deemed to have been British subjects immediately before January 1st, 1949. Another important change is found in the provisions relating to loss of nationality. Since 1870, British nationality was automatically lost on voluntary naturalization in a foreign state. Today, however, automatic loss of nationality is not possible; it can only be lost by the registration of a declaration of renunciation of citizenship, and permission to register may be refused by the Secretary of State in time of war. The common law rule was rigid: *nemo potest exuere patriam.* The new rule is a return, but not a complete return, to that principle.

It is interesting to note the ease with which citizens of other Commonwealth countries can acquire citizenship of the United Kingdom and Colonies. For example, a Canadian of full age and legal capacity is entitled to be registered as a citizen of the United Kingdom and Colonies if upon application the Secretary of State is satisfied that he is ordinarily resident in the United Kingdom and has been so resident throughout the period of twelve months, or such shorter period as the Secretary of State may accept, immediately preceding the application. In other words, twelve months residence will usually be sufficient for acquiring citizenship. Compare the Canadian rule with this. If a citizen of the United Kingdom and Colonies takes up residence in Canada, he cannot acquire Canadian citizenship until after five years residence. The only distinctions between a Commonwealth citizen and an alien who migrates to Canada are that (i) the former does not have to file a declaration of intention to become a Canadian citizen not less than one year

nor more than five years before the date of his application for citizenship, while the latter does; and (ii) the former may apply directly to the Minister of Citizenship and Immigration, who may grant a certificate of citizenship if he is satisfied that the applicant has all the qualifications of residence, character and so on; while the latter (the alien) must satisfy a court that he has the qualifications.

The subject-matter, the conciseness and clarity of the language, the adequate index, the appendices containing the full texts of the British Nationality Act, 1948, and the Ireland Act, 1949, and, above all, the author's painstaking scholarship, contribute to the excellence of this book. It will be a great aid to those who seek knowledge of present British nationality law.

C. B. BOURNE*

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Self-Incrimination: What Can an Accused Person be Compelled to Do? By FRED E. INBAU. Springfield, Illinois: Charles C. Thomas, Publisher. 1950. Pp. x, 91. ($3.25)

This useful little book is presented as an up to date revision and enlargement of previous papers by Professor Inbau in the 1937 Journal of Criminal Law and Criminology of Northwestern University Law School. It belongs to a series of American Lectures in Public Protection edited by Lemoyne Snyder, M.D., Medicolegal Consultant, Lansing, Michigan; Ralph F. Turner, Associate Professor of Police Administration, Michigan State College, East Lansing, Michigan; and Charles M. Wilson, Superintendent of the Wisconsin State Crime Laboratory, Madison, Wisconsin.

Self Incrimination treats of what an accused person can be compelled to do, for the purpose of criminal investigation and criminal prosecution. Discussed under various headings, with the related judicial decisions in the United States, are: footprint comparisons; examination of body for scars, marks and wounds; medical examination of sexual organs directed to venereal diseases and pregnancy or child birth determinations; putting on or removing wearing apparel for purposes of identification; the removal of disguising effects for identification purposes; standing up or assuming various positions (including police "line-ups") for identification purposes; fingerprints and photographs; handwriting comparisons; voice identifications; mental examinations for insanity and sexual psychopathy; lie-detector and truth-serum tests; and removal of incriminating evidence from, upon or within the body of an accused person, including alcoholic intoxication and blood-grouping tests.

The author's conclusion on the validity of such compulsory evidence in the federal and state courts of the United States is thus stated:

> "The test as to the applicability of the self-incrimination privilege in any case situation is whether the compulsory evidence is of a *testimonial* nature. In other words, has an *incriminating statement* been extracted from the accused?
>
> "Of the various groups of cases previously analyzed, only two present situations which may reasonably be considered within the coverage of the privilege; (viz.) the testing for deception and for sexual psychopathy.

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"The other groups [including alcoholic intoxication tests] all involve the *procurement of non-testimonial physical evidence and thereby fall short of the scope of the privilege* — not only by reason of its historical origin and purpose, but also because of policy considerations as well." (Italics added)

It is noted also that the author describes the term "sexual psychopath" as psychiatrically undefinable at present, and rather meaningless, except in so far as it may point to a person who has committed one or more prior sex offences. The approach to this phase of the "psychopathic personality" problem seems to be consistent with that of Professor Jerome Hall in the wider sphere of *General Principles of Criminal Law*.

Self-Incrimination is a concise discussion of its subject-matter with critical studies of relevant federal and state court decisions in the United States. One Canadian case is cited, *Rex* v. *Whittaker*, [1924] 3 D.L.R. 63, in which Mr. Justice Walsh in a reasoned judgment held that an accused in the witness box could be ordered to write certain words in order that they could be compared with an unproven letter, which as a result was admitted in evidence against him.

C. H. O'HALLORAN*

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Trials of Frederick Nodder (*The Mona Tinsley Case*). Edited by Winifred Duke. Volume 72, Notable British Trials Series. London, Edinburgh and Glasgow: William Hodge & Company Limited. New York: The British Book Centre, Inc. 1950. Pp. xiii, 242. ($3.50)

Trial of Peter Griffiths (*The Blackburn Baby Murder*). Edited by George Godwin. Volume 73, Notable British Trials Series. London, Edinburgh and Glasgow: William Hodge & Company Limited. New York: The British Book Centre, Inc. 1950. Pp. 219. ($3.50)

The Trials of Patrick Carraher. Edited by George Blake. Volume 74, Notable British Trials Series. London, Edinburgh and Glasgow: William Hodge and Company Limited. New York: The British Book Centre, Inc. 1951. Pp. xiii, 278. ($3.50)

The crimes involved in the first and second volumes have certain similarities, the murder of young girls, and the strange behaviour and characteristics of both accused, which are, no doubt, well known to the compilers of the Kinsey Report. The principal actor in the third volume was also tried for murder, on two separate occasions, but the victims were adult men and the events the result of street fights and over indulgence in drink. The defence to the crimes described in the second and third volumes turned on the mental condition of the accused.

Frederick Nodder was twice tried, first on a charge of abduction of ten year old Mona Tinsley, when he was convicted and sentenced to seven years penal servitude. On a January afternoon in 1937 the little girl left her school in Newark, a manufacturing town in the English Midlands, for home, but

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never reached there. Intense inquiries by the police led to the arrest of Nodder, who lived several miles away at Retford and had previously known the Tinsleys. Mona had been observed boarding a bus accompanied by the accused and she was last seen alive in the doorway of Nodder's home.

Five months after her disappearance, the body of Mona Tinsley was retrieved from the muddy waters of the nearby River Idle, and Nodder was then charged with murder, convicted and hanged. In the second trial, he took the witness stand and, while admitting that he had taken Mona away to his home, swore that he had left her on a bus en route to Sheffield where her aunt resided; and the jury was asked to believe that someone else must have killed her. Norman Birkett, K.C. (now Birkett L. J.), led for the Crown in both cases, and Canadians who have on several occasions heard him speak at Bar Association meetings can read with interest his carefully prepared addresses to the jury and his skilful examination of witnesses. In the first trial there were some lively exchanges between the presiding judge, Mr. Justice Swift, and the leading defence counsel, Mr. Maurice Healy, K.C., who was obliged to suffer rebukes and criticisms from the bench.

The trial of Peter Griffiths (the Blackburn Baby Murder) has more valid interest, not because of the dreadful crime involved, but because of the successful use of mass fingerprinting to detect the criminal, the medical evidence as to the mental state of the accused, and the court's treatment of the legal doctrine of insanity.

On a night in May 1948 June Anne Devaney, just under four years of age, disappeared from her cot in the babies' ward of Queen's Park Hospital in Blackburn, Lancashire. About dawn the body of the girl was found on the hospital grounds, and the authorities were shocked to realize that a sleeping child could be removed from the apparent safety of a hospital ward to the adjoining grounds, raped with unspeakable ferocity, bitten, and her head battered against a stone wall.

Members of the local police force were in action before full daylight, and soon afterwards the machinery of New Scotland Yard had been set in rapid motion. The investigators discovered fibres belonging to a man's clothing, but what proved to be the most useful evidence were fresh finger and palmar impressions, not belonging to anyone having legitimate access to the premises, upon a Winchester bottle under the girl's hospital cot. It was decided to fingerprint every male of sixteen and over in the town, searches were made at the principal fingerprint bureaus in the British Isles, and, on the chance that the criminal might have served in the armed forces overseas, it was deemed necessary to circularize every fingerprint bureau in the world. It was not until August 12th that a card bearing the desired fingerprints appeared and by this time more than 46,000 fingerprints had been taken in the Blackburn area and the impressions on the Winchester bottle had been compared with several million fingerprints throughout the world, a remarkable piece of criminal investigation.

Peter Griffiths, a twenty-two year old resident of Blackburn and a veteran of the Welsh Guards, was arrested and, when charged with the crime, made a statement admitting his guilt. The defence was insanity, the form of insanity being schizophrenia, or "split mind". Three medical men gave evidence, two called by the defence, one by the Crown. The prosecution witness had spent most of his professional life as a medical officer in prison service, and the other two were eminent psychiatrists. The only medical evidence

suggesting complete responsibility was given by the doctor called by the prosecution. One of the psychiatrists called by the defence had taken a statement from the prisoner of the circumstances of the crime, but the presiding judge, Mr. Justice Oliver, ruled it inadmissible as hearsay.

The late Lord Chief Justice Hewart declared that the law does not define insanity, which is a medical matter, but it does consider the conditions that must be satisfied to excuse a person from criminal responsibility, which is a question of law. The editor in his capable introduction suggests that the trial judge may not have given full significance to the medical evidence presented. This introduction, and an appendix on the subject of schizophrenia by Dr. C. Stanford Read, a consulting psychiatrist and lecturer on psychopathology, are well worth the attention of students of medico-legal matters, since they indicate the growing conflict between the legal concepts of insanity and the comparatively modern science of psychiatry.

The trials of Patrick Carraher take us to the most ancient part of Glasgow, a district known as the Gorbals, once an insanitary, overcrowded slum area, and perhaps still so. A sinister resident of the Gorbals, Patrick Carraher, had a criminal record involving several convictions for assault, theft and housebreaking. He was most often drunk or near drunk, and was "work shy". On the night of August 13th-14th, 1938, he became involved in a quarrel with the Durie brothers who, according to the editor, are known in the *argot* of Glasgow as "Neds"—that is, "the rather shiftless lads who hang around street corners and watch and wait: without much purpose, without definitely criminal intent, but with a wary eye for the main chance". One is reminded of Toronto hoodlums or Winnipeg zoot-suiters. While the argument was in progress, a young regular soldier, James Sydney Emden Shaw, who was not known to the Carraher-Durie group, stepped into the picture. He made the remark that Carraher "spoke like an Englishman", or words to that effect. Now, while such an observation might gratify certain people, it could not be construed by a man of Carraher's character as anything but an insult. The quarrel then passed from the Duries to Shaw and the result was a scuffle in which Shaw was stabbed and soon bled to death from the jugular vein. Carraher was charged with murder and the jury of fifteen men and women, by a majority verdict allowable in Scottish procedure, found him guilty of culpable homicide, which in England or in Canada would be called manslaughter. He was sentenced to three years penal servitude.

After his release from prison, Carraher carried on his life of crime, but transferred his operational base to the Townhead area on the opposite side of the Clyde. The main attractions here were a woman, Sarah Bonnar, who became Carraher's mistress, and her brother, Daniel Bonnar, who became his henchman. Knife wielding became a habit with Carraher and in 1943 he was convicted of assault and razor-slashing, and again sentenced to gaol. His last crime, for which he paid the supreme penalty, was committed in November 1945, when in the course of another drunken brawl on the street he again fatally stabbed a man in the neck. The circumstances of the period favoured the hooligan. Scotland was subject to food and liquor controls while the underworld luxuriated in an atmosphere of easy money and black markets, complicated by deserters on the run from the Services. There was also a strain on the depleted police forces.

The defence was that of diminished responsibility and it relied entirely on medical evidence provided by two psychiatrists who testified that Car-

raher's was a psychopathic personality. Once again the Crown relied upon the evidence of a prison doctor who was not a psychiatrist, but who firmly declared that the accused had no mental illness. While agreeing that Carraher had alcoholic tendencies in a marked degree — he was seldom without drink — he would not concede that his general sense of social responsibility was so far impaired that he could not properly appreciate the consequences of his act.

J. RAGNAR JOHNSON*

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Benjamin on Sale. Eighth edition by THE HONOURABLE SIR D. L. FINNEMORE and ARTHUR E. JAMES. London: Sweet and Maxwell Limited. 1950. Pp. xlix, 1091. (£5, 10s. net)

The profession will welcome the eighth edition of *Benjamin On Sale* or, to give its full title, "A Treatise on the Law of Sale of Personal Property with References to the French Code and Civil Law by Judah Philip Benjamin", a copy of which has just come to hand. This edition, which appears twenty years after the publication of the last, contains a short biographical note on the illustrious jurist and politician who lends his name to it, which should appeal to the reader who likes to know something of his author as a man.

The original edition appeared in 1868, two years after Benjamin had received his call to the English Bar, a second edition being published in 1873. A large practice prevented his taking part in the preparation of any later edition, and in 1906 the fifth edition was published under the editorship of Walter Charles Alan Kerr and Arthur Reginald Butterworth, who, while preserving the substantial identity of the book, thoroughly overhauled and revised it, with special reference to the Factors Act, 1889, and the Sale of Goods Act, 1893.

The work remains what it always has been — a valuable compendium of the law on the sale of personal property and, from the point of view of the practising lawyer, probably the most helpful of all books on the subject. Moreover, the work is valuable as a reference on the general law of contract.

Close upon thirty years ago, in one of his addresses to the American Bar Association, Elihu Root, referring to the multitude of decided cases, said: "We must get back to the fundamental principles upon which our law rests . . . there is danger of forgetting the principles." In the preparation of the present edition this admonition appears to have been kept well in mind; for while the wealth of case illustration is retained and indeed amplified, the fundamental principles are stated with welcome precision.

The book is based principally on the Sale of Goods Act, 1893, and, although the distinguished and learned editors aim at making no more change than necessary, so as to retain as much as possible of the original work, the effect of important cases decided and statutes passed since the seventh edition was published in 1931 are discussed and a new and valuable chapter on Vendor's Liability in Tort has been added. The references to the French Civil Code are retained, and throughout the work mention is made of the Quebec Civil Code and American, Canadian and Scottish cases, in addition of course to English decisions.

Appendix IV contains a note on the application of English law and cer-

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tain sections of the Statute of Frauds, and the statutory adoption of the Sale of Goods Act, 1893, in the British dominions and possessions. The work closes with a comprehensive index of fifty pages.

Smaller print than in the seventh edition has been used, presumably to prevent the book from becoming too bulky. The work now covers altogether 1140 pages, and the question arises whether, in such a comprehensive work as this, it would not be better for more convenient handling to divide it into two volumes or perhaps not to attempt to cover so much ground.

Two matters which might merit attention occur to the present reviewer: (1) the full citation of a case should be given each time it is referred to in a footnote; (2) it would be of advantage to a Canadian lawyer if the grounds for the statement on page 47 that the Factors Acts override certain provisions of the Sale of Goods Act were given and analyzed.

FREDERICK READ*

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Industrial Arbitration Act, 1912-1949: Western Australia. With annotations by F. T. P. BURT, LL.M. Nedlands, Western Australia: University of Western Australia. 1950. Pp. xxx, 189. (No price given)

The approach to industrial relations in Australia and Canada is basically different, a fact that should puzzle the doctrinaire, for Australian methods, although seeming to deny our most tenaciously held notions, have been at least as successful in preserving industrial peace. The Australian is commonly supposed to be more of an egalitarian than his Canadian cousin and, if the description is correct, it may explain why, beginning more than half a century ago, the state has played a more important rôle in industrial relations in Australia than with us.

The different approaches are illustrated by the emphasis placed in Australia on "compulsory arbitration" and in Canada on "collective bargaining". Australian legislation, Commonwealth or state, establishes permanent courts of record under various names — Court of Conciliation and Arbitration, Court of Arbitration, and Industrial Commission, for example — with compulsory jurisdiction over industrial disputes, in the sense that the jurisdiction of a civil court is compulsory, and power to prescribe minimum wages, hours of work and other conditions of employment. As a logical corollary, Australian legislation prohibits strikes and lockouts. On the other hand, we are told in Canada, and with apparent reason, that everything possible should be done to bring management and labour together and encourage them, through the mutual give and take of the bargaining process, to settle their own differences. Only as a last resort should outside intervention be prescribed and then it should not take the form of a court, because wages, hours and the like involve policy — economic, social and equitable — and are not justiciable questions at all. With equal logic, given our philosophy, we recognize the strike and lockout as ultimate weapons in the armoury of labour and management, prohibiting them only in the preliminary stages of a dispute.

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Perhaps in these general speculations I am beginning to give a wrong impression of the book under review. They arise from a reading of the book, but they are not the sort of question to which the author addresses himself. This is a reprint of the Industrial Arbitration Act of Western Australia with detailed annotations to October 1st, 1950, by Mr. F. T. P. Burt, a practitioner of the Supreme Court of that state. In a few lines of foreword the Attorney-General explains that the annotations are based on a thesis submitted in 1945 for the degree of Master of Laws in the University of Western Australia and were prepared in association with the Editorial Committee of the University of Western Australia Annual Law Review, a collaboration that will sufficiently guarantee their accuracy and comprehensiveness. But the annotated statute is intended for reference and not the general reader, particularly the reader in another country. The book will help us in Canada to round out our knowledge of the very different method of regulating industrial relations adopted in Australia — a good deal of material is available here on the Commonwealth system but not much, so far as I know, on the state systems—but, in Canada, it is a book for the reference library and the specialist.

A Canadian should hesitate to express an opinion on anything so indigenous as another country's approach to the relations between its employers and workers. Perhaps the Australian attitude is right for them and the Canadian for us; perhaps, again, we should adopt theirs, at least in some limited fields like public utilities. Mr. Justice Dunphy of the Commonwealth Court of Conciliation and Arbitration, who was co-author of a paper on "The Jubilee of Industrial Arbitration in the Federal Sphere" delivered recently at the Seventh Legal Convention of the Law Council of Australia, is reported to have said during the discussion that followed the paper (1951), 25 Aust. L.J. 360, at pp. 377-378:

> "I do not know how else you can deal with industrial disputes except by conciliation and arbitration, and if it is suggested that some other scheme might be more beneficial the placitum would not cover it of course, but we would all be very pleased to hear of any new system that could be evolved. As we pointed out in the paper the only suggestion that has been made in modern times is that of collective bargaining, but I point out that collective bargaining is sponsored and encouraged by the Act as it stands at the moment, but the effect of collective bargaining is that you cannot bargain unless you have some industrial power or economic strength. It results in those with most power getting the lot, and those without getting nothing. That is most inequitable, unfair and undemocratic. If the only other methods that have been used in an attempt to settle industrial disputes have been by abject surrender or fear, those are not items covered by the legislation at the moment, and certainly not adopted by the court. If anyone in the audience or in the profession can give some idea of how a new system could be evolved that would settle industrial disputes otherwise than by conciliation and arbitration we would be delighted to hear it, because it would relieve us of an enormous amount of responsibility."

Perhaps he is right: who knows?

Whatever one may think about the Australian approach to industrial relations, it is difficult to escape the conclusion that the method of implementing it is over technical and rigid. At least partly, this seems to derive from the

constitutional background, upon which Mr. Burt has something to say in an introductory note. In Canada, the failure of the British North America Act to mention labour matters has at least enabled the division of jurisdiction between Dominion and provinces to be made without great pother, though not necessarily of course to everyone's satisfaction. As Mr. Burt explains, in Australia jurisdiction over labour matters is a concurrent power, the Commonwealth having the specific grant and the states the residuary, with a federal award prevailing in the event of its inconsistency with state legislation or the award of a state instrumentality. Placitum (xxxv) of section 51 of the Commonwealth of Australia Constitution Act, 1901, gives to the Commonwealth Parliament power "to make laws for the peace order and good government of the Commonwealth with respect to . . . conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State". This provision, most frequently before the courts of all the paragraphs of section 51, has been passed upon some hundreds of times by the High Court and the Privy Council. The difficulty, as this outsider understands it, is that under the grant Parliament has no general legislative power over industrial relations; it may only deal with interstate industrial disputes, and it may only deal with them indirectly, by establishing machinery for conciliation and arbitration. The power of the states is not restricted to industrial disputes and they may act either directly by legislation or indirectly through subordinate agencies. And yet, such are the uncertainties of constitutions and the ingenuities of courts, that by one path or another the Commonwealth power has come to be the more significant—a reversal that will no doubt seem ironical to some Canadians.

G. V. V. N.

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The Conflict of Laws: A Comparative Study. By ERNST RABEL. Volume III, Special Obligations: Modification and Discharge of Obligations. Ann Arbor: University of Michigan Press. Chicago: Callaghan and Company. 1950. Pp. xlvi, 611. ($12.50)

In my review (1947), 25 Can. Bar Rev. 318, of the first volume of Dr. Rabel's book, published in 1945, I gave some account of the scope and purpose of the work as a whole. As regards its scope, it will when completed afford a comprehensive and detailed comparison in English of the conflict of laws systems of the world, which will be especially useful in England and in other Anglo-American countries. As regards its purpose, it is specifically designed to make available in the United States information about foreign systems of the conflict of laws, this comparative law material being an indispensable requisite for the reconsideration of American conflict theories (including a restatement of the Restatement of the Conflict of Laws) and the adoption in the United States of a less isolationist approach to conflict problems.

Volume one bears the sub-title *Introduction: Family Law.* Volume two, published in 1947, and reviewed by me (1949), 27 Can. Bar Rev. 375, bears the sub-title *Foreign Corporations: Torts: Contracts in General.* The third volume consists of parts 9 and 10, the former of which (pp. 1-382) is entitled *Special Obligations.*

Part 9 (chapters 34 to 48) continues the subject of contracts commenced in the second volume by the discussion one by one of various types of business contracts, which could not be adequately covered in the treatment of the principles applicable to contract in general, because as regards each of these types of contracts special conflict rules may be desirable. One special type of business contract is omitted, because, as the author says in his introductory note (p. xi), "the conflicts of law respecting negotiable instruments are too complex and important to be investigated before property law will be examined in volume four".

Chapter 34, Money Loans and Deposits, serves as an introduction to the important chapter 35, Special Problems of Money Obligations, in which the author discusses the difficulties arising from the fluctuations in the value of currencies. There is no reference to the valuable summary of this topic, from the English point of view, contained in rules 160 to 166 of the sixth edition (1949) of *Dicey's Conflict of Laws*, and presumably this edition was published too late to be used in the third volume of Rabel, which, according to the editorial note (p. v), "speaks in general as of May, 1949, when the manuscript was completed; however, the author has been able to include some references to later material". The first part of chapter 35 is devoted to a statement of the "municipal" (that is, domestic) rules of different countries. Under the heading "Nominalism" (a principle more clearly stated in Dicey's rule 160) Dr. Rabel discusses various protective clauses inserted in money obligations (for example, gold coin clauses, gold value clauses) and "legislation against protective clauses". Under the heading, Foreign Money Debts, he discusses the right to conversion and judicial conversion, and under the heading, International Bond Issues, he discusses option of currency (*option de change*) and option of collection (*option de place*). While the author admits that the principle of nominalism prevails in most countries, he doubts the justice of its applicability to catastrophic changes in currency values as contrasted with minor changes. For example, the German Supreme Court refused to apply the rule that a "mark" equals a "mark" when in 1923 the German mark was "degraded to one billionth of its former value" (p. 19). In the second part of chapter 35 the author discusses questions of the conflict of laws (supplementing the discussion in chapter 34) under the headings *lex pecuniae* (*lex monetae*), *lex contractus*, *lex loci solutionis*, *option of currency*, and *moratorium and exchange restrictions*. In his opinion most of the conflict problems are governed by the proper law of the contract. He refers many times to the Joint Resolution of the Congress of the United States of the 5th June, 1933, without stating its provisions. (An English or Canadian reader will of course find its provisions sufficiently stated in *Rex* v. *International Trustee*, [1937] A.C. 500, at p. 503). As regards the five to four decision of the Supreme Court of the United States in *Guaranty Trust Co. of N.Y.* v. *Henwood* (1939), 307 U.S. 247, that the Joint Resolution applies to a promise to pay alternatively in United States money or in a foreign currency, Dr. Rabel says that the decision "may be regarded as an unwarranted extension of the Joint Resolution which does not mention foreign currency debts" (p. 45).

Contracts of sale of goods are discussed in chapter 36 (Sales of Movables) and chapter 37 (Sales of Goods: Scope of the Rule). After noting the general tendency to treat sale of goods as merely the main example of the application of conflict rules relating to contract in general, the author points out that

while many cases simply apply the law of the place of contracting or the law of the place of performance as such, the resulting choice of law can often be justified by better reasons (pp. 51, 52). In his search for more specialized conflict rules, he discusses various important contacts or connecting factors, as, for example, the seller's ordinary residence, the buyer's ordinary residence, place of delivery under f.o.b. and c.i.f. contracts. In chapter 37, the chief topic is the distinction between the transfer of the property in goods (governed by the *lex rei sitae*) and the contractual rights and duties of the parties. There is also a discussion of various allied or subsidiary questions, such as conditional sales, unpaid seller's privilege, risk of loss, warranty of quality, collateral duties, measure of damages and specific performance.

Chapter 38 (Sale of Immovables) is relatively short, presumably because the transfer of interests in land is to be further discussed under the heading of "property law" in volume four. Doubtless in that volume will be found, what is missing in chapter 38, some attempt to reconcile the rule that the *lex rei sitae* governs not only legal interests in land, but also equitable interests, and *semble*, some contractual interests, with the decisions in some cases that a contract relating to land may be governed by some law other than the *lex rei sitae*. My own efforts to state, and to find a solution for, this problem are contained in my *Essays on the Conflict of Laws* (1947) 522 ff., 528 ff. As regards capacity to transfer land or to contract respecting land, Dr. Rabel's discussion is not entirely satisfactory. He cites (pp. 102, 109) *Polson* v. *Stewart* (1897), 167 Mass. 211, 45 N.E. 737, without expressing any doubt of the merits of the decision. He also discusses (p. 115) *Smith* v. *Ingram* (1903), 132 N.C. 959, 44 S.E. 643, without any reference to the criticism contained in Cook, *Logical and Legal Bases of the Conflict of Laws* (1942) 271 ff., and without citing *Proctor* v. *Frost* (1938), 89 N.H. 304, 197 Atl. 813, which Cook prefers to *Smith* v. *Ingram*. *Bank of Africa* v. *Cohen*, [1909] 2 Ch. 129, deserves more than a casual citation (p. 109), and *Landreau* v. *Lechapelle*, [1937] O.R. 444, [1937] 2 D.L.R. 504, might also have been discussed. As to both cases, compare my *Essays*, pages 548 ff., 550 ff.

The complicated problems relating to representation, or agency in the widest sense, are discussed by Dr. Rabel in chapters 39 (Representation), 40 (Authority) and 41 (Employment and Agency). The headings alone of the author's analysis extend to more than two pages and a half in the table of contents, and it is impossible for a reviewer to indicate in summary form the course of the author's argument, and the indication of an occasional dissent would not give a fair impression of the author's work. The book is intended to be, as its title indicates, "a comparative study". The subject of representation has an extraordinarily varied history in the domestic laws of different countries and the author gives an account of the great diversity of treatment which the subject receives in different systems of the conflict of laws. Personally, I should like to lay more stress in the conflict of laws on the distinction clearly stated for American domestic law in the Restatement of the Law of Agency between "authority" and "power", so that, broadly speaking, the relations of principal (*P*) and agent (*A*) *inter se* and the extent of *A*'s authority (that is, what is frequently, but unnecessarily called "actual" authority) should be governed by the proper law of the contract or other transaction between *P* and *A* (not necessarily the law of the place where the contract is made or the transaction takes place), and that the relations between *P* and the third party (*TP*) with whom *A* makes a contract on behalf

of *P* or transfers *P*'s property (that is, questions of *A*'s "power" to bind *P*) should be governed by the proper law of the transaction between *A* and *TP* (which should be the *lex rei sitae* so far as the question is whether *TP* gets a good title to *P*'s property). The nomenclature "authority" and "power" is not used in English cases, but the comment on rules 158 and 159 in *Dicey's Conflict of Laws* (6th ed. 1949) 710 ff. includes a course of reasoning which is "akin to, but not identical with" the distinction between authority and power (p. 712, note 36).

Limitations of space prevent my doing more than mention the topics discussed in the other chapters of part 9, namely, chapters 42 (Workmen's Compensation), 43 (Maritime Transportation of Goods), 44 (Maritime Carriage of Goods: Comparative Conflicts Law), 45 (Other Transportation Contracts), 46 (Insurance), 47 (Suretyship), 48 (Extracontractual Obligations).

Part 10 (pp. 383-524) is entitled Modification and Discharge of Obligations, and consists of chapters 49 (Voluntary Assignment of Simple Debts), 50 (Other Transfers of Simple Debts), 51 (Setoff and Counterclaim: Compensation), 52 (Statutes of Limitations) and 53 (Statutes of Limitation: Comparative Conflicts Law).

The book contains a list of abbreviations, a bibliography, a table of statutes, a table of Anglo-American cases and an index. An especially useful feature is an elaborate table of contents (17 pages), which should be consulted by a reader who is seeking information on a particular point, and which affords an introduction to the author's analysis of each topic. The analysis is sometimes intricate, but its intricacy is a necessary result of the complexity of the material upon which the author works. There are such fundamental differences between the ways in which a particular topic is approached in different systems of the conflict of laws that the exposition cannot be simple.

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Current Law Year Book 1950. General editor: JOHN BURKE. Year Book editor: CLIFFORD WALSH, LL.M. London: Sweet and Maxwell Ltd. 1951. Pp. cc, [36], and 4439 paragraphs unpaged. (£2, 2s. net)

This is the fourth volume in a series begun in 1947. (See earlier reviews, 26 Can. Bar Rev. 1152; 28 Can. Bar Rev. 1049.) The form continues largely as in 1949 — table of cases (digested, applied, referred to, etc.), tables of statutes (a statute citator) and statutory instruments (1950 only), followed by the digest (of case law, statutory law, and references to legal literature) in numbered paragraphs under subject headings. Finally, there is an index which is cumulative back to the first digest for the year 1947. The statute citator, perhaps one of the most valuable features of the volumes, continues the practice begun with the 1949 volume of giving references to the appropriate 1950 amendments, statutory instruments and cases under each section of the statutes from the earliest times to date. And we heartily echo the general editor's comment (p. iii) that the mode of citation of English statutes "seems archaic and inconvenient" when, for example, in a single calendar year two different statutes are known as 14 Geo. 6, c. 8, and 14 &

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15 Geo. 6, c. 8. The editor commends the simpler system in Australia which uses the calendar instead of the regnal year. There is the difficulty, of course, of two or more sessions in one calendar year. Should this make any difference to the citation?

The "Outline of the Law" for the year, a part of the 1947 volume, but dropped in the two subsequent volumes, has reappeared pursuant, we are told, to a number of requests. This time it is twice as long (now 31 pages). In this space, we are given merely an outline of the legal highlights of 1950 in England. "It is admittedly a thing of bits and pieces arranged under broad general headings." For its limited purpose of providing a succinct account of these highlights in each field for those who are less familiar with one field than another, it is very ably written and conveniently set out. But as a regular feature, its value may still be doubted.

There would appear to be one change in the table of cases. Formerly, there was a reference, in addition to citation of all reports (except Tax Cases, still not recognized), to a comment in the periodical literature. While these references, we noted last year, were confined to three periodicals, we did like the practice of giving them. Now they have disappeared entirely from the table of cases and, instead, a reader is referred to the heading "articles" and an appropriate paragraph number. Much space could be saved by the editors and much time for the readers if the references to those articles which are case comments could be restored to the table of cases. This is especially true when the vast majority of articles referred to are from the Law Journal, the Law Times and the Solicitor's Journal. But there is an encouraging broadening of the periodical references. Not all are listed in the table of abbreviations. In fact, the citations for most of those not so listed are incomplete in that the volume number is consistently omitted. See, for example, s. 659, 2785, 4426.

Perhaps the most important feature about this year's volume is the notice that is taken of nine new sources of quasi case law: Decisions of (1-2) the Commissioner and Minister under the National Insurance Act (five series; (3) the Minister of Town and Country Planning; (4) the Lands Tribunal; (5) the Transport Arbitration Tribunal; (6) the Industrial Court; (7) the Civil Service Arbitration Tribunal; (8) the National Arbitration Tribunal; and (9) the Umpire under the Reinstatement in Civil Employment Act, 1944. Many of these decisions are referred to (and some digested) in the digest: see, for example, s. 1392-4, 1444. Of these new sources, one has produced a new series of reports, the Planning and Compensation Reports (see s. 607). Others leave this reviewer guessing as to where he might find out more about the four and a half pages of listed awards in s. 1394 (National Arbitration Tribunal). These awards are merely listed, not digested. If they are included at all, therefore, it must be with the purpose of leading us to the original source. Something might be done to enlighten readers abroad.

This work has, as usual, required many hours of careful checking of thousands of references. When we say that it continues to be well-nigh perfect in this respect, the editors will not object to a reference to s. 46 where in the last line the "T.L.R." citation is incomplete, and to s. 201 where the intended second line is omitted.

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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.

Abstract of Legal Preliminaries to Marriage in the United Kingdom, other countries of the British Commonwealth of Nations, and in the Irish Republic. Prepared by the General Register Office, Somerset House, London. London: His Majesty's Stationery Office. 1951. Pp. v, 189. (6s. net)

Assessment and Rating: Being the Law of Municipal Taxation in Canada. By H. E. MANNING, K.C. Third edition. Toronto: Cartwright and Sons Limited. 1951. Pp. xii, 793. ($22.00)

Canadian Constitutional Law: Cases and Text on Distribution of Legislative Power. By BORA LASKIN. Toronto: The Carswell Company Limited. 1951. Pp. xvii, 676. ($16.50)

Canadian Law for Business and Personal Use. By W. H. Jennings, B.A., A.M. (Educ.). Toronto: The Ryerson Press. 1951. Pp. viii, 238. ($3.00)

Au Carrefour de Trois Systèmes Juridiques: Le Droit civil de la Province de Québec. Thèse pour le doctorat en droit, Faculté de Droit, Université de Bordeaux. Par Gérard Le Moyne de Sérigny. Alger: La Maison des Livres. Pp. 160. (No price given)

Charles Evans Hughes. By MERLO J. PUSEY. In two volumes. Toronto: The Macmillan Company of Canada Limited, 1951. Vol. I, pp. xvi, 409. Vol. II, pp. vii, 410-829. ($18.75)

Conservation of Oil and Gas: A Legal History, 1948. Edited by BLAKELY M. MURPHY. Chicago, Illinois: Section of Mineral Law, American Bar Association. 1949. Pp. xvii, 754. (No price given)

Current Legal Problems 1951. Edited by GEORGE W. KEETON and GEORG SCHWARZENBERGER on behalf of the Faculty of Laws, University College, London. Volume 4. London: Stevens and Sons Limited. 1951. Pp. vii, 428. (£2 5s. net)

A Digest of the Law of Agency. By WILLIAM BOWSTEAD. Eleventh edition by PETER ALLSOP, M.A. London: Sweet and Maxwell, Limited, 1951. Pp. lxxxiv, 351. (50s. net)

The General Manufacturers Sales Tax in Canada. By JOHN F. DUE, Ph. D. Canadian Tax Papers, No. 3. Toronto: Canadian Tax Foundation. 1951. Pp. xi, 202. ($2.00)

Government and Collective Bargaining. By FRED WITNEY. Lippincott Series in Labor Economics and Industrial Relations, under the Editorship of JOSEPH SHISTER. Chicago, Philadelphia and New York: J. B. Lippincott Company. Toronto: Longmans, Green and Company, 1951. Pp. viii, 741. ($7.00)

Handbook on Canadian Mechanics' Liens, with Forms. By ROBERT W. MACAULAY and H. MAXWELL BRUCE. Containing a chapter by JACQUES DE BILLY, K.C., on the law of the Province of Quebec. With a foreword by the Hon. J. R. Cartwright. Toronto: The Carswell Company, Limited. 1951. Pp. xxvii, 321. ($9.75)

Handbook on Trade Marks Laws Throughout the World. By P. O. HEREWARD. London: Sweet and Maxwell, Limited. 1951. Pp. 210. ($7.75)

Labour and the Constitution. Sydney, Australia: Fabian Society of New South Wales. 1951. Pp. 24. (1s.)