Correspondence

Unfusing the Profession

TO THE EDITOR:

While it is usual to speak of the legal profession in Canada as being joined or fused, in fact in the common-law provinces barristers are barristers, solicitors are solicitors, and it is quite possible to be one and not the other; but of course most lawyers *are* both, and that is the great distinction between the organization of the profession here and in England, where it is not possible for a person to be at one time a member of both branches.

In the early days in Upper Canada the advisability of splitting the two branches and adopting the English system was considered, and in 1840 a bill was introduced to separate the practice and profession of a barrister and attorney-at-law. A special committee of the legislature reported against the suggestion thus: "In time past the two branches of the profession have been conjoined; and in the opinion of your Committee, the period *has not yet arrived* when a separation may be wisely effected". The italics are mine. Attempts at separation were again made in 1847 and, for the last time, in 1849; both failed, and thus for over one hundred years the right of the Canadian lawyer to be both attorney and advocate has not been seriously challenged.

Has the time *now* arrived when we should reconsider the matter? Certainly Canada in 1955, with good roads, coast to coast railways and extensive plane service, is a more closely knit community than the insecure frontier province of 1798. Distance has been, if not annihilated, changed completely, so that in terms of time Vancouver is closer to Toronto today than was Kingston a hundred and fifty years ago. And a country of 15,000,000 people is a quite different thing from the Canada of the early 1800's.

Also there are now, as there were not in the early days, a sufficient number of well educated and adequately trained lawyers to serve the needs of our people. Would those needs be better served if the advocate was not also the solicitor? I think so, but I do not think that a bill to put asunder what has for so long been joined together would have any more chance of becoming law now than

it had in 1840. But, if it is desirable that we have a body of lawyers doing advocacy exclusively, it should be possible to achieve that end without legislative action, and indeed voluntary organization is not merely the practical but also the better way. It is to be borne in mind that the ancient Inns of Court came into being as voluntary societies and that to this day their rules and customs are largely of their own devising.

Before considering how we may get a true bar, let us look at the present system. In Ontario alone there are some 4,000 lawyers who take out their annual certificates and are thus entitled to practise as solicitors and barristers. I would hazard a guess that at least half of these seldom go into court and that three-quarters of them would be happier if they never put a gown on their backs. They are, and they much prefer to be, solicitors, performing the useful and indeed indispensable functions that the solicitor performs. But the fact that they *are* barristers, and that we have no lawyers who are barristers only, is a source of embarrassment to many of them. They cannot and should not admit that they are less skilled or less able than their fellows, or that they are less or differently qualified, and thus if one of their clients becomes involved in litigation they feel it their duty to appear for him in court, no matter how little inclined or how little experienced. They are afraid, except in most important matters, to suggest to the client that counsel be engaged, as it may give the impression that they are unsure, or unskilled, or something less than fully competent. It would be so easy if the capable and honest gentlemen who are solicitors by choice could explain to the client that advocacy is a different branch of the legal profession and that there are men of the law who do that work exclusively; who do not practise as solicitors and who do not see clients except through solicitors. The client would probably be happier in the feeling that he is getting the services of an expert, a specialist if you will; the solicitor would be relieved of an unpleasant task, but would still know that in sending the brief he would not lose the client. As things are, however, many solicitors fear to send a client to another lawyer, who practises as both solicitor and barrister, because they feel that the client's future business may well go with him.

Then, too, should there not be some place to which students and young lawyers who desire to learn advocacy may resort? The law schools can and do teach the theory of the law, and in some respects they teach the practice of it, but they cannot teach the art of advocacy, which must be learned by seeing and doing. Yet how many students can get into an office where advocacy is the exclusive or principal business of even one partner in the firm?

If, as I think, arguing a case at bar is a quite different art from drawing a deed or will, or advising on corporate matters, then it

follows that the man who excels at the one must almost of necessity be an indifferent practitioner of the other; and thus the skilled lawyer, who is quite competent to instruct his student in the business of making a testamentary disposition, will probably have not the faintest notion of how to open a case to a jury; and vice-versa. There are a great many law offices where the budding *solicitor* may learn his trade and learn it well, but there are not many where the lawyer ambitious to address judge and jury can learn even the rudiments of *that* trade, which also has its skills.

Conceding as I do that no legislative action to separate the profession is desirable, even if practicable, but convinced as I am that the public would be better served if we had a body of advocates, what might be done?

We might start by establishing, say in Toronto first (and then in other principal cities if the experiment were successful), an Advocates' Library. This must be a purely voluntary association; one would hope that many of our leading counsel would join it at the outset, and its rules could be simple. Those joining would agree to practise much as an English barrister practises; thus they would withdraw from association with a firm of solicitors and they would not see clients except through the intervention of a solicitor. There would be room in the Library for counsel of all sorts, and of all ages; indeed it would be desirable that there be at the outset a number of juniors, so that even the least remunerative piece of litigation could be attended to. It should be possible to accommodate such a Library near the courts, and the associated barristers would have their chambers adjoining. Indeed, the only essential difference between what I suggest and the English system would be that the withdrawal from practice as a solicitor would be voluntary and revocable: anyone dissatisfied could at will resume the general practice of law. There would be no compulsion, and all members of the bar not of the Advocates' Library would be free, as they are now, to appear in any court as they see fit. The only people deprived of a privilege they now possess would be those who by joining the Library elected to be so deprived and, as I have said, their purely voluntary election would be revocable at any time.

Over the years many judges have complained to me of the quality of much of the advocacy they are compelled to listen to; many solicitors have told me of their dislike of court work and of their inability to avoid it because of pressure from clients; students and juniors have talked of their desire to become advocates and their difficulty in discovering how to do so; and busy counsel have told me of the distractions of solicitors' work, which at least occasionally they are compelled to undertake. The voluntary system

I suggest may be a partial and in time a fairly complete answer to these complaints. In any event I think it worth a try.

It may also turn out that the establishment of societies of advocates in our principal cities would go some way toward solving the problem of the defence of indigent persons accused of crime, as junior members of the societies would no doubt be willing to follow the English practice of appearing for a nominal or no fee, and of course the interposition of a solicitor would not be necessary.

In the long run the adoption by such societies of the bulk of the voluntary English rules governing barristers should make litigation not only more competently handled but less costly to the litigant. Counsel would be paid his stipulated fee, regardless of the event of the cause, and not, as happens so often now, a fee based largely on the result.

And, finally, such establishments could in time give meaning to the now almost meaningless dignity of silk. Thus, those of the Library who are Queen's Counsel might well adopt the English rule that they should not appear unless briefed with a junior, and then only in superior courts, or some such modification of that rule as would be found workable. In any event, more employment would be given to capable juniors and one might reasonably expect that in time we should have a compact, competent and versatile society of Canadian barristers.

This is an outline only, and I do hope that those favouring or opposing the suggestion will make their views known through your columns.

JOSEPH SEDGWICK*

* * *

Succession Duties and the Lawyer-Arithmetician

TO THE EDITOR:

I would like, if I may, to make a few observations on the decision of the Exchequer Court in *Hospital for Sick Children* v. *Minister of National Revenue*, [1954] Ex. C.R. 420, and on Mr. J. B. Watson's comment on it at page 348 of the March number of the Review.

In the first place both the learned judge and Mr. Watson appear to have overlooked what seems to me a most important factor. Potter J., after referring to some English and Scottish cases on legacy duty, said at page 437 of the report:

> On the authorities, therefore, a gift free of duty is a gift of the subject matter of the gift itself and of the amount of the money necessary to pay the duty on the gift.

In the case before him the net value of the gifts made free of duty

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to the testator's widow was assessed at $655,363.51; after allowing for Ontario succession duty, the total of both Dominion and Ontario duty on this sum was calculated at $229,586.17. When this sum was added to the original bequest, the total, which was the dutiable value of the succession according to the decision of Potter J., came to $884,949.68. The duty on this sum at the appropriate rate was $327,815.93, which Potter J. held was the total duty payable. Under sections 13 to 15 of the Dominion Succession Duty Act the duty must ultimately be paid out of the succession. If duty of $327,815.93 is deducted from a succession worth $884,949.68, the widow is left with a net sum of $557,133.75, which is almost $100,000.00 less than the amount bequeathed to her free of duty. I would respectfully submit that a decision which leads to this result cannot be right. It seems to me that the value of the succession must have been underestimated by approximately $100,000.00, plus, of course, the duty on the $100,000.00.

The fallacy, I suggest, lies in trying to calculate the duty on the net amount of the bequest instead of on the whole succession, including the duty.

On the other hand, the method of calculation proposed by the Minister of National Revenue contains another and more interesting mathematical fallacy known, I believe, as Achilles and the Tortoise. If Achilles can go ten times as fast as the tortoise and starts a hundred yards behind it, then when Achilles has covered those hundred yards, the tortoise is ten yards ahead of him. When he has covered those ten yards the tortoise is a yard ahead of him. This process can be continued indefinitely and although the gap between them is steadily reduced it never completely disappears. Similarly the minister's recalculations will never cease to yield an increase in duty. Ultimately the increase will be reduced to a minute fraction of a cent, but it will never entirely disappear. To adopt a method of calculation which is incapable of final solution does seem slightly perverse.

Mr. Watson suggests a third method of calculation, namely, "calculating the amount subject to duty which, less the duty, would equal the duty-free gift". When the rate of duty is fixed, this calculation is quite simple. For example, suppose the bequest to be $100.00 free of duty and the rate of duty 10%. As the rate of duty is 10%, the proportion of the succession remaining after duty is deducted is 90%, that is nine-tenths. Taking x as the value of the succession, we can now construct a simple equation:

$$\frac{9x}{10} : \$100.00$$

$$x : \$111.11$$

Duty on that at 10% is $11.11 and when that is deducted from the total the legatee is left with $100.00, which is what was given to him. Thus this method of calculation yields the right answer and seems to me therefore to be the correct method, and the only correct method. As the rates of duty are on a sliding scale, which varies with the value of the succession, the calculations will in practice be more complicated than this example, but they should not, in this day and age, prove insoluble.

This method of calculation is used in the United Kingdom in calculating income tax on an annuity given free of tax. Whereas, in the case of legacy duty, section 21 of the Legacy Duty Act, 1796, exempted from duty money used to pay the duty on a bequest made free of duty, there is no corresponding provision in the Income Tax Act to exempt from tax money used to pay the tax on a tax-free annuity. Consequently, in the words of Lord Sands in *Hunter's Trustees* v. *Mitchell*, [1930] S.C. 978, at p. 982 (quoted with approval in the House of Lords in *I.R.C.* v. *Cook*, [1946] A.C. 1):

> . . . when under a will an annuity is payable free of income tax, the amount of the tax is taken to be an additional gift, and is included in the income of the annuitant when, for revenue purposes, a return of total income is necessary. Further, the income from this source is not the annuity plus the tax upon it, but the amount of the annuity plus such sum that, when the tax is levied upon the total amount, the net amount will be the amount of the annuity.

The Dominion Succession Duty Act also contains no counterpart to section 21, and I would therefore suggest that this rule ought also to be applied to Canadian succession duty. The effect of the decision of Potter J. is to introduce the principle of section 21 on the first recalculation, as it were at one remove. As Parliament has chosen not to adopt that section, it ought not to be applied at any stage of the calculations.

R. B. CANTLIE*

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Last Clear Chance: Corrigendum

TO THE EDITOR:

In my article in the March issue on Last Clear Chance after Thirty Years under the Apportionment Statutes, in stating the facts of *McKee & Taylor* v. *Malenfant & Beetham* (p. 281), I mistakenly described the defendant's truck as unlighted. I noticed the error

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before the March issue was mailed to subscribers but too late to incorporate a correction. Although neither the thesis of the article nor my comment on the case is in any way affected by this mistake, I am very sorry that it occurred because one naturally regrets being in error and as a result of it a reader could hardly be blamed for expecting other errors in the statement of facts of other cases.

In the *Malenfant* case the trial judge was unable to come to a conclusion as to whether the lights were on or not, but said that, if he had had to come to a conclusion, he would have found that the plaintiff had failed to carry the burden of proving them unlighted. The Ontario Court of Appeal made no finding on the question. In the Supreme Court of Canada Mr. Justice Kellock, with whom Mr. Justice Taschereau and Mr. Justice Fauteux concurred, mentioned the trial judge's difficulty but made no finding as to the lights. Mr. Justice Locke came to the conclusion that the lights were on and that the defendant was not negligent. Mr. Justice Cartwright (who dissented) ignored the question.

My own view is that the presence or absence of the lights is an element in the determination of the question whether the defendant was negligent and how negligent the defendant was, and how negligent the plaintiff was in failing to see the defendant's truck in time to stop. But the presence or absence of the lights was not a turning point on the question whether or not the last-chance doctrine applied. I am nevertheless sorry to have failed to state the facts accurately.

After my article was in type the judgment of the Supreme Court of Canada in *Bruce & Bruce* v. *McIntyre*, cited by me at page 276 as an illustration of the Ontario Court of Appeal properly apportioning the damages when a moving vehicle negligently hits a negligently parked vehicle, was reported, [1955] 1 D.L.R. 785. Here the decision apportioning the damages was affirmed, so that this case now furnishes an illustration of the Supreme Court of Canada adopting the reasoning of *The Volute*, [1922] 1 A.C. 129, and apportioning the damages notwithstanding last-chance facts.

M. M. MacIntyre*

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The Governor General

To the Editor:

The recent discussion in the Canadian Bar Review[1] on the office of Governor General has covered a great deal of territory and raised

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[1] Thomas Franck, The Governor General and the Head of State Functions (1954), 32 Can. Bar Rev. 1084; commented upon by Eugene Forsey, Correspondence (1955), 33 Can. Bar Rev. 252.

a number of interesting questions for the Commonwealth countries as a whole.

A major difficulty with many existing studies in this field is their failure to distinguish between formal authority and effective power, and so to realize that the actual working, operational practices of Governors General, and for that matter of colonial Governors or provincial Lieutenant Governors, may vary widely from country to country, and even within the one country at different periods, though the facade of formal authority may be unchanged. It is the *working* constitution—the conventional element is governing in an area where the forms tend to be of interest mainly to the historian—that here is of dominant importance.

A meaningful approach to comparative study of the office of Governor General in the various Commonwealth countries, it is suggested, would begin by attempting to classify the various cases by criteria both of space and of time. It is surely desirable to know, for example, whether a user, or claimed user, of gubernatorial powers is exercised in relation to a country having representative, democratic government or in a country that has not yet reached this condition, which is in what we may call a "pre-democratic" condition. The powers exercised by the governors in British North America at the time of the Durham Report or in the British Crown Colonies at the present day (note the recent example of British Guiana) are clearly vastly greater, effectively, than those exercised by the Governor General of the new self-governing Dominion of Canada after 1867. Likewise, we can expect a basic difference in the effective powers of the Governors General of Canada in the period of the old British Empire and in the periods of the British Commonwealth of Nations and of the plain, unprefixed Commonwealth of Nations that succeeded the old Empire. The reasons for this are clear.

While the Commonwealth countries were in a position of legal subordination to the United Kingdom—a situation that existed until the era of "Dominion status", recognized by the Imperial Conference of 1926 and the Statute of Westminster, 1931—the Governor General of any one of those countries, Canada for example, had something of a dual function. He was, first of all, the representative and agent of the British government in Canada and as such exercising in Canada those powers still retained by the British government over Canada: he was also, however, the head of the whole hierarchy of governmental authority in Canada, a rôle in Canada analogous to that exercised by the King for the United Kingdom.

Once the Commonwealth countries ceased to be legally subordinate to the United Kingdom, the first function of the Governor General became anachronistic, a fact that was made abund-

antly clear when the Commonwealth Prime Ministers began, not merely effectively to make their own appointments to the office of Governor General, but also to appoint local citizens, instead of citizens of the United Kingdom, to the office—a practice followed by India, Pakistan and Ceylon since their attainment of independence after the war, by South Africa in the last twenty years, by Australia in the case of the last two Labour-party governments, and by New Zealand and Canada more recently.

The second function of the Governors General has tended to accord with the powers effectively exercised by the monarchy in the United Kingdom. The atrophying of the royal powers in England since the nineteenth century can clearly be linked to the progressive extension of the franchise and the impossibility of long asserting powers depending for their legal authority on hereditary derivation against prime ministers possessing the political backing of parliamentary majorities elected by the whole adult population. In part too, of course, the progressive disappearance of royal powers can be traced to the two-party system, which has substantially prevailed throughout recent times, except during the early 1920's when the Labour Party was emerging to full power and the Liberals were finally disintegrating, and which has effectively eliminated an area of royal discretion by presenting only an either/or choice. If the King should refuse the prime minister of the day's advice to dissolve, he could turn only to the opposition party, with the consequent risk of embroiling the monarchy in ugly, partisan strife, as happened to Governor General Byng in Canada after he refused MacKenzie King's request for a dissolution in 1926. Under present conditions the policy arguments in favour of a rule that the King or Governor General must act upon the advice of the prime minister of the day, especially as to dissolution, are obvious and compelling.

There has been some discussion in these columns, of a critical nature (see Franck, *op. cit.*, p. 1093), about the action of Governor General McKell of Australia in acceding to Prime Minister Menzies' request for a dissolution of both houses of the federal parliament in 1951. This criticism, it is submitted, is not justified. While there is little doubt that Mr. McKell's private sympathies (he was Labour-party Premier of the State of New South Wales at the time of his appointment as Governor General in 1947) would have disposed him to decline Prime Minister Menzies' request, since the electoral advantage to the Conservative government seemed clear, Mr. McKell under advisement granted the Prime Minister's request. Apart from the obvious risks, if he should refuse the Prime Minister's advice, of being caught in the same sort of imbroglio as Viscount Byng in Canada in 1926, Mr. McKell took note of the clear fact that once the two-party system (Labour ver-

sus Conservative coalition forces) had gelled in Australia in 1909, no Governor General of Australia had ever refused a prime minister's request for dissolution, including notable instances in 1914, 1929 and 1931. Actually, surveying British practice since World War I, one finds a similar record, for in every case—Baldwin in 1923, MacDonald in 1924, MacDonald again (as leader of the National Government) in 1931, Baldwin in 1935, Churchill (as Conservative leader after the break-up of the wartime coalition) in 1945, and Attlee in 1951—the prime minister's request for a dissolution has been granted by the King.

Of course the fact that the Governor General in any one of the Commonwealth countries is now effectively appointed by the local Prime Minister, and the fact also that he will increasingly tend to be a local citizen, may well raise in the future some problems not envisaged at the time the twin principles of local appointments and local appointees were first being canvassed. So long, in the present stage of full representative, democratic government in the Commonwealth countries, as the Governor General is an alien figure remote from local partisan controversies, he can reasonably be expected to fulfil his office according to the directives of the ministry of the day, simply because that is the most objective, non-partisan basis on which the office can be conducted. If the office of Governor General is filled on a local basis, however, the risks of personal involvements in local controversies must tend to become much greater. The present Governor General of Pakistan, Ghulam Mohammed, has certainly, in the recent constitutional crisis in that country, exerted very sweeping powers, which no British-born Governor General of any of the Commonwealth countries could ever conceivably have attempted in the era of representative, democratic government. It is true that a local appointee as Governor General who does not have a fixed term of office—in other words, whose tenure is ultimately dependent on the goodwill of the government of the day—may really have no choice but to abide by the government's directives. But once give the incumbent a definite term independent of the whim of the government (the offices of President, formerly Governor General, of Ireland and India carry constitutionally fixed terms of seven years and five years, respectively), and once take the power of appointment away from the government (the office of President in Ireland is filled by direct popular vote and, in India, by vote of an electoral college consisting of the members of both houses of the federal Parliament and the elected members of the state legislatures), then the temptation for the Governor General to exercise his own personal discretion may become very strong.

The fact that any attempt to take the practices governing the office of Governor General out of the area of conventional, un-

written law, and reduce them to positive-law form (cf. Franck, *op. cit.*, p. 1093) might produce unforeseen consequences of this nature is of course no necessary argument against such a move. But constitutional changes should never be made without regard to their possible effects on the main body of law and practice. If the office of Governor General is ever given independent status by establishing a firm term of years and by vesting the appointing power in some agency outside the government of the day, then it is likely to be transformed from its present Doge-like character into something more—perhaps some form of constitutional counterpoise to the cabinet and legislature.

EDWARD MCWHINNEY*

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"Reciprocity" in the Recognition of Foreign Judgments

TO THE EDITOR:

I am much indebted to friends for having enabled me to study, while staying in Canada, some issues of your highly interesting Canadian Bar Review, which I regret is so little known in my country. The article of Professor Gilbert D. Kennedy in your April issue of last year, on "Reciprocity" in the Recognition of Foreign Judgments, interested me particularly. Although the article deals mainly with common-law conflicts, its importance extends to judgments given by courts outside the Commonwealth, as it indicates in what circumstances such judgments can be expected to find recognition by a court in the Commonwealth. When we think of the chaos which still reigns in the area of international recognition and enforcement of foreign judgments, we cannot but hope that the rule implied in *Travers* v. *Holley*, recognition on the basis of reciprocity, will indicate a way out of the existing difficulties.

But the solution Professor Kennedy suggests on this point appears to me impossible. He states that the continental civil-law countries largely use nationality or citizenship as a basis of jurisdiction for divorce and other status proceedings, while the English common-law jurisdictions are based mainly on domicile. He recommends, for the purpose of determining sufficiency of jurisdiction, that nationality ought to be equated with domicile, so that the rule of reciprocal recognition could also be applied to judgments in divorce and other status proceedings where jurisdic-

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tion had been based on nationality. As an example he mentions the case of a divorce granted by a French court to French nationals. If those French nationals are not domiciled in France—even if they are domiciled in England—an English court ought, according to Professor Kennedy, in the spirit of reciprocity to recognize the French divorce, since the basis of the French court's jurisdiction—nationality—is to be deemed equivalent to domicile. The assumption from which this theory starts, however, is wrong. In France, as well as in Holland and Belgium, countries whose systems of law are founded on the Code Napoleon, jurisdiction of the court in divorce and other status proceedings is determined mainly by domicile and not by nationality.

To give some examples, in France a divorce suit must be brought before the court of the place where the defendant spouse is domiciled. This means generally the court of the place where the husband has his domicile, as the wife necessarily shares it, unless she is judicially separated, after which she may acquire a separate domicile. It is curious that neither the French Civil Code nor the Code of Civil Procedure contains any rule of jurisdiction in divorce proceedings. The general rule just mentioned is derived from article 59, para. 1, of the Code of Civil Procedure, read in conjunction with article 108 of the Civil Code. If the general rule cannot be applied, because the domicile of the defendant is not known, the court of the last known domicile of the defendant spouse is competent, and, to help the wife, the court of her actual residence will probably assume jurisdiction when the husband has disappeared for a long time.[1] These last two rules are judge-made. According to article 262, para. 1, of the Dutch Civil Code, the court of the place where the husband is domiciled exercises jurisdiction, even when the parties are separated. Article 265 moreover permits divorce at the former common domicile when the defendant has deserted his spouse or has left the country after the ground for divorce has arisen. (Besides, article 262, para. 2, gives a rule of jurisdiction in divorce proceedings for Dutch parties only. If the husband is domiciled abroad, the court of the place where the wife lives is competent.)

The French general jurisdictional rule applies not only to nationals but also to foreigners domiciled in France. In addition, the French courts assert jurisdiction over foreigners if the defendant spouse has no domicile abroad or if the parties can be considered as having accepted, explicitly or implicitly, the jurisdiction.[2] In Holland the jurisdiction of the court over foreigners in divorce

[1] Planiol et Ripert, Traité pratique de droit Civil Français (1952), Vol. 2, pp. 432-433.

[2] Cour d'Appel, Paris, April 6th, 1903; Recueil periodique et critique Dalloz 1904, Part 2, p. 273; Planiol et Ripert, *op. cit.*, p. 435; Rabel, Conflict of Laws, Vol. 1 (1945) p. 406.

proceedings results directly from articles 262, para. 1, and 263, as contrasted with article 262, para. 2, the application of which is limited to Dutch parties only.

Only after the court has thus settled its jurisdiction, mainly on the basis of domicile, does the question of nationality come in. The principle is embodied in all our civil codes that the status and capacity of a person is always governed by his own national law, wherever he may be.[3] This nationality principle obliges the court to observe the substantive rules of the national law of the parties. Thus a French court having jurisdiction over Italians, domiciled in France, must apply the Italian law on their status and therefore cannot grant a divorce, since Italian law does not allow divorce.

Strict application of the principle would force the courts to refuse a divorce also to a wife who is a national of the forum but married to a foreigner whose national law forbids divorce. To avoid this hardship on a deserted wife, the courts of most continental civil-law countries have long since followed the practice of granting, where possible, divorce to a party of a mixed marriage, who has the nationality of the forum. A well-known example is the case of the Marquis de Ferrari.[4] Here a French woman was married to an Italian. After a judicial separation she recovered her French nationality. The French court later granted her a divorce. Although it cannot be denied that this practice affects the nationality principle, as domestic law is being applied to a foreign husband, the courts have in those cases tried to save at least the appearance of the general principle by holding that the national law of the forum continues to govern the party who has the nationality of the forum.[5]

Although this practice is followed in Holland too, the *Ferrari* case never could have happened there. Section 8 of the Hague Convention on divorce of June 12th, 1902, to which Holland and Italy are still adherents, would force a Dutch court to apply Italian law to such a case, it being the law of the last joint nationality of the parties. A Dutch court therefore can give no relief to nationals in these circumstances. For this very reason France and many other countries have left the Hague Convention.

The national law of the parties should also be applied, as to the grounds available for divorce, separation and other status proceedings, unless to do so would offend against the public order of the

[3] Article 3, Code Civil Français; section 6, Wet 15 Mei 1829 Houdende Algemeene Bepalingen der Wetgeving van Het Koningrijk (Holland). The principle is expressed in the codes only for their own nationals, but the same principle is assumed with regard to foreigners.

[4] Cour de Cassation, July 6th, 1922; Recueil per. et crit. Dalloz 1922, part 1, p. 137; Planiol et Ripert, *op. cit.*, pp. 374-376; Rabel, *op. cit.*, p. 443.

[5] Cour d'Appel, Paris, December 21st, 1937; Recueil Hebdomadaire de Jurisprudence Dalloz, 1938, p. 186.

forum. A recent judgment of the Court of Maastricht (Holland) furnishes a good example of the way in which this principle is applied.[6] A Belgian wife sued her Belgian husband for divorce. The court, having assumed jurisdiction on the basis of the domicile of the parties in the District of Maastricht, went first into the question of the law governing the grounds on which the court could grant a divorce to Belgian parties. Holding that Dutch private international law refers on this point to Belgian law, the court inquired whether the grounds alleged by the wife complied with Belgian law, which it found they did. That foreigners are thus treated differently from nationals of the forum, the court went on, is not to be deemed contrary to Dutch public policy. Only a ground for divorce in the foreign law, which contravenes the public order of the forum, would, if claimed by the plaintiff, constitute an offence against public order and have to be put aside by the court, which was not the case here.

It should be borne in mind that strict adherence to the nationality principle with regard to the grounds of the action has two aspects. One is that the courts should apply grounds recognized by the law of the nationality even though unknown to the forum. The other aspect is that the courts should not apply grounds recognized by the *lex fori* if unknown to the national law. It is obvious that only in the first case is the question whether the grounds are contrary to public order relevant. Courts have always been reluctant to apply grounds with which they are not familiar and they are hesitant to grant, for example, a divorce more readily to foreigners than to nationals. This explains the tendency of courts to declare a foreign, unknown ground contrary to public order, a term as indefinable as it is elastic. That garrulity of the wife, which seems to have been a reason for divorce in China,[7] will be repugnant to a western forum is of course obvious. But even insanity or impotence would probably not be accepted in Holland or in France.[8] It is more difficult to decide whether desertion for three years will be recognized by a Dutch court, whose law requires five years. Predictions as to what courts will do must be conjectural. On the whole, courts are apt to dismiss any ground unknown to their own law as contrary to public order. But as soon as the other aspect of the principle enters courts will as a rule adhere to it. If a foreign law allows only adultery as a ground for divorce, for example, it is unlikely that any Dutch, or French or Belgian court would allow parties, both foreigners, to use one of the other grounds for divorce provided by the *lex fori.*

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[6] Rechtbank Maastricht, December 3rd, 1953: Nederlandse Jurisprudentie 1954, no. 729.

[7] Rabel, *op. cit.*, p. 439.

[8] Planiol et Ripert, *op. cit.*, pp. 263 and 385.

Summing up, I venture to submit that, although the nationality principle is not being enforced in all its consequences, it still is a valid and necessary complement to the domicile upon which jurisdiction is founded.

Now the term "domicile" in continental civil law must not be confused with the same term in the English common law. These two "domiciles", both bases of jurisdiction in divorce and other status proceedings, are not identical. Here lies the source of many difficulties. As is well known, the requirements for establishing a domicile are less severe under continental law than under the English common law: a foreigner who has the permission of the government to settle in Holland is regarded as domiciled there almost as soon as his name is entered in the register of population. The French law of November 12th, 1938, gives an alien all the rights connected with French domicile, if he has authority to stay in France for more than one year. On the other hand, the domicile of the civil law is lost more easily than the English domicile.

That an English court will generally recognize a divorce granted in France to French nationals living in France will be due simply to their domicile in France, in the English sense of the word. But it is also clear that in the case mentioned as an example by Professor Kennedy the French nationals who are not domiciled in France cannot get a divorce there, because no court in France will have jurisdiction. Only in the hypothetical case where these French nationals, although not domiciled in France according to the common law, have a domicile there according to French law, could a French court grant a divorce. The domicile of the parties, in the French sense of the word, and not their nationality, would be the basis for the jurisdiction of the French court, although their French nationality would make it easier for the court to find a domicile in France. But would such a divorce ever be recognized by an English court? It seems that reciprocity on the basis suggested by Professor Kennedy cannot be supported, since domicile, in the French sense, is not the equivalent of the English domicile. Only the two recognition rules, of *Le Mesurier* v. *Le Mesurier*[9] and *Armitage* v. *Attorney-General*,[10] remain. Hence it seems to me unquestionable that the divorce in the hypothetical case taken would not be recognized by an English court.

If therefore recognition of a foreign judgment in divorce or other status proceedings is, apart from the other requirements for the validity of foreign judgments, to be determined solely on the common-law concept of jurisdiction, *Travers* v. *Holley* will not advance us much further on the way to the international recognition of continental judgments in status proceedings. The two concepts of domicile, identical in wording but so different in substance,

[9] [1895] A.C. 517. [10] [1906] P. 135.

will bar the way to the principle of reciprocity. Only international treaties on this subject could provide a solution; but, as I have already explained, the continental civil-law principle of domicile—which in fact means residence—as the basis of jurisdiction is supplemented by the rule that in status proceedings the court must follow the national law of the parties. If the national law happens to be the law of the country where the parties are domiciled, in the English sense, surely there can be no question that the court applied "some rule of municipal law peculiar to its forum". The foreign judgment will be in substance based on the same law which the court of the domicile would have applied itself. Is this not reciprocity in substance and would it not be "inconsistent with comity" if this substantially equivalent judgment were not recognized by the court of the domicile, solely because the continental court based its jurisdiction on a different principle?

I venture to submit that the rule of *Travers* v. *Holley* would indeed provide a satisfactory solution to many recognition problems where continental judgments in divorce and other status proceedings are involved if, when a continental court has no jurisdiction according to the common law, for the purpose of determining the validity of the judgment the two complementary factors, namely jurisdiction of the court according to its own law *and* application, qualified as already mentioned, by the court of the substantive law of the country where the parties are domiciled, in the English sense, were equated with domicile.

J. BOSSCHART*

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TO THE EDITOR:

After the numerous notes and articles treating *Travers* v. *Holley*, [1953] P. 246, narrowly, a serious attempt to evaluate the case in a wider setting is to be welcomed, but, even in the field of recognition of divorce judgments, I find it hard to go all the way with Professor Kennedy in his article commencing at page 359 of your April 1954 issue.

At page 360 he distinguishes between cases where the forum and the domicile coincide, on the one hand, and those in which the forum has to deal with a divorce of parties domiciled in a third state, on the other, but he does not develop the distinction, which, it is submitted, is fundamental. In the latter case, an English court will recognize any divorce that would be recognized by the court of the domicile (*Armitage* v. *A.-G.*, [1906] P. 135). This however does not solve a case where, the domicile and forum coinciding,

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the court is directed to its own law as *lex domicilii*. It is submitted, though the court in *Travers* v. *Holley* did not advert to the point, that it was to English law as the law of the domicile, and not as *lex fori*, that the court may have looked. It was irrelevant in that case, but, where the laws do not coincide, it might be decisive. Only if Professor Kennedy is right in assuming that it is the *lex fori* that governs will the number of limping marriages, whose dissolution is not recognized by the law of the domicile, increase, as he points out at page 362.

I agree with him (pp. 365-366) that for common-law courts to refuse to recognize a foreign judgment because of its choice of law rules would be hypocritical, in view of the insular view of our statutes applying the *lex fori* and not the personal law. But it is submitted that the rule should be changed by legislation, and the personal law applied as it is on the continent (see Madame Bosschart's letter elsewhere in this issue). At common law no need to consider choice of law rules was felt, when the domicile and forum necessarily coincided, and it is unfortunate that the statutes granting extraordinary jurisdiction compelled the courts to apply the *lex fori*. Should the law of the domicile not recognize such a decree, and should it not allow divorce on such grounds, a marriage so dissolved would be permanently crippled, unless a new ground could be found or engineered.

It may be of interest that Professor Kennedy has been confirmed by Davies J. in *Dunne* v. *Saban*, [1954] 3 W. L. R. 980, in his view that a residence requirement of ninety days would not be sufficiently substantial to bring the case within the *Travers* v. *Holley* rule (which he considers to be obiter (p. 985), though why, it is hard to understand). His lordship says at page 988: "It seems to me that the observations of the Court of Appeal . . . were directed to a case where the extraordinary jurisdiction . . . of the foreign court corresponds almost exactly with the extraordinary jurisdiction exercisable by this court". He implies, on the following page, that requirements at least as strict as those of the forum would suffice; the line must be drawn somewhere.[1]

One further gloss: Professor Kennedy criticizes at pages 361-362 Mr. Gow's questioning of the recognition of English decrees in Scotland, on the basis that it "seems a denial of the competence of the only parliament with legislative authority for Scotland . . .", but it is submitted that where a statute expressly enacts, as does section 35(3) of the Matrimonial Causes Act, 1950, that "This Act shall not extend to Scotland or Northern Ireland", for a Scots court to ignore it, unless otherwise directed by its conflict laws, is merely a recognition of its self limitation, not a denial of its validity. The House of Lords, in the converse situation presented in

[1] See Ziegel, Comment, p. 475 of this issue.

Shaw v. *Gould* (1868), L.R. 3 H.L. 55, failed to recognize a Scots divorce granted before judicial divorce was possible in England.

VALENTINE LATHAM*

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TO THE EDITOR:

I am indebted to you for the opportunity to read the letters from Miss Latham and Madame Bosschart. I shall endeavour to treat each point mentioned by them separately.

(1) When the court in *Travers* v. *Holley* referred to English law, and its provisions permitting divorce on a jurisdictional basis comparable to those in New South Wales, where the divorce in question was granted, did it refer to English law as the *lex fori* or the *lex domicilii*? Miss Latham submits that it was the latter, with the result that the "number of limping marriages, whose dissolution is not recognized by the law of the domicile", will not increase. It is obvious, as Miss Latham points out, that I have taken a different view. So long as domicile may continue to be the sole test of divorce jurisdiction (and recognition), there is much merit in her submission. However, I am inclined to think that, with domestic departures from that principle for jurisdiction purposes, it is sound policy to depart from it in this respect and recognize those foreign divorces founded upon a jurisdictional basis comparable to the basis we in the forum would use. Miss Latham's point does raise a further comment, though.

Is the principle of *Travers* v. *Holley* to be applied to the question whether the domicile will recognize the foreign divorce? Suppose a divorce in New South Wales in the circumstances of *Travers* v. *Holley*, except that the domicile at the time of the divorce was in Ontario. The divorce's validity is questioned in an English court. Had the question been raised in an Ontario court it would seem clear that, on the basis of the *Travers* case, there would be recognition. If so, there will also be recognition in England using the combined effect of the *Travers* and *Armitage* cases. But to limit the principle of *Travers* v. *Holley* to its actual facts (forum and domicile coincide) and to this situation (forum recognizes divorce recognized by domicile on *Travers* basis) would, I suggest, unduly restrict the spirit of the court of appeal's judgment.

Miss Latham points to the legislative changes in domestic jurisdiction for divorce purposes, which in Canada and in England, at least, prescribe the *lex fori* rather than the normal personal law governing status. She suggests that if the local rule is, as it has been,

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changed by statute, then our conflict rule should also be changed by legislation and not left to the courts. While there is merit in this argument, I suggest that a distinction should be drawn between the method by which a change is made and the question whether or not a change has been made. It may be better to make it by express legislation, but that does not prevent either the expansion of the common-law conflict rules by the courts themselves, especially in the light of domestic statutory changes, or the recognition by the courts that a new opportunity has been provided for the application of conflict rules. In some ways, too, it is not really a change but the logical extension of an existing conflict rule.

(2) I appreciate the remarks about *Dunne* v. *Saban*. Unfortunately, while the ninety-day residence aspect of that case was, as Miss Latham notes, discussed in theory in my earlier article, I do not agree with the result in the *Saban* case. I venture to suggest that there was more involved than ninety days residence. Florida law actually required, according to the evidence, domicile (in the American sense) plus ninety days residence. Entirely apart from the actual Florida law, however, there was in fact two years residence plus a *bona fide* domicile of choice in Florida in the American sense, which in this case was no different from our own, except that a married woman may not have, with us, a separate domicile. Assuming the wife were deserted, the *Saban* decree ought to be recognized in Canada, even on the restricted view of the *Travers* case favoured by Mr. Ziegel (see, *ante*, p. 475). In using the old domicile test for recognition purposes, we looked not to particular requirements of the local law (for example, Nevada's six weeks) but to the actual domicile in the English sense. Should we not, in using the *Travers* basis of recognition, also look, not to the local law (Florida's ninety days in the *Saban* case), but to the actual facts (two-years residence plus her own domicile of choice there, had she been able to acquire one there under English law as she did under American law) to test reciprocity? It is reciprocity in the actual facts, not of laws. We *by statute* give a fictitious domicile to a deserted wife, either directly, as in some Australian states, or indirectly by giving the court jurisdiction notwithstanding the husband's domicile elsewhere. In the United States, the separate domicile for this purpose is acquired at common law. When the actual residence and the "domicile" are taken into account, a different light is thrown on the *Saban* case and the divorce granted by the Florida court is made more comparable to England's own domestic jurisdiction. "There is in substance reciprocity."

(3) I had suggested that a divorce granted in England under the recent statute conferring jurisdiction upon the courts where the wife has been resident in the forum for three years must be recognized in Scotland on the basis of the supremacy of the one parlia-

ment that legislates for both parts. Miss Latham directs attention to that section of the present statute which declares that the legislation "shall not extend to Scotland or Northern Ireland". May I suggest that the section does *not* say that the statute is not part of the law of Scotland. It prevents the extension or application to Scotland, or to the Scottish courts, of the substantive and jurisdictional law of divorce provided by this statute for English matters. Historically, this three-year residence jurisdiction was given by a special statute in 1949. Section one conferred jurisdiction on the High Court of Justice in England; section two conferred the same jurisdiction upon the Court of Session in Scotland: Law Reform (Miscellaneous Provisions) Act, 1949, c. 100. A year later, in a consolidation of English matrimonial causes legislation, section one was transferred to section eighteen of the consolidating act: Matrimonial Causes Act, 1950, 14 Geo. 6, c. 25. And, logically enough, this 1950 legislation which dealt with English grounds for divorce, nullity, and so on, as well as jurisdiction, was declared not to extend to Scotland. I do not rely upon this historical development. But it does help to make clear that the saving as to Scotland merely says that the Scottish courts do not under this statute receive comparable jurisdiction. The legislation is as much part of the law of Scotland as of England. A statute of the United Kingdom specifically referring only to a part of Great Britain, for example, the City of London, is part of the law of Great Britain and recognizable as such in the courts of Great Britain. A somewhat comparable situation appears in Canada where our Divorce Jurisdiction Act does not apply to Newfoundland. At first glance I, too, took Miss Latham's approach, but on reflection came to the conclusion that it was too artificial: (1954), 32 Can. Bar Rev. 211, at pp. 214-215. These statutes deal with jurisdiction, not recognition. The question of recognition in Scotland depends upon valid jurisdiction in the English court. Scotland, I suggest, cannot question the jurisdiction of the English court in this matter.

Miss Latham adds to her submission on this point a reference to the decision of the House of Lords in *Shaw* v. *Gould* in 1868. There the house held that an English court need not recognize a divorce granted in a Scottish court in 1846 at a time when judicial divorce was not available in England. It is suggested, however, that this decision is no authority for the proposition that England today need not recognize Scottish divorces granted under that special United Kingdom statute which confers the three-year jurisdiction on the Scottish courts — or that Scotland need not recognize English divorces similarly granted.

There are really two reasons why *Shaw* v. *Gould* is inapplicable, I suggest. In the first place the Scottish courts had no jurisdiction under Scots law. The parties were not domiciled in Scotland in

either the English or Scottish sense at the time of the divorce, even though the Scottish court may have thought that it had jurisdiction. In this type of situation, Scots law requires domicile just as an English court. Whatever Scottish courts may have thought was the basis of jurisdiction in 1846, it would now seem that Scots law is the same as English law: both require domicile, and both, for this situation, mean the same thing by "domicile". This would appear to follow from *Mackinnon's Trustees* v. *The Lord Advocate*, 1920 2 S.L.T. 240 (H.L.). This case involved the domicile of a married testatrix whose husband had been shipped off from Scotland to Australia where he acquired a new "wife" and a domicile in Queensland. In proceedings involving the amount of legacy and succession duty, the house held, on an appeal from Scotland, that the wife who had remained in Scotland died domiciled in Queensland, notwithstanding a separation agreement and the existence of facts which would have entitled her to a divorce or judicial separation. In the course of the judgment, it is clear from their lordships' comments, in a case in which they were expounding Scots law, that they spoke of English and Scottish cases on domicile and on divorce jurisdiction as if the laws of the two countries were similar. They referred to *Dolphin* v. *Robins* (1859), 7 H.L.C. 390, where the house had in an English appeal refused to recognize a Scottish divorce obtained by Mrs. Dolphin at a time when her husband was domiciled in England though temporarily "resident" in Scotland. It did so, however, partly on the now discredited theory that a Scottish court could not dissolve an English marriage and partly on the ground that the divorce in Scotland was "mere mockery and collusion from beginning to end" (Lord Kingsdown, at p. 422). In their references to this case in the *Mackinnon* case in 1920, their lordships, in dealing with Scots law, in no way suggested that Mrs. Dolphin's divorce while invalid in England was valid in Scotland. In fact they treated the decision as showing that in Scots law Mrs. Dolphin had her husband's domicile and could not acquire a separate domicile of her own in Scotland or elsewhere, not even by means of such a Scottish divorce. In result, it would seem that *Shaw* v. *Gould*, where the Scottish divorce was also collusive and the domicile in Scotland fictitious, is no authority upon the recognition of valid Scottish divorces in England, especially where the jurisdictional validity of the Scottish divorce is based upon a statute of the parliament of the United Kingdom. The belief by the Scottish court that it had jurisdiction in *Shaw* v. *Gould* on forty days residence does not remove the defect that in fact the Scottish court did not have jurisdiction even in Scottish eyes. Scots law required domicile in the same sense as that in which we know it.

In the second place, let us assume that jurisdiction for divorce in Scots law was not based on domicile in the usual sense, but that

forty days residence was sufficient. This was the uncontested premise upon which the house proceeded in *Shaw* v. *Gould*. The case is still no authority, I submit, for the proposition that England may refuse to recognize a Scottish divorce based upon something less than domicile where that something less (three years residence) is given by an act of the parliament of the United Kingdom. The jurisdiction of the Scottish courts to decree divorce goes back to the period of the old parliament of Scotland. It is believed that ever since the Reformation Scots law has permitted judicial divorce for adultery (see the clause in the act of 1563, c. 74, preserving the right to obtain divorce for adultery). And it is clear that divorce for desertion continuing for four years was provided for by statute of the Scottish Parliament in 1573: c. 55. By legislation of the same parliament the divorce law already in existence was entrusted to four "Commissares", "who shall have the only power to declare all causes of divorcement"; an appeal lay to the Court of Session, which was also given original jurisdiction in case the Commissares "performe not their duety": act of 1609, c. 6. The terms of union between England and Scotland preserved in articles 18 and 19 the existing jurisdiction of the Scottish courts. These terms were ratified by acts of the separate parliaments of Scotland (1706, c. 7) and England (1706, 6 Anne, c. 11; sometimes cited 5 & 6 Anne, c. 8). These acts did not confer new jurisdiction, whether upon a new or old basis, upon the Scottish courts, but merely preserved the existing jurisdiction, subject to change after the union by the "new" parliament of Great Britain. That new parliament declared in 1830 that the divorce jurisdiction of the old Commissary courts should cease and that the Court of Session should have exclusive jurisdiction: 11 Geo. 4 & 1 Wm. 4, c. 69, ss. 31, *33*. The divorce granted to Elizabeth Buxton of *Shaw* v. *Gould* fame in 1846 was granted by the Court of Session. But nothing in that statute of 1830 dealt with the basis of jurisdiction, whatever that might be. The existing divorce jurisdiction was merely given to the Court of Session exclusively. No changes were made in the requirement of domicile, residence or otherwise as a basis of jurisdiction. English courts could not thereafter question the Court of Session as the proper court for divorces but nothing prevented their questioning, in England, the basis upon which any particular divorce was granted. Not until the legislation of 1949 was the basis of the Court of Session's jurisdiction changed by legislation which England could not question. Nothing of this kind existed when *Shaw* v. *Gould* was decided.

(4) I am indebted to Madame Bosschart for pointing out an error in one of the facts in putting forward my tentative suggestion that divorces granted in continental countries using the civil law's connecting factor should be recognized in England in the same spirit of reciprocity applied in the *Travers* case. I had assumed that

the civil law's connecting factor for divorce jurisdiction is nationality and had suggested that a divorce granted by a court of the nationality might be recognized in common-law countries. The idea is not original: see 1 Rabel (1945) p. 399. Madame Bosschart points out that the basis for jurisdiction in Holland, Belgium and France is not, on the whole, nationality but "domicile"; that once jurisdiction is established the courts apply, not the law of the domicile, but the law of the nationality; and that domicile in continental countries is not to be equated to the "domicile" of English law. Apparently jurisdiction in civil-law countries is based largely upon a form of residence more than casual but not fully amounting to English domicile. Compare the Netherlands' "werkelijke verblijfplaats" and "hoofd verblijfplaats" (the real or main residence), and the German "ihren (gemeinsamen) gewöhnlichen Aufenthalt". In addition, it would appear that in a few cases nationality is an alternative jurisdictional basis even in these countries. And, in some continental countries, it may still be the main basis: 1 Rabel (1945) pp. 397-399. I regret this error. As corrected, however, I put my tentative suggestion again: that an English court ought to recognize a divorce granted by a continental court using the appropriate connecting factor used by that continental country, whether "domicile" in the civil-law sense or, in some cases, nationality.

(5) Madame Bosschart suggests in her last paragraph an additional situation where the principle of *Travers* v. *Holley* might be applied. I most decidedly concur. I suppose, however, that the likelihood of its practical application to continental divorces is nil.

GILBERT D. KENNEDY*

Books Received

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

Annuaire de Jurisprudence du Québec 1954. Sous la direction de PAUL LEFEBVRE. Montréal: Wilson et Lafleur (limitée). 1955. Pp. 560. ($2.75)

Chitty on Contracts. Twenty-first edition under the general editorship of JOHN BURKE and PETER ALLSOP. Volume 1: General Principles. Volume 2: Specific Contracts. The Common Law Library, Numbers 1 and 2. London: Sweet & Maxwell Limited. Toronto: The Carswell Company, Limited. 1955. Vol. 1, pp. clxiv, 836; Vol. 2, pp. cxxxi, 744. ($27.00)

Contracts and Conveyances of Real Property. By MILTON R. FRIEDMAN. Chicago: Callaghan & Company. 1954. Pp xi, 425. ($10.00 U.S.)

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Le Contrôle Judiciaire de l'Administration Anglaise. Contentieux de la Légalité. Par GILBERT TIXIER. Préface de M. MARCEL WALINE. Paris: Librairie Dalloz. 1954. Pp. 191. (No price given)

Criminal Code, Chapter 51, 2-3 Elizabeth II, 1953-54, and Selected Statutes. Prepared under the direction of the Minister of Justice. Ottawa: Queen's Printer and Controller of Stationery. 1954. Pp. viii, 581. ($7.50, Canada; $10.00, other countries)

L'évolution de la doctrine de l'enrichissement sans cause. Par ANDRÉ MOREL. Montréal: Collection Thémis. 1955. Pp. 171. ($3.00)

Handbook of the Law of Evidence. By CHARLES T. MCCORMICK. St. Paul: West Publishing Co. 1954. Pp. xxviii, 774. (13.00 U.S.)

Introduction to Income Tax Law: Canada. By FRANCIS EUGENE LA BRIE, B.A., LL.B., LL.M., D. JUR., with the assistance of MARCEL BÉLANGER, M.A., C.A. Toronto and Montreal: CCH Canadian Limited. 1955. Pp. x, 388. ($7.50; special price to students, $5.00)

The Judicial Control of Public Authorities in England and in Italy: A Comparative Study. By SERIO GALEOTTI, D. PHIL., DR. JUR. (Milan). With a foreword by F. H. LAWSON, D.C.L. London: Stevens & Sons Limited. Toronto: The Carswell Company, Limited. 1954. Pp. xi, 253. ($5.75)

The Judicial Process among the Barotse of Northern Rhodesia. By MAX GLUCKMAN. Published on behalf of the Rhodes-Livingstone Institute of Northern Rhodesia by Manchester University Press. 1955. Pp. xxiii, 386. (37/6d.)

Modern Trials. By MELVIN M. BELLI. In three volumes. Indianapolis: The Bobbs-Merrill Company, Inc. 1954. Vol. 1, pp. xxx, 918; Vol. 2, pp. xvi, 919-1862; Vol. 3, pp. xvi, 1863-2763. ($50.00)

Nuremberg: German Views of the War Trials. Edited by WILBOURN E. BENTON and GEORG GRIMM. Dallas: Southern Methodist University Press. 1955. Pp. vii, 232. (($4.00 U.S.)

Patents for Inventions and the Registration of Industrial Designs. By T. A. BLANCO WHITE. Second edition. London: Stevens & Sons Limited. Toronto: The Carswell Company, Limited. 1955. Pp. lï, 542. ($11.25)

Patent Law in the Research Laboratory. By JOHN KENNETH WISE. New York: Reinhold Publishing Corp. 1955. Pp. 145. ($2.95 U.S.)

Prairie Portraits. By ROY ST. GEORGE STUBBS. Toronto: McClelland & Stewart Limited. 1954. Pp. ix, 176. ($3.00)

A Train of Powder. By REBECCA WEST. New York: The Viking Press. Toronto: The Macmillan Company of Canada Limited. 1955. Pp. 310. ($4.25)

Woodfall's Law of Landlord and Tenant. Twenty-fifth edition. First Supplement (to February 1, 1955). By LIONEL A. BLUNDELL, LL.M., and V. G. Wellings, M.A. (Oxon). London: Sweet & Maxwell Limited. Toronto: The Carswell Company, Limited. 1955. Pages unnumbered. ($5.75)