

Reviews and Notices

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)

Professor La Brie's new work is a major contribution to the writing on tax law in Canada. Although the author expresses a limited purpose in his preface when he says that the book was prepared to meet the needs of teachers and students of income tax law, we are all, particularly in this field, students. The book may have been designed especially for undergraduate students, but it is one every practising lawyer who deals in any way with income-tax matters, or with business transactions, should keep in the bookcase that stands nearest to his right hand.

The author follows generally the pattern of the Income Tax Act and so, after the introduction, we find chapter two dealing with the imposition of income tax, which corresponds generally with part I, division A, of the act, "Liability for Tax". In the same way chapter three deals with the concept of income, which, in its turn, falls under division B of part I of the act, "Computation of Income". Then follow, in order, chapters on income from business and property; income from an office of employment; the receipt of income; the measurement of business income; items excluded from income; and permitted deductions from income. We move on next to the computation of taxable income, with which the act deals in division C.

At this point the author forsakes the order of the act and proceeds to deal with Exemptions and Special Cases, leaving the matter of Returns and Assessments to a more logical later place towards the end of the book, where it is followed only by a chapter on tax avoidance and evasion. As one might expect, chapter twelve, on Exemptions and Special Cases, and chapter thirteen, Income Tax and the Corporate Entity, are the longest in the book, running to over sixty and slightly under forty pages, respectively. They are packed with information, well arranged and very read-

able—as readable at least as a technical work on income-tax law can very well be.

The teacher's habit of leaving questions with his class rather than spoon-feeding the answers finds expression in certain places, but has not been followed consistently, perhaps as a sop thrown to the practitioner, who, when he has to make up his mind about a problem, is not too happy to find a series of questions instead, sometimes ending with a devastating "why?"

In the space of a single review I cannot even refer to all the many topics upon which this book will furnish useful guidance, but there are some that appealed to me particularly. To one who himself lectured to undergraduates on income-tax law, the illustration of such topics as the accounting treatment of reserves, found at page 94, and the discussion of the problem of Lifo versus Fifo in inventory valuations, at pages 108 and following, are most useful. To the practitioner-student, as well as the undergraduate-student, the full discussion of capital cost allowances will be of real value, for this is a subject that seems to confound most lawyers, who are apt to throw up their hands when faced with the undoubted intricacies of the act and the regulations on it. Again, those who remember the speech of the Minister of Finance at the 1954 conference of the Canadian Tax Foundation, and share with him his difficulty in discovering the meaning of certain subsections of section 20, will be happy to find that the author has succeeded in explaining the whole system of capital allowances in only twenty-five pages, including some seven pages of illustrations, for which, together with other illustrations, we are indebted to Mr. Bélanger. Perhaps this discussion of capital cost allowances may turn out to be too detailed and exhaustive for the undergraduate, but it will be most useful to the practitioner who must advise on concrete problems of depreciation and recapture on the sale or purchase of business assets. Again, the increasing number of personal investment-holding companies being formed makes the discussion of personal corporations timely for the practitioner, though it may be somewhat academic for the undergraduate. Finally, the detailed examination given the various subsections of section 28 on controlled companies deserves praise. The subject is of the utmost importance to the practitioner whose corporate client is considering the acquisition of a subsidiary and the discussion helps to chart the narrow path along which only may a company walk safely.

There are a few things I should like to see changed, as what reviewer of a book does not? A problem with which Professor La Brie does not deal at any length, for example, is that of repairs. The leading cases of the *Rhodesia Railway Company*¹ and the

¹[1933] A.C. 368.

*Dover Harbour Trustees*² are not commented on or referred to. On this matter the Income Tax Appeal Board has given, I suggest, a number of unsound judgments and I hope that the author will review them in a second edition. Again, in chapter nine there is some discussion of the problem of insurance moneys spent on repairs and the author poses, but does not answer, the question what happens when insurance moneys are used in rebuilding and the rebuilding is of such a character as to fall within the type of work the Appeal Board has considered to be capital. Finally, it is suggested that it would be preferable to remove into chapter thirteen, on Corporate Entity, the discussion of the rate of tax applicable to corporations, particularly the consideration of those obscure and involved sections by which companies become associated with each other for purposes of the Income Tax Act, including the subsections of section 139, adopted in 1954, on non-arm's-length transactions, which baffle most mortals.

This book has been badly needed in Canada, both for use in law schools and by active practitioners. All in all, it is an excellent effort and one can only hope that the rewards of Professor La Brie and Mr. Bélanger will not be limited entirely to satisfaction in a job well done.

M. G. TEED*

* * *

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

The appearance of another volume of biographical sketches by Mr. Stubbs will be welcomed by those who read his earlier book, *Lawyers and Laymen of Western Canada*, which was published in 1939. Western Canada is fortunate to have a man like Mr. Stubbs, who finds time to record the lives of some of its colourful pioneers.

The present volume contains sketches of six men: A. J. Andrews, K.C., Lord Bennett, John W. Dafoe, F. J. Dixon, Mr. Justice Dysart and E. J. McMurray, Q.C., P.C. The sketches of Andrews, Bennett and Dysart originally appeared in the *Canadian Bar Review*. Of the six men, only Mr. McMurray is still living. Andrews and McMurray achieved fame chiefly as leading counsel in Winnipeg. Dixon was a well-known radical politician who was connected with the Winnipeg strike of 1919, and Dysart a highly respected member of the Manitoba bench. Dafoe became a national figure as editor of the *Winnipeg Free Press* for forty-three years and Bennett of

² (1934), 13 A.T.C. 123.

*M. G. Teed, Q.C., of Teed, Palmer & O'Connell, Saint John, N.B. Mr. Teed was chairman of the Taxation Section of the Canadian Bar Association in 1950-1951 and again in 1951-1952.

course, after a successful career at the bar, was Prime Minister of Canada during the early thirties.

Perhaps the only fair way to judge the success of any work is to see whether the author has succeeded in accomplishing what he set out to do. In the author's note, which appears at the beginning of the book, he says modestly that his purpose in writing this and his earlier book "was to introduce to a new generation some of the colourful personalities of earlier days, and to contribute a few bricks and a little mortar to the upbuilding of Canadian tradition". He has succeeded, but one cannot help wishing that he had used a little more straw in making the bricks. Only rarely do the men he writes about come to life, at least for this reader. Too frequently, when he wishes to show that a particular person had a certain characteristic he makes his point by giving a well-known quotation instead of a real-life incident involving the person he is describing. Perhaps, if the author had spent a little more time gathering homely details about his subjects, the results would have been more satisfying.

Despite this shortcoming, Mr. Stubbs has performed a real service by writing these biographies. Hardly any eminent Canadians seem to get around to writing their memoirs, and the biographical art is sadly neglected in Canada. For example, the sketch of Lord Bennett appearing in this book is apparently the first serious attempt to write his biography. This seems amazing until one learns that Lord Bennett's papers are locked away in the vaults of the University of New Brunswick, safe from the hands of anyone who wants to write about him.

The present volume is readable, it contains splendid photographs of the men whose lives are recorded and it is attractively bound. It should find a place in the libraries of those who are interested in the history of Western Canada and of the legal profession.

G. R. SCHMITT*

* * *

The Colonial and Imperial Conferences from 1887 to 1937. Compiled and edited by MAURICE OLLIVIER, Q.C., LL.D., F.R.S.C., Law Clerk of the House of Commons of Canada. Three volumes. Vol. I, Colonial Conferences; Vol. II, Imperial Conferences, Part I; Vol. III, Imperial Conferences, Part II. Ottawa: Queen's Printer and Controller of Stationery. 1954. Pp. vi, 330 (Vol. I); vi, 474 (Vol. II); vi, 487 (Vol. III). (\$15.00)

The learned and professional worlds owe a good deal to civil servants who, either in their spare time or as one aspect of their

*Associate Professor of Law, University of Saskatchewan, Saskatoon.

duties, prepare and publish reference material. These three volumes compiled by M. Ollivier are typical. They constitute a précis of the official published material resulting from the Colonial and Imperial Conferences, a running record for the half-century of the conferences' existence. They embody proceedings, formal speeches, committee reports, memberships, agenda and other material of the sort. There are also some transcripts of discussion: these are by far the most interesting material presented, but they are given for only a few of the conferences.

Turning rapidly through these thirteen hundred pages, the reader gets a "moving-picture" impression of the origin and evolution of an important organ of empire. He can see colony change into nation, sense the changing weights of mother country and daughter nations, note the progression of the subjects discussed as the years go by: some of these are settled and put aside, as for example the Canadian-Australian cable route; others come up meeting after meeting and will probably never be settled, as, for example, the entrance of the non-whites into the white countries.

The same panorama of personalities meets the eye. In the early conferences lions like Robert Cecil, Marquis of Salisbury, make their appearance. Sir Wilfrid Laurier comes on the scene, dominates it, disappears. Asquith, Lloyd George, Borden, Hughes, Meighen, Baldwin, King, Bennett, all file across the stage, and make their contributions to these pages.

It would be impossible to publish the complete records of all these conferences: for some of them, much was never made public and is still, it is to be presumed, kept undisclosed (though why is one of the secrets only officialdom can reveal) and, for others, the bulk of material actually printed and published at the time is so huge that the volumes would have lost all point if they had simply reproduced it. The compiler appears to have followed a compromise line: where previously published material has been scanty, he has reprinted much of it; where it has been voluminous, he has concentrated on those subjects of particular interest to Canada and has given, where possible, the actual words used by the Canadian representatives. This is to be commended, but if he had introduced his various snippets with a word of explanation, he could have made his arrangement clearer to the reader than he has. For example, two successive extracts may begin: "Sir Wilfrid Laurier [extract from speech follows name, ending with period]". "Sir Wilfrid Laurier [a second extract]". Presumably other speakers have intervened between the two remarks credited to, say, Laurier. Some indication of who they were and the general purport of their remarks should have been included.

There is also much repetition. In the report of the conference of 1930 (volume III), pages 277-288 and 303-311 repeat each

other. In the report of the conference of 1932 (also volume III), pages 362-367 and 372-375 repeat each other. These are two examples of unnecessary padding noted only in passing; there may be others. In the 1930 instance, the repetitive extracts purporting to be the official statements of prime ministers do not entirely correspond. One is led to ask "when is an official record not a record?" And the further query soon thrusts itself on the reader as to how much value attaches to collections of pious platitudes, such as fill many of these pages.

Two conclusions seem to emerge: (1) that records such as these three volumes contain can only be taken as general guides—they are not in themselves the material of history; and (2) that the editorial canons for governmental publications fall below those for private. No learned society would allow an expensive publication such as these three volumes, put out at the taxpayers' expense, to be issued under its auspices without more compression, more care in arrangement, more effort at interpretation. "Blue books" in themselves are bad enough in these matters; loosely strung together extracts from blue books are worse.

To examine the contents of the three volumes would not be possible within the proper limits of a review. Moreover, to any reader interested in the subject of imperial relations, they will be fairly well known in advance: the advance towards and retreat from centralization, the duel between Chamberlain and Laurier, the emergence of the self-governing Dominions and their evolution to independence, the Balfour Report, the inter-Imperial trade treaties of 1932, the questions of free trade and tariffs, inter-imperial emigration and citizenship, and, of course, the great dominating theme of the First World War and its aftermath. For future historians of this dramatic page in human affairs, these three volumes will constitute a more or less reliable tourist guide, but not an authoritative collection of source material. For that, writers will have to go much farther and deeper.

A. R. M. LOWER*

* * *

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. li, 542. (\$11.25)

The well-worn appearance of the first edition of this book (1950) in my library is mute evidence of the extent to which it has been

*A. R. M. Lower, Ph.D., F.R.S.C., Douglas Professor of History, Queen's University; author, among other works, of *Colony to Nation* (1946).

used. The second edition is bigger, but still retains the virtues of clarity and conciseness that distinguished its predecessor. There is no padding. The additional weight consists of sinewy new cases and muscular opinions, not fleshy quotations or fatty irrelevancies.

For example, take the trenchant criticism of the recent case of *A.S.E.A. v. Burntisland* (1952), 69 R.P.C. 63 (Court of Appeal): "Unfortunately, the only case in which the Court has read two separate documents together for the purpose of destroying a patent is a singularly unhelpful one. . . . Whatever the Court meant to say, its manner of saying it was exceedingly unfortunate."

The value of this edition as a source of law is enhanced by the incorporation of some 160 additional cases and a thorough annotation of the texts of the United Kingdom Patents Act and Registered Designs Act: its usefulness as a guide to practice has been increased by the inclusion of the Patents Rules and Designs Rules.

Although there is a growing body of native Canadian patent law, much of it is still made in England, despite the fact that in many respects our Patent Act resembles the American rather than the British act. On questions of patentability and infringement, which are not governed by statute, decisions of the British courts are accorded great respect here. House of Lords and Judicial Committee opinions may even be binding on our courts—who knows? Thus, a good British text is a necessity for the Canadian lawyer who is interested in patent law.

Patent agents who file and prosecute patent applications in Great Britain and Commonwealth countries will find that this work deals more fully with Patent Office practice than most texts; and the student will find it a veritable "Patent Law Made Easy".

GARETH E. MAYBEE*

* * *

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.)

Had this book been written by a lawyer it would have been called a casebook: "Cases and Materials on Primitive Law". Its author is Professor of Social Anthropology at the University of Manchester. Its subject is the law of a people, the Barotse, who dwell in the flood plains of the Upper Zambesi Valley in Northern Rhodesia. For more than two years during the period 1940-1947, Professor Gluckman lived among the Barotse (especially the

*G. E. Maybee, Q.C., of Ridout & Maybee, Patent Attorneys, Barristers and Solicitors, Toronto.

dominant Lozi tribe) observing their courts in action. The heart of his book is the record of some sixty cases he witnessed during his stay. In many instances, the record includes in detail the evidence produced at the trial as well as the judgments.

The book is based on direct observation. This is the great difference between the arm-chair anthropologist of Maine's day and the modern field-worker. With its brevity and sense of immediacy, the book reads much like a scientist's laboratory report and, in fact, Professor Gluckman says that its main outlines were worked out in Northern Rhodesia. Since the results of any scientific experiment depend on the validity of the observational data, his methods of observation are important. Some idea of them, and incidentally of his style, is conveyed in this passage:

The cases proceeded at high speed in Lozi, which I understood very well but not perfectly. I took down notes in a longhand mixture of Lozi and English. During the hearings I got lost over some details. It was particularly difficult for me to follow the references by parties and witnesses to others by various kinship terms. Where I got confused I asked the head of the kuta [court], next to whom I was invariably seated, to clear things up for me. Secondly, while the kuta is trying a case some councillors [judges] may also at the same time be transacting administrative business, and in trying to follow this, I missed some passages in cases. Nevertheless, I am certain that the records are fair.¹

But the book is more than a collection of cases. It is also a commentary on the cases. Professor Gluckman has followed Malinowski's injunction that "the modern anthropological explorer, who goes into the field fully trained in theory, charged with problems, interests, and maybe preconceptions, is neither able nor well-advised to keep his observations within the limits of concrete facts and detailed data. He is bound to receive illumination on matters of principle, to solve some of his fundamental difficulties, to settle many moot points as regards general perspective. He is bound, for example, to arrive at some conclusions as to whether the primitive mind differs from our own or is essentially similar; [and] whether the savage lives constantly in a world of supernatural powers and perils, or on the contrary, has his lucid intervals as often as any one of us."² Professor Gluckman's conclusion is that "the judicial process in Lozi courts is basically similar to that of Western judges"³ and that the judicial process at different times and different places displays striking similarities. Adequately to assess this conclusion, one should be either an anthropologist or a legal philosopher. Professor Goodhart, who certainly qualifies as the latter, states in the foreword that the book

¹ P. 35.

² *Crime and Custom in Savage Society* (1926) p. ix.

³ P. 327.

makes "a major contribution to legal philosophy" by showing through concrete illustrations the basic identity of the judicial process in primitive and modern law.

For my own part, the book's main contribution is on a more humble level, that of judicial procedure. This is how justice is administered in Lozi-land:

The litigants, supported by their witnesses and kinsmen, sit before the judges against the posts which hold up the roof. The plaintiff, without interruption, states his case with full and seemingly irrelevant detail. The defendant replies similarly. Their witnesses, who have heard their statements, then speak. There are no lawyers to represent the parties. The kuta, assisted by anyone present, proceeds to cross-examine and to pit the parties and witnesses against one another. When all the evidence has been heard, the lowest induna [judge] on the right gives the first judgment. He is then followed by councillors. . . . in ascending order of seniority until the senior councillor-of-the-right gives the final judgment. This is then referred to the ruler of the capital, who confirms, rejects, or alters it, or refers it back to the kuta for further investigation and discussion. It is this final judgment by the last induna to speak which, subject to the ruler's approval, is binding.⁴

No pleadings! No lawyers!

One of the main functions of Lozi judicial proceedings is the settlement of disputes by reconciliation of the parties rather than by imposition of a sanction on one of them. To accomplish this end the judges have very broad notions of relevance and draw not only on the evidence given by witnesses but on any personal knowledge they themselves possess. Our doctrine of judicial notice would seem absurd to them. If the parties cannot be reconciled, a sanction may have to be imposed. Judicial remedies are many and curious. Thus where a husband neglected his two wives (for they are polygamous) in favour of other women, he was severely upbraided and ordered to spend six nights a week with his wives. In the quaint language of the Lozi, "a woman does not marry a blanket". Or in the case of theft, the thief is "brought to the king who will give him a village or cattle and make him his tribute collector. People will then see if he will thieve again or become a good citizen."⁵

More of the fascinating materials here collected are indicated by the table of cases listing, *inter alia*, the case of the Deposed Senior Wives; Magic against the King; Overpaid Prostitute; Urinating Husband; Unused Land. There is even the case of the Watchtower Pacifists. And there is more to come. Professor Gluckman has promised two further books: *The Role of Courts in Barotse Social Life* and *The Ideas of Barotse Jurisprudence*. Now that the Melanesians have had their Malinowski, the Cheyenne

⁴ P. 15.

⁵ P. 106.

Indians their Llewellyn and Hoebel, and the Barotse their Gluckman, I wonder who the English, the Americans and the Canadians will get? Must the scientific observation of courts in action be confined to primitive systems?

D. G. KILGOUR*

Solicitors' Account Rules

Under the Solicitors' Account Rules, 1945, and Solicitors' Trust Account Rules, 1945, a solicitor must keep separate banking accounts for his own money, and for moneys received by him and belonging to his clients, or vested in him as a trustee either solely or jointly with another solicitor-trustee. Every solicitor, when applying for his annual practising certificate, has to declare that he has complied with these Account Rules, a full copy of which is printed on the back of the application form. The application form must be signed by the solicitor personally unless he obtains the express permission of The Law Society to the signing of the form by someone on his behalf, and it is difficult to obtain this permission. The making of a false declaration by a solicitor is a very serious matter, and will lead to his being brought before the Disciplinary Committee.

In addition to the solicitor having to make this personal declaration he must every year produce the books, accounts and documents relating to his practice to a professionally qualified accountant for audit, and such accountant must, under the Accountant's Certificate Rules, 1946, give a written certificate that he has examined such books, accounts and documents and that from such examination and from the information and explanations given to him he is satisfied that during the accounting period the solicitor has complied with the Rules, or has so complied except for trivial breaches all of which were rectified on discovery and none of which resulted in any loss to any client. If any breach of the Rules is not trivial then the accountant must give details on the back of his certificate. The accountant's certificate has to be sent by the solicitor to The Law Society every year, and should it disclose breaches of the Rules other than trivial breaches, then the Professional Purposes Committee will consider the matter and instruct the Investigation Accountant and Internal Auditor, who is a member of The Law Society's permanent senior administrative staff, to inspect the solicitor's accounts, which accounts have to be delivered to The Law Society for that purpose. Should the report of the Investigation Accountant justify it, The Law Society will bring the matter to the notice of the Disciplinary Committee. (Richard C. FitzGerald, *The Role of the Solicitor in Modern Society*, an inaugural lecture delivered at University College, London, on February 4th, 1954)

*Assistant Professor of Law, Faculty of Law, University of Toronto.