

REVIEWS AND NOTICES

The Highway Traffic Act, The (Automobile) Insurance Act and The Negligence Act, etc. By AUSTIN O'CONNOR, Q.C., Sixth Edition. Toronto: The Carswell Company Limited. 1959. Pp. xc, 650, 56. (\$25.00)

The first five editions of O'Connor's *Highway Traffic Act* have been familiar to practising lawyers, at least in Ontario, throughout a full generation. At first a handy pocket book, O'Connor expanded in scope and bulk from edition to edition until the Fifth Edition had attained the size of a full scale text. When an equally large looseleaf supplement was added it was apparent that the work had got out of hand. The current edition shows signs of an effort to reduce the size and improve the arrangement of the book.

The core of the Sixth Edition, as of the first five, is a consolidated and annotated text of The Highway Traffic Act of Ontario, including amendments made in 1958, but this core now takes up little more than half of the text, 356 out of 650 pages. The remainder includes annotations upon selected sections of the Criminal Code and parts of certain Ontario statutes, namely, The Highway Improvement Act, The Summary Convictions Act, The Negligence Act, The Public Vehicles Act, The Public Commercial Vehicles Act and automobile insurance provisions of The Insurance Act, as well as selected Rules of Practice. Added are notes on negligence, evidence and damages and several other topics well labelled "Miscellaneous". Although the title page refers to annotations of some analogous provisions of the corresponding acts of other Provinces of Canada, and although citations include a considerable number of cases from all provinces, there is no real study of legislation of provinces other than Ontario. In fact, the only statutory text printed in the book is that of The Highway Traffic Act. The annotations include a few brief notes but consist chiefly of lengthy lists of cases, some digested in skeleton form and others merely cited. The author's expressed hope to have included all important cases relating to his topics down to June 30th, 1958, has probably been achieved, and many unimportant ones are added, since some 5300 decisions are listed in the table of cases.

No book should be criticized for not being what it does not pretend to be. Since the author expressly disclaims for this book the description of a text and refers the reader for statements of principle to standard authorities, we should appraise his work as what he calls it, a guide to relevant cases. From this point of view, the book is undoubtedly useful. The constant demand for annotated statutes amply justifies their continued production. A collection of annotated statutes and statutory provisions dealing with motor vehicles is well worth undertaking. The success on the market of past editions of this book has proved its usefulness. No doubt, this edition combining a consolidation and bringing up to date of text and supplement with improvements of form and arrangement, will also be successful.

Nevertheless, the book is unsatisfactory. It has spread out in haphazard fashion beyond its original and proper theme and has become a rhapsody of nondescript and indiscriminate variations on a series of unrelated themes whose only connection with each other is that highways or motor vehicles appear somehow in each of them. In arrangement it suffers from defective classification, from the insertion of extraneous material under various headings and from frequent mere listing of cases.

On pages 72 to 89 are digested 106 cases dealing with garages, parking and storage lots, bailment and repairs; on pages 79 to 89 are digested 133 cases related to liens, conditional sales, chattel mortgages and mechanics liens; and on pages 90 to 95 are seventy-five cases related to sale and trading. On page 355 under "Miscellaneous Highway Traffic Cases", are twelve cases, of which one deals with a lottery, one with a credit card, two with gifts *inter vivos*, one with a *donatio mortis causa*, three with interpretation of wills and a tenth is *Shynall v. Smythson and Priestman*, digested with reference to duty of care and The Public Authorities Protection Act.

The title "The Criminal Code" is followed by fifty-nine pages of annotations, of which some deal with sections of the Code relating to motor vehicles. Others refer to sections 5, 7, 16, 20, 25 and 29, and to offences under sections 92, 99, 110, 117, 119, 120, 134-5, 149, 158, 165, 168, 230, 276, 295-6, 304, 323 and 370-3, and many procedural sections, including those dealing with appeals and extraordinary remedies. The last ten pages are devoted to what is aptly called "Miscellaneous Criminal Law and Quasi-Criminal Law".

Not only in selection of subjects but also within subjects there are many examples of the error of classification by association. The fact that an alleged act of gross indecency has occurred in a motor vehicle does not make the case one of motor vehicle law (*Reg. v. J.*, at p. 592.)—one of many examples of such classification.

The chapter on Practice takes one through an action from writ to execution. Among other topics discussed are parties, pleading, payment into court, discovery, notice of trial, jurisdiction, guardians, executors and administrators, class actions, consolidation and joinder and third party procedure. Jury notices lead through jury trials, sub-section 63(1a) of The Judicature Act, (the section number is omitted on p. 397), instructions and questions to the jury, to appeals, new trials and *stare decisis*. Discontinuance leads through foreign judgments, conflict of laws, judgments and orders, *certiorari*, and *res judicata*, and nine pages on costs, to two pages of advice on preparation for trial.

The arrangement of topics under "Evidence" is better, and there is useful material under the heading "Damages". The note on "Negligence" displays good and bad features. The arrangement is relatively convenient but over 290 cases are merely cited and at least half as many are discussed in not more than five words each.

In fact the stringing together of cases under general headings, giving nothing but style of cause and citation, seems even more prevalent in the Sixth Edition than in its predecessors. Groups of cases so noticed appear here and throughout the book, as, for example: under "Further Cases on Railway Crossings", fifty-two cases; under "Cases out of Ontario", twenty-six cases; under "Contributory Negligence of Infants" twenty-three cases; and under "Error as to Ownership where charge laid" twenty-three cases. Under this heading, by the way, are five cases dealing with evidence. Representatives of the publisher defend such lists on the ground that the practitioner, by reading every case so listed, may find one "on all fours" with his own. God give him strength! It is suggested, however, that if an author can find nothing about a case worth mentioning, except its citation under such a general heading, the case is not worth mentioning at all. Fewer cases, intelligently selected on grounds of relevancy, better classified and adequately if briefly digested, would be of more value than such lists.

On the credit side, improvements in this edition include clearer and more legible form and arrangement, with the individual cases separately printed and thus more readily distinguishable. The index appears to be good.

In conclusion, it is respectfully suggested that for the next edition the object and scope of the work be re-considered, that relevancy and not association be made the criterion for selection and arrangement of topics and material, that matter extraneous to this work be left to writers of other subjects, and that cases not found worth digesting be discarded. The resulting work should be not over three fourths as long as the Sixth Edition. Nevertheless,

many lawyers will no doubt put up with the faults of the present edition for the sake of its advantages.

H. R. S. RYAN*

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Cases and Notes on Land Law. By BORA LASKIN, Q.C., Professor of Law, University of Toronto. Toronto: University of Toronto Press. 1959. Pp. xxiv, 675. (\$15.)

In the very early pages the author provides some humour by reminding his readers of the remarks of Riddell J. in *Miller v. Tippling* (1918), 43 O.L.R. 88, at p. 97, 43 D.L.R. 469, at p. 477, when the learned judge observes that "it has been said that law of the land in countries under the Common Law of England is a 'rubbish-heap which has been accumulating for hundreds of years, and . . . is . . . based upon feudal doctrines which no one (except professors in law schools) understands'—and rather with the implication that even the professors do not thoroughly understand them or all understand them the right way." The author who is a professor in the Faculty of Law at the University of Toronto generously states that readers and students will have to determine for themselves the accuracy of this estimate on either or both counts.

If land law is a rubbish-heap, Professor Laskin has waded boldly into it, sorted it out and made it comprehensible. Throughout the pages of this learned treatise the author presents the law relating to land in a manner, not only in which it can be understood, but in a fashion that stimulates abiding interest.

The law of land tenure in Canada has its origins in the Norman Conquest. After explaining the various land tenures in England which became systematized by 1100, the author examines the historical background in Canada and finds that the only freehold tenure operative in the common-law provinces has been free and common socage. This was confirmed by the Constitutional Act, 1791, which provided that all lands granted within the province of Upper Canada shall be granted in free and common socage. It also provided that in Lower Canada lands should be thereafter in free and common socage when the grantee shall so desire.

There are valuable chapters on estates in fee simple, in fee tail, life estates, future interests, uses, *etc.* There is also a special chapter (of 180 pages) devoted entirely to landlord and tenant law.

Many solicitors may argue that the book is not for them, as it is too scholarly, too learned. These may prefer the essentially

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practical type of handbook as the late Frederick Heap's *Canadian Decisions as to Sales of Land* which appeared in 1926. The book under review is much more than a mere handbook. It is a complete work on an important subject. The author states that he is convinced that the critical faculties of the legal profession might be sharpened and that this could be done in relation to land law. This reviewer agrees, and urges practitioners not to ever get very far from a thorough knowledge of the law, its background, its development and its present state.

J. RAGNAR JOHNSON*

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Law of Municipal Corporations. (Two Volumes). By I. MACFEE ROGERS, Osgoode Hall, Barrister-at-Law. Toronto: The Carswell Company Limited. 1959. Pp. Vol. I, c, 628, vol. II, xx, 629-1400. (\$48.00)

There are in Canada thousands of municipal corporations for which the discharge of the multitudinous duties of local government in compliance with our municipal statutes is becoming increasingly difficult.

The solicitors who have to advise these corporations and keep them within the limits of their authority will welcome the appearance of a new text on municipal law, the first Canadian book on the subject to be published in thirty years. Those of them who refer to the pages of Rogers' *Municipal Law* for assistance in solving their clients problems will have occasion to appreciate the timeliness and thoroughness of this book.

A legal text, particularly one on such a subject as municipal law is not the type of book commonly read from cover to cover as one would read a novel or a biography: such a text is usually kept readily available, to be consulted, when the occasion arises, to answer a particular problem presented to the legal practitioner by his client: as a result its value lies in its organization, the manner in which it covers its selected field and the indexing which provides the guide posts for locating the information it can give to the reader.

To write a book conforming to such exacting requirements, and one of such magnitude, would have been a prodigious task for an author devoting his whole time to his writing; for a lawyer engaged in the active daily practice of his profession, as was Mr. Rogers, it is almost past comprehension to imagine how he found the time for the reading and research necessary for the production

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of these volumes. Yet the book is undeniably proof of its worth, and the author's professional associates bear witness to his fidelity to the demands of his practice during all the time he was engaged on it.

Mr. Rogers has not sought to simplify his task by producing an annotated Act but has given a comprehensive treatment of the whole field of municipal law. His textbook as it goes along, deals fairly exhaustively with the particular phase under consideration. As a result the person consulting it is spared the annoyance of frequent references to other parts of the book. This method leads to some repetition of material and increases the over-all length of the volumes; but this feature also will prove to be time-saving to those using it in day-to-day practice.

Even a casual glance through the table of contents discloses the all-embracing nature of the subject matter; solicitors acting against municipal corporations, as well as those acting for them, will find much from which to profit.

Beginning with a discussion of the nature of the corporation, following through its creation, its enlargement by annexation and amalgamation, the election of its council members and officers, the powers and duties of the council, fiscal management, local improvements, capital borrowing, licencing, zoning, highways, municipal services and franchises, police responsibility, judicial inquiries, relationships to the Department of Municipal Affairs and the Ontario Municipal Board, the municipal solicitor will find his *vade mecum* in this text; the treatment of the validity of, and attack on by-laws, contractual obligations, responsibility for wrongs, expropriation and arbitration, while equally helpful to him, will interest a larger group of solicitors whose clients are brought into contact with municipal action by the ever-widening scope of the authority which municipal councils exercise. With the exception of the field of assessment, for which the author makes gracious reference to Mr. Harold E. Manning's excellent book on *Assessment and Rating* (3rd ed., 1951), there is little reason to look elsewhere for light on legal problems arising in the field of municipal law.

Although this book will prove to be nigh invaluable to the lawyer dealing with problems of municipal law, a word of warning should be added for the benefit of those municipal officers and councillors who may be labouring under the misapprehension that placing Mr. Rogers' book in the office of the clerk will resolve all the legal matters of the municipality without the necessity of retaining a lawyer. This is not a layman's guide but a thoughtfully written textbook: it is designed to be read by those with a groundwork of legal training and to help them in arriving at certainty in a field where uncertainty oftentimes prevails. Used as a do-it-

yourself guide by those lacking some formal legal training it will prove to be of disservice rather than of service.

In literary works, the task of the reviewer is to give the prospective purchaser some idea of what he will find in the pages when he opens the book to read it, at the same time to whet the appetite while preserving the mystery of the entertainment to be found by the reader. Such an objective has no place in the review of a legal textbook, the title of which alone conveys to the reader the nature of the subject matter. But unlike a novel, which may continue accurately to portray human nature for generations after it is written, the more perfect the legal text is the sooner will there be the necessity of a new edition. Hence, in a constructive sense, some criticism may be offered in the hope that the author or the editors of a future edition may seek to expand the coverage of this subject.

At a time when the growth of urban centres has brought to many municipalities a realization of the need and a desire for well ordered planning, it is to be regretted that so few pages have been devoted to a study of this vexing problem.

The effect of the motor car as a means of private transportation and the accompanying advent of good roads seem to indicate that the traditional demarcation between urban and rural municipalities is destined to disappear; one would hope that the problems of the merging of city and country and the development of something which is at the same time both and neither, would receive some critical attention and that the opportunity would be taken to point the way to a more realistic statutory treatment of the factual changes that have been and are continuing to take place in this regard.

The tendency of the municipality through itself or through a municipally financed commission to provide services to its residents, a broadening of the definition of public utilities to include such services as parking, seems to point out the growing role of the municipal council as an operating agency, in lieu of its former position of a legislative agency. Here again one would hope for investigations and suggestions.

While it may yet be too early accurately to assess the suitability of the form of Metropolitan organization in operation in the Toronto area, the recurrence in other parts of Canada of the conditions which made necessary such a radical departure have led many places to watch with interest this experiment in partial amalgamation. Some greater detail of the basis of the scheme operating in Metropolitan Toronto was almost a demand.

With full realization of the controversial ground which is thereby opened up, a plea might be added for greater evidence of the expression of the author's personal views on many matters

which are admittedly in a state of flux. The treatment of the law as it stands, quite apart from the fact that it may so rapidly change is always accompanied by an absence of a sense of direction. To know where the law is going or is probably going, one must know the history by which it came to its present state of development—in this way alone can an estimate be made with any degree of accuracy of the course of the law in times to come. If the members of the legal profession accept the responsibility for the state of the law (and who should be better able to evolve proper laws) a greater degree of conscious effort must be put forth by the profession towards the shaping of the law. And a textbook by an author who has familiarized himself with one phase of law as Mr. Rogers has done might well contain the inspiration for the changes in law which the members of the legal profession should seek to accomplish.

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Fundamental Law in Criminal Prosecutions. Edited by ARTHUR L. HARDING. Dallas: Southern Methodist University Press. 1959. Pp. ix, 121. (\$3.00 U.S.)

This is a collection of four essays based on papers delivered by distinguished American legal scholars at the 1958 Conference on Law in Society held at Southern Methodist University. The essays are directed to the informed and inquiring citizen, layman as well as lawyer and concern what the editor aptly describes as “the minimum decencies of criminal prosecution”. Much of the book is naturally concerned with the problem of federal control over state courts which depends on the “due process of law” provision of the Bill of Rights. At the moment “due process” is not a term of art in Canadian jurisprudence and even if such a phrase be incorporated in a Canadian Bill of Rights, we have no reason to anticipate a constitutional struggle between province and Dominion, criminal law being within the exclusive legislative authority of the Dominion. Of what interest then is this book to the Canadian citizen, lawyer or layman? The answer is clear. Whether or not we acquire the technical phrase “due process” to describe them, “the minimum decencies” should be of interest to us all. Further, such an authoritative study of the constitutional problems facing the American lawyer will be of the greatest value to those of us who specialize in criminal work and are faced with the problem of working with the many American decisions on due process.

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Of especial value in this regard is the first essay by the editor, an historical study of the basic constitutional issues.

The remaining essays deal with specific protection afforded an accused person. Thus, the second essay by William M. Beaney, concerns the right of an accused person to have the assistance of counsel in his defence. This right, guaranteed by the Sixth Amendment, was construed as nothing more than the right to retain counsel until 1938 when in *Johnson v. Zerbst*¹ the Supreme Court held that in every federal criminal case, the accused must either have counsel appointed by the court, where indigency made retention of counsel impossible, or must waive counsel after proper instruction by the judge. According to the author, there was no professional nor public criticism of this generous interpretation of the Sixth Amendment. It was apparently accepted that the adversary system functions best with each side represented by competent counsel. Critics of our present legal aid schemes in the various provinces may find ammunition in the author's reference to the solution furnished by the public defender system presently used with great success in the city of Los Angeles and other areas in the United States. As he points out, "it is hard to conclude that there are differences between those using the public defender plan and the rest of the United States which prevent widespread adoption of this solution" (p. 55).

The third essay, on compulsory self-incrimination, emphasizes the highly unsatisfactory state of the law of evidence in this regard. Professor Fairman, the author, holds, as I do, that the rule excluding coerced confessions depends largely, if not exclusively, on public policy against the incorporation of coercion as part of our judicial process. In other words, the rule excluding involuntary confessions is aimed at the elimination of third-degree methods on the part of the police. In this respect, it is interesting to note that the author endorses the proposal made by Dean Roscoe Pound, in 1934,² of a statutory procedure for questioning a suspect before a magistrate, under suitable safeguards. Professor Fairman links this liability to be questioned with a right to refuse to answer and a liability to have such failure commented on by the judge at trial. In 1940, Dr. C. A. Wright³ proposed that our rules of evidence be amended so as to afford an accused protection from having his record, if any, exposed on entering the witness-box under the guise of testing his credibility.⁴ He suggested that at the same time the judge should be given power to comment on

¹ (1938), 304 U.S. 458.

² Legal Interrogation of Persons Accused or Suspected of Crime (1934), 24 J. of Criminal L. & Criminology 1014.

³ (1940), 18 Can. Bar Rev. 808.

⁴ The construction placed upon s. 12 of the Canada Evidence Act, R.S.C., 1952, c 307 is too notorious to require exposition.

the failure of an accused to testify. This is substantially the position in England and it may be that this indirect withdrawal of the present privilege not to give evidence would be more acceptable to the Canadian lawyer and citizen than Professor Fairman's proposal.

The final essay follows naturally from this discussion of the indirect protection of the citizen's freedom from unlawful coercion, the late Professor Reynard taking as his topic "The Right of Privacy". In England, where every man's home is his castle, evidence obtained through a police wire-tap was used in the recent "trial" of a doctor for professional misconduct before the General Medical Council with the apparent approval of the Home Secretary. While, in Canada, wiretapping has not yet presented a problem, there has been a recent tendency by the police to limit the extent of the citizen's right to privacy by the indirect use of provincial legislation, e.g. to use a right of search conferred by the Ontario Liquor Control Act for the purposes of general search. Such Canadian cases as *R. v. McNamara*,⁵ *A.G. for Quebec v. Bégin*⁶ and *R. v. St. Lawrence*,⁷ heavily reinforced by such Privy Council authority as *Kuruma v. R.*,⁸ tend to give the police every encouragement by admitting real evidence procured by tortious or even criminal violation of a suspect's rights. On the whole, the American cases tend the other way, with a marked difference between practice in matters within federal jurisdiction and those within the jurisdiction of some of the states. As Professor Reynard notes:

On the one hand there is society's deep and abiding concern for the individual's right of privacy. On the other, there is an equivalent interest in the prompt and effective apprehension of criminals. Neither interest should be sacrificed on the altar of the other. (p. 117)

This book will be of interest and value to the intelligent reader rightly concerned with a proper accommodation of the rights of citizen and society.

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⁵[1951] O.R. 6, affirmed. at p. 11.

⁶[1955] S.C.R. 593.

⁷[1949] O.R. 215.

⁸[1955] 1 All E.R. 236 (P.C.)

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