

BOOK REVIEWS

REVUE DES LIVRES

Cases, Notes and Materials on the Conflict of Laws. By JEAN-G. CASTEL, L.L.B. (Michigan), Licencié en Droit (Paris), S.J.D. (Harvard). Toronto: Butterworth & Co. (Canada) Ltd. 1960. Pp. xxvii, 1092. (\$23.00, student rate \$15.00)

Professor Castel's *Cases, Notes and Materials on the Conflict of Laws* is monumental in size and scope, and unique in character. In size it runs to over a thousand closely typed pages and includes abstracts, extracts and references to almost as many cases. In addition it contains copious notes and summaries written by the editor himself as well as numerous articles, many reproduced in full, by such eminent and internationally recognized scholars as *Savigny, Niboyet, Beale, Walter Wheeler Cook, Yntema* (who is particularly featured), *Dean Griswold, Westlake, Schmitthoff, J. H. C. Morris, Dr. John D. Falconbridge*, to whom the book is dedicated, and a good many others. In scope the book is much more than a typical casebook and the textual materials go far beyond what is usually connoted by "notes and materials". Statutes, both domestic and foreign, are quoted throughout, wherever material or instructive, and in addition to the articles and commentaries already noted, lengthy references are made to the opinions and reports of committees such as the Conference of Commissioners on Uniformity of Legislation in Canada, the Private International Law Committee (England) and the American Law Institute's Restatement of the Law of Conflict of Laws.

To aid the groping student and the unfamiliar practitioner to a better understanding and appreciation of the nature and application of conflict of laws, Professor Castel has also provided generous portions of introductory and historical material, and lists of selected readings, to give a background and framework for the subject and to point up the principles and rules which pertain to its various aspects. All in all the book is a veritable library of conflict of laws material and its distillation into such a portable and palatable form constitutes a remarkable feat of scholarship and organization on the part of its author-editor.

This in itself is a unique triumph but, from the viewpoint of this reviewer, the chief value of Professor Castel's book stems

from a uniqueness of a different character.

First and foremost it represents the only *Canadian* casebook on conflict of laws, certainly between hard covers, that has been *designed* for both law students (and teachers) and practitioners alike. At the same time it demonstrates that the subject is not mysterious, exotic or an academic plaything (although that, too often, has been its undeserved reputation) but rather that it is a very essential and basic tool to resolve the manifold and complex problems that result, and are continually increasing, as men, women, motor cars and business organizations become more and more peripatetic in an ever shrinking world, where ownership of property knows no boundaries, and births, marriages, divorces and deaths, with all their concomitant problems, may and do occur anywhere.

The *Canadian* character of the book is reflected in two ways. First of all it embraces decisions from all of the provinces and devotes considerable space to Quebec decisions and the significance of conflict of laws under the Civil Code of that jurisdiction. Heretofore there has been a tendency among Canadian writers in dealing with conflict of laws to treat the common law and civil law in a parochial fashion and to prepare texts, casebooks and articles, on conflict of laws which emphasize one of the systems to the virtual exclusion of the other. This has been unfortunate. Canada, after all, is a federal nation and Quebec law, in its conflict of laws aspect, may affect the rights of any and all persons having contact with that province regardless of where they might live or carry on business. The inclusion of Quebec cases, legislation and other material is therefore essential if a true and complete picture is to be given of the function and functionings of conflict of laws in Canada. Moreover, and aside from the real practical need for this material, it has other advantages. Many of the Quebec cases afford admirable illustrations of common-law concepts and have contributed much to the general theoretical development of the subject in Canada. *Trottier v. Rajotte*¹ for example, sets out what is probably the best and most definitive statement on the law relating to *domicile* and the casebook abounds with numerous other Quebec decisions equally deserving of attention by the common-law lawyer which otherwise might escape his notice. In this regard the special qualifications of Professor Castel are of great value for he is trained in both the civil and common law and is a teacher of experience who is equally at home in either system. And quite apart from his professional and academic qualifications much is owed to, and the book reflects, enormous industry and perseverance on his part whereby these and many other Canadian cases have been ferreted out of the reports, particularly

¹ [1940] S. C. R. 203.

when it is borne in mind that in the field of conflict of laws the indexing of Canadian reports and digest systems leaves much to be desired. Many a gem lies hidden in their depths and only diligent, and often thankless, digging can bring them to the surface.

The *Canadian* character of the book is reflected in yet another way, that is, by the number of Canadian decisions which are collected and set out in its pages. Although Professor Castel does not eschew the use of English, American and Commonwealth decisions, and even uses some from France, where they are the most apt and best suited to illustrate a particular point or problem, nevertheless the emphasis is placed on Canadian decisions and most of the cases are Canadian. This is as it should be, but strangely enough, at least in the common-law jurisdictions of Canada, writers and teachers (and eventually, through a process of osmosis, lawyers and judges) tend to be preoccupied with English case law and are, consciously or not, inclined to treat Canadian decisions as poor, and rather suspect, relations. No one would deny that conflict of laws in Canada owes a great deal to English developments and, quite naturally, Canadian experience parallels or mirrors English experience in a great many instances. However, it is also natural, indeed inevitable, that there must be differences. Canada is a federal nation; it is an immigrant nation; it has many and varied problems which are particularly and peculiarly Canadian and as a consequence, in the words of Professor Castel, "the trend is toward the establishment of true Canadian rules or local variations of the old rules".

Too long have we in Canada been disposed to render unswerving homage to dog-eared dicta of the Privy Council in some appeal from Ceylon and tremble before hoary English pronouncements delivered at Nisi Prius in the antediluvian era of conflict of laws. Too long have we ignored the rich lode of Canadian material which has been quietly and tortuously accumulating over the years and which only needs to be discovered to be appreciated. Thanks to Professor Castel much of this material, including extensive extracts from the writing of Canadian scholars, and most of the important cases are now painlessly made available and are collected in logical sequence and organized under the familiar and easily recognized divisions of the subject. To the practitioner, in particular, the author has rendered valuable service. After all, what is more important to Canadian practice than Canadian material?

Hopefully, too, this book should go a long way towards dispelling the commonly held illusion that conflict of laws is a subject which is only fit for ivory towers and the fulminations of pedants and that, as a legal device or technique for solving prob-

lems, its usefulness is extremely limited. Admittedly, however, there have been some grounds for these suspicions.

For one thing, a good many of the so-called "leading" cases have, unfortunately, been concerned with situations that do not usually occur and some are completely divorced from reality in terms of the ordinary practice of the ordinary lawyer. If the traditional *domicile* cases usually taught to students are any criteria of the problems in that area they may be pardoned for concluding that conflict of laws is only helpful where the person involved is a multi-millionaire, a yacht-loving war correspondent or an erratic visionary who designs cigar-shaped boats. Similarly, the law of contracts is apt to be conceived in terms of the improbable spectacle of an irascible Chief Justice losing his baggage in Egypt while *en route* to Mauritius. Again, the constant and invariable use of Latin and French expressions, such as *lex rei sitae*, *lex loci actus*, *lex fori*, *lex domicilii*, *lex patriae*, *envoi*, *renvoi*, to give a few instances, and the academic articles pro and con which rage, pretentiously abstract, on theories pertaining to the *renvoi*, characterization of the question and so forth, tend to create an image of conflict of laws as a ritual cult, wherein membership is restricted to a chosen few, rather than as a legal tool which, in fact, is extremely useful in solving typical, everyday problems. Also, the influence of the Privy Council and its role as arbiter for an entire empire has resulted in undue prominence being accorded to such novelties as Hindoo divorces and Basutoland marriages with the consequence that conflict of laws is associated in the minds of many with the rare and exotic. Perhaps, too, the alternative description of the subject as private international law conjures up visions of the cosmic futility which is associated, in an age of cynical and unabashed power politics, with international law in the public sphere.

But whatever is the cause for the suspicion, indifference and, indeed, ignorance that is so often connected with conflict of laws, it is time that the subject received more respect and its application to "typical" situations be better appreciated. In Canada alone, where there are ten "foreign" provincial jurisdictions, the permutations and combinations of even a simple inter-provincial transaction may be many and varied (and yet very unexceptional) and the addition of fifty adjacent American states creates almost limitless opportunities for problems to arise which affect Canadians and their activities and which call for clear and definite resolution if they are to properly regulate their affairs. Canadian activities abroad and strangers from other jurisdictions, and their investments located in this country increase the complexities, if not the nature, of the problems that may arise. What is needed is a vivid awareness of the practical necessities of know-

ing and applying and developing the rules of conflict of laws in and for Canada if chaos and uncertainty is to be avoided. Professor Castel has supplied the means to fulfill this need and his selection of cases aptly demonstrates the ever increasing importance of the subject.

Finally, a few comments should be made of a more specific nature concerning the organization and contents of the book, its usefulness to students and its value as a vehicle for teaching (its value to the profession being already conceded).

The order of treatment is fairly orthodox and is divided into three parts. The first part, of approximately one hundred pages, is devoted to an outline of the history and theory of conflict of laws, including its objects, scope, sources and terminology, but in particular it deals with the definition of domicile, the most important connecting factor defining the personal law of an individual. This part also serves to introduce the reader to the technique used in conflict of laws in the conviction, to quote Professor Castel, that "once this technique has been absorbed he will have no difficulty in understanding the most complex rules". This statement may be overly sanguine but there is no doubt that a good grounding in the basic premises of the subject will make things immeasurably easier for the beginner and such a grounding is given in Part I.

Part II is entitled "Conflict of Laws Proper" and is the heart of the book. It deals with the choice of law rules, as developed in the Canadian common-law provinces and in the province of Quebec, beginning with a study of the various doctrinal bases of the subject and treating extensively such preliminary obstacles as characterization, *renvoi*, substance or procedure, the incidental question, public policy and proof of foreign law. Some idea of the coverage extended to these latter matters may be gained from the fact that two hundred pages are devoted to the problems involved. The remainder of Part II deals with the choice of law and choice of jurisdiction rules appropriate to the basic subject matter categories recognized in conflict of laws beginning with Domestic Relations (marriage, nullity, divorce, matrimonial property and capacity) and continuing through Status (incidents of status, legitimacy and legitimation, adoption, custody, guardianship, interdiction), Transfer of Property *Inter Vivos* (immovables and movables, negotiable instruments, specialty instruments, debts and other choses in action, shares and share certificates), Administration and Succession in all its aspects, Bankruptcy, Contracts and Torts.

Part III, entitled "Conflict of Jurisdictions", is devoted to the jurisdiction of Canadian courts; the recognition of foreign judgments both *in rem* and *in personam*; reciprocal enforcement legis-

lation; arbitration awards; and concludes with a chapter on the problems of conflict avoidance, consisting of scholarly articles by two specialists in this field, *Clive Schmitthoff* of England and *Dean W. R. Lederman* of Canada.

From the foregoing summary it is clear that Professor Castel has served a very generous helping of conflict of law, material and his book is extremely representative of the types of problems that are likely to be encountered in this field. He himself recognizes that, for teaching purposes, much more is provided than can possibly be covered in the time normally allotted to the course by the average law school curriculum but this plethora of riches enables the teacher to pick and choose, in whatever order he wishes, from amongst a wide assortment, and thereby comply with not only the exigencies of schedules but also with his own particular preferences and prejudices. It matters little, of course, if certain topics are not covered by a student or teacher. What is important is that they are available if he wishes to cover them. Neither does it matter that some of the teacher's "favourite" cases may be missing. The book is not intended, and no casebook can hope to pretend, to be an exclusive vehicle for teaching and, because teaching is such an individual process it cannot possibly satisfy everyone in every particular.

Professor Castel's book is highly recommended for those teachers who adopt the casebook method of teaching and, for individual purposes, whether they use that method or not. It is equally recommended to students, assuming that it is not positively required for course purposes, provided that they can afford fifteen dollars. Even though they are given a discount on the purchase price charged to the profession, fifteen dollars still represents a considerable sum to the majority of students. It is to be hoped that *Cases, Notes and Materials on the Conflict of Laws* enjoys widespread sales and that a high circulation may someday result in lower prices to students.

R. S. MACKAY*

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A Casebook on the Conflict of Laws. By P. R. H. WEBB, M.A., LL.B. (Cantab.), Solicitor of the Supreme Court, Lecturer in Law in the University of Nottingham, and D. J. L. Brown, M.A., LL.B. (Cantab.) of the Inner Temple, Barrister-at-Law, Lecturer in Law in the University of Leeds, sometime Whewell Scholar in the University of Cambridge. London: Butterworth & Co. (Publishers) Ltd. Toronto: Butterworth & Co. (Canada) Ltd. 1960. Pp. 1, 478. (\$13.25)

*R. S. Mackay, of the Faculty of Law, University of Western Ontario, London, Ontario.

The book under review is no mere reproduction of judicial decisions but a sustained study in the conflict of laws. The authors' selection of leading and thought-provoking cases has been carefully supplemented by concise but nevertheless extremely valuable extracts from extra-judicial sources, including statutes, textbooks, learned articles and Law Reform Committee reports. For the most part these extracts have been selected from English legal writings though foreign materials and more especially Canadian and American publications are well represented. The authors do not, however, rest content with a recitation of opinions expressed by others. A welcome feature of the casebook will be found in their own penetrating analyses which appear by way of introduction to a topic or in comment upon specific judicial decisions. Their study on the doctrine of *renvoi* is particularly notable in this respect and will dispel many of the mythical difficulties encountered by the law student on introduction to this subject. In order to keep the size of the book within reasonable proportions reference to foreign judicial decisions has been reduced to "an absolute minimum". Furthermore, no attempt has been made to embrace all the topics which would normally be found in a standard textbook on the conflict of laws. Topics excluded or treated only superficially include the origin and historical development of the conflict of laws, negotiable instruments, bills of exchange, proceedings ancillary to matrimonial causes, adoption, lunacy, bankruptcy, powers of appointment and matters pertaining to what may be generically termed "substance and procedure". Considerations of space have also rendered it necessary for the authors to digest many cases in such a manner as to reproduce only the pith of the judicial decision. Although this processing denies the student an opportunity to determine the *ratio decidendi* of a case by personal research, it is clearly justified by reason that it facilitates the introduction of more extensive references to legal commentaries to which the attention of the student might not otherwise be drawn.

The most distinctive characteristic of the casebook is the frequent insertion of searching questions and hypothetical problems. These will do much to stimulate student application of the principles enunciated in the text and will provide valuable aids to the law teacher who adopts a case or problem method of approach in the lecture room.

The authors have in general followed a traditional order of presentation of topic. A noteworthy addition in contents is Chapter 3, which briefly refers to the problems which may be experienced by the courts when they are called upon to determine the impact of certain legislative enactments upon conflict of laws rules. This chapter is based upon *Morris's* article "*The Choice of*

Law Clause in Statutes"¹. The following chapter is also significant in that it provides a general reference to problems of time in the conflicts of laws, a topic frequently relegated to mere incidental mention in the standard textbooks. An interesting though all too brief reference to the sociological implications and bases of judicial decisions in this branch of law appears in an introduction to that portion of the casebook which treats of the "application of laws in time and space in Family Law, Obligations, Property and Succession". It is to be hoped that the authors will expand this sociological synopsis when further opportunity arises for this is also a matter which has received scant attention in the textbooks.

The book lends itself to relatively few criticisms. Elucidation of the problems of classification tends to be rather restricted and a surprising omission to the Canadian lawyer is the absence of reference to the contribution of *Falconbridge* in this sphere of the conflict of laws. In discussing legal capacity to enter into contractual relations, the authors interpret the judicial authorities as favouring the application of the *lex loci contractus*. It would appear that contractual capacity should more logically be referred to the proper law of the contract as objectively ascertained. This would accord with the decision of the Court of Appeal of Ontario in *Charron v. Montreal Trust Co.*² and would substantially eliminate the possible evasion of legal disabilities. The decision of the Saskatchewan Court of Appeal in *Bondholders Securities Corp. v. Manville*³ and early English dicta which affirm the application of the *lex loci contractus* are not totally irreconcilable with *Charron v. Montreal Trust Co.*⁴, for they are explicable on the basis that the *lex loci contractus* was long considered to be the proper law of the contract. In considering the question of illegality of contracts, the opinion is expressed that contracts will be unenforceable in the English courts where they are illegal—that is imperatively prohibited—either by the *lex loci contractus* or the *lex loci solutionis*. This conclusion, while not inconsistent with the authorities, would seem to extend beyond the *rationes decidendi* of the relevant decisions and the more restrictive interpretation accorded by *Cheshire*⁵ might reasonably be alluded to. Doubt may also be cast upon the authors' statement that where the English courts will assume jurisdiction *in personam* upon a certain basis, they will usually be willing to concede a similar right to a foreign court. Although this proposition re-

¹ (1946), 62 L.Q. Rev. 170.

² [1958] O.R. 597, [1958] O.W.N. 357, (1959), 15 D.L.R. (2d) 240, affg. [1958] O.W.N. 70, (1958), 12 D.L.R. (2d) 45.

³ [1933] 4 D.L.R. 699, [1933] 3 W.W.R. 1.

⁴ *Supra*, footnote 2.

⁵ Private International Law (5th ed., 1957), pp. 234-238.

ceives some support from Denning L.J., as he then was, in *In re Dulles Settlement* (No. 2)⁶, the application of the doctrine of reciprocity in this context is far from certain.⁷ Issue might further be joined with the authors in respect of their statement that section 18(3) of the Matrimonial Causes Act, 1950, enjoins the application of English law in nullity proceedings.⁸ These are, however, only minor points of criticism, for the book is basically free from inaccuracies and represents painstaking care on the part of the authors in sifting materials in order to provide an extensive and intense analysis of this difficult field of law.

JULIEN D. PAYNE*

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Fraud on the Widow's Share. By W. D. MACDONALD, Professor of Law. Ann Arbor: University of Michigan Law School. 1960. Pp. xviii, 477. (\$10.00 U.S.)

The Preface to Mr. Macdonald's study states that his purpose is to seek an answer to the troublesome question of what should be done about gratuitous *inter vivos* transfers in "evasion" of the widow's statutory share. The title, in a sense, is misleading because, as the author repeatedly points out, in many instances the basic question is not one of "fraud" at all—in the usually accepted sense of the word. Furthermore, while the majority of the cases, and the text material, deal with the rights of widows, the theory includes surviving widowers as well. Almost all jurisdictions have some sort of statutory share legislation providing in essence that if the surviving spouse is not given a specified amount of the decedent's estate, such spouse may elect to take the equivalent of an intestate share. This presents no problem as far as actual probate assets are concerned, but the trouble arises when one considers that vast amounts of property are being transferred today outside probate by *inter vivos* conveyances such as revocable and irrevocable trusts, survivorship devices, life insurance, United States savings bonds, and so on. To what extent, if any, should the spouse be permitted to take a portion of such property given by the decedent in this fashion to others?

The author suggests that the problem is growing more acute, pointing out that almost every state has one or more cases involving the question either directly or indirectly. In addition, his

⁶ [1951] Ch. 842, [1951] 2 All E.R. 69.

⁷ See *In re Trepca Mines Ltd.*, [1960] 1 W.L.R. 1273, at pp. 1280-1282.

⁸ See Zelman Cowen, *Choice of Law Provisions in Matrimonial Causes* (1957), 73 L.Q.Rev. 350.

*Julien D. Payne, of the College of Law, University of Saskatchewan, Saskatoon.

tabulation of cases indicates that the number of litigated cases has been increasing constantly, with as many cases having been decided in the eighteen years from 1940 to 1958 as were reported in the sixty-five year period from 1875 to 1940.

In searching for an answer, Mr. Macdonald frankly confesses his strong feeling that the various types of family maintenance legislation used in the British Commonwealth are a better answer than the ordinary statutory share legislation which, he thinks, is too rigid and insensitive to family and community needs.

This book is unique in that the author's approach is not only legal, but equally sociological. He is concerned with (a) the right of the decedent to dispose of his property as he desires, (b) the interests of the donee in the transferred assets, (c) the rights of the widow and children to be supported, and (d) the community's interests in family welfare.

Roughly the first half of the text deals with a study of the cases in an attempt to ascertain the factors which the courts have seemingly felt important. His first breakdown of the cases is in the category of tests applied. Some courts have applied principles relating to the degree of retention of control by the decedent; others have laid more stress on the motives; and still others on the "reality" of the transfer. He next looks at the cases to see what effect the apparent equities have had on the results. Elements included here are such items as the proportion of property given, proximity of the gift to the date of death, relationship of the donee, moral claims of the parties and disparity in ages between spouses.

His third approach is from the standpoint of the method of making the transfer, for instance, by outright gift, trust, survivorship property, and so on.

In every one of these categories his analysis is very thorough. At the same time, by the very nature of the cases and the vague words used in the decisions (such as "illusory", "colorable", "unreal"), it is obvious that one man's conclusions as to what the court *really* felt are no better than any other. The reader, therefore, may or may not agree with Mr. Macdonald's feelings about what the cases show. Furthermore, the more one studies these cases, the more one is inclined to doubt whether it is possible to break them down into neat theories or classifications. One has the feeling, in the final analysis, that in each case the court decides what it is going to do and then casts about for a convenient hook upon which to hang its conclusion. Such, at least, was my opinion some time ago when preparing a brief on the subject and this book confirms the belief.

Admitting that the law is in a thorough state of confusion in this area, there remains the question of the importance of the

problem. One may look at the statistics and note, without dispute, that the volume of litigation in these cases has undoubtedly increased. But how one interprets this increase is a matter of subjective appraisal. After twenty-five years of experience in practice, teaching, and consulting in this field I feel that there are some factors which are important and are not adequately covered in this work:

(a) The importance of the marital deduction in estate planning in the United States. It has been general experience that extremely few men prefer to make the tax collector a beneficiary of their estates—even though they may not like their wives. As a result the normal client will so arrange his affairs that his widow will receive the economic benefits from at least half of his estate.

(b) In many instances, the estates of the husband and wife are approximately equal, so that the motivating reason for creating trusts is not at all to deprive the spouses of property, but to avoid unnecessary taxes between the two estates.

(c) The desire of the husband to protect his wife by placing property in trust and thus give her professional management of her property rather than leave it to her outright.

(d) There are some very difficult questions on conflict of laws involved in the author's solution. If all the recipients of the decedent's property are resident of the same jurisdiction, one will have no problem. But suppose that the decedent dies a resident of State A; that he has property jointly owned with persons in State B; and that some of his life insurance goes directly to beneficiaries who are resident in State C—how can the courts of State A extend their jurisdiction to compel persons in any other State to contribute anything at all?

It is true that these four elements are generally applicable to the individual who has a substantial estate *and* who attempts to do an "estate planning" job. There still remains the problem of the "poor man" who makes his will by using devices other than a will; and one suspects that this sort of an individual might be more tempted to "defraud" a second wife than any other. For this sort of individual, one is inclined to doubt whether any type of remedial legislation will do any good. And would it be feasible to legislate for *all* persons because of the possibility that a few small cases might be helped? These are questions that have no easy answer.

In any event, this book, with its wealth of case law, is a most valuable addition to the presently limited subject matter in the field. It will be of enormous help to any lawyer involved in any litigation on the subject because of its extremely thorough coverage of the matter. And, I think, it should be required reading for any person who is dealing with legislation in this area. Whether

any particular jurisdiction should or should not do anything is a question, but there is no doubt that this book will be a guide for a long time in this field.

LAWRENCE G. KNECHT*

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Canada and the Privy Council. By COEN G. PIERSON. London: Stevens and Sons Limited. 1960. Pp. xii, 119. (\$4.00)

The Privy Council's decisions interpreting the British North America Act have been the butt of considerable criticism by academicians, but as an institution, the Privy Council has not been the subject of very much systematic research. Mr. Pierson who is a professor of history at De Pauw University, Indiana, has attempted to fill this gap. Unfortunately this book is somewhat disappointing as it fails to really examine this interesting subject in sufficient depth. In a mere ninety-seven pages, Professor Pierson attempts to outline the origins of this body, summarize some of its leading decisions, describe several of the important personalities involved in the Council's work and identify the forces which led to the abolition of appeals to it from Canada. The result of this ambitious attempt is to cover most of the subject matter much too superficially. For example, very little is achieved by chapters four and six, both of which are merely summaries of some of the leading constitutional decisions of the Judicial Committee affecting Canada. For the informed student of Canadian constitutional law, the coverage is too thin, whereas it is insufficient to really give a newcomer to the Canadian constitution a sufficient view of the case law which emanated from the Judicial Committee. The non-expert, after reading these chapters, would not only be uninformed but probably misinformed about the extent to which the Privy Council distorted the words of the British North America Act.

The best part of the book are those chapters which describe the factors and events which led to the abolition of appeals. They are both interesting reading and also a real contribution to our understanding of Canadian constitutional history. The author describes a number of circumstances which contributed to the end of appeals. First he notes that the spirit of nationalism contributed to the feeling that it was inconsistent with Canada's position as a sovereign nation to still have judicial recourse to a non-Canadian judicial body. Critics also stressed the cost of appeals, emphasizing that this worked to the benefit of wealthy corporations as against the ordinary litigant. Professor Pierson, however, emphasizes that opposition to appeals became particularly vehement

*Lawrence G. Knecht, of the Bar of the State of Ohio, Cleveland.

whenever this body handed down decisions which irritated large sections of opinion. For example, the Judicial Committee's decisions declaring much of Mr. Bennett's "New Deal" *ultra vires*, led to tremendous agitation for the abolition of appeals. The fact that many of the Privy Council decisions merely affirmed those of the Supreme Court of Canada did not seem to quell the agitation.

Right until the end, however, there were many Canadians who opposed abolition. They argued that in a federal system it was highly desirable to have an impartial third party act in jurisdictional disputes between the central government and the regional governments. They feared that the bestowal of complete judicial power on the Supreme Court of Canada would lead to further encroachments on provincial rights. They also argued that the Canadian judiciary was not up to the quality of the Judicial Committee.

The author stresses the role of the Liberal party in the agitation for abolition of appeals, whereas the Progressive Conservative party tended to be more favourable to continuation of the existing system. Towards the end, however, most of the Conservative party accepted the inevitability of the abolition of appeals. Besides the Liberal party, the author notes two other groups of persons who led the abolition movement. First, the "Hate Britain" agitators and secondly, petitioners and lawyers who had lost cases before the Judicial Committee. The author, however, does not mention the part played by many members of the Canadian academic community, particularly in political science and law, who urged abolition because they felt that the Privy Council had not only misconstrued the British North America Act, but was too remote from local conditions to realize the implications of their actions. These scholars were particularly incensed by the fact that the central government was unable to carry out the comprehensive programme of economic reform necessary to alleviate the depression.

Professor Pierson leaves the impression that he feels the Privy Council has not been given all the credit it deserves. He talks about the "meritorious record of the Judicial Committee" and that "it's total record became one of superior achievement". It is refreshing to hear comment in praise of the Judicial Committee, if for no other reason, than that it provides a contrast to the torrent of abuse usually heaped upon it. It is unfortunate that the author does not expand on his obvious sympathy for the board.

It is to be hoped that the author will expand on his research in this area. For example it would be interesting to have a more detailed analysis of the philosophy and motivations of both Lord Haldane and Lord Watson. Neither of these dominating figures is given sufficient attention. Perhaps, as I have already noted, the

author could outline more fully what he thinks are the benefits which accrued from having appeals to the Privy Council.

The informed reader will find much of this book repetitious. Nevertheless, it should be read by serious students of Canadian constitutional law because of the interesting description of events and forces which finally led to the abolition of appeals.

RONALD I. CHEFFINS*

Books Received - Ouvrages reçus

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

Tout ouvrage mentionné dans la liste qui suit pourra faire l'objet d'une analyse détaillée dans un prochain numéro.

Bingham's Motor Claims Cases. Being a Digest of fully annotated cases connected with motor claims together with the relevant statutory matter and tables. By LEONARD BINGHAM, Solicitor of the Supreme Court. Fourth Edition. London: Butterworth & Co. (Publishers) Ltd. Toronto: Butterworth & Co. (Canada) Ltd. 1960. Pp. xlvii, 775. (\$15.75)

Canadian Income Tax Regulations. Twentieth Edition. Consolidated to January 25, 1961. Toronto: CCH Canadian Limited. 1961. Pp. 147. (\$2.00)

Casebook on the Conflict of Laws, A. By P. R. H. WEBB, M.A., LL.B. (Cantab.), Solicitor of the Supreme Court; Lecturer in Law in the University of Nottingham and D. J. L. BROWN, M.A., LL.B. (Cantab.) of the Inner Temple, Barrister-at-Law; Lecturer in Law in the University of Leeds; sometime Whewell Scholar in the University of Cambridge. London: Butterworth & Co. (Publishers) Ltd. Toronto: Butterworth & Co. (Canada) Ltd. 1960. Pp. 1, 478. (\$13.25)

Caughnawaga Indians and the St. Lawrence Seaway, The. By OMER Z. GHOBASHY, LL.B., Ph.D. New York: The Devin-Adair Company. 1961. Pp. xi, 137. (No price given)

Clarke Hall and Morrison's Law Relating to Children and Young Persons. By A. C. L. MORRISON, C.B.E., formerly Senior Chief Clerk of the Metropolitan Magistrates' Courts and L. G. BANWELL, O.B.E., formerly Chief Clerk, Metropolitan Juvenile Courts. Sixth Edition. London: Butterworth & Co. (Publishers) Ltd. Toronto: Butterworth & Co. (Canada) Ltd. 1960. Pp. xlv, 723, 41. (\$24.50)

Economic Interpretation of the Constitution of the United States, An. By CHARLES A. BEARD. New York: The Macmillan Company. Galt, Ontario: Brett-Macmillan Ltd. 1961. Pp. xvii, 330. (\$1.75)

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*Ronald I. Cheffins, of the Faculty of Law, McGill University, Montreal.