BOOKS AND PERIODICALS

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CHIEF BARON POLLOCK.[1]—This work of filial piety was well worth writing, and on the whole it is creditable to the distinguished author.

The first Pollock of the legal profession was the third son of the saddler to George III. and his sons—the father hailed from Berwick-on-Tweed, the *Nutrix Leonum,* which produced the Scotts, Lord Mansfield and Lord Stowell.

Born September 22, 1783, (Jonathan) Frederick, the "handsome Pollock," was educated in a private school in Lambeth, in St. Paul's —which he left after a controversy with the Headmaster who prophesied that he would be hanged, a prophecy which in later years the prophet remembered as foretelling that he "would fill an elevated position"—and at Trinity College, Cambridge, becoming Senior Wrangler. He was at the University just before the Cartesian symbolism and terminology were adopted, Fluxions and Fluents were still in vogue, the Differential Calculus was not, and the "Newtonian dotage" had not given way to the "Cartesian deism."

It is recorded of him that he maintained his early love, and toward the end, devoted his leisure thereto—not unlike our own Chief Justice Thomas Moss, who spent much of the time in his last illness in solving algebraical problems.

He attended lectures on Anatomy, Chemistry, Mechanics—and when he was in active practice, one of his sayings was: "I study medicine but I practise law." *Me judice,* no better foundation can be laid for a career at the Bar than a thorough grounding in Mathematics, pure and applied, Chemistry and Medicine.

His law course included Paley's *Natural Economy* and Beattie's *Truth* as well as Blackstone, Tidd, Selwyn, Littleton, Coke and Cruise.

Called in 1807, he obtained a fine practice in a comparatively short time. A High Tory, he was elected to Parliament at the fateful General Election of 1831: he fought against the Reform Bill of 1832 to the last and when the inevitable occurs, he considers "the

[1] Lord Chief Baron Pollock, A Memoir by his Grandson, Lord Hanworth, Master of the Rolls. London: John Murray, 1929.

Constitution is at an end. The Revolution has begun and practically we are a Republic."

But although he had been Attorney-General (1834-1835) resigning to resume his practice at the Bar, he did not refuse in 1839 to defend the Chartist Frost (9 C. & P., 165—the technical defence is worth considering even in these non-technical days).

After a successful career at the Bar, Frederick Pollock (he early dropped his first name just as our Edward Blake did) became Chief Baron in 1844 and occupied that high office until his resignation in 1866; he died in 1870 aged 87. It may not be without interest to note that he had twenty-four children of whom twenty survived him. It is said that in the later years on the Bench, he at times dozed when hearing argument—in one case, *Attenborough* v. *Thompson*, 2 H. & N. 559, on Counsel arguing that a man's residence is where he eats, drinks and sleeps, he said: "That cannot be, for if so, my residence would be the Court of Exchequer."

The biography as a whole is well-written, and it throws a sidelight on some matters of the past.

Pollock's older brothers were attacked with smallpox, the oldest was laid out for dead but afterwards recovered and lived to be "the ugliest man in London." The mother insisted on Frederick being inoculated (Jenner and vaccination were still in the future) against the views of her husband, a strict Presbyterian who believed that such matters should be left to the direction of Providence. A King's Counsel still received wages from the Treasury: duelling was still in vogue and everyone was anxious to find an escape for the duellist who had killed his man: a criminal sentenced to death on Friday was hanged on Monday (the author makes a strange mistake in saying that this "probably indicated unusual haste," a hundred years ago): Dissenters had no place in the Universities, and it was impudence in them to ask it: when an election was imminent "it was the duty of someone to post down to Huntingdon to secure all the public-houses in the Tory interest, whence followed unlimited beer": in the House of Lords, any peer, lay as well as professional, could sit and hear cases (some of us have seen a half-crazed lay Lord, sitting with the Law Lords on the hearing of an appeal, but no one paid any heed to him).

Coming seventy-five was "an age considerable—beyond the common stretch of human existence"—*eheu fugaces labuntur anni!* Campbell, Parke, Russell and their confrères are met in many situations.

The author gives due credit to Dickens "with his usual accuracy in criminal procedure"—it is extraordinary and to this reviewer unaccountable that the trial of *Bardell* v. *Pickwick* has been generally considered a travesty.

The curious Chancery tradition which inserted a mute aspirate between two vowels to show that they should be sounded separately, e.g., "preheminence," is noticed.

The proof-reading is not impeccable—we find "Lord Coke"—the criminal is "hanged, drawn and quartered" (as though he was hanged and then "drawn" like a chicken, instead of being "drawn" to the place of execution on a hurdle and then hanged): for "Quant a moi," the author is not perhaps responsible and an occasional slip in punctuation may be overlooked.

The work will make no very great impression upon the legal or literary world; but as has been said, it, on the whole, is creditable to the author, and was worth writing.

WILLIAM RENWICK RIDDELL.

Toronto.

NOTES ON RECENT BOOKS.

BY THE EDITOR.

WISE SAWS AND MODERN INSTANCES.—We congratulate Mr. Johnson on producing a book[1] of a kind and quality all too rare in Canada. Many books on the practical side of the two systems of law prevailing in this country have been published, but little has been done in the way of critical enquiry into the origin and development of the doctrines of either system or in making a comparative study of both. Mr. Johnson's book is a happy combination of the practical and what is called, *faute de mieux*, the academic aspects of the law. Predicating that the maxims of the Civil Law which have survived to our own day stand as "the core of codes and textbooks, the rock foundation of legal thought today as they were a thousand years ago," he takes certain of these maxims and, after tracing their history, establishes the reasonableness and utility of the principles they embody by showing how persistently modern legislation and judicial decisions in Quebec are moulded in conformity with them.

The sub-title of the book is "Essays in the Evolution of Law," and the author modestly offers his venture in legal literature "to those who will take the trouble to read it; not without the hope,

[1] *Maxims of the Civil Law.* By Walter S. Johnson, K.C., Montreal: Wilson and Lafleur, 1929.

however, that in the comparative method adopted wherever possible, lawyers of the English provinces may find some windows opened through which they may view the *rationale* of our French Civil Law; and that young students may find some stimulation in the methods of legal reasoning exhibited in the decisions reviewed." The author's hope will be realised if our law-schools throughout Canada do their duty by his book. If there is any country under the sun where the study of comparative jurisprudence should be encouraged, surely it is ours where two great systems of law coexist. Notwithstanding all that has been written to the contrary in the past, that the English Common Law owes somewhat of a debt to the Civil Law cannot be gainsaid. In one of his recent books, that great historian of the former system, Dr. Holdsworth, says: "Whether we look at the law from the point of view of the practitioner, or the teacher, the debt of English law to the civilians is much more considerable than a modern lawyer would suppose . . . . In the sixteenth century it [the Civil Law] helped to make English law sufficient for the needs of a modern State. In the eighteenth century it helped Lord Mansfield to construct our modern Commercial Law . . . . From the purely academic point of view we cannot afford to neglect a branch of legal learning which has so large an historical effect, a branch of learning which is still so necessary to a scientific study of law. From the purely practical point of view we cannot afford to neglect a branch of learning which is necessary to the proper understanding of International Law, and of foreign Codes of Commerce."

Mr. Johnson will pardon the suggestion that any later editions of his book should include an index and a table of cases cited.

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AMERICAN DIPLOMATIC HISTORY.[1]—This is a book of abounding interest in a field which, as the author declares, is "astonishingly neglected." The position of executive agents in American foreign relations is worthy of study if only because of its peculiarity under the constitutional structure of the United States. European executives, for the most part, are untrammelled in making appointments to their legations, while in the case of the United States appointments involve a dichotomy of power between the President and the Senate. It has been the object of the author, in the studies that have given him material for his work, to discover how far the executive

[1] *Executive Agents in American Foreign Relations.* By Henry Merritt Wriston. Baltimore: The Johns Hopkins Press, 1929. Price $5.00.

power in the United States has been able to move outside its constitutional straitness in the conduct of foreign relations. Before discussing the history of his subject since 1789 the author examines the revolutionary period when the Congress exercised executive power. He says: "A Committee of Secret Correspondence was created by Congress on November 29th, 1775. In carrying on its work, the committee employed persons analogous to the executive agent of a later day. They were persons without official status, charged, nevertheless, with public business. The first appointment by the committee was that of Arthur Lee, a former colonial agent in London. The committee instructed him as follows: "It would be agreeable to Congress to know the disposition of foreign powers towards us. . . . We need not hint that *great circumspection and impenetrable secrecy* are necessary." The following year Lee was sent to Paris along with Franklin and Silas Deane. In an article by John Bassett Moore, published in *The Harvard Law Review*, vol. 14, p. 165, it appears that the committee requested Deane to acquire a knowledge of "Parisian French." All this would indicate that there was no thought of 'shirt-sleeve diplomacy' in the minds of those who controlled affairs in the revolutionary period. As a matter of fact the executive agents of that period served their country with excellent astuteness, no less than fourteen treaties being negotiated between the United States and foreign countries before 1789. Some of these agents—notably Edward Bancroft—allowed their conduct to fall below the ethical standards of diplomacy, but on the whole the country which employed them had little to complain about.

Mr. Wriston gives us an excellent survey of history of the appointments of executive agents after 1789. We have space only to refer to one instance where a President of the United States flouted the requirements of the Constitution as to the making of such appointments, and got away with it. Article II., sec. 2, of the Constitution requires that the President "shall nominate, and by and with the advice and consent of the Senate shall appoint, ambassadors, other public ministers . . . and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law." In May, 1917, President Wilson named a group of men, headed by Mr. Elihu Root, to proceed to Russia on a diplomatic mission. Although Mr. Root was given "the rank of ambassador" and some of his associates the rank of "envoys extraordinary and ministers plenipotentiary," the appointments were not submitted to the Senate.

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CONCERNING ADMINISTRATIVE LAW.[1]—We are being told now by the politicians and publicists that Administrative Law has come to stay and that those who mislike it *tout à fait* and those who don't know what to think about it will have to accept and make the best of it. In such a situation it is instructive to have a book like Dr. Port's which, *inter alia,* shows us that the alarm of those who feel that Administrative Law is a wholly new monster of frightful mien, essaying audacious and edacious enterprises upon the Law Courts, is due to their lack of awareness that as a feature of the administration of justice it has always had a place in our constitutional machinery. Dr. Port would be disposed to admit that until the Great War it had never in England emulated the part played by the Queen in Alice in Wonderland. In view, then, of the present ebullience of the bureaucratic pot on both sides of the Atlantic it is well to heed what the learned author has to say about putting proper restraint upon its activities and so safeguarding the body-politic from a by no means pleasant dip into hot water.

Sir John (now Lord Chancellor) Sankey says in his foreword to the book that the dislike of lawyers to Administrative Law may to some extent be attributed to the late Professor Dicey's published opinion that for England to adopt such a system as the French *Droit administratif* would be to fly in the face of foundation principles of the Common Law. Critics today, however, are demonstrating that Dicey's learned eye went sadly asquint in this matter, but even if he were right and the critics wrong his argument fails to apply to the complexities of government and social control in the second quarter of the twentieth century. There is already a substantial body of Administrative Law reposing in the statutes of England, America and in Canada, which differs in procedure rather than in spirit from that prevailing on the continent of Europe. It must be carefully employed so that the *bien-être* of the State will be served.

We regret lack of space to discuss with any degree of adequacy the contents of this valuable work. Amongst his most important suggestions are those we put in our own language below:

(a) There should be every freedom of relief against a Board or authority operating under this system of law.
(b) Procedural certitude must be had.
(c) There should be a proper Administrative Court of Appeal where Star Chamber methods do not walk as ghosts.

[1] *Administrative Law.* By Frederick John Port, LL.D. Toronto: Longmans Green & Co. 1929. Price $7.50.

(d) General control by the Lord Chancellor of the whole system must prevail so far as England is concerned.

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PERILOUS SEAS.—A book of most timely service has recently appeared dealing primarily with the jurisdiction of a State over its marginal seas for the purpose of preventing the introduction of prohibited or dutiable goods.[1] It ought to prove useful to the conference to be held at the Hague next year which, we learn, has in view a codification of the law of territorial waters.

Professor Masterson presents a fine historical study of the right of the littoral State to exercise authority with respect to foreign vessels beyond the three-mile limit. He divides his work into five parts, the first dealing with the development of the English law against smuggling; the second with the law as it obtains in various parts of the British Empire; the third with the development of the law of the United States; and the fourth with diplomatic correspondence relating to the subject, treaties and international arbitrations; while in the fifth part he sums up the authorities that support the distinction between the general jurisdiction of a State over a narrow strip of water near its coast and a wider special jurisdiction to protect its fiscal interests. As a result of his very exhaustive examination of the subject the author reaches the conclusion that a customary rule of the law of nations may be said to exist which permits a State to assume jurisdiction, under its revenue laws, over foreign vessels beyond the zone of territorial waters.

While we do not feel free to comment on the "I'm Alone" case now pending arbitral enquiry, we are free to say that authority must be sought outside Professor Masterson's book to justify the contention of the United States.

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WHAT EVERY ONE SHOULD KNOW.[1]—Mr. Marshall, who is a member of the Massachusetts and Illinois Bars, has endeavoured to present in these two volumes a compendium of some leading principles of law and equity. It is manifest in the author's well-written introduction that the work is primarily intended to familiarise intelligent laymen in the United States with the fundamentals of the system of laws under which they live and most of them thrive. But

[1] *Jurisdiction in Marginal Seas, with Special Reference to Smuggling.* By William E. Masterson. Toronto: The Macmillan Company of Canada. 1929. Price $6.00.

[1] *Common Legal Principles.* By Francis W. Marshall, LL.B. 2 vols. New York: Funk & Wagnalls, 1929. Price $10.00.

that the work is worthy of a place on the shelves of both the apprentice and master of the law in Canada as well as in the United States is obvious from any slight inspection of it. The author's method is to state the leading principles of legal science in the form of propositions clearly and succinctly phrased, and support them with the best authority to be found in the reports of the English and American Courts. In some instances the opinions of notable text-writers are also cited. The value of such a method need not be argued. A series of appendices are included in the second volume containing the Constitution of the United States, with certain suggested amendments not adopted at the time of publication; the canons of ethics for Bench and Bar adopted by the American Bar Association; and Specimen Forms for the legal practitioner. The work contains a good index.

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A GUIDE FOR LAW-MAKERS.[1]—The Chief Justice of Tanganyika Territory has obliged all those concerned in the initiation and preparation of legislation by a second edition of his useful manual. In this edition the author has enhanced the value of his work by presenting the inexperienced draftsman with practical hints concerning the pitfalls which confront him in his enterprise of law-making. (Pp. 3-66). We find here much wise counsel. For instance, speaking of Marginal Notes to Statutes, he says (p. 49): "Although there are decisions of the courts purporting to disregard them, they should not be considered trivial or unimportant, since most people are likely to accept the guidance of a marginal note." This view draws support so far as private Acts are concerned from the observations of Phillimore, L.J., in *Woking Urban Council (Basingstoke Canal) Act*, [1914] 1 Ch. 300.

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INFANTS BEFORE THE LAW.[1]—The law in England affecting infants has been so materially altered by recent legislation that a book which aims to show its bearing today, (1) as to rights over the infant's person; (2) as to rights over his property; (3) as to the infant's capacities and disabilities in so far as they are not comprised under the first two classifications; and (4) as to procedure in the Courts concerning infants, is to be welcomed. The new statutes are printed in appendices to the work, and there is an excellent index.

[1] *Legislative and Other Forms.* By Sir Alison Russell. 2nd edition. London: Butterworth & Co. Ltd.

[1] *The Law and Practice in relation to Infants.* By B. A. Bicknell, LL.B. London: The Solicitors' Law Stationery Society, Ltd.