


REVIEWS AND NOTICES

 Publishers desiring reviews or notices of Books or Periodicals must send copies of same to the Editor, Cecil A. Wright, Osgoode Hall Law School, Toronto 2, Ontario.

The Development of Dominion Status, 1900 - 1936. Edited by ROBERT MACGREGOR DAWSON. London and Toronto : Oxford University Press. 1937. Pp. xiv, 466. (\$5.00)

Almost a century ago, Hon. Joseph Howe, who obtained the right of self-government for Nova Scotia in what the late Sir Robert L. Borden called a "bloodless revolution" said :

"It will be our pride to make Nova Scotia a Normal School for the rest of the colonies showing them how representative institutions may be worked so as to secure international tranquillity and advancement in subordination to the paramount interests and authority of the Crown."

We would naturally expect a Nova Scotian, trained as they all are, consciously or unconsciously, in the Howe school of thought, to write with clarity and strength on the recent development of responsible government in the Dominions. Knowing that Dr. Dawson comes of strong Nova Scotian stock, on reading his short study of the development of Dominion status 1900 - 36, we are not disappointed in this expectation.

The introduction, which covers only 132 pages, contains a crisp, clear-cut and well balanced analysis of the subject which not merely the student, but more particularly the general reader, can read with understanding. The remaining 323 pages contain not only the important formal documents of this period but also a number of informal documents, such as extracts from Parliamentary debates, correspondence, articles in magazines and newspapers of the day. The author has done well to preserve these informal documents in his book as they throw a flood of light on the day to day development and make exceedingly interesting reading.

Many of the readers who have not followed closely the development of Dominion status will lay down this book with amazement at what has happened in so short a period of time. Dr. Dawson shows that although before the War the Dominions enjoyed virtually complete self-government in all domestic matters, "in more vital matters, such as the conduct of foreign policy, the diplomatic relations with other countries, the declaration of war, the making of peace, the participation in important international conferences, the Dominions took, as yet, virtually no part." In 1936, in very marked contrast, the position, as he expresses it, is that "The Dominions and Mother Country now stand as equals, and their contracts must take place today in the most trying field of human intercourse, that of international co-operation."

If this book had been published a few months later, the author would no doubt have included in it extracts from the speech of Canada's Governor-General, Lord Tweedsmuir, delivered before the Canadian Institute of International Affairs in October, 1937, in which he said: "Canada is a

sovereign nation and cannot take her attitude to the world docilely from Great Britain or from the United States or from anybody else."

The story of how this outstanding change in the position and authority of the Dominions was brought about is all clearly and lucidly detailed in this book. Moreover, the story is simplified by being divided into what appears to be five natural stages, as are also the documents contained in the book, *viz*: the period before the War, 1900-14; the War and the Peace Treaty, 1914-20; the period of tentative centralization, 1920-2; the period of decentralization, 1922-6 and the period of equal status, 1926-36.

In conclusion, Dr. Dawson asks the very pertinent question, now that the Dominions have obtained complete and equal status with Great Britain, what are they going to do about it, and how will they act. On that question he wants us all to ponder. "There is good reason to fear," he says, "that a Dominion nationalism, bred upon successful aggressiveness, may fail to realize that the new status involves not only new responsibilities but also an entirely new attitude and feeling towards the other Dominions and particularly towards Great Britain."

Many readers will no doubt dissent from Dr. Dawson's explanation of and attitude towards certain events of the period under review. It would be surprising if this were not so as there were many cross-currents and counter-currents during that period. This reviewer would, however, venture to comment on the fact that when dealing with the attitude taken by Canada at various stages, he looks at England through Canadian eyes, but when he deals with the attitude of the Irish Free State, he crosses over to England and looks at Ireland through the non-approving eyes of the English civil servant.

CHARLES J. BURCHELL.

Halifax.

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Neutrality for the United States. By EDWIN BORCHARD and WILLIAM POTTER LAGE. New Haven: Yale University Press. 1937. Pp. viii, 380. (\$3.50)

This tiresomely repetitive book is not so much a legal treatise as an essay in propaganda. It takes for granted that the pre-war politics of balance of power, and the development of a code of international conduct based upon the consent of States and abandoned at discretion, were the best scheme of world affairs that the frailties of human nature would permit. It utterly condemns idealism in international politics and goes out of its meandering way to manufacture opportunities of jeering at what it calls "uplift" or "the Higher Morality". It has knowledge and research behind it, and might have been a good statement of the completely reactionary point of view in diplomacy if its authors could have resisted the childish temptation of constantly overstating their case.

Messrs. Borchard and Lage have no difficulty in demonstrating the sympathy of President Wilson's administration for the Allied cause. They assert, without demonstrating, that the government was more unneutral than the people. Their point is that the Great War proves nothing as to the possibility of neutrality for the United States, because no really serious attempt was made to preserve impartiality as between the

belligerents, and because powerful influences within the government and its diplomatic service desired intervention against the Central Powers. They insist that the good old-fashioned neutrality is by no means out of date, that on the contrary it remains the one means of restricting the scope of war. They condemn the surrender of the neutral right of trade in the recent Neutrality Acts passed by Congress, and argue that the provisions of these Acts would operate so heavily in favour of the belligerent with cash and sea-power as to provoke retaliation and so ultimately to draw the United States into hostilities.

For these writers, the League of Nations, the Kellogg Pact, and all the recent attempts to preserve peace by organisation and sanctions are not merely dreams; they are nightmares. The effort to define and check aggression by consultation and collective action is in their view responsible for the turmoil of the present; for the joint condemnation of national ambitions which they term "natural", and the measures taken to curb realisation of such ambitions by violence, are the cause of the recent outcropping of intense nationalism and dictatorship.

Students in search of calm judgments based upon impartially marshaled facts will not find them here. This book does not evaluate; it reviles. It is a tract, and its manner will go far to prevent it from carrying any conviction to those not already convinced.

P. E. CORBETT.

McGill University.

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Selected Cases on Commercial Contracts. By A. CECIL CAPORN.
London: Stevens & Sons. Toronto: The Carswell Company.
1937. Pp. xviii, 395. (\$4.00)

The original collection of cases on contract by Mr. Caporn has been long and favourably known to law students. In that collection he formerly included a number of chapters on specific types of commercial contracts. The present small volume has removed sections dealing with special types of commercial contracts and gathered them together in this new collection. Included in the volume are cases on Agency, Negotiable Instruments, Sale of Goods, Bills of Sale, Carriage of Goods, Insurance, Guarantee and Suretyship.

To one like the reviewer, who is accustomed to the more exhaustive treatment of these subjects in Canadian and American law schools, and who has used in mimeograph form for a number of years his own collection of cases on contracts and agency, it is amazing to find all these subjects collected within the confines of 368 pages, including exhaustive notes. By way of comparison the reviewer's own collection of cases on agency alone would run to well over 400 pages of the size used by Mr. Caporn, while his collection on contracts would doubtless run to some 800 pages. This difference in page numbers alone may indicate the difference in objective and methods of legal education on this side of the Atlantic.

No useful purpose could be served in examining or venturing to criticize the author's selection. The cases are chosen for their statement of leading principles rather than problem or discussion-provoking. The fact

that the principles enunciated may not necessarily be true as stated, does not seem to be a subject for inquiry in this book. It seems strange, however, that the chief problem in agency, in the reviewer's opinion—that of imposing liability on a principal for the acts, whether resulting in contracts or torts, of his agent—should be deemed sufficiently covered by one case and that the case of *Pickering v. Bush* which seems to be neither a case of true authority nor of true apparent authority. The student who reads this case alone, even with the assistance of the notes the author gives, must be very ill-equipped to deal with the general underlying principles—or absence of principles—involved in vicarious liability.

The collection, however, is an extremely interesting one as a refresher to those who have had a thorough grounding in the basic principles of the subjects dealt with. Not the least interesting feature of the book in this reviewer's opinion are the long footnotes which the editor gives, expanding or explaining the doctrines which purport to be set out in the leading case. Such notes are usually of an expository nature, however, and do not raise troublesome points of reconciliation of principle which seems all important to a student for whose benefit the book is presumably intended. For instance, the question of continuing guarantees (see p. 357 *ff.*) seems to be one that requires considerable ingenuity to reconcile with the ordinary doctrine of revocability of offers and in the reviewer's opinion should be considered with other cases of offer and acceptance.

A collection of cases such as the present tends to treat the common law as a series of isolated instances rather than a series of illustrations from which some general principle may perhaps be gathered. As a tool to be used in teaching it is seriously open to doubt whether such a small collection of case material is not more dangerous than a collection of principles in a text book which have, presumably, been arrived at by a process of deduction from a great number of cognate situations which have been decided by the courts.

According to the English standards for case books, the present volume carries on in admirable fashion the English tradition. Though that tradition is one which the present reviewer is inclined to doubt as the most satisfactory for teaching purposes, it does not prevent him from recommending the book to those who wish a convenient collection of elementary principles in the language of the Bench itself.

C. A. W.

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The Practice of the Privy Council in Judicial Matters. By NORMAN BENTWICH. Third Edition. London: Sweet and Maxwell. Toronto: The Carswell Company. 1937. Pp. xxiv, 353. (\$9.00)

The third edition of what has become the standard textbook on the judicial work of the Privy Council discusses a number of valuable decisions that have been given on points of practice since the second edition appeared over ten years ago. No important change in the practice of the Judicial Committee has been made and no new rules of general application have appeared, but in the interval between the second and third editions the Imperial Conference of 1926 and the Statute of Westminster, 1931, have

greatly changed the bases of jurisdiction. Thus, for example, the Irish Free State has removed by statute the right of appeal to the Judicial Committee, and the validity of the Statute has been upheld on the basis of these recent changes in the constitution of the British Commonwealth.

In places the structure of the book is a little confusing. Changes to type of a lower case occur for no apparent reason. The citation of the statutes of the various Dominions are in some cases defective; thus in the section dealing with appeals from the Supreme Court of Canada reference is made to the original Act but no citation of the present Supreme Court Act is made, nor is it made available in the Appendix.

For anyone engaged in preparing an appeal to the Judicial Committee the book is of great value. In particular the table of steps to be taken in an appeal, and the specimen of the index of the record, both appearing in the Appendix, are most useful. Moreover, the book is of general interest in setting out briefly and clearly the varying jurisdiction of the Judicial Committee in appeals from different parts of the British Commonwealth.

R. M. FOWLER

Toronto.

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The Highway Traffic Act. Third Edition. By AUSTIN O'CONNOR.
Toronto: The Carswell Company. 1937. Pp. xxix, 504.
(\$7.50)

The present volume, already well known to the profession, is what is usually referred to as a "practice" book. As the author stated in the preface to the first and second editions, it does not purport to be a text book "but is merely a handy guide in finding the law". Unless this reviewer is badly mistaken, the book will have been a best seller in the profession due to the popular and practical appeal of the subject. Little need be said of the book, therefore, for undoubtedly there are few members of the profession who have not already had occasion to use it and to form their own opinions thereon. That it does contain an exhaustive, not to say exhausting, citation of cases on the Highway Traffic Act, on various points of pleading and practice dealing with negligence actions, citations of cases under the Contributory Negligence Act, provisions of the Insurance Act dealing with automobile insurance, as well as sections from the Criminal Code, is amply proved by even a casual investigation of the book. We believe the author implicitly when he states that it does contain "citations of practically all of the known reported cases decided in Ontario concerning motor vehicles on the highway".

If the practitioner is looking for cases he will get plenty here, even for what seem self evident propositions such as "if a person cannot see clearly ahead he should take greater care" (p. 61), and "if a proper lookout is not kept, that is negligence". Whether the practitioner finds the accumulation of cases which are brought together in such confines "a handy guide" is a matter for each practitioner.

The chief criticism of the present reviewer is that the author has not made a clear distinction between cases which involve a broad working

principle and others which are of little or no assistance in another set of facts. Perhaps this is the fault of our law reporting in printing such cases. it would seem, however, that while the author has striven to give as much as possible on all kinds of topics (some, for example, "Dedication of a Highway" (p. 11) rather remote from the main subject) the result might have been better if the chaff had been sifted from the wheat and a little more exposition of principle added.

C. A. W.

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An Autobiographical Sketch by John Marshall. Edited by JOHN STOKES ADAMS. Ann Arbor: The University of Michigan Press. 1937. Pp. xxiii, 48. (\$2.00)

The University of Michigan Press is to be congratulated on its publication of this short autobiographical sketch of John Marshall which was prepared at the request of Mr. Justice Story. The manuscript was discovered in 1932 among the papers of the Story family and while it contains little information about its author which was not known before, it reveals as perhaps nothing else could, the charm and simplicity of his character. A lieutenant in a company of minute men at the age of 19 he saw service in the Revolutionary War but found time between campaigns to attend lectures and be called to the Bar. Upon the cessation of hostilities he speedily acquired a large practice and the following twenty years were divided between the Bar and politics. Finally the pressure of his friends and his sense of duty prevailed on him to forsake the former and devote himself to affairs of state. But the law remained his real love and as he says himself he was "unfeignedly gratified" at his appointment as Chief Justice of the Supreme Court.

A. O. G.

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Labor Treaties and Labor Compacts. By ABRAHAM C. WEINFELD. Bloomington, Ind.: The Principia Press. 1937. Pp. vi, 136. (\$2.00)

The value of this monograph for the Canadian reader lies in its comparative treatment of the regulation of labour conditions by treaty in the United States and Canada. What emerges as significant is that, in the United States, the power of the federal government in this respect is plenary, saving a probable limitation of due process, although aside from the treaty power the matters regulated would be within the competence of the several states. A similar attitude was fostered in Canada by the *Aerial Navigation* and *Radio Cases*, only to be exposed as wishful by the decisions of the Privy Council on Mr. Bennett's social legislation. (See Symposium in 1937, 15 Can. Bar Rev. 393 ff.)

Considering the size of the book, the author has covered a far-flung territory. He has been forced, therefore, to sacrifice the elaboration of points whose claim to fuller discussion can be vindicated only in a lengthier treatise.

BORA LASKIN.

Toronto.

Law and Other Things. By THE RT. HON. LORD MACMILLAN.
London: Cambridge University Press. 1937. Pp. 284.
Price 8s. 6d. net.

Lord Chancellor Hatherley said in *Chatterton v. Cave*, (1877) 3 App. Cas. 492, that "books are published with an expectation, if not a desire, that they will be criticized". Now the verb 'criticize' as applied to authorship, implies, among other things, 'to censure'; and that meaning attaches to a good deal of the literary pen-play of some of our reviewers who are not critics — that is to say, not critics because they are not qualified by learning or native taste "to find, to know, to love, to recommend, not only the best, but all the good that has been known and thought and written in the world", as George Saintsbury puts it in his definition of the art of criticism. But it would be an undiscerning and ill-natured reviewer indeed who could find fault with Lord Macmillan's book, except on the ground that it might have been larger in volume.

When the reader, informed by the substance and charmed by the limpid and piquant style of this group of writings, finds himself all too soon at the end of the book, he realizes the truth of the saying "l'appétit vient en mangeant," and wishes that his plate might be replenished at the table of the author.

With the exception of the larger portion of the paper on Lord Birkenhead, which first appeared in *The Empire Review*, and that entitled "Law and the Citizen," which is a reprint of a lecture delivered over the B.B.C. network during its 1936 programme, the contents of the book comprise addresses made by Lord Macmillan before special and public bodies during recent years. Members of the Canadian Bar Association will be pleased to find in the paper which bears the title of "Law and Order", the substance of an oral address delivered by the distinguished jurist before that Association during its annual meeting at Regina in August, 1928. A perusal of it as it appears in the book will reveal the instructive value of the address, but the happy digression tending to clarify some fuliginous phase of his subject, and the occasional flash of the subtle humour which only Scotland knows and Scotsmen use, which marked the oral delivery of the address and delighted the ears of those of us who listened to it, are necessarily absent from its formal presentment on the printed page.

The 'Other Things' which in Lord Macmillan's book we are taught to associate with the Law looked upon as the framework of our social structure, are Politics, Order, Ethics, Religion, History, Literature, Language and Citizenship — a fruitful and comprehensive field of study indeed for those who regard the Law as a science rather than a craft.

In our humble opinion Lord Macmillan shows by this book that he pulls a strong oar in the literary galley manned by modern lawyers.

CHARLES MORSE.

Ottawa.

BOOKS RECEIVED

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

The Administration of Justice Under the Quebec Act. By HILDA M. NEATBY.
Minneapolis : The University of Minnesota Press. 1937. Pp. 383.
(\$6.00)

The Interstate Commerce Commission. (Part IV). By I. L. SHARFMAN.
New York : The Commonwealth Fund. 1937. Pp. xii, 550. (\$4.50)

The Citizen's Choice. By ERNEST BARKER. Cambridge : At the University
Press. Toronto : Macmillan Company of Canada. 1937. Pp. ix, 185.
(\$2.50)

Hanged by a Comma. (*The Discovery of the Statute-book*). By E. STEWART
FAY. London : Lovat Dickson Limited. Toronto : The Macmillan
Company of Canada. 1937. Pp. vii, 280. (\$2.75)

Lawlessness, Law and Sanction. By MIRIAM THERESA ROONEY. Washington :
The Catholic University of America. 1937. Pp. 176.

*The Private International Law of Succession in England, America and
Germany.* By WALTER BRESLAUER. London : Sweet & Maxwell. 1937.
Pp. xxviii, 339. (£1. 1s.)

The Mind of the Juror. By ALBERT S. OSBORN. Albany : The Boyd
Printing Company. 1937. Pp. xv, 239. (\$4.50)

The Responsibility for Offences and Quasi-offences under the Law of Quebec.
By GEORGE V. V. NICHOLLS. Toronto : The Carswell Company. 1938.
Pp. ix, 164.