


## 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.

*Gatley on Libel and Slander*. Third Edition by RICHARD O'SULLIVAN. London : Sweet & Maxwell. Toronto : The Carswell Company. 1938. Pp. cxlix, 962. (\$18.75)

Of the many books on libel and slander which have been published in England none is more favourably known to the profession than that of the late Dr. Clement Gatley. Indeed, it is the reviewer's opinion that Gatley on Libel and Slander furnishes a model that could be followed to advantage by most of the current text book writers. Not only did the late Dr. Gatley achieve an enviable lucidity of arrangement and exposition of the English cases, but he realized that, in a subject the problems of which are universal to common law jurisdictions, the inclusion of judicial experience in Canada, Australia and the United States could be of assistance to the English practitioner. The result is that Gatley on Libel and Slander is a book which breaks away from the insular approach of many English text books.

Dr. Gatley expressed in his last will the desire that the present editor, Mr. Richard O'Sullivan, K.C., should have charge of future editions of his work on Libel and Slander. The present volume is the first produced since Dr. Gatley's death and Mr. O'Sullivan has maintained and indeed enhanced the reputation of the first two editions. At a time when the market is filled as never before with new treatises on law, perhaps the highest praise which one can bestow on the present volume is to repeat the eloquent words of Lord Atkin in the Foreword to the present edition: "It is a good book."

Mr. O'Sullivan has shown tremendous industry, not only in integrating the many recent English decisions in this field, but in his exhaustive collection of the Canadian authorities (which, so far as the reviewer has been able to ascertain, omits nothing of importance decided in any of the Canadian Courts in recent years) and in his careful selection from American experience. Of particular interest to the reviewer is his discussion (at pp. 5 and 93 - 94) of the troublesome question of classifying defamation by radio broadcasting as either libel or slander. This is a subject which has to date been little considered in any jurisdiction of the Empire outside the decision of the Victoria Court of Appeal in *Meldrum v. Australian Broadcasting Co. Ltd.*, [1932] Vict. L.R. 425 (which the present editor seems to regard with some doubt) and therefore the reference to American periodical literature and case law should be particularly helpful. The statement on page 109, however, that a broadcasting corporation is liable as a joint publisher of any defamatory matter broadcast on their radio, is perhaps open to argument when stated in such absolute form. Since the publication of the present volume, the American Law Institute has published the third volume of the Restatement of Torts, which includes the division dealing with defamation, and it is interesting to note that in a caveat to section 577, "the Institute expresses no opinion as to whether the proprietors of a radio broadcasting station are

relieved from liability for a defamatory broadcast by a person not in their employ if they could not have prevented the publication by the exercise of reasonable care, or whether, as an original publisher, they are liable irrespective of the precautions taken to prevent the defamatory publication."

A further valuable note in the present edition is that dealing with the right to privacy and border line problems between that moot subject and the law of defamation. *Tolley v. Fry*, [1931] A.C. 333 furnishes the basis for an extremely interesting collection of American authorities and American writings which the average practitioner would have difficulty in finding.

The chapters on practice and procedure in libel and slander actions have always furnished one of the most valuable parts in Dr. Gatley's book, and in the present edition Mr. O'Sullivan has included precedents based on many of the recent cases both in England and other common law jurisdictions. (See for example pp. 803 and 804 for forms of statements of claim for libels by advertisement, by sound films, by broadcasting.)

In a work of such general excellence it is with diffidence that one expresses the view that there might be room for clearer analysis in any part. In connection with slander of title and slander of goods, however, it is the reviewer's opinion that the question of malice might have been subjected to more penetrating analysis. As the author points out, the cases are most confusing on the question of malice in the sense of *mala fides*, and perhaps one should not criticize an author for failure to clear a stream which has been so thoroughly muddled by the courts. On page 6 malice, as used in ordinary defamation cases, is given its proper allocation as describing an act done without legal justification or excuse. In chapter nine, however, in deference to many express statements made in the courts, malice, in slander of title cases etc., is given a different connotation as implying some actual malice in fact. As there are decisions (see Proudfoot J. in *Ontario Industrial Loan etc. Company v. Lindsey* (1883), 4 O.R. 473) which indicate that malice is presumed when words are spoken by a stranger, and others which indicate that statements made in defence of one's own property are privileged, (see Gatley p. 159) it may be open to argument that all the cases can be aligned on the same understanding of malice as in the ordinary defamation situation. This would really mean working out a system of privilege in these cases which, up to the present time, has not been clearly demonstrated in the authorities. As an illustration of this approach we may again refer to Volume III of the American Law Institute's Restatement of the Law of Torts, chapter 28. The whole subject of disparagement of goods etc., is one that needs further elucidation in England.

For purpose of future editions it might be suggested that the publishers use square brackets in connection with those Dominion reports in which the date, following the English practice, is now part of the citation. For example at p. 93, footnote 6, "[1936] 2 D.L.R." instead of "(1936), 2 D.L.R." should be used. Further, at p. 77 the Ontario statute referred to in footnote 11 is "R.S.O. 1937, c. 113. s. 18," not "R.S.O. 1922"; and at p. 95, footnote 12 "Masters" should be "Masten".

It seems unfortunate that a book of such outstanding merit should be published in such an unattractive and ungainly manner by the publishers. This has no reference either to legibility or attractiveness of

print or arrangement, but to the tremendous bulk which seems to be fashionable with English publishers. Surely, without sacrificing legibility, there is some way of producing a book of a thousand pages with less bulk, and in a manner that will prevent its splitting into several parts, if, as Gately ought to be, it is used extensively.

CECIL A. WRIGHT.

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*Luck and Opportunity.* Recollections by FRANCIS L. WELLMAN.  
New York: The Macmillan Company. Toronto: The  
Macmillan Company of Canada. 1938. Pp. viii, 214.  
(\$2.75)

Mr. Wellman enjoyed a great reputation at the New York bar as a trial counsel and his published works entitle him to be ranked as one of the leading popular writers on legal subjects. This present volume, though readable enough, will not add much to his reputation either as a lawyer or author. It is, like most books of its kind, a record of famous cases in which Mr. Wellman appeared, with a few other *causes célèbres* thrown in for good measure, all told with a familiar, almost journalistic, style.

To Canadian readers, the most interesting chapter is that dealing with the *Hyams Case*. There can be no doubt at all as to the chapter being about the *Hyams Case*, and anybody familiar with Canadian legal history will at once recognize it. Mr. Wellman naively says, however,

Everybody connected with the case is dead, so far as I know. But in generations to come, had there been a conviction, the taint of having had two members of their family hanged for murder might every now and then pop up to the intense embarrassment of the younger generations. I have taken care not to use any names, for obvious reasons, *nor have I given any fact that would disclose the identity of the persons involved.*

The last statement is amusing as Mr. Wellman names counsel in the case correctly, gives the facts with fair accuracy, and leaves no doubt at all as to what case he is writing about.

The author is not greatly concerned with either consistency or accuracy. For instance, in the same chapter he speaks of meeting the "Lieutenant Governor of Toronto". Later he says:

In Canada, it seems, a man's wife is allowed to take the witness-stand against him. Almost at the close of the trial to my horror I observed the wife of one of the boys, called by the Crown, mount the witness box—I say mount because the witnesses have to stand in a box-like contraption which is almost on a level with the heads of the audience.

Of course this is not a statement of the law of Canada as it is now or as it has been for over 30 years.

In speaking of the prosecutor, the late B. B. Osler, he says he was "a brother of the famous Dr. Osler, who before he took up his residence in London at the head of one of their leading institutions, etc." It would not have required much research to ascertain that Sir William Osler was not the head of a leading London institution, but was Regius Professor of Medicine at Oxford.

Possibly because they are good legal stories, or just to fill in space, but certainly not because he had any special knowledge of them, Mr.

Wellman includes in his book chapters on Oscar Wilde's trial, on the "Jack the Ripper" case and on George Chapman. If what he says about his own cases is no more accurate than his statements as to those in which he did not appear, the book should be read with caution.

For instance, either the author or the proof reader (or both) should blush at "The Ballad of Redding Gaol"; and what must the Dean of Westminster and old Chaucer, in his far Heaven, think of this :

He was buried in the famous cemetery, Père La Chaise, named after Louis XIV's fashionable confessor. Although many famous men and women are buried there, including Chaucer, Adelina Patti, Sarah Bernhardt, Molière, Chopin, Daudet, Balzac and Rosa Bonheur, the concierge in charge at the entrance of the burying ground told me on my first visit there that nine out of ten visitors, though it was thirty years after his death, still asked first to be shown the tomb of Oscar Wilde.

These are little things, but in a great lawyer one expects some degree of legal accuracy. Probably the book is for the laity. Lawyers, however, will find it amusing, if only for its inaccuracies, and in the main entertaining and reasonably instructive.

JOSEPH SEDGWICK.

Toronto.

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*Hints for Young Solicitors and Articled Clerks.* By SIR J. ROGER B. GREGORY and M. F. TWEEDIE. Revised by L. J. D. BUNKER. London : Butterworth and Company. 1938. Pp. viii, 56. (\$1.00)

This small book was written for the purpose of supplying students training for the profession of solicitor with various hints on the conduct of that profession. It does not attempt to be an epitome of the principles of any department of law or to cover rules of practice and procedure exhaustively. It aims, rather, at giving a student some notion of the manner in which a solicitor should conduct himself towards his clients, the manner of carrying out in a general way duties of executorship and administration and suggests the ordinary routine of various types of conveyancing matters. In addition it contains chapters on the sequence of procedure in various forms of litigation. While the book gives the impression of containing much that is superficial and some of the advice seems to deal with matters which one takes for granted in the conduct of solicitor's work, the fact that such a book has been felt necessary in England probably should warn us that certain elementary moral and practical precepts are necessary to the young student. While directed chiefly to the work of a solicitor in England, and therefore containing much of that quaint etiquette which deals with the relation of barrister and solicitor which does not apply here, the book can be read with profit by any student of law in this country, even though, in his sophistication, he may not need the advice which we find at page 50 :

Remember the undertaker's advice to his son : "Always get the bill in whilst the tears are in their eyes."

C. A. W.

*The Constitutions of All Countries. Volume I. The British Empire.*  
London : His Majesty's Stationery Office. 1938. Pp. vii,  
678. (10s. 6d.)

His Majesty's Stationery Office is to be congratulated on the publication of this volume in which The Foreign Office has assembled the Constitutions of the British Empire. In addition to the Statute of Westminster, Acts such as The British North America Act dealing with the Dominions and the new constitution of Ireland, the important features of the constitutions of the various colonies and mandated territories are reproduced. The section on Kenya Colony and Protectorate, for example, contains extracts from the Legislative Council Ordinance, from the Royal Instructions to the Governor and from The Orders in Council which provide for the establishment of courts and the exercise of jurisdiction over the Protectorate.

This volume, and a second in course of preparation, which will contain similar material relating to the countries of Continental Europe and their dependencies, will be of great value to anyone interested in external affairs as well as to students of constitutional law.

A. O. G.

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#### BOOKS RECEIVED

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

*A Digest of the Law of Agency.* By WILLIAM BOWSTEAD. Ninth edition by ARTHUR H. FORBES. London : Sweet and Maxwell. Toronto : The Carswell Company. 1938. Pp. xciv, 400. (30s.)

*Cases and Other Materials on Judicial Remedies.* By AUSTIN WAKEMAN SCOTT and SIDNEY POST SIMPSON. Cambridge: Published by the Editors. 1938. Pp. xi, 1309.

*The Personal Conception of the Legal Entity.* (Harvard Studies in the Conflict of Laws—Vol. 3). By ALEXANDER NEKAM. Cambridge : Harvard University Press. 1938. Pp. 131. (\$2.00)

*Trade Associations in Law and Business.* By BENJAMIN S. KIRSH and HAROLD ROLAND SHAPIRO. New York : Central Book Company. 1938. Pp. 399. (\$5.00)