

REVIEWS AND NOTICES

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Liability for Animals. By GLANVILLE L. WILLIAMS. Cambridge: University Press. Toronto: Macmillan Company of Canada, 1939. Pp. lxvi, 409. (8.00).

In this volume Dr. Williams has purported to deal with a department of law the roots of which stretch back into dim periods of history when notions of liability were extremely primitive and when ideas of vengeance and "thing liability" were common. Anyone who has had the misfortune to encounter an animal in the course of his investigation of legal principles will, we believe, readily admit that such encounter is as disturbing to the pursuit of legal theory as actual physical encounters have proved disturbing to litigants throughout the long course of our legal history. The main title of Dr. Williams book does not adequately describe the varied fields of inquiry he has pursued. As he points out, "the untidy patchwork" of our present law stems from various distinct sources and in particular from (1) distress damage feasant; (2) cattle trespass; (3) the *scienter* action, and (4) negligence and nuisance committed through the instrumentality of an animal. All these sources are examined historically and critically, and in addition the author treats related problems such as the duty to fence and various statutory provisions relating to isolated problems concerning animals.

The author's treatment of an exceedingly difficult subject is, as one has been lead to expect from other writings of Dr. Williams, comprehensive and constructively critical. In fact, it is a type of book which has in the past appeared all too infrequently. Not content with confining himself in the orthodox English manner to a survey of the English cases and legislation, Dr. Williams has made an exhaustive search of both the decisions and legislation of various parts of the British Empire. Thus, for example, the Canadian case law is here given a treatment which, so far as the reviewer knows, can be found in no other place and his references to Canadian legislation are complete and accurate. It is noteworthy that reference to the development of the law in other parts of the British Empire than England is not relegated to mere notes appended to the main discussion in the text, but takes its place throughout the book in the development of the subject generally. One of the few instances where this has been done in an English text is Gatley on *Libel and Slander*. It has long been the reviewer's opinion that more work along this line needs to be done, and the manner in which Dr. Williams has undertaken the task in the present volume leaves nothing to be desired as an example to future writers.

While the treatment of the author contains more historical detail than the practitioner would welcome in his hurried scramble for authorities, we believe that in this difficult field a practitioner who attempts to argue a case on isolated instances or decisions would be unconsciously misleading the court, and therefore the discussion by the author is not merely academic but extremely practical. In any event Dr. Williams

has made a concession to the so-called practical mind by inserting at the beginning of his book somewhat in the fashion of a statute, a summary of the rules of modern law dealt with in the work. The summary is a model of succinctness and clarity of statement.

The "hodgepodge" of our present law is clearly brought out if one merely traces throughout this volume the peculiar position, and the more peculiar reasons which have been given at various times for that position, of dogs and cats in our law. Apparently dogs may be distrained damage feasant (p. 28), yet the owner of a dog is not liable in the action of cattle trespass for the harm done by his pets (pp. 137 ff.). In this connection it is interesting to observe that the Supreme Court of Victoria refused to follow the vagaries of English law in this connection and imposed liability in trespass (p. 146).

Throughout the volume one cannot fail to note Dr. Williams' dislike of any form of liability imposed without fault. In particular he dislikes the doctrine of *Rylands v. Fletcher*, at page 2 he calls the doctrine a "deliberate atavism" and at page 363 he refers to its "fungoid fertility". He can see no connection between the generalizations of *Rylands v. Fletcher* and the *scienter* action or liability in cattle trespass. Historically, we have no doubt of the correctness of Dr. Williams' position but, for reasons which we have pointed out elsewhere in this issue in dealing with two recent decisions regarding animals, there seems to be a very real connection on any rational view between the specific instances dealt with by Dr. Williams and the broader notion of liability without fault set out in *Rylands v. Fletcher*. Dr. Williams argues for a wider extension of the doctrines of negligence which have been frequently submerged in pursuit of ancient learning regarding *scienter*. With this one must agree, but at the same time we are not convinced of the value or desirability of wiping out strict liability altogether. While in many respects strict liability may be a remnant of primitive law, its extension by both common law and statute in the modern world indicates the danger of premises such as no liability without fault. While it is generally true that the move in tort has been towards liability based on fault, even as in a general way Maine was encouraged to state that the movement in law was from status to contract, both these generalities have received checks in the twentieth century in favour of a policy of adjusting risks and imposing liability irrespective of fault in tort or consent in contract. While many of the notions regarding liability for animals are no doubt due to preserving historical anomalies at the expense of rationalization, the persistence of forms of liability without fault seems to indicate a vitality which cannot be attributed solely to historical accident. Historical accidents have a way of disappearing when they become inconvenient. A reading of Dr. Williams' book will clearly show that in this field historical accidents die hard. Whether the book will convince the reader of the desirability of abandoning doctrines of strict liability in favour of a liability based on fault is a problem that must be left for the individual reader.

One of the most valuable parts of the present volume, in the reviewer's opinion, is the discussion of the doctrine of remoteness of damage in connection with cattle trespass (pp. 157 ff.). The case law on this subject is extremely confusing and as illustrative of some of the problems involved we would refer the reader to the comment in the present issue of the REVIEW.

In the reviewer's opinion, Dr. Williams' recent contribution to the literature of torts is one of the best legal treatises from England which it has been his privilege to review in a number of years. Any investigation regarding liability for animals, and kindred topics must now begin with Williams. In view of the authors exhaustive treatment it is almost possible to say that it may end there as well.

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Canadian Constitutional Decisions of the Judicial Committee of the Privy Council, 1930 to 1939. By CHARLES PERCY PLAXTON, K.C. King's Printer, Ottawa, 1939. Pp. lxxi, 457. (\$5.00)

This work is, in effect, a continuation of the two volumes edited by Dr. E. R. Cameron under the title "The Canadian Constitution and the Judicial Committee". It includes the verbatim reproduction of the decisions of the Judicial Committee in the cases on the Canadian Constitution which came before it in the years 1930 to 1939. It includes also Notes and Annotations on those decisions, with useful reference to earlier decisions, to the extent of 109 pages. The book is well bound and well printed. It has appendices containing the B.N.A. Act, 1867, and the Statute of Westminster, 1931, and concludes with an adequate Index.

Mr. Plaxton, Acting Deputy Minister of the Department of Justice, compiled and edited the work for that Department. The Minister of Justice, The Right Honourable Ernest Lapointe, has written a Foreword in which he describes the qualifications of the Editor, and the nature of the work itself, in terms which the reviewer sincerely adopts. Mr. Lapointe says :

"Mr. Plaxton has brought to the execution of this task a comprehensive knowledge and a keen grasp of the decisions relating to the Constitution of Canada and of the principles established by them. His Notes and Annotations unfold and illumine, by way of analysis and exposition and without bias, the salient principles to be deduced from the decisions reprinted in this volume. He has collated also in convenient fashion earlier decisions of the Judicial Committee relating to similar topics of legislation or the same head of legislative jurisdiction".

The thirty decisions set forth in Mr. Plaxton's work are concerned with widely diversified topics including, as Mr. Lapointe mentions, "the regulation of fish canneries, the eligibility of women to sit in the Senate, the prevention and suppression of trade combines, control over aeronautics and radio communication, legislation of extra-territorial operation for the protection of the revenue, the prohibition of appeals to His Majesty in Council in criminal cases, legislative competence to give effect to Geneva Labour Conventions, employment and social insurance legislation, regulation of the marketing of natural products, and a provincial legislative attempt to introduce a system of social credit".

In addition to the variety of their subject matter these decisions of the past decade have been of great, perhaps of crucial, importance in the elucidation of the present application of an old text. In addition to deciding whatever question of jurisdiction was presented in it, each decision has made its own contribution to the more general problem as to how the Constitution is to be approached, and by what methods it is to be interpreted, by the Courts in the future. Some of them may be subject to criticism as to their specific points of decision, or as to the judicial approach they reveal; some of them follow logically from previous decisions, others represent divergences from previous opinions. What is more important, however, is that these recent decisions clearly manifest the present judicial attitude to the Constitution and clearly reveal the true nature of the Federalism which is Canada's today. They furnish data for an intelligent judgment as to whether our Constitution, as judicially interpreted, is well or ill adapted to our present needs. As Mr. Lapointe truly remarks: "The importance of these decisions, in their bearing upon the structure of the Canadian Constitution and the distribution of the legislative powers thereby conferred, should challenge the interest and engage the reflection of every thoughtful Canadian citizen — the layman and the student no less than the lawyer and the legislator".

Mr. Plaxton has done well, a work he was well qualified to do, in reproducing these important texts and adding to them Notes and Annotations which will be of great utility to all who desire to know what has been decided in the immediate past and is likely to be decided in the immediate future. It could not be expected that one in Mr. Plaxton's position should engage in criticism to any great extent and so his notes may be described as expository rather than critical. Accordingly he has taken little account of the great quantity of material published in this Review and elsewhere, and spoken in Parliament, in criticism, and in defence, of the decisions reprinted in his book. He has wisely left it to others to do the ungrateful, yet necessary, work of evaluating those decisions from various points of view and of educing what is merely implicit in them.

The reviewer is glad to be able to say that Mr. Plaxton has done his own great reputation ample justice in this publication which will be of extreme value to all concerned — as all Canadians must be concerned — in understanding the effect of the recent decisions upon our Constitution.

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Admiralty Law in the United States. By GUSTAVUS H. ROBINSON, Professor of Law, Cornell Law School. St. Paul, Minn.: West Publishing Co. 1939. (\$5.00).

Admiralty Law is one of the most ancient branches of the law and the branch that is most world-wide in the application of its general principles. Notwithstanding this no part of the law is so little known and understood by the ordinary member of the Bar. Professor Robinson has made a very valuable contribution to the Hornbook Series of Elementary Treatises of all the Principal Subjects of the Law in his Handbook of Admiralty Law in the United States. In a clear and concise manner Professor Robinson

deals with the early history of Admiralty Law — with its international character, with its ancient codes and usages, how it was adopted by the United States, and the manner in which it became subject to Federal jurisdiction. Professor Robinson shows why and how there is an obvious advantage in Admiralty Law in having so far as possible conformity with the rest of the world. He quotes from an early judge of the Supreme Court of the United States as follows :

“Undoubtedly no single nation can change the law of the sea. That law is of universal obligation and no statute of one or two nations, can create obligations for the world. Like all the laws of nations, it rests upon the common consent of civilized communities. It is of force, not because it was prescribed by any superior power but because it has been generally accepted as a rule of conduct. Whatever may have been its origin whether in the usages of navigation, or in the ordinances of maritime states, or in both, it has become the law of the sea only by the concurrent sanction of those nations who may be said to constitute the commercial world.”

It is interesting to know that among the British colonies of North America there had been Admiralty Courts in the sea-port cities since 1696. In 1678 new Vice Admiralty courts were set up at Halifax, Boston, Philadelphia, and Charleston. Commissions to these various colonial judges bestowed wide authority to deal with both specified and general maritime matters. After the American Revolution the practice, self-created as it was, was passed on to all the courts of the United States. By the end of the year 1778 Admiralty Courts had been set up in all of the thirteen States and the Continental Congress had organized a committee to hear appeals in prize cases. Although not specifically mentioned, it was generally conceded that all cases of Admiralty and maritime jurisdiction were under national control. It thus follows that the general admiralty and maritime field was recognized as having been confided by the United States Constitution to the Federal Government not merely judicially but legislatively as well. This has resulted in admiralty decisions being applied uniformly throughout the United States.

Professor Robinson then proceeds to define judicial “jurisdiction” of maritime causes. He shows how although State courts may give common law remedies in maritime causes, nevertheless proceedings *in rem* have been denied them as not part of the common law remedy. The maritime character of a cause of action, what are and what are not navigable waters, the defining of vessels as admiralty objects, the subject of torts in admiralty, are all dealt with most clearly and concisely. The Workmen’s Compensation Acts, both State and Federal, in their application to admiralty matters form the subject of a separate chapter. Professor Robinson further deals with the history of wrongful death in admiralty and recent legislation in connection therewith. The admiralty contract is another matter which is carefully treated. Contracts for arbitration, the substantive law governing a vessel, the contract rights of seamen, the maritime lien, ship mortgages, common carriers, towage, pilotage, salvage, general average, collision, and limitation of liability, are all treated in a most painstaking manner.

Professor Robinson has performed a real and distinct service to those practicing in the Admiralty Courts. The arrangement of the book is excellent. The method of headings and subheadings covering the various subjects dealt with makes it comparatively easy to ascertain the law on any given point. The Hornbook Series is to be congratulated on being able to add to their treatises such an able work on the subject of Admiralty Law.

F. H. BARLOW.

Toronto.
