

## REVIEWS AND NOTICES

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*Company Law of Canada.* By Hon. Mr. Justice Masten and William Kaspar Fraser. Fourth Edition. Toronto: The Carswell Company, Limited. 1941. Pp. cxxx, 1041. (\$18.00)

The task of a reviewer of legal text-books is not an easy one. He assumes, in reviewing the work, a grasp of the legal principles beyond that of the author. This is not infrequently a wrong assumption, with the result that the review can, and often does, degenerate into either fulsome flattery or destructive criticism on some comparatively minor points. It is difficult to maintain a proper balance and do justice to the author.

The work in question is too well-known to the profession to require any introduction. The fact that a fourth edition has been issued indicates that this work has been well received to date. The present edition has been, according to the preface, "largely the work of Mr. Fraser, but it has throughout received the scrutiny of Mr. Justice Masten and certain new notes have been written by him". The immediate necessity for this new edition was the substantial changes and rearrangement made in the Dominion Company Law in 1934 and 1935. There is no question but that a good deal more material has been embodied in this edition than in the previous ones.

The authors have "sought to make the treatment practical and to avoid discussions of a merely theoretical character". To this end the work, as in previous editions, is based upon the sections of the Dominion Companies Act and the Winding-Up Act. This edition, perhaps more than any other, confines the discussion to the Dominion sections. There are, of course, cross references to the Ontario Act and to the English legislation. If one were to take a very narrow view of the treatise one might say that it is merely a full annotation of the Statute with certain additional notes appended.

It must be admitted that for the average practitioner the arrangement is a very practical one. If there is any question as to the arrangement, it is that, while apparently logical, it is not entirely so. There are a number of principles of company law which are not to be found within the four corners of the Statute. These principles have not been overlooked but they have been introduced under sections to which they only indirectly relate. Then there are such items as Provincial Securities Act, Provincial Licensing Laws, etc., which have been inserted.

Beyond the cross reference to the Ontario Act, this edition will not be very easy to apply in interpreting the various Provincial Acts. There is, of course, some reference to the Provincial Acts, but as the Dominion Act relates to companies incorporated by letters patent, those provinces which follow the English system have of necessity received scant consideration.

At page 757-8 there is a table of corresponding sections of the Companies Act R.S.C. 1927, c. 27 and amendments, and the Companies Act 1934 and amendments. If a reviewer may be permitted a suggestion, it is that a further table might have been inserted showing the corresponding sections in the various Provincial Acts. While it is obvious that, to the practitioner dealing with large corporations, the Dominion Law is of prime importance, there are a number of provincial corporations and many local solicitors with but little company law experience who have to deal with these.

The desire of the authors of legal works to be practical sometimes leads to excess. It may result in the author leaving entirely aside discussion of general principles and historical background and stating what the law is. It may even go so far as to avoid even indicating the unsolved problems and giving any help with respect to these. In order to keep a work on company law within the compass of one volume it has been necessary to make some sacrifice. The balance has been satisfactorily maintained in the present work.

The practical character of the work is further illustrated by the inclusion of the schedule of forms, tariff of fees, details of formalities of incorporation and outline of a modern trust deed. In addition, there are throughout the work, certain reference to difficulties which may arise in applying the Act. In certain other instances, particularly in connection with the capital structure of companies, there is a reference to Income Tax Laws, etc., which will be of undoubted value.

There is considerable background to the present Dominion Act and it is perhaps unfortunate that the dictates of space prevented the authors from dealing with this. It is recognized that the findings of commissions are not evidence for the purpose of interpretation, but they do assist materially in the approach to any problem.

It is not possible within the compass of a review to deal with any more than one or two aspects of the work which appeal to the reviewer. The authors are to be commended particularly with reference to the portion of the work which deals with the financial structure of companies. There is sufficient information and suggestions contained therein to enable the practitioner to solve many of the problems with which he will be confronted. The principles enumerated with respect to the constitutional problem arising out of the divided jurisdiction over companies, appear to be very carefully done. It is obvious it could not be a full text on this very large question.

The discussion at page 63, as to emanations of the Crown, is valuable but does not by any means exhaust the authorities upon the subject. This appears to be the proper place to introduce a plea for reference to periodical legal literature and text books. There are some excellent articles in previous volumes of this REVIEW (*e.g.*, 10 Can. Bar Rev. 155; 12 Can. Bar Rev. 45; 14 Can. Bar Rev. 252; 499) dealing with this subject. These would have given the reader access to other authorities and various points of view on this difficult subject. While there may be others, the only reference to any Review upon which the reviewer can put his finger on is at page 156 (49 Law Quarterly Review 344) dealing with the nationality of companies. There are undoubtedly a great number of points which have not been covered by Canadian and English decisions

and references to American and English legal literature would have been of unquestionable value in assisting the practitioner to obtain information. It is apparent that if authors do not make available review material, it will remain a closed book to the majority of lawyers.

At page 100 it is said :—

“What constitutes carrying on business in such a manner as to subject an extra-provincial corporation to the requirements of and the disabilities imposed for non-compliance with the local requirements will depend to a certain extent on the specific provisions of the applicable provincial statute. It is difficult to state any general principle underlying the decisions and what constitutes doing business with reference to any specific statutory provision will depend to a large extent on the particular facts of each case.”

No one can quarrel with the statement insofar as it goes, but it does not appear to go far enough. The problem as to whether or not a provincial legislature can, by definition, bring a company within its jurisdiction does not appear to have been discussed. This is an important topic and much could be said thereon. In addition to the cases cited, as to what constitutes carrying on business, there are a large number of English Income Tax cases which might usefully be considered.

At page 28 of the text there is a reference to the case of *Hague v. Cancer Relief & Research Institute*, [1939] 4 D.L.R. 191. It is said that in order that a corporation may be created there must be first a group or series of natural persons to constitute the corporation. No one can quarrel with that as a statement of what the case decided, but whether that decision was a proper one or not may well be open to question. This was the decision of a single judge. Until the matter is finally settled by a court of last resort, it will not be finally accepted by a large number of practitioners.

The discussion of the law relating to proxies at page 650 *et seq.* is excellent, but here again one is inclined to think that further references might have been given.

The portion of the text dealing with procedure at page 711 *et seq.* is undoubtedly useful, but certainly cannot be considered as exhaustive. The reviewer is inclined to think that the references to criminal procedure might be supplemented by reference to the annotated codes of Tremear and Crankshaw. The value of this portion dealing with procedure will in a measure, as well as other portions of the work, depend upon how well the various items are indexed, *e.g.*, “Discovery” is mentioned at page 716, but it is not indexed either under this heading or under “Examination for Discovery”. It is buried under the general title “Procedure”.

The portion of the work dealing with the Winding-Up Act seems to be exhaustive of the cases as a check-up indicates. In connection with the Winding-Up Act a reference to the places where the Winding-Up Rules, in force in the various provinces, may be found would have been useful. It is always somewhat of a problem for the practitioner to lay his hands on these unless he is working with the subject from day to day.

The problem of an index is always a serious one. The index in this case covers approximately 100 pages. To make an exhaustive index sufficient for the casual user of the work would have required very nearly

as many pages as are contained in the text. An example of an exhaustive index is to be found in the case of certain recently promulgated Rules of Court. In that case the index occupies 90 pages. The text of the Rules is only 137 pages. The index appears to be reasonably satisfactory in the circumstances.

The format of the book is excellent and the practice of putting the cases and citations thereof in the body of the text has much to recommend it. Any lawyer engaged in company law practice will be well repaid in obtaining this edition.

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Toronto.

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*Criminal Youth and the Borstal System.* By WILLIAM HEALY and BENEDICT S. ALPER. New York: The Commonwealth Fund. 1941. Pp. vii, 251. (\$1.50)

The first thing that interested the reviewer about this book was the fact that it was published in these disturbed times. The material for it was gathered at the very outbreak of war, as far as that part of the book is concerned which refers to the Borstal System in England.

The first part deals with a very frank, and distinctly unflattering appraisal of the reformatory methods in force in the United States with regard to youth ranging from 17 to 23 years of age, the group from which the greater part of our criminal population is recruited.

The investigation of the Borstal System was made with the purpose of discovering a better approach to the whole problem of youthful behaviour. While the writers freely criticized certain elements in the Borstal System, on the whole they are convinced that it supplies the real answer.

It is refreshing to read a book which proceeds on the assumption that there is a satisfactory solution to this tremendous problem. The answer is seen in: (1) The careful diagnosis of each individual case; (2) the separation of youths into groups where, instead of the attitude of "The penalty fits the crime," there is the sincere desire to discover the treatment to fit the offender; (3) the careful choice of those who have the upervision and direction of the inmates of Borstal institutions; and (4) careful follow-up after release.

It is evident that the Borstal System has set up a framework within which reformation has a real opportunity of functioning.

In 1930, the reviewer had the opportunity of visiting the examination centre for Borstal youths in Wormwood Scrubbs in London, and later, the Borstal Institution at Felton. It was therefore intensely interesting to follow a really worthwhile investigation of the whole System by such competent observers as the authors of this book.

The reviewer was impressed then, and that impression has been intensified by the reading of this study, with the fact that the key to any such approach lies in the quality of life in those who supply the leadership, and the personal supervision in various Borstal institutions. It is really not

surprising that one should discover this fact, for we all realize that a group of young men in need of adjustment to right standards of living are not likely to rise higher than the character of those over them; but the moral quality of leadership needs a rightly devised plan through which to function, and the happy combination of these two elements is responsible for such success as has been achieved in the Borstal System.

The book is not too technical for any one to read, and is not encumbered with statistics, although, of course, they appear whenever some particular situation needs to be made clear. Everyone having to do with adjustment of anti-social youth to the generally accepted and right standards of living ought to read this book.

We have a creative approach to the maladjustment which we know as ill-health. We are struggling towards a positive attitude in the matter of poverty. In the field of behaviour it is tremendously encouraging to know that two forward-looking scientific men have approached another kind of disease with the real belief that the cure can be found.

The very word "Borstal" means "a hill," so up we go.

QUINTIN WARNER.

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*The International Conferences of American States: First Supplement 1933-1940.* Division of International Law of the Carnegie Endowment for International Peace. Washington: Carnegie Endowment for International Peace. New York: Columbia University Press. 1940. Pp. xxviii; 558. (\$3.50)

This is a supplementary volume to that published in 1931 under the title *The International Conferences of American States, 1889-1928*, and contains the conventions, recommendations, resolutions and motions adopted by (1) the seventh and eighth International Conferences of the American States, held in Montevideo in 1933 and in Lima in 1938, respectively; (2) the Inter-American Conference for the Maintenance of Peace, held in Buenos Aires in 1936; (3) and the first and second Meetings of the Ministers of Foreign Affairs of the American Republics for Consultation, held in Panama in 1939 and in Habana in 1940, respectively. The volume contains valuable appendices including (1) synopses of technical pan-American Conferences and Congresses; and (2) synopses of pan-American Commissions and other bodies.

This collection of documents testifies to the remarkable advance of the pan-American movement in the last decade, an advance not unrelated, however, to events elsewhere. Study of the achievements and purposes of this movement can no longer be, if it ever was, deemed unimportant in Canada; its necessity has but recently been underscored by the presence of the Canadian Minister at the White House, along with the representatives of the American republics, during President Roosevelt's speech of May 27. Even more tangible evidence of the growing concern of Canada in the problems of the American continents are the steps being taken to establish formal diplomatic relations between Canada and the republics of South America. Nor is the participation of the Canadian

Bar Association in the Inter-American Bar Association to be ignored in this connection. This Canadian concern is founded on the firm ground of Canadian interest. Canada cannot remain indifferent, for example, to the Declaration of Lima, 1938, (Declaration of the Principles of the Solidarity of America), to the Declaration of Panama, 1939, defining a security zone of waters adjacent to the American continent, to the Act of Habana, 1940, concerning the provisional administration of European colonies and possessions in the Americas, and to the Convention on this subject, signed on July 30, 1940.

The volume under review is an indispensable reference book on the possibilities of regional international cooperation, to use the phrase by which Mr. G. A. Finch (Associate Director of the Division of International Law of the Carnegie Endowment for International Peace) describes the pan-American movement in a prefatory note. It will, as have numerous other volumes published under the auspices of the Carnegie Endowment, lighten considerably the researches of students and statesmen and of any others interested in the materials collected.

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