

Canadians always expect a little rancour in an American writing of Revolutionary times; but little of this appears here. Simcoe<sup>1</sup> was not really so badly defamed and it need not be made a matter of great complaint that Duché<sup>2</sup> is thought to have become "infamous by his attempt to lure Washington from the patriot cause." Of course in Canada, the United Empire Loyalists who would almost hang Washington as a traitor, would not think Duché's conduct infamous but rather creditable. The two parties at the time of the American Revolution were much like the Cavaliers and Roundheads in the time of Charles I, one saying "Liberty," the other "Loyalty": and why their descendants cannot forget old differences as have the descendants of Cavalier and Roundhead, I cannot understand.

The mechanical appearance of the book leaves nothing to be desired—paper, type, proof-reading, binding, all impeccable; and the few illustrations have been chosen with discrimination.

WILLIAM RENWICK RIDDELL.\*

LEGAL ESSAYS IN TRIBUTE TO ORRIN KIP McMURRAY—edited by Max Radin and A. M. Kidd. University of California Press, Berkeley, 1935. Pp. x, 694.

The names of the contributors to this volume are enough to insure the distinguished character of the twenty-four essays of which it is composed. The editors have drawn on the legal profession from one corner of the United States to the other and for good measure have sprinkled in two essays from continental Europe and one from Egypt.

It is difficult to classify the materials composing the volume. The subject matter ranges from property law peculiar to France and riparian rights in California to the constitutional aspects of New Deal legislation. In a very rough way the essays may be classified as follows: Jurisprudence and Legal History, nine; Property, five; Criminal Law, Commercial Law, International Law, and Constitutional Law, two each; Military Law, and Procedure, one each.

Among the jurisprudential articles, Professor Jossierand's essay, *La Protection des Faibles par le Droit*, deals with adjust-

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<sup>1</sup> John Graves Simcoe, the first lieutenant-governor of upper Canada.

<sup>2</sup> Jacob Duché, chaplain of the Continental Congress, who urged Washington to make peace with England.

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ments of the juridical infirmities of "the weak." In contrasting the brutal legal philosophy that "*la raison du plus fort est toujours la meilleure*" with the modern tendency in juristic theory that law is "*la puissance des faibles comme des forts*," the author examines three phases of the current juristic movement: (1) the differing character of the present class which appeals to the "collective conscience" as requiring protection, (2) the variance between legal devices now and formerly employed for their protection and (3) the necessity for measures to prevent the protectors from, in turn, being made weak. Professor Radin discusses the Anglo-Saxon equation of the Greek *epieikeia* and the Roman *aequitas*. Dean Pound lays stress upon the different natures of law: a rule of conduct, a rule of decision, a threat of official action, a prediction thereof, and an ideal. Professor Bohlen with penetrating insight examines the functions of judges and juries in passing judgment and the manner of their use of legal formulae. Professor Wigmore develops an analytical study of consideration in the "bi-factoral relations"—Contract, Deceit, and Estoppel. The essay is illuminated by two complicated but highly interesting charts. Starting from a picturesque, if somewhat garbled figure, Professor Llewellyn discourses interestingly on the doctrinal aspects of constitutional theory with its background of private law. Included perhaps in the jurisprudential group may be the institutional study of law and morals of primitive trade by Frank I. Schechter, appended to which is a highly useful bibliography, and the historical study by Professor Schiller of the legal aspects in Roman law of the commercial relations of patron and freedman. The last essay in the book is an urbane critique by Professor Yntema of the American Law Institute and its major project, the Restatement of the common law.

In the group of essays which deal with aspects of property law are to be found two studies on "water law"; one by Professor Bingham, dealing with the peculiarities of California law, and the possible effect of a recent constitutional amendment; and an institutional study by Mr. William E. Colby dealing with the freedom of the miner in making prior appropriations to use of water for mining purposes. Mr. Sayre MacNeil contributes an interesting essay on the tolerance of legal systems of trees and their ways. Professor Henri Capitant discusses the recent legislation in France affecting the legal relations of the landlord and tenant of property used for commercial purposes with respect to the tenant's priority to renewal at the termina-

tion of the lease and his right to arbitrate the rental for the new term. Professor Costigan's essay on Protective Trusts is a powerful refutation of John Chipman Gray's dictum that "spendthrift trusts have no place in the system of the common law."

In the field of constitutional law, Professor McGovney discusses the curious status of the Filipino after independence, the Eskimo in Alaska, the inhabitants of Puerto Rico, Guam, American Samoa, and the Canal Zone. Professor Maggs uses the recovery legislation of the Roosevelt Administration as a peg upon which to hang an illuminating discussion of the relative importance of doctrine, document, and judge in the decision of constitutional law cases. Many will share the reviewer's feeling of satisfaction with this discussion; many, perhaps, will not.

The literature of International Law is enriched by two articles. One by Professor Dickinson deals with the competence of the national court to determine a question of the law of nations which overlaps the function of the political department of the nation, specifically, jurisdiction over a person or thing seized outside the state in violation of international law and thereafter brought within the territory of the state. Professor Hudson publishes what is to constitute a chapter from his forthcoming treatise on the Permanent Court of International Justice. The chapter deals with the court's interpretation of international engagements not only as they affect the parties to the engagement, but also states not parties thereto.

Mr. Justin Miller and Judge Robert L. Henry of the Mixed Courts of Egypt contribute two studies in criminal law and jurisprudence. Mr. Miller's essay is an analytical study of the criminal act. Judge Henry's essay compares the criminal jury in the civil and common law.

Two valuable essays on the commercial law are those by Dean Masterson and Professor Langmaid. The former deals with specific performance under the English and American Sales Act. It is an attempt to appraise the effects of the legislation by a comparison of decisions in specific performance cases before and after enactment. Langmaid's article discusses certain new problems of subrogation in suretyship and insurance cases, some of which involve the very difficult problem of contribution and indemnity between joint tortfeasors.

Finally there is an interesting essay by Captain Hubert D. Hoover which discusses the competence of courts-martial and their function and place in the legal scheme, all of which is prefaced by a brief historical sketch of the substance of the

Articles of War. Professor Morgan's study of the effect of presumptions on the judge's instructions to the jury throws much light upon certain problems which have long baffled students in this field.

Even a cursory examination of these essays makes it clear that the contributors have done much more than to make a polite but hasty gesture in honor of a venerable teacher and scholar. Without exception, the studies represent valuable contributions to the literature of the fields in which they fall. The book is printed in readable type and upon paper of good quality. The only objection which the reviewer can find with the physical qualities of the volume is the scheme of inserting the references in footnotes at the end of the essays, a practice which is highly irritating to the reader who wants to take in with his eye, while reading the text, the authorities upon whom the writer relies. After all, while the text of legal literature may be interesting and instructive, it is not pleasant to read consecutively fifty to seventy-five footnotes at the end of the chapter.

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CRIMINAL EVIDENCE—by H. C. Underhill. Fourth Edition, by John Lewis Niblack. The Bobbs-Merrill Company, Indianapolis, 1935. Pp. xxviii, 1691.

Some one has classified legal text books as being of two types, one a learned, comprehensive and exhaustive study of the law as it is, indicating its existing diversities and conflicts together with the opinion of the writer as to what the law should be. Such books, when written by men distinguished in their respective fields, frequently influence the courts and create a definite trend of legal construction in the direction advocated by them. Other text books are simple horizontal digests. Both types, however, serve a purpose. The digest type of text book has some value to the lawyer searching for authorities. In many cases he is more interested in knowing what the law is in his particular jurisdiction than in a learned discussion no matter how valuable it may be, as to its underlying principles or jurisdictional conflicts. Of course it may be said that a digest would serve the purpose just as well as a text book which to all intents and purposes is frequently no more than a digest. However, I think that the experience of brief writers, in many cases compelled to

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