

page vii, the last line of the table of contents should read "affirmative" rather than "affirmation." (It is stated correctly at page 95). At page 37 in the fifth line from the bottom the word "by" should read "to"; at page 107 the citation of the Saint John Shipping case should read "(1966)" rather than "(1965)" (if the date is to be used at all); at page 118, line 27, the word "in" should be inserted between "law" and "failing"; at page 168, line 14, "Cameron" is spelled "Cameeron."

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CANADIAN CRIMINAL PROCEDURE. By Roger E. Salhany. Toronto: Canada Law Book Co. 1968. Pp. liv and 228.

Roger E. Salhany has produced a worthwhile, concise summary of criminal procedure in his book *Canadian Criminal Procedure*. His book, inclusive of the copious footnotes, provides less experienced practitioners with a ready reference, but the book as a whole does not contribute much to an exhaustive critical analysis of the more difficult and moot areas in criminal procedure.

Following (with some exceptions) the basic subject divisions of the Criminal Code,¹ the author brings new insight to a number of the subject areas of procedural law through his consideration of the historical background. This background is brief, yet cogent enough to make the treatment of procedure more meaningful. This valuable approach, however, is somewhat negated by the author's reliance upon a paraphrased version of the subject matter of the Code. A "new-version expression," rather than a "revised version expression," incorporating more of the leading decisions interpreting the Criminal Code might have been preferable.

The author indicates in his preface that his intention is to set out and examine the principles and procedures governing the trial and appeal of indictable offences and summary conviction offences under the Criminal Code. However, in his book he appears to have resorted too often to the presentation of submission either on behalf of the Crown or of the defence, whereas more attention should have been paid to the de facto resolution of procedural questions and to moot areas, at the same time relegating his own personal submissions, where required, to an appendix.

With respect to the subject headings themselves, I refer first to the mode of classifying offences. While the classification is basically adequate, it is nonetheless deficient in respect of its failure to sufficiently emphasize and distinguish jurisdiction into areas of geographical jurisdiction, jurisdiction over offences and jurisdiction over persons.

In dealing with venue, the book makes no contribution in relation to the situation with respect to preliminary hearings. For example, it is of some concern to Alberta practitioners to realize that an accused must be indicted in the proper judicial district, and this cannot be changed without a court order. There appears, however, to be no legal obligation

¹ S.C. 1953-54, c.51, as amended.

requiring the holding of a preliminary in the same judicial district where the offence is alleged to have occurred if it appears to be more convenient for all concerned to hold the same in another judicial district. This would appear to be the case if the Magistrate (as in Alberta) is not restricted territorially.

In his consideration of the question of search and seizure, the author does not deal adequately with search of the person. Reference, for example, to this aspect might have been made by consideration of such decisions as *Gottschalk v. Hutton*.²

Bail and its basic considerations are dealt with adequately, but here again, the author would have been better advised to deal with the practical issues rather than putting forth "the better view."

The author's consideration of the preliminary hearing gives a concise and valuable historical background. Alberta students, however, should be aware of the author's somewhat inadequate consideration of Sections 417 and 490, as well as the case *Regina v. Lyding*.³ The matter of partial elections should also have been considered, and here again Alberta students should bear in mind that if the offence is one covered by Section 413(2) the accused still may, in Alberta, be able to have it tried by a judge alone. It should have been pointed out that in Alberta a district court judge does not sit with a jury.

The author is to be commended for his reference to those cases laying down the tests to be applied to a consideration of charges alleged to be bad for duplicity.

Speaking generally, it appears that the work too often relies on English and Ontario precedents. It would have been worthwhile to have mentioned under the subject heading "Appearance" the decision of the Alberta Supreme Court in *Regina v. Pawliuk*,⁴ which decision holds that an accused, in a summary conviction matter, can be compelled to appear for sentence, i.e., that a trial does not end until sentence has been passed.

Lastly, I earlier mentioned that there is no comprehensive treatment of a number of trouble areas. For example, there is no doubt that a summary conviction appeal is a trial de novo, and the court hearing same can adjudicate as the evidence before it dictates. But there appears to be a difference in intention when it comes to appeal re sentence. Here the advocate is forced to read Section 727(1) and Section 727(3) of the Code rather carefully. As one Alberta District Court Judge pointed out, under Section 727(3), though the Judge (had he been sitting as a Magistrate at trial) would have imposed a different sentence, yet with regard to an appeal of sentence he sits more as he would if acting as an Appeal Court Judge in indictable offences. That is to say, he reviews, on the basis of principle, the fitness of the sentence of the lower Court.

I am of the opinion that there was a need for a suitable, concise text on criminal procedure, and it is my observation that this book fills this need. It follows that, though at the outset I expressed the view that it would be of more assistance to the beginning practitioner than

² (1921), 36 C.C.C. 298, 302 (S.C. Alta.).

³ (1966), 54 W.W.R. 286, *aff'd*, 55 W.W.R. 448.

⁴ (1954), 110 C.C.C. 164.

to the veteran, nevertheless, because of its general coverage and its concise and quick reference, it would be a valuable addition to the Criminal Law Library and an asset in the briefcase of the advocate.

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NEGLIGENCE IN MODERN LAW. By M. A. Milner. Toronto: Butterworths, 1967. Pp. xxxviii and 7 and 248. \$9.25.

Mr. Milner, in his preface, emphasizes the speed with which changes are wrought in the law of negligence. The title of the book is not misleading for Mr. Milner, after his introductory chapters, covers the following specific topics: The Tort of Negligence and the Law of Contract; Estoppel and the Tort of Negligence; Industrial Injuries and the Encroachment of Negligence on other Torts.

The author contends, and few would dissent from his view, that the operative place for the tort of negligence is at the centre of the law of torts. He then demonstrates how the influence of this tort radiates to influence the older forms of tort liability which surround it. A comparison is then made between the attempts of the Roman law and the modern civil law to balance the risk principle and the fault principle and the machinations of the common law to achieve the same end. It might, however, be alleged that the author exaggerates the difference between negligence and fault.

The author dexterously employs the aphorism and the epigram. The result is that the book should be read carefully for there are very few wasted words. Furthermore, many sentences are eminently suitable for quotation. The author mentions the usefulness of the duty of care as a judicial control which is flexible and can be used as a matter of policy. This was, of course, the device employed by the House of Lords in the disposition of *Rondel v. Worsley*.¹ Unfortunately, the decision of the House of Lords in that case was not published at the time the book was published.

The book contains a good analysis of the decisions on *res ipsa loquitur*. The references in this and other parts of the book are useful. Mr. Milner's ideas are valuable and he is at his best in discussion of the abstract.² For the sake of completeness, however, some parts of the book are merely expository, for example, the treatment of fatal accidents and of the action *per quod servitium amisit*.

Mr. Milner does explain the anomalies in the British law since the Occupiers' Liability Act.³ However, he confuses 'traps' and allurements. It is suggested that an allurement may not necessarily also constitute a trap for a child. The child may be injured by something quite other than the object which first attracted him on to the land. This being so, the allurement should be regarded as nothing more than a tacit licence. Of course, there is ample judicial authority for this imprecision.⁴

¹ [1967] 3 All E.R. 993.

² However, it may be said that occasionally he goes too far, at least for traditionalists, when at 196 he points out the similarity between *Rylands v. Fletcher* and negligence.

³ See Street (1968) 10 J. Soc. Pub. Teach. Law 60.

⁴ E.g. *Perry v. Thomas Wrigley Ltd.*, [1955] 1 W.L.R. 1164.