10-16-1936

Volume 10, Issue 1 (1936)

OBITER DICTA

OFFICIAL PUBLICATION OF OSGOODE HALL LAW STUDENTS

VOLUME X. TORONTO, FRIDAY, OCTOBER 16, 1936 No. 1.

THE NATURE OF A CORPORATION

Dissecting That Puzzling Legal Myth "The Natural Person"

By Charles C. Hill

The prevailing opinion seems to give to the Romans the credit for originally inventing the political constitution of the corporation. They were introduced by Numa, who, finding on his accession the city torn to pieces by the two rival factions of the Sabines and the Romans, considered it prudent to subdivide these two into many smaller ones by instituting societies of every trade and profession.

They were afterwards much considered by the Civil Law in which they were called "universitates" and also by the canon law. From it our present ecclesiastical corporations are derived.

In England in the 13th century we find lawyers dealing with municipal and ecclesiastical groups. Their manner of dealing with such groups make them look very much like our present day corporations.

The earliest English corporations, however, were those created by the common law itself, such as municipal, ecclesiastical and educational corporations, appearing late in the 15th century. Of these Blackstone says: "With us in England, the King's consent is absolutely necessary to the erection of any corporation, either expressly or impliedly given. The King's implied consent is to be found in corporations which exist by force of the common law to which our former kings are supposed to have given their concurrence."

Professor Maitland gives to the Italians the credit for giving English lawyers the correct corporate [illegible] in the 16th century, when the medieval learning of English law was at its height, a certain amount of foreign theory was being received, the most remarkable instances of which was the Italian theory of the corporation." The English courts had long been dealing with group units, but had no actual theory of a corporation. They required a theory that would give a separate personality to a group of individuals bound together by the operation of their own wills, even though that end be attained by means of a fiction of law; and it was by a fiction that English courts first came to recognize the separate entity of the corporation. Of this Maitland says: "The corporation is a person, but it is a person by fiction of law only and being such a person, it requires some authoritative act to bring it into being, some declaration of the state's will, that it exist and continue to exist, even though all its members be dead."

That the corporation owes its inception to the sovereign power is one of the basic features of our English law of corporations. In the Year Books of the reigns of Henry IV., Edward IV. and Henry VII., we find the courts recognizing some unchartered bodies of persons as legal units. A long line of judicial definitions refers to a corporation as being, in effect, an artificial person existing only in contemplation of the law. Being such a creature of the law, it loks to it for its rights and powers and is subject to and confined by the limitations and restrictions imposed upon it by its charter of incorporation and the general companies acts for the time being in force. This was established by Chief Justice Marshall in the Dartmouth College case. (Dartmouth College v. Woodward Wheat (U.S.), 518 at 636.) He speaks of a corporation as "being the mere creature of the law, possessing only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence."

It would, however, seem to be possible for a body of men to bind themselves together for the purpose of carrying out certain undertaking and of becoming so well organized that they are capable of acting as a unit. Out of such a situation there arises a more or less metaphysical being, the corporate persona. A persona of this type may exist irrespective of legal recognition, but it has no actual status at law because the King's consent to its existence has never been obtained. What the law can give it is a legal classification and it becomes a legal persona or juristic person vested with such powers as are set out in its charter along with the general capacity which the common law ordinarily attaches to corporations created by charter.

Let us look at the nature of this "something more than the sum of its members" in the broader light of human associations in general. Whenever men act in common, they inevitably tend to develop a spirit which is something different from themselves taken either singly or in sum. It is their common purpose which begets a common spirit distinct from their individual personalities.

The corporation is, in fact, a very efficiently organized unity, to which the law has ascribed rights and duties and an existence and personality of its own. It has been settled by Saloman vs. Saloman & Co. Ltd. (1897), A. C. p. 22 at p. 51, that "a company is at law a different person altogether from the subscribers to the Memorandum." We know that a corporation possesses certain legal rights and duties and that it has a personality distinct from that of its members. It follows, therefore, that its rights and duties must differ from those of the persons who compose it. The learned author of "The Personality of a Corporation and the State," in 21 Law Quarterly Review, p. 365, says: "For the purpose of establishing the inherence of certain rights and duties which cannot be conveniently treated—or perhaps cannot be treated at all—as inhering in the members of the corporation, but which can be dealt with as in-

(Continued on Page 3.)

To the New Chief Justice Our Congratulations

The enthusiasm with which the Ontario press has greeted the appointment of Mr. Newton W. Rowell to the office of Chief Justice of Ontario once more attests not only the fact that the people of Ontario are jealous of the high reputation for fitness and probity which has ever been a characteristic of their judicial officers, but further that they will be generous in their appreciation of the appointment of a man in whom these attributes are pre-eminent. Time and again in his long and illustrious career Mr. Rowell has revealed a deep and abiding respect for the responsibilities of public office; he has been dogged and persistent in support of a cause of the righteousness of which he was profoundly convinced; he has flouted political consistency to follow the dictates of his own convictions, and by his obvious sincerity has escaped the usual consequences of such a step. These characteristics are ideally suited to the requirements of the office to which he has been appointed.

It is quite unnecessary to speak of his legalistic experience and talent. For twenty years he has been accounted as one of Canada's leading counsels, and now it is doubtful if he has a rival as a constitutional authority. His knowledge extends into many fields, and his experience in national and international affairs has given him a breadth of outlook which in Canada only Sir Robert Falconer and Sir Robert Borden can equal. He has been president of the Canadian Bar Association and is now the titular head of the Ontario Bar. He is in the opinion of OBITER DICTA the best possible choice for the office, a worthy successor to Sir William Mulock, whose long and meritorious tenure, we hope, he may emulate.

SIR WILLIAM MULOCK

The Law School's Tribute to Ontario's Grand Old Man

By R. A. Bell

On June 30th, 1936, with the retirement of the Right Honourable Sir William Mulock from the position of Chief Justice of Ontario, there ended an era in the judicial history of Ontario. In his 54 years of active public service as Member of Parliament, Minister of the Crown and one of His Majesty's justices, Sir William carved for himself a peculiarly prominent niche in the Hall of Fame. His retirement from active public life marks the severance of our intimate connection with the days which to the most of us are only history.

The Province of Upper Canada was only a frontier settlement when William Mulock was born in 1844. And it was still far removed from the Ontario of today, when in 1859 the fifteen-year-old boy came down from Newmarket to register in the uncompleted building of University College. Here, in the stately university halls, he first made evident his ability to secure the confidence and esteem of his assistants. Upon the completion of his university career, law and politics had become his ambition in life and he bent his efforts towards realizing his goal. Soon after his call to the bar, William Mulock began to devote his energies to politics with the result that he was elected Member of Parliament for North York in 1882, which riding he represented until his retirement from politics in 1905.

To the political world, he brought rare qualities. An enthusiastic campaigner, a shrewd strategist and an astute judge of public sentiment, his efforts contributed largely to the splendid vote received by the Liberal Party in Ontario in 1896, and it was therefore only natural that he should be called upon to enter the Laurier government. In the position of Postmaster-General, which office he held for nine years, he indicated a progressiveness of spirit and a bold initiative which resulted in many administravtive reforms of far-reaching effect, of which one need only mention penny postage within the Empire and the construction of the Pacific cable. During this time, also, he organized and presided over the new Department of Labour, choosing as his deputy, it is interesting to note, William Lyon Mackenzie King.

In 1905 Sir William retired from the Laurier cabinet to become Chief Justice of the Exchequer Division, which office he held until his appointment in 1923 as Chief Justice of Ontario. No attempt can properly be made at this early date to evaluate the influence of the former chief justice upon the development of law and legal science in Ontario. In the courts, he was more the businesslike, matter-of-fact judge than the profound and erudite legal scholar. In this was his strength. With painstaking diligence he sifted a legal problem to its depth and then with mellow wisdom and a broad humanitarian conception of legal principles, rendered his decision, based on common justice rather than legal hair-splitting. In criminal appeals, which in these later years constituted a major portion of his work, this was particularly evident.

In the field of education, perhaps even more than law or politics, his contribution will have greater ultimate significance. His indefatigable labours which had their consummation in the federation of various colleges and faculties into the University of Toronto, constituted what is perhaps the summit of his career and the success of that institution is in large measure a monument to his efforts.

As he lays aside his mantle of office, the students of Osgoode Hall send to Sir William their best wishes and an expression of their hope that he may live long and be happy in his quiet reveries, in his contemplation of his life's work and achievements and in the knowledge that his province and his country are the better for his having lived.

A Reprint of Last Year's Student Committee Report on Legal Education

Reopening That Long-Drawn Controversy of Law Student vs. Law School

(Ed Note: *Last year a Student Committee at Osgoode Hall was appointed once again to look into the system of legal education in Ontario and at the end of such a survey present a report. This report was finally published in* OBITER DICTA *on April 15th, 1936, the last number of the year. The findings therein raised considerable comment both at meetings of the Literary Society and in student discussions. However, examinations at that time were too ominiously near, and the ensuing comments on the report were necessarily curtailed. Feeling that the very object of the report was thereby defeated, the editor and the executive of the Literary Society have decided to reprint in a summarized form the results of the Committee's detailed and important research. This course they feel is justified for three reasonss (1) the discussion that was so untimely throttled last year will be given another opportunity of making itself heard; (2) there is a new first year which has not seen the Report; (3) this issue of* OBITER DICTA *is being mailed to some two hundred of the leading law firms in the City of Toronto and the very people who can do something constructive regarding the findings in the Report will thereby be given a chance of doing so. Completeness and literary style have perforce been sacrificed for brevity in this reprint. The editor apologizes to the committee if he has in anyway marred the effectiveness of the original Report, but feels that some of a pudding is better than none of a pie. Dots and italics will be used where parts of the original text have been deleted.*)

Student Committee Report

This is the Report of a Committee of Students appointed by the Executive of the Legal and Literary Society of Osgoode Hall to further investigate the problems of legal education in Ontario in the light of the Report of the Special Committee of Benchers dated February 14, 1935. With the greatest respect, this Committee finds that it must differ in many material instances from the recommendations in the last-mentioned Report, the reasons for this difference of opinion being set out below.

It should be noted at the outset that the findings of the Benchers' Committee are in direct conflict with the recommendations submitted by a special Committee of students appointed at the request of the Benchers in 1934. That Students' Report, reprinted in 12 Canadian Bar Review 144, has the wholehearted approval of this present Committee, and continues to represent the views of the great majority of the students at Osgoode Hall. In what follows, this Committee is exceedingly desirous, in the light of subsequent developments, to reiterate the reasoning therein employed and the conclusions therein reached.

The premise on which the abovementioned Students' Report and this immediate one is based, is that the members of the Bar in Ontario belong to a learned profession (rather than a trade craft), which is most intimately conceived with the regulation of the social relations among all members of the community. Such being the case, methods of legal education should be directed towards the enhancement of the prestife of the profession. The object of legal education must be such as to assure the community that the class which administers the law is a cultured class of well-trained men and women, having a deep insight into the history and spirit of the law, and a knowledge of the trend of the social conditions to which it must be made applicable. The students of Osgoode Hall Law School are eagerly desirous of being afforded adequate time and opportunity to gain more than the superficial smattering of legal precepts, which is handed down to them in the Law School under its present system of administration,

(Continued on Page 3)

Wallace Nesbitt Essay Winners Announced

The fifth annual award of the Wallace Nesbitt Prize Essay Competition was again won this year by Mr. Bora Laskin. Mr. Laskin has the enviable distinction of having captured this award of $100 for two successive years, last year his essay on "Collective Bargaining" having taken first prize, while this year his essay, "The Protection of Interests by Statute and the Problem of Contracting Out," was considered the best of those submitted. This difficult legal problem, and one on which there are very few decided cases, was so well done by Mr. Laskin that Dr. Wright has announced its publication in the November issue of the Canadian Bar Review. Bora Laskin may well be proud of his latest contribution to a brilliant academic career which he is at the present time continuing at the Harvard Law School.

The second prize of $50 was won by Gerald D. Sanagan with his essay, "The Doctrine of Renvoi," while John C. Osborne was the winner of the third prize of $25 with his contribution, "Trusts Arising under Joint and Mutual Wills." The calibre of the articles submitted this year was exceedingly high, and *Obiter Dicta* takes this opportunity of congratulating all those who entered this competition on their fine efforts, and hopes to be able to publish as many of these essays as possible during the coming year.

(Continued on Page 5)

OBITER DICTA

Published at Osgoode Hall Law School.

EDITORIAL BOARD

Editor ..... MILTON SHULMAN, B.A.
Business Manager ..... J. DOUGLAS WILSON, B.Comm.
Editorial Staff ..... ERNIE MARKS, B.A.
FRANK SANDERS, B.A.
M. S. SMITH, B.A.
DAVID C. VANEK, B.A.

TORONTO, FRIDAY, OCTOBER 16, 1936.

LEX ET LUX

"Law, I think, should be regarded as an elastic tissue which clothes the growing body. That tissue, that garment, must fit exactly. If it is too tight, it will split, and you will have revolution and lawlessness. . . . If it is too loose, it will trip us up and impede our movements. . . ."

The words are those of Lord Tweedsmuir; the views are those of many. That the law must be a changing, active thing rather than static and unyielding, is an almost universally accepted fact in this swiftly-moving age, with its cataclysmic, lightning-quick moods. For it is at the feet of those who felt the law must be kept a confining and unresisting influence, that the blame for this mad world in which we live, must be laid. And if we are desirous of once more returning to a sane and normal life, it naturally follows that those who make the law, those who administer it, and those who prescribe it, should be capable of meeting these turbulent disturbances of our times, and out of chaos bring about cosmos. But before we can have our legislators, our judges and our lawyers, we must have that group of people who study the law. And it is to these self-same students that this editorial is addressed.

That narrow-mindedness is the chief sourse of suspicion and distrust can hardly be disputed. For narrowness almost inevitably leads to intolerance and intolerance to bigotry. This chain of hate, linked together by ignorance, can only be broken by knowledge, and it is the function of education to supply such knowledge to its disciples.

It has often been said that the professional man is the most narrow-minded of all. The doctor, so they say, thinks only of patients and diseases, the engineer of dynamics and hydraulics, and the lawyer of courts and cases. That the lawyer, whose duty it is to build, sustain and repair that bulwark of our civilization called the law, should be so categorized is to be deplored. But that it is true, we must reluctantly confess. Too many times have our judges applied antiquated legal theories to our modern social problems; too many times have our lawyers advocated nineteenth century solutions for twentieth century questions.

For while it may be the legislatures that make the laws, it is undoubtedly the courts that interpret them. And it is this interpretation that must be neither "too loose" nor "too tight," too narrow nor too wide, too stern nor too meek. It is this interpretation that the lawyer must keep atune with our present discordant symphony of living and by his efforts, in time, drown out the clash of cymbals with the singing of violins. And if it is admitted that this be the function of the lawyer, it is reasonable to assume that he must be prepared to properly fulfill that function.

That preparation he must start while young, for then only has he the time and the bent for it, and then only will it do him most good. He must learn to understand and appreciate the contribution that other people are making to our civilization, and try as best he can to learn the fundamental concepts upon which they base their efforts. He must feel that the doctor, the engineer, the psychologist and the economist are all as important in the scheme of things as is the lawyer, and to honestly so feel he must attempt to understand the means and the end by and for which they are striving.

Thus while we here at Osgoode Hall have little time to devote to anything other than our own case-books and texts, it is nevertheless essential that some part of that extra time be spent in learning how the other man thinks. We must begin to see now, that while law is important, other things also are important; that while the lawyer can solve crimes, the psychologist and the doctor have also a solution; that while judges can effect cures in our social system, the economist and the philosopher have also a cure. It is only when the lawyer has seen this that he can truly call himself educated; it is only when he has felt this, that he can properly perform his duty to society. When that day comes, when our legislators, judges and lawyers are imbued with that patience and tolerance that comes only through education and understanding, then only can it honestly be said that the law is "the cement of civilization."

I. SMITH'S REPORTS

Another Misleading Case on the Act of God

By M. S. Smith

(Foreword: This interesting study into the law of personal chattels is here reprinted with the gracious consent of the scholarly editor of Smith's Cases on Personal Property. The case is, to our limited knowledge, a unique one in every respect, for in spite of the fact that landslides are a sufficiently common occurrence throughout Canada at five year intervals, in law one is—to quote the scholarly editor of Smith's Cases on the law of Contracts—a 'rara avis.' Because of the absence of judicial precedent bearing directly upon the point in question we have solicited comment upon it from many prominent authorities, asking that they subject the argument to the most searching criticism, and we have appended the collected comment to the text).

Hyde v. Morgan; 1 Nevada 234.

(Ed. note. *The case of Hyde v. Morgan was fortuitously reported by a youthful prospector of the 'Fifties. I found his fresh, picturesque account so entertaining, so refreshing after the dreary, tiresome dissertations of the Classic Cases of Messrs. Hale, Coke, et al, with their lengthy irrelevancies disguised in Latin so poor that P. Vergilius (Vergil to you) would have spoken of arms and a man with the wagon that I have reproduced his report in full*).

"The mountains are very high and steep about Carson, Eagle and Washoe Valleys—and so when the snow gets to melting off fast in the spring and the warm surface-earth begins to moisten and soften, the disastrous landslides commence . . . One morning Dick Hyde rode furiously up to General Buncombe's door in Carson City and rushed into his presence without even stopping to tie up his horse. He told the General that he wished him to conduct a suit for him; and with violent gestures and a world of profanity he poured out his griefs. He said that it was well known that his ranch was situated just in the edge of the valley and that Tom Morgan owned a ranch immediately above it on the mountainside. And now the trouble was that one of those landslides had come and slid Morgan's ranch, fences, cabins, cattle, barns and everything down on top of his ranch and exactly covered it to the depth of about thirty-eight feet. Morgan was in possession, and refused to vacate the premises—said that he was occupying his own cabin and not interfering with anybody else's—and that the said cabin was standing on the same dirt and same ranch it had always stood on, and he would like to see anybody make him vacate.

"And when I reminded him," said Hyde, weeping, "that it was on top of my ranch and that he was trespassing, he had the infernal meanness to ask me why didn't I stay on my ranch and hold possession when I see him a-coming. Why the blathering lunatic, the . . . . But what grinds me is that that Morgan hangs on there and won't move off'n that ranch, says it's his'n and he's going to keep it—likes it better'n he did up the hill. Mad? Well, I been so mad for two days I couldn't find my way to town—been wandering around in the bush in a starving condition—got anything to drink, General? But I'm here now, and I'm going to law. . . .

When the General sat down he did it with the conviction that if there was anything in good strong language, uncontested witnesses, a great speech and believing and admiring countenances all around, Mr. Morgan's case was killed. Ex-Governor Roop leant his head upon his hand for some minutes, thinking, and at last began impressively:

(Continued on Page 4)

FIRST YEAR IMPRESSIONS

By Jack Mirsky

First-year impressions remind me of that never-to-be-forgotten fable of the three blind men grouped around the elephant, and each using the Braille system on a different part of the elephant's anatomy in an attempt to ascertain the nature of the animal. But in an attempt to be truly legal, we shall follow the example set by generations of English lawyers in their "wilderness of single instances," and in descending from the general to the particular we shall liken ourselves to the single unfortunate blind man placed at the extreme rear of the elephant. Like true first-year law men we take everything without a "granum solo" — including that grand old adage "English law is based on experience and not on logic." That is the reason I liken law to the rear of the elephant rather than to the fore, because the fore, in its jungle manner, resorts to logic, whereas the 'aft,' with its "wilderness of reflexes," built up by generations of experience, acts according to bitter experience. Our blind man, after a few exploratory moments, would be quite correct in coming to the conclusion that his assignment was law.

The preface to law is indeed the sorriest of all professions — the gauntlet one runs of disillusioned, despondent and even desperate lawyers in an attempt to obtain a studentship in a lawyer's office, indeed equals the ancient rite performed by the Cree Indians. And if perchance one emerges from the rite with a head "bloody but unbowed," one is not met by the tribe with huzzahs, acclamations, and all the paraphernalia of a hero, including a feast in the offing. In the tribe of forensic Sophists the reception committee views you with one eyebrow lifted and all the encouragement that bleak November gives to a failing consumptive. In the offing awaits seven long years of forms, and not seven long years of feast. But being a cheery individual, "guided by experience and not by logic," I remember that the law of averages presents every seven with a corresponding eleven, and "with

(Continued on Page 5)

THE NATURE OF A CORPORATION

(Continued from Page 1)

hering in the corporation itself." Among such rights and duties of a corporation are included perpetual succession, the right to sue and be sued, to receive and grant by the corporate name, to purchase and hold land and chattels, to have a common seal and to make by-laws. These are necessarily and inseparably incident to every corporation which incidents, as soon as a corporation is duly erected, are tacitly annexed.

The next important phase of the corporate nature which must be considered at some length is the theory that the separate personality of the corporation has been conferred upon it by a fiction of law. That this is one of the best established doctrines underlying our conception of English corporation law there can be no doubt. Professor Maitland gives Pope Innocent IV. the credit for being the first man to use the phrase "persona ficta" about 1243. Thenceforth the corporation was admitted by both canonists and legalists to be a person, but a person by fiction and only by fiction. It is said that the Pope was so in earnest about the fictitious-ness of the corporation's personality that he proclaimed that the corporation could commit neither sin nor delict.

What seems to be meant when the corporate personality is referred to as a fiction is that it has no more existence than the state chooses to give it. Lord Selbourne, in Great Eastern Railway Co. v. Turner (1872, 8 Ch. App. p. 125, says: "The corporation is a mere abstraction of the law. All that it does, all that the law imputes to it as its act, must be that which can be legally done within the powers vested in it by law."

The courts, both in England and in the United States, and more especially in the latter country, have lately been showing a tendency to disregard the fiction theory when it is urged to an intent not within its reason and purpose; choosing under such circumstances to regard the corporation as an aggregation of persons. "It is a certain rule," says Lord Mansfied, C.J., "that a fiction of law shall never be contradicted so as to defeat the end for which it was created, but for every other purpose it may be contradicted." Broom, in his legal Maxims, supports this view, saying: "All fictions of law have been introduced for the purpose of convenience and to subserve the ends of justice. It is in this sense that the maxim 'in fictione juris subsistit aequitas,' is used and the doctrine of fiction applied. But when they are urged to an intent and purpose not within the reason and policy of the fiction, they have always been disregarded by the courts." The attitude of American Jurists on this point is clearly expressed in the judgment in Chicago First National Bank v. F. C. Trebein Co., 59 Ch. St. 316, 326: "The fiction by which an ideal legal entity is attributed to a duly formed incorporated company, existing separate and apart from the individuals composing it, is of such general utility and application, as frequently to induce the belief that it is universal, and be, in all cases adhered to, although the greatest frauds may thereby be perpetuated under the fiction as a shield. But modern cases sustained by the best text writers, confine the fiction to the purposes for which it was adopted—convenience in the transaction of business and in suing and being sued in its corporate name, and the continuance of its rights and liabilities, unaffected by changes in its corporate members; and have repudiated it in all cases where it has been insisted on as a protection to fraud or any other legal transaction." The author of an article in 20, Harvard Law Review, p. 223, refers to the "fiction" of the corporate entity as being "firmly established and variously applied," but that a qualifying doctrine has been proposed that in some circumstances it be disregarded. He regards the statement "that the fiction of a corporate entity be disregarded when urged to an intent and purpose not within the reason and policy of the fiction," of the tentative qualifying doctrine to be the most promising. But he questions by what standards it can clearly be determined what is "within the reason and policy of the fiction." There seems to be no urgent need of this innovation, says the learned gentleman, for the "public inconvenience, wrong, fraud or crime, to prevent which the fiction is to be adjured, can almost always be reached through other legal principles. If in scattered instances suitable established legal remedies are lacking, the legislature, which has granted corporate powers, should be left to provide against the abuse of them."

Some of the more modern writers are beginning to express doubts on the theory that a corporation can only be created by some act of the state. A view which arose from the conception of the early legalists that the corporate personality was purely fictitious and, therefore, required some authoritative act, some indication of the state's will to give it commencement. They argue that the theory that a corporation cannot exist except by virtue of the sovereign power is itself a fiction. "It is a fact," says Professor Dicey, "which has received far too little notice from English lawyers, that, whenever men act in concert for a common purpose, they tend to create a body which from no fiction of the law but from the very nature of things, differs from the individuals of whom it is composed." Mitchell, in his Canadian Commercial Corporations, claims "that it is almost obvious that bodies possessing all the attributes of corporations existed before their alleged creation by charter or statute. So that corporations, instead of being the creatures of the law, compelled recognition by the law." Mr. W. Jethro Brown points out that "the chief attributes of a corporation, such as the right of perpetual succession, the right to sue and be sued by name, to purchase lands, to have a common seal and to make by-laws belonged to and were used by organized groups of individuals acting together in a common purpose long before the conception of

(Continued on Page 5)

STUDENTS' REPORT

(Continued from Page 1)

and to raise the esteem of their future profession by bringing to it a wider culture and a more efficient training.

With these objects in view, this Committee cannot agree in the wisdom of the present system of low entrance requirements, nor in the system of concurrent office work and law school training. The undesirable results, from the point of view of both of the student and of the profession, which are engendered by these two fundamental defects in the present system of legal education, have been further accentuated by the changes that have been made in the hours of lectures, against which a protest, which went unheeded, was made by the students of Osgoode Hall immediately after the publication of the Benchers' Committee Report (13 C.B.R. 357). Other unhappy conditions have added to the general dissatisfaction with the present system of legal education. This report will accordingly proceed to discuss the improvement of legal education in Ontario under the following general heads:

1. Entrance Requirements.
2. Concurrent Law School and Office Work.
3. Present Conditions Prevailing at the Law School.

Entrance Requirements

This Committee feels that the Benchers' Committee, in a manner, recognize the desirability of a university education for all intending lawyers ... It is observable, in this connection, that since all other professions have a higher standard for preliminary training, our low standard is in effect an invitation to those heedless persons who, with no special taste or aptitude for law, are anxious to enter that profession which will honour them with its credentials at the lowest price ...

The Benchers' Committee has declined, however, to recommend that a university degree be made a prerequisite to entering the law school, placing great reliance, as above mentioned, upon the English practise, as embodied in the Report of Lord Atkins. (*The report then goes on to discuss the differences between the English and the Ontario systems which to their mind makes the finding of Lord Atkins inapplicable in this province.*) ... The legal profession in this province is admittedly and indubitably overcrowded. The most energetic and ablest young lawyers find it extremely difficult to-day to build up a remunerative practice, whilst the increasing number of cases before the discipline committee bear shameful testimony to the pressure which economic conditions are imposing upon old and young members of the profession alike. In the light of such conditions it is submitted that some sort of limitations on the annual output of lawyers has become a drastic necessity. Such a limitation, to be fair, should be applied at the entrance to the Law School course, and should be based on the principle that those men and women will be admitted who seem most likely, in the long run, to make better lawyers and citizens. It is submitted that since the Benchers' Committee has recognized "the importance of a good cultural background for all intending lawyers," and expressed the view that a university degree "is very desirable" (13 C.B.R. 351), it should now be made an essential requirement. Although it is slightly more than a year since this suggestion was rejected by the Benchers' Committee, this committee is fortified in asking for its reconsideration by the fact that "the York Law Association and other county associations and a majority of the members of the Lawyers' Club all advocate the single standard of a career from an approved university. The Dean and Faculty of the Law School are of the same opinion." (13 C. B. R. 351.)

Concurrent Law School and Office Work

The Report of the Benchers of the Law Society of Upper Canada on Legal Education (1935 13 C.B.R. 347) quite properly recognizes the division of legal education into two complementary parts: (1) Academic and (2) practical office training (352). "There can be no difference of opinion," says the Report, "in respect of the value and importance of proper office training and the immediate need of better measures to supply it" (p. 352). There is a tacit admission here that the concurrent law school and office work system, in vogue when the Report was drafted, and which, for all practical purposes, is still in effect, was and is a failure.

We need not seek far for the reasons. They are concisely stated in the Report of the Special Committee of Students of Osgoode Hall (1934 12 C.B.R. 144) and may be briefly recapitulated. Firstly, the present concurrent system does not guarantee enough office prac tise for all or any of the students under articles, because (a) there are insufficient offices in Toronto to absorb all students: (b) the condition of the legal profession is such that graduate lawyers are available at ridiculously low salaries; (c) influence of some sort is usually necessary for a student to obtain a suitable office; and (d) some students are unable to carry the burden of concurrent law school and office work with any justice to either. Secondly, the concurrent law school and office training system precludes the effectual realization of the true

(Continued on Page 6)

PRESIDENT'S REPORT

A Glimpse of the Year's Activities, As Seen in the President's Crystal

By Ernie Marks.

The editor of *"Obiter Dicta"* has graciously permitted the writer to outline briefly the policies of the Legal and Literary Society for the ensuing year. At the outset, it may be stated that the Society is the official student organization, and is composed of all the students in attendance at Osgoode Hall. Its function is to represent and interpret the views of the student body on all matters pertaining to their legal education. For this purpose, general meetings will be held throughout the year, at which students will have an opportunity to voice their views on the questions with which they are intimately concerned.

To the first year students, a most cordial welcome is extended on behalf of the upper years. To the wish that they will have a successful academic year is added an invitation to join in all the activities sponsored at the Hall.

The executive of the Society is elected annually by the students and it is the earnest desire of the present incumbents to work with the whole-hearted approval and support of all three years. When mistakes are committed—which is inevitable — constructive criticism will be welcomed and acted upon.

The chief defect of our present educational system is that it is marked by an absence of good-fellowship, which is so characteristic of other schools. Despite obvious handicaps, an effort has been made of late years to build up an "esprit de corps" and to this cause the executive pledges itself.

The monthly luncheons, which were so well attended last year, will be continued and these have proved instrumental in fostering a school-spirit. Leading members of the bench and bar will be asked to speak and with the law student price there is every reason to believe that the luncheons will attract even larger attendance than last year.

The Society sponsors lighter entertainment in the nature of dances. The "At Home," the outstanding social event of the year, will be held at the Royal York on February 12. It is hoped to have an informal dance in the fall in good advance of the Christmas exams. The chairman of the social committee is Jim Whyte of 3rd year, whose experience in that capacity at Varsity will stand him in good stead.

Another important activity at the Hall is that of moot courts and debates. The chairman of the debating committee is the popular and hard-working Frank Sanders. He and his committee will welcome all those interested in this activity, especially those of the first year. Debates are arranged with other universities and are held in parliamentary style, with speeches from the floor of the House.

The moot courts present to those who take advantage of them, the opportunity to get a practical working knowledge of court procedure. The judges are prominent lawyers and judges whose criticisms and suggestions are very valuable. The chairman of the moot courts committee is Claire Tooze, and we prophesy that he will lend fresh distinction to that office. He and his committee also extend a special invitation to the first year students.

An event of great popularity last year was the Mock Parliament. If the various political clubs will lend their co-operation, it is hoped to repeat this very novel feature.

In conclusion, a few remarks on *"Obiter Dicta"* would not be amiss. It is the official student publication, is financially independent, but is run by student literary effort. The editor is Milton Shulman, whose good work with last year's paper brought about his promotion. The executive wishes to thank him in advance for the co-operation which it knows will be forthcoming.

I. SMITH'S REPORTS

(Continued from Page 2)

"'Gentlemen, I feel the great responsibility that rests upon me this day. This is no ordinary case. On the contrary it is plain that it is the most solemn and awful that ever man was called upon to decide. Gentlemen, I have listened attentively to the evidence, and have perceived that the weight of it, the overwhelming weight of it is in the favour of the plaintiff, Hyde . . But, gentlemen, it ill becomes us to meddle with the decrees of Heaven. It is plain that Heaven in its inscrutable wisdom has seen fit to move the defendant's ranch for a purpose. We are but creatures and we must submit. If Heaven has chosen to favour the defendant in this marked and wonderful manner; and if Heaven, dissatisfied with the position of the Morgan ranch upon the mountain-side, has chosen to remove it to a position more elegible and more advantageous for its owner, it is for us to submit without repining. Heaven created the ranches, and it is Heaven's prerogative to rearrange them, to experiment with them, to shift them around at its pleasure . . . Gentlemen, it is the verdict of this court that the plaintiff, Richard Hyde, has been deprived of his ranch by the visitation of God. And from this decision there is no appeal."

Comment on the Case.

Professor Arthur L. Corbin, upon being interviewed, made the outspoken reply, "It is believed to be erroneous," he paused and then continued: "In strict confidence I should like to express myself strongly upon the subject. Although I have nothing but respect for the learned trial judge, yet, in view of all the attendant circumstances I must go on record as saying 'I doubt.' "

Dr. C. A. Wright (author of Wright's Williston's Walds Pollock on Contracts, Dr. Wright was credited with an assist). Dr. Wright merely said: "Terrible, outrageous, wholly illogical; reminiscent of some of the recent decisions of the House of Lords and the Privy Council. For a fairly reasonable treatment of the point raised see Wright's Williston's Walds' Pollock on Contracts and Seven Sarawak Reports 413.

John F. Crankshaw (Annotator of Canadian Criminal Code; the standard authority on the split infinite): "It is impossible to reasonably venture an opinion."

Mr. A. R. Clute: "I'm afraid I won't have time to do more than touch upon this point, if that; you'd better look it up for yourselves."

OCTOBER LUNCHEON

Speaking on the subject "Politics and the Lawyer" at the first luncheon of the year held in the Oak Room of the Union Station, the Honourable J. Earl Lawson, former Minister of National Revenue in the Bennett government, advised his audience of law students to be practical and warned them against attempting an excursion into the field of politics until they had developed a well-established practice.

"If you have to be in Ottawa five months in the year," continued the guest speaker, "you will find that the courts will not wait for you, and that your client will get his advice from another lawyer who will not be your partner. You cannot earn a living in politics and if you attempt to do so you will end up either financially embarrassed, disgruntled or a grafter. And there isn't much chance for the grafter because the public is too well-educated and intelligent to-day."

Mr. Lawson then went on to discuss the method by which a lawyer should start in politics. In the first place, he said, the lawyer must first adopt an attitude on public questions and a state of mind that will be intended for the serving of others. As to whether there was a place for the lawyer in politics, Mr. Lawson felt that without them the statutes Legislatives would be likely to pass would be unintelligible, and that therefore their presence prevents the passing of acts which might create hardships and injustice.

"There are three political economic systems," Mr. Lawson con-

(Continued on Page 7)

APPEALS TO THE PRIVY COUNCIL

The Whys and Wherefores of a Very Moot Point

By David C. Vanek.

Has the Canadian Legislature the authority in law to abolish the appeal from Canadian courts to the Judicial Committee of the Privy Council in England? The question may be purely of academic interest, for, no doubt, if requested to do so by the Dominion, the Imperial Parliament would enact the necessary legislation abolishing the appeal; but, nevertheless, the problem presented is of supreme importance to those who are concerned with the status of the Dominions, and of Canada in particular, within the British Commonwealth of Nations. That the final word, in cases arising in Canadian courts, should rest with a tribunal sitting in England, over which Canadian authorities have no control is in itself a serious derogation from Canadian autonomy; and the desirability of retaining the Privy Council within the Canadian hierarchy of courts is at least questionable, if not manifestly undesirable.

Appeals to the Privy Council are of two kinds: the appeal by special leave, and the appeal as of right. Appeals as of right are regulated by Canadian authorities, by whom they may be abolished, if deemed advisable. Appeals by special leave, on the other hand, are those appeals which may be taken to the Privy Council only with the special permission of the Privy Council itself. Based originally upon the prerogative of the King, the appeal by special leave was subsequently regulated for the Dominions by two statutes of the Imperial Parliament. These statutes (3 and 4 Will. IV., c. 41, and 7 and 8 Vict. c. 69), are Imperial statutes extending to the Dominions as part of the law in force in the Dominions. Hence the question whether Canada, by unilateral action, can abolish the appeal by special leave resolves itself into this: Can the Parliament of Canada enact the legislation requisite for the repeal of the Imperial legislation referred to above? If this question is affirmatively answered, there remains yet a second difficulty. Will the prerogative right of the King to hear appeals from the Dominion be revived on the repeal of the Imperial legislation? And if the prerogative is revived, can the Canadian authorities abolish the prerogative itself insofar as it extends as part of the law of Canada?

Several years ago, in an attempt to abolish appeals to the Judicial Committee in criminal cases, the following statutory provision was enacted by the Canadian Parliament: "Notwithstanding any royal prerogative, or anything contained in the Interpretation Act or in the Supreme Court Act, no appeal shall be brought in any criminal case from any judgment or order of any court in Canada to any court of appeal or authority, by which in the United Kingdom appeals or petitions to His Majesty in Council may be heard (R.S.C. c. 146, s. 1024)."

In 1926, the Privy Council in Nadan v. The King ([1926] A. C. 482), declared the provision ultra vires of the Canadian Parliament, firstly, because it was repugnant to Imperial legislation, extending to Canada as part of the law of the Dominion, and, secondly, because the Canadian Parliament had no authority to enact legislation with extra-territorial effect, but was restricted to legislation operating only within the territorial limits of the Dominion.

It was argued in a later case (British Coal Corporation v. The King, ((1935) 51 T.L.R. 508), in which substantially the same provision was in question, that by the Statute of Westminster, 1931, drafted as the result of several Imperial Conferences dating from 1926 to 1930 and enacted as an Imperial Statute at the request and with the consent of the Dominions, these restrictions on the legislative authority of the Dominion were abolished, and hence, that Canada was thereafter free to repeal Imperial legislation extending to the Dominion, and to abolish appeals to the Privy Council. Undoubtedly, one of the chief effects of the Statute of Westminster was to break the fetters on Dominion legislation imposed by the Colonial Laws Validity Act, enacted by the Imperial Legislature in 1865. It is paradoxical that this enactment, which was originally intended as a liberating measure, should itself subsequently be construed as a limitation on Dominion autonomy. The Colonial Laws Validity Act was intended to replace the old common law rule, that Dominion legislation inconsistent with the law of the United Kingdom, both statute and common law, was to the extent of that inconsistency void. The effect of the Colonial Laws Validity Act was to limit the operation of the common law principle to statutory enactments which were explicitly or by necessary intendment applicable to the colonies. This Act was clearly inconsistent with the later development in the status of the Dominions, and the Imperial Conferences, 1926-30, advised its repeal. However, by repealing the Act, it would appear that the old common law rule imposing the more stringent limitations would be revived. Moreover, the Act was still useful insofar as it applied to colonies which had not yet attained Dominion status. Accordingly, the procedure followed in drafting the Statute of Westminster was, by s. 2 (1), to repeal the Colonial Laws Validity Act in its application to the Dominions; and, so as to avoid a reversion to the common law, s. 2 (2), was inserted, whereby: "No law and no provision of any law made after the commencement of this Act by the parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of *England*, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of a parliamentof a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation, insofar as the same is part of the law of the Dominion." Thus s. 2 does away with the doctrine of repugnancy: s-s. 1 by repealing the Colonial Laws Validity Act for the Dominions, and s-s. 2 by avoiding a reversion to the old common law rule; and in virtue of s. 2, Imperial legislation continuing to extend to a Dominion as part of the law of that Dominion may be repealed or amended by an enactment of the Dominion.

Another important provision of the Statute of Westminster recognized the right of the Dominions to enact legislation effective outside their territorial boundaries, i.e., the right to legislate with extra-territorial effect. Canada has always maintained that extra-territorial power already existed before the Statute of Westminster, and this contention was reinforced by Craft v. Dunphy ([1906] A.C. 542), which, although decided after the statute was enacted, left open the issue as to the retrospective effect of the statute, and decided, that at common law, and quite aside from the statute, the Parliament of Canada had the power to enact legislation effective outside its territorial boundaries, so long as the legislation fell within the classes of subjects conferred on it by the British North America Act.

At first blush, it would seem, then, that if before the enactment of the Statute of Westminster, the

(Continued on Page 7)

THE NATURE OF A CORPORATION

(Continued from Page 3)

the corporation was thought of and the acquisition by a Borough, for instance, of a formal charter was a mere recognition by the law of these rights rather than a testimonial of them."

According to this last proposition, it would seem that these groups existed by custom, arising from the universal agreement of the whole community, which is, according to Blackstone, nothing else but the common law. As even the powers which they exercised are incidents which the common law attaches to corporations, could it not, therefore, be said that this type of corporation of which Mr. Brown speaks belongs to that class of corporation which existed by force of the common law, to which it has been implied that former kings have given their concurrence.

So far I have spoken of corporate powers in a very general way. It now becomes necessary to speak of them more specifically.

We have seen that a corporation is the legal subject of right and duties and that the right to perpetual succession to sue and being sued in the corporate name, to hold lands, have a common seal, and make by-laws are necessarily and inseparably incident to every corporation and may only be taken away by an express provision to that effect in the charter or act of incorporation.

The powers of a corporation are derived from a grant by the King or other sovereignity creating it. All powers which are not expressly conferred or fairly incidental are prohibited. (Riche v. Ashbury Carriage Co., 9 Ex. 229.) That this is true of American corporations is clearly expressed by the Supreme Court of that country in Central Trans. Car v. Pullman, 139 U.S. 24, 48. "The charter of a corporation read in the light of any general laws which are applicable, is the measure of its powers and the enumeration of those powers implies the exclusion of all others not fairly incidental." What is meant by implied or incidental powers is that, "in the absence of express restrictions, a corporation has the power to do all acts that may be necessary to enable it to exercise the powers expressly conferred and accomplish the objects for which it was created."

A corporation created by charter at common law has a capacity resembling that of a natural person. This capacity is retained by section 238 of the Ontario Companies Act for corporations created by it. But the same is not true of corporations created under the Memorandum of Association Acts.

Any discussion of the powers of a corporation might seem to be incomplete without saying a few words about the doctrine of ultra vires. But as the title of this essay is "The Nature of a Corporation," and I have a no less eminent authority than the present Chief Justice of Canada to support me in saying that the doctrine of ultra vires does not rest upon any theory as to the nature of Corporation, I am, therefore, indebted to the learned Chief Justice for preventing me from straying from my subject.

The corporate rights and powers as distinguished from those of a natural person are brought into clear relief by comparing a corporation with a partnership.

A partnership is formed by agreement between the parties and rests solely on their common law right to contract with each other, while a corporation cannot be so formed, but requires authority from the Sovereign power. In a partnership, there is no legal entity separate and distinct from the members as in the corporation, but the partnership business is conducted, and the partnership property is owned by the partners simply as individuals, and suits are brought against them as individuals only. While in the case of a corporation, it is a well-setlled and important rule that the real or personal property conveyed to and acquired by a corporation is in law the property of the corporation as a distinct legal entity, and not in any sense the property of the stockholders. In a corporation, there is "perpetual succession," while in the case of a partnership, if a member dies or retires, the firm is dissolved. In the case of a corporation, the members are not agents for the incorporated body, unless specially clothed with powers as such. In a general partnership, however, each member is an agent for the partnership with respect to all matters in the scope of the partnership business. A contract entered into by one member of a partnership is deemed to have been made for, and is binding upon, the other partners, while contracts entered into for a corporation by its authorized agents or officers are the contracts of the corporation as a distinct legal entity. The members of a partnership are individually liable for the debts of the firm, whereas the members of a corporation are not so liable.

This last distinction leads to a consideration of the limited liability of a member of a corporation under the English Common Law. "The moment a society of any kind becomes incorporated, its members do not in any way become liable for the debts and engagements of the body corporate." Lindley, L.J., in Elise v. Boyton, says: "It is not part of the prerogative right of the Crown so to incorporate persons as to make them liable to any extent to the debts of the corporation without the express authority of an Act of Parliament." Of this principle, Palmer, in the fifteenth edition of his work on Company Law, says: "It is a peculiarity of a chartered corporation that its members are under no liability for the debts of the corporation." The debts of a corporation, either to or from it, are totally extinguished by its dissoluition; so that the members thereof cannot recover, or be charged with them, in their natural capacities. The first right of modification of the doctrine of Limited liability was conferred upon the Crown by a statute, which provided that the individual members shall be liable to a specified extent in respect of their shares for the liabilities of the association. Companies incorporated under the first Companies Act of 1844 were endowed with the faculties, privileges and powers denied to an unincorporated company, with the exception that the immunity of members from direct liability was withheld from them. It was not until 1855 that a company, except those incorporated by charter, could assume limited liability.

As I find the word "Company" creeping into my treatise on corporations, it might perhaps be of some value to ascertain whether what we know in this country as a "company" is purely a "corporation" or whether it only partakes of some of the attributes of corporations. In Ontario, it is laid down by section 2 of the Companies Act that a "corporation" shall include a company whether with or without share capital and the word "company" means only a company with capital divided into shares. It would seem, therefore, that a company was not a corporation pure and simple, both on the authority of the Act and on the words of Chief Justice Strong to the effect that, "whereas about the period of 1877, companies incorporated in Canada by letters patent were corporations pure and simple, yet owing to the subsequent changes in the statute law affecting

(Continued on Page 8)

First Year Impressions

(Continued from Page 2)

strength like steel, I push the vision by."

One enters a law office, stenographers spring to attention and start a concerta on their typewriters, office boys lay down their adventure stories to lick stamps, and a sophisticated second-year student steps briskly across the office with a fistful of papers. You discreetly give your name and announce your business to be personal to an already suspicious secretary. Accordingly you are announced and ushered into the presence of a beaming barrister. Then like a bomb hurling death, destruction and chaos upon huddled, agonized victims, you release that missle of missles, "Are you in need of a law student, sir?" The inhabitants of Alcazar in all probability experienced the same sensations, but a seeking law-student plunges on with the tenacity of a whippet-tank. However, once the query is made, the attack over, the beam changes to a frown (and I'd probably frown myself if a prospective client played chameleon and turned into a pink law-student), his forehead drops, the stenographers relax and three minutes later — you're trying another office.

But there's always a consolation. Victory when it does come is sweet, and when those words, so often repeated in love stories and cinemas, "I do!" poll forth, the Dead Sea, separates before you, the walls of Jericho fall, the Gauls have surrendered to Caesar, Napoleon is "en route," Alcazar has been relieved, unemployment is with us no more; and a hero you are, "if not theoretically," as Dr. Wright so ably puts it, "yet practically."

But I have neglected Osgoode Hall in my resume of first impressions. As a youngster my conception of Osgoode Hall was that of an enormous, Norman Hall leading to a huge lecture room. If my architectural impression was erroneous "in fact," my impression of Osgoode Hall is still that of hallway where one passes from refreshing innocence to exhilarating sophistication. One merely enters and passes on. That pleasant parlour-idling that infects one at University is sterile at the "Hall" — maybe of necessity. The "hellery" for the late students at the office beckons with the voice of Stentor, as compared to the seductive whispers of the smoking lounges. That "bonhommie" which so contributes to a University is lacking because of the little opportunity presented for its conception. Coming from University I expected University, and I'm of course excused for being disillusioned.

To an exasperating degree, one's conception of law is so changed. With the solemnity of an oracle emitting from Delphi, one hears, "it is more necessary that the law be sure than just." And our introductory lecture reveals the fact that we're to disagree (and legitimately so) with Balfour v. Balfour. It is therefore with timidity that I offer the sureness of my corrected interpretation to the locanic principle enunciated by the justices. To beat up a villan, I not only have to commit assault, but also battery, trespassers cannot be prosecuted, etc., etc. As for myself, those tricky cross-examinations I planned that put the Socratic method to shame, the trapping of the lying witnesses, the swaying of the juries to tears — that's apparently not for the first-year student.

Substitutes are the quivering knees in Division Court, the continuous licking of stamps, the benumbing perusals in the registry offices, and the consolation of carrying an important-looking brief down Bay St.

Wallace Nesbitt Prize

(Continued from Page 1)

The prizes in the contest are payable out of the income of a trust fund of $10,000, created by gift of the Honourable Wallace Nesbitt, K.C., late Treasurer of the Law Society of Upper Canada, for the improvement of legal education in Ontario and the encouragement of legal research. The competition is open to any student registered and in actual attendance in the second or third year of the law school course. The topic selected by any candidate must be approved by the Dean of the Law School before the 1st day of February, and must be delivered to the Secretary of the Law Society on or before the 1st day of April, 1937. The income of the fund is administered by a committee consisting of the Treasurer of the Law Society, the Chairman of the Legal Education Committee and the Dean of the Osgoode Hall School.

BOOK REVIEWS

The Canadian Abridgment: A Digest of Decisions of the Provincial and Dominion Courts, Including Decisions Based on the Quebec Civil Code, from the earliest times to date. Edited by The Hon. Justice Riddell, F. C. Auld, D. A. MacRae, W. K. Power. Vol. I.-VI. Toronto: Burroughs and Company (Eastern).

No Canadian Legal Book Review column would be worthy of its name, if it failed to include a review of the Canadian Abridgment, and while second and third year men will doubtless already have become well acquainted with these volumes, to Osgoode Hall freshmen the Abridgment is probably still more or less of a mystery. The compiling, condensing and editing of all the Canadian cases into this one work is unquestionably the most momentous and painstaking task ever attempted by any legal publishing house in this country. Now in its sixth volume, the importance of this all-embracing collection is becoming increasingly more evident to the profession, and it may now be truthfully said that every lawyer is waiting impatiently for the next number to appear. For, while there have been many general digests of worth, this is the first attempt "to place, in a broad compass, the whole of the living Canadian case law within the reach and ready to the hand of the practising lawyer."

That the Canadian Common Law has within the past few decades acquired a freshness and originality that is peculiarly its own, no one will deny, and while the decisions of English judges are of important, and in the case of the House of Lords, even binding force, the Canadian bench has felt itself free at all times to interpret and decide Canadian statutes and problems in the light of our own social customs and institutions. With this trend towards a closely-knit Canadian legal system making itself felt more keenly every day, it became imperative that some common ground upon which this new-found legal philosophy could strengthen and grow, be established. And for supplying such a foundation, the Canadian Bar owes the editors and publishers of the Abridgment its deepest and warmest gratitude. For here, for the first time, has been summarized, compactly and simply, every case illustrating any principle of law, decided by a Canadian common law court of record.

That the compiling of such a work would entail a tremendous amount of arduous research and labour is obvious, but that the final result will be well worth the effort is the consensus of opinion of all who have had the opportunity of examining the volumes to date. To the bench it will be an invaluable aid in sifting through the mass of cases zealous counsel have presented to them, and finding those that fit the peculiar facts of the action before them. To the bar, it will be an inestimable time-saver, cutting the hours of searching through dusty tomes tremendously, while simultaneously attaining an accuracy and efficiency that will bring heart-felt gratification to both lawyer and client. To the student, the nightmare of case-books and original reports will largely disappear, when he finds a twenty-page judgment condensed for him in such a way that the meat of the decision is still there, with his not having had to plow through a confusion of fat and bones to find it.

The arrangement of the cases, the index, the printing and binding are excellent. Both technically and academically, the Abridgment shows skillful and experienced guidance. That the Abridgment will not replace C.E.D. is certain, for while the one digests and reviews the cases, the other is a running commentary on the law, containing both statutory amendments and up-to-the-minute legal maxims. That the Canadian Abridgment will be as necessary in the library of every practising lawyer as are the Rules of Practice, would be but repeating a platitude. There remains nothing more to do but to congratulate the learned editors, the publishers and all those engaged in this monumental task, and to look forward eagerly to the completion of this vast and important enterprise.

MILTON SHULMAN.

Roman Law and Common Law: W. W. Buckland and Arnold O. McNairn, Cambridge, 1936, pp. XVIII, 353; 15 s

It is somewhat odd that there are, loosely speaking, only two great systems of law known to Western Europe. In this circumstance it is definitely surprising that so many students of law are familiar with only one of these systems, the English. The principles of the Common law have only a share in ruling the Western world, and while to the Canadian practitioner they are indisputably those mose important, to the Canadian student they should be merely the guides and not the tyrants of his studies.

It is true that it is difficult to make a rapid survey, however cursory, of any system of law. Especially is this true of a system, such as the Roman law, whose development has been as different from the English as the society from which it arose. Here, however, is a volume that enables a survey of the most important of Roman law principles and institutions to be made in a short time. The effort necessary to master new or different substantive rules is minimized by the scheme of the work, which, as the title suggests, is comparative. Taking the more familiar common law principles and the problems arising in their application as a starting point, the principles evolved by the Roman lawyer for the solution of the problems which presented themselves in the Roman society are classified in a familiar classification and their similarities and differences indicated and discussed. As a consequence of this manner of treatment the basic principles of both systems are fixed in the reader's mind in ordered relation, so that the principles of the Roman law are learned and those of the Common law given a new meaning.

It is as impossible for the reviewer as it would be unprofitable to the reader to attempt to make a digest of the matter of this 350-page volume. Certain features which may be more interesting than important may, however, be mentioned. The principle of stare decisis which is popularly supposed to be the reason for the "liveliness" of the Common law, (though it played a relatively small part in its development and is the child rather than the parent of our legal system), is well known to have played no part in the Roman system. How the Romans created a legal system without its benign assistance is developed at some length. Today when the principle is being so severely criticised by many Common law lawyers, this discussion is of the greatest value.

Quasi-contract, the cuckoo in the nest of Common-law principles of contract, is given a chapter, as it was given a classification by the Romans, to itself. It is well known what logical absurdities are reached in our courts in attempting to base these obligations on consent. It is encouraging to find that the Romans, doughty jurists though they were, had no inconsiderable troubles with this themselves, though their difficulties, and in this lies the value of the discussion, arose from different reasons. The difficulties of our Courts arise chiefly because of our view of contract as an actionable agreement, involving the consent of the parties. To the early Roman jurists, however, contract was only a subclassification of a wider branch of civil obligations. A contract is a "negotium," but a "negotium" is not necessarily a contract in the sense of an agreement. While this viewpoint had its drawbacks, it at least avoided the necessity, frequent in Common-law courts, of discovering a real agreement where the parties had not even been in negotiation. Our Court will sometimes go to great lengths to achieve an equitable result. This is frequently desirable, but it is often illogical. It is magnificent, but it is not law.

The effect of fraud and mistake on contractual obligations is discovered to be much the same in both systems. But the conceptions are different, and certain legal absurdities are thus avoided by the Romans. In our law fraud inducing a fundamental mistake affects the reality of consent to such a degree that there is no contract at all. If there is no contract, then neither "party" can sue upon it, yet, gloss the matter over as we may, there is still a cause of action in the innocent party inseparably connected with the existence of a valid contract. In the Roman view, fraud was regarded, not as affecting consent, but as itself a substantive ground for relief. The question of the existence or non-existence of a contract was unimportant.

It is not to be concluded that this work is limited to a discussion of contract law, its scope is indeed the whole field of the Common and Roman law. The authors, however, did not concern themselves to any great extent with the principles of Equity, probably because this branch of our law has been elsewhere dealt with by them and others. The advantages of having the whole of the English system compared with the Roman in the same volume would however seem to outweigh any other considerations.

It may be asked, of what practical importance, granting the refreshing effect of the comparison with Common-law principles, can a study of Roman law be. As is indicated in the authors' introduction, such a study inevitably leads to a view of law as organic, as reflecting the social mind of a community, and as an adjustable civilizing instrument. Today, when the most fundamental legal concepts are straining under the burden of a changing world, this view of law is most important. The law is being altered; whether it is altered ill or altered well depends to a great extent upon the attitude to it of lawyers here and elsewhere.

G. K. DRYNAN.

STUDENTS' REPORT

(Continued from Page 3)

functions of the Law School or office training. Thirdly, there is no foundation for the assertion that the concurrent system would enable students to earn some money while attending law school. The notion is, in the vast majority of cases, a well-nurtured myth. Fourthly, students under the concurrent system, being cheap labor, are easily exploited in the interests of their firms and to their own detriment, when, having become proficient in a certain line of office work, they are kept at it throughout the period of their articles . . .

It amazes your Committee to realize that the Committee of Benchers see the law school as a mere appendage of the system of legal education centred in the law office. The Benchers' Committee fears that even now too much emphasis is placed on academic training. What are the facts? The contention that too much emphasis is laid on academic work seems devoid of substance as far as requirements for admission are concerned; these have been dealt with in the first part of this Report. Nor is there any more substance in the Benchers' Committee's contention in regard to academic work in the law school. An average working week for law students consists of thirty-eight hours, calculated on the minimum basis of five seven-hour days and three hours on Saturday mornings. Of these thirty-eight hours, ten only per week are spent in lectures; the other twenty-eight are nominally devoted to office work. In view of this fact, it seems quite inaccurate to urge that academic training is being over-emphasized and office work minimized.

It is purposeless to belabor the fact that all students are genuinely desirous of obtaining a proper office training. It is admitted on all sides that the present concurrent system cannot satisfy that desire. The real question confronting a body charged with the supervision of legal education is how and when ought that office training to be obtained, so as to permit full scope to academic training, and also as

(Continued from Page 8)

OSGOODE POLITICS

A Platform for the Piling of Planks

LIBERAL.

Honorary Presidents:
The Honorable Vincent Massey.
Senator James H. Spence.
Mr. J. C. McRuer, K.C.

Executive:
President.....J. K. Blair, B.A.
Vice-President.....J. M. Godfrey
Sec.-Treas. .....Max Sauder, B.A.
3rd Year Rep...Ross J. Dunn, M.A.
2nd Year Rep.....W. L. Moore
1st Year Rep..W. R. R. Sutton, B.A.

The Gladstone Club, as one might gather from its name, is an organization devoted to the study of the economic and political issues of the day in the light of contemporary liberal thought and professes to number its supporters from among those at Osgoode Hall who pride themselves on an intelligent and unbiased attitude toward public affairs irrespective of political affiliations.

The Club plans to carry on with the luncheon meetings so ably instituted by the outgoing executive. These luncheons, held every two weeks, afford law students an excellent opportunity to become better acquainted; but of still greater significance, the Club is able to hear some of the best speakers of the day elucidate on current problems of interest.

These short addresses have proven very interesting and instructive in the past and it is the firm conviction of the executive that those who attend will benefit by them in the future. The Club has been singularly fortunate in being able to secure several prominent men to speak.

Another phase of activity, which must not be overlooked, is the Mock Parliament, to be held sometime in January. With the co-operation of the other groups at the Hall, it is proposed to make this coming event something of interest and value to those participating.

The activities of the Gladstone Club will shortly commence; everyone being entirely welcome. Watch the notice board for the announcement of our opening meeting.

CONSERVATIVE.

The Osgoode Hall Conservative Club takes this oportunity to welcome the 1st year law students to Osgoode Hall. We are sure they will enjoy themselves during their stay at Osgoode in both their academic and social pursuits. We would appreciate it very much if all Conservatives in the 1st year would acquaint Mr. W. West of their political aspiration in order that no one should miss the opportunity of belonging to the Club and attending its functions.

There was a big turnout at the meeting of the Osgoode Hall Conservative Club on Wednesday, Oct. 14, at which the officers for the forthcoming year were elected. We would like very much if all Conservatives in the 2nd and 3rd years would get in touch with their respective representatives, or any officer of the Club. (The names of these appear below).

The outlook for the coming year is indeed bright. All indications are for a vigorous and large membership for 1936-7. As we are well aware, there is an election in the offing and all Conservative supporters should re-double their successful attacks on and criticism of the fallacies and illiberal policies of the Government.

For the benefit of newcomers we would point out that the purpose and aim of the organization is to train and give experience to young Conservatives at Law School. That this policy is sound and has been often fulfilled is witnessed by such outstanding leaders as Col. Geo. Drew, K.C.; C. W. Bell, K.C.; E. J. Murphy, K.C.; Leopold Macaulay, K.C.; Wilfred Heighington, K.C., and many other leaders in the affairs of our country. We would urge all law students to attend our meetings. They will hear such men as the above and others speaking and presenting their views on problems which are befuddling the present Government. By taking an active part in the Club's activities we will have opportunities of acquiring the views of experienced political veterans, which should aid us to take over in our turn the representation of our various constituencies. We must not lose sight of the fact that the young political enthusiasts of to-day are the members of Parliament and administrators of our countries affairs to-morrow. The invitation to join the Osgoode Hall Conservative Club is opportunity knocking at your door.

We would therefore, remind all those interested in the Conservative cause to enroll in the Club and share its benefits and opportunities. The date and speaker at the first meeting will be posted shortly on the bulletin board. We urge you again to take advantage of this opportunity to develop your political talents. Don't forget there will be a mock parlitment during the year in which we will defend our policies against the Opposition.

The officers for 1936-37 are as follows:

President: A. K. Henderson B.A.
Vice-Pres.: Wm. Roberts, B.A.
Sec'y.-Treas.: E. McLeod Tew, B.A.
3rd Year Rep.: P. Armstrong, B.A.
1st Year Rep.: W. West, B.A.

C.C.F.

The Osgoode Hall C.C.F. Club was formed last year. The purpose of its formation was to enable those law students who believe in the creation of a Socialist state, as proposed by the Co-operative Commonwealth Federation, to meet and feel a sense of unity of purpose. The Club is a staunch supporter of the C.C.F. Party. Its members feel that the present economic system is not working in the best interests of the majority of Canadians, and that only through Socialism will the greatest happiness for the vast majority of our people be achieved.

The C.C.F. group took an active part in the Mock Parliament and made its presence felt. It intends to participate in any such future activities. If the membership is sufficiently large, well-known speakers will be invited to address the Club.

If you share our views, join us and you will find a warm welcome.

The executive elected at the last meeting consists as follows: President, I. Freeman, B.A.; Vice-President, A. C. Franklin; Secretary-Treasurer, S. Shniffer, B.A.

EXTRA -- CURRICULA

News and Previews of the Past and Coming Months

MOOT COURTS.

One of the chief extra-curicular interests of the students at Osgoode Hall is their participation in Moot Courts, and since the inauguration of the Legal and Literary Society, it has been one of its most important functions to sponsor and encourage this form of student activity. Here the student is given the opportunity of pleading cases before well-known judges and in this way gain for himself invaluable experience in addressing a court and in developing that forensic ability which is so necessary for a successful career at the bar.

The courts take on the form of an appelate division with either a High Court Judge or some very prominent lawyer presiding. The subject matter of the cases are carefully chosen, so that they may be of use to the student in his course of study at school. There are at the present time lists waiting to be signed for all those who are interested in this form of legal expression. The committee strongly urges all students to take advantage of the opportunity here presented to them and hopes to continue this important and interesting activity with as much success as others have had in the past. The committee is composed of the following members: Claire Tooze, Third Year; William Warrender, Second Year; Jack Jefferies, First Year.

FALL DANCE.

On the night of Friday, October 16th, Osgoode Hall students will be given their first opportunity to forget the arduous hours spent on legal lore, and at Hunt's Savarin on Bay Street be given the chance of demonstrating their terpsichorean abilities in the arms of their fair companions. For on that evening, the Executive of the Lit has arranged the first Osgoode Hall dance. In the past, this affair was held in December and was known as the Christmas dance, but because it was more or less a formal party and due to the fact that it was held too close to examination time, it proved to be a financial failure. This year, however, the Executive feels that by having an informal dance much earlier in the year, the attendance will be larger and more enthusiastic.

The Committee has planned the serving of an excellent buffet luncheon and the reasonable price of $1.50 per couple, including tax, is being asked. Such a sum should be well within the reach of everyone, and this popular dance spot of Toronto's winter season should be crowded for the first Osgoode party of the year. Bring your friends and have a good time.

GRADUATION PHOTOGRAPHS

The first omen that the end of a long session of schooling will soon be brought to a close for most of us comes with the announcement that the time for taking graduation photographs has come.

Once again we are favouring the Lyonde Studio at 112 Yonge Street and sittings will commence Wednesday, October 14th. We are asking the students of third year to co-operate so that the sittings may be completed as soon as possible. Appointment cards have been given out and if the time specified is not convenient, will those students desiring a different appointment please communicate with Mr. Lyonde at Adelaide 2667 and arrange for a sitting at another time. There is no need to take your own outfits for the photographs, as Mr. Lyonde will provide the necessary legal ar ay.

The cost of each sitting is $2.50, payable at the time of the sitting, and this amount includes a copy of the group pictures for each student. The student is under no obligation to order photographs and if he does order them, he may order as great or as small a quantity as he may choose. The prices which Mr. Lyonde will be pleased to discuss with you are special student rates and appear most reasonable.

Now is the time to make your debut in legal splendour, so go to the Lyonde Studio at the time that we have arranged and see how "coming events cast their shadows before them."

FIRST YEAR ELECTIONS

The annual election for the first-year representative of the Legal and Literary Society took place on October 2nd and after a close ballot Mervin Mirsky was elected out of a field of some five candidates.

First year may well be complimented on their choice, for Mervin Mirsky has earned for himself a brilliant reputation as both a speaker and an executive of note. He is a graduate of the Law course of the University of Toronto, was a member of the Hart House Debates Committee, Speaker of the University College Parliamentary Club, and a well-known debater, having teamed with his brother to win the coveted Robinette Debating trophy. He is at the present time permanent secretary of his graduating year, and is well equipped both with experience and ability to ably represent the first year on the executive of the Literary Society.

OCTOBER LUNCHEON

(Continued from Page 4)

tinued. "Communism which attempts to drag those in the highest social strata down to the level of those in the lowest; fascism which is a dictatorship fostering the ancient plan of might is right; and democracy which defines the freedom of action decided by the majority and gives the person in the lowest levels an opportunity of attaining the highest."

"But democracy to-day keeps 20% of its people in destitution and want, and makes the rest of the taxpayers support them," he said. "Such a system can't survive and therefore it must be changed. This can be done by means of social and paternal legislation, such as minimum wage laws, maximum working hour laws and proper housing schemes. These changes however cannot be brought about because of our constitution. The constitution must be changed and there is no group of men better fitted both by training and by intellect for this task, than are the lawyers.

"If you should decide to serve the state," concluded Mr. Lawson, "you must always keep in mind that your country is your client, and her perpetuity must be a large portion of your fee and retainer."

Appeals to Privy Council

(Continued from Page 4)

only restrictions on the power of the Dominion to abolish appeals to the Privy Council were twofold: the doctrine of repugnancy, and the inability to legislate with extra-territorial effect, that since these restrictions had been abolished, the Dominion now had full power to do away with Privy Council appeals. Nevertheless, it is not quite certain, in the first place, whether the Imperial Statutes regulating the appeal from the Dominion entirely superseded the prerogative of the King in respect of appeals, and whether, if these statutes were repealed, the prerogative right to hear appeals would not be revived; and, if such appeals are based on the prerogative of the King, does the Statute of Westminster grant the right to a Dominion legislature to repeal the prerogative so far as it applies to the Dominion? Does the "law of England" referred to in s. 2 mean the law in three aspects: statute, cannon law and prerogative? Moreover, assuming that it is competent for a Dominion legislature to repeal or amend the prerogative, there are stringent rules of construction to be reckoned with. The repeal could not be effected by "a side wind," but only if the power to repeal had originally been conferred and had been exercised by express words or necessary intendment. However, in British Coal Corporation v. The King (supra), the Privy Council declared valid substantially the same provision which before the enactment of the Statute of Westminster was declared by the Privy Council in Nodan v. The King (supra), to be ultra vires; and in the course of the judgment, it was held that the Imperial statutes regulating the appeal had entirely superseded the prerogative. Although this decision has been attacked on the ground that it was based on politics, rather than law, yet it is a decision of the highest court of the realm and must be accepted as law.

There remains yet a further difficulty. So far as criminal matters are concerned, it would appear from the recent decision in the British Coal Corporation Case, that the Dominion has effectively prohibited appeals being taken outside of Canada. In civil matters, however, there are two types of courts from which appeals may still be taken: Federal courts and provincial courts. The regulation of the federal courts is within the competence of the Dominion legislature; whereas the regulation of provincial courts rests with the individual provinces. By the Statute of Westminster, although the federal parliament is given the power to enact legislation repugnant to the law of England insofar as it extends as part of the law of the Dominion, and to enact legislation having extra-territorial effect, the exercise of these powers is restricted by the statute to those subjects of legislation which by the constitution of the Dominion are conferred on the federal legislature. Thus, whereas it may be argued, particularly in view of the decision in the British Coal Corporation case, that the Dominion legislature may abolish appeals in civil matters from federal courts, it does not equally follow that the appeal may likewise be prohibited from the provincial courts. And, indeed the possibility of legislative action on the part of the Dominion abolishing the appeal in respect of federal courts, without similar action in respect of provincial courts being taken is not a pleasant thought. Under such circumstances, imagine an appeal being taken from a provincial court to the Privy Council, and a decision on the law in direct conflict with a previous decision of the Supreme Court of Canada, from which the appeal had been abolished! Utter chaos would result, the Supreme Court maintaining one view of the law, the Privy Council upholding a contrary view.

Clearly, then, in order effectively to abolish the appeal, it would be essential to abolish the appeal in respect of provincial courts. As has been shown, the necessary legislative action is outside the competence of the federal legislature. Is it within the competence of the provincial legislatures? There are no decided cases directly in point; and consequently it must be with diffidence that one would attempt an answer to this question. By the Statute of Westminster, the powers granted under s. 2 to the federal parliament were extended to the provinces. This was a startling innovation which had not previously been agreed upon at the conferences of 1929-30. However, the new powers granted to the provinces, as in the case of the Dominion, could only be exercised in respect of those subjects of legislation already within the competence of the provinces. Moreover, the statute did not grant the provinces the right to pass extra-territorial legislation; and, indeed, by s. 92 of the British North America Act, the provinces are limited to legislation in relation to matters merely of a local nature, leaving the implication that the provinces may not enact legislation having extra-territorial effect. Yet it is contended by many that, aside from the Statute of Westminster, and at common law, the provinces may by extra-territorial legislation make ineffective the right of appeal from provincial courts, and in support of this view, dicta in Croft v. Dunphy (supra), Hodge v. The Queen ([1883] 9 A.C. 117), and Regina v. Burah ([1878] 3 App. Cas. 889) are usually quoted. What view of the law would be accepted by the courts as correct to-day, it is difficult to say. Let us venture no dogmatic opinion on the point. Suffice it to state that there is some authority for either view; and that, since no extra-territorial powers are granted to the provinces under the Westminster statute; and since, for the most part, it has been the accepted view that no such powers existed at common law, we cannot regard the contrary view as anything but problematical.

In conclusion, to summarize the result of our enquiry, so far as criminal matters are concerned, legislation has already been enacted prohibiting appeals to the Privy Council, and the Privy Council has itself declared the legislation to be intra vires. As to appeals in civil matters, in view of this decision, no doubt the federal legislature is competent to abolish appeals from federal courts, but it has no authority to act in respect of provincial courts. Finally, as to the competence of the provincial legislatures, it is not clear that they have the power to enact extra-territorial legislation, and consequently it is doubtful whether they are competent to abolish appeals from provincial courts.

To those who look in the direction of Dominion autonomy, it is doubtless a disagreeable thought that Canada is dependent upon an English tribunal for decisions pertaining to problems that are justly Canadian in character, and that this tribunal may not be abolished by Canadian authorities if considered to be advisable by them. Some solace may be derived, however, from the principle of the equality of status of the Dominions and the Mother Country expounded in the Balfour Declaration of 1926. There is no desire on the part of the United Kingdom to enslave the Dominions. Above all, it must be remembered that the restrictions on the legislative activity of the Canadian legislatures are for the most part essentially self-imposed. At the Imperial Conferences, 1926-30, and in the drafting of the Statute of Westminster, the United Kingdom was willing to make large concessions to the Dominions. Unfortunately, in the case of Canada, because of the federal nature of the constitution, full advantage of such concessions could not be taken. Indeed, it was at the direct request of Canada that s. 7 was inserted in the Statute of Westminster, whereby the alteration of the British North America Act, otherwise than in the manner theretofore employed, was not to be affected by the operation of s. 2. Thus, although Canadian authorities may in law have full power to abolish appeals from Canadian courts to the Judicial Committee of the Privy Council; if such is not the case, there is little doubt that the United Kingdom would accede to a formal request from the Dominion to abolish such appeals. It still remains for Canada herself to reach a definite decision on the problem.

THE NATURE OF A CORPORATION

(Continued from Page 5)

shareholders' liability, such companies are of the nature of joint stock companies, which, (to use the expression of Lord Justice Lindley) are a statutory hybrid between a partnership and a corporation."

Following upon a discussion of the powers of a corporation, it is necessary to consider what liabilities are imposed upon it by general laws and by any rules of law which are peculiar to the political constitution of the body corporate.

Wegenast says: "That a company, like a natural person, is subject to general laws respecting the regulation of contracts, the holding and transfer of property, the payment of taxes and the like, as well as general laws, like the Criminal Law."

A corporation, like a natural person, is responsible for the torts of its agents on the principle of "respondent superior." The best statement of the law on this point, and one which has been followed by the House of Lords on many occasions, is that of Mr. Justice Willes, in Barwick v. The English Joint Stock Banking Company, L.R. 2 Ex. (Ch.) 259: "The master is liable for every such wrong of his servant or agent as is committed in the course of his service, and for the master's benefit, because, although the master may not have authorized the particular act, he has put the agent in his place to do that class of acts, and he must be answerable for the manner in which that agent has conducted himself in doing the business which it was the act of the master to place him in." In Alexander v. North Eastern Railway Co. (1865), 6 B. & S. 340, a corporation was held answerable for a libel. An action for assault was successfully maintained in Butler v. Manchester Railway Co. (1888), 21 Q.B.D. 207. While in Moore v. Metropolitan Railway Co. (1872) L.R. 8 Q.B. 36, a corporation was held liable for false imprisonment. At one time there was some doubt whether a corporation could be held liable for false imprisonment, because it was questionable whether the necessary degree of malice could be attributed. Since the case of Pratt v. British Medical Association (1919), 1 K.B. 244, the rule has been that a corporate body can be guilty of actual malice in the case of any kind of tort in which actual malice is an ingredient. So also a corporation may be liable for fraud or for deceit. "The principles," says Wegenast, "of the liability of a corporation for negligence and nuisance are so well known as to require no citation."

At one time it was thought that a corporation could not commit torts or be held liable for the wrongful acts of its officers or agents, but, as we have seen, this view has long since been exploded. A similar notion obtained in early times as to the criminal liability of a corporation but it has long since been settled that they are fully amenable to criminal prosecution, not only for offences such as criminal negligence, for which a corporation was indicted and convicted in Rex v. Canadian Allis Chalmers, Ltd. (1923) 54 O.L.R. 38, but a corporation has been found guilty of manslaughter.

In Union Colliery Company v. The Queen (1901), 31 S.C.R. 81 at p. 90, a person was killed as a result of the negligence of the defendant corporation who was indicted for and convicted of criminal negligence, but it was said in the Supreme Court of Canada, per Sedgewick, J. "It is further argued that as the indictment disclosed a case of manslaughter, and as (as is stated) an indictment will not lie against a corporation for manslaughter, the conviction was not maintainable. It is possible that the facts alleged in the indictment would be sufficient to sustain an indictment for manslaughter against an individual, but the offence alleged in the indictment here is not manslaughter. . . It is not, therefore, necessary here to express any opinion as to whether or not under the present state of the law and its constantly broadening and widening jurisprudence on the subject of the civil and criminal liability of bodies corporate, they are capable of committing the offence." In view of what Mr. Justice Sedgewick has said, it would seem quite possible for a corporation to be found guilty and convicted of manslaughter. The criminal liability of a corporation for malicious libel was established by Lord Campbell in the case of Whitefield v. South Eastern Railway Co., E.B. and E. 115.

As in the case of torts a corporation is responsible for the fault or misconduct of its servant acting within the scope of their employment or apparent authority. It was held by Channel J. in Gunston & Tee v. Ward (1902), 2 K.B. 1 at p. 11, that where certain acts are forbidden by law under a penalty . . . the offender is liable whether he had mens rea or not." This principle was applied to a corporation in Mousell Brothers Limited v. London and North Western Railway (1917), 2 K.B. 836 at p. 846, by Atkin J. "Once it is established that this is one of those cases where a principle may be held criminally liable for the act of his servant, there is no difficulty in holding that a corporation may be the principle. No mens rea being necessary to make the principle liable, a corporation is in exactly the same position as a principle who is not a corporation." One of the possible difficulties that might have confronted the earlier courts in determining the criminal liability of corporations is the fact that a corporation could not be imprisoned. Our Criminal Code, Sec. 1035, has, however, overcome this difficulty by providing "any corporation convicted of an indictable or other offence punishable with imprisonment, may in lieu of the prescribed punishment be fined in the discretion of the court before which it is convicted. '

We have seen that the corporation has come to us from Italy, that it has a separate personality, which has been created by a fiction, and that the more modern opinion are beginning to qualify that doctrine, also that a corporation can only be created by a sovereign power, though there is opinion to the contrary. We know that a corporation has certain powers which are necessarily and inseparably incident to it and that it is limited to these and the powers expressly or impliedly set out in its charter. We have considered the distinction between a corporation and a partnership, the principle of limited liability and the contradistinction between the word 'company' and 'corporation,' and have discussed corporate liabilities. All this would seem to cover pretty thoroughly the nature of a corporation, without going into the history or provisions of The English or Canadian Companies Acts, the different types of companies and corporations, such as joint stock, private, public companies; municipal, ecclesiastical, educational and de facto corporations and corporations sole. Once the nature of the corporation has been established these different types are just offshoots from a common source.

DAMAGES GIVEN FOR ITCH

Washington.—The United States Supreme Court declined to interfere with the ruling by the Oregon Supreme Court awarding Ralph Compton, the mate, $1,000 against the Hammond Lumber Company of Oregon, owner of the vessel which operates between Pacific coast and Gulf of Mexico ports. The mate claimed he had contracted the itch from the ship's cook. The lumber company contended there was no evidence that either the mate or the cook had the itch.

STUDENTS' REPORT

(Continued from Page 6)

to afford all students an office training that will not be merely perfunctory, but of real value to the students themselves. This appears to be the only question with which the Benchers' Committee failed to deal.

This Committee does not hesitate to say again that the present concurrent system is futile in its effect and wasteful in its tendency. Office training after graduation and before call seems to be the only sensible remedy in order to permit full advantage to be gained from a thorough training in a full-time law school, after which proper attention can be paid to the practical side of legal education without other distractions.

Present Conditions Prevailing at the Law School

This Committee feels that the recommendation of the Benchers' Committee that "the organization, methods of study and examinations be at all times under the control of the Committee (Benchers)" (13 C.B.R. 356) is a retrogressive step. While there should be, and no doubt is, the fullest co-operation possible between the staff at the law school and the Benchers, the need of freedom from extraneous influences of any kind, dictates that the staff alone be responsible for the conduct of examinations. Further, the interests of legal education demand that as little interference as possible with the work of the staff should take place. This Committee is of opinion that the excellence of the staff is at present sufficiently handicapped by a system that places them between Scylla and Charybdis — that makes them choose between lecturing critically, while knowing that the students cannot, without extreme assiduity, follow the lectures intelligently, and feeding the students digested principles without the concurrent stimulation of critical analysis in the light of social conditions. The plight of the staff can only be resolved by a full-time law school that will enable the members of the faculty to embark on a unified scheme of instruction.

This Committee thinks it is not amiss to point out here that a full-time law school would enable more "laboratory" work to be done — as, for example, exercises in the drawing of agreements, wills, deeds, etc. This is a valuable experience that not even an office training can supply in adequate measure. . . .

Changes in lecture courses should be considered as well as the necessity of adding new ones. In this respect, this Committee would direct attention to the Students' Report of 1934 (12 C.B.R. 169) and to the Benchers' Report of last year (1935, 13 C.B.R. 356). This Committee thinks also that a course in jurisprudence would better enable students to appreciate the relation of law to society in general; in such an aspect, the value of such a course cannot be minimized.

A course of regret to this Committee is the meagre supply of text books in the students' library. While the library facilities are otherwise excellent, such of the new text books as are recommended by the staff would be continually added to the library. The law journals of the various law schools in England and the United States should likewise be available to the students in the students' library. All these improvements will add to the achievements of those purposes for which the legal profession strives. This Committee cannot refrain from restating its opinion that law must be considered as a social science, and as a profession, not a trade. Yet the almost abysmal ignorance of the social sciences that exists among lawyers, not only in Canada, but in England as well, has reduced the profession, in the mind of the ordinary layman, to the status of a trade. . . .

This Committee feels that the Benchers cannot consistently with their function and responsibility in regard to legal education continue to turn a deaf ear to the suggestions for improvement contained in this and the previous Students' Report on legal education. Not least among the voices to be listened to in discussing problems of legal education should be that of the students themselves, especially when, as here, theirs is not a voice "crying in the wilderness," but is one that in concert with the voices of many others, teachers and practitioners both, demanding a system of legal education more suitable to the current times than the one with which this province is at present burdened.

All of which is respectfully submitted.

Dated at Osgoode Hall, this 6th day of April, 1936.

(Sgd.) BORA LASKIN,
(Chairman).
JOHN R. ANDERSON,
E. MOFFAT HANCOCK,
G. ARTHUR MARTIN,
G. GORDON BRADSHAW,
G. A. STILES,
ERNIE MARKS.

NEW WAY TO GET INSURANCE

Little Rock.—The Arkansas Supreme Court held recently that the beneficiary of a life insurance policy could recover from the company even though the policy holder had been executed legally for crime. The court ordered the Progressive Life Insurance Company to pay $300 to Essie Dean, Helena negro woman, for the death of her brother, C. D. Ward. He was executed at the Missouri Penitentiary August 19, 1935, for criminal assault.