

each other and to declare war, one or both resort to the use of limited force, and it is left to third states to decide whether in relation to the disputing states, they prefer the laws of peace or neutrality. Such a relationship is described as *status mixtus*.

The author's approach to these problems is realistic, his method empirical. It is a thought-provoking work, well worth the attention of even the most advanced students, although it is rather rich fare for beginners.

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MECHANICS' LIENS IN CANADA

By DOUGLAS N. MACKLEM and DAVID I. BRISTOW, with a chapter on the Quebec Law of Privileges by JOHN W. DURNFORD. Toronto: The Carswell Company Limited. 1962. Pp. xxxi, 476.

Practitioners will welcome a new textbook on the Canadian law relating to mechanics' liens. The law of England does not provide the kind of protection afforded to workmen, contractors and suppliers by Canadian mechanics' lien legislation, and there has been a lack of convenient reference material on the principles applied in the more than 700 cases reported since the first Mechanics' Lien Acts were adopted in Manitoba and Ontario in 1873.

Students too will be pleased to learn that the authors of this book have adopted an analytic and comprehensive approach which does much more than merely collate decisions in digest form.

In this respect the present book is a vast improvement over the earlier *Handbook on Canadian Mechanics' Liens*, by MacAulay and Bruce. Although the new work purports to be a second edition of the earlier handbook, it is in fact a new textbook, and one which is in most respects much superior to the earlier one.

Those who have used MacAulay and Bruce cannot fail to have been irritated by their unusual method of case reference. They supplied a table of cases in the introductory pages, with a number assigned to each case. References to cases in the course of the text were not by name but by number, and to find out what cases were referred to it was necessary to refer constantly to the case list.

Macklem and Bristow have more sensibly referred to the cases by name and citation. Unfortunately, they have not availed themselves of the standard practice of using footnotes, and the resulting lack of continuity in their comments makes for difficult reading at times. Further-

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more, they have not troubled to indicate the province in which a case has been decided, so that the reader does not know whether a "W.W.R." or "D.L.R." citation refers to a case which is authority in his province or not.

Difficulties of style, however, do not seriously detract from the usefulness of the book.

Those who have puzzled over how to calculate the amount of hold-back required in building contracts, particularly when a contract has been abandoned or unfinished, will find new light thrown on their problem by the new text.

There is also a good discussion on the trust fund provisions of the Mechanics' Lien Acts. Such provisions were added to the Ontario statute only in 1942, and to the British Columbia Act in 1948, and there had been no reported decisions on them when MacAulay and Bruce went to press. The subject was there treated in a single page, with no mention at all of the Manitoba Builders and Workmen Act¹ which, of course, has embodied the trust fund principle for decades in this province. Macklem and Bristow devote ten pages to their treatment of the matter, and review the several cases which have come before the courts since 1955.

The authors have attempted to produce a textbook useful throughout Canada, and in large measure they have succeeded in this purpose. There is a "Table of Concordant Sections" which is of some help in comparing Manitoba law with Ontario law. Regrettably, in several places the authors speak of provisions contained in "some of the other provinces", without specifying which provinces they are referring to.

Manitoba practitioners should be on guard against accepting all the statements of law as being necessarily applicable to Manitoba. The authors say, for instance, that:

until registration the lien is liable to be defeated by a conveyance of the property to a subsequent purchaser who registers his conveyance without actual notice of the claim for lien.²

This may be the law of Ontario, but in Manitoba Certificates of Title under the Real Property Act are deemed to be subject to unregistered mechanics' liens,³ so it is an unwary solicitor who will close a real property purchase without requiring a Declaration as to Possession.

In another place, the authors say:

At the expiration of the holdback period the "owner" or the person primarily liable should make a search in the appropriate Registry or Land Titles Office to ascertain if any lien has been registered. If none has been registered, and he has no notice in writing as required by several of the Acts, then he is free to pay out the holdback.⁴

In Manitoba, it is at least doubtful if an owner would be justified in paying out without searching the Day Book as well as the Certificate of Title. It is notorious that titles sometimes do not contain memorials of

1. R.S.M. 1954, c. 28, s. 3.

2. P. 156-7.

3. R.S.M. 1954, c. 220, s. 62 (i) (e).

4. P. 87.

documents until several days after registration. Since it is practically impossible in most Land Titles Offices to search the Day Book, the only safe course would seem to be to wait until a Certificate of Search can be obtained, dated after the thirty-day holdback period.

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COMMON MARKET LAW

By ALAN CAMPBELL and DENNIS THOMPSON. London: Stevens & Sons. 1962. Pp. xx, 487.

Lawyers, perhaps considering themselves beset with enough problems of their own, have tended to dismiss the European Economic Community (or, in short, the Common Market, or the Six) as a playground for the economist and industrialist, and a battle-ground for the politician. The very title of this book, however, should help to bring home to the legal profession that such a dismissal is, to say the least, a little short-sighted. If Britain should join the Community we would face a situation with legal issues affecting many established common law concepts.

At the Messina Conference in 1955, the representatives of the Six (France, West Germany, Italy, Belgium, Holland and Luxemburg) declared that it was their object:

to achieve a united Europe through the development of common institutions, the progressive amalgamation of national economies, the creation of a common market and the gradual harmonization of their social policies.¹

These objects are certainly more far-reaching than the establishment of a simple economic union, which some seem to regard as the only effect of the Treaty of Rome, which created the Community. In fact, the institutions of the Community which have already been established are the European Parliamentary Assembly, the Council of Ministers, the Commission and the Court of Justice. A cursory glance at these names may serve to jolt the lawyer out of a lethargic dismissal of the Market as a mere economic union. As the authors of this book say:

the field of the Treaty is vast and its framework provides ultimately for international legislation on a plane which has never been seen before.²

In Chapter 1 the authors trace how and why the above six countries came to form this new Community, and then give a brief survey of the scope and general application of the Treaty of Rome. Even if the reader gets no further (though it is hoped he will) this chapter, in its short compass

*Of Walsh, Micay & Co., Winnipeg.

1. Quoted at p. 4. 2. P. 9.