BOOK REVIEWS

THE LAW OF COSTS. By Mark M. Orkin. Toronto: Canada Law Book Limited, 1968. Pp. xxiii and 364.

The appearance of a new Canadian textbook on costs is welcome. Lawyers will be grateful that Mark M. Orkin, who gave us the only Canadian text on Legal Ethics, has made another contribution to the text material available to the Canadian practitioner.

The consideration of the problems arising in the law of costs on a textbook basis is to be commended. The gaps in the usual abridgment on annual practice are just too great and it is that kind of publication which we have been forced to employ since Cameron, published in 1901, outlived its usefulness.[1]

One must point out that while the book does not purport to be restricted to Ontario and its publisher's advertising material indicates it to be of general application, it is very much oriented to Ontario rules and practice and a practitioner in Alberta could not avoid making frequent references to our own rules and our own practice.

An example calling for caution in accepting the positive wording of the text is to be found in the chapter dealing with costs and appeals. At page 223 the proposition is advanced that since an appeal as to costs only requires leave the appeal court has no power to interfere with the exercise of the Trial Judge's discretion as to costs when leave has not been given, even if there is an appeal with respect to other matters. This view is contrary to the practice in Alberta and reported English authority.[2] A similar problem is encountered in accepting the general principle enunciated that on appeal from the taxing officer the court will not interfere with the discretion of the taxing officer, since, for example, Alberta rules expressly authorize the court to interfere with discretion.[3]

A further example of the Ontario bias will be found in the omission of any discussion of contingent fees which, whatever may be the position in Ontario, are not only used elsewhere but expressly sanctioned.[4]

One sympathizes with Mr. Orkin and his publishers who no doubt wish to make the text useful beyond Ontario and to incorporate relevant decisions from elsewhere. It is, however, a difficult task and the caveat against total acceptance in the other provinces must be accepted.

This is not to say that the book is not useful because in the great majority of cases the rules and principles applicable are at least similar throughout Canada.

Many practitioners would probably feel justified in acquiring the text if for no other reason than to have laid out interpretations of the

1 Cameron, *Costs*, Canada Law Book (1901).
2 *Wheeler* v. *Somerfield* [1966] 2 Q.B. 94, [1966] 2 W.L.R. 1007. The principle is also recognized in Alberta: *Waterton* v. *Prudential Trust* (1967), (Alta. A.D.) affirmed by S.C.C. without discussion of this point (1968) 68 D.L.R. (2d) 562.
3 Alberta Supreme Court Rules, Rule 657.
4 The Judicature Act, S.A. 1967, c. 38, s. 4; see Williston, *The Contingent Fee in Canada* (1966), 6 Alta. Law Rev. 184.

various classifications of costs which we so often encounter. Many of us are not fully aware of the accepted definition of the terms that we so glibly employ. There is, however, an accepted distinction between "costs to a party in the cause" and "costs to a party in any event of the cause" and between "costs as between solicitor and client" and "costs as between solicitor and his own client". The common expressions are all defined as are the basic principles of entitlement to costs.

Moreover it should be pointed out that the author does not often fall into the error so commonly encountered in Canadian textbooks of using what one must call "the abridgment" principle which usually results in the enunciation of the rule followed, perhaps not immediately, by numerous qualifications and sometimes by flat contradictions. While one has to read the full section in Orkin in order to pick up all of the exceptions and modifications the author seems to have avoided this disease typical to Canadian textbooks.

The book does not purport to be and is not a primer on the preparation of solicitor and client accounts. It does, however, undoubtedly fill a need and should find its way onto the shelves of those practitioners with any volume of litigation.

—W. A. STEVENSON*

* Professor, Faculty of Law, University of Alberta.

THE MIXED COURTS OF EGYPT. By Jasper Yeatles Brinton. Montreal: McGill University Press, 1968. Pp. xvi and 305. ($12.50).

At the present time, when the tendency among the States of the world is to condemn as neo-colonialism any attempt to confer special status on aliens, such institutions as *The Mixed Courts of Egypt* tend to be ignored in university courses, or to be regarded as nothing more than an historic curiosity to be mentioned apologetically and *en passant.*

In fact the capitulatory courts in Egypt had a major role to play in assisting that State to become the important commercial and trading centre that it did after 1876. Until their abolition in 1949 they offered the foreigner, trader and resident alike the guarantee that his legal rights would be protected not in accordance with the vagaries of the local law or the special provisions, which he would probably reject, of the Koran; but in the light of the European juridical and commercial traditions to which he was accustomed.

Dr. Brinton, a citizen of the United States, who was himself a Judge of the Mixed Courts from 1921-1948, and President of the Court of Appeals from 1943 to 1948, has written what must be regarded as the history and the epitaph of this unique institution, which in its heyday, dealing with well nigh every case involving a foreigner, issued anything up to 40,000 written opinions a year.

In view of the strains and stresses that now exist between Egypt and Israel involving allegations of ill-treatment of its Jewish residents by the Egyptian Government, it is perhaps as well that Judge Brinton calls attention to an early Claudian papyrus addressed to the citizens of Alexandria, in which the Emperor deplores the feuds, "or rather,