

## Correspondence

### The Apparent Futility of Privative Clauses

TO THE EDITOR:

I have read with some interest and not a little concern the article by Professor Bora Laskin in your December 1952 issue on *Certiorari to Labour Boards: The Apparent Futility of Privative Clauses*. I can only say that I am most thankful that the courts have so far exercised the judicial review of which he complains. Perhaps Professor Laskin might find his answer in the first paragraph of part V of his article starting on page 1000, in which he suggests that legislative and governmental control is sufficient to protect a person from the "absurd" action of an administrative agency protected by a privative clause in decreeing the divorce of a person appearing before it or in condemning him to jail or to be hanged. It might be small comfort to the person hanged, or to his family, to know that legislative and governmental control might obviate reliance on a superior court. Indeed, as it is, not a few of us find small comfort in legislative or governmental control. Legislative control and governmental control are usually identical and are usually exercised with a view to securing the most votes at the next election, whether or not individuals suffer.

A further answer may be found in the last sentence of the same paragraph, "Where the matter relates to an act of the board in the area of its function, the privative clause gives it the same privilege of rendering 'bad' decisions as is exercised by superior courts". Does Professor Laskin mean by the words "the area of its function" a prescribed field and, if he does, is it not the right of the court to interpret what that field is? If he means by those words an indefinite expanse into which any subject directly or indirectly, remotely or closely, affecting the dispute may be brought, then where is there protection for anyone, even from the dire perils mentioned by Professor Laskin? If he means a precise field, the courts have always said that once the matter is found to be within that field the tribunal has the *same* privilege of rendering bad decisions as is exercised by superior courts. No courts are

allowed to act other than judicially and the courts rightly expect that labour tribunals will also act judicially.

May I observe that the objections to the courts' treatment of decisions of labour tribunals seem to come frequently from the same sources as the objections to the appearance of members of the legal profession before them or as members of them? May the day never come when the courts will not be alert to protect the liberties of the individual subject, and may the legal profession ever be alert to assist the courts in that task.

G. E. EASTMAN\*

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TO THE EDITOR:

May I presume to comment briefly on Mr. Eastman's letter, which you gave me an opportunity to read prior to its publication. While I cannot hope to match the expression of fervid emotion with which Mr. Eastman concludes his letter, I do not yield to him in devotion to the preservation of liberty. I am unable, however, to share his view that curtailment of court authority to review administrative board decisions is *ipso facto* a violation of liberty. And there is a further question whether Mr. Eastman's interpretation of liberty in purely economic terms does not make his emotional outburst rather suspect.

I am somewhat concerned that Mr. Eastman should find it necessary to explain my article to me, as he purports to do in his letter. Either he has missed the point of the article or I have failed in its articulation. Let me say that I have simply advanced the thesis that a legislative direction to the courts ought not to be ignored by them, however much they may be out of sympathy with the purpose of the direction. I do not quarrel with anyone who seeks to challenge the wisdom of such a direction by the legislature. But this is a far different thing from supporting the courts in their disobedience to a statutory ouster of their supervisory authority.

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## Books Received

*The mention of a book in the following list does not preclude a detailed review in a later issue.*

- Canadian Regions: A Geography of Canada.* Edited by DONALD F. PUTNAM. London: J. M. Dent & Sons Ltd. Toronto: J. M. Dent & Sons (Canada) Limited. 1952. Pp. x, 601. (\$9.00)
- Chalmers on Bills of Exchange: A Digest of the Law of Bills of Exchange, Promissory Notes, Cheques and Negotiable Securities.* Twelfth edition by BARRY CHEDLOW. London: Stevens & Sons Limited, Toronto: The Carswell Company, Limited. 1952. Pp. xliii, 390. (\$9.50)
- Classical Roman Law.* By FRITZ SCHULZ. Oxford: At the Clarendon Press. Toronto: Oxford University Press. 1951. Pp. xii, 650. (\$7.50)
- Current Law Consolidation 1 1947-1951.* General Editor: JOHN BURKE. Consolidation Editor: CLIFFORD WALSH, LL.M. London: Sweet & Maxwell, Ltd. Toronto: The Carswell Company, Limited. 1952. Pp. dclxxvii, [paras.] 11123, 53. (\$30.25)
- Detention in Remand Homes: A Report of the Cambridge Department of Criminal Science on the Use of Sec. 54 of the Children and Young Persons Act, 1933.* With a preface by L. RADZINOWICZ, LL.D. London: Macmillan and Co., Limited, Toronto: The Macmillan Company of Canada. 1952. Pp. x, 92. (\$2.40)
- The Dominion of Ceylon: The Development of its Laws and Constitution.* By SIR IVOR JENNINGS, Q.C., Litt. D., LL.D., and H. W. TAMBIAH, B.Sc., LL.B. Volume 7, The British Commonwealth: The Development of its Laws and Constitutions. London: Stevens & Sons Limited. Toronto: The Carswell Company, Limited. 1952. Pp. xvi, 319. (\$10.75)
- Fine Papers: Investigation into Alleged Combines in the Manufacture, Distribution and Sale of Fine Papers.* Report of Commissioner, Combines Investigation Act, Department of Justice, Ottawa. 1953. Ottawa: Queen's Printer and Controller of Stationery. Pp. v, 433. (No price given)
- Hayes & Jarman's Concise Forms of Wills.* Eighteenth edition by KENNETH WARNELL RUBIN, LL.B. London: Sweet & Maxwell Limited. Toronto: The Carswell Company, Limited. 1952. Pp. xc, 332. (\$13.25)
- An Index to the Australian Law Journal: Vols. 1-25 (1927-1952).* Compiled by R. ELSE-MITCHELL, LL.B. Sidney, Brisbane and Melbourne: The Law Book Co. of Australasia Pty Ltd. Pp. 284. (No price given)
- The Instrumental Detection of Deception: The Lie Test.* By CLARENCE D. LEE. Police Science Series. Springfield, Illinois: Charles C. Thomas, Publisher. Toronto: The Ryerson Press. 1953. Pp. xv, 249. (\$7.75)
- The Juvenile Court in Law.* Ottawa: Canadian Welfare Council. 1952. Pp. 63. (\$1.50)