# Reviews and Notices

*Parliament: A Survey.* By LORD CAMPION and Others. London: George Allen & Unwin Ltd. 1952. Pp. 296. ($5.25)

This volume is the product of a series of lectures given, in the main, by specialists on the various aspects of parliamentary government in Britain. The Department of Extramural Studies of the University of London invited a number of parliamentarians, lawyers, historians and civil servants in the summer and autumn of 1947 to join a group to study parliamentary government in Britain. The group held twenty meetings under the chairmanship of Mr. J. J. Craik Henderson. Following these discussions a series of ten weekly lectures was delivered during the first quarter of 1950; these lectures in turn form the basis of the present volume.

What the authors of these lectures have to say about parliamentary government is conditioned, as might be expected, by their experiences or observations of parliamentary practices in Britain. Nevertheless, many of the problems that are discussed have their counterpart in the Canadian parliamentary experience. For example, the Rt. Hon. L. S. Amery gives an analytical as well as an historical description of parliamentary government in "The Nature of British Parliamentary Government". His pronouncement that on the Opposition rests the main responsibility for what was once the critical function of parliament as a whole was substantiated in our own 21st Parliament, which had a large and in the main docile majority accepting the wishes of the front benches without demur. The critical function of parliament, with but few exceptions, was carried out by the members of the three opposition parties.

The comparisons Professor D. W. Brogan makes with the American and French political systems bring out some of the basic differences that have evolved in the principal democratic countries. The major difference that has developed, as he clearly indicates, is that the system of government in Britain and France depends on a unity between the executive and legislature, whereas the American system, on the other hand, rests on a separation of these two functions. Professor Brogan pointedly notes that the lack of unity between these two branches of government in the United States and

their short-lived and highly vulnerable unity in France have compelled both to find a substitute for cabinet government in the committee system. He brings out in fair perspective the merits and demerits of both the committee system and the cabinet system. To the parliamentarian, however, the cabinet system, with the executive in the House of Commons to account for its actions to Parliament as a whole, and dependent on the support of Parliament, is a vastly superior system to the one that obtains in the United States, where it is often difficult to judge who has power in a particular field.

Mr. J. J. Craik Henderson in his lecture, "Dangers of a Supreme Parliament", is really concerned with the supremacy of the Cabinet, with its almost unlimited power derived from its control of the majority party in the House of Commons. Mr. Henderson, like Sir Arthur Salter in his lecture on "Cabinet and Parliament", is deeply concerned with the change that has taken place in the relations between cabinet and parliament, in the shifting of power from the House of Commons to the executive. The problem of maintaining a proper balance of power between the cabinet and the House of Commons poses no less a problem for students of the Canadian constitution, though there is this one important difference, that the Canadian cabinet is prevented by our system of federalism from achieving the degree of sovereign power possible to the English cabinet. Here it is necessary for any federal government to share power with ten other governments having complete supremacy in respect to those matters allotted to their exclusive jurisdiction by the British North America Act.

Mr. Henderson suggests that a strong second chamber be established with general powers to reject, in particular, those measures which endanger fundamental rights. There are numerous arguments against the establishment of a second chamber having or approximating co-ordinate powers with the House of Commons. Perhaps the main one is that under our parliamentary system a second chamber with such powers, and not being an elected body, is liable to incur the charge of being irresponsible and, as indicated by the Australian experience, to have a second chamber on an elected basis may not prove any more effective. The difficulties in the way of reform, which are great, are shown by Mr. F. W. Lascelles in his chapter on "A Second Chamber". Mr. Lascelles has reviewed the many suggestions advanced to strengthen the second chamber, as well as actual attempts that have been made, not only in Britain but elsewhere, and it is perhaps significant that he does not arrive at any solution.

In so far as strengthening the Canadian Senate is concerned, it should be kept in mind that, excepting the fact that the Senate may not introduce or amend financial bills sent up from the Com-

mons, it has theoretically much the same powers as the House. For example, it may introduce any other measure and has the power to reject outright any kind of measure passed by the House of Commons. There are many who believe, and I suspect with good cause, that even if the Senate did not have its present large Liberal representation, it would still be reluctant, through fear of risking public censure, to reject any important measure passed by the elected House of Commons.

A strong executive is essential to our parliamentary system, as is conceded by both Mr. Henderson and Sir Arthur Salter. The risk of its becoming dictatorial and irresponsible can be checked by several methods. For example, the opposition could be rendered more effective by making available more adequate research facilities, which would provide opposition members with easier access to information than is presently possible. In other words, if the opposition had the assistance of a "civil service" on a minor scale for research work, the opposition would become more knowledgable with regard to the government's activities and consequently would be in a stronger position to expose them when it is felt that they are not in the public interest. The rules of the House are already flexible enough to permit the raising of grievances and easier access to information would assist the opposition member to make better use of the opportunities afforded for debate. I believe that this offers a better solution to the problem than establishing a stronger second chamber, even if that were practicable under our system.

The lecture by Professor Goodhart on "Parliamentary Control over the Nationalized Undertakings" deals with the problem of how to keep public corporations responsible, a relatively new problem arising out of modern economic and social needs. The question of the status of these corporate bodies, the extent to which a minister and Parliament are responsible for their activities, and the general concern with preventing them from growing into autocratic bodies responsible only to themselves, are dealt with in an interesting and thought-provoking manner by Professor Goodhart. These are problems which still require considerable study. Although we in Canada have now had a fair degree of experience in setting up crown corporations, we have not as yet had recourse to the device on the same scale as in Britain.

But from our experience to date it is evident that public corporations, despite criticism from certain quarters, can be made responsible to Parliament and at the same time achieve administrative flexibility. It is true that a minister is not responsible for the administration of Crown bodies. On the other hand, Parliament exerts considerable control over them in a number of more important ways. The work of crown companies can be examined by a Parlia-

mentary committee each year. Their accounts and transactions are audited by the Auditor-General and members of Parliament have access to this information. In some instances, especially where the public corporation is a non-trading concern, Parliament controls their finances, voting sums of money for their operations. What is more important, crown corporations are subject to general policies laid down by Parliament. It would appear that the problem of effecting a responsible relationship of these public bodies to Parliament, and at the same time permitting them a flexibility in administration they could not achieve if they were established directly under a government department, is not as profound as many critics would have us believe.

Professor E. C. S. Wade makes a valuable contribution in "The Courts and the Constitution", describing the rôle played by the courts under the British constitution. He has summed up clearly and well the rôle to be played by an independent judiciary in a country without a written constitution, where Parliament is virtually supreme. A statute enacted by the United Kingdom Parliament cannot be interpreted to see whether it violates a written constitution and is, therefore, incontestable; on the other hand, the judiciary is concerned, as Professor Wade points out, "with ensuring that administration is conducted according to law and that arbitrary conduct by the rulers shall not be substituted for law . . .". The relation of Canadian courts to the constitution is of a far different nature, as might be expected under a system of federalism. We have a written constitution that distributes powers between the federal authority, on the one hand, and the provincial authorities, on the other. Our Supreme Court must be primarily concerned with seeing to it that neither authority exceeds its power as defined by the B. N. A. Act, or conflict will develop.

Safe-guarding the rights of the individual in Canada is an uncertain matter and less satisfactory than in Britain, where tradition and precedent have created a respect for civil rights that unfortunately does not always obtain here. Civil rights largely lie with the provinces and, although the federal government has the power to disallow a provincial statute which it believes is jeopardizing civil rights, experience has taught that political considerations are too often taken into account in deciding whether or not that power will be exercised. A bill enumerating the rights of Canadians might be incorporated in the B. N. A. Act, though Parliament itself may be handicapped in making the amendment because of its limited jurisdiction. It has been suggested, and I believe the suggestion has merit, that the federal government refer a bill of rights drawn up by Parliament to the Supreme Court of Canada for an opinion on the degree to which the fundamental freedoms of the citizen are matters for the federal or provincial jurisdictions.

In his lecture on "Delegated Legislation", Sir Cecil Carr deals directly with a subject that recurs throughout this volume, the growing power of the executive over Parliament. He cites many examples of subordinate legislation and his material should prove of particular value to students of the subject. It will always be largely a matter of opinion as to what are matters of principle and what matters of detail, the former being the undisputed prerogative of Parliament and the latter within the discretion of the executive. An alert opposition, strengthened in the manner I have already suggested, should do much to prevent the unnecessary assumption of power by the executive.

Lord Campion has contributed two lectures of interest, "Parliament and Democracy" and "Parliamentary Procedure, Old and New". The latter is a discussion of the development of House of Commons procedure, consisting of a review in some detail of certain aspects of the evolution of procedure during the last seventy-five or eighty years. Mr. H. E. Dale, in "Parliament in relation to the Civil Service", presents a valuable discussion of the relationship between these two bodies and examines the influence each exerts on the other. Although Parliament must always be the master and the civil service the servant, it should come as no surprise to any one to read of the influence the civil service can and does have over Parliament, largely through the advice it gives to its immediate superiors, the ministers, and to a lesser degree through the limited contact between individual members of Parliament and of the civil service.

The chapter on "The Organization of British Parties" by Mr. Ivor Thomas contains many interesting facts on the organizations of the various British parties. Here the reader may learn something of the many minor parties that are either integrated with the Labour, Conservative or Liberal parties, or have no representation in the House of Commons.

This is a stimulating book and the Canadian reader who wishes to obtain a better insight into the problems confronting our own parliamentary government will profit from a study of it.

M. J. COLDWELL*

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*Copyright and Industrial Designs.* By A. D. RUSSELL-CLARKE. London: Sweet & Maxwell, Limited. Toronto: The Carswell Company, Limited. 1951. Pp. xv, 261. ($7.25)

A novel feature of this book is that it deals under one cover, as the

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title indicates, with both copyright and industrial designs. The first 138 pages are devoted to the law of copyright. Other works, *Copinger* for example, deal with this branch of the law at greater length and in more detail, but for the reader, either lay or professional, who prefers the summarized and digested type of text-book the answer is here. The principles are briefly but at the same time clearly expressed and the case citations are numerous and useful.

The classification of industrial designs has always been a source of confusion. For example, the term "copyright" is frequently used in English statutes in connection with designs, but in Halsbury's Laws of England designs are dealt with in part VI of the subject of trade marks. Designs and trade marks are again grouped together by Dr. Harold G. Fox in his useful work, *Canadian Law of Trade Marks and Industrial Designs*, though he is careful to distinguish designs from other branches of the law of industrial property, such as patents, trade marks and copyright. Mr. Russell-Clarke, on the other hand, approaches the problem of classification from the opposite and positive point of view, and devotes his chapter 24 to showing the similarities and overlapping between copyrights and designs. His premise is that the right protected by the law of industrial designs is copyright.

In Canada designs were formerly registered in and administered by the Patent Office, as they still are in England, and came to be called loosely, "petty patents". Mr. Russell-Clarke probably gives the explanation for much of the confusion when he says in his preface:

> The reason why no attempt has so far been made to embody all aspects of the subject [of copyright] under one cover is probably attributable to the fact that when in 1875 registration of designs was, for convenience of administration, transferred to the Patent Office, industrial copyright came to be associated with patent rather than copyright law.

Dr. Fox quickly and firmly disabuses us of any idea that designs are a kind of minor patent, and Mr. Russell-Clarke goes on to say that:

> The law of copyright in industrial designs has always borne a closer affinity to the law of artistic copyright than to the law of patents.

And he might have added that the law of industrial designs has even less resemblance to the law of trade marks, though in Canada designs are now registrable in the Trade Marks Office.

The Canadian law of industrial designs is set out in the Trade Mark and Design Act (R.S.C., 1927, c. 201). The trade-mark provisions of this statute were repealed and replaced by the Unfair Competition Act, 1932 (Statutes of Canada, 22-23 Geo. V, c. 38), and the design provisions left behind were merely consolidated, without even a renumbering of the sections, into what is now called the Design Act. The resulting statute is of the most sketchy char-

acter and gives little assistance to the practitioner who is asked to solve a problem in this field. It contains no definition of an industrial design and outlines the right of action for infringement in the vaguest and most general of terms. The only hint of a definition is in section 39(a) where it is stated that every person commits an offence who without right "for purposes of sale, applies or attaches such design or a fraudulent imitation thereof to the ornamenting [note the word] of any article of manufacture. . .".

Thus an industrial design in Canadian law would seem to be something applied to an article of manufacture, or commerce perhaps, for the purpose of "ornamenting" it. Contrast this signal lack of guidance with the definition under the English statute (Patents and Designs Act, 1907, 7 Edw. 7, c. 29, and amendments), which states simply and clearly that:

> 'Design' means features of shape, configuration, pattern or ornament applied to an article by any industrial process or means, being features which in the finished article appeal to and are judged solely by the eye, but does not include a method or principle of construction or features of shape or configuration which are dictated solely by the function which the article to be made in that shape or configuration has to perform.

It is interesting to consider that this definition comes from a country that we are sometimes pleased to tell ourselves is backward in merchandising methods. We live in the plastic age, on the threshhold of the atomic age, and we refuse to buy even a kitchen spoon unless it is brightly coloured, streamlined in shape and bears features of jet propulsion to captivate the popular imagination. Industrial designing is big business. And yet we wander on with one of the most haphazard and inadequate pieces of legislation ever enacted in Canada to guide the practitioner and protect the citizen who exercises his original imagination in order to ease the monotony of living with the mundane objects of daily existence.

The result is that the courts, practitioners and public in Canada must turn to the law of England when confronted with a legal problem in industrial designs. Dr. Fox has made a masterful attempt to conjure from almost nothing a Canadian theory of law, but it is not enough. We clearly need a new statute and, carrying the thesis of Mr. Russell-Clarke to its logical conclusion, the statute ought to take the form of an amendment to the Copyright Act (R.S.C., 1927, c. 32). Until this vision has been reduced to brute matter, we need Mr. Russell-Clarke.

STUART B. RALSTON*

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*The Polygraphic Truth Test: A Symposium.* By WILLIAM WICKER, EDWARD E. CURETON, and PAUL V. TROVILLO; with Comments by HUDSON JOST, GEORGE W. CRANE and RUSSELL B. CHATHAM. Reprinted from the Tennessee Law Review, Vol. 22, February 1953. Pp. 64. (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)

*Drug-Induced Revelation and Criminal Investigation.* By GEORGE H. DESSION, LAWRENCE Z. FREEDMAN, RICHARD C. DONNELLY and FREDERICK C. REDLICH. Printed in the Yale Law Journal, Vol. 62, February 1953, Pp. 33. ($2.00)

The Canadian reader may open the first two of these publications from the United States with a skeptical conviction that the polygraph (the most highly developed of those instruments, carelessly, though popularly, termed "lie detectors") is a gadget meriting no serious legal consideration. He will find fascinating reading, and will finish them convinced that the polygraph is no magic box; that it is a scientific instrument of compelling significance.

We have heard very little in Canada of the scientific development and increasing use of these instruments in the United States. Some may recall reading that in August 1948 the House Un-American Activities Committee of the United States Congress, during the initial stages of investigating the allegations of Whittaker Chambers against Alger Hiss, invited Hiss to take a lie-detector test. Hiss asked for time before giving his decision and unfavourable inferences were undoubtedly drawn from his apparent unwillingness to take the test. Again, in March 1953, Senator Joseph McCarthy demanded, in the United States Senate, that the President's nominee as ambassador to the Soviet Union, Charles Bohlen, submit to a similar test as a condition precedent to confirmation by the Senate. Though these incidents were widely reported in the newspapers, the Canadian reader may have been more inclined to consider them congressional idiosyncracies peculiar to American politics than dramatic illustrations of the increasing reliance being placed upon the polygraph in many and diverse phases of American activity.

The assembled data indicate most convincingly that the instrument, properly used, can be an effective aid in the detection of lies. Polygraphic interrogation is based upon a simple theory. Lying usually causes changes in the blood pressure, the pulse and the respiration. Neutral questions establish the subject's normal blood pressure level and pulse response level. Variants in the established

levels, upon pertinent interrogation, are significant in the detection of deception. The polygram (the record of changes in the blood pressure, pulse and breathing) is interpreted in conjunction with the list of questions asked. The examiner may then express an opinion (it is important to note that this is an opinion only; the polygram examiner is endowed with no higher evidentiary status than any other expert witness) whether the examinee was lying or telling the truth when he answered designated questions; or his opinion may be that the record is too ambiguous to justify expressing an opinion. All the authors agree that the validity of polygraphic interrogation cannot be assessed apart from the background, training, experience and integrity of the examiner. An untrained, inexperienced examiner is no more capable of detecting deception with a polygraph than a layman is of diagnosing a heart condition with a stethescope or cardiograph.

The symposium is the more readable of the two publications dealing with the polygraph and provides an excellent introduction to the subject. It is written objectively, is comprehensive in scope without being technical, and contains the bibliography and case references essential to closer study. The symposium was conducted by the College of Law of the University of Tennessee with a thoroughness that seems to be characteristic of that intellectually restless institution. In an introduction, Dean Wicker gives a studied assessment of the law of evidence relating to the polygraphic truth test. It is his submission that the legal profession should be aware of the scientific progress in the field of deception detection. He comments upon sixteen decisions of various American appellate courts and concludes that so far they have consistently refused to approve the court-room use of truth tests, with two possible exceptions: (1) where both parties to the litigation are willing to resort to a polygraph test and stipulate that the results shall be admitted in evidence; (2) where an accused has been told that his polygraphic responses indicate he was lying, the test results are admissible on the limited issue as to the voluntary nature of his subsequent confession. Nearly all the cases give as the principal reason for exclusion the fact that the tests have not gained such scientific recognition among physiological and psychological authorities as would justify the courts in admitting expert testimony based on them. Dean Wicker convincingly suggests that the validity of this conclusion is, in the light of recent developments in machine and technique, fast disappearing.

Though legal precedent has delayed judicial recognition of polygraph activity in the United States, its general acceptance in other fields is striking. In business, industry and preliminary criminal investigation its use has mushroomed. In hundreds of banks, hotels, retail stores and industrial plants, polygraph examinations have

become routine in personnel procedures. The plain objectives of these examinations are to protect the loyal and honest employee, and keep him from becoming disloyal and dishonest. Apparently Lloyd's of London is sufficiently impressed with the value of periodic polygraph tests to reduce the premium on fidelity bonds to banks that give them to their employees. Police departments and other investigative agencies in all parts of the United States are using polygraph tests daily to aid in finding stolen property, obtaining confessions and eliminating innocent persons from a list of suspects. In some American defence industries and government agencies in which sabotage is an obvious possibility, both pre-employment polygraph testing and periodic testing of those already employed is an established procedure; and even American lawyers are sending clients to polygraph examiners to check their stories before taking cases on a contingent-fee basis.

Professor Edward E. Cureton of the Department of Psychology, University of Tennessee, contributes to the symposium an impressive analysis of the validity of polygraph techniques. Paul Trovillo, a forensic psychologist, writes on the methodology and techniques of the polygraph operator, and the symposium ends with articles of general comment by Dr. Hudson Jost of the Department of Psychology, University of Georgia, and Dr. George W. Crane, a consulting psychologist.

Clarence Lee's monograph, *The Instrumental Detection of Deception*, is necessarily of more restricted interest. Written as one of the Police Science Series, it is essentially a technical description of tests and techniques for use in administering banking, retail-store, industrial and insurance personnel. The author has a rather distressing pre-occupation with the angular language of the eager scientist, but perhaps some of this is essential to the adequate description of the various instruments and the physiological explanation of the techniques relevant to each. The monograph will prove essential to law enforcement administrators using deception-detection instruments and as a text for courses in instrumental deception-detectors.

The symposium entitled "Drug-Induced Revelation and Criminal Investigation" was published in the Yale Law Journal in what almost seems concert with the Tennessee Law Review. The contributors are four faculty members of Yale University, Professors Dession and Donnelly of the Law School, and Professors Freedman and Redlich of the School of Medicine. This inquiry, too, was motivated by the hope of finding an elixir to help in establishing the truth of verbal testimony. The subject of their inquiry is popularly referred to as "truth-serum", though the drugs so classified are not serums, and people do not always tell the truth under their influence.

Sodium amytal is the most common pharmacological agent used in this type of personality study. The method is properly termed narcoanalysis, a term indicating a state of partial consciousness induced by drugs and an interview with the patient in this condition. The drug acts as a depressant upon the subject's central nervous system. Present conclusions indicate that only individuals are induced to confess under the influence of the drug who have conscious or unconscious reasons for doing so; though there can be no doubt that, conducted under properly controlled conditions by a qualified psychiatrist with experience in its use, an interview in which the subject is partially under the influence of a drug may be a proper and valuable auxiliary procedure in a thorough diagnostic examination. The American cases reviewed in the symposium have obviously strained to resist the introduction of interviews given while under the influence of drugs. The authors forcefully submit that when the subject has volunteered to undergo to a thorough psychiatric examination, the psychiatrist should be permitted to take the results of a drug-induced interview into account as data in forming an opinion about the subject's mental condition and personality structure. This complex matter is dealt with thoroughly, with comprehensive references for further study.

Canadians who have a nostalgia for the days when cross-examination was considered an adequate engine for the extraction of truth will be relieved to know that neither polygraph interrogation nor narcoanalysis has, to this date, found fertile soil in Canada. The Department of Justice has advised me, in reply to an inquiry about the use of the "lie detector" and similar instruments in Canada, that it has no information. Undoubtedly police officers, in cities near the American border, have on rare occasions been involved in the use of "lie detectors" in co-operation with American police. Some Canadian employees of American companies have, too, been required by their employers, on occasion, to submit to polygraph interrogation in the United States.

On December 4th, 1945, the Windsor Daily Star announced on its front page that it had arranged a lie-detector test "for the first time in Canadian history". The subject was one Raymond Haggerty of Windsor, who had been convicted of an attempted armed robbery for which he was sentenced to twelve years imprisonment. With the permission of the then Attorney-General of Ontario, the Daily Star brought Dr. Leonarde Keeler to Windsor and Haggerty volunteered to submit to the test. It was Dr. Keeler, a pioneer in polygraph development, who was to have given Alger Hiss his test. Haggerty was examined in the Essex County Court House on December 3rd, 1945, and for those interested the Windsor Daily Star of December 4th withholds no details of it. In brief, it was Dr. Keeler's opinion that Haggerty was not involved in the

particular offence for which he was convicted, but that he was a "border-line psychopathic" and probably guilty of offences equally serious of which he had not been convicted. No official action was taken.

This reviewer is aware of no other instances in which the polygraph has had Canadian use. As to narcoanalysis, it is undoubtedly in use as a standard psychiatric technique; but I also know of no case where it has been of legal consequence in Canada. Possibly we are too timid in our approach to forensic experimentation; possibly we lack the investigative curiosity of the Americans; or possibly we are skeptical of "truth aids" and, like Montaigne, believe that we are destined never to find that elusive creature, truth.

SYDNEY PAIKIN*

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*The Law Relating to Wills, with Precedents of Particular Clauses and Complete Wills.* By W. J. WILLIAMS, B.A. Two volumes. London: Butterworth & Co. (Publishers) Ltd. Toronto: Butterworth & Co. (Canada) Ltd. 1952. Volume I, Law of Wills, pp. xvi, 624; Volume II, Precedents, Tables and Index, pp. xxii, 625-1389. ($29.50, the two volumes)

Since new editions have recently appeared of both the established English texts on the law of wills, *Jarman* and *Theobald*, it is natural to wonder why anyone in the United Kingdom should have thought it worth while to undertake the heroic labour of a new treatment of the same subject. Apparently there were three reasons that persuaded Mr. Williams. In the first place, there was no other work that combined a comprehensive statement of the law of wills and a complete set of will forms. Secondly, when a statement in the text is supported by a reference to a number of decisions the author was not to be content, as others have been, with giving a mere list of them, but, where possible, an attempt would be made to indicate the essential differences of fact or law. Finally, a large number of decisions in other parts of the Commonwealth was to be included.

All these objectives unquestionably involved improvements on existing practice and Mr. Williams is entitled to have confidence that the skill and learning he has shown in attaining them will earn for his new work the recognition it deserves. Canadian lawyers will welcome the inclusion of references to decisions of their own courts and the courts of commonwealth countries other than the United Kingdom, as they must welcome any breach in the almost impenetrable parochialism of the Inns of Court. They may, however, feel that the choice of Canadian cases has been somewhat whimsical.

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For example, on the subject of testamentary capacity, the only decisions of the Supreme Court of Canada referred to are *Re Poirier Estate, Leger* v. *Poirier*, [1944] S.C.R. 152, and *Laramée* v. *Ferron* (1909), 41 S.C.R. 391. Similarly, on undue influence and the so-called rule in *Barry* v. *Butlin*, *Craig* v. *Lamoureux*, [1920] A.C. 349 (P.C.), is referred to, but not *Harmes* v. *Hinkson*, [1946] 3 D.L.R. 497 (P.C.); and in the chapter on foreign wills no mention is made of the useful Ontario cases of *Re Howard* (1923), 54 O.L.R. 109, and *Re Teale* (1923), 54 O.L.R. 130. In the chapter on the Inheritance (Family Provision) Act, 1938, *Walker* v. *McDermott*, [1931] S.C.R. 94, is mentioned, but not *Pouliot* v. *Cloutier*, [1944] S.C.R. 284, or *Meyer* v. *Capital Trust Corporation Limited*, [1948] S.C.R. 329. One must, however, be grateful that the author has gone so far as he has in a field where admittedly the problem of selection is most difficult.

Mr. Williams points out in his preface that his approach to the law of wills has been practical rather than analytical. He tells us what, in his view, the cases decide, but not what he considers they should have decided in order to bring them into harmony with his own conception of the principles involved. There is a minimum of criticism and a maximum of description. In other words, this work is essentially a practitioners book of reference. As such it is both comprehensive and concise. To a Canadian lawyer who knows where to find the Canadian decisions that are not mentioned, it should be very useful.

With each year's accumulation of reports, the task of adequately preparing an argument on an application for construction of a will, or for advice on a question arising in the administration of an estate, becomes heavier, no matter how much reading one has done in the past. Perhaps that is one reason why our decisions on will cases sometimes raise the suspicion that the court has failed to receive the sort of assistance in argument to which it is entitled. A work of this kind, well designed to facilitate the preparation of an argument and thereby to assist the bar in meeting its responsibilities toward clients and the court, should be received with gratitude.

The second volume of Mr. Williams' work contains an extensive collection of will forms, both individual clauses and complete wills. These forms show the combination of learning and technical skill one would expect to find in the draughtsmanship of the conveyancing editor of the *Encyclopaedia of Forms and Precedents*, and set a standard of conveyancing technique it would be hard to match in this country. They show also, of course, the revolution in conveyancing practice introduced in England by the Birkenhead statutes of 1925, a fact that must be kept constantly in mind by any Canadian lawyer who consults an English collection of forms. It is,

perhaps, unfortunate that in Canada Mr. Williams' forms are likely to be of most practical value to those who need them least: to those experts who may find a useful suggestion in the solution of some special problem rather than to the general practitioner looking for some clause or series of clauses he can transcribe almost verbatim. But this is in the nature of things.

The forms are fully annotated on specific points and with cross-references to the general text. The author has been meticulous in explaining his reasons for the provisions and phraseology he recommends, and when a clause is given an efficacy about which he has doubts, as, for example, a clause of forfeiture for disputing the will, he does not hesitate to say so. Those who, since *Re Wynn*, [1952] Ch. 271, have doubted whether a testator can go very far in authorizing his trustees to adjust, in their discretion, the conflicting interests of beneficiaries, will find the author sharing their doubts.

Apart altogether from the high quality of the contents, these volumes are admirable as a piece of book-making, being neither too bulky for comfortable handling nor too compressed for legibility. Whoever assisted with the proof-reading deserves a special accolade.

TERENCE SHEARD*

## Party Feelings

A Christian Judge, in a free land, should, with the most scrupulous exactness, guard himself from the influence of those party feelings, upon which, perhaps, the preservation of political liberty depends, but by which the better reason of individuals is often blinded, and the tranquility of the public disturbed. I am not talking of the ostentatious display of such feelings; I am hardly talking of any gratification of which the individual himself is conscious, but I am raising up a wise and useful jealousy of the encroachment of those feelings which, when they do encroach, lessen the value of the most valuable, and lower the importance of the most important, men in the country. I admit it to be extremely difficult to live amidst the agitations, contests and discussions of a free people, and to remain in that state of cool, passionless, Christian candour, which society expect from their great magistrates; but it is the pledge that magistrate has given, it is the life he has taken up, it is the class of qualities which he has promised us, and for which he has rendered himself responsible: it is the same fault in him which want of courage would be in some men, and want of moral regularity in others. It runs counter to those very purposes, and sins against those utilities, for which the very office was created; without these qualities, he who ought to be cool, is heated; he who ought to be neutral, is partial: the ermine of Justice is spotted: the balance of Justice is impoised: the fillet of Justice is torn off; and he who sits to judge after the law, smites contrary to the law. (Sydney Smith: The Judge That Smites Contrary to the Law. 1824)

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