BOOK REVIEWS
REVUE DES LIVRES

Le Contrôle Judiciaire de l'Administration au Québec. By RENÉ DUSSAULT. Quebec: Laval University Press. 1969. Pp. xxv, 487. ($8.75)

British textbook writers habitually treat administrative law and constitutional law together, as related parts of a single topic. This notion seems a little strange to us in Canada, partly because we tend to think of constitutional law primarily as the division of legislative powers between Parliament and the provincial legislatures. In fact, there is a good deal more to our constitutional law than just that: the sovereignty of Parliament or the legislature, the role of the federally-appointed judges of the provincial superior courts, the principle of judicial review, the rule of law, Crown liability and immunities, and the prerogative powers. One cannot secure a proper understanding of the basis or scope of administrative law or judicial review of administrative action unless one sees it in the light of these fundamental principles of our constitution.

The above-mentioned book finally gives Canada a textbook which does these things. The title of the work is unduly modest, for although it does concentrate upon the decisions of Quebec courts and certain Quebec legislation, it is by no means confined to Quebec law. Only a small proportion of the pages is devoted to matters which have no application outside Quebec. The range and thoroughness of the research which has gone into the book are revealed by the bibliography, table of cases, and the extensive footnotes found throughout the book. The authorities and writings cited come from all over Canada and the rest of the Commonwealth, and not just from the Province of Quebec. The citations are completely up to date, and an Appendix added as the work was going to press covers the latest important decision of the Supreme Court of Canada in this area.

The first half of the book gives a good general introduction to the Canadian constitution (apart from questions of distribution of legislative power). Doubtless some commentators might quarrel with Mr. Dussault's interpretation of the present status of Dicey's

theory of the rule of law, or with his interpretation of the maxim that "The King can do no wrong", but these are a matter of opinion. The discussion of section 96 of the British North America Act is invaluable, and the explanation of why the public law of the Province of Quebec is based upon the reception of English law rather than French law, is unlikely ever to be excelled.[1] This is all the more true because of the author's citation of authorities on this subject, which authorities have until now have been scattered to the point that they have escaped the notice of many people.

The second half of the book describes the rules for judicial review of administrative action as developed in Canada, with some reference to English and Privy Council decisions. The classification of topics appears to have been influenced by the current debate over Professor H. W. R. Wade's thesis that all areas of judicial review should be seen in terms of the *ultra vires* rule. Aside from this, the work proceeds along orthodox lines. Much new material is analyzed in discussions of what constitutes the face of the record for purposes of quashing because of error of law on the face of the record, and of the precise meaning of the *audi alteram partem* rule.

No Canadian lawyer who can read French should be without this book: it is a worthy companion to Professor de Smith's well-known text. Although a proofreader more familiar with English spelling might have been found, the book is otherwise well printed and bound, and much more reasonably priced than most Canadian lawbooks.

J. E. CÔTÉ*

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Law Reform: The New Pattern. By THE HONOURABLE MR. JUSTICE SCARMAN. London: Routledge & Kegan Paul Ltd. Pp. 64. (12s. 6d)

The past few years have witnessed a significant revival of interest in law reform, which has in particular manifested itself in the creation of permanent bodies entrusted with special responsibility for reviewing and reforming the law. In this book, which consists of the Lindsay Memorial Lectures delivered at the University of Keele in 1967, the Honourable Mr. Justice Scarman, with specific reference to the Law Commission of England and Wales, of which he is chairman, reflects upon the "new pattern" of law reform which is emerging, explains some of the problems which confront

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[1] Pp. 22-28.

the Law Commission, and finally discusses the long-term effect which the work of the Commission is likely to have upon English law.

The author emphasizes that the Law Commission represents a "subtle experiment" whereby it is sought "to introduce into the law-making process the independent thought and technical learning which one expects to find in the courts", and in effect to remove law reform from the arena of political controversy. The independence enjoyed by the Commission is imperative; but it is to be noted that although the Commission initiates its reform programme, this must be approved by the Lord Chancellor. One questions whether this power of veto vested in the Lord Chancellor is either necessary or desirable.

Pressure of Parliamentary business is a perennial obstacle to systematic and comprehensive law reform, and Mr. Justice Scarman points out that the Law Commission also suffers from the lack of a Minister in the House of Commons charged with responsibility for law reform. The possibility of the establishment of a Ministry of Justice suggests itself, but, lest this might be "too much of a break with tradition to be immediately acceptable", the author advances the pragmatic solution of the appointment of a third law officer.

As to the future shape of the law, Mr. Justice Scarman advises that the English lawyer must rid himself of the traditional preconception that statute law merely supplements the common law, and he must get into the habit of looking first at the statute book, turning only to cases if the law cannot be found in the statute.

Although Mr. Justice Scarman focuses these lectures on the Law Commission of England and Wales, many of his observations are of general application. The objectives of the English Law Commission, the problems confronting it, and the effect which it is likely to have on the development of the law are not peculiar to it. The book is, therefore, recommended to all lawyers and general readers wishing to learn something of the techniques and direction of modern law reform.

G. R. BRETTEN*

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Therapeutic Family Law. Second Edition. By NESTER C. KOHUT. Chicago, Illinois: Adams Press. 1968. Pp. 436. (No price given)

Law reform is almost invariably a slow process. Certainly this has been our experience in the area of family law, and especially the

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law of divorce. In his book, Mr. Kohut disassociates himself from present legal attitudes to marital differences and goes some way in offering a fresh and imaginative solution to the ever-increasing problem of family disruption.

This is the second edition of the book,[1] and represents a substantial enlargement upon the first. The present edition is divided into three parts. Part I, styled "Analytical Presentations", includes most of the first edition. It commences with the author presenting his highly challenging thesis that "A substantial number of marriages alleged by the parties and supposed by the attorneys and divorce courts to be broken, lifeless or irreparable, are not in fact completely or irreversibly broken".[2] Mr. Kohut immediately recognises, however, that the task of providing workable criteria for determining when in fact a marriage has broken down is a difficult one. Indeed, after quoting from the many opinions expressed by, for example, lawyers, clergymen and sociologists, he frankly admits that neither sociology nor psychology has advanced to the stage where it can determine precisely when a marriage is broken.[3] Thus the author suggests five objective criteria for determining whether or not a marriage is irrevocably dead.[4]

In order to substantiate his basic thesis, the author selects four fault grounds for divorce[5] and proceeds to examine the validity of each in relation to his "breakdown" premise. The chief contention is that whilst statutory grounds for divorce are supposed to reflect breakdown, they in fact fail to do so. For instance, in regard to desertion, Mr. Kohut posits that if the deserting spouse were located, the prospect of reconciliation would be as good as in any other marital conflict. Voluntary separation and factual marriages are also condemned as inconsonant with the notion of breakdown.

Throughout the book, but more especially in Part I, the law is seen as destructive rather than constructive in its treatment of family problems. In support of this interpretation, the author suggests that inasmuch as the modern trend is to provide easier exits from the marriage, this is indicative of a failure to affirm the

[1] The first edition was published in 1963 under the title A Manual on Marital Reconciliations.

[2] P. 25. [3] P. 36.

[4] Pp. 36, 37. The five criteria are:

1. Is any relationship or bond sufficiently viable, or is any function still being performed reasonably adequately to maintain the marriage at a workable level?
2. Does the nature of the difficulty go to the roots of the marriage, or in other words, is there a serious threat to the unity of the marriage?
3. If professional conciliation were attempted and given a fair try might it offer an opportunity for reconstruction of the marriage?
4. Have society, its agencies and institutions done all they could to assist the distressed couple?
5. Is there a suitable alternative to divorce?

[5] The four are desertion, cruelty, incompatibility and drunkenness.

interests of society in the preservation of the marital bond.

The fact that this is a time-honoured argument does not detract from its possible validity. What does seem worthy of criticism, however, is that at no point does Mr. Kohut set out in concrete terms what he believes society's interests to be. In this respect, the author perpetuates a defect which recurs continually in the literature on this subject. It is suggested that the need to define with greater clarity the interests of society is paramount. If it indeed be true that all solutions to marital conflict involve the weighing of the interests not only of the individuals involved but also of society, it would seem to follow that until the latter's interests are spelled out in greater detail, it will remain difficult to arrive at a solution which accords with those interests.

Part II of the book is called "Therapeutic Considerations". It comprises an examination of the "team" approach to marriage rehabilitation. The proposition stressed is that marital conflicts generally entail such complex psycho-social problems that lawyers, as presently trained, are not equipped to handle them without assistance and that consequently they should call in aid other members of the "helping professions".

After reading the materials in this section, the reviewer holds little doubt about the truth of this proposition. Mr. Kohut points quite clearly to the professional responsibility of the solicitor in matters of divorce and then goes on to show, in a discussion of some of the fundamental techniques of marriage counselling, that the latter is indeed both an art and a science. Consistent with the theory of the "team" approach, a major portion of this section has been contributed by some sixteen members of the "helping professions". Each has attempted to show how he could assist the solicitor in marriage rehabilitation. Although these chapters offer both interesting reading and vital support for Mr. Kohut's basic contention, there is much in all of them that was essentially repetitive. It seems doubtful, for example, whether there is a real need in a book such as this to devote fifty or more pages to pastoral counselling though this comment is in no way intended to disparage the great value of this counselling source.

In order that the Bar be able to meet the demands of marriage counselling, Mr. Kohut proposes a new legal specialist, the reconciliation lawyer. But he merely hints at some of the problems inherent in this. Although he properly chastises the law schools for generally failing to provide any training in counselling, the author suggests no programme himself. Indeed, it is doubtful whether any law school in the present-day mould could undertake what would appear to be the mammoth task of training the type of reconciliation lawyer envisaged. A further criticism which might be ventured is that the book as a whole contains little or no treatment

of the type and amount of fees a client undergoing therapy could expect to face. The "team" approach would seem to offer some thorny problems in this regard.

It is also unfortunate that there is not more discussion of the problem of establishing appropriate machinery to administer Mr. Kohut's brand of therapy. It seems fairly obvious that a change in social attitudes toward marital disputes, whilst a *sine qua non*, would of itself be insufficient to bring about the desired results. Legislation which enacted this changed attitude and which set up machinery for its administration would seem a natural prerequisite for effective therapy on any large scale. However, there are only two rather short chapters[6] on this crucial problem.

Notwithstanding these criticisms, the section contains much valuable reading. There are interesting chapters on therapeutic separation agreements, reconciliation agreements, and on the interests of children in their parents' divorce. The two case presentations which comprise Part III were drawn from the books of counselling experts and show that the author may well be correct when he asserts that many marriages could be saved with proper effort.

It is a pity that lack of available statistics causes Mr. Kohut to admit that his hypothesis cannot be tested with desirable precision.[7] In view of this, his book will serve best as a source book of opinion. At all events, the author has drawn upon a wealth of experience in the area of family law and marriage counselling in order to issue an enlightening and provocative challenge to the current philosophy underlying that part of the law which deals with ailing marriages. Bearing in mind that the 1968 Divorce Act[8] attempts both to incorporate the notion of marital breakdown and to stress the desirability of marriage reconciliations, it is suggested that *Therapeutic Family Law* has a particular relevance to Canada and is recommended reading for lawyers from all branches of the profession, not least of all the legislators.

IWAN B. SAUNDERS*

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Labour Law: Old Traditions and New Developments. By OTTO KAHN-FREUND. Toronto: Clarke, Irwin & Company Limited. Pp. xii, 92. ($5.50)

This book, based on the W. M. Martin Lectures given by Professor Kahn-Freund at the University of Saskatchewan in 1967,

[6] Chaps 29 and 30. [7] P. 79. [8] S.C., 1968, c. 24.

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constitutes a scholarly analysis of the present state of British labour law. The author seeks to set the law against the broad back-cloth of social and economic history, to identify its formative influences, and tentatively to predict the direction in which the law will develop.

In these lectures Professor Kahn-Freund explains why the law has played a less significant role in labour relations in Britian than it has been called upon to play in other common law jurisdictions and the countries of continental Europe. The explanation offered for this legal abstention is that in Britain trade union organization had passed through its first and decisive stages before the franchise was extended to the working class.

It is, however, observed that increasingly the traditional policy of non-intervention by the law is being called into question in Britain. Recognition of the necessity for keeping incomes in line with productivity and of the disastrous effect which the high incidence of wildcat strikes has upon the economy has led to serious re-consideration of the function which the law should fulfil in the regulation of labour relations. In particular Professor Kahn-Freund draws attention to the highly controversial Prices and Incomes legislation which has been in force in Britain during the past four years. The legislation which the British Government proposed earlier this year to implement some of the recommendations made in the Report of the Royal Commission on Trade Unions and Employers' Associations[1] represents a long overdue and even more momentous departure from the policy of non-intervention by the law.[2]

Among other developments in British labour law, the Contracts of Employment Act, 1963,[3] and the Redundancy Payments Act, 1965,[4] are discussed. The author describes the latter as "a highly original piece of legislation in that it combines a fundamental change in the law of contract with an innovation in the law of social security". The "social security" facet of the legislation is, however, becoming somewhat remote, as the government has periodically raised the rates of contributions which employers must make to the Redundancy Fund and has recently reduced the proportion of the redundancy payments which employers may recover from the Fund. More significantly, it is doubtful whether the Act is achieving its primary economic purpose of promoting mobility of labour.

In his final lecture Professor Kahn-Freund examines the recent and important cases concerning the law of trade disputes. He refers

[1] Cmnd 3623/1968.

[2] The Industrial Relations Bill has unfortunately been emasculated since the date when this review was written.

[3] 11 & 12 Eliz. 2, c. 49.

[4] 13 & 14 Eliz. 2, c. 62.

to the picketing cases of *Piddington* v. *Bates*[5] and *Tynan* v. *Balmer*,[6] which are likely to be of real interest to Canadian readers, and predicts that picketing may "gain in importance in Britain with the growing struggle of white collar unions for recognition and with the spread of union organization in the distributive trades". The decision of the House of Lords in *Rookes* v. *Barnard*[7] is described as having "ominous possibilities" and as opening up a new era in the development of the law governing trade disputes—an era of judicial intervention, with the courts regarding themselves as the champions of the individual against the impact of the apparently arbitrary power exercised by trade unions.

As a comparative lawyer, Professor Kahn-Freund enriches these lectures by drawing upon his knowledge of the labour laws of Europe, Canada, Australia, New Zealand and the United States. The result is a stimulating and perceptive book which is likely to be of enduring interest and value.

G. R. BRETTEN*

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The Law of International Drainage Basins. Edited by A. H. GARRETSON, R. D. HAYTON and C. J. OLMSTEAD. Dobbs Ferry, N.Y.: Oceana Publications. 1967. Pp. x, 916. ($30.00)

At a time when multi-authored "instant" books are in vogue, it is a pleasure to find one which has been several years in preparation and which contains a collection of articles having more in common than simply the title of the book. Such a work is *The Law of International Drainage Basins.*

This publication, the end result of the International Rivers Research Project of the New York University School of Law, constitutes an excellent companion volume to the Helsinki Rules on the Uses of Waters of International Rivers, adopted by the International Law Association in August, 1966. That these two works are so well matched is, of course, not surprising for the studies preceeding their publication paralleled each other in time and involved close collaboration between the two groups of scholars. What are propounded as legal rules by the International Law Association are analysed and elaborated by the New York Project publication, and throughout, the authors display a concern for realism, distinguishing *de lege feranda* from *de lege lata.*

[5] [1960] 3 All E.R. 660.
[6] [1965] 3 All E.R. 99, aff'd [1966] 2 All E.R. 133.
[7] [1964] 1 All E.R. 367, [1964] 2 W.L.R. 269 (H.L.).
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The first part of the study is directed to the legal and administrative problems involved in sharing the water resources of an international drainage basin. Introducing this collection of papers, Cecil Olmstead provides a perspective for the work, emphasizing that, while the law governing uses of international drainage basins is by no means settled, it is of signal importance to expound and develop rules and practices which take into account the complex demands of society on our water resources.

The two articles which follow Professor Olmstead's introduction proceed to examine some of the major substantive rules governing uses of international rivers and underline the points made in the introduction.

Jerome Lipper, in a well documented chapter, explores the various legal theories which have been advanced as the basis for rules governing the utilization of international boundary waters and concludes that no basin state is entitled to appropriate unilaterally the waters of a river basin for its own uses. Marshalling evidence from the traditional sources of international law, Lipper supports the validity and efficacy of the conclusions reached by the International Law Association Committee in Article IV of the Helsinki Rules: all basin states have a legitimate interest in their common waters and each state is entitled to an equitable share of the beneficial uses.

To state the principle of equitable utilization is one thing; to elaborate its various aspects is quite another. The author in his discussion of the detailed rules emphasizes that the doctrine is of recent vintage and consequently, the rules are rudimentary and indefinite. This fact, of course, is not without advantage for the very flexibility constitutes a value in applying the principle of equitable utilization to very different river basins.

Anthony Lester in the following chapter considers the narrower but no less complex issue of international water pollution control. Adopting as the guiding rule the doctrine of *sic utere tuo* as this is elaborated in Articles X and XI of the Helsinki Rules, the author suggests the traditional basis of liability and the remedies which might be considered by an international tribunal in an action to prevent continuing transboundary water pollution.

Water pollution is, however, a problem where frequently the relief which may be sought by way of judicial action is illusory. As Lester himself observes, "In some cases an adjudicatory process may not be able to provide suitable remedies, even if responsibility in legal terms could adequately be assessed". This might be put even more strongly, for in most cases of transboundary water pollution, what is required is co-operative action among the states to remedy the situation; not adjudication of rights.

Northcutt Ely and Able Wolman direct themselves to the

administrative issues involved in international waters resources management, examining the structures and functions of international machinery which has been established to facilitate joint administration of river basins. Their examination of several North American, European, Asian and African commissions which deal with the planning, development and regulation of international river basins leads to two major conclusions. First, there is no single agency which serves as a model for use in other river basins. Second, international agencies are essential to the effective joint management of international river basin resources.

The authors might have underscored with more emphasis a third conclusion which is apparent in the examination of existing machinery: the continuing reluctance of states to vest these international bodies with any significant decision-making or enforcement powers. The vagueness of the rules expounded by Lipper and Lester and the reluctance of states to refer disputes to binding adjudication make it imperative that the international agency administering a river basin be empowered to resolve the various issues of conflict which may arise. Only by possessing such powers can the agency be effective in joint planning, implementation and administration.

Legal rules and machinery for administration of international river basin resources only become meaningful when applied to concrete situations and some of these are provided for the reader in the useful series of descriptions of several major river basins of the world.

This second part of the book offers some good illustrations of the accomplishments which can be achieved through international co-operation in the planning and development of shared water resources (the Columbia River) as well as the mind-boggling challenges which some basins pose to internationl management. If ever the need for political, economic and technical co-operation were evident to achieve optimum development and control of shared resources, the Rio Plata basin makes it clear. By comparison, the development and regulation of the Columbia and St. Lawrence rivers appears simple.

Nothing is more valuable to the researcher than a well-organized bibliography of relevant materials and this too is expertly presented in the publication through the skilful endeavours of Ludwik and Eileen Teclaff, comprehensively and intelligibly in one hundred and seventy pages. The bibliography is not confined merely to the legal writings and documentation on international river basin development, but includes as well the materials on related aspects such as the economic, political, social, technical, and so on.

A reader could be well satisfied with the book if it stopped at

this point. However, hidden among the appendices is a good monograph by R. D. Hayton which examines in a comprehensive and readable fashion, the manner in which customary rules of international law relating to drainage basins are developed. While the author has directed the paper to the subject matter of the treatise, it is in many ways an exposition on the customary development of international legal rules generally.

In sum, this book is an excellent source of information for the many researchers who, in the next years, will be pursuing the numerous problems relating to the management of international water resources.

FREDERICK J. E. JORDAN*

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Verdict! eleven revealing Canadian trials. By JOHN KETTLE and DEAN WALKER. Toronto: McGraw-Hill Company of Canada Limited. Pp. 289. ($6.95)

I think that any lawyer who reads this book will be disappointed. In conceiving the book, Messrs Kettle and Walker[1] had a virtually novel idea, insofar as Canadian legal history is concerned,[2] and an idea replete with possibilities of success; unfortunately, in the slang in which Messrs Kettle and Walker all too frequently indulged throughout the book, they "fumbled the ball" or "blew the game". The sins of commission and omission perpetuated by the authors were several and varied; I shall deal with them in turn.

How revealing are the trials discussed in the book? The dust jacket tells the reader that the cases presented are "eleven of the most intriguing courtroom cases in the history of Canadian law"; interestingly, the oldest case dates only from 1939. Without going into detail, in my opinion, of the eleven trials presented, only five or six of them can be classified as "revealing";[3] the others at best,

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[1] The dust jacket states that "co-authors John Kettle and Dean Walker share between them thirty-four years of full-time writing experience . . . writing and selling some sixteen million words in magazine articles, television and radio shows, speeches and columns. . . . In the past twelve months they have worked together on communications and consultancy [sic] projects for associations and industry. Verdict! is their first book". The last mentioned fact may be one of the more revealing things contained in the book!

[2] I believe that the only other attempt to collect Canadian trials was done by Albert R. Hassard, Famous Canadian Trials (Carswell, Toronto, 1924). See also, A Legal Bibliography of the British Commonwealth of Nations, volume 3, Canadian and British American Colonial Law (Sweet & Maxwell, London, 1957), pp. 170-179.

[3] African Ballet and Fanny Hill (*Regina* v. *C. Coles Co. Ltd.*, [1965] 1 O.R. 557) Trials 1967 and 1964; Hal Banks Assault Trial 1964; Jehovah's

depending upon your reading preferences, are more or less interesting.[4]

The style of writing and the vocabulary are not those usually found in what is considered to be good English prose. The style is too journalistic and slang abounds throughout the book.[5] The treatment given to most, if not all of the trials, borders on being superficial. Although the authors may have done a reasonable amount of background investigation, their discussion of the cases is sadly lacking insofar as the legal aspects are concerned.

Frustratingly, with two minor exceptions, there are no footnotes throughout the book; consequently, the book is practically useless as a source from which to delve more deeply into the cases discussed. For one reason or another, authors writing or publishers producing books for popular consumption seem to regard footnotes or references as negative quantities. With all due respect, this attitude or belief is simply ridiculous. Granted not all readers will wish to be bothered with the material contained in footnotes or references, but their presence, especially if they are collected at the end of the book, in no way impedes the easy reading of the book. Proof positive of this fact is *The Lion and the Throne* by Catherine Drinker Bowen,[6] which is a perfect example of a scholarly but easily readable book dealing with legal history. As well, there is neither a bibliography nor an index to the book.

The failure of Messrs Kettle and Walker to engage the services of a collaborator trained in the law is apparent, not only in the lack of insight into the legal aspects of the cases presented as mentioned earlier, but also in the terminology used by the authors. For example, in referring to superior court judges, the authors use the term "Mr. Justice Harvey" instead of "Harvey J.", or the term "the judge said" instead of "the learned judge said". At another point there is a reference to "Mr. Justice Rand, whose clear prose could set a standard for all senior judges"—whoever they might be?[7] In addition, there are references to the "Federal Criminal Code", "the law" meaning the police, "the Code said" instead of the Code states, "trial by judge" meaning trial by judge alone, the "official legal report on the case" meaning the decision, "the

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Witness Appeal (*Saumur* v. *Quebec City & A.G. Que.*, [1953] 2 S.C.R. 299) 1952; Evelyn Dick Trials (*Rex* v. *Dick*, [1947] O.R. 105, 695) 1946; Jimmy Ayalik Trial (*Regina* v. *Ayalik* (1960), 33 W.W.R. 377 (N.W.T.)) 1960.

[4] Wayne Ford Trial 1967; Doukhobor Conspiracy Hearing 1962: Lucas (*Lucas* v. *The Queen*, [1963] 1 C.C.C. 1 (S.C.C.)) and Turpin Trials 1962; Grey Owl Estate Suit (*Re Belaney ("Grey Owl") Estate*, [1939] 3 W.W.R. 591 (Sask.)) 1939.

[5] The opening of the chapter dealing with African Ballet Trial is remarkable. It reads as if it had been written for a television public affairs programme; and, there is also a natural break after the first full paragraph for the introductory credits and a commercial.

[6] (Little Brown & Co., Toronto, 1957). [7] P. 191.

Nine Wise Men of the Supreme Court of Canada", "the Confederation Act of 1867", and so on.[8] In another instance, a quotation which was taken from a headnote is offered as a portion of an actual judgment.[9] To top all, the names of a superior court judge and a distinguished counsel recently appointed to the bench are given incorrectly, namely "Mr. Justice Cosgrain" instead of Casgrain J.[10] and "W. M. Morrow" instead of W. G. Morrow, Q.C.[11] There are other errors and shortcomings to which I could refer, but I will not bore you with them.[12]

In summary, the book is disappointing and frustrating; indeed, I am tempted to say that the verdict is that *Verdict!* is, in the memorable words of Peter Cook, a complete non-event.

CAMERON HARVEY*

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An American Judge: Marmaduke Dent of West Virginia. By JOHN PHILIP REID. New York: New York University Press. 1968. Pp. 230. ($8.50)

You may well be wondering of what possible interest can Marmaduke Dent, a hitherto obscure judge of the West Virginia Supreme Court of Appeals, be to the readers of this *Review*. Well, to begin with, "due to Dent's faith in a revengeful God . . . he became the judicial spokesman in the United States for one school of criminal-law theory . . . criminal-law classicism . . . . Dent was one of the last expounders of pure, undistilled classicism—the school that stressed conduct in terms of free will, attached liability on the basis of moral accountability, and imposed punishment in proportion to the criminal deed".[1] "Of far more importance (and perhaps his single most significant prospicience concerning the development of twentieth-century legal principles) was [his enunciation of] the doctrine that public corporations which enjoy special privileges must pay for these privileges by assuming special burdens."[2] As well, "Marmaduke Dent was America's most outspoken judicial champion of womankind".[3] Finally, in connexion with the case of *State* v. *Mamie Jones*,[4] which "has become the

[8] Pp. 39, 49, 50, 121, 173, 198 and 211 respectively.
[9] P. 171 — the case involved was *Re Belaney*, *supra*, footnote 4.
[10] P. 194.
[11] P. 252.
[12] For what it is worth, of the eleven trials, I enjoyed the most the accounts of the Hal Banks Assault Trial 1964, the Grey Owl Estate Suit 1939 and the Jehovah's Witness Appeal 1952.

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[1] Pp. 181-182. [2] P. 197. [3] P. 79.
[4] (1903), 53 W. Va 613, 45 S.E. 916.

leading American precedent on the law of domestic misdemeanors,[5] Dent wrote an opinion which one eminent criminal-law scholar[6] has called 'classic' and even 'poetic' ".[7] The author sums Dent up as follows:

> Dent, who tried to wed a jurisprudence of biblicism with a jurisprudence of interests, who on one hand reached back to the law of Moses and on the other foresaw the need for workman-compensation statutes, as much as any other judge represents that transitional period which came between the formative era of American law brought to a close by Doe[8] and the modern era of American Law personified by Oliver Wendell Holmes, Benjamin Cardozo and Learned Hand.[9]

The book commences with a chapter which provides the reader with a short resume of Dent's ancestry, of the nature of the West Virginia bar during Dent's practising and judicial career, of Dent's "twenty years at the Grafton bar", of his twelve years as a Supreme Court Justice, and of his retirement and death following his failure to be re-elected to the bench in 1904. The second and third chapters attempt to put Judge Dent's judicial career into its proper perspective and to describe the pathetic situation at the close of the nineteenth-century of West Virginia's judiciary system.[10] The fourth and final chapter of Part One of the book details how the West Virginia Supreme Court of Appeals "came of age when Judge Marmaduke Dent and Judge Henry Brannon debated in the pages of the official reports the important legal questions of their day";[11] periodically throughout the remainder of the book, the author presents the discussion of the legal questions with which Judge Dent grappled by way of taking excerpts from the judgments of Judges Dent and Brannon and setting them out in the form of a dialogue. Part Three of the book deals with Dent's criminal-law classicism while Part Two deals with the other aspects of his judicial career.

Technically, the book is written in a style which is quite readable and captivating. It is a short book which you will want to read through to its end in one or two sessions. The book is well footnoted and contains a workable index. This is not the author's first attempt at judicial biography, for he is the author of *Chief Justice: The World of Charles Doe*.[12]

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[5] In defense of "a charge of keeping a house of ill fame", Mrs. Jones "tried to shift criminal blame onto her husband . . . by relying upon the defense that 'she was a married woman living with her husband and presumed to be under his coercion' ".

[6] Gerhard O. W. Mueller, who, as the author acknowledges, "first recognized the uniqueness of Marmaduke Dent's criminal-law classicism . . . [and] suggested that [the] . . . book be written. . . ."

[7] P. 152. [8] See *infra*, footnote 12. [9] P. 205.

[10] To some extent the third chapter may give the reader some insight into the probable conditions under which pioneer Canadian judges laboured.

[11] Pp. 47-48.

[12] Harvard University Press, 1967. Charles Doe rose to be Chief Justice

In conclusion, do not be put off by the title of the book; it is an interesting book which can be quickly read with much profit.

CAMERON HARVEY*

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of the New Hampshire Supreme Court; the author at p. 205 describes him as "the last great nineteenth-century jurist".

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