


## REVIEWS AND NOTICES

 Publishers desiring reviews or notices of Books or Periodicals must send copies of same to the Editor, Cecil A. Wright, Osgoode Hall Law School, Toronto 2, Ontario.

*The Life of Mr. Justice Swift.* By E. S. FAY. Toronto : Reginald Saunders. 1939. Pp. xi, 282. (\$4.00)

With the approach of the long vacation the profession undoubtedly look forward to a release from the necessity of immersion in the technicalities of law. At the same time we have never yet seen a lawyer who could resist the fascination of a legal tale told well. The present volume on the life of Mr. Justice Swift is a book which the reviewer has no hesitation in recommending to all readers of the REVIEW as a highly entertaining and well written biography of an extremely colourful judge.

Mr. Justice Swift, as depicted in these pages, was a combination, altogether rare in this country, of inflexible discipline, of all embracing humanity, and a sense of humour which, unlike that of many judicial humorists, was never misplaced. While perhaps, as his biographer admits, lacking that deep leaning which Lord Hailsham indicated was one of the requisites which entitles a judge to be styled "great", Mr. Justice Swift's handling of complicated facts and his understanding of human nature as exhibited in his charges to juries, undoubtedly entitle him to the description of a "strong" judge in the best English tradition.

Mr. Justice Swift's biographer has produced a book which is brimming with the anecdotes which had a habit of clustering about the late judge. At the same time it portrays the part which Mr. Justice Swift played in many of the celebrated cases of the last twenty-five years, such as the famous Woolmington trial and appeal, one of the most important criminal cases of recent years, the Brixton taxicab murder and the trial of Madame Fahmy, while the chapter dealing with the famous breach of promise action brought against Lord Revelstoke is one of the most amusing and at the same time most instructive chapters in a thoroughly interesting book. The camaraderie existing between the Bench and Bar in England, may be illustrated by one of the many stories to be found in these pages. Mr. Justice Swift had been a member of the Northern Circuit while at the Bar, and while a guest of the Western Circuit mess had remained seated during the Latin Grace. "This was a Northern circuit custom, "but on the Western was a solecism. Appreciating his error, the judge "asked Mr. Du Parcq. K.C., (now Lord Justice Du Parcq) :—

'Will the Almighty be vexed?'

'No, judge, He'll think you don't know latin.'

"First point to counsel !

"But Swift did not forget the matter, and next day when a doctor "said in evidence, somewhat to the stupefaction of those present, that "the plaintiff was suffering from 'Pachymeningitis Haemorrhagica', Swift "said, 'Ah ! Here's Mr. Du Parcq coming into court. He'll be able to "tell us what that means. He understands Latin!

"Second point to judge.

"But counsel had heard enough of the word to recognize its derivation. I'm afraid, my Lord, it's Greek to me!"  
"Oh!"

From time to time there appear biographies of eminent judges or counsel and it is unfortunate that a great number of them lack substance and are inaccurate in detail. The present volume, happily, is not among that class. It is a book which can be enjoyed by the youngest law student and the oldest practitioner. It has the authentic aroma of English judicial administration and the reviewer highly recommends it as a volume for holiday reading.

C. A. W.

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*Readings on Personal Property.* Third Edition. By WILLIAM T. FRYER. St. Paul: West Publishing Company. 1938. Pp. xxxii, 1184.

The present volume marks a departure from the ordinary case book to which we have become accustomed in legal teaching. In place of a selection of cases, either of the expository or problem type, the editor has made an exhaustive collection of excerpts from law review material either in the form of articles or comments on recent cases. These the editor has collected and reproduced under the orthodox chapter headings which have become more or less stereotyped in the rather conglomerate course called *Personal Property*. Thus, we find the usual chapters on possession, bailments, liens, pledges, bona fide purchaser, gifts, fixtures, etc.

The collection of law review material was given a great impetus by the publication of selected readings on the law of contracts by the Association of American Law Schools in 1931. The reviewer is heartily in accord with the salvaging from the pages of the numerous legal periodicals material which is only too likely to be lost over a period of time. Labouring under the influence of the "cult of the judge", the teaching of law has, whether under the guise of case book or text-book, consisted of a form of judicial word worship for altogether too long a period. If the introduction of the case method was an endeavour to make students think rather than absorb, it would seem that a collection of law review material, dealing with large masses of cases from opposed points of view, would further this objective. In the reviewer's own teaching work, students have frequently asked why a book similar to that which Professor Fryer has produced for *Personal Property*, could not be made available for other subjects. Case notes, and law review articles, should be critically constructive if they are to be of any value. Such material can cover much more ground than the ordinary case book and can present problems and suggestions for using the legal concepts developed in the case law in a much more stimulating fashion than the old style case book.

Professor Fryer has been extremely energetic in making this collection and the result is a book which, in the reviewer's opinion, should be of inestimable value as a time-saver and thought-stimulator of those students who are really anxious to study law both intensively and extensively.

We should imagine that the book would need to be supplemented considerably by the study of more cases than are here set out, if for no other reason than to give the student warning of the manner in which critical and constructive analyses of fact situations must be presented in the legal jargon prevailing in a given jurisdiction. This is really, in the reviewer's opinion, a comparatively simple matter. At the present time, certainly in jurisdictions with which the reviewer is familiar, there is a tendency to treat this legal jargon as the sole expression of the law, and unless a court has said a thing, or unless a text writer has said the same thing which generations of courts have said, students of law are not expected to "speculate" as it is sometimes said, about possible solutions to hypothetical cases. In short, students of law and lecturers are to leave the thinking out of problems to the courts. The only way to obviate this stultifying process is to indicate in some manner the choice of solutions that is open to various factual problems. The present volume in giving the opinion of diverse legal thinkers on groups of cases is certainly one method of supplying this need. Professor Fryer's book is an experiment—an experiment of which all persons interested in either teaching or studying law should take advantage.

Naturally the material reproduced here is uneven in quality. Much of it is mediocre. Even admitting this, we doubt whether it will suffer in comparison with the purely judicial essays which, in the main, supply the present literary diet of the legal neophyte.

C. A. W.

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*Trial of Field and Gray.* Edited by WINIFRED DUKE. Notable British Trials, Series, Volume 67. London and Edinburgh: William Hodge & Company. Toronto: Canada Law Book Company. 1939. Pp. vi, 302.

The Notable British Trials series is now so well and favourably known to the profession that the appearance of a new volume—in this instance the sixty-seventh in the series—needs little in the way of commendation. The present trial involving the brutal, and in part unexplained, murder of a young London typist holidaying at Eastbourne, is interesting chiefly by reason of the participants in the trial. Sir Marshall Hall appeared for Gray and Mr. J. D. Cassels (the present Mr. Justice Cassels) appeared for Field. Faced with an almost insurmountable mass of circumstantial evidence connecting the two accused with the murder, the efforts of these two counsel, although ultimately unsuccessful, to build up an alibi in the face of conflicting stories of the accused persons, furnishes an admirable illustration of advocacy in criminal trials. The presiding judge was the late Mr. Justice Avory, whose power for cold analysis may sometimes have seemed almost inhuman. His charge to the jury in the present trial is a fair sample of that lucidity and simplicity for which he was famous throughout his lengthy and distinguished tenure of office. The case attracted a considerable degree of publicity in the English press, some of which came very close to, if it did not pass beyond, the dividing line between comment and contempt of court. One cannot resist a chuckle at the

alliteration, undoubtedly unconscious in the case of Mr. Justice Avory, which the learned judge used in connection with his warning to the jury to regard only the evidence adduced in court. The opening paragraph contains the following somewhat purple passage :

"I regret that such a warning in a Criminal Court of this country should be rendered necessary by the pernicious practice which prevails of pandering to the prurient proclivities of the public by publishing pictorially and otherwise the lurid details of a ghastly tragedy such as that which we are now investigating."

## CORRESPONDENCE

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EDITOR, CANADIAN BAR REVIEW.

Sir,—In your May number appears an article entitled "The O'Connor Report" on the British North America Act, 1867." It discusses a report made by me pursuant to a resolution of the Senate of Canada as Parliamentary Counsel thereof. The report has been received by the Senate but that body has not yet considered it.

Parliamentary conventions do not permit my entry into any discussion with the author of the article mentioned, but I am free to say that it does not in substance or at all correctly summarize, report or present my opinions, contentions or statements, nor are these safely to be known otherwise than by consultation of the report to which the article refers.

Yours truly,

W. F. O'CONNOR

*Parliamentary Counsel of the Senate.*