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Peter Wright

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Book Reviews

Personal Property. By J. CROSSLEY VAINES, LL.M. Second edition.
London: Butterworth & Company Limited. 1957. Pp. lv, 431.

This is a useful book for student and practitioner alike. It has a timely quality to it, that makes many of the chapters lively and provocative. There are not only discussions of the familiar property marks of *Armory v. Delamirie*, (1722) 1 Stra. 505, and *Coggs v. Bernard*, (1703) 2 Ld. Raym 909, but of English cases in the last twenty years. Thus Evershed M.R., Greene M.R., Lord Goddard C.J., and Denning L.J., appear in the foreground as leaders of thought and development in this branch of the law.

The result is a book at once more topical and more pleasant for the modern reader. Even twenty-five years ago, the law of personal property was taught and written about in terms of the life of England, one, two or three hundred years before, because, then were the cases that had established the law. Many of the principal actors were innkeepers, settlors, apprentices, factors and a set of rogues generally known as A, B and C who kept striking out endorsements, selling heirlooms, forging bills and pledging with litigious pawnbrokers, knick-knacks which rightfully belonged to E, F or G. All the while, as it is remembered, what was to happen in law as a result of these rascalities and other sad occasions depended on the history of trover, conversion, detainue and trespass and an understanding of seisin, chattels personal, choses in possession, choses in action, tangibles, moveables, bailment, estoppel, interpleader and a number of other concepts which were no part of daily life and language. English was used to make these meanings clear, but the quintessence of definition and learning was found in strange words of art, as: *hospitium; elegit; quicquid plantatur solo; solo cedit; emblements; tertium quid; in personam; in rem; mobilia sequuntur personam; ad hoc; jus tertii; animus revertendi; nemo dat quod non habet; debitum in praesenti solvendum in futuro* and *donatio mortis causa*. In those days, it appeared that only scholars and gentlemen could really profess to advise Mrs. Smith on whether her membership in the Homelover's Club prevented the management from repossessing her washing machine. It was a simple matter of applying the jargon to a firm basis of Lord Holt's law and convincing Mrs. Smith or the merchant that the cases of the idle apprentice and the alcoholic factor two hundred years before determined their dispute.

All the words and concepts from the past will be found in this book, as they must be. It is pleasant to meet them again, set forth clearly and attractively. But what is much more helpful are the English cases of the last twenty-five years dealing with modern instances in living language, and bringing to everyday problems the coherent wisdom of living judges.

There are many noteworthy examples of this treatment in this book. These will illustrate:

- (a) the discussion at pages 23-26 of *Jarvis v. Williams*, [1955] 1 All E.R. 198, and *Kahler v. Midland Bank Ltd.*, [1950] A.C. 24, as to the right of possession in modern circumstances required to support what is still called an action in detinue;
- (b) the case at pages 50-55 of the thirteen gold bars that were sold by the Bank of England as dealt with in *United States of America v. Dollfus Mieg et Compagnie S.A.*, [1952] A.C. 582;
- (c) the disputes between husband and wife as to personal property, at pages 59-69, involving the counterpart of section 13 of The Married Woman's Property Act, R.S.O. 1950, c. 223, and illustrated by *Re Rogers' Question*, [1948] 1 All E.R. 328, *Re Cohen*, [1953] Ch. 88, and *Hoddinott v. Hoddinott* [1949] 2 K.B. 406;
- (d) the criticism at pages 127-130 of *Lord Strathcona S.S. Co. v. Dominion Coal Co.*, [1926] A.C. 108, involving a restrictive covenant and a chattel; and,
- (e) the principle at pages 258-259 set forth in *Re Rose*, [1949] Ch. 78, and *Re Rose*, [1952] Ch. 499, applying to a gift of shares in a private company, the transfer of which is not approved.

All these are excellent essays on modern problems and modern solutions.

There are more pedestrian passages dealing generally with codified law but, for the most part, the book is stimulating to thought and helpful in practice.

It is an English book. Although there are references to a few Privy Council cases, Canadian jurisprudence as such is left unmentioned. This country, although sparsely populated, lays such claims to personal property that there must be some cases dealing with it. But to read this book and most other English law texts, you would think that a few deals in wampum are all that our Courts, if any, ever dealt with, and then by oral judgments or Indian fire signals.

The great ocean of the Common Law contains many a fine fish, living and dead. But in the centre, in their own ample fish bowl, float serenely the finest and wisest fish. The glass of their bowl is such that the drab, grey, witless fish outside can look in, their jaws agape, but the bright eyed fish and schools of fish inside cannot look out. They move majestically in mutual fascination.

Thus we in the outer ocean, north or south of the equator, have our little struggles, feebly apply to our inconsiderable problems what we think is the Common Law, and even make brief and thrilling advances only to find, as we look hopefully to the noble fish in the bowl in the centre, that they have eyes only for each other and it is as though we had never been.

To put the matter concretely, there could be, even in an English student's book, Canadian cases and developments which would add to

the understanding of the subjects discussed. For example, *Re Berchthold*, [1923] 1 Ch. 192, has been a matter of much more debate and difficulty than note (e) at page 17 indicates. This is found to a degree in *In re Cutcliffe's Will Trusts*, [1940] 1 Ch. 565, and Cheshire on Private International Law (4th ed.) at pages 424-5, but one of the best discussions of the problems raised by it, is in Falconbridge's *Essays on Conflict of Laws*, Chapter 28, at pages 586-593, a product in one sense of Osgoode Hall. The case was considered by the Supreme Court of Canada in *In re Steed, Minister of National Revenue v. Fitzgerald*, [1949] S.C.R. 453 at page 458, where Kerwin J., the present Chief Justice of Canada, said:

In re Berchthold is a decision on the conflict of laws and it is dangerous and misleading to apply conflict of laws cases to those of taxation.

A second example is the author's brief discussion, at page 14, of "rights". Canadian cases have dealt perforce with the nature of rights because of the allocation in the British North America Act of "property and civil rights in the province" to the provinces. The leading cases are reviewed in Laskin's *Canadian Constitutional Law* at pages 281-301, notably *Royal Bank of Canada v. The King*, [1913] A.C. 283; *Ottawa Valley v. Hydro*, [1937] O.R. 265, and *Beauharnois v. Hydro*, [1937] O.R. 796.

A third example is the Canadian jurisprudence under the counterparts of section 17 of the English Married Women's Property Act, 1882 (in Ontario, R.S.O. 1950, c. 223, s. 12). There is at pages 56-69 of this book, a most lucid discussion of "Concurrent Interests and Title in Husband and Wife" which can be of great practical value to Canadian lawyers, but there is no reference to *Minaker v. Minaker*, [1949] S.C.R. 397 and *Carnochan v. Carnochan*, [1955] S.C.R. 669, which last discusses the discretionary quality of the section. Perhaps these cases could be as interesting to English Courts and English readers as the English cases discussed by Mr. Vaines under this head are to us.

These are by way of example only. Similar illustration could be raised from the jurisprudence of Australia and the United States. Quite apart from the graceful good manners of paying some heed to the senior Courts of other countries administering the Common Law and statutes in the English form—quite apart from this courtesy, books such as this one are far more valuable to the Canadian practitioner if they include significant and authoritative Canadian cases.

But this is by the way. The book is worth while whether the author ever heard of Canada or not. And *vice versa mutatis mutandis*, as the old books might say.

PETER WRIGHT *

* Peter Wright, Q.C., of Wright & McTaggart, Toronto.