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# Book Review: Canadian Law of Landlord and Tenant, by The Hon. E. K. Williams

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Book Review

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*Canadian Law of Landlord and Tenant.* By THE HON. E. K. WILLIAMS.  
Third edition. 1957. Toronto: The Carswell Company Limited.  
Pp. xlvi, 751.

Chief Justice Williams is among that select group of Canadian authors which includes the late E. D. Armour and the respected and now retired Dean Falconbridge, who can claim to have put as many as three editions of a law work through the press. These editions span a period of thirty-five years; and it is a tribute to the interest as well as the energy of the learned author that despite the demands of his judicial office he should have personally prepared this latest edition for publication.

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\* The Hon. C. J. O'Halloran of the Court of Appeal of British Columbia.

There are features of this work which belie the author's modest assertion that it is still a collection of "Notes" on the subject with which it deals. This was certainly true of the first edition which appeared in 1922; it was less true of the second edition which appeared in 1934; and it is even less true of the present edition. This is not to say that the learned Judge has produced a rounded text-book, but he has been driven by his own intellectual curiosity (and perhaps, too, by his experience on the bench which he ascended in 1946) to develop some phases of his "Notes" into fairly complete, if terse, annotations which seek to pull together the subject at hand. A comparison of his treatment of licences in the second and in the current edition, and his treatment in these respective editions of the landlord's liability to a tenant and to others for the defective condition of the premises will illustrate for the reader the point just made.

The general style and scope of the book have remained unchanged. As before, the treatment is concerned with the law in the common law provinces, with account being taken, of the particular statutory provisions obtaining in those provinces. There are sixteen chapters in the new edition as there were in the preceding one; and black letter generalized propositions are included in each chapter as, more or less, separate sections thereof, followed in each case by notes or text elaborations woven around specific cases. What is striking about the black letter propositions is the enlargement of their expression in quite a few instances—symptomatic to this reviewer of a recognition that landlord-tenant case law is mellowing somewhat. The process has, however, quite a way to go before the stringent property doctrines in which the subject is enveloped yield to the dispensing principles which have qualified contractual liabilities. Illustrations abound but two may be mentioned here. First, there has been a perceptible movement toward embracing the doctrine of frustration (discussed by the Chief Justice on pp. 5 and 6 and in a related aspect at pp. 188-189), and it is a pity that the Ontario Court of Appeal peremptorily rejected its application in *Mercur v. H. Shoom & Co.*, [1954] 1 D.L.R. 85, [1954] O.W.N. 55 (C.A.), which offered an excellent opportunity for a contemporary examination of the doctrine. Secondly, the contractual principle of dependency of promises and that of the duty to mitigate damages still faces, in our case law, the formidable barrier of the "estate" relationship of the parties, preventing the tenant on the one hand (except in rare instances) from terminating the lease, and on the other, preventing the landlord from suing once and for all for his damages but permitting him to stand by while rent runs on and to sue for it as it accrues. The author's treatment of these matters is, understandably (by reason of the nature of the book), dispersed through several areas, *e.g.*, in connection with his material on rent, on surrender in his treatment of various covenants and recovery for breaches thereof.

Even a random excursion through the book discloses that the author has carefully collected the recent case law and has noted the modifications or deflections of older doctrine by newer decisions. Thus,

he has qualified exclusive possession as an invariable characteristic of a tenancy, in reliance on *Errington v. Errington*, [1952] 1 K.B. 290, but it may be noted that since the preparation of this edition the English Court of Appeal returned to exclusive possession as a general test of a tenancy in its decision in *Addiscombe Garden Estates Ltd. v. Crabbe*, [1957] 3 All E.R. 563. Again, in dealing with the exception of reasonable wear and tear he has noted the expansion of the exception by *Taylor v. Webb*, [1937] 2 K.B. 283, an expansion carried into at least Ontario case law by *Manchester v. Dixie Cup Co. (Canada) Ltd.*, [1951] O.R. 686. Again, however, there has been a recent contraction of this branch of the law by the English Court of Appeal in *Brown v. Davies*, [1957] 3 All E.R. 401, a judgment too recent to be noted in the book.

While the reported cases are represented in abundance, and while it is unfair to criticize a book for what it does not pretend to be, one cannot but regret that the author did not yield more than he did to the temptations for rounded analysis. The doctrine of *Taylor v. Webb*, already mentioned, is an instance in which the subject should have been pulled together more than it was. Another situation offering a similar opportunity is in respect of the covenant against assignment without leave. While the English rule in *Houlder Bros. v. Gibbs*, [1925] Ch. 575, was doubted by some members of the House of Lords in *Tredegar v. Harwood*, [1929] A.C. 72, and while the Ontario Court of Appeal refreshingly (although in the reviewer's opinion the occasion was not the most propitious one for asserting Canadian judicial independence of English Courts) refused in *Shields v. Dickler*, [1948] 1 D.L.R. 809 to follow the *Gibbs* case, the fact remains that later cases in England and in Ontario too, e.g., *Cowitz v. Siegel*, [1955] 1 D.L.R. 678, returned to the *Gibbs* principle. The matter was worth more than bare unconnected statements of the actual holdings in the various cases.

In a third area, that of the running of covenants, the black letter statement of principle seems singularly inadequate and less than helpful, even though the cited cases offer some illumination. Thus, Article 141 reads: "A covenant is said to run with the reversion when either the liability to perform it or the right to take advantage of it passes to the assignee of the reversion . . .", and Article 142 contains similar language applied to the "land". A statement of when covenants run rather than a mere statement of consequences if they do run is what the author should have provided. And, beyond this, closer attention to the consequences of the cases in terms of who was suing and who was being sued (i.e., whether original contracting parties or assignees at one or both ends of the covenant) would have served a most useful purpose. *Woodall v. Clifton*, [1905] 2 Ch. 257, cited for the proposition that a covenant to give the lessee an option to purchase does not run, was a case where the action was between assignees. Two recent judgments, one from England and one from Ontario, and both decided too late for inclusion in Chief Justice Williams' book, show that *Woodall v. Clifton* is too widely expressed. In *Quee v. Jany* (1957), 7 D.L.R. (2d)

596, the Ontario Court of Appeal held that a covenant for an option to purchase was not enforceable by a lessee against an assignee of the reversion; but in *Griffith v. Pelton*, [1957] 3 All E.R. 75, it was held that such a covenant was enforceable by an assignee of the lessee against the lessor's executrix. The conclusion is plain, in terms of the "touching and concerning" requirement for the running of covenants in leases.

If the learned Chief Justice has not modified his book sufficiently towards a treatise style to suit this reviewer, the practising lawyer must still be grateful in being presented with a very wide assortment of fact situations from which he can develop a brief or argument—at least, after reading the cases to which this book will lead him. While little of significance in the case law has been omitted (and the author has not hesitated to refer to the American Law Institute Restatement of Torts, as at p. 381), it is a little surprising to find no mention, in connection with illegality, of *Alexander v. Rayson*, [1936] 1 K.B. 169, or *Edler v. Auerbach*, [1950] 1 K.B. 359. Neither this omission nor the other points I have made in the discharge of a reviewer's duty, detract to any great degree from the veritable mine of information and citation to which the profession now has access. It ought to take advantage of this excellent working tool.

BORA LASKIN \*