

The overall impact of the book does not suffer from being over-assertive. The author's conclusions are cautious, even tentative:

“Man will never discover peace and a cure for war, as we may reasonably hope that man will discover health through a cure for cancer.

Yet each time that international judicial surgery is used to excise from the world's political turbulence even a small irritant in the relations of two countries, the world advances a few inches on the long road to peace.”

To some, pessimism may seem fully justified when the future progress of the international legal system is measured in inches rather than leaps and bounds. Yet this comment by one of the world's most respected authorities in the field at least takes account of reality. In the words of the apocryphal Cockney barrister to his equally-apocryphal colleague, “Some we wins, and some we loses, but why does the best ones always get settled down the Whitechapel road?”³

Judge Jessup seems to know the answer.

J. M. SHARP*

ARABINESQUE-AT-LAW

By R. E. Megarry, pp. 32, London (1969).

In his introduction to this delightful little book, Hon. Sir Robert Megarry makes the observation that it was written during a “long, rainy Long Vacation week-end” which he spent in Norway. I rather suspect that it is a book which its author had long wanted to write; and that, if the adverse weather in Norway had not prompted its birth, it would have been born at some other appropriate time. Be that as it may, what counts for the grateful reader is that Sir Robert did manage to find time, in his crowded life, to write it.

William St. Julien Arabin was an eccentric. He was an English eccentric which is to say that he was an eccentric of a very special breed—a breed that contributed much, over the generations, to the characteristic flavour of the English way of life. Is the breed dying out? There is some evidence of this melancholy fact, and it is a matter of great regret, for eccentrics are the vitamins that keep society in good health. They should

3. Whitechapel Road: a street in the East End of London notorious as the site of the violent settlement of numerous underworld feuds.

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be allowed to flourish at their will, without let or hindrance. John Stuart Mill spoke truth when he said: "No society in which eccentricity is a matter of reproach can be in a wholesome state."

Arabin was a man of property with extensive holdings in Middlesex and Essex which came to him by inheritance. He was appointed a serjeant-at-law in 1824. Three years later, he became a judge of the Sheriff's Court in London; and, in 1843, one of the Commissioners of the Central Criminal Court. For some years, he served as Judge Advocate-General of the Army. After an active, useful life, he died in 1841. In 1843, there was printed for private distribution only a small book entitled *Arabiniana* which collected some of the strange remarks that the Serjeant had made from the bench. This book, which was put together by "H.B.C." (H. Blencowe Churchill), a practising barrister,¹ gave convincing proof of Arabin's eccentric use of words.

He was no Mrs. Malaprop. He did not wrongly apply words, nor use them in a sense other than their proper meaning. Such delightful nonsense as this: "An aspersion upon my parts of speech! was ever such a brute! Sure, if I reprehend anything in this world it is the use of my oracular tongue, and a nice derangement of epitaphs"²—such was not his manner of speaking. His fault was that he did not always know exactly what he wanted to say, that the links in his chain of reasoning sometimes slipped a cog or two, that when he began a sentence his beginning did not always know his end. He did not attend to the precise import of every word in his sentences. His mind worked in the same strange, fitful fashion as the mind of the anonymous Irishman who drafted an act for the rebuilding of Chelmsford Gaol which had a provision that the new gaol was to be built by the materials of the old gaol, and another provision that the prisoners were to be kept in the old gaol until the new gaol was finished.³

This dictum, which was Sir William Holdsworth's favourite, well illustrates Arabin's manner of speaking:

Of beer.

"R. v. Higgins, February 1839, P.P. The prisoner was convicted. The Court, to prisoner. I have no doubt of your guilt; you go into a public house, and break bulk, and drink beer; and that's what in law is called embezzlement."⁴

Happily, Sir Robert has ventured to revive the book which recorded some of the remarkable sayings of the remarkable Serjeant Arabin.

1. *A History of English Law*, vol. 13, 569.

2. *Sheridan, The Rivals*, Act 3, Scene 3.

3. *Lord Eldon's Anecdote Book* (1860) p. 76.

4. *op. cit.*

“Very few copies of the book seem to exist,” he explains, “and it has long dropped out of sight. Yet it is too good—and too bad—for that.” In his revival of the book, he has made some changes—footnotes have been dropped, the names of cases, dates, reporters’ initials have been removed; but, as he says, “I would not wish and have not dared to alter or omit a single word or comma of the Serjeant’s; apart from the suppression of some italics, everything of his is reproduced exactly as it appeared in *Arabiniana*, complete and unabridged, as they say.”

Here are five of the Serjeant’s more memorable dicta:

“The Court: Yes. When I sit here, I fancy myself on the top of Mount Breeze; and the first thing I do every morning of the session, is to go to the glass and see if my eyes have not been blown out of my head.”

“The Court: My good man, don’t go gabbling on so. Hold your tongue, and answer the question that is put to you.”

“The Court, to witness: Woman, how can you be so stupid? You are tall enough, to be wise enough.”

“The Court: I assure you, gentlemen, they will steal the very teeth out of your mouth as you walk through the streets. I know it from experience.”

“The Court, in charge: If ever there was a case of clearer evidence than this of persons acting together, this case is that case.”

If the good Serjeant were living in this day and age, he would be in serious trouble with Women’s Lib. In addressing a convicted woman, he once said: “You must go out of the country; you have disgraced even your sex.”

How many women today would escape conviction before a judge who reasoned in this fashion: “I cannot suggest a doubt; she goes into a shop, and looks at several things, and purchases nothing; that always indicates some guilt.”

When the Serjeant was presiding on his bench, counsel had to tread warily in the best interests of their clients. When a defence counsel observed that only one witness had been called, though three had been present at the scene, Arabin voiced this warning: “Now, don’t make me transport him for life.”

His idea of mercy, which, it must be admitted was as variable as the weather, seems to have been out of step even with his own times. To a prisoner who had been found guilty on several indictments, he said “. . . it is in my power to subject you to transportation for a period very considerably beyond the term of your natural life; but the Court, in its

mercy, will not go as far as it lawfully might go, and the sentence is that you be transported for two periods of seven years each."

Anyone who was fortunate enough to hear Mr. Justice Megarry when he gave the annual Manitoba Law School Foundation lecture, in 1971, will need no urging to read a book from his pen. The only fault that I can find with his present book is that it is only 32, and not 320, pages long.

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**LAND PLANNING BY ADMINISTRATIVE REGULATION –
THE POLICIES OF THE ONTARIO MUNICIPAL BOARD**

By Gerald M. Adler; (University of Toronto Press, Toronto), 1971,
xiv, 246 (including index) pp.

The nature of this book is such that it requires an input of a fair amount of time and diligent concentration if its full fruits are to be reaped. Unfortunately, for several reasons including a lack of real expertise with the Ontario Municipal Board or a similar board and a lack of familiarity with the method of computer research utilized, this review is going to be a "cop-out" for I have had to conclude that I cannot write a proper review of this book which would do justice to it; the best that I can do is to write what actually amounts to no more than some additional informational copy about it.

As the title suggests, this book deals with the Ontario Municipal Board in its land planning and land use control aspect; it should be of particular interest to those concerned with land planning and land use control, not only in Ontario but in any jurisdiction with a similar set-up,¹ and to those interested in the field of administrative law in general for it is an in-depth study of a tremendously significant administrative tribunal.

This book, apparently completed in 1968, is the final product of a study which probably could be said to have had its beginning in the summer of 1961 when Mr. Adler, then a law student, served as a legal researcher to the Chairman of the Board; en route a modified version of it was submitted to Yale Law School in partial fulfillment of the requirements for a post-graduate degree.

Between an introductory chapter and a concluding chapter, the

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1. The author outlines this at pp. 6 - 13.