to accept the traditional view that the marriage was, by virtue of the *lex loci celebrationis*, a potentially polygamous one. However, he then went on to hold that as the marriage had always been monogamous *de facto*, and as the husband was now prohibited from taking further wives both by his *lex domicilii* and by the *lex loci celebrationis*, "the status of the parties must be regarded as being changed" and "the marriage must be considered as no longer polygamous."[9]

It is respectfully submitted that the lengths to which the learned judge was prepared to go in his judgment to reach the desired end leave one with an unhappy feeling that maybe a little too much straining was necessary to achieve justice for a deserted wife, who could have been helped to the same end by an approach more directly consonant with sociological and legal realism.[10]

C. H. C. EDWARDS*

LAW AND THE ESKIMOS

In a recent case[1] of vital importance to Canada's Eskimo population, Mr. Justice John H. Sissons, of the Territorial Court of the Northwest Territories, was called upon to write on a clean slate;[2] or, to vary the metaphor, to embark upon a legal course with little but commonsense and imagination for his guide.

Noah, an Eskimo, died from injuries received during a fire which destroyed a bunkhouse in which he was sleeping. Some two years before his death, he had married Igah, a woman of his own blood, in accordance with native Eskimo custom. His marriage took place on Broughton Island, an isolated settlement of about 100 persons, having few of the recognized attributes of the white man's civilization.

The Vital Statistics Ordinance of the Northwest Territories provides for the registration of marriages entered into in accordance with Eskimo custom. Noah's marriage was not registered under this ordinance.

One child was born of his union with Igah. He died intestate, leaving an estate of some $26,000. The administrator of his estate applied to the court for an order to determine Noah's next-of-kin.

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9. (1962) 31 D.L.R. (2nd), at p. 574.

10. Since writing the above this case has gone on appeal to the British Columbia Court of Appeal, whose decision is reported in 40 W.W.R., at p. 257. Both the husband's and the wife's applications for a declaration as to the effect of the Indian marriage were dismissed, but on grounds of procedure and equity. The appeal judgment again appears to assume that the marriage was basically polygamous because of the ceremony and the *lex loci*, and fails to consider the intention of the parties with regard to their matrimonial home.

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1. *Re Noah Estate* (1962) 36 W.W.R. 577.

2. These are Mr. Justice Sisson's own words. The phrase is not in good favour with the Supreme Court of the United States. On three recent occasions, this Court has said, "We do not write upon a clean slate." See Frederick Bernays Wiener's Selden Society lecture for 1962, at p. 16.

"The primary question," said Mr. Justice Sissons:

> is whether a marriage in accordance with Eskimo custom is a valid marriage. There have been thousands of marriages in accordance with Eskimo custom and such marriages are still taking place, particularly in the Eastern Arctic. If such marriages are invalid, there are thousands of illegitimate Eskimos in the north. Parties married in accordance with Eskimo customs could not adopt a child under the provisions of pt. LV of the Child Welfare Ordinance. There are very many adoptions among the Eskimos. The widow and children of a man married in accordance with Eskimo custom could not share in his estate under the provisions of the Intestate Succession Ordinance. Many estates are affected. There is also involved the rights, freedoms, laws and customs of the Eskimos, as well as their honour and reputation.[3]

The official attitude of the Department of Northern Affairs and Natural Resources was placed before the court by two written submissions. These written submissions bristled with the arrogant assumptions of the white man—that his way of life has a universal validity, that what is good for him is necessarily good for the other fellow. The second submission, for example, stated:

> (Noah's) life and association with the Church, the government and the white man lead to the conclusion that he was aware of the concept of a lawful wife and her privileges but chose rather another relationship, whose incidents we must assume were more to his liking.[4]

In sternly repudiating this view, Mr. Justice Sissons said:

> A marriage in accordance with Eskimo custom is not "the Eskimo custom of concubinage." Igah was not a concubine. Noah was not a paramour. And he was not a philanderer.[5]

Mr. Justice Sissons, with counsel concerned in the case, travelled to Broughton Island to hold sittings. "The court and counsel," he explained:

> visited and talked with these people and met most of the people of the settlement and secured a better understanding and appreciation of the community and of Eskimo life and customs on Broughton Island, and of the present matter and the people involved. This was in accordance with the general practice of the bar of the Northwest Territories. They learn first hand.[6]

The compelling force behind Eskimo marriages is economic necessity. "In the arithmetic of life," said Browning, "the smallest unit is a pair." For the Eskimo, these words have more than a poet's validity. It is literally true that the smallest unit which can survive in the Arctic wastelands is a pair—a man to provide the food (a full-time occupation), and a woman to do the camp chores, which include the making of clothing, a task which calls for the burning of much midnight oil.

As a result of learning at first hand, Mr. Justice Sissons was able to reach some interesting conclusions:

> Eskimo marriage was a matter of mutual interest and necessity. Married people were generally very devoted to each other and remained faithful to each other throughout life. Their devotion had very little to do with sex.[7]

3. P. 577-8. 4. P. 583. 5. P. 591. 6. P. 590. 7. P. 592.

He found no evidence to support the popular belief that an Eskimo, as a mark of favour, will make his wife available to a guest:

> Marriage among the Eskimos is not, as suggested by the argument, a morally loose affair.
>
> Morality pertains to or is concerned with right conduct and it is generally accepted custom of conduct and right living in one's own society which govern. It may be that in spite of our conceits that customs other than our own may be generally accepted or condoned in other societies, and may even be more moral. The sexual customs of the Eskimos may be different from ours, but that does not constitute immorality.[8]

"There appear to be no cases relating to marriage in accordance with Eskimo custom."[9] There are, however, reported decisions from Canadian and American courts relating to marriage in accordance with Indian custom. Mr. Justice Sissons accepted help from these cases in wrestling with his primary question. In his judgment, he had to consider the effect of The Marriage Ordinance of the Northwest Territories upon a marriage in accordance with Eskimo custom. This ordinance, he declared, was misnamed. As provincial legislation it concerned only the solemnization of marriage. It could not invalidate a valid marriage and accordingly threw no light on his present problem.

He also considered the effect of the Intestate Succession Ordinance of the Northwest Territories. This ordinance, he held, has no general application to Eskimos. But it did apply in the particular case of Noah, who had left the Eskimo community, and had given up the Eskimo way of life to work for the white men's wages, part of which he put away in a bank for the use of himself and his family.

His findings led irresistibly to the conclusion that the marriage of Noah and Igah was a legal marriage, and that Igah and her child were entitled to inherit Noah's estate.

His judgment of twenty-seven pages is more than a routine contribution to the law reports. It is a valuable social document.

The *Noah* case was not the first case in which Mr. Justice Sissons has guarded the traditional rights of the Eskimo, and taken an imaginative approach to the solution of their legal problems. In *Regina* v. *Kogogolak*,[10] he held that a Royal Proclamation of 1763 is the Magna Carta of the Eskimos, and that the Game Ordinance of the Northwest Territories does not abridge the Eskimo's right, granted by that proclamation, to hunt, trap and fish at all times on all unoccupied Crown lands in the Arctic.

In *Regina* v. *Otokiak*,[11] he ruled that the Liquor Ordinance, which provides that no Eskimo shall possess or consume liquor, is *ultra vires* of the Council of the Northwest Territories.

And in the *Adoption of Katie*,[12] decided in October, 1961, he held that an adoption in accordance with Eskimo custom is a valid adoption, as

8. P. 591. 9. P. 596. 10. (1959) 28 W.W.R. 376.
11. (1959) 28 W.W.R. 515. 12. (1962) 38 W.W.R. 100.

effective for all purposes as an adoption made under the provisions of the Child Welfare Ordinance, N.W.T. "The Eskimos, and particularly those in outlying settlements and distant camps," he said in his judgment:

> are clinging to their culture and way of life which they have found to be good. These people are in process of cultural change and have a right to retain whatever they like of their culture until they are prepared of their own free will to accept a new culture. In particular, although there may be some strange features in Eskimo adoption custom which the experts cannot understand or appreciate, it is good and has stood the test of many centuries and these people should not be forced to abandon it and it should be recognized by the court.[13]

In these four cases, dealing with different aspects of the legal position of the Eskimos, there is evident a very real desire on the part of the presiding judge to make an active sense of justice the handmaiden of the law.

ROY ST. GEORGE STUBBS*

THE CONSTITUTIONAL VALIDITY OF THE TIME SALE AGREEMENT ACT

The Time Sale Agreement Act,[1] recently passed by the Manitoba Legislature, but not yet proclaimed, has given rise to considerable controversy, especially among Manitoba merchants. One question which has yet received little consideration is the constitutional validity of this Act.

The preamble to the Act indicates its purpose. It states:

> Whereas it is desirable that a person purchasing goods on an instalment payment plan should, at the time of entering into an agreement for the purchase thereof, be fully informed as to the amount of interest that he is required to pay on any unpaid balance of purchase price and the true rate thereof, and also as to all other amounts added to and included in the purchase price, or payable in addition to the purchase price;

The Act applies to conditional sale and hire purchase agreements[2] (included in the term "time sale agreement") in retail sales for an amount of one hundred dollars or more,[3] and requires all such agreements to be "evidenced" in writing, to be signed by the purchaser and to contain a description of the goods sufficient to identify them.[4]

In addition, such agreements are required[5] to state, *inter alia*: the regular cash selling price; the full selling price charged to the buyer, including a separate item showing the amount for the finance charges; the amount charged for insurance, if any, and the nature of the coverage provided; any other amount, including interest, charged to the buyer for the privilege of purchasing under a time sale agreement, and showing whether it is

13. P. 101.

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1. S.M. 1962, c. 76. 2. Section 2. 3. Section 5.
4. Section 3 (1). 5. Section 3.