



Reviews

LIVES OF THE LORD CHANCELLORS 1885-1940

By R. F. V. HEUSTON. Oxford: Clarendon Press, 1964. Pp. 632.
\$11.50.

The author in his preface states that "the general object of the work is to depict the Lord Chancellors of the years 1885-1940 in their legal, political and personal lives" Mr. Heuston, in his detailed analysis of each Chancellor, in these three aspects, certainly fulfils this promise, though at times one is inclined to wonder if he does not go too far. For example, in feeling obliged to set out the exact final resting place of each of the noble lords (with a note in one case of two errors on the tombstone¹) and the amount of his estate!

At the end of the life of each of the twelve Chancellors there is a valuable appendix setting out the important cases in the various branches of the law decided by that particular Chancellor. Here the thoroughness of Mr. Heuston's research is well evidenced, and for the legal reader there is an opportunity of appreciating in a short compass the contribution to the law of each Chancellor.

For the Canadian reader there are two particular areas of interest. The first, of course, is the part played by the various Chancellors in the Judicial Committee of the Privy Council, which, throughout the whole period, was the final court of appeal for this country. The second is the question of appointments of High Court Judges and Queen's Counsel which, in the United Kingdom, are made upon the recommendation of the Lord Chancellor.

As to the first, the author points out that during this period there was a convention that the Chancellor should preside on the hearing of appeals to the Judicial Committee of the Privy Council, which raised important points of Canadian constitutional law. He states that "Loreburn, Haldane and Birkenhead each regarded this as a most important part of their duties."² In his treatment of Haldane he deals at some length with his interpretation of the British North America Act, pointing out that "his influence on the constitutional law of Canada has been profound".³ It is interesting to note that out of 41 appeals to the Judicial Committee, between 1912 and 1929, Haldane was a member of the Board on 32 occasions, and in fact delivered the judgment in 19 cases. Heuston, as a constitutional lawyer himself, deals with Haldane's interpretation of the controversial Sections 91 and 92 with great fairness and lucidity, and gives us some insight into why Haldane was so emphatic about provincial rights.

As to the question of appointments to the judiciary, here again one must admire the author's detailed analysis of the appointments recom-

1. p. 446 (that of Lord Cave).

2. p. xvii (Introduction).

3. p. 216.

mended by each Chancellor, and in particular his careful study of those recommended by Lord Halsbury, which were so controversial on account of their political overtones and are, therefore, of particular interest in the Canadian context today. He spends a whole chapter dealing with Halsbury's appointments of High Court and County Court Judges and also Queen's Counsel. Heuston, consistent with his sympathetic treatment of all the Chancellors, defends Halsbury, and feels that there were only "four dubious appointments (to the High Court) out of thirty during a tenure of the Woolsack lasting seventeen years".⁴ Nevertheless, this reader, for one, was left with a feeling that Halsbury's appointments were in fact too often influenced by political patronage rather than by merit. It is, however, encouraging to find how completely the United Kingdom has been able to break away from this position in the comparatively short period of the last fifty years, so that Viscount Jowitt, as Lord Chancellor in 1950, was able to state in an address to the American Bar Association, that in his five year term on the Woolsack not one member of his party had been appointed to the High Court. Heuston gives us a possible clue as to how this change came about in that he points out that in the case of Halsbury's controversial appointments the various English law journals were forthright in their criticisms, and *The Times* itself did not hesitate to devote leading articles criticising the appointments.⁵ Unfortunately, in Canada the public is little informed on the question of political appointments of Judges and Queen's Counsel, and until the press is willing to arouse the public conscience on this matter, as it did in England, there is little hope of the change being experienced here.

In dealing with so many characters and events that naturally provoke controversy, the author is to be commended that he lives up to the promise in his preface to allow the "material to speak for itself with the minimum of comment". With the wealth of material so interestingly supplied throughout the book, the reader is enabled to obtain a new insight into and form his own conclusions on many of the lawyers who have left their mark on our law and constitution today.

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PROVINCE OF ONTARIO REPORT OF THE JOINT COMMITTEE ON LEGAL AID

Toronto: Queen's Printer. 1965. Pp. 126.

The past few months have seen the publication of several book bargains for lawyers. The new *Pelican* law series (including: Street, *Freedom, The Individual and the Law*; DuCann, *The Art of the Advocate*; Borrie and

4. p. 66.

5. See p. 55.

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