Fortunately, Professor Dales' thesis does not depend on the quality of his legal analysis. Most of his chapter on property rights seems irrelevant to me. I suppose he included it in order to accustom his readers to the use of property concepts in his pollution control scheme, but it doesn't seem to me to have been necessary, and it is very likely to cause serious misunderstandings about the state of existing law.

There is one comment that Professor Dales makes to lawyers that I do applaud: ". . . lawyers (should) tear themselves away from private law long enough to do some thinking about public law and put forward some legislative proposals for dealing with social problems."[2] (That's rather unfair, but I'll let it pass) ". . . our lawyers ought to be on a continuous outlook both for new legislative methods and for old ones that become newly practicable, in order to help control the use of our two most important common property resources, air and water."[3] He's right—if lawyers are to be worthy of the designation "social engineers" that Roscoe Pound applied to us, we must take an interest in problems like the ones described in this book, and do something about them.

DALE GIBSON*

VERDICT! ELEVEN REVEALING CANADIAN TRIALS,

By John Kettle and Dean Walker; (McGraw-Hill: Toronto), 1968; 289 pp.

This book contains nine chapters. Each one of seven of these chapters gives a brief account of a single Canadian trial. The other two each deal with two trials.

The authors are laymen and they use legal phraseology rather loosely. One does not have to read far into their book to become aware of this fact. For example, on page 5, they make this comment:

> "At the bench, presiding over Ford (i.e. the accused who was on trial for murder), the lawyers, and the all-male jury, was Mr. Justice Morand."

After a weeks at law school, any wide-awake student would rephrase this sentence thus:

> "On the bench, presiding over the court was Mr. Justice Morand."

The suggestion that a judge presides over lawyers as though they were schoolboys doing their sums is not a flattering one to a practising lawyer, and it seems to miss the point that the lawyer at the bar plays as neces-

2. P. 55.
3. P. 63.

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sary and integral a part in the adminstration of the law as the judge on the bench. But be that as it is, this book is well worth the investment of the few hours required to read it.

All chapters are not of equal interest. Four of them deal with murder trials—the Wayne Ford trial of 1967, "the boy who killed his mother"; the trials of Arthur Lucas and Ronald Turpin, which were held in 1962 (according to the authors these two men, who were hanged together, "may have a place in history as the last of the 701, the last to suffer the supreme penalty in Canada"); the trial of Evelyn Dick, "the wicked woman," who was acquitted of the murder of her husband in 1946, immediately re-arrested, put upon a second trial, and convicted of the murder of her newly-born child; and the trial of Ayalik, an Eskimo, for the murder of a young R.C.M.P. constable which was held before Mr. Justice Sissons in the Territorial Court of the Northwest Territories in 1960.

Murder is as old as love, hate, the high passions. It has been a fact of life since the foundation of the world. It is a too familiar tale. A full account of a murder trial, such as is provided by a volume in the Notable Trial Series, gives a comprehensive picture of the law in action. It may be read with profit by any student of the law. A capsule account of a murder trial, such as the authors give in this book, is quite a different matter. Allowing for variations in the sordid details, one such account is much like any other such account, and offers little profit to a serious reader, who will find the authors' other cases of more interest. These cases are a mixed bag. First, in order, is the prosecution of a member of the African Ballet, in Montreal, in 1967. The authors make this appropriate comment on this trial:

> "Suddenly the city whose glorious Expo had so recently made it the epitome of world sophistication reappeared as a Gallic hicktown."[1]

In some measure, the presiding judge, Mr. Justice Beaulieu, redeemed the reputation of his city. In dismissing the Crown's case, he said:

> "In the Court's opinion, the performance mentioned in the charge is not an indecent performance according to the evidence brought forward, taking into account the time, place and way in which the show was performed; because the Court cannot see . . . (as) a main characteristic the undue exploitation of sexual matters tending to deprave or corrupt morals."[2]

Next comes the prosecution concerning John Cleland's controversial novel Fanny Hill, in Toronto, in 1964. As a result of the decision in this case, in the authors' words, "Fanny Hill (was) made enough of a lady to be turned loose on the citizens of Toronto."[3]

1. P. 37.
2. P. 48.
3. P. 66.

Then follows the conspiracy hearing of 1962, involving the Dukhobors. The chapter devoted to this case makes disturbing reading. As does the next chapter which deals with the Hal Banks assault trial of 1964. This strong arm labour thug was characterized by Mr. Justice Norris, in his Royal Commission report, thus:

> "He is of the stuff of the Capones and the Hoffas of whom the dictators throughout history from the earliest time to the totalitarians Hitler and Stalin are prototypes. He is a bully, cruel, dishonest, greedy, power hungry, contemptuous of the rule of the law. In his mouth the use of the word 'democracy' is sheer blasphemy. For him the big lie and the failure to remember are ever-ready weapons and shields."[4]

These are strong words but, as the authors unfold the tale of Banks' villainy, they do not seem too strong.

In a chapter entitled the Secrets of a Celebrity, the authors give an account of the proceedings taken in the Courts of Saskatchewan by the first (and only lawful) wife of Grey Owl, following his death in April, 1938. The authors refer to this much-married man, an Englishman who posed successfully as an Indian for many years, as the "most colorful character in Canadian history." The trial gave Mr. Justice Anderson, who presided, the occasion to write a delightful judgment—an oasis in the desert of print that a lawyer must needs traverse in the course of his practice—in which he calls Grey Owl "somewhat of a fascinating masquerader, (who) was not essentially a charlatan."[5]

In another chapter, The Right to be Offensive, the authors deal most effectively with the case of Laurier Saumur, the Jehovah's Witness who was convicted in Quebec City, in 1948, of distributing literature on the streets without a written permit from the Chief of Police. In 1952, on an appeal to the Supreme Court of Canada, his conviction was quashed by a split-decision (five to four) of the court.[6] This, in my view, is the best and most interesting chapter in the book.

There is, as the authors suggest, a distinctive Canadian flavour about these eleven trials. They do express something of Canada's "special personality." For example, an American court faced with a prosecution against the Jehovah's Witnesses would refer directly to the positive guarantees of religious freedom to be found in the American Constitution. A Canadian court on the other hand must consider the division of power between federal and provincial jurisdictions, always keeping in mind the fact that if a competent legislative authority desires to limit our freedom it can do so. The authors quote parallel statements of

4. Quoted p. 117.
5. Reported (1939) 3 W.W.R., 591.
6. Reported (1953) 2 S.C.R., 299.

Mr. Justice Murphy of the Supreme Court of the United States and Mr. Justice Rand of the Supreme Court of Canada.

These are Mr. Justice Murphy's words:

> "The Jehovah's Witnesses are living proof of the fact that even in this nation, conceived as it was in the ideals of freedom, the right to practise religion in unconventional ways is still far from secure. Theirs is a militant and unpopular faith, pursued with a fanatical zeal. They have suffered brutal beatings; their property has been destroyed; they have been harassed at every turn by the resurrection and enforcement of little used ordinances and statutes . . . To them, along with other present-day religious minorities, befalls the burden of testing our devotion to the ideals and constitutional guarantees of religious freedom."[7]

Here is what Mr. Justice Rand said:

> "The crime of seditious libel is well known to the common law. Up to the end of the 18th Century it was, in essence, a contempt in words of political authority . . . .
>
> "There is no modern authority which holds that the mere effect of tending to create discontent or disaffection among His Majesty's subjects or ill will or hostility between groups of them, but not tending to issue in illegal conduct, constitutes a crime, and this for obvious reasons.
>
> "Freedom in thought and speech and disagreement in ideas and beliefs, on every conceivable subject, are the essence of our life,".[8]

Though these two statements travel in the same direction, they travel by different routes. The end result may be the same, but the emphasis is different—in the one case American, in the other Canadian.

Something should be said of the authors' literary standards. A brief passage from their book may serve to illustrate their breathless, and breath-taking, full-steam-ahead style. These lines introduce their second chapter which deals with the African Ballet and the Fanny Hill cases:

> "Bosoms are a problem in Canada. Fifty per cent of Canadians have them but they're supposed to keep them covered in public lest they foster anti-social behaviour in the other fifty per cent. Provided they are covered, Canadian breasts may be enlarged, reshaped or restrained to taste and their owners will not be hauled into court. But, bared to the eye, these symbols of la différence offer legal hazards to their owners, to theatrical producers, and to editors, and dilemmas to judges who must decide whether to be indignant, irritated, or merely amused when the Crown solemnly lays charges under hazy morality laws.
>
> "Almost by definition, morality laws in a democracy lag behind public opinion. Canadians in the late 1960's certainly don't see much sin in skin. Bikinis on North American beaches rate barely a wolf whistle and full-colour bra advertising is accepted by family magazines . . . ".[9]

What is the appropriate comment on this gaudy assemblage of highl-coloured words? Res ipsa loquitur, perhaps!

Many good books might be put together by enterprising authors who raid the law reports for their copy. The field is large. Few Canadians have turned their hands to cultivating it. May Messrs. Kettle and Walker continue their good work.

ROY ST. GEORGE STUBBS*

7. P. 189.
8. P. 191.
9. P. 36.

* Winnipeg Barrister, author of Four Recorders of Rupertsland, etc.