

FRANK REGINALD SCOTT, Q.C.

The Welsh, who have in instinct for the picturesque phrase, claim that the perfect man is one who can "build a boat and sail it, tame a horse and ride it, make an ode and set it to music". This is a tall order; one not easy to fill. If Francis Reginald Scott cannot fill it, it can be claimed with certitude that he is one of the most accomplished men in Canada — a throw-back to a more specious age, such as the age of the first Elizabeth, when a man, who aspired to intellectual distinction, was expected to be, not a narrow specialist, but a man of versatility, of depth, able to do many things well.

In a crowded lifetime, Frank Scott has been lawyer, law teacher, for four years dean of McGill Law School, one of the foremost authorities on Canada's constitutional problems, political pundit, author, poet, lecturer, valiant warrior in the cause of civil liberties and social rights — and always in all his manifold activities, a humanitarian who might be written as one that loves his fellowman.

I propose to deal with him chiefly as lawyer and as poet. Law and poetry are two of the greatest forces for civilization, which, in John Galsworthy's words, may be defined as the gradual fortifying of the higher part of us — "the exaltation of the principle of justice, the chaining of the principle of force." Law and poetry have met and mingled in the person of this remarkable man in a truly remarkable way. To open my introduction of him, I am going to borrow the words of a lawyer, and of a poet. These words may suggest something of the regard in which he is held by fellow-workers in these two fields — fellow-workers, who by their own exertions, have earned the right to be heard.

First, let us hear from the lawyer: some ten years ago, in reviewing one of his books, Mr. Justice Bora Laskin said: "Professor Scott, by any measure is already a heroic figure in Canadian public life. Both contemplative and active, he has combined careers as law teacher and lawyer, political theorist and party strategist, poet and man of letters, speaker and author. His contribution to Canadian public life has come as significantly from his advocacy before the Supreme Court of Canada as from his law review writings."¹

And now the poet: in a recent salute to F. R. Scott, A. J. M. Smith, who first met him when they were undergraduates at McGill, had these eloquent words to say of his friend and fellow-poet: "In Frank Scott we have a figure whom some Carlyle of Canada's second century might write about as The Hero as Canadian Poet or perhaps more soberly as The Poet as Man of Action. Politician, lawyer, teacher, scholar, and public

1. The University of Toronto Law Quarterly, vol. 13 (1959-1960), 288.

figure, F. R. Scott has been in the forefront of the battle for civil liberties and social justice in Canada. He was one of the doctors presiding over the birth of the C.C.F. and the New Democratic Party: he fought and won the legal battles against the padlock law of Premier Duplessis and against the censorship of *Lady Chatterley's Lover*; he has written studies of Canada's Constitution, has been Dean of Law at McGill, and is at present a member of the Royal Commission on Bilingualism and Biculturalism. And he has, since his early days as a law student at McGill, been a poet."²

To use a word which has recently entered colloquial speech, Francis Reginald Scott was born a wasp — on August 1, 1899, in Quebec City. His father, Archdeacon Frederick George Scott, was the beloved senior Chaplain of Canada's First Division in World War I, and a poet, a member of the second string of Confederation poets, ranking after Roberts, Carman, Lampman and Duncan Campbell Scott.

With his family background and his conventional upbringing, Frank Scott seemed destined to become a gilded member of the establishment. But Fate, who watches over her own, had other things in store for him. There was work to be done and She elected him to do it. I like the words Desmond Pacey has written about him: "In fact, although recognizing the worth of the ideals of conservative Anglicanism and Imperialism in the Canada of the nineteenth century, Scott has rebelled against the tradition as being inadequate for the needs of an industrial democracy. He has, however, remained true to the finest ideal of that tradition, that of selfless service to his fellow-man."³ In other words, Frank Scott has managed to take the best from two worlds.

After obtaining the degree of B.A., in 1919, from Bishop's College, Frank Scott embarked upon a career as a teacher. A year later, he was appointed Rhodes Scholar for the Province of Quebec. At Oxford, he attended Magdalen College, where he might have met the fate of Jim Jay, as it is reported by Walter de la Mare:

"Do diddle di do
Poor Jim Jay
Got stuck fast
In Yesterday."

Referring to his career at Oxford, where he specialized in history, he wrote, in a letter to Professor Pacey: "I spent three blissful years at Oxford soaking up everything I could learn about the past and paying very little attention to the present."⁴

2. Canadian Literature No. 31, Winter, 1967, 25.

3. Ten Canadian Poets (Paperback edition, 1966) 225.

4. *Ibid.*, 226.

On his return to Canada, in 1923, with two Oxford degrees — B.A. and B. Litt. — to his credit, he resumed his teaching career. His oldest brother, W. B. Scott, a Montreal lawyer, who became Chief Justice of Quebec, thinking that he would be too circumscribed in the teaching profession, persuaded him to study law. In 1924, he enrolled in the Law Faculty at McGill. Three years later, he received the degree of B.C.L. and was called to the bar of Quebec. After a year in private practice, with the Montreal law firm headed by Eugene Lafleur, perhaps the greatest lawyer Canada has produced, he accepted an invitation from Dean Percy E. Corbett to join the staff of McGill Law School. In Corbett, he recognized a kindred spirit, a man who was moving in the field of law in the same direction as himself. Speaking at Carleton University in 1959, he recalled Corbett's definition of law: "Law is our collective name for what is perhaps the most important set of institutions by which man has sought to reinforce his reason against his passions."⁵ And that perhaps is the most poetic definition ever given of law. Frank Scott himself offers this much more prosaic definition: "A law is a command of the state which must be obeyed, and which the power of the state will enforce through courts."⁶

Since joining the staff of McGill Law School, F. R. Scott has been continuously active as a law teacher. Therese Casgrain once asked him why he did not give up teaching for the active practice of law, suggesting to him that, as a practising lawyer, he would be able to provide himself with a more abundant supply of loaves and fishes. "The law needs good teachers," he replied, "even more than it needs good lawyers. Canadians judge the law by lawyers. That's like judging religion by priests. We need to elevate the position of law in Canada in order to elevate the rule of law."⁷

As a law teacher, F. R. Scott has specialized in the field of constitutional law. He is recognized generally as Canada's first authority in this field. On many occasions, in his forthright manner, he has deplored the uninspired way in which the Privy Council set about the bedevilment of the Canadian Constitution. In his view, the fault does not lie so much with the B.N.A. Act as with what unenlightened judges have done to it "We may say that the B.N.A. Act is an old constitution," he once declared, "and shows the marks of its age. We have patched it up with a few amendments, but it came out of the mid-nineteenth century, pre-industrial age and has to suffice from our needs in this society of large-scale enterprise and international interdependence. Considering its origins, it is remarkable how well it works on the whole."⁸

5. *Civil Liberties and Canadian Federalism*, (Alan B. Plaunt Memorial Lectures) 27.

6. *The Canadian Constitution and Human Rights* (C.B.C. Radio Talks), 1959, 44.

7. quoted by Ken Lefolli in *MacLean's Magazine*, April 11, 1955, 74.

8. *Op. cit.* note 6, 26.

Canada's present constitutional difficulties, he has said, "are due less to defects in the original constitution than to a persistent pro-provincial bias which has permeated, with few exceptions, the English interpretations of the Canadian constitution."⁹

One of the unfortunate consequences of these interpretations has been to stimulate a rivalry between the federal and the provincial governments. In the beginning, "federal and provincial governments," as Professor Scott has pointed out, "were not thought of as competing units, almost sworn enemies, but as complementary institutions all engaged in their allotted tasks for the benefit of the whole people of Canada."¹⁰

Why did we wait so long to cut the umbilical cord that bound us to the Privy Council? Why did we wait to abolish appeals until, in Professor Scott's words, "The Dominion residuary clause has been narrowed down almost to the vanishing point by the development of the judicial doctrine that it could be invoked only amidst war, pestilence or famine,"¹¹

Here is Professor Scott's answer to this question: "It was sentiment and colonial status which prevented the Canadian Supreme Court from being made the final court of appeal; from this point of view membership in the Commonwealth has greatly retarded the development of Canadian unity."¹²

The present unhappy situation, with the provincial governments, in effect, enjoying the residue of power under the constitution, has been summed up by Professor Scott in this verse:

"We are most deeply concerned with national unity.
This is our country; the state has new obligations.
So we submit our national responsibilities
To the veto of provincial politicians. We shall worship
At the altar of divided jurisdiction, and thus we shall honour
The Compact of Confederation."¹³

These lines strike a gloomy note. But Professor Scott, as one interested in the larger loyalty, is not unduly pessimistic. If politicians at all levels could but be persuaded to use them, commonsense and good-will could soon dispell the gloom. In his Presidential Address to the Royal Society of Canada, in 1961, he said: "I am one of those who believe that the original constitution of Canada, changing as it must in face of new demands and new challenges is still basically adapted to the sum total of our various hopes and aspirations."¹⁴ In other words, he believes that the Fathers of Confederation did their work passably well.

9. *Canada Today*, (2nd edition, 1939), 81.

10. *The Courts and The Canadian Constitution*, edited by W. R. Lederman, (1964), 25.

11. *Canada Today*, 79.

12. *Ibid*, 127.

13. *Selected Poems, Orderly Decontrol*, 62.

14. Lederman, *op. cit.*, 34.

During his long teaching career Professor Scott has held various appointments at McGill. He joined the staff as an assistant Professor of Federal and Constitutional Law. The next year he became an Associate Professor. In 1934, he was appointed Professor of Civil Law. In 1940, he was given a Guggenheim Fellowship which enabled him to spend a year at Harvard in the study of constitutional law. In 1961, he was appointed Dean of the Faculty of Law at McGill. In the same year he became a Queen's Counsel. He had been passed over for the appointment of dean on several occasions because of his political activities and his outspoken advocacy of unpopular minority causes.

The man who consistently opposed him for Dean was J. W. McConnell, proprietor of the Montreal Star, and chairman of the Board of Governors of McGill University. In McConnell's eyes, he was a dangerous man who questioned accepted social value, a renegade from the respectable position in life to which he had been called, a radical bent upon changing a system with which he himself found no quarrel. The Star adopted a deliberate policy of refusing to accept political advertisements from the C.C.F. F. R. Scott once called upon the proprietor to demand an explanation. He pointed out that the Star accepted advertisements from the Communist Party. Why make flesh of one and fish of the other, he enquired. "Because they're not dangerous," was McConnell's blunt reply.¹⁵

For fifteen years, J. W. McConnell refused to allow Scott's name to appear in the columns of his paper. This abuse of his position as proprietor called forth from Professor Scott a verse of four lines, in which, characteristically, he left no reason for any reader to complain that he had not made his meaning clear. Here are the lines:

Twinkle, twinkle, Montreal Star,
How I know just what you are,
Up above my world so high
Like a prostitute in the sky!¹⁶

Professor Scott resigned as Dean in 1964. One suspects that he relinquished the job because the chores of administration stole too much of his time from pursuits more congenial to him. As he writes in a letter to me, "the more time you put here the less time you had there. In other words, it is the same problem as arises in economics: how to apportion limited resources to alternative uses."

He now holds a post-retirement position in The French Canada Studies Programme at McGill University.

While he was an undergraduate at McGill, Frank Scott became disenchanted with the political wares that the old-line parties were offering to

15. quoted Ken Lefolli, *op. cit.*, 72.

16. *The Eye of the Needle*, 66. This poem is called *Tribute*, on page 71 F. R. Scott has this comment: "There is a long story behind this short tribute."

the Canadian electorate. He became convinced that the capitalist system had spent itself. In 1932, with Professor Frank R. Underhill, he planned the formation of the League for Social Reconstruction. This League was a study group which had for its objective "the establishment in Canada of a social order in which the basic principle regulating production, distribution and service will be the common good rather than private profit."¹⁷

The LSR played an important role in Canadian political life. As Kenneth McNaught says it "actually helped to found a new national party."¹⁸

Frank Scott was one of the founders of that party. He helped in the preparation of the Regina Manifesto, which was adopted, with one dissenting vote, at the First National Convention of the Cooperative Commonwealth Federation, held in Regina, in July, 1933.

A generation later, when the C.C.F. sought to change its image and was reborn as the N.D.P., he was present at the birth of the revamped party. He drafted the preamble to the N.D.P. Constitution, but, when asked to become a member of the party's inner circle, he refused. "I've fathered two parties now," he explained, "and lost my political fertility. This isn't my swan song. It's my stork song."

In the political field he has always been an advocate of reform by constitutional means. Writing of the C.C.F. party, shortly after its formation, he said: "its repudiation of violence; its opposition to outright confiscation of industry, its insistence on political and religious liberty and its promise of 'a much greater degree of leisure and a much richer individual life for every citizen' give the lie to opponents who accuse the C.C.F. of desiring all the evils they imagine belong to communism."¹⁹

Any man trained in the law knows that society must constantly be beware of the reformer, who, in Emerson's words, comes carrying an axe. By a sharp blow, or by any number of sharp blows, the present cannot be severed from the past like a tree from its trunk.

To the too-prosperous Poshocrat, and to the timid reactionary, to the J. W. McConnells of this country, it must have seemed at times that Frank Scott was wielding an axe. He has been a mighty warrior in the cause of social betterment. But the axe has never been his weapon. His weapons have been two — his voice and his pen, and they have had a sharper edge than any axe — but they have been used not to destroy, but to promote, by constitutional means, a more equitable society, a society built solidly upon the rule of law. He has been a builder, not a wrecker.

17. quoted Pacey, *op. cit.*, 230.

18. *A Prophet in Politics*, (1959), p. 258.

19. quoted Pacey, *op. cit.*, 231.

"To multiply worldly goods," he said, in addressing an audience of lawyers, "and not enlarge human rights is to head toward disaster. To put all the emphasis on production and not to ask the question "Production for what use and purpose" is to see only half the need. Besides, if I help to produce a first-rate legal mind, am I not a producer as much as the corporation that produces a new automobile, or the inventor that invents the better mouse-trap? We as a profession are surely meant to be producers of the highest kind of social good — liberty under law, and freedom from unlawful interference with rights."²⁰

F. R. Scott has not been an armchair politician. He has not been too much confined to professional and faculty habits. He has entered the arena of practical politics. From 1942 to 1950, he served as National Chairman of the C.C.F. In 1952, he was Resident Representative in Burma for the United Nations Technical Assistance Programme. After these many years, he is still active in the ranks of those, who can make this honest assertion:

"Our warfare's not against, but for Mankind;
Our falling ramparts, barriers of the mind."²¹

And through it all, he has been modest, never seeking to distinguish himself at the expense of his cause.

Frank Scott's interest in poetry was first aroused when he met A. J. M. Smith at McGill. He became a member of the Montreal Group of poets. With his new friend, he founded *The McGill Fortnightly Review*, and later *The Canadian Mercury*, and still later other journals and papers as vehicles for the publication of the new poetry which was being written by the Montreal Group, and other Canadian poets, under the dominance of Ezra Pound, T. S. Eliot, Edith Sitwell, E. E. Cummings and others; and which a decade later was influenced by the work of W. H. Auden, Stephen Spender, Louis MacNeice and C. Day Lewis. In 1936, with Professor Smith, he edited an anthology of the new Canadian poets under the significant title *New Provinces*. Speaking of the work of the Montreal Group, W. E. Collin said, in the year that saw the publication of *New Provinces*: "These poets face their age . . . and they face it with disciplined passion . . . These men are our first poets to express their thoughts and feelings in imagery taken from contemporary city life, thereby introducing a new tone into Canadian verse."²²

Frank Scott has published seven books of verse — *Overture* (1945), *Events and Signals* (1954), *The Eye of the Needle* (1957) Translations from St. Denys Garneau and Anne Hebert (1962), *Signature* (1964),

20. *The Canadian Bar Journal*, vol. 3, No. 3, June 1960, 205.

21. These two lines are from Scott's poem "War", quoted Pacey, *op. cit.*, 246.

22. *The White Savannahs*, (1936), 178 et seq.

Selected Poems (1966), and Trouvailles (1968). He is co-editor, with Professor Smith, of a second anthology, *The Blasted Pine, an Anthology of Satire, Invective and Disrespectful Verse*. By his translations from French Canadian poets, he has provided a bridge between the two cultures of Canada.

As a poet, Frank Scott has always held, with Ezra Pound, that a poet's task is "to write a poetry that can be carried as a communication between intelligent men".²³ His verse is as direct as his speech. His meaning is never clouded over with words that are misty, or images that are meaningful, if, indeed, they have any meaning, only to the image-makers.

"Poetry is feeling purified of the superficial", Professor Scott once said, "it brushes aside the polite compromises that make for ease of living in a suburban society, and hence is bound to be unpopular".²⁴ These words are a commentary on his own poetry. In a review of his *Selected Poems*, I wrote: "As a poet he is at his best when he rattles the dry bones of Canadian complacency. He has cultivated the field of satire in his own individual way. What he once said of A. J. M. Smith applies equally to him, he has "a power of satire that spares no false values and which springs from his delight in exposing the pharisaical and sanctimonious."²⁵ These lines from his poem *Examiner* may suggest what I wished to convey:

"Shall we open the whole skylight of thought
To these tiptoe minds, bring them our frontier worlds
And the boundless uplands of art for their field of growth?
Or shall we pass them the chosen poems with the footnotes,
Ring the bell on their thoughts, period their play,
Make laws for averages and plans for means,
Print one history book for a whole province, and
Let ninety thousand reach page 10 by Tuesday?"²⁶

That, in my view, states admirably the case against education as we know it today.

The American critic, Edmund Wilson, speaks disparagingly of Frank Scott's satirical verse. He suggests that it lacks bite. He cites as an example of what he means, a poem, inspired by Prime Minister King, which he claims "is less an incisive satire than a political editorial". "But you have to be bitter for this kind of thing," he says, "and it is difficult for an English Canadian to find anything to be bitter about".²⁷ His knowledge of Canadian satirical verse and of Canadian conditions generally cannot be very extensive.

Is there not a real bite to these lines which Frank Scott calls *Justice*:

23. *Literary Essays*, edited by T. S. Eliot, (1954) 55.

24. *Writing in Canada*, (1956), 4.

25. *Winnipeg Free Press*, June 18, 1966.

26. *Selected Poems*, 85.

27. *O Canada, An American's Notes on Canadian Culture*, (2nd Printing, 1966), 92.

"This judge is busy sentencing criminals
 Of whose upbringing and environment he is totally ignorant.
 His qualifications, however, are the highest —
 A. B.A. degree,
 A technical training in law,
 Ten years practice at the Bar,
 And membership in the right political party.
 Who should know better than he
 Just how many years in prison
 Will reform a slum-product,
 Or whether ten or twenty strokes of the lash
 Will put an end to assaults on young girls."²⁸

Frank Scott once said that "satire was the holding up of the existing society against standards one was formulating in one's mind for a more perfect society".²⁹

Two verses on the same general theme illustrate what he means by these words.

These lines, which are not so much an indictment of the abuse which is being made of radio as an indictment of modern civilization itself, are from *Social Sonnets 2*:

"Hail to the huckster! Knight errant of our time!
 Proudly he rides to war for the barons of soap,
 Perpetually storming the castles of the home.
 This gives our bathrooms a touch of the sublime
 So be not discouraged, never give up hope,
 And please — no escaping to Moscow or to Rome."³⁰

Command of the Air is another mirror held up to this 'comfortable, complacent and conforming age' which dances blindly upon the brink of disaster:

"This sweet music that I hear,
 Is it Soap, or is it Beer?
 Do I owe the string quartet
 To Foulness of the Breath, or Sweat?
 When the Chopin Prelude comes
 Will it help Massage the Gums?
 And will Serkin play encores
 Mixing Bach and Baseball Scores?
 Damn! They've cut the Brahms finale!
 Your world's my world, Mr. Dali!"³¹

Here is a poem which uses the same imagery to develop another variation of the same theme. It is called *General Elections, 1958*:

"Do you suffer from arthritic pain, collapse of prices, atomic fall-out?
 The Tories will bring you fast, fast, FAST, relief.
 The Tories have not one analgesic, but three analgesics —
 High tariffs for low incomes, low taxes for high incomes,
 And a flow of natural gas piped from Prince Albert.
 So switch off Uncle Louis and tune in Honest John,
 See the new vision, change the name of your brand,

28. *Selected Poems*, 49.

29. *English Poetry in Quebec*, (1963), 44.

30. *Events and Signals*, 49.

31. *Ibid.*, 51.

Go to the drug-store today, follow the crowd,
 Take home the handy pack or family carton.
 When the Grey Cup is over the Stanley Cup begins
 And next year the Queen Mother will visit the unemployed."³²

Do not these lines scorch the tired edges of suburbia's smugness, and rattle the dry bones of Canadian complacency with a vengeance?

Here is a short verse on a current controversy, called Practical Men:

"No health insurance for Canada"
 says the Chamber of Commerce
 sitting in the Chateau Frontenac
 everyone insured personally
 against sickness, accident, fire, theft,
 and housemaids falling off step-ladders.
 "It might lead to state medicine"
 warn these prophets
 who have been educated in state schools
 and, if lucky,
 have graduated from state universities."³³

Our politicians have not escaped Frank Scott's attention. His pen has been inspired by the distinguished careers of two of Canada's prime ministers. He has paid his poetic respect to both William Lyon Mackenzie King and Richard Bedford Bennett. His poems are too long to be quoted in full, but for a significant commentary on Canada's political life they should be read, and re-read. They are tightly packed with meaning:

Of W.L.M.K., who "blunted us", he has written:

Truly we will be remembered
 Wherever men honour ingenuity,
 Ambiguity, inactivity, and political longevity.
 Let us raise up a temple
 To the cult of mediocrity,
 Do nothing by halves

Which can be done by quarters.³⁴
 And of R.B.B.:

Some glimmering concept of a juster state
 Begins to trouble him — but just too late.

His whole life work had dug the grave too deep
 In which the people's hopes and fortunes sleep.³⁵

Frank Scott's latest volume of verse, *Trouvailles*, is a volume of Found Poems. Found Poems are produced by taking someone else's prose and carving it up into free verse patterns. It is poetry with the nerve of inspiration missing. As satire, as social protest, Frank Scott's found verse can be very effective. Here is an example: He was reading *The Treaties of Canada with the Indians of Manitoba*, by Alexander Morris, who was Manitoba's first chief Justice, but, who left the position, before really settling into it, to become Lieutenant-Governor of Manitoba and the

32. Signature, 44.

33. *The Eye of the Needle*, 35.

34. *Selected Poems*, 61.

35. *Ibid.*, Ode to a Politician, 58.

Northwest Territories. He came upon a passage which he felt moved to turn from Morris' prose into his own found verse. He calls it *And Now I Close*:

"Let us have Christianity and civilization
To leaven the mass of heathenism and paganism
Among the Indian tribes;
Let us have a wise and paternal government
Carrying out the provisions of our treaties
And doing its utmost to help and elevate
The Indian population,
Who have been cast upon our care,
And we will have peace, progress, and concord among them
In the North-West.

They are wards of Canada, let us do our duty by them,
And repeat in the North-West,
The success which has attended our dealing with them
In old Canada,
For the last hundred years."³⁶

Alexander Morris wrote his book in 1880. Unfortunately, his words fell upon deaf ears, and the plight of the Indian was not improved by the pious advice which he offered in the best of faith but with little understanding of the problem.

I do not want to suggest that Scott's range as a poet is limited to satire. He has written some delightful love poems and poems descriptive of the Canadian landscape. But he has never been a private poet, living in his own private world, and spinning his poems from his own subjective feelings. He has lived in the great world, not in the scholar's den. He has been concerned with man's plight, interested in his problems. He has been a public poet, in sympathy with every movement which turns its face to the future, with every force that makes for progress.

He has never been self-consciously literary. His work has been nourished by life, not art. Poetry written in a social vacuum, art for the sake of art, makes no appeal to him. Poetry has a sterner purpose than to serve as decoration, as ornament. It is a power which works for the moral and social improvement of man. "Poets sensitive to the growing forces of their age," he once wrote, "will give symbolic expression to these forces and will become a potent instrument of social change. The more revolutionary their epoch the more markedly will their writing differ from that of their predecessors, for they will be obliged to experiment with new form and imagery in order to convey their new ideas."³⁷

He has written a poem of twenty-five words, in which he gives his own working creed — the creed by which the poet in him has inspired and guided the lawyer:

36. Trouvailles, 12.

37. quoted in *The Making of Modern Poetry in Canada*, edited by Louis Dudek and Michael Gnarowski, (1967), 97.

The world is my country
The human race is my race
The spirit of man is my God
The future of man is my heaven.³⁸

On that note we shall leave him as a poet, and turn to consider him as a lawyer.

In dealing with Frank Scott as a lawyer, I propose to concentrate on three cases which he carried successfully to the Supreme Court of Canada on appeal from adverse decisions of the Courts of Quebec. These three cases would be a sufficient monument for any lawyer who had devoted the full energies of a lifetime to the practise of law.

A new meteor appeared in the political skies of Quebec in the middle thirties. Maurice Duplessis, a lawyer from Three Rivers, formed a French Canadian Nationalist party which won the provincial election in 1936. He became premier and attorney-general of the province. As a practical politician, one who could always persuade himself that the end justified the means, Duplessis was second to none. He was without a single political scruple, and he had but one conviction — that he had an irrevocable mandate to rule his province. Pierre Laporte, in his book *The True Face of Duplessis*, reports him as saying in a campaign speech, in Vercheres County, in 1952: "I warned you not to elect a Liberal candidate. You did not listen to me. Unfortunately your riding did not receive any of the grants, the subsidies that could have made it a happier place in which to live. I hope you have now learned your lesson and that you will vote against the Liberals this time".³⁹

It was inevitable that this man, who lead the forces of darkness in Quebec for two decades, should cross words with Frank Scott, who was in the forefront of any movement designed to make Canada a better land — a land in which every person could assert his right to be himself.

In 1937, as attorney-general, Duplessis sponsored an Act to Protect the Province against Communistic Propaganda. This act provided that it shall be illegal for an owner, or an occupier, of a house within the Province of Quebec, to use his premises or allow any other person to use them to propagate communism by any means whatsoever. It further provided that the attorney-general, upon proof satisfactory to him, that premises had been used to propagate Communism, could make an order closing them down for a period not to exceed one year. No where in the act was there a definition of communism. Charlie Chaplin once suggested that, for any genuine, one-hundred per cent red-blooded American, a communist was anyone who stepped off the curb with his left foot first. Premier Maurice Duplessis was not one to quarrel with this definition. Duplessis's iniquitous

38. *Selected Poems, Creed*, 132.

39. *First English-Language Edition*, (1960), 87.

Padlock Law, as it came to be known, remained on the Statutes books of Quebec for nearly twenty years. Prime Minister King was invited to disallow it but he was seeking a record for political longevity and wanted no quarrel with anyone, least of all with the voters of Quebec.

On January 27, 1949, Duplessis signed an order padlocking the premises occupied by John Switzman. These premises were held under lease from Freda Elbling, who sued for a cancellation of her lease. The case came before Mr. Justice Collins of the Superior Court of Quebec who granted her the relief which she sought. Switzman did not deny that he was a communist but he contended that the Act Respecting Communist Propaganda was not within the competence of the Quebec Legislature. As he raised a constitutional issue, he was required to serve notice on the Attorney-General, who intervened and was joined as a party litigant. Switzman appealed to the Quebec Court of Queen's Bench (Appeal Side). This Court, with Mr. Justice Barclay in dissent, affirmed the judgment of the trial judge, and upheld the validity of the Act.⁴⁰

With leave of the Appeal Court, Switzman took his case to the Supreme Court of Canada. In this Court he was represented by Abraham Feiner, F. R. Scott and J. Perrault. In November, 1956, a full court, nine judges — Chief Justice Kerwin, and Mr. Justices Taschereau, Rand, Kellock, Locke, Cartwright, Fauteux, Abbott and Nolan — heard the appeal. Judgment was given on March 8, 1957.⁴¹ The Chief Justice, and Mr. Justices Locke, Cartwright, Fauteux and Nolan, held the statute to be legislation in respect of criminal law and thus within the exclusive jurisdiction of the Parliament of Canada. Mr. Justices Rand, Kellock and Abbott held that the statute did not come within any of the powers conferred on the Provinces by the B.N.A. Act and that it was an "unjustifiable interference with freedom of speech and expression essential under the democratic form of government established in Canada".

In a dissenting judgment, Mr. Justice Taschereau upheld the validity of the statute. His judgment is an almost perfect example of the authoritarian special pleading indulged in by those who have no real appreciation of liberty of opinion and freedom of speech, and who set themselves and their beliefs up as the standard by which all men and their beliefs must be judged. He wrote his judgment in French. I quote from the approved translation into English: "It has also been contended that this legislation constituted an obstacle to the liberty of speech. I believe in those fundamental liberties: they are undeniable rights which, fortunately, the citizens of this country enjoy, but these liberties would cease to be a right and become a privilege, if it were permitted to certain individuals to misuse

40. (1954) Que. Q.B. 421.

41. (1957) S.C.R., 285.

them in order to propagate dangerous doctrines that are necessarily conclusive to violations of the established order. These liberties, which citizens and the press enjoy of expressing their beliefs, their thoughts and their doctrines without previous authorization or censure, do not constitute absolute rights. They are necessarily limited and must be exercised within the bounds of legality. When these limits are overstepped, these liberties become abusive, and the law must then necessarily intervene to exercise a repressive control in order to protect the citizens and society."⁴²

In contrast to this special pleading, here are two blasts of good, clean, fresh air — one from Mr. Justice Rand and the other from Mr. Justice Abbott. Here is the first: "Parliamentary government postulates a capacity in man, acting freely and under self-restraints, to govern themselves; and that advance is best served in the degree achieved of individual libertation from subjective as well as objective shackles This constitutional fact is the political expression of the primary condition of social life, thought and its communication by language. Liberty in this is little less vital to man's mind and spirit than breathing is to his physical existence."⁴³ Thus Mr. Justice Rand. And now Mr. Justice Abbott: "The right of free expression of opinion and of criticism, upon matters of public policy and public administration, and the right to discuss the debate such matters, whether they be social, economic or political, are essential to the working of a parliamentary democracy such as ours."⁴⁴

Mr. Justice Abbott made this reference to the argument advanced for the appellants: "As Mr. Scott put it to us in his very able argument: (1) the motive of this legislation is dislike of communism as being an evil and subversive doctrine, motive of course, being something with which the Courts are not concerned (2) the purpose is clearly the suppression of the propagation of communism in the Province, and (3) one means provided for effecting such suppression is denial of the use of a house."⁴⁵

Commenting on the situation which might have prevailed if the Supreme Court had not struck down the Padlock Act, Professor Scott once said: "We would have had the extraordinary situation in Canada that while the federal Election Act would decide who could be a candidate for Parliament, a province might have barred the use of any public hall or building to members of any particular party. We would have been left with what I call the "open-field" theory of democracy; freedom of speech would have existed only in the open air."⁴⁶

I now pass to consider the second of the Supreme Court cases in which

42. Laskin, *Canadian Constitutional Law*, 3rd edition, 960.

43. *Ibid.*, 964.

44. *Ibid.*, 968.

45. (1957) S.C.R., 325.

46. *Civil Liberties*, op. cit., 47.

Professor Scott played a part. Prime Minister Duplessis was also involved in this case. He was defeated at the polls in the Quebec election of 1939 on the issue of conscription for the Second World War. He took his defeat seriously, changed his convivial habits, became a drinker of orange juice, and immediately began making plans for his return to power. In 1944, he was re-elected and, with unabashed ruthlessness, kept himself continuously in office until his death in September, 1959.

In Quebec, in 1945 and 1946, the religious sect known as the Witnesses of Jehovah carried on an active campaign to proselytize their faith. They believed that, as members of a religious sect, of whom each member was a minister of the gospel, they had a right to distribute pamphlets and books on the streets, and to visit their fellow-citizens in their homes, without any license from civil authority. With his foxy eye, Duplessis saw an opportunity to make political capital. He declared "war without mercy" on this small uninfluential religious sect, whose members soon made it evident that they were prepared to do battle for their faith. Some sixteen hundred prosecutions of the Witnesses, most of them for very minor offences, were embarked upon under Duplessis' auspices.

Jehovah's Witnesses were particularly active in Montreal. In 1946, Frank Roncarelli was the proprietor of a restaurant on Crescent Street in that City. The business had been started by his father in 1911 and had been in successful operation since that time. Mr. Roncarelli was a Jehovah's Witness. When Jehovah's Witnesses were being arrested by the score, he undertook to go bail for them. He signed bonds totalling over \$83,000 in some 390 cases. When the authorities changed their policy, refusing to accept bonds, and demanding cash bail, he did not go bail anymore. He signed the last bail bond on November 17th, 1946. On December 4, the liquor permit, which he held from the Quebec Liquor Commission, was cancelled, his restaurant was raided in broad daylight and his stocks of liquor were removed from his premises.

In February, 1947, Duplessis gave an interview to the Canadian Press, in which he said: "It was I, as Attorney-General of the Province charged with the protection of good order, who gave the order to annul Frank Roncarelli's permit. By so doing, not only have we exercised a right but we have fulfilled an imperious duty. The permit was cancelled not temporarily but definitely and for always."⁴⁷

When Duplessis sentenced his prosperous business to economic ruin, Mr. Roncarelli gave evidence that he was made of stern stuff. He embarked upon a law suit which lasted for twelve years. He proved himself to be a public benefactor. By his determination he gave the law a chance to vindicate itself in which is now the court of last resort for Canadians.

47. quoted in judgment of trial judge (Mr. Justice Mackinnon), (1952), 1 D.L.R., 692.

He consulted Lou Stein, a Montreal attorney. "In 1946, when my attorney Lou Stein and I were looking for counsel to help fight my case," he once explained, "a mutual friend suggested Frank Scott. I didn't think there was a chance to get him but we asked him anyway. He came out with his sleeves rolled up, and I've been surprised and thankful ever since."⁴⁸

When Frank Scott entered the case he was not on the practicing role of lawyers. He immediately paid his fees to the Law Society of Quebec to put himself into good standing. It was well that he did. When Duplessis knew that they were to meet again in the courtroom, in harmony with his policy of taking nothing for granted, he checked with the Law Society to see if Professor Scott was on the active list of barristers. "I'm glad I thought of it before he did," Professor Scott commented to Mr. Roncarelli.

Following the prescribed procedure, Mr. Roncarelli's counsel sought the approval of the Chief Justice of Quebec to sue the Quebec Liquor Commission. The Chief Justice refused to give his approval on two occasions. When that avenue was blocked, they sought to fiat from Attorney-General Duplessis to sue Edouard Archambaut, Manager of the Commission, who had signed the order cancelling Mr. Roncarelli's liquor permit. Duplessis did not deign to answer their letter, but called a press conference and announced publicly that there would be no permission granted to sue Mr. Archambaut.

Only one course was left. That was to sue Duplessis personally. This course was taken. Suit was entered against Duplessis in which damages of \$118,741 were claimed. Meantime, Mr. Roncarelli had been forced to sell his restaurant and several other holdings at a sacrifice, and was working for wages of sixty dollars a week.

In the first instance, his case was heard by Mr. Justice Mackinnon, in May, 1951, in Quebec Superior Court. Duplessis was subpoenaed from his seat of government in Quebec City. There was a delay in opening of Court due to the absence of a court reporter. "This is intolerable," the impatient Duplessis complained to the presiding judge. "If you'd pay for more stenographers, this wouldn't happen," countered Mr. Justice Mackinnon.⁴⁹

At the trial, four points were involved:

1. Was there a relationship of cause and effect as between Duplessis' acts and the cancellation of the liquor permit.
2. If such a relationship existed was Duplessis' conduct justified on the ground that he acted in good faith in the exercise of his official duties.

48. quoted, Ken Lefolli, *op. cit.*, 70.

49. *Ibid.*, 70.

3. Was the cancellation of the permit a lawful act of the Commission, acting within the scope of its powers as defined by statute.
4. Was Duplessis entitled to the protection of an article in the Quebec Code of Civil Procedure, requiring a litigant to give notice before launching suit against a public official.⁵⁰

Mr. Justice Mackinnon gave a lengthy judgment in which he found against Duplessis and awarded Mr. Roncarelli damages of \$8,123.53, made up of \$1,123.53 for loss of value of the liquor seized from his premises, \$6,000 for loss of profits from the date of cancellation of the permit to the date of its normal expiry, and \$1,000 damages to his personal reputation.

"It has been established," he said in his judgment, "that plaintiff had an excellent education, a fine upbringing and generally enjoyed a good reputation as a business man and citizen in the community of Montreal where he and his family have lived for approximately 30 years. Never up to December 4, 1946, had he experienced any trouble with the authorities in the operation of his restaurant."⁵¹

He held that "the principal complaint as to the activities of plaintiff is that he steadily and consistently furnished bonds for the Witnesses of Jehovah accused of certain infractions of the by-laws of the City of Montreal."⁵²

He quoted from an interview which Duplessis gave to the press in which he said that the granting of a permit to sell liquor was a special privilege, granted only to men of good character, "law-abiding citizens in the full sense of the word". As a Jehovah's Witness, Duplessis placed Mr. Roncarelli outside that category and he claimed "to allow him to have that privilege, and, because of that privilege, secure the means of encouraging acts leading to public disorder, would have been, in effect, to make the Attorney-General an accomplice."⁵³

Mr. Justice Mackinnon completely repudiated Duplessis's defence. He held that the cancellation of the liquor permit was illegal, that Duplessis had acted outside the scope of his functions as Attorney-General and was not entitled to notice of action as required by the Code of Civil Procedure.

In a brief analysis of Mr. Justice Mackinnon's decision, Professor E. C. S. Wade offered this comment: "It is seldom that a Prime Minister is sued personally for an act purporting to be done in the exercise of his functions as a Minister of the Crown. Nor is it easy to find a recent pre-

50. see judgment of Mr. Justice Martland 16 D.L.R. (2d), 737.

51. (1952), 1 D.L.R., 685.

52. *Ibid*, 687.

53. *Ibid*, 705.

cedent, where the deliberate, as opposed to the negligent, act of an official in high office has resulted in a successful action for damages being brought against him."⁵⁴

The Prime Minister appealed to the Court of Queen's Bench (Appeal Side). Mr. Roncarelli cross-appealed for more damages. The appeal was heard by a court of five judges — Mr. Justices Bissonnette, Pratte, Casey, Rinfret and Martineau. This Court, in 1956, with Mr. Justice Rinfret in dissent, allowed Duplessis' appeal and dismissed the cross-appeal.⁵⁵ Mr. Roncarelli appealed to the Supreme Court of Canada.

In January, 1959, more than twelve years after Mr. Roncarelli's permit had been cancelled, the Supreme Court gave judgment in his favour, awarding him damages of \$33,123.53, increasing the trial judge's award by \$25,000. Nine judges — Chief Justice Kerwin, and Justices Taschereau, Rand, Locke, Cartwright, Fauteux, Abbott, Martland and Judson — heard the appeal. Three judges — Mr. Justices Taschereau, Cartwright and Fauteux, wrote judgments in which they dissented from the majority of the Court.⁵⁶

In his dissent, Mr. Justice Taschereau said: "Many, rightly or wrongly, may think that the respondent was mistaken in believing that it was his duty, in order to maintain public peace and to suppress existing disorders which threatened to spread further, to advise that the permit of the appellant, be cancelled. For my part, I cannot subscribe to the fallacious principle that an error, committed by a public officer, in doing an act that is connected with the object of his functions, strips it of its official character, and that its author must then be considered as being without the scope of his duties."⁵⁷

Mr. Justice Cartwright held that the Quebec Liquor Commission had an unfettered discretion to cancel a liquor permit. He accepted the submission of counsel for the respondent made in these words: "Under the statute, no one has a pre-existing right to obtain a permit, and the permit being granted under the condition that it may be cancelled at any time, and no cause of cancellation being mentioned and no form of procedure being indicated, the cancellation is a discretionary decision of a purely administrative character." As an administrative decision, it was not subject to review by the Courts.⁵⁸

In his dissent, Mr. Justice Fauteux did not excuse the respondent's conduct, but he held that notice of action should have been given to him.⁵⁹

54. 39 Canadian Bar Review, (1951), 665.

55. (1956), Que. Q.B., 447.

56. 16 D.L.R. (2d), 689.

57. *Ibid*, 695.

58. *Ibid*, 715.

59. *Ibid*, 718 et seq.

For the majority, Chief Justice Kerwin said simply that he saw no reason to quarrel with the trial judge's decision.

Mr. Justice Rand wrote the kind of decision which might have been expected of him.

"Beyond the giving of bail and being an adherent," he said, "the appellant is free from any relation that could be tortured into a badge of character pertinent to his fitness or unfitness to hold a liquor license." And later he made this clear and unequivocal statement, which might be quoted as a capsule comment on the whole case: "The act of the respondent through the instrumentality of the Commission brought about a breach of an implied public statutory duty toward the appellant; it was a gross abuse of legal power expressly intended to punish him for an act wholly irrelevant to the statute, a punishment which inflicted on him, as it was intended to do, the destruction of his economic life as a restaurant keeper within the Province. Whatever may be the immunity of the Commission or its member from an action for damages, there is none in the respondent. He was under no duty in relation to the appellant and his act was an intrusion upon the functions of a statutory body. The injury done by him was a fault engaging liability with the principles of the underlying public law of Quebec."⁶⁰

Mr. Justice Locke wrote no judgment of his own but concurred with Mr. Justice Martland.

Mr. Justice Abbott said forthrightly that "the religious beliefs of the appellant and the fact that he acted as bondsman for members of the sect in question had no connection whatever with his obligations as the holder of a license to sell alcoholic liquors. The cancellation of his license upon this ground alone therefore was without any legal justification."⁶¹ He quoted Dicey's well-known words: "Every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen."⁶²

Mr. Justice Martland gave a lengthy, closely-knit and well-reasoned, judgment in which he covered every possible issue that was pertinent to the proceedings. Point by point, he demolished the contentions of the respondent. "Is the position altered by the fact," he queried, "that apparently (the respondent) thought it was his right and duty to act as he did? I do not think that it is. The question of whether or not his acts were done by him in the exercise of his functions is not to be determined on the

60. *Ibid.*, 697.

61. *Ibid.*, 729.

62. *Ibid.*, 730.

basis of his own appreciation of those functions, but must be determined according to law."⁶³

The sixth member of the majority — Mr. Justice Judson — concurred in the judgment of Mr. Justice Rand.

Mr. Roncarelli launched his suit against Prime Minister Duplessis before the abolition of appeals to the Privy Council. Duplessis might have appealed to that Court. "Should I go in appeal to England," he asked, and answered his own question: "No, I have the intimate conviction it is the affair of the grand tribunal of public opinion in Quebec."⁶⁴

But his public career had almost run its course. Difficulties were piling up for him. Members of his cabinet had greatly enriched themselves by using inside information in their dealings on the stock market. One scandal followed another. His health broke. He died in his seventieth year. The grand tribunal of public opinion in Quebec was not given the opportunity of vindicating him.

These words of Frank Scott's are a good last comment on the Roncarelli case: "To punish a man for giving bail is like punishing jurors for their verdicts or witnesses for their testimony. It is, or should be, in my view, a crime and not just an excess of authority. For it is interfering with a judicial process."⁶⁵

The third Supreme Court case, in which Professor Scott was concerned, on which I wish to comment, is the case of *Brodie v. Her Majesty the Queen*.

In 1868, Chief Justice Cockburn, in *R. v. Hicklin*, laid down a standard by which obscenity is to be judged. He held that "the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall".⁶⁶ This served as the practical test of obscenity, not only in England, but in Canada, for nearly a century. In 1959, the Canadian Parliament amended the Criminal Code to provide a more certain guide as to what constitutes obscenity.

Section 150 of the Code was amended to read, in part:

1. Every one commits an offence who . . . has in his possession for the purpose of publication, distribution or circulation any obscene written matter . . .
2. No person shall be convicted of an offence under this section if he established that the public good was serviced by the acts that are alleged to constitute the offence.

63. *Ibid.*, 744.

64. quoted Ken Lefolli, *op. cit.*, 71.

65. *Civil Liberties*, *op. cit.*, 49.

66. (1868), L.R., 3 Q.B., 360.

3. For the purposes of the Act any publication a dominant characteristic of which is the undue exploitation of sex shall be deemed to be obscene.

Section 150 A of the Code (a new Section added in 1959) provides that a judge who is satisfied by information on oath that there are reasonable grounds for believing that obscene material is being kept for sale or distribution shall issue a warrant authorizing the seizure of the material.

In November, 1959, under a warrant, several copies of *Lady Chatterley's Lover*, by D. H. Lawrence, in the unexpurgated edition published by Signet, were seized on premises occupied by Larry Brodie, and he was summoned to show cause why they should not be forfeited to Her Majesty.

His Honour Judge Fontaine sitting in the Court of the Sessions of the Peace in Montreal ordered the books forfeited as being obscene. An appeal to the Court of Queen's Bench (Appeal Side) was dismissed unanimously by a Court of three — Mr. Justices Casey, Choquette and Larouche (*ad hoc*).⁶⁷

The poet in Professor Scott, who had appeared for Brodie, before the Appeal Court, was aroused to activity by its verdict. He wrote a poem which he calls *A Lass in Wonderland*. It is truly delightful. I quote it in full, as it must be quoted, for each strand is so neatly woven into the next that to do it justice the whole poem must be read.

A Lass in Wonderland

I went to bat for the Lady Chatte
Dressed in my bib and gown.
The judges three glared down at me
The priests patrolled the town.

My right hand shook as I reached for the book
And rose to play my part,
For out on the street were the marching feet
Of the League of the Sacred Heart.

The word 'obscene' was supposed to mean
'Undue exploitation of sex'.
This wording's fine for your needs and mine
But it's far too free for Quebec's.

I tried my best, with unusual zest,
To drive my argument through,
But I soon got stuck on what rhymes with 'muck'
And that dubious word 'undue'.

So I raised their sights to the Bill of Rights
And cried: 'Let freedom ring!',
Showed straight from the text that freedom of sex
Was as clear as anything.

Then I plunged into love, the spell that it wove,
And its attributes big and bold
Till the legal elect all stood erect
As my rapturous tale was told.

67. 36 Criminal Reports, (1961), 200.

The judges' sighs and rolling of eyes
 Gave hope that my case was won,
 Yet Mellors and Connie still looked pretty funny
 Dancing about in the sun.

What hurt me was not that they did it a lot
 And even ran out in the rain,
 'Twas those curious poses with harebells and roses
 And that dangling daisy-chain.

Then too the sales made in the paper-back trade
 Served to aggravate judicial spleen,
 For it seems a high price will make any book nice
 While its mass distribution's obscene.

Oh Letters and Law are found in the raw
 And found on the heights sublime,
 But D. H. Lawrence would view with abhorrence
 This Jansenist pantomime.⁶⁸

The judges three who glared down at counsel for the appellant gave their decision in April, 1961. In May, the Supreme Court of Canada granted the appellant leave to carry his case to that court.

The Supreme Court sat to consider Brodie's appeal on November 15, 1961. Two other appeals of similar nature were heard at the same time. Nine judges were on the bench — Chief Justice Kerwin and Mr. Justices Taschereau, Locke, Cartwright, Fauteux, Abbott, Martland, Judson and Ritchie.

Judgment was given on March 15, 1962. *Lady Chatterley's Lover* was held not to be an obscene publication — but by the narrowest possible margin. The Court split five to four — Mr. Justices Cartwright, Abbott, Martland, Judson and Ritchie gave their decisions in favour of the appeal.⁶⁹ To comment on this split decision is beyond my competence. There is, I am sure, a moral in the tale. I find it significant that the four most recent appointments to the Court were all in favour of allowing the appeal. Perhaps, the isolation of the bench ultimately insulates judges from up-to-date thinking and current community of opinion. Certainly, in the climate of opinion, prevailing in 1961, *Lady Chatterley's Lover*, a dull book, for all that it may be a work of genius, a point that only time can decide, was pretty mild stuff, indeed; and unworthy of all the fuss raised about it by those who, in the face of all the evidence, still think that morality can be legislated. Education, the opening of the whole skylight of thought to tiptoe minds, not legislation, is the answer, surely.

In his dissenting judgment, Mr. Justice Taschereau said: "It is common knowledge that the 1959 amendment was to eliminate the distribution of obscene material and to call a halt to what may be rightly termed legalized assault against morality. The aim of the Act was without doubt to clean

68. *Selected Poems*, 82.

69. 32, D.L.R., (2d), 507.

up all news stands of this land, filthy literature, published surely not to serve the public good but merely for pecuniary gain. I give a cold reception to the suggestion that, if the book is banned, our Courts will be the only ones to hold in such a way. This Court does not make the law but its duty is to apply it as enacted by Parliament. The decisions rendered in England, France and the United States are entirely immaterial for the determination of the case at the bar."⁷⁰

Mr. Justice Judson, who delivered judgment for Mr. Justices Abbott and Martland, as well as for himself, struck a modest note: "I can read and understand," he said, "but at the same time I recognize that my training and experience have been, not in literature, but in law and I readily acknowledge that the evidence of the witnesses who gave evidence in this case is of real assistance to me in reaching a conclusion."⁷¹

He made reference to the evidence of two of Canada's outstanding novelists, Hugh MacLennan and Morley Callaghan, and of Henry T. Moore, a teacher and critic, who were called by the appellant to speak of the literary and artistic merits of *Lady Chatterley's Lover* and of D. H. Lawrence's position in the literary world.

Mr. Justice Ritchie also referred to this evidence. "I agree with counsel for the appellant," he said, "that the defence of the public good is available under S. 150 A and while we are not required to pass judgment on the literary or artistic qualities of the book or its author, it nevertheless seems to me that any harmful effect which these objectionable passages might have upon those who seek them out for separate reading is counterbalanced by the desirability of preserving intact the work of a writer who, according to the only evidence before us, is regarded as a great artist by teachers, authors and critics whose opinion is entitled to respect."⁷²

And so by a decision of five to four *Lady Chatterley's Lover* was found not to be obscene, and, Canadian law, on that score, stayed in line with the law in England, France and the United States.

In 1963, Frank Scott was appointed a member of the Royal Commission on Bilingualism and Biculturalism. His qualifications for this appointment cannot be questioned. Central to his own hopes and aspirations for our country is the concept that someday, before it is too late to matter, Canada will become an equal partnership between English and French-speaking Canadians. Speaking on the campus of Glendon College, at York University, in November, 1967, he made this significant declaration of faith: "Personally, I believe a person who speaks only one language is really obsolete in this world. If you want to be an English-speaking poet,

70. *Ibid.*, 514.

71. *Ibid.*, 526.

72. *Ibid.*, 533.

or French-speaking poet, or write music, or do various other things, you can get along very well in one language. In most countries most people do. But if you want to play a significant role in this world, or if you want, and this is more important, to open your mind to the enormous contributions of other cultures, you must know more than one language. The challenge, I think, to Quebec and to Canada is whether or not they are going to maintain the existing practice of an almost unbroken unilingualism."⁷³

In all his works — whether at the bar, or in the lecture hall; on the political platform, or in the poet's study, F. R. Scott has given evidence of his firm faith in the constant advancement of the human race. He knows that the goal is distant, that the pace is slow, that reform comes only by inches, but he wastes no energy in despair. He has better uses for his great energy. I suspect that these words of Churchill's find an echo in his heart: "For myself, I am an optimist — it does not seem to be of much use being anything else. I cannot believe that the human race will not find its way through the problems that confront it."⁷⁴

ROY ST. GEORGE STUBBS*

73. Quebec: Year Eight (C.B.C. Publication), 72.

74. These lines are quoted by Elizabeth Rider Montgomery in *Toward Democracy*, (1967), IX.

* Senior Judge of the Winnipeg Family Court.