

author systematically examines "the various planning, legal, and other significant variables which the Board considers in the zoning, land subdivision and municipal annexation applications submitted to it for approval"; included in these chapters is the harvest of an attempt by the author through the use of data retrieval techniques to analyse the written reasons of the Board during the period January 1964 to July 1966.

I indicated at the outset that this is a book which cannot be read casually and that it deals with a particular administrative set-up; however, I would not want to leave the impression that this book should be passed over and forgotten by those who do not happen to be vitally concerned with, or interested in, land planning and land use control and particularly before a board such as the Ontario Municipal Board, for it can serve as a very valuable practical source book for anyone in Canada who becomes involved in a land use decision at any level in any capacity.

CAMERON HARVEY*

SUBSTANTIAL JUSTICE:

LAW AND LAWYERS IN MANITOBA 1670 - 1970

By Dale and Lee Gibson; (Peguis: Winnipeg), 1972; pp. ix, 357.

This history of three centuries of law in what is now Manitoba is a book on which the authors are to be congratulated and of which Manitobans may be proud. Wholly produced in Manitoba, the book is as Manitoban as pemmican or goldeye. Moreover, since law and justice are central to any society, it is also a substantial addition to the history of that historic community.

The character of the book is also Manitoban, a history of men and events, essentially plain, practical and to the point. Basically it proceeds by anecdote and character sketch. Indeed, if one may pick up a thought from the preface and use a great name in a new context, it is Stubbsian, Roy Stubbsian, written in the mode Mr. Stubbs has made his own in his distinguished contribution to the history of Manitoban law and lawyers.

The great virtue of the Stubbsian style is that it greatly increases knowledge. The viewer is not certain, however, that to the same degree it augments understanding. That observation, to the extent it may be just, suggests the ground on which this book should receive the serious criticism it merits. By serious criticism it is not meant to fault a book for being of a particular style and character. It is meant rather to at-

tempt to assess that character, to define its limitations, and to expand the implications those limitations suggest.

The title of the Gibsons' book, *Substantial Justice*, illuminates the issue. What law could there be in Ruperts Land in 1670? Obviously none, in the sense the term is used in the book. The Indian tribes lived under immemorial custom. The English who came, however, continued to live under the law of England; they carried it with them, as they did their tools and clothing. But they did not bring all the means of the administration of law, magistrates, lawyers and police. Nor were such available until there were enough English in the country to warrant their presence. Hence the lawlessness of the conflict of the fur companies and the giving of jurisdiction to the courts of Canada by the Canada Jurisdiction Act of 1803. Hence the slow growth of courts and police in the Red River settlement after 1811, and even then the intimidation of the courts in the Sayer case of 1849, and the jail breakings of the 1860's. In the circumstances, it was much to have 'substantial' justice done; the refinements of judicial process and the sophistication of the law had to wait the growth of settlement.

The law, such as it was, more over, was rarely imposed on the native people. When it was, as in the hanging of the Saulteaux Ojibwa murderer Capinesewet in 1845, the results were ill omened, and heightened that fear of an Indian rising which underlay the consciousness of the people of Red River and Manitoba down to 1885. The matter then, was how to see that law was observed and justice done in a primitive society, part living under custom, part without adequate means of justice. This is indeed the basic theme of Red River history, stated clearly by Alexander Ross in the preface to his *Red River Settlement* in 1852. How was civilization to be nurtured in the wilderness and among a people living by their own customs? The fur traders, the missionaries, the settlers, all faced the issue. So, perhaps, even more clearly, did those charged with the administration of justice. The Gibsons have followed the tender development of the process of making one court grow where none grew before with fascinating care.

The condition prevailed, however, only to borrow a date from the book, down to 1883, the end of the regime of Chief Justice Wood. By then, perhaps better by 1885, settlement was dense enough, the apparatus of justice sufficiently developed, the authority of law strongly enough asserted by the suppression of the Saskatchewan Rebellion, to ensure that law and order could be upheld and justice done. It is at this point, however, that the reviewer questions whether the doing of substantial justice was enough, or indeed whether the title does not, if pushed, do some injustice to the administration of justice in Manitoba?

What was lacking that there should not have been exact and refined administration of the law?

The point has, perhaps, some importance. The lay reader of the period from 1884 to 1919, or even further on, feels that the legal profession and the courts of Manitoba retained until well into the century much of the rough and ready character of the years before 1883. There would be small virtue in talking here of 'frontier' or 'pioneer' conditions of society. But it is true to say that all aspects of society, including the administration of the law, were relatively simple and unsophisticated. So one notes the admiration for the prosecuting counsel and for the quirks of judicial personalities in the chapters of this period, in which the flavour of the circuit story still prevails. It was a period of rugged heartiness, in which legal boldness and even bravado tended to carry the courts rather than subtle reasoning or massed knowledge of the law. In particular, it was a time in which the social assumptions of the law were individualistic, laissez-faire, property-conscious, and, as it seems to a layman, too little aware of civil liberties or of social change. If this was so, it explains why in their greatest test to that date, the trials of the leaders of the Winnipeg General Strike, the courts and the legal profession of Manitoba—not, of course, in the acquittal of F. J. Dixon—failed their times. Like the society of which they were a part, they were overwhelmed by rapid change.

Those trials were the opening of a new age, urban and industrial, in which even substantial justice would prove to be immensely difficult to attain. As the book makes clear, even under the difficulties and prohibition of writing recent history, the legal profession set in train the changes that were needed in legal education and in the process of self-criticism and self-education without which any profession fails to serve its society and its time. As one who witnessed something of the process and knew some of the lawyers involved, the reviewer thinks these pages are best to be assessed by knowledgeable readers. Suffice it to say that as churches are best judged by the numbers of saintly people they have among their members, so the legal profession, like the academic, is best judged by the intellect and eloquence of its best members. In this respect the Bar of Manitoba justified itself, as a layman who knew slightly Isaac Pitblado and who argued with the razor-sharp mind of E. K. Williams, may testify, to mention only past members of that Bar. The law is among the most intellectually consistent, the most passionately refined, of all human constructs, ranking the great systematic sciences and philosophies, and only some share of the best minds of society, brooding over the strange process of social changes, can keep the law sweet, and able to clothe the social order with the garments of reason and keep law itself pointed always towards the shifting pole of justice.

These last reflections arise out of a recent attempt of the reviewer to write an essay on the concern of Canadians for civil liberties. It was an almost impossible task until the last fifty years. Until that time, isolated instances do indicate Canadians cared for civil liberties, but not until 1919 did that concern begin to become at all widespread, and not until after 1950 did the courts begin to hand down judgments which should be among the treasured documents of Canadian history. How can society know itself without some knowledge of its law, and how is law to be known, being the historical creation it is, without a knowledge of the history of law? But writing the essay was like trying to find something in an unlighted cellar. The history of Canadian law is as dark as the other side of the moon. Manitobans, may be thankful that, by reason of this book, it is no longer true of the history of law in Manitoba.

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