

## BOOK REVIEW

A SECOND MISCELLANY-AT-LAW. By The Hon. Sir ROBERT MEGARRY.  
[London: Stevens & Sons Ltd. 1973. 420 pp. including index.  
£4.80 net]

There are a very few people for whom the law is their whole life—in that it so fulfils their every expectation of enrichment and satisfaction that they have little time (or inclination) for unrelated matters. Mr. Justice Megarry (recently appointed Vice-Chancellor of the Chancery Division) is indubitably one of them. It has been my pleasant experience not only to have read him as the author of two lucid text-books, and three of my favourite diversions, the first *Miscellany-at-Law*, *Arabinesque-at-Law* and now *Second Miscellany*, but also to have heard him as a law-teacher, moot-court judge and after-dinner speaker. To read this book is, I feel, to experience the man himself—through wit, attention to detail, kindness and an infectious enthusiasm that can only serve to inspire those lawyers to whom the study or practice of the law seems a dreary task, but from which they will invariably be suitably and delightfully diverted by this mine of information useless to any except themselves. The book is thus aptly dedicated “to Old Father Antick, The Law, And All Who Revere Him” (block capitals mine, however). There is ample material here for such a reader to become qualified to speak intelligently in the precincts of the Courts, the Temple, Law Offices, Parliament tea-rooms, coffee houses, pubs and other places where lawyers and law-makers gather, about how asinine the law is (and he may even be mistaken for a law reformer).

The first *Miscellany* was prefaced to be primarily “a collection of wise and witty sayings of the judges” together with some anecdotes and examples of the curiosities of the law. Material in the *Second Miscellany* is even more amorphous. This is the reason, perhaps, for a paraphrased sub-title to each chapter which was not provided in the first *Miscellany*. Thus, a “Bursen-Bellied Hound”, one discovers, is sub-titled “Tort”, and on a closer reading, is in fact about the tort of defamation and not any other torts. There is one fundamental difference between the first *Miscellany* and *Second Miscellany*: in the latter Megarry draws extensively from non-English cases—particularly U.S., Canadian and South African together with some Australian and Indian ones. It reveals a wealth of research into these jurisdictions and thus gives the reader trained only in English law some insights into other legal systems, which although basically structured on the common-law model, have their glaring differences. Thus Chapter I of Part III, entitled “The Constable has Blundered” (sub. nom. “Liberty”) draws primarily from the experience of the U.S., with its written constitution, so unfamiliar to English lawyers. Such a lawyer may be enriched by the stirring judgments of Holmes J., Brandeis J., Frankfurter J., and Cardozo J., and begin to see what the test of

“clear and present danger” is or what the concept of “unreasonable classification” has to do with the right to the equal protection of the laws. On the subject of women, he may even be bemused to know that by the *Senatus Consultum Velleianum*, a legacy of the Romans, it is deemed reprehensible in a woman in South Africa to engage in “anything so masculine as the undertaking of suretyship”; and that in the state of Oregon, U.S.A., a statutory prohibition on females participating in wrestling matches is not an unconstitutional discrimination against women since, in addition to its concern for the public weal, the Oregon legislature’s intention is (obviously) “that there should be at least one island on the sea of life reserved for man that would be impregnable to the assault of woman”. (See *State of Oregon v. Hunter* 300 P. 2d. 455 at 457 (1956) *per* Tooze J.).

However, amorphous though the material may be, it can be subsumed under the following heads:

1. The “uncommon law” type of cases with their highly implausible judgments— such as *Rogers v. Missouri Pacific Railroad Co.*, the so-called case of “unanimous dissents” and *Poisson v. d’Avril*, the case of the “Omnibus Repealer” of laws.
2. Strange contracts and wills— such as the marriage contract in *Hussein v. Hussein* [1938] P. 159.
3. Oddities in statutory drafting (once by itself constituting the entire subject of an after-dinner speech by Mr. Justice Megarry to young members of the Cambridge University Law Society).
4. Judicial wit and wisdom.
5. Legal records— viz. the longest delays in the legal process, the largest number of Queen’s counsel gathered together in one case, and the largest number of judges sitting on a case in the House of Lords.
6. Anecdotes about the legal profession.
7. Advice on ethics on various matters— with the invaluable comments of Dr. Johnson himself.
8. Finally some insights into history— such as the history of the English sergeants-at-law, some problems of the Royal Succession and what really went on in Parliament at the passing of certain Bills like the Habeas Corpus Bill, 1679, at its final reading.

This book being a “diversion”, it is implicit that one should (preferably) be doing something from which to be diverted by it. A good thing to be doing is studying or practising the law. Second, one will discover that one cannot read this book rapidly “from cover to cover”. To do that would be not only to court indigestion but to perform an act of debasement, not unlike gulping a bottle of vintage wine without having savoured the bouquet or having realised that it was vintage. One must read this book, a little at a time, keeping some for the next time (although chapters can be read in any order). Then genuine addicts could re-read parts of the book by choosing a topic at a time from that unusual and delightful labour of love, the index, at the same time marking in the index the “bits”

one particularly likes and wants to make future reference to. To say one could not put the book down till one reached the end is hardly praise with regard to this book. Such a reader is obviously no respecter of Father Antick, and cannot have appreciated what he was reading (or doing, or that it was wrong). Finally, although compulsory reading it is not, compulsive reading it may well become. It is therefore no wonder to myself that I necessarily took more time than a reviewer is normally allowed to review a book, and yet did not flag in my enthusiasm for the book. That a reviewer is compelled to read this book with an attitude of reverence (for Father Antick, of course) is sufficient praise for it; that he should have read it without pleasure or profit is his sufficient punishment.

The painstaking reader, whether a lawyer or not, will amidst the quotations, the strange documents, statutes and cases, and the anecdotes, discover valuable answers to innumerable questions. A reader keen on finding out just how valuable or interesting the book will be to him may, if he wishes, attempt the following questions. If the paper needs a title, what about: "*1189 and all that*"?

Part A: (Answer Yes or No):

1. Can a peer practise at the Bar?
2. (a) Can a lawyer appear in a case as both advocate and witness?  
(b) Can a judge be called as a witness in the case upon which he adjudicating?  
(c) Can a reigning sovereign give evidence as a witness in the King's Court?
3. Is an oath valid even if unwittingly taken not upon the bible but Olendorf's *New Method of Teaching French* or *The Young Man's Best Companion*?
4. Are a prostitute's professional earnings subject to income tax?
5. Can a tree be the owner of itself and the land on which it stands?
6. Can a will be written on an egg-shell?
7. Is it contrary to public policy to induce mothers to have offspring at too frequent intervals?
8. Have adultery or fornication ever been criminal offences in England?
9. Is it defamatory to call:
  - a) a justice of the peace "a blood-sucker" or "slouch-headed bursen-bellied hound";
  - b) a workman in a Railway Workshop "a bastard";
  - c) a Johannesburg woman "a cheap South Hills cow"?
 Do you agree?
10. If an appellent before the House of Lords has five grounds of appeal and there is on each ground one law lord in his favour and four against, will the appeal be allowed in
  - a) an English case;
  - b) a Scottish case?

Part B (Tick *one* alternative):

11. Is the shedding by counsel of tears in a courtroom
  - a) a legitimate argument before a jury;
  - b) his personal privilege;
  - c) his right;
  - d) his professional duty;
  - e) highly improper?

12. If you were a witness in court, would you
  - a) swear;
  - b) kiss the book;
  - c) place your hand on the book;
  - d) hold up your hand?
13. Who first said that "Parliament can do everything, except making a woman a man, or a man a woman":
  - a) de Lolme;
  - b) the second Earl of Pembroke?
14. Which is the precise moment of marriage in the marriage service:
  - a) after the second "I do";
  - b) after the ring is placed on the bride's finger;
  - c) on the completion of the service?
15. Is the failure to serve tea at a meeting where tea is a specified item on the agenda:
  - a) an irregularity; or
  - b) some indication of the extreme acrimony of the situation?
16. Would the hypothetical tenant prefer
  - a) a house with a view of a railway shunting yard; or
  - b) one without?

Part C (answer in your own words):

17. What happened to the rank of sergeant-at-law and why was it known as the "Order of the *Coif*"?
18. What form of oath should be taken by a musical expert called not to give oral testimony but to play a piano in court?
19. Is it true that "Espinasse does not lack companions in shame" and that there are others whose "wandering and masterless reports" are regarded as of questionable authority?
20. Discuss the legal definitions of
  - (a) "an idiot"; and
  - (b) "drink".
21. Consider the role of the Senatus Consultum Velleianum in modern jurisprudence (if you can).
22. What is uncommon about the case of AAAAAAAAAAAAAAAAAA AAAAAAAAAA v. *Southwestern Bell Telephone Co.*?

Even if a reader is so fortunately endowed by Nature as to be able to answer the majority of these questions with some measure of confidence, he will find this a treasure for his personal library if he is at all literary-minded. So also, the busy practitioner, who often has little time to do his leisure-reading and for whom this work possibly strikes a happy medium between work and play and may even forestall those common stress-induced disturbances, the ulcer and hypertension.

On the last page of the text, (p. 352), Mr. Justice Megarry concludes with the words of Coke: "And for a farewell to our jurisprudent, I wish unto him the gladsome light of jurisprudence, the loveliness of temperance, the stabilite of fortitude, and the soliditie of justice". I suspect that anyone who has read the book this far faithfully must possess all of these qualities already.