

of copyright, the major revision of the Criminal Code in 1891-92, the Paris negotiations in 1893 over the Behring Sea seal fishery, and the Manitoba and North West schools questions all fell to Thompson. Waite's analysis of these events is well done, but the book's ultimate strength lies elsewhere. In his review of Sandra Gwyn's *The Private Capital*, Waite remarked that our historians' preoccupation with "the political, economic and constitutional" has sometimes "emptied our academic history of its life." This fault cannot be laid at his door. *The Man from Halifax* is alive with real people, not only because of the author's mining of the rich personal correspondence in the Thompson Papers, but equally because of his perceptive eye and, quite simply, evident conviction that the deftly crafted descriptive portrait of events and personalities is an integral part of the historian's craft.

If there is need for a caveat it is this — Waite's study clearly demonstrates that Sir John Thompson ought properly to be considered one of the major figures in late nineteenth-century Canadian history (Macdonald called him "the best thing I ever invented"), yet concludes with the statement that Thompson's legacy, in the end, was "integrity and ... hard work." Perhaps this is so, given that his career was cut short before he had time to leave his mark on the prime ministership, but surely his achievements warrant a somewhat bolder conclusion. This criticism notwithstanding, *The Man from Halifax* ranks with the best historical writing produced in this country.

Bruce Walton
Manuscript Division
Public Archives of Canada

The Supreme Court of Canada: History of the Institution. JAMES G. SNELL and FREDERICK VAUGHAN. Toronto: The Osgoode Society with the University of Toronto Press, 1985. xv, 319 p. ISBN 0-8020-3417-9 \$40.00 cl., \$17.50 pa.

When I was an undergraduate, my introduction to the Supreme Court of Canada was Peter Russell's *Leading Constitutional Decisions*. What a changed picture of the Supreme Court emerges from Snell and Vaughan's history of the court. Russell's description of a "captive" court unwilling to strike out on independent paths is enhanced by Snell and Vaughan's full account of the Supreme Court's beleaguered life. Underlying their study is a comparison of the Canadian court with its counterpart in the United States. The judicial activism of the American Supreme Court appears to be the standard against which the Canadian court is measured. And in comparison with the American court, the Supreme Court of Canada has been both cautious and conservative in its judgements, preferring to apply existing laws rather than interpreting the law under changed social conditions.

This history is familiarly Canadian. The court's early years after Confederation are not the stuff from which legends are made: judicial appointments refused, merit taking second place to regional representation, haggling over salaries and pensions, reluctance to live in the capital, and dismal court facilities on Parliament Hill. Even as the court survived its first decades and passed into the twentieth century, its stature and reputation suffered from overt political appointments — flagrant in the case of David Mills — and from some spectacularly bad judgements — as in the "persons case" when the court declared that women had not been "persons" in 1867 and therefore were not persons in 1928. The greatest effect on the court's judicial behaviour up to its independence in 1949 was the

powerful shadow of the Privy Council in London: appeal cases from the provincial supreme courts could be taken — and were taken — directly to the Privy Council without reference to the Supreme Court of Canada. This appeal procedure meant that the Supreme Court could be bound by English judgements on Canadian cases into which it had had no input. For Snell and Vaughan this is the major source of the conservatism which characterized the Canadian court until Bora Laskin's influence was felt in the 1970s.

Out of this largely uninspiring history, however, some undeservedly little known figures emerge from obscurity: justices such as Lyman Poore Duff and John Idington. Duff has now been the subject of a recent Osgoode Society biography by David Williams; however, John Idington remains unknown. Yet, in 1914, Idington stood out alone in dissenting from his colleagues on a case involving a racist Saskatchewan law forbidding the employment of white women by "Chinamen." While the other justices upheld Saskatchewan's right to such a law, Idington used a basic civil rights argument in his judgement to uphold the rights of all naturalized Canadian citizens. Given the time, place, and previous pattern of Supreme Court judgements, this alone makes Idington unusual among his associates on the bench. But will it be possible to give Idington the attention he deserves? Unlike Duff, there is no major collection of Idington Papers. And indeed, this lack of sources may account for a certain surface quality to a few sections of the book. Of the two authors, Snell's portion — as the institutional historian — was perhaps the most frustrating. There appear to be only three major collections of Supreme Court justices' papers: those of Duff, Fitzpatrick, and Mills. Snell had to rely heavily on information extracted from Department of Justice files, some early Supreme Court letterbooks, and the political papers of Macdonald, Laurier, King, and others. The sometimes apparent vignette quality to the administrative history is not a failing on Snell's part. Instead, it points to a limitation in the research sources he was forced to use. Furthermore, none of the Supreme Court records used by Snell were available at the Public Archives of Canada; all are still stored at the court. It is time for the court to make use of the archival institution at its disposal to preserve at least what little is available of the early administrative records of Canada's preeminent court.

Any real complaint about this book concerns its organization. Midway through, I realized that each chapter contains two separate sections: the first section deals with the administrative history of the court while the second section covers case law and jurisprudential issues. The second section starts at the beginning of the chapter's period, thus breaking the chronological flow established in the first section. Since no editorial device was used to indicate the change from one section to another, the results can be confusing. Only the last chapters of the book are cohesive — with the last chapter being the strongest one in the book. It is at this point that the authors seem to develop a real interest in their subject. Indeed, Snell and Vaughan describe their history as an "extended prologue": a prologue to the court's new role as "arbiter and defender" of civil liberties under the new Charter of Rights. Even as prologue, however, Snell and Vaughan have provided us with a solid reference work on an institution which will become increasingly important to our lives under the law.

C.J. Shepard
Archives of Ontario