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Book Review

The Law on Two Islands: A Review of *Essays in the History of Canadian Law, Volume IX: Two Islands: Newfoundland and Prince Edward Island*

Christopher English, ed., *Essays in the History of Canadian Law, Volume IX: Two Islands: Newfoundland and Prince Edward Island*. Toronto: University of Toronto Press and the Osgoode Society for Canadian Legal History, 2005. xii, 419 pages.

The Osgoode Society for Canadian Legal History has played a vital role in encouraging legal history research in Canada, and one of its most important programs has been the *Essays in the History of Canadian Law* series. Canada lacks a legal history journal, but since 1981 the Osgoode Society has provided an opportunity for scholars to publish their work in one of its collections. *Two Islands* is the ninth such edited volume by the Osgoode Society that bears the title *Essays in the History of Canadian Law*. The first two volumes, published in 1981 and 1983, were general collections containing articles that ranged over various periods, but which generally focused on developments in Quebec in Ontario.¹ Since 1983, the content of the volumes have been determined by thematic or geographic concerns, or by a desire to honour leading Canadian legal historians. Thematic volumes include two collections on the legal profession and one on the criminal law.² Volumes with a geographic theme have tackled developments in Nova Scotia and British Columbia and the Yukon, and a future volume is planned on pre-Confederation Quebec and Ontario.³ The Osgoode Society has also published collections in honour of two leading

1. David H. Flaherty, ed., *Essays in the History of Canadian Law, Volume I* (Toronto: Osgoode Society, 1981); David H. Flaherty, ed., *Essays in the History of Canadian Law, Volume II* (Toronto: Osgoode Society, 1983).

2. Carol Wilton, ed., *Essays in the History of Canadian Law, Volume III: Beyond the Law, Lawyers and Business in Canada* (Toronto: Osgoode Society, 1990); Jim Phillips, Tina Loo & Susan Lewthwaite, eds., *Essays in the History of Canadian Law, Volume V: Crime and Criminal Justice* (Toronto: University of Toronto Press and the Osgoode Society, 1990); Carol Wilton, ed., *Essays in the History of Canadian Law, Volume VII: Inside the Law: Canadian Law Firms in Historical Perspective* (Toronto: University of Toronto Press and the Osgoode Society, 1996).

3. Philip Girard & Jim Phillips, eds., *Essays in the History of Canadian Law, Volume III: Nova Scotia* (Toronto: Osgoode Society, 1990); Hamar Foster & John McLaren, eds., *Essays in the History of Canadian Law, Volume VI: British Columbia and the Yukon* (Toronto: Osgoode Society, 1995). Don Fyson and Blaine Baker are editing the planned Ontario and Quebec volume.

scholars in the field, the retired R.C.B. Risk, and the deceased long-time editor-in-chief of the society, Peter Oliver.⁴ *Two Islands* is another of the geographically-focused collections, providing a forum to draw together the small group of scholars working on the legal histories of Newfoundland and Prince Edward Island.

Two Islands is a welcome addition that casts light on several previously unexplored topics. As with other Osgoode collections, the goal is not to provide complete and definitive legal histories of the provinces. Rather, essays are grouped into several thematic sections that address particular topics of interest. After a brief introduction by Christopher English, the volume is divided into five parts. Part one, "Historiography," consists of two essays that survey the existing legal historical literature on Prince Edward Island and Newfoundland. In his examination of the legal historiography of Newfoundland, English notes the long shadows cast by two early scholars, John Reeves, who published a history of Newfoundland in 1793, and Daniel Woodley Prowse, who published his *History of Newfoundland* in 1895.⁵ Reeves and Prowse established the long-held view that Britain had banned settlement in Newfoundland. According to English, challenges to this received wisdom were slow to appear because of the poor opportunities for higher education in Newfoundland before the twentieth century, the small size of the legal profession, and the lack of a provincial law school. Happily, English notes that several young scholars have offered substantial new re-interpretations, although English recognizes that several topics remain unexamined, including the history of Newfoundland law firms, the relationship between legal culture and politics, the formation of government policy, detailed analyses of government departments and courts, and, generally, work on the post-1832 period. The state of legal history knowledge in Prince Edward Island is weaker yet, as J.M. Bumsted shows in his historiographical essay. Historical writing examining P.E.I. tends to be, in Bumsted's view, "parochial in nature and exceptionalist in interpretation." (39) Much of the existing work examines the bitter land question on P.E.I. that started when the British divided most of the island into sixty-seven lots, and handed the properties to wealthy

4. G. Blaine Baker & Jim Phillips, eds., *Essays in the History of Canadian Law, Volume VIII: In Honour of R.C.B. Risk* (Toronto: University of Toronto Press and the Osgoode Society, 1999); Jim Phillips, R. Roy McMurtry & John T. Saywell, *Essays in the History of Canadian Law, Volume X: A Tribute to Peter N. Oliver* (Toronto: University of Toronto Press and the Osgoode Society, 2008).

5. John Reeves, *History of the Government of the Island of Newfoundland* (London: J. Sewell, 1793); D.W. Prowse, *History of Newfoundland from the English, Colonial and Foreign Office Records* (London: Macmillan, 1895).

landlords. While there are studies of the land issues, Bumsted believes the rest of the existing literature on P.E.I. "is slender and scattered." (43)

Part Two contains three articles examining "The Administration of Justice." Bumsted first offers an overview of the justice system of P.E.I. from 1769 to 1805, demonstrating how the early justice system was highly politicized. Leading landholders and politicians (who were often the same) attempted to employ the justice system to settle their personal disputes, a problematic tendency since the legal system lacked expertise and law and politics often intermixed. He concludes that the justice "was not meted out fairly," (72) and suggests that the use of the justice system for personal vendettas "was probably more pronounced on the Island than in any other jurisdiction in early British America." (73) In his study of the role of surgeons in eighteenth-century Newfoundland, Jerry Bannister begins with an overview of the development of the criminal justice system, then demonstrates that forensic medicine was not (as one might expect) comparatively backward, and that surgeons had large roles in the justice system in addition to acting as medical practitioners.⁶ Nina Jane Goudie examines the operation of the new Newfoundland Court on the Northern Circuit between 1826 and 1833. This circuit replaced the earlier system of Surrogate Courts, by which visiting representatives of the seasonal naval governor acted as judges in many outports. Goudie shows how isolation, distance, and geography made using a circuit system challenging for the judges and other officials, who disliked the travel required, and for residents of the outports who felt they had been better served by older dispute resolution arrangements.

Part Three contains essays focused on property law and inheritance. Bruce Kercher and Jodie Young examine the land law decisions of Francis Forbes in Newfoundland and in New South Wales. Forbes served as chief justice of Newfoundland from 1817 to 1822, then became the first chief justice of New South Wales, holding that position from 1824 to 1837. Kercher and Young show that Forbes carefully mediated between the laws of the Empire (including English common law and statutes), the legal actions of the colonial governors, and the legal customs of local inhabitants. In Newfoundland, the authors show that Forbes drew on local custom and legal loopholes to develop what he considered "suitable laws" to promote productive property ownership. His decisions were thus an

6. Bannister's chapter was published previously. It is a modestly revised version of a paper that appeared seven years earlier in Greg T. Smith, Allyson N. May & Simon Devereaux, eds., *Criminal Justice in the Old World and the New: Essays in Honour of J.M. Beattie* (Toronto: Centre of Criminology, 1998).

“attack on the British government’s sometimes half-hearted restrictions on the permanent development of Newfoundland.” (166) The authors go on to show that Forbes was less creative in New South Wales, but conclude that even Forbes’s work in New South Wales demonstrates that the law in the colonies exhibited an “interplay between received English laws and locally created ideas about law,” and that at least some judges “elevated local ideas into formal law, so creating a pluralist legal empire.” (180) Trudi Johnson continues the analysis of land law in Newfoundland in her study of the *Real Chattels Act* of 1834. This legislation stipulated that all landed property was classified as “chattels real.” In practical terms, this meant that land in Newfoundland would devolve at law in the same manner as personal property. The measure was designed to dispense with the English rule of primogeniture for those who died intestate. Inheritance is also the focus of Michele Stairs’s article. She demonstrates that inheritance patterns on P.E.I. between 1828 and 1905 show concern for the future well-being of all family members, regardless of gender. For example, she shows that spinsters were both supported by families and were expected to support families. “In return for their devotion to family,” Stairs finds, “the spinsters often received financial recompense and the potential for independence from the family.” Thus, the “role that they played within their families was necessary, valued, and repaid.” (227)

Three scholars in Part Four offer essays on the legal status of women and the access women had to the courts. Willeen Keogh examines the involvement of working-class women in assault cases in the southern Avalon Peninsula from 1750 to 1860. She shows, not surprisingly, that women were often assaulted, but, more interestingly, that women often perpetrated assaults, using physical violence to defend family property and family honour, among other reasons. This, Keogh concludes, indicates a “fluidity of gender relations within the plebian community” and demonstrates “that these women felt they had the right to use verbal and physical intimidation in the public sphere.” (249) Krista L. Simons examines the place of women in the courts of the Placentia District between 1757 and 1823. She, like Keogh, finds that women exhibited more agency than one might expect; she suggests, for example, that married women in Newfoundland “assumed legal rights” (272) by owning property and bringing and defending legal actions. A final essay on women in Newfoundland, by Laura Brown, skips ahead to the legal status and judicial treatment of Newfoundland women between 1945 and 1949. She argues that several pieces of legislation, including the *Mothers’ Allowance Act* of 1949, represented a step forward for women, but that

judicial attitudes lagged in this period, reflecting the view of many judges that women belonged in the home as wives and mothers.

Part Five, "Litigation in Chancery and at Common Law," includes detailed case studies of two infamous cases. In the first study, David M. Bulgar examines *Bowley v. Cambridge*, a P.E.I. equity case litigated for forty-seven years. Like Bumsted, Bulgar shows that the P.E.I. justice system was marred by intrusive actions by the island's small colonial elite and was slowed by the lack of trained legal personnel. For Bulgar, the case stands as an example of how the problems of Chancery practice led to delay and expense for the parties. According to Bulgar, the complexity of Chancery "actually defeated justice." (347) The second study in Part Five is Christopher English's examination of Newfoundland's *Emerson, Winter and Winter v. Cashin* case of 1947. In this dispute, two of the three members of the Newfoundland Supreme Court and the court's registrar sued Peter Cashin for libel after Cashin alleged that the plaintiffs had supported ending responsible government in Newfoundland because of personal financial interests. Cashin defended himself and the jury failed to reach a verdict. English suggests that the case is notable for its personalities, the nature of the alleged libel, and the rarity of judges suing for libel.

Although the essays tackle a wide variety of topics in two different jurisdictions, several themes become apparent when the volume is read in its entirety. First, both jurisdictions were distinctive because of the small size of their legal professions. This meant that laymen often played especially important roles in the administration of justice. Second, it is evident that early colonial judges and administrators tended to emphasize pragmatic solutions to many legal issues. For example, Keogh suggests that magistrates did not use the law to push women into traditional gender roles in Newfoundland because the resident fishery had become highly dependent on the household production by women labourers. It was therefore not in the interests of local magistrates "to encourage the withdrawal of plebeian women into economic dependence and the respectability of the private sphere." (257) In his discussion of surgeons in Newfoundland, Bannister also emphasizes pragmatic solutions, as he notes that criminal justice was "an amalgam of transplanted English institutions, local customs, and available resources." (101) Similarly, Kercher and Young argue that Francis Forbes sought practical solutions to Newfoundland's land problems, while inheritance practices in P.E.I. were, according to Stairs, shaped by the desire to find common-sense distributions of family resources that would benefit as many people as possible. Third, the authors tend to downplay the discrimination faced by women who interacted with the justice system; instead, the scholars

generally emphasize the women's agency and the willingness of some legal actors to consider the needs of women. For instance, Simon concludes that the courts of Placentia "displayed fairness, necessity, and consensus, to the benefit of female residents and the community at large." (296) A fourth theme is that concerns about access to justice were often expressed in both jurisdictions. As Goudie and Bumsted show in Newfoundland and P.E.I. respectively, inhabitants consistently called for the retention or creation of decision-making bodies that could cheaply and regularly serve communities outside of Charlottetown and St. John's.

Overall, the collection furthers our knowledge of the legal histories of P.E.I. and Newfoundland. This is especially useful for P.E.I., to which legal historians have given insufficient attention. Several articles in the collection stand out. Bumsted's examination of politics and the administration of justice on P.E.I. is a valuable overview that makes wonderful use of colonial correspondence. Bannister's clearly written study offers a useful overview of the structure of the Newfoundland criminal justice system and the unusual role of surgeons within it. Kercher and Young's study is a fascinating account of how Forbes mixed British law, local custom, and the legal actions of governors. The article also highlights the value of legal historians' attempt to track the careers of colonial judges in several jurisdictions. Doing so reveals continuities and differences in their judicial approaches. It also, at least in this case, led the authors to uncover sources that cast new light on developments in Newfoundland. A full judgment of an early and important case, *Williams v. Williams*, was not included in the *Newfoundland Law Reports*. Forbes, however, took a hand-written version of his judgment to New South Wales that the authors located in his personal papers in Sydney. The manuscript version contradicts the *Newfoundland Law Reports'* conclusion regarding who won the case, and helps elucidate Forbes's judicial method. Johnson's chapter on the *Chattels Real Act* of 1834 nicely demonstrates the continued problems of land law in Newfoundland. Keogh's chapter is also insightful, fitting nicely within the trend in recent historiography to identify the agency of women in the justice system.

Some of the weaknesses of the volume are similar to those that have occasionally appeared in other Osgoode edited collections. The Osgoode volumes are not intended to be comprehensive legal histories. As a result, at times the topics addressed can seem like a peculiar mix that leaves out important issues. This is aggravated in *Two Islands* by the fact that a large majority of its chapters are devoted to Newfoundland: nine of the articles address developments in Newfoundland, while just four look at P.E.I. The collection lacks studies of the judiciary, gives little attention to twentieth-

century developments, does not discuss legal education on either island, and outlines litigation patterns to a very limited extent. Also, in the case of Newfoundland, one wonders if the editors might have included an essay that addresses how the new province integrated its legal system and case law with Canada's in 1949. In all fairness, English is aware of this problem. He defends the book's contents in his introduction, noting that Canadian legal history as a whole is "modest, cautious, eclectic, and incremental." (8) Further, he suggests that the legal history community "must take our case studies as we find them, hoping that any hypotheses and conclusions we draw will contribute to the national enterprise." (9)

Another common problem also evident in *Two Islands* is that the articles are not of a uniform quality. Simon's article, for example, is lightly footnoted and seems longer than necessary. Also, Simon, particularly at the end of the article, begins to discuss various "interesting" cases without providing readers much analysis of why the cases are important. Brown's article is also lightly footnoted, and does not engage with the existing literature on the topics covered. She also states her assumption that it was a commonly held view by the 1940s that a woman's place was at home. This may be true, but the statement suggests a startling change in Newfoundland society since the nineteenth century, when, according to by Keogh, women played a vital role in the fishing industry.

The two case studies that conclude the collection are both fascinating accounts of interesting cases, but their broader significance is not always clear. Bulgar's sometimes overly in-depth analysis of *Bowley v. Cambridge* substantiates the old, familiar story that Chancery had a byzantine set of procedures in need of reform. This story was often emphasized by critics of Chancery in the nineteenth century. However, one is left to wonder how Chancery operated in P.E.I. in "regular" cases. Does this interesting case exemplify a common failure of Chancery, or is it an interesting but exceptional case? The answer is not clear from Bulgar's analysis. English's study is more readable than Bulgar, but, similarly, one is left wondering what broader insights should be taken from his account.

There are other problems in the collection that are not shared by some Osgoode volumes. For example, the combining of P.E.I. and Newfoundland in one collection is peculiar. English tries to rationalize the combination, but his explanation is not wholly convincing. English suggests convenience as one practical reason for publishing one volume on the two jurisdictions. "Publication might prove a huge challenge for either to achieve alone," he notes. (3) He further suggests that both places had a shared experience of being islands, that the economies of both colonies were based on staple production (cereal crops and cod), and

that both had unique settlement patterns. However, after making a claim that the two should be examined together because they are in many ways distinctive vis-à-vis the rest of Canada, English criticizes those who still have a tendency to “see these ‘two islands’ as deviant, departures from British colonial norms.” (7) One can’t have it both ways.

Another weakness of *Two Islands* only becomes apparent when the volume is read as a whole: several chapters repeat the same material. For example, Kercher and Young, Johnson, and English all overview the legislative history of settlement. Both Johnson and Kercher and Young also discuss several of the same cases to make similar points about land law. A description of the structure of the Newfoundland justice system can be found in both the essays by Keogh and Bannister. Rather than repeat the same topics, the editor might have eliminated some of the repetitive material and pushed the contributors to cross-reference their articles.

English’s criticisms of Jerry Bannister’s work in this volume also seem misplaced. In 2003, Bannister published *The Rule of the Admirals: Law, Custom, and Naval Government in Newfoundland, 1699-1832*, in which he examines governance in Newfoundland from the rule of the fishing admirals to the creation of responsible government in 1832. He emphasizes the role of the British navy, suggesting that the navy helped provide an effective system of government in Newfoundland by the mid-eighteenth century. The book was warmly received, winning the Canadian Historical Association’s Sir John A. Macdonald Prize as the best book published in Canadian history in 2003. One of the few negative reviewers was English, who in the *Canadian Historical Review* called the book a “good, if sometimes dense, analysis” of Newfoundland legal culture. English suggested that Bannister “dismissed in sometimes ungenerous language” his peers, and offered a “one factor explanation” that failed to address several key issues.⁷ English seemed to be taking umbrage at Bannister’s introductory comments in the *Rule of the Admirals*, in which he singled out several scholars, including English, for relying too much on statutes to understand the legal system of Newfoundland, rather than custom and practice.⁸

English continues his criticism of Bannister both in his introduction to *Two Islands* and in his chapter on Newfoundland historiography. For example, in the introduction he criticizes Bannister for not entering into

7. John English, Review of Jerry Bannister, *The Rule of the Admirals: Law, Custom, and Naval Government in Newfoundland, 1699-1832* (Toronto: University of Toronto Press and Osgoode Society, 2003), (2005) 86 Can. Hist. Rev. 356 at 356, 357, 358.

8. Jerry Bannister, *The Rule of the Admirals: Law, Custom, and Naval Government in Newfoundland, 1699-1832* (Toronto: University of Toronto Press and Osgoode Society, 2003) at 20-22.

the debate over whether official British policy was to ban settlement on Newfoundland, noting that “Bannister does not enter the debate, an interesting stance in light of his generally critical assessment of the work of his contemporaries.” (15) He later suggests that Bannister in *The Rule of the Admirals* “may occasionally claim too much,” but that his book is an “important addition to the island’s legal historiography.” (26) English also takes pains to argue that, in refutation of Bannister, Newfoundland historians need more “sustained research into the statutory evolution of the colony.” (27) While English’s criticisms are not necessarily unfair, they seem strange in the current volume considering that Bannister is not participating in the exchange.

Despite these minor complaints, *Two Islands* will be welcomed by those interested in Canadian legal history, and those interested in the social, cultural, and political histories of Newfoundland and P.E.I.

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Book Review

The Law of the Land: The Advent of the Torrens System in Canada, by Greg Taylor. Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 2008. 168 pages.

In the fall of 1980 Charles W. MacIntosh, Q.C., then the head of the Land Registration and Information Service (L.R.I.S.), a federally funded initiative of the Council of Maritime Premiers, delivered a lecture to first year students at Dalhousie Law School. He announced with justifiable pride that Nova Scotia had enacted the *Land Titles Act*¹ and that the province would be moving to a Torrens system of title registration. The time for throwing off the centuries-old system of deeds registration, where the government provided a passive repository for title documents, was nigh! Nova Scotia would come to enjoy the benefits of a Torrens system of title registration, where land is indexed by location rather than by an interest holder's name. A government guarantee of parcel ownership would replace title certification based on lawyers' opinions. Expensive and repetitive historic title searches would become a thing of the past in Nova Scotia!

Mr. MacIntosh was proven right, but not until twenty-three years later, when the *Land Registration Act*² was proclaimed in its first county.

This anecdote goes to the heart of the challenge one faces when investigating and describing the advent of the Torrens system in Canada. Any attempt to do so is fraught with complication. One cannot adequately describe the adoption of Torrens in Canada in a single article or in short story format. After all, "Canada" did not adopt the Torrens system. Rather, each province or region implemented its version of Torrens (or declined to do so) in light of the social, political, and economic contexts in which decision-makers operated at the time. There were many roads to Torrens, but each one meandered.

Undaunted by the task, Greg Taylor traces the reception of the Torrens system of title registration in Canada, on the 150th anniversary of the first introduction of the system in South Australia. As indicated, it was a long and sometimes tortuous journey, and it is not over yet. To date, seven provinces and all three territories have brought in the Torrens system.

1. S.N.S. 1978, c.8.

2. S.N.S. 2001, c.6, first proclaimed on 24 March 2003.

Each province that adopted Torrens did so for similar reasons, but with a fascinating variation in legislative approaches and in differing political environments.

Dr. Taylor, senior lecturer in law at Monash University, Melbourne, Australia, has done an admirable job in making the story of Torrens in Canada come to life in an authoritative, though not exhaustive, exploration of the topic.

The Law of the Land is a book that will be of interest to political scientists and historians as much as it will interest lawyers who practice real estate law or who study legal history. Dr. Taylor refers to original sources including statutes, legislative debates, archival records, newspaper accounts, and historic correspondence to uncover the Torrens story in Canada. The inherent flaws of the old English system of deeds registration are very clearly explained, as are the cornerstones of a Torrens system of government-guaranteed land title: the mirror, curtain, and assurance principles.

Importantly, the author also demonstrates that whether in Australia or Canada, Torrens finds fertile ground in regions where the government seeks to encourage settlement and economic development. The “democratization” of land ownership, where a large percentage of the population can aspire to land ownership, is revealed as a central factor in adoption of the Torrens system in a society.

With each chapter, *The Law of the Land* demonstrates that the push for Torrens was a matter of promoting the public interest and not simply an exercise in self-interest by mortgagees or any other group. Politicians, lawyers, business people, and bureaucrats are all examined in a thorough and un-varnished account of the adoption of Torrens from Vancouver Island to Nova Scotia.

A striking feature of Dr. Taylor’s examination is the revelation that in nineteenth-century Canada, the general public was intently interested in reforming the deeds registration system. He excerpts newspaper editorials and accounts of the day and it seems fair to conclude that land titles held a place in the people’s hearts and minds that would not be familiar to an observer in the 21st century!

Dr. Taylor has, through his research, debunked a myth or two about the Torrens system generally and about its adoption in Canada in particular. Once and for all, its connection to South Australia is confirmed, as are the reasons why the connection between the original statute of the Vancouver Island Colony and South Australia’s *Real Property Act* of 1858 went un-noticed by some observers. The common belief that Torrens

based his system on ships' registers is revealed to be, if not a myth, an overstatement.

The Law of the Land is organized in chapters that describe the arrival of the Torrens system according to its history in the various provinces or regions of Canada. It takes the reader from a general background on the Torrens system through a discussion of its adoption (or non-adoption) in each province and territory. This approach is entirely appropriate, not just because of the length of time it took Torrens to spread throughout Canada—the story is still unfolding—but also because of the unique political, social, and cultural milieu that prevailed in each region of Canada. This meant that the “flavour” of Torrens varied by region, too.

The Law of the Land clearly demonstrates the impact that the Canada Land Law Amendment Association (founded in 1883 in Toronto) had on the adoption of Torrens in Ontario, the Northwest Territories (including Alberta and Saskatchewan) and Manitoba. Interestingly, while the colony of Vancouver Island was the second jurisdiction in the world to adopt the Torrens system in 1861 (at 31), it too would come to adopt an “eastern” version of the Torrens system as promoted by the Association.

Dr. Taylor describes the drivers behind the adoption of the particular brand of Torrens in each of the provinces or regions. It is an engaging review that showcases the author's attention to detail and gift for tying salient facts together and placing them in context. For example, it was a real education to learn how Vancouver Island's settlement plan mirrored the one pursued in South Australia, and how this actually worked in favour of adoption of the Torrens system there. (at 20)

It was also interesting to learn how in Manitoba, conversion from the deeds registration system was first made mandatory and then, due to political pressure, voluntary. The nuances with the adoption of Torrens in the Northwest Territories (what are now Alberta, Saskatchewan, and the Territories) are explored and sadly, the role that administrative incompetence played in almost sinking the system in the territories is explained. (at 126) In general, one is left with a very good grounding in the challenges, similarities, and differences in the adoption of the Torrens system everywhere north and west of Ontario.

It is with Ontario and the Maritimes that Mr. Taylor omits a discussion of the innovative solutions that created a “tipping point” in favour of the Torrens system in Ontario, New Brunswick, and Nova Scotia.

Regarding Ontario, Mr. Taylor states that “it was the computer age that made the difference and led to the system's really taking off after ...1970” (at 110). This is true as far as the statement goes, but Torrens' progress in Ontario is equally linked to the government's policy decision

to pursue an innovative public-private partnership whereby parcels were systematically converted to land titles by Teranet, Inc.

Teranet was formed in 1991 as a partnership between the Ontario government and the private sector. The company's goal was to automate a large amount of data and create the world's first electronic land registration management system. In keeping with its original vision the Ontario government divested its interest in Teranet Inc. in 2003.³

A discussion of Ontario's decision to move forward through Teranet would have added an important dimension to Mr. Taylor's book. Admittedly, the travails of "automation," including its costs and complications, could be the subject of a separate book.

As for the Maritimes, Mr. Taylor's book fails to mention the seminal work carried out by the Land Registration and Information Service (L.R.I.S.). That organization operated an ambitious program consisting of four phases. Phases one and two concerned control survey and mapping activities. Gradual conversion to land titles was the focus of Phase 3 and integration of land related information was to be Phase 4.

In 1978, a uniform *Land Titles Act* was introduced simultaneously in the Legislatures of all three Maritime Provinces. New Brunswick and Nova Scotia both enacted their statutes, but only New Brunswick proclaimed theirs, as part of a land titles pilot project in Albert County. Prince Edward Island's Act died on the order paper as the province went to the polls.

L.R.I.S.'s legacy can still be felt in the land titles registries of Nova Scotia and New Brunswick. Many of the leading professionals in Service New Brunswick and Service Nova Scotia and Municipal Relations are L.R.I.S. veterans. It is not an exaggeration to say that without the fine work of the L.R.I.S., neither New Brunswick or Nova Scotia would be enjoying the benefits of the Torrens system today.

As with Ontario and Teranet, Inc., Mr. Taylor's book would have benefitted from at least an overview of the L.R.I.S., its activities and impact. That said, Mr. Taylor has written a yet to be published article entitled "The Torrens System in Nova Scotia and New Brunswick."⁴ As with Ontario's "automation" project, the Maritimes' experience lends itself to a separate treatment.

In all, Dr. Taylor has written a thorough and, as stated, authoritative book on the adoption of the Torrens system across Canada. It is only a shame that I did not have this more-than-useful guide when I travelled

3. See Teranet's web site, URL <<http://www.teraview.ca/whois.html>>.

4. Ed. Note: now published (2009) 16 Aust. Prop. Law J. 175.

across Nova Scotia promoting the *Land Registration Act* to lawyers and other stakeholders in 2000-01!

C.A. Mark Coffin
Registrar General of Land Titles, Nova Scotia

Book Review

Lady Landlords of Prince Edward Island: Imperial Dreams and the Defence of Property, by Rusty Bitterman and Margaret McCallum. Kingston and Montreal: McGill-Queens University Press, 2008. 207 pages.

On 23 July 1763, some four years after its acquisition of Saint John's Island [now Prince Edward Island] in the 1763 Treaty of Paris, Britain held a one-day lottery through which it distributed almost the entire island in sixty-six lots [townships] of about 20,000 acres each.¹ Many lots went to individuals, civil and military servants of the crown, including such notables as John Pownall, secretary to the Lords of Trade, and Admiral Augustus Keppel. Although none of the proprietors met the principal condition of their grant—that they settle the land within ten years with one Protestant settler for every 200 acres—the proprietorial system remained in place for over a century. Some large proprietors lost their lands when they were sold by the local government for failure to pay quit rents, while others sold because they were worried about such legal action, with the result that by the 1830s about one-fifth of Island land was in the hands of small farmer-owners. Yet the vast majority of the land continued to be owned by descendants of the original large proprietors, and mostly worked by tenant farmers. Most of the large proprietors were absentee landlords, residents of the United Kingdom.

The land question was a pervasive controversy in the history of nineteenth-century Prince Edward Island. A demand that proprietorial lands be escheated—taken back by the crown because grantees had failed to meet the grant conditions and then distributed to those actually working

1. This brief history of the Prince Edward Island land question is based on the introduction to the book under review and the work of a small coterie of other historians. See especially R. Bitterman, *Rural Protest on Prince Edward Island: From British Colonization to the Escheat Movement* (Toronto: University of Toronto Press, 2006); I. R. Robertson, ed., *The Prince Edward Island Land Commission of 1860* (Fredericton: Acadiensis Press, 1988) and *The Tenant League of Prince Edward Island: Leasehold Tenure in the New World, 1864-1867* (Toronto: University of Toronto Press, 1996); J.M. Bumsted, *Land, Settlement and Politics on Eighteenth-Century Prince Edward Island* (Montreal: McGill Queens University Press, 1987); R. Bitterman and M. McCallum, "Upholding the Land Legislation of a 'Communitistic and Socialist Assembly': The Benefits of Confederation for Prince Edward Island" (2006) 87 *Can. Hist. Rev.* 1; and M. McCallum, "The Sacred Rights of Property: Title, Entitlement, and the Land Question in Nineteenth-Century Prince Edward Island," in G.B. Baker and J. Phillips, eds., *Essays in the History of Canadian Law: In Honour of R.C.B. Risk* (Toronto: Osgoode Society for Canadian Legal History and University of Toronto Press, 1999).

the land—arose in the 1790s, and led to the changes just described. In the late 1830s a campaign to force widespread escheating won the support of the local Assembly but could not achieve its ends against the entrenched local elite in the Legislative Council and the imperial authorities in London. But the demand for land reform persisted and deepened as the island first achieved responsible government (in 1851) and then became part of the new Dominion of Canada in 1873. Voluntary sales by proprietors to government changed the landscape to some extent, but they were marked by scandal and proved not to be a solution. A Tenant League engaged in mass protests in the 1860s, protests which caused the authorities to bring in military forces from Halifax. The issue was finally resolved by the 1875 Land Purchase Act, which required sale of large estates to the government at prices to be determined by a Land Commission.

Lady Landlords of Prince Edward Island is a very widely-researched—in both Canadian and British sources—beautifully written, engaging and fascinating addition to the literature on the history of P.E.I. land settlement. It examines the stories of four women who became proprietors; none, of course, were original proprietors, they all inherited their Island estates. The first two chapters look at Anne and Jane Saunders, who came into the ownership of two estates, one of 20,000 acres originally granted to their great-uncle Admiral Sir Charles Saunders, and one somewhat smaller granted to their father Dr. Richard Huck Saunders. The women were minors when they inherited their land, as well as a substantial fortune in the United Kingdom, in the later eighteenth century, and probably did not even know they had them until they married and needed to arrange marriage settlements with their new husbands. The third woman, Georgiana Fane, was the daughter of Jane Saunders, and became owner in 1857. The final study, that of Charlotte Sullivan, looks at one of the last holdouts, a spinster who inherited her estate in 1866 and resolutely refused to sell until forced to under the *Land Purchase Act*.

The subjects of this book thus represent landownership in P.E.I. from the system's early decades to its denouement in the 1870s. The authors weave together the personal lives of the women with their activities and attitudes as landlords on the other side of the Atlantic, which involved both stewardship and embroilment in the twists and turns of Island politics over the land question. Whether or not this was part of the original intention, the book deals rather more with the lives of wealthy and well-connected British women in the eighteenth and nineteenth centuries than with Prince Edward Island—although it does discuss for each patterns of stewardship and the extent of their involvement in Island and imperial politics, and thus deepens our knowledge of both those issues. What emerges is a story of

contrasts. Anne and Jane Saunders had very little direct connection to the Island—Anne never visited, Jane just once—whereas Fane and Sullivan spent some time there. In part this was the result of a more personal distinction: the Saunders girls married prominent men, Fane and Sullivan never married.

The two contrasts that I found most interesting, however, involve the very different marriages experienced by the Saunders girls, and the level of involvement in the estates and in Island politics between, on the one hand, the Saunders women, and on the other, Fane and Sullivan.

Anne Saunders married Robert Dundas, son of the highly influential Henry Dundas (Lord Melville), and her sister Jane became the wife of the Earl of Westmoreland. Both marriages were, of course, aided by the considerable wealth the sisters could bring to their unions. Anne never visited the Island, although her son did, and the chapter on her concentrates on detailing the life of a politician's wife and a mother of numerous children. It shows a family in which husband and wife treated each other with respect, indeed more or less as equals, even in the face of continual money problems. It was both a companionate marriage and one in which Robert Dundas involved his wife in all decisions and often relied on her advice.

Jane's marriage was nothing like that of her sister. Her union with an impetuous martinet twice her age was an unhappy one, and she herself was argumentative and eccentric, albeit in ways that inspire the reader to both occasional smiles, and more frequently, grudging admiration. The marriage quickly became a battleground, and Lord Westmoreland tried to have his wife confined as a lunatic. Her strength of will prevented this, and they were eventually able to come to an agreement by which they lived apart. But she refused to shun the bright lights of society as he wished her to do: with a wonderful touch of assertiveness tinged with irony she wrote to those negotiating the agreement for separation that she would "endeavour to consult his [Lord Westmoreland's] wishes in the regulation of my future actions," but would do so "as far as I can do consistently with justice to myself." The couple never reconciled and Jane Saunders also managed to fall out with a number of her children. Her story shows the darker side of Victorian marriage, and at the same time shows us a woman able to make her own eccentric way in the world and to live a life of very considerable independence.

There is also a species of sub-contrast in the book as well on the issue of marriage, because unlike the Saunders Georgina Fane and Charlotte Sullivan did not marry. For Fane this was a disappointment which sprang from her difficult temperament, but although Sullivan's spinsterhood was

at least in part the result of her mother's early death and the need for one of the children to stay at home to care for their father, for me she emerged as a woman who saw little benefit to matrimony. She preferred the life of a wealthy benefactress of her community, an efficient businesswoman who managed her property skillfully and would have likely had rather less autonomy in a conventional marriage.

Turning to my second principal point of contrast, in the two chapters dealing with these two married women P.E.I. plays a fairly minor role. Anne and Jane Saunders did have to deal with the problems caused by their pre-marriage trustees' neglect of their responsibilities—failure to settle the land and (probable) failure to pay their quit rents. This meant that their estates were among those targeted for escheat by Island politicians in the 1790s. Although they escaped that fate the imperial government demanded that quit rents be paid, and this was generally done from the families' British assets. They did try to invest in and improve the management of their estates, but met with relatively little success and enriched only the local land agents they employed. The quit rent payments and settlement schemes they attempted for P.E.I. proved a further drain on family finances. In some ways it is remarkable that Anne and her husband held onto the P.E.I. estate, sinking time and money not only into failed development schemes but also into resisting the renewed escheat movement of the 1830s.

The authors argue that Jane saw the Island differently than her sister, actually visiting it—as part of a North American tour and staying a little less than year—and donating money to build a church and provide education for her tenants. They are correct to note this distinction, but it comes across as only a small difference, and indeed while she “assumed the role of lady bountiful with her tenants,” (139) the tenure of those tenants was rendered insecure by a controversy between husband and wife as to who owned the land and thus as to who could grant leases. That controversy in turn, as the authors clearly explain—no mean feat in itself—was the result of the arcane married women's property laws of nineteenth-century England. But at the end of the day Jane had little impact on the Island, and her main contribution to its life may have been her falling out with Lieutenant-Governor Fitzroy, one of a long list of people she alienated throughout her life.

But whatever the differences between them, the Saunders women had much less involvement in the Island than either Georgiana Fane or Charlotte Sullivan, and as a result P.E.I. itself plays a more prominent role in the book as we get to the latter two chapters and these two women. The life-long spinster Fane came into her P.E.I. inheritance when her

mother, Jane Saunders, died in 1857, and thus six years after P.E.I. had been granted responsible government. Land policy was increasingly set in Charlottetown, not London, and that policy was aimed at getting rid of the great estates. Legislation was passed to authorize government purchase of them for resale to tenants and others, and to limit landlords' rights and compel them to pay towards the costs of public improvements. There was a continual threat of more—to take away fishing rights from landlords, and to compel sale of their land. Fane was one of a number of absentee proprietors—she visited P.E.I. only once—who lobbied the Colonial Office to disallow legislation they disliked and to find a solution to what was increasingly an impasse. She found herself in a vociferous minority of landlords unwilling to go along with a compromise solution hammered out between the Colonial office and another group of owners. Considered in England to be as eccentric and difficult as her mother, she was a far more active a participant in Island politics than her predecessors in title, albeit one increasingly ignored by officialdom because of her obdurate resistance to any form of compromise that involved any diminution of her property rights.

Yet Fane did not simply resist those who wanted land holdings to be more widely dispersed. She took on an active role as “benevolent” “Lady landlord,” paying for good works and infrastructural developments, and spending her rent money on various improvements. Exemplary of the contradictions in her character were the fact that she was well enough liked to have both a road and a settlement named after her, while others on the Island labelled her a “diehard” and her own tenants went on a rent strike against her in 1864. Her failure to avert the end of landlordism on the Island was due in part to her gender—as the authors point out she lacked the political connections that the personal connection of marriage brought other women—and in part to her inability to recognize the inevitable and to see that compromise was the landlords' best answer, not to prevent loss of their estates but to get as good a deal as possible.

The denouement of the century-old system brings us to the fourth of the women profiled, Charlotte Sullivan. She inherited her island estate less than a decade before the *Land Purchase Act*, and visited P.E.I. a year later. Her family had been one of the more neglectful landlords over the previous decades, and it was generally assumed that an astute businesswoman like her would accept a government offer to sell, as others increasingly did in the 1860s and early 1870s, but she obdurately refused. She believed that with better stewardship—the hallmark of her management of her English properties—she could get a better return on her island lands than the interest on the capital sum from any sale. By the time the *Land Purchase Act* was

passed she was the largest estate holder on PEI, and in the end she fought compulsory purchase as well, even taking her case, albeit unsuccessfully, to the Supreme Court of Canada.²

This short, engaging, yet deeply scholarly study will interest and inform any reader interested in Prince Edward Island's history, for it deals with perhaps the most important aspect of that history. It reminds us that the law is central to many aspects of Canadian history, and that within legal history the competition over access to resources, a competition shaped by and enshrined in property law, is as important a relationship as any. Along the way there are many insights offered into the nature of both marriage and spinsterhood for wealthy women in the nineteenth century.

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2. See *Prince Edward Island (Commissioner of Public Lands) v. Sullivan* (1877), 1 S.C.R. 3.