

Raymond-A. Landry and Ernest Caparros (edited by), *Essays on the Civil Codes of Québec and St. Lucia*, Ottawa, University of Ottawa Press, 1984, 400 pages

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Raymond-A. LANDRY and Ernest CAPARROS (edited by), *Essays on the Civil Codes of Québec and St. Lucia*, Ottawa, University of Ottawa Press, 1984, 400 pages.

*Essays on the Civil Codes of Québec and St. Lucia* is a selection of papers presented at seminars held at Montebello, Québec, in May, 1983, and at Castries, St. Lucia, West Indies, February 13th to 17th, 1984. The purpose of the seminars was to deal in parallel with legal concepts of the Civil Codes of Québec and St. Lucia, both of which have the same common ancestor, *La Coutume de Paris*. The essays are edited by Raymond A. Landry, Dean of the Civil Law Section of the Faculty of Law of the University of Ottawa Law School, and Ernest Caparros, Professor of Law at the University of Ottawa and Director of the *Revue générale de droit*.

At the very outset, one cannot help but wonder how it could happen that the law of Québec and St. Lucia should have so much in common. The obvious answer lies in the early French domination of both Québec and St. Lucia (Québec until 1760; St. Lucia, off and on until 1803). Yet, the fact still remains that St. Lucia is the only country in the former British West Indies in which the Civil Law still persists. All of the others are common law jurisdictions. Why this should be is explained in the Foreword to the *Essays* written by Dean Raymond Landry, and by His Excellency Sir Allen Lewis, Governor-General of St. Lucia, at the official opening of the Conference. It appears that the *Civil Code of Lower Canada* of 1866 served as the model for the *Civil Code of St. Lucia* which was enacted in 1879. That was done under the influence of James Armstrong, a lawyer from Sorel, Québec, the then Chief Justice of St. Lucia, with the able support of William Des Vœux, a barrister trained at Osgoode Hall, who was Administrator of St. Lucia. Later, under similar circumstances, the *Code of Civil Procedure* of Québec went into force in St. Lucia on April 15, 1882.

Part I of the *Essays* consists of the 15 papers delivered at the second seminar on the Civil Codes of Québec and St. Lucia which took place in Castries, St. Lucia. The first of the fifteen is by Ernest Caparros, one of the editors of the *Essays*. Entitled "Overview of an Uncompleted Journey: From the Civil Code of Lower Canada to the Civil Code of Québec",<sup>1</sup> it discusses what the author terms the "very uncomfortable situation" of Québec with two Civil Codes. One is the *Civil Code of Lower Canada* which is over 118 years old; the other is the new *Civil Code of Québec* on which work started in 1955 when the Civil Code Revision Office was created, but which did not reach the legislative process until 1980 and which, according to the author, is being implemented "by instalments".<sup>2</sup>

Perhaps Professor Caparros' paper should be read in conjunction with the first paper in Part II of the *Essays* which is entitled "The History and Development of the Saint Lucia Civil Code".<sup>3</sup> Written by N. J. O. Liverpool, Professor of Law at the University of the West Indies Faculty of Law, this paper is one of those delivered at the first seminar which took place in Montebello, Québec, in May, 1983. Divided into four parts, the paper gives an account of the discovery

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1. P. 15.

2. P. 27.

3. P. 303.

and conquest of St. Lucia — how the island passed back and forth between the French and the English. It discusses the English theory of the doctrine of the reception of law and its application to St. Lucia. It also gives an account of the preparations for codification between 1814 and 1842 — the problems that were caused by the existence of a French judiciary and British governors during the early years. The paper concludes with the story of the codification of the laws of St. Lucia between 1842 and 1879 — of the problems that were encountered because of the vagueness of knowledge as to what law was actually in force due to the presence of English judges who were uninstructed in the Civil Law.

One of the most interesting of the papers found in the *Essays* is that by Kenny D. Anthony, Assistant Lecturer, Faculty of Law, University of the West Indies. Entitled “The Viability of the Civilist Tradition in St. Lucia: A Tentative Appraisal”,<sup>4</sup> it deals with the problems that exist in what the author terms “Mixed/Hybrid jurisdictions” *i.e.*, jurisdictions in which the civil law and the common law compete with one another for recognition, if not for survival itself. Standed as St. Lucia is from its jurisprudential mentors in Québec, France, and elsewhere, and cut off from the Caribbean legal community by virtue of legal tradition, one cannot help but be surprised by the fact that the country continues as a repository of the Civil Law tradition, the only one in the English speaking Caribbean community. For that reason it is small wonder that the author asks in his conclusion, “Whither now?”.<sup>5</sup> As he seeks to find an answer to the question the author prints out that there are two choices: (1) to convert to the common law, (2) to pursue hybridism as an end itself. If the first choice is adopted, it is the opinion of the author that St. Lucia will be deprived of an important role in the families of the legal community; if the second choice is followed, then, in the words of the author, “the Island (as indeed other mixed/hybrid jurisdictions) can become an intermediary between the civil law and the common law”.<sup>6</sup>

“The Rules of Evidence in Civil and Commercial Matters in Quebec Law”<sup>7</sup> are discussed in a paper by Professor Léo Ducharme of the University of Ottawa School of Law, Civil Law Section. In a similar manner, “The Law of Evidence in Civil and Commercial Law Under the Laws of St. Lucia”<sup>8</sup> are discussed in a paper by Desmond McNamara, Q. C. In his paper, Professor Ducharme brings out the interesting fact that in Québec substantive rules of evidence are derived mainly from French law, whereas the procedural rules of evidence are derived from the English common law — that in Québec French substantive rules of evidence and English trial rules have been blended together. Similarly, Mr. McNamara points out in his paper that under article 1137 of the 1957 *Civil Code of St. Lucia* any question relating to evidence which is not covered by the Code or any other statute “must be decided by the rules of evidence as established by the law of England”.<sup>9</sup>

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4. P. 33.

5. P. 72.

6. P. 73.

7. P. 75.

8. P. 93.

9. P. 94.

The notarial systems as they exist in both Québec and St. Lucia are discussed in two short, but excellent, papers. Earl Kimmel, Member of the Bureau and of the Executive Committee of the Chamber of Notaries of Québec, presents "The Notarial System and its Impact in Canadian Law".<sup>10</sup> "The Notarial System of St. Lucia" is discussed in a paper by Vernon Alexander Cooper.<sup>11</sup> The important difference between the notarial system as it exists in the two countries is that in Québec there is a notarial *system* in the true sense of the word, whereas in St. Lucia there is not. In Québec there is a Chamber of Notaries with its own self-governing board of Bureau; in St. Lucia there is not the factual separation of the two branches of the legal profession, nor does the notarial profession have a disciplinary body. In St. Lucia both branches of the legal profession are merged under the blanket designation of *Legal Practitioners*.

Other papers in the first part of the *Essays* explore Prescription as a mode of acquiring property in both Québec and St. Lucia,<sup>12</sup> the law of succession in Québec and St. Lucia.<sup>13</sup> There is also a paper that makes a comparison between statutory law and a Civil Code,<sup>14</sup> another that examines contract law under the Québec *Civil Code*,<sup>15</sup> also one on the evolution of the law of Responsibility in Québec,<sup>16</sup> and two that delve into the execution of judgments.<sup>17</sup>

In the second part of the *Essays*, in addition to Professor Liverpool's paper on "The History and Development of the Saint Lucia Civil Code", already mentioned in this review, there is a paper on "The Interpretation of the Civil Code of Saint Lucia", written by V. F. Floissac, the President of the St. Lucia Bar.<sup>18</sup> This paper emphasizes the hybrid character of the St. Lucia Civil Code — as the author expresses it, "a fascinating blend of Québec, French, English and indigenous law".<sup>19</sup> Among other things, the paper related to the influence of Québec Codal Law, the impact of the importation of English law, the continuing dependence on the Québec Code, and the presence of indigenous law, *i.e.*, articles in the St. Lucia Code that are neither Québec, French, nor English law.

In this second part of the *Essays* there is also a paper on "Legislation Derogating From the Québec *Civil Code*",<sup>20</sup> written by Professor Angers Larouche,

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10. P. 109.

11. P. 111.

12. Raymond A. LANDRY, "Prescription as a Mode of Acquiring Property: Myth or Reality", p. 125; Kenneth MONPLAISIR, "The Law of Prescriptions: The St. Lucia Situation", p. 151.

13. Germain BRIÈRE, « The Evolution of the Law of Succession in Québec », p. 163; N. J. O. LIVERPOOL, "The Law of Succession in St. Lucia", p. 190.

14. Alain BISSON, "A Comparison Between Statutory Law and a Civil Code", p. 225.

15. Jean-Louis BEAUDOIN, Q. C., "Some Reflections on Contract Law Under the Québec Civil Code", p. 235.

16. Louis PERRET, "The Evolution of the Law of 'Responsibility' in Québec: The Civil Code and Special Statutes", p. 247.

17. Charles BELLEAU, "The Law of Civil Procedure in the Province of Québec with Special Reference to the Field of the Execution of Judgments as Compared with the St. Lucia Experience", p. 265; Yvon DUPLESSIS, "The Execution and Enforcement of Judgments in Private International Law and in Public Internal Law", p. 289.

18. P. 339.

19. P. 340.

20. P. 361.

also of the Civil Law Section of the University of Ottawa Law School. The paper focuses on statutory law that either derogates from, completes, or enlarges the scope of the provisions of the Québec *Civil Code*.

Finally, at the end of the volume there is a fascinating short paper that is only six pages long entitled, "How Hybrid is Saint Lucian Law?".<sup>21</sup> Written by Andrew Huxley, Lecturer at the University of the West Indies, the paper speculates on how effective will be the 1956 Ordinance that had as its purpose "to assimilate the [St. Lucia] Code to the law of England in the light of the present needs of the colony".<sup>22</sup> After the author poses some unanswered questions concerning the mandated step towards the anglicization of the St. Lucian legal system, he wishfully concludes his paper as follows:<sup>23</sup>

My questions reflect only the regrets of one comparative lawyer that he could not have been born two hundred years later in time to see the mature fruits of St. Lucia's experiment in hybridization.

*Essays on the Civil Codes of Québec and St. Lucia* is well organized, clearly printed, and attractively bound. It sheds light on a number of areas that cannot help but be clouded to many, particularly to one such as the author of this review who was nurtured on the common law. That is why the book was fascinating to read and to review. It is a book that satisfies one's curiosity, but at the same time creates a thirst for more once the final page has been turned.

At the front of the book there is a good table of contents, a list of the membership of the panels that participated in the seminars, a list of the lecturers, and a table of abbreviations. At the end of the book there is a table of cases, an index of treaties and statutes, and an excellent general index. It is a book that should be on the suggested reading list of every student of the law.

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former Professor of Law, Université Laval; member of the  
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21. P. 371.

22. See s. 4(3), Laws of St. Lucia (Reform and Revision), Ordinance no. 21 of 1954, cited and quoted from at page 371 of the *Essays*.

23. P. 376.