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## LAW, MEDICINE, AND MORALITY

OF THE PARAMOUNT NECESSITY of establishing confidence between doctors and lawyers there is no doubt at all in my own mind. With the establishment of a Royal Commission to investigate and report on the health services in Canada, and the recent memorandum of the Canadian Medical Association on the subject, there probably looms large in the minds of every practising doctor the near certainty of a National Health Service in Canada. It is not proposed to discuss the political arguments that such a proposal is calculated to engender, but something should be said about the prospects of a flood of litigation that might be thought to be the necessary concomitant of a National Health Service.

The lessons to be learned from the United Kingdom's experience in this regard are not without significance. Before the National Health Act of 1948, although it was open to any patient at any time to sue the doctor who had treated him, he rarely did so because there was a human relationship between the two. As a rule the patient was reluctant to attack the man who had been so good to him and who had tried hard and done his best. With the inception of a National Health Service, however, it was not the doctor that was being attacked—it was the Government, that impersonal, anonymous giant with the seemingly bottomless purse. There was also a parallel development in the introduction of legal aid with the comfortable knowledge—since eradicated—that even if the patient lost his case it was quite impossible for the doctor to obtain from him any costs or other recompense. Claims resting on medical negligence were multiplied, even though they often rested on trivial issues. Quite often, of course, the doctor and the hospital would settle for a substantial sum rather than go into court. The position as regards staffing hospitals at the junior medical level had become extremely difficult. Nurses, sisters, resident staff, and even senior surgeons and physicians were acutely conscious of the potential menace associated with almost every patient.

The High Court judges in Britain were well aware of the consequences of

this rash of medical negligence cases; so too the ranks of the legal profession. The trend towards hitting out blindly at the medical staff in hospitals whenever anything went wrong was halted by the Court of Appeal in a judgment delivered by Lord Justice Denning, the arch iconoclast of the English judiciary, who said:

Medical Science has conferred great benefits on mankind, but those benefits are attended by considerable risks. Every surgical operation is attended by risks . . . we should be doing a dis-service to the community if we were to impose liability on hospitals and doctors for everything that happens to go wrong . . . Doctors would be led to think more of their own safety than of the good of the patient. Initiative would be stifled and confidence shaken.

If a doctor acts in accordance with current medical practice and uses reasonable skill and care in so doing, he has nothing to fear. There may be understandable reasons for the apparent lack of confidence that exists between the members of the two professions, but this can and must be overcome. The two fields so often overlap; as yet, however, there is evidence of only the mere beginnings of an attempt on the part of members of both professions to explain and understand their respective points of view. It is, after all, for the public good that a sense of trust and confidence between lawyer and doctor should be firmly established. Not least is this so in regard to the solution of those delicate but fundamental moral problems that arise in the to a large extent uncharted territory between Law and Medicine. But let it not be thought that the answers to these questions are within the exclusive or even special purview of the two professions; equally vital is the contribution to be made in the sober exercise of moral judgment by the ordinary man in the street.

It has been rightly said that there is no frontier more controversial than that between law and morals. Let me mention some of the controversial issues which are being debated and argued in the learned journals of the two professions but as to which hardly a ripple of concern appears to be manifested amongst the vast majority of ordinary people in the community—unless and until it becomes a matter of vital concern to them personally. Should suicide and attempted suicide continue to be regarded as criminal offences? In what circumstances is therapeutic abortion legal, and is the law in need of reform? What view is taken of the morality of the practices of artificial insemination by the husband and artificial insemination by donor, and what legal problems arise in consequence? Is euthanasia in any circumstances morally and legally defensible? What degree of criminal responsibility should properly attach to the person who is insane or mentally ill,

and are the criteria laid down in the last century in need of radical change to accord with the advances in medical science?

These are but some of the questions that call for an answer. Another, the controversy which sparked off the most pronounced divergence of public opinion in England in recent years, is the law relating to the twin problems of homosexuality and prostitution. The *Report of the Wolfenden Committee*, which was published in England in 1957, revealed a state of affairs the pertinence of which in assessing conditions in Canada may not be very obvious. But what is significant and important is that part of the Wolfenden Report in which, as the basis of recommending a change in the criminal law to make homosexual behaviour between consenting adults no longer a criminal offence, the Committee directs attention to the fundamental principles governing the relationship between law and morals, between crime and sin. And it is to these basic questions that we now turn.

The name of Jeremy Bentham is familiar, perhaps, to both lawyers and non-lawyers. But it is his contemporary and great friend John Austin whose theories have contributed most to the development of English and Canadian law as we see it practised at the present-day. "Law," said Austin, is "a rule laid down for the guidance of an intelligent being by an intelligent being having power over him". The key to the understanding of law is in the word "command", because every law is a species of command. Attached to the command is a sanction or penalty or other evil which exists to secure obedience. This may be in the form of a fine, an injunction, imprisonment, or the payment of damages. Force, according to Austin, is necessary to compel obedience, and this may be said to be the foundation and inevitable basis of all law. As Thomas Hobbes somewhat crudely, but effectively, put it, "Clubs are trumps". Even those persons who have never thought of themselves as students of jurisprudence may have pondered on this question: Why do some 18,000,000 people in Canada recognize that they are under an obligation to obey a statute enacted by a comparatively few individuals sitting in the Houses of Parliament at Ottawa or, closer at hand, why do the half-million odd people in Nova Scotia acquiesce in the laws passed by the handful of legislative members in Province House? Is it our innate sense of the democratic process that ordains that the will of the majority must prevail? It will be informative to look more closely at some typical statutes with which most of us are familiar, such as the Motor Vehicle Act or the Criminal Code of Canada. The latter statute, incidentally, embodying the basic criminal law of Canada, was enacted as a Code so that all citizens would become aware of what constituted criminal behaviour, but it is difficult to

avoid the suspicion that such an ideal has always been a fanciful dream. What is it then that compels our obedience to the laws that govern our daily lives, our professional duties, our relationships with our neighbours and the rest of society?

Is the Austinian theory of command and sanctions satisfactory as providing the sole explanation for our law-abidingness? In more recent times, the view has been advanced that people obey the law because it is in accord with what they instinctively feel to be right; expressed in another way, it is because the law of the land is in accord with the moral law. This moral law, in Canada and other countries within Western civilisation, undoubtedly derives largely from Christian teaching. As we all know, it is ordained in the Ten Commandments that murder and theft shall not be committed, and the law, with increasing complexity, prohibits such crimes because they are universally regarded as immoral and sinful. And in the fields of marriage, divorce, and responsibility for children one will often find the courts making reference to the principles of Christianity—using such phrases as the “natural law” or “moral law” to embody their judicial thinking.

A distinguished English judge, Lord Justice Devlin, has said that “A State which refuses to enforce Christian beliefs has lost the right to enforce Christian morals.” But it may be submitted that the use of the secular law to enforce Christian beliefs does not carry with it the implication that law and Christian doctrine must necessarily be synonymous. To advocate this would be to fail to recognise the many differences as to fundamental issues within Christianity itself—for example, the practice of contraception. The Roman Catholic Church holds it to be an immoral and sinful practice, whereas the Anglican Church at the last Lambeth Conference declared that family planning is a positive Christian duty. And even where there is general agreement as to the sinful character, for example, of adultery, there is no uniform attitude towards the question—should adultery be a crime? Public opinion, which once ostracized adulterers, does it no longer. The very real question has been posed by Dr. Geoffrey Fisher, the retiring Archbishop of Canterbury:

has adultery become such a public menace that the time has come when it ought to be made a criminal offence? Can nothing be done to show that if a third party breaks into a marriage, and thereby inflicts an injury of the gravest and most antisocial kind on the institution of marriage, he is doing a serious public harm to society.

It is interesting to know that until the revision of the Criminal Code in 1955 adultery was still regarded as a crime in New Brunswick, having been created, in 1854, a misdemeanour punishable by a fine of £100 or two years imprisonment. And

as recently as 1935 a person in New Brunswick was sentenced to eight months' imprisonment for committing adultery (*Foster* 62 C.C.C. 264). Adultery continues to be a criminal offence in many of the states of the U.S.A., but it is only right to point out that this law is regarded as a dead letter. Further afield, in Saudi Arabia, an important reform in criminal law was announced last year: adulteresses will no longer be stoned to death as in Biblical times; henceforth they will simply be shot.

There are other areas in which Christian teaching and the ordinary law diverge. Prostitution in itself is no crime; soliciting for the purposes of prostitution is, but as the recent English Street Offences Act (1960) shows, it is only an offence when the soliciting is done by a woman. Conversely, and just as inexplicable, whereas homosexuality between males is a crime, lesbianism between females is not. Furthermore, incest was not a criminal offence in English law until it was declared so by statute just over fifty years ago. Before that, it was regarded as a matter for the ecclesiastical courts. There being no competent ecclesiastical court in Canada, and the ecclesiastical law of England not being in force in Canada, it is interesting to note that the provinces of Nova Scotia, New Brunswick, and Prince Edward Island made incest a criminal offence as long ago as the middle of the nineteenth century. Even more interesting was the maximum punishment provided by the different provinces. Nova Scotia was content with two years imprisonment, New Brunswick imposed a maximum of fourteen years imprisonment (the maximum still provided by the new Criminal Code with an additional discretion as to whipping), while Prince Edward Island evidenced its moral reprobation of the offence by providing a maximum of twenty-one years imprisonment with or without hard labour.

More recently, in England, consideration has been given to the problem whether the practice of artificial insemination by donor should be prohibited by law. Of this fairly modern expedient to overcome a childless marriage, the Archbishop of Canterbury has declared:

The Christian view says that A.I.D. cannot be justified because it violates the God-given integrity of the persons concerned, the husband, the wife, the doctor, the donor and the child—and is not to be justified by the psychological relief and fulfilment that it may bring to a few.

In this outright condemnation of "A.I.D." as "an ungodly thing" the Anglican attitude reflects also the Roman Catholic position. What is interesting, however, is that whereas Dr. Fisher, the Archbishop of Canterbury, has advocated the invok-

ing of the ordinary law to forbid the practice of A.I.D., a committee of Anglican bishops came to the conclusion that "we do not at present advocate the imposition of penal sanctions for a practice which, though immoral and socially undesirable, has not yet reached proportions sufficient to justify that step." Moreover, if, as is usually the case, the woman is married and consequently the resort to A.I.D. is tantamount to adultery, the question may well be asked—ought A.I.D. to be made a criminal offence when adultery is not?

All these examples raise the fundamental question: to what extent, if at all, should the criminal law concern itself with the enforcement of morals and punish sin or immorality as such? To this question the Wolfenden Committee, echoing the views of Fitzjames Stephen, the "father" of the Canadian Criminal Code, expressed this contentious opinion:

Unless a deliberate attempt is to be made by society, acting through the agency of the law, to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law's business. To say this is not to condone or encourage private immorality.

The Committee went on to say:

It is not the function of the law to intervene in the private lives of citizens, or to seek to enforce any particular pattern of behaviour, further than is necessary to carry out the following purposes:

- (1) to preserve public order and decency,
- (2) to protect the citizen from what is offensive or injurious,
- (3) to provide sufficient safeguards against exploitation and corruption of others.

It must be made clear that these statements of principle are naturally restricted to the subject-matter of the Report, but they are made in general terms and there is no reason why, if they are valid, they should not apply to the criminal law in general.

It will be observed that acceptance of the Wolfenden standpoint involves the clear-cut separation of crime from sin, the divine law from the secular, and the moral law from the criminal law. Of course, it is not difficult to find a wide-range of offences which exist independently of any question of morals. Rules that impose a speed limit or regulate the standards of cleanliness in cafés and stores have nothing to do with morals. These exist for the simple purpose of achieving uniformity and enabling society to be well regulated and operate smoothly. The choice between good and evil is not involved in this wide area of the criminal law.

But let us turn back to the Wolfenden Committee's concept of the boundaries separating law from morality. If one accepts the view that the criminal law

should not concern itself with acts which can be done in private and without offence to others and in which no element of exploitation or corruption of others is involved, one is brought face to face with these medico-legal problems: (1) euthanasia or mercy killing; (2) suicide and attempted suicide; (3) sterilisation; (4) abortion. It is with these controversial topics that this paper is particularly concerned.

### *Euthanasia*

There must be few general practitioners who, at some time or another in their professional careers, are not faced with the tremendous moral question—how far can they go to mitigate the pain of a suffering patient in a way which might shorten the patient's life? One might expect the legal position on this problem to be clear and unambiguous. Where the person involved is a close relation of the sick person the law is certain and, however much sympathy the particular circumstances may arouse in the breast of the judge or of the jury, only one verdict is returnable—murder. But where a medical practitioner is concerned, the law, as Lord Justice Devlin recently commented in an address to the Medical Society of London, is "woefully undeveloped and uncertain". It was the same judge, by general assent the outstanding criminal law judge in England, who, a few years ago, gave what may well be described as the classic ruling on the question posed above. This ruling was given in a case which is probably as well known in Canada, at least to doctors and lawyers, as it is in England. It is, of course, the case of Dr. John Bodkin Adams in 1957, a classic trial for murder.

It is impossible to review all the evidence in that case or to recount the dramatic nature of the defence's production of the nurses' records made at the time of the victim's last illness, which the Crown believed had been destroyed but which demolished much of the oral testimony given by the same nurses. Mrs. Morrell, the patient, a very rich woman and 81 years of age, suffered from cerebral arteriosclerosis and also from the results of a stroke. According to a Harley Street specialist, it was unusual for pain to accompany such conditions. However, for ten months before her death Dr. Adams had prescribed very substantial quantities of morphia and heroin for Mrs. Morrell, resulting in a serious degree of addiction. During this period Dr. Adams was concerning himself with a change in Mrs. Morrell's will involving a Rolls Royce car and a case of jewellery. On the day before Mrs. Morrell died, Dr. Adams had prescribed 75 one-sixth grain tablets of heroin—a lethal dose—on top of which he personally prepared two very considerable injections of paraldehyde which were administered by the attendant nurse. When asked by the police to explain his conduct, Dr. Adams said that his patient was "in terrible

agony". According to the nurses, Mrs. Morrell was in a semi-comatose state for days before her death. In answer to the trial judge, Dr. Douthwaite, the senior physician at Guy's Hospital, said that he was forced to the conclusion that Dr. Adams gave the paraldehyde on the last night because he was tired of waiting for the morphia and heroin to act, and that it must have been given with an intent to kill. On the other hand, Dr. Harman, the consulting physician at St. Thomas' Hospital, said that the dosage contributed neither directly nor indirectly to the patient's death.

Lord Justice Devlin summed up to the jury as follows:

[M]urder was an act or series of acts, done by the prisoner, which were intended to kill, and did in fact kill. It did not matter whether Mrs. Morrell's death was inevitable and that her days were numbered. If her life were cut short by weeks or months it was just as much murder as if it was cut short by years. There had been a good deal of discussion as to the circumstances in which doctors might be justified in administering drugs which would shorten life. Cases of severe pain were suggested and also cases of helpless misery. The law knew of no special defence in this category, but that did not mean that a doctor who was aiding the sick and dying had to calculate in minutes or even hours, perhaps not in days or weeks, the effect on a patient's life of the medicines he would administer. If the purpose of medicine—the restoration of health—could no longer be achieved, there was still much for the doctor to do, and he was entitled to do all that was proper and necessary to relieve pain and suffering even if the measures he took might incidentally shorten life by hours or perhaps even longer.

On the seventeenth day of the trial Dr. Adams was acquitted. The Crown entered a *nolle prosequi* in respect of a second charge of murder against Dr. Adams. A few months later he was convicted of a series of charges involving forgery and false declarations relating to cremation certificates, to be followed later by having his name erased from the medical register. As a postscript, it is interesting to learn that Dr. Adams' recent second application to have his name restored to the medical register was refused by the General Medical Council.

Explaining his direction as to the law in the Adams case, Lord Justice Devlin has said:

Medicine has not only to preserve health and save life but also to prevent or mitigate suffering—the last and only duty which it could perform for the dying. The deliberate acceleration of death must *prima facie* be murder and the *Adams* direction was not given on the basis that the relief of pain justified an act that would otherwise be murder in law. But, before a man could be convicted of murder, it must be proved that his act was the cause of the death. Medicine was concerned with the immediate physical cause and the criminal law with the guilty cause. Proper medical treatment consequent upon

illness or injury played no part in legal causation; and to relieve the pains of death was undoubtedly proper medical treatment.

We must ask ourselves whether this statement of the law—applicable, in my opinion, to both Britain and Canada with their common systems of criminal law—reflects what we conceive to be morally right and just. I believe that it represents the consensus of opinion among lawyers and doctors as to what the law should be, and that this view also commends itself to moral philosophers and theologians.

### *Suicide and Attempted Suicide*

It is estimated that 1,600 persons in Canada commit suicide every year. In England the figure is said to be about 5,000 suicides a year. True, the reliability of the recorded suicide rates has often been questioned, but not to the same extent as in relation to cases of attempted suicide. I have been unable to ascertain the number of attempted suicides "known to the police" in Canada, but there is no reason to doubt that, as in other countries, such cases are only a fraction of the whole. A conservative estimate places the total of attempted suicides in England at 30,000 a year, six times the number known to the police. Of this total, only a small fraction are prosecuted annually before the criminal courts, and the immediate question for our consideration is whether suicide and attempted suicide should continue to be regarded as criminal offences. There appears to be a widespread feeling among the medical profession that the person who has attempted suicide is a case for medical and social care and that the intervention of the criminal law is undesirable and unnecessary. This, in effect, was the principal recommendation of a joint committee of the British Medical Association and the Magistrates Association which considered the question in England in 1956 and which declared:

A person who attempts to commit suicide must undoubtedly be in a state of mental distress and unhappiness and therefore needs special sympathy and understanding. Public opinion has moved in this direction and it is desirable that the law should be amended in accordance with this more compassionate and merciful outlook.

A Church of England committee appointed by the Archbishop of Canterbury, more recently, in 1959, also urged a change in the suicide law so as to abolish the felony of suicide and also to take attempted suicide outside the criminal law. Similar sentiments, considerably more strongly expressed, were voiced at Columbia University in 1956 by Dr. Glanville Williams, whose *Carpentier Lectures* have since been published in a notable book, *Sanctity of Life and the Criminal Law*. This pressure of opinion has finally produced results. The British Government has announced its

intention of amending English criminal law so that suicide and attempted suicide shall no longer be criminal offences. This, it is significant to observe, follows a provision in the Mental Health Act of 1959 conferring power for the emergency treatment of those who have attempted to commit suicide.

Canada has moved ahead of England in one respect. The introduction into Canadian law of the Criminal Code in 1892—derived as it was from the Draft Code prepared by that great English judge, Fitzjames Stephen, and unforgivably rejected by the British Parliament—resulted in the alteration of the old common law position which, since the ninth century, regarded the act of suicide as self-murder and the person committing it as a *felo de se*. Consequently, any person who assists another to commit suicide is himself guilty of murder. It was in pursuance of this rule of law that the survivors of suicide pacts in England were, until only a few years ago, arraigned for murder. The Homicide Act of 1957 in England has changed the law slightly by differentiating between “genuine” and “bogus” suicide pacts. And even in Canada, although suicide is not regarded as itself a felony, it is an indictable offence, punishable with a maximum of fourteen years’ imprisonment, to aid and abet or counsel or procure another to commit suicide, whether the suicide is successful or not.

As late as 1823 in England persons who committed suicide were buried at a cross-roads with a stake driven through the body and a stone over the face—a practice that was presumably intended to prevent the spirit or the body from rising as a ghost. Thereafter, private burial by night in a churchyard without religious rites was permitted, and it is only since 1882 that Christian burial for such persons has been recognised in England. Moreover, until 1870 all the property of a suicide was confiscated by the state. When Britain changes its law making suicide no longer a felony or a crime of any description, it will bring English law into line with Canadian law and also with the legal position in other European countries. This will leave India, where English legislation used to apply, and some American states as the only remaining places that treat suicide as a crime in itself.

As to attempted suicide, however, which is soon to be abolished as a crime in England, I have seen no suggestions for the repeal of the Canadian Criminal Code which, since the enactment of the new Code in 1955, makes it only a *summary* offence to attempt to commit suicide. The Canadian position is in accord with the views of Lord Goddard, the former Lord Chief Justice of England, who, some years ago (*French*, 1955, 39 Cr. App.R. 192), said:

No doubt, attempted suicide has always been regarded as an offence, but to say that

it is to be regarded as a very serious crime shows an entire lack of proportion. It is not a very serious crime in point of law. Whether it is regarded as a sin or not is not a matter for the court. In such cases a short sentence is often given to protect the man against himself. At any rate, it is absurd to say that a sentence of two years' imprisonment ought to be passed.

Home Office instructions to police forces in England — I know of no similar instructions to Canadian police forces — are to prosecute only where there are some definite circumstances calling for punishment or where a court order is the only chance of providing refuge or asylum. Even so, the local practice varies according to the attitude adopted by the Chief Constable. Thus, in the ten-year period from 1946 to 1955, the number of suicide attempts known to the police of England and Wales was 45,000. Of these, 5,800 were brought to trial, and 5,400 were found guilty. What is significant in Canada is the considerable increase in the number of *convictions* (the figures for which alone are available, but they must reflect the number of *prosecutions*) for attempted suicide since it was reduced from an indictable to a summary offence. Before the change in the law, 126 people were convicted for suicide attempts in 1954; the following year saw the total reduced to 75, but in the subsequent years the total has risen to 219 in 1956, 225 in 1957 and 267 in 1958. In Nova Scotia alone, before 1958, the figure was of the order of 5, often less — but in 1958, 47 persons were convicted of attempted suicide.

Just as the the local practice as to instituting criminal proceedings varies widely, so too, the method of disposal by the courts is unpredictable: to take the position in England where the information is readily available, the case may lead to unconditional discharge, probation, discharge conditional on undergoing psychiatric treatment, a fine, or (as in the case of 300 of the 5,400 found guilty between 1946 and 1955) imprisonment for anything up to nine months. And as was explained earlier, further evidence of the enlightened view taken by the British Parliament is to be seen in the Mental Health Act of 1959, which provides:

136.—(1) If a constable finds in a place to which the public have access a person who appears to him to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety within the meaning of the last foregoing section.

(2) A person removed to a place of safety under this section may be detained there for a period not exceeding seventy-two hours for the purpose of enabling him to be examined by a medical practitioner and to be interviewed by a mental welfare officer and of making any necessary arrangements for his treatment or care.

Should suicide attempts be regarded as criminal or not? Should Canadian law follow the British proposal to fall into line with Scotland, France, and other European countries which have long taken attempted suicide outside the purview of the criminal law altogether? Cases of attempted suicide, it has been said, fall into two broad groups of (1) the mentally ill and (2) the irresponsibly unstable. Within the latter group fall the not uncommon cases of irresponsible young women overdosing themselves because life chanced not to be going their way and making casual gestures of self-destruction, and the "blackmailing" women who indulge in threats of suicide to prevail on the doctor to perform abortions of unwanted extra-marital pregnancies. There are those amongst the medical profession who, with all their humanitarian feelings, are not anxious to see removed the last legal stanchion of responsibility under law. What sanction, it is asked, can we assert before these people, adults in years but children in behaviour, if society formally underwrites their standardless irresponsibility?

On the other side, there are those who maintain, contrary to the conclusions reached by Sir Norwood East, that the threat of criminal proceedings is not a deterrent and that its existence does not denote a low suicide rate. Also, from the medical point of view, such a threat may be possibly harmful. It often causes people admitted to hospital following an obvious suicide attempt to lie to the doctor and to insist that "it was an accident". By adopting this attitude they deny themselves the possible benefit of psychiatric treatment, which is impossible if the truth is withheld from the doctor.

The criminal law, in its criterion of insanity, draws a rigid line between the sane who are held responsible for their conduct and the insane who are exempt from responsibility, though detained indefinitely in a mental institution. The inadequacies of the present law of criminal insanity and the absence from Canadian law of any defence of diminished responsibility to deal with the borderline cases is a subject which concerns me. But it is even more important that the criminal law should not insist on any demarcation between the mentally sick and the rest of the population where suicidal acts are concerned. It is surely much more difficult to draw a line here than it is with other types of abnormal behaviour. I would urge that Canada follow the initiative of Britain in dealing with this particular problem.

### *Sterilization*

Writing in the *British Medical Journal* a few months ago, its legal correspondent said: "Whatever may be the law on sterilization, it is clearly most desir-

able that the courts or Parliament should now declare it." That the law should be in this unsettled state may well pose considerable problems to the doctor and his patient, as well as to society at large—unless, of course, we adopt the attitude of the Wolfenden Committee.

Obviously, the question of sterilization may arise in a wide range of circumstances. These will be examined individually. It must be emphasized, however, that there is a complete dearth of actual decisions by the courts, whether in Canada or in England, upon which to rely in analysing this very important problem.

(1) *Sterilization, if done without consent* upon a normal person, constitutes a criminal assault of a most wicked kind, leaving the doctor concerned open to criminal charges under the Criminal Code, as well as the possibility of a civil action for assault with the likelihood of substantial damages being awarded against him.

(2) *Therapeutic sterilization, if done in order to avert danger to life, or grave and immediate injury to health*, would almost certainly not be regarded as criminal, whether or not the prior consent of the patient was first obtained. Similarly, it is inconceivable that successful civil proceedings for assault would lie in such circumstances—certainly not, if prior consent has previously been obtained

(3) *Therapeutic sterilization to benefit a patient's health*, and where the urgency of saving the patient's life or averting grave or immediate injury to health is absent, provides a situation in which consent would be vital, but it must be clearly stated that the law in regard to this situation is uncertain. Addressing the Medical Society of London a few months ago, Lord Justice Devlin said:

An assault should not be treated as criminal if done (i) to avert danger to life, or grave and immediate injury to health; or (ii) with the consent of the other party and *for a purpose not otherwise criminal*. Abortion, for example, is a crime in itself, and so consent would remain irrelevant; it would have to be justified under the first head. If it was thought that sterilisation by consent should be prohibited except for grave medical reason it should be a crime in itself and the law should not try to catch it as a form of assault.

On the question whether sterilization should require the consent of the patient's spouse as well as that of the patient, I can give no guidance. There is no law at present which says that the consent of both husband and wife is necessary, but in the present unsettled state of the law it would seem advisable to have it.

(4) *Sterilization on eugenic grounds* is voluntary sterilization to prevent the transmission to offspring of some hereditary taint. The provinces of Alberta (in 1928, R.S. 1942, c. 194) and British Columbia (in 1933, R.S. 1948, c.302) have enacted legislation which at least clarifies the legal position so far as the medical profession

is concerned. In both provinces a board is established with power to order sterilization when procreation would be likely to produce children who by reason of inheritance would tend to develop a serious mental illness or mental deficiency. An operation, however, is not to be performed without the consent of the patient if he is capable of giving consent. Where the patient is incapable of giving consent, the consent of the spouse for a married patient, or the consent of the parent or guardian for an unmarried patient, is required. Similar legislation is to be found in several of the states in the U.S.A. So far as the rest of Canada is concerned—there are no decisions of the courts on the point—I would venture the opinion that the courts would uphold as lawful a sterilization performed on eugenic grounds.

Medical defence organisations in both Canada and Britain apparently agree in refusing to indemnify any practitioner undertaking sterilization for purely eugenic reasons. That the consent of the patient would absolve the doctor from the risk of *civil proceedings* for assault is not disputed. But such consent would not avail a doctor charged with assault *under the criminal law* if the purpose of the operation is regarded *per se* as unlawful. This, as I understand it, is what Lord Justice Devlin had in mind when saying that consent should be a defence to a doctor faced with a charge of assault provided the operation was undertaken “for a purpose not otherwise criminal”. It is because these doubts are left unresolved that Lord Justice Devlin advocates legislation to clarify the attitude of society towards this question. It is for each of us to say whether, given the task of framing appropriate legislation, we would declare eugenic sterilization to be unlawful or lawful. In my opinion it should be lawful.

(5) As for *voluntary sterilization*, the Criminal Code in Canada, and the law of England, contain no express provision regarding it. Some guidance was given in 1955 in an English case (*Bravery v. Bravery* [1954] 1 W.L.R. 1169) where a wife was petitioning for a divorce on the ground, *inter alia*, that her husband had arranged for a sterilization operation on himself. The wife’s petition was unsuccessful, and in the Court of Appeal Lord Justice Denning expressed the opinion, though it was in no way necessary for the decision of the court, that sterilization was an offence when done to enable a man to have the pleasure of sexual intercourse without shouldering the responsibilities attached to it. Lord Justice Denning’s opinion, which, incidentally, made no advertence to the relevancy of the practice of contraception, was not concurred in by the other two judges in the Court of Appeal, who expressly left the question open. At the same time, the learned Lord Justice agreed

that sterilization was lawful when done with consent for just cause, giving the example of preventing the transmission of hereditary disease.

We are left at the position where we began: what constitutes "just cause or excuse"? Where is the line drawn by the law between what is lawful and unlawful? Is the liberty of the individual to prevail over the interests of society? Addressing the British Medico-Legal Society in 1925, Lord Riddell argued against voluntary sterilization as being against public policy because it imperils the future of the race. On the other hand, the Supreme Court of Minnesota in 1934 (*Christensen v. Thornby*), held that there was nothing against public policy in a husband being sterilized for the sake of his wife's health, but this ruling is the only United States decision of which I am aware. In the states of Utah and Kansas voluntary sterilization is expressly disallowed by statute, but there is good ground for the belief that sterilization as an "operation of convenience" is freely bought by comfortably-off women in certain other parts of the U.S.A. At the same time, it must be stated that the American College of Surgeons has adopted a policy of bringing pressure to stop such sterilization of convenience. The position under Canadian law, I repeat, remains undetermined, there being a natural reluctance on the part of any of the surgeons involved to offer himself as the subject of a test case before the courts.

### *Abortion*

A striking example of a surgeon having the courage of his convictions and being prepared to invite criminal proceedings to secure a clarification of the law is seen in the case of Mr. Alec Bourne, a gynaecologist and obstetric surgeon in the very front rank of his profession, who, in 1939, found himself standing in the dock of the Old Bailey, London, charged with the felony of abortion. The seriousness of this crime, both in Canadian and English law, can be gauged from the maximum punishment that may be imposed—life imprisonment. Insofar as there is the same marked absence of authority, which we have already observed in other fields, by way of decisions of the Canadian courts to which resort might be had in stating the law governing therapeutic abortion, we must begin with an examination of English law as stated by Mr. Justice Macnaghten in the *Bourne* case, and then we can proceed to consider to what extent it represents the prevailing Canadian position. The Canadian Code was revised in 1955, and there are some authorities who maintain that the law of abortion was changed to such an extent as to give unmistakable warning to doctors of the risks involved in deliberately terminating pregnancy.

The criminal law makes no distinction between the terms "abortion" and "miscarriage". Each term, in law, means "the birth of a non-viable foetus". In medical parlance, however, interruption of pregnancy during the first three months is usually referred to as "abortion", whereas interruption after that period is usually described as "miscarriage". Bearing in mind, then, the absence of any such differentiation by the law, criminal abortion is committed when any person "with intent to procure the miscarriage of a female person, whether or not she is pregnant, uses any means for the purpose of carrying out his intention". It should be observed, incidentally, that it is an indictable offence for a woman to procure her own miscarriage, and this carries a maximum sentence of two years imprisonment.

This paper is not, of course, concerned with the professional abortionist; but it may be noted that, in England, a Government Committee in 1939 accepted the suggestion that there were between 110,000 and 150,000 abortions every year and that two-fifths of these were criminal—that is, between 40,000 and 60,000 cases of criminal abortion occur each year. This is generally thought to be a conservative estimate, and of these cases the average number of prosecutions is of the order of 40 to 60, so that there is only one prosecution for every thousand instances of illegal abortion. In Canada, where roughly 40 cases of criminal abortion come before the courts each year, one must make his own estimate of the actual incidence of illegal abortions across the country.

Let us consider first, however, the position under the criminal law of a doctor who deliberately terminates pregnancy. This is what Mr. Alec Bourne did in 1939 and what, it is not unreasonable to suppose, a considerable number of obstetric surgeons likewise do regularly in Canada. Supposing the Crown, either at the invitation of the surgeon, or on information placed at its disposal, institutes criminal proceedings. What will be the outcome of such a case? The best guidance is provided by the Bourne case, which arose out of a shocking rape upon a young girl of fourteen who became pregnant as a result. Her case was referred to Mr. Bourne who, after consultation with some of his colleagues and obtaining the consent of the parents, induced an abortion. It is hardly necessary to add that the operation at St. Mary's Hospital, London, was performed without fee or reward. The defence contended that under the circumstances of the case the operation was not unlawful. Mr. Bourne said that he operated because he considered that continuation of the pregnancy would probably have caused the young girl serious injury. His evidence was supported by Lord Horder. Another medical witness, a specialist in medical psychology, expressed the opinion that if the girl gave birth to a child she would be likely to become a "mental wreck".

The prosecution of Mr. Bourne was taken under a section of an English statute (Offences against the Person Act, 1861) which is similar to the parallel section in the old Canadian Criminal Code which made it a criminal offence if a person "unlawfully" used any means to procure a miscarriage. The new Canadian Code, enacted in 1955, significantly omits any reference to the word "unlawfully", but the existence of this key word was relied upon in *Bourne* as indicative of Parliament's recognition that abortion was lawful in some circumstances. Reliance was also placed on the wording of the Infant Life (Preservation) Act, 1929,—the net effect of which is also to be found in both the old and the new Canadian Criminal Code—which provides that

Any person who, with intent to destroy the life of a child capable of being alive, by any wilful act causes a child to die before it has existence independent of its mother shall be guilty of the felony of child destruction . . . .

Provided that no person shall be found guilty of an offence under this section unless it is proved that the act, which caused the death of the child, was not done in good faith for the purpose only of preserving the life of the mother.

It must be emphasized that this defence, according to the terms of the statute, only exists to a medical practitioner charged with *child destruction* (which in effect is limited to cases of terminating pregnancy after the twenty-eighth week). Under neither Canadian nor English law is *this* defence expressly provided for in the statutory definition of *abortion*. But the trial judge in *Bourne* boldly extended its application to a case of *abortion* and, furthermore, gave the words "for the purpose only of preserving the life of the mother" a wider meaning than they appear to convey. According to Mr. Justice Macnaghten, the law does not require the doctor to wait until the unfortunate woman is in peril of immediate death. Rejecting the view of the Crown that there was a clear-cut distinction between "danger to health" and "danger to life", the judge told the jury,

I think those words ought to be construed in a reasonable sense. If the doctor is of the opinion, on reasonable grounds and with adequate knowledge, that the probable consequence of the continuance of the pregnancy will be to make the woman a physical or mental wreck, the jury are quite entitled to take the view that the doctor who, under the circumstances and in that honest belief, operates, is operating for the purpose of preserving the life of the mother.

Mr. Alec Bourne was found not guilty and can truly be said to have struck a notable blow for the entire medical profession. There is another passage in the English judge's summing up which points to the ethical problems to which the operation of abortion gives rise:

Apparently [said Macnaghten, J.] there is a great divergence of view even in the medical profession itself. Some there may be, for all I know, who hold the view that the fact that the woman desires the operation to be performed is a sufficient justification for it. That is not the law. The desire of a woman to be relieved of her pregnancy is no justification for performing the operation. On the other hand, no doubt there are people who, from what are said to be religious reasons, object to the operation being performed at all, in any circumstances. That is not the law either. On the contrary, a person who holds such an opinion ought not to be a doctor practising in that branch of medicine, for, if a case arose where the life of the woman could be saved by performing the operation and the doctor refused to perform it because of some religious opinion, and the woman died, he would be in grave peril of being brought before this court on a charge of manslaughter by negligence. He would have no better defence than would a person who, again for some religious reason, refused to call in a doctor to attend his child, where a doctor could have been called in and the life of the child saved. If the father, for so-called religious reason, refused to call in a doctor, he also would be answerable to the criminal law for the death of his child. I mention those two extreme cases merely to show that the law—whether or not you think it a reasonable law is immaterial—lies at any rate between those two. It does not permit of the termination of pregnancy except for the purpose of preserving the life of the mother. ([1938] 3 All E.R. 615 at p. 618.)

The question uppermost in the minds of any doctor in Canada contemplating such an operation is, naturally enough, "What is my position under the altered wording of the new Criminal Code?" When the trial judge in *Bourne* justified his extension of the statutory defence in "child destruction" to the crime of "abortion" by reason of the existence of the word "unlawfully" in the definition of criminal abortion, does it, therefore, follow that the deletion of this epithet in the new Canadian Code is intended to preclude the defence of "operating to preserve the life of the mother"?

*Bourne's* case was decided in 1939. The Canadian Code was revised in 1955, so that the Parliament of Canada, if it had been so minded, could easily have made express provision for such a defence in the section which governs criminal abortion. They did not do so. Instead they deleted the key word "unlawfully". No wonder then that there are those who maintain that the judge's ruling in *Bourne* does not represent the present Canadian criminal law on the subject. Reference, however, to the Parliamentary debates when the Criminal Code Bill was being discussed in 1954 indicates the Government's understanding that Canadian law on the subject does follow English law.

A further indication of the necessity of clarification is to be found in the provision elsewhere in the Code, that

where a person, for *an unlawful object*, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to effect his object without causing death or bodily harm is guilty of murder.

If death is not reasonably foreseeable or if the doctor is criminally negligent, he is guilty of manslaughter. Such a case involving a doctor occurred in Quebec in 1955, and the accused was sentenced to six years imprisonment. That the risk of death or permanent invalidism is no myth, even when the operation is lawfully performed by skilled surgeons, needs to be widely known. The far greater risks incurred by women who resort to quacks are obvious—in the United States alone, it is estimated that 15,000 die annually from criminal abortion.

Notwithstanding the clear statement of the law in 1939 in *Bourne*, apprehension on the part of the English medical profession persists, and attempt after attempt has been made to secure the passage of legislation which will put the matter beyond any doubt. The most recent effort was the introduction of the Medical Termination of Pregnancy Bill in November last year. Since it is a private member's bill, its chances of success are slender. English doctors, however,—and who is to deny that Canadian doctors are any less apprehensive—are not content to rely upon the decision of a single judge. Actually, the ruling in *Bourne* has been followed by Morris, J., in *R. v. Bergman and Ferguson* in 1948, which seems to indicate that where serious injury to health is feared, the court will not look too narrowly into the question of danger to life; and again in *R v. Newton and Stingo* (1958) by Ashworth, J. The latter two cases are unfortunately not reported in the Law Reports, but the latter decision is reported fully in the *British Medical Journal*.

If the opportunity for amending the criminal law should present itself here in Canada or in England, we might perhaps follow the example of Sweden, which relaxed its abortion laws in 1946, permitting termination of pregnancy for any one of four reasons: (1) as under our present law—to preserve the mother's life or health if it is seriously endangered; (ii) if the mental or physical health of the mother is likely to be seriously impaired as a result of childbirth and the subsequent care of the child; (iii) in cases of rape; (iv) on eugenic grounds—when there is a risk of transmission of hereditary insanity, mental defect, or other serious disease. Here I must interject the lone but weighty opinion expressed in England by Lord Denning in 1956, in an address to a medical school, that the medical practice of abortion in cases of German measles was lawful. This view, I venture to think, recognizes the currently held opinion amongst doctors that such circumstances in the early months of pregnancy indicate the necessity of operating to end the pregnancy. But it

would be idle to believe that Canadian or English judges, *on the present law*, would be prepared to further stretch the ambit of legally justifiable reasons for performing abortion. According to a contributor to *The Practitioner* of November, 1960, the "new freedom" in Sweden has had mixed results: "Reports indicate that although women are pleased with their new-found freedom, a definite proportion continue to have mental symptoms after termination of pregnancy. Thus of 479 women in whom abortion had been induced on psychiatric grounds, a quarter had guilt reactions of varying severity". Another investigation showed that "no fewer than 20 per cent of women in whom pregnancy was terminated had intentionally become pregnant within a year of the operation".

Finally, a few words on the religious aspects of abortion. Therapeutic abortion would appear to be generally acceptable to Protestants, but the Church of Rome, just as conscientiously, is opposed even to therapeutic abortion as being in direct contravention of natural law and divine law. It is not my intention to indulge in expressing any opinion on this divergence of approach, but I believe it may be helpful to explain the fact that the Roman Catholic position is not so completely absolute as it is sometimes thought to be. Explaining the attitude of the Church of Rome in 1951, the Pope explained that the prohibition was confined to a "direct killing". If, for example, he said, the saving of the future mother's life, independently of her pregnant state, should urgently require a surgical act or other therapeutic treatment which would have as an accessory consequence, in no way desired or intended, but inevitable, the death of the unborn baby, the act "could no longer be called a direct attempt on an innocent life". Two examples will suffice—where the uterus is dangerously diseased or in the case of an ectopic or extra-uterine pregnancy as where the foetus grows in the Fallopian tubes instead of in the womb.

The conflict that might arise between patient and doctor is a very real one in such circumstances as those that have just been outlined. Where the patient's religious beliefs differ from those of the doctor, whatever the doctor's religion, it hardly needs stating that the proper ethical practice is to recognise that the final decision rests with the mother. If she chooses to risk life and health either from a passionate desire to bear a child or from religious conviction, the doctor has no right to do more than warn her. In the case of a Roman Catholic doctor the position may, of course, be more acute because of the doctor's religious beliefs and his position under the criminal law, if he fails to perform an operation and the mother's life is sacrificed. I would think that the correct action in such a case would be to seek the opinion of a non-Catholic colleague.

V. L. O. Chittick

## THE MANY-SIDED HALIBURTON

ADVISEDLY OR NOT, I must confess to a certain hesitancy in undertaking to write a paper with the title I have given this one. Years ago there was widely read an essay, by whom I have long since forgotten, called "The Many-sided Franklin." Having paralleled its caption, I am worried lest I be thought hopeful of paralleling its subject. Haliburton, definitely, was no second Benjamin Franklin. Still, there were more than a few points of resemblance between them. Not the least obvious of these is the fact that both were many-sided, though Franklin was much more and more notably so than Haliburton. Yet Haliburton, like several of his public office-holding contemporaries—Joseph Howe is a striking instance—was notably many-sided too.

Perversely, if you will, I propose to consider Haliburton as such without reference (unless peripherally) to his satiric and ironic exposures of his countrymen's, and of others', social, economic, and political shortcomings; or to his services to his native colony as historian, story-teller, legislator, and judge; or to his gifts as a parodist and as a writer of comic dialects; or to him as a promoter of provincial industry and transportation, or as an exemplar of convivial charm and gracious living. By merely enumerating these various indications of his many-sidedness, in rejecting them as irrelevant to my immediate purposes, I am aware that I am establishing the very proof that I wish to establish wholly otherwise. The many-sidedness of Haliburton that I am presently concerned to make clear is the many-sidedness of but one of his many sides—and that one I have not mentioned. It is his disinterested interest in his colonial homeland and his unqualified admiration for it which often amounted to an affirmative love. For Haliburton *did* love Nova Scotia, if not always wisely or too well; and he showed that he did in numerous ways besides chastising her. I have in mind, specifically, his enthusiasm for Nova Scotian towns and villages, their spirit and their scenery; for Nova Scotian homes, their settings and furnishings; for Nova Scotian persons, their dress and their

character (for him the one was the index of the other); for Nova Scotia's domestic arts and crafts; for its ships, their building and handling; for its hunting and fishing; for its horses (some of them); and, in spite of his reputation to the contrary, for its women.

His descriptions of the varied beauties of Nova Scotia's procession of the seasons afford a satisfying initial exhibit of his steady awareness of his country's natural phenomena, not to say glories. As is the case with much of Haliburton's best writing, these descriptions are to be found in that too often neglected treasure trove, *The Old Judge*. (It also contains his vivid recalling of a Nova Scotian "silver thaw.") While by present-day standards Haliburton's prose-picture colorama of the seasons must be held at fault in occasionally revealing brush strokes weighted down with an excess of near-Ciceronian periods, it is spread before us in a tradition common to its times, and was almost certainly adopted as a result of the artist's collegiate and legal training. A more serious criticism is that too frequently it approaches the brink of disaster that lies ill-concealed in the fallacy of *ersatz* pathos. But I shall let it speak for itself, in so far as limited and selective quotation will permit:

[Spring] arrives later here than elsewhere, . . . It comes with a clear unclouded sky, a bright and dazzling sun, and a soft and balmy south-west air. . . . the snow begins to be soft and moist, the ice to glisten, and then grow dim with trickling tears, while the frozen covering of accumulated drifts releases its hold, and slowly moves from the roofs of the houses, and falls like an avalanche on the streets, . . . In a few days, the snow disappears . . . save here and there a black and slimy heap, which a covering of ashes or of straw has protected from the searching rays of the sun. . . .

Retreating winter now rallies, and makes a last and desperate effort to regain its lost ground. . . . Long, tedious, and fierce conflicts between these two contending seasons ensue, till the succours of advancing Summer terminate the contest. Spring reigns triumphant . . . .

Spring, having now clothed the fields with verdure, unfolded the bud, expanded the blossom, and filled the air with fragrance and the music of birds, departs as suddenly as it arrived, and leaves the seed to be ripened and the fruit matured by the succeeding season. A deep blue sky, a bright and brilliant sun, a breathing of the west wind, so soft and gentle as scarcely to awaken the restless aspen, a tropical day, preceded by a grey mist in the morning, that gradually discloses to view the rich, luxuriant, and mellow landscape, and sheds a golden lustre over the waving meadows, . . . usher in the summer . . . .

Autumn has now commenced. . . . The larch rises like a cone of gold; the maple is clothed with a crimson robe, fading in the distance into changeable shades of brown; the beech presents its bright yellow leaves, gradually yielding to a strong green near the trunk, where the frost has not yet penetrated; and the birch, with its white stem

and gaudy colouring, is relieved by a pale grey tint, produced by the numerous branches of trees that have already shed their leaves, and by the rich glowing clusters of the fruit of the ash; while the tremulous aspen grieves in alarm at the universal change around it, . . .

If the spring is short in this country, Nature has compensated us for the deficiency, by giving us a second edition of it at this season, called the 'Indian Summer.' The last fortnight is restored with sunny skies, bland south-west winds, and delicious weather, which has the warmth of spring without its showers, the summer sky without its heat, and autumn nights without their frost. It is Nature's holiday—the repose of the seasons, the lingering beauty of maturity, ere the snows of age efface it for ever. . . .

A heavy storm of rain, succeeded by a sudden shift of wind to the north-west, brings winter upon us in an instant: the lakes are covered with ice, the swamps congealed into a solid mass, and the ground frozen as hard as adamant. When the wind relaxes, snow succeeds, until the whole earth is covered with it to a great depth. Everybody is abroad, and in motion; the means of transport, which were suddenly suspended by the frost, are now furnished by the snow (*The Old Judge*, Chap. XIX).

A much shorter, though not unrelated, sketch is done with a lighter and surer touch. The subject is a fog, as observed on shipboard, along Nova Scotia's "Eastern Shore" at a port which Haliburton names "Chesencook", using what is still the accepted local pronunciation of "Chezzetcook":

. . . the fog set in, or rather rose up, for it seemed not so much to come from the sea as to ascend from it, as steam rises from heated water.

It seemed the work of magic, its appearance was so sudden. A moment before there was a glorious sunset, now we had impenetrable darkness. We were enveloped as it were in a cloud, the more dense perhaps because its progress was arrested by the spruce covered hills, back of the village, and had receded upon itself. The little French settlement . . . was no longer visible, and heavy drops of water fell from the rigging on the deck. The men put on their 'sou-wester' hats and yellow oiled cotton jackets. Their hair looked grey, as if there had been sleet falling. There was a great change in the temperature—the weather appeared to have suddenly retrograded to April, not that it was so cold, but that it was raw and uncomfortable (*Nature and Human Nature*, Chap. XIII).

"A Hot Day at Petite Riviere" affords another of Haliburton's acute weather observations. Though credited to Sam Slick, it does not altogether escape his creator's too common fault of over-writing. But the word-drawing that results is reasonably realistic, for all that.

. . . it was a day of intense heat. As far as the eye could reach eastward, the sea lay like an ocean of melted silver. Not a ripple or a dimple nor motion was perceptible on it. It was two or three hundred yards from the house, so that you could see its bosom heave; for in a general way it undulates even in sleep as a female's does, and

I've an idea that the rote on the beach is the breathin' that swells it, when restin' in slumber that way. It shone like a lookin'-glass in the sun. . . . The beach is fine white sand . . . a brighter, clearer white than the sea, and dazzles and sparkles more. You could actilly see heat there, for it seemed as if there was fire underneath (*Wise Saws*, Chap. XXIV).

Stephen Richardson, Sam Slick's Bluenose counterpart, is as curious about the weather as the Clockmaker himself (which is to say, as Haliburton was), and as meticulous in noting its signs and effects. Whether or not he is meteorologically sound about these I have no means of knowing. There is no question, however, that he, as were the other two, is devoted to the task of recording them, or at least what the local folk-say was about them.

There's something very odd about all winds. The south wind seems to uncork all drains and swamps, . . . and you can actilly smell it hours and hours afore it comes; and in spring and fall it sends ahead a little white frost, as a kind of notice that it's on the way. Well, the east wind is a searching one too. It gets into your joints, and marrow, and bones; you can feel it afore you see it. If it wasn't for that, I don't think we should have any rheumatis in this country. It's a bad wind, and brings colds, and consumptions, and pauper emigrants from Great Britain . . . , and fogs and shipwrecks, and rust in wheat, and low spirits, and everything bad under the sun. A wester, agin, is a blustering kind of boy—comes in a hullabolloo, but-end foremost, and kicks away the clouds right and left, like anything. It's a fine, healthy, manly, bracing breeze, that west wind of ours. . . . Now, as to the north wind, I'll tell you what, I wouldn't just positively swear I ever saw it blow due north in this province . . . . I certainly don't mind of ever seeing it. Nor-nor-west and nor-nor-east is common; but a rael, genuine north wind, by point of compass, I am of opinion is a thing we have to make acquaintance with yet (*The Old Judge*, Chap. XIV).

Seasons and weather suggest farming. That was an activity in which Haliburton engaged by both precept and practice. ("I know all about farm things," he allowed Sam Slick to say for him, "from raisin' Indian corn down to managing a pea-hen.") His idea of what any farm, and farm life, might be like in Nova Scotia, if its rural settlers were so inclined, is set forth in his account of "the method, regularity, and order" he encountered when shown over Squire Horton's "establishment" in the Gaspereau valley. So factual (and rhapsodic) is it that I feel sure I could have identified the very layout as the valley still was during my years at Acadia.

A splendid country this . . . . the Lord never made the beat of it, . . . grand grazin' grounds and superfine tillage lands. A man that know'd what he was about might live like a fightin'-cock here, and no great scratchin' for it neither. Do you see that are house on that risin' hummock to the right there? Well, gist look at it, that's

what I call about right. Flanked on both sides by an orchard of best-grafted fruit, a tidy little clever flower-garden in front, that the galls see to, and a'most a grand sarce garden over the road there sheltered by them are willows. At the back side see them everlastin' big barns; and, by gosh! there goes the dairy cows; a pretty sight too that, fourteen of them marchin' Indgian file arter milkin', down to that are medder. Whenever you see a place all snugged up and lookin' like that are, depend on it the folks are of the right kind. Them flowers too, and that are honeysuckle, and rose bushes, show the family are brought up right . . . (*The Clockmaker*, II, Chap. IV).

Though Haliburton has favoured us with barely more than a glimpse of the Horton farm-house interior, where its "right-minded" occupants were busy enough to be kept out of mischief and frivolity, he was generally anything but indifferent to the household furnishings and conveniences of his fellow colonists. Among his carefully detailed appreciations of their intimate domestic surroundings, perhaps the most deserving of being known are those of Judge Sandford's home at Elmsdale (both names are fictional), the "keeping-room" of the hostel at Mount Hope, and, my personal favorite, Aunt Thankful's private sitting-room at Jordan River, where Sam Slick, after half a life-time of philandering, finally fell in love. (The first two are in *The Old Judge*.) I offer no apology for quoting, in spite of its length, nearly the whole of the last in illustration of how memorably Haliburton could transmit his sentimental attachment to reminders of his Loyalist and pre-Loyalist ancestry and to the gentility of a former era. To illustrate his preference for solid comfort (and simple *décor*?) I should have to draw upon the other two.

Here is a room, that looks as if it must have been cut out of the old family house in New York States, and fetched down [to Nova Scotia], holus bolus, as it stood . . .

I paced the floor, it was twenty-two by twenty. The carpet was a square of dark cloth, not so large as the whole floor, and instead of a pattern, had different coloured pieces on it, cut out in the shape of birds and beasts, and secured and edged with variegated worsted in chain-stitch. In one corner stood an eight-day clock, in a black oak case, with enormous gilt hinges. In the opposite one was a closet, . . . with a glass front, to preserve and exhibit large silver tankards; Dutch wine-glasses, very high in the stem, made of blue glass, with mugs to match, richly gilt, though showin' marks of wear, as well as age; a very old China bowl, and so on.

In one of the deep recesses formed by the chimbley stood an old spinet, the voice of which . . . had forgot its music. In the other was a mahogany bureau, with numerous drawers, growin' gradually less and less in depth and size, till it nearly reached the ceilin', and terminatin' in a cone, surmounted by a jet parrot, . . .

The jambs of the fire-place, which was very capacious, were ornamented with bright glazed tiles, havin' landscapes, representin' windmills, summer-houses in swamps, canal boats, in which you could see nothin' but tobacco-pipes for the smoke, and other Dutch opulent luxuries painted on them. On one side of these were suspended a very

long toastin' fork and a pair of bellows; and on the other a worked kettle-holder, an almanac, and a duster made of the wing of a bird.

The mantel-piece, which was high, was set off with a cocoanut bowl. . . . an ostrich egg, and a little antique China tea-pot, . . . Two large high brass dog-irons, surmounted by hollow balls, supported the fire. The chairs were of mahogany, high and rather straight in the back, which had open cross-bar work. Two of these were arm-chairs, on one of which (Aunt Thankful's own) hung a patch-work bag, from which long knittin' needles and a substantial yarn-stockin' protruded. All had cushions of crimson cloth, worked with various patterns, and edged with chain-stitch, and intended to match the curtains which were similar. On the largest of the tables in the room stood two old-fashioned cases, with the covers thrown back to exhibit the silver-handled knives which rose tier above tier, like powdered heads in a theatre, that all might be seen. Beside them was a silver filigree tea-caddy.

On the smaller table stood a little hand-bell and a large family Bible with enormous clasps, a Prayer-book, and the "Whole Duty of Man" . . . .

Well, between the winders was a very large lookin'-glass in an old dark, carved mahogany frame; a yellow sampler, with the letters of the alphabet; a moral lesson, "Remember thy Creator in the days of thy youth," and the name of the artist, "Thankful Collingwood, 1790, aged ten years," worked on it; and a similar one, containin' a family coat-of-arms, executed in the same material, and by the same hand, though at a later date, were substantially framed, and protected by glass. Two portraits of military men, in oils, remarkably well painted, completed the collection; each of which was decorated with long peacocks' feathers (*Wise Saws*, Chap. XX).

Another interior description, this one of a household near the opposite end of the social scale, if not drawn with equal admiration, is done without more than a touch of condescension. It introduces us to the every-day living quarters of an Acadian fisherman's family, which Sam Slick visited in the course of his treaty-rights inspection cruise along Nova Scotia's Atlantic coast. (Incidentally, the second half of that cruise was closely paralleled, by intention I suspect, by another many years later, taken by Professor Archibald MacMechan, and duly reported in the pages of the *Dalhousie Review*.)

The door [of one of the cottages at "Chesencook"] . . . opened outwards, the fastening being a simple wooden latch. The room into which we entered was a large, dark, dingy, dirty apartment. In the centre of it was a tub containing some goslings, resembling yellow balls of corn meal, . . .

The walls were hung round with large hanks of yarn, principally blue and white. [The two female occupants of the cottage, like all other women in the village, wore clothing woven from the same material. "Going in blue and white, in Mary's colour," as T. S. Eliot's line in *Ash Wednesday* could remind us.] An open cupboard displayed some plain coarse cups and saucers, and the furniture consisted of two rough tables, a large bunk, one or two sea-chests, and a few chairs of simple workmanship.

A large old-fashioned spinning-wheel and a barrel-churn stood in one corner, and in the other a shoemaker's bench, while carpenter's tools were suspended on nails in such places as were not occupied by the yarn. There was no ceiling or plastering visible anywhere, the floor of the attic alone separated that portion of the house from the lower room, and the joice [*sic*] on which it was laid were thus exposed to view, and supported on wooden cleets, leather, oars, rudders, together with some half-dressed pieces of ash, snow-shoes, and such other things as necessity might require. The wood-work, wherever visible, was begrimed with smoke, and the floor, though doubtless sometimes swept, appeared as if it had hydrophobia hidden in its cracks, so carefully were soap and water kept from it. Hams and bacon were nowhere visible. It is probable . . . that they had found their way to market, . . . for these people are remarkably frugal and abstemious, and there can be no doubt . . . that there is not a house in the settlement in which there is not a supply of ready money, though the appearance of the buildings and their inmates would by no means justify a stranger in supposing so. They are neither poor or destitute but far better off than those who live more comfortably and inhabit better houses (*Nature and Human Nature*, Chap. XVII).

Haliburton's interest in the Acadians extends backward to the time when, as a member of the provincial House of Assembly, he counted the residents of Clare among his constituents, and defended their rights there. His approbation of them, while not unqualified, included more than their frugality and its returns: "There is no such thing as a ragged Acadian, and I never saw one begging his bread." We have already noted his glance at the dress of the women. Here is what he adds as to that of both men and women:

The men all dress alike, and the women all dress alike, . . . and have always done so within the memory of man. A round, short jacket which scarcely covers the waistcoat, trousers that seldom reach below the ankle-joint, and yarn stockings, all four being blue, and manufactured at home, and apparently dyed in the same tub, with moc-casins [made from cariboo hide] for the feet, and a round fur or cloth cap to cover the head, constitute the uniform and unvaried dress of the men. The attire of the women is equally simple. The short gown which reaches to the hip, and the petticoat which serves for a skirt, both made of warm domestic cloth, having perpendicular blue and white stripes, constitute the difference of dress that marks the distinction of the sexes, if we except a handkerchief thrown over the head, and tied under the chin . . . (*Nature and Human Nature*, Chap. XVI).

"To return back," as Sam Slick would say, to the upper levels of society, here, by way of contrast, is another of his item-by-item comments on feminine costume—this one on that of Aunt Thankful herself:

She had on a white dimity, high-bodied, short gown, extendin' a little below the hips, and enclosin' a beautifully-starched, clear white handkerchief, fastened by a girdle of white cotton cord, terminatin' in two tassels pendant in front. To this was attached,

on the right side, a large bunch of steel snap-rings; the uppermost supported a thick, clumsy-lookin' gold watch, of antique manufacture, the face, for security, restin' agin her person, and the wrought back exhibitin' no design, but much labour and skill, resemblin' somewhat brain-stone tracery. From another was suspended, by a long ribbon, a pair of scissors in a steel-case, and a red cloth pincushion; and from the rest, keys of various sizes.

The sleeves of the gown were loose, reached a little below the elbow, and terminated in long, grey, kid mitts, coverin' half the hand, the lower part bein' so fashioned as to turn backwards toward the wrist in a point. The petticoat [skirt] was made of shiny black shalloon, rather short, and exhibitin' to advantage a small foot in a high-heel shoe of the same material, and a neat ancle incased in a white cotton stockin', with open clocks (*Wise Saws*, Chap. XX).

The Nova Scotian Indians, like the Acadians, were a neglected minority group that attracted Haliburton's sympathy and understanding. For their problem (they had one, triple-knotted) he was ready with a solution: put a stop to selling them rum; end the inter-denominational bickering about which sect should give them religious instruction, and hand it over to the Church of England; and halt the white man's steady encroaching on the game-, water-, and timber-supply needed to secure them a living according to their ancestral customs. His appreciation of their modernly acquired handicrafts was genuine; among them he listed for special praise

their beautiful bark-work, . . . slippers, ornamented with porcupine quills, dyed of various colours, and beads, fancifully arranged, nests of circular boxes and chair-bottoms finished the same manner, and baskets of every shape and size, made of birchin strips, not unlike the English willow manufacture (*Wise Saws*, Chap. XIX).

And he showed himself well abreast, if not ahead, of his contemporaries' anthropological concerns by having one of his more intelligent characters, in conversation with Sam Slick, propose the study and preservation of the Indians' language and legends. Here is Sam Slick's quoted version of one of their proverbial bits of wisdom, often repeated in variant forms nowadays:

"If wood is scarce, instead of makin' forest come as you do, Indgian goes to it. Indgian no fool; he builds his wigwam where wood, water, fish, and huntin' all meet. He has nothin' to do but strechen out hand, help himself, and go to sleep" (*Wise Saws*, Chap. XIX).

That quotation, in its context, brings us inevitably to Haliburton's own woods-skill and hunting-lore; for that he had them is certain. Otherwise how account for Sam Slick's (and his informants') persistent holding forth to all and sundry on the proper ways and means of playing a salmon, rounding up a school of mackerel, spearing a shad, smoking a herring, bringing down (or eluding) a bear,

calling or shooting (by bullet or arrow) a moose, or handling a rifle, and his keen-eyed "wild-life notes" on such varied topics as the gait of a fox, the shrewdness of a rat, or the love-play of ducks? In the woods, says Sam Slick, a man must be able to take care of himself. To prove that he knew what he was talking about, and could pass his self-imposed test for outdoors survival, I have chosen, first, one of his scores of fish-yarns. Although it is a fairly tall one, I have no doubt that it is true—that is, true enough. Sam Slick is showing off at Jordan River for the benefit of the young brother of his sweetheart, Sophy Collingwood:

"Do you see where the water shoals off above that deep, still pool? Well, that is the place to look for the gentleman to invite to dinner. Choose a fly always like the flies of the season and place, for he has an eye for natur' as well as you; and as you are a-goin' to take him in so he shan't know his own food when he sees it, you must make it look like the very identical thing itself, or else he turns up his nose at it, laughs in his gills, and sais to himself, 'I ain't such a fool as you take me to be.' Then you throw your line clear across the stream; float it gently down this way, and then lift the head of the rod, and trail it up considerable quick—tip, tip, tip, on the water. Ah! that's a trout, and a fine fellow too. That's the way to play him to drown him. Now for the landin' net. Ain't he a whopper?" In a few minutes a dozen and a half of splendid trout were extended on the grass. "You see the trout take the fly before I have a chance to trail it up the stream. Now, I'll not float it down, for that's their game; but cast it slantin' across, and then skim it up, as a nateral fly skims along. That's the ticket! I've struck a nobiliferous salmon. Now you'll see sport." The fish took down the stream at a great rate, and I in after him; stayin' but no snubbin', restrainin' but not checkin' him short; till he took his last desperate leap clean out of the water, and then headed up stream again; but he grew weaker and weaker, and arter a while I at last reached the old stand, brought him to shore nearly beat out, and pop he went into the net (*Wise Saws*, Chap. XVII).

Next, in case anyone thinks that Sam Slick in telling that story was "jist talkin'", I offer this piece of evidence (even if it is his own) that he really had the "know-how" that makes fisherman's luck the likely result of having a master's technique under control:

If your hook ain't well covered, and the bait well chose to suit the season, fish won't so much as look at it. If you pull at a nibble, you never get another one, for there's nothin' so bad as eagerness. A quick eye, a steady hand and cool temper, is not do-withoutable. Tantalize 'em, play 'em on and off, let 'em see the bait and smell it, then jist raise it a little out of sight till they have to look for it, and then let it float down stream for them to foller, and when they get to it, snub it short till they pass it, and have to turn back and make up again stream. They don't see so clear then for the drift stuff, air-bubbles, and what not, and when you find them makin' right at it full split with their mouths open, slacken up a little, and jist as they snap at it, draw it forward an inch or

so, and then rest a bit. The next grab they make they will take in the bait, hook, line, and sinker, and all, and maybe part of the line, and then give it a back pull (not forward, for that is blundersome, and will pull it out agin p'raps, but back) with a short turn of the wrist, and it whips the hook right into the jaw (*The Clockmaker*, III, Chap. XII).

Finally, the instructions that Sam Slick gives Squire Poker on what to do with a rifle—along with the rifle—in exchange for a brace of pistols:

He then examined the lock of the rifle, turned it over, and looked at the stock, and, bringing it to his shoulder, ran his eye along the barrel, as if in the act of discharging it. "True as a hair, Squire, there can't be no better; and there's the mould for the balls that jist fit her; you may depend on her to a sartainty; she'll never deceive you; there's no mistake in a rail down *genuine* good Kentuck, I tell you; but as you ain't much used to 'em, always bring her slowly up to the line of sight, and then let go as soon as you have the range. If you bring her *down* to the range instead of *up*, she'll be apt to settle a little below it in your hands, and carry low. That wrinkle is worth having, I tell you, that's a fact. Take time, elevate her slowly, so as to catch the range to a hair, and you'll hit a dollar at seventy yards, hand runnin'" (*The Clockmaker*, II, Chap. XXIII).

One would not have to know the tidal waters of Minas Basin, as Haliburton did, to realize that Sam Slick's advice was that of an expert boatman: "Try an eddy, . . . and then you would work up river as if it was flood-tide. At the end of the eddy is still water, where you can rest for another struggle. . . . If you are in a fix, back-water, throw the lead, look out for a channel, and pull into some cove or another." Obviously this boast of his (he would deny its being that) was made by no one unacquainted with ships and sailing:

. . . whoever gets to windward of me had better try it on a river or a harbour, in a sloop-rigged clipper, have his mainsail cut flat as a board, luff all he can, hold on to all he gets, and mind his weather eye. I don't calculate in a ginerall way to have the wind taken out of my sails . . . (*Wise Saws*, Chap. XVI).

Judge Sandford's account (in *The Old Judge*) of spring's coming to the Avon, and the opening of the river's traffic, is a re-creation of sights to be seen annually from Haliburton's "home-place" at Windsor. A far call from the methods now employed in the shipment of gypsum, it brings back personal memories of the arrival and departure of three-masted schooners, though I never heard of the ritual breaking-out of a spruce bough at the foretop of the first to make port. Haliburton, if we may trust to Sam Slick (as we must), was familiar with all types of sailing craft, but his preference (except, possibly, for canoes: "there's nothing like one of those light, elegant, graceful barks") was, as we have seen, for "sloop-rigged clippers".

Unfortunately for my purposes, those that Sam Slick sounds off about were all American-built. But no matter!—they frequented the Nova Scotia coast so constantly that they were an accepted part of the provincial scene. Haliburton may have obtained his knowledge of them from hearing (or hearing about) smuggling cases.

. . . when you ain't in a hurry [says Sam Slick], . . . give me a clipper. She is so light and buoyant, and the motion so elastic, it actilly exhilarates your spirits. There is something like life in her gait, and you have her in hand like a horse, and you feel as if you were her master, . . . I ain't sure you don't seem as if you were a part of her yourself. Then there is room to show skill, and if you don't in reality go as quick as a steamer, you seem to go faster, . . . for the white foam on the leeward side rushes by you in rips, raps, and rainbows, . . . give me a craft like this that spreads its wings like a bird, and . . . a wholesale breeze, . . . Ain't she a clipper now, and ain't I the man to handle her? (*Nature and Human Nature*, Chap. II).

The in-bound cargoes, which were not supposed to be carried by the clippers over which Sam Slick was so ecstatic, were (in due course) part of the provincial scene too: “. . . churns, buckets, hay-rakes, farming-forks, factory cotton, sailor's clothes, cooking stoves, and all sorts of things to sell for cash or barter for fish,” in defiance of the fisheries treaty then intended to be in force, were regularly supplied to the residents along shore.

Sam Slick's “dreadful pretty” horse, Old Clay, however oriented to the Blue-nose locale, was also an American product—in his story-book incarnation. He would hardly have been conceived of by anyone not a lover of horse-flesh. Haliburton owned horses, and esteemed them. And, more than likely, it was out of his intimate contact with them, and with those of other horsemen he knew, that most of the equine data with which Sam Slick enlivened his long-winded yarn-spinning and moralising was derived. Sam Slick spoke for him, and spoke truly, when he declared, “I consait I know considerable some about a horse.” How much that was might be inferred from the pointers he gave Squire Poker about what to look for in a horse (they are taking stock of Old Clay):

. . . There's action. That looks about right—legs all under him—gathers all up snug—no bobbin' of his head—no rollin' of his shoulders—no wobblin' of his hind parts, but steady as a pump bolt, and the motion all underneath. When he fairly lays himself to it, he trots like all vengeance. Then look at his ears, jist like rabbits', . . . strait up and pineted, and not to near at the tips; for that one, I consait, always shows a horse ain't true to draw. There are only two things, Squire, worth lookin' at in a horse: action and soundness, for I never saw a critter that had good action that was a bad beast (*The Clockmaker*).

Or from these further pointers, given at another time, to another listener, about a horse's fore-quarters (seen in profile):

. . . there is only one place for [the front leg], and that is 'thar,' well forward at the shoulder-point, and not where it most commonly is, too much under the body—for if it's too far back he stumbles, or too forward he can't 'pick chips quick stick' (*Nature and Human Nature*).

A more lurid auction-block line than Sam Slick's is employed by quite a different sort of horse-fancier in sizing-up a "beast":

He can trot his mile in two minutes and thirty seconds, and no break, shuffle-rack, or pace, . . . nor pounding the road like breaking stones, but a sort of touch-me-light-and-go-easy style, like the beat of a gal's finger on a pianny; . . . The way he makes the spokes fly round in a wheel, so that you can only see the rim as if it was a hoop, is amazing. . . . he is a *su*-perior animal, beyond a doubt. . . . Oh, he's a doll! His sinews are all scorpion tails and whipcords, and his muscle enough for two beasts of his size. You can't fault him in no particular, for he is perfect, head or neck, shoulder or girth, back or loins, stifle or hock, or chest or bastions; and as for hoofs, they actually seem as if they was made a purpose for a trotter. In fact, you may say, he's the greatest piece of stuff ever wrapped up in a horse-hide (*The Old Judge*).

Sam Slick's reflection that "A man that don't love a hoss is no man at all. . . . If I was a gal I wouldn't have nothin' to say to a man that didn't love a hoss, and know all about him. . . . You never get tired of a good one. . . . You like him better every day. He seems part of yourself, he is your better half. . . . How grateful [hosses] are for kindness, how attached to you they get," sets a standard that neither he nor Haliburton has any trouble to meet. Witness the pride that lies behind this close-up of

. . . Old Clay in a pastur, a racin' about, free from harness, head and tail up, snortin', cavortin', attitudinisin' of himself. Mane flowin' in the wind, eye-ball startin' out, nostrils inside out a'most, ears pricked up. *A nateral hoss* (*The Attaché*).

Although Sam Slick once asserted that "anythin' pertainin' to the apron-string is what I don't call myself a judge of, and feel delicate of meddlin' with," and again that "I am too fond of the feminine gender to make fun of them," he also asserted, and more truthfully, "Now I *do* say, I know something of women; I have made it a study, and know every pint about a woman, as well as I do about a hoss." And, as if in justification of his dubious claim to being an authority on female vagaries, he went on record with

Any man . . . that understands horses, has a pretty considerable fair knowledge of women, for they are just alike in temper, and require the very same treatment. In-

courage the timid ones, be gentle and steady with the fractious, but lather the sulky ones like blazes. . . .

backed up by such declarations as "There never was a good husband that warn't a good horseman," and the half-way apposite old proverb,

A woman, a dog, and a walnut tree,  
The more you lick 'em, the better they be.

The person who would attribute these and similar opinions to Haliburton, as the creator of Sam Slick, will land himself in serious difficulty. Probably they were worked into the harangues of the loquacious Yankee under the mistaken notion that they added to his comic appeal. A careful reading of *The Clockmaker* and its sequels will reveal that this brand of Sam Slick pronouncements, and there are many of them, is pretty well balanced off by others that fall into one of two categories: either statements of "just plain fact" about women, or (more or less) unequivocal compliments to them. Here are some samples of the first sort: "nothin' makes a woman so mad as personal slight"; "nothin' equals a woman for contrivances"; "women know how to find excuses, it comes nateral to 'em"; "a woman's tongue goes as slick of itself, without water power or steam, and moves so easy on its hinges, that it is no easy matter to put a spring stop on it, I tell you—it comes as nateral as drinking mint julep"; "[Gals] are about the most difficulty to choose and manage of any created critter"; "The worst of women is . . . they are everlastin'ly a teasin' folks with little things their children say"; "women is women, whether their petticoats are made of silk or cotton, and the dear critturs will have their own way"; "women in a ginerall way never lose sight of the main chance"; "women always put the rael reason last—they live in portsripts"; "nothin' strange goes on long, but a woman likes to get to the bottom of it."

The compliments to the weaker sex include the following: "women ain't throwed off their guard easily. If they are in a dark place, they can feel their way out"; "quickness of perception [is] natural to a woman"; "I guess women are more than a match for the men in the long run"; "Petticoat angels there are, beyond all doubt, the most exalted, the most pure, the most pious, the most lovin', the most devoted; and these angels are in low degree as well as high; they ain't confined to no station—prizes that clockmakers as well as princes may draw. Although women are not endowed by natur' with the same strength as men, they ain't deficient in rael courage, when there is need for it. A woman that would scream and faint if a mouse was to run over the keys of her piano, could face fire, shipwreck, and death in any shape with calmness and coolness"; "There's no pinnin' a woman up in a

corner unless she wants to be caught"; "Women are naterally sharp, quick-witted, and lively; if they can't reason like men, a nateral gumption takes 'em to a right conclusion long afore a man has got half way though his argument."

Haliburton's women in those quotations, like his horses in the quotations presenting them, are generalizations. His generalized horses, however, are provided (outside the quotations) with definite regional settings and colour. The case is different with his generalized women: one finds, and feels, with them few signs of local attachment. But on a single occasion (I doubt if there is a second) Haliburton got down to particulars. Writing in *Wise Saws*, with a minimum of interposition from Sam Slick's garrulity, he states,

It is impossible in minglin' with the people of this coast who are descended from the Germans and the Loyalists, and have by intermarriage founded, as it were, a new stock of the human family, not to be struck by their personal appearance. The men are the finest specimens of the Nova Scotian race, and the women are singularly handsome. This remark is applicable to the whole population of the southern shore, includin' Lunenburg and Chester; at the latter place the females are not to be surpassed in beauty by those of any part of the world that I have seen.

In recording this instance of his manifold acquaintance with, praise of, and affection for Nova Scotia, Haliburton discloses that he had not only the seeing eye we have noted so many times before but a roving eye as well. His statement of what that roving eye brought into focus must have given delight to several closely related communities of his native province, if to no others.