

ered. To constitutional lawyers the Canadian Charter of Rights 1982 will immediately come to mind, with its protection in section 2(a) for the fundamental right of freedom of conscience and religion. Many British public lawyers will be familiar with two early Charter decisions of the Supreme Court on Sunday trading in *R v Big M Drug Mart* [1985] 1 SCR 295 and *R v Edwards Books and Art Ltd* [1986] 2 SCR 713, but as the account here shows there is a much richer Canadian jurisprudence of freedom of religion, both pre- and post-Charter. As the United Kingdom stands on the brink of incorporation of the European Convention of Human Rights in the Human Rights Bill, and the churches struggle to come to terms with the implications (whether or not the final version of the legislation imposes duties on them as 'public authorities'), the Canadian case law on the Charter will be one of several sources to be drawn on, especially in view of the relative paucity of authority on Article 9 of the European Convention. This book will be a useful introductory reference for United Kingdom lawyers to the freedom of religion case law. Professor Ogilvie describes the function of the Charter thus (p 44):

'The result is that since 1982, the religious history of Canada has come to be shaped more by the judiciary than by the religious institutions themselves as adherents of all religions try to make a space within Canada through the law, as well as adherents of none.'

Perhaps this is the shape of things to come in the United Kingdom also?

This, however, is a distinctly British diversion from the book's professed purpose, which is to provide a guide to the law for two groups: practising lawyers and those involved in church administration. Accordingly, there are substantial chapters on the governance and property of religious organisations as well as discipline of clergy and laity (chapters 8 and 9). Alongside these is a treatment of related matters in the law where religious belief is relevant, notably evidence, the criminal law, education (a substantial topic in view of the different provincial guarantees for denominational schools) and employment. Many of the issues, for example controversies of religious education and school prayer and Sunday trading, will be familiar to a British audience also. The overall effect is a Canadian work of rather similar scope to St John Robilliard's *Religion and the Law* (Manchester 1984). The depth of treatment is variable: a more contextual approach is taken to the law relating to religious institutions and education, while the remainder is generally descriptive, rather than critical, in keeping with the needs of the target readership. The one major weakness is one anticipated by the author in her preface (vi): the slight treatment given to non-Christian religions. Despite the historical justification for this emphasis, more could have been made of the implications of human rights (anti-discrimination) legislation and—a matter of an explosion of scholarly interest—the law relating to 'First Nations' (Aboriginal and Indian groups). If prediction made about the Charter of Rights comes to be fulfilled, no doubt the balance will have to be redressed in future editions.

*SCANDAL IN THE CHURCH; DR EDWARD DRAX FREE* by R. B. OUTHWAITE. 1997 The Hambledon Press, London and Rio Grande, xvi + 184 pp (hardback £19.95), ISBN 1-5285-165-1.

A review by D. W. Elliott, Emeritus Professor of Law in the University of Newcastle upon Tyne

On 15 February 1830 the High Court of Delegates confirmed the sentence of the Court of Arches depriving Dr Edward Drax Free of the living of Sutton in Bedfordshire. On 22 March sequestrators took possession of the church, but the

Rectory, which had been fortified by the vicar, did not fall to them until 11 April, when he was starved out. So ended the long sufferings of the parishioners of Sutton, who had grievous cause for complaint ever since their vicar was inducted in December 1808. No charges of heresy or doctrinal irregularity were ever put against him, but in every other respect there could not be a worse or more oppressive parish priest than Dr Free. The sheer range of his shortcomings is truly remarkable.

He seduced or attempted to seduce a succession of housekeepers, got four of them pregnant, fathered five illegitimate children, and caused one of the women to miscarry by knocking her down. The prosecution for assault brought by her was settled on his promise to pay her money, which promise he did not honour. He did, however, pay the money in support of one of his bastards ordered by a magistrate. He kept pornographic literature which he showed to his housekeepers, to whom he regularly talked 'bawdy'. He was often drunk, used profane and threatening language to servants and workmen employed about the Rectory, and had to be sued for their wages. He similarly treated tradesmen seeking payment of their bills, and was prosecuted and fined for assaulting one of them.

He stripped lead from the church roof and sold it, and cut down mature timber on the glebe for his own profit. He quarrelled violently with his neighbours, often on the subject of boundaries and fences, raised the rents of tenants of the glebe to the extent that they could not pay, and oppressively claimed tithes on the garden produce of poor cottagers. He kept a horse, cows, sheep and pigs in the churchyard, and pigeons in the belfry. The Vestry was locked out of the church and had to meet in the porch, being prevented from examining the progress of repairs to the interior.

Free neglected to hold Sunday services; when he did hold them they were perfunctory, and sermons often consisted in no more than tirades against his many enemies. Not surprisingly, his congregation largely deserted him. Nowhere was the vicar's conduct more oppressive than his habit of refusing to perform baptisms, the churching of women and burials, sometimes because the arranged time was not convenient to him and sometimes because people could not pay his inflated and illegal charges. The refusals were accompanied by abusive language.

Although Free's misbehaviour began soon after his induction, it was not until 1823 that formal complaint was made to the Archdeacon of Bedford. The complainants included Montague Burgoyne, a member of the leading family of local landowners. In quarrelling with that family, Free sealed his eventual doom. It would take years and much treasure to accomplish, but in Montague Burgoyne Free had met a pursuer with the requisite money and determination to bring him down.

Burgoyne resided in Essex and took little interest in parish affairs until 1818, when he wished to bury his daughter in the family vault in Sutton Church. Although Burgoyne had the permission of the Bishop of Lincoln, Free charged him £300. Thereafter Burgoyne established a nominal residence in the parish, had himself elected as churchwarden, and set about collecting evidence against Free. In 1824 proceedings began in the Court of Arches before Sir John Nichol with Burgoyne 'in the office of judge', i.e. promoter. Free succeeded in postponing and drawing out the proceedings by obtaining writs of prohibition out of King's Bench and other devices. But in June 1829, with affidavit evidence in and interrogatories dealt with, Nichol was able to hear arguments from counsel and from Free (who by now was acting in person), review the evidence and pronounce sentence of deprivation. It remained only for Free's last desperate appeal to the High Court of Delegates to be dismissed in February 1830 for Burgoyne's victory to be complete and to be celebrated by him in pamphlets.

Free occupied the next few years with attempts to recover his fellowship of St John's College, Oxford, and to this end he pursued the Visitor, the Bishop of Winchester, bombarding him with letters and petitions, cast in undiplomatic language, demanding to be admitted or at least supported by the college, and brought

court proceedings against him. When these failed, Free resumed direct appeals to the college. In 1833, and again in 1837, he invaded the college and had to be ejected by the porters. In 1839 he had the impudence to urge the college to give him the living of Tapley, and when this was refused he wrote to the bishop, entering a caveat against another Fellow being presented to the living.

By then Free was penniless, and at one point he was confined to the King's Bench prison for a debt of £968 owed to his former attorney. When, in charity, some Fellows subscribed to buy Free a small annuity, he claimed it was a bribe to get him to renounce his claims against the college. He dragged out a penurious existence in London until 1843, when, at the age of 78, he died as a result of a street accident.

Although Free's manifest shortcomings as a man and a priest were the direct causes of his final miserable state, it is impossible not to feel a twinge of sympathy for this coarse, rude, quarrelsome, combative man. He never seems to have had a friend in the world. Although he came from a clerical family and had two brothers, there is no mention in Dr Outhwaite's book of any family support in his travails. By the end he had exhausted the charity of all the non-family persons to whom he had applied for succour. No one wished to see a clergyman and a college Fellow living in penniless squalor, but he seemed constitutionally incapable of seeking help except in hectoring terms. If ever a man deserved the description of his own worst enemy, he did.

The disentangling of the many strands in this sorry affair is achieved by Dr Outhwaite in a very clear and competent manner, and the result is an interesting read. Whether the prosecution and downfall of Free has enough historical significance to justify a whole book is a matter of some doubt. At the time there was much ongoing controversy about the perceived shortcomings (particularly the delays) of the existing system of ecclesiastical courts, and in 1830 a commission of inquiry was established which resulted in 1840 in what was to be the first of a series of statutes reforming clergy discipline. However, the controversy long preceded and continued after the Free case; and although on the subject of delay some witnesses instanced his case, the defenders of the *status quo* objected to such an extreme one-off case being used as a stick with which to beat the existing system. Perhaps the most that can be said is that the case was a prominent feature in the background of the political uproar which would certainly have resulted in reform even if the case had never occurred.

As such, the Free affair would merit a footnote to a history of the public controversy, or an article in this Journal, but not a whole book without something else. That something else is a glimpse of village life in the early nineteenth century. The contemporary researches of the indefatigable Burgoyne, preserved in witness depositions, have enabled the author to flesh out the 'short and simple annals of the poor'. There is a whole chapter on the successive housekeepers which deals not only with their seductions but also with their previous and subsequent histories. The potted biography of Maria Cook, for example, covers not only her seven or eight weeks in the service of Free, but also her previous employments and her subsequent life up to 1828, when she gave evidence against him. A reader may feel that he knows more about Maria Cook than he needs to. In truth, the glimpses of village life are mostly digressions which get in the way of the central narrative of Free's career.

The main text of 140 pages is thus somewhat discursive, and to it are added 40 further pages of appendices, sources and index. The 26 pages of appendices seem to add little of value to the main text. They comprise a three-page epitaph (composed by himself) of Dr Free's father, the churchwardens' presentments of 1823, the text of An Act to Prevent Frivolous and Vexatious Suits 1787, and the unbearably prolix articles presented against Free in the Court of Arches, including those deleted at an early stage of the proceedings. The impression is gained of padding to make a work of respectable length out of a small subject. That said, the main story is enjoyable; and the volume, as usual with this publisher, is a handsome and accurately printed production.