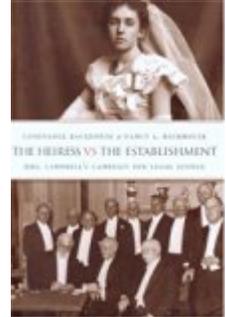


Constance Backhouse, Nancy L. Backhouse. *The Heiress vs The Establishment: Mrs. Campbell's Campaign for Legal Justice.* Vancouver: UBC Press for Osgoode Society for Canadian Legal History, 2004. xix + 313 pp. \$29.95, cloth, ISBN 978-0-7748-1052-4.



Reviewed by Tom Mitchell

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In December 1884, Elizabeth Mary Bethune (after 1895, Lady Howland through marriage to Sir William Pearce Howland) inherited an estate of close to \$60,000 from her late husband James Bethune. For the next thirty-eight years, William Drummond Hogg--brother-in-law by marriage to Bethune's sister--managed the Bethune estate. In 1922, Howland, now eighty-two, was declared legally unfit to manage her own affairs. An order of the Supreme Court of Ontario appointed the Toronto General Trusts Corporation "committee" of her estate. The Trust Company wrote to Hogg, now seventy-four, a pillar of the Ontario legal community, bencher of the Law Society of Upper Canada, and Chairman of the Board of Toronto General Trusts Corporation, for details of Howland's investments. Hogg provided an accounting, amounting in all to \$8,200.

Lady Howland died in 1924 with an estate valued at \$17,450. It appeared that she had died intestate. After a combative negotiation with her oldest sister and visits to the offices of the Trusts Corporation and a lawyer's office in St. Catharines, the youngest of Howland's three surviving

children, Mrs. Elizabeth Campbell, produced a will. Dated 29 June 1915, and unsigned, in it Lady Howland made provisions for the three Bethune daughters (a son had died in 1921), but left the bulk of the estate to the youngest, Elizabeth Campbell. The Supreme Court of Ontario found the will invalid, ruling that Howland had revoked it prior to passing into dementia. During an appeal of this decision before the Ontario Court of Appeal, Campbell was persuaded to accept a settlement of the estate: she received one-half, her two sisters split the remainder.

Family strife over Lady Howland's will was only the opening chorus of discord over the estate. Campbell did not accept Hogg's account of her mother's estate and retained Arthur Slaght, one of Ontario's leading and most flamboyant litigants, to act on her behalf. In actions that followed, Hogg provided new disclosures about the estate. He claimed to have receipts for \$39,972.86 with \$486 still due. Later, he disclosed receipts of \$46,561.61 with \$531 due. Court rulings largely accepted his confused accounts.

Campbell did not. An appeal of Hogg's accounts to the High Court of Ontario in 1927 was dismissed, but netted her an additional \$1,155. An appeal of this decision before the Ontario Court of Appeal in November 1928 also went against her, though the Court granted her an additional \$1,000 as a "more satisfactory ending to the case" (p. 228). It wasn't.

At this point in Campbell's legal odyssey, D'Alton Lally McCarthy, an even more prestigious counsel than the dashing Slaght who had withdrawn from the case, told Campbell "never short of the Privy Council, never on this side of the water, can you win this case" (p. 86). She took his advice. An appeal to the Ontario Court of Appeal for permission to take her case to the Law Lords of the Privy Council, the final court of appeal in the British Empire, was granted on 1 February 1929.

Campbell appeared before the Law Lords in February 1930 to appeal the ruling of the Ontario Court of Appeal on Hogg's accounts. A woman untrained in the law had never appeared before the Law Lords. Her appearance made news internationally. Moreover, she was persuasive. On May 1, 1930, the Law Lords granted her appeal. Unlike the Canadian courts, the Law Lords did not find Hogg's accounts credible. They were "much affected by his tampering with business books and his shifting statements on that subject...[and were] unable to profess themselves satisfied either with regard to the correctness of his testimony on any disputed item or generally in relation to this case" (p. 194). Hogg had "wrongfully testified to paying sums to Lady Howland that he hadn't." Moreover, "monies Hogg had claimed to have paid to Charles Bethune--Mrs. Campbell's brother, turned out to be for monies received after the younger Bethune's death." The Law Lords concluded that Hogg owed the estate \$7,027.34 (p. 194).

Back in Canada, further and mostly unsuccessful legal actions moved from court room to court room over claims by Campbell for legal and accounting fees and her right to interest on

monies owed by Hogg. Actions were also initiated by the Trust Company to take monies from the estate to pay legal and accounting fees incurred in defending its handling of the estate. The legal battles ended only in 1935: Mrs. Campbell was granted interest at 5 percent compounded annually; the Trust Company was allowed to recover its costs from the estate. After all was said and done, Hogg was forced to pay the \$7,027.34 awarded by the Law Lords with interest at 5 percent compounded annually. After the Trust Company recovered its expenses, \$2,201.02 remained in the estate to be divided among the survivors. Campbell's share was a small fraction of the costs incurred to bring the now eighty-seven year old Hogg to justice.

Campbell had also sought to end the old, if not venerable, bencher's practice of law. An action before the Ontario Supreme Court in 1931 to disbar Hogg for conduct unbecoming went nowhere. An attempt to bring criminal charges against Hogg for forgery, theft, perjury, and false pretences failed as well. In 1934, the Law Society of Upper Canada dismissed Campbell's claims against Hogg apparently without giving them much consideration. In 1935, Campbell brought her case against Hogg before the court of public opinion through her self-published memoir of legal struggle *Where Angels Fear to Tread*.

The book became a kind of underground classic. University of Toronto law professor Martin Friedland read it in the 1950s: "We felt we were reading a manuscript that the legal establishment wanted to suppress" (p. xv). Like Campbell, the story had staying power. His Honor Judge Sidney Harris, retired from the Ontario Court of Justice, read the book in the 1940s, and in the early 1990s curiosity about the case led him to research Campbell's story in Boston (Campbell had followed her husband to that city) and London. In 1995, Hon. Mr. Justice William J. Anderson of the Ontario Superior Court published an article on Campbell's story in the *Law Society of Upper*

Canada Gazette.^[2] The Hon. Mr. Justice Maurice Cullity brought *Where Angels Fear to Tread* to the attention of University of Ottawa law professor Constance Backhouse who shared the book with her sister Madam Justice Nancy L. Backhouse. After an evening of discussion, they decided "spontaneously to take on the project of republication together" (p. xiv).

The publication of *The Heiress vs. The Establishment--Mrs. Campbell's Campaign for Legal Justice* by The Osgoode Society for Canadian Legal History--in part a creation of the Law Society of Upper Canada--marks a sort of rehabilitation for Campbell's memoir and maybe even a vindication for Mrs. Campbell. As the Honorable R. Roy McMurty, Chief Justice of Ontario and President of the Osgoode Society asserts, Campbell's story is "about how some lawyers and judges used their power to defeat all her efforts and to discredit her" (p. ix). Anticipating revelations to follow, Madam Justice Nancy L. Backhouse asks in her prefatory remarks "whether the Law Society today would show similar reticence in disciplining a prominent member of the profession and bencher who had been proved guilty of grave breaches of trust" (p. xvii).

The text of *Where Angels Fear To Tread* is introduced with a cogent summary of biographical and familial data for the Bethunes, Howlands and Campbells, an account of Lady Howland's declension and the origins of her troubled estate, and sketches of William Hogg, Arthur Slaght and Lally McCarthy. An indictment of the Ontario legal profession and judicature of the Campbell era for its "aversion to reform, its conservatism, and its claims to 'patrician' status" is advanced (p. 21). Ontario's legal elite was, the authors assert, an arrogant, self-interested, latter day Family Compact: "elite lawyers, benchers, and judges moved in very small circles, intermingled their families by marriage, and prided themselves on their unchallenged invulnerability" (p. 22). Finally, some leading questions to which the authors return in the

book's epilogue are provided for readers to consider as they read: Did William Hogg misappropriate funds from Lady Howland's estate? Did the Ontario legal community conspire to protect Hogg? Did the nature of her case prevent Mrs. Campbell from securing appropriate legal representation?

A thoroughly annotated version of the original Campbell text follows. A brief summary can do little justice to this extraordinary compilation of fully eighty pages of endnotes that guide the reader through the complexity of the legal matters in dispute and furnish detailed mini-biographies of nearly everyone involved. The account of Arthur Slaght is a must read. The family connections between the Bethunes and members of Ontario's legal and political elite including William Lyon Mackenzie King are explored. Accounts of features of the development of the legal profession in Ontario, of the Law Society of Upper Canada, even the history of trust companies, are provided. When, Mrs. Campbell goes shopping in London on Boxing Day, the English origins of Boxing Day are probed.

In the epilogue, the Backhouses turn a critical gaze on Elizabeth Campbell, deploying the interpretative categories of class, race, ethnicity, and gender. She emerges as a complex, self-assured woman. Estranged from her siblings, she is prepared to leave her husband and children in Boston for months on end while she pursues Hogg through courts in Toronto and London. Her success in carrying forward this campaign is attributed to her "upper class status," and her "sense of entitlement" (p. 179).

In a section headed "'Hard Done By' or a 'Crook'," the Backhouses return to William Hogg. Though they acknowledge that he administered Lady Howland's affairs for three decades for nothing, and that the evidence against him is open to interpretation, they conclude that he was a crook. They draw up short of claiming that a conspiracy "sheltered [Hogg] from professional

disgrace and legal sanction because of his stature in law and society..." (p 199). After a thorough account Hogg's relationship with judges before whom Campbell appeared, they conclude that "personal contacts between Hogg and the judiciary substantially influenced the outcome of legal proceedings" (p. 204).

On the conduct of the Law Society of Upper Canada, the authors observe that the "records filed by Mrs. Campbell proved Hogg to be in serious dereliction of professional duties regarding trust funds." Still, Hogg was never required by the Law Society to answer these charges. The members of the Society's Discipline Committee chaired by Newton Rowell are guilty as charged: "Influenced by long-standing friendships and professional connections, they disregarded clear evidence of financial mismanagement and blocked Mrs. Campbell's efforts to seek legitimate redress..."(p. 221). The Backhouses are also critical of members of the legal fraternity who refused to represent Campbell, as well as Slight and McCarthy for withdrawing from the case. The fact that Campbell had difficulty retaining qualified counsel, they conclude, "adds further weight to the growing body of evidence that Hogg's stature insulated him from legal attack" (p. 219).

The explication of *Where Angels Fear to Tread* offered by the authors of *The Heiress and the Establishment* is plausible but not entirely satisfying. Given its quite striking narrative qualities, a literary reading of Mrs. Campbell's story of justice denied seems essential to provide a fully satisfying account of this text. "Her tale is told by a true raconteur, one who makes lawyers, judges, and witnesses come alive on the page" (p. 178), the Backhouses assert. This assessment does not adequately convey the extent to which Campbell's text molds a particular presentation of individuals and events.

Increasingly, historians have become sensitive to how narratives are formed and emplotted, how such created literary structures give form

and meaning to the events and personalities contained in the narrative. Barthes tells us that narrative "ceaselessly substitutes meaning for the straightforward copy of the events recounted." [3] Campbell's florid account of legal strife owes debts to romance and melodrama. Romance in her account of her legal adventure culminating in an uncommon appearance before the Law Lords of the Privy Council of a woman untrained in the law, and the Law Lords coming to the aid of an innocent and vulnerable colonial denied justice by wayward Canadian courts. Melodrama, in her hyperbolic presentation of events and individuals as features of a Manichean struggle between the forces of good and evil.

It is true that Campbell's narrative materials invite such a rhetorical ordering: dementia, death, a disputed will, familial discord, a heroine with the élan of Jane Eyre, an estate apparently plundered by a doyen of the legal community, lost and incomplete ledgers, falsehoods, courtroom drama on both sides of the Atlantic, the withdrawal one after another of our heroine's weak-kneed legal Galahads, a greedy Trust Company headed by Hogg, and appearances by a politician of national prominence as President of the Trust Company and Chair of the Discipline Committee of the Ontario Law Society, compromised in both roles by misplaced loyalty to Hogg. There are also judges galore (mostly Hogg's friends and associates of decades) of courts of appeal, surrogate courts, high courts, supreme courts, not to mention the men in white hats, so to speak, the Law Lords of the Privy Council.

To go with this cast, Campbell had a chronicle of seemingly endless and complicated legal engagements to relate, one easily fashioned into a narrative that stretched on for years with excruciating legal twists and turns culminating in, well, sort of, an exposé of corruption. Denied justice by dark forces inhabiting the upper reaches of the Ontario judiciary, good triumphs over evil only when our heroine, bankrolled by a wealthy de-

scendent of Paul Revere, travels to Downing Street to appear before the incorruptible Law Lords of the Privy Council.

Campbell's commitment to a register of melodrama as her principal aesthetic criteria is evident throughout. She opens her narrative in a melodramatic key: "My father's death was terribly sudden, my mother was young and stricken with grief, and she knew little or nothing about business, and furthermore she trusted Mr. Hogg utterly" (p. 68). Early on, the occult is implicated in her story when "Fate" operating through a Trust Company clerk furnishes her with her mother's lost will (p. 40). Hogg is cast as the central villain of the melodrama: his conduct was "premeditated and diabolical" (p. 68). At an early trial his "gaze riveted upon me with a look of positive hatred, -- it was... terrifying"(p. 69). A conspiracy determined to "white-wash that worthy King's Counsel" is imagined (p. 86). Mr. Justice Masten, a judge repeatedly hostile to her case, is demonized: "looking closely at the learned gentlemen it occurred to me that his appearance was rather suggestive of a handsome elderly Mephisto who, his scarlet cape for the moment swung aside, had wrapped himself in robes of office and deserted the Brocken for the bench" (p. 85). When Arthur Slaght withdraws from the case our heroine is "cold with fear...in vain did I beg and plead and coax, in vain did I entreat " (p. 82). Later, when Lally McCarthy quits, Mrs Campbell is left standing on the steps of the Canada Life Building "dazed, ... with death in my heart..." (p. 88). In a London hotel preparing to appear before the Law Lords she stands before a mirror "her heart throbbing with a tremendous thrill" (p. 31). A cautious reader should ponder the reliability of such a narrative voice, be wary of characters brought "alive" on the page, judgments proffered.

Approached from this perspective, *Where Angels Fear to Tread* takes on the character of a fully-fledged melodrama rhetorically interpolating Mrs. Campbell, lawyers, judges, clerks, trust com-

pany official and bystanders--and readers of her account--into roles in a melodramatic confrontation between good and evil, heroine and villains. Historical characters tend toward caricatures, events assume the theatrical, *Fate* appears in the wings. A satisfactory conclusion requires that corruption be exposed and virtue celebrated: our heroine must be rescued from the tracks, several men in black unmasked and shamed. Rhetorical strategy overwhelms the possibility of verisimilitude. Innuendo, exaggeration, and caricature muscle aside the prosaic. The muted condemnation of Hogg by the Law Lords becomes a triumph of British impartiality and an indictment of Canadian justice.

It is the case that the findings of the Canadian courts were flawed and incomplete. Unlike their Canadian counterparts, the Law Lords were unwilling to accept Hogg's partial and incomplete accounting of the Howland estate. How is this to be explained? The Backhouses' discount Campbell's conspiracy theory and point instead to "personal contacts" between Hogg and the judiciary as the reason for the leniency of the Canadian courts (p. 204). This may have been the case, but the implication that the Canadian judges ruled in his favor out of personal favoritism tends to oversimplify the dynamic of the courtroom and the production of legal meaning. A broader literary heuristic for assessing the outcomes of trials suggest a different reading.

The trial and the courtroom provide a liminal space in which competing claims about truth and legality are narrated before judges and juries as the final arbiters of narrative authority and legal meaning.[4] Campbell brought her claims against a person who had established himself as a man of character, who had served the law and the legal community for decades, who had managed Howland's estate for thirty-four years without charging a penny for his trouble. His muddled handling of the records of the estate, as the Backhouses acknowledge, may have been a product of confusion

or carelessness. Members of the Canadian judiciary had extensive knowledge of Hogg, had made assessments of his character and probity.

Viewed in this light, Campbell's failure in Canadian courts was not a product of favoritism towards Hogg, of decisions taken by unprincipled men defending one of their own, but of Campbell's failure to establish the authority of her narrative of willful corruption and mismanagement. She ran up against judges unwilling to accept her interpretation of events when other plausible interpretations were possible. Judges and juries write their own stories and determine legal meaning based on what they bring to the courtroom and what they hear while they are there. Justice is mostly about how stories are told in courtrooms and how they are received and interpreted by judges and juries.

Campbell's experience in the courts points to a force more powerful and ubiquitous than favoritism. It points to the central role of story telling in the making of legal meaning. Some stories and some storytellers wield greater narrative power than others. Some storytellers are more able to gain the attention and sympathy of the bench, to adhere more closely to the powerful authoritative discourses of law, to establish agreement on the terms and logic essential to narrative authority, and to produce shared legal meaning with judges and juries. It isn't easy. One need only imagine the unusual narrative challenges that have faced the advocates of Aboriginal people, working-class radicals, political dissidents, marginal women, and unwanted immigrants, who have appeared before the Canadian courts in search of justice only to be denied. In Canada, Elizabeth Campbell had to cope with an unreceptive audience and alternative narratives. She lost. It wasn't the same in London.

Just as justice too often appeared blind in Mrs. Campbell's account of her experience of Canadian courts, so "justice" in the subtitle on the title page of this book is "i" less. But this is a trivial

matter. The authors of *The Heiress vs The Establishment--Mrs. Campbell's Campaign for Legal Justice* should be commended for their remarkable initiative of historical recovery and the extraordinary ends to which they have gone to introduce, annotate and assess Elizabeth Campbell's quite remarkable *Where Angels Fear to Tread*.

Notes

[1]. John Galsworthy's play *Loyalties*, first performed in 1922, brings together in dramatic fashion a set of circumstances involving theft, class loyalty, and threatened professional status. The central figure in the book under review described her predicament as "worse than Galsworthy's *Loyalties* (p. 81).

[2]. Hon. Mr. Justice William J. Anderson, "Where Angels Fear to Tread (Campbell v. Hogg, et al., [1930] D.L.R.673)," *Law Society of Upper Canada Gazette*, 1995.

[3]. Roland Barthes, "Introduction to the Structural Analysis of Narratives," *Image, Music, Text*, trans. Stephen Heath (New York: Hill and Wang, 1977), p. 79.

[4]. For an illuminating account of how melodrama, narrative, and the courtroom may be implicated in the making of legal meaning see Martha Merrill Umphrey, "The Dialogics of Legal Meaning: Spectacular Trials, the Unwritten Law, and Narratives of Criminal Responsibility," *Law & Society Review* 33, no. 2 (1999): pp. 393-423.

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