But one's own house is not always in order. How many solicitors take any steps, when acting for a purchaser, to guard against inconsistent dealings lodged between the search and the lodging of the transfer? In Victoria, says Mr Ruoff (page 26), no one ever stays registration under section 93. The reason is that the forty-eight hours' stay available is ordinarily insufficient, but one can lodge a caveat and follow it with a final search.

The articles reprinted in this book can be re-read with profit.

PETER BALMFORD*

Bureaucracy in New Zealand, edited by R. S. MILNE, M.A. (New Zealand Institute of Public Administration, Wellington; Oxford University Press, London, 1957), pp. 1-137. Price £1.

The papers delivered and discussed at the annual conventions of the New Zealand Institute of Public Administration have been published each year since 1953. *Bureaucracy in New Zealand* is the fifth volume in the series. It comprises papers dealing with diverse aspects of administrative procedure and law in New Zealand presented by the then Attorney-General of New Zealand, a senior civil servant, the head of an administrative agency, a lawyer, a political scientist and 'a private citizen' (who turns out to be a solicitor and an Oxford M.A.!). A brief résumé of discussion is appended to each essay. Doubtless the publishers were forced to conserve space as much as possible in order to produce the book at its modest price of one pound, but it is to be regretted that the discussion and replies have been abbreviated in some cases to the point of incomprehensibility.

Lawyers will find much of interest in the papers concerned with administrative machinery and the checks and balances imposed upon executive action within the governmental machine. The population of New Zealand is roughly the same as of Victoria, and Victorians interested in the problems of government in a small State will find these papers valuable.

However, of more immediate interest to the profession is the discussion of legal controls of administrative authorities by R. B. Cooke in a paper entitled 'The Rights of Citizens' (pages 85 ff.). After comparing the readiness of the New Zealand Supreme Court under Myers C.J. (1929-46) to use the prerogative writs and other means to check excesses in the use of administrative discretionary powers with its reluctance to do so since the war, Cooke considers in relation to New Zealand's experience and needs the hardy annual whether a superior administrative tribunal is desirable to co-ordinate appeals from existing specialist tribunals, and to hear appeals on matters which are at present beyond the reach of the courts. Dating the paralysis of English courts in the field of administrative control at *Liversidge v. Sir John Anderson*[1] in 1942, he attributes it to a carry-over into peace time of the tendency of the courts in time of total war to concede 'to the executive discretionary powers of the greatest amplitude' (page 97). 'There can be little doubt that, in respect of administrative law, habits of judicial thought engendered in time of war survived into the post-war years. . . . It seems a fair deduction that after the war the English judges, studious of impartiality and anxious

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[1] [1942] A.C. 206.

to avoid any hint that political prejudices influenced their decisions, continued to show a willingness to allow administrative discretion a very free reign.' (pages 99-100). The timidity of the courts in such cases as *Franklin v. Minister for Town and Country Planning*[2] and *B. Johnson & Co. (Builders) Ltd v. Minister of Health*[3] and their artificial technicality in applying terms such as 'judicial' and 'quasi-judicial' to administrative functions are strongly criticized.

Nevertheless, Cooke arrives at the conclusion that it would be inadvisable to create a British equivalent of the Conseil d'Etat at the present juncture.[4] It would be unreasonable to expect a government to transfer 'the cream of the Public Service' from policy-making to appellate work. Laymen would be sceptical about the degree to which such a tribunal would be immune 'from undisclosed pressures and influences' (page 107). It would be impossible for one tribunal to acquire the technical knowledge requisite to hearing appeals on the merits of cases from a disparate collection of tribunals. Finally, the position of the courts as supreme judicial tribunals ought not be affected 'unless arguments for the change are so cogent as to be beyond dispute' (page 108). There appears to be some inconsistency between this argument and the strong criticism of judicial control of administrative action since the war, but Cooke hastens to add three reasons for his belief that the courts possess the necessary means of exerting a positive influence in the administrative sphere, and have merely been reluctant to exercise them. He feels that the tide may be turning. First, English courts will grant the modern [*sic*] discretionary remedy of declaration where certiorari or damages would be inadequate to redress an injustice.[5] Secondly, the writ of certiorari has been given wider application since *R. v. Northumberland Compensation Appeal Tribunal*.[6] Thirdly, the case of *Prescott v. Birmingham Corporation*[7] found the court prepared to consider closely the purposes for which discretionary powers are conferred. One wonders, however, by what means cases such as the Crichet Down affair may be brought within the reach of judicial review, as Mr Cooke sanguinely predicts on page 111. Perhaps Mr Cooke's optimism may be conditioned by the New Zealand Declaratory Judgments Act,[8] which confers a right to obtain judicial review of many administrative decisions, and for the purpose of proceeding under which the New Zealand Supreme Court has apparently adopted a most liberal attitude to the *locus standi* of a plaintiff.[9] It is a little surprising not to find this Act mentioned. It would also have been instructive to have had Mr Cooke's view of the effectiveness of statutory 'final and conclusive' sections in limiting the right to judicial review.

J. D. MERRALLS

[2] [1948] A.C. 87. [3] [1947] 2 All E.R. 395.

[4] Apparently Mr Cooke's essay was prepared before the publication of the report of the British Committee on Administrative Tribunals and Enquiries (the Franks Committee), July 1957. One brief reference to it has been included, in footnote 55.

[5] *E.g., Barnard v. National Dock Labour Board* [1953] 2 Q.B. 18; *Vine v. National Dock Labour Board* [1957] 2 W.L.R. 106.

[6] [1952] 1 K.B. 338. See Megarry, *Miscellany at Law*, (1955), 280-281.

[7] [1955] Ch. 210.

[8] 8 Edw. 8, no. 220, s. 3. Possibly the scope of the section is no wider than R.S.C. Order XXV, 2. 5. See Borchard, (1933) 11 *New York University Law Quarterly Review* 139.

[9] *Simpson v. Attorney-General* [1955] N.Z.L.R. 271. *Cf. Anderson v. The Commonwealth* (1932) 47 C.L.R. 50.