

BOOK REVIEWS

THE FUNCTIONS AND POWERS OF JUSTICES OF THE PEACE AND CORONERS, by Peter Burns, LL.M., and J. A. B. O'Keefe, J.P., B.A., LL.M. Wellington. Sweet & Maxwell (N.Z.) Ltd., 1968. New Zealand price \$6.00.

The Preface to this book states inter alia "We have collaborated in writing this book mainly for Justices of the Peace and Coroners" and "Our aim has been to produce a concise but comprehensive book comprehensible to the informed layman . . ."

Two pages further on I was struck by four pages containing "Table of Cases", seven pages containing "Table of Statutes", and another page containing "Statutory Regulations and Statutory Rules". My immediate impression was that this would be sufficient to frighten off most laymen from reading any further, on the grounds that this was obviously a legal textbook basically for the use of lawyers and law students, and beyond the depth of the average layman.

The layout of the book gives the reviewer the impression that the authors were struggling to find sufficient material to pad out their book. For example chapters 13 and 15 "The Judicial Process" and "Finding and Keeping the Law" seem to have been added as an afterthought, whereas in fact they really form part of the introduction to the subject and would have been more appropriately combined with Chapter 1 "Outline of History of Office".

The book also recites in detail a number of forms which are not within the powers of a Justice of the Peace to issue, e.g.:

- (a) Chapter 3 page 30 "Notice of information laid for Traffic Offence" which can only be signed by the Registrar of the Court.
- (b) Chapter 3 page 32 "Warrant to arrest under s. 19 (c) of the Summary Proceedings Act 1957" which can only be signed by a Magistrate.
- (c) Chapter 5 page 90 "Order to Estreat Bond" which can only be signed by a Magistrate.
- (d) Chapter 10 pages 167 and 168 "Medical Certificate under the Mental Health Act 1911" which can only be signed by a Medical Practitioner.

In Chapter 3 five forms listed in the Child Welfare Act 1925 are quoted verbatim. These forms are repeated again in full in Chapter 10. All told, the book quotes sixty-six forms verbatim.

There are numerous deficiencies and inconsistencies of citation which become irritating, e.g.:

- (a) On page 11 a case is described as *Whitten v. Parnell* [1918] N.Z.L.R. 762; on pages 13 and 15 it is referred to as *Whitten v. Pennell* [1918] N.Z.L.R. 762 and in the Table of Cases as *Whitten v. Pennell* [1918] N.Z.L.R. 672.
- (b) In the Table of Cases and in chapter 13 page 181 the reference to *Woolmington v. D.P.P.* is given as [1935] A.C. 465; in chapter 6 page 92 and chapter 7 page 113 and 117 it is shown as [1935] A.C. 462.

- (c) In the Table of Cases and page 12 a case is referred to as *Taylor & Others v. Salmon and Others* (1925) N.Z.L.R. 589.
- (d) Some criminal cases are shown as *R. v. ———* others as *Rex. v. ———* e.g. *R. v. Halsford*, page 17, and *Rex v. Sussex Justices*, page 18.
- (e) In chapter 9 page 144 one Coroner is given the courtesy title of "Esq." On page 147 another Coroner is referred to as plain "Mr".

One other irritating thing I found was the use of such phrases as "ipso facto an ex officio Justice of the Peace": chapter 2 page 5 line two. Would this be comprehensible to the layman? I note, tucked away in the appendices, there is a "Glossary of legal terms". This glossary contains a number of well-known phrases such as "ex officio" but does not include typical legal phrases such as "ipso facto" and "per se" with which the layman would not be familiar.

On the other hand the book contains a lot of very useful information to the layman and serves a very useful purpose in setting out some of the commonplace matters such as witnessing documents, administering Declaration and Oaths, procedure at hearing, principles governing granting of bail, etc., all of which we as lawyers tend to take for granted.

Appendices III, "Main Statutory Provisions affecting Justices", and IV, "Offences over which two or more Justices have Jurisdiction", serve as a very useful ready-reckoner for the layman.

With regard to the topic discussed in chapter 6 at page 109, it is of interest to note that in March of this year a conviction for driving while under the influence of drink or drug was quashed on appeal by Mr Justice Moller in the Supreme Court at Auckland (*Borrows v. Police*). In this case a blood sample on analysis was found to contain 210 milligrams of alcohol per 100 millilitres of blood. His Honour dealt with the question of rebuttal of the presumption raised under s. 62A (5)(c) of the Transport Act 1962 if there is more than 100 milligrams of alcohol per 100 millilitres of blood.

I was disappointed with the brevity of the chapter on the functions and powers of Coroners. No lead is given to the uninitiated as to:

1. When the powers under Section 6 of the Coroners Act 1951 should be exercised.
2. When a finding of suicide as against self-inflicted or self-administered death should be brought in: see *R. v. Huntbach, ex parte Lockby* [1944] K.B. 606; [1944] 2 All E.R. 453.
3. What limits should be placed on cross-examination.
4. When burial and/or cremation should be withheld. On page 147 it is stated that a Coroner "is not empowered to direct cremation" but a Coroner must formally assent to cremation in such cases.

About 30 per cent of Coroners in New Zealand have no legal background—and as is the case in the earlier chapters of this book which contain a lot of very useful information and guidance—this portion of the work lacks that guidance.

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