

Statute Law Review - Book Review

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Crown Office Proceedings

by Richard Gordon,

(Sweet & Maxwell, 1990. £145)

This new looseleaf work on the department of the High Court which handles what used to be called business on the Crown Side, namely proceedings before the Queen's Bench Divisional Court, is presented in eight main sections. These are respectively labelled A: The Crown Office, B: Contempt, C: Judicial Review, D: Habeas Corpus, E: Statutory Appeals, F: Cases Stated, G: Statutory Review, and H: Miscellaneous. The nomenclature immediately raises questions. Does 'Contempt' relate to contempt of court, contempt of statute or both? Since all appeals are statutory, what is the scope of section E? What is meant by the unusual term 'statutory review'?

Before pursuing these matters let me extend a warm welcome to a treatise which has no doubt been prompted by the recent surge of judicial review cases (mainly concerned with the legal meaning of enactments), and is long overdue. The previous work on the subject, published as long ago as 1947, was J. O. Griffiths' *Guide to the Practice of the Crown Office and Associates Department*. Lord Goddard CJ greeted this in a foreword with the remark that a book on Crown Office practice 'has been wanted for a long time'. Before that we had the 1890 work by Short and Mellor (second edition 1908) which also opened with the statement that for a long time 'a want has been felt for a modern work on the Crown Office Practice'. In a foreword to the present book Lord Justice Watkins, ignoring Griffiths, speaks of 'the gap which has lain open for some eighty years'. However it is worth recalling a statement made by Archbold in his own treatise on the subject published nearly 150 years ago:

'A work upon the Practice of the Crown Side of the Court of Queen's Bench, has not until lately been much wanted, the whole of the business being hitherto transacted by Clerks in Court, who were intimately acquainted with the Practice. The kindness and readiness of the Officers of the Crown-Office, in answering all questions of practice put to them by Gentlemen at the Bar, left the Bar little to wish upon the subject..'¹

I can testify from personal experience that the officials of the Crown Office are no less kind and ready with help today than they seem to have been in Archbold's day.

Section B of Mr Gordon's book turns out to deal only with contempt of court, which extends of course far wider than the Divisional Court. The offence known as contempt of statute (formerly statutory misdemeanour) is not mentioned, even though control over it is exercised by the Divisional Court. Nor is the leading modern authority on that topic, the Divisional Court decision in *R v. Horseferry Road Magistrates' Court, ex p Independent Broadcasting Authority* [1986] 3 WLR 132.

As is typical in the book, Section B is divided into three parts, headed 'Law',

¹ J.F. Archbold, *The Practice of the Crown Office of the Court of Queen's Bench* (Owen Richards, London: 1844) p. iii.

‘Procedure’ and ‘Materials’. The first part runs to a mere eleven pages, which demonstrates a weakness of this as a practitioners’ aid. It is clearly inadequate compared to an individual full-scale treatment of the topic in question, such as that by Professor Miller on contempt of court (492 pages).² Another weakness is shown when we reach the ‘Materials’ section. This gives the text of the Contempt of Court Act 1981, but there are unexplained omissions and no annotations. On this the reader would be much better off consulting Halsbury. Extracts given from the Rules of the Supreme Court are no substitute for the White Book.. And so on.

- Section E turns out to deal solely with appeals falling within RSC Ord 55 (appeals which by or under any enactment lie to the High Court from any court, tribunal or person). Section G, labelled ‘Statutory Review’, is concerned with cases (falling within RSC Ord 94) where an individual Act provides its own machinery for the challenging of a decision taken under it, often by what is termed a ‘person aggrieved’. The term ‘statutory review’ as a label for such cases is new to me, and appears to have been coined by the author. It is liable to cause confusion with judicial review, and is therefore unhelpful.

Despite the inevitable deficiencies of this form of treatment (which do no harm provided they are allowed for) Mr Gordon’s book is of undoubted value, if only as a starting point in preparing a case and as a checklist. It is clearly authoritative, as the following statement from the author’s preface indicates:

‘All the nominated judges have, I fear, had several chapters inflicted upon them as bedtime reading! Lord Justice Mann and Mr Justice Nolan have kindly taken on the extraordinary burden of reading and commenting on the whole text. . . Inevitably I have had to rely on the staff of the Crown Office for detailed and specific criticism and comment.’

A word should be said in conclusion about price and updating. The publishers say the price of £145 (which will no doubt be raised with inflation in future years) includes the updating service to the end of 1991 and that future annual updating charges will be about half the current price of the work.

Francis Bennion

² C.J. Miller, *Contempt of Court*, 2nd edn, (Clarendon Press, Oxford: 1990).