

## **TANGLING WITH LAW: REFORMS IN LEGAL PROCESS.**

**By F. A. R. BENNION.**

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MR. BENNION in a small book moves over a wide area and in addition to casting a cool eye on present imperfections he provides quite an amount of information. How many people know that Mr. Justice Stephen used to punish unseemly laughter in his court by making the offender stand by the prisoner in the dock until the end of the case? One wonders whether the dock would always be capacious enough if the conventional muffled titter disturbed a crowded court. He also relates that when wigs were first worn by young barristers judges condemned them as "coxcombical" and that as late as 1713 judicial wigs were not invariably worn—he writes that the statue of Sir John Powel (a Queen's Bench judge who died in 1713) in Gloucester Cathedral shows him in skull cap but no wig.

In a discussion of the practice of the police in questioning those suspected of crime he raises some queries which might profitably be considered by proponents of a restriction on the traditional right of the British freeman to preserve silence when interrogated. He recalls that at the Commonwealth Law Conference in 1965 the Director of Public Prosecutions suggested that a person being questioned, at any rate until he is charged, should be obliged to reply to questions put by the police. Mr. Bennion asserts that the nature

of the proposed obligation is obscure since it was not proposed that failure to answer should be a criminal offence. No doubt failure could be commented on at the trial but it is questionable whether that would be of great utility in practice. Then there are commentators who think that the Judges' Rules should be abolished. Lord MacDermott, Lord Chief Justice of Northern Ireland, has argued that the courts should determine, as a matter of law, whether evidence offered is admissible and, as a matter of discretion, whether it should be excluded in the interests of a fair trial. The difficulty is that the police would have to be given some guidance about permissible modes of questioning, and it is proper to recall that the original Rules were formulated because of differing judicial approaches to the same problem. Mr. Bennion is surely right in his assertion that if instructions have to be given it is preferable that they be given by judges rather than the executive. "Certainly," he writes, "nothing must be done to encourage the police to think that they can use any means to extract evidence." He adds that there have been several recent inquiries which have established brutality by police seeking evidence, and he mentions the notorious affair at Sheffield in 1963 when police officers were found by a tribunal to have inflicted serious injuries on persons in custody. According to Mr. Bennion, "one police officer is on record as saying that any of his colleagues who did not know the Judges' Rules would be a fool, but he would be even more of a fool if he adhered to them." In one respect in which there can be a check, that is, the duty to record the times of the beginning and ending of questioning and of statements, failure to follow the Rules occurs not uncommonly. Clearly, it was the intention of the judges who framed the new Rules that these matters should be recorded. The times can be of importance where it is alleged that the questioning has been oppressive and protracted or that the written statement has been the subject of prompting or impropriety by police.

He has something to say about delay and about costs and is exercised that litigants without a sense of proportion should have the judicial resources of the state placed at their disposal, and he recalls these words spoken by Lord Justice Knight Bruce about a squabble over £10:

“upon a matter that, if they had not good sense enough to settle it for themselves some respectable neighbour would probably upon application have adjusted for them in an hour . . . the career of cost, and heat, and hatred, of reproach, scandal and misery, in which they are now engaged, of which neither this day nor this year nor perhaps another will, I fear, see the end, and which seems well to exemplify an old English saying, that the mother of mischief is no bigger than a midge’s wing.”

To the continuing debate about law reform Mr. Bennion can be said to contribute something of value.

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