

Review of the 1st edition of *Statutory Interpretation* by Hugh J. O'Flaherty

Page 175

Statutory Interpretation by Francis Bennion, *Butterworths* 1985 £85.00 stg

This is a mighty tome. Weighing in the book at 904 pages. The author corner out of his corner at the sound of the bell full of fight. As a former parliamentary counsel he is not going to be cowed by the judges as most of his ilk have been from time to time. I recall many years ago before he was a judge, Sir Robert Megarry addressed a group in Dublin in the course of which he told a funny story about the parliamentary draughtsmen in which he quipped: 'Depend upon it, Sir, it could have happened to any of us!'

Mr Bennion says that at the heel of the hunt the trouble with Acts is that they 'use only words'. Act so faultily engendered pass in rapid succession before busy judges advised by busier advocates. Few of these actors have the time, or are equipped for cool and deep analysis. Yet learned judges lean to the delivery of impromptu and pithy (and therefore doubly inaccurate descriptions of the nature of statutes and the principles governing their interpretation.'

As regards his own book he says that it is designed to serve at all levels from mere dip to thoroughgoing research. Because it examines the subject in depth the book may appear difficult. But abjuring all false modesty he says: 'The difficult books are the ones that treat their material superficially. This book is no more abstruse than its subject.

It is in the form of a code fol-

Page 176

lowed by a commentary and the author puts forward suggestions on the user of the book from those who want to gain a thorough knowledge of the subject to those who may want to look up a particular point or get some tips on 'court technique'.

The scholarship is profound; Bentham, Craies, Maxwell and Cross, of course, but would you believe Cardinal Newman? (Ten thousand difficulties do not make a doubt) and from him back to Coke on Littleton.

Even the great Lord Atkin is not spared. He is stated to have ignored a presumptuous suggestion and delivered a 'tart re-joinder' as regards the role of law teachers in the legal scheme of things.

Apropos of which, the tradition in England was that law teaching was rather divorced from practice which did not prevail here until the last fifteen years or so. It is a pity because when I went to law school there was the interplay of the practitioner with the teaching of an academic subject. It seems that the teacher and the practitioner have now got hopelessly apart; one having to battle in the dust of the arena while the other writes rather lofty commentaries on the practitioners possible ineptitudes.

It is hard to say how helpful this book will be to the Irish practitioner. The rules for constitutional and statutory interpretation are by no means fixed. Until last term the literal interpretation' of the Constitution held sway but the case of *Tormey v Ireland* [1985] ILRM has said that the sensible working of the Constitution should prevail.

It may be that this great work will be the resort or those who will wish to conjure up a felicitous phrase or example to rescue an otherwise despondent argument: it may become a kind of a rich scholars 'Brooms Legal Maxims'.

If so, it would be well for the simple practitioner to remember that the judges tend to have the last word; they may want to get their own back!

At £85.00 stg. the book is not cheap but even if one were to look on the whole subject of statutory interpretation as the great Taylor ('Evidence') looked on the law of stamps as 'one of the most repulsive subjects which could be selected by an author for discussion', nevertheless the quotations

from judges, scholars and literary men are so extensive and so interesting as to make the possession of this book well worth while.

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3 *Irish Law Times* (Aug 1985) No. 8 pp. 175-176

For full version of abbreviations click 'Abbreviations' on FB's website.