



THE COURTS OF LAW : A GUIDE TO THEIR HISTORY AND WORKING. By Peter N. Walker. 1970. David and Charles, Newton Abbot. Pp. 207. £ 1.75.

IT IS generally said that the law lags behind the times, and it is not seldom that a law book lags behind the law. By the time a book is planned, written and published, a change in the law may take place, owing either to new legislation or to judicial activism. If there is anyone, who has no reasonable ground to complain about "law's delays" in the comprehensive sense of the expression, and who should rather be delighted at them, it is the producer of legal literature. *The Courts of Law* is, unfortunately, one of those books which turned out to be out of date, at least in part, soon after publication. By the time the book reached editorial offices of law journals, if not book stalls, in India, the Courts Act, 1971 was passed by the Parliament of the United Kingdom. The new Act happens to make quite a number of statements in the book obsolete. The book, however, as the sub-title indicates, deals not only with the working of the courts of law but also with their history. The history of the law, with a short introduction treating of the origin of law, oath and classification of offences, has a relevance which has not lost its significance by the adoption of the new legislation.

The book is intended for the layman. Most of the contents of the book would be a matter of common knowledge to the legal practitioner and the academic lawyer. The parts of the book which deal with the historical development of the court system may, however, be found informative not only by lay readers, but also by a good number of practitioners. As the book is meant for the lay man, it is written in easily intelligible language. There is little of "legalese" in it, nor is there any attempt made to give a simple idea a garb of complexity. One wonders whether there is any compulsion for a legal writer to indulge either in verbiage or in circumlocution with a view, perhaps, to creating an impression that he is saying something that is much more profound than what he has in mind, assuming, in all neighbourly love, that he has something to say. Stendhal, the French novelist, is reported to have been given to reading a few pages of the French Civil Code every morning for the purpose of improving his literary style. Could any writer afford to read a piece of legislation—and this applies to most pieces of other legal writing as well—in a common law jurisdiction without running the risk of ruining, beyond redemption, whatever intelligible prose style he has acquired? It may be that style is the man, but man is not impervious to the influences of style, judicial or statutory. It may be noted that the language of the law is gradually changing in England, while we in India seem to cling steadfastly to old forms. In the new administration order forms issued in England in 1971,



“the language it less stilted, clearer and less repetitious”.¹ For instance, “I am indebted” in the old forms has been changed to “I owe” and “to the best of (his) knowledge, information and belief” has become simply “to the best of (his) knowledge”.

Apart from the fact that a considerable part of the court system has been restructured by the Courts Act, 1971, a number of courts dealt with by the author, for instance, the Tolzey and Pie Powder Courts of Bristol, the Liverpool Court of Passage, the Salford Hundred Court, the Durham and Lancaster Palatine Courts, have been abolished. The author, as he deals with the history of the courts, has a chapter devoted to obsolete courts. It may be that in a revised edition of the book these courts could be given an honourable place in the chapter. The abolition of these courts was due to the proposals in the Beeching Report for a national system of courts. The Act of 1971 replaces all the higher criminal courts by a single Crown Court which is vested with all their criminal jurisdiction and also with the bulk of the civil and quasi-civil responsibilities which used to be exercised by a large number of quarter sessions. Judges of the Crown Court consist of High Court judges, circuit judges² and recorders appointed under the Act of 1971.³ The business of the Crown Court may be conducted anywhere in England and Wales. Under comprehensive powers granted to the Lord Chancellor, the locations of the Crown Court and the High Court can be administratively determined.⁴

The author's discussion of legal aid presenting the salient features of the Legal Aid and Advice Act, 1949 and the Legal Aid Act, 1960, has now to be supplemented by an appraisal of the provisions of the Legal Aid and Assistance Act, 1972. Under the Act of 1972 the Law Society is empowered to employ salaried solicitors to act under the legal aid scheme. The solicitors may give oral and written advice on any steps which the client might appropriately take. They may also take counsel's opinion.

Though entitled *The Courts of Law*, the book at certain places attempts to give a short summary of the law on a particular subject. To cite one instance : the law of divorce is traced from the days of Moses up to the Divorce Reform Act of 1969, indicating in some detail what the provisions of the law are at the present time. Here as well as on a few other topics

1. See 12 *The New Law Journal* 679 (1971).

2. Circuit judges consist mainly of the former country court judges and whole-time judges with criminal jurisdiction in the higher courts.

3. Recorders appointed under the Act act as part-time judges. They replace the former part-time recorders and chairmen and deputy chairmen of quarter sessions.

4. The Crown Court sits in six circuits into which the country has been divided for administrative purposes. In all the circuits, there are first, second, and third-tier centres located at different places. First-tier centres which are served by High Court and circuit judges deal with both civil and criminal cases. Second-tier centres served by both High Court and circuit judges, and third-tier centres served by circuit judges deal with criminal cases only.



like the jury, treasure trove and bail, a clear conspectus of the law is presented in the brief space of a few pages.

The chapter on "Coroners" not only traces the history of the office of the coroner, but also gives details of his duties and of the procedure followed in carrying them out. Speaking of "deodand" the actual object responsible for a death, the author gives the instance of a man killed in 1227 by a cart drawn by two horses. According to normal practice, it was only the wheel of the cart which was to be declared deodand and forfeited to the Crown. But in this case, the cart, the two horses and a pig which was on board were all declared deodand. The concept of payment of compensation to the victims of crime may perhaps be perceived in the Crown's occasionally renouncing its right to a deodand and awarding it or its equivalent value to the relatives of the dead person.

In places *The Courts of Law* provides fascinating reading especially where the history of certain institutions or practices is traced. The incident which led to the repeal of the ancient law of assize of battle is one instance. In 1817 Abraham Thornton was acquitted of the murder of Mary Ashford. Her brother appealed to the King's Bench Division against the decision. Thornton appeared before the court and challenged the brother to mortal combat claiming that he had a legal right to do so. The court, after examining his claim, decided that he could legally make a claim to appeal by combat, however obsolete it appeared. The girl's brother who was very young refused to fight. Thornton was, therefore, discharged. This resulted in the repeal of this ancient law the next year.

The glossary of legal terms at the end of the book will be of great assistance to a lay reader. The glossary is fairly exhaustive with even such familiar terms as "waive" being explained, and the explanations are easily intelligible to the layman.

In order to make it more useful to the general reader at present the book needs to be revised, keeping in view, among other things, the changes brought about by the Courts Act, 1971.

*Joseph Minattur**

* M.A. (Madras and Nagpur), Lic. D.C. (Luxembourg), Ph.D. (London), LL.D. (Nimeguen), D.C.L. (Strasbourg), of Lincoln's Inn, Barrister-at-Law, Indian Law Institute, New Delhi.