

## Reviews • Resensies

### *The Quest for Justice Essays in honour of Michael McGregor Corbett*

Edited by Ellison Kahn

Juta & Company

380 pages

Hard cover R215,00 (incl VAT)

On 3 August 1995, Juta & Company published a collection of essays in honour of the Chief Justice, Michael Corbett. This collection, entitled *The Quest for Justice*, does more than celebrate the distinguished career of a great South African jurist - it also celebrates a new kind of South African hero.

*The Quest for Justice* is edited by Ellison Kahn, Professor Emeritus of Law and Honorary Professorial Research Fellow at the University of the Witwatersrand. It contains biographical essays, tributes to Judge Corbett's character and standing from his colleagues in the profession, and a series of articles on legal issues particularly influenced by Judge Corbett during his judicial career. *The Quest for Justice* covers the career of one of the legal profession's most illustrious personages, one moreover who has lived and continues to live in interesting times.

*The Quest for Justice* contains fascinating insights into the particular career of a gifted man, and also the nature of a Chief Justice's work. More importantly still, for us as South Africans, it is our first celebration of a new kind of hero - the honourable man dedicated to the service of a just state. □

#### JUDGES NOT TO BE SENSITIVE SOULS

'... [T]he law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate': per Douglas J in *Craif v Harney* 331 US 367, 91 L ed 1546 at 1552 (1947).

### *Malan on Bills of Exchange, Cheques and Promissory Notes (Second Edition)*

by F R Malan, with J T Pretorius and  
C R de Beer

Butterworths, Durban

556 pages

Soft cover R182,40 (incl VAT)

I have not the slightest hesitation in saying that *Malan on Bills of Exchange, Cheques and Promissory Notes* (2nd ed.) is the best text book on this subject in this country, and firmly replaces the now obsolete 4th edition of *Cowen on Negotiable Instruments*.

The formula of numbered paragraphs, and both page references (from the case index), paragraph references (from the main index) and paragraph references (from the statute reference) with the text of the Bills of Exchange Act at the end, has been followed from the first edition, which to my mind, is a pity, since this means a constant to-ing and fro-ing from the text to the Act and back again and possible mistakes when referring to a paragraph number instead of a page number. This is, however, a minor quibble. I do find the footnote numbering decidedly minute, and difficult to see the right number, but this may be caused because of this reviewer's advancing age.

There are a number of minor typographical errors. Section 19(1) of the Act should read in fact: 'No contract on a bill, whether it be the drawer's ...'NOT 'a drawer's.' The same mistake is, however, repeated in Malan's first edition; the Butterworth Statutes; the Juta Statutes; and *South African Banking Legislation* (Malan and Oelofse).

*Whistler and Forster* (1863) 32 LJCP 161, like the first edition is erroneously referred to as 1883. I also noted the following: Sec 20(2) instead of sec 29(2) (p 78 fn 11); Consitutum possessorium (p 78); Supsensive (p

91); Amino indor sandi (which seems somewhat acidic - p 135); while Chalmers and Guest seems to be referred to throughout as Guest and Chalmers.

A mysterious Government Gazette appears in footnote 2, page 219 with the sinister reference 'GN\*\*\* of \*\*\* 1993 - obviously something to do with censorship.

The French reference to Savary 'Parères ou avis et conseils ...' has slightly suffered. 'Le plus importants' should be 'Les plus importants' and 'étrangers' should be 'étrangers'.

In regard to the author's commentary on section 19(2)(b), par 67 page 91, I have some difficulty. I would submit that it is an unnecessarily cumbersome way of analysing the subsection.

I would also respectfully disagree with Professor Malan's treatment of the post-dated cheque in par 191, page 296. He says: 'A post-dated cheque is a bill payable on a future date and becomes a cheque on that future date.' This Cinderella-like quality of transformation from, presumably its pumpkin state of being a bill payable on a future date, to its ball-gowned metamorphosis as a cheque - doubtless when the clock strikes twelve, does not seem realistic at all.

How can such an instrument ever have possibly been a bill payable on a future date? A bill, according to section 9 is payable at a determinable future time 'if it is expressed to be payable: (a) at the expiration of a fixed period after date or sight; or (b) on, or at the expiration of a fixed period after, the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.'

This 'bill' prior to its transformation fits into neither category, and hence, by definition is not payable at a future time. It is therefore silent as to its due date, and thus in terms of section 8 payable on demand.

The date on a cheque is not, and