

Reviews • Resensies

The Quest for Justice Essays in honour of Michael McGregor Corbett

Edited by Ellison Kahn

Juta & Company

380 pages

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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); Supsensitive (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

was never intended to be, a due date. Since it is a cheque, the date thereon simply means the date from when demand can be made. No time for payment is expressed thereon - whether it be prior to the post-date or after. Hence it is, and always was, a demand instrument pursuant to section 8(1).

Even prior to the post-date it was still payable on demand save that demand was deferred. The remarks of Holmes J A in *Standard Bank of South Africa Ltd v Sham Magazine Centre* 1977(1) S.A. 484 (A) at 505 advocating the legal osmosis of such an instrument were *obiter* and, with respect, incorrect.

However, this academic flight of unreality into a Cinderella world has tempted this reviewer into the equally unreal world of poetry, and the following poem is respectfully dedicated to Professor Malan in the hope that his views on the nature of a post-dated cheque will have changed by the time the third edition is ready for publication:

*A bill of exchange embryonic
Displayed some traits histrionic.
'Twas a post-dated bill
At midnight - until
It's a cheque now, chameleonic.*

D G Tobias
Durban Bar □

Income Tax in SA Law and Practice

deur RC Williams BA LLB (UK) LLM
(Londen) H Dip Tax Law (Wits) PhD
(Macquarie)
Professor, Universiteit van Natal.

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Hierdie boek is 'n oorsig van die Suid-Afrikaanse inkomstebelastingreg. Die skrywer se doel is om die stof op 'n beginselgrondslag, eerder as chronologies artikel vir artikel, te behandel. Hierdie benadering maak die uiteensetting vir 'n leser makliker verstaanbaar as wat andersins die geval kon gewees het. Dit verskaf ook

argumente vir die uitleg van die Inkomstebelastingwet op die basis van die beginsels wat die Wet onderlê.

Die skrywer se benadering word onder andere getipeer deur die titel tot hoofstuk drie, wat lui: "The legislative scheme and cardinal features of the South African income tax system". Verder aan sê hy: "... the courts have, when confronted with tax questions, generally sought an answer via a narrow and literalistic focus on the *ipsisima verba* of the Act ... instead of searching first for underlying concepts and principles and then asking whether the statutory definitions compel a different conclusion". (p 73-74.)

Die boek poog nie om die hele Wet in besonderhede te behandel nie. Wat sommige gedeeltes van die Wet betref, is die bespreking dus kursories. Die werk kan gevolglik nie beskou word as 'n volledige handleiding oor die inkomstebelastingreg nie. Waar die behandeling van 'n onderwerp nie poog om volledig te wees nie, gee die skrywer gewoonlik 'n verwysing na 'n vollediger bespreking in *Silke on South African Income Tax*. Daardie verwysings verhoog die bruikbaarheid van die boek.

Uit hoofde van die feit dat die inkomstebelastingreg aan baie gereelde en substansiële wysiging onderworpe is en die boek nie 'n losbladwerk is nie, moet aanvaar word dat dele daarvan besonder gou sal verouder. Dit moet egter gesien word teen die agtergrond van die skrywer se doel om eerder algemene beginsels te verduidelik as om 'n volledige byderwetse handleiding oor die vakgebied te verskaf. 'n Regspraktisyn wat die boek aanskaf, sal dus moet aanvaar dat hy ook minstens een ander (volledige) werk oor die inkomstebelastingreg tot sy beskikking sal moet hê.

Die boek bevat heelwat verwysings na Australiese en Engelse beslissings asook na Suid-Afrikaanse tydskrifartikels, handboeke en bronne soos die Margo-verslag. Daardie verwysings verhoog die praktiese nut van die werk. Die aansienlike hoeveelheid verwysings na Australiese gesag is waarskynlik gedeeltelik te wyte aan die feit dat die skrywer tien jaar in daardie land deurgebring het waar hy onder andere aan 'n universiteit verbonde was. Die leser moet mys

insiens egter die Australiese verwysings met versigtigheid hanteer, aangesien daardie land se regstelsel, en die benadering van die howe aldaar, dikwels heelwat van dié in Suid-Afrika verskil. Op p 66 n 118 word die volgende stelling byvoorbeeld gemaak wat na my mening nie in Suid-Afrika toepassing sal vind nie:

"In Australia, the fact that the taxpayer may have to refund moneys received (even where such refund is given as a matter of 'business good sense' rather than in terms of a contractual obligation) has on occasion led the court to hold that, while the possibility of such refund exists and provided that the taxpayer creates some kind of suspense account for the moneys in question, such advances do not have the quality of 'income' ..."

Silke paragraaf 2.19 sê in dié verband die volgende betreffende die huidige regsposisie in Suid-Afrika:

"Once income has accrued to a person ... the ultimate disposal of the income by that person does not affect its nature as income in his hands."

Die skrywer maak heelwat submissies van sy eie, die geldigheid waarvan die leser uiteraard self sal moet weeg teen die agtergrond van die aangehaalde gesag. Op p 315 sê die skrywer:

"... if a company [which is not being wound up] purchases an asset for R10 000 which has a current market value of R25 000 and it donates the asset to a shareholder, the distribution is not a 'dividend' [as defined]."

Ek meen dat hierdie stelling nie met die vorige paragraaf van die werk strook nie. Aldaar het die skrywer se beskouing naamlik daarop neergekom dat die gratis oordrag van 'n bate aan 'n aandeelhouer uit 'n ongerealiseerde wins wat op die voormelde wyse ontstaan het, wel 'n dividend is.

Die boek is in 'n maklik leesbare styl geskryf. Die verdeling van die inhoud in kort paragrawe vergemaklik die gebruik daarvan.

Anton Derksen
Pretoria-Balie □