BOOK REVIEWS

A CASEBOOK IN THE LAW OF CRIMES, by Peter Burns, LL.M. Wellington. Sweet & Maxwell (N.Z.) Ltd., 1968. xxvii and 553 pp. (including index). New Zealand price $13.50.

How does one review a casebook in which the editor has assembled a selection of judgments, most of them edited, and with a minimum of comment, has posed a large number of questions on the material thus presented?

It is refreshing to read some of the judgments delivered in the 17th, 18th and 19th centuries where, with a directness which is much appreciated, clear statements of principle are enunciated. Alas, as one moves on to judgments of recent date the distillation of principles of law becomes increasingly difficult. More and more cases decided in different jurisdictions are referred to, followed or distinguished. Dicta from Canada, Australia, New Zealand and even the United States all find their way into English arguments and decisions. Pity the poor law student of 2068! But maybe his task will be confined to feeding the relevant facts into a computer programmed to produce the right legal answer. For his sake, we rather hope so.

One wonders whether too much emphasis is currently placed on the case method of learning law, and whether there is a tendency to look to decided authority for principles and away from the statute creating the offence. Lord Loreburn warned against this in *Swansea Vale (owners)* v. *Rice* [1912] A.C. 238, 239 thus—

> My Lords, I am glad that the learned counsel who addressed to your Lordships such a concise and admirable argument recognised the true value of decided cases in connection with an argument like this. Cases are valuable in so far as they contain principles of law. They are also of use to show the way in which judges regard facts. In that case they are used only as illustrations.

To like effect is the dictum of Lord Buckmaster in *John Stewart and Son (1912) Ltd.* v. *Longhurst* [1917] A.C. 249, 258:

> In my opinion, however, the learned county court judge has fallen into error in his endeavour to obtain from decided cases a fixed standard of measurement by which to test the meaning of the words in the statute . . . No authority can with certainty do more than decide whether a particular case upon particular facts is or is not within the meaning of the phrase.

These comments are made, and the dicta of Lord Loreburn and Lord Buckmaster included, not to belittle or detract from the importance of decided cases, but to try to maintain a balanced perspective of the whole field. It is of the utmost importance to bear in mind that cases are decided on their particular facts and the law applicable to those facts.

Quite early in this casebook (at p. 101 to be precise) this question is asked—"Do you think that *Fraser's* case would have been decided differently if the report of *Lim Chin Aik* had been available to the Court of Appeal prior to delivering its decision? See the comments of Hardie Boys, J. in *Helleman's* case". Turning to p. 44 of the casebook one reads the comments of His Honour in *Helleman's* case where he

deals succinctly and lucidly with the controversy which some have sought to create between *Fraser* and *Lim Chin Aik*. As His Honour points out, the Privy Council in *Patel* v. *Collector of Customs* [1965] 3 All E.R. 593 "has without doubt approved the majority decision in the last mentioned (*Fraser's*) case" while being at pains to point out that its decision in *Lim Chin Aik* had not been overlooked. What does emerge is that in each case the statute has been applied to the facts of the case under review and because those facts have differed materially, the end results have also differed. It may have been preferable if Mr Burns had chosen to include the Privy Council decision in *Patel's* case and make passing reference to *Lim Chin Aik* rather than as he has done, give the latter case special emphasis. Adopting Mr Burns' technique I shall simply pose the question—"Is either case more important than the other?" I think not.

Under the heading "Vicarious liability" Mr Burns has included *Budd* v. *Police* at p. 120 of the casebook, but has set out the judgment of North, P. only. Three separate judgments were delivered by the members of the Court of Appeal in *Budd's* case. Counsel appearing before me since then have submitted "that the law is now clearly set out in *Budd's* case". I have, quite frankly and with the greatest respect been unable to agree on the "clarity" aspect. I would hope that in any future edition of this casebook, Mr Burns would include the decision of Henry, J. in *Ashworth* v. *Sullivan* (as yet unreported) in which His Honour reviews some aspects of the judgments in *Budd's* case and in my view, again with the greatest respect, achieves the clarity and precision previously lacking in the interpretation of the section involved.

Kilbride v. *Lake* (*Casebook* p. 36) is another decision which hardly warrants elevation to the category of "leading case". Although the proved facts have not been stated with precision either in the report ([1962] N.Z.L.R. 590) or in the casebook, it seems that they come within a narrow compass, viz., that the appellant drove his car displaying a current warrant of fitness to the place where he parked it, left his vehicle, then later returned to find that the warrant had been removed or at any rate had disappeared. The situation reminds one of the parable of the tares—"an enemy hath done this". Unnecessarily lengthy processes of law and complexity of reasoning seem to have been employed in reaching the conclusion that on these facts no offence had been committed.

Is it mere coincidence that the author of the notes appearing under the heading "The Actus Reus of an Offence" (1963) 1 N.Z.U.L.R. 139 and bearing the initials P. E. K. should now be identified in the casebook at p. 39 as a gentleman named Kilbride?

One wonders why *Conroy* v. *Paterson* at p. 357 of the casebook should find a niche among the leading cases on criminal law. It was decided both at first instance and on appeal on its facts and the elementary principles of law involved. On referring to the report ([1965] N.Z.L.R. 790), I see that counsel for the appellant was one Burns, none other, I understand, than the editor of the casebook. The only unusual aspect of the case was that the prosecution was brought by a private individual—not common these days.

At p. 28 Mr Burns includes an excerpt from the speech of Lord Reid in *Thabo Meli et al* v. *R.* and on the following page he notes the view of the New Zealand Court of Appeal in *Ramsay's* case, having also noted that in *Church's* case the Court of Criminal Appeal followed *Thabo Meli.* This review does not constitute the proper vehicle for a critical analysis of the principles eunciated in these three cases. It is to be hoped that someone will undertake a detailed review of the decision in *Ramsay's* case, for its implications can be far-reaching, and, with respect, clearly opposed to the plain meaning of the words used in s. 166 and s. 167 of the Crimes Act 1961. Could it be said, for instance, that if Ramsay had administered the grievous injuries he did to his victim and instead of using the gag as the last instrument he had repented and in good faith given her brandy which was intended to revive but had the effect of choking her, he would not be guilty of murder? Or if the gag had been used as the last instrument and he had repented and taken her to hospital where she died while undergoing surgery for her injuries would he not be guilty of murder? A number of questions of this kind are raised by the decision in *Ramsay's* case, and it may be that *Thabo Meli* will yet be recognised as better authority on causation than *Ramsay.*

The casebook is clearly intended to stimulate discussion among students. As I remarked at the outset the editor has, with a minimum of comment, posed a large number of questions on the material presented. Perhaps the nadir is reached at p. 247 where, following an extract from *R.* v. *Malcolm,* there appears this bald question—"Would this case be decided the same way today?"

I shall not attempt to comment on any other of the questions posed. No doubt lecturers in criminal law will find them useful as ready-made subjects for opinions and exercise setting.

I am interested to note the spelling of *Carr-Briant* in the index and in the text. For some reason the All England Reports persist in the spelling of *Carr-Braint* in the face of *Carr-Briant* in the King's Bench reports and Halsbury. What is much more important, however, is that I should have thought *Carr-Briant* worthy of inclusion in Chapter 2 of the book.

Thus far I have been wholly critical, constructively I trust. I hasten to add, however, that as a collection of many of the leading cases, the casebook has real value to the student of criminal law. Searching for an answer to many of the questions posed would provide an excellent exercise either by way of set work or tutorial discussion. I fear, however, that the book would not be of great assistance to the criminal lawyer seeking a direct answer to a problem.

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[Mr Murray's suggestion that a detailed review of *Ramsay's* case ought to be undertaken has in fact been implemented earlier in this *Review.* See "Homicide and the Supposed Corpse" *supra* p. 278. Ed.]