

BOOK REVIEW

FACULTY OF JURISDICTION OF THE CHURCH OF ENGLAND

By G. H. NEWSOM, Q.C.

(Sweet and Maxwell [1988] £12.95)

A Review by JOHN HOLDEN, Chancery Barrister, Co-ordinator of the Society's Faculty Jurisdiction Working Party and sometime member of the Faculty Jurisdiction Commission.

Let me, at the outset, for those who prefer to read a book unencumbered by the opinions of another, give a brief and fairly factual description of Chancellor Newsom's new work. It is a volume of two hundred and sixty-two pages, within a simple but elegant bronze soft cover, which has bold, black lettering. The pages include a brief Foreword by the Archbishop of Canterbury and a similarly economical Preface by the author (both of which items compress much into a small space). There are three Appendices – one comprises the un glossed texts of the Faculty Jurisdiction Measure and the Faculty Jurisdiction Rules (as amended); one comprises model Forms of Delegation of authority; and the last one consists of a note by the author on the "ecclesiastical exemption". These items, together with the unambitious, but accurate and functional Index, constitute the last seventy or so pages of the book. The format which has been adopted is helpfully straight-forward and clean, both in terms of its marshalling of content and in its actual appearance on the printed page. Seven chapters are provided for an Introduction, Procedure in the Consistory Court, Fabric and Contents, Churchyards, Unconsecrated Buildings and Land, Enforcement Costs and Fees – and each of these is sensibly sub-divided, under appropriate and clearly marked headings.

The book costs (as I discovered in making, with our Chairman, one of the initial purchases, at its Reception launching) £12.95. Is it, then, worth buying? My decisive answer is, "yes!" I shall discuss its potential market and suitability for different readership groups later, for those who doggedly read on, but I believe that everyone, who is a member of this Society ought, *ipso facto*, to procure (and, indeed, preferably in order to encourage the publishers to take this area of law seriously – to purchase!) a copy. (Perhaps proof of possession should be required as a condition precedent for joining of all aspirants for Membership of the Society).

I now turn to a more reflective and opinionated consideration of the text and its merits; of the various contributions which the author has made to the shaping of ecclesiastical law and practice, as culminating in this book, and of the possible uses to which the book can effectively be put.

In the short time available to me, I have sought the reactions of a small but diverse group of those who have at least 'dipped into' its contents and the reaction of all has been favourable, most expressing its potential practical value to them, despite their very different circumstances and interests. One, muted, and rather 'specialised' criticism of the text which has been voiced to me is that the author makes markedly heavy and frequent use of his own decisions as Chancellor to explain the legal principles (a Denningsque foible of which it will doubtless amuse Chancellor Newsom to stand accused) but this is explicable, not as the

abused privilege of authorship, so much as the inevitable consequence of the author's having been for thirty years a Chancellor, much of that time in three very different dioceses; and from the good fortune of many leading cases having passed through the courts over which he has presided with distinction. He has been, as judge and as Chairman of the Faculty Jurisdiction Rules Committee, that strangest and most stimulating of phenomena, the innovative traditionalist – and these characteristics inform virtually every page of the book. I do not think that any of the present distinguished Bench of Chancellors would demur at the proposition that the Chancellor shares, with Chancellor Garth Moore, the position of doyen of contemporary ecclesiastical lawyers. Both, by their administrative offices and their academic writings have contributed to the development and strengthening of a jurisdiction which might, otherwise, have lapsed, or been abolished. Both stand in the list from Swinburn, Godolphin, Prideaux, Burn, Phillimore, Elphinstone and Wigglesworth: each an authority in his lifetime. All of this must support the Chancellor's own claim that his purpose in writing the book was to provide a definitive account of the Faculty Jurisdiction: and this reviewer is so far prepared to accept the claim as is justified by adding "so far as anyone could do so, within the physical constraints of such a work". No book on the topic, in any event, could hope to be absolutely definitive, because of the discretionary and flexible character of the system, which allows for considerable variation of provincial and diocesan practice: see pp. 36, 67, 185. What can be said is that chapter by chapter the coverage is comprehensive, accurate and workman-like, as one would expect. The exposition of the law is scholarly, without being academic, and practical, without actually amounting to a practice manual. As a historian of Church Courts and, in particular, the Faculty Jurisdiction, I am sorry that the author's terms of reference have prevented his tracing the development of the jurisdiction from its effective origin in the early eighteenth century (but those interested are referred to Peter Winkworth's "An Authentication of the Faculty Jurisdiction") and, as a member of the Faculty Jurisdiction Commission, I am sorry that the body only merits a mention on page 5 of the Introduction, though I recognise that the author's concern is with the law as it is, not as it was and not as it may be.

Who may expect to find the book of value? First, and in some ways, foremost, will be all those dedicated volunteers, the members of congregations, to whom falls in greater or lesser measure, responsibility for the upkeep and maintenance of church buildings. I was lucky enough to be a P.C.C. Secretary for many years not only with a legal background but also with a practical and academic knowledge of the jurisdiction. I am very conscious of how many lay officers, particularly wardens, have been mystified and irritated by the apparently labyrinthine processes of a system which demanded and exacted much of them, without revealing much of its rationale or purpose by way of justification. Parochial clergy, and even archdeacons – the very keystones of the system – ought to find the book invaluable (as witness pre-emptively the comments of Archdeacon Burgess in reviewing the second edition of Chancellor Moore's introduction to *English Canon Law*, in the February volume of this Journal). Diocesan authorities must well use the book as the basis of training days for young priests, newly sent in to their archdeaconries. Certainly a wider understanding of the *raison d'être* of each of the stages of the procedure in applying for a faculty would reduce the friction and resentment which often accompanies the active involvement of a parish in the operating of the system. The Chancellor is a marvellously good communicator. He writes in a lucid and attractive way and non-lawyers should not find them-

selves struggling to understand the technical legal points, which have, inevitably, to be touched on and explained.

The Chancellor hopes that members of planning authorities and developers, *inter alia*, will give the book their attention. I hope so too. Less speculatively it would be very heartening if the various experts who comprise DACs were to resort to it, if only to witness the very real respect and appreciation which the author accords them in the exercise of their difficult roles. Again, new members of such bodies would be likely to profit from the insights which are given of the legal methodology of church lawyers. And what of the latter? I suppose that experienced chancellors and registrars will find little that is new to them (a factor which I take to be great praise for the book, rather than otherwise), but they will doubtless appreciate the benefits of having so much material in a concise and handy form within the bounds of one work. The real beneficiaries amongst lawyers ought to be those who come to church law fresh – the Secretary of the Society informs me that at least forty practising barristers have recently shown interest in taking up membership – and for them it will not so much be the description of substantive law, or even of, to all of them, unusual procedure, so much as the stressed need to have highly developed pastoral, liturgical, aesthetical and architectural sensitivities in order to be an effective advocate or proctor. In preparing a matter for the Consistory Court, over the past weeks or so, I have deliberately adverted to Chancellor Newsom's book in order to see whether it could serve as a practitioner's manual – in respect of these extra-legal, as well as legal, considerations – and find that, at the very least, it provides an effective and useful guide and ought to save the novice practitioner from too many solecisms. More than that, if the lawyer understands, as the Chancellor would have him understand, that a hectoring, bullying, in short, an 'unchristian' mode of operation on paper and in court, is entirely inappropriate, then the book justifies itself on that account alone.

The author does not, generally speaking, present a critique of the system, contenting himself, instead, with describing how it actually operates. He is particularly adept, as could readily be anticipated, in dealing with the effects of the new rules, of which he has been a leading and vigorous developer. Though he does successfully demonstrate their efficacy, I share with our President some misgivings about the influence of the common law (including Chancery, for this purpose) on the procedure, as well as the substance, of canon law. Reliance on common law and chancery models of practice and procedure (see e.g. p.70) may, in the long term completely destroy the flexible, informal and inquisitorial character of faculty proceedings.

I am conscious of having been, as I was earlier reporting the author as having been perceived to be, too dependent on my own experience, in describing my reactions to this much needed book. There is, however, an amusing touch of irony, that the reviewer for this Journal of a work entitled, "The Faculty Jurisdiction of the Church of England", should be the self-same person who, ten years ago, put down the motion in the General Synod "that the Faculty Jurisdiction of the ecclesiastical courts should be abolished", a factor which was partly instrumental in bringing about the Faculty Jurisdiction Commission. I felt then, however, that the jurisdiction was degenerating into a rigid, expensive and painfully slow system, when it had all the potential to be flexible, cheap and expeditious. By his creative approach to delegation, to fees, and to many other aspects of the

jurisdiction, all touched on in this book, and, now, by the book itself – apologue as well as authoritative text book – Chancellor Newsom has contributed much to a change for the better. This book is a professional, tight and interesting exposition of an area of law perceived by many hitherto, as being arcane and shrouded in mystery. Its author has distilled into it the wisdom and experience of at least half a lifetime, at the same time conveying the respect, relish and, even, affection he has for the system which he so effectively describes.