

THE STUART CASE, by K. S. Inglis, Melbourne University Press, 1961, pp. i-vi, 1-321.

This book is a well written, well organized, account of what is probably South Australia's most widely known criminal case. The proceedings which followed the trial of Rupert Max Stuart for the murder of a little girl named Mary Hattam near Ceduna in South Australia towards the end of December 1958 caused South Australians to think more about the basic structure for achieving criminal justice in their society than anything else in recent years. In view of the deep and emotional cleavage at the time of the proceedings between those who supported the official view of things and those who challenged the processes of law and of government, it is remarkable that the author of this book, who after all was in Adelaide throughout the relevant time, was able to maintain an objective attitude. In this book he does not take sides. He has been content to organize the relevant facts, to describe the relevant events, and to let them speak for themselves. Only occasionally is the reader given a hint as to which side of the dispute the author must have favoured at the time. Occasionally, but only indirectly, the reader has a sneaking suspicion that the author may, even at the time of his writing, have had some doubts as to the correctness of Stuart's conviction.

Stuart is an aboriginal Australian of the Aranda tribe who had one white great-grandparent. Some days after Mary Hattam's raped and mutilated body was discovered Stuart was arrested; and, while in the custody of the police, he signed a confession. Without that confession it is difficult to see how he could have been convicted of murder by judge and jury, as he was. He was sentenced to death. He appealed to the Full Court of the Supreme Court of South Australia unsuccessfully. The High Court of Australia refused him special leave to appeal to it but expressed some doubts as to the propriety of certain incidental occurrences at the trial. An attempt to take the case further by way of appeal to the Judicial Committee of the Privy Council was unsuccessful.

While the various appeal procedures were attempted Stuart was held in gaol, and his execution was, of course, delayed.

While Stuart was in gaol and awaiting execution, certain further material came to light from which it seemed, to those who had interested themselves in Stuart's case, that he might have been wrongly convicted. The original doubts arose from the reactions of a priest who spoke Stuart's native tongue and who was called upon to assist him to prepare for his execution. That priest, after several conversations with Stuart, came to entertain real doubt as to Stuart's guilt. One thing, which provided much of the basis for the priest's doubt, was that he and others interested became convinced that Stuart could not have made the confession which he had signed in the language which it in fact used. His English simply wasn't good enough. The press, in the form of the *Adelaide News*, became interested, took up the matter, and financed further investigations which produced witnesses who, if believed, could provide at least a possible *alibi* for Stuart for the period in which the murder had been committed.

Questions were asked in the Parliament of South Australia. Ultimately a Royal Commission, on which sat three judges of the Supreme Court of South Australia, was set up to investigate.

Proceedings before the Royal Commission were lively to say the least. One leading Counsel brought in from New South Wales to appear for Stuart, the late Mr. Shand Q.C., "marched out", claiming that he had been prevented by the Commission from cross-examining police witnesses in the way he desired, and in the way he said was necessary in Stuart's interests. Angry clashes occurred both between Counsel assisting the Commission and Counsel appearing for Stuart, and between members of the Commission and Counsel appearing for Stuart, both before and after Mr. John Starke Q.C., of Victoria, replaced Mr. Shand as representing Stuart.

The proceedings of the Royal Commission made headline news throughout Australia and were reported by leading newspapers in England.

The explosive nature of the proceedings arose, it seems, not so much from the fact that a man's life was hanging in the balance, though that alone might have made the proceedings newsworthy so far as the press was concerned, but because the campaign of protests on behalf of Stuart were apparently seen by the government, by the judges, and by the police, as a deliberate and unjustified attack upon established authority, upon the efficiency and the security of government administration, and upon the judiciary itself.

Stuart received a series of temporary respites or stays of execution. After the Commission had sat for some time, the tension of the hearings was reduced somewhat by the commutation of his sentence to life imprisonment. It seems clear enough, now, that Stuart was properly convicted. Few murderers can have had so much time, trouble and expense committed to a demonstration that their conviction was justified. But the story as told by Dr. Inglis reveals a great deal about the nature of South Australian government and society and not a little about the importance of the basic detailed work that must be done, principally by the police, if criminal justice is to be efficient and certain.

One might have thought that once doubts, reasonably based, were raised about Stuart's guilt or innocence, the appropriate government authorities would have moved quickly to investigate the doubts, to allay any public disquiet that might have been aroused by their publication, to provide the means by which relevant evidence, which had not been available at the trial but which might demonstrate Stuart's innocence, could be tested. But nothing of that kind was done. The Government and officialdom generally reacted to the public expression of doubts as to Stuart's guilt with immediate resistance and apparent determination to hang Stuart on the appointed day. Led by the *News*, which became quickly and vociferously committed to the demand for a full re-investigation of the Stuart case, there was a public demand for such a re-investigation; and this was supported by many qualified and eminent people in other parts of Australia. When the Royal Commission was at last charged with such a re-investigation, and began its sittings, it gave several indications that its members viewed the people who had made themselves active in Stuart's behalf as being involved in an attempt to discredit the established organs for the maintenance of law and order and for the administration of justice in South Australia.

On the other hand, Stuart's helpers made several mistakes, acted hastily on occasions and, but for the fact that they might claim the

excuse that they were fighting against time to protect a possibly innocent man from execution, laid themselves open on one or two grounds to charges of irresponsibility. When all the story is told, however, and all the evidence is in, one very important thing emerges. That is, that if the police and the prosecution authorities do not do their work well, then, in the Common Law tradition, no hierarchy of courts, however well manned and however dedicated to the impartial administration of justice, can be sure to repair the initial defects. If Stuart murdered Mary Hattam, and it may be taken that he did, then it should not have been very difficult to prove it beyond the last faint shadow of a doubt. There were footprints near the body not properly compared with Stuart's, not properly classified, and not recorded. There were hairs clutched in the fingers of the victim not examined. There were witnesses to Stuart's movements on the day concerned not interrogated and not called at the trial. There was a confession quite clearly written more in the words of the interrogating policemen than in the words of Stuart, which several policemen swore was in the very words spoken by Stuart. If the detectives had done their work "according to the book" and given their evidence according to the absolute truth even on incidental matters, there would probably never have been a Stuart case known outside a comparatively few people concerned with the actual trial, sentence and execution of Rupert Max Stuart.

But when that has been said, it remains to note that the Stuart Case made the occasion for South Australians to examine the workings of their judicial system and of their governmental organs connected with the judicial system, and for South Australians and many outside South Australia to ask themselves some fundamental questions about the nature of the administration of justice not often asked or answered. Dr. Inglis has performed the task of telling the whole story in an admirably clear and concise way. Drama and tension are provided not merely by the fact that the central figure's life hung in the balance through much of the period concerned, but by the emotions aroused by the issues among the principal participants. The effect of an emotional appeal for justice for one man upon large numbers of comparatively uninformed people is seen; the angry and improper reaction of representatives of a proud police force under attack is several times in evidence; and the effect of hurt dignity upon ministers and judges carrying responsibility in the affair obtrudes on occasions.

It may be that in the very long run it is a good thing that quiet and settled communities like that of Adelaide should be disturbed from time to time in their basic structures, as Adelaide's was by the Stuart case; but such disturbances leave scars nonetheless. The hurt dignity of officialdom produced unfortunate actions after the event. The *News*, and its Editor-in-Chief, were prosecuted for seditious libel (and for other offences)—unsuccessfully as it turned out. Some of Stuart's legal advisers, those in particular who represented him in the beginning and carried the burden in Adelaide of organizing steps to protect his interests after the trial, have subsequently found it desirable to leave Adelaide and to practise in another State of Australia.

This book should be read by all those interested in the relations between the administration of justice and the executive Government of a country—not only by those interested in South Australia.

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MATRIMONIAL CAUSES JURISDICTION, by *Zelman Cowen, B.C.L., M.A. (Oxon.), B.A. (Hons.), LL.M. (Melb.) and Derek Mendes da Costa, LL.B. (Lond.)*, Australia: The Law Book Co. of Australasia Pty. Ltd., 1960, pp. i-xx, 1-163.

"Very many persons in South Australia object to the notion of the marital tie being dragged down to the level of New South Wales"—with this expression of opinion given on the occasion of the Debates of the Australasian Federal Convention held in Sydney in 1897 by Mr. P. McMahon Glynn, of South Australia, and the diametrically opposed rhetorical question by Sir John Downer also of South Australia, "What subject matter is more fitted for general legislation," the learned authors introduce their text book.

The arguments presented pro and con the inclusion in the Federal Constitution of section 51 (xxii) bear a remarkable resemblance to the questions which were debated prior to the passing of the Matrimonial Causes Act 1959 (Commonwealth) particularly in relation to the grounds for dissolution of marriage.

In this lively book which went to press before the Commonwealth Matrimonial Causes Act came into operation, Professor Zelman Cowan, Professor of Public Law and Dean of the Faculty of Law, University of Melbourne, and Mr. D. Mendes da Costa, Senior Lecturer in Law, University of Melbourne, have devoted themselves solely to the matters adumbrated in the sub-title, namely, "The Law of Jurisdiction, Choice of Law and Recognition of Foreign Decrees under the Matrimonial Causes Act, 1959".

After a brief summary of prior Commonwealth legislation and the basis of prior State legislation, the authors deal with questions of jurisdiction of the Courts and discuss such questions as the possibility of original jurisdiction in the High Court in matters arising under the Act where the husband and wife, parties to a matrimonial cause, are resident in different States, and the problems which may arise where there are concurrent suits in Australia and in a foreign forum.

The work proceeds to discuss questions of domicile and the presumptions of domicile raised by section 24 of the Act in proceedings for dissolution of marriage, questions of domicile and residence in proceedings for nullity of marriage and proceedings for judicial separation, restitution of conjugal rights and jactitation of marriage.

Having dealt shortly with the new statutory provisions contained in section 5(a)(b) of the Act enabling proceedings to be taken for a declaration of validity of a dissolution or annulment of marriage or the validity of a decree of judicial separation, the learned authors discuss at some length the question of recognition of foreign decrees in the light of Part X of the Act. They then consider the exercise of jurisdiction in relation to co-respondents not domiciled or not resident in Australia, and questions of enforcement of orders for damages and costs. A chapter is devoted to proceedings for ancillary relief and especially the effect of a change of domicile upon such proceedings and a further chapter to the "transitional provisions" of the Act.

The task of authors of a text book such as this, written prior to the coming into operation of the statute, is to some extent untrammelled in that there is no judicial interpretation of the statute itself. In some cases, however, there has been a suspicion that

text books dealing with new statutes have been produced too rapidly in a competitive spirit. This is not my impression of the text book under review. The learned authors will probably find material for a supplement before very long, but I would expect that the book in its present form would continue to be useful both to students and to lawyers practising in the field of the matrimonial causes jurisdiction. The work is not over-loaded with case references, and where cases are discussed they are referred to succinctly. In particular I have appreciated the discussion of English and Australian cases as a background to the draftsman's choice in drafting certain of the sections of the Act. I note that recognition is given in the Preface to assistance from Mr. John Q. Evans, Commonwealth Parliamentary Draftsman, and his colleague, Mr. Charles Comans.

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A CASEBOOK ON THE CONFLICT OF LAWS, by P. R. H. Webb, M.A., LL.B. (Cantab.) and D. J. L. Brown, M.A., LL.B. (Cantab.). London: Butterworth & Co. (Publishers) Ltd., 1959, pp. i-l, 1-478.

Those who have doubts about the merits of the casebook method of law teaching are advised to consider the significance of the increasing number of casebooks on private international law which have appeared on the Australian book-market in recent years. The well-known casebook on this topic by Dr. Morris has now entered its third edition (J. H. C. Morris, *Cases on Private International Law*, 3rd ed. (1960), Clarendon). Within a short span of time it has been joined by three other publications: *The Conflict of Laws* by B. D. Inglis (1959, Sweet & Maxwell (N.Z.) Ltd.; reviewed in No. 1 of Vol. I of this journal), *A Casebook on the Conflict of Laws* by P. R. H. Webb and D. J. L. Brown (1960, Butterworth), and *Cases and Materials on Private International Law* by Professor E. I. Sykes of the University of Queensland (1962, Law Book Co.). The last of these publications is the first Australian casebook on this topic. In addition, to make this brief survey complete, the existence of numerous American casebooks on private international law must be mentioned.

This sudden profusion of casebooks in the field of private international law is easily understandable. Both the subject-matter and the method of presentation are sufficiently new and unexplored to present an interesting challenge to everyone concerned with legal education. Private international law is a subject of a comparatively recent origin to our legal system, and due to its multifarious nature many of its basic aspects are still open to speculation. It is an intriguing and tempting field of law to anyone who wishes to work in it. Similarly, the casebook as a method of presentation of law, with the exception of the United States where it has been known since the time of Langdell, is a newcomer to our bookshelves. As a teaching tool, at least in Australia, it has not yet advanced past the experimental stage.

The resistance to the use of casebooks by many law teachers is caused by a number of inherent shortcomings in many of the

casebooks which their compilers do not seem to be able to overcome. First, as a result of their selective character, casebooks contain many limitations in contents; the scope and depth of treatment of the subject-matters with which they deal leave much to be desired. Secondly, they covertly represent, by their selective character, the attitudes and points of view of their compilers. Thirdly, the use of casebooks as teaching tools is exceptionally difficult except to those who happen to have views on the subject-matter of a particular casebook which are identical with those of its compilers. There are always occasional exceptions to which the above observations are not applicable. Casebooks such as M. Rheinstein's *Law of Decedents' Estates* (2nd ed. (1955), Bobbs-Merrill), H. A. J. Ford's *Cases on Trusts* (1959, Law Book Co.) and D. Lloyd's *Introduction to Jurisprudence* (1959, Stevens), although the last one is not strictly a casebook, come instantly to the reviewer's mind. These casebooks, in spite of their reproductive contents, are equal to the best of legal treatises.

The main obstacle to the alleviation of these shortcomings is the lack of general agreement on the scope and nature of the material which casebooks ought to contain as well as on the method of presentation of such material. It is still being debated whether a casebook should reproduce complete judgments or only short extracts therefrom, whether it should have additional notes by the compilers or not, and whether it should contain all the relevant authorities on a particular topic thereby restricting the scope of its contents or be selective in the reproduction of the authorities and cover a wider field.

The different attitudes towards the compilation of casebooks can be seen best by comparing the four casebooks on private international law which have been mentioned above. The casebook by Dr. Morris is the least elaborate of these casebooks. It consists of lengthy extracts from selected leading judgments interspersed with a few extremely useful notes explaining the significance of some of the judgments. Professor Sykes' book goes some way further. In addition to extracts from judgments it contains many more editorial notes, digests of other relevant cases at the end of each topic and brief bibliographies. The book by Dr. Inglis is a radical departure from the usual casebook form. It is a combination of a textbook and a casebook.

At a first glance the casebook on the conflict of laws by Webb and Brown does not appear to depart from the general pattern of casebooks. It also consists predominantly of a selection of topically arranged excerpts from judgments in the various branches of private international law. However its closer examination reveals a host of interesting innovations. Thus the excerpts from judgments are not restricted to leading cases; many excerpts, indeed, are included in the book because they are interesting and not due to their authoritative nature. The book also contains many case excerpts from other common law jurisdictions. Australia, for instance, is represented by several excerpts from the case of *Koop v. Bebb* (1952) 84 C.L.R. 629. The desire of the compilers to reproduce as many excerpts as they could think of is, in fact, one of the gravest shortcomings of this book. Many of the excerpts are too short to be of any value to those who are not familiar with the actual cases; other excerpts do not contain any facts of the cases

which they reproduce, and no statements of such facts are given elsewhere in the book. Some cases are cut up into a number of excerpts dispersed throughout the book. Such practices create the impression that the book is uneven, haphazard and, perhaps, unfinished. This is extremely regrettable because it is a mine of useful and interesting information.

In addition to the large number of excerpts from judgments the book contains references to many other cases, including a number of Australian authorities, and at the end of each chapter the compilers have set out comprehensive bibliographies of other source materials. Short extracts from leading articles are also included. Each chapter of the book commences with a lengthy general note explaining the particular topic. A more analytical commentary follows the excerpt of every important judgment. In some of the chapters the compilers have also included sets of questions and problems which may facilitate the use of the book in the casebook method of teaching. Unfortunately, as with the selection of cases, the compilers have attempted to compress too much information into their notes and commentaries, and these show considerable unevenness as the compilers fluctuate between general and particular statements. Some of the questions are not very clear. For instance the question on p. 13: "Can a person be domiciled in (a) Italy, (b) the U.S.S.R., (c) Australia, (d) the United Kingdom" can be understood in several ways.

However, in spite of these sniping remarks, the book is a valuable contribution to the field of private international law and contains a wealth of useful material. Although primarily a students' book it introduces several new topics which have so far received only a passing attention in other textbooks and casebooks. The problem of time in private international law, to which the compilers devote the whole of Chapter 4 of the book, is one such topic. Directly arising for the first time in the case of *Starkowsky v. A.G.* [1954] A.C. 155, this problem was exhaustively discussed in an article by F. A. Mann ((1954) 31 B.Y.I.L. 217), but this is the first book in which it is allocated a chapter of its own. Incidentally, Webb and Brown refer also to the case of *In the Estate of Pikelny* which has only been reported in "The Times" (July 1, 1955) and may not be known to Australian lawyers. This interesting case deals with the administration of a deceased's estate who died in Lithuania at an indeterminate date whilst that country was under the rule of either Germany or Soviet Union during the chaotic times of the Second World War. Karminski J. had to decide the law applicable to the appointment of administrators. As the estate consisted of movables the element of time became important to determine whether the law of Lithuania, Germany or Soviet Union was to be applied. Karminski J. decided in favour of the Lithuanian law because the German law was that of an enemy invader; and since the Soviet Union received de facto recognition of its occupation over Lithuania from the United Kingdom only in 1947, the consideration of its law became irrelevant. A similar problem, in a different context, has been considered in Australia in the case of *Maksymec v. Maksymec* (1956) 72 W.N. (N.S.W.) 522.

Another topic, discussed in Chapter 3 of the book, deals with the effect of private international law rules on the domestic statutes of the forum. It is a topic of considerable importance to Australia with its innumerable interstate problems. But its discussion by the compilers

may not be very useful to Australian lawyers as such Australian authorities as *Mynott v. Barnard* (1939) 62 C.L.R. 68 and *Dykes v. Dean* [1958] A.L.R. 970 are not mentioned. The book also contains valuable discussions of specific problems of jurisdiction in admiralty, bankruptcy, probate, adoption, legitimation and lunacy (pp. 130-135). Equally interesting is the examination of the differences between jurisdictional and choice of law questions in private international law contracts (p. 331). In the chapter dealing with problems of classification (Chapter 2) the compilers have made a very useful contribution to the understanding of this highly academic topic by setting out two comprehensive lists enumerating respectively the different "legal relationships" and "connecting factors" with which the classification rules deal.

The book does not deal with adoption, maintenance, bankruptcy, negotiable instruments, corporations, powers of appointment and the rules distinguishing substantial and procedural laws. In the opinion of the reviewer some of these topics have considerable practical importance today, but, as the compilers state, their omission was dictated by lack of space. Another serious omission is the absence of any discussion on the rules relating to the establishment of residence. This topic is now gaining more and more in importance as an element of jurisdiction in matrimonial disputes, corporate matters and taxation. Perhaps it is the voice of local patriotism speaking, but the reviewer thinks that many more Australian cases could have been either reproduced or at least referred to by the compilers. Such cases as *Laurie v. Carroll* (1958) 98 C.L.R. 310 (dealing with jurisdiction in personam) or *Fremlin v. Fremlin* (1913) 16 C.L.R. 212, *Bradford v. Bradford* [1943] S.A.S.R. 123 and *Walton v. Walton* [1948] V.L.R. 487 (concerned with the establishment of domicile) are sufficiently important to be of more than local interest to Australia.

The book is warmly recommended to all who are interested in private international law.

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THE LAW OF SECURITIES, by *E. I. Sykes, B.A., LL.D. (Melb.)*. Australia: The Law Book Co. of Australasia Pty. Ltd., 1962, pp. i-xxxvi, 1-682.

Professor Sykes's book on the Law of Securities is not just another work which succeeds in explaining lucidly and competently some of the more difficult aspects of our law. It is also a highly successful attempt to break new ground in our legal system by taking existing rules of law, characterizing them in the context of legal changes and social demands, and forming them into a new, analytically valid, independent and functional category of law.

The title of Professor Sykes's book may mislead those who are not acquainted with the American legal terminology. The book does not deal as might be expected, except in a limited way, with shares and other company securities. It uses the term "law of securities" in the American sense, as a generic term for the law relating to mortgages,

bills of sale, pledges, liens, charges, assignments and other similar types of transactions. In America the law of securities is established as a separate legal discipline. In Australia, with the exception of some law schools, the law of securities is still not recognized as a separate independent subject of law; and its component parts are distributed in the law curricula among many unrelated subjects creating thereby a very unsatisfactory teaching result. Of course, the term "law of securities" in its American context is comparatively unknown in Australia. It is for this reason, not for introducing a new American term to Australia but rather by presenting the law of securities constructively as a whole, that Professor Sykes's work is of fundamental value to Australia.

Originally a doctoral thesis which earned for Professor Sykes the degree of Doctor of Laws from the University of Melbourne, but since then substantially re-written, the book is both practical and critical. It purports, to borrow the author's own words, "to render the law relating to all securities over real and personal property (including choses in action) in the Australian States and to effect some characterization of their basic nature". This formidable task is performed by him both skilfully and competently.

The book is divided into four parts. The first part, which the reviewer finds the most interesting academically, deals with the definition, description and characterization of securities in our law, and their effect in relation to third parties. The author defines a "security" as "an interest in the property of another, not being an interest arising from a trust, by virtue of which certain rights are exercisable against that property in order to obtain from the owner of that property some independent benefit either consensually provided for or validly directed by some third party to be conferred". This all-enveloping definition does not deter him from dealing with every possible type of security thoroughly and exhaustively as if it were the only matter to which the book is directed. To simplify his task, as well as that of the reader, Professor Sykes distinguishes between three basic classes of securities which are equally applicable to all types of property. He calls these classes mortgages, possessory securities and hypothecations respectively (pp. 10-11 and 639-643).

This basic classification is applied throughout Parts II and III of the book to existing security transactions, first in land, then over corporeal chattels, and finally in relation to choses in action. In spite of difficulties in the characterization of individual security transactions, such as workmen's liens over land, the author manages to evince by this approach a convincing and easily comprehensible system of securities. Part IV of the book discusses such matters as bankruptcy, limitation of actions and different statutory controls and restrictions, e.g. money lenders' legislation and companies' powers to borrow, which are common to all types of securities.

The reviewer is quite certain that there is no such security which is not mentioned and discussed in this book. The different types of mortgages, bills of sale, charges, pledges, liens and conditional assignments are analysed and explained. There are sections on such little-known and obscure securities as bottomry bonds, maritime liens and solicitor's charges. In addition, a substantial part of the book is devoted to a thorough discussion of priorities and their application to

securities. Finally, Professor Sykes suggests two reforms. He advises the abolition of the rule of foreclosure, which in his opinion does not exist anyway and only encumbers the understanding and application of the present law of securities. Secondly, he stresses the need for a unification of the different Australian statutes pertaining to securities.

The reviewer extends his unreserved admiration and congratulation to Professor Sykes for producing a book of such high quality. It will unquestionably be useful to practitioners, students and teachers, and every law library is recommended to find a place for it on its shelves. It is to be hoped that, in a foreseeable future, this book will be followed by a companion volume containing texts of relevant statutes and precedents, appropriately annotated by the author, somewhat in the form of Volume II of Woodfall's Landlord and Tenant, and, perhaps, by a third volume as a casebook on the law of securities.

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FAMILY LAW, by *B. D. Inglis, B.A., LL.M. (N.Z.), J.D. (Chicago)*. Wellington: Sweet & Maxwell (N.Z.) Ltd., 1960, pp. i-iii, 1-662.

The subject of family law is full of human drama and social problems, but too many writers present it in such a technical and cumbersome manner that the human element disappears completely from their books. This observation does not apply, however, to a book on New Zealand family law by Dr. B. D. Inglis. He has the exceptional ability to write on the most complex problems of law in an amusing and interesting manner. Occasionally one is almost deceived to believe in the simplicity of legal propositions by his narrative style, and sometimes one has the suspicion that Dr. Inglis himself becomes the victim of his own deception. He has the tendency to oversimplify the law for the sake of elegance. But, in general, his book is both instructive and reliable.

The content of the book does not differ in broad lines from other works on family law although its emphasis is on the state of that law in New Zealand. In this respect the book is of considerable comparative interest to Australian lawyers. But Dr. Inglis does not limit himself to the use of New Zealand or applicable English cases and statutes. He skilfully blends into the text of his book many Australian cases, showing considerable knowledge of the Australian family law.

The book, which contains more than six hundred pages, is divided into five parts, the first of those being of an introductory nature and discussing predominantly the rules of domicile. The other four parts deal with marriage, matrimonial causes, children, and the contractual, tort, evidence, criminal law and proprietary problems of a family respectively. But these topics are by no means considered evenly. More than one-third of the book is devoted to the discussion of what may be termed ancillary relief problems, which are undoubtedly the more practically important issues in family law disputes. A considerable part of the remainder discusses private international law rules relating to matrimonial causes. However, the inclusion of such lengthy discussions on private international law in a book which primarily deals

with family law is of doubtful value as it emphasizes particular problems of another legal topic at the expense of the more important topics in family law itself. In any event, all of these private international law problems have been considered with equal precision by the author in an earlier book (B. D. Inglis, *The Conflict of Laws*, 1959, Sweet & Maxwell (N.Z.) Ltd.). Even that part of the book which examines the various matrimonial offences is more concerned with physiological and psychological issues which are extremely interesting but draw away the attention of the reader, especially if he is a student, from the more pertinent questions of law. For instance, more than eight pages are devoted to a discussion on penetration and artificial insemination in adultery.

No mention is made anywhere in the book of the Commonwealth Matrimonial Causes Act 1959 which has revolutionized divorce practice in Australia. The absence of any reference to that Act and the passing of the Commonwealth Marriage Act 1960 subsequent to the publication of the book limits considerably its practical use in Australia. The one exception is the author's discussion of the ground of separation for dissolution of marriages (pp. 178-203) which has existed in New Zealand since 1953, and to some limited extent since 1920 (N.Z. Divorce and Matrimonial Causes Amendment Act 1953 s. 10), and in respect to which there are many New Zealand authorities which are collected in the book.

But in spite of all these criticisms the book is very readable, even entertaining, and can be recommended as a preliminary reading text for students who intend to study family law.

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ANNUAL LEGAL BIBLIOGRAPHY, by *Harvard Law School Library* (ed. by V. Mostecky), Vol. I. Cambridge, Massachusetts, 1961.

The Harvard Law School Library is performing an immense service to all lawyers and law libraries by deciding to publish a bibliography of its current acquisitions. There are not many libraries which can or are able to undertake a work of such magnitude. But the Harvard Law School Library is not only the largest depository of legal publications in the world. It is also a highly competent and reputable research institution in its own name. A list of its acquisitions, even though it may be selective as this bibliography is, furnishes research workers, librarians and lawyers generally with a comprehensive survey of legal materials published throughout the world.

The bibliography is published in the form of annual volumes which are kept current by monthly supplements. The first volume covers the period from 1st July, 1960, to 30th June, 1961. The bibliography is divided topically into seven main categories dealing respectively with the common law jurisdictions, civil law and other jurisdictions, private international law, public international law, international economic and social affairs, Roman law and canon law, and each category is subdivided into subsidiary subject-matter and geographical sections. The books and articles are arranged in an alphabetical order in each

section under their authors' names. To simplify its use the bibliography also contains a classified list of subjects, a geographic index and an alphabetical subject index (including shorter subject indices in the French and German languages). It is comprehensive, handy to use, and very informative.

However, in the reviewer's opinion, the bibliography is still subject to improvement. The absence of an authors' index complicates the search for a particular publication when the name of its author is the only piece of information available to the searcher. The use of the Alphabetical Subject Index requires considerable imagination and mental agility especially on the part of those who are not familiar with the American legal terminology. Thus there is no reference to the term "companies", and one has to look for "corporations". Although the index refers to such detailed subjects as desertion or hearsay it does not contain the term "hire-purchase" or, for that matter, the term "conditional sales" (and yet books and articles on the law of hire-purchase agreements have been published during the period covered by this bibliography). Another minor but very irritating item of the bibliography is its concurrent listing of books and articles from legal periodicals. These should be distinguished either by the use of a different print or by their separation into different sub-sections. But all these shortcomings can be easily overcome and do not minimize the general value of the bibliography in its present form.

The bibliography only lists selected publications. It does not refer to retrospective acquisitions unless they are published within three years of the date of the bibliography, and it excludes publications of primary sources except their new editions.

A perusal of the bibliography whets the appetite for a more massive work containing a list of all the acquisitions by the Harvard Law School Library and, in addition thereto, supplying brief abstracts of the listed acquisitions. But irrespective of whether such work can be undertaken by the Harvard Law School Library the reviewer warmly congratulates it on its present venture.

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ESSAYS ON THE AUSTRALIAN CONSTITUTION *edited by the Hon. R. Else-Mitchell.* Sydney, Melbourne, Brisbane, 1961: The Law Book Co. of Australasia. Pp. i-xxi, 1-380.

In the 11 years since the first edition of these essays appeared this collection has gained firm acceptance, not only among lawyers but with a wide range of social scientists, too, as one of the most outstanding contributions to an understanding of certain key features of the workings of the Australian Constitution. Intended originally to mark the Jubilee of the Commonwealth in 1951 and to record "the progress of Australian federalism over the first half century" (as the Hon. R. Else-Mitchell points out in his Introduction), the appearance of this second revised and expanded series of essays indicates that there is the very welcome possibility, now that this work has outgrown its original purpose, of it becoming a permanent feature of the

all too limited hard cover literature on our federal constitution. Perhaps the greatest value of these Essays lies in the fact that the contributors, who include many of the most outstanding present day Australian constitutionalists, generally do not merely expose the law on the topics which are the subject of their special expertise, but they make valuable contributions with critical analyses and discussions which have often been lacking in published work on Australian constitutional law. The essays do not of course purport to give a comprehensive coverage of Australian Constitutional Law, but as they deal with a wide variety of controversial and developing areas in this field most of the leading constitutional cases of the last decade find their rightful place in these pages. There are some disappointments; the second *Uniform Tax Case*, for example is peremptorily dismissed in five lines. In the main, however, the outstanding constitutional *causes célèbres* of the last few years, including the *Boilermakers' Case*, the *Hughes and Vale* decisions and *Dennis Hotels v. The State of Victoria* are fully and adequately examined, in each of these instances at least, in more than one essay.

As nine of the thirteen essays included in this second edition continue to be contributed by their original authors and there are few changes in their presentation and exposition, other than to bring their material into line with developments since 1951, the main new interest in this second edition, as far as a reviewer is concerned, rests in the work of the new authors included in this volume in 1961 and the addition of two completely new chapters, one on "Full Faith and Credit, The Australian Experience" and "The Territories of the Commonwealth".

Based on the original contribution by Sir Douglas Menzies, Professor D. P. Derham has maintained the same high standard as his predecessor in dealing with "The Defence Power" in the light of developments in the past ten years. In the first place Professor Derham has had the opportunity to view in perspective the *Capital Issues Case*, which was handed down by the High Court just before the publication of the first edition and which perforce Sir Douglas Menzies could only deal with in a short addendum to his essay. As to be expected, too, with the wartime use of the defence power and the unwinding process after the second world war now much more a matter of history than it was in 1951, Professor Derham has dealt more extensively with the use of the defence power in peacetime. In particular, Professor Derham's queries on the constitutional validity of the Snowy Mountains Hydro Electric Scheme and the production of aluminium in Tasmania by the Australian Aluminium Production Commission; which have gone unchallenged in the courts, indicate some of the manifest difficulties which could face the Commonwealth in this context. Professor Derham's analysis of these and other unsolved problems on the ambit of the defence power is a notable contribution to the literature of Australian Constitutional Law.

The difficult and challenging task of dealing with "Freedom and Preference in Inter-State Trade" has been successfully achieved by a second new contributor, Mr. C. I. Menhennit, Q.C., of the Victorian Bar. In part I of his contribution Mr. Menhennit deals with the plethora of decisions on Section 92 and proves to be more than equal to the task of separating the wool from the warp in this wilder-

ness of case law. After a necessary historical introduction to the vagaries of constitutional interpretation in this area, Mr. Menhennit gives a succinct and valuable summary of the present day status of the protection accorded by section 92. As to be expected, in a limited essay of this type, no detailed analysis of the impact of Section 92 in particular areas of its operation, such as road transportation, has been possible, but the main lines of constitutional interpretation are extracted and provide a good starting point for a fuller understanding of this topic. The same is largely true of the second part of Mr. Menhennit's essay, which deals with the constitutional prohibition in Section 99 against Commonwealth preferences in law or regulations dealing with trade commerce or revenue. Here, however, a little more speculation on the ambit of this section, despite the fact that it has so rarely been the subject of judicial exegesis, might have been a worthwhile addition to this chapter.

The first of the two completely new chapters in this second edition is Professor Zelman Cowen's contribution on "Full Faith and Credit, the Australian Experience". Section 118 of the Constitution, which provides that full faith and credit is to be given throughout the Commonwealth to the laws, the public Acts and records and the judicial proceedings of every State, has been one of the "orphan clauses" in our constitution and it is very much to Professor Cowen's credit that he has played a leading part in stimulating interest in its scope and operation in a number of his writings. Now in Chapter XI of these Essays he has lucidly and most effectively examined, developed and summed up his previous work in this field and emphasised the need for Australian courts and lawyers to recognise full faith and credit problems when they arise. With his adept and incisive references to the American experience under the similar provision in Art. IV, s. 1 of the United States Constitution Professor Cowen points to the manifest difficulties which can arise under a clause such as Section 118, but his work in this field, as exemplified in this essay, clearly shows the way to understanding the intricacies and problems involved in dealing with this constitutional provision.

The second new essay in this series is on "The Territories of the Commonwealth" by Howard Zelling, of the South Australian Bar. Mr. Zelling's examination of the operation and interaction of the Constitutional sources of Commonwealth power over all of the Territories, including such regions as the Heard and McDonald Islands, for example, is an important contribution to the study of Australian Constitutional Law. Not content with merely exhaustively listing each of the territories separately and showing the constitutional bases of Commonwealth power in these areas, which in itself is a welcome study, Mr. Zelling makes a most helpful critical examination of the operation of the main Territories power, Section 122 of the Constitution. His discussions on what limitations, if any, can be placed upon the exercise of Commonwealth power under this section, and the relationship of Section 122 to Sections 51 and 52 of the Constitution with particular reference to the source of power over the Australian Capital Territory, and his brief but extremely penetrating analysis of the inconsistencies in the cases touching on whether laws made under Section 122 are "laws of the Commonwealth", make this essay set a high standard for any exposition on this branch of

the law. It is unfortunate that the High Court decision in *Fishwick v. Cleland* [1961] A.L.R. 147 which dealt with the nature of Commonwealth power over the Trust Territory of New Guinea, was handed down so soon before the publication of this volume that Mr. Zelling could only refer to it briefly in a footnote. This High Court decision, in the present writer's view at least, is far from satisfactory, particularly in ascribing the source of Commonwealth power in the Trust Territory to Section 122. Mr. Zelling briefly points out that *Fishwick v. Cleland* has not answered the criticisms which have been levelled against using Section 122 for this purpose, but by force of circumstances we must await Mr. Zelling's mature judgment on this not unimportant issue.

All in all, "Essays on the Australian Constitution" must now be regarded as taking its rightful place as one of the foremost studies on Australian Constitutional Law. The volume is a necessary addition to any personal or public library which purports to have on its shelves the basic literature on the working of our federal system.

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