

*Family Law*, by E. L. Johnson, M.A., LL.B., Lecturer in Law, King's College, University of Durham. London, Sweet & Maxwell Ltd., 1958, Sydney, Law Book Co. of Australasia Pty. Ltd. xl and 325 pp. (£2/9/6 in Australia).

Mr. Johnson in his preface suggests that it is an anomaly of ordinary university courses that the student acquires little grounding in various aspects of family law. This criticism is on the whole not applicable to the law course at Sydney which deals with aspects of family law in a diversity of subjects. Divorce and Domestic Relations, Torts, Property and Equity all cover different aspects of the subject, though some matters, such as maintenance proceedings in the Children's Court and proceedings under the Married Women's Property Act, are not dealt with or only touched in passing in the Sydney course.

The author has done a great service in collecting a variety of subjects concerning the legal relationship between husband and wife and parents and children in one compact and eminently readable volume. In particular, his treatment of Married Women's Property Act applications and the application of the Inheritance (Family Provision) Act, 1938 (the English counterpart to our Testator's Family Maintenance Act) is most valuable and helpful. So, too, is his chapter on property rights of husband and wife. The author has made an interesting analysis of the recent cases on that vexed subject, a deserted wife's right to the occupation of the matrimonial home, and to some extent may be said to have anticipated the recent decision of the N.S.W. Full Court in *Dickson v. McWhinnie*.<sup>1</sup> Indeed, it is a pleasing feature of the book that the author does not hesitate to give his own views on matters which are doubtful or controversial, though he is careful to explain that they are no more than his own views. He is careful, too, to point out that a principle which he cites is no more than *obiter dictum* when such is the case.

Another valuable feature of the book is the great wealth of case law which it contains, including many useful but surprisingly little-known authorities. For instance, one would not expect to find in an English textbook a reference to the old Victorian case *Allardyce v. Mitchell*,<sup>2</sup> a case familiar, perhaps, to the attentive law student but to few others.

It is difficult to understand how Mr. Johnson has compressed so much into so little space. In 325 pages he has created a miniature *Eversley on Domestic Relations*; and although he has no chapter on master and servant, a subject outside the scope of family law, this does not explain the disparity, as Eversley devotes only 27 out of his 743 pages to this topic. The answer must be found in Johnson's concise style and the fact that, on the whole, he confines himself to the law as it is at present, avoiding lengthy discussions on the evolution of principles. The law stated is as on the 1st May, 1957, although a number of later cases are mentioned. It is inevitable that the compactness of such a book involves rather brief treatment of some matters. For example, the absolute bars to divorce, collusion, connivance and condonation are somewhat sketchily treated. It is disappointing that the author slips away from the interesting problem of the application of the objective test as against the subjective test in constructive desertion — a problem on which the Privy Council compromised in *Lang v. Lang*.<sup>3</sup> These points are, perhaps, rather carping, for too much detailed analysis would be out of place in a book of this kind and would, in fact, destroy one of its best features, which is its conciseness. It is this feature which makes the book of particular value to the busy practitioner and to the student.

The book is written, as the author explains, primarily for students, but here a strong note of warning must be sounded. In recent years, the respective

<sup>1</sup> 75 W.N. (N.S.W.) 204.

<sup>2</sup> (1868) 6 W.W. and A'B. 45.

<sup>3</sup> (1958) A.C. 402.

matrimonial laws of England and New South Wales have drifted wider apart. The divergence goes deeper than a mere difference between the grounds for divorce available in the two countries, though these are wide enough. The N.S.W. Matrimonial Causes (Amendment) Act, 1958, has further widened the gap by its new provisions as to alimony. But the English provisions as to nullity go deeper. Until, for instance, the wilful refusal to consummate the marriage was made a ground for a declaration of nullity, the fundamental principle was recognised in England (as it is in this State) that whereas a marriage is dissolved because of some act or omission on the part of the respondent, it is only declared void on account of some defect in the ceremony or for some pre-existing cause. The new provisions as to nullity in England entirely abandon this ancient principle of the Ecclesiastical Courts by recognising as a ground for a declaration of nullity certain acts of the respondent committed after marriage. This abolishes the fundamental basis of the distinction between a declaration of nullity and a decree for dissolution. The incautious student could here be badly led astray. Yet, with this warning to local students, it can be said that Mr. Johnson has made a valuable contribution to the literature on the subject; and his book is worth a place on every lawyer's bookshelf both as interesting reading and as a useful reference book.

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*An Englishman Looks at the Torrens System*, by Theodore B. F. Ruoff. Sydney, The Law Book Co. of Australasia Pty. Ltd., 1957, ix and 106 pp. (£1/5/- in Australia).

Mr. Ruoff is an officer of the Land Registry in London, who in 1951 visited Australia under a Nuffield travelling fellowship. As a result he published various articles which, with some further material, are collected in this volume, for the occasion of the centenary of the introduction of the Torrens System in South Australia in 1858.

Mr. Ruoff is not here concerned to examine the Torrens System in detail. Rather his aim is to emphasise the essential principles of the system, and to urge, firstly, adherence to these principles, and, secondly, their adaptation to modern conditions and the needs of people engaged in dealings with land. In his view the system in any of its various local forms "succeeds or fails according to the degree with which the local law and the local administration accord, or do not accord, with certain fundamental principles", which he calls (1) the mirror principle, (2) the curtain principle, and (3) the insurance principle.

On the mirror principle the register book should reflect "all facts material to an owner's title to land", and his title thus appearing should be indefeasible. Dealing with breaches of this principle Mr. Ruoff concentrates most of his attack on legislation creating statutory charges which are enforceable although unregistered, such as those dealt with in *South-Eastern Drainage Board v. Savings Bank of South Australia*;<sup>1</sup> and he gives something less than due regard to the extent, and the justification for, the exceptions to indefeasibility contained in the various Torrens Acts themselves. Under the Australian Acts the register book should be, with some exceptions, a mirror of the legal interests affecting registered land; but the Acts are far from making the title thus shown indefeasible. In South Australia itself Torren's original

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<sup>1</sup> (1939) 62 C.L.R. 603.