

Guest, dissented from the majority judgment given by Lord Hodson, Lord Wilberforce and Sir Douglas Menzies. In the present state of the world it will be surprising if some of these serious issues do not recur. On a rather lighter note a surprising amount of learning went into the decision of McElwaine, C.J. of the Singapore High Court⁶ to the effect that certain cigars, sent from Shanghai to the German ambassador in Moscow at a time when the Soviet Union was still a neutral in the Second World War, but detained in Singapore, must be regarded as enemy property, the learned judge holding:

I have no doubt that in normal times courtesies are extended to ambassadors accredited by a friendly nation to another nation while they are in transit through our country, but I do not imagine that similar facilities would be given to an enemy ambassador if he attempted to pass through our territory on his way to assume his duties in a neutral state.

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The Law of Minors in Relation to Contracts and Property, by D. J. Harland, Sydney, Butterworths Pty. Ltd., 1974, xxxviii + 238 pp. \$18.00.

This book is almost entirely an analysis of the Minors (Property and Contracts) Act 1970 (N.S.W.), although Professor Harland does devote space as well to other relevant legislation such as the Trustee Act 1925, the Conveyancing and Law of Property Act 1898 and the Conveyancing Act 1919.

The book will be of principal value to New South Wales lawyers, for it is a careful and methodical exposition and discussion of legislation affecting them. After introductory chapters dealing with the age of majority, and the capacity of infants at common law, Professor Harland summarises the 1970 Act and then devotes chapters to such features of the Act as attaining the age of majority, beneficial civil acts, dispositions of property, capacity by court order, civil acts not initially presumptively binding but subsequently rendered so, and civil acts not presumptively binding. There are also chapters dealing with the control and management of the property of minors, the law of succession affecting minors, and minors and the law of torts. The book concludes with an appraisal of the 1970 Act. The author has tackled what many would regard as one of the most daunting tasks of an academic: the analysis of an important new piece of legislation before there has been any judicial interpretation of it. He expounds the principles of the Act, and shows

⁶ *Re Contraband Mails ex M.V. "Conte Rosso"* [1946] *Malayan L.J.* 5; [1941-42] *Straits Settlements L. Rep.* 197.

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their inter-relation with one another, most clearly and readably, and is not afraid to express a view on those provisions on which there is room for difference of opinion. His suggested approaches to such questions as whether a civil act is for the minor's benefit, and the adjustment which the court may make on repudiation of a minor's contract, are convincingly argued and will no doubt provide useful guidelines for those who come across the Act in practice. He obtains guidance from cases decided before the Act, and from the interpretation of analogous provisions in other countries. Although Professor Harland indicates his desire not to depart more than necessary from the injunction contained in Lord Herschell's famous dictum in *Bank of England v. Vagliano Bros.*,¹ it is interesting once again to see just how difficult and even undesirable it can be for expounders of new codifying legislation to avoid reference to earlier cases; the code must take its place comfortably in the framework of the legal system as a whole, and those earlier decisions were often merely encapsulations of wider legal principle which cannot be ignored without the possibility of harming the unity of the system. The effect of the *Vagliano* pronouncement on the interpretation of codes has not been great.

New South Wales lawyers, then, will receive great benefit from Professor Harland's book. They may count themselves fortunate that their population is so large that the publishers can afford to produce a monograph like this; it is a luxury which could not happen in smaller jurisdictions.

For those who hail from other parts the main value of the book will be as a comparative exercise. Your reviewer is from New Zealand, and he found himself constantly comparing the New South Wales provisions with those of the Minors Contracts Act 1969 (N.Z.), an exercise which was encouraged by Professor Harland's own comparison in his final chapter. It has now become customary for the different parts of the Commonwealth to seek their own individual legislative solutions to problems; indeed one sometimes even detects a feeling that it is a sign of weakness to copy exactly the legislation of another jurisdiction. The result is often a bewildering plethora of different solutions to a problem which must be essentially the same everywhere, and which does not depend on differences of locality. The New South Wales statute on minors is very different from the New Zealand one. Several points of difference particularly struck the reviewer, quite apart from the different age of majority (18 for N.S.W., 20 for N.Z.). First, the New Zealand Act gives the court a much larger discretion in the enforcement of minors' contracts. In essence, the contracts of minors over 18 are presumptively binding, although a court may refuse to enforce them, and the contracts of minors under 18 are presumptively not binding on the minor, although a court may decide to enforce them in whole or in part if they are fair and reasonable. The New South Wales provisions do confer an element

¹ [1891] A.C. 107.

of discretion, particularly in relation to the adjustment which must be made on the repudiation of a minor's contract and (of necessity) in deciding whether a contract is for the benefit of a minor, but this decision is much more closely circumscribed than in the New Zealand statute. By the same token, however, the New South Wales provisions are much more detailed and complicated. Both statutes, then, are beyond the ken of the layman, and he will need to seek legal advice; the difference is that in New Zealand he will usually be told that he must go to court before he can get a clear answer to his problem, in New South Wales his lawyer will usually be able to provide a somewhat more precise answer. However one of the features of the New South Wales Act which the reviewer did ponder with some misgivings was the provision that if a minor does nothing to repudiate a contract presumptively not binding on him it becomes automatically binding on him when he reaches 19. Given the unreasonableness of expecting a layman to understand the Act, this seems a harsh penalty for inactivity, although the number of cases where it happens will probably be very small. Secondly, the reviewer was impressed by the breadth of the New South Wales legislation. The New Zealand Act is confined to contracts; not only does the New South Wales one extend to all "civil acts" (a nice piece of borrowing from the civil law), but it provides expressly for the minor's position with regard to such things as estoppel, laches, and agency. Thirdly, in providing that a civil act is binding if it is for the minor's benefit, the New South Wales legislation would seem to have gone to the heart of the rationale for refusing to enforce certain minors' contracts. The New Zealand Act, by allowing for enforcement if the minor's contract is fair and reasonable, is headed in the same direction, but less purposefully; "fair and reasonable" is not quite on all fours with "for his benefit", and in any event in New Zealand fair and reasonable contracts are not enforceable as of right but only in the court's discretion. Other points of difference between the two pieces of legislation also present themselves: they take quite opposite views over the question of whether a tort ought to be actionable against a minor if it is connected with an unenforceable contract, and the New South Wales legislation gives greater protection to security of title once a disposition of property has been made. However on one point both Acts score a black mark: they are silent on the very important question of the effect of registration under the Torrens system on a minor's rights.

These are simply the reflections of a New Zealand reader; readers from other jurisdictions will also find stimulation in Professor Harland's account of his State's law. This is a very worthwhile book. It is a pity that its typeface is so small, particularly in footnotes and quotations, that reading it for any period of time can be more tiring than it ought to be.

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