this period. Even so, this biographical essay on Ellis Bent fills a long felt need for the study of the early years of the Macquarie era in New South Wales.

Although, in constrast to his treatment of Ellis Bent, Dr Currey clearly has little sympathy with Jeffery Hart Bent, he fails sometimes to bring out, as effectively as he might have done, the absurdity of the situation faced by Governor Macquarie when the self-righteous, pompous, elder brother of Ellis Bent refused to sit on the Bench of the newly-created Supreme Court for more than two years. The vain self-seeking, elder brother Bent may have had some justification for his stand in refusing to take part in Supreme Court proceedings, thus stopping them effectively, when faced with the almost certain possibility that George Crossley and other ex-convict lawyers would be admitted to practice before the tribunal. The almost childish acts of petulance which followed, however, and which are recalled by Dr Currey, demonstrated that the elder Bent had few, if any, traits, to commend him. The story of Jeffery Hart Bent's sojourn in Australia fortunately has had few parallels in Australian legal history although, in later years, the actions of Boothby J. in South Australia, leading up to his amoval, are, to some extent, reminiscent of the situation created for New South Wales by its first Supreme Court Judge.

ALEX C. CASTLES*

*Australian Divorce Law and Practice*, by PAUL TOOSE, C.B.E., Q.C., LL.B., RAY WATSON, Q.C., B.A., LL.B. and DAVID BENJAFIELD, LL.B. (Syd.), D. PHIL. (Oxon.), Professor of Law, University of Sydney, Member of the Law Reform Commission of N.S.W., 1966-1967. (The Law Book Company Limited, 1968), pp. i-cvi, 1-1162 and Supplement by RAY WATSON, Q.C., B.A., LL.B., pp. 1-22. $29.80.

Few good books have been written specifically for Australian legal practitioners. *Australian Divorce Law and Practice* is one of them. It presents an exhaustive coverage of its subject in the form of annotations to the Matrimonial Causes Act 1959-1966 (Cth) and the Matrimonial Causes Rules, and the Marriage Act 1961-1966 (Cth) and the Regulations made under it. This method of presentation, supported by extensive indexes, facilitates access to the immense store of information which the authors have gathered, though it entails much repetition of material which is relevant to more than one statutory provision. The authors and publishers, however, have clearly determined that considerations of space should not unduly inhibit them in providing a comprehensive handbook for the busy practitioner. Extracts from judgments in leading cases are lavishly quoted, and where a conflict of judicial opinion has arisen on a significant issue, each side of the controversy is permitted to speak for itself at generous length.

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One indication of the gigantic proportions of the authors' task is that seventy-two cases were reported in Australia, New Zealand and England during the five months when the book was in the press. These are dealt with in a supplement, and practitioners will hope that supplements will be issued frequently. The volume of reported cases in this field is so great that the value of the book will speedily diminish if the text is not constantly revised.

This reviewer has found the book to be a valuable key to the case law on divorce, but some parts are much better than others. In some areas the authors illuminate the general trend of the decisions of the courts by effective arrangement and discussion of the cases. They are particularly successful in their exposition of the cases on section 28 (m) (separation as a ground for divorce: paragraphs 403-425) and section 85 (custody of children: see especially paragraphs 725-745). In other parts, however, the presentation is less helpful. For example, the discussion of the disposition of the matrimonial home upon divorce is confined to a "catalogue" of some of the reported cases, classified only according to whether they were decided in Australia, New Zealand or England (paragraph 768). The basis on which the cases were selected for mention is not clear, and their facts and decision are so scantily recorded that the paragraph is of very limited value.

It must also be said that on some occasions, the guidance which the reviewer has received on a particular point has varied according to the passage to which reference was made. Thus, paragraph 487, dealing with the discretion of the court to refuse relief to an adulterous petitioner, quotes from the judgment of Wolff C.J. in *Cowie v. Cowie*,[1] in which his Honour pointed out that it should make no difference to the exercise of the court's discretion if the petitioner continues to live in adultery with the person he desires to marry. His Honour described as outmoded the supposed doctrine that such a petitioner should be advised to cease adultery with a view to getting a decree: "[it] pays no regard to human nature and only leads to a plaintiff coming to court with a lie on his lips."[2] Yet in paragraph 492, which discusses the duty of a solicitor in such cases, we read:

> Although, in general, an adulterous association which is being carried on by a prospective petitioner should be broken off before proceedings are instituted and the party should be so advised, the court has, in exceptional circumstances, granted a decree despite the fact that the association was maintained up to the date of the hearing.

*Zarnke v. Zarnke*[3] is cited. No mention is made of *Cowie v. Cowie.*

If one turns to paragraph 286 to learn whether an honest and reasonable belief by one spouse that the other has committed adultery may give the former just cause or excuse for withdrawing from the matrimonial

[1] [1962] W.A.R. 74.
[2] *Ibid.* 75.
[3] (1950) 81 C.L.R. 572.

relationship, one finds that it may if the belief is induced by the conduct of the suspected spouse and not by extraneous circumstances. This proposition is supported by the citation in a footnote of the leading case, *Glenister v. Glenister*,[4] and more than a dozen other cases, most of which considered *Glenister v. Glenister*. No reference is made to the recent important decision in *Marsden v. Marsden*.[5] But if this information were sought in paragraph 292, which deals with the same subject in the course of analysing section 29, one would find the citations of only five cases which have considered *Glenister v. Glenister*. They include *Marsden v. Marsden*. None of the five is amongst the cases cited in paragraph 286. In paragraph 433, the authors state that, in their view, the effect of section 29 is not to impute to the respondent an intention to desert. Yet, in paragraph 284, that is the effect which is attributed to section 29.

In paragraph 564, it is said to be doubtful whether a minister of religion is legally compellable to solemnize any marriage. But the Marriage Act 1961-1966, section 47 (a), makes it clear that a minister is not legally compellable, and the section is set out in paragraph 1782.

Far more important to the practitioner than blemishes of this kind is the wealth of advice and information which the authors infuse into their commentary. They provide precedents for the framing of pleadings, and straightforward guidance on numerous practical difficulties. See, for example, their observations on the significance of acts of sexual intercourse as indicators of a termination of a state of desertion by a resumption of the matrimonial relationship (paragraph 287); or the advantages of relying on the ground of separation even where other grounds for divorce are available (paragraph 425), and their suggested formula for estimating an appropriate amount of maintenance (paragraph 688). They advise on the steps to be taken when the matrimonial home is subject to the war service homes scheme (paragraph 765). They explain the effect of social services legislation upon the assessment of maintenance (paragraph 699), and the effect of stamp duty legislation upon orders for a settlement under section 86 (paragraph 766). Their attention to detail extends to the provision of the addresses and telephone numbers of all approved marriage guidance organizations (paragraph 58).

Also included is a brief historical introduction to the 1959 Act by Mr Malcolm Broun, which traces the development of matrimonial law in England and Australia, and discusses the close relationship between changes in social attitudes to marriage and shifts in the administration of the law. It is a lucid account, though some readers may boggle at the proposition that "it has been a feature of all communities at all times that members of a legal profession will strive to meet a community's need, no matter how inconvenient or unyielding the law they help to administer may be." (page xciv).

[4] [1945] P. 30.

[5] [1968] P. 544.

It is not within the scope of this book to make a critical assessment of the effectiveness of the law in meeting the needs of contemporary Australian society, or to speculate upon possible reforms. The authors and Mr Broun are content to acclaim the 1959 Act as reaching "a peak of legislative excellence unequalled in the countries which have inherited the English tradition as to marriage and divorce" (pages vii, ciii). In his Foreword, the Attorney-General, after referring to current proposals for reform, makes his view plain:

> [T]his ferment is unlikely to lead to hasty changes in our law. Reform of the law is not something that is accomplished overnight, it requires to be shown that the law needs to be reformed. Although the Commonwealth is interested in work being done in this field overseas, the Act is here to stay for some time. (page v).

Some of those who view the law from the other side of the lawyer's desk might find it difficult to understand the Attorney-General's lack of urgency. But they should at least gain some indirect benefit from the publication of this indispensable book, which will make a valuable contribution to the efficient conduct of practice in the matrimonial causes jurisdiction.

DAVID HAMBLY*

*Modern Federalism*, by GEOFFREY SAWER, Professor of Law, Institute of Advanced Studies, Australian National University. (C. A. Watts, 1969), pp. 1-vii, 1-204. United Kingdom price 15s.

For years Geoffrey Sawer has been not only placing "generations" of students of Australian constitutional law in his debt but also building a stout bridge between that subject and Australian political studies. A great deal of his sometimes distinctly provocative constitutional writing has been addressed at once to open-minded professionals and to the laity. In a federation like the Australian that is at once an invaluable and an indispensable service, Sawer has not only equipped himself intellectually to perform the bridge-building function but as a natural teacher he makes what he has to say eminently readable by the pungency and directness of his presentation. He is not, of course, a conservative traditionalist in the mould of so much of the Australian legal profession and the verve with which he throws off his contentious ideas makes even some of the abler members of that profession feel somewhat uncomfortable.[1]

To all this, his new little volume, *Modern Federalism* is no exception. It is written for the laity. But the student of constitutional law is also surely once more in Sawer's debt if for no more than bringing aspects of Australian federalism into illuminating relationship with corresponding or constrasting aspects of other federal systems and for suggesting insights into our own federal trends from other federations' experience.

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[1] One example of such a reaction is to be found in (1968-1969) 3 *F.L.Rev.* 144.