

BOOK REVIEWS

An Index-Digest with Table of Reported Cases in the Commonwealth Law Reports Volumes 1-127 (1903-1972) by P. H. LANE, B.A., LL.M., LL.D. (Syd.), s.J.D. (Harvard); Barrister-at-Law; Professor in Constitutional Law, University of Sydney. (The Law Book Co. Ltd, 1976), pp. i-clxx, 1-652. Recommended retail price \$47.50 (ISBN: 0 455 19303 7).

Practitioners and others who make use of the Commonwealth Law Reports are familiar with the index-digest covering volumes 1-100 (1-111 with supplement) compiled by Professor P. H. Lane. Professor Lane has now produced a replacement volume, taking in all the cases decided by the High Court of Australia contained in the 127 volumes of the C.L.R.'s up to 1972. The new volume continues to provide an accurate index of the cases and a classification of them under appropriate headings.

Nevertheless, users of the volume will be astonished by the author's prefatory statement, which the publishers have reproduced in the advertising material. It reads:

The content of the work consists of the material facts and ratio of each case, principles enunciated, theories and doctrines expounded, any historical excursus or legal rule discussed.

It would be miraculous if the entire work of the High Court over the traditional life span of man could be so comprehensively and conclusively presented in a single volume, but Professor Lane does not reveal in this book that he stands above the rest of us as a worker of miracles. The volume is as its title suggests—an index-digest—and as such will be as valuable as its predecessor. In the opinion of this reviewer, as a working tool, it is one of the author's best contributions to law.

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Land Law and Registration by S. ROWTON SIMPSON C.B.E., M.A. (Cantab.) of the Inner Temple, Barrister-at-Law. (Cambridge University Press, 1976), pp. i-xlix, 1-726. Recommended retail price U.K. £30.00; Recommended retail price Aust. \$71.30 (ISBN: 0 521 20628 6).

On a comparative basis Rowton Simpson knows more about systems of registration of titles to lands than any one else writing today. Not only does he know and understand the theory, but he also knows what makes such systems tick. Even more importantly, he knows what stops

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them from ticking. He has drafted, and advised upon the operation of, more systems of registration throughout the world than any living person. I am one of those who has been fortunate enough over the last decade or so to have spent some weeks at various times with Rowton Simpson arguing, disagreeing, agreeing and generally enjoying, and gaining from, his scholarship and practical knowledge. That he has made such generous use of parts of my own work in the present book is not so much a consequence of the persuasiveness of my arguments but, I fancy, of my persistence in putting them.

Land Law and Registration started off as a new edition of *Dowson and Sheppard's Land Registration*, a work by the two men who, in the previous generation, had done the practical advisory and inceptive job that Rowton Simpson did for so many years.

However, this book is not a new edition of *Dowson and Sheppard*; it is a new work which occasionally refers back to the earlier one but, just as often, picks up information and ideas from other works or other sources. *Dowson and Sheppard* was a fascinating collection of registration of title material which was a distillation of the knowledge that Sir Ernest Dowson and Mr Sheppard had acquired over half a century. But it suffered from repetition and compression which sometimes led to inaccuracy. The present book has none of the failings of its ancestor.

One of the difficulties faced by Rowton Simpson has been that he is writing for so many different readers with different angles on land administration: surveyors, lawyers, land administrators (who may be without either legal or survey training), draftsmen of new systems, or indigenous office holders of land administration posts to whom English is a second language. For the specialist in a particular area, the explanation of a simple term that is second nature to that specialist may seem unnecessary, and even, occasionally, slightly irritating. But I can only say that I was grateful to have several of the explanations from other specialisms that occurred in the text. I illustrate. I did not need a translation of *bona fide* or an explanation of who Mr Bumble was. But, similarly, the surveyor and Central African respectively did not need an explanation of catenary or *dambo*. I did.

The book contains two Books; Book 1 is called "History, Principles and Practice" and Book 2 is called "The Law". In fact, there is a very considerable amount of law in Book 1 as well, but probably what the author was leading up to in his second Book really was the explanation of *THE LAW*—justifiably in capital letters with "the" italicised! That is, the kind of system contained in the statutory provisions that Rowton Simpson would like to see adopted and, of course, has been adopted on his recommendations in many jurisdictions.

Book 1 of 20 chapters and 4 appendices starts with chapters on the nature of land ownership and processes of land transfer. There are then short descriptions of English land law and conveyancing. These are interesting chapters, but they leave no doubt where the Simpson sympathies lie—they are with a system of registration of title where the register is initially compiled systematically and compulsorily rather

than sporadically and voluntarily. For the fully developed country where the emphasis is, of course, on individualized tenure, I believe that the Simpson view is unanswerable. It is much more difficult in a developing country (such as Papua New Guinea for instance) with vastly different levels of development within the one jurisdiction.

The next chapter on the Torrens system is necessarily short in such a comprehensive work, but, even here, Rowton Simpson sets the main for what is advocated in Book 2. He reminds us of the inaccurate description of a fee simple in the original South Australian Torrens statute of 1858 which, like the provisions in that statute under which trusts could be noted on the register, soon disappeared. It is just this kind of provision (of course, without the use of the term "fee simple") that the Kenyan Registered Land Act 1963 contains in s. 27 where it provides that the registration of a person as proprietor "shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto". Such a provision, of course, effectively throws out most of English land law and, in its turn, does create the "back stop" law problem. That is, once the basis of non-statutory law has been nullified and replaced with a statute that purports to be comprehensive, an intractable problem arises if the statute is shown to have a gap in it. An equity and good conscience section in the appropriate statute is the simplest, but not necessarily the most effective, way of overcoming the problem.

After chapters on registration of deeds, cadastral survey, boundaries and maps (in which chapter he, quite rightly in my view, has a side swipe at our so-called "guaranteed boundaries" under the Torrens System), objects and reasons for registration of title and compensation for loss, Rowton Simpson turns to practical problems. There are chapters on compilation of the register, fragmentation and consolidation, unit or strata titles, adjudication, administration, machinery of registration and Registry Office procedure, survey techniques as well as some others. Automation gets a small chapter, but I fancy I lost an argument with the author here as he is not quite as hopeful as I am on this score. But I feel that the inclusion of the two appendices (the other two deal with French and West German records) dealing with the Sabah computerization, and, particular, the Swedish Land Data Bank tend to support my theoretical arguments in practice.

Book 2 concentrates on the statutory law and develops further the Rowton Simpson thesis mentioned above that, in developing countries, the labyrinthine qualities of English land law (particularly without the 1925 reforms) are inappropriate and almost ludicrous for a developing country. I support his stand and I have always argued that, even in the much simpler context of Australasia, English land law has largely worked because we have ignored most of its complexities. Rowton Simpson goes even further when he says (at p. 442) that what is needed in a developing country is a statute that will be suitable whatever may have been the nature of the previous system (or systems) of land law in that jurisdiction. Further, he argues that the statute itself

should provide the substantive law as well as the technical registration law.

On registration, not unnaturally, he takes as his centre-piece the Kenyan Act which has been in operation for more than a dozen years. He subjects it to a penetrating commentary, although, like *Oliver Twist*, I could have asked for more. The second last chapter deals with adjudication of land which usually involves transition from some kind of customary tenure to individual tenure—a process which often accompanies the transformation of the use of land from that in a subsistence to that in a commercial society. In the final chapter, he deals with the vexed problem of the control of land transfer where there is development going on in a society; what level of protection should be built into the system for unsophisticated peoples dealing with their lands. For both of these chapters the Malawi statutes are the prototypes used for discussion.

I have often said that we lawyers can supply a goldplated (but not yet solid gold) system of registration of title to land, but such a system is no use unless the community to which we supply it asks for, and needs, such a system. Rowton Simpson's Book 2 shows at least one set of legislation which can be used as a guide.

I enjoyed reading this book. But it is not everyone who can get a good read from a book on land law and registration of title! It is more than a worthy successor to *Dowson and Sheppard*. It is not only a work of scholarship, but it can be used in a very practical way. One of the sadnesses is that, although it will be a most useful handbook for land administrators in developing countries, it has had to be priced at £30 per copy. Incidentally, others share my view of the scholarliness of the book; it has earned for Rowton Simpson a Ph.D. degree from the University of Cambridge. It is not unusual for good books to earn their authors doctoral degrees, but what is delightful in this case is that Dr Simpson takes his Ph.D. 51 years after taking his B.A.

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Conflict of Laws in Australia by P. E. NYGH, LL.M. (Syd.), S.J.D. (Mich.); Professor of Law, Macquarie University. (Butterworths, 1976, 3rd Edition), pp. i-xlvi, 1-530. Cloth, recommended retail price \$25.00 (ISBN: 0 409 43752 2); Paperback, recommended retail price \$20.00 (ISBN: 0 409 43753 0).

The previous editions of this work have been reviewed in (1969) 3 F.L. Rev. 307 and (1973) 5 F.L. Rev. 316 and it might be thought to be otiose to review the third edition. Professor Nygh has made a

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