cases. This book is not his first. His publications show an industry that suggests one should look forward to the next.

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Bilateral Studies: American—Australian Private International Law, by ZELMAN COWEN, M.A. (Oxon), B.C.L. (Oxon), B.A., LL.M., of Grey's Inn, Barrister-at-Law, (Oceana Publications, New York, 1957), pp. 1-108. Australian price £1 17s. 6d.

In a federal system one expects to find many cases with interstate elements. The present expansion of population and commerce in Australia, and particularly the growth of large companies carrying on business in more than one State, must lead to many more such cases. As a result the courts find themselves called upon more and more to grapple with the rules of private international law.

This problem has been faced for many years in the United States of America, and as a result a considerable body of case law has been built up in that country dealing with private international law particularly at the interstate level. This book is one of a series comparing the rules of private international law in America with those in other countries. In this short but admirable book Professor Cowen has set out to provide such a comparative study of the rules in the two federal systems of America and Australia. The book is short, there being only 80 pages of text, the balance being taken up with appendices, tables and a comprehensive and useful index. The author displays a complete grasp of the rules of private international law in the two systems, and in many ways shows how the American experience can provide a useful guide to the Australian courts, on the interstate level. Although in a book of this size it is impossible to discuss fully the whole range of private international law, Professor Cowen has briefly summarized all the main features of the subject. He has done more than achieve his stated object of comparing the two systems. He has seized the opportunity to ask some very stimulating questions of the Australian courts, and has forcefully advocated a new thinking in Australia on problems of interstate private international law.

The book contains references to a number of cases where Australian courts have made a distinct contribution to the English common law rules of private international law. Some of the fields dealt with are: renvoi; incapacity to marry imposed by the domicile of one of the parties to the marriage (where the High Court in *Miller v. Teale*[1] cast doubt on the doctrine of *Sottomayer v. De Barros (No. 2)*[2]; and choice of law in a suit for divorce where the petitioner relies on misconduct of the respondent, part of which occurred in some other country.

The greater part of the book, and the most interesting part, deals with cases where the common law rules have been modified, or in the author's opinion should be modified in cases on the interstate level. The author devotes a chapter to full faith and credit (section 118 of the Australian Constitution) and returns to the subject on a number of occasions throughout the rest of the book. His contention is that the Australian judges, unlike their American brothers, have failed to apply full faith and credit in many cases where it should have been relevant, and generally seem un-

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[1] [1954] Argus L.R. 1109.

[2] (1877) 2 P.D. 81.

aware of its importance. He criticizes the decision of Mr Justice Fullagar in *Harris v. Harris*,[3] the only Australian case in which full faith and credit has been fully considered, mainly on the grounds that the judge should have drawn some implications from the federal nature of our system and applied them to the construction of the full faith and credit provisions. While this may have been the approach in America, it can be argued that the same policy reasons do not apply in Australia which is a much closer-knit community with few great differences in the laws of the various states. Professor Cowen is also doubtful whether *Harris v. Harris*[4] gives any real help in the field of choice of law, because it is always necessary to find out to which law full faith and credit should be given. One answer could be that the common law already provides rules for choice of law. Could not these rules be used to find the proper law? The law so found would then have to be given full faith and credit. This seems to have been the view of Mr Justice Napier in *In re E. & B. Chemicals & Wool Treatment Pty Ltd*[5] in the extract from his judgment quoted by the author.

Professor Cowen strenuously attacks the doctrine that a married woman cannot acquire a domicile apart from her husband. He favours the rule adopted in some American states that the wife can have a separate domicile. When and if the Marriage Bill presently before the Commonwealth Parliament becomes law, much of the hardship occasioned by this rule will disappear. The author finishes his section on domicile by quoting a passage from the Victorian case of *Armstead v. Armstead*[6] where the Supreme Court suggests that in this day and age the concept of State domicile could well be replaced by an Australian domicile. To my disappointment, Professor Cowen's only comment was that this may well provoke thought on either side of the Pacific. I would have been interested in his views on the effect such a concept would have generally, for instance on the succession laws of the various states.

In a very interesting chapter on the recognition of foreign judgments the author considers the question whether the reciprocity doctrine of *Travers v. Holley*[7] should be extended to judgments obtained on service outside the jurisdiction in accordance with legislation. His view is that such jurisdiction has been assumed to permit satisfaction of a judgment against assets of the defendant within the jurisdiction. But where there are no such assets within the jurisdiction, he feels it would be unfair that a judgment could be obtained against a defendant who does not submit to the jurisdiction, which judgment could be enforced as a valid foreign judgment. On the other hand, however, the jurisdiction is only assumed when there is some nexus between the defendant's conduct and the jurisdiction, so why should a forum which assumes jurisdiction in the same circumstances not recognize the foreign judgment? Failure to recognize it may well lead to unfairness to the plaintiff. The author points out that on the interstate level this problem can be overcome by service under the Service and Execution of Process Act. He also refers to the possibilities of full faith and credit in this context. He incidentally attacks the decision in *Fenton v. Fenton*[8] where the Victorian Supreme Court refused to follow *Travers v. Holley*.[9] This position has now been rectified by statute: see Marriage Act 1958 section 72 (2).

There are many other interesting topics dealt with throughout the book,

[3] [1947] V.L.R. 44. [4] *Ibid.* [5] [1939] S.A.S.R. 441. [6] [1954] V.L.R. 733.
[7] [1953] P. 246. [8] [1957] V.R. 17. [9] *Supra*, n. 7.

but these examples demonstrate the author's critical approach. This is the first book which has ever summarized the Australian experience in the field of private international law, and for that reason alone is important. One is tempted to judge it as a book on Australian private international law, but that would be to misinterpret the scope of the work. Professor Cowen has covered all the important advances in the common law rules made by the Australian courts, and he has indicated the effects of Commonwealth law. There are other minor contributions made by Australian courts in various fields of private international law which he has not been able to fit in.

Two examples are cases on legitimation by statute, *Thompson v. Thompson*,[10] *In re Williams*[11]; and a series of recent cases (resulting from immigration to Australia) on the recognition and proof of ceremonies of foreign marriages. There is also a great deal of law on the operation and effect of the Service and Execution of Process Act which would be out of place in this comparative study. The book whets one's appetite for a book dealing with the whole field of Australian private international law with ample scope for full discussion of all the intriguing problems raised by Professor Cowen in his excellent work. In the meantime this book will answer many of the problems of the student of Australian private international law, and will provide a framework within which to tackle new problems as they arise, as well as a reference to comparable American experience.

The author has achieved his object admirably. Throughout the work he has compared the Australian law with the American. Anyone reading this book will feel that the Australian courts have not yet fully grasped the fact that interstate private international law problems must often be dealt with differently from international ones. In particular the reader will appreciate that full faith and credit has yet to be given its full application in Australia. This book will help towards a greater understanding of interstate problems of private international law in Australia.

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Unincorporated Non-Profit Associations, by HAROLD A. J. FORD, S.J.D. (Harvard), LL.M. (Melb.), Reader in Law in the University of Melbourne. (Oxford University Press, 1959), pp. i-xxii, 1-151. Price £2 6s. 6d.

This monograph, which was originally written as part of the author's work for his S.J.D. degree at Harvard, packs a remarkable quantity of material, upon one of the most difficult subjects available for this kind of treatment, into the short space of one hundred and fifty pages. The work is divided into two parts, the first dealing with dispositions of property to associations, while the second, and longer, part deals with their liability.

The associations involved are of various kinds, and include clubs, unincorporated trade unions, mutual benefit societies, non-charitable welfare organizations, lodges and the like. The significance of the term 'non-profit' in the title of the work, is that commercial partnerships, being otherwise catered for, do not fall within the author's purview.

There are, of course, other aspects of non-profit associations which are significant for legal theory, but the two aspects chosen by Dr Ford for examination have been selected by him for the opportunity they offer to

[10] (1951) 51 S.R. (N.S.W.) 102. [11] [1936] V.L.R. 223. * LL.M., Barrister-at-Law.