reasoning in *Bourhill v. Young*[2] is quite unsound. Yet although the authors refer to this case on several occasions, they nowhere suggest that it was wrongly decided.

I appreciate, of course, that if one is writing a textbook of English law there is little point in saying that a decision, especially a decision of the House of Lords, is wrong, no matter how absurd or unjust its results may be. The refusal of English appellate courts to reconsider their past decisions would make such criticism pointless, and even misleading to a student who seeks to find out 'what the law is'. But the authors are not writing a textbook of English law, and they could well have afforded to put aside the polite fiction—in which no one believes—that all the cases are correctly decided and can be reconciled. They might even have remembered that their book will be read in many jurisdictions outside England, jurisdictions where the judges have not refused to accept the responsibilities that accompany the judicial office.

Despite this blemish, however, the book remains a splendid piece of work. It should be read by everyone who aspires to be learned in the law, and I have little doubt that it will be greatly in demand in future years. I would hope, however, that this will lead to reprints rather than to new editions. For, after all, there is little point in revising a book such as this to keep up with the new cases, and the authors ought now to devote their considerable talents to analysing and clarifying other dark areas of the common law.

PETER BRETT*

Industrial Conciliation and Arbitration in Australia, by ORWELL DER. FOENANDER, LL.M., LITT.D. (The Law Book Co. of Australia Pty Ltd, Sydney, 1959), pp. i-xx, 1-220, and Appendix 1-119. Price £2. 15s.

This is the seventh book by the author dealing with labour relations in Australia. It deals with the constitutional sources of jurisdiction and the form of the existing Commonwealth system of conciliation and arbitration. The publication arises from the new provisions inserted, in 1956, in the Commonwealth Conciliation and Arbitration Act. For convenience the whole Act is printed as an appendix to the book.

The 1956 Act represented a completely new departure from the previous combination of arbitral and judicial power in the one tribunal, the Conciliation and Arbitration Court. This combination of powers being precluded by the *Boilermaker's Case,*[1] a new start with a division of arbitral powers to the Commonwealth Conciliation and Arbitration Commission, and the necessary accessory or consequential judicial powers to the new Commonwealth Industrial Court had to be made. In addition, a further experiment (in this instance not imposed by constitutional limitations) was undertaken by appointing conciliators without any power to settle industrial disputes other than by the process of conciliation (Chapter III).

This division of functions is so strikingly different from the position prior to 1956, that a book based on the new Act from Dr Foenander will be of great assistance to students and to those actively concerned with cases arising in the jurisdiction. Unfortunately the book, as appears from the footnote references to Industrial Court and Arbitration Commission

[2] [1943] A.C. 92.

* LL.B. (Lond.), LL.M. (W.A.), S.J.D. (Harvard); Barrister-at-Law; Senior Lecturer in Law in the University of Melbourne.

[1] (1956) 94 C.L.R. 254.

cases, deals only with the first two years' experience under the Act and this may explain why the author was not in a position to make a more critical appraisal of the success of the new scheme. In one particular he has, however, shown that he sees little merit in the changes, with regard to appointment of conciliators (pages 103-107). Yet a fuller experience from 1956 till 1960 suggests that the Commission has been more successful in the sphere of conciliation than the Arbitration Court, and some part of this success is clearly due to the work of the new conciliators.

The author's main pre-occupation in his latest book centres round the relative merits and de-merits of a compulsory system of wage fixation compared with collective bargaining (Introduction, page vii). While giving lip service to the concept that the two systems are not mutually exclusive it appears to the reviewer that the author insufficiently appreciates the extent to which the existence of registered employer and employee organizations under the Commonwealth Act does in itself facilitate the processes of conciliation (and therefore in effect of collective bargaining) in dealing with disputes of all kinds even at a national level. For example, attention can be drawn to the near success of negotiations for a long-service-leave code throughout Australia (page 84).

The author appears to vacillate between the two methods of settling disputes so far as they are regarded as being mutually exclusive (contrast his comments on page 75 with his comments on pages 181-186), but it appears that his real sympathy lies with the Australian system. However, the tests he proposes for judging the success of the Australian system, that is the tests of industrial continuity, industrial justice and public interest (Chapter II), appear likely to raise controversy both about their validity and definition, and also the extent to which the Australian arbitration system has satisfied these criteria.

Although reference is made in the book to the recent High Court cases affecting the limits on the type of industrial disputes which can be created (page 72), no analysis has been made of the limitations imposed in particular by the *Grazier's Case*[2] which decided that employee organizations *only* can create a dispute in which coverage is extended to *all* employees whether members of the organization or not. In the pastoral industry itself, with a federal award confined to union members, there exists at the moment the utmost confusion as to whether the obligations of an employer to a particular employee are under State or federal law in circumstances where an employer may not know when the employee's status has changed from membership to non-membership, or *vice versa.* This aspect is stressed because any analysis of the success or failure of the Australian system of compulsory conciliation and arbitration as a method of settling disputes is plagued by the further deficiencies imposed on that system by the inevitable conflict between Commonwealth and State industrial authorities due to the existence under the Constitution of divided industrial powers, and by the opportunity given for employers and employee organizations to exploit that conflict to their own advantage even within the one industry. No immediate solution to this problem appears to be in sight. The author refers to the report of the Joint Committee on Constitutional Review (page 87) on this aspect and refers in the Introduction (page vii) to the possibility of, and need for, the 'alteration in the apportioning of industrial power between Commonwealth and the States under the constitutional assignments'. He has not, how-

[2] (1956) 96 C.L.R. 317.

ever, expressed his personal views as to how this major problem of Australian industrial relations is to be overcome.

In the federal sphere this book should be both useful and stimulating to all students and others interested in labour problems, but the treatment of State tribunals appears to have been deliberately confined to a mere outline (Chapter V).

The author has referred (page vii) to the interest of overseas students in Australian methods and ways of industrial regulation. The book itself is admirably suited for overseas perusal and indeed appears to have been deliberately, and successfully, compiled in a manner which should provide a clear picture of the Australian industrial system and a basis for comparison with differing practices in other countries.

A. P. AIRD*

BOOKS NOTED

The Law of Torts, by HARRY STREET, LL.M., PH.D., Professor of Public Law and Common Law in the University of Manchester, 2nd ed. (Butterworth and Co. Ltd, London, 1959), pp. i-lxxxvii, 1-544. Australian price £3. 15s. 6d.

This is the new edition of the book on torts which has quickly taken a place alongside *Salmond* and *Winfield* as a standard work, being, however, more 'modern' in presentation and theory. Professor Street has removed those errors pointed out by less sympathetic reviewers of his first edition, added references to newly decided cases, rewritten the section on economic torts in the light of recent research, and incorporated into his section on occupiers' liability the Occupiers' Liability Act 1957 (Eng.). Whilst Professor Street obviously had no choice but to do this because his is essentially a statement of the law of England, it has not improved the book from the Australian point of view. Little or nothing remains of a statement of the law of occupiers' liability applicable in Australia until we adopt, or accept parts of, the Occupiers' Liability Act. This *lacuna* can, however, be filled by Professor Fleming's treatment of the subject in his work on torts. The remainder of the book is none the less valuable for this failure of Australian law to adapt to the current law of England.

Companies Act 1958, by W. E. PATERSON and H. H. EDNIE, B.COM., LL.B. (Hons.), A.A.S.A. (Prov.), (Butterworth and Co. Ltd, Melbourne, 1960), pp. 1-726. Price £6. 2s. 6d.

This book is another of the Butterworth series of annotated Acts.[1] It provides for the lawyer concerned with Victorian company law what the *Digest* provides for the lawyer in a less specialized field. The *Companies Act 1958* is reprinted with all the case law which has annexed itself to the various sections, or their antecedents, set out in detail. It is not a book filled with a stirring theme, but it does contain a wealth of material, which indeed is the only justification that the book professes.

Together with the Companies Act itself, the practitioner will find readily accessible all those regulations which are so important in the practical sense but which are so often hidden from sight. As well as the regulations under the Companies Act there are sections on Stock Ex-

* B.A. (Hons.), LL.B. (Melb.); Barrister-at-Law.

[1] For a review of the previous book in this series, see (1959) 2 *M.U.L.R.* 282.