The text of the book proper is only 79 pages. One wishes that it were longer, but the book is a re-print of a course of lectures, and in five lectures one cannot do much more than explore the potentialities of a subject. This Professor Johnson has done admirably. His concentration on and approach to the law of warfare offer a refreshing difference from that of most writers on the law of the air. But it is not only as an introduction to that topic that the book should be read. As a bonus, he presents a picture of the way in which rules of International Law develop from nothing, by means of analogy, use of the concepts of municipal laws, State practice, and Convention. But it is as a book on Air Law that the book should be primarily read. The result of reading it is a hope that Professor Johnson will not fail to make further contributions to this important part of International Law.

ARTHUR ROGOSON

Cases and Materials on Contract, by R. E. MCGARVIE, Q.C., LL.B. (HONS), C. L. PANNAM, LL.B. (HONS), LL.M. (ILLINOIS), and P. J. HOCKER, LL.B. (The Law Book Company, 1966), pp. i-xxxii, 1-1103. Price $13.50.

The authors state that this book has been designed primarily as a teaching instrument. It is, therefore, proper that this reviewer should preface his remarks with a declaration that he has never consciously employed the purely case method of teaching. Furthermore, as a student he was never consciously or (for the avoidance of doubt amongst those who favour the somnolently unconscious acquisition of knowledge) unconsciously subjected to that method of instruction. However, even those of us who are wedded to the trilogy of text, case and problem realize that a good case book is an indispensable tool for the modern law student, whether he be a practitioner, a teacher or an undergraduate.

In the respectful opinion of this reviewer, the authors, publishers and printers have produced an outstandingly good case book. Respect for the industry, research and discrimination of the authors will be engendered in all of those who are wise enough to use the book.

The publisher's claim that the book is comprehensive is more than substantiated. Indeed, the inclusion in the text of *The Council of the City of Sydney v. West*[1] (at page 253), which was not published in the reports until the end of January 1966, and the inclusion of the even later decision, the *Suisse Atlantique Case*[2], as an appendix to Chapter V, must have involved an amazing degree of co-operation between authors, publishers and printers. The book has been arranged in chapters which substantially cover the same ground as the standard texts, thus involving a comprehensive treatment of special appeal to the trilogist.

To say that a case book is comprehensive does not mean that it is all embracing. Some cases must of necessity be excluded. The process of selection and rejection is inherently difficult and, in the case of a book designed primarily for the use of Australian students there is the additional complication of having to consider the case law of a number of common law jurisdictions. Having decided upon the various aspects of the subject which must be covered, it is then necessary to decide which of those aspects, if any, call for greater emphasis.

On the question of emphasis the authors have displayed courage and an admirable insight. As they point out in the preface, too much time in the past has been spent on the case law dealing with the formation of

[1] (1965) 39 A.L.J.R. 323. [2] [1966] 2 All. E.R. 61.

contract at the expense of other aspects of greater significance. This reviewer unreservedly endorses that view, and, in fact, is of opinion that because of the traditional emphasis on formation, where the rules are substantially uniform for all simple contracts, lawyers have been encouraged to think that the infinite variety of obligations flowing from contracts after their formation must also be governed by uniform rules. A perusal of *White and Carter (Councils) Ltd v. McGregor*[3] (included at page 830) and of the judgment of Dixon J. in *Automatic Fire Sprinklers Pty Ltd v. Watson*[4] (included at page 825) may convince the reader that although there may be a law of contract governing formation it becomes a law of contracts in regard to other aspects. The reviewer is happy to have the opportunity of adding a *'mea culpa'* to the authors' act of contrition for past sins.

By far the longest chapter is devoted to the terms of a contract. The authors make no apology for emphasizing this aspect and none is needed. The art of legal interpretation and construction has long been neglected in favour of over indulgence in the esoteric pursuit of elusive, and at times illusory concepts with the result that modern lawyers sometimes tend to give 'more weight to words than to purpose'.[5] (See the observations of Sir Victor Windeyer, 'Unity, Disunity and Harmony in the Common Law'[6].) The authors are to be congratulated for having drawn attention to a serious and only too common omission in the teaching of the law of contract.

Clearly what shall be included and where it is to be placed will often be a matter of purely personal judgment. Some teachers will use one case to illustrate a principle and some will use another, to illustrate the same principle. Again some teachers will use a case to illustrate one principle and some will use the same case to illustrate another principle. Where a case illustrates more than one principle the authors have adopted the procedure of referring the reader to chapters other than the one in which a case is included. For example, *Rickards v. Oppenheim*[7] and *Craine's Case*[8] are included in Chapter XVI (at pages 745 and 749 respectively) and the reader (at page 754) is referred back to Chapter III. However, the earlier Chapter has no reference to these cases. It is suggested that in such cases a cross reference is helpful.

With regard to the placing of cases this reviewer finds ground for serious disagreement in only two cases. First, in his opinion, the judgment of Denning L.J. in *D. & C. Builders Ltd v. Rees*[9] (included under Quasi Estoppel at page 123) adds nothing to his lordship's earlier restatement of the concept in *Combe v. Combe*[10] (included at page 113). On the other hand the case is of considerable importance in that Lord Denning (at page 125) has, albeit unconsciously, given his approval to the interpretation of *Sibree v. Tripp*[11] advanced, the year after it was decided, by the Supreme Court of New South Wales in *Polack v. Tooth*[12]. Secondly, *Shanklin v. Detel*[13] is included in the chapter on Collateral contracts (at page 134). The objection is not merely that the cause of action was not based on a contract 'made in consideration of another contract' (the other contract had already been entered into) but that its classification

3 [1962] A.C. 413.
4 (1946) 72 C.L.R. 435.
5 [1966] New Zealand Law Journal 193, 196.
6 *Ibid.*
7 [1950] 1 K.B. 616.
8 (1920) 28 C.L.R. 305.
9 [1966] 2 W.L.R. 288.
10 [1951] 2 K.B. 215.
11 (1864) 15 M. & W. 23.
12 (1847) 1 Legge 381.
13 [1951] 2 K.B. 854.

as a collateral contract obscures its real importance. Surely the case does what has been frequently done in the U.S.A., that is to say it provides a contractual remedy in some cases of innocent misrepresentation based upon a warranty given in return for valuable consideration—a remedy that had for some time been confined by English lawyers to an agent's warranty of authority.

There are only two omissions that cause any grave concern. In Chapter III—Quasi Estoppel there is an adequate coverage of English and New Zealand cases but no Australian ones. It is true that there are no Australian cases directly in point but there are at least two cases of considerable significance to Australian lawyers. First, the decision of the Full Court of the Supreme Court of New South Wales in *New South Wales Rutile Mining Co. Pty Ltd v. Eagle Metal and Industrial Products Pty Ltd*[14] (following its earlier decision in *Perpetual Trustee Co. (Ltd) v. Pacific Coal Pty Ltd*[15]) demonstrates that the concept of quasi estoppel, if it exists, can have no application in a common law action in New South Wales. It would be parochial to assume that the decision is of interest only to lawyers practising in New South Wales. Secondly, in evolving the concept, Lord Denning placed great reliance on *Hughes v. Metropolitan Railway Co. Ltd*[16]. In the only case in which the High Court appears to have applied *Hughes's Case, Barns v. Queensland National Bank*[17], it did so on the assumption that consideration was an essential element.[18] In this context it is hoped that even case method purists will draw the attention of their classes to Sir Owen Dixon's address, 'Concerning Judicial Method'.[19]

The criticisms that have been made (one hopes that the authors will regard them as suggestions), if not *de minimis*, affect only a small part of a large book. This reviewer regards his copy not only as a valuable addition to his already not unsubstantial law library but also as an indispensable part of his equipment as a teacher of the law of contract in an Australian Law School.

P. F. P. HIGGINS*

Principles of Australian Administrative Law, by D. G. BENJAFIELD, LL.B., D.PHIL., and H. WHITMORE, LL.B., LL.M., 3rd Ed. (Law Book Company, 1966), pp. i-xxxi, 1-368. Price $7.50.

Few tasks require more scholarly skill and firmness than the writing of a textbook on Australian Administrative Law. The work under review represents a genuine development in content and arrangement from the two earlier editions, in which Professor W. Friedmann had played a significant pioneering role. The increase in social legislation, the influence of new approaches to many fundamental issues, and the greater volume of decisions by Australian courts have obliged the present authors (Professor Friedmann having withdrawn from the enterprise) to expand considerably the original volume.

These new demands have magnified the terrors of authorship. The grand flood of decisions and laws forces a writer to make a rigorous selection from his available material. The present authors have wisely opted

14 (1960) S.R. (N.S.W.) 495.
15 (1955) 55 S.R. (N.S.W.) 495.
16 (1877) 2 App. Cas. 439.
17 (1906) 3 C.L.R. 925.
18 *Ibid.*, 939.
19 *Jesting Pilate*, 152 ff.

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