

*The Law of Securities*, by Emeritus Professor Edward I. Sykes, (3rd ed. Law Book Co. Ltd, Australia, 1978), pp. lxxxix 1-830, Index 831-927. ISBN 0 455 19700 8, Price \$27.50 (paperback); ISBN 0 455 19701 6, Price \$34.50 (hardback).

The third edition purports to update to the 1st January 1977 the case law and statute law of the already comprehensive treatment of the Law of Securities in the second edition (1973). The main statutory changes included are the Queensland Property Law Act 1974-1975 and the Tasmanian Limitation Act 1974. Developments in the common law include such areas as failure to lodge caveats and questions of the mortgagee's duty when exercising his power of sale. The Victorian position on failure to lodge caveats has altered since *Osmanoski v. Rose*<sup>1</sup> where Gowans J. distinguished the position expounded in *J. & H. Just v. Bank of New South Wales*<sup>2</sup> as dealing with New South Wales legislation and decided that failure to lodge a caveat by a prior interest holder can be a factor leading to postponement of his interest to a subsequent equitable interest holder. Professor Sykes includes a discussion of the *Osmanoski* decision. It is however surprising that he does not refer to the decision in *Taddeo v. Catelano*<sup>3</sup> which affirmed *Osmanoski* for South Australia. (See now *Taddeo v. Taddeo*<sup>4</sup> and *Avco Financial Services Ltd v. White*<sup>5</sup>). The mortgagee's duty when exercising his power of sale was examined in *Latec Investments Ltd v. Hotel Terrigal Pty Ltd*<sup>6</sup> where Kitto J. made useful comparisons between the duty under an Old Title Mortgage and the Torrens Title Mortgage. Perhaps this explains why Professor Sykes includes the subsequent case of *Henry Roach (Petroleum) Pty Ltd v. Credit House (Vic.) Pty Ltd*<sup>7</sup> in the 'Old Title Legal Mortgage' Chapter and not the 'Torrens Title' Chapter.<sup>8</sup> The *Henry Roach* case clarifies the type of obligation on the Torrens Title Mortgagee.

One area which could be expanded is constructive notice. Professor Sykes makes brief mention of the case of *Caunce v. Caunce*<sup>9</sup> merely to say that a prospective purchaser is not affected with notice of an equitable interest possessed by the vendor's wife merely because the wife is living with her husband on the premises. Professor Sykes further states that the mere existence of the matrimonial relationship does not impose upon a purchaser the duty to investigate the financial relationships of the vendor with his wife upon pain of being affixed with constructive notice of equitable interests possessed by her. *Caunce v. Caunce* was dealing with unregistered land under the English Law of Property Act 1925 and hence will have application to general law priorities in Australia. However the case of *Hodgson v. Marks*<sup>10</sup> should have been mentioned here, where Russell L.J., although dealing with registered land under the English Land Registration Act 1925, disapproved of *Caunce v. Caunce* and its statement on the extent of the purchaser's duty to enquire. In any event, today the case of *Williams and Glyn's Bank Ltd v. Boland; Williams and Glyn's Bank Ltd v. Brown*<sup>11</sup> clearly affirmed for registered land the position in *Hodgson v. Marks* and disapproved the dicta of *Caunce v. Caunce*. Lord Denning in fact states that 'anyone who lends money on the security of a matrimonial home nowadays ought to realize that the wife may have a share in it'.<sup>12</sup> It may well be that as a result of *Williams'* case a purchaser of general law land in Australia will be deemed to have constructive notice of a wife in possession.

<sup>1</sup> [1974] V.R. 523.

<sup>2</sup> (1971) 123 C.L.R. 546.

<sup>3</sup> (1975) 11 S.A.S.R. 492.

<sup>4</sup> (1978) 19 S.A.S.R. 347.

<sup>5</sup> [1977] V.R. 561.

<sup>6</sup> (1965) 113 C.L.R. 265.

<sup>7</sup> [1976] V.R. 309.

<sup>8</sup> Cf. Book Review (1979) 53 *A.L.J.* 596.

<sup>9</sup> [1969] 1 W.L.R. 286, 321.

<sup>10</sup> [1971] Ch. 892.

<sup>11</sup> [1979] 3 W.L.R. 697.

<sup>12</sup> *Ibid.* 796.

Special treatment is given in the book to the statutory Torrens mortgage which Professor Sykes classifies as of the hypothecation type but which has attracted the remedy of foreclosure and many of the incidents of the traditional mortgage by assignment. Professor Sykes highlights the problems that have surrounded the Torrens mortgage by comparing the policy of the English legislature which introduced in 1925 the concept of a legal charge but also statutorily included much of the case developed law surrounding the mortgage by assignment form. He deplores the absence of some such provisions in the case of the Torrens title mortgage in Australia. It is specialized treatments such as these that are welcome both to the academic and the practitioner who can obtain a wealth of information at the same time as treating the book as a reference for questions on more complex security transactions.

A word too should be said about the inclusion of a chapter on Limitation of Actions especially in relation to mortgages. Adverse possession is dealt with briefly as an express statutory exception to indefeasibility but also in Chapter 20 in relation to the limitation situation between mortgagor and mortgagee. Professor Sykes emphasizes the need for reform in this area, particularly as regards the legislative omission by all States of provision for an adverse possessor's right to apply for a statutory registered title and of any provisions as to the application of the Torrens title mortgage to adverse possession. See now the Real Property (Possessory Titles) Amendment Act 1979 (N.S.W.) which allows an adverse possessor in New South Wales to apply to the Registrar-General to be registered as proprietor after the expiration of the relevant limitation period.

Apart from the content of the book a word should be added on the book's style. The manner of exposition appeals to the property lawyer. Professor Sykes himself in the preface to his first edition<sup>13</sup> expresses a desire to preserve an 'analytical and critical attitude'. One should not confine oneself to setting out the law but should be 'bold enough to deal with points as yet undecided by Courts'. Sykes makes every effort to fulfil this endeavour in all three editions of his book. With extraordinary clarity he not only provides legal information to the reader, he also offers comments and opinions on the law he exposes. He certainly leaves his personal stamp on what could otherwise be a mechanical cataloguing of the law on securities. This personal and colourful style is demonstrated in his treatment of the area of gifts of Torrens Title land. Dixon J. (as he then was) in the case of *Brunker v. Perpetual Trustee Co.*<sup>14</sup> decided that the grantee under the unregistered voluntary instrument takes no estate legal or equitable but is entitled to a right of a new description viz. an indefeasible right to be registered. While Professor Sykes admits that the Dixonian view must be accepted as the dominant Australian view he submits with engaging vulgarity that it is misconceived and unconvincing.

As a whole the compelling substance and style of the second edition which have made the book a leading authority on the law of securities have been gratefully preserved in the third edition.

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<sup>13</sup> Sykes E. I., *The Law of Securities* (1st ed. 1962).

<sup>14</sup> (1937) 57 C.L.R. 555.

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