side of the border he is on. Consequently the brave new Ireland gets built in America, Australia and New Zealand, and at home the population is millions less than it was in 1800.

It may be that Dr. Donaldson was being circumspect about the present because of his official position, or because he felt that a Northerner needs to be polite when writing of the South. Certainly he shows time and again in his treatment of the past that he is not indifferent to the connexion between legal developments and their social antecedents. Be that as it may, Some Comparative Aspects of Irish Law is a book to be read by anyone with an interest in Irish law specifically, or with an interest in the development of the common law or of constitutional law in general. Irish law is important to the Irish anyhow, comparative or not, and it is so outside Ireland also, especially as an example of English law operating in a separate jurisdiction almost as long as it has operated in England, and as a pioneering effort in independence after 1920.

L. A. SHERIDAN.*


The French have an idiom which may be fairly applied to this little book, and in a double sense. It is “Faites aggrandir vos meilleurs clichés”. In its proper Gallic meaning it constitutes a useful piece of advice to Professor Cowen who is well qualified to make of Australian private international law something grander than a slim volume of this kind, a century of pages of which a quarter are non-textual in character.1 Again, bearing in mind the limited contents of the book, the phrase can do service for the reviewer when he suggests that here is an opportunity to go beyond the cliché if not to make it greater, by saying that this little book is too long for its title. For, unlike the other essays in this series, the laws being here compared are very similar in their rules and, in the constitutional areas where there is no common English background at all, there is as yet no sufficient quantity of Australian material from which to draw comparisons, the courts having correctly spied the dangers of taking more than a casual sip from the maelstrom of American precedents.

Unfortunately for the Australian reader, moreover, this work apparently conforms to a plan of some kind, the structure of which is not clear. Thus a three-page section on the British and the Australian Commonwealth needs must have the information that foreign diplomats are exempt from income tax, sales tax, excise tax and customs duties in Australia (p. 7); the succeeding section on International and Interstate Conflict of Laws brings together, after some pertinent general remarks, renvoi, proof of foreign law2 and exchange control — the interstate operation of the last being left to the imagination; and some Diceyan ghost of the past apparently influenced a section on Domicile and Nationality to the extent of including under the latter head a summary of the Australian nationality legislation. The plan too has, one assumes, excluded some topics in which clear developments of the common law have been made by Australian courts. Thus the subjects of domicile of lunatics,3 lis alibi pendens,4 adoption,5 legitimation,6 and recognition of foreign nullity decrees,7 have all

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1 It is worthy of note that by an assiduous use of cross-references the Index has achieved thirteen pages to the seventy-nine of the text.
2 A reference to the strangely neglected provisions of the British Law Ascertainment Act, 1859, 22 & 23 Vict., c. 63 would have been in point here.
4 Gibbins v. Gibbins (1948) S.A.S.R. 267. This case (cited as Gibbons v. Gibbons) is mentioned on another point at 56.
5 Re Mackenzie (1951) 51 S.R. (N.S.W.) 293.
7 Vassallo v. Vassallo (1952) S.A.S.R. 129.
been examined in Australian cases of recent vintage but are not to be found in this book.8

Turning now to the subjects dealt with by the author, it is readily apparent that the two most important topics are full faith and credit and diversity problems in jurisdiction which, besides having individual sections of their own, receive investigation on other pages also. On both these subjects, of course, the author has been a pioneer in earlier publications; in particular it can be truly said that the “orphan clause” has found in him an adoptive parent. Yet it is submitted that in this field Australian jurisprudence, freed by Harris v. Harris8 from the melancholy pursuit of its own tail in the vortex of American case-law, can make a useful and important contribution in its own way, realising that an exotic plant must be raised differently in its new surroundings. As far as diversity jurisdiction is concerned, the author is, it seems, in the unenviable position of stimulating a campaign for a commodity of which there is as yet no appreciable supply.

The lesser topics in the book are a mixed bag. The author suggests that the similarity of institutions and freedom of movement within Australia ought to mean that a domicile of choice in one State should more easily be found so as to displace a domicile of origin in another State. He cites the opinion of Barry, J. in Walton v. Walton10 that “the same significance and importance cannot be ascribed to a person’s conduct in moving from one State to another” as when he moves to a place in which he will have the character of a foreigner. Yet it is submitted with respect that the logic of this is not so ex facie conclusive. For if movement is easy and uncomplicated between two States then such movement may be in either direction and the mere fact of moving has less significance than that of taking up residence in a foreign country. The fallacy of the argument, itself an expression of dissatisfaction with the rules relating to domicile of origin, lies in neglecting the animus. For it is readily arguable that a change of domicile should be more easy to establish within a federation; but surely the only safe line of argument is that the state of a man’s mind and his future intentions are less likely to undergo radical changes if he moves within the States of his own country. Thus no swing away from established doctrine is necessary; all that the courts need to do is to show a greater latitude of vision in the discovery of intention.

This matter is taken a little further by the citation of a passage from Armstead v. Armstead12 in which the Victorian Supreme Court suggested that “in the light of political, economic, social and scientific developments during the last forty years” State domicile should be replaced by an Australian domicile. “This”, says our author, “may well provoke thought on either side of the Pacific”. Yet it is submitted that such a choice among the oceans is too modest and too narrow. For even the United Kingdom is for the purposes of private international law a federation, and it is arguable that some of the developments listed have been equally at work here, perhaps for longer than the forty year period chosen. But, it may be said, the difference in Australia is that the legal systems are identical in very many of the matters in which private international law plays a part. Surely this is an argument as much in favour of having an Australian municipal private law as in favour of an Australian domicile? But

*It should also be observed that two High Court cases which could be said to be within the scope of the book have been overlooked. These are Koitaki Para Rubber Estates Ltd. v. Federal Commissioner of Taxation (1941) 64 C.L.R. 15 (residence of a corporation) and Re Usine de Melle’s Patent (1954) 91 C.L.R. 42 (situs of a patent and its devolution on the Crown as bona vacantia after the dissolution of a company). It is also convenient at this point to correct the author’s statement of Tracy v. Tracy (1939) 39 S.R. (N.S.W.) 44. This Court in this case did not grant the wife a decree, she having unsuccessfully sued in Queensland where she was domiciled; it allowed her to petition for dissolution.

8 (1941) V.L.R. 44.
10 (1948) V.L.R. 481, 489.
12 At 34.
18 (1954) V.L.R. 733, 736.
in fact the legislatures of the States always have defined classes of persons in mind when they alter their law and in many instances an Australian domicile would be meaningless.\textsuperscript{13}

It may be suggested, furthermore, that Professor Cowen is occasionally inclined to pass an over-hasty judgment, perhaps on account of a desire to prove that the Australian courts have found it possible to demonstrate their independence. Of this tendency there are four interesting examples.

The first is the disapproval of Machado v. Fontes\textsuperscript{14} by the High Court in Koop v. Bebb.\textsuperscript{15} The former decision laid down that an act subject only to a criminal sanction in the locus delicti could be the subject of a tort action in the English forum. Now it must be urged that this lonely swallow is not bright enough to make even an English summer of Australian precedents. Machado v. Fontes is easily defensible, if only on the barren ground of the plain meaning of the words “not justifiable” and, in any event, it could only be followed on exactly similar facts. Besides, such disapproval is nothing new — in fact the members of the High Court seem only to have wished to make it clear that they allied themselves with the majority who have already disapproved of it.

The second example is Sottomayor v. De Barros No. 21\textsuperscript{18} which, via Pezet v. Pezet,\textsuperscript{17} was frowned upon by the High Court in Miller v. Teale.\textsuperscript{19} Professor Cowen mis-states the original case when he says that the English authorities hold that an incapacity of a party under a foreign lex domicilii would be disregarded when the marriage was celebrated in England and the other party to the marriage was an English domiciliary. The true position is, of course, that the foreign incapacity must be one unknown to English law. If this point be remembered, the decision is not so unreasonable. After all, one suspects that the marriages of domiciled Englishmen to their deceased wives’ sisters in Germany and Holland (e.g., Mette v. Mette\textsuperscript{20} and Re Paine\textsuperscript{21}) were probably regarded as valid by the courts of those countries. But, in Pezet v. Pezet,\textsuperscript{22} the earlier case was given a most unreasonable extension to a case where the particular incapacity was common to the domiciliary law of both parties, though only one was affected by it. This, to say the least of it, is an unconscious denial of the “reciprocity” methods to which we are now being accustomed.

The third example concerns the well-known Vita Food Products Inc. v. Unus Shipping Co. Ltd.\textsuperscript{23} When this case is first mentioned\textsuperscript{24} the author claims that it laid down “sweeping propositions about the governing law of a contract in cases where the parties have expressed an intention about that law”. Yet, when we meet it again, outside the valley of the shadows of English precedents, a milder approach is found necessary. Thus we read that “Australian courts, both in international and interstate cases, have not been troubled by any doctrinal difficulty in permitting a reference to a governing law of the parties’ own choosing”, and we also learn that, even before the Vita Food Case, “there was a disposition in the Australian High Court to afford a considerable measure of recognition to this expressed intention”\textsuperscript{25}.

\textsuperscript{13}E.g., In New South Wales the Stamp Duties Act 1920-1957, Eighth Schedule sets out higher rates of duty payable on the estates of persons dying domicilled outside New South Wales.
\textsuperscript{14}(1897) 2 Q.B. 231.
\textsuperscript{15}(1951) 84 C.L.R. 629. The point being made is, of course, that the High Court will not always follow the English Court of Appeal. It is interesting to observe that since the decisions of the Privy Council bind Australian courts there are some cases when, in effect, the Court of Appeal is thus made binding upon the Australian courts. E.g., the decision in Re Halley (1868) L.R. 2 P.C. 193, although nominally one of the Privy Council, ranks only as equivalent to a decision of the Court of Appeal. See Supreme Court of Judicature (Consolidation) Act, 1925. (Eng.) 15 and 16 Geo. 5, c. 49, s. 26(2) (c), replacing Judicature Act, 1873, 36 and 37 Vict. c. 66, s. 18.
\textsuperscript{16}(1879) 5 P.D. 94. \textsuperscript{17}(1946) 47 S.R. (N.S.W.) 45. \textsuperscript{18}(1954) 92 C.L.R. 406.
\textsuperscript{17}Italics supplied.
\textsuperscript{18}(1859) 1 S.W. & Tr. 416. \textsuperscript{19}(1894) 47 S.R. (N.S.W.) 45.
\textsuperscript{19}(1839) 1 S.W. & Tr. 416.
\textsuperscript{20}(1839) 1 S.W. & Tr. 416.
\textsuperscript{21}(1940) Ch. 46.
\textsuperscript{22}(1939) A.C. 277 (P.C.).
\textsuperscript{23}(1946) 47 S.R. (N.S.W.) 45.
\textsuperscript{24}(1939) A.C. 277 (P.C.).
\textsuperscript{25}At 17.
The final point concerns the rule concerning unitary domicile between husband and wife. Here the author lays a heavy hand upon this "rigid rule", "demonstrably out of touch with social realities", "legal doctrine which is socially indefensible and which produces absurd and artificial conclusions". However, it is surely old-fashioned, except during a short dark age in Victoria, to call the rule of common domicile "absurdly inflexible". Since the genius of the English common law revealed itself in the decision in Travers v. Holley, the conservative approach, which had hitherto resisted any attempts to railroad the law into acceptance of separate domiciles, has been well justified. Besides, it is hardly fair to call the doctrine "socially indefensible" in a bene concordans matrimonium. Lastly, Professor Cowen states the following case to show that the law is still incomplete. "If", he states, "husband and wife are resident in Victoria, yet domiciled in New South Wales, and husband deserts wife, she cannot petition in a Victorian court." Now the first rejoinder to this is "Neither can he!"; but the second is that after one year's residence in Victoria, not an arduous requirement, they can both avail themselves of the provisions of the federal legislation; and, since in the next paragraph this legislation is mentioned without reference back to the hypothetical case, the example becomes needlessly ambiguous.

In conclusion, therefore, it must reluctantly be stated that this work, though useful as a sketch for Australian readers, is not really likely to achieve its wider aim. It does not give an adequate picture of the existing law and, in places, it seems to exaggerate the significance of such variations as do in fact exist.

J. A. ILIFFE.*


In a review of one of the author's early novels it was written that he liked "nothing better than to be turned loose among a crowd of eccentrics". This, whether it be taken as a criticism or not, must also be said of the present work, for surely it would be hard to find a more tightly packed collection of legal eccentrics than within these pages. Some of them, of course, have seen the light before, the most amusing being the Mrs. Pembury of Bayswater Bridge Road who desires to upset her uncle's will and who is, to this end, receiving instructions from the deceased via a spiritualist society. The others, however, are of a pedestrian character, though the author's humour usually rises above and beyond his characters. Much of what he relates and many of the scenes he paints are only capable of appreciation in their original setting, particularly Bleekeer's Coaching School at Swiss Cottage with its Indian students and the "rather old Air Vice-Marshal who has come to the Bar rather late in life". This, like many of the better parts of the book has not been chosen as a subject by the illustrator. Indeed the illustrations, which are of the cross-hatching variety favoured by Edward Ardizzone, are a disappointment. A point of interest here is that the illustrator's name appears only on the dust-jacket.

* At 33, 34, 54.
* At 55.
* (1953) P. 246. Apart from some unsolved difficulties concerning the form as opposed to the substance of the provisions to be compared (e.g. Dunne v. Saban (1955) P. 178, comparing the law of Florida — not, as in the present work, Idaho (p. 57)), Travers v. Holley has clearly given new opportunities to the courts.
* Which, of course, bring their own difficulties, as Professor Cowen appreciates (see p. 54).
* At 54-55.
* Matrimonial Causes Act 1945-1955 (Cwlth.), Pt. III.
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