

the third point is the most interesting. In the case of the vast majority of workers there are virtually no express terms in their contracts of employment. The relationship is governed by countless rules arising from statutes such as the Victorian Labour and Industry Act and Workers Compensation Act and the Commonwealth Conciliation and Arbitration Act and the various Public Service Acts. There will also be, in almost all cases, an award or formally registered agreement having the force of an award, which will determine minimum rates of pay and allowances and many conditions of employment concerning, for example, various types of leave, hours of work, amenities and equipment. In addition there will probably be an agreement between the union and the employer for the payment of a wage higher than the prescribed minimum.

It is true that many of these provisions could be said to be incorporated in the contract of employment by implication but this is unimportant. All the incidents of employment which really matter to these workers derive from their status as employees of a particular employer, not from the contract they have with him.

Nevertheless the contractual relationship can still be very important to more highly paid employees such as managers and to workers in areas not much covered by industrial laws—*e.g.* domestic servants.

The cases extracted to answer the difficult question as to who is an employee at common law, or for the purposes of particular Acts, are well chosen. Those dealing with the incidents of the relationship once established are necessarily selective, but give a good range. Restrictive covenants are well covered.

Some of the earlier cases read rather strangely today. Employers receiving substantial damages for comparatively minor industrial disturbances and employees suing (albeit unsuccessfully) because they receive pay but no work, are not common today.

Just as some areas of law, such as the right of an employer to obtain indemnity from a negligent employee, are now of little more than academic interest, so others are developing fast. That relating to trade secrets is a good example and well covered here.

The chapter on termination of employment is comprehensive and the sections dealing with qualification for unemployment benefits and redundancy payments are interesting although largely irrelevant to the Australian scene. The same is true of the chapter on collective bargaining and even the chapters dealing with industrial conflict and strikes have an air of unreality for the Australian reader—although some parts of them are relevant at least in theory.

The section of the book dealing with trade unions is again of little value here because of the detailed code which we have built up in the Commonwealth Conciliation and Arbitration Act and similar State Acts.

The final chapter, on injury at work, again returns to an area where we have much in common with British law—although statutory provisions do create some variations.

Throughout the book the Professor shows an excellent ability to summarize facts and to condense judgments wisely. His short introductions to cases are models of their kind, and extracts are of no greater length than is necessary. An Australian edition would be very welcome.

A. E. WOODWARD\*

*Annual Survey of Commonwealth Law 1966*, edited by H. W. R. WADE, M.A., LL.D., D.C.L. of Lincoln's Inn, Barrister-at-Law and Honorary Bencher; Professor of English Law in the University of Oxford; assisted by BARBARA LILLYWHITE, M.A., of Gray's Inn, Barrister-at-Law; Fellow of St Anne's College, Oxford (until September 1966) and HAROLD L. CRYER, M.V.O., B.A., of the Middle Temple, Barrister-at-Law; Captain Royal Navy (Retired); formerly Chief Naval Judge-Advocate. (Butterworths Ltd, London, 1967), pp. i-xxvii, 1-872. Australian price: \$23.50.

There is more than a touch of irony in the establishment, so late in the twentieth century, of this important series of annual surveys on Commonwealth law. Whilst

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Britannia 'waved the rules' (to quote the version of Rule Britannia so long favoured by the more irreverent citizens of some parts of Britain's colonial empire) the xenophobic attitude of British courts and lawyers did little to stimulate British interest and concern in legal developments in the 'outposts of Empire'. Today, the seemingly irreversible trend, which is partly one consequence of this attitude, is the disintegration of many of the unifying features of the common law tradition. Given more exceptions to the general run of xenophobic British jurists in the nineteenth century (like William Burge, who published his *Colonial and English Law* in 1838), together with the creation of the long advocated inter-Empire appellate tribunal for Britain and its overseas territories, and other suggested instruments of legal co-operation, the situation might well have been otherwise. Ironically, however, it has only been at the time of the dismemberment of Empire that a growing number of British jurists have come to look with favour and concern at the contributions made to English jurisprudence by the non-British courts nurtured in the Westminster tradition. If this present volume was the 102nd in a series, rather than being the second, the history of English law overseas may well have followed a different course. Instead, like its predecessor, this volume bears witness to the increasing diversity of the legal principles and the legislative rules which order the regulation of life in the nations loosely related with each other through the amorphous political entity we now call the Commonwealth of Nations. To some extent, the volumes in this series might help to reverse this movement. It is hard to resist the conclusion, however, that although the traditions of the common law sometimes now provide one of the few remaining, tangible links between many of the countries of the Commonwealth, constitutional developments, like the Unilateral Declaration of Independence in Rhodesia, which is reviewed in this volume, will continue, and perhaps hasten, the further disintegration of the ties, both legal and otherwise, which were forged initially in the zenith years of British imperialism.

Whatever the long term importance of this series, however, it stands out, in its immediate impact, as one of the most constructive recent additions to the literature of the law. Its sponsors, the British Institute of International and Comparative Law and the Faculty of Law in the University of Oxford, working through a distinguished Committee of Management, have gathered together a group of leading British scholars, who have, in 20 chapters, made a detailed examination of developments in their own fields of special interest. Some of the contributors, like Professor A. R. N. Cross, the Vinerian Professor of English Law at Oxford (who writes on Criminal Law, 'The General Part' and Criminal Procedure) and Professor R. F. V. Heuston, of the University of Southampton (who writes with his usual elegance on Tort) are more than well known in Australia for their outstanding contributions to the study of law. Other contributors are not so well known outside Great Britain. Almost without exception, however, the contributors to this volume maintain a clarity of exposition and a critical approach to their task which makes this volume, like its predecessor, much more than a mere catalogue of cases, as the title *Survey* might seem to suggest.

Understandably, the nature of the subject matter in some chapters, like those on constitutional law, administrative law, contract, tort, and conflict of laws, lend themselves more to critical assessments and more intensive comparisons of movements in the law in Commonwealth countries. On the other hand, in the fields of taxation, labour law, and other areas where indigenous developments have led to marked variations in Commonwealth laws on these subjects, the opportunities for comparison and criticism are obviously more limited. Even so, the standard of analysis maintained in this volume, despite this situation, is generally of a high order.

All of the authors have obviously been given ready access to a wide range of law reports and other materials from around the Commonwealth, through the Bodleian Law Library at Oxford, and other sources, and have clearly made good use of these. For Australians, starved as we are of many of the reports and other materials referred to in the contributions to this series the surveys are already providing a valuable reservoir of information and comment on legal developments which otherwise might go unnoticed in this country. For the academic and practitioner alike, this in itself is a valuable service. It can also serve as a counterweight to the understandable insularity which can still occur in this country by the lack of foreign legal literature in many of our libraries.

There are again, as in the 1965 *Survey*, five chapters within the broad area of public law. Professor S. A. de Smith's 'Constitutional Law' covers what he describes as 'the year of Rhodesia and the year of revolutions'. This examination evidences only too clearly the continuing collapse of the British style governmental system in so many Commonwealth countries and underlines the need for countries, like Australia, in planning the constitutional evolution of territories like Papua-New Guinea, to look for new and better institutional systems in working towards granting independence to newly emergent countries. The situation in Rhodesia again, not surprisingly, impinges on the discussion in Dr Yardley's excellent chapter on fundamental rights and liberties. Dr Yardley looks, too, at Britain's decision to accept, for three years initially, the right of individual petition to the European Commission of Human Rights and the compulsory jurisdiction of the European Court of Human Rights. For those in Australia who still consider that fundamental rights and liberties need only the protection of the common law, this decision must have been viewed as a remarkable *volte face*, but it emphasizes the need for considerable changes in Australian attitudes on many questions relating to individual liberty. Professor Wade and Mr D. G. T. Williams provide an excellent summation of developments in administrative law and the chapter on criminal law, evidence and procedure, prepared by Professor Cross and Messrs Buxton and Taffer is a first class survey and critical analysis which serves as an admirable refresher course for those who haven't the time to delve regularly and more deeply into this area of the law. Finally, in the public law area, J. E. S. Fawcett covers recent developments in international law with a strong leaning towards the traditional, classical topics dealt with in this field. It is a pity perhaps that further material was not included on Commonwealth relations with international organizations and the role played by Commonwealth countries in the important juridical developments which are taking place through such bodies as the United Nations.

Professor Heuston's contention that a feature of our time 'has been the increasing independence of the High Court of Australia' sets the tone for his expected urbane, careful analysis of recent developments in tort, in which the High Court of Australia, as Heuston clearly demonstrates, is making contributions in the field which are influencing the path of the law well beyond the confines of this country. Treitel's 'Contract', the chapter on 'Trusts' by J. D. Davies and P. B. Carter's 'Conflict of Laws' stand out, partly at least because of their general interest as contributions which can be read with considerable profit in Australia. Other areas are well served, too, by contributions, *inter alia*, on commercial law and partnership, labour law, industrial property and bankruptcy, civil procedure and family law.

As Denning M. R. said in his Foreword to the first volume in this series, it is 'a notable venture'. Because it is obviously difficult, and in some cases impossible to give a deep analysis of the widely differing developments, both legislative and otherwise, which are taking place around the Commonwealth in a number of fields of law the *Survey* cannot, of course, be regarded as a substitute for other more lengthy analyses on particular subjects. As an up-to-date source of information, on recent legal developments, written by scholars of calibre, with critical eyes cast on movements in the law in a particular year, the *Survey* stands out, however, as a publication which should gain firm acceptance not only in the countries of the Commonwealth but in many other countries as well.

ALEX. C. CASTLES\*

*Cases and Materials on the Legal Process*, by F. K. H. MAHER, M.A., LL.B. (Melb.), Barrister and Solicitor of the Supreme Court of Victoria, Reader in Law, University of Melbourne; LOUIS WALLER, LL.B. Hons. (Melb.), B.C.L. (Oxon.), Barrister and Solicitor of the Supreme Court of Victoria, Sir Leo Cussen Professor of Law, Monash University, and DAVID P. DERHAM, M.B.E., B.A., LL.M. (Melb.), Barrister-at-Law, Sir Owen Dixon Professor of Law and Dean of the Faculty of Law Monash University. (Law Book Company Ltd, Melbourne, 1966), pp. i-xliii, 1-457. Price: \$9.50.

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