some students who will be fundamentally, and even irrevocably, upset by the "headnotes" on pages 222 and 247 which read, respectively, "The essential validity of a contract is governed by its proper law, i.e. the law of the country with which the contract has the most real connexion" and "or the proper law may be the law of the country with which the contract has the most substantial connexion"; that on one occasion only, and then apparently without reason,[25] the names of the opposing counsel are given after the statement of facts.

How, then, is one to pronounce upon this work? The best assessment, one feels, is that it stands at the crossroads, looking back to its old "companion" days and, like many a so-called casebook, containing for the most part a heap of useful and steady decisions, yet looking forward to a stage in which it could be a textbook in its own right. For although the *Cases* is nearly half the price of *Dicey* there are not many students who can lay out eight guineas for one work and that on a subject which, for many, will not be a full course; the "companion", therefore, may as well start getting ready to travel alone.

J. A. ILIFFE.*

Industrial Conciliation and Arbitration in Australia, by O. De R. Foenander, LL.M. (Melb.), Litt.D. (Melb.), Senior Research Fellow in the University of Melbourne. Sydney, The Law Book Co. of Australasia Pty. Ltd., 1959, xx and 220 pp. with Indexes. (£2/15/0 in Australia).

This is Dr. Foenander's seventh major work on industrial regulation in Australia.[1] None of these works attempts to be a complete coverage either of a particular industrial jurisdiction or of a particular segment of industrial law or relations. Rather, they take the form of a collection of essays on various aspects of the arbitration system. While this allows the author to discuss new developments since the publications of a previous work it also means that each new work tends to repeat much that has been said before, either by himself or by other writers. To many of his readers it would be more satisfactory if Dr. Foenander produced a work dealing with a particular segment of industrial law and relations and kept it up-to-date by writing new editions. This would give greater continuity to his writings and facilitate reference to particular topics therein.

Part I of the present work[2] is basically a descriptive survey of the Commonwealth and State arbitration and wages board systems, reinforced in many places, with comments on their impact on industrial relations. Five of the six chapters involved,[3] however, are concerned essentially with the Commonwealth industrial jurisdiction. While the author is, of course, free to determine the arrangement of his work, to many the result may seem lop-sided. Undoubtedly, the Commonwealth industrial jurisdiction is the most important in Australia but it still covers less than half of Australian employees. Moreover, the initiative in developing new industrial standards has tended to pass to the States, particularly New South Wales, as witness the recent legislation concerning equal pay, preference to unionists and political levies by trade unions. What is more, in Queensland and Western Australia only a small percentage of employees are covered by Commonwealth awards, the industrial tribunals there continuing to exercise a very real and independent authority. It is true that the State jurisdictions are dealt with at greater length in previous works, notably, *Better Employment Relations*,[4] but this is now six years out of date. It may be

[25] Possibly because the judge refers to counsel by name in the course of the judgment. But this happens in other cases given in the work and here the simple expedient of putting "counsel for the plaintiff" in brackets is used (e.g. 5).

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[1] He is also author of a book on workers' compensation in Victoria.

[2] Pp. 3-175. [3] Cc. i-iv, vi. [4] (1954), by the same author.

objected that, in view of the relatively scanty treatment afforded the State jurisdictions, the title of the present work is somewhat misleading.

In this, as in all his previous works, Dr. Foenander has paid little attention to aspects of industrial law outside the arbitration systems, be they common law, equity or statute. Despite the impact of authoritative industrial regulation in this country, the common law and equity continue to play an important role. For instance, the application of the industrial award depends on the existence of a contract of service, and its formation and, to some extent, its content and the remedies for its breach are still governed by the ordinary common law rules. Reference to such matters seems desirable if a balanced picture of the industrial (legal) scene is to be presented. Maybe such matters could not be given adequate treatment in a work concerned essentially with industrial arbitration. The answer, no doubt, lies in a completely different approach in which industrial arbitration is treated merely as a part of a general work on industrial law.

Dr. Foenander devotes the greater part of two chapters[5] to discussing the constitutional aspect of labour regulation. They do not purport to be an exhaustive treatment,[6] for which the reader may be expected to look elsewhere.[7] Their interest lies in the way they portray the use of various Commonwealth powers, in peace and war, for labour regulation. The chapters on Industrial Arbitration[8] and Industrial Conciliation[9] are, for the most part, a collection of general comments on the operation of these procedures in the Commonwealth jurisdiction. The most valuable contribution in this Part is the chapter dealing with the constitution and general powers of the Commonwealth Conciliation and Arbitration Commission.[10] In 1956, this body took over the non-judicial functions of the old Arbitration Court. The author's account of it will provide a handy reference for those seeking general information on this matter. It is a pity, however, that he did not include a further chapter on its companion body, the newly-created Industrial Court. Chapter V is a short account of the industrial machinery in the various State jurisdictions. Although useful, it is, as already suggested, too brief to be really informative and could, with advantage, form the subject of a separate book or books.

Part II[11] is an all too short account of collective bargaining. From time to time, there is much talk in both employer and trade union circles of having the present system replaced by one of collective bargaining. How far they are sincere is another question. An informative treatment of what collective bargaining actually entails—for it has many shapes and forms—would be of great value and would do much to dispel the rather vague and fanciful notions which abound. While such information is given in foreign works, their circulation is very limited in this country. Dr. Foenander gives only a very short account of two collective bargaining methods and then proceeds to attack their alleged defects. The reader would like to know a lot more about the subject which is being demolished. The author's criticism that collective bargaining does not protect the public interest, whereas industrial arbitration does, is too black and white. More serious, however, he overlooks the extent to which collective bargaining actually operates within the Australian arbitration system. Without haggling as to terminology, not only industrial agreements, but also many awards, represent, in fact, the result of joint negotiations by the parties before they come into court. This negotiation is not limited, as he suggests,[12] to over-

[5] Cc. i, vi.
[6] This matter was previously discussed by the author in his *Studies in Australian Labour Law and Relations* (1952).
[7] E.g., W. A. Wynes, *Legislative, Executive and Judicial Powers in Australia* (2 ed. 1956).
[8] C. ii.
[9] C. iii.
[10] C. iv.
[11] Pp. 178-197.
[12] P. 76.

award benefits but applies to the formation and variation of the award itself.

The author is most open to criticism when he leaves a discussion of legal powers and ventures into the sphere of "so-called" industrial relations. Most of his comments, particularly those concerning the functioning of conciliation and arbitration, take the form of rather superficial generalisations. It is difficult, with accuracy, to generalise on industrial relations, each industry, and indeed each plant, having its own particular industrial relations problems. No amount of knowledge of awards or even of what the judges say will give an understanding of the actual industrial relations problem at any particular time. A more fruitful approach, which has been undertaken on several occasions in recent years,[13] is to develop a case study of a particular industry or industries.

Unfortunately the style of *Industrial Conciliation and Arbitration in Australia* does not make for easy reading. There are far too many lengthy extracts from judgments and from sections of Acts, which should have been curtailed or placed in the footnotes. On the other hand, the footnotes appear to be too copious. Granted that they may be useful for reference, there is still much repetition which could easily have been avoided.

Yet, despite these criticisms, this book is informative and well-documented, and a welcome addition to the various studies in this field.

D. C. THOMSON.*

Judicial Review of Administrative Action, by S. A. de Smith, M.A., Ph.D., Professor of Public Law in the University of London. London, Stevens & Sons Limited: New York, Oceana Publications, 1959. xlvii and 486 pp. and Index. (£4/17/6 in Australia).

Even before the appearance of this work, Professor de Smith had established himself through his many contributions to legal journals as a scholar of distinction and as one of the foremost students of administrative law in Britain today. Prepared originally as a doctoral thesis, *Judicial Review of Administrative Action* can only enhance that reputation and earn for its author the gratitude of all those concerned with the teaching and practice of administrative law both in Britain and in this country. Although the case materials upon which this work is based are predominantly British, regard has been paid to some of the relevant decisions of other Commonwealth courts and also significant differences between administrative law in Britain, on the one hand, and on the other hand, administrative law on the Continent and the United States. Professor de Smith is clearly not one of those British lawyers who is "tempted to discount the value of studying American administrative methods by exaggerating the differences due to the role of the Judiciary in the Federal Constitution".[1] While recognizing the differences due to different constitutional complexes, he has recognised also that there is a sufficient area of identity for useful comparisons to be drawn and that the leading features of judicial review in Britain may be best demonstrated by reference to the different approach of American courts to similar administrative problems. Although more limited in its scope, the book serves as an admirable complement to Professor Bernard Schwartz's *American Administrative Law* and certainly the best point of departure for any foreign lawyer wishing to learn something of the British apparatus for judicial scrutiny of administrative acts.

The utility of the work for comparative purposes derives in part from the

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[13] M. Perlman, *Judges in Industry* (1954); K. F. Walker, *Industrial Relations in Australia* (1956).

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[1] E. C. S. Wade in Foreword to B. Schwartz, *American Administrative Law* (1950) v.