

policy towards some particular foreign dispositive law (p. 242). The particular result reached in *Apt v. Apt*²¹ would seem to be intelligently justified by saying that the question whether actual attendance of the parties at a marriage ceremony is or is not required seems to have more to do with the form of the ceremony than the essence of the marital relationship and so fits into the formal validity indicative rule. There seems to be little point in asking whether the Argentinian municipal rule was a more suitable or a more meritorious one than the English municipal rule.²² Whilst an inquiry whether it is in accord with English policy that proxy marriages in the Argentine should be governed by Argentinian law just does not seem to make sense.

The criticisms previously made of the deficiencies in the treatment of the subjects of torts and matrimonial law do not apply to other parts of the book. The sections on contract, on service out of the jurisdiction and on full faith and credit are particularly well done.

One notices one or two mechanical deficiencies. A 'not' seems to have been omitted in the tenth line of page 158 and the case in footnote 8 on page 99 is incorrectly cited. The footnotes on the whole show a high degree of relevancy to the text though occasionally this is not so, for example, *Re Cooke's Trusts* (footnote 92 on p. 114) hardly supports the proposition cited and the same may be said of *Merika v. Merika* (p. 110). On page 147 (footnote 29) Queensland should be added as one of the States which still preserve the procedure of foreign attachment.

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The Law and Practice Relating to Torrens Title in Australia Volume 1, by E. A. FRANCIS, B.A., A.A.S.A. (Butterworths, Australia, 1972), pp. i-lxiii, 1-640. Recommended Australian price \$22.50. ISBN 0 409 36511 4.

For some time a text book dealing with the operation of the Torrens legislation in Australia has been needed. Apart from books discussing the Acts of the various States, the last major work was Dr Kerr's *Australian Land Titles (Torrens) System*, which was published in 1927. For this reason Mr Francis' enterprise is a welcome one. His book is to appear in two volumes. The first volume covers the following: the scheme and purpose of the system, administration, bringing land under the system, caveats, implied and express covenants, easements and restrictive covenants and indefeasibility of title. The author describes and compares the legislation in all States, in the Australian Capital Territory, and in New Zealand.

Recently there have been several important decisions concerning land under the Torrens system. In 1967 the Privy Council laid the ghost of deferred indefeasibility of title in *Frazer v. Walker*.¹ In 1971 the High Court of Australia grappled with the role of the caveat in a competition between competing equitable interests in *J. H. Just (Holdings) Pty Ltd v. Bank of New South Wales*.² In 1967 the New South Wales Court of Appeal dealt with easements omitted from the Register in *James v. Registrar-General*.³ In 1969 the Supreme Court of New South Wales restricted the concept of indefeasibility of title in *Pratten v. Warringah Shire Council*.⁴ Apart from this volume of litigation the New South Wales parliament made several important amendments to the legislation in 1970.

²¹ [1947] P. 127, [1948] P. 83.

²² Perhaps Argentinians are better authorities on amatory relations than Englishmen!

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¹ [1967] 1 A.C. 569.

³ [1968] 1 N.S.W.R. 310.

² (1971) 45 A.L.J.R. 625.

⁴ [1969] 2 N.S.W.R. 161.

These events suggest that the time is ripe for a re-examination of the philosophy of the system and for an enquiry into whether the goals of simplicity of conveyancing and certainty of title are still being achieved. Such an enquiry would extend beyond a review of the acts and the decided cases. It would question the approach of the courts to Torrens system problems. It would examine the procedures and practices of the Titles Offices in bringing land under the acts, and in registering dealings. It would consider whether modern techniques such as computer technology could be of assistance in furthering the aims of the system.

Mr Francis' object is less ambitious. In his preface he states that one of the purposes of his book is to 'remind legislators, administrators and lawyers of their responsibilities in the protection of a system which has amply proved its worth'. However, even in this respect the book is disappointing. The bulk of the work is almost entirely descriptive. Although the statutory provisions are set out in minute detail, and the differences between the various State acts are fully catalogued, any penetrating assessment of the significance of these differences is missing. For example the caveat provisions work quite differently in Queensland from the way they work in the other States. While Mr Francis points out this difference he expresses no view as to the most desirable approach. Nor does he point out that in Queensland the caveat procedure is rarely employed, probably because of the way in which the provisions are drafted.

Where an explanation or interpretation of a provision is necessary Mr Francis relies heavily on quotations from decided cases (see, for example, pages 629-33), without any explanation or criticism of these cases. The result is a patchwork of statutory provisions and extracts from cases which adds little to what a reader of the cases could discover for himself. The fact that relatively unimportant as well as key parts of the legislation are treated in the same kind of detail means that the book lacks balance, and also detracts from its readability. For example the chapter on administration of the legislation occupies fifty-six pages, and deals almost entirely with the details of the various sections. The chapter on indefeasibility of title is only eleven pages longer.

The deficiencies of the book are clearly illustrated in the chapter on indefeasibility of title, perhaps the key chapter in the book. Dr Kerr classified the provisions securing indefeasibility into six main groups. Mr Francis adopts this classification and adds a seventh. He then lists these groups of provisions in each State in turn. This treatment covers some ten pages. However the minute detail makes it almost impossible for the reader to gain a clear view of how the sections interact or of any of the significant differences between the States. The great dispute between deferred and immediate indefeasibility occupies only four pages and three-quarters of this is taken up by a quote from the judgment of Street J. in *Mayer v. Coe*.⁵ Mr Francis does not mention that the existence of s. 69(2) in the South Australian Real Property Act 1886-1969 makes the application of immediate indefeasibility in that State doubtful. Nor does he consider any of the virtues and defects of the view taken by the Privy Council in *Frazer v. Walker*.⁶ The problems arising from immediate indefeasibility of title and discussed by Taylor in 'Scotching *Frazer v. Walker*'⁷ are not mentioned.

The rest of the chapter deals with exceptions to indefeasibility. These pages contain a useful comparison between the Acts of the various States and the Australian Capital Territory and a collection of the decisions on these exceptions. Again, however, the author is silent as to his view on the width of these exceptions, the role of the courts in interpreting them, or their compatibility with fundamental aim of indefeasibility of title. In this section Mr Fraser does not mention the New South Wales decisions of *Pratten v. Warringah Shire Council*⁸ or *Travinto Nominees Pty Ltd v. Vlattas*.⁹

Although the book contains many flaws, it possesses some virtues. Its comprehensive treatment of statutes and decisions will make it a useful tool for practitioners,

⁵ [1968] 2 N.S.W.R. 747, 750, 751.

⁷ (1970) 44 *Australian Law Journal* 248.

⁹ [1970] 2 N.S.W.R. 95.

⁶ [1967] 1 A.C. 569.

⁸ [1969] 2 N.S.W.R. 161.

and a handy starting point for anyone wishing to pursue his researches into the Torrens system. The section on easements and restrictive covenants is particularly helpful in this regard. The mere existence of this book will be helpful in an area where up-to-date texts are lacking, but it is unfortunate that the author has not extended his discussion of basic principle and reduced or even eliminated his reproduction of material to be found in the Acts themselves.

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