

CURRENT LEGAL PROBLEMS 1967, edited by George W. Keeton and Georg Schwarzenberger. On behalf of the Faculty of Laws, University College, London. Stevens & Sons, 1967. viii and 240 pp. (including tables of cases, statutes and treaties, and index). New Zealand price \$9.90.

This little volume, the twentieth in the series of *Current Legal Problems* continues the uniform high standard of articles on a diversity of topics which has been a feature of this publication. Each year *Current Legal Problems* contains the public lectures delivered at the Faculty of Laws of University College, London. The 1967 volume also contains an address entitled "The Honest Merchant" which was delivered to the Bentham Club by its President, Lord Kilbrandon.

With the possible exception of "Information Agreements and the Reform of the Restrictive Trade Practices Act 1956" by Mrs Valentine Korah, which, of necessity, is somewhat technical, the articles in *Current Legal Problems 1967*, while ranging over a wide area in subject matter, present no great difficulty to the general reader. This book, then, as well as containing individual contributions to specialised fields, is one of general reference concerning current legal problems and should be read as such by all lawyers.

This reviewer found of particular interest Mr E. L. Johnson's article entitled "No Liability without Fault—the Soviet View". The suggestion that fault should be extended from the realm of tort to become a general concept of liability in contract would no doubt meet with some considerable resistance from the common lawyer. Yet this is the position in the Soviet Union. As a result of Article 222 of the Soviet Civil Code of 1964, a breach of contract raises a rebuttable presumption of fault; if rebutted the party in breach is free from liability. The rationale of the rule appears to be that where no fault can be shown, loss should lie where it falls. Further, in the case of public corporations where efficiency is measured by the corporation's financial position, the payment of large sums in damages where the corporation has not been at fault would result in a false indication of the corporation's real efficiency. However, as Mr Johnson points out, in practice it is not easy to escape liability.

Of general interest too is Professor O. R. Marshall's discussion of "The Law Commissions". After commenting that had he known, before he had written the lecture, of the wealth of material about to be published, concerning the Law Commissions and law reform, "no amount of persuasion could have got me here this evening", Professor Marshall proceeds to reflect on the advantages and disadvantages of reform and to consider some areas where reform is needed. He suggests, for example, that the method of publishing statutes in chronological order ought to be discarded and replaced by a "loose-page" system, in order that an Act and its amendments can all be kept under the one cover. Such a suggestion is attractive and appears worth further consideration. It serves too as a reminder that reform of the law is not limited to content. Methods of reporting and digesting, and the recording of the law generally, are also in need of frequent review.

The family lawyer is particularly well catered for in this volume. An article by Professor E. H. Scamell entitled "Matrimonial Assets" contains a plea for the treatment of that topic as a separate part of the law and for its restatement and codification. In New Zealand this has

been done, in part at least, by the enactment of the Matrimonial Property Act 1963. The deserted wife's equity in the matrimonial home, so hopefully raised by Denning L.J. in *Bendall v. McWhirter* [1952] 2 Q.B. 466, and so conclusively laid to rest by the House of Lords in *National Provincial Bank v. Ainsworth* [1965] A.C. 1175, is re-examined by Margaret Buckley under the apt title of "Equity Deserts the Wife". As Miss Buckley points out the battle is not lost for in July 1966 the Matrimonial Homes Bill was given its first reading in the House of Lords. (See now the Matrimonial Homes Act 1967, which came into force on 1 January 1968.) The effect of the Act is to prevent the eviction of a deserted wife from the matrimonial home by her husband or a claimant through him (except a trustee in bankruptcy) without a court order. Her right will be equivalent to an equitable interest and registrable as a land charge. In substance then, a deserted wife now has the rights denied to her in the *Ainsworth* case.

One of the features of *Current Legal Problems* is its articles on various aspects of international law, and this edition is no exception. Professor Schwarzenberger, surely one of the most prolific writers on international law today, has contributed a penetrating study of the problems surrounding the protection of foreign investments ("Decolonisation and the Protection of Foreign Investments"). He sees the greatest prospects for co-operation to lie in international institutions, such as the International Bank for Reconstruction and Development.

An analysis of the fateful progress of the cases brought before the World Court by Ethiopia and Liberia against South Africa in respect of the mandate for South-West Africa is provided by Professor Cheng ("The 1966 South-West Africa Judgment of the World Court"). With the aid of diagrams illustrating the composition of the Court in 1962 and 1966 and the reasoning in each of its opinions, Professor Cheng traces developments from the hopes following the Advisory Opinion in 1950, through the preliminary victory of 1962 and on to the disillusionment of 1966 when the case was rejected before the true issues could be considered. He concludes that "six years of labour were engaged in an exercise of futility" and suggests that,

... one of the most urgent tasks facing the Court and the doctrine of international law is to seek a reasonable harmonisation of the conflicting approaches to international law lest the notion of a uniform code of conduct governing international relations becomes a mere fiction.

It may be further suggested that not only is there a need for a harmonisation of conflicting approaches to international law, but the decision of the International Court of Justice in the South-West Africa case provides a further indication of the need for a fundamental re-appraisal of the function of international law in contemporary world society.

Other articles in the volume include, "Care of Cargo under the Hague Rules", by F. J. J. Cadwallader, "Control by Licensing" by Professor Glanville Williams and "Police Powers and the Citizen" by Professor D. C. Holland.

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