

## BOOK REVIEWS

*The Law of Securities*, by EDWARD I. SYKES, B.A. (Q'ld), LL.D. (Melb.) (The Law Book Company of Australasia Pty Ltd, Sydney, 1962), pp. i-xxxvi, 1-643. Price £5 5s.

The word 'securities' lacks constancy of meaning. It can indicate forms of investment of money or it can mean money claims evidenced by documents. More narrowly it can mean money claims the payment of which is secured by an interest in some property. Despite its fuzziness it is sometimes used by legislative draftsmen and every so often a testator by using this word makes the Equity Bar his incidental beneficiary. Professor Sykes' new work, which earned for its author the Melbourne Doctorate of Laws, is about the law governing a security in the strict sense: the situation where a person has a right to have a claim satisfied out of specific property. The book is not confined to secured rights arising from contract: it extends to secured rights created in other ways such as the benefit of a charge created by will.

There is, as yet, no discrete body of principle in English law relating to secured claims. Differences in the kinds of property against which claims may be secured and differences in the law governing the methods of dealing with various kinds of property prevent the writing of a work on the secured claim *simpliciter*. Thus, Professor Sykes, after some jurisprudential analysis of the nature of security interests generally has been obliged to see his subject shaped by the Procrustean classification of property in English law. In dealing with securities over land the division into chapters is determined by the differences between legal and equitable mortgages, between freehold and leasehold estates, between old title land and Torrens title land and between a mortgage in the strict sense (which the author defines as 'a total divesting by the mortgagor of what property rights he had so that after the transaction he has nothing left but rights of a merely contractual nature') and a charge in the form of hypothecation which does not involve transfer of ownership although it gives the chargee certain rights against specific property. The order of treatment of securities over chattels personal is determined for the most part by the distinctions between things in possession and things in action. In treating of things in possession the author discusses bills of sale, stock mortgages, wool liens, crop liens, securities over ships and possessory liens. The author concludes with chapters on the effects of bankruptcy on a secured claim, the limitation of actions and company securities (mainly debentures). The book provides a comprehensive treatment of a number of difficult topics such as priorities between competing interests. Occasionally it is necessary for the author to discuss some of the unsettled areas of property law. For example, there is a valuable treatment of the conflicting authorities on the effect of an unregistered voluntary instrument of transfer of Torrens title land.

The author's attempt to bring the law of securities into one compartment goes some distance towards a functional classification of law in the light of contemporary needs and raises questions for planners of a law school's curriculum. But it does not go the whole way. It is not really a book on the law of financing: for one thing, it does not deal with hire-purchase law. Perhaps this is not to be deplored. Suggestions that the arrangement of law school studies should wholly reflect the more obvious of the current functions of law in the community are rightly suspect. Such an arrangement would hinder recognition of legal ideas which transcend

the affairs of particular communities. As Holmes J. has put it: 'The remoter and more general aspects of the law are those which give it universal interest.'

Professor Sykes' book is a welcome addition to Australian legal literature. Hitherto in the field of mortgages it has been necessary to refer to English texts and to supplement this research by looking to local digests and legislation. The new book simplifies the task of the practitioner. The book traces local divagations from English doctrine and practice. It takes in all the relevant legislation of the various States. In so doing it prompts speculation whether the current trend towards unification of law as between the States and Territories will embrace this area of the law. The emergence of new methods of business financing, such as 'factoring' (involving large-scale assignment of claims), will probably prompt a demand for a measure of unification.

All told, the book is the product of sustained scholarly labour. In its field it will not be lightly superseded.

H. A. J. FORD\*

*The British Cabinet*, by JOHN P. MACKINTOSH (Stevens & Sons Ltd, London, 1962), pp. i-xi, 1-546. Australian price £3 10s.

The origin of this substantial work, the author tells us, was a request made to him in 1958 by Professor J. D. B. Mitchell to join in the production of a third edition of A. B. Keith's *British Cabinet System*. After several months' work on this project it was found that so much alteration would have been necessary that the new edition could scarcely bear Keith's name. It was accordingly decided that Keith's book should be left untouched, and the present author was asked to write this book. I would say, in passing, that this was an eminently sensible decision, of a kind which would bear repetition in relation to many of the established standard legal texts.

The book falls into three parts. There is first a fairly brief attempt to trace the origins of the Cabinet system and its developments up to 1832. The treatment is necessarily brief, because the materials for a detailed study are not readily available, if indeed they are available at all. Secondly, there is a detailed tracing of the development of the Cabinet system between 1832 and 1914. Here there is a wealth of sources, some in the form of published work, others in manuscript collections or archives, and every page bears traces of the care with which the author has culled through these materials. And finally, the author deals with the working of the Cabinet system from 1914 to the present day. Here the sources are less readily available, for obvious reasons, but once again it is clear that the author has been tireless in his search.

I have spoken of 'the Cabinet system', but it is only fair to say that the author is at pains to show that this phrase is misleading. What is often presented as 'the Cabinet system' is a picture of a system of government which operated during one fairly recent period of British history, but which has evolved almost to the point of vanishing. True, a body known as the Cabinet still meets; but it no longer exercises the functions and powers that it once had. At the present day, in the United Kingdom, the Cabinet is little more than an administrative clearing-house for decisions already taken, either by a governmental Committee of Ministers,

\* LL.M. (Melb.), S.J.D. (Harvard); Barrister-at-Law; Professor of Commercial Law in the University of Melbourne.