

BOOK REVIEWS

The Law of Contract, by G. C. CHESHIRE, D.C.L., Vinerian Professor of English Law in the University of Oxford, and C. H. S. FOOT, M.A., All Souls Reader in English Law. London; Butterworth and Co. Ltd., 1945, pp. xlviii, 435, Index 1-27.

This work has received glowing reviews. It begins with an historical introduction which is concise and clear. In dealing with the formation of contract the authors point out that the phrase "offer and acceptance" though hallowed by a century and a half of judicial usage "is not to be applied as a talisman, revealing, by a species of esoteric art, the presence of a contract. . . . The rules which the judges have elaborated from the premise of offer and acceptance are neither the rigid deductions of logic nor the inspiration of natural justice. They are only presumptions, drawn from experience, to be applied in so far as they serve the ultimate object of establishing the phenomena of agreement."¹

In defining consideration, the authors regard the antithesis of benefit and detriment as not altogether happy and prefer to approach the problems of consideration through the language of purchase and sale. "The plaintiff must show that he has bought the defendant's promise either by doing some act in return for it or by offering a counter-promise."² The report of the Law Revision Committee is not regarded as "wholly satisfactory."³ The conclusion can be explained only on the assumption that the Committee lacked the courage of its convictions. The bold and simple abolition of consideration would at least have had the merit of making all subsidiary changes unnecessary, but the alternative of recommending only those few alterations which were necessitated by actual inconvenience has satisfied neither party. On the whole the authors think that the "aura of academic propriety which seems to have surrounded the Committee's deliberations have led them to exaggerate the practical hardships of the existing law."⁴

In dealing with mistake, the authors distinguished between: (a) common mistake, where both parties make the same mistake: (b) mutual mistake, where the parties mistake each other: (c) unilateral mistake, where one of the parties alone is under a misapprehension, and the other party is aware, or ought reasonably to be aware, of the fact. These are useful distinctions, but the reader must remember the particular meaning given to these terms which differs somewhat from current usage.

Part IX. on Quasi-Contract is a useful addition. The authors favour the left wing view that "it may be that the ultimate solution will be to free quasi-contract alike from its historical association with Assumpsit, from its meretricious flavour of contract and from its flirtation with 'equity' and to merge it in a unique and generic doctrine of Restitution. The time is ripe for some such general reorganisation."⁵

The book is modern in the best sense. Without sacrificing any of the merits of scholarship, or ignoring the effect of history on the law, it

1. p. 23.
2. p. 47.
3. p. 72.
4. p. 73.
5. p. 435.

gives the impression of being created to deal with the specific problems of to-day.

The style is clear and the book is well organised. The cases are aptly used for illustration and the facts are concisely stated so as to lay bare the real points at issue. Although over a thousand cases are cited, the work does not give the impression that it is over-loaded with references. A general index of twelve pages is adequately arranged. The printer has done his work well.

G. W. P.

A Treatise on the Principles of Income Taxation by J. P. HANNAN, Barrister and Solicitor of the Supreme Court of Victoria, Member of the Commonwealth Taxation Board of Review. The Law Book Co. of Australasia Pty. Ltd., 1946 ; pp. xxxii, 505.

As the author points out, it is more than strange to find a large volume of legislation directed at a subject which there has been no attempt to define. It is refreshing to find a work directed towards this difficult problem of the meaning of income and doubly so when the author is so well qualified to undertake the task. The work is clearly written and does more than merely provide an accessible digest of the decisions. It is impossible in a review to discuss the technical points involved in a subject where the issues are so often confused—it can only be said that this work will be of great benefit to lawyers. The publishers are to be congratulated on the excellence of their work—it is unfortunately not always possible to say this of Australian publications. The use of cross headings, cross references and an efficient index make the work easy to use.

G. W. P.

Commonwealth Conciliation and Industrial Arbitration Law. By NEVILLE G. McWILLIAM and RICHARD H. BOYT. Law Book Company of Australasia Pty. Ltd., pp. xxiii and 432. Price £2 10s.

On pages 1-185 of this publication there is set out the Commonwealth Conciliation and Arbitration Act 1904-1946, with "cases relevant" to the great majority of the sections recorded "as far as practicable" under the particular section. Then follow, with little in the way of notes, the Commonwealth of Australia Conciliation and Arbitration Rules of Court (pp. 186-213), the Regulations under the Commonwealth Conciliation and Arbitration Act 1904-1934 (pp. 214-238), various sets of Regulations promulgated under the fast expiring National Security Act 1939-1943 (pp. 239-380), and the Regulations comprising the schedule to the Women's Employment Act 1942, as amended (pp. 380-392). The book is concluded with an appendix (mainly quotation matter) intitled "Basic Wage, War Loadings and Wage Increases in Commodity Costs" (pp. 393-406) and an index. There is a table of cases among the preliminary contents.