

*Cases on the Constitution of the Commonwealth of Australia*, by GEOFFREY SAWER, B.A., LL.M. (Melb.), of the Victorian Bar; Professor of Law, Australian National University, formerly Associate Professor of Law, University of Melbourne, 3rd ed. (Law Book Company of Australasia Pty Ltd, Sydney, 1964), pp. i-xxxii, 1-674. Price £4 15s.

This book is now well known to, and much used by, law teachers and law students and most members of the profession; and this third edition will be welcomed by all of them. An extensive review of a third edition of such a book, which has been widely reviewed in earlier editions,<sup>1</sup> would not be justified perhaps. Something more than a mere note of changes made is called for nonetheless.

This is not a case-book in the modern American style. It is not designed as a 'course-book' for a problem-solving class. It is much more a collection of very carefully culled judicial texts currently authoritative where the principles of our federal Constitution are concerned. It is more than that, however, for the texts chosen enable students to understand the broad sweep of doctrinal developments in constitutional interpretation over the last sixty years. Further, Professor Sawyer's cryptic and penetrating notes lead more advanced students of the law not only to read more widely but to ponder more deeply upon many of the more puzzling questions which arise or may arise under our Constitution.

In spite of the fact that eight cases which were included in the second edition have been dropped,<sup>2</sup> this edition is nearly fifty pages longer than the last. This underlines the difficulties facing the author of such a book where the law of the federal Constitution is concerned. In the seven years between editions there were at least the eleven additional cases now in the book<sup>3</sup> which simply had to be included if the general structure of the book was to be maintained and kept up to date. In this reviewer's opinion, at least one other should have made up the

---

<sup>1</sup> *E.g.* W. Friedmann, (1957) 57 *Columbia Law Review* 1195; M. R. R. Davies, (1957) 6 *International and Comparative Law Quarterly* 711; Sir John Latham, (1957) 1 *Melbourne University Law Review* 266; S. A. de Smith, (1957) 20 *Modern Law Review* 681; F. R. Beasley, (1957) 4 *University of Western Australia Annual Law Review* 179; E. McWhinney, (1958) 7 *American Journal of Comparative Law* 426.

<sup>2</sup> *Stock Motor Ploughs Ltd v. Forsyth* (1932) 48 C.L.R. 128; *Morgan v. Commonwealth* (1947) 74 C.L.R. 421; *Gratwick v. Johnson* (1945) 70 C.L.R. 1; *Wilcox Mofflin Ltd v. New South Wales* (1952) 85 C.L.R. 488; *Parton v. Milk Board (Victoria)* (1949) 80 C.L.R. 229; *Federated State School Teachers' Association of Australia v. Victoria* (1928) 41 C.L.R. 569; *Nelungaloo Pty Ltd v. Commonwealth* [1951] A.C. 34; and *Commonwealth v. Limerick Steamship Co. Ltd* (1924) 35 C.L.R. 69.

<sup>3</sup> *Commonwealth v. Cigamic Pty Ltd* (1962) 108 C.L.R. 372; *Victoria and New South Wales v. Commonwealth* (1957) 99 C.L.R. 575; *Harris v. Wagner* (1959) 103 C.L.R. 452; *Fish Board v. Paradiso* (1956) 95 C.L.R. 443; *Egg Marketing Board v. Bonnie Doone Trading Company (N.S.W.) Pty Ltd* (1961-1962) 107 C.L.R. 27; *Dennis Hotels Pty Ltd v. Victoria* (1960) 104 C.L.R. 529; *Illawarra District County Council v. Wickham* (1958-1959) 101 C.L.R. 467; *Attorney-General for Victoria v. Commonwealth* (1961-1962) 107 C.L.R. 529; *The Queen v. President, etc. of the Commonwealth Conciliation and Arbitration Commission* (1959) 107 C.L.R. 208; *Lamshed v. Lake* (1958) 99 C.L.R. 132; *Dennis Hotels Pty Ltd v. Victoria* (1961) 104 C.L.R. 621.

round dozen of new cases: *Australian Coastal Shipping Commission v. O'Reilly*.<sup>4</sup>

The eight cases left out<sup>5</sup> were well chosen for omission but it is easy to sympathize with the author's reluctance to see them go. It is not quite so easy to see why he did not adopt the late Sir John Latham's suggestion<sup>6</sup> that *Huddart Parker & Co. Pty. Ltd. v. Moorehead*<sup>7</sup> could be omitted. It may be that the author felt that the passages included from that case would provide useful material to reveal the history of change in judicial doctrine and at the same time would remind readers that corporations were mentioned in section 51 (xx) of the Constitution. The case is placed too far back in the book, however, to meet the first of those aims conveniently.

Out of sixty-one cases in all, eleven section 92 cases are included. And yet it is probable that the task of selecting section 92 material may have presented the author with most difficulty, so numerous are the decisions under that section now reported. It would be carping to criticize the section 92 selection here. So rich is the field it would be possible to have as many varied selections as there are constitutional lawyers to consult.

In conclusion, an unfortunate change of form may be noted—'The new material omits full citation of the cases mentioned in text and notes; the full citation is in each case to be found in the table of cases'.<sup>8</sup> This not only makes for inconsistency of form (for full citations are provided in the old material), but it is an irritation for those who wish to use the book for speedy reference. The reason both for the omission of citations and for tolerating the inconsistency is the pressure of rising costs of publication. That the pressure is great is shown by the fact that this edition sells at nearly twice the price of the second edition.

DAVID P. DERHAM\*

---

<sup>4</sup> (1962) 107 C.L.R. 46—and oddly enough there is a misprint in the Table of Cases (p. xx) in this book and the reference to *O'Reilly's* case is entered twice.

<sup>5</sup> *Supra* n. 2.

<sup>6</sup> (1957) 1 *Melbourne University Law Review* 268.

<sup>7</sup> (1908) 8 C.L.R. 330.

<sup>8</sup> Author's Preface p. ix.

\* M.B.E., B.A., LL.M. (Melb.), Barrister-at-Law; Dean, Faculty of Law, Monash University.