

BOOK REVIEWS

A Digest of Australian Constitutional Cases by P. H. LANE, B.A., LL.M., LL.D. (Syd.), s.J.D. (Harvard); Barrister-at-Law, Professor in Constitutional Law, University of Sydney. (The Law Book Co. Ltd, 1976), pp. i-xix, 1-394. Cloth, recommended retail price \$21.00 (ISBN: 0 455 19397 5); Paperback, recommended retail price \$17.00 (ISBN: 0 455 19398 3).

One of the major problems in the study and teaching of Australian constitutional law is how to keep abreast of the growing volume of decisions of the High Court and to appreciate the nuances of the judgments of the seven Justices who, as a full bench, or sometimes with fewer members, find different rationes for the conclusions reached on the validity or construction of laws of the Commonwealth or a State which are the subject of challenge.

The enormity of the task can be readily seen from the fact that the Commonwealth Law Reports seem to multiply at the rate of about two volumes a year and few of these do not include some decisions of significance to the course of constitutional authority. For the few practitioners who are immersed in the subject and have the benefit of regularly appearing in the High Court it is difficult enough to assess the reactions of members of the Bench to new situations, but even they find changes in the personnel of the judicial jury a continual source of concern. It is not surprising in consequence that teachers and students of constitutional law find the whole process of analysis and evaluation of High Court judgments both complex and daunting.

This Digest of Australian Constitutional Cases has been conceived by Professor Lane as a means, though not a perfect one, of assisting the student to cope with a problem of the magnitude I have indicated. He has selected passages from the judgments of 160 cases, mostly the leading ones, and published them in chapter form according to subject matter together with the relevant facts and legislation in issue. The object of the exercise, he says, is to achieve "less knowing and more thinking" for otherwise "too much time is consumed in hauling in the sheer contents of law, and little time is left for leisurely thinking".

No doubt the conception of a digest of this sort will meet with disapproval in some academic and professional quarters, but for undergraduate purposes it may be extremely useful since a course in constitutional law at first degree level cannot attempt the study in depth which would be appropriate for post-graduate or specialist purposes. After all it is but a small minority of law graduates who will find themselves in the High Court or called on to advise on constitutional issues of gravity in their early years of practice.

The plan of the work has these advantages but its execution manifests a number of blemishes. For one thing the order in which the cases are digested does not reflect changes in constitutional decision-making. For example, the *Pharmaceutical Benefits* case (1945) precedes the *Brewery Label* case (1908); *Moran's* case (1940) follows

the two *Uniform Tax* cases (1942, 1957); *Kotsis v. Kotsis* (1970) precedes *Lorenzo v. Carey* (1921) and the bankruptcy cases of *Le Mesurier* (1929) and *Bond* (1930); and more importantly, *Huddart Parker's* case (1908) should go before the *Rocla* case (1971) which overruled it. The same inverted order is seen also in a score or more of decisions on section 92 which begin with the *Dairy Industry Authority* case (1975) and conclude with *McArthur's* case (1920).

There is a second and quite irritating blemish in the colloquial and shorthand expressions used by Professor Lane in his exposition of the basic facts of the cases. It is hardly appropriate, for example, to speak of the Court having "made some obiters about the corporation power" in the *Rocla* case (page 84), or to say of *R. v. Oregon* that "Oregon returned to his home and employment in Hobart . . ." and "Mrs Oregon went into the High Court sitting in Melbourne to ask for Habeas Corpus" (page 235); this sort of word picture is even more peculiar when applied to *Watson v. Marshall and Cade* (1971) of which it is said—and in italics, as if for emphasis—that "Watson went into the High Court in its original jurisdiction". The emphasis might have been more appropriate to that well-known litigant Frederick Alexander James who also "went into the High Court in its original jurisdiction" in 1927 (page 243).

Equally irritating and imprecise are the use of words such as the "concocting" by the Prime Minister and Premiers of a scheme to subsidise wheat growers (*Moran's* case, page 49), a "Gazettal notice" (page 114), the "reckoning of compensation" (page 120) and the phrase "inter se law" as used on page 225.

A final matter of criticism is the method of identifying the author of a judgment at the end of each quoted passage rather than at the beginning. When the judgments in one case run on to those in another as with *R. v. Phillips* (page 153), *Cadbury Fry Pascal* (page 158) and the *Professional Engineers* case (page 386) the reader is left speculating as to the reason and as to the manner in which the relevant passages should be appreciated.

It is a pity that an experiment in legal publishing and teaching should manifest these blemishes. If a new edition is called for it is hoped they will be corrected. At the same time consideration might be given to rationalising the order in which decisions and judgments are published and appending suitable notes so that the trend of constitutional interpretation can be seen in chronological perspective. The historical approach may not be of universal application but in a field like constitutional law it is an aid to the process of evaluating the influences in judicial decision. This is especially the case with section 92 where decisions of the Privy Council on more than one occasion changed the whole current of authority in the High Court and made a profound impact on the legislative policies of every State in the Commonwealth.

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