BOOK REVIEWS

The Conflict of Laws by GRAVESON (Sweet & Maxwell Ltd., London, 1955), pp. i-xxxiv, 1-506. Australian price £2 15s. 6d.

The third edition of Graveson's *Conflict of Laws* appeared seven years after the publication of the first. This is in part a tribute to the quality of the book and also, as the author points out in his preface, acknowledgement of the fact that some very important developments have taken place in recent years in this branch of the law. The author has an international reputation as a scholar in the conflict of laws and he has the gift of clear and concise exposition, as well as a sharp and original mind.

For Victorian readers it will be a little ironical, and, I hope, a little saddening, to read the author's statement in the preface that 'at home our courts have displayed a new breadth of vision in developing this body of their creation of which the most conspicuous instance is *Travers v. Holley*'[1] (p. vii). Within the last few months, the Full Supreme Court of Victoria has unanimously held in *Fenton v. Fenton*[2] that *Travers v. Holley* should not be followed. The court's view was that the English decision was bad as a matter of law, because it was in conflict with the House of Lords authority and was also bad as a matter of principle and policy. *Travers v. Holley* held that a New South Wales divorce decree, which was not a decree of the *forum domicilii,* but was based upon a deserted wife statute, should be recognized in England, because English courts would assume jurisdiction in such a case on the footing of a substantially similar deserted wife statute. The doctrine unanimously stated by the Court of Appeal (though Jenkins L.J. dissented on other grounds) was in a loose sense a principle of reciprocity: that we will recognize what we ourselves would do. The Court of Appeal relied for authority on a passage from *Le Mesurier v. Le Mesurier.*[3]

The Victorian Supreme Court relied heavily on *Le Mesurier* for a different purpose – to support the proposition that as a matter of common law the *forum domicilii* had exclusive jurisdiction, subject to the rule in *Armitage v. A.-G.*[4] The authority which the Victorian court found to be squarely in the path of *Travers v. Holley* was *Shaw v. Gould,*[5] where the House of Lords refused to recognize a Scots divorce decree in a case where the parties were not domiciled in Scotland. The headnote to that case states plainly that a decree will not be recognized unless it is a decree of the domicile and the court in *Fenton v. Fenton* said quite dogmatically that *Shaw v. Gould* was clear authority for that proposition. With respect it is not so clear. There were four members of the House of Lords sitting in *Shaw v. Gould.* Lords Cranworth and Westbury plainly supported the domicile rule. Lord Chelmsford refused to state any general principle but held that the Scots divorce was bad because the parties deliberately misled the Scots court into assuming jurisdiction. Lord Colonsay also held the Scots decree bad on this ground, but said very clearly that he did not believe that jurisdiction was exclusively reserved to the *forum domicilii.* On what theory of *ratio decidendi* is *Shaw v. Gould* authority for the proposition for which the Victorian

[1] [1953] P. 246.
[2] [1957] V.R. 17.
[3] [1895] A.C. 517, 528.
[4] [1906] P. 135.
[5] (1868) L.R. 3 H.L. 55.

court used it? It is significant that in *Niboyet v. Niboyet,*[6] Brett L.J., in a famous dissenting judgment arguing that an English court could only assume jurisdiction in divorce if it were the *forum domicilii,* did *not* rely on *Shaw v. Gould.* In *Le Mesurier v. Le Mesurier,* also heavily relied on by the Victorian court, *Shaw v. Gould* was carefully discussed. The Privy Council relied heavily on Lord Westbury in *Shaw v. Gould,* but went on to point out that in that case there was no clear *ratio* supporting the exclusive jurisdiction of the *forum domicilii.* I do not believe that the Victorian court's argument is sound on the basis of authority and the argument on principle seems to me to support *Travers v. Holley.* The Court of Appeal said that it was outrageous to adopt a 'holier than thou' attitude; and spelled out of *Le Mesurier* (reasonably, as Graveson and as I think) this proposition: that in general, as a matter of common law, jurisdiction is reserved to the *forum domicilii,* save where there are substantially common grounds of jurisdiction, other than domicile, in the jurisdictions involved. To be sure, difficult problems may arise in deciding whether there are substantially similar bases of jurisdiction,[7] but courts are adequately equipped to deal with such questions.

Graveson also discusses the Report of the Private International Law Committee on Domicile which was presented in 1954. He has also discussed this at length in an article in the *Law Quarterly Review.*[8] Over all, in the compass of a relatively small book there is a remarkable coverage. He includes a short discussion of the recognition of foreign acts of adoption, quasi-contract and torts committed in and from the air.

For any Australian, concerned to a large extent with intra-Australian problems of the conflict of laws, English doctrine and texts have a qualified usefulness. Perhaps because there has never been an Australian text on the conflict of laws, there has been too much of a tendency to rely on English authority and to assume, sometimes I believe wrongly, that the international rules are fully applicable to interstate problems. An Australian student studying any English text, should always remember this. But with this general warning, Graveson's *Conflict of Laws* can be recommended.

ZELMAN COWEN

Preface to Jurisprudence. Text and Cases, by ORVILL C. SNYDER. (The Bobbs-Merrill Company, Inc., Indianapolis, 1954.) pp. i-xxvi, 1-882. $10.00.

The development of the modern 'case-book' or book of materials collected for teaching purposes is one of the major achievements of American legal education. Perhaps because of the peculiar reluctance of American Law Schools generally to accept a course in jurisprudence as a necessary part of a future lawyer's education, the highest peaks of development in this regard have not been reached in books on jurisprudence, but on traditionally accepted divisions of the positive law—contracts, torts, equity, conflicts and so on. It may be partly that this unequal development has affected me in my reaction to books of materials prepared for jurisprudence courses, or it may be, as I think it is, that there is some-

[6] (1878) 4 P.D. 1.
[7] *Dunne v. Saban* [1955] P. 178.
[8] 'Reform of the Law of Domicile' (1954), 70 *Law Quarterly Review,* 492.