To my mind, much of the merit of this book lies in its emphasis on libel practice. This is a most effective way of gauging whether the libel law is fulfilling a legitimate social function, properly balancing the competing interests of the defamed against those of what is in practice a rather narrow range of defendants. Claims that the present system in Britain is unbalanced in favour of the plaintiff-claimant seem very credible. Mr Rubinstein himself suggests one possible counter-measure—a new right to both publishers and authors to counterclaim for damages, including losses caused by disruption of publication following receipt of a claim, and damage to their reputations, in any libel action other than one in which a claim for special damages only is pleaded. This he claims:

> . . . should help to restore balance to the administration of justice, if our society is not yet mature enough to treat insults with the same indulgence as flattery. (p. 144)

RENN WORTLEY*

Labour Law in Australia, by E. I. SYKES, B.A. (QLD), LL.D. (MELB.) and H. J. GLASBEEK, B.A., LL.B. (HONS) (MELB.), J.D. (CHIC.), (Butterworths, Australia, 1972), pp. i-lii, 1-771. Recommended Australian price $25.85 (hard), $18.00 (limp).
ISBNs O 409 43850 2 (hard) & O 049 4385 O (limp).

Nolan and Cohen published their first edition of *Federal Industrial Laws* in 1948. The fourth edition, edited by C. P. Mills and G. H. Sorrell, now stands in the bookshelves of every trade union, employer and industrial advocate in Australia. *Labour Law in Australia,* which will now stand beside Nolan and Cohen, could not have been published at a more opportune time; it is a useful review of the law as it stands and it discusses the newly revived question of trade union immunity from actions for tort in respect of acts alleged to have been done in furtherance of industrial disputes. This is especially timely.

Rookes v. Barnard[1] has tempted one or two rather adventurous employers. The more far-sighted employers are unwilling to take the leap into darkness which that case seems to invite. If the principle enunciated in the English decision was held to be law in Australia, it would bring about the total collapse of our arbitration system and put an end to the orderly resolution of industrial disputes.

Professor Sykes believes that the loss of credibility of the penal sanctions of the federal arbitration system may possibly lead to a revival of actions at law for the wrongs of conspiracy and unlawful inducement of breaches of contract. He declares that if a strike is made illegal by statute or award, it may follow in law that the combination that plans and leads the strike will become liable to pay personally damages commensurate with the harm done, that is to say, genuine compensation, and limited in practice only by the capacity of the defendants to pay. The retribution will not be finite and limited as are the penalties contemplated presently by the Conciliation and Arbitration Act.

Mr H. J. Glasbeek, Professor Sykes' co-author, sees the existence of active organizations of employees as a logical development within the structure of a *laissez-faire* society. He argues that the law ought therefore to remain truly neutral in its exercise of control of the competing elements in industrial conflict. Each is a legitimate interest entitled to equal consideration. Glasbeek notes without comment the thesis commonly advanced that the judges, who declare the law, are only too happy to be true to their own social backgrounds and class origins in expounding the law to be applied from case to case.

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1 [1964] A.C. 1129; [1964] 1 All E.R. 367.

Both authors make out a powerful case for amending the Constitution to enable the Commonwealth to enjoy a wider jurisdiction in the field of industrial relations. The unrestricted right to hire and fire and other archaic ingredients of the so-called 'managerial prerogative' have no place in this age of nuclear science, computers and automation.

The case law cited by the authors convinces me that the Parliament must legislate to safeguard employees in their employment from such abuses, for instance, as victimisation for industrial militancy and non-conformity with the self-set standards of behaviour which employers frequently seek to enforce. Judges won't provide the safeguards. Indeed, they will, as Glasbeek points out, take every opportunity to seize upon some (newly discovered) ancient common law principle to give a statute a meaning in direct conflict with the obvious intention of the legislature. Parliament could, of course, declare that the common law shall cease to bind the courts on any given point. One could not be sure, however, that this would not set the merry-go-round in motion once again, as the judges dig into the graveyards of ancient law seeking some other substitute weapon with which to arrest human progress and thwart commonsense.

One finds it difficult to read this book without concluding that there is a fundamental weakness in a system which makes the judiciary unanswerable to the people affected by its decisions. This freedom from the sanctions of public opinion must surely generate a demand in Australia for Parliament to have the like power to reject judicial appointments proposed by the Executive as the U.S. Congress exercises when it blocks appointments to the Supreme Court. There is a case also for a more efficacious power of recall. The principle is accepted in our constitutional format, but it is almost impossible to invoke.

The sections dealing with industrial agreements are of special interest. The signs indicate that Australia has set its course for an industrial relations system under which the Conciliation and Arbitration Commission will confine itself merely to setting minimum standards for hours, wages, leave and general conditions of employment, with management and labour relying upon collective bargaining to set 'the going rates'.

Mr Glasbeek criticises section 58 of the Conciliation and Arbitration Act, which gives legal perpetuity to an industrial agreement drawn and expressed by the parties to be of a stated and limited duration. This is an important defect in the functioning of the Act. It leads to neglect and staleness where there should be challenge and change. Obsolete standards remain sanctified by the law.

He is also right to point to the difficulties created by the High Court decisions which circumscribe the capacity of parties to settle disputes effectively and with full force of relevant law by privately negotiated agreements. These decisions have the effect of preventing employers and employees having full access to the facilities offered by the Arbitration Commission for the formation and control of industrial standards. They do not prevent such agreements being made by and between the parties. But, frequently, such agreements may not be registered and thereby will not come within the ambit of the Act. Thus, out of a total of something like 2000 agreements now in existence regulating industrial conditions, only 151 are registered with the Commission.

Glasbeek's evaluation of the High Court's decision in *Pitfield v. Franki*[2] (the *Firefighters'* case) is far from flattering to the Court. It is unbelievable that the reasoning of the majority could come to be at such variance with the judgment of Mr Justice Walsh, dissenting, and with the trend of the previous decisions of the High Court on the points in issue.

Whilst *Labour Law in Australia* is essentially a manual for practising lawyers, it is nonetheless a book that must have a tremendous appeal to union officials, in-

[2] (1970) 44 A.L.J.R. 391.

dustrial officers and advocates. More than one thousand decisions are cited, and the index of the subject matter runs to 16 pages of fine type.

The authors point out that it is impossible to say that a statement of the law as it exists may also be a statement of the law as it will persist. It is pleasing, therefore, to note that it is the intention of the authors to publish a supplement from time to time to keep the book up to date.

Professor Sykes is, of course, well-known as a writer in the field of industrial relations. His colleague may not be so well known to the public in these matters, but his carefully drafted comments on the new industrial relations policy adopted at the 1971 Hobart Conference of the Australian Labor Party have been of inestimable value to me and to my Party.

I am sure that this book will assist readers to understand the complexities of industrial law in Australia and that it will offer some understanding of the reasons why the resolution of industrial conflicts is so difficult. It may, perhaps, be sadly noted in passing that we have brought our industrial law to such a pitch of complexity in the 70 years since Federation that the successful trade union leader must needs be an amateur Q.C. if he is to perform his functions efficiently in the interest of the wage earners of Australia.

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