

BOOK REVIEWS

LAW OF MARRIAGE AND DIVORCE, together with Cumulative Supplement 1960-66. 4th ed., vols. 1 and 2 reprinted in one volume. By P. E. Joske. Butterworths 1967. Pp. 127 (tables of contents and cases), 827 and 95 (index).

The occasion for the publication of the fourth edition of this work was, as the preface points out, the coming into operation in Australia of uniform federal marriage and divorce laws. The fourth edition, unlike its predecessors, was published in two volumes. Volume two, which dealt primarily with divorce law, appeared first, in 1961, hard on the heels of the federal Matrimonial Causes Act 1959 which was proclaimed to come into operation as from February 1961. Volume one, which principally covered marriage law and was prompted by the federal Marriage Act 1961, did not appear until 1963. The delay was explained by the fact that it was not until September 1963, after certain provisions had withstood an attack on their constitutional validity, that this Act was proclaimed to come into effect. Now, in 1967, these two volumes of the fourth edition have been reprinted in one volume.

For many years now Joske has been the standard practitioners reference work in Australia. Nearly 5000 decisions drawn from the Australian, New Zealand and English jurisdictions are cited, together with the statutory provisions of the States of the Commonwealth in the summary jurisdiction field. This must make the book the most comprehensive Australian work in this area of law, and the benefit to practitioners to have this in one volume of not unmanageable size, instead of two, is apparent.

But editions of works of this nature which follow soon after, or as in the case of the fourth edition of Joske almost contemporaneously with, the proclamation of new legislation, are exposed to the hazard of becoming dated to a greater or less degree according to the novelty of the legislation and the extent of the judicial activity which follows it. As there was a fair measure of the former in the new laws and there has been a considerable amount of the latter since the appearance of the fourth edition, it is difficult to understand the decision to

reprint in 1967 without taking the opportunity of revising the text to incorporate the subsequent developments. This lack of revision has been largely overcome, no doubt, by the production of an annual cumulative supplement, the latest of which covers the years 1960-1966 and contains in all 253 pages. On the other hand where there has been so much judicial activity during the period covered by the supplement of not only an interpretative kind but also involving re-definition of old concepts, this method of up-dating this sort of book is not entirely satisfactory.

This shortcoming is not so significant as far as that part of the reprint which formerly appeared as volume one is concerned. Decisions on the new Marriage Act are not numerous, and under the heading of Proprietary Rights much of what was said in *National Provincial Bank v. Ainsworth*¹ was anticipated by earlier Australian decisions, particularly *Dickson v. Mcwhinnie*.² It was a little disappointing, however, in a work as comprehensive as this to find no reference to the considerable legislative development in the area of summary jurisdiction in this State in either the reprint or the supplement. The Married Womens Protection Act 1922 (repealed in 1960) and the Child Welfare Act 1937-59 (the relevant part of which was repealed in 1965) are cited in the reprint as the statutory foundation for the making of separation and maintenance orders in Western Australia. The supplement is silent as to the repeal of the former and the relevant part of the latter, the considerable changes made and the ultimate consolidation of this law in the Married Persons and Children (Summary Relief) Act 1965.

It is, however, in that part of the reprint that was formerly volume two that the shortcoming is more marked, and a few illustrative examples will suffice. Cruelty is discussed without reference to *Gollins*³ and *Williams*⁴ and their successors; desertion without reference to *Manning*⁵—these cases will be found in the supplement. The single page in the reprint on the Australian ground of five years separation, based on a few cases decided on the former Western Australian provision, is virtually replaced by three pages in the supplement of more recent cases rendering much of what is said in the reprint obsolete. So also must the supplement be turned to for four pages on the recent developments in the law relating to settlements.

¹ [1965] 2 All E.R. 472.

² [1958] S. R. (N.S.W.) 179.

³ [1964] A.C. 644.

⁴ [1964] A.C. 698.

⁵ (1961) 2 F.L.R. 257.

What emerges then is essentially a practitioners' reference book (this is not a student text) whose utilitarian value is greatly reduced unless constant reference is made to the supplement—neither the existence of which, nor the necessity for making such reference to ensure the accuracy of a proposition in the text is explained anywhere in the reprint itself. Nevertheless, provided this is appreciated, for the practising lawyer or libraries who failed to acquire the fourth edition when it first appeared this reprint of Joske together with the supplement, now provides the opportunity to acquire a book which represents the most comprehensive treatment of Australian law in the field of marriage and divorce.

IAN MCCALL

PAKISTAN. By Alan Gledhill. British Commonwealth Series, Volume 8. 2nd ed. Stevens & Sons Ltd. London. 1967.

In 1957 Professor Gledhill published the first edition of this book which was the eighth volume in the British Commonwealth series. A year later, in October 1958, President Iskander Mirza issued a proclamation abrogating the Constitution of 1956, dismissing the federal and provincial governments and legislatures, and placing the country under martial law with General Ayub Khan as Chief Administrator. Within a few days Iskander Mirza resigned and Ayub Khan assumed the Presidency.

Gledhill's second edition, published in 1967, takes account of these events and of the political events which precipitated them, as well as of subsequent developments in Pakistani public and private law. A period of martial law followed the abrogation of the 1956 constitution, and in 1962 a new constitution was promulgated. It is presidential in the American sense; the Westminster model is repudiated and the President is not answerable to the legislative. Both the President and the Legislature are indirectly elected; the notion of successive electoral tiers, the "Basic Democracies", gives expression to Ayub Khan's notion of the appropriate measure of direct popular involvement in governmental processes. Direct representation occurs only at the base, and Gledhill expresses some sympathy with this notion. As he puts it:

There is much to be said for the view that local government boards provide the best training grounds for national politicians. It could be argued that constitutional progress in the sub-continent has introduced democratic government at the higher levels