ters, and Professor Cowen apparently consulted Mrs Marjorie Cohen, Isaacs' elder daughter, in his work on the book. It is a pity he was unable to obtain more of the homely kind of information that would balance his account. Not that the Isaacs who emerges from these pages is in any way de-humanized: we feel as though we know him well as a politician and judge and it is in these capacities, of course, that his claim to our attention chiefly rests.

The result is that Professor Cowen has written an exceptionally good book on the public Isaacs. It deserves to be widely read. In many ways it confirms what one had, from reading his judgments and from much less knowledge, always felt about him. It is a book written with great academic ability from a lawyer's point of view, and is quite indisputably the best biography ever written of an Australian judge. As such it should be read by lawyers, historians, and by those interested in the psychology of power.

NEVILLE CRAGO

PRINCIPLES OF BANKRUPTCY IN AUSTRALIA. (2nd ed.). By E. J. Hayek. University of Queensland Press. 1967. Pp. 165. $5.00.

> *And thou shalt not, Firenze 1766, and thou shalt not*
> *sequestrate for debt any farm implement*
> *nor any yoke ox nor*
> *any peasant while he works with the same.*
>
> Ezra Pound, Canto XLIV.

As Dr E. J. Hayek points out in the timely second edition of his "Principles of Bankruptcy in Australia", 'the English law of bankruptcy is entirely a creature of statute'. It has been the subject of much statutory modification and refinement since the Act of 1542 which introduced the first rules in bankruptcy. By the time this issue goes to press the Commonwealth of Australia Bankruptcy Act, No. 33 of 1966, will have come into operation. The Commonwealth legislature cannot be accused of hastening this piece of reforming legislation: a Committee was appointed to review the bankruptcy law of the Commonwealth on 23rd February 1956 and its Report, which scheduled a complete draft bill for a new Bankruptcy Act, was completed on 14th December 1962; the Act based upon the Bill was assented to on 1st June 1966 and becomes operative in March 1968. The second

edition of Dr Hayek's book is based on the new Bankruptcy Act although, unfortunately, the author allowed this edition of his book to be published before the Statutory Rules 1968 No. 2 under the Bankruptcy Act 1966 were made. Although many of the more important of the Rules under the Bankruptcy Act 1924 have been promoted to sections in the new Bankruptcy Act, there is still much in the new Rules which it is hoped will be dealt with in subsequent editions of this textbook.

The subject of bankruptcy is sadly neglected by legal practitioners and is becoming increasingly the province of accountants. Even the Commonwealth Parliament has recognised the pre-eminence of accountants in this field by severely limiting the functions of a solicitor appointed as a "controlling trustee" under the new Act, whilst conferring more extensive powers and responsibilities upon a registered trustee (who will, almost invariably, be a practising accountant) who is appointed a "controlling trustee". The publishers recommend "Principles of Bankruptcy in Australia" as a textbook for students of bankruptcy law, and also suggest that it should 'prove valuable to the commercial world as well as being a first-hand reference for lawyers'. Dr. Hayek has done well to condense the whole field of Australian bankruptcy law into less than 170 pages omitting any subject which should be brought to the notice of students, but it is a pity that the dull subject of bankruptcy will not be enlivened for students by this rather dull textbook. The legal practitioner and accountant practising in this field must await a new edition of McDonald, Henry & Meek[1] for the more thorough treatment of the new Act which they will require. The publishers claim that, for the reader without a legal background 'all legal terms used are defined'. Unfortunately, in some instances, Dr Hayek's explanations of legal terms and concepts will only baffle the commercial man without a legal background. For example, the term "tenant in tail" is explained in a footnote on page 86 by reference to the definition in Earl Jowitt's Dictionary of English Law in these terms: "an estate in tail was formally freehold of inheritance, and is now the equitable interest which may be created in respect of personalty as well as realty by way of trust". It must also be mentioned that this cheaply produced textbook of which the reviewer's copy fell apart at one reading, seems to be over-priced at five dollars.

Dr Hayek's book will serve as an early introduction to the changes brought about by the new Bankruptcy Act. The introduction to the

1 AUSTRALIAN BANKRUPTCY LAW AND PRACTICE (3rd ed.).

Report of the Committee (published in 1962) provides a most interesting commentary upon the new Act and ably justifies the innovations contained in it. One of the important innovations is the abolition in the Australian law of bankruptcy of the English doctrine of apparent possession. The Commonwealth legislature has recognized that few Australians today own the more expensive chattels of which they are in apparent possession. Any creditor who regards his debtor's possession of large motor cars, television sets or suites of furniture as indicia of ownership does not any longer deserve the protection of the law. Unfortunately the Western Australian Parliament has not yet recognized the effect of the extensive use of consumer credit upon the validity of the doctrine of apparent possession, which remains enshrined in the Western Australian Bills of Sale Act 1899. Section 25 of that Act still provides that a bill of sale (as widely defined in the Act) not duly registered 'shall be deemed fraudulent and void as against' the Official Receiver and the trustee in bankruptcy etc., and shall be void against sheriffs, bailiffs and other persons taking chattels comprised therein in execution. Section 27 also renders an unregistered bill of sale invalid against any purchaser bona fide and for valuable consideration without notice thereof. An interesting conflict may arise between the Western Australian Bills of Sale Act and the Commonwealth Bankruptcy Act if the Western Australian Act is not amended. Section 91 of the Bankruptcy Act 1924 included in the property of the bankrupt, divisible amongst his creditors, 'all goods being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, with the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof': section 116 of the Bankruptcy Act 1966 confines the property divisible amongst the creditors of the bankrupt to 'all property that belonged to, or was vested in, a bankrupt at the commencement of the bankruptcy. . . .' It is doubtful whether an unregistered bill of sale, although 'deemed fraudulent and void as against the Official Receiver' could pass title to the goods comprised therein so as to make them subject to section 16 of the Bankruptcy Act 1966.

Section 25 of the Western Australian Bills of Sale Act raises an interesting question under section 40 (1) (b) of the Commonwealth Bankruptcy Act 1966. The Bankruptcy Act provides that 'if . . . [a debtor] makes a conveyance . . . or other disposition of . . . any part of his property' or 'creates a charge on . . . any part of his property . . . that would, if he became bankrupt, be void as against the trustee' he commits an act of bankruptcy. Dr Hayek comments on this provision

that 'a debtor commits this act of bankruptcy if he makes a disposition . . . that would be void as against the trustee under any provision of the (sic) Act if the debtor became a bankrupt'. However, the Bankruptcy Act does not limit the avoidance to an avoidance under any provision of the Bankruptcy Act, and it is surely arguable that the making of a bill of sale under such circumstances as to render it void under section 25 of the Western Australian Bills of Sale Act might constitute an act of bankruptcy under the Commonwealth Bankruptcy Act, notwithstanding that section 25 may no longer make the goods the subject of such a bill of sale available for distribution among the creditors of a bankrupt.

The statutory law of bankruptcy presents some serious difficulties to students of the law. One of these difficulties is that it introduces some artificial concepts which seem to run counter to the ordinary law of property. An example of this artificiality is the avoidance of preferences (dealt with in section 122 of the Bankruptcy Act 1966); Dr Hayek, in chapter 10 of his book presents a very clear exposition of these provisions. Another difficulty peculiar to the law student faced with the study of bankruptcy law is that he will not have practical experience of the commercial circumstances surrounding insolvency. This will make it difficult for him to understand why creditors, in some circumstances, prefer to deal with their debtor otherwise than by making him bankrupt. Part X of the new Act consolidates Parts XI and XII of the old Bankruptcy Act and deals with all arrangements with creditors without sequestration. Unfortunately, Dr Hayek does not assist the student by explaining, in any detail, the practical advantages of Deeds of Assignment, Deeds of Arrangement and Compositions. He introduces the topic with the sentence: 'It may happen that creditors are not prepared to institute bankruptcy proceedings, perhaps because of the inconvenience caused thereby, or for other reasons'. This is exactly the sort of sentence which a student would write in an examination if he had not the faintest idea why creditors should not be prepared, in given circumstances, to institute bankruptcy proceedings. McDonald, Henry & Meek in "Australian Bankruptcy Law and Practice" (3rd edition) succinctly introduce the subject by explaining that the object of these arrangements is 'to sanction and regulate arrangements between a debtor and his creditors outside bankruptcy, and to protect the debtor from the stigma of bankruptcy so long as he remains amenable to the directions of his creditors'. It is perhaps appropriate to comment that these arrangements are often resorted to when the family and friends of a debtor offer a financial

inducement to his creditors if they are prepared to refrain from making the debtor bankrupt. It is also interesting that the new Bankruptcy Act has sought to improve the machinery of Part X because the greater use of these arrangements outside bankruptcy 'will have the effect of reducing some of the cost of maintaining the Commonwealth bankruptcy administration'.[2] It is also a pity that, whilst he describes the statutory provisions governing Deeds of Arrangement and notes that no form of this document is prescribed by the Act, Dr Hayek has not assisted the student by describing to him the common provisions customarily found in such a document.

The disabilities imposed upon an undischarged bankrupt are serious, and the new Act ameliorates a bankrupt's fate by providing for his automatic discharge after five years from the date of the bankruptcy unless an objection has been entered to such discharge. It is unfortunate, perhaps, that the law of insolvency still perpetuates distinctions between commercial enterprises incorporated under the Companies Act and those carried on by individuals. It is well recognized that most proprietors of small family businesses who seek incorporation do so not because there is any legitimate need for them to limit their liability, but because certain taxation advantages flow from their incorporation. Nevertheless, the creditors of an insolvent proprietary company are in a very different position under the winding-up provisions of the Companies Act than are the creditors of a bankrupt whose estate is being administered under the Bankruptcy Act.

It is time that an attempt was made more closely to assimilate the procedure of the winding-up at least of proprietary companies to the procedures which govern bankruptcy. It is curious that, whilst an undisclosed bankrupt cannot obtain credit of two hundred dollars or more without disclosure, cannot acquire property for himself, must deliver up his passport to his trustee and cannot act as a director of or take part in the management of any corporation, the director of a company, even if he be practically its sole shareholder, suffers no personal disability in the event of the liquidation of that company consequent upon its insolvency, unless he be convicted of any of the offences specified in section 122 of the Companies Act 1961.

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2 Report of the Committee to Review the Bankruptcy Law of the Commonwealth, p. 61.

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