

this review, one might as well relegate both to the category of recommended reading and prescribe Pannam and Hocker.

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THE MORTGAGEE'S POWER OF SALE By C. E. Croft. Butterworths Pty. Ltd., Australia, 1980. Recommended retail price \$19.

The secured creditor, further to his right to sue on the personal promise of the debtor, has recourse to the property of the debtor in order to enforce the discharge of the latter's obligation. He is thus not obliged to rely solely on his contractual remedy in the event of the debtor's insolvency. The mortgage represents one of the most common kinds of security. Legal practitioners are regularly called upon to advise a party of his or her rights in relation to a mortgage; more specifically, advice is particularly sought when a mortgagor makes default under a mortgage. It is at this point, when creditor and debtor alike are scrambling to ascertain their respective rights and obligations, that Croft's book has made a substantial contribution to Australian legal literature.

The extensive use of the mortgagee's power of sale and, to a lesser extent, of the power to appoint a receiver, represent a virtual abandonment of the other remedies available to the secured creditor.¹ The importance of Croft's book lies in his exhaustive treatment of the mortgagee's most common choice of remedy upon the default of the mortgagor — sale out of court.

The subject matter of the book is arranged, as the preface points out, so as to correspond chronologically with the steps that a mortgagee would take in exercising his power of sale. Hence, after a short discussion in Chapter One of types and definitions of mortgages, the source of the power of sale (Chapter Two), the conditions precedent to its exercise (Chapter Three), and the mortgagee's rights in relation to the possession of the mortgaged property (Chapters Four and Five), are discussed.

The materials are arranged, for the most part, by dividing chapters into general law mortgages and registered ('Torrens') land mortgages. The book adopts a system of consecutively numbering paragraphs and makes liberal use of headings and sub-headings so as to enable quick reference to the point of law sought. A notable feature of Croft's exposition is the lack of consistent analysis of and commentary on the authorities. While practitioners are well served by the book's concise and

¹ See Henchman, 'Remedies of the Secured Creditor', (1971) 10 *U.W.A.L. Rev.* 20.

thorough presentation of principles and rules, it is respectfully suggested that extensive quotation from authority² should be avoided. It may also be noted here that Croft extracts verbatim all relevant provisions of the New South Wales and Victorian legislation.

Chapters Six to Eight deal with the unsettled area of the standard of care to be exercised by a mortgagee when he conducts the sale of the mortgaged property. Two standards of care emerge from the authorities. The first is that the mortgagee is under an obligation to take reasonable care to obtain the true market value and the second line of authority states that the mortgagee's only duty is to act bona fide in the conduct of the sale. Having canvassed all of the authorities, however, Croft considers that a significant distinction is to be drawn between whether the mortgagee is answerable for 'mere negligence or carelessness' on the one hand, and whether the mortgagee's duty is merely to act in good faith with or without being bound also to take reasonable precautions to obtain a proper price, on the other. Thus, while he holds that the mortgagee owes no general duty of care to the mortgagor as would make him liable for 'negligence or carelessness' in Australia, he observes that, '[i]n relation to the negligence issue it appears that the two lines of authority must be regarded as divergent and unresolved'.³

Although some support may be found for Croft's distinction in the judgment of Aickin J. in *ANZ Banking Group Ltd v. Bangadilly Pastoral Co. Ltd*⁴ the commentators have not embraced it.⁵ It is doubtful whether the distinction advances analysis of the cases in this area. The fundamental issue is surely how to resolve the conflicting interests of the mortgagor and the mortgagee. Indeed, as Stone has pointed out;⁶ the courts have yet to deny a claim on the basis of the distinction in question.

Chapters Nine and Ten discuss the question of who may purchase on a mortgagee's sale and under what circumstances a purchaser's title may be impugned. Chapter Eleven contains a short, but complete analysis of the rights of the mortgagor in relation to redemption and setting aside sale. The law with respect to distributing the proceeds of a sale is considered in relation to General Law Land and Registered Land mortgages in Chapters Twelve and Thirteen respectively. The author is to be commended for a very thorough analysis of all aspects of the law in this area and for his discussion of the perplexing priorities problems which

² See at 24-25, 92-94, and at 96 especially.

³ At 102.

⁴ (1978) 52 A.L.J.R. 529.

⁵ See Butt's analysis, 53 A.L.J. 172.

⁶ 53 A.L.J. 842.

face mortgagees when paying proceeds to subsequent encumbrancers. Solicitors will find the forms and precedents in the Appendix to the book very useful.

While this book will be of great use to all practitioners, it is unfortunate that the book is almost exclusively concerned with only that relevant legislation which is in force in New South Wales and Victoria. It is respectfully suggested that reference to the equivalent or comparable provisions of statutes in other States would be a welcome addition to any later editions of this work.

J. P. LONGO

THE LAW OF INTERNATIONAL BUSINESS IN AUSTRALIA By P. J. O'Keefe and M. A. G. Tedeschi. Butterworths, Sydney, 1980.

As the title indicates, this volume has a wide scope. It is not clear whether it is intended for law students, practitioners or business people. Some passages provide essentially introductory discussions such as those on contracts of adhesion¹ and exculpatory clauses.² Elsewhere valiant attempts to deal with difficult issues in the limited space available mean that the reader must have recourse to other sources to obtain comprehensive coverage. An example is the discussion of *Mareva* injunctions.³

Yet the author's bold attempt to deal with so large a subject has been crowned with a considerable degree of success. The emphasis on the practical aspects of negotiation and drafting is both practical and useful. Analysis of exchange control, foreign takeovers, taxation, antitrust and arbitration will be of interest to all three of the audiences previously suggested.

On particular points it can be suggested that *The Atlantic Star*⁴ and *MacShannon v. Rockware*⁵ merited discussion. Proof of foreign law is a difficult matter and some examination of the problems raised by the cases might have been in order. *Texaco v. Libya*⁶ is a landmark arbitral decision and could have been mentioned. It would have been of interest to read the authors' views on the progress to date in the Dillingham negotiations. Choice of court clauses should specify that the forum men-

¹ At 17-18.

² At 32-36.

³ At 187-190.

⁴ [1973] 2 W.L.R. 795.

⁵ [1978] 1 All E.R. 625.

⁶ (1979) 53 I.L.R. 389.