

REVIEW ARTICLE*

Torrens Title: RTJ STEIN and MA STONE (Butterworths, 1991) pp i-xlvi, 1-385 hardcover recommended retail price \$79.00 (ISBN 0 409 4947 6).

Sir John Latham once mused that "knowledge is valuable, but knowledge is neither real nor personal property. A man with a richly stored mind is not for that reason a man of property."¹ One hopes, though, that the categories of knowledge and property are not necessarily mutually exclusive. It would be pleasing to think that those who possess a great knowledge of property law are not necessarily condemned to live a life of penury.

Whether fearful of Sir John Latham's forebodings or not, the late Robert Stein and Margaret Stone have displayed a profound knowledge of property law in producing an excellent book on the Torrens system. *Torrens Title* is published by Butterworths and appeared in 1991. The book is divided into seven chapters which deal discretely with such titles as mortgages, leases, indefeasibility of title, sale of land and registration procedures in addition to other matters.

While the legal profession is well accommodated by some very fine property texts and loose-leaf services, providing as they do a general guide to property law and a digest of recent case law, there exists a need for a work which provides a skilful overview of the whole system of the land law with special regard to Torrens title. This book fulfils that need. Approximately 95 per cent of all titles in New South Wales are now under the Torrens system and the percentage is greater in most other jurisdictions. Whilst the introduction of the Torrens system did provide for a new statutory regime of title by registration, it is built upon centuries of land law distilled and refined in the courts of common law and equity. A book which attempts to provide a comprehensive analysis of the Torrens system at work in the land law must deal with the creation and

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1 *Federal Commissioner of Taxation v United Aircraft Corporation* (1943) 68 CLR 525 at 534.

disposal of proprietary estates and other interests at common law and in equity as well as transfer of title under the system. It is an ambitious aim but the authors have succeeded admirably. Stein and Stone are to be congratulated for providing the reader with a coherent and scholarly account of the Torrens system set against the background of the general land law.

The book will certainly appeal to the practising property lawyer who may turn to it to find a speedy answer to, for example, an indefeasibility of title or a priority problem. However, the book will have a wider audience. In addition to the busy practising property lawyer, the book well serves the needs of teachers and students of property law and deserves to become a standard text or reference book for use in Law Schools across Australia. The book's clarity of expression and evaluation of difficult conceptual problems is commendable. Providing as it does an analysis of the statute law and case law which make up the Torrens system, the teacher and student alike will benefit from the cogent and fluent exposition of principle.

It is pointed out in the preface that it was the authors' belief that "equal attention to the legislation of all the Australian jurisdictions would yield a mass of detail which would obscure" the principles informing the Torrens systems of all of the states. For this reason, the text deals primarily with the New South Wales legislation with corresponding legislation in other jurisdictions being footnoted. The cross references contain important legislative comparisons which judges, barristers, solicitors and legal academics will find useful.

Of particular interest to this reviewer were the chapters on indefeasibility of title and mortgages. As to the latter, Lord Macnaghten once professed that "no one, I am sure, by the light of nature ever understood an English mortgage of real estate".² Stein and Stone take the reader through the tangled web of statute law, common law and equity which make up the law of mortgages and explain some of the curiosities with a view to historical development, such as the repeal of the usury laws, and equity's traditional abhorrence of penalties and forfeitures. The material on indefeasibility of title is not limited to an exposition of the present law but rather explains to the reader the reason for the court's interpretation of the key indefeasibility provisions of the Act (such as NSW *Real Property Act* ss 42, 43, 124 and 135) in the light of the central aims of the Torrens system. This treatment is in sympathy with the authors' approach to the whole work. The authors do not stop at stating the present law but rather explain why the law is as it is. Where they feel it necessary, Stein and Stone are not reluctant to criticise both courts and legislators where, in their view, judicial decisions and government practice and policy undermine the proper working of the system.

In summary, this book which provides a scholarly yet practical account of the Torrens system and the land law, will be welcome as a major reference work on the subject.

2 *Samuel v Jarrah Timber & Wood Paving Corp Ltd* [1904] AC 323 at 326.