

THE TORRENS SYSTEM IN MALAYA. By S. K. Das. [Singapore:
Malayan Law Journal, Ltd. 1963. lxxiii + 542 pp. \$125.]

The appearance of this book is of such importance in Malaysia that it is disappointing not to be able to extend to it a wholehearted welcome and unqualified praise. Whatever the particular objections however, general appreciation of attempting the task of presenting and discussing the Land laws of Malaya cannot remain unexpressed.

It is impossible to say that the book is a pleasure to read, even if reading land law is itself accepted as a pleasure, for the reader is forced to leap from one subject to another with no guide as to direction or purpose. The book is divided into three parts, and twenty three chapters, but with no further subheadings or divisions. This gives the whole a fragmentary and disorganised appearance. Further, the author advances what at the best are views on the interpretation of statute with a dogmatic assurance.

Unfortunately some of these assertions are not only debatable but are plainly incorrect. The author states (at p. 258) that a contract is not voidable for innocent misrepresentation if the party whose consent was so caused had the means of discovering the truth with diligence. The English Court of Appeal decision in *Redgrave v. Hurd* (1881) 20 Ch.D. 1 is directly to the contrary and if there is a Malaysian authority to support the text the reader is not favoured with its name. As an authority for the elements necessary for a successful plea of estoppel there appears (at p. 194) that of Fry J. in *Willmott v. Barber* although the English Court of Appeal in *Hopgood v. Brown* confined the effect of that decision to estoppel by acquiescence.

Mr. Das discusses the problem of the deserted wives rights to the matrimonial home, but the discussion forms the middle of a sandwich consisting of rights created by special legislation and the question of whether the testamentary capacity of Muslims is enlarged by the Land Code. After travelling the highways of legislative action the reader spins from the womb to the tomb all in the breathless space of a few pages, never having any idea at any given moment into which problem he is to be plunged. The author states with blissful certainty (at p. 258) that "the principle" — apparently referring to the principle that a deserted wife has some right in regard to the matrimonial home — stems from a dictum of Goddard L.J. in *Bramwell v. Bramwell* to the effect that, as a husband could not sue his wife in tort, he cannot bring ejectment against her. Although there is support for this view in a recent judgment of Lord Denning M.R., the view is at best controversial, and if advanced should surely be linked in some way with the change in English law under the Law Reform (Husband and Wife) Act 1962 under which a husband can sue his wife in tort. On the same subject, it is misleading to refer to *Churcher v. Street* as a case where the wife's conduct was held to be indefensible and to disentitle her from claiming protection. The wife was allowed to stay in the premises for six months, and the cardinal point of the case was that the plaintiffs were trustees, not that the wife had misbehaved.

Throughout the book there is an indiscriminate citing of authority, and little attempt to relate such authority to the actual statute under which it was decided. Does such authority really serve any purpose unless it is clear that the relevant provisions are identical in meaning and purpose? To decide this, not only the particular provision being discussed must be examined, but the basic provisions of the particular statute. Mr. Das virtually ignores such a provision of the Land Code — s. 55 — citing authorities decided under the Real Property Act of New South Wales, and other Commonwealth legislation as interpreting the Code and its effect on unregistered instruments and interests (see e.g. pp. 189-190, 196, 293-300). General propositions advanced are (at pp. 163, 188) that equity cannot be used to defeat legislation and (at p. 188) that "the generality of the language used in s. 42(vi) must not be made a pretext for defeating the proprietors title by a side-wind". Further, the author asserts that in the absence of fraud, registration is conclusive as to the title of a registered proprietor. Where then stand the equitable interests, such as those of the cestui que trust said to be recognised by the Code? There is no attempt to explain (e.g.) how a vendor is a trustee for a purchaser under the Code after a contract for sale has been entered into (see pp. 164, 379). Not only that, but there is no relating to the general proposition the principles that an unregistered instrument is not void but operates as a contract, and that title obtained by misrepresentation as well as fraud is a statutory exception to the indefeasibility principle. The "omnibus provision" of s. 42(vi) applies, it is said, to "an overriding unregistered claim, equitable or contractual", but how this is reconciled with the general pronouncement of indefeasibility is but one more problem for the somewhat bewildered reader.

In conclusion, the reader is left after it all, with the impression of being on a roundabout in which the individual cars are themselves whirled around. Perhaps some of the many inconsistencies could be made to fit into some kind of pattern by a less dogmatic approach, and much of the general confusion could surely be avoided by a few aids in pointing to the paths to be followed.