LEWIN ON TRUSTS, 16th Ed. By W. J. Mowbray. [London: Sweet and Maxwell. 1964. cl + 883 pp. 9 gns.].

In the Preface the author of this edition gives us three keys to the nature and limitations of this very large book. It is, he says (quoting, presumably from another edition) "a practitioner's work". Further, it is the only book on Trusts which "attempts a complete citation of authority", (one assumes he means "complete citation of English authority by a book published in England"). Finally he says that where he has met with undecided questions and has suggested answers to them he has done so (citing Bacon) "to open the law upon doubts and not to open doubts upon the law."

Despite the fact that it is a practitioner's work, it seems disappointing that the author has not thought fit to deal with basic propositions and questions involving the legal concepts with which the book is concerned. It is a little strange, *after* Parts I and II dealing with the definition of a trust and trustees to discover that Part III is headed "Equitable Interests". The chapters within this part deal mostly with the rights and obligations of the trustee and beneficiary, and either the content is not worthy of the heading or the heading does not reflect the content. It may be that its title is, like the title of some collections of short stories, taken from the first chapter "Characteristics of an equitable interest".

It would seem that any discussion of the general category of equitable interests should take its place with a discussion of the nature of the trust. The definition of a trust put forward on the first page of the book, if it is not to be taken as circular, is wide enough to cover equitable interests other than trusts such as charges or liens. How, if at all, do they differ? How do powers differ from trusts? Is a trust a proprietary interest? What is an equitable interest?

To none of these rather fundamental questions does the book attempt any but a superficial answer. It may be thought that they are so fundamental that no answer is needed, but before there can be any discussion of what can be done with an interest

or the results of the creation of a trust as such an interest, surely we need to establish the criteria for deciding whether or not it does exist. Although matters "more properly dealt with in works on Wills" have been excluded, a new section on Estate Duty has been added. Any thoughts that a discussion of "property" or "proprietary interest" would be a waste of a practitioner's time should be banished by a consideration of the statutes cited in this part and a consideration of *Livingstone* v. *Commissioner of Taxation.* A reference to the decision of the High Court of Australia in that case (later appealed to the Privy Council) would not, one would have thought, overburdened the load of authority under which the work already labours. It is hoped that at least the decisions will find their way into a supplement.

Even if peripheral matters are to be excluded in substance, a discussion of then characteristics would help to define the trust relationship more clearly. A chapter on "Powers" appears in Part II ("Trustees") but surely the distinction between trusts and powers is so basic that this should be dealt with at the beginning of the book. Further, the discussion on Powers is specifically limited so as to exclude the general questions of the relationship between the two concepts.

The author deals with the question of "equities" in much the same way as he does equitable interests. His treatment is short, (see pp. 595-596 and pp. 597-598) but the development of thought on this subject should have rid us of the ability to come to any dogmatic conclusion firstly as to whether there is such a proprietary interest as an equity and secondly upon its nature. Connected with the nature of an equity is the author's treatment of third party rights. He says in the Preface that there is a new section introduced under certainty of words as to when it is possible to treat a party to a contract as holding its benefit in trust for a third party. In the text (at p. 45) his statement of the question implies that a trust is the only way in which a person not a party to the contract could take a benefit from it. Is there not a connection between such an ability to benefit, the enforcement of a gift by the creation of an equitable right prior to its completion (e.g. *Dillwyn* v. *Llewellyn* as contrasted with *Milroy* v. *Lord)* and the general nature of an "equity"? These matters are treated shortly and separately when, it is suggested, they form an area which is to-day one of consistent development. There is in the book no hint of either development or connection.

The fact that it is a "practitioner's work" perhaps is a reason for the cavalier treatment of some difficult questions, and one cannot imagine that practitioners would find the questions as soluble as does this edition of Lewin. For example (at p. 45) it is said that if chattels personal are bequeathed by will to A with remainder to B then a trust is implied. The nature of B's interest, and whether or not he has an interest, is a matter on which there are conflicting authorities only one of which is cited in support of the proposition advanced in the text.

Dealing with the question of foreign elements and a trust the author states that "personal property is regulated by the law of domicile" (p. 256) and that a disqualification of a beneficiary unknown to English law will be ignored by the court in paying a trust fund out of court (p. 273). Both statements are stated positively and both cannot be accurate. Further, the general rule stated positively at p. 256 does not wholly survive qualification made at pp. 19-20.

The treatment of trusts with a foreign element in general dealt with at pp. 20-21, 117 and 256 and 273 contains connected points, but not only is there no cross reference in the text or footnotes but the text is misleading either because it is too widely or too narrowly expressed and in addition is not entirely consistent.

Firstly the question of the meaning of "law" in this context is ignored and secondly there is no reference to the question which it is necessary to decide in order to determine which is the lex situs of a proprietary interest, i.e. the nature of that interest.

Perhaps it is the author's desire not to create doubts upon the law that has led to doubts about the text. Would it not be preferable to point out the doubts than rely on doubtful dogma?

Finally, the criticism of short and unconnected treatment cannot be made in regard to the vexed question of the certainty of conditions attached to trusts and the relevant distinction between conditions precedent and subsequent, for this is simply not mentioned.

The hope that the book represents a "complete citation of authority" assumes the insularity of the English Bar — an assumption which may well be justified. There does appear to be a tendency for the English courts to take more notice of Commonwealth authorities than hitherto and perhaps the thought expressed by a leading English silk a few years ago that the task of searching Commonwealth authorities was too horrible to contemplate in terms of work, may become (for him) a terrible reality. It would appear that even books expressly designed for the English practitioner could not but be enhanced by citation of some Commonwealth authority. Despite the encouraging sign that the approved definition of a trust is that of a Commonwealth judge there is no reference in this work to Commonwealth cases on points where they could only be of assistance. To take just a few examples from Australia in regard to this edition of Lewin, the decisions of *Wirth* v. *Wirth* on the presumption of advancement; the *Livingstone* case on the nature of an equitable interest; and *Norman* v. *The Commissioner of Taxes* and *Anning* v. *Anning* on the voluntary assignment of a proprietary interest would not add greatly to the number of cases cited while they would refer the practitioner to detailed discussions of concepts probably not obtainable in any of the English authorities. Perhaps it is therefore not too late to hope that in the supplement we may see mention of *Haque* v. *Hague* in regard to the distinction between movables and immovables and *Latec Investments Ltd.* v. *Hotel Terrigal Pty. Ltd.* as to the nature of an equity.

The book reads in places like an annotated Act, (particularly Chapters 30-32) and the absence of the citation of any articles adds to this impression. It may be that the above criticisms can be met by the proposition that this is what it is meant to be. If that is so it suffers from its size and paradoxically from the shortness of the treatment of propositions in the text. Nobody will find any answers to any problem from this work. It is a guide to relevant references, the relevance, being as it must, a matter for the author,

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