BOOK REVIEWS

TENURE AND LAND DEALINGS IN THE MALAY STATES. By DAVID S.Y. WONG. With a Foreword by TAN SRI MOHAMED SUFFIAN. [Singapore University Press. 1975. xxxiii + 563 pp. S$60.00]

In this work we have for the first time [1] a comprehensive and up-to-date study of the law of land tenure and land dealings in the Malay States of West Malaysia. Setting the study of such law into its historical context, the book makes for interesting and at times fascinating reading, offering as it does (to use the words of Tun Suffian, in his Foreword to the book) "the history of the Torrens system woven into an account of the system as it obtains in the Malay States".

As the author of the work emphasises, in tin mining may be said to be the origin of West Malaysian land law. The Chinese of the Kinta valley and elsewhere pioneered the tin industry, but subsequently the industry was "transferred from a predominantly Chinese to a predominantly western industry".[2] Two western writers, Allen and Donnithorne, have noted that "from the earliest days of the British Protectorate the government set itself to create a sound legal and administrative foundation for mining".[3] They observed that "an accurate land survey is a condition precedent to the orderly development of mining. Soon after the establishment of the British Protectorate a trigonometrical survey of Perak was instituted and this was later extended to other States."[4] Such a survey was the very basis of the Torrens system as it emerged in the Malay States. After all, "throughout the history of Malaya the tin-mining industry has been one of the chief sources of the government's revenue. . . . Revenue from tin provided the financial basis not merely for the administrative machine in the early years of the century but also for extensive capital works. A large part of the Malayan railway system was constructed out of current revenue derived from the tin industry."[5]

I believe that the author is correct, therefore, in his general assessment of the economic and commercial reasons prompting the development under British aegis of the land laws of the Malay States. Indeed, "the establishment of British rule throughout Malaya meant that the authorities had to provide a legal basis for land holding which would protect the rights of the native population and at the same time permit

[1] If one excepts the work of S.K. Das *(The Torrens System in Malaya)* a study of the F.M.S. Land Code, overtaken by the promulgation of the National Land Code.

[2] Allan and Donnithorne, *Western Enterprise in Indonesia and Malaya* (1957), p. 153.

[3] *Ibid., p.* 154.

[4] *Ibid.,* p. 155.

[5] *Ibid.,* p. 156.

the extension of European enterprise." Such is the proposition earlier put forward by Allen and Donnithorne.[6] Citing a case not mentioned in the book under review, they comment that "The long-continued dispute concerning the Duff concession demonstrated the importance of such legal provisions at this stage of development. The inception of the modern system of land tenure began with the appointment of Sir William Maxwell as Resident of Selangor in 1889. Maxwell had a wide knowledge of land problems in the East and in Australia, and he adopted the Torrens system of land registration when instituting the Selangor Land Code of 1891. This was adopted throughout Malaya except in the Straits Settlements. It required the registration of all land transactions at a local land office. In the early days land was normally alienated under a perpetual lease, but the extension of rubber-growing[7] compelled the government to introduce more stringent regulations to protect the rights of the indigenous population."

Robert Torrens, a layman, was in 1857 Registrar of Deeds in South Australia. In 1859, taking the register of ships and the Shipping Acts as a model — a useful instance of cross-fertilization within different legal areas — he set to work on what became the Real Property Act, 1857-8, of South Australia: a measure having its origin (according to its preamble) in the "losses, heavy costs and much perplexity" caused to the inhabitants of the Province of South Australia "by reason that the laws relating to . . . freehold and other interests in land are complex, cumbrous, and unsuited to the requirements of the said inhabitants." Out of this system, therefore, there emerged a system of registration of title to land: although in the Crown Colony of Labuan an Ordinance[8] had already constituted what one writer[9] "believed to be the earliest instance of an attempt by any British Legislature at making registration of transactions with land essential to their validity."

When we come to the origins of the land law of the Malay States we run into difficulty, just as we do when, for example, we seek to ascertain what the law of Penang or Singapore might have been prior to the Charters of Justice. As the author notes, "a study of the history of land law in the Malay States might well begin with an account of the indigenous Malay customs relating to land which obtained in those States before British rule," adding that "knowledge of the past indigenous customs is, however, very limited." Maxwell is cited as an authority of sorts, only to be put in his place by reference to his theory that "in a Malay Sultanate, the soil of land was vested in the Sultan": a theory hardly supported by the one direct quotation from Maxwell here cited, to the effect that "the Raja's absolute property in the soil is but a barren right, and as he undoubtedly has, independently of it, the right of levying tenths and taxes and of forfeiting

[6] Allen and Donnithorne, *op.cit.,* p. 115.

[7] "In 1897 Stephens and McGillivray, partners in a coffee estate, interplanted rubber and coco-nuts among 200 acres of coffee. A few years later coco-nuts were felled, and in 1904 the estate exported rubber to the value of 4000 Straits dollars. This was the first estate to grow rubber on a commercial scale in Perak. In Selangor the brothers Kinnersley, who had opened the Inch Kenneth Coffee Estate in 1894, planted 5 acres of rubber with Ridley's seedlings as a separate crop two years later. This was the first recorded planting of a separate field of rubber" *(ibid.,* p. 110). "By 1913 a great new [rubber] industry had been created in Malaya" *(ibid.,* p. 117).

[8] Ordinance No. 7 of 1849.

[9] J.R. Innes, *A Short Treatise on Registration of Title in the Federated Malay States* (1913) p. 1.

lands for non-payment, Malay law does not trouble itself much with speculation about it."

As an admirer of Maxwell I am, I fear, a prejudiced reviewer. The trouble is, that an Englishman has to look, for sources of much Malayan law, mostly to English writers. Clifford, in his famous Report of 1895, noted that "in the reigns preceding that of Baginda Umar (i.e., around 1869) a feudal system, as complete in its way as any recorded in the history of the Middle Ages, was in force in Trengganu. This system, which presents a curious parallel to that of mediaeval Europe, is to be traced in the form of Government of every Malay Kingdom in the Peninsula with which I am acquainted, and it was to be found in full force in Pahang when that State was protected by the British Government in 1888. In Trengganu it has undergone considerable modification, and has now been replaced by a wholly different kind of Government. Under the Malay feudal system the country is divided into a number of districts, each of which is held in fief from the Sultan by a Dato or District Chief. These districts are sub-divided into minor baronies, each of which is held by a Dato Muda, or Chief of secondary importance, on a similar tenure from the District Chief. The villages of which these sub-districts are composed are held in a like manner by the *Ka-tua-an* or Headmen from the Dato Muda." The system had, it seemed, given way to one of centralisation, according to Clifford: so it may well be that Maxwell was more accurate than Dr. Wong supposes. After all, as Cheshire notes of the English real property law of 1922,[10] this "might justly be described as an archaic feudalistic system which, though originally evolved to satisfy the needs of a society based and centred on the land, had by considerable ingenuity been twisted and distorted into a shape more or less suitable to a commercial society dominated by money." The creation of any land law appears in its origin to serve the interests of a propertied class.

To observe the evolution of the land law of the Malay States from a political, or even a Marxist point of view, can, I suspect, be misleading, and I must confess that I find the arguments of an agricultural economist more persuasive. T.B. Wilson, who in the 1950's made a study of several padi-growing areas in Perak, Province Wellesley, Perils, Kedah and Kelantan, states that "the original Malay customary law recognised only usufructuary rights possessed by the cultivator by virtue of his occupation of land in the traditional Malay system of shifting cultivation. This customary law, comparable to that of Burma, Thailand, Borneo and Sumatra, was appropriate to the natural ecological condition of dense monsoon forest. With a sparse population, abundant land and tall forest vegetation demanding laborious felling before cultivation, the original rights were created by clearing and then cultivating the land, and were absolute so long as cultivation continued or the land bore signs of appropriation."[11]

Even so, Wilson notes, "the proprietary, as distinct from the usufructuary, rights came only after long settlement, with the introduc-

[10] Preface to *The Modern Law of Real Property* (seventh edition, 1954).
[11] Wyatt-Smith noted that "There is, in some States, an age-old custom — which Governments are loth to ignore — that the first clearing of jungle establishes a right to the land": *Shifting Cultivation in Malaya* (The Malayan Forester, Volume XXI, p. 141).

tion of monarchy. Groups of shifting cultivators, who lived in tribes under chiefs and *penghulus* for mutual protection, became subjects of the Rajas when monarchy was introduced by the Hindus from India. The rights of the Raja included a share of the crops grown by his subjects, with payment enforceable by the seizure of crops or land. Malay custom fixed the Raja's share at one-tenth of the crop, so that usufructuary rights were then held so long as the land was occupied and payment was given to the Raja *via* his chiefs. The Raja's rights were also extended to abandoned land and so the doctrine grew that the absolute right of the soil was vested in the Raja. The doctrine came to be accepted because it involved no conflict with the cultivator's right of usufruct. Forest land, *i.e.* unalienated State land, in Kedah is still known as *tanah raja* (Sultan's land)."[12]

So wrote a British officer in 1958: a writer who underlines the feudal nature of the Malay system: "The Raja's collection of one-tenth of the padi crop, following Siamese practice, required that the cultivator in Kedah deliver the padi to specified granaries." However, "when the land registers were introduced, for example by Maxwell at Parit Buntar in 1875, the concept of full rights of alienation and inheritance was also introduced, which the *tuan tanah* (landowner) as collector of the Raja's tax and the cultivator with occupation rights, had never previously possessed in Malay law." Of padi land, Wilson observes that "it is a matter of some interest that the existence of proprietary rights to padi land in Malaya came after, instead of before, the payment by the cultivators of crop-shares. Fixed rents originated as feudal dues, which were continued after the disintegration of the Raja feudalism."

On the other hand, C.T.M. Husband wrote of the land law of Trengganu[13] that "the earliest form of land tenure appears to have been based on Mohammedan law which gave the right to any true believer of appropriating and keeping for himself as much forest and waste land as he had the power to keep under cultivation, his title being secured by continuous occupation, subject to the payment of tax to the ruling power and the liability to "krah" or forced labour . . . . No land revenue whatever appears to have been paid to the Sultan . . . . Had this remained the sole form of land tenure the evolution of written land law on modern lines under stable government would have been relatively simple. Unfortunately there was later super-imposed on this system another entirely different in principle. The latter amounted to the assumption by the ruling power of absolute ownership of unoccupied land and the issue of grants, locally termed "chops", and concessions conveying what was to all intents and purposes a freehold title. . . The practice probably originated with the idea of a written title as a document evidencing ownership, no doubt introduced under Siamese influence, and developed, on much the same lines as the *surat putus* in Kedah, to the issue of a grant of unoccupied land."

I cite these observations in the hope that the author may take a kinder view of Maxwell than one who was but a "legal theorist". Whether Maxwell was correct or not in such theories as he possessed

[12] T.B. Wilson, *The Economics of Padi Production in North Malaya* (Department of Agriculture Bulletin, Kuala Lumpur, 1958).
[13] C.T.M. Husband, *A History of Land Law and Land Administration in Trengganu* (unpublished; circa 1939).

I do not know: the evidence is confused. Whatever the true position on that issue may be, however, it is to Maxwell's foresight, skill and tenacity of purpose that the Malay States of West Malaysia owe their present system of registration of title to land and the benefits that flow from the efficient application of such a system: for Maxwell was the author of the Selangor Registration of Titles Regulations of 1891 and the Malacca Lands Ordinance of 1886, which formed the basis of the Federated Malay States Land Enactment, 1911,[14] and from which the Land Code of 1926 and the National Land Code evolved.

Much of Maxwell's work was of course derived from the so-called Torrens system of South Australia: although to a large extent, as Dr. Wong points out, the early law of the Malay States relating to registration of land was modelled upon the Real Property Ordinance, 1876, of Fiji, a territory subject to the Torrens system. It is interesting to speculate what might have occurred had Maxwell not vigorously pursued his campaign for registration of title: for it is likely that the States of West Malaysia would now be labouring under a system of unregistered conveyancing on English lines, coupled with the English law of real property, "frequently. . .described by practical conveyancers" (so Charles Sweet wrote in 1912) "as a disgrace to a civilised community."[15] What Maxwell did — and therein lies, I believe, his major achievement — was to introduce in the Malay States legislation which, as Dr. Wong very acutely and concisely notes, "did not merely provide for a system of conveyancing, but, indeed, made provision for the substantive law relating to dealings and interests in land."

Alienation of land in the Malay States was thus, to the good fortune of those States, from an early stage brought within a system of registration of title: but in the Straits Settlements Maxwell, when Commissioner of Lands at Penang in the 1880's, found resistance to his efforts to introduce such a system. Defeated in his immediate objective he nevertheless, in the property legislation of 1882 to 1886, laid the foundations for the ultimate introduction of a system of registration of title throughout Penang and Malacca: and as Walker-Taylor observes,[16] "having regard to the practical difficulties encountered, and the growing public opposition to his land reform measures [in the Settlements] Maxwell went as far as he could towards achieving a system of registration of title; and. . . the existing land tenure and transfer machinery embodies a considerable proportion of the essential elements of a system of registration of title." Indeed, so skilfully did Maxwell contrive the land laws of the Straits Settlements that those laws, coupled with efficient and comprehensive surveys of Penang and Malacca, paved the way for the promulgation of the National Land Code (Penang and Malacca Titles) Act, 1963, a measure designed to introduce the system of registration of title to land in the States of Penang and Malacca; and with the enactment of this measure, it became possible to prepare a common land code for all the States of West Malaysia. In this fashion, therefore, the National Land Code was prepared: a measure which, when coupled with the work of

[14] See J.R. Innes, *op. cit.,* p. 18.
[15] 28 L.Q.R. 10.
[16] B.P. Walker-Taylor, *The Progressive Development of the Penang Land System to a System Comparable to Registration of Title* (unpublished; circa 1953).

Baalman in Singapore,[17] may be said to mark the logical end of the work begun in Malaya in the 1880's by Maxwell and others.

As Dr. Wong emphasises, the foundations of the National Land Code itself lie in the Land Code of the Federated Malay States, enacted by the Federal Legislature in 1926. This Code replaced legislation enacted in 1911 in similar terms in all the F.M.S. and dealing, separately, with land and registration of titles: the enactment of such legislation being, no doubt, prompted by a desire to confer security of tenure upon expatriate commercial interests. Of the original land system of the Federated Malay States the Legal Adviser, writing in 1926, observed that "it comprised two forms of title, a form of registered title modelled on the Torrens system, suitable to European and commercial interests, and a right of occupation suitable to peasant proprietors. Originally the latter were recorded as occupiers of customary land and had a transferable right of use and occupation, but nothing more. In subsequent years the mukim register was introduced, the occupant received a document of title, and acquired first the right to charge and later the right to lease the land." The policy of the Code of 1926 was therefore, in the words of the Legal Adviser, "to complete the assimilation between the two forms of title, and the only remaining differences are in the office in which dealings are registered, in the authority by whom the sale of charged land may be ordered, and in the right to enter into occupation of charged land." These differences, observed in 1926 and maintained until the present time, remain in the new Code: their justification no doubt residing in the belief that there is a duty on the part of Government to protect the rural smallholder, by ensuring that he is neither victimised by unscrupulous moneylenders nor exploited by avaricious lawyers.[18]

The Land Code of 1926 marked, therefore, a major consolidation of the law relating to tenure of land: a law that remains of singular importance in a country whose welfare is almost wholly dependent upon the efficient use of its natural resources. While it was to a large extent an evolutionary measure, founded in existing law but borrowing freely from such sources as Fijian, Indian, South Australian and Straits Settlements legislation, it contained a number of innovations, such as, for example, the prohibition of the alienation of land to a minor (a practice permitted in the Straits Settlements), the restriction of leaseholds to a maximum term of thirty years, and the reduction of the period of a lease not requiring registration from three years to one year. Work on the Code had begun some five or six years before its enactment, for the office of Commissioner of Lands, which had appeared in State laws as early as 1903 but had been abolished before the land legislation of 1911, was revived in 1920.[19] From that date, therefore, the work of drafting a new Land Code, in collaboration with the bench, the legal profession and the land officers, had continued: so that the Code of 1926, six years in the making, represented a careful and exhaustive consolidation, so successful that it survived

[17] Singapore Land Titles Ordinance, 1956.
[18] Writing in 1958, the Land Administration Commission observed that "it has been officially estimated that more than 50 per cent of the adult population throughout Malaya are illiterate. Such settlers require simpler systems and more guidance than the people of a more educated and advanced community." *(Report,* para. 57)
[19] Enactment No. 28 of 1920.

without any radical amendment for about forty years, and persists as the basic framework of the present Code.

This is not to say, however, that the Code was regarded as perfect for, seven years after its coming into force on January 1, 1928, a committee was appointed to advise upon what amendments to it might be considered necessary. This Committee consisted of two lawyers, (the chairman, Mr. H.C. (later Sir Harold) Willan and Mr. W.G.W. Hastings) and one civil servant (Mr. A. Sleep), all of them expatriates. It was a strong and vigorous committee, and in 1936 it submitted to the Under Secretary to the Government of the Federated Malay States a typescript report of some thirty-five pages, setting out in detail its advice. This report, which remains the only authoritative examination of the Land Code of 1926, was never published; it is not mentioned in Dr. Wong's book; and it appears to have disappeared into that particular limbo reserved for the more intelligent recommendations of the servants of government: but it did, some twenty-seven years later, afford a useful basis for a review of the Code of 1926, and such of its recommendations as appeared of continuing validity were included in the new Code. It is a pity that Dr. Wong had no access to the Report of the Willan Committee: and I can only hope that the Report will be published in due course, for the benefit of the legal historian.

For various reasons land administration fell into a certain state of confusion during and after the period of the Japanese occupation, a confusion that persisted into the late 1950's: so that in February, 1957, the High Commissioner in Council was prompted to appoint a Land Administration Commission to make *(inter alia)* such recommendations as it considered necessary for the improvement of land administration in the then Federation of Malaya, and including, if necessary, alteration to the land laws. This Commission consisted, like the Willan Committee, of three expatriate members, this time from Queensland, India and Uganda; and their report, constituting a lengthy and thorough survey of land administration in the Federation, was completed before *merdeka,* and published in 1958.[20]

The Commission observed that the land laws and administration in Malaya were "somewhat diversified and complex. . . . The four former Federated Malay States of Perak, Selangor, Pahang and Negri Sembilan have a common Land Code, but each of the other States and Settlements has its own land laws. There are differences in procedure, but the differences in the land Laws of the various States though considerable are not of a fundamental nature. The same common principles underlie them all and, with a will to co-operate and work together, these differences easily could be resolved and a National Land Code be enacted applicable to all the States retaining, where necessary, the few small variations which may be needed to meet the special requirements of some of the States. In regard to the Settlements there are considerable differences from the States in the laws relating to land, but special provisions could be made even for these in a National Land Code. A National Land Code is essential if land administration is to be effectively regulated throughout the Federation. It would greatly help in encouraging a national spirit, in introducing uniformity in land procedure and administration, and consolidating Malaya into a progressive Nation."[21]

[20] *Report of the Land Administration Commission* (Kuala Lumpur, 1958).
[21] *Report,* paras. 48-49.

This recommendation was adopted by the Alliance Government, which appreciated perhaps more accurately than its colonial predecessors that (to quote the Report of the Commission) "the greater part of the revenue of the country, directly and indirectly, comes from the land and from the activities supported by the land. Land directly provides the livelihood for the majority of the people. Indirectly it also supports villages, towns and cities. The products from land, chiefly from rubber and tin, have enabled a comparatively high standard of living to be maintained. Nothing can more ensure the future prosperity of Malaya than the correct utilisation of its lands and their proper administration."[22] In consequence the preparation of a National Land Code formed part of the election manifesto issued by the Alliance in 1959, and in November 1959 the office of a Federal Commissioner of Land Legislation was established, the first occupant of that office being charged with responsibility for the preparation, in collaboration with a legal draftsman, of a new code.[23]

The preparation of a National Land Code had, of course, been envisaged at least as early as 1955, and possibly as early as the period of the Malayan Union (1946 to 1948). when opinion in favour of a strong and efficient central administration first found favour. In view of the difficulties of preparing such a Code, however, an attempt had been made to embark upon the task on a piecemeal basis: the only product of this particular policy being the Attestation of Registrable Instruments Act of 1960,[24] which endeavoured to consolidate the law relating to attestation of instruments used in land transactions. It was soon appreciated that not only would the task of consolidation, undertaken upon such a casual basis, take an undue time, but the confusion consequent upon such activity would outweigh its ultimate usefulness: and so the policy was dropped, and attention concentrated upon the preparation of a complete Code: a Code designed to afford clear and certain guidance to those required to apply it; expressed in a language to be understood by both layman and lawyer; and yet sufficiently complex to permit of such modern innovations as, say, the ownership and sale of flats.

Such, at any rate, was the basic design of the National Land Code. That it must have its weaknesses is undeniable, for many of the ideas it incorporated were either novel, or else novel to Malaysia: so that it is impossible to foresee what these weaknesses may be, and how they will emerge. One thing, at any rate, was likely to prove of benefit: for after the promulgation of the Code there is only one law to amend, instead of half-a-dozen or more, and that a law designed expressly for the territory, and not borrowed indiscriminately from elsewhere. This is not, of course, to deny the right of any State in which the Code is in force to amend the Code in its application to the State, where the exercise of such a right is not inconsistent with the provisions of the Constitution: but now that a National Land Council has, since

[22] *Report,* para. 54.

[23] The first Commissioner of Land Legislation was an officer of the Malayan Civil Service, Mr. K.A. Blacker; and it is to his experience of land office practice and to his vigorous and skilful persistence that two major measures (that bringing Penang and Malacca into the system of the National Land Code, and the Code itself) were prepared and promulgated.

[24] Act No. 1 of 1960.

1957, been established,[25] with authority to require the Federal and State Governments to follow any national policy for, amongst other things, the administration of any laws relating to the promotion and control of the utilisation of land throughout the [original States of the] Federation, it is probable that any defects in or amendments required to the Code will be effected by a single Act of Parliament instead of by separate legislation in the States.

The most significant feature of the National Land Code lay, from an administrative point of view, in the powers there conferred upon the Federation. These powers flow, of course, from Clause (4) of Article 76 of the Constitution, and their inclusion in the Code can, like their exercise, be justified only on the grounds of uniformity of law and policy. Since law is the instrument of policy, it follows that the powers of the Federation are here restricted to those cases in which a majority of the members of the National Land Council have agreed upon the policy to be followed throughout the States in any particular matter.

This feature is, however, perhaps of more interest to the Federal and State Governments as such, rather than to the private individual: and the latter is more likely to be interested in the major innovations contained in the Code, as these affect him as proprietor. These are admirably dealt with in Dr. Wong's book, which adopts a historical, analytical and comparative approach to this detailed and interesting statute, gives a full and interesting account of the development of a system of land tenure in the Malay States, and deals with the legislative history of the land law under the British administration, leading up to the National Land Code itself, the basic object of study.

Based upon the Federated Malay States Land Code as the new Code is, the *Explanatory Statement* to the Bill[26] somewhat ingenuously suggested (paragraph 6) that "to make detailed reference to all such drafting changes" (as those necessary 'to re-write and supplement existing provisions in order to remove ambiguities, to remedy omissions, or to express in statutory form what was previously only implicit or supplied by subsidiary legislation of varying structure in different States') is not only impossible but is unnecessary since they involve no change of any principle of the F.M.S. Code: they merely give those principles more precise expression." It would have been helpful to have in the Government *Gazette* a comparative table showing the provenance of these new sections of the Code: but alas, that enlightenment is denied to the reader of the *Explanatory Statement,* who will turn to Dr. Wong with a sense of gratitude.

Dr. Wong gives a good picture of the manner — often conflicting — in which the Torrens System has developed all over the world, with different courts offering different solutions to identical problems. This study is enhanced by reference to Malaysian legal history. For example, on the matter of the nullity of unregistered dealings in land Dr. Wong illustrates very clearly how the stringency of section 4 of the Selangor Registration of Titles Regulation of 1891 was modified by section 55

[25] Article 91 of the Constitution. This body consists of a Minister as chairman, one representative from each of the States, and up to ten members appointed by the Federal Government. The policy of that Article is but weakly reflected in section 9 of the National Land Code.

[26] *Government Gazette* of 1 July 1965, at page 953.

of the F.M.S. Land Code, and that modification taken even further by section 205(1) of the National Land Code: and he indicates how the judicial approach to the principle has also changed over the years, at least since the Privy Council's advice in the case of *Haji Abdul Rahman* v. *Mohamed Hassan,* in 1917. In this context I would have welcomed a reference to the case of *Mohamed Hassan* v. *Haji Mohamed Eusope*[27] which presaged, I think, this change of approach: a change likely to make increasing use of the saving of "the contractual operation of any transaction relating to alienated land or any interest therein", set out in section 206(3) of the Code. In all, however, Dr. Wong's analysis of *Haji Abdul Rahman's* case is stimulating: although I myself have always tended to hold on to the thought implanted in me by that case that an agreement may, while not registrable, still be good, and that (while the conflict of opinion on exactly what that case did decide still continues) equity, like cheerfulness, will insist upon breaking in.

Indefeasibility of title is of course an essential principle of registration of title: and it seems indeed strange that, having admitted the principle of indefeasibility, the Malaysian Torrens system does not provide any machinery for compensating anyone who, without any fault on his part, has been deprived of his title or interest in land. Dr. Wong has some sharp comment on the matter of the present system leaving the loss where it falls, pointing out that "the desirability of [a] compensation scheme needs no advocating, and the want of such a scheme under the Malaysian Torrens system is undeniably a defect." In the light of the principle of Article 13 of the Malaysian Constitution, it is perhaps desirable that this matter be reviewed: the more so when one considers the issue of whether the National Land Code binds the Ruler or the Government of a State. On this point Dr. Wong follows the philosophy of Australia and New Zealand, to the effect that the Code necessarily implies such a binding force. The issue is a nice one, however, given the fact that the National Land Code is based upon Article 76(4) of the Federal Constitution. I would have liked a lengthier discussion of this (to me) extremely interesting question, and one not necessarily leading to the obvious answer: for I have no doubt that Dr. Wong is correct in affirming (p. 131) that "it may be concluded that the present National Land Code has more fully adopted the general principle of putting the State in the same position as a private person."

Incidentally, if ever there was a phrase likely to confuse a student of law, I suggest it is "indefeasibility of title". Dr. Wong grasps this nettle firmly, and I think that pages 322 to 406 of the book alone render it worth purchase by any practitioner concerned with the administration of the National Land Code.

Dr. Wong deals in an interesting footnote with one aspect of the definition of "proprietor", pointing out — correctly in the writer's opinion — that "is seems clear that under the Code [the] form of security transaction by way of creation of a lien *[i.e.* deposit of issue document of title] is simply not available to a co-proprietor". The original draft of the Code suggested that the definition of a proprietor should include the proprietor of a charge or lease, but the Code itself excludes such a person: with the result painfully obvious in a recent

[27] [1913] Innes 282.

case, *Lee Chuan Tuan* v. *Commissioner of Lands and Mines, Johore Bahru.*[28] In this respect the National Land Code offers a peculiarly vicious example of legislating by altering a key definition: for the F.M.S. Land Code included within the definition of "proprietor" a lessee of State land.

Dr. Wong notes that "the provisions of the Code relating to easements are susceptible of an interpretation extending their application to restrictive covenants", and has some interesting and constructive comments on this topic, made with the object of keeping easements within the statutory system, rather than having to treat them as equitable interests outside the system. Section 111 of the Singapore Land Titles Ordinance, 1956, enables a proprietor to burden his land with restrictions, but the National Land Code does not.

The author is kind to errors in the Code. Re-reading the Code this reviewer is disposed to think that the draftsman has failed to appreciate the method and style of Maxwell's drafting: with the result that the Code will, in the end, have to be re-interpreted in more simple, neat and tidy English. It is a pity, for example, that a Code so long in the making offers an inadequate definition of "land"; abuses the word "title" in, for example, the definition of "purchaser"; cannot make up its mind whether air space is part of State land; and includes bricks and cement as "rock material". The Code is an over-refined law designed for a land administration more expert in land law than most lawyers.

At times there is overlap in some of the chapters of Dr. Wong's book — although this is not necessarily to be regarded as a fault, since the student or lawyer consulting the book will naturally tend to look at the particular subject-matter exciting his interest. In this regard I could have wished that the Index (admittedly occupying some twenty-seven pages) included a reference to authors cited. Further, in a work of this magnitude a bibliography would be of inestimable value; I appreciate that some authors throw every relevant item into such an addition: but there are texts other than statutes and law reports (excellently indexed in the opening pages) and a list of these would open up broad vistas for those readers to whom a footnote spells ignominy or oversight.

There is a regrettable number of misprints and minor errors in the book, and these mar an otherwise admirably produced volume that reflects credit upon the author, the Press and the printers. In the next edition — and that there will be another I have little doubt — I trust that these will be corrected; that there will be a tautening up of its prose and a correction of occasional infelicities of style; that the historical background to the National Land Code itself be enlarged upon; that a bibliography and an index of authorities be included; and that — dare I hope it? — a few kind words be added for Maxwell, the originator of registration of title in the Malay States, and Kenneth Blacker, the first Commissioner of Land Legislation, whose ideas and industry are to be observed by all who consult the National Land Code. The prosperity of West Malaysia is in no small part due to the patient and careful evolution of its land law over the course of the

[28] [1973] M.L.J. 188.

past hundred years: and that evolution has been the work of a few dedicated men moved by that especial kind of passion that produces codes of law and commentaries thereon.

In spite of its blemishes — and these are minor — it is my belief that Dr. Wong's book makes the first notable contribution to the development of a modern Malaysian jurisprudence. To conceive and sustain a project of the nature of this book is by any standard no mean achievement: and to carry it to completion clearly required the dedication with which only a scholar or a saint is endowed. The work deserves close attention and study by all concerned with the administration and development of Malaysian land law; it is as much a landmark in the history of that development as the National Land Code itself; and I can only hope that it will follow the pattern of Cheshire, and run into as many editions as that beloved work.

R. H. HICKLING