THE EXAMINATION OF WITNESSES IN COURT. Third edition by Sir Frederick John Wrottesley. [London: Sweet & Maxwell Ltd. 1961. pp. 158. £1-0-0.]

The sales impact of sex on paper-backs seems to have its counterpart in books on advocacy in the field of legal literature. The latest in the growing list of books on advocacy is that under review.

A long time ago — probably in the nineteenth century a Mr. Cox, Sergeant-at-Law of the English Bar, published a work entitled *The Advocate, His Training, Practice, Rights & Duties,* and seemingly — also probably in the nineteenth century — a Mr. Henry Hardwicke of the New York Bar published a work called *The Art of Winning Cases* in which he borrowed extensively from Cox's *The Advocate.* This transatlantic publication emigrated back to the United Kingdom in 1910 in the first edition of the work under review, which sought to adapt Hardwicke's book to the requirements of English students.

The first edition was reprinted four times, and the second edition of 1926 had two reprints. With such an interesting history one anticipates a classic, despite repeated disillusionment with books on the Art of Advocacy — for it is not only legal students who purchase these works in the hope of finding the formula that will be the key to the mystique of their profession.

The work is as to the first chapter a simple exposition of the rules of Discovery and Interrogatories, which may be equally well ascertained by reading the Rules of the Supreme Court. The remaining chapters on "Examination", "Cross-Examination" and "Re-examination" are in large measure repetition of moth-eaten sayings of worm-eaten men couched in the language of ponderous pomposity of the pontificating Victorian. This archaic language tends to give a hollow ring to the high moral principles which the work seems to inculcate in the young practitioner and renders wearisome the search for such nuggets as

— Mr. Baron Alderson's remark to Counsel: "Mr. —— you seem to think that the art of cross-examination is to examine crossly."

— "Never continue cross-examination of a witness (if) .... the judge shows the slightest disposition to do it himself."

— "The expert witness is 'a man who is paid a retainer' to make a sworn argument"

— "Beware that you do not fall into the fault, only too common with the inexperienced, of seizing upon small and unimportant discrepancies"

and the valuable advice at page 98: — never to show exultation or anger at the replies received from cross-examination; for to display pleasure is to warn the witness that you think he has let his side down and to show dismay is to emphasize to the court and the jury the damage which the answer has done to your side.

There are (unexpectedly, in a work from such famous publishers) a number of curious inaccuracies: At page 13 it is suggested:

> It becomes necessary sometimes for the plaintiff only to put in enough of his evidence to make out a *prima facie* case, and it is occasionally best to keep back the strongest testimony till the testimony of his opponent has been heard, and then offer it by way of rebuttal to the case which has been made against it,

adding:

> After the jurors have heard the testimony for the defence they are better prepared than they were before to appreciate the remaining testimony of the plaintiff.

Whatever the law may be in America, this certainly is not the law of England, and the work is supposed to be written for English legal students and practitioners.

At page 141, however, it is recognised that the plaintiff can only introduce evidence by way of rebuttal if the defendant has introduced a matter which has taken him by surprise.

In the last chapter on "Some Elementary Rules" we find: "dying declarations and depositions are admissible as evidence in certain criminal cases but they do not really fall under the head of hearsay evidence as they are statements on oath." The authority for this extraordinary statement is alleged to be Archbold (34th edition, paragraphs 1082 to 1088). Archbold, in fact, makes it clear in paragraph 1088 that depositions of persons dangerously ill taken under section 41 of the Magistrates Courts Act, 1952 are distinct from dying declarations. How anyone could possibly suggest that dying declarations are not hearsay evidence or that they are statements on oath is difficult to understand, and it would be interesting to know if the learned editors of Archbold, which is also published by Sweet & Maxwell have taken up the matter of these inaccurate references to their valuable work. Again, at page 144 we find:

> In criminal cases, what is said in the presence of the accused is evidence even if it be the confession of his fellow accused incriminating him

and the authority for this statement is alleged to be Archbold (34th edition, paragraph 1124). Reference to that paragraph in Archbold, however, would show that Archbold merely states the rule in *Christie's case* ([1914] A.C. 545) that such a statement is evidence against the accused only in so far as the accused by his words or conduct accepts it to be true.

Since the publication of this work is indicative of a demand amongst students and young practitioners for a practical guide in the examination of witnesses, it is to be hoped that in future instead of inflicting on us further editions of this work, Sweet & Maxwell will discover an author who could do justice to the subject in the language of today.

DAVID MARSHALL.