BOOK REVIEWS

INTRODUCTION TO ENGLISH LAW, Fifth Edition. By Philip S. James. [London: Butterworths, 1962. [26] + 465 + [33] pp. 22s. 6d.]

THE ENGLISH LEGAL SYSTEM. By G. R. Rudd. [London: Butterworths, 1962. xxi + 263 pp. including index. 37s. 6d.]

Anyone who seeks to write on the administration of the law and the English law in less than five hundred pages must necessarily admit that on such a small canvas he can only attempt to represent faithfully the outlines of his subject. Professor James will therefore probably admit to the charges that his book is superficial, that its propositions are generalizations at an extremely high level of abstraction. In mitigation Professor James will probably refer the critic to the first line of his chapter which reads, "This book is intended for beginners."

Professor James says at page 4 of his book:

> There are therefore three aspects of legal study. First, and most important, the student must seek to acquire a knowledge of general principles; secondly, he must learn something of the detail of the existing legal rules, statutory or otherwise; finally, he must know something of the development and historical background of the law.

Although these aims are stated generally, they no doubt are the aims which Professor James seeks to achieve in writing this book. With respect, these three are not the only aims of legal study, certainly not at a university. At a university the reading of cases and statutes is not merely so that the students may deduce some principles therefrom. The aims of the exercise are also to develop to the optimum each student's ability to reason logically, to show the student the inter-relation between law and other social sciences and to discover the truth of the nature of the judicial process.

Professor James' book achieves the three limited objectives he set out but falls far short of what is desired in a book for students reading law at a university.

Take one characteristic example. At page 315 the author, under the title "Trespass against the Person," states "The mere fact of touching another person will amount to a technical trespass entitling the person touched to nominal damages, unless it is justified." The author therefore implies that the unintentional and non-negligent touching of another is a technical trespass. This is an incorrect statement of law.

What is more important, Professor James gives no indication of the change that has occurred in this cause of action during the last hundred years. Prior to the middle of the nineteenth century, all that the plaintiff had to establish to succeed in such an action was that he was injured by a volitional act of the defendant. See *Weaver* v. *Ward* (1616) 80 E.R. 1284; *Cole* v. *Turner* (1704) 87 E.R. 907; *Underwood* v. *Hewson* (1723) 93 E.R. 722; *Leame* v. *Bray* 102 E.R. 724.

In 1866, Blackburn J. suggested in a passage in his judgment in *Fletcher* v. *Rylands*[1], that is *obiter,* that where the alleged trespassory act of the defendant took place on the highway or near to it, the plaintiff had to establish in addition, that the defendant had acted either intentionally or negligently. As a proposition of law this was novel.

Nine years later, it was adopted in *Holmes* v. *Mather*[2]. This rule was extended by the decision in *Stanley* v. *Powell*[3] to wherever the alleged trespassory act of the defendant might have occurred. With this decision a change in the law was completed and appears to have been accepted by the profession. [4]

The significance of this change in the law coinciding with the industrial revolution and the problem it presents to the doctrine of *stare decisis* are issues which a good textbook should seek to illumine. On all these points Professor James throws no light.

To anyone who has read Professor de Smith's "Judicial Review of Administrative Action", Professor James' section on the prerogative order is an over-simplification which tends to mislead the student. A bramble bush should not be painted as a neat little garden however small the canvas may be. Other examples displaying such failings are too numerous to afford detailed criticism.

Mr. Rudd's little book, according to the author, is "written primarily for the student who is preparing for Part I of the Law Society's Qualifying Examination and is, therefore, based on the syllabus prescribed for the English Legal System paper in that examination." The reviewer thinks that the word "solely" should be inserted in place of the word "primarily" in the above quotation as he can think of no other utility for this book. Mr. Rudd's book, especially the introductory chapter on the substantive law, contains all the shortcomings of Professor James' book but in a more extreme degree.

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