

EVIDENCE. By Rupert Cross. [1958, London: Butterworth & Co. (Publishers) Ltd. £2 15s. lxxii + 514 pp. inc. index 18 pp.]

“All the existing books on the Law of Evidence are written on the usual model of English law-books, which, as a general rule, aim at being collections more or less complete of all the authorities upon a given subject to which a judge would listen in argument. Such works often become, under the hands of successive editors, the repositories of an extraordinary amount of research, but they seem to me to have the effect of making the attainment by direct study of a real knowledge of the law, or any branch of it as a whole, almost impossible.” Thus complained Stephen writing in 1876 in the Introduction to his *Digest of the Law of Evidence*. It is perhaps a reflection on the attitude that existed to the law of evidence that it was not a subject suited to academic teaching that teachers and students had to wait till 1952 for Dr. G. D. Nokes’ *Introduction to Evidence*. As indicated by the title, Dr. Nokes’ book is an introduction and is an ideal work for a student embarking on the study of the law of evidence. Mr. Cross’s *Evidence* on the other hand, is obviously written for a student more mature and one already with some groundwork in the law of evidence. The student with aspirations to honours will find this book on evidence by Mr. Cross, who lectures in the subject at the University of Oxford, just what he needs.

Mr. Cross’s aim has been “to supply students and practitioners with a work which will take a middle place” between Stephen’s *Digest* and Phipson’s *Law of Evidence* and the needs of practitioners where these differ from those of students have been met by the inclusion of many more cases in the foot-notes. The curious and perhaps the good student will find it difficult to resist the temptation to explore the avenues sign-posted in the foot-notes. Besides references to the great English and greater American works on the law of evidence there is welcome reference to decisions of courts of the Commonwealth outside England as well as to periodical literature.

The besetting difficulty of a student of the law of evidence more so than of other branches of law is the lack of an agreed terminology. Where definitions differ and as sometimes can happen remain unexpressed confusion of thought arises. Mr. Cross in dealing with each topic has examined the various terms used by judges

and writers and explained them lucidly without evading any issues but recognising that attempts to remedy the existing state of affairs, whether in terminology or classification, will wear a slightly unreal appearance so long as they are not employed by judges who decide cases. A distinction generally glossed over if not totally ignored between the two “presumptions” of innocence and sanity which do not depend upon proof of a basic fact on the one hand and presumptions which depend upon such proof on the other is made clear by Mr. Cross (at pp. 83, 84) and need not await judicial acceptance.

Any quarrel one may have with Mr. Cross will be more with regard to definitions and terms than with regard to substance. (The surprising statement in a foot-note on p. 438 that “confessions are altogether excluded under the Indian Evidence Act, 1872” will no doubt be corrected in the second edition.) The law of evidence does not lend itself to classification of subject matter and the author has not divided the book into parts but into individual chapters. To be welcomed is a short introductory note to each chapter informing the reader of the sequence and manner in which each topic under the chapter is to be dealt with and where topics connected with that chapter but not properly coming within it may be found.

In this comprehensive and accurate statement of the English law of evidence the author’s aim to provide a work that is, in addition, an up-to-date account of the theory of the subject has been realised and Mr. Cross has put in the hands of readers a work that Stephen in his time missed.

What follows is not a criticism of Mr. Cross or his publishers but a general one. When the *English Reports* came into being lawyers were still familiar with the original reports which were reproduced in the *English Reports*. Today, when a reference is given to the older reports hardly anyone makes reference to the original reports. Has not the time come to give a parallel *English Reports* reference to a case that is reproduced in them?

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