LINDLEY ON PARTNERSHIPS 12th Edition. By Ernest H. Scammell. [London: Sweet & Maxwell. 1962 clii + 949 pp. £10.]

Lindley is more than a book — it is a tradition. Any criticism must be made within the conventions, so they may as well be stated at the outset:

1. Lindley is a 'practitioner's work' — scholarship is of no great use to practitioners *ergo* "Lindley" need not seek to be too scholarly.

2. What Lindley did was great, *ergo* what he left undone was not worth troubling about.

Having these conventions in mind, the reader will not be disappointed by the new edition of Lindley. The fact nevertheless remains that the whole law of partnership has never been subjected to the same scholarly criticism that has been visited on other branches of the law. No doubt this is due to the fact that partnership law was obsolescent, due to the rise of the private company limited by shares, before modern scholarly criticism became widespread. It may also be due to Lindley himself, however, for whatever else be said of the book, it certainly covers the field, and virgin territory may have more appeal to the scholar than the well-trodden ways. For these reasons, it may not be inappropriate to advert to some of the elementary matters on which Lindley's scholarship could stand improvement.

By and large, the editor's claim that "all the new cases bearing directly on partnership have been incorporated" is borne out. The omission of *Conway* v. *Wingate*[1] which concerns the construction of a particular if not unimportant clause in a partnership deed, whilst rendering false the claim is, nevertheless, understandable. The omission of any reference to *Gordon* v. *Gonda*[2] is not, involving as it does not merely the question of good faith, but also the vexed question of the extent to which one partner may be considered a trustee of the other's interest. Perhaps, also, more should have been made of *Miles* v. *Clarke,* than a brief statement of the facts and decision. That decision is most significant in having at least to some extent and perhaps entirely replaced the vagueness of the 'substantial involvement' test of partnership property as propounded in, for example, *Waterer* v. *Waterer* with a more accurate one, to wit, whether circumstances render it conceptually necessary to assume that the property in question has been brought in, e.g. because it has been consumed in the course of carrying on the business. This creates a presumption in favour of individual property. In all other respects, however, the new edition seems up-to-date. If, therefore, the original Lindley had been entirely satisfactory in all respects, one would have no hesitation in issuing the strongest of recommendations. This is not possible. Scholarship in English partnership law virtually crystallized sixty years ago, yet much that is elementary remains to be done. And it is not done by Lindley.

Lindley's view of the status of the Partnership Act, 1890, is of doubtful validity. In relying upon decisions on other statutes *(Bank of England* v. *Vagliano Bros.* and *Herdman* v. *Wheeler* on the Bills of Exchange Act; *Hall* v. *Hayman* on the Marine Insurance Act; *Wimble* v. *Rosenberg* on the Sale of Goods Act; *Despatie* v. *Tremblay*

1. 1952 W.N. 171, 1952 1 All E.R. 782.

2. 1955 2 All E.R. 762

on the Quebec Civil Code; *Grey* v. *I.R.C.* on the Law of Property Act, 1925) Lindley continues to ignore two important statements about the Partnership Act itself, in *Re Budgett* and *British Homes Corporation* v. *Patterson.* Similarly, it is not necessary to continue to confine the meaning of 'business' to 'commercial' activity (p. 11) [3] and nor does it seem useful to say that "the management of a landed estate... .does not necessarily fall within the above definition of business". It is an 'occupation' for the purposes of section 45. It is an 'activity' — the Lindley criterion. The only reason for not calling it a business is an ill--advised passage in Underhill's much over-rated book, for which that author cites no authority. Such an occupation may lack an element of repetitiveness, which may be responsible for Underhill's attitude (he relying on *Smith* v. *Anderson)* but, as Lindley rightly points out in another place, Partnership and Company Law part company on this point. It is worth remembering that Underhill deduces that practice at the Bar is not a business for the reason that barristers cannot be partners.

Lindley continues to repeat, at p. 1, the accusation of Commissioner Fane in the 1857 Report, that *Waugh* v. *Carver* is based on "unsound views of political economy". It is, of course, true in a sense, that a person who takes a share of profits is NOT drawing on that fund to which creditors look for payment, since what are distributed are NET profits, but this is playing with words. Increases in a partner's wealth are all available for creditors. Profits do not cease to be available (as do dividends) on distribution. If they go to someone who is not a partner, then, to that extent, that person is drawing on a fund available for creditors. In any case, accounting practice has never required complete discharge of current liabilities as a precondition to distribution of profits. Finally, one searches *Cox* v. *Hickman* in vain for any correction of these "unsound views of political economy". *Waugh* v. *Carver,* it is true, receives little mention, but what it does receive is not unfavourable. *Waugh* v. *Carver* is itself a much over-rated decision whose effect was, if anything, retrogressive. In substance, it was not a partnership case at all and it would be better for the law of partnership if relevant dicta in the case were politely forgotten in the future. If they are to be remembered, then it should be noted that it did not lay down that "all persons who shared the profits of a business incurred the liabilities of partners therein, although no partnership between themselves might have been contemplated". It laid down that "he who takes a moiety of all the profits *indefinitely* shall, by operation of law, be made liable to losses...." — 'indefinitely', not 'for a fixed period', or 'a fixed purpose' or 'a fixed amount'. The statement of law as found in Lindley derives from a series of half-baked decisions of Lord Eldon *(Ex p. Hamper; Ex p. Langdale* come to mind) in which the previous authorities were patently misread (patent, if only by virtue of the citation of *Grace* v. *Smith* as *Groves* v. *Smith).*

One final point that continues to harp — *Mair* v. *Glennie* continues to be cited as an instance of the rule that participation in gross returns is not evidence of partnership, notwithstanding the fact that it is a 'net profit' case. Please could it be re-read?

If, for this type of reason, one cannot give the new edition of Lindley the highest of recommendations, one can at least understand why not. "Lindley" is an old craftsman in a contracting industry. One admires him for his function, albeit obsolete — but he rates low in the list of priorities, when it comes to re-training. If his efficiency is not all that might be expected of a technocrat in an era of industrial dynamism, one can continue to say of him that he's still doing a grand job.

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3. See also *Rolls* v. *Miller,* cited at p. 877