GHANA AND SIERRA LEONE: THE DEVELOPMENT OF THEIR LAWS AND CONSTITUTIONS. By T. O. Elias. [London: Stevens. 1962. xii + 334 pp. £3. 10s. 0d.]

This volume, the tenth in the series The British Commonwealth: The Development of its Laws and Constitutions, is, as the author remarks in the Preface, "really two books in one; the first deals with Ghana and the second with Sierra Leone." Dr. Elias is the author of a number of books and articles on African law and the present work is a valuable contribution to African legal literature.

Though the section on Ghana opens with the establishment of British rule, there are a few pages dealing with indigenous political institutions. If no detailed discussion of these institutions in their various aspects is attempted, it is probably because "the object of our study is to trace the development of constitutional government in Ghana since the establishment of the British connection" (p. 10) This object may be laudable when dealing with the development of the constitution of Australia or New Zealand; but in writing of the constitutions of most of the African countries where indigenous institutions and customs play a consirerable role it is desirable to devote some attention to them. This reviewer would assume that what interests a reader of books on African law is African law rather than the modifications introduced in English law when "received" in an African country. These remarks are not meant to convey the impression that Dr. Elias does not deal with indigenous laws at all, but are intended to underline the reviewer's view that more pages, giving details, could have been devoted to the subject. That Dr. Elias is an expert in this field is evident from his *Nature of African Customary Law.* It was probably thought that if more attention was paid to indigenous law, the importance given to it might appear disproportionate in the general scheme where the development of the laws prevailing in the country concerned is traced.

When he does speak of customary law, he highlights some points which will be of interest in any country where customary law has any application. For instance, he points out that in Ghana under a statutory provision[1] any question as to the existence or content of a rule of customary law is a question of law for the Court and not a question of fact. (pp. 132-3). But there is no reference to the assimilation of a rule of customary law by the common law contemplated in S. 18 of the Interpretation Act, 1960. As an assimilated rule of customary law ('a common law rule of customary origin') takes priority over statutes of general application and over the rules of equity and common law in the narrow sense, a reference to section 62 of the Chieftaincy Act, 1961[2] which provides for the procedure to be adopted for such assimilation[3] would have been welcome, even though no assimilated rules have as yet been made. There are also provisions in the Chieftaincy Act for declaration and alteration of customary law.[4] All these are of interest to lawyers not only in Africa, but also in other lands where customary law is recognised and applied.

If people of Ghana have gained in the recognition and respect given to their customs and traditions in recent years, their personal liberty has been accorded scant respect in the interests of national security. In 1958 was passed the Preventive Detention Act. Most readers, one feels, would have liked a fuller treatment of this enactment than is given in the book. Though Dr. Elias who is Minister of Justice in a neighbouring State may not like to embark on a controversy on the subject of preventive detention in Ghana, a few details like the fact that in 1960 the Act was applied to criminal gangsters who did not indulge in any political activities or that four opposition Members of the Parliament were included among the fifty persons detained in October 1961 in the wake of the disturbances caused by the stringent budget of that year and one of them was the United Party candidate in the Presidential election of 1960 could not have been out of place.

A discussion of a few cases (Dr. Elias does discuss one at p. 81) in connection with the issue of detention orders would also have been of interest to lawyers all over the world. An interesting, if not original, point was made by the Supreme Court in its observations in *Re Akoto*:[5]

> The mischief aimed at by the Preventive Detention Act is in respect of acts that may be committed in the future, whereas the Criminal Code concerns itself with acts which have in fact been committed.

As has been pointed out by Bennion,[6] there are provisions in the Criminal Procedure Code (sections 22-31) which empower the government to require suspected persons to execute a bond with sureties for their future good behaviour.

1. Section 67(1) of the Courts Act, 1960.
2. Though the Preface is dated September 1960, there are references in the text to statutes passed in 1961 (e.g. Criminal Code Act, 1961). The book was published in 1962.
3. The section reads:
   62. Assimilation of customary law. — (1) The Minister may, either after receiving representations from a House of Chiefs or on his own initiative, convene a joint committee of all Houses of Chiefs to consider whether a rule of customary law should be assimilated by the common law.
   (2) If, after considering such evidence and representations as may be submitted to them and carrying out such investigations as they think fit, the joint committee are of opinion that the rule should be assimilated by the common law, they shall draft a declaration describing the rule, with such modifications as they may consider desirable.

   (8) A draft prepared under the preceding subsection shall be submitted to the Minister and if, after consulting the Chief Justice, the Minister is satisfied that effect should be given to the draft, either as submitted or with such modifications as he considers necessary, he shall make a legislative instrument embodying the draft, or the draft as so modified, as the case may be, and declaring the rule to be assimilated in that form.
4. Sections 59 and 60. A House of Chiefs may draw up a draft declaration of a customary law rule relating to any subject in force within its area or a draft statement of desirable alterations to such a rule, and submit it to the Minister of Justice. If the Minister is satisfied that effect should be given to this draft either as submitted or with such modifications as he considers necessary, he shall make a legislative instrument embodying the draft as submitted or as so modified.
5. Civil Appeal No. 42/61, cited in F.A.R. Bennion, *The Constitutional Law of Ghana* (London, 1962) at p. 224.
6. *Id.* at p. 226 (footnote).

Sierra Leone is dealt with almost the same way as Ghana. The part devoted to Sierra Leone begins with the establishment of British connection and traces constitutional developments up to the Independence Act of 1961. While dealing with the legal system, Dr. Elias speaks of the Native Courts[7] and draws special attention to section 38 of the Courts Ordinance[8] which provides for the administration of customary law by the Supreme Court and the Magistrates' Courts. The Mohammedan Marriage Ordinance also is mentioned (p. 302). But he does not mention section 5(7) of the Sierra Leone Protectorate Ordinance, cap. 185, which provides that

> . . .it shall be lawful for a District Council, with the approval of the Governor in Council, to make rules altering or modifying native customary law in the District and all Native Courts in the said District shall take cognisance of all rules so made.

A few omissions, like the ones mentioned, probably due to the fact that the manuscript was prepared long before the date of publication, do not substantially detract from the general usefulness of the book.

The reference to the Preventive Detention Act, 1957, (p. 81) is obviously a slip; so also the reference to the arrival of the first Chief Justice of Sierra Leone in 1911; the relevant dates are 1958 and 1811 respectively.

When the author points out that "The new Law Schools, as well as the growing numbers of practitioners in these territories, should find this volume a useful *vade mecum"* (p. vi), one can easily agree with him.

JOSEPH MINATTUR.