

BOOK REVIEWS

ARCHBOLD : CRIMINAL PLEADING, EVIDENCE AND PRACTICE, 36th Ed. By T. R. Fitzwalter, Butler and Marston Garcia. [London: Sweet and Maxwell. 1966. 1,668 pp. £7.17s. 6d.].

In order to assess the value of this book one may fairly apply two tests:

- (a) How well has this 1966 edition dealt with the substantive legislative and judicial developments since the last edition of 1962 and;
- (b) How wisely does it present the current law.

As to the first test it must be admitted that the editors have performed an excellent job of painstakingly and accurately incorporating all the new changes while simultaneously pruning obsolete material so as to produce a welcome reduction of over 100 pages in the present volume. Express mention in this respect is made of the Murder (Abolition of Death Penalty) Act, 1965, Criminal Appeal Act, 1964, the Criminal Procedure (Insanity) Act, 1964 and the Criminal Procedure (Attendance of Witnesses) Act, 1965. In spite of all these additional changes the editors and publishers have combined successfully in an attempt to keep the bulk of Archbold within reasonable bounds. The index has also been carefully revised and improved upon.

However, the major disappointment lies in the second and most important test. There is little attempt at rewriting. What the editors have done is merely to tag new material to the old instead of recasting the whole. This apparent lack of rewriting and the failure to try and reconcile new decisions to old ones, or at least, pointing out existing inconsistencies if any have resulted in the presentation of inconsistent propositions. The clearest example lies in the treatment of *D.P.P. v. Smith* [1961] A.C. 290; 44 Cr. App. R. 261, H.L. In section 1010 the editors interpreted *Smith* to have laid down an irrebuttable presumption of intent. This proposition is followed by an equally emphatic contradictory statement in *Rex v. Steane* [1947] K.B. 997; 32 Cr. App. R. 61, that "t(he) guilty intent cannot be presumed and must be proved." What is most unsatisfactory however, is that the same two inconsistent statements are repeated in section 1515. Another minor comment here is that in referring to *Smith* in respect of the presumption of intended consequences of acts the editors should have also sounded a note of warning on the dubious antecedents and chequered post-natal history of that unfortunate decision.

The next disappointment lies in the fact that the editors have failed to note glaring mistakes pointed out to them by reviewers of their book. Reference is made of the perpetuation of an error regarding the question of provocation in murder trials. In paragraph 2503 of Archbold it is stated "Where therefore provocation inspires an actual intention to kill or to inflict grievous bodily harm only one special exception has been recognised as reducing murder to manslaughter — namely where one spouse actually finds the other in the act of adultery." This proposition is not true having regard to the decisions in *Lee Chun Chuen v. R.* [1963] A.C. 220, which was affirmed in *R. v. Martindale* [1966] Crim. L.R. 621. The true position is that as expressed by Smith & Hogan, *Criminal Law* (1965), p. 205, namely that a person "may actually intend to kill and do so in pursuance of that intention and yet not be guilty of murder," so long as his intention to do so arises from sudden passion involving loss of self-control by reason of the provocation.

Finally, no mention is made of important cases like *Myers v. D.P.P.*; *Millar & Page* (1965) Cr. App. R. 241 and *Gurmit Singh* [1965] 3 All E.R. 384 in dealing

with the problem of admissibility or otherwise of certain types of documentary evidence and the law of criminal attempts respectively.

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