

EVIDENCE. Third Edition. By Rupert Cross, D.C.L., Solicitor; Vinerian Professor of English Law in the University of Oxford and Fellow of All Souls College, Oxford. [London: Butterworths. 1967. xciv + 565 pp. and index. £3. 7s. 6d.].

Cross on Evidence is a gem of a book. The immensity of the author's learning is well known to anyone who has dipped into his two earlier editions. The author seeks to reconcile academic expositions of this intensively pragmatic subject with the functional justification of the rules of evidence. And in this he is most successful, as evidenced in the author's treatment of the problems of hearsay evidence in Chapter 7. This chapter is almost entirely new and is a most lucid and persuasive discussion of the topic concerned. Likewise, another example of the author's masterly command of the subject is the analysis in Chapter XIV of "evidence of disposition and character" — "similar fact evidence" as it is often called. This is perhaps the most difficult problem which courts from time to time have to face; that a man is of bad character or has previously committed offences similar to the offence charged is not normally probative of anything, or, if probative, this is only to an extent which is far outweighed by the prejudice which must be excluded; yet there are circumstances in which the details of another offence may be highly relevant to the offence charged, as, for example, in *R. v. Sfraffen*.¹

Professor Cross is nothing if not assiduous and fastidious. For the present edition he has done quite a substantial amount of rewriting. The chapter dealing with the standard of proof in matrimonial causes (p. 93) have been rewritten in the light of the decision of the House of Lords in *Blyth v. Blyth*.² Similarly, the House of Lords decision in *Commissioner of Customs and Excise v. Harz and Power*³ has influenced the rewriting of the section on the admissibility of confessions (p. 449).

Other new materials included in this edition relate to issue estoppel, conflicting presumptions, crown privilege, fingerprints, blood tests and tracker dogs and a section on the Criminal Evidence Act, 1965 has been added in Chapter 20.

Besides a few minor omissions like the failure to mention *R. v. Nicholas*⁴ in relation to dying declarations and the decision in *R. v. Greenfield*⁵ which ended the widely-held belief that the prosecution counsel might have to save defence counsel from a dilemma by volunteering the criminal past of a prosecution witness to the Court, the only aspect of the subject that the reviewer finds unsatisfactory is the author's treatment of the *res gestae* rules (p. 459). The author has made a division between "statements accompanying and explaining relevant facts" (p. 461) and "statements contemporaneous with and directly concerning an event in issue" (p. 464) which is neither a useful distinction nor particularly discernible from the illustrative cases cited. The only explanation to this insistence of the two categories lies in the fact that the author is blinded by the need to accommodate the decision in *Howe v. Malkin*⁶ however inconvenient that decision may be. On the other hand, what is more unsatisfactory is that Professor Cross admits that there are many cases of admissible *res gestae* statements which are incompatible with the judgment in that case. It is hoped that in future this division be reconsidered and perhaps abandoned for the better. While still on this topic of *res gestae*, it is suggested that the author refrain from making inconsistent statements. On page 460, for instance, the decision and *ratio decidendi* in *R. v. Foster*⁷ are set out with great clarity and conclusiveness and on page 465 *Bedingfield*⁸ receives the same treatment. Then follows this pregnant statement on page 466: ". . . it is doubtful whether the two cases conflict in principle, and each of them was mentioned without disapproval in the House of Lords in *R. v. Christie*."⁹

1. [1952] 2 Q.B. 911.

2. [1966] 1 All E.R. 524.

3. [1967] 1 All E.R. 177.

4. (1862) 6 Cox C.C. 120.

5. [1964] Crim. L.R. 817.

6. (1878) 40 L.T. 196.

7. (1834) 6 C.&P. 325.

8. (1879) 14 Cox C.C. 341.

9. [1914] A.C. 545.

Another minor comment is that the Judges' Rules should be treated in greater depth than mere isolated references to them as is being done in this edition.

Considered as a whole however, this third edition on Evidence is highly commendable and indeed "it is clear that (the) book has come stay."¹⁰

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10. *Journal of Criminal Law.*