

BOOK REVIEWS

AN INTRODUCTION TO EVIDENCE. Fourth Edition. By G. D. Nokes.
[London: Sweet & Maxwell. 1967. xlvii + (with index) 535 pp.
£3.17s. 6d.].

Students of the subject which is part statute and part common law are not often so fortunate as to have all the materials they require for study in a ready accessible form. Much thanks are due therefore to Professor Nokes for not only undertaking such a work but also revising it from time to time.

This present fourth edition has been brought up to date in an admirable fashion and a number of passages have been rewritten with the inclusion of some 400 reported decisions and some 30 new statutes incorporated therein. More admirable perhaps is the fact that despite this, the present edition is only a few pages longer than the previous one. However, the merits and demerits of the book remain substantially as they were.

The great single merit of Professor Nokes' book lies in the straightforward, clear and logical presentation of the material available for a study of a complex subject like Evidence. This quality has considerably helped to make this present edition an excellent manual and working textbook for the teacher and the student of evidence. Indeed, this fourth edition by the author fully justifies the high expectations engendered by its predecessors.

However, in respect of its content, the defect of the book is that it remains too much a work of exposition of the law and outstandingly lacking in exploration and discussion. Surely, the very nature of the subject matter calls for much more thinking and rethinking rather than merely restating the law as such. To quote the clear example — when commenting on the issue of admissibility of evidence at p. 36, one notes that the intractable problem of reconciling *Stowe v. Querner*¹ with *Boyle v. Wiseman*² has been conveniently glossed over and suppressed by their relegation to a mere footnote reference. No attempt is made to analyse the two cases.

Similarly, on the question of character in issue (at p. 152 *et seq.*) in conjunction with the Evidence Act, 1898, it is felt that the case of *Malindi v. R.*³ merits a more detailed examination. Such an examination could have logically followed the reference to the rule in *R. v. Ellis*,⁴ which is proposition to the effect that an accused is not liable to cross-examination under section 1(f)(ii) of the 1898 Act solely because evidence elicited in answer to the charge might support an inference of good character. This same point was argued in *Malindi v. R.*,⁵ with several notable differences though. In the case of *R. v. Ellis*,⁶ the evidence emerged in the process of a cross-examination of the Crown witnesses, in which case the statute categorically states that the questions in such a situation must have been asked only "with a view to establish his own character." In *Malindi v. R.*,⁷ on the other hand,

1. (1870) L.R. 5 Ex. 155.

2. (1855) 11 Exch. 360.

3. [1966] 3 W.L.R. 918, P.C.

4. [1910] 2 K.B. 46.

5. *Ibid.*, n. 3.

6. *Ibid.*, n. 4.

7. *Ibid.*, n. 3.

the evidence was given by the defendant in chief and was therefore within the literal meaning of the less circumscribed "or has given evidence of his good character." Section 1(f)(ii) as such, can be sharply contrasted with the position where the defendant attacks the character of the witnesses for the prosecution. This point was not discussed by Professor Nokes in the book.

Another criticism of the treatment of the subject by the author has reference to the section on the Evidence Acts 1938 and 1965 (at p. 341 *et seq.*). There is no comment whatsoever; indeed, there is no mention made regarding the effect of the Act on the rule in *Crouch v. Drury*.⁸ This is the case which decided that prior consistent statements of witnesses are inadmissible. In *Hilton v. Lancashire Dynamo*,⁹ and *Re Powe*,¹⁰ it was held that the rule did not exclude prior statements within the ambit of the Act of 1938.

Likewise, one would have expected some detailed account of the changes brought about by the recent decisions of *Harvey v. Smith-Wood*,¹¹ and *Saunders v. Saunders*,¹² in respect of the Evidence Act of 1938.

The new Judges' Rules are confined to a mere page and a half of discussion. This could profitably have been expanded.

In the part on the rules regarding confessions, there is no reference to *Cook's* case;¹³ neither is there mention of *Walker's* case,¹⁴ which decided that leading questions are permissible in committal proceedings.

All said, it should however be noted that it is not the intention of the reviewer that the above criticisms should undermine the many merits of the present volume both as a textbook and reference book on a difficult subject like Evidence.

8. [1850] 4 Cox C.C. 163.
9. [1964] 2 All E.R. 769.
10. [1956] P. 110.
11. [1964] 2 Q.B. 171.
12. [1965] F. 499.
13. [1955] A.L.R. 792.
14. [1950] 2 All E.R. 911.