AN OUTLINE OF THE LAW OF EVIDENCE. Third Edition. By Rupert Cross and Nancy Wilkins. [London: Butterworths. 1971. xxxix + 269 pp. (with index). Casebound £3.00 net. Limp £2.00 net].

This book, an "outline" of the English law of evidence set out in the form of article and explanation, like Stephen's *Digest,* is undoubtedly the best of its kind and is now firmly in its third edition. It was originally written in 1964 by one very well-known "ageing academic" and one "very newly fledged barrister" (at the time) for the benefit of Bar, police and (less ambitious) University students; the latter category being impliedly warned that they would only find it useful either as an introduction or as a convenient means of revision. By way of further implication, the latter are to devote themselves to the larger *Cross* on Evidence and with the "frills" of academic articles and cases from other jurisdictions, of which this humble work is "shorn". If this reviewer may add, they should also amuse themselves with a knowledge of the proposed reforms in the law, which in the last few years has been in a state of flux and which has so far (sadly) rendered much

of the senior author's larger classic *Cross* (1967 edition) obsolete for students of English law.

In the first edition, the authors took pains to allay feelings of alarm in students (particularly police) interested only in evidence in criminal cases by pointing out that the principles for both civil and criminal cases were basically the same and by referring to particular articles they might conveniently omit from study. Meanwhile, the augurs of the Law Reform Committee and of the Criminal Law Revision Committee respectively have been examining the entrails of the law of evidence and have each come up with their own prophecies of doom, those of the former Committee alone having been fulfilled in the form of the Civil Evidence Act 1968. This has widened the chasm between civil and criminal evidence and lightened the task of the police student who may now omit rather more. However it has admittedly "greatly complicated" the law generally for others, primarily by creating two completely different laws of hearsay and a number of other anomalies, so that both authors "can only say... that we are more than ordinarily sorry for the student". Indeed, those who compare the first and third editions will find the first a remembrancer of better days, of common law accompanied by its usual growth pains untainted by statute, while the third is frightening in its revelation that there are now far fewer "thumb-rules" based on logic and common sense than readers would like to have been invited to grasp. Indeed, many rules (and articles of the book) must now be simply learnt and not be attempted to be understood. Let he who wishes to understand read *Best,* Stephen's *Digest* and the Reports of both Committees, or become a denizen of a happier legal system where inspiration is drawn from Stephen's Draft of the Indian Evidence Act built on the solid foundations of Mill's theory of logic.

Nor is this all. The authors, although originally keeping their book shorn of "frills", do feel the need to employ a few cases from other jurisdictions and views of certain academics to increase the exactitude of the present edition. For example, at p. 159, in including a paragraph on the evidence of the behaviour of tracker dogs, they refer to the Northern Irish case of *R.* v. *Montgomery* [1966] N.I. 120, there being "no fully reported English case" on the subject. Further, Mr. L.H. Hoffman is acknowledged as the guiding light behind the altered, fuller article 70, on similar fact evidence, the first paragraph of which now reads:

> "1. Evidence of the conduct of a party on other occasions may be given if it is relevant for some further reason than its tendency to show in him a disposition towards wrongdoing in general or the commission of the kind of crime or civil wrong with which he is charged; or if, notwithstanding the fact that it does no more than show in him a disposition to commit the kind of crime or civil wrong with which he is charged, it is of particular relevance either on account of its similarity to the conduct charged, or on account of some further item of evidence in the case.

It is uncertain whether this esoteric exposition can aid the average student to an increased understanding on this topic. He has therefore no alternative but to memorise the article unless he proposes to follow up Mr. Hoffman's views in *South African Law of Evidence,* 2nd edition, p. 34 et sequor.

Chapters 6 and 13 in particular have been much altered to accommodate the changes brought by the Civil Evidence Act 1968. There are other welcome additions: for instance, the replacement of *R.* v. *Bass* with the new *Chan Wei Kueng* v. *R.* [1967] 2 A.C. 160 and *R.* v. *Ovenall* [1969] 1 Q.B. 17, at p. 118 on the direction to be given to juries on confessions once admitted; totally new paragraphs on blood tests, tracker dogs and tape-recordings on pp. 159-160, under the head "Things, and real evidence generally" (Art. 58); an extremely full and helpful discussion of the leading case of *Selvey* v. *D.P.P.* [1970] A.C. 304 at pp. 209 et seq. (one and a-half-pages — much longer even than the discussion of the case in the supplement to the larger Cross!) There is much said on the effect of the Family Law Reform Act 1969 in relation to the presumption of legitimacy, and the use of blood tests. However, perhaps a reference could have been made at p. 45 to the relevance of blood tests in relation to the presumption as affecting the probabilities or in rebutting the presumption.

In Chapter 5 on "Corroboration", not enough appears to have been said at p. 92 on corroboration in sexual cases or in relation to sworn children. As to arrangement: There is no kind of definition of a relevant "fact" until Chapter 8 (Article 59). And "relevance, admissibility and weight" are only discussed in Chapter 9. Meanwhile, for instance, a student has to grapple with questions of the "weight" to be attached by a jury to confessions at p. 118 (Chapter 6) and there is no cross-reference to tell him where he can find the meaning of "weight".

The concluding chapter (Chapter 18) on "The Judges Rules and the Use of Interpreters" is a thoughtful feature of the book, but it is curious that the authors only now express their uncertainty about the utility of Chapters 16 and 17 on "Proof of Frequently Recurring Facts" and "Particular Criminal cases", which had always existed in the two previous editions. The authors need have no misgivings about these chapters; they are not a part of every student's essential diet, but it is difficult to see how in a book of this nature they can be fitted in otherwise than as "Miscellaneous" chapters, available for reference in the "particular" case. Omit these, and one might almost immediately lament the lack of an Archbold, Phipson, or the larger Cross at one's elbow.

One final plea is humbly made: This book is intended to aid a number of categories of readers. Perhaps a future edition (which one hopefully anticipates will materialise soon after the next spasm of legislative reforms) can usefully be employed by the authors to give some thought to the magistrate and lay justice as well on his functions in directing himself on such matters as the burden and quantum of proof, corroboration, the drawing of correct inferences, weight and discretion? No manual on evidence or criminal procedure has yet succeeded in doing this, although appellate courts are only too ready to allow an appeal owing to misdirections by ill-informed but well-intentioned judges or justices at first instance. A well-informed young police prosecutor's job is never finished until his Bench has addressed itself to the evidence and other matters before it properly.

The first edition of 244 pages citing just over 500 cases, has expanded in this edition to 269 pages with 526 cases cited. If the rules of criminal evidence are reformed to fall in line with the civil, one can anticipate a fourth edition that is much shorter than even the first was. Nevertheless, the authors find it hard to believe that the present edition will not be a "godsend" to the student — for whom the law inevitably moves more swiftly than he can conveniently follow. This Mercurial edition will indeed provide him with the few paths he can take to catch up with the elusive chameleon, the advocate's devil's devil. It is up to him either to take up the cudgels or to admit he is beaten.

V. S. WINSLOW