BOOK REVIEWS

EVIDENCE CASES AND MATERIALS. By J. D. HEYDON. [London: Butterworths. 1975. xxiii + 451 pp. Cased — £12.00 Limp — £7.00 net.]

Professor Heydon's book of cases and materials on evidence should certainly go far towards meeting the need for a forward-looking approach to the law of evidence. Though published in 1975, it was only made available in Singapore in 1976 and is now reviewed because of its enhanced value to local practitioners and students, especially after the coming into force of the Criminal Procedure Code (Amendment) Act 1976 and the Evidence (Amendment) Act 1976.

One immediately noticeable fact about this book is its manageable size — even, one would think, for a highly pressurised reader. This was achieved by means of a careful selection and edition of materials followed by perceptive and precise commentaries. The author's preface (at p. v) states the bases for selection: the subjects should be of particular appeal to students, or be of fundamental theoretical importance or be of special interest to the law-reformers. By this selective treatment, the author has been able to put in his own comments and notes on the nature of the existing rules, the reasons for their existence, the case for reform. Such an approach should provide a student with a sound base on which to focus his thinking about the law of evidence as distinct from the all too common exercise of simply "learning the rules".

The book has six Parts: Introduction, Burdens and Presumptions, The Protection of the Accused, Hearsay, Witnesses, The Course of the Trial. Over half the book is devoted to matters concerning the protection of the accused (Part III) — the doctrine of corroboration, the right to silence, confessions and improperly obtained evidence. This emphasis is, no doubt, justified and necessitated by the current academic and legislative challenge (initiated and motivated, to a large extent, by the U.K. Criminal Law Revision Committee's 11th. Report on Evidence 1972 (Cmnd. 4991)) to the validity of the principles and policies which traditionally underlie the rules protecting the accused both at the pre-trial and trial stage. Professor Heydon, for instance, in Chapter 5, discusses the doctrine of corroboration — pointing out the irrationality in the treatment of different types of "suspect evidence", and the somewhat paradoxical instructions that a judge needs to give to the jury on corroboration. A rational reconstruction of the doctrine was proposed by the Committee (paras. 174-208, Clauses 17-21; see also, the amended Singapore Evidence Act, sections 114, illus. (b), 133, 156(2)). It is reasonably clear that Professor Heydon generally agrees with the proposals relating to corroboration (see [1973] Crim. L.R. at p. 281) but he did point out that the rule against mutual corroboration of accomplices is "more justifiable than such a

rule generally" (p. 78). Would Lord Morris's *dictum* in *D.P.P.* v. *Hester* [1972] 3 W.L.R. 910, at p. 919, that "[t]he essence of corroborative evidence is that one creditworthy witness confirms what another creditworthy witness has said" be of help here? Could it be acceptable to include in the *Baskerville* definition a further criterion, namely, that the person who corroborates or who is to be corroborated must firstly be, in the eyes of the court, a creditworthy witness? If so, much of the justification for the rule against mutual corroboration of accomplices would be gone and the rule itself could, therefore, be done away with.

The utility of this book is undoubtedly increased by the inclusion of reasonably large extracts from the Committee's report. It is relevant to mention here that the provisions relating to the accused's right to silence and the provisions on the admissibility of hearsay in criminal cases as well as the provisions on corroboration are, *mutadis mutandis,* adopted into the law of Singapore *via* the Criminal Procedure Code (Amendment) Act 1976 and the Evidence (Amendment) Act 1976. Familiarity, therefore, with the arguments and proposals of the Committee will be of help in predicting the possible judicial interpretations on these new provisions. To illustrate the usefulness of knowing the original provisions of the Draft Criminal Evidence Bill, one need only refer to the question whether or not the local provisions (C.P.C. (Am.) Act, ss. 371B-J) on hearsay cover the admissibility of second-hand oral hearsay. In the English Draft Bill, such second-hand oral hearsay is purported to be excluded by Clause 31(5). There is no such corresponding provision in the local Act: it would appear, therefore, that second-hand oral hearsay statements are admissible, allowing the judge to exercise his discretion as to the proper weight to be attached in each particular case to such statements.

The selection of materials from several jurisdictions is most helpful in that it enables the student to see how a rule of evidence operates in different circumstances and environment and, in so doing, he may gain a better understanding of the rules that he is studying. For instance, the juxtaposition of *Kuruma* v. *R.* [1955] A.C. 197 and *R.* v. *Wray* (1970) 11 D.L.R. (3d) 673 with Scottish, Irish and American cases brings out the limitations of the *Kuruma* rule well.

But it is disappointing not to find certain well known cases in the materials: for example, *Butterwasser* [1948] 1 K.B. 4, *Rowton* (1865) Le. & Ca. 520 (on character evidence) are omitted. So is *Rumping* v. *D.P.P.* [1964] A.C. 814 (on marital communications). It is also unfortunate that by not including cases like *Lowery* v. *R.* [1974] A.C. 85 and *Lupien* v. *R.* (1970) 9 D.L.R. (3d) 1, the chance has been missed for discussion of problems arising out of expert witness testimony on the reliability of witnesses. For instance, *Lowery* (*supra.*) could be regarded as authority for the proposition that psychiatric evidence is admissible to show the reliability of a witness, but this has since been doubted in *R.* v. *Turner* [1975] 1 All. E.R. 70. On the other hand, psychiatric evidence is generally admissible to show that the veracity of a witness is suspect: *Toohey* v. *Metro. Police Comm.* [1965] A.C. 595. We may, perhaps, infer from this that psychiatric evidence can be trusted (or at least, deserve to be considered) when it tends to show the unreliability of a witness, but not when it tends

to show the reliability of a witness! Recent case-law development, such as *Boardman* [1974] 3 W.L.R. 673 and *Ping Lin* [1975] 3 All. E.R. 175 may soon necessitate a revision of the work.

Regrettably, the exclusion or cursory treatment of less popular topics must detract from the value of the book. Prominent among the exclusions are the doctrines of estoppel and documentary evidence. Rather cursory treatment is given to topics pertaining to the course of trial. All this is explained by the author as being due to one or more of the following reasons: the topic is arguably outside the scope of evidence (e.g., estoppels); it is not suited for undergraduates (e.g., documentary evidence); it is in an extremely complicated and sterile stage (e.g., competency of witnesses) and is likely to be changed or abolished; it depends on practical experience and judicial discretion (e.g., matters arising in the course of the trial). With respect, though one can defend these reasons to a certain extent, one has to regard them with circumspection. Firstly, in jurisdictions such as India, Burma, Malaysia, Singapore, Sri Lanka, Stephen's views on evidence holds sway in the form of the Indian Evidence Act 1872 (which was adopted almost word for word in the countries abovementioned). Stephen, for instance, regarded estoppel in *pais* as a clear evidential rule (see the Indian Evidence Act, sections 115-117). It is the unfortunate lot, therefore, of students in the countries mentioned to have to do the doctrines of estoppel in their courses on Evidence, bearing in mind the importance of the doctrine in practice. Documentary evidence is another topic especially relevant in practice. It is submitted that one should not entirely ignore these two subjects just because they can be better learned in the world of practice. Secondly, one can also take issue with Professor Heydon as regards rules which are not covered by him by reason of their "imminent demise" (p. vi). If one can assume that he is referring to the recommendations of the Criminal Law Revision Committee, then one need only say that it seems unduly optimistic to expect the implementation of the provisions of the Draft Bill as the heated opposition to the more controversial provisions seems to have affected the acceptability of the less controversial ones as well.

It only remains to add that typographical errors are rare, though it may be appropriate to point out that a sub-heading "A" has been omitted in Ch. 14 at p. 362 (Oral Hearsay? Introduction?).

The relatively few and minor objections to this book should hardly discourage readers from purchasing it, for it represents a convenient and a very readable source of materials on most of the important doctrines of evidence. Professor Heydon is to be congratulated for making the learning of evidence a much more pleasant and interesting task. He has shown that Evidence is not a subject to be learned for practice's sake. Nor is it necessary to look in the cupboards of history everytime (as Thayer would have us believe) to understand Evidence. His book is warmly recommended.

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