

BOOK REVIEWS

PHIPSON ON EVIDENCE. Twelfth Edition. By JOHN HUXLEY BUZZARD,
RICHARD MAY & M.N. HOWARD. [London: Sweet & Maxwell,
1976. cxciii+1014 pp. £25.00]

This is a much improved edition of Phipson although the strains of editorship (as distinct from authorship) are still showing. According to the editors, they have a Herculean task on their hands and the revision of the work would take several editions.

Quite a bit, it is clear, still has to be done; not least on the first few chapters on different types of relevant facts (chapters 5-11). Relevancy understood in its ordinary sense (*i.e.*, purely logical relevancy) is far too fluid a concept to admit of satisfactory classification for use by law courts. Arguably, the most complete statement of "relevant facts" is to be found in Stephen's Indian Evidence Act 1872 — sections 5 to 16. Even he had to draft a blanket section (s. 11) to cover facts which may not come within the other sections. It is suggested that the urge to classify facts in this way in the past was prompted by two related misconceptions: one, that "logical relevancy" was the same as "legal relevancy" and two, that the second term was intended to include the concept of "admissibility" as well. Thus, it was necessary in those days to list out the various types of "legally relevant" facts (meaning admissible facts). Now that the two concepts have been distinguished by academics and judges alike, the use of those chapters on types of relevant facts can be said to be simply illustrative of what are "relevant facts". Such illustrations could be adequately dealt with in a general chapter on Relevancy.

Admittedly, the topics of *Res Gestae* and Similar Facts need more detailed analysis and discussion. The chapter on *Res Gestae* (Ch. 6) makes *Ratten v. R.* the leading authority and amendments were made to the previous text accordingly. A point on emphasis may be made here: it is that the discussion does not satisfactorily bring out the function of the doctrine which is primarily as a device to avoid the harsh rigours of some of the exclusionary rules, especially the hearsay rule. The chapter on Similar Facts (Ch. 11) incorporates the House of Lords decision in *Boardman v. D.P.P.* which was intended by the Law Lords to settle doubts about the basis of the *Makin* rule. However, a recent crop of *post-Boardman* Court of Criminal Appeal decisions (notably, *Scarrott*) may mean that the subject requires fresh consideration. There is no doubt that this will be supplied in the expected supplements. A curious (to say the least) subtitle may be found just before para. 445: "The Principles Governing the Admissibility on behalf of the Crown of Similar Acts on behalf of the Defendant" (whatever this may mean).

A general comment may be made concerning the amount of subtitles that one can find in every chapter, not to mention the use of bold-print and italics intermittently, giving the impression of a rather loose arrangement. It would be most helpful to have a more detailed synopsis of each chapter at the head of the chapter. Such a synopsis is, it is suggested, necessary for the chapters on Hearsay and especially, the chapter on The Course of Evidence.

Be that as it may, it is clear that *Phipson* is now much improved. One needs only to look at the masterly discussions on the Civil Evidence Acts of 1968 and 1972 to realise what the work could be. At the moment, it has to assume second place to Professor Cross's much more precise treatment of the subject in his book "Evidence".

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