BOOK REVIEWS

THE SALE OF GOODS

By P. S. ATIYAH, B.A., B.C.L.

Sir Isaac Pitman & Sons Ltd. 1957. xxv and 196 and (index) 10 pp. £1-19-6.

The object of this work is, in the author's own words, "to state within a moderate compass the modern English law of sale of goods." As Professor Gower writes in his Foreword, there has long been a need for such a work, and there is no doubt that Mr. Atiyah's book fills this gap adequately. By using the narrative method of exposition rather than writing a commentary upon the Sale of Goods Act, Mr. Atiyah achieves a greater freedom in the arrangement of his subject-matter, a freedom which he uses to good advantage.

Despite his desire to base his exposition almost exclusively on the Act and the cases decided thereafter, and his endeavour to follow the spirit of Lord Herschell's injunction in *Bank of England v. Vagliano*, [1891] A.C. 107, the Table of Cases reveals that over twenty per cent of the cases cited were decided before 1893. This is, of course, no reflection on Mr. Atiyah, but merely illustrates the extent to which the modern law is dependent upon the old.

Mr. Atiyah states that although he had no particular class of readers in mind, he supposes that his book will be of more use to students than anyone else, and since he adopts an avowedly academic approach it is safe to assume that the work will make its appeal mainly to students. This, however, is not to say that it is a book which practitioners should ignore. For students, however, it is felt that, on occasion, the compression of the law into under two hundred pages has been achieved at too great a sacrifice.

Thus the student is not likely to be greatly assisted by being told in one paragraph (on page 7) that the view taken in *Lee v. Griffin* [1861] 1 B. & S. 272, was "exploded" in *Robinson v. Graves* [1935] 1 K.B. 579, only to be told in the next paragraph that "on the other hand in *Cammell Laird & Co. Ltd. v. Manganese Bronze and Brass Co. Ltd.* [1934] A.C. 402 the House of Lords held that a contract for the construction of two ships' propellers was unquestionably a contract for the sale of goods." Some discussion of the relationship between the two decisions would have been helpful. Further, is it altogether true to say that the view in *Lee v. Griffin* has been exploded? That decision was followed in *Samuels v. Davies* [1943] K.B. 526, and again more recently in *Marcel v. Tapper* [1953] 1 All E.R. 15. In neither decision did the Court seem to be aware of any explosion.

Again, on pages 9-10 Mr. Atiyah suggests a possible interpretation of the decision in *May & Butcher v. The King* [1934] 2 K.B. 17, based on the proposition that "absence of an agreement as to the price may provide good evidence that the parties have not reached a concluded contract" and then merely adds that "the later case of *Hillas & Co. Ltd. v. Arcos Ltd.* [1932] 38 Com. Cas. 23, shows that we cannot regard the earlier case as laying down any general rule." This coupled with his statement on *Foley v. Classique Coaches Ltd.* [1934] 2 K.B. 1 would only lead the student to question Mr. Atiyah's justification for putting forward his interpretation of *May & Butcher v. The King*. Further discussion of the issues involved would render his treatment of this problem more helpful to the student approaching the subject for the first time.

Finally (on page 70), in discussing the seller's obligation to supply merchantable goods, Mr. Atiyah considers *Niblett v. Confectioners' Materials Ltd.* [1921] 3 K.B. 387 and *Sumner Permain & Co. Ltd. v. Webb & Co. Ltd.* [1922] 1 K.B. 55, but attempts no discussion of the relationship between the two decisions, or possible bases upon which they may be reconciled. Some discussion of the problems involved would have been helpful.

Not everyone will agree with Mr. Atiyah in his treatment of the position of infants in relation to the sale of goods. As regards the liability of an infant on an executory contract for necessaries, he seems to support the view that there can be no liability, and he disposes of the decision in *Roberts v. Gray* [1913] 1 K.B. 520 by saying, in effect, that it cannot be regarded as an authority so far as sale of goods are concerned. This approach would seem to suggest that an infant may be liable on some executory contracts, but not if they are contracts for the sale of goods. Strong grounds would surely be necessary to justify such a distinction, but Mr. Atiyah provides none.

With regard to the problem as to whether property will pass under a contract for non-necessary goods, little reliance can be placed on the decision in *Pearce v. Brain* [1929] 2 K.B. 310 for although the Divisional Court held that it was a contract for "goods supplied" within the meaning of the Infants Relief Act, 1874, it was nevertheless a contract of exchange rather than of sale of goods, and there is no particular justification for Mr. Atiyah's view that what is true in the case of contract for the sale of goods "must be true of a contract of exchange." In an exchange the property may be regarded as passing by virtue of delivery with intention to pass property, and in such a case it cannot be said that this interpretation is open to the objection that the intention is based on the existence of a valid contract of sale.

Mr. Atiyah's criticism of *Rowland v. Divall* [1923] 2 K.B. 500 will also hardly commend itself to all readers. On page 24 he states: "The object of a contract of sale is surely to transfer to the buyer the use and enjoyment of the goods free from any adverse third party claims" and on this basis he argues that where the buyer has such use and enjoyment "it is quite unrealistic to talk of total failure of consideration." Surely the

object of a contract for the sale of goods is to transfer the property in goods and where this has not been transferred there seems to be nothing unrealistic in speaking of a total failure of consideration.

The statement, on page 45, made after quoting the provision of s. 27, that "it is not generally the duty of the seller to deliver (the goods) but the duty of the buyer to take them" is rather misleading. Delivery, as defined in s. 62, is the "voluntary transfer of possession" and it is always the duty of the seller to deliver, in this sense, whether the buyer comes to take the goods or whether the seller sends them to him. There would seem to be some confusion here between delivery, as defined in s. 62 and delivery in the sense of the physical transportion of the goods.

A further point which has been brought to my attention is that in commenting on the decision in *re Anchor Line Ltd.* [1937] Ch. 1 (at page 100) Mr. Atiyah states: "the Court of Appeal inferred that the property in the goods had not passed because there was a specific clause in the contract placing the risk upon the buyer and if the property had passed such a clause would not have been necessary." Admittedly the contract, under which the purchase price was deferred, contained a clause to the effect that the purchaser was to have "entire charge of and responsibility for" the property, but the Court of Appeal attached very little significance to this. Romer L.J. was the only member of the Court expressly to refer to this clause, and then only to say that it was of little assistance. The Court really held, to use the words of Lord Wright, M.R. (as he then was), that "the contract read as a whole (disclosed) a clear intention that the property should not pass until the purchase is completed." It was thus not the clause by itself but the intention of the parties as revealed by the contract taken as a whole which prevented the passing of the property.

All in all, however, these are merely points of detail or interpretation. Taken as a whole the book remains probably the best that can be recommended for students reading the law of sale of goods and Mr. Atiyah must be congratulated on having produced so useful and serviceable a work. The book is produced with their usual high standard by Sir Isaac Pitman & Sons and we have discovered only one typographical error—on page 18 n. 4.

G. W. Bartholomew.

THE TRANSFER OF CHATTELS IN PRIVATE INTERNATIONAL LAW

By G. A. ZAPHIRIOU, LL.M.

The Athlone Press (University of London Legal Series No. 4) 1956. xx and 219 and (bibl. and index) 7 pp. £1-10-0 sterling.

This work, which appeared slightly later than the similar work of Dr. Lalive (*The Transfer of Chattels in the Conflict of Laws*, 1955), undertakes an investigation of the law governing particular transfers of chattels in private international law, and in his discussion of this topic Mr. Zaphiriou draws not only on English and American decisions and writings, but also on those of France, Germany, Italy and Switzerland and on the decisions

of the Mixed Arbitral Tribunals, all of which adds up to a very valuable collection of authorities on a subject which has very rarely received systematic consideration in English.

After an Introduction in which he discusses the distinction between contracts and transfers of property, Mr. Zaphiriou examines, in Part I, which he entitles "Determination of the Connecting Factor in Space," the various solutions which have been proposed, from time to time, in relation to this problem, and rejecting the *lex domicilii*, the *lex loci actus* and the *lex actus*, he concludes that the English authorities tend to support the application of the *lex situs*. In Part II entitled "Application of the Lex Situs," Mr. Zaphiriou discusses conflicts between the proper law of the contract and the *lex situs*, and "The Prerequisites of the Transfer," under which heading he discusses such matters as the law governing formality, capacity and essential validity. His conclusion is that it is the *lex situs* which should prevail. In this part he also discusses the problems of rescission, risk-passing, transfers by non-owners, involuntary transfers, lien stoppage *in transitu* and the priorities of proprietary rights. Finally in Part III, which he entitles "Determination of the Connecting Factor in Time" Mr. Zaphiriou discusses the effect of the removal of a chattel from one country to another and the problems of *res in transitu*.

In his Introduction Mr. Zaphiriou stresses the distinction between those systems of law which require delivery for the transfer of property and those which do not and also upon the distinction between the contractual and conveyancing aspects of the contract for the sale of goods. It is suggested that he over emphasises these distinctions. Professor Lawson has written that: "It is therefore very difficult to conceive of any practical consequence as following from the transfer of property as between seller and buyer other than the passing of risk, with its corollary the right of the buyer to receive any benefits accruing after the completed sale." (65 L.Q.R. at p. 360). Mr. Zaphiriou's analysis of the English law on this point is not sufficiently detailed to be as helpful as it could have been, and is, by reason of its lack of detail, rather misleading.

Thus on page 8 Mr. Zaphiriou writes: "a transaction may be void or unenforcable as a contract and be effective as a transfer" and for this proposition he relies on the decisions of *Elder v. Kelly* [1919] 2 K.B. 179, and *Stocks v. Wilson* [1913] 2 K.B. 235, neither of which can be regarded as a very strong authority. The former relates to the effect of the Sunday Observance Act, 1677 s.1, on a contract for the sale of milk, and merely decides that the attraction of penalties under the Act, does not take the transaction out of the Sale of Food and Drugs Act, 1875 s. 6. The decision thus merely illustrates the familiar rule that an illegal contract is not necessarily devoid of effect. This, however, does not depend upon the distinction between a contract and a conveyance, for an illegal contract may retain contractual consequences despite the illegality.

Stocks v. Wilson involves the operation of the Infants Relief Act, and although Lush J. expressed the view that property passed under a contract which was "void" under the terms of that Act, nevertheless it must

be remembered that the term "void" as it occurs in the Infants Relief Act has a rather special meaning. Further, it has been suggested that in such cases the property passes by delivery with intention to pass the property. This is an independent means of transferring property, and, if this interpretation is justified the passing of property cannot be said to depend upon the distinction between the contractual and the conveyancing aspects of a contract for the sale of goods. A more detailed discussion of these and similar problems would have been of great assistance.

A transfer of chattels may be effected in several ways other than by a contract of sale, but by placing the discussion of the distinction between the conveyancing and contractual aspects of the contract for the sale of goods at the very outset of his work, and not discussing, at the same time, other methods of effecting a transfer, Mr. Zaphiriou has tended to stress unduly the contract for the sale of goods, other forms of transfer being considered as merely incidental. Thus gifts, including *donationes mortis causa*, only receive the merest mention. Admittedly conflict problems associated with gifts do not arise frequently, yet a discussion of the problems involved would have enabled the general principles to be discerned more clearly.

This approach has led Mr. Zaphiriou to regard all particular transfers of chattels as being governed by the same conflict rules, in the sense that he appears to regard the transfer of chattels as a single category for the purposes of the application of conflict rules. This is surely a questionable assumption. Indeed the mere fact that universal transfers are generally admitted to be governed by other considerations suggests that the transfer of chattels as such cannot be considered as constituting a single category. This being so one is inclined to wonder whether there is really any justification for lumping all particular transfers into a single category. Thus is there any particular reason for assuming that voluntary and involuntary transfers should be subject to the same considerations, particularly, in the latter case, where the transfer is effected by means of confiscatory legislation? Some discussion of the problems involved here would have been desirable.

Owing to the arrangement of the material that he has adopted Mr. Zaphiriou does not discuss what most writers seem to regard as the major obstacle to the *lex situs* theory until the very end of his work. This is the argument that *lex situs* is difficult to apply in those cases in which the goods are in transit, or in which the *situs* of the goods in question is only casual. This arrangement seems rather unfortunate since the problems of *res in transitu* necessitate qualifications of the *lex situs* theory, and it would have been more helpful had these points been discussed earlier in the work.

In discussion of the decisions and dicta supporting the *lex situs* theory it is surprising to find, in a dissertation in which the authorities are so exhaustively surveyed, no reference to Lord Loreburn's opinion in *Lecourturier v. Rey* [1910] A.C. 262 in which his Lordship stated:

> "This property (for property it is) which has come in question in this appeal is property situated in England and must therefore be regulated and disposed of in accordance with the law of England."

Admittedly the property in question was not a chattel but a trade mark, and admittedly the transfer was effected by means of confiscatory legislation, yet the opinion may surely be regarded as a dictum which supports the *lex situs* theory.

Even so we would doubt whether the English decisions really justify the conclusion that "the English courts have most strongly favoured the application of the *lex situs* to the creation, transfer and loss of proprietary rights," just as we would be inclined to doubt the wisdom of totally separating the question of the transfer of property from the contract, in those cases in which the transfer is effected by means of a contract. It is clear, as Mr. Zaphiriou has demonstrated, that a good case can be made out for the view that the *lex situs* is applicable, but to say that the English courts have most strongly favoured the application of the *lex situs* is to go beyond the authorities, from which no very consistent trend seems to emerge at all. Further Mr. Zaphiriou is hardly fair to the *lex actus* theory when he states (at p. 35): "To say that the law most closely connected with the transfer should apply is to state the problem of conflict without solving it." It is almost axiomatic that the essential validity of a contract is governed by its proper law and most writers on private international law today favour an objective rather than subjective determination of the proper law. Mr. Zaphiriou's criticism of the *lex actus* theory, if valid, applies equally to the objective interpretation of the proper law theory. This is not a matter which falls within the scope of his work, yet if such a criticism of the *lex actus* theory is admissible it is regrettable that Mr. Zaphiriou did not explore its implications in greater detail.

In a subject in which the authorities are so few and conflicting and which has been so rarely treated systematically it is hardly to be expected that definitive solutions can be reached all at once. Whether one agrees with Mr. Zaphiriou's conclusions or not his work is a notable attempt to deal with a very difficult problem and is a valuable addition to the literature on private international law.

G. W. Bartholomew.

LAW OF PARTNERSHIP IN AUSTRALIA AND NEW ZEALAND

By P. E. JOSKE, M.A., LL.M., Q.C.

Butterworths (Australia) Ltd. 1957. xxii and 106 and (index) 8 pp. £1-12-6.

This would seem to be the first work to appear dealing with the law of partnership in Australia and New Zealand and must, as such be warmly welcomed. The Partnership Acts of Australia and New Zealand are substantially the same as that of the United Kingdom, but none of the standard English works cite the Australian and New Zealand decisions

and it is therefore extremely useful to have these authorities collected in such a convenient form. The Table of Cases reveals that nearly two-thirds of the decisions cited are Australasian cases.

In appearance Mr. Joske has adopted a narrative form of exposition in preference to writing a commentary on the Partnership Act, but in reality the majority of the main paragraphs either commence with, or contain, a verbatim quotation of, the relevant section of the Act. Were it not for the fact, therefore, that a limited amount of material not covered by the provisions of the Act has been introduced, and the fact that the arrangement of the material does not follow that of the Act (the major departure being that the mutual relations of the partners are dealt with before their relations with third parties) this work would be essentially a commentary on the Partnership Act. Unfortunately the sections of the Act, when quoted, are not distinguished, typographically or otherwise, from the rest of the text, and in some cases there is no indication in the text that a statutory provision is being quoted. It is therefore sometimes very difficult to determine just what the statutory provisions are, particularly in the few cases in which the relevant section is not quoted verbatim in the text.

Although the work is entitled the *Law of Partnership* there is little attempt to deal with those aspects of the law which fall outside the scope of the Partnership Act. Thus although there is a brief mention of such matters as bankruptcy, proceedings between partners (unfortunately the relevant Rules of Court are not cited), taxation and business names, no attempt has been made to deal with such matters as limited partnerships, foreign partnerships or the administration of partnership estates.

Mr. Joske's exposition of the "Elements of Partnership" would, it is suggested, gain in clarity if there were less emphasis on the contractual basis of partnership. Whilst it is of course true that in many cases, indeed probably in most cases, partnership does result from an express contract, the Act nowhere states that partnership is a contract and in fact the rights and duties of the partnership will be imposed by law on any persons who carry on a business in common with a view to profit irrespective of any intention to create the partnership relationship. Indeed unless there is such a business no amount of agreement can create a partnership (*Goddard v. Mills* [1929] *The Times* 16 Feb.); whilst, on the other hand, if there is a business being carried on in common with a view to profit no amount of agreement can prevent a partnership from being created (*Fenstone v. Johnstone* [1940] 23 Tax. Cas. 29). The essential problem, therefore, in determining whether a partnership exists or not, is that of determining whether or not there exists a business which is being carried on in common with a view to profit. In answering this question the intention of the parties will of course be a relevant consideration but only in relation to an enquiry directed towards the question of whether a business of the requisite nature is being carried on, and not directly in relation to the question of whether there is or is not a partnership.

Because this distinction is not stressed by Mr. Joske quite as clearly as it might have been there is some loss of clarity in the exposition. Thus on page 1 we read that "partnership is a relation springing from agreement express or implied." So it may well be, but the agreement relating to the nature of the business which is being carried on. Again on page 3 Mr. Joske writes: "In order to determine whether there is or is not a partnership between persons the whole agreement between them must be considered in order to see what their intention was at the time when they entered into their agreement." Unless it is made clear that the intention is an intention relating to the nature of the business and not an intention to create the partnership relationship this statement is misleading.

It is not until page 4 that we read that "It is not the law that partnership between persons is impossible where they expressly agree that they shall not be partners." This proposition, however, is put forward on the rather surprising basis that "persons are not permitted to deny the necessary consequences of their acts."

It is of course perfectly true that within the partnership relationship there is a considerable degree of contractual freedom. So far as the mutual relations of the partners are concerned this is a matter which is almost entirely left within the partners' own control, the provisions of the Act only applying in the absence of agreement to the contrary, but the fact remains that in so far as the creation of partnership is concerned the criterion is simply the nature of the business which is carried on and not the intention of the parties. Greater stress on this fact would, it is suggested, render Mr. Joske's exposition of the elements of partnership much clearer.

Turning to rather more detailed points. The last line on page 2 is somewhat misleadingly worded; it could almost be taken as implying that incorporated companies cannot be members of a partnership. Again the statement on page 8, under the general heading of "Capacity," that an enemy alien cannot be a partner is also misleading. Might it not have been better to discuss the position of enemy aliens in relation to section 39 (Tas.) dealing with the effect of illegality—a section on which Mr. Joske provides no commentary at all?

The statement on page 9 that "there is a distinction between an ordinary partnership and an unincorporated company or association" is surely a little strange. There may be a world of difference in practice between the two, but the legal theory underlying the unincorporated association which is carrying on a business with a view to profit remains that of partnership. The mere fact that there is a constantly changing membership in the unincorporated association is not in itself a basis for distinguishing between the two. In fact, of course, it was the exemption of partnerships from the terms of the Bubble Act which led to the growth of the unincorporated association for trading purposes.

It is rather misleading to read in the commentary on section 40 (Tas.) that "the court will not dissolve a partnership on the ground of insanity at the suit of the lunatic partner, but only on the application of the other

partner" when section 40 expressly provides that the application may be made as well on behalf of the lunatic partner as by any other partner. The decision cited by Mr. Joske in this connection, *re Anderson* [1878] 4 V.L.R. (Eq.) 103 appears to have been based upon the terms of the Victorian lunacy legislation rather than on the wording of the Partnership Act, and can hardly, therefore, be taken as enunciating a general proposition.

The discussion of other provisions of the Act is sometimes inadequate. This is particularly true in the case of the provisions relating to partnership property. Some reference to the problem of distinguishing between property of the firm (*i.e.* partnership property properly so called) and joint property of the partners *qua* co-owners, and of the test as to when property becomes partnership property as laid down by Lord Romilly M.R. in *Steward v. Blakeway* [1869] L.R. 4 Ch. 603, would have been helpful.

It is doubtful whether the operation of the doctrine of conversion upon partnership property is really dependent upon the absence of a contrary intention, as seems to be implied on page 23. Intention may decide the issue whether the property is in fact partnership property, but once it has been established that the property in question is partnership property then no contrary intention can prevent the operation of the doctrine of conversion (*re Kempthorne* [1935] 1 Ch. 268 and *re Fuller* [1933] Ch. 652). Again Mr. Joske does not discuss the nature of the tenancy upon which partnership property is held, whether it is tenancy in common, or joint tenancy without benefit of survivorship, nor does he discuss the application of the principle *inter mercatores ius accrescendi locum non habet.*

The proposition on page 94 that "each partner has a lien on the share of his co-partner in respect of such co-partner's proportion of the partnership liabilities" unnecessarily limits the extent of the partnership lien —which in fact extends over all property which was partnership property at the time of the dissolution, to the extent of the partner's own share in that property.

Finally, in our view, the discussion of section 45 (Tas.) as to the apportionment of premium would be assisted by a reference to the decision in *Atwood v. Maule* [1868] L.R. 3 Ch. 369.

Any attempt to compress the law of partnership into a little over one hundred pages must necessarily be rather selective and it is probably impossible to satisfy everyone with a given choice of material, yet had Mr. Joske allowed himself a little more scope the work would have been very much more valuable. As it is, it is a little difficult to see for whom the work is designed. The citation of authorities is hardly adequate for the practitioner, whilst the exposition is not sufficiently detailed for the student.

Finally two general comments. Firstly, it would be helpful if, in the second edition, a brief resume of the facts of some of the cases cited could be given so that the actual application of the rules could be more easily discerned. Secondly, it would be less irritating if case citations could be removed into the footnotes so as not to break up the text quite so much.

Most of our comments have been directed towards matters which Mr. Joske had insufficient room to discuss in the detail which he would doubtless have wished. As it stands the work is a useful statement of the law of partnership as contained in the Australasian statutes and decisions. With fuller discussion of some of the problems that arise it could become a valuable work.

G. W. Bartholomew.

FRAUD IN EQUITY

By L. A. SHERIDAN, LL.B., Ph.D.

1956, Sir Isaac Pitman & Sons Ltd., xliii and 235 pp. £3-3-0.

Fraud is an ubiquitous and amorphous concept. Even the layman recognises certain things as fraudulent. But what is fraud? When we turn from concrete examples to attempted definition the elusiveness of the concept makes itself evident.

Professor Sheridan does not define fraud as such. He does, however, examine the various types of behaviour from the effects of which equity will give protection. He takes as a basis for this examination the division of equitable fraud formulated by Lord Hardwicke in *Earl of Chesterfield v. Janssen*; a division which he finds inadequate. He therefore in conclusion develops his own classification of equitable fraud from the cases and other material already discussed and lists the constituent elements.

One of the most striking features of the work is its analytical rigidity. Not once does the author deviate from his discussion of "Fraud." Side issues are ignored with inflexible and sometimes unfortunate purpose.

This rigidity is both a strength and a weakness. Logical clarity has been obtained at the expense of readability. Of necessity breadth has been sacrificed for depth. The result is a book to gladden the heart of a scholar or research work and to cheer the spirits of a practising lawyer seeking amid the myriad cases the answer to a particular question. There is, however, no perspective. The avoidance of side issues which so strengthens the analytical structure of the book prevents the concept of fraud being presented in context. There is, for example, no discussion of estoppel as such. The word "estoppel" does not appear, although a great part of the field of *estoppel in pais* is covered as an example of the operation of equitable fraud. Such insularity certainly lessens the significance of the work for those who cannot already see the question of fraud in relation to other legal concepts.

To sum up: For the academic it is a valuable and interesting book; for the practitioner is could prove a handy guide through the labyrinth of decisions on what constitutes equitable fraud. However, the undergraduate student seeking to learn the law would find it difficult to read, and this perhaps is fortunate since for him it could prove dangerous.

P. G. Nash.

JENNINGS: PARLIAMENT

Second Edition, 1957: Cambridge University Press, XII and 574 pp. £3.

When war broke out in 1939 Sir Ivor Jennings had already estabished his repuation throughout the English-speaking world as an authority on the British Constitution. His work on "Cabinet Government" (1935) was at once recognised as a magisterial work; and if the second work of a planned trilogy, on "Parliament" (1939) was by its very nature regarded as less original, it was hailed as a substantial contribution to our knowledge of an ancient and venerable institution, a well documented survey of modern practice, erudite to a degree and altogether fresh in its approach. The third work of the trilogy, on Party Politics, remains to be written, but Sir Ivor now tells us "the ambition persists."

Since the war Sir Ivor's ambition, his reputation as a constitutional lawyer, his wide ranging interests and his sense of duty have carried him far afield into the wider and yet emerging world of the Commonwealth. His trained and observant eyes have watched at close quarters the establishment in India, Pakistan and Ceylon of constitutions framed on the British pattern. In Ceylon and Pakistan, in particular, he lent his knowledge, skill and advice. Few Englishmen in fact have contributed so much to the making of the new Commonwealth.

Back in England again in 1954 as Master of Trinity Hall, Cambridge, he decided to revise his work on Parliament. With an interest tinged with expectancy we approach this new edition, wondering just how much Sir Ivor's assessment of 1939 has been modified by his own widening experience and by the world-shattering events of the last twenty years.

In retrospect it seems fitting that "Parliament" appeared in 1939. In the years between the wars Parliament as an institution was subjected frequently to critical comment. No longer was it regarded as "the best club in Europe." Things were never the same after the coupon election of 1918, which filled the House of Commons with hard-faced business men, who looked as though they had done well out of the war. In the 'twenties, too, a small minority of militants, most of them Clydesiders, tried to infuse a mild dose of class war spirit into that dull and lethargic House in which Stanley Baldwin so comfortably lounged. With the deepening depression informed critics like the late Harold Laski questioned whether the deep class differences could ever again be reconciled within Parliament as it stood. Laski's imagination played with the idea of an Industrial Parliament, non-territorial and functional in its representation. At his most extreme Laski believed that the Conservative Party could never accept a Socialist majority at an election, dedicated to carry out a socialist programme, but rather it would resort to economic sanctions or even force. These were the reflections of a sincere, humane man at a time when the Fascist dictators swaggered across Europe, when Parliamentary government in France after the riots of February, 1934, seemed in decay, and Spanish constitutionalism was being betrayed and butchered. There were people in England, some in high places, who, fascinated by the

parade of strength by the dictators, and fearful of "mass democracy," which they equated with Bolshevism, sought and found weaknesses in Parliamentary government. Was not the persistence of mass unemployment due to the fact that such government was slow, cumbersome and inefficient? In those difficult years there were men in the House of Commons who sensed the crisis and fought against the deadly torpor until the series of humiliations from Munich to Narvik led to an explosion of frustration and righteous anger. At last, amid the wreckage of hopes and illusions a man stood out supreme and in command, conscious of his historical destiny and defiant before the dictators in their hour of triumph. Amid the fire and flame of London under bombardment the old House was destroyed. But Parliament lived; and once again those who came on to break Parliaments were themselves broken. Even the tremendous stresses and demands of war, empowering the executive branch of government as never before, did not prevent Parliament from functioning. Criticism was not stifled nor were the Opposition silenced and voice was given in the darkest days of 1941-1943 to doubts and anxieties within Parliament. Churchill was not immune, nor did he ever try to make himself immune. When victory came he found himself made Leader of the Opposition, the duties of which office he assumed manfully to the admiration of the world.

There followed then the period of Socialist supremacy in the House of Commons which created the welfare state and proved Laski's fears to be unfounded. Moreover, the House elected in 1945 embraced a variety of brilliant talents comparable, in the memory of Lord Campion, to the House elected in 1906. Gone was the dullness, the torpor and the occasional expression of class hatred that had marred the Parliaments between the wars. The galaxy of talent, old and new, seemed to give assurance of the continuity of Parliamentary government.

Against the background of what he calls "these exciting years" Sir Ivor Jennings has pondered upon the problems of Pariamentary government. He is well aware of the extensive studies that have gone on since 1945 in fields of political science materially related to the study of Parliament. The Nuffield College researches on each of the General Elections since the war have thrown light upon the nature of the electorate, the working of the electoral system, and the organisation of parties. The composition of the House of Commons is made much clearer by the work of J. F. S. Ross on "Parliamentary Representation" and "Elections and Electors." In his pioneering work R. T. McKenzie has revealed the remarkable similarities between the two major parties, while indicating their important differences and he has filled in the picture of life in Parliament by portraying the activities within the party committee rooms. Less than ever now can Parliament be studied in isolation from public opinion. The evidence presented to the Royal Commission on the Press provided valuable information about the relations of Parliament and the Press. Important research has been carried out only recently by Samuel Beer and S. E. Finer into the nature, formation and methods of pressure

groups in the United Kingdom. Less has been written since 1939 on Parliament itself, though useful and expert contributions have been made by Lord Campion and Herbert Morrison.

When, then, Sir Ivor Jennings decided to produce a second edition of his "Parliament" he must have wondered just how much he ought to add, how much to amend. When an author has written such a masterly book there is much to be said for leaving well alone. However, the events of "these exciting years" and the knowledge derived from recent research called for some revision. The result is that he has produced a second edition which closely follows the original, both in its pattern and in its text, but which has, quite rightly, been made to embody new materials and occasionally to express a new emphasis.

In this, as in the old edition, Sir Ivor deals first with the live material that makes up Parliament—the members, the Speaker and the Chairman, the Prime Minister, the Leader of the Opposition and the Whips. Then follows a discussion of the legislative process and the methods of financial control. Separately dealt with are Private Members, the House of Lords, Private Bills and Delegated Legislation. A chapter is now added on Nationalised Industries. And, as before, there is a final chapter giving the author's assessment of Parliamentary Democracy as a form and method of government.

Most of this stands as it did in the first edition. Over all, the amount that has been re-written is quite slight. The opening chapter on "Authority Transcendent and Absolute" contains some changes of emphasis but the author's views on the sovereignty of Parliament are unchanged. His account of the functions of the Prime Minister and the Leader of the Opposition is brought up to date and there is special reference to Standing Orders of the Parliamentary Labour Party. In the Framework of Oratory (chapter 4) he has amended the sections dealing with adjournment motions, government business and the closure following changes made in accordance with recommendations of the Select Committee on Procedure (1945-6)). Figures show that Speakers during the last generation have been less inclined to accept adjournment motions. The difficulties of interpretation of the words "urgent" and "of public importance" relative to such motions are discussed. He then explains how government business has increasingly taken precedence. The rights of private members in these matters disappeared totally during the war and were restored only in 1950. Sir Ivor is not pessimistic about this tendency, and, if anything, shows sympathy for the Government which has to get through all its legislative business in 60 days each year, over 40 days having been allotted to finance and the rest to the Opposition and private members. The changing habits of the House emerge. Members used to sit much later at night in the early part of this century and before the war the "eleven o'clock rule" normally applied. During the war this became a "ten o'clock rule" and the change has persisted, for the majority of Labour members have always preferred to start work earlier and to get to bed at a reasonable hour.

Many readers will be surprised, and some no doubt pleased, to learn that no Government finds it easy to discipline its members in the House of Commons. Numerous instances are given of the difficulties faced by the Atlee Administration (1945-51) in dealing with a forceful and recalcitrant Left-wing. And despite what Sir Ivor calls the public school call "not to let the team down," we know now of the difficulties created for Churchill and Eden by, for instance, the "Suez group" of Conservative members. In discussing both the "Art of Management" (chapter 5) and the "The Technique of Opposition," Sir Ivor makes full use of the researches of Ross, McKenzie and of the scholars who have analysed elections. He stresses the importance of the floating vote and the extraordinary sensitivity of the House of Commons to small changes of political allegiance in about one-fifth of the constituencies. This he finds a salutory corrective for any Government.

Dealing with the process of legisation (chapter 8) he makes changes in the section on Committees. He is not at all convinced that the increase in the number of Standing Committees, following the recommendation of the Select Committee on Procedure, has been justified. It is difficult to get enough members to serve as many Conservatives have other professional duties in the City or the Law Courts in the mornings. It is hard to believe, nevertheless, that the present Committees which are smaller are not more efficient. Strangely enough, we learn that the Government finds the Standing Committees more difficult to manage than it did before war, though this may be due to the practice now of including more "specialists" on the Committees than formerly. The attempts made by the Conservatives to keep important and controversial, as well as constitutional, bills on the floor of the House did not succeed, and between 1945 and 1951 the Labour Government sent its major nationalisation legislation "upstairs" where guillotine motions were applied.

Turning to financial legislation (chapter 9) the author records that 90% (it was 70% in the first edition) of the annual expenditure of the Government has to be voted annually by the House of Commons and authorised by legislation. Discussing the decline of Parliament's control of expenditure, he makes the salutary remark that such control was never strong. He then examines the extensive attempts made since 1888 to tighten Parliament's control by means of an Estimates Committee. Despite the questionable usefulness of this Committee and the recommendation of the Select Committee on Procedure that it should be merged with the Public Accounts Committee, so that they operated as two sub-Committees of the one Committee with a common Chairman, the Government restored the Estimates Committee to its former status and functions after it had lapsed during the war.

Sir Ivor enjoys discussing the constitutional position of the House of Lords (chapter 12). He describes the negotiations which led to the Parliament Act of 1949. Clearly he appreciates the value of a Second Chamber in a modern industrial democracy, and he deeply regrets the failure of the Conservatives to accept the compromise offered by the

Labour Government in 1948, largely because their minds were fixed on the Steel Nationalisation Bill. Now he appears uncertain whether there is time to mend the House of Lords before it is ended. His analysis of the composition of the House of Lords destroys some illusions. For neither birth nor wealth form the basis of the House. Moreover, the author's enumeration of the number of divisions each session suggests widespread indifference, and this alone justifies his categorical statement that the House of Lords is no longer a political issue.

Chapter 10 on the Nationalised Industries is entirely new, and here Sir Ivor discusses some, but not all, of the major questions which fall under the head of public accountability. It contains little beyond a normal text-book account. However, it is clear that Sir Ivor is with Herbert Morrison and against those Conservative critics who desire a Select Committee, analogous to the Public Accounts Committee, to probe into the administration, especially the financial administration, of the public corporations. Instead he favours the employment of committees of experts to investigate at seven-year periods, as is done in the case of the B.B.C., and he looks upon Select Committees of M.P.'s as having little more than nuisance value. Like Morrison, he is satisfied that Parliament can get any information it needs and that ultimate control is in its hands.

The reader may turn to the final chapter, in which Sir Ivor makes his assessment of Parliamentary Democracy (chapter 15), and hope to find in it new fruit grown in the years between. If so, he will be disappointed, for he has contented himself with the chapter as it stood in 1939 apart from some minor alterations of an illustrative character. He may well be proud that he felt no need to alter his original judgments and no one in this century has surpassed his tribute to parliamentary government. There is nothing here of the wailing of the Jeremiahs. He is as certain of the strength and flexibility of Parliament within the British Constitution today as he is that it is the most dignified assembly in the world and has retained its prestige in the minds of the British people. Perhaps those who remember his radical approach in the 'thirties will think that he has become more conservative with time. But his conservatism is that of a great constitutional lawyer, who like Burke fixes his gaze on realities and shuns abstractions, and who can discern what is living even in the ceremonial of the most ancient institution. That is why he can write: "The House of Commons has been so devised by history that it needs the House of Lords to complete and supplement its work." And, what is more, the House of Lords, like the House of Commons, must have an Opposition to make it work. Only in totalitarian countries, he wryly reminds us, the Opposition rots in prison.

In a work such as this, comprehensive though it may be, it would be surprising if there were no aspects of parliamentary government that did not receive adequate treatment. One authority, W. A. Robson, in his review of the first edition, after paying tribute to the erudition of the author, said that the work left him somehow unsatisfied. Of course, many

readers come to the subject of Parliament with attitudes more or less fixed and this in turn leads them to raise particular problems. There will be some today who will think that this work skates too lightly over some of the problems that relate to Parliament. For instance, should not more be said about the boredom and the sense of frustration that are increasingly affecting members and inducing fewer to take up a parliamentary career? Is this merely a passing phenomenon, a reaction to party politics which have lost much of their interest to the electorate at large? For, apart from the Suez intervention controversy, the political temperature in the House has for some years now been quite low. At the same time the more responsible Press has remarked the sad but distinct decline in the manners and temper of debates. Convention may have allowed a member to call one of the Opposition a fool but never a knave. Recently it has been said that the spirit that in the mid 'fifties came to be known as McCarthyism had entered even the House of Commons.

At times concern has been expressed about the influence of interest groups within the House, the slowness of business methods, over-long speeches, and cumbersome voting procedure. Sir Ivor points out the inspiration of Private Members and Government alike is now and always has been the pressure of interest groups, and he sees no particular danger in this. As for speeches, they are much shorter than they used to be and he does not advocate that they be shortened further. He admits that few speeches get a mention in the Press, but while recognising that public opinion is the final arbiter he is unworried by the fact that the public is less well informed, and sometimes deliberately misinformed, about the doings of Parliament. He says little about methods of voting in the House, which certainly are time-consuming, though he notes that members do like to record as many divisions as possible to impress their constituents.

But the only serious lacuna relates to Parliamentary privilege. This will appear a strange omission to those who recall the use made of privilege during the struggle with the Crown in the 17th century and the abuse of it in the 18th century at the expense of the private citizen's rights and the way it was raised before the principles underlying the independence of the Press were established. During those centuries when the House of Commons struggled to assert its pre-eminence it used Privilege as an instrument of power. Only recently its use, or, as some would say, its abuse, has given rise to controversy. The most recent invocation of Privilege followed the threat of libel proceedings against a M.P. arising out of matter contained in a letter he had written to the Chairman of one of the big public corporations. It was held that as the member was carrying out his normal parliamentary duties he was covered by Privilege. It would seem that Privilege is still a useful safeguard against the overmighty subject. There was more public controversy when the House took action during the Suez crisis against an editor who published the statement that M.P.'s were being favoured by an extra petrol ration. The editor made an apology before the Bar of the House, but although the affair was handled with dignity and decorum, the more responsible Press

was convinced that the House had been unduly sensitive on the issue and that by taking the action it did members had raised doubts in the public mind about the use of their privileged position.

When everything has been said this work remains, what it was in 1939, the most comprehensive and authoritative study of the British Parliament in the 20th century. It is not likely to be superseded during the next generation. We do not get here perhaps the smell of the party rooms, or catch the cry of "Speaker," or feel the heat of debate, or breathe the air of expectancy as a hushed and overcrowded House waits for the Prime Minister to make an important statement. But we do get the impression of a hard-working body of more than 600 members sitting behind the Government or in the Opposition, adhering to the rules of debate and only rarely disturbing the formal dignity of proceedings of the House. We see them upstairs in the Committee rooms going through each Bill piecemeal, receiving constituents and other interest groups outside the Chamber but within the precincts and we follow them into the heart of London or to the furthest reaches of the kingdom as they communicate with the electors and nurse their constituencies. Yet although, as Sir Ivor reminds us, high taxation and low salaries are threatening to make the House increasingly less representative, we feel confident as we close this book that the traditional prestige of the House, which the author's erudition so richly illustrates, will continue to call upon some of the best talents of the Nation.

W. A. Townsley.

AN ENGLISHMAN LOOKS AT THE TORRENS SYSTEM

By THEODORE B. F. RUOFF

Law Book Co. of Australasia Pty. Ltd., 1957. ix and 103 and (index) 2 pp. £1-5-0.

Theo Ruoff in 1951 quit the Land Registry in London for a year's tour of the Torrens world by courtesy of the Nuffield Foundation.

He found an apathetic administration of the system, an indecent solvency of the insurance funds, and a system that had not kept pace with modern times.

Whilst this book of essays is not a repository of deep learning it provokes the reader to some thought on the real principles of the Torrens system (mirror, curtain and insurance), and whether they are in our own systems progressing or falling into the hands of the judicial construers, the Bumbles and the lawyers.

Mr. Ruoff urges boldness be my friend in the administration of the system and rightly abhors the intrusions of untutored legislatures upon the indefeasibility of Torrens titles.

His dissertations upon the land-stealing squatters' rights against the registered proprietor, consideration of the *Gibbs v. Messer* doctrine and the problem of the simplicity of the system clogging the dispositive powers of the owner is refreshing enough to make the old problems look

new, while his look at the New Zealand system in action is an enlightening warning.

The note on flatted property alone makes the book worth reading.

A little more care in editing the essays so that repetition of the author's continuous lament, *inter alia*, of the unbusinesslike credits in the assurance funds, which he claims are really insurance funds, would have improved the presentation, but we are greatly indebted to anyone who will take the trouble to write anything which will remove that uncomfortable feeling that we may be grouped with those illustrious personages referred to on page 31 who have not the same wealth of knowledge and the same practical grasp of the Torrens system as they have of other branches of the law relating to land.

J. R. M. Driscoll.

THE TRANSFER OF LAND ACT 1954 WITH ANNOTATIONS

By P. MOERLIN FOX, LL.B.

Law Book Co. of Australasia Pty. Ltd., 1957. xxix and 159 and (index) 42 pp. £2-15-0.

Mr. Fox makes it quite clear by his preface that this book is not a commentary on the Torrens system (we have Mr. Baalman for that) nor a complete digest of the authorities (Mr. Wiseman's second edition having brought us up to 1933)

The book capably compares the 1954 Victorian Statute, with the aid of a useful table, with the 1928 Act and also with earlier legislation. The introductory note is something that should be compulsory reading for all students.

"The Torrens System," says Mr. Fox, "was designed to remedy defects in the general law system of conveyancing and in order to understand the principles of the Torrens System it is necessary to appreciate those defects."

This reviewer has always believed that the best way to teach the land laws is to approach the subject by relating it to the system of conveyancing. R. E. Megarry in the introduction to his Law of Real Property, 1957, has taken this view and, now with Mr. Fox requiring a prerequisite of understanding of general law defects for an understanding of the Torrens System, there seems to be good authority for teaching first the conveyancing system, relating the land law to it, and then the Torrens System.

The book is well and carefully annotated. The irrelevant and dead cases that plague the busy practitioner in most annotated statutes have no place here, yet there are quite sufficient live ones for the student's purposes.

The comparative table is most useful, the index excellent. If any Tasmanian would take the time to make up an extended comparative table for the Tasmanian Statutes he would have an extremely useful volume.

Too few books are available on our land laws and a modern work is very welcome. I hope that it may be expanded into a commentary on the Torrens System in due course whilst retaining the format of an annotated statute. Perhaps a similar Act to the 1954 Victorian Statute will soon amend and consolidate the Tasmanian Real Property Acts and the numerous Acts which affect them. If that were done someone might be persuaded to follow in Mr. Fox's footsteps and do for the Tasmanian legislation what has been done by Mr. Fox for the Victorian.

J. R. M. Driscoll.

THE LAW OF TORTS

By J. G. FLEMING, M.A., D.Phil.

The Law Book Co. of Australasia Pty. Ltd., 1957. pp. i-xxxix, 1-779. £4-4-0.

To those reared on Torts books such as "Salmond" and "Pollock" and to a lesser extent "Winfield," this book may well prove strange and disconcerting—it has a different approach to the subject, its methods are new and the style is not in the tradition of the English text-book writer. (In some of these things Professor Harry Street, of the University of Nottingham, in his recently published "Law of Torts" has also departed from the sacred way). In fact it is quite apparent that American writers and American texts have had a dominant influence on Fleming's writing, but this in my view has much to commend it. There are many law teachers in Australia today, and practitioners as well, who, aware of the mass of able work on Torts produced by Americans in the last two decades and who, heeding the wise words of Oliver Wendell Holmes to the effect that "in order to know what the law is, we must know what it has been and what it tends to become," believe that it is the function of a book and of a teacher in training and developing the legal mind to show the reader and the student that the rules of law today have developed out of the conditions of the past and that existing rules have nothing immutable and fixed about them but will as surely change and develop with the needs of the future. A book that in substance contains only the law as it is no longer is acceptable to those of this attitude. The author realised this and without departing from the necessity of expounding present day rules has amply covered the history of the past and the possible requirements of the future. It is true with respect to the latter that if the book is read from cover to cover at one reading, as it were, the continuously reiterated needs of policy become a little tiresome, but read in relation to one topic at a time, as a practitioner, and even a student, is likely to do, the discussion is stimulating and valuable. Is there a duty of care owed by a gaoler to an accused person in a lock-up? This question came before the Supreme Court of Tasmania during 1957. Fleming's analysis of the policy considerations that influence Courts in answering questions of this kind was found to be of considerable assistance to the counsel and to the Judges.

Apart from the new approach the book is a change from the older text-books in that it includes the decisions of all the Australian superior Courts and has an analysis of the Australian State torts statutes which I have not seen done as well anywhere else. One statutory error I noticed. The action of defamation does in Tasmania survive death. Fleming to the contrary, p. 544 n. 12.

All aspects of the law of torts are fully covered. Perhaps, as I have said, in some places too fully. The book contains 762 pages of text, compared to the 511 pages, for example, of Street. I am sure that with careful editing in the next edition the book can be reduced in size. Some of the repetition on future tendencies and policy demands can and should be eliminated.

The printing is good and easy to read. The headings stand out well, but it would be an advantage if the cases discussed in the text were printed in black type. I found some misprints. "Rather than" for "rather that" (p. 197); "Scholl" for "Sholl" (p. 392 n. 31 and p. 431 n. 15); "Pultman" for "Pulman" (p. 587); "me" for "men" (p. 542); "resonable" for "reasonable" (p. 451); "Appointment" for "Apportionment" (p. 752).

R. W. Baker.

LEGISLATIVE EXECUTIVE AND JUDICIAL POWERS IN AUSTRALIA

By W. ANSTEY WYNES, LL.D.

Second Edition, 1956. The Law Book Co. of Australasia Pty. Ltd. pp. i-lxi, 1-768. £4-15-0.

This is an exceedingly complete work on the Australian Constitution, as indeed the size of the book would indicate. The title to the first edition did not include "and Judicial," but such is the nature of constitutional law that even in that work much thought and space was given to the nature of judicial power. But now that section of the text has been greatly expanded and dealt with in a separate chapter, whilst a further long chapter has been added on the content of Federal jurisdiction.

Despite its exhaustiveness many Australian teachers of law will not be completely happy with this book as a teaching tool, at least if not taken along with a work with a different approach such as Sawer's Cases. Not only is the book somewhat difficult to read for a student—its very completeness makes for this whilst at the same time it has not the same drawback for the practitioner who will look to it as a reference book to be dipped into on individual topics as cases arise—but its legalistic, logical-positivist approach, readily appreciated by lawyers of older schools of thought who were trained in more conservative law schools than those of today, is out of harmony with the methods and ideas of the present law schools (or most of them) who try to teach along the lines inherent in McClosky's thoughtful introduction to Essays in Constitutional Law published in the U.S.A. in 1957.

It is only fair to say that Dr. Wynes did not intend his work to be other than a "legal text book." This he makes clear in his preface: "It is essential to any proper appraisal of the Constitution and its working first to examine the law as it is." This being his purpose he has achieved it in a manner far more exhaustively and industriously than has been done by any predecessor in the field. No practitioner who is confronted with constitutional problems can afford to be without it. Nor can any law teacher who must, of course, whatever his method of teaching or whatever his mental approach to the subject, know the law as it is. But the book for the student remains to be written.

There is a thoroughly good Table of Cases, Additional Notes to bring the book as far as possible up to date as it went to print, two Appendices (the Australian Constitution and the Statute of Westminster Adoption Act 1942), and a List of the Principal Works Referred To.

R. W. Baker.

OUTLINE OF LAW IN AUSTRALIA

By JOHN BAALMAN, Barrister-at-Law

Second Edition, 1955. The Law Book Co. of Australasia Pty. Ltd. pp. 1-302. £1-5-0.

In his preface to the first edition of this work the author stated that although the subject of the book was elementary law it was not designed merely as a primer for law students. "It's main object," he wrote, "was to reach those members of the community who, without any intention of adopting law as a profession, regard some knowledge of the rules which regulate their daily conduct as a sheer cultural necessity." Two English books of a similar nature to that under review are Hood Phillips' "A First Book of English Law" and James' "Introduction to English Law." Both books, their prefaces state, are intended for readers about to embark on the study of the law as a career. Yet, all in all, there is very little difference between them and Baalman's. His book contains seven chapters, dealing with sources of the law, the administration of the law, personal relations, property, contracts, torts and criminal law. James has chapters on the nature, classification and sources of law, the administration of the law, first principles, personality, status and capacity, the law of the constitution, criminal law, the law of state responsibility, the law of contract, the law of torts, the law of property, trusts, the law of succession. And Hood Phillips has much the same. As there is so little difference in content, Australian universities which have an Elements of Law course or a course on Introduction to Legal Method could well use this bok instead of the English ones, especially as the work is based on the law of Australia.

Of Baalman's seven chapters I thought that on the Administration of the Law done best of all, particularly that part of it dealing with the Courts. There is a great deal of information given in easily understood, non-technical language. Also the chapter on Property is very well written. The author has put into simple words what is a very complex part of the

law. Not so well done was the author's exposition of the Law Merchant in chapter I. Even bearing in mind the obvious limitations of space in a work endeavouring to give a conspectus of the entire field of law, this account is too short to do other than confuse the student-beginner or the general reader. And does it achieve anything, in a book of this nature, to discuss what is law in terms of Bentham and Austin (p. 2)?

Isolated points: On page 4 the author writes that the common law is the heritage of a majority of the United States of America. So far as I know all but Louisiana base their law on the English common law. What will the general reader make of "the rules of procedure are the means by which substantive law is made adjective" (p. 54) and what of "fora" (p. 73) and "maxima" (p. 263)? What of "in bona fide" (p. 143)? Is it true to say that the separate entity of a corporation is a matter of form rather than of substance (p. 75)?

Corrections and additions: In dealing with compellability of witnesses, a reference could be added to Section 96 of the Tasmanian Evidence Act 1910, which, as well as the Victorian statute, gives a privilege to clergymen and medical men. Do not Australian Married Women's Property Acts give husbands, as well as wives, actions in tort for injury to spouses' property (p. 100)? The Commonwealth's power of compulsory acquisition is not "for public purposes" (p. 114), but "for any purpose in respect of which the Parliament has power to make laws" (Section 51 (xxxi) of the Constitution). A reference to the Victorian Wrongs (Damage by Aircraft) Act 1953 could be added to the text on p. 237. Libel and slander have been assimilated in Tasmania by the Defamation Act 1957, which also alters the law in respect of unintentional defamation (Baalman pp. 246-247).

The text is well set in an easily readable form and in the main there has been thorough proof-reading; occasional blemishes that I noticed are: "soicety" (p. 77); "where" for "whether" (p. 79); "its" for "his" (p. 80); words are missing at the bottom of p. 88; "qually" (p. 118); "the" for "to" (p. 267); "sentenences" (p. 283).

A good book and one that quite clearly succeeds in doing what the author set out to do —"to provide a conspectus of modern law."

R. W. Baker.

A HISTORY OF ENGLISH LAW, VOL. I

By SIR WILLIAM HOLDSWORTH, O.M., K.C., D.C.L., LL.D.

Seventh Edition, revised, under the general editorship of A. L. Goodhart, K.B.E., Q.C., D.C.L., LL.D., and H. G. Hanbury, D.C.L., with an Introductory Essay by S. B. Chrimes, M.A., Ph.D. 1956, Metheun & Co. Ltd. lii and (Introductory Essay) 77 and 650 and (Index and Appendix) 56. £2-5-0 sterling.

Sir William Holdsworth's *History of English Law* inevitably presents a considerable problem for a reviewer. Not only is the work one of the sources of English legal history, but the progress of its publication over the last half-century has virtually become part of legal history.

The volume under review is described as the seventh edition revised. It appears under the distinguished general editorship of Professors Goodhart and Hanbury, who write, in their Note to the edition, that the volume required supplementation and correction in two respects. First, those changes in the law which had occurred since the last edition (which appeared in 1938), and which had rendered some of Holdsworth's statements inaccurate, needed to be noted. Second, discoveries made since the last edition needed to be incorporated to bring the volume up to date. In this work of supplementation and correction there has been a division of labour between the general editors, who have noted the relevant changes in the law, and Professor Chrimes who, in his Introductory Essay, deals with recent historical discoveries and literature.

For the most part, unfortunately, this edition can only be described as very disappointing. Its most obvious inadequacy springs from the fact that the twelve pages of addenda and corrigenda which had accumulated by the sixth edition have been omitted. This is very hard to explain. Presumably the main reason for resorting to the rather cumbersome apparatus of an Introductory Essay and additional addenda and corrigenda is to preserve Holdsworth's text, but by omitting Holdsworth's own addenda and corrigenda, however, the reader is not presented with the text as Holdsworth left it. In many cases the omission of addenda and corrigenda would not be a vital matter, but it is of major significance in Holdsworth's case since almost all the major changes that he introduced after the third edition were introduced by this means. Admittedly the Notes to the fourth and sixth editions stated that changes had been introduced into the text of those editions, and Professor Plucknett has commented "changes of text are troublesome to make and if the author made them it must be because he considered them too important to leave to the addenda." (61 L.Q.R. at p. 229). It would appear that this view cannot be sustained. Collation of the various editions has revealed that no changes of any real significance have been introduced into the text since the third edition. The changes that have been introduced are, almost without exception, either slight changes in the wording, brief references to changes in the law which had occurred since the previous edition, or footnote references to recent literature. We have been able to discover only two textual changes which may be regarded as representing major alterations in the opinions expressed, both of which were introduced into the fourth edition. These are the views expressed on page 207 regarding the presence of the King in the Court of King's Bench, and the view expressed on page 273 regarding the duties of Judges of Assize to report on general matters.

Nevertheless the consequences of the omission of Holdsworth's addenda and corrigenda are mitigated by the fact that the publishers are making the omitted pages available to purchasers (and reviewers) of this volume.

The text and footnotes of this edition are substantially those of the sixth edition. There are a few changes in wording such as those on page

217, lines 9-10; page 327, lines 15-17; and page 580, line 15; a few additional footnote references such as those to Putnam, *Enforcement of the Statute of Labourers* on page 360; Thorne's edition of the *Praerogativa Regis* on page 473; and to Fifoot's *Lord Mansfield* on page 573, and a few textual additions referring to recent legislation such as the references to the Criminal Justice Act 1948 on page 213, the Justices of Peace Act 1949 on page 294, and the Statute of Westminster 1931 on page 525.

Even the work of noting these changes has not been performed with great care. The reference to the Administration of Justice Act 1928 on page 519 (which is printed as the "administration of Justice Act") has a footnote reference 7a for which there is no corresponding footnote. On page 567 a cross reference to volume xiii has been added to the first footnote which has led to the total disappearance of footnotes 2 and 3. Similarly, on page 576 the addition of a reference to Keir and Lawson, *Cases in Constitutional Law* has led to the disappearance of footnote 4. Despite the fact that the abolition of Grand Juries is noted both in the addenda supplied to this edition and in the text (on page 213), yet on page 321 we still read "just as at the present day the grand jury may present matters which they themselves have observed." Again on page 525 it is noted that, as a result of the Statute of Westminster, 1931, the Dominions may, and for the most part have, abolished appeals to the Judicial Committe of the Privy Council, yet on page 522 it is still written, "the only instance in which this right has been thus expressly taken away is the clause in the Act establishing the Australian Constitution."

The fifth edition contained an erratum slip inserted between pages 518-519 relating to page 518, line 20. This appears to have been omitted from both the sixth and the seventh editions without the necessary change having been introduced into the text.

One matter of which notice has not been taken relates to the trial of peers. On page 390 in footnote 7 it is stated that "the last instance of the trial of a peer by the House of Lords is that of Earl Russell for bigamy," whereas the last instance was in fact that of the trial of Lord de Clifford in 1936 for manslaughter.

There appear to have been but two isolated attempts to bring the references to the literature cited up to date. On page 578 the reference to Dicey, *Law of the Constitution* has been changed from the 7th to the 9th edition, and on page 357 the reference to Anson, *Parliament*, has changed from the 2nd to the 5th edition. All other references seem to remain unaltered. Thus the references to Anson, *Parliament*, which occur on pages 359, 379 and 392, remain references to the 2nd edition, whilst the reference to Anson, *The Crown*, on page 547, remains a reference to the 3rd edition. Anson on *Contract* is referred to by the 8th edition on page 547, although the current edition is the 20th, and Harris's *Criminal Law* is referred to in the 8th edition on page 293 although the current edition is the 19th.

The numerous references to Halsbury, *Laws of England*, appear still to be references to the first edition, and the same is true in the case of Pollock and Maitland, *History of English Law*, although fortunately in this

case the second edition retains the pagination of the first edition in the margin so that reference is not too difficult. Again Rashdell's *Mediaeval Universities* is referred to in its first edition, although a new substantially altered edition appeared in 1936, but again the new edition gives the pagination of the first. The most unsatisfactory aspect of this failure to revise the references arises in connection with the many references to Stubbs' *Select Charters*. The references given are to the sixth edition. The current edition, and the one most likely to be available to students, is the ninth edition, which was substantially altered by the learned editor, and as a result many of Holdsworth's references do not appear in the current edition.

In the third edition Holdsworth apologised (on page 3, footnote 1) that the cross references to other volumes of his history were by volume, book and chapter, rather than by volume and page. In subsequent editions most of these cross references have been altered to page references, but a number of the old style cross references still remain, as on pages 48, 81, 126, 159, 196, 320, 398, 430 and 567. It is surprising to find the cross references in page 560 in the seventh edition have reverted to the older style, although in the fifth and sixth editions they were in volume and page form.

The publishers state that the Lists of Statutes and Cases have been revised. Whilst it is true that a number of additions have been made to the List of Statutes, it unfortunately cannot be said that this has been done very carefully. Thus 4 Henry VII c. 13 appears in the List of Statutes as 3 Henry VII c. 13, whilst 35 Edward III cc. 1, 5, 6, 9-11 appears as 34 Edward III cc. 1, 5, 6, 9-11. Whilst an attempt has been made to include those statutes cited in Professor Chrimes's Introductory Essay there would appear to be a number of omissions. 1 Edward III stat. 2, cited on page 25*; 14 Edward II stat. 1 c. 5, and 31 Edward III stat. 1 c. 12, cited on page 41* are not included in the List of Statutes. In addition there are a substantial number of statutes cited in the Introductory Essay which are not there quoted by regnal year citation, and none of these appear to be included in the List of Statutes, as for example, the Statute *de Finibus* (1299), cited on page 46* and the Statute of *Praemunire* quoted on page 67.*

The List of Cases bears few marks of any very thorough revision. *Renouf v. A.-G. for Jersey*, a reference to which was added in the sixth edition, still does not appear in the List of Cases, nor is there any mention of the fact that *Skinner v. The East India Co.* is referred to by Professor Chrimes in his Introductory Essay. *Re South Lady Bertha Mining Co.* still appears in the List of Cases as *re South Lady Bertha Mincing Co.*

No account has been taken in this edition of the work that was put into the preparation of the Consolidated Index which appeared in 1931. That work contained a list of errata two of which related to the first volume but which still remain uncorrected. Further, in preparing that Index, references to Anonymous cases, which had not been listed in the individual volumes, were included in the List of Cases. The appropriate references have not been included in the List of Cases in this edition.

Even the addenda and corrigenda supplied to this edition have not been prepared with the same care with which Holdsworth drafted his own addenda and corrigenda. These were drafted carefullly so as to make their incorporation into the body of the text a purely mechanical matter, but the same cannot be said of these addenda and corrigenda which in some cases are merely references to recent legislation without much guide as to the manner of their incorporation. In some cases it is difficult to see why material has been left to the addenda and corrigenda rather than being incorporated in the footnotes. The additional reference for page 37 footnote 7 could easily have been added to the footnote without in any way disturbing the type, whilst that for page 406 footnote 2 could have been similarly inserted with little difficulty. The addenda and corrigenda contains an additional reference for a non-existent footnote 7 on page 405. Finally, it is a little difficult to see the significance of printing in the list of addenda and corrigenda a direction that the paragraph dealing with Trial by Peers should be transferred to page 379 under the heading "Obsolete Jurisdiction." This may be of significance as a printer's direction but it achieves little as far as the reader is concerned.

There are a number of misprints, most of them a legacy from the third edition. On page 60, footnote 7, the title of Adams' book acquires an unnecessary plural; on page 243, the seventh line is a reprint of the fifth line; on page 347, line 21 reads rather strangely, but since the passage in question has been reworded, it is impossible to say, simply from a comparison with earlier editions, what it should be; on the same page, in footnote 4, "Dctor" should of course be "Doctor," whilst on page 560, in the last line of footnote 8 "the" should be "they." On page 562, lines 18 and 19, "somtimes" should be "sometimes," whilst on page 593, third line from bottom should read "the old state (of) things." On page 608, last line, "draw" should be "drew," whilst on page 622, line 15, "couid" should be "could."

All these points are doubtless very trivial and they do not affect, in any way, the value of Holdsworth's text, but they do indicate that this edition has not been prepared with the care that a work of this importance and magnitude warrants.

Probably the most subsantial criticism that can be levelled at this edition is the fact that the alterations and additions to the text are now scattered in two sets of addenda and corrigenda, an Introductory Essay and the Consolidated Index. There is doubtless considerable force in the argument that the text should be left unaltered and that the pagination should remain the same, but it is surely only reasonable to expect that the necessary alterations should be collected in one place and dealt with in a uniform manner. It is particularly unfortunate that whilst Professor Chrimes's Essay contains references to the relevant passages of Holdsworth's text no cross reference has been given in the latter to Professor Chrimes's Essay. However valuable the Essay may be it is the text of Holdsworth that is of main significance, and there is no point in reading

through the 77 pages of the Essay, which have little meaning unless considered in relation to Holdsworth's text to which it is supplementary, and it is regrettable that Professor Chrimes does not discuss the relation of the modern work to the views expressed by Holdsworth. It would have been much more valuable, as a supplement to Holdsworth, had it discussed Holdsworth views in the light of the modern literature, rather than merely discussing the literature itself.

It is to be hoped that when the next edition is prepared greater care will be taken in dealing with the alterations, and it is suggested that when that time comes greater consideration should be given to the fact, which the general editors state in their Note, that the first volume of Holdsworth has always differed from the other volumes in that it provides a self-contained account of a single subject and is in common use as a student's text-book. A student should not be required to wade through the complex apparatus which now surrounds Holdsworth's first volume. Unless some such course is adopted it is difficult to see how this volume will retain its status "unsurpassed as a consultant of final resort."

G. W. Bartholomew.

CASES ON LAND LAW

By W. N. HARRISON, B.A., LL.M.

1958, The Law Book Co. of Australasia Pty. Ltd., XVI and 754 pp. £4-15-0.

The appearance of a Case Book dealing with Land Law immediately poses the question whether the subject of Real Property is capable of adaptation to the "case method" of teaching the law. Professor Harrison denies that his book is designed for any such purpose. However, the fact that there is now available in this subject a case book which treats of land law within the Australian framework must inevitably tempt the teachers of Real Property, especially in the smaller law schools, to adopt, if only experimentally, the "case method" of teaching. The advantages or disadvantages of such an approach are not appropriate for argument here; but is there any reason why the law of Real Property should be less susceptible to that method of teaching than any other subject?

The book is divided into twenty chapters, which deal with the various topics normally embraced under the heading of Real Property with one notable exception, the law of mortgages. On this topic there is included only one case, and that deals with the effect of the statutory foreclosure of a Torrens system mortgage. In his preface Professor Harrison says that he decided to exclude the subject of mortgages "when a tentative short list of the most important cases on mortgages showed that those were nearly all concerned with personalty," *Pearks v. Moseley*, however, is quoted at length, with the explanatory note at page 623 that "it is the leading case on remoteness in relation to class gifts, and is cited as such whether the property is realty or personalty."

Irrespective of the test of consistency and whatever the purpose of the book, the omission of mortgages from a book entitled "Cases on Land Law" is, to say the least, unfortunate.

Professor Harrison states as a major object of the work the saving of wear and tear on library copies of reports and the lessening of competition among students for the use of the reports available in libraries. Therefore, has has included "leading cases, which all students should read, rather than cases which raise problems and invite criticism." He does, however, also have in mind that the book should be used for class discussion purposes. Any comments on the value of the book, therefore, must bear this stated purpose in mind.

At page 9, the minority judgment in *Commonwealth v. New South Wales* is mentioned but no extracts from it are included. Since it is primarily on this case that Professor Harrison depends to illustrate the meaning of the term "land," it is difficult to justify his exclusion of the judgment of Higgins J. Both in order to save wear and tear on law libraries and to facilitate class discussion, the inclusion of that dissenting judgment seems eminently desirable.

Similarly at page 66 Professor Harrison poses a question re *Wake v. Hall* which cannot be answered accurately without recourse to the full judgments given in that case. Yet he quotes only extracts in his case book. It is also interesting to contrast the space devoted (in note form) at page 702 to the Privy Council decision in *Great West Loan Co. v. Friesen* and that taken up by extracts from *Wandsworth Board of Works v. United Telephone Co.* at page 9 *et seq.* The reason given on page 1 for the very inclusion of the latter case is "because of its higher authority as a Court of Appeal decision."

There seems to have been no guiding principle behind the decisions as to what should be included and what should be omitted. This applies not only to the size of extracts from particular cases nor the inclusion or omission of cases, but also to the amount of space devoted to particular topics.

Out of 749 pages of text, only 120 are devoted to the Torrens system. In view of the amount of case law to which this system has given birth and to the practical importance of the Torrens system in Australia, it is hard to explain such (relatively) sparing treatment. In his preface Professor Harrison himself says, "The prominence given to certain topics may seem eccentric, for example fixtures, rent, and covenants in leases. My justification is that these are topics of every day practical importance in which there have been a large number of decisions."

Freehold Estates are dealt with by means of decisions which exemplify the problems rather than by use of the leading cases, because, as the author says at page 117, "the classic text-books have had exceptional authority and influence" in this field "so that the law may properly be and usually is studied in them rather than in the cases. Furthermore, the leading cases, if studied *in extenso*, contain so much obsolete matter that they are unsuitable for the use of present-day students; while on the other hand a series of short extracts from them would be little more than a patchwork text-book."

This is not in conformity with his purpose as expressed in the preface. It is an approach which avoids rather than solves the problem and, as such, hardly that which the author of a case book can be commended for adopting.

Notes on the cases quoted are, on the whole, confined to references to supporting or contrary cases. Difficulties are pointed out but the author makes little or no attempt to insert his own comments or reconciliations of apparently conflicting decisions. Not that he is uncritical but he refuses at all times to criticize at length. This is in many ways an asset rather than a liability. However, at page 57, for example, he implies that *Hobson v. Gorringe* might be incorrectly decided and states that if correct, it substitutes an artificially imputed intention for the actual intention. Such a note would be far more valuable if it were expanded. Again, at page 127, there is a three-line note on *In re The Trustees of Holts' Hospital and Hague's Contract*. This note cites decisions for and against but does not quote from them, nor even comment on their accuracy, except to say that "In the absence of legislation . . . the question cannot be considered settled."

There is, however, much to commend the book. It gives the teacher of law and the student a tool which they have not previously possessed. Its faults when compared with its virtues pale into insignificance. Its usefulness for class discussion and the ready access to the cases which it gives to the student alone render it an essential for the teaching of Real Property. Yet it is so designed that it will not hamper the student in learning to ferret out for himself the pith of a decision. Its scope is extremely comprehensive and it raises some points which are not normally raised in a course on Real Property; on other points Professor Harrison's notes and problems throw a new, and often clearer, light. These problems, which he includes at the end of every chapter, raise some interesting questions and should make much easier the task of teaching what is often considered a rather dry subject.

P. G. Nash.

JURISPRUDENCE

By R. W. M. DIAS, M.A., LL.B. (Cantab.) and G. B. J. HUGHES, M.A. (Cantab.), LL.B. (Wales)

London: Butterworth & Co. Ltd., L and 529 pp.

In 1955 a new book, "Jurisprudence," by G. B. J. Hughes was published. Some short time after publication it was withdrawn by the publishers. Now we have in its place "Jurisprudence" by R. W. M. Dias and G. B. J. Hughes. The explanation of this rather curious turn of events is set forth in the foreword to the new work written by Professors Hamson, R. Y. Jennings and Radzinowicz. The reader may consider this statement for himself and it seems to this reviewer that no further comment on the reasons for the changes from Hughes to Dias and Hughes is necessary or relevant.

However, it is relevant to compare the structure and substance of Dias and Hughes with that of its predecessor. Although it is difficult to agree with the authors' claim that this is an entirely new work, much of the material has been re-arranged and substantial portions re-written. The deletion of certain parts of the earlier book, particularly the fourth section, entitled Law and Society, has added to the compactness and cohesive organisation of the work as a whole.

The traditional English classification of jurisprudential materials adopted in Hughes has been retained. The first part of the work deals with sources of law (pp. 27-189), the second with concepts of the law (pp. 193-346), and the third and final part (pp. 349-501) with legal theory and the philosophy of law under the strange title of Concept of Law.

The first two parts have been modified in the re-writing and the order of presentation of topics reorganised. These sections remain largely derivative, but as an exposition of other men's views provide an adequate and readable account well suited to the needs of those law students whose instructors are old-fashioned enough to persist in the view that jurisprudence consists of little more than an examination of the historical sources of law and the concepts of law, such as rights, duties, possession and ownership. The fact that the authors felt constrained to devote so much of their book to these topics confirms this reviewer's impression that the teaching of jurisprudence in England is still unduly dominated by the works of John Austin, Sir Henry Maine and their disciples.

The third part of the book is both the most stimulating and most original. Like the preceding two parts it is also largely derivative, but the authors here permit themselves greater freedom in criticism and in the expression of their own opinions. It is clear that it is this area of jurisprudence that lies closest to their own interests and the authors show a keen awareness of the need to ensure an adjustment of law to the rapid and complex changes of modern society. It is also particularly pleasing to see that the realism of the Scandinavian jurists such as Hagerstrom and Olivecrona receive much belated attention. These writers have been inexplicably ignored by contemporary writers for too long. The treatment of them in this volume may serve to direct the attention of others to the stimulating and rewarding contributions to the literature of jurisprudence that their expositions have made. It is difficult not to agree with the authors' appraisal of Olivecrona that "He has given us a thoroughly sane, commonsense approach to the highly abstract problems of legal philosophy" (p. 489).

The method of presentation adopted throughout the book is an inductive one. The authors state that it "is because the formation of ideas necessarily precedes their application that in this book the emphasis is laid on the inductive discipline . . . the basis of approach that has been adopted is the semantic analysis of meaning" (p. ix). Happily they go on to point out, however, that they have no illusions that semantics will furnish all the answers and they do not rigidly adhere to semantic

analysis. Any apprehensions the reader may have as to such approach are quickly dispelled by the readiness with which the authors are prepared to deviate from it.

The intractable nature or "meaning" of words is certainly an intellectual obstacle to the communication of ideas, and anything that helps to lessen such obstacles to understanding is to be welcomed. The present reviewer remains unconvinced that semantics will solve the perennial problems of jurisprudence, but also believes the authors' attempt has been worthwhile and does provide some new insights. The problems of jurisprudence certainly cannot be solved by assumptions that are contrary to the facts, or by pretending that problems do not exist simply because we are unable to solve them. It may be a criticism of the reviewer that he remains comforted by the belief that jurisprudence still can mean almost anything the reader wants it to mean.

This book is a welcome and useful addition to the all too few text-books on jurisprudence suitable to student needs. The directness and clarity of style and the comprehensive utilisation of English and American writings make it a valuable teaching aid. Although it does not stand up to comparison with such giants in the field as Stone's "Province and Function of Law" or Friedman's "Legal Theory," it is the best text-book of purely English origin to emerge from that country for a very long time and will achieve a secure place as a standard student text.

R. P. Roulston.

EVIDENCE

By RUPERT CROSS, M.A., B.C.L.
London: Butterworth & Co. Ltd., 1958, 1-496. £2-15-0.

The appearance of a new English text-book on the law of evidence is an event rare enough to arouse, of itself, enthusiasm in practitioner and student alike, and Mr. Cross has produced a volume on the subject which will be of great assistance and instruction to both. He has endeavoured, he says, to cater for the student by including more theoretical discussion than the practitioner usually requires, and for the practitioner by providing more case notes than the student can be expected to consult, and one might have feared a consequent lessening of value to each. However, it is not so. The book is clearly to be regarded as a supplement to the standard texts on evidence ("a middle place between . . . Stephen & Phipson") but it is a very thoroughly researched, scholarly work.

Many learned writers have mourned the lack of precision in most of the basic concepts of the law of evidence, and this is no doubt partly due to the haphazard formulation of principle necessarily brought about by the pragmatic nature of the subject. Over the centuries it has grown by the practical on-the-spot solutions Judges found to the problems raised by the use of the jury as an instrument of trial. In the main neither Judges nor text-book writers in England have greatly concerned themselves with analysis of the theory underlying the more important rules of evidence, with the result that there has been little agreement even upon

the meaning of basic terms like "relevance" and "admissibility." Some particular branches of the law of evidence, such as the hearsay rule, have received a good deal of attention from the theoretical point of view, but others, such as judicial notice, are only now beginning to receive the kind of intensive study which they received years ago from American writers such as E. M. Morgan, and of course Wigmore.

It is very stimulating, therefore, to find in this work a very thorough discussion of principle relating to all major topics. This is a trend begun by Dr. Nokes' admirable work "An Introduction to Evidence," and the fact that it is carried on so extensively in this volume is a definite sign of the times, because there is perhaps no subject in which more development has taken place in the last 40 years or so than evidence, and none in which further development in the future is more likely. To take one instance of this, the topic of similar facts as evidence in the criminal law has undergone a very distinct progression between the Privy Council's decision in *Makin v. A.G. of N.S.W.* (1894 A.C. 57) in 1893, and *Harris v. Director of Public Prosecutions* (1952 A.C. 694) in the House of Lords in 1952. In the process, literature on the subject in the first 25 years of this century has become distinctly dated, and certainly the end is not yet. One has only to compare the Privy Council's decision in *Noor Mahamed v.The King* in 1949 (1949 A.C. 182) (where, incidentally, Lord Du Parcq still makes use of Stephen's phrase "deemed to be irrelevant," which means, as Mr. Cross points out, nothing more than "inadmissable though relevant"), and the opinion of Viscount Simon in Harris' case, to realise the uncertainty which has still to be resolved.

There are other features of this work which are a departure from standard texts and which increase its value as an aid and supplement to them, and of these one should mention particularly the quite extensive use of Commonwealth authorities. Decisions of the High Court of Australia receive due prominence where the context requires, and as an example of this, *Watts v. Watts* ((1953) 89 C.L.R. 200) receives proper notice in the excellent chapter on the standard of proof in matrimonial causes.

The work has a distinctly academic flavour, and by some practitioners this may be thought a demerit from a practical point of view, but if the tendency of the Courts is, as is believed, to require from counsel an increasing amount of discussion of theoretical principle when really difficult points of evidentiary law arise, it can only be an advantage.

There is one matter which it is thought could have been dealt with in a more satisfactory way, and that is the arrangement of chapters. This reviewer found it difficult to discern the purpose or scheme the author had in mind in his arrangement, because there are eighteen separate chapters, without any grouping into sections or parts, and one cannot see, for instance, any clear connection between ch. 9, which relates to the Course of Evidence — examination-in-chief, cross-examination, etc. — ch. 10 on Privilege, and ch. 11 on Public Policy. This is not an unimportant defect, because it is extremely helpful in a text on this wide

ranging subject to draw together and connect the various chapters as much as possible. However, taking into account the size of the book, and the many excellent qualities of the subject matter, the criticism is certainly not a fatal one, and on the whole the work must be characterised as admirable.

F. M. Neasey.

BOOKS AND PUBLICATIONS RECEIVED

Key to Living. By Muriel Wrench. London: Rider and Co., 1957, 184 pp. (£1/0/9).

Not By Bread Alone. By Vladimir Dudintsev. London: Hutchinson and Co., 1957, 447 pp. (£1/2/6).

A Prisoner in Red Tibet. By Sidney Wignall. London: Hutchinson and Co., 1957, 264 pp. (£1/2/6).

Whispering Wind. By Syd. Kyle-Little. London: Hutchinson and Co. (£1/2/-).

Things Worth While. By Evelyn Cheeseman. London: Hutchinson and Co. (£1/6/-).

Mr. Five Percent. By Ralph Hewins. London: Hutchinson and Co., 1957. (£1/6/-).