

## BOOK REVIEWS

*Cases on the Conflict of Laws.* By R. H. GRAVESON. (Sweet & Maxwell Ltd., Stevens & Sons Ltd., London. 1949. xx and 659 pp. Our copy from Law Book Co. of Australasia Pty. Ltd., Sydney, Melbourne, and Brisbane. £A2 19s.).

It is not altogether easy to review a book received four years after its publication without being unfairly retrospective. Private international law is a subject which is developing so rapidly that there are already many important cases which need to be included in any volume. It must, however, be said that Professor Graveson's collection of cases is particularly well chosen, and that the editing of the judgments has been done with skill and decorum. Criticisms are mainly of a minor kind; for example, that the case of *Walpole v. Canadian Northern Railway* might perhaps have been treated more fully instead of being included as a footnote.

The collection is geared to Professor Graveson's own textbook on *The Conflict of Laws*, and since the arrangement and references have been adequately attended to, textbook and casebook go well together. It is hoped that Professor Graveson will now be able to publish a new volume of his *Cases* to accompany the second edition of *The Conflict of Laws*.

L.J.D.

*Leading Cases in the Law of Banking.* By LORD CHORLEY and P. E. SMART. (Sir Isaac Pitman & Sons Ltd., London. 1953. xxx and 329 pp. Our copy from the publishers. £2 5s.).

There are many kinds of case books for English and Australian lawyers, reflecting the diversity of view as to what a case book should or should not include, and how its material should be presented. *Leading Cases in the Law of Banking* is not a case book in the lawyer's sense, and since it has been prepared for the benefit of candidates for the Diploma Examination of the Institute of Bankers, there is no reason why it should be. The compilers have provided a summary of facts and decision, with a certain amount of direct quotation from the judgment. The case is then discussed at greater or lesser length in an appended note, and other relevant cases may be referred to. The result is that there is more explanatory matter than case reporting. This discussion is of course helpful and illuminating, but its inclusion means that the work partakes far more of the

character of a textbook than the title would indicate. The practice further of summarising the cases, with the addition of only occasional short extracts from the judgments, is really a use of the headnote technique, with the consequence that reference to the law reports may be necessary for a fuller comprehension.

The book however can be of considerable use and interest to lawyers who feel in need of a certain amount of instruction in the law of banking, though much of the contents—for instance, the sections on cheques and mortgages—will be familiar to them from other sources. One particular advantage is the inclusion of a few cases previously reported only in the *Journal of the Institute of Bankers*, or in *Legal Decisions affecting Bankers* (published by the Institute of Bankers). The compilers have also, very commendably, not been afraid to include a number of Privy Council decisions, though being careful to point out that these are not binding on English courts.

A minor blemish is the reference to the *Victorian Law Reports* on p. xxvi as the *Victoria Law Reports*. And a final comment is that though considerations of space understandably may have limited the number of cases reported, it is perhaps a matter for regret that it was not found possible to include the *Dollfus Mieg Case*, [1952] 1 All E.R. 572, which was concerned, *inter alia*, with a bank's position as bailee.

L.J.D.

*Governmental Liability*. By H. STREET, LL.M., Ph.D. (Cambridge University Press: London. 1953. 221 and (index) 2 pp. £1 5s. stg.).

This book is another volume in the series entitled Cambridge Studies in International and Comparative Law. It is a comparative study of governmental liability in the legal systems of England, the United States and France. There are references to other systems including those of some members of the British Commonwealth.

Chapter I is a brief but informative historical introduction. Chapters II, III and IV compare the present law of governmental liability in England, the United States and France in regard to tort, contract, expropriation, quasi-contract and trusts. Chapter V compares the remedies available against the State, and Chapters VI and VII compare the substantive and procedural limitations on the liability of the State in these countries.

The reviewer's special interest was in the chapter on tort liability. Professor Street gives a detailed analysis of both the Crown Proceed-

ings Act 1947 and the Federal Tort Claims Act 1946. Both Acts make use of the private law master-servant and vicarious liability concepts. This economy in analytical equipment may lead to functionally inappropriate results. Thus it may follow that the Crown is not liable for the tort of an officer committed in the course of a duty imposed upon him by law and in which he is required to exercise an independent judgment. It is so held in the Australian cases of *Enever v. Rex*, (1906) 3 C.L.R. 969, and *Field v. Nott*, (1939) 62 C.L.R. 660. But there is sound policy why the Crown should be liable—there is public interest that these officers should be independent in performing their duties but no public interest in making them solely liable for their torts. It is true that the English Act by section 2 (3) imposes liability generally on the Crown for torts committed by “an officer of the Crown” performing functions conferred or imposed on him by law, but the definition of “officer of the Crown” in section 2 (6) has the effect of excluding Crown liability for the acts of a police officer. The value of section 2 (3) is thus severely limited.

In France, on the other hand, as Professor Street shows, this economy in analytical equipment has not been practised. The *Conseil d'Etat* has built up over the years a distinct body of public law determining governmental liability in tort. Professor Street gives a brief account of the jurisdiction of the *Conseil d'Etat*. He then examines the distinction between *faute de service* for which the Crown is liable in the *Conseil d'Etat*, and *faute personnelle* for which the officer concerned may be sued in the civil court. But liability of the State in the *Conseil d'Etat* is not limited to occasions of fault. The *Conseil d'Etat* has developed a liability based on risk. It will incidentally interest the English lawyer to learn that the *Conseil d'Etat* can reserve the right to try a further action if the plaintiff suffers more damage later, that an award of damages may take the form of an annuity, and that an award can take account of changes in the value of money between the date of the accident and that of judgment.

Professor Street sees in the tendency of the *Conseil d'Etat* to base liability on risk a development which could well be adopted in Anglo-American systems. Eventually, he believes, we need “a new code of administrative liability by which public authorities are liable for pecuniary damage directly caused in the course of the execution of their functions, provided that the damage suffered by the citizen suing is an exceptional loss exceeding that of his fellow-citizens” (page 79). “Whether there is a tort by an official would be irrelevant

except to decide whether the public authority could recover from him a contribution" (page 79). But he does not favour adjudication of issues under this new code by an administrative tribunal—he considers this may well be left to the ordinary civil courts. A separate court for administrative liability requires a special court to resolve jurisdictional conflicts. And, he believes, there is too much uncertainty about the principles of liability in the *Conseil d'Etat* due to a denial of the binding force of precedent. He considers that courts in the English tradition are quite capable of interpreting the new law untrammelled by common law notions. The reviewer would here enter a mild dissent. There is probably a greater measure of principle and respect for precedent in the decisions of the *Conseil d'Etat* than the Anglo-American lawyer is commonly led to believe. And Professor Street's confidence in the English courts is at odds with the view he expressed earlier that "too often they rely mechanically on presumptions or interpret legislation so as to leave the old law as little changed as possible" (page 26).

English law does not offer a distinct category of government contracts. Here again there is a 'making-do' with the analytical equipment of private law. Professor Street shows how inappropriate are many of the private law rules when it is sought to apply them to government contracts. English law here contrasts with American and French law. In France any government contract which is *relatif à un service public* is subject to rules of public law.

The substantive limitations on the liability of the State discussed by Professor Street relate to the effect of statutes, the doctrine of estoppel, and limitation of actions. His conclusion is that these limitations are "inappropriate to the present public and executive concept of the Crown". He calls for reform "on the general principle that no Crown immunities are tolerable unless their retention can be affirmatively proved to be necessary in the public interest" (page 165).

The reviewer would recommend this book both as a valuable critical account of the English law in the field and as an important contribution to comparative studies.

R.W.P.

*An Introduction to Criminal Law.* By RUPERT CROSS, M.A., B.C.L., and P. ASTERLEY JONES, LL.B. (London. Butterworth ( Co. (Publishers) Ltd. 3rd edition, 1953. lvii and 377 and (index) 30 pages. £A1 18s. 6d.).

*Cases on Criminal Law.* By RUPERT CROSS, M.A., B.C.L., and P. ASTERLEY JONES, LL.B. (London. Butterworth & Co.

(Publishers) Ltd. 2nd edition, 1953. xxxi and 351 and (index) 20 pages. £A1 15s. 6d.).

The appearance of a third edition of the *Introduction* and a second edition of the *Cases* within five years of the original publication of these works is an indication of their deserved popularity. In preparing the new editions the authors have made a good many changes. In the *Introduction*, apart from a number of minor matters, the article on the definition of a crime has been rewritten, the chapter on criminal liability has been completely recast, the discussion of criminal attempts has been rewritten, and there have been major changes in the discussions of murder, manslaughter, and offences against property and possession. To the *Cases* the authors have added some forty-three new decisions; they have deleted the general notes which appeared in the first edition, and they have made some additions to the extracts from the judgments which originally appeared.

The general nature of the authors' approach to the many thorny problems of criminal law is discussed in an article earlier in this volume, where a comparison is made between their approach and that of Mr. J. W. C. Turner. This reviewer confesses to a preference for the views of the present authors, as being calculated to give the student a better idea of the criminal law as it is actually administered in the criminal courts today. It may be that Mr. Turner's arguments against certain leading decisions of recent years are correct, but it can hardly be doubted that the Court of Criminal Appeal is unlikely to diverge from its present path.

There will certainly be many more editions of these two texts, and a few suggestion may therefore perhaps be offered. The doctrine that there must be a reasonable proportion between the nature of provocation received and the retaliation offered, laid down in *Mancini v. Director of Public Prosecutions*, [1942] A.C. 1, might well receive fuller discussion. Some mention should surely be made of crimes of homosexuality and indecency, and the vagrancy offences could receive a much fuller treatment with advantage. In the chapters on criminal procedure, more could well be said concerning the pleas of *autrefois acquit* and *autrefois convict*, and the discussion of the objects of punishment could be improved. It is perhaps too much to ask that a short account be given of what is known concerning the causes of criminal behaviour.

To this reviewer the two chapters which form Part IV, on evidence in criminal cases, are the least satisfactory part of the book.

The articles on burden of proof and corroboration belong more appropriately to an account of criminal law and procedure than to a section dealing with evidence. The remainder of this part of the book is scrappy and unlikely to be of assistance to a student who is already acquainted with the law of evidence; to the student who is not so acquainted, it may well be misleading.

The excision of this part of the book would leave the authors with room to give more attention to some of the offences which they are at present compelled to omit, and to some of the details of criminal procedure. It would also be useful for future editions of the book to contain a short account of the classic texts on criminal law—Coke, Hale, Hawkins, Foster, etc. The views of these ancient writers have played a great part in moulding our criminal law into its present shape, and the student should learn something about them and where they are to be found.

Any discussion of the *Cases* at once raises the question; what is the purpose of a book of cases? This book is clearly not intended as a teaching tool, to the exclusion of a textbook. The authors intend it to be used as a companion to the *Introduction*, and perhaps to some other texts. It may accordingly be suggested that they could cut down the number of decisions included, and give the reports of some of the leading cases in their entirety. Furthermore, since the object of reading a case is to find out what the judges said, rather than rely on the views of someone else as to what they said, it would be better to omit the headnote summaries of the point decided and to give the facts in the words of the judges themselves wherever possible.

These are, however, minor criticisms, and this reviewer is pleased to be able to add his voice to the chorus of welcome which has greeted these new editions of two excellent works.

P.B.

*The Construction of Deeds and Statutes.* By Sir CHARLES E. ODGERS, M.A., B.C.L., Barrister-at-Law, late Puisne Judge of the High Court of Judicature at Madras. (Sweet & Maxwell Limited: London. 3rd edition, 1952. xxvi and 331 and (index) 30 pages. £1 10s. stg. [Our copy from The Law Book Co. of Australasia Pty. Ltd. £A2 2s.]).

In preparing this new edition of a students' text, the author has taken the opportunity to correct errors which had crept into the last edition, to clarify doubtful expressions, and to expand certain

important topics. He has added a short section on rectification of documents, and has rewritten the section on delegated legislation. The text has been brought up to date, and the setting of the book generally improved.

The construction of documents is a difficult topic to deal with. The main complaint which can be levelled at the author's handling of it is that he perhaps makes it appear too easy, and thereby conveys a misleading impression to the student who approaches it for the first time. The two main lines of approach which may be adopted by a court of construction—acceptance of the meaning of the words used, and the search for the meaning of the framer of the document—are adequately dealt with, but there is insufficient stress on the fact that these two approaches are irreconcilable in practice. The student ought surely to be warned that the two roads usually lead to different solutions, and that which road will be chosen will depend largely on the justice of the case and the predilections of the judge. If a fuller account were given of such cases as *Perrin v. Morgan*, [1943] A.C. 399, *Hickman v. Peacey*, [1945] A.C. 304, and *Magor and St. Mellons R.D.C. v. Newport Corporation*, [1951] 2 The Times L.R. 935, with particular attention to the views of both the majority and the minority and (in the latter case) of Denning L.J. in the Court of Appeal, this point would clearly appear.

This reviewer agrees with the author in his refusal to include a section specifically dealing with the interpretation of wills, and he would add the suggestion that the section on the individual parts of a deed is already too long. It contains much material that is applicable largely to conveyancing transactions only. It also contains discussions of *falsa demonstratio* and *eiusdem generis*, which would be better dealt with among general rules of interpretation or miscellaneous rules. Despite the author's desire to keep the book within bounds, there is also need for the inclusion of a short account of the bearing of the study of semantics on interpretation, and of the views of Hawkins and Wigmore on the theory of legal interpretation.

This book is an excellent introduction to a difficult subject, and the appearance of a new edition in an improved setting and cloth covers is to be warmly welcomed. It is to be hoped that the book will continue to have a long and useful life.

P.B.

*Justice in Magistrates' Courts.* By FRANK J. POWELL, of the Middle Temple, Metropolitan Stipendiary Magistrate. (Sir Isaac

Pitman & Sons Ltd.: London. 1951. viii and 206 and (index) 6 pp. £A1 4s.).

This is a difficult book to review. It comes to the reader with an introduction from Mr. Justice Cassels, who recommends it to all justices of the peace and to members of the public who are interested in the subject. The learned judge commends the author (a friend of some 40 years' standing) to the newly-appointed justice of the peace as a *Friend Who Knows*. The book will guide this hypothetical reader along the right lines; it will tell him a great deal that he does not know. It is a valuable, helpful, and timely contribution.

It is, of course, notorious that those who contribute to legal reviews do not always agree with the opinions of Her Majesty's Judges; and accordingly this reviewer has felt it his bounden duty not to accept the learned judge's opinion without reserve, but to read the book carefully and to form his own views on it. In carrying out this task, he has borne in mind the author's statement of his aims—to attempt to state in plain language the main principles of practice, evidence, and procedure in magistrates' courts, to call attention to some of the problems which arise, to the provisions made by the State for the treatment of persons who are brought before the courts, and, in the last chapter, to consider how "The Church"—meaning by that expression churches of all denominations—might play an increasing part in the fight against crime and juvenile delinquency.

To encompass such a wide range of topics within a little over 200 pages calls for selection and rigid compression, accompanied by statements of principle as broad as may be consistent with accuracy. Mr. Powell unfortunately does not appear to have realised this. He is certainly selective in his topics; sexual crimes and immorality, which surely are encountered often enough in the magistrates' courts, receive no mention, nor is there any indication of the difficult problems which may arise in dealing with charges of larceny and kindred offences.

There is, however, a great deal of unnecessary material in the book. The author has included pages of statistics of charges coming before the courts, though for what purpose does not clearly appear. Perhaps the object is to reinforce his argument that the volume of crime at the present day has reached serious proportions. If so, a reference to the source of the statistics would surely have been sufficient. Again, on pages 56 and 57 we are given a long extract from the Report of the Magistrates' Association for the year 1948/49,



concerning the administration of legal aid. Inasmuch as the views set out in this extract were not accepted by the "Powers that be" this passage might well have been omitted. The book is full of superfluous material of this kind.

The result is that when dealing with some topics of the greatest importance the author has left himself insufficient room to manoeuvre. He then gives short summaries of the relevant statute law, without comment or explanation, and leaves his hypothetical lay reader to struggle with the somewhat involved language of the statutes concerned. Even the two best chapters in the book—dealing with the need for acting judicially and the proper relations of the bench and the police—are marred by discursive irrelevancies.

What is the proper means of dealing with a convicted criminal, adult or juvenile, is a question which can give rise to much controversy. The author devotes a good deal of space to this matter. He is doubtful of the value of reports from psychiatrists and psychologists, though he does not whole-heartedly condemn them. It may be doubted, however, whether he fully understands the nature of such evidence, for he defines a psychiatrist as "a doctor who has specialised in psychology" (page 124). While sympathising with the need for reforming criminals if possible, he believes that punishment should be deterrent, except that it should contain some element of retribution. This latter element appears to be confused with revenge, although moral philosophers would not agree. This leads Mr. Powell to suggest that the punishment should fit the crime, and that whipping should be inflicted in a gross case of brutality. The statement on page 200, that the only element of punishment in imprisonment today is deprivation of liberty and separation from relatives or friends, argues an insufficient acquaintance with the conditions obtaining inside prisons.

The author's outlook for the future is somewhat pessimistic. Modern living conditions—betting, the cinema, the refusal of many women to recognise that their place is in the home, lack of discipline in schools, lack of religion, excessive emphasis on pleasure—all these contribute to the increasing volume of crime. It may be doubted whether there is likely to be any reversal of these trends in the near future. But, after all, we can hardly expect to succeed in repressing crime, if the author's statement on page 112, that crime is largely due to the universal affliction of "original sin", is true. Our only hope seems to be to await a return of religion and the old gospel of rewards and punishments, with its accompaniment of the

notion of Hell, the prospect of punishment and the emotion of fear (pages 184-5).

P.B.

## PUBLICATIONS RECEIVED

(Inclusion in this list neither guarantees nor precludes subsequent review)

*Rating Valuation Practice.* By PHILIP R. BEAN, F.R.I.C.S., F.A.I., F.R.V.A., and ARTHUR LOCKWOOD, M.B.E., F.R.I.C.S., F.A.I., F.R.V.A. (Stevens & Sons, Ltd.: London. 1952. xv and 357 and (index) 8 pp. Our copy from Law Book Co. of Australasia Pty. Ltd.: Sydney, Melbourne and Brisbane. £A2 9s. 6d.).

*The Law of Succession Testate and Intestate.* 3rd edition, by Sir DAVID HUGHES PARRY, M.A., LL.D., D.C.L. (Sweet & Maxwell Ltd.: London. 1953. xxviii and 321 and (index) 26 pp. £A3 2s.).

*The Law Relating to the Architect.* By E. J. RIMMER, B.Sc., M.Eng., A.M.I.C.E. (Stevens & Sons Ltd.: London. 1952. xv and 238 and (index) 6 pp. Our copy from Law Book Co. of Australasia Pty. Ltd.: Sydney, Melbourne, and Brisbane. £A2 9s. 6d.).

*Effective Legal Writing.* By FRANK E. COOPER. (The Bobbs-Merrill Company, Inc.: Indianapolis. 1953. x and 304 and (index) 9 pp.)

*A Treatise on Labor Law.* By MORRIS D. FORKOSCH. (The Bobbs-Merrill Company, Inc.: Indianapolis. 1953. xiv and 1168 and (index) 29 pp.)

*Principles of the Law of Contracts.* By GROVER C. GRISMORE. (The Bobbs-Merrill Company, Inc.: Indianapolis. 1947. lxiii and 294 and (index) 14 pp.)

*Theft, Law and Society.* 2nd edition, by JEROME HALL. (The Bobbs-Merrill Company, Inc.: Indianapolis. 1952. xix and 367 and (index) 28 pp.)

*Living Law of Democratic Society.* By JEROME HALL. (The Bobbs-Merrill Company Inc.: Indianapolis. 1949. 146 pp.)

*A First Book on Anglo-American Law.* 2nd edition, by CHARLES HERMAN KINNANE. (The Bobbs-Merrill Company, Inc.: Indianapolis. 1952. xvi and 693 and (index) 102 pp.)

*The Law of Homicide.* By ROY MORELAND. (The Bobbs-Merrill Company, Inc.: Indianapolis. 1952. viii and 314 and (index) 8 pp.)

*Jurisprudence — Its American Prophets.* By HAROLD GILL REUSCHLEIN. (The Bobbs-Merrill Company, Inc.: Indianapolis. 1951. xvii and 480 and (index) 47 pp.)

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