

AN INTRODUCTION TO EVIDENCE. Fourth Edition. By G. D. Nokes, LL.D. London. Sweet & Maxwell, 1967. xlvi and 535 (including index). New Zealand price \$10.50 (hard cover), \$5.95 (paperback).

The first edition of this work was published in 1952 and it was immediately hailed as an outstanding exposition of the Law of Evidence. The mere fact that, after only fifteen years, it now appears in its fourth edition is ample testimony that it continues to fulfil its original promise. This edition has, to some extent, been prompted by recent developments in what has become a quickly moving branch of the law. As Professor Nokes himself observes, there have been in the region of 400 significant decisions and 30 relevant statutes during the past five years. Yet this edition is only eight pages longer than its predecessor. This in itself is a tribute to the author's economical scholarship and it is a matter of pleasure to this reader, at least, that Professor Nokes has not yielded to what must have been a pressing temptation to prune the historical treatment which is such a feature of the earlier editions, because it is only through an understanding of the way in which the Law of Evidence has evolved that one can understand many of its present features. One may add that the fact that this is an English textbook in no way lessens its value for New Zealand readers. In this branch of the law the differences between the two countries are not yet so significant that English experience and English decisions are irrelevant to New Zealand conditions.

The outstanding characteristic of this book is perhaps its singular evenness of quality. This makes the selection of any one part or chapter for comment difficult and invidious. However, this reader has always considered that Professor Nokes's examination of the concepts of relevance and admissibility in Chapter 5 remains unequalled by any other English writer. He continues to resist Professor Cross's thesis that only facts relevant to the facts in issue are admissible in evidence in a court of law and his comment that Professor Cross "strains the meaning of 'relevant' to breaking point" seems unanswerable. As Professor Nokes points out, it is extremely difficult to see how circumstances which constitute a condition precedent to the admissibility of confessions or dying declarations can possibly have any relevance to a fact in issue or even a fact which is relevant to a fact in issue.

The division of topics and the order in which they are treated must, to a very large extent, depend on personal preference and it may be that there is more scope for differences of preference in the Law of Evidence than in many other legal subjects. Nevertheless one wonders if the discussion of *res gestae* which is included in the chapter on relevance might not have been postponed with advantage to the parts of the text where hearsay is examined in detail. Statements which accompany and explain the *res gestae* form quite the most important aspect of this topic and it seems fruitless to risk perpetuating the myth that such statements do not constitute an exception to the hearsay principle. It is true that Professor Nokes recognises that in many cases these statements are hearsay. However, it is submitted that his exposition would be clearer and more beneficial if it were more directly related to the hearsay principle. It is seldom in the course of this book that one misses a relevant decision but *R. v. Buckley* (1873) 13 Cox C.C. 293, which is mentioned only in relation to declarations by deceased persons in the

course of duty, might well have been contracted with *R. v. Thomson* [1912] 3 K.B. 19, itself a decision which merits more comment.

In the same chapter, one suspects that Professor Nokes is unduly complacent about the purpose for which complaints in sexual cases are admissible. He is content to repeat the traditional formulation that such complaints are admissible, not in order to establish the truth of their contents, but rather to show the consistency of the complainant's conduct or to negative consent where consent is in issue. This rationalisation which is of course based on the cases has always troubled the reviewer. The distinction between establishing the truth of the contents of a complaint and showing the consistency of the complainant's conduct seems to be unduly fine. Surely it would be preferable to recognise this and admit that once again we are in the presence of a tacit breach of the hearsay principle.

The foregoing comments may readily seem to be carping criticism but they are not so intended. They do, however, underline a significant feature about the method employed by Professor Nokes. His book is an introduction to the subject for students. Its terms of reference are the traditional framework within which this subject has been traditionally taught. It is essentially expository rather than critical. This is a pity because the Law of Evidence is at the present time being subjected to close analysis in many countries and the deep knowledge of this subject which Professor Nokes so obviously has would provide an admirable basis for a critical and reasoned examination by him of the deficiencies of the present law and the now numerous proposals for its reform. One would, for example, like to know his views about the various proposals currently being canvassed for reform of the hearsay rule. Does he think that the present rule is satisfactory or does he agree with those reformers who regard much of it as archaic deadwood which ought to be pruned away? Again, what does he think about the Rule in *Hollington v. Hewthorne*? Should it be retained, or modified or swept away? These are weighty questions and it would be immensely stimulating to see the impact of Professor Nokes's deep knowledge and wide experience upon them.

R. A. Caldwell,
Senior Lecturer in Law,
University of Canterbury.

THE LAW OF SALE OF GOODS IN AUSTRALIA AND NEW ZEALAND, by K. C. T. Sutton, B.A., LL.M.(N.Z.), Ph.D.(Melb). Sydney. The Law Book Company Ltd., 1967, xlvi and 405 pp. (including appendix and index). New Zealand price \$14.35.

There is a wealth of Australasian authority on the law relating to sale of goods. Readers of English text books might be excused for thinking that only about three cases, *McRae v. Commonwealth Disposals Commission*, *Taylor v. Combined Buyers* and *Riddiford v. Warren* are really deserving of attention. Professor Sutton demonstrates that this is not so; a rich source is tapped with a vengeance. He does not, and could not, ignore English authority, but a fair proportion of the approximately 1,600 cases he cites are from this part of the world—and rightly so!