

REVIEWS AND NOTICES

Evidence in Criminal Cases—Briefs on Evidence—Canada Evidence Act. By A. E. POPPLE. Toronto: The Carswell Company Limited. 1946. Pp. xxv, 363. (\$7.75)

After examining this book carefully I can hazard the opinion that it is a good handbook for any person who might have anything to do with the practice of criminal law. The only possible criticism I might make of it is that, although it is not a large volume, there is a certain amount of repetition in its various sections.

The book is part digest and part text book, and is divided in a somewhat unusual way. There are two sections, of about 50 pages each, dealing with questions that arise daily in criminal practice and bringing the authorities down to the last moment. Between these two sections are about 80 pages of what might be called an index to the various problems that constantly arise, giving the principal law available on these subjects, supported by the relevant cases. There is also a sort of supplement at the back of the book, covering all branches of the law of evidence, from producing documents down to wrongful admission of evidence, and discussing fully the various decisions affecting such matters, which I think will be very helpful to a practitioner.

In the text-book section I was struck by the clarity with which the author treats such subjects as the question of similar acts, accomplices, identification, insanity, joint trials, reasonable doubt, the question of cross-examination of the accused, dying declarations and the functions of the judge and the jury at a criminal trial. Mr. Popple has an extensive knowledge of his subject and is evidently a scholar of no little merit in the general field of criminal law; within a matter of some 300 pages he has dealt with all the questions that might be expected to be met in the ordinary course of practice, well indexed, and approaching the various phases of criminal law from different angles.

This handbook does not follow the Criminal Code in its method of treatment, although it frequently refers to sections of the Code and the general field seems to have been very well covered. Crankshaw and Tremear have now become not only reference books but almost libraries in themselves; in looking up a case in them one may be confronted by pages of fine print and a countless number of authorities, and in the end any person, no matter how experienced, may be left somewhat confused. Mr. Popple has approached this difficulty in a rather unique manner and from several angles.

Owing to its unusual arrangement it might be as well to read the book through first in order to understand how a subject should be approached. In general the author has taken the last cases as his starting point, although all the standard cases are referred to and such references are given as may be required to clarify a point.

The writer has not had the pleasure of meeting Mr. Popple personally, but he has had the opportunity of looking over his earlier books in connection with criminal practice and his latest book seems to be much the best.

On the whole the book is a very satisfactory one and should be in the library of every lawyer who has any practice trenching upon the criminal

field. There is a particular need for a work of this sort at the present time when the Reports are coming in in such volume that even a man accustomed to dealing with criminal law is somewhat at a loss to find the last case on any point.

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The Province and Function of Law: Law as Logic, Justice and Social Control: A Study in Jurisprudence. By JULIUS STONE, Challis Professor of Jurisprudence and International Law, University of Sydney. Sydney: Associated General Publications Pty. Ltd. Toronto: The Carswell Company Ltd. 1946. Pp. lxiv, 918. (\$15.00)

The titles and sub-titles of this engrossing work by Professor Stone barely suggest its vast range and scope. In our April number an advance section of the book was noticed—*Recent Trends in English Precedent*—and the complete work now at hand more than justifies its promise. It is one that every lawyer should read, in whole or in part, if he would scan the far horizons, the trends and cosmic evolution of our civilized systems of law.

"The English-speaking world" says the author "has moved uneasily into its second century of the teaching of jurisprudence". From which one may conclude that old and traditional concepts of the method of approach to the subject have been questioned and in a degree found wanting. For the study of jurisprudence is not an examination of the laws and judicial decisions of any one country or system, nor of laws and decisions *per se* and at large; rather is it a search for the inevitable principles of justice, the reason for law.

"Jurisprudence", said Grotius in the opening sentences of his classical *Jurisprudence of Holland*, "is the art of living according to Justice. Justice is a virtuous disposition of the will to do that which is just." A thousand years earlier, Ulpian defined it as "the knowledge of things human and divine, the science of the just and unjust"—in a word, a science, a philosophy, "a science of those legal principles which exist independently of the institutions of any particular country", as T. E. Holland remarks in his *Elements of Jurisprudence*.

One feels that Ulpian and Grotius were thinking in terms of law in its relation to human purposes, and not as a system of cold logic operating with machine-like precision. This concept of law as logic characterized the teaching of Austin and is still influential; it reflected the buoyant, materialistic, *laissez-faire*, highly industrialized nineteenth century, which was less inclined to search out the ultimate justice of the law, than interested that laws should be few in order that liberty be not restrained, and that they should be literally applied as the logic-chopping profession might forensically indicate, let the chips fly as they might.

The last few years have witnessed a mass revolt against this concept, as wars and strikes and disregard for law would suggest. Law is not necessarily just because for the moment it appears as the active text, nor because as such it is intended to apply equally to all men within its purview. The quiet voices of Ulpian and Grotius are beginning to be heard again. And Professor Stone brings together here in review all the theories and opinions of past centuries, only to emphasize the emerging, during the present century, of a new but necessary concept of the meaning of law in our changed and rapidly evolving age. In a few words he presents his general thesis:

"Anglo-American juristic interests have been largely concentrated, in the century since Austin, on the logic of the law, on the effort to view the precepts of the legal system in whole or in part as a logically self-consistent system. Increasingly, however, the attention of a restless world is being directed towards two other questions. One of these is the question of justice. What are the ideals to which the legal order ought to conform?—the central question of the theory of justice. The other question concerns law as a social reality. It inquires concerning the actual effects of the law upon men's attitudes and behaviour, and the effects of these latter upon the law. This brief series of questions sets the boundaries of the present work."

That these problems have been and are being searchingly considered is indicated by the massive lists of authorities, books and articles gathered in the foot-notes, most of them within our own century, and many of them within the last twenty years. The prodigious learning so deftly and clearly summarized in the text evokes a reader's wonder and humility. Take the chapter on Natural Law. In twenty-four pages the evolution of the meaning and force of natural law is traced from its beginnings in Greek thought, through the Roman law, the Reformation, the birth of international law, modern European legal growth, eighteenth-century revolutionary thought, the impact on modern positive law and English equity, its operation in the social process in our own times. One closes such a chapter with a sense of satisfaction, for one continuous stream of human endeavour has been wonderfully illuminated. The grand divisions of the book, Law and Logic, Law and Justice, Law and Society, subdivided into chapters and sections, are a complete review and critical evaluation of all that has been said and thought upon the relation of law to man.

And that is the ancient and the present problem—of deciding how little law is needed when there is "spontaneous harmony in men's relations", and how much, and with what compulsion, "when harmony (or rather adjustment) must be artificially introduced. Those, it has been said, who overemphasize planning will become dictatorial; those who emphasize the natural harmonies in society become apostles of *laissez-faire*."

The question will solve itself if and when the planet is depopulated. Meanwhile, Professor Stone's splendid book, of which this reviewer wishes space would permit a more ample notice, enables us better to face the problem as it presents itself in our generation—of bringing harmony among all men, by doing justice, through the disciplines of law.

WALTER S. JOHNSON

The Trial of German Major War Criminals: Proceedings of the International Military Tribunal Sitting at Nuremberg, Germany. Part 1: 20th November, 1945, to 1st December, 1945. London: His Majesty's Stationery Office. 1946. Pp. xi, 327. (5s. 0d. net)

The Nuremberg trial is over and the Nazi war lords who were sentenced to death have been executed. Disputes over the proceedings will, however, continue for a long time. Lawyers will argue as to their legality and students of statecraft as to their wisdom. But there are few who will deny that the trial makes history and, on a reading of the evidence, that it has rid the world of a band of evil men.

The accused were indicted for crimes against peace, war crimes, crimes against humanity, and as participants in a common plan or conspiracy to commit these crimes. Part 1 of the Proceedings, taken from the official transcript and covering the period from November 20th, 1945, to December 1st, 1945, reproduces the indictment, Mr. Justice Jackson's review of the indictment and of the Charter of the Tribunal and their legal foundations, and the first part of the case under Count I of the indictment charging a common plan or conspiracy.

The highlight of this part of the Proceedings is the opening of the case for the prosecution by Mr. Justice Jackson. It is a masterly exposition of the facts of the Nazi conspiracy against the world, of the Nazi philosophy and policy and conduct in peace and in war, in their national and international aspects, as fully proved at the trial, and of the legal concepts of the Charter under which the German leaders were tried. It should be read by all students of history, of law and of politics.

Critics who do not deny the evidence establishing that Hermann Goering et al plotted war and were responsible for war crimes and crimes against humanity of a most bestial nature, argue, nevertheless, that these do not constitute crimes in international law; that the declaration of law in the Charter cannot make them such crimes; that the law of the Charter was, in any event, *ex post facto*; and, therefore, that the entire proceedings were without legal validity. Mr. Justice Jackson's remarks on this point are as follows:

"It is true, of course, that we have no judicial precedent for the Charter. But International Law is more than a scholarly collection of abstract and immutable principles. It is an outgrowth of treaties and agreements between nations and of accepted customs. Yet every custom has its origin in some single act, and every agreement has to be initiated by the action of some State. Unless we are prepared to abandon every principle of growth for International Law, we cannot deny that our own day has the right to institute customs and to conclude agreements that will themselves become sources of a newer and strengthened International Law. International Law is not capable of development by the normal processes of legislation, for there is no continuing international legislative authority. Innovations and revisions in International Law are brought about by the action of governments such as those I have cited, designed to meet a change in circumstances. It grows, as did the Common Law, through decisions reached from time to time in adapting settled principles to new situations. The fact is that when the

law evolves by the case method, as did the Common Law and as International Law must do if it is to advance at all, it advances at the expense of those who wrongly guessed the law and learned too late their error. The law, so far as International Law can be decreed, had been clearly pronounced when these acts took place. Hence we are not disturbed by the lack of judicial precedent for the inquiry it is proposed to conduct."

Apart from the criticism of the legality of the Nuremberg trial, it is submitted by critics that it will not prove a deterrent to future aggressors and that, if the tables are turned, a future Hitler may condemn his defeated enemies on a similar basis. But the decision of the Tribunal must not be considered in isolation. The Charter is a part of the general effort to maintain peace. In pointing a way to juridical action against the individuals responsible for wars of aggression it complements the United Nations Charter which provides for political and military action against aggressor nations. The effectiveness of the precedent set at Nuremberg is, in fact, dependent upon the degree of success that will be attained by the new international organization for peace.

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The Trial of William Joyce. Edited by J. W. HALL. London: William Hodge and Company, Limited. 1946. Pp. xii, 312. (15s.)

The attraction this book holds for the reader depends more on the skill and industry with which the editor chose his opening quotation, prepared his Preface and his Introduction and selected the material for some of his Appendices than on the formal record which it contains of the proceedings in the Central Criminal Court, the Court of Criminal Appeal and the House of Lords.

It was a trial that can well claim a place in the Notable British Trials Series and yet, if it were divorced from its spectacular setting and were left to rely on its own events, it would be uninteresting except to a very limited number.

Many factors contributed to make this a notable trial: the despicable crime of which Joyce was guilty—high treason; the effrontery with which it was committed by the novel means of broadcasting to the subjects of our Lord the King propaganda on behalf of the enemies of our Lord the King; the nickname by which the British people sought to dismiss Joyce as a joke and yet to express their execration of his treacherous conduct and to counteract the alarm and despondency he tried to cause; and the general British attitude to Joyce's broadcasts, which the editor sums up in the words: "If our people ever catch Lord Haw-Haw, he'll 'get it in the neck'."

Even the way in which "our people" did catch him adds to the appeal of the story. The circumstances that led to his apprehension were probably fortuitous. He was caught in a wood in Germany somewhere near the Danish frontier by two British officers who were gathering wood to make

a fire. The accused, who was walking in the same woods, spoke to them. They recognized him, shot at him, wounded him and captured him.

Further zest is added by the vivid contrast between the high ideals Joyce expressed when he commenced his career and the crime to which he stooped before he ended it. On August 9th, 1922, he wrote to the University of London Military Education Committee: "I am in no way connected with the United States of America, against which, as against all other nations, I am prepared to draw the sword in British interests. As a young man of pure British descent, some of whose forefathers have held high position in the British army, I have always been desirous of devoting what little capability and energy I possess to the country which I love so dearly." Thus he wrote when he applied for enrolment in the University of London O.T.C. shortly after reaching the age of sixteen. By July 2nd, 1940, he had entered the German Broadcasting Service, had traitorously adhered to, aided and comforted the King's enemies and had committed high treason. In September 1945 he was on trial at the Old Bailey and seeking to prove that he always had been an American citizen.

The Introduction is more than successful in its presentation of these and other notable features of the case. It gives a well-ordered history of Joyce's ancestry, life and career, discusses the public reaction to his broadcasts, sketches the events of the criminal proceedings and explains the law involved. At times it digresses—to criticize the present system of verifying passport applications or to comment on the value of the formal inquests held after executions. It narrates, outlines, explains and comments, and it does so in a most diverting manner. When the reader has finished the Introduction he has been skilfully prepared for the reading of the formal record and, furthermore, he has been entertained and delighted.

After reading the Introduction the record of the trial seems uneventful. It is lacking in the brilliant cross-examination, the obviously devastating question and the flights of oratory that are supposed to mark and make a notable trial. The issue as to whether the accused had broadcast propaganda on behalf of the German Realm received very little attention; the Crown's evidence on the point was very brief; the defence made almost no effort to contest the issue. The great feature of the trial was the gradual marshalling by the defence of evidence which proved that, contrary to the original belief, Joyce always had been an American citizen. The evidence of the accused's American nationality finally became so overwhelming that the Attorney-General (at p. 133) intimated that he was not going to invite the jury to say that he was a British subject. The only major question that then remained open was as to the effect of the British passport which Joyce had obtained and which was still in force when he commenced broadcasting.

The result is that from page 133 until the conclusion of the proceedings in the House of Lords, at p. 274, the book is little else than a series of arguments and judgments as to the law relating to treason and allegiance with particular reference to the effect of a passport. This part of the proceedings is rather lacking in general interest and even the most studious is apt to find the three consecutive arguments of the same issue tedious and repetitious. He has already learned from the Introduction that the Lord Chancellor is going to deliver the majority judgment on the point and that Lord Porter is going to deliver a dissenting judgment and he even knows what the substance of their reasoning is going to be.

At the same time it can be said, with all deference, that both judgments are well worth reading when one does reach them.

The same can be said with equal truth and with equal deference of the Opening Speeches to the Jury, both for the Prosecution and for the Defence. One can well envy the ease and ability with which Sir Hartley Shawcross, K.C., M.P., and Mr. G. O. Slade, K.C., presented to the jury a lucid outline of the facts they intended to prove and the principles on which they desired to rely.

The trial may have been completely barren of exciting incidents but it does shine from the written record as a piece of well-directed advocacy on the part of two determined and eminent counsel, each of whom was a complete master of his case and each of whom was intent on proving, in adverse circumstances, the facts on which his case must depend—facts that trailed back to July 1892 when the accused's father first signified his intention of becoming a citizen of the United States.

The last five Appendices constitute one of the most interesting parts of the book. They include, among other things, specimens of some of Joyce's broadcasts, extracts from others and notes on their effect in Great Britain and Overseas. No matter how one may belittle the effect of the broadcasts or detest the motives that led to their delivery, the excerpts are fascinating and add to the value of the book.

The book is well illustrated with photographs of the Lord Chancellor, the Lord Chief Justice of England, the trial judge, leading counsel, the accused himself, etc.

If the part containing the record of the proceedings is read with a discrimination, as to which the individual reader must use his own discretion, the book, even to the biographical notes which form the closing pages, will be found to maintain the standard the editor set when he commenced with the piquant quotation from Samuel Pepys' Diary:

"By and by comes W. Joyce, in his silke suit, and cloake lined with velvett; staid talking with me and I very merry at it. He supped with me; but a cunning, crafty fellow he is and dangerous to displease, for his tongue spares nobody."

E.F.W.