Introduction to Criminal Law in New South Wales, by R. P. Roulston, Sydney, Butterworths Pty. Ltd., 1975, 225 pp. and index. $10.00 (paperback).

Professor Roulston, who is Director of the Institute of Criminology, Faculty of Law, University of Sydney, and who is responsible for the teaching of Criminal Law in that Faculty, has written this book as initial guidance to those confronted with the study of his subject. He had in mind also the needs, not only of incipient lawyers, but others involved in our system of Criminal Justice, like police, probation and parole officers, prison and court officials. It seems clear also that he intended it to be used by those, not being lawyers, who present themselves as candidates for the Institute of Criminology's Diploma of Criminology. For these folk the course in Criminal Law and Criminal Justice in the Diploma must have presented considerable difficulty. This subject being concerned with what one might term the philosophy or jurisprudence of the Criminal Law necessarily assumes some acquaintance with the content of that law. A glance at the table of contents gives firm assurance that those innocent of learning in the Criminal Law will be much comforted and rewarded in the study of the book.

It is worthwhile to note the chapter headings: General Characteristics of Criminal Law, Criminal Liability, Exemptions from Criminal Liability, Murder, Manslaughter, Assault and Affray, Sexual Offences, General Property Offences involving Dishonesty, Housebreaking and crimes against property involving violence or threats, Attempt, Conspiracy and Parties to a Crime and Complicity. In the ordering of these matters the arrangement of the Crimes Act, 1900-1974 (N.S.W.) is approximately followed, which is convenient. The order is not, however, the order of incidence of the commission of the various offences, for happily, offences against property greatly outnumber all others except crimes connected with the use of motor vehicles.

So far as is reasonably possible Roulston has made his work up-to-date to November, 1974. It thus appears to the reviewer to be the only text presently existing which covers the wide changes in the law brought about by the Crimes and Other Acts (Amendment) Act, No. 50 of 1974 which came into effect on 2nd August in that year. Curiously, it is in the vicinity of his notice of that Act that he fell into the only error I noticed, although there may well be differences of opinion on matters of emphasis elsewhere.

At p. 8 it is said, "The *Justices Act* s. 80 provides that if upon the close of the case for the prosecution 'it appears to the justice or justices that the offence ought to be dealt with by indictment, he or they shall abstain from adjudication thereon and shall deal with the case for the purpose of committal for trial only' ". That part of the Justices Act quoted is the proviso to s. 80 and it was repealed by s. 14(b) of the Crimes and Other Acts (Amendment) Act. The proviso was lifted from

the Criminal Law Amendment Act, 1883. At the time of the passing of that Act the summary courts of the State were constituted in the main by magistrates having no formal qualifications in law. This no longer being so it is the intention of the Legislature that once a magistrate is committed to the hearing of an indictable offence in a summary way he cannot resile from it.

It is not generally known that about 98 percent of all prosecutions brought are heard and determined in the Courts of Petty Sessions. In 1975 these achieved a figure in the vicinity of 550,000. It might have conduced to better understanding if ss. 115 and 116 had been expanded to the extent of explaining that some statute-created offences are triable either on indictment or summarily at the election of the prosecutor, some summarily at the election of the prosecutor and with the consent of the accused person and some, by virtue of s. 476 of the Crimes Act, at the election of the magistrate and with the consent of the accused person.

To say "certain crimes can only be tried in a summary manner: *Summary Offences Act* 1970, s. 64"[1] may be misleading. First, s. 64 applies only to the Summary Offences Act. Second, the general provision in the law regarding summary trial is to be found in s. 4 of the Justices Act which provides, *inter alia,* that save in the case that an Act declares an offence to be treason, felony or misdemeanor, where an Act creates an offence and makes no provision for trial, the matter shall be heard and determined in a summary manner by two or more Justices or by a Stipendiary Magistrate. Chapter III of Part XIV of the Crimes Act provides for the summary trial of a considerable number of offences, some in other contexts felonies, and others rather serious, e.g. unlawful assembly.

One of the many strengths of the work is the care taken to indicate where local law has diverged from that of England. One example is the careful demonstration that notwithstanding the strictures heaped on the phrase "beyond reasonable doubt" in *Summers* v. *R.*,[2] the words are sacrosanct in Australia. To assist the puzzled student, it is shortly after made clear that the High Court may keep us clear of any error the House of Lords may seem to stumble into, as for instance, when it indicated in *Parker* v. *R.*[3] that *D.P.P.* v. *Smith*[4] should not be followed in Australia. One may hope, nonetheless, that someone may take on him to explain simply, so far as that may be done, to puzzled probation officers and the like the principles by which the decision of one court is binding on another. It is to Roulston's credit that later, in his dis-

---

[1] R. P. Roulston, *Introduction to Criminal Law in New South Wales,* Butterworth, Sydney, 1975, § 116.

[2] *Summers* v. *R.* (1952) 36 Cr. App. R. 14.

[3] *Parker* v. *R.* (1963) 111 C.L.R. 640.

[4] *D.P.P.* v. *Smith* [1961] A.C. 290.

cussions of murder and manslaughter, he takes care boldly to point out that these and many other difficulties would be much reduced if for those two crimes the single crime of punishable homicide were introduced with a maximum penalty of life imprisonment

The treatment given the arcane mysteries of *mens rea* is such as to render them almost as comprehensible as they were before the enlightenment of psychology and psychiatry. In reading the excellent exposition of the so-called defence of automatism one wonders what will confront an editor of Glanville Williams in 1991, 30 years after the second edition, if these two disciplines continue their contribution to criminal jurisprudence. Perhaps not so very much for these things tend to have their hour of high fashion and then depart the scene. Whatever difficulties the theories and the unusual may provoke are seldom seen in practice. As the work says:[5] "Proof of *mens rea* is sometimes provided by the accused's own statements and sometimes by the accused's conduct prior to, and subsequent to, the doing of the act. Often, if the accused does not give any explanation of his conduct the jury may infer guilt and, sometimes in those cases where he does give an explanation, the jury may not find his explanation credible".

Some useful pages concern themselves with what is known as diminished responsibility. This itself is perhaps too gentle a term in that s. 23A speaks of "such abnormality of mind . . . as substantially impaired his mental responsibility for the acts or omissions . . . ." An argument for a verdict of manslaughter on this ground succeeded before a Sydney jury last week. Indeed it has been solemnly argued in a summary trial! Neither this nor any more pardonable error is likely after reading the book we discuss. The author has been at pains to epitomise all the relevant authorities in a way not to be found elsewhere.

The chapter on rape is useful and much care is taken in explaining the rather difficult decision in *Sperotto and Salvietti*[6] where the principal point was mistake as to consent. There is criticism of the decision and one may think it is fairly taken and with support from Victoria and England. To the ordinary man the point seems barely within the realms of reality and one may be forgiven for supposing that Scrutton, L.J. had it covered when he said in *Greers Ltd.* v. *Pearman and Corder Ltd.*:[7] "honest belief in an unfounded claim is not malice; but the nature of an unfounded claim may be evidence that there was not an honest belief in it".

Forty-five pages are devoted to dishonest and fraudulent dealing with property which is rather a larger proportion than that accorded these matters in the Kenny I was raised on. This is gratifying and proper in the light of the high and increasing incidence of this kind

---

[5] *Roulston, op. cit.* p. 17.

[6] *R.* v. *Sperotto and Salvietti* [1970] 1 N.S.W.R. 502.

[7] *Greers Ltd.* v. *Pearman and Corder Ltd.* (1922) 39 R.P.C. 406 at 417.

of crime. The treatment is not exhaustive — it could not be in a book of this size. The major difficulties are confronted thoroughly and with purpose. By way of example the sections on larceny as a result of accidental mistake may be noted. The authorities are all English and appear to condense into a dichotomy of view in *Moynes* v. *Coopper*[8] and *Russell* v. *Smith*.[9] Lord Goddard, L.C.J. sat in both appeals and appears, in the later case, to have somewhat repented of his brusque explanation of *R.* v. *Hudson*[10] in *Moynes* v. *Coopper*. In this last case Stable, J. dissented and referred with approval to *Hudson*. It is clear that in *Russell* v. *Smith* Lord Goddard accorded more respect to *Hudson* while Slade, J. thought the matter covered by it. In *Hudson* the Ministry of Food in error drew a cheque payable to a Mr. Hudson. It was received by the accused who returned it to the Ministry with what amounted to a request that his initial be inserted. This was done and the accused negotiated it and used the proceeds. In confirming his conviction the Court of Criminal Appeal referred to *R.* v. *Ashwell*[11] where Lord Coleridge, L.C.J. had said:[12] "In good sense it seems to me he did not take it till he knew what he had got; and when he knew what he had got, that same instant he stole it". One may chance one's arm not too much to suppose that the later cases say that if the person passing possession does so under such mistake of fact as not to intend to pass the property then the odds are very high if the recipient, when he knows the mistake has been made, decides to keep the property will thereby be guilty of larceny. The author appears to think the situation rather less certain. What is certain is that here is good material for a moot.

In the whole work I have found but little to argue with and even so my teeth are drawn in that the introduction professes only to provide initial guidance. In truth it is much more than that. It provides some philosophy. There is much explanation of the various courts' endeavours to fit the law of a small and primarily agricultural country to the needs of an extremely complex urbanized, industrialized and commercial society which possesses communications far beyond the vision of its lawmakers. Those students who take the book up will surely have their wits extended but the exertion will be worthwhile. Reading it will be a rewarding revision and up-dating for the practitioner with the bonus of an occasional new shaft provided for a worthy adversary. One of my colleagues told me recently he had satisfactorily prepared himself for an inquiry into a charge of conspiracy from the very useful chapter on that esoteric subject.

Unless things have changed much lately the Criminal Law is in the teaching of law accorded less importance than the community is

---

[8] *Moynes* v. *Coopper* [1956] 1 Q.B. 439.
[9] *Russell* v. *Smith* [1958] 1 Q.B. 27.
[10] *R.* v. *Hudson* [1943] 1 All E.R. 642.
[11] *R.* v. *Ashwell* 16 Q.B.D. 190.
[12] *Id.* at 225.

entitled to expect and the volume of the litigation seems to demand. Roulston has here made some way to redress the balance. What he has written should be of interest to many aside from those who work within the machinery of Criminal Justice—to those with concern for Criminal Justice. Regrettably the only other work on our N.S.W. Criminal Law is the practice book which in its nature is likely to be of service only to lawyers. The venture deserves such success as to require future editions.

I cannot let go without a Parthian shot at the spelling. Most unfortunately the Professor has been ill-served by his proof-reader. There is an irritating number of mis-spellings and I will never believe that the Judges of the Queen's Bench were *summonsed* to the House of Lords to deliberate upon *M'Naughten* or *McNaghten* or *M'Naghten*.

WALTER LEWER*

Cases and Materials on Evidence, by H. J. Glasbeek, Sydney, Butterworths Pty. Ltd., 1974, xix + 464 pp. $17.50 (paperback).

> Professor Glasbeek explains the purposes of his book as follows: Until fairly recently Australian law schools have treated the law of evidence as a set of black letter rules that must be taught to students who aspire to practise law. It has frequently been spoken of as a technical subject which the various Law Institutes and Societies require to be taught but which has no inherent academic merit.
>
> Today the feeling is different. Evidence has become a subject which is attracting academics in much the same way as the new "socially relevant" options do. This is no doubt largely due to the fact that the trial process itself has become the subject of heated debate and much empirical analysis. Inevitably attention has been focused on the rules which govern the fact-finding role of the trial process. My interest having been so aroused I have come to believe that a serious study of the law of evidence tells us much more about the nature of the legal system than does an equally profound examination of one of the so-called substantial [*sc.* substantive] law subjects.
>
> This book of cases and materials seeks to reflect this belief. The cases and materials selected reveal the basic rules of evidence for it must never be forgotten that evidentiary rules must be known in a way that, say, torts' rules need not be known: the rules of evidence are to be invoked by counsel who will often not have

* LL.M., Deputy Chairman, Bench of Stipendiary Magistrates.