



REVIEWS

THE ENGLISH LEGAL SYSTEM. BY A.K.R. KIRALFY. Fourth Edition. Sweet & Maxwell. 1967. Pp. xxvii+342.

A TEXT-BOOK, generally, does not attempt, or achieve a skyward flight. This work is not an exception to the rule. Designed, primarily, "for students taking an introductory — course in the first year of law at a University," it does not venture into any depths of legal theory, nor any analysis of intricate legal doctrine. It is comprehensive, without being profound. But it does achieve clarity, and within the limits that the author has set himself, he is precise, lucid and informative. A text-book can sometimes be read with great profit, not only by those for whom it is meant, but even by people who have outgrown this stage find it refreshing and valuable to have the elementary outlines strengthened. This is, essentially, such a book.

Printed in elegant, easy-to-read type, and comprising only about 330 pages, it has convenient divisions, taking the entire English legal system, as its subject. After a very brief essay on the nature of law, which ventures into no legal philosophy, the divisions of English law are described, namely (1) case law and statute (2) civil and criminal law (3) their respective sub-divisions, and (4) equity. There is a brief account of English legal history, followed by a review of the sources, precedents and legislation.

"An Outline History of the Courts" follows, with further chapters on criminal procedure, civil proceedings in the Queen's Bench Division, and other civil proceedings in chancery, matrimonial jurisdiction, probate and administration. The final chapter includes studies on costs, legal aid, the legal profession and the law of evidence.

As a taste of the clearness of exposition, avoiding anything that is likely to bewilder or confuse a student, the following passage from the book, on equity, may be quoted :

Equity is a system of rules enforced by the Chancellor as keeper of the King's conscience, designed to alleviate, on moral grounds, technical injustices of the common law. Thus it is a "gloss" (*i.e.*, a commentary) on the common law, it exists beside and complements it, so that all actions in equity formerly contained the disclaimer "and he hath no remedy at the common law." Originally a rule-of-thumb system, fitting remedies to particular cases, equity was once described as being "as long as the Chancellor's foot," *i.e.*, varying with the holder of the office.¹

The author then proceeds to describe the characteristic features of equity jurisdiction, which include moral considerations, the assistance

1. Kiralfy, *The English Legal System* 72 (1967).



of the poor and the weak, relief in cases of fraud, specific performance, injunction, and the law of trusts and mortgages. Similarly, in dealing with the history of the common law, he stresses the 'declaratory', and the fact that this *corpus* of law 'is a living law'; "A decision of a Court operates retrospectively, declaring what the law is and has been, rather than what it shall be."² The author presents legal fictions as a device that has been evolved to prevent the common law from becoming rigid, which is its inherent tendency. Instances of legal fiction are given, including the "speedy and effective action known as *ejectment* which called upon two imaginary characters, John Doe and Richard Roe, to take part."³ Similarly, there are helpful elucidations upon the double aspects of wrongs, felonies and misdemeanours, contract and tort, and the law of real property in England.

A short chapter entitled "Legislation" could be read with profit, even by those who are mature lawyers, and no longer students of law. Towards the end of this chapter, the author comments on the following principles of interpretation, namely, (1) the *ejusdem generis* rule (2) presumptions in interpretation (3) presumption against the imposition of criminal liability without fault (4) presumption against confiscating vested rights, and (5) presumption against outside the jurisdiction of the courts. Canons of construction of statute are also briefly referred to. Though the presentation is brief and elementary, it is adequate enough to prepare the student for the more serious incursion into *Maxwell* and *Craies*.

Altogether, this is a very valuable text-book, and it does show how well-knit, progressive, and infused by a pragmatic approach to law, is the legal system of England today. It is not that that system, or the agencies that have evolved for the administration of the law, can be said to have achieved perfection, or anywhere near it. The book gives a powerful impression of a system which today is a living reality and secures both the quality of judicial decisions and reasonable effectiveness.

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2. *Id.* at 6.

3. *Id.* at 8.

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