some dicta to the contrary effect (compare with page 316); and it is not helpful to treat cases of common-law disqualification for pecuniary or other forms of interest as illustrations of a 'rule against bias'. But viewed against the background of Dr Brett's achievement the conventional reviewer's epilogue becomes even more platitudinous than usual. These are indeed small matters.

S. A. DE SMITH*

Cases and Materials in Criminal Law, by PETER BRETT, LL.B. (Lond.), LL.M. (W. Aust.), S.J.D. (Harv.), and PETER L. WALLER, LL.B. (Melb.), B.C.L. (Oxon.). (Butterworth & Co. (Australia) Ltd, Sydney, 1962), pp. i-xi, 1-726. Price £5 7s. 6d.

Three well recognized instruments of legal education are the hypothetical case, the source-book and the narrative account of the development or present state of the law. Until I read Brett and Waller's *Cases and Materials in Criminal Law* I would have said that any endeavour to use all three extensively in one book was doomed to failure; I am now almost entirely convinced to the contrary. I may have some minor reservations, but I have no doubt that this good book (the first of its kind known to me on the criminal law of the Commonwealth) is something for which all teachers of law should be grateful, and upon which the authors are to be most warmly congratulated.

It is, in effect, divided into twenty-one chapters which begin with a problem or direction to the student to formulate his reasons for judgment in a hypothetical case. These are intended to form the basis of a discussion for which ample background material is provided in the ensuing pages. The problems are well chosen for their purpose. More difficult questions are frequently posed by the authors after their extracts from or accounts of particular cases, but these questions are too specific to form the point of departure and means of concluding the kind of general discussion spread over several hours in class which the book is designed to assist.

The selection of materials has been most catholic, ranging from the Victoria Law Reports to the Jerusalem post. There is a goodly number of American cases in addition to extracts from the decisions of most of the common law jurisdictions of the Commonwealth. It is, however, with regard to the quantity of the materials that I have my minor reservations. In order to make room for their somewhat extensive notes and comment, the authors have not set out full extracts from the judgments in quite as many cases as most people would expect in seven hundred and thirteen pages. They give an account of the facts and decisions in quantities of cases, but there are bound to be some teachers and students who will regard this as a poor substitute for substantial extracts from the judgments. It will be a great pity if this shortcoming militates against the use of *Brett and Waller* as the basic book in classes on criminal law in other universities than that of Melbourne where it is used by the authors, for the amount of time, energy and paper spent on the compilation of materials in Australasian law schools must be stupendous, and it is doubtful whether other fuller compilations will really be any more useful. Nothing can dispense with the need or desirability of referring the student to a great deal that is not included in any circulated materials.

If allowance is made for the decisions more or less fully mentioned by

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Brett and Waller in addition to those more or less fully abstracted, there are strikingly few omissions. The failure to refer to the Victorian cases on provocation as a qualified defence to crimes other than murder, something that may reduce wounding with intent to murder to unlawful wounding, for example, is the only really serious lapse in this respect. The accounts of the decisions which are not fully abstracted, are almost invariably accurate, although it is a pity that, on page 295, the authors should appear to lend their support to the suggestion that the fictitious relation back of the felonious intent to the original trespass had anything to do with the *ratio decidendi* of *Regina v. Riley*.[1] This was the suggestion of the late Professor Kenny. The grounds of the decision were either the continuance of the trespass or the accused's ignorance of the presence of the additional lamb in his flock until it was pointed out to him. Had the time of the larceny been material, it would surely be held to have been that of the conversion, not the moment when the lambs were led out of the field.

The authors' own contributions are uniformly first class. There are several historical notes and jurisprudential discussions which one can but hope will some day be enlarged into articles or monographs. The whole emphasis is very properly on the stimulation of thought and discussion. I have, in fact, only come across two possible instances of the dogmatism to which the average author of a students' textbook is all too prone. The first of these is on page 306, and relates to larceny by finding. Is it really as clear as the authors suggest that someone who finds a handbag with its owner's address inside is guilty of larceny if he converts it under the mistaken belief that 'finding is keeping' is a rule of law? The second instance of what might perhaps be considered to be dogmatism, occurs on page 708, and relates to the much discussed case of *Director of Public Prosecutions v. Smith*.[2] Is it not misleading to suggest that the decision has in effect revived the presumption of intention in its original form, so far as the English courts are concerned? At the very most, the decision must be confined to murder and wounding with intent, and it is possible that Lord Kilmuir's reference to section 18 of the Offences Against the Person Act 1861, simply related to the question of the proper definition of 'grievous bodily harm'. It is in fact arguable that the case has nothing to do with the proof of intent. Like the earlier case of *Regina v. Ward*,[3] it is concerned with malice aforethought. This includes an intention to cause grievous bodily harm, but the issue in *Smith's Case* was whether it also includes the intention to perform an act which, in the circumstances known to the accused, was calculated according to common experience to cause death or grievous bodily harm. The decision that it does, may well have been regrettable, but nothing is to be gained by exaggerating its breadth. The authors would have done better to enquire whether the High Court's difficulties in *Smyth v. The Queen*,[4] in distinguishing between *Rex v. Steane*,[5] and *Regina v. Ward*,[6] were really justified.

The great danger of instruction by means of the textbook and 'straight' lecture such as that which prevails to a large extent in English law schools, is that it may make students insufficiently conscious of the need for reform. The approach engendered may be too conservative. There is no danger of this in the case of those who are lucky enough to start with *Brett and Waller*. The book contains many suggestions for legislative improvement, including copious references to the American Law Insti-

[1] (1853) Dears. 149. [2] [1961] A.C. 190. [3] [1956] 1 Q.B. 351.
[4] (1957) 98 C.L.R. 163. [5] [1947] K.B. 997. [6] [1956] 1 Q.B. 351.

tute's draft penal code which has now become an indispensable adjunct of any serious study of the criminal law. Whilst I wholeheartedly applaud the authors' zeal for penal reform, I must conclude with the hope that it will not be all the readers of this excellent book who agree with the suggestion on page 340 that I may have unwittingly obstructed a reconsideration of certain aspects of the law of larceny: 'It is difficult to see how Dr Williams and Dr Cross expect such a reconsideration to occur so long as they are willing to indulge in elaborate arguments with a view to reconciling the cases'—and to think that Mr Waller was a pupil of mine! Surely the attempt to reconcile the cases is the first duty of every law student.

RUPERT CROSS*

Cases and Materials on Private International Law, by EDWARD I. SYKES, B.A., LL.D. (Melb.). (Law Book Co. of Australasia Pty Ltd, Sydney, 1961), pp. i-xxiii, 1-908. Price £5 5s.

Professor Sykes is one of the most prolific and learned of Australian legal writers; and the range of his scholarship is remarkable. His casebook is a very acceptable tool for this teacher of the Conflict of Laws, and, I should hope and think, for teachers of the Conflict of Laws throughout Australia. For a long time the Conflict of Laws was taught in Australian schools from English texts and largely from English materials, and there was little awareness that there might be distinctively Australian problems to the solution of which materials drawn from other jurisdictions, and particularly from the United States, might prove helpful guides.

In the preparation and selection of his cases and materials, Professor Sykes has consulted with other teachers in this country and the materials in part therefore reflect an acceptance of their judgment. The inclusion of some cases may therefore evidence a yielding to the judgment of a 'giant' customer, and if the choice does not find universal favour, the fault is not necessarily with Professor Sykes.

The book contains as well as cases and statutes, brief introductory notes, some short reprinted readings, digests of cases not printed in full, references to writings, and questions. The range is wide, the selection of materials very good, and the book provides Australian teachers of the subject for the first time with a case-book which is planned to satisfy their distinctive needs. The best English case-books have been very useful indeed, but the most cursory comparison with this book demonstrates that *Sykes* is what has been needed in Australia.

This reviewer confesses himself well satisfied with the choice of cases. So much depends upon an individual approach to the subject, and one who works with a case-book inevitably asks of the author's planning: 'Why did he arrange the cases like that?' Or, 'why has he edited this case so liberally and that one, seemingly more important, so severely?' But in a book which is generally so satisfactory and so useful, these criticisms detract little from the over-all achievement.

The preparation of a case-book is an ungrateful task. While so much of the final result is not the author's work, but is the text of the case and the statute, the burdens of editing, selecting, rejecting and organizing are immense. In very recent years, the case-book has come to Australia, and in the last few months almost, it seems, in an avalanche. To the present

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