there be such an invariable rule irrespective of all the circumstances, and possibly of overpowering considerations of justice ?

On a mere matter of terminology and language, also, the present reviewer cannot agree that the French expression "*droits acquis*" is inadequate properly to suggest the elements of the concept of acquired rights, or that the German expression "*Vermögensrecht*" is superior in that regard.

On some points of form, there is room for legitimate complaint. The Bibliography is inexplicably bad, listing review articles without the titles or page references; for example, the entry "Rosenne. In B.Y. (1950)". The Index is likewise deficient; it fails to list the names of all the authors who are cited in the text. Hence we look in vain for Kelsen, McNair, Mervyn Jones, Kaeckenbeeck, and others who have written on Succession, although the Index discriminates by listing Gidel, Hall, Keith, Sack, Vattel, Wade, &c.

A final verdict is that with considerable revision and amplification, this book could well be the monumental work on Succession which its author, Dr. O'Connell, is so clearly capable of producing.

J. G. STARKE*

The Rule Against Perpetuities by J. H. C. Morris, D.C.L. of Gray's Inn, Barrister-at-Law, Fellow of Magdalen College, Oxford, and W. Barton Leach, LL.B. of the Massachusetts Bar, Story Professor of Law, Harvard Law School. London, Stevens & Sons Ltd. 1956, Sydney, Law Book Company of Australasia Pty. Ltd. xlvii and 366 pp. (£3/8/9 in Australia).

This is a unique book in that it combines a detailed analysis of what the rule against perpetuities is, together with an advocacy of what the rule should become either by judicial statemanship in fields where this is still possible or legislative intervention where it is not. The two aspects are harmoniously linked together, the discussion of the aspects of the rule itself and its history indicating the opportunities which were missed and which it is hoped may be regained. However, the authors consider major amendment the possibilities of which were never adverted to by judges in the development of the rule.

It is also a book of considerable significance in that it marks another territory captured by an academic treatise from a field in which, previously, all treatises produced in England were the work of professional lawyers. It is, therefore, an example of a tendency for the responsibility for maintaining the orderly development of the common law to be transferred from the bench and bar to the academic lawyers. The multiplication of authority and the increasing complexity of the law has made the role of the textbook writer more and more important and he has become the guardian of the traditions of the common law. As the textbooks capable of performing this rule are almost always the product of the academic lawyer their importance in the administration of the law must increase. This book, together, of course, with Gray, must henceforth dominate decisions involving the Rule against Perpetuities and the lines of development where development is possible indicated by its authors must be weighed carefully by all judges responsible for deciding these matters.

The rationale of the rule against perpetuities has recently been considered by Professor Simes in *Public Policy and the Dead Hand* and the subject is considered again in this book.[1] The learned authors are unconvinced by many of Simes' justifications, and they suggest that the expansion of the powers of trustees by statute, the normal form of the well-drawn will, the Settled Lands Acts, and present-day taxation, have combined to render the economic

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[1] See also fourth Report of the U.K. Law Reform Committee, *Cmd.* 16 (1956).—Ed.

justification for the rule, namely, that otherwise property will be taken out of commerce, obsolete. In this State these developments, even taxation, have not been carried to the degree attained in England and here a stronger case could be made for the retention of the rule on economic grounds than that which can be made in England. The rule acts as a deterrent, though not the sole deterrent, to the undue complication to the title of property. The complication of the title of property is usually associated with family pride and though the problems which the rule against perpetuities were designed to solve arose from the attempts of English landowners to control the destination of their estates over long periods of time, this sentiment is not confined to the rich. It can occur where people have only small amounts of property and act without legal advice. In this State, where property holding in land is general, and small landed proprietors often make their own wills, the continued necessity for the rule would hardly be the matter of debate. The only question about which controversy could rage is whether the periods allowed by the rule during which the vesting of property can be suspended are not too great.

The authors are much concerned to diminish the number of occasions in which the rule against perpetuities will defeat the intention of testators and settlors where their intentions technically, but not in substance, infringe the rule. For this purpose they suggest that the courts be given a general authority to mould the intentions of testators and settlors to conform to the rule. It would be a power analogous to the cy-près jurisdiction of a court of equity in the case of gifts showing a general charitable intention. They suggest, however, that one difficulty which may arise is that the jurisdiction might not be popular with judges called upon to exercise it. The occasions for the exercise of this jurisdiction would arise rarely except in proceedings in equity and the judges of the Supreme Court of this State in its equitable jurisdiction are continuously concerned with the reform of testators' intentions in the exercise of their powers under the Testators Family Maintenance Act.

It is difficult to see what psychological barriers could exist in this State or any other States in which a similar jurisdiction is regularly exercised by the courts. This particular reform, which (the authors suggest) might make all further tinkering with the rule against perpetuities unnecessary, could well receive consideration from our legal authorities.

One suggestion advanced from the provision of the rule is that in the case of family disputes it should be possible to withhold capital from beneficiaries until they are past twenty-one that being an age at which they could not be expected to have investment wisdom. It is also suggested that for commercial transactions longer periods depending upon the nature of the transactions themselves could be allowed. As the authors show, the periods allowed by the rule were the result of a series of fortuitous accidents and not the fruit of carefully considered policy, but it is respectfully suggested that this proposed change is of very dubious value. The authors are not impressed with Simes' contention that one of the economic reasons for the rule is that it will from time to time free property from the cautionary rules covering its use when in the hands of trustees, and make it valuable for speculative investment which is a necessary feature of a private enterprise economy. It is important that the young and daring should be equipped with the means of gambling with their lives even though they may lose the family fortune, and it is all the more so in a society which is obsessed in its public life with the need for security. The fact that so many testators and settlors endeavour to withhold property from their children until they reach maturity should not have the weight which the authors attribute to it. A number of periods dependent upon the nature of the transaction concerned would probably give rise to great difficulties firstly in defining the classes of transactions, for the distinction between commercial and family matters is not always rigid, and

secondly in preventing the disguise of transactions to bring them within more desirable periods.

In addition to the rule against perpetuities in the strict sense the book also deals with the rule against accumulation and the rule in *Whitby* v. *Mitchell*. The references to Australian cases as far as the writer's checking goes is complete. One minor infelicity has been noted. On some occasions references to reports of cases decided in the High Court appear as "Com. LR", in other cases "C.L.R.".

F. C. HUTLEY*

Sexual Offences, A Report of the Cambridge Department of Criminal Science. Macmillan & Co. Ltd., London, 1957. xxvii and 533 pp. (£4/18/9 in Australia).

This is the sixth volume to appear in the series "English Studies in Criminal Science", published by the Department of Criminal Science, Faculty of Law, University of Cambridge. It summarises the results of a survey, initiated in 1950, into the incidence, prosecution and punishment or other treatment of sexual crime occurring in fourteen districts of England and Wales over a period of several years. The districts were so selected as to provide a fair representation of both industrial and agricultural areas, although the former predominated. An endeavour was made to cover every aspect of the problems. The authors of the report are anonymous, but it appears that the work fell largely upon the shoulders of Messrs. F. J. Odgers, F. H. McClintock, J. H. Bagot, and G. van Dulken. The broad results of the survey are summarised in a preface contributed by Dr. L. Radzinowicz, the Director of the Department.

The survey covered in all something over 3,000 cases of both indictable and non-indictable sexual offences. It appears to have been carried out by a careful examination of available records. These were of four types — police records, court records, probation records, and Children's Department records. The latter includes the surprising sub-title "Records of Legal Proceedings taken against Juveniles as a result of their being victims of Sexual Offences"; this is no doubt capable of explanation but that explanation ought surely to have been given. The information obtained from all these records was classified under various headings and the results are fully set out and summarised. In addition, in many instances a number of illustrative cases are added.

There are, of course, considerable difficulties inherent in the adoption of such a plan of research. One is almost driven to adopt the classifications which are adopted by the police and the courts in compiling their respective records. But these are often determined by factors which may have little or no bearing upon the social implications of the problems presented by sexual criminals. For example, the offence of indecently assaulting a female may be either very grave or comparatively trivial. In the former case it may have been adopted by the police or the prosecution merely because some necessary piece of evidence required to support a charge of rape or attempted rape (which may have been the offence intended by the offender) was thought to be lacking. Again, a change in the law or in the prosecution methods may result in a change in the statistical information available. These difficulties were, of course, fully known to the researchers and are emphasised by them at various stages through the report.

It is essential to bear this matter in mind when reading the report. Failure to do so may well result in the drawing of conclusions which are not warranted by the facts. That this should be so is not a criticism of the Department's

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