AN OUTLINE OF THE LAW OF EVIDENCE. By Rupert Cross and Nancy Wilkins. 2nd edition. London: Butterworths. 1968. Pp. xliv and 258.

In the Commonwealth, the principal textbook on the law of evidence is by Professor Rupert Cross.[1] The high regard in which it is justifiably held by the profession and the bench is illustrated by the willingness of judges to cite it.[2] Dr. Cross, in collaboration with a young barrister, decided several years ago to publish a shorter version deleting references to academic literature and decisions by courts outside England, avowedly for use by students for the English bar finals and candidates for police promotion examinations. The authors also expressed the belief that many university students would find the book useful, whether as an introduction or for review purposes. Now in its second edition, the book is worthy of note to Canadians partly as an elementary manual for quick reference by practitioners and partly for use by students who want to economise their efforts. For general use, however, it is of limited value here, on two counts. First, it often lacks detailed discussion of principle (of which there is a wealth in Cross on Evidence). Second, the exclusion of non-English authorities makes it less convenient as a reference work.[3] Moreover, the failure to refer to non-English authorities can be positively misleading to the Canadian reader; an example is the question of the admissibility of declarations of intention to do an act, as evidence of the doing of the act. The accepted law in England is that it is inadmissible, but in Canada the decision of the Appellate Division of the Supreme Court of Alberta is that it is admissible.[4]

It is only fair to point out that, in comparison with the major work, only a relatively small number of English cases are cited or used as illustrations, and therefore it must be made clear that the points just made are not criticisms but merely reflect the self-imposed limitations of the work.

In England, changes in the law of evidence, both statutory and judicial, have been coming quickly in very recent years. One thinks of the Criminal Evidence Act, 1968, rendering admissible certain kinds of written hearsay in criminal cases; the Civil Evidence Act, 1968 (which had been introduced in time for Cross and Wilkins to discuss it in a useful Note), principally making admissible previous statements of witnesses and first-hand hearsay in civil cases, and abolishing the rule in *Hollington* v. *Hewthorn*;[5] and the decision of the House of Lords in *Duncan* v. *Cammell Laird*[6] as to the function of the court where a claim to "Crown privilege" is made. In such an atmosphere of reform, even an elementary manual can quickly become outdated. Happy to say, while Cross and Wilkins was published too early to record the final result in *Conway* v. *Rimmer*,[7] that is the only recent English development not accounted for in this edition.

1 Now in its 3rd edition, which states the law as at December, 1966.
2 As in *R.* v. *Workman & Huculak* [1963] 1 C.C.C. 297 at 305, and *R.* v. *Horwood* [1969] 3 All E.R. 1156 at 1160, per O'Connor, J.
3 In Cross on Evidence, a count of the cases indexed from A to F shows that of about 700 cases cited, 22 are Canadian, 52 Australian, 10 from New Zealand, 12 from Ireland, 1 from Northern Ireland, 8 from Scotland and 2 from the U.S.A.
4 *R.* v. *Workman & Huculak* [1963] 1 C.C.C. 297, upheld by the Supreme Court of Canada without discussing this question, [1963] S.C.R. 266.
5 [1943] K.B. 587; [1943] 2 All E.R. 35.
6 [1942] A.C. 624; [1942] 1 All E.R. 587.
7 [1968] A.C. 910; [1968] 2 W.L.R. 998; [1968] 1 All E.R. 874.

To sum up: a well-produced "overview" (to use a horrid word common in academic circles today), but of limited usefulness to the practitioner or serious student.

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CARDOZO AND FRONTIERS OF LEGAL THINKING. By Beryl H. Levy. The Press of Case Western Reserve University. 1969. Pp. xi and 365. $9.95.

Benjamin Nathan Cardozo was an outstanding example of the finest traditions of the American judiciary. In a manner reminiscent of Oliver Wendell Holmes, his predecessor on the Supreme Court, he brought a strongly philosophical outlook to his work as a practising judge. It is perhaps even more notable that Cardozo maintained such an outlook when the major portion of his career was spent in the Court of Appeals of New York State rather than in the more philosophically congenial atmosphere of the Supreme Court.

Dr. Levy's study, which was first published in 1938, has as its focus Cardozo's concern with the process of judicial decision making and particularly his methods of dealing with the nonroutine, or penumbral, case. The format of the work is interesting. It is divided into three sections, consisting of a critical analysis of Cardozo's attitudes towards the judicial decision, followed by an illustrative sample of his opinions and an afterword, which seeks to put his views into some kind of historical perspective. The first two sections of the book are reprinted from the first edition and only the third section, of about fifty pages, contains any new material.

The analysis of Cardozo's views on the judicial decision can best be described as a fascinating period piece. It was written at the peak of the Realist movement and it gains strength from a vivid sense of contemporaneity. Throughout this section, Cardozo is treated as a living person and the problems with which the Realists were so fruitfully concerned are presented as live issues. This section of the book to some extent revives the genuine intellectual excitement aroused by Realism in the full flush of its success and avoids the current tendency to regard the movement as an old-fashioned and rather naïve curiosity of the Thirties.

As a consequence of this generally beneficial scheme, however, one receives the impression that the author is claiming too much for the realism of Cardozo. It was almost a characteristic of the Realist movement to attempt to find support for its iconoclastic tendences in figures of such legal and philosophical eminence as Holmes[1] and Cardozo. Dr. Levy bears no exception to this trait. Cardozo is viewed as "an eminent pioneer of the Realist movement,"[2] though of course the author admits that he was far from being one of its radical supporters. But within the

1 For an analysis of Holmes' position as a Realist, see A. L. Goodhart in *Jennings, Modern Theories of Law*, at 1-20.
2 *Id.*, at 19.