BOOK REVIEWS

Cases and Other Authorities on Equity. Volume 3. *Reformation, Rescission, and Restitution, at Law (Quasi-Contracts) and in Equity.* By Walter Wheeler Cook. St. Paul, West Publishing Company, 1924. Pp. xix. 1048.

Ever since the introduction of Quasi-Contracts in the law school curriculum, it has been treated, in nearly all of the schools, as a subject quite distinct from Equity. That quasi-contractual obligations are, in a broad sense, equitable in character, was recognized from the first. But the fact that they are enforceable at law through the fiction of a promise, coupled with the fact that restitution in equity was already covered by Ames' *Cases in Equity Jurisdiction,* led to separate treatment. Professor Cook, while engaged in teaching both Equity and Quasi-Contracts, conceived the idea of combining the latter subject with Recission and Reformation in Equity. The experiment seemed to him a distinct success, and the present volume is the outcome.

The book is divided into five parts: Part I, Mistake (Including Misrepresentation and Non-Disclosure); Part II, Benefits conferred under Agreements which have been wholly or partly performed; Part III, Benefits conferred under Compulsion and Undue Influence; Part IV, Benefits conferred under Intervention in Another's Affairs; Part V, Benefits obtained by the Wrongful Use of Another's Property.

In the selection and arrangement of the cases in Part I, which constitutes more than half of the volume, the editor doubtless found his most difficult task. For it is here that the courts of law and of equity have most frequently dealt with essentially the same problems. But difficulties are anything but obstacles to Professor Cook, and it is precisely in this part that he has probably done his best work. The cases are well chosen, and the arrangement is as effective, from the pedagogical standpoint, as the nature of the subject permits. The student is likely to be confused at times by the mixture of cases at law and in equity, but if he is clearheaded and persistent he will emerge with a pretty thorough understanding of the principles of relief from mistake. And he will have had an impressive demonstration of the true relation between law and equity.

The remaining parts of the book deal with situations in which relief in equity is less frequent, and consequently show less originality. Whether the editor has here substantially improved upon preceding casebooks in Quasi-Contracts is a question upon which there will be a difference of opinion. At any rate he has provided entirely adequate material.

Although it happens that the present reviewer has been more interested in the legal than in the equitable aspect of "unjust enrichment," the use of this casebook has convinced him that much is gained by treating both aspects together. For one thing, time can be saved—though this cannot be accomplished without a judicious trimming of the super-abundant material in Professor Cook's volume. What is more important, by a comparison of the cases of equitable rescission and reformation with those of relief through the medium of an action at law, both the essential similarities and the incidental differences may be strikingly brought out. It is believed that every teacher, whether of Quasi-Contracts or of Equity, will do well to try the experiment of teaching them together.

It is always easy, in reviewing a casebook, to make minor criticisms of

the editor's selection of cases. In the present volume teachers will miss some of their old favorites. For a conspicuous example, they will find *Moses v. Macferlan* reduced to a brief note near the end of the volume, dealing with the overhauling of a judgment, without any quotation of Lord Mansfield's famous dictum on the nature and scope of the action of assumpsit. But, on the other hand, there are many interesting and significant cases not to be found in other casebooks; and there can be no doubt that, on the whole, the collection is a most useful and stimulating instrument both for the teacher and for the student. It is a worthy companion of Volume I.

FREDERIC C. WOODWARD

University of Chicago.

Reports of Cases in the Vice-Admiralty of the Province of New York and in the Court of Admiralty of the State of New York, 1715–1788. Edited by Charles Merrill Hough, New Haven, Yale University Press, 1925. pp. xxxvi, 311.

It is well known that when the Federal Admiralty courts were first organized under the Constitution, they considered that the constitutional grant of "all cases of admiralty and maritime jurisdiction" was intended to vest them simply with the Admiralty jurisdiction administered by the courts of the mother country at the time. Hence they declined jurisdiction over cases not arising on tide water.[1]

But the growth of commerce on our great rivers resulted in further consideration of the question and repudiation of the limitations on the admiralty jurisdiction in England which had been imposed by writs of prohibition from the courts of law. In *Waring v. Clarke*[2] the Supreme Court decided that the American admiralty jurisdiction extended over tidal waters within the body of a county, thus ignoring one restriction of the English courts. Five years thereafter, in *The Genesee Chief v. Fitzhugh*,[3] the tidal test also was discarded and the test of navigability announced as the criterion.

This conclusion was reached by studying more closely the jurisdiction exercised by the colonial courts of admiralty and the commissions under which many of them had acted. This resulted in the decision that the jurisdiction had in mind by the framers of the Constitution was that exercised by the colonial and state admiralty courts, with which they were familiar, and not the narrower jurisdiction of the English courts, with which they were not familiar.

On this account any records of those early American courts which can be exhumed and made accessible to the practitioner are of value, and even Judge Hough's enthusiasm for his find has not exaggerated its importance. New York seems to have been more fortunate than the other colonies—perhaps from the fact that it fell into British hands so early in the Revolution and remained under their control so long so that its records escaped the vicissitudes of war. Judge Hough in the Appendix relates the fate of the other colonial records.

As to Boston, the writer a few years ago had the good fortune to find in an old book store the brief of Henry Wheaton and Daniel Webster in *Peele v. Merchants Insurance Co.*[4] in the U. S. Supreme Court. It was an admiralty suit upon a marine insurance policy, tried before Mr. Justice

[1] *The Thomas Jefferson*, (1825, U. S.) 10 Wheat. 428.
[2] (1847, U. S.) 5 How. 441.
[3] (1851, U. S.) 12 How. 443.
[4] (1822, C. C. D. Mass.) Fed. Cas. No. 10905.

Story in Massachusetts. The question of jurisdiction was made and reserved but not discussed in the opinion, as Judge Story had already decided in favor of the jurisdiction in the famous case of *DeLovio v. Boit.*[5] The case was tried and decided on the merits, and was taken to the Supreme Court, whose minutes show; "Reversed by consent Jan. 31, 1827 without prejudice to any party or any question and without costs."

The brief—as would be expected of its authors—is a strong one, but is chiefly notable for its appendix. It extracts from Godolphin, *The Sea Laws*, the argument of Sir Leoline Jenkins in the House of Lords on the admiralty jurisdiction, and quotes Malyne's *Lex Mercatoria*, Zouch and Exton—everything which bears on the admiralty jurisdiction in contract.

It also contains an abstract of all the records of the Admiralty Court of Boston from 1740 to 1747, accompanied by the statement that "there are no other Admiralty Records in Massachusetts prior to the adoption of the Constitution."

In Virginia we are still more unfortunate. As early as 1660 the House of Burgesses passed an act constituting the Governor and Council a court of admiralty,[6] but no court was organized till 1697. In 1671 Governor Berkeley, in answer to "Enquiries by the lords commissioners of foreign plantations" says (as to "what courts of judicature are within your government relating to the admiralty") that in 28 years there has never been one prize brought into the country; so that there is no need for a particular court for that concern.[7] In the same paper, however, he says that "English ships, near 80 come out of England and Ireland every year for tobacco; few New England ketches,"[8] which indicates a fairly active trade.

But later—in 1715—Governor Spotswood, in answering a query from the Lords Commissioners of Trade and Plantations, states that the Virginia Vice-Admiralty Court is composed of "Judges who are Gentlemen of English birth, and bred up at the Inns of Chancery in the profession of the Law."[9]

The Virginia Convention of 1775–6 first elected Edmund Randolph, John Blair and James Holt, and afterwards James Hubard, Joseph Prentis and John Tyler judges of the admiralty court; and the state court of admiralty was in active operation down to the adoption of The Constitution.

In colonial times John Clayton, John Holloway and Edward Barradall served on the admiralty court at different times. They had all filled the office of Attorney General, and were men of high attainments. It is almost certain that they wrote opinions, and yet not one can be located. A room in the capitol at Williamsburg was assigned to this court, and its records must have been lost, either in the hurried removal of the capital to Richmond in 1779, or more probably when the capitol was burned at the evacuation of Richmond in 1865. And so the New York records are like the surviving Sibylline books, more valuable from the loss of their companions.

The subjects of maritime jurisdiction with which we of the present time are familiar are rather scarce. Collision cases, as might be expected, are absent, and there are only a few salvage cases. They did not object to selling slaves at that time in New York.[10] They declined cognizance of seizure within the body of a county, or contracts made on land,[11] thus

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[5] (1815, C. C. D. Mass.) Fed. Cas. No. 3776.
[6] 1 Hen. Sts. 537.
[7] 2 Hen. Sts. 512.
[8] *Ibid.* 515.
[9] *Spotswood Letters*, vol. 2, p. 193.
[10] *Ex parte* 17 *Indians, Molattos and Negroes*, p. 29; *Ex parte John Reton*, p. 31; *Cox agt. Two Negroe Men*, p. 73.

following the narrower restrictions of the English courts. A good example of a *nolo contendere* plea is given.[12] A libel for an assault *super altum mare* consisting of throwing punch in one's face is sustained, and damages assessed at 20 shillings.[13] So also an assault on a passenger by the master of a ship.[14] In a case where the master sued in a representative character and died during the pendency of the suit, the proceeding was revived in the name of the owners.[15] In an unreported case known to the writer suit was revived in the name of the master's personal representative—an obvious error as the master was suing as agent and an agency is revoked by death. In *Francis v. The Ann*, p. 63 (a libel for seamen's wages) the *res* was taken into custody under the process of the court, although it was then in the custody of a court of law. Such an interference of one court with another would not be permitted now.[16] In *The New York* (p. 217–9) the judge at the request of proctor for claimants answered interrogatories in writing, but not under oath, as there was no one to swear him, and the same were read at the hearing. The report does not show whether the other side was permitted to file cross-interrogatories or to cross-examine. But this attempt to act as judge and witness did not meet the approval of the court when an appeal was taken to England, and his answers to the interrogatories were thrown out as unsworn to.

Prize cases and cases arising out of the English navigation laws and trade regulations are much more numerous than any of the other classes. The proximity of New York and New England to the sea line of communication between France and Canada, as compared to the Southern colonies would largely account for the prize cases. As to the trade cases, some irreverent historians have insinuated that smuggling was regarded as quite a gentlemanly occupation in the Northern colonies. It may have been so in the Southern ones too, but, unless our lost records rise up to testify against us, they cannot prove it against us.

Judge Hough's annotations and preliminary discussion show excellent judgment, being just enough to bring out the original matter in its best phase, and not so elaborate as to relegate it to a secondary place.

ROBERT M. HUGHES

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The Historical Foundation of the Law Relating to Trade Marks. By Frank I. Schechter. New York, Columbia University Press, 1925, pp. xxviii, 211.

This book marks the beginning of research work in the various law schools in this country. Although such work is in its infancy, its growth is assured. It is fitting that the first book of the Columbia Legal Series should be devoted to the law of trade marks, which has become so important under present day business practice.

Mr. Schechter's work is interesting and thorough. It is of practical advantage in providing a background for a subject of which the average lawyer, as well as the layman, is likely to be ignorant. The historical development of a trade mark, from a liability to an asset of tremendous value, throws considerable light upon the difficulties encountered today in trade mark litigation.

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[11] *Kennedy agt. 32 bbls. gunpowder*, p. 82.
[12] *King v. Booth*, p. 12.
[13] *Thomas v. Bryson*, p. 179.
[14] *Gillaspie v. Hynes*, p. 210.
[15] *Rainbow*, p. 63.
[16] *Taylor v. Carryl*, (1857, U. S.) 20 How. 583; *Moran v. Sturges* (1894) 154 U. S. 256, 14 Sup. Ct. 1019.

With the breaking down of the Guilds and the extension to other fields of business, which previously had been local, trade marks came to be regarded as assets and relief was sought against counterfeiting. This was originally cared for by the Guilds themselves. The growth of the common law conception of a trade mark from the fragmentary Guild trade mark law, coupled with the relief afforded in the Privy Council and Star Chamber, and the final intervention of equity to prevent commercial fraud, marked the milestones of progress. Yet the English Courts found considerable difficulty in granting relief. Although strongly inclined to prevent fraud, it was necessary for them to find a legal basis. In the early English cases various grounds were stated, deceit of the public, interference with property rights, etc. No particular principle has as yet been agreed upon. Some courts, even now, speak of a property right in the trade mark, others of deceit of the public, and still others of interference with the good will of a particular trader. The difficulty with the present law of trade marks, as in the old English cases, is in making the facts fit a particular theory. These problems of the modern law, considered from a historical standpoint, are treated at length by Mr. Schechter without reaching a definite conclusion.

From the trend of present decisions it can no longer be maintained that a naked trade mark is property. A business branch of the law must keep pace with business practice. To confine trade mark law to narrow bounds and arbitrary and artificial classifications leads to difficulties, contradictions, and manifest injustice. It seems inadequate to answer the conundrum, which Mr. Schechter puts, by saying that trade mark law is but a part of the broader law of unfair trading, unless it be conceded that any act, which artificially interferes with the normal course of trade, to the disadvantage of another, constitutes unfair trading, and that this is a question of fact in each case. The acceptance of this general principle appears to be the only theory upon which divergent views can be reconciled and courts enabled to keep pace with the trade parasite for the purpose of adequately protecting business.

ALLEN M. REED

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Recent Developments in International Law. By James Wilford Garner. Calcutta, Calcutta University Press, 1925. pp. x, 840.

This volume incorporates a course of lectures, substantially as they were originally written, delivered by Dr. Garner in November and December 1922, as Tagore Professor of Law in the University of Calcutta for that year. His selection for that post no doubt may in a measure be ascribed to the impression made by his treatise entitled "International Law and the World War," published in 1920, in two volumes. To the reflection of those who are accustomed to contemplate the "codification" of international law with a lightness of heart similar to that with which Louis Napoleon declared that he entered upon the Franco-German war of 1870, it may be appropriate to commend Dr. Garner's prefatory remark, in the volume now under review, that international law, like the common law of England and the United States, "has grown up slowly and gradually, largely by the process of accretion;" that the results are "the culmination of historical and evolutionary processes," which can be "satisfactorily studied only by beginning with their origins;" and that much of what has taken place since the opening of the present century, instead of being in any true sense of the word a "development," belongs more properly to the domain of "interpretation" and "application," sometimes representing "retrogression rather than progress." On the other hand, the reaching of

a specific agreement, as is now and then done, on rules concerning matters about which there has been a divergence of opinion among states, involves, he observes, "the work of codification in the larger sense of the word;" and notable attempts have been made in recent years to advance in this direction.

As regards present doctrine and practice, Dr. Garner says that "the supremacy of international law does not exist in the sense that national courts may disregard the law of their own state when in their opinion it is repugnant to the prescriptions of international law;" and, employing the terminology of certain other writers, the value of which he questions, he remarks that, in the aspect just mentioned, international law "is still *inter*-national and not *super*-national." Not only do I fully share Dr. Garner's doubts as to the value of this terminology, but I think it clearly betrays, on the part of its authors, a want of appreciation of certain elementary legal principles. The phrase "international law" has to a great extent superseded the title "law of nations," or, as we often find it in earlier writers, "laws of nations;" and the specific object of the substitution was to indicate that this body of law, instead of being a law *of* nations, in the sense of emanating and deriving its authority from the legislation and decrees of each nation separately and individually, was "international," or, in other words, a law *between* nations, binding them as between themselves, individually and collectively, by a superior obligation, and constituting a standard to which their municipal law must be made to conform. Of this conception there is the familiar corollary that all states within the circle of law-governed nations are conclusively presumed to have accepted that obligation and standard. This is simple and altogether intelligible. The part national courts may play in the interpretation and application of international law is another matter. National courts are not the sole nor the final interpreters of international law, nor are they the designated agencies of foreign intercourse; and if, in discharging their functions, they violate a rule of international law either freely, by reason of misunderstanding, or under compulsion, by reason of an act of national legislation, the nation is answerable through its proper organ. This is an admitted principle so constantly acted upon that the citation of examples of its observance should be superfluous.

In the course of his discussions Dr. Garner deals, among other things, with The Hague conventions, maritime warfare and the Declaration of London; with the interpretation and application of international law in recent wars, including the "world war," and with the peaceful settlement of international disputes by means of arbitration and otherwise. He devotes to the history of the development of an international court of justice an entire lecture, concluding with a comprehensive account of the Permanent Court of International Justice which was eventually opened at The Hague in 1922. In describing the so-called convention for the limitation of the use of force for the collection of contract debts (The Hague 1907), he inadvertently speaks (pp. 70, 71) of Señor Drago as a Chilean; he was, like Calvo, an Argentine. But this is not a matter of substance. On the other hand, one naturally looks for the author's considered opinions on questions of such profound importance as the professed interpretations and applications of international law during the "world war;" and it is interesting to find here the clear and significant statement that, in respect of the treatment of the property and business enterprises of enemy aliens, "the policy of all the belligerents was severe and largely unprecedented" (p. 311). No less clear and significant is his opinion that, although none of the belligerents appears to have "intended" that the properties taken into their custody should be "confiscated outright," yet the provision of

the treaties of peace (the Versailles treaty with Germany, and the treaties with Austria, Bulgaria, Hungary and Turkey) that such properties should be held for the satisfaction of claims "amounted virtually to confiscation," and that "the requirement that the enemy governments should indemnify their nationals for the losses sustained by the appropriation of their property for this purpose hardly rendered it less so" (pp. 312-313). A writer is to be commended who, thus brushing sophistry aside, candidly goes to the heart of the matter.

JOHN BASSETT MOORE

Rye, New York.

Law and Practice of Libel and Slander. By Clement Gatley. London. Sweet & Maxwell, Ltd., 1924, pp. cxxii, 932.

This book is the latest volume on the subject of defamation. In arrangement, content, and clarity of statement, it is not unlike that of Odgers, although one would hesitate before saying that it is a better or even as good a book. Perhaps the chief difference lies in the emphasis which the two authors have given to the decided cases. The impression left with the writer after a rather hasty reading of the text, is that it is more of a statement of rules and results gleaned from the decisions, and less of an exposition of underlying principles, than is to be found in Odger's book. In view of the size, and the large number of cases collected, it is impracticable to even attempt, within the compass of a review, to discuss the book in detail. Besides, an appraisal of the work as a whole based upon isolated parts which, on a hasty reading, appear to be either meritorious or objectionable, would be of little value.

The author has endeavored not only to state the results of the English cases, but has included many Colonial and American decisions. In the preface, the author states that he has carefully gone through the cases collected in the American Century and Decennial Digests, and has incorporated a large number of the more important of them, among which are several illustrating novel or doubtful points of law. The discussion of the English cases appears to be exhaustive and, in the main, accurate. But the treatment of the American cases, being more or less incidental, is in many cases inadequate and in some instances misleading. Thus, in the discussion of slanderous words actionable *per se* because they disparage a person in his trade, business, office or profession, the author confines himself almost wholly to the English cases. After discussing the decision of the House of Lords in *Jones v. Jones*[1] which held that words accusing a schoolmaster of immoral conduct were not actionable *per se*, the author does not mention the fact that an opposite conclusion was reached by an American court.[2] Likewise, after pointing out that according to the English decisions prior to the enactment of the Slander of Women Act in 1891, words imputing unchastity to a woman were not actionable *per se*, the author does not note that a number of American courts held such words to be actionable *per se* without the aid of a statute.[3] Again, in discussing whether a municipal corporation may recover for a libel against the cor-

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[1] [1916, H. L.] 2 A. C. 481.

[2] *Nicholson v. Dillard* (1911) 137 Ga. 225, 73 S. E. 382; see (1915) 28 HARV. L. REV. 713.

[3] Perhaps the majority American view is that such words are not actionable *per se*. *Pollard v. Lyon* (1875) 91 U. S. 225. But several American courts have declared words of this character to be actionable *per se* in the absence of a statute. *Cushing v. Hedcrman* (1902) 117 Iowa, 637, 91 N. W. 940; *Barnett v. Ward* (1880) 36 Ohio St. 107; *Battle v. Tyson* (1906) 77 Neb. 563, 110 N. W. 299.

poration, the author discusses the English cases, but makes no mention of the recent and, perhaps, the leading American decision upon this point.[4]

In the chapter on Absolute Privilege, the text is confined largely to the English decisions, but in a footnote the American rule is stated as follows:

"In America the rule as to the privilege of statements made in the course of judicial proceedings is subject to the qualification as to parties, counsel, and witnesses that their statement be pertinent and material to the subject-matter of the inquiry, but the Courts take a very liberal view of what is pertinent and material."

The above is a correct statement of the majority[5] American view if the author means that parties, counsel and witnesses enjoy an absolute privilege only when the statement is pertinent and material to the subject-matter of the inquiry. But the statement is open to criticism in that it may convey the impression that if the statement is not pertinent and material, there is no privilege at all. Certainly this is not so according to some American decisions. The rule, as laid down in many American cases, is that if the statement is pertinent, it is absolutely privileged; if the statement is not pertinent, then there is only a conditional privilege.[6]

It is disappointing to find that the author has accepted the decision in *Smith v. Streatfield and others*[7] without *quaere* or comment. The facts in that case were that A, who was conditionally privileged to publish to certain persons defamatory matter concerning B, employed X, a printer, to print the defamatory matter for distribution. In an action against A and X for libel, the defense of privilege was interposed. It appeared that A was actuated by malice, but that X, the printer, acted in good faith. The court conceded that X would not have been liable had it appeared that A acted in good faith, but the court held that the malice of A, although unknown to X, defeated the privilege both for A and X, and that they were joint tort feasors and jointly liable. This conclusion is predicated upon the assumption that there was but one privilege, like a single shield which, having been destroyed because of A's malice, necessarily left X exposed to liability. Certainly the result is shocking. Had the court regarded the privilege of A and X as separate privileges, obviously a different conclusion as to X might have been reached. The occasion being a privileged one, and X having no reason to suppose that A was actuated by malice, it would seem that he was justified in printing and distributing the pamphlets. If X, in answer to an inquiry about B, had made defamatory statements concerning B, X would have been protected if he had acted in good faith, and his privilege would not have been defeated because it subsequently appeared that the one making the inquiry had no real interest in the subject matter, but was actuated solely by curiosity.[8] If in this case X is not bound to ascertain the motive of the one making the inquiry,

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[4] *City of Chicago v. Tribune Co.* (1923) 307 Ill. 595, 139 N. E. 86.

[5] Apparently the Kentucky and Maryland courts have followed the English decisions and accorded an absolute privilege to witnesses, counsel and litigants. See *Sebree v. Thompson* (1907) 126 Ky. 223, 103 S. W. 374; *Yancey v. Commonwealth* (1909) 135 Ky. 207, 122 S. W. 123; *Hunckel v. Voneiff* (1888) 69 Md. 179, 17 Atl. 1056.

[6] See *Myers v. Hodges* (1907) 53 Fla. 197, 44 So. 357, for an excellent discussion of the majority American rule as well as an exhaustive collection of the cases. See also *Dayton v. Drumheller* (1919) 82 Idaho, 283, 182 Pac. 102.

[7] [1913] 3 K. B. 764.

[8] In *London Association v. Greenlands* [1916, H. L.] 2 A. C. 15, Lord Atkinson made the following observation (p. 35): "It was decided as long ago, I think, as *Bromage v. Prosser* (4 B. & C. 247), and many times since, that if one person makes an inquiry of another touching the position or character of a third, and the person inquired of makes a reply which he

it is difficult to see why the printer in *Smith v. Streatfield and others* was bound to determine the motive of the one who employed him to make a communication on an occasion which was obviously privileged. Where the agency employed to transmit the communication is a telegraph company, there are decisions in America which support the conclusion that the telegraph company is protected if the sender of the message is apparently privileged and the operator acted in good faith in transmitting it.[9] While a telegraph company may be given greater protection than other agents,[10] it is difficult to justify the distinction. In this connection, it should be noted, that the author does not discuss the American cases which accord to the telegraph company a privilege under the above mentioned circumstances.

Among the statements said to be actionable *per se* because they impute to the plaintiff certain diseases, the author, in addition to venereal disorders, leprosy and the plague, adds scarlet fever. This is rather startling, in view of the fact that neither Odgers nor Fraser thought that to accuse one of having scarlet fever was slander *per se*. Furthermore, the authorities cited in support of the statement do not support the text. If scarlet fever is to be added to the list, there would be no justification for excluding small-pox, the imputation of which both Odgers and Fraser declare is not actionable *per se*.

While one might point to numerous passages in the book which appear to be inadequate or questionable, its good qualities far outweigh the bad, and in that it brings together many important English cases decided since other leading texts on the subject were published, it will undoubtedly prove to be of value to the profession.

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bona fide believes to be true, and also bona fide believes that the inquirer desires the information, not merely to gratify idle curiosity, but for some purpose in which he, the inquirer, has a legitimate interest of his own, the occasion upon which the answer is communicated to him is a privileged occasion. *This will be so*, I think, whether either of the beliefs so formed by the person inquired of be reasonable or not—*Clarke v. Molyneux* (1877) L. R. 3 Q. B. Div. 237—and also *whether the inquirer, in fact, desired the information for the purpose mentioned. It will be sufficient if the other person honestly believes he does so require it*: *Waller v. Loch* (1881) L. R. 7 Q. B. Div. 619." (Italics the writer's.) See also dictum in *Sunderlin v. Bradstreet* (1871) 46 N. Y. 188.

[9] *Western Union Tel. Co. v. Cashman* (1906, C. C. A. 5th) 149 Fed. 367; *Nye v. Western Union Tel. Co.* (1900, C. C. D. Minn.) 104 Fed. 628; *Peterson v. Western Union Tel. Co.* (1896) 65 Minn. 18, 67 N. W. 646; (1898) 72 Minn. 41, 74 N. W. 1022; (1899) 75 Minn. 368, 77 N. W. 985 (*semble*); *Paton v. Great Northwestern Telegraph Co.* (1919) 141 Minn. 430, 170 N. W. 511. See discussion of this question in article by present writer (1920) 20 COL. L. REV. 30, 369.

[10] See Smith, *Liability of a Telegraph Company for Transmitting a Defamatory Message* (1920) 20 COL. L. REV. 369 at 383 *et seq.*