Book Reviews


Students of American banking will rejoice that Mr. Warburg has finally been persuaded to publish the story of his connection with the movement for banking reform, the passage of the Currency Act, and the establishment and development of the Federal Reserve System. Though born in Germany and trained in schools and banking houses abroad, he had made several visits to the United States before he took permanent residence here in 1902, joining the firm of Kuhn, Loeb & Company. With what thus might seem too spare an acquaintance with American life and institutions, he almost immediately became very active in the problem of reforming our banking system of which the deficiencies were most glaringly shown in the panics of 1900, 1903 and 1907. From 1907 to 1913 no one was consulted more often and more respectfully, or wrote more voluminously and constructively on the subject of bank reform than he. In furnishing ideas, in educating the American public in the need of bank reform, and in directing the mass mind along proper channels, he probably tops all in non-political personal influence on the Federal Reserve legislation. President Wilson very naturally recognized the supreme importance of having such a man on the Federal Reserve Board in the formative period of the system and persuaded Mr. Warburg to accept membership for four years at great financial sacrifice. His two volume work therefore covers the System's origin and growth to the end of his service on the Board in 1918.

The exact objective of his book is defined in numerous places. He does "not present it as a chapter of banking history, or as a complete story of the struggle of the non-political thought in banking reform;" he means to "give a description of the episodes of the play in which [he] personally took part either as actor or as spectator;" he has the "very distinct and limited aim in mind of contributing building material which some day might be useful to historians;" he does not "claim to have originated any new banking principle." As champion of "the non-political side" he aims to show: "that the Federal Reserve Act . . . is still weighed down with the burden of political compromises which menace its future; that this danger could be removed without affecting any fundamental part of the structure, but that the necessary remedial action may be hoped for only if the problem can be dealt with in a thoroughly nonpartisan spirit. The principal message of this book thus remains that the Federal Reserve System is the product of the labors of many minds, that it is the common property and ward of all the people, and that all must feel an equal degree of concern and responsibility for its welfare." He claims that in their books on the Federal Reserve, Owen, Willis, and Glass have put the wrong emphasis on the factors of law-making by neglecting the great mass of propaganda and popular education of a non-political character which was necessary to make legislation possible at all and which prepared the bank bill before politics took hold of it and put it through Congress. Furthermore, he impeaches these authors as pleaders, not bent on giving the full unvarnished truth about the origins and legislative progress of the bill but rather on aggrandizing their own or their party's contributions and

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minimizing the contribution of others. In particular, he feels that an equitable assessment and frank acknowledgment of the work and service of Senator Aldrich as the political champion of bank reform have not been made and he is not disposed to permit certain misinformation by these authors to stand unrefuted, believing that fullest knowledge makes for better legislation and the wise amendment of the system hereafter.

The first 500 pages of Volume I constitute the author's present contribution to the above points; but in order to show exactly and indisputably the large contribution of the Aldrich (National Monetary) Commission, pages 178 to 406 are devoted to a parallel arrangement by which the sections of the Aldrich Bill (National Reserve Association Bill) are juxtaposed to the corresponding sections of the Federal Reserve Act. This is divided into two chapters, the first giving the text and the second being “an analytical comparison... based on the juxtaposition of texts shown” in the first. The preparation of this abstract was largely entrusted to Dr. R. W. Robey, of the Columbia University faculty. By means of abbreviations and footnotes the similar provisions of Mr. Warburg's own scheme, “The United Reserve Bank of the United States,” offered in 1910, are compared with the Aldrich and Federal Reserve plans. Pages 466-487 are entitled “Looking Forward” and consist of the author's recommendations for the future, substantially as formulated in the spring of 1927. But inasmuch as nearly two full years transpired before his book was published, the author wrote two addenda, the first (pp. 488-500) on “The Chicago Incident,” referring to the question of the power of the Federal Reserve Board to prescribe discount rates to a recalcitrant Federal Reserve Bank, and the second on “The Stock Exchange Crisis of 1929.” In the remainder of Volume I and in all of Volume II are assembled the letters and papers cited and quoted by Mr. Warburg and a complete collection of his writings on bank reform and Federal Reserve policies and practices, from 1907 on. The assembling of all this documentary material will command the eternal thanks of the banking fraternity and the historians and scholars of finance.

The very size of the text makes it quite impossible for the reviewer to speak with much particularity or to cover it at all adequately. In his writings and counsel Mr. Warburg hammered most heavily the fact that the essential weakness of our system was the extreme decentralization of bank resources, the lack of a sense of responsibility to other banks and to the public in time of emergency, and the absence of a two-name commercial paper and discount market and of a central bank at which such paper could be converted to useful form when needed. He challenged the “almost fanatical conviction that the only hope of keeping the country’s credit system independent” of politics on the one hand, and of Wall Street on the other, “was to be sought in complete decentralization of banking,” and advocated centralization. He urged, but with much less importance, the abolition of the bond-secured note system and the establishment of an elastic “asset currency.” He found Senator Aldrich and the old Republican guard which dominated the Senate more disposed to adopt measures of bank centralization than they were to abandon the bond-secured currency; but Mr. Warburg wanted an asset currency issued by a centralized bank and not by the individual commercial banks as proposed in the Fowler Plan. His earliest (November 12, 1907) plan was described in a paper entitled “A Plan for a Modified Central Bank,” advocating a central bank to be located in Washington with possibly some local boards for branches in the various cities, the clearing house committees to be taken as nuclei. In March, 1910, he published his maturer views on bank reform under the title “A United Reserve Bank of the United States.”
The bank suggested, to be owned directly by the member banks and to be located at Washington, was to have perhaps twenty zones of operation, with a voluntary association, preferably incorporated, of banks grouped around a financial and commercial center, each having a board of directors and officers.

Throughout his career Mr. Warburg never relented from his position that high centralization was the ideal for efficiency, and when the regional idea finally triumphed he worked to keep the number of district banks at a minimum and to strengthen the central governing board. Nevertheless he pictures Senator Aldrich at a conference in 1910 as disposed to "attempt to establish a full-fledged central bank, in the European sense," and himself as dissuading Aldrich from going too far in that direction. By that time he had concluded that "our political, legal, and economic conditions preclude[d] the possibility of creating an institution with powers and efficiency equal to those of the European government banks," and that it was wise to be content with an initial step toward this final aim, not neglecting "any of the fundamental principles on which modern central banks have been founded in other countries." At this and other conferences with the Senator, as well as by his letters, publications and speeches, he greatly influenced the Aldrich Plan, so that when the Democrats came to put over the legislation it was but natural that they associated Warburg with Aldrich and were disposed to depreciate his contributions. This explains in part the attitude of Glass, Owen, and Willis toward Warburg, and why Warburg repeatedly impeaches the motives, fairness and scholarship of these "pleaders."

Warburg praises Aldrich warmly—"I was deeply impressed by the earnest devotion with which he approached the subject and the untried patience with which he applied himself to it .... there was not a page of the thirty-five volumes collected and published by the National Monetary Commission which he had not read .... he had penetrated quite deeply, not only into the theory, but also into the technique, of the banking problems involved. He differed from Senators Owen and Glass .... in that he had essentially a business mind .... although he was a very shrewd politician, he showed a surprising disregard for party politics in dealing with our particular problem .... he always stressed the imperative necessity of dealing with the question on a non-partisan basis .... the secret of his great political power in Congress .... must have been his indefatigable, painstaking willingness to ascertain the facts down to their very last details. .... When Senator Aldrich revised his original views on the banking problem and in a radical way reversed the policy of a great political party of which he was so prominent a leader, he showed extraordinary courage and vision for which the country owes him an everlasting debt of gratitude." This surely is a very different picture from the one presented in the books of Owens, Glass, and Willis, and Warburg does a real service not only in repainting the picture but in indicating in great detail the exact ideas and phraseology appropriated by the framers of the Federal Reserve Bill from the Aldrich Bill.

Mr. Warburg seeks to correct other impressions created by Owen in The Federal Reserve Act (1919), Willis in The Federal Reserve System (1923), Glass in An Adventure in Constructive Finance (1927), and Seymour in Intimate Papers of Colonel House (1926-1928), not only as to false claims of contributions to the Federal Reserve Act and its passage, but also as to the position, motives and acts of these men relative thereto. He shows that Willis did not really enter the bank reform movement until 1911 when he was invited to prepare a handbook to be published by the "National Citizens League for the Promotion of a Sound Banking Sys-
tern," and adds (p. 71): "In becoming so intimately conversant with the principles for which the League stood, as well as with the technical features under discussion, it is to be presumed that he gained a familiarity with the subject which, later on, proved valuable in the work he was invited to undertake as the expert for the Glass Committee." Warburg soon locked horns with Willis, who strongly opposed counting the notes of any central organization which might be created as legal reserves of member banks; Willis won this friendly contest, but it has proved a doubtful victory since the Reserve Act deposits of the Federal Reserve banks, which are surely weaker credit than Federal Reserve notes, are made the exclusive legal reserve of member banks. Glass is pictured (p. 79) as restating the plank adopted by the Democratic Convention in 1912, as "The Democratic party is opposed to the Aldrich Plan or a central bank," to read "Aldrich Plan for a central bank," in order to save his face when it had come time to formulate a new banking plan and he had found it advisable to appropriate so much of the Aldrich Plan. Warburg doubts (p. 83) Glass' statement that he had originally planned to make the Comptroller of the Currency the only connecting link between the Federal Reserve banks, for Glass could not by temperament have tolerated such a financial dictatorship centered in one man.

That the regional idea originated with Glass or Willis, as they claim, is flatly denied (pp. 84–9) and Warburg quotes an article of his own dated 1909, and articles of Victor Morawetz dated 1909 and 1911, to show that Glass and Willis had been anticipated in this contribution; in fact, he is quite doubtful whether either Glass or Willis even knew that certain important conferences had been held and speeches made and papers read on this subject in New York two years before the Federal Reserve Bill was whipped into shape. Warburg also prepared a regional plan and presented it through Morgenthau in January, 1913, a copy going to Colonel House and to Willis, three months before the Willis "Digest of the Federal Reserve Bill" was written (p. 90–1); and yet Willis (Federal Reserve System, p. 523) wrote that the Federal Reserve Act "was not derived from, or modelled after, or influenced even in the most remote way by other bills or proposals currently put forward from private sources, but, on the contrary, it was itself the pattern from which a host of imitators sought to copy." At the request of Colonel House for the President, Warburg was persuaded to analyze the Willis "Digest" as quickly as possible; this analysis, delivered to Colonel House on April 22, 1913, passed from the President through McAdoo to Glass. In his book Glass refers (page 49) to this analysis as "hostile criticism... calling for radical alterations of the bill, which were not made, and advocating certain things which were not done," and declares Warburg "simply was unalterably hostile to certain fundamental provisions of the federal reserve bill and in plain terms persistently said so." Warburg shows that Glass was confused as to dates and bills in these criticisms, that his analysis "while frank, was written in a constructive, rather than a hostile, spirit," and that the analysis "contained no less than nine suggestions which appear, either wholly or in part, in the Federal Reserve Act as passed by Congress."

These instances are sufficient to indicate the nature of the misinformation which Warburg was moved to correct in writing his book. There are many, many more. One of the invaluable features of these corrections is that they are carefully documented, with fully quoted letters, papers, and memoranda, and are not simply such verbal denials or contradictory affirmations as would leave the reader in doubt as to who should be believed.

New Haven, Conn.

RAY B. WESTERFIELD.

Most first year courses in pleading and procedure are not particularly successful. Dean Clark has sought to remedy the situation by the presentation of a new collection of interesting and realistic materials. First of all, he has broken with tradition by largely subordinating historical matters, except when there is something of present day importance to be learned from ancient sources. For this purpose his use of selections dating from the Norman Conquest to the present year is much sounder than the traditional method of disregarding all occurrences before 1500 and since 1848. But his golden age is the present and his cases are predominately modern.

The introductory chapter commences with two recent appellate records in which the facts are bound to catch the interest of a beginner. It then proceeds to a treatment of the development from oral to written pleadings, followed by data for a critical discussion of the functions of pleading. After the introduction, the volume is divided into four books, of which the first deals with claims for damages for injuries to the person. Of this the first section is devoted to the common law writ system, including the distinction between trespass and ease and its present significance. The reviewer regrets the designation of trespass for an assault as vi et armis, as distinguished from trespass de bonis asportatis, quare clausum fregit, etc. (p. 56.) It is true that trespass for an assault is vi et armis, but no more so than trespass to lands or personalty. Then follows a brief treatment—principally by way of reference—of jurisdiction over and appearance of the defendant.

Chapter three deals with the complaint. Its chief distinctive feature is the inclusion of excerpts from philosophical texts developing the problem as to what are facts in the pleading sense. This, combined with casebook and form-book material, makes possible an extremely critical and practical development of the subject. Chapters four and five cover the answer and reply in thorough fashion. Treatment of demurrers as a procedural device, which in this volume is only incidental, is evidently left largely for the second volume, perhaps for comparison with the more flexible motions to dismiss. Chapter six, "Relation of the Pleading to the Proof," is a new feature in pleading casebooks. It treats presumptions and burden of proof with a quite different emphasis from that ordinarily developed in the course on evidence. The reviewer believes that the chapter will prove of enormous advantage in the study of pleading as well as a substantial aid in the teaching of substantive law and evidence courses, though it will not materially reduce the allotment of teaching time to the latter.

In Book II, covering contract claims, there is considerable historical matter. This is skillfully related to the problems of the modern pleader, the use of the common counts being particularly well developed. The third book deals with actions concerning personality and realty. The handling of personality claims is at least as satisfactory as in earlier casebooks, but the editor here makes rather less of an advance over his predecessors than in the other topics. There is too much overlapping with personal property courses on questions of plaintiff's right, defendant's act and the nature of the property. This cannot be avoided entirely, but it can be curtailed and more emphasis placed on the modern procedural side of these actions.

Equity is the subject of Book IV but there is no treatment of adequacy of remedy at law, balancing of interests, mutuality, etc. Nor is there a comprehensive survey of the older equity pleading and practice.
After a brief résumé of the history of equity, the editor proceeds to develop the problems of jury trial, appeals and equitable defenses, as raised by the union of law and equity under the code. This is the topic which is probably dearest to the editor's heart and his treatment of it, chiefly because of the common-sense solutions of the difficulties that are suggested, is admirable. The volume is concluded by seventy pages of materials on the enforcement and effect of equitable decrees.

The work is not hampered by strict mechanical arrangement into parallel chapters and sections. For example, sections on pleading fact details and on the relation of pleadings to the proof are not repeated in the parts dealing with contract and property claims, since the conceptual difficulties of these topics are sufficiently treated in connection with actions for personal injuries. And both the title and the contents of Book IV are on entirely different planes of classification from those of the first three books. Sequence of material is determined with the sole idea of making the work teachable. The cases are well chosen to arouse interest in the facts and in the intellectual problems involved. Dean Clark does not set up a straw man in the garb of the forms of actions and obsolete procedure at common law and then proceed to knock it down by showing what modern legislation has done; the student has the material before him to furnish a constant awareness of the present situation and the applicability of historical materials to it. The volume is constructed by placing together the principal cases, quotations from others, forms, text matters, references, suggestions and short essays by the editor in type of the same size. This practice is not altogether pleasing to the eye, yet the slight aesthetic disadvantage is entirely outweighed by bringing to the student's attention other data which are as important for his consideration as the principal cases.

In schools where it is desired to teach pleading substantially as at common law, with code and equity pleading as separate electives, it would be possible, though difficult, to use the work. Likewise those law schools which prefer to give the body of procedural work in the student's last year with only introductory matter in the first will not find the volume entirely suitable. But in the large number of schools where the desire is to develop a knowledge of modern pleading and procedure early in the student's course, the book is a practical and stimulating teaching tool—by far the best which has yet appeared.

Lawrence, Kan. THOMAS E. ATKINSON.


This book phrases the problem of control in its currently popular terms, the regulation of electrical utilities. The success of any scheme of control must depend upon its application to the predominant industry. If, then, the light and power industry has by rapid technological advances and far flung financial operations assumed an ascendent position in the field of the public services, it is important to know how effectively present laws cope with that ascendency.

To this extent the book represents a sound outlook. The authors discuss the status of the public service commission, the role of the courts in regulation, the elusive structure of the holding company, the constitutional problems arising out of the interstate transmission of power, and the disclosures of the Federal Trade Commission on the propaganda of the
private interests. Conditions are said to be critical. Commissions have insufficient powers; they are slow to recognize their responsibilities as champions of the public interest; they are embarrassed by judicial theories of valuation; they are constitutionally incapable of dealing with the industry from a national viewpoint. The crisis is thought to raise a clear cut issue between complete public ownership and unbridled private exploitation.

With the hope of avoiding that issue, the authors devote Part II of the book to a consideration of various compromises. Control through contracts between the state and the companies, the promotion of huge public enterprises to compete with private companies, the Ontario scheme of control through a league of municipalities, and the Electricity Acts of Great Britain are successively treated as possible solutions. But none is deemed adequate and the book ends with a sort of evangelical appeal for "public spiritedness among responsible leaders."

In spite of its sound outlook upon the problem, the book is deficient in detailed analysis. If the purpose of the book is to test the adequacy of present laws in their relation to the light and power industry, it would seem important at the outset to determine the specific defects of the existing machinery. Is the difficulty merely that regulatory legislation thus far has been framed in too general terms to be readily adapted to the needs of a particular industry? Or, were the laws enacted to curb abuses in other industries, with which the peculiar deviations of the power companies are not synonymous? Or, do some of the laws now in force represent unsuccessful attempts to deal directly with problems of light and power? The answers to these questions require a closer study of legislative history and administrative experience than the book reflects.

On the contrary, the book's survey of regulation by state commissions is little more than a cursory summary of the well known characteristics of that agency. No real attempt is made to delve into the successive abuses in the utility field that caused the evolution of the state commission from its early days as an advisory body to its present status as a complex organism of control. The review of the role of the courts in regulation is equally superficial, and to that extent inaccurate. "Public service legislation like all other legislation may be subject to judicial review, for the common law has as part of its accepted ideals and technique the supremacy of the law, which embraces judicial interpretation of legislation" (p. 40), is a statement too ambiguous to be worth printing. To declare, "The common law was developed from the concept of the quasi-public nature of certain callings which the courts differentiated from purely private enterprises" (p. 44), is to overlook reliable research tending to establish that at common law all businesses were deemed public.

The essential characteristic of a business subject to regulation is one of the most disputed questions in public law, yet the authors do not hesitate to conclude, "But under our constitutional system only an industry or service which amounts to a natural monopoly can be considered a legal monopoly" (p. 49). It is difficult to understand the meaning of this paradox, and cases cited in the preceding paragraphs do not seem to support it.\(^1\) The perplexing problem of judicial review is considered

\[^1\] Haugen v. Albina Light and Water Co., 21 Ore. 411, 28 Pac. 244 (1891), cited in note 10, p. 46, to support a statement in the text that natural monopoly is the test of regulation, was a case in which the court justified regulation on the ground that the company had been given a franchise. Green v. Western Union Telegraph Co., 136 N. C. 489, 49 S. E. 165 (1904), is improperly cited in note 19, p. 48.
without reference to the Ohio Valley Water Company case,\textsuperscript{2} which, although its actual holding may be vague, is recognized as a leading decision on the question. A statement that “up to the time of the Civil War very few attempts were made to control rates by legislation” (p. 57), ignores the importance of the Special Act by which rates were generally regulated before that time. While, to suggest that the court in Smyth \textit{v. Ames}\textsuperscript{3} did not have the question of original cost versus reproduction cost now before it (p. 68), is to forget that the question was squarely drawn in counsel’s argument.\textsuperscript{4}

These inaccuracies and the superficial analysis of topics throughout the book, except in the admirable chapter on the Ontario system, are surprising in view of the statement in the foreword that the book “was undertaken as a staff project, because like so many social problems, it presents a variety of facets which can be adequately illuminated only through the collaboration of a number of specialists. Thus economists and engineers joined hands with political scientists, a social psychologist, a statesman, and a specialist in public law. Among the consultants of the staff were a sociologist and an accountant.” But, even though the book does not represent an exhaustive analysis of the problem, it is not without value. It gathers together in one volume material hitherto available only in separate documents. It focuses attention upon the need for testing public service laws in the light of a single industry—which is, perhaps, the most practical approach to sound reform.

New Haven, Conn. RICHARD JOYCE SMITH.


No phase of the work of the League of Nations has been studied more carefully by scholars than the mandate system. The result has come to be a voluminous mass of material, of varying quality, in which almost every phase of mandates has been explored. But a masterful survey of the system has been lacking until the publication of this volume by the Professor of International Law at the University of Chicago. Mr. Wright has spent many years in his study. He has delved into records at Geneva, he seems to have read or seen almost everything published on the subject, and he has made his own observations in some of the mandated territories. In training, in disposition, and in experience, he was equipped to make a significant contribution, and those who have eagerly awaited the results of his work are not to be disappointed.

Part I, dealing with the “Origin and Development of the Mandates System,” is an excellent survey, mainly limited to the actual establishment of the institution in 1919 and subsequent years. Part II, “Organization of the Mandates System,” is a careful study of the way in which organs of the League of Nations have gone about the fulfillment of Article 22 of the Covenant. Some of the subtitles of this section, such as “The Form of the League’s Comments,” are not happy. Part III on “The Law of the Mandates System” is valuable for its grappling with the problems relating to the theoretical basis of the system; it is the first attempt known


\textsuperscript{3} 169 U. S. 466, 18 Sup. Ct. 418 (1898).

\textsuperscript{4} \textit{Ibid.} 499, 501.
to the reviewer to build a comprehensive legal philosophy of the subject. A large part of Chapter IX is devoted to "sovereignty," the treatment of which becomes more involved as it proceeds. Its value will depend largely on the reader's own susceptibilities; when Mr. Wright speaks of the "sovereignty of things," the reviewer feels himself compelled to turn the page. Chapter XI on "General Principles of Law" seems to the reviewer to take too seriously the dictum of Holland that "the law of nations is but private law 'writ large;'" likewise such phrases as "titles to territory," understandable enough in vulgar parlance, become monstrosities in the hands of a legal philosopher. Moreover, the endeavor to explain such words as "mandate" and "trust" in Article 22 by recourse to the Roman mandatum or the Anglo-American trust seems to be destined to futility from the start. Public instruments are not phrased in the atmosphere of the study of the legal historian. Mr. Wright does not fail to appreciate this, and his good judgment prevents his being carried away by analogies, but readers of his book may lack his perspective. Chapter XII on "The Practice of States" deals more with the formal basis of governmental institutions established in mandated territories than with the actual administration; the latter subject is only sketched in Chapter XIII on "The Practice of International Institutions," which deals with many other topics as well. The summary of the position of the United States as to the mandates is excellent, and the conclusion that "the American claim to a voice in the disposition of the mandated territories rested in reality upon a moral or political rather than a legal basis," seems irresistible. The title of Chapter XIV, "Interpretation of the Documents," is somewhat misleading, for it deals not only with interpretation but also with execution.

In Part IV on "The Value of the Mandates System," Mr. Wright is at his best. Chapter XV on "The Achievements of Mandatory Administration" is very illuminating, and might have been enlarged. The author concludes that "the mandates system has proved a practical method for administering backward areas, more satisfactory than others that have been tried from the standpoint of the natives and from the standpoint of the world in general."

Nine appendices contain documents, statistics and maps essential to an understanding of the mandates. The reason for including Article 23 of the Covenant is not clear to the writer. Unfortunately the sources from which documents are reprinted are not indicated, nor is the reader placed on his guard against reliance on an English text where the French text is also authoritative. The bibliography of forty pages is perhaps the best that has been published to date; indeed, it seems at times too complete, in that it relieves the user of little of the task of discrimination.

As a whole, the volume is not only the best study of the subject that has come to the writer's notice, but it will probably remain the standard work in English for many years to come.

Cambridge, Mass. MANLEY O. HUDSON.


The present work has been used in a large number of law schools since the appearance of the first edition in 1915 and the second in 1925. Both the book and its distinguished author are preëminent in the field of torts. Neither needs introduction. We have only to note the changes made in the third edition.

The revision shows markedly the influence of recent judicial utterances,
and, more particularly, of the editor's work as Reporter of the Law of Torts in the American Law Institute where "the actions of Trespass to the Person and Negligence have been dissected" (Preface, p. iii) by the Reporter, as chief surgeon, with the aid of law teachers and judges from all parts of the country. The historical presentation has yielded somewhat to an analytical systematic presentation. The differentiation between "direct" and "indirect" injuries has been superseded by that between "intentional" and "unintentional" invasions. Thus, Parts I and II of the second edition were entitled, respectively, "Direct and Intentional Invasions of Interests of Personality and Property" and "The Development of Tort Liability by the Action of Trespass on the Case." The chapters on assault, battery, false imprisonment and trespass to real and personal property were each headed "Direct Invasions of the Interest etc. etc." In the third edition, the word "direct" is dropped entirely. "Intentional" takes its place. Part II is called "Liability—Unintended Invasions of Interests of Personality and Property." Likewise, a new chapter, "Volition," has taken the place of the introductory chapter of the second edition consisting of quotations from Pollock and Maitland's History of English Law in regard to the early law and the actions of trespass. The cases like Weaver v. Ward 1 and Brown v. Kendall, 2 which were scattered through the first part of the second edition, dealing with "direct" invasions, are now collected in a separate chapter in Part II under the title "Transition From Liability Without Fault to Liability Based on Moral or Social Misconduct" (p. 130). Finally, Ashby v. White 3 and McNary v. Chamberlain, 4 have left their old place as the first chapter under Part II, "The Development of Tort Liability by the Action of Trespass on the Case," for the functionally more appropriate place in the topic "Invasion of Interests of Political and Economic Advantage." New chapters have been added on "Liability for Preventing Third Persons from Rendering Aid" (p. 341) and "Duty of Care in Rendering Services Performed Gratuitously or for Consideration Paid by Third Person" (p. 316).

Approximately 91 cases from the second edition have been omitted and about 75 new cases added. Of the latter, 13 are in Part I, "Intentional Invasions;" 49 in Part II, "Unintended Invasions;" 2 in the part dealing with fraud and deceit; 4 on labor disputes and interference with political, social and economic advantage; and 7 in the Appendix on Conversion. Of the 91 cases from the second edition omitted in the third, 15 fall in Part I; 48 in Part II; 10 relate to fraud and deceit; 8 to defamation and 10 to interference with political, social, and economic advantage.

The greater part of the changes consists of the substitution of really superior cases and the addition of outstanding recent opinions which add value to the book. Examples of the latter are the Palsgraf 5 and Good-

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1 Bohlen, Cases on Torts (3rd ed. 1930) 130, Hobart 134 (1616).
3 Bohlen, p. 926, 2 Ld. Raym. 938 (1703).
4 Bohlen, p. 932, 34 Conn. 384 (1867).
The excellent footnotes are enriched by the citation of recent literature and almost all the sections of the Tentative Restatement of the Law of Torts are referred to in appropriate places. With the exceptions noted, the revision does not mark a new departure from the casebook idea exemplified in the second edition, but the rearrangement and the selection of new cases are improvements which assure to the new edition the same high place among American casebooks on torts deservedly attained by its predecessors.

One or two questions may be asked as to matters not directly affected by the revision. It seems difficult to understand why the excellent cases of South Royalton Bank v. Suffolk Bank7 and American Bank and Trust Co. v. Federal Reserve Bank10 which should undoubtedly remain in the collection, are still hidden away as a section on "Malicious' Litigation of Valid Right of Action" in the chapter entitled "Misuse of Legal Process" (p. 921). Neither case involves the misuse of legal process or malicious litigation except as it is passingly referred to by way of analogy. And each illustrates problems raised by the abusive exercise of normally undoubted rights far more significant than, and quite different from, "malicious" litigation or misuse of process.

It may also be doubted whether a case should be divided into parts and the several portions reprinted in separate sections.11 The detailed analysis of the field of torts into titles, subtitles, and sub-subtitles doubtless necessitates this treatment, as it does also the more frequent and cognate practice of reprinting only portions of opinions. Unquestionably the analysis has great value and eases the life of both teacher and student. But is not the practice incident thereto likely to mislead the student into false notions of clear-cut discriminations and definite separations? May it not obscure the interrelation of the parts, the various considerations involved in and the several paths leading to the single conclusion in each case, "judgment for the plaintiff" or "judgment for the defendant"?12 The answer is, of course, obvious that there need be no misguidance when the subject is properly taught by an able teacher. The problem is one of pedagogy and the judgment and experience of the master teacher are controlling.13

New Haven, Conn.  

HARRY SHULMAN.

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7 245 N. Y. 260, 157 N. E. 130 (1927), BOHLEN, p. 984. Comment (1927) 37 YALE L. J. 249; (1927) 12 MINN. L. REV. 81. One would like to see included with this case the opinion in Interborough Rapid Transit Co. v. Lavin, 247 N. Y. 65, 159 N. E. 363 (1928), noted in (1928) 13 CORN. L. Q. 447; (1928) 41 HARV. L. REV. 770; (1928) 12 MINN. L. REV. 666.


9 BOHLEN, p. 922, 27 VT. 505 (1854).


12 Cf. Crane, J., in Keller v. Butler, 246 N. Y. 249, 254, 158 N. E. 510, 512 (1927): "Names and classifications of remedies are not indispensable to a court, although they may be convenient and necessary for the student. Justice may not tarry to tabulate. The fact is, such a wrong must have a remedy."

13 In the event of a second printing, several errors in proof-reading

The writer of this book is well and favorably known to many American readers as Sir William Mackenzie, author of The Industrial Court, as well as a number of excellent articles, and for several years President of the British Industrial Court and Chairman of the National Board for Railways and the Tramway Tribunal for Great Britain and Northern Ireland. Industrial Arbitration in Great Britain is a product of his wide experience in arbitration and industrial enquiry, his sound common sense, and careful historical research. Needless to say, the volume is an important addition to the literature of its field.

The book is a summary, historical account of wage regulation, conciliation and industrial arbitration from medieval times to date. The account of early legislation regulating wages in an effort to stabilize them and to prevent them from increasing more than required to maintain the customary standard of living, is followed by a brief but accurate survey of the laws against combination and of the modifications of these made in the middle of the third decade of the nineteenth century. The special legislation relating to arbitration in the cotton trade and in industry generally early in the nineteenth century is also reviewed. Following this an account is given of the beginnings and development of conciliation and arbitration on a trade basis in unionized industries and of the proposed and actual legislation enacted during the decades down to the outbreak of the Great War. At each point the successes and failures are noted and explained. Three or four chapters are devoted to the Committee on Production and the Cost of Living, the Interim Court of Arbitration, and the Joint Industrial Councils developed during the war period. The final chapters deal with the Trade Boards, the Agricultural Wages Board, the National Board for Railways, the Tramway Tribunal, the Miners' Joint District Boards, and the Industrial Court.

At each point in the account the author explains the institutions and procedures developed in terms of the problem presented and the economic and industrial philosophy of the time, and tests them in view of the requirements for successful operation. Perhaps the greatest merit of the book is found here. More interesting to most readers is the author's conception of the roles of conciliation, arbitration and public enquiry and report. He believes that while government intervention is necessary it should be strictly supplementary to what industry can be encouraged to do. Arbitration decisions should ordinarily not be more than morally binding. Nor should the arbitrator be a reformer; his decisions should be in line with accepted ideas of the time. As regards wages, provided notably low levels are remedied, they should be fixed within the narrow limits established by economic forces. Permanent machinery for conciliation and arbitration is desirable, for it encourages peaceful settlements and tends to develop a common law of industry based upon consistent principles.

This theory of government intervention is of course the dominant one in Britain. Though it would not be viewed with favor by many Australians, should be corrected. The alphabetical arrangement in the Table of Cases is not always accurate, and some cases are listed in very unfortunate places. For example, The Germanic (p. 152) and The Nitro-Glycerine cases (p. 138) appear in the Table only under the letter "T"; In re Polomis & Furness, Withy & Co. (p. 233) appears in the Table only under "P"; Nash v. Minn. Title Ins. Co. (p. 714) appears under "W" as "Wash.," etc. The cross-reference notes, 68 and 73, on pages 865 and 867 refer to the pages of the second edition.
it will be accepted by most American students of the problem presented by industrial disputes, and especially by those economists who have had successful experience in the work of conciliation and arbitration.

Chicago, Ill.

H. A. MILLIS.


This sense in which the phrase "legal history" is used by Messrs. Hedges and Winterbottom in their title excludes all historical data except facts of what Parliaments and courts have said. As an accurate, orderly and compact repository of such facts, from 5 Eliz., c. 4 to the Trade Disputes and Trade Unions Act of 1927, their book will prove of very great use. But the student concerned to understand the legal history of trade unionism in England will find it barren except in conjunction with such works as those of Webb and Dicey—works which, for all their light and leading, leave understanding incomplete. It would be unfair, however, for the reviewer to let his disappointment at finding here no further essay in interpretation bar appreciation of an austere excellence within the tight limits of the authors' intention.

New Haven, Conn.

WALTER NELLES.

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