Legislative Loss Distribution in Negligence Actions. By Charles O. Gregory. 1936. The University of Chicago Press. Pp. 191.

This volume deals with two problems, contribution between tortfeasors and comparative negligence. Since every author must have a starting place at which certain presumptions underlie the subsequent processes of reasoning, Professor Gregory has taken as his point of departure the superiority of the principles of comparative negligence and contribution between wrongdoers over the prevalant common-law principles of contributory negligence as a complete defense to a plaintiff's action and the rule of no contribution between tortfeasors. He takes it as "self-evident" that these principles "furnish a theoretically fairer basis for loss distribution in negligence cases than the accepted principles of the common law." With this hypothesis as the basis for his discussion, he devotes the study to the administrative and procedural difficulties involved in the application in litigation of the principles of contribution and comparative negligence.

With the author's assumptions as to the desirability of contribution and comparative negligence the reviewer has no quarrel. There are many reasons to believe that lawyers, judges, and jurors generally take the same view. The technical devices employed as exceptions to the rule of contributory negligence as well as the countless compromise verdicts bear eloquent testimony that this is the case. As an abstract issue for debate, it is most certainly a defensible position that "justice" requires fairness to the persons upon whom financial loss is shifted as well as fairness to him from whom it is lifted.

The author offers tentative solutions of many nasty difficulties which lurk for the unwary in the administration of an adequate system of contribution between tortfeasors. He points out the inadequacy of the requirement found in several statutes of a joint and several judgment liability as the basis for contribution, and the resulting helplessness of a defendant thus required to depend upon a plaintiff for his right to contribution. Among other readjustments of the ordinary technique in litigation necessary to an adequate system of contribution, the author explains the "contingent" judgment by which the right of the contribution claimant is conditioned upon his payment of more than his share of the injured plaintiff's judgment, and the "split" judgment under which, in an appropriate situation, the plaintiff may withdraw from the litigation and execute a several judgment obtained against one defendant leaving him and the others to continue the litigation to determine their respective rights on the issue of contribution.

The discussion of comparative negligence is prefaced by a brief consideration of the few statutes which purport to formulate this principle. This discussion is important as indicating the impotency of legislative efforts to solve a complicated problem with a simple solution. The Mississippi statute, the Nebraska act, and the Wisconsin enactment all have the merits of simplicity. They also have, as the author demonstrates, the potentialities for confusion which invariably result from oversimplification. The serious character of inadequate statutory tinkering is strikingly indicated by the Wisconsin experience where, although what the author describes as "an almost flawless practice" has been developed under the contribution statute, it is not available in comparative negligence litigation because of the limitations of the comparative negligence statute. The Ontario comparative contributory negligence statute, drafted to circumvent many of the limitations of

the other Canadian statutes on the subject, is shown to he the most satisfactory legislation in existence, combining contribution with comparative negligence and thus providing for an allocation of loss among any number of persons in an action in which there may be multiple defendants. Even in Ontario, it is disclosed, a successful practice under the statute is made possible only by procedural devices found elsewhere than in the comparative negligence enactment. Thus, consolidation of actions, adequate joinder provisions, a third party practice, and satisfactory provisions for cross-claims, not found in the specific statute dealing with comparative negligence, are necessary to make the statute work properly.

From the investigation of the statutes in existence and the practice under them, Professor Gregory compiles a list of minimum procedural facilities necessary to a satisfactory system of loss distribution in negligence cases. From these, he drafts a suggested statute designed to furnish such equipment and obviate the difficulties which beset the practice under existing statutes.

While a microscopic scrutiny of this model probably,[1] and experience with it certainly, would disclose defects, the author's effort is an instructive illustration of a scientific method in handling this type of legislative problem. The book is indeed, what Professor Morgan pronounces it to be, a "demonstration of an ideal technique." It is written with that scholarly imagination so much needed and so often sadly wanting in proposed legislative reforms. On the specific problem, Professor Gregory has here done the spade work for a rational system for the distribution of loss in negligence cases. To it, the various legislatures and the Commissioners on Uniform State Laws might turn with great profit.

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Trials, Judgments and Appeals. By Thurman W. Arnold and Fleming James, Jr., Cases and Materials. West Publishing Co. 1936. Pp. xxvii, 869.

This excellent modern case book is the joint product of two Yale professors whose background and professional experience especially qualify them and lead us to expect what the volume really is—a helpful handbook for student and practitioner.

The reviewer has just completed his fortieth year of general law practice, and when he donned the academic togs eight years ago the modern curriculum showed great changes and expansion over the courses available to him in the nineties. One outstanding innovation was the inclusion of courses in practice, procedure and law administration, adjective branches of instruction of which then a sole sentinel was Evidence, with Greenleaf and Wharton as the doughty texts. And even in the twentieth century law school menu, at the date of my call to the teaching ministry, no text or case book could be found which covered adequately the field of Practice. In the dim and remote

[1]Even the casual reading of the Act which the reviewer has given it discloses what seems to him an unsatisfactory disposition of the problem of assumption of risk. (See Section 14 (b) and the author's discussion, pp. 134–139.)