

BOOK REVIEWS

THE SOVIET UNION AND INTERNATIONAL LAW. By T. A. Taracouzio. The Macmillan Co., New York, 1935. Pp. xvi, 530. Price: \$7.50.

To many thoughtful persons who have approached the subject with open minds, the new Russia has seemed an enigma, largely because here for the first time it is attempted to embody the Marxian principles in a colossal state. Many persons of strong prejudice, to whom the Marxian doctrine is anathema, have turned thumbs down upon the Russian project without further investigation. Others have gone to the opposite extreme and have accepted it uncritically as the ultimate solution of humanity's problems within the social realm. The subject is worthy of open-minded study. Obviously a population of one hundred and sixty million human beings inhabiting nearly one-fifth of the earth's land surface cannot be ignored nor treated with contempt or indifference. True students of any great subject in the realm of social science approach their subject without any preconceived notions of approbation or censure. In that spirit Mr. Taracouzio has approached his study of *The Soviet Union and International Law*. To those who have a genuine desire to acquire a better understanding of the new Russia, this book will be welcome and very helpful. Only a person familiar with the Russian language and imbued with Russian background and patterns of thought and life could produce this book. Mr. Taracouzio, a native of Russia, began his legal studies in Russia before the World War. Interrupted by those disturbances and the Revolutions in Russia he has since continued his studies in America. He lectured in the Harvard Law School in the field of Comparative Law and later has been in charge of the Slavic collections in the Harvard Law Library. Mr. Taracouzio's volume is based upon four categories of materials: the works of Marx, Engels and Lenin; Soviet National laws and regulations; treaties entered into by the Soviets with other nations; and the works of Soviet authorities on international law.

The author shows that, since the Bolshevik Regime is itself a program of international policy, the old concepts of international law are not accepted by the Soviet Union except insofar as the practical necessities of dealing with capitalistic nations enforce upon the Soviet Union an adaptation of their new principles to the realities outside of Russia itself. In turn, those who are responsible for the foreign policy of Russia make a conscious attempt to modify the principles of international law to conform to Communistic theories. While capitalistic regimes are cultivating the sentiment of militant nationalism, the Bolshevik regime and the communist philosophy reject this sentiment of nationalism as definitely counter-revolutionary. Bolsheviks do not view the history of the past in terms of the political state, but in terms of class interests. The author states that the ultimate aim envisaged by the Communists is a world commonwealth in which both class and state differentiations disappear, but the law also will disappear. But during the period of transition the Soviet Union is confronted with the alternative of isolation or compromise. It has chosen the latter. The result is a new school of international law which the author designates: the Soviet International Law of the Transition Period. The Bolsheviks assume this stage to be temporary, hence the inconsistencies between their abstract theories and their actual practices in the realm of international intercourse.

Mr. Taracouzio's book is an elaboration of the foregoing doctrines and tenets and practices under a dozen chapter headings, which include Sovereignty,

Territory, Nationality and Citizenship, Status and Legal Capacity of Foreigners, Diplomacy, Consular Service, Treaties, Pacific Settlement, and War.

Sovereignty for Communists is said to mean the spontaneous right of the proletariat to struggle for its supremacy. From the international point of view the old idea of sovereignty thus disappears, except that in the transition period social reconstruction will be manifested in national self-determination. Consequently the Union of Soviet Republics graciously recognized the independence of Estonia, Latvia, and Lithuania in the treaties of 1920. This willing recognition, although preceded by war, must have been made in anticipation of the world commonwealth under which political entities become non-existent. Another practical consequence ensuing from this doctrine is the championing by the Soviet Union of colonies against their imperialistic overlords.

In his treatment of the Communist practice with relation to territory the author finds that the Soviet Union has departed from the Marxian theory that the state is merely an abstract manifestation of class struggle in which territory loses all significance as an essential of a state. The Soviets have adhered to the principles of international law relative to the state territory, be it land, water or air space, thus admitting that there are legal principles which are binding upon the Soviet Union even in disagreement with their abstract theories.

On the subject of Nationality and Citizenship Mr. Taracouzio states that "there is today no citizenship of individual Soviet Republics which does not carry with it also the citizenship of the Union." This is the reverse of the American doctrine embodied in the opening sentence of the Fourteenth Amendment of the Constitution of our own republic, which declares that citizens of the United States are by virtue of that citizenship also citizens of the state wherein they reside.

The chapter on Nationality and Citizenship is one of the most interesting in the volume. Despite the Marxian theory that the proletariat has no country of its own, it is shown that the Soviets lay primary emphasis not upon the class affiliation of the person but upon his political allegiance. In Russia there is such a thing as naturalization, repatriation and loss of citizenship. With modifications the Soviets apply the principles of *jus sanguinis* and *jus soli*. In Russia, foreigners are those who are not Soviet citizens and persons who are citizens of foreign states. The author shows that Soviet law and practice in regard to persons in international law are not very different from those of other states. This departure from communist theory is another instance of political necessity forced upon the Soviets by the circumstance of living in a world of non-communist states.

In the field of diplomacy it is shown that the Soviet Trade Representative combines the functions of the ordinary commercial attache, *i. e.*, the collector of commercial information, and those of government business agents, this latter being necessitated by the fact that in Russia the right to engage in commercial transactions is reserved solely to the state. The status of Trade Representative has been acquired through a network of bilateral international treaties and is something novel in the realm of diplomacy.

In his ably written chapter on Treaties the author discusses the ancient doctrine of the sanctity of treaties and the more practical bases upon which the observance of treaties has rested in modern times. He states that, "In the eyes of the Soviets these practical considerations of political necessity and opportunism outweigh the claims of all theories involving a moral obligation to fulfill treaty engagements." He goes on to say that this is quite natural in view of the political isolation of the Soviets resulting from the mutual distrust between them and the non-Communist world, their faith in the righteousness of the class struggle and the assumed temporary character of the political entity at present embodied in the State of Workers and Peasants.

We find that in the Union of Socialist Soviet Republics the component republics do not possess any power to make treaties with foreign states. This power is vested by the constitution of the U. S. S. R. in the supreme organs of the Union and by statute is delegated to the Peoples' Commissariat for Foreign Affairs. However, the component republics do have limited power to enter into compacts with each other.

On the subject of Pacific Settlement of International Controversies the author states that, "Whatever one's attitude toward the political aspirations of the Soviet Union, it is impossible to deny the fact, recorded in diplomatic documents, that the Soviets have unceasingly attempted to secure some means of guaranteeing international peace." They are advocates of total disarmament, but in a world of armaments they are not so naive as to disarm or even to reduce their armament. On the contrary, the author quotes from a statement made by Litvinov at the end of 1933 in which it was said: "Being thus forced to maintain the defensive, we shall continue as of old—and ever more—to strengthen and improve the basis of our safety—our Red Army, Red Fleet, and Red Aviation."

In the concluding words of the author this careful study "serves to emphasize the fundamentally different conceptions of international law held by non-Communists and Communists." It is found that the practical application of the tenets of international law by the Soviets is nothing but a diplomatic way of attempting gradually to remove international law from the path of their advance towards the stateless commonwealth and to place it ultimately in the museum of antiquities along with the spinning wheel and other obsolete human contrivances.

Throughout the body of the work many quotations and excerpts from the basic materials are to be found. These, of course, have been translated by Mr. Taracouzio from the original Russian. The text is well documented and the footnote citations are abundant. There are no less than twenty-four appendices, including the Constitution of the U. S. S. R., treaties, decrees, ordinances, statutes, regulations, and the like. The bibliography and the index appear to be complete.

A thorough reading of this book will help to illumine a field of human endeavor and experiment heretofore not well understood.

Robert McNair Davis.†

STAATS UND VERWALTUNGSRECHT IM DRITTEN REICH. By Otto Meissner and Georg Kaisenberg. Verlag für Sozialpolitik, Wirtschaft und Statistik. Berlin, 1935. Pp. xvi, 357.

A contemporary study of the public law and administrative law of Germany, from a standpoint as objective as possible under the circumstances, has been greatly needed. Since the National Socialist Party obtained control, transformations in the organs of the state and the distribution of powers and functions; the relations of the Länder to the Reich; the relations between the chief of state, the ministers, and the Reichstag; the taxation system, the law of officers, and many other highly important fields, have been bewilderingly rapid. A systematic exposition of the present situation, by persons so thoroughly competent as Dr. Meissner and Dr. Kaisenberg, is therefore particularly welcome.

It must be admitted at once that absolute objectivity has not been attained. Such sentences as: "The state of Adolf Hitler is a folk-state"; or, "The unified

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state knows nothing of . . . art for art's sake—on the contrary, it requires from the artist also a positive contribution to the state, to German life and the good of German culture"; or (in respect to the object of education), "The whole man is to be so formed as to develop the type which the Leader requires as the guarantee of the future of his work"—all these, and many others, ring strangely in a book that is fundamentally a legal treatise. Yet such passages are relatively infrequent; moreover, they do not in any way detract from the informative value of the work as a whole.

The greatest service which the authors have performed is that of summarizing the present public and administrative law of the Reich. The first part of the book explains, against a brief historical background, the legal changes which have brought Hitler in less than three years to the position and the powers which he enjoys today, and have destroyed the German republic. The next division is given to a discussion of the relations between state and party. The very interesting third section discusses, among other important topics of constitutional law, the respective legal positions of the Leader and Chancellor of the Reich, the cabinet and the individual ministers, the national governors in the transformed member states, and the Reichstag. It is made clear that although laws (not ordinances, as might be expected, but laws) are now issued by the cabinet, "There still remains the possibility that the Reichstag may also be called upon to legislate, in case the Leader and Chancellor of the Reich, on grounds of domestic or foreign policy, might perhaps consider it advisable to base a law upon the vote of the Reichstag."

The outstanding changes in administrative law are set forth briefly but comprehensively. Only a few examples can be given here. The law of officers now requires anyone who is appointed to public office to pledge himself that he will always support wholeheartedly the "national state." Women may not receive permanent appointments unless they are at least thirty-five years old. No person may hold office if he or his spouse is not of "Aryan descent." The functions of the former states are administered through national governors, yet there is no attempt at complete centralization in cultural and economic matters. The taxes and the whole system of tax administration have been altered repeatedly, in order that they may express the world view of the National Socialist Party. This world view appears to include a desire to lighten the burdens of merchants and farmers, which seems not wholly unfamiliar.

The law and the courts are undergoing a process of transformation. In the program of the National Socialist Party is a demand "that the Roman law, which serves the material world-order, be replaced by a German common law." The function of building up a German law is given to the Union of National Socialist German Jurists. As to the courts, one or two examples will suffice. "Against political leadership and accomplishment, no possible rights of individuals can be of controlling significance. Even the administrative court system . . . as regards this political leadership, is not independent in the earlier sense of the word." The special courts which have been established to try persons accused of political offenses against the state, the party, or the party uniform, use a summary procedure, and make final decisions against which no legal remedy is available.

A very interesting feature of the text is the reiterated insistence that all the changes which have been made have had a legal basis. There is no doubt that this is true in a formal sense. On the other hand, many of the new laws are totally incompatible with various clauses of the Weimar constitution, which has never been discarded. What, then, has happened to this constitution? According to our authors, such parts of it as are not opposed to the ideals of National Socialism are still in effect, unless they have been superseded by new

laws. The day will come, however, when the principle, *lex posterior derogat legi priori*, will make the last clause of the constitution a matter of history.

This book should be not only read, but studied, by everyone who is interested in public law, administration, or contemporary history. Its references are complete and accurate, so that anyone who wishes to read the text of an important law will know where it can be found. However greatly the reader may disagree with the viewpoint of the authors, the value of the information supplied by this treatise can hardly be over-estimated.

Miriam E. Oatman.†

CASES ON EQUITY. By Zechariah Chafee, Jr. and Sidney Post Simpson. Published by the Editors, Cambridge, 1934. Volume I, pp. xiii, 870; Volume II, pp. vi, 749. Price: \$8.00.*

This must be a prejudiced and inadequate review, not because I want to write such a review, but because I am not equipped to do better. I am interested in equity from the procedural point of view. I do not have the knowledge or the experience to comment on this case book on the basis of equity itself. So far as the actual scope of the two volumes of this excellent case book is concerned, I can only say that it covers jurisdiction and specific performance with a thoroughness and completeness never before equalled. In addition to an excellent selection of cases covering both common law equity and equitable powers under modern statutes, the volumes have a number of very carefully planned problems following most of the cases as well as the most exhaustive and scholarly footnote material I have ever seen in any case book. I venture this last comment with respect to the parts of the subject with which I have some knowledge, with the absolute confidence that it applies generally to the whole. Surely, no one can go through these volumes without a feeling of gratitude and admiration for the completeness of the critical material that is here made available for students of equity.

The volumes have some most attractive features that have not been used in other case books at all. A striking instance is the pictures, which include views of equity courts and, particularly, photographs of portraits of the great equity judges. Furthermore, photographs illustrative of famous cases are also included, as well as diagrams or maps in certain instances illustrative of the facts of particular cases. Among the pictures, I confess that it would have seemed fortunate to me if the editors had included certain great political chancellors, such as Cardinal Wolsey, Sir Thomas More, and Lord Somers. One difficult thing for the student to grasp with regard to equity in England is that the Lord Chancellor is a great political officer even today, and this, in itself, is a very important influence on equity jurisdiction.

The editors point out, in their preface, that their first concern is to give material for training law students in the technique or traditional methods of equity. A better case book for this purpose could hardly be imagined.

As I indicated at the outset, however, the point of departure for this review is purely negative and consists perhaps of equal parts of prejudice and ignorance. Indeed, my objection to the case book seems wilful and even vicious in character. To put it paradoxically, the better the case book itself, the more I deplore it. In a word, it is an excellent work, contributed to a plan of teaching law that seems to me unwise. Thus I can but regret that such

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* See Sayre, Book Review (1934) 83 U. OF PA. L. REV. 284, for a detailed review of the section on Contracts for Arbitration and Appraisal.

superior material is allocated to an analytical division of legal material for teaching purposes that I think unfortunate.

Briefly, I wish the content of these case books for the most part were put in the course of Procedure, although I confess the material here would be much greater than could normally be used even in an expanded course in Civil Procedure which would include this part of equity. I feel that Professor Cook has already succeeded in a reasonably successful merger of the field of equitable relief in contract with quasi-contractual recovery at law. It also seems fair to say that Professor Handler has now succeeded in merging the equitable relief in the vendor and purchaser situation with the law side of these transactions. Dean Clark has made a gallant, though perhaps not wholly successful effort to include equity rather generally in the course of Procedure. No one has fairly merged equitable relief against torts with any course dealing with the legal side of tort law. It seems fair to say, however, that Professor Cook and Professor Handler have successfully merged large parts of equity with the legal side of the same situations. After all, this very extensive case book by Professors Chafee and Simpson covers only a part of the field of equity jurisdiction. If the editors of this case book had undertaken to assimilate the material it covers with the material now usually covered in the course in Civil Procedure, we then would have a fairly workable assimilation of equity, except for equitable relief against torts. At some later time they, themselves, or some other workers might have tried to merge that field of equity also.

Of course, the editors would not agree with most of these very dangerous generalities; as I said at the outset, this is a prejudiced review.

The teacher of procedure is shocked when he considers the scope of procedure as this is understood in the law school course and compares this with the scope of procedure in practice. A general course in Civil Procedure means substantially common law actions and then actions at law under the codes. Even where code pleading is treated in a separate course or in treatises in code pleading, the content of this material is substantially law and not equity, although law courts under our codes have effected a substantial merger of law and equity on the procedural side. In his course in Procedure, the student substantially learns the legal side only. Whatever may be said of teaching the law side of contracts in one course and the equity side of contracts in another course, it certainly is at least formally inconsistent to present civil procedure and omit from the course substantially the whole field of equitable relief as a material part of procedural method.

In defense of their analysis, the editors set forth with admirable clarity and fervor their belief that students must have materials for thorough training in the technique or the method of equity, and that this requires the teaching of equity generically. *A priori* this reasoning seems unanswerable. One begins to doubt its validity, however, when one considers that the same reasoning has been used in the past with perhaps even greater fervor in defense of a separate course in Common Law Pleading, and in opposition to any merger in teaching common law pleading along with the codes.

On this score, again, I think Dean Clark has done gallant work in making the cases on common law actions really justify themselves as a part of training in modern procedure. So far as the equity side of his case book goes, I think it was not to be expected that one would succeed in merging such a large part of equity into the course in Civil Procedure as he undertook to do. It is only fair to remember generally that we have been building case books in the several fixed divisions of the law for many years. It is not to be expected that an allocation of equity into newly determined courses will be accomplished satisfactorily at the very outset.

Professors Chafee and Simpson undertook to present a part of the scope of equity jurisdiction generically, so that the students would have scholarly material for a real understanding of the material involved. They have accomplished their purpose superbly.

Paul L. Sayre.†

THE ECONOMICS OF INFLATION: THE BASIS OF CONTEMPORARY AMERICAN MONETARY POLICY. By H. Parker Willis and John M. Chapman. Columbia University Press, New York, 1935. Pp. xi, 443. Price: \$4.50.

The first question that will be asked of a book bearing this title is, what has it to say of the policy with which the government of the United States has been experimenting during the past three years? Nor, in this case, is there any equivocation about the answer. "The larger part of American public finance is today devoted to the raising of money upon public credit—eventually, presumably, to be repaid out of taxation—the proceeds therefrom to be devoted to the carrying of unprofitable enterprises or the payment of subsidies to their owners by way of compensation for losses incurred" (page 121), while "the attempt to maintain the 1929 (or 1926) level of prices, business, banking and the like, is an effort for which no good warrant can be afforded—an effort inevitably certain to be defeated because it has no adequate weapons with which to conquer the forces that it must meet" (page 94). Clearly this volume is not an apology for inflationary policies of the kind so much discussed at the present time!

It would, however, be wrong to regard this excellent study, the result of a year's work in the Banking Seminar of Columbia University, as a collection of carping criticisms. Without doubt, it is the most comprehensive and careful analysis of the nature and implications of inflation that has appeared in the present generation so that students of economic and political theories will welcome both the reasoned discussion by the distinguished authors and the more specialized monographs of the members of the seminar.

To begin with, the concept of inflation is analyzed. Too often, as a result of the widespread belief in some crude form of the quantity theory of money, inflation is thought to be synonymous with an increase in the general level of prices, engendered by augmentation of the quantity of money and credit available to the community for spending. Such a conception is unsatisfactory for scientific purposes. In the first place, the general level of prices is nothing but a statistical fiction: individual prices are rising or falling all the time, and any pronounced movement in the general average tends to increase the degree of dispersion. Secondly, through the monetary researches of Mr. Keynes and others, we have become aware of the fact that inflation can occur without any increase in price levels at all. In so far as inflation is a monetary phenomenon, it is indicated chiefly by the increasing illiquidity of bank portfolios, resulting from excessive lending for capital projects that are not (to use a term that is no longer fashionable) self-liquidating. General price levels, therefore, are not essentially related to inflationary policies, but some questions may be raised regarding the suggestion of the authors (for example on page 88) that inflation can be accomplished without any increase in the quantity of money and credit. Although such an increase may not be the most important inflationary factor, it appears to be an essential concomitant as Mr. Murad points out in his interesting essay on contemporary literature.

To return to prices for a moment, it is clear, however, that inflation increases price dispersion and disturbs the relationships that previously existed

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among individual prices. It is, in other words, a method of redistributing national income by destroying the existing economic equilibrium in the attempt to create another that is theoretically considered more desirable. Those people who are in a position to raise their selling prices more rapidly than their costs of production naturally improve their position, while those who find their incomes increasing less rapidly than the prices of the things they buy are forced to consume a smaller portion of the national income. The study of inflation thus involves a careful analysis of the effects of such policies upon each class in the community and, since these classes overlap to a considerable extent, it is probably necessary to go further and study the effects upon individuals within each class.

This task is attempted, with considerable success in the essays that comprise the latter half of the volume, and the results are well summarized in the chapters written by Professor Chapman. To farmers, investors and industrialists it is apparent that economic policies of inflation bring more losses than gains in the long run. "The test of gain or loss is ability on the part of the given individual to readjust himself . . . Viewed in this way, it soon appears that those who are aided by inflation are the speculative element in the community; those whose means or labour are engaged in enterprises where the term of engagement and the rate of remuneration is steadily altering without being held stable for continuous periods, through agreement. Inflation helps speculation by creating unsettled speculative conditions. Those who find it hardest to adapt themselves to such changed conditions are those who are accepting fixed returns and do not care, or are unable, to enter a constant process of bargaining and revaluation" (page 216).

Recognition of these conclusions, and careful study of the data on which they are based, would place the current discussions of inflation on an entirely new footing. To recognize inflation as a process of deliberately disturbing economic conditions is not to outlaw it entirely. There are times, such as the years that immediately followed the War, when it is necessary to destroy or modify certain existing relationships in order to recreate a workable economy. Perhaps the present may be one of those occasions. But in so far as monetary and banking policies are not essential instruments in the achievement of such an ideal, it may be emphatically pointed out that redistribution of the national income, if essential, can more safely be achieved by other means. Scientific monetary management may or may not be possible in the present state of our knowledge, but in any case it is something very different from the prostitution of monetary policy to the temporary aims of evanescent administrations.

F. Cyril James.†

THE LAW OF LIBEL AND SLANDER. By Ernest P. Seelman. J. B. Lyon Co., Albany, N. Y., 1933. Pp. xxxvii, 742. Supplement, 1935. Pp. 63. Price: \$15.00.

If any branch of the law other than criminal procedure requires re-examination and re-statement, it is the law of libel. Born in one age and reared in another, in matters substantive as well as procedural it is today as outmoded as many books of statute law. What other branch of the law has been more impregnated with the fears of kings and the deeds of fools? But political concepts have changed, and yesterday's fool is today's hero. Time marches on, but not the law of libel.

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Seelman, in this book, has accomplished more toward modernizing the law of libel than have the combined efforts of all previous writers in the field. Newell's first edition was scholarly; but Seelman's approach is that of a scientist. He analyzes the law of libel in one jurisdiction—New York—examining it with a microscope through which is revealed the law of the land. Over a year ago, the reviewer observed, "The State of New York is richer in the law of libel (if otherwise poorer in consequence) than any other jurisdiction. The First City's great newspapers give it this questionable distinction."¹ It is inevitable that the New York decisions be respected as precedent in the law of libel; and as inevitable that progress in this branch of the law be needed through its courts and its legislature. In this work Seelman is scholar and critic—and teacher. He strikes down fear and fiction, and urges recommendations which blaze the way for future development of his chosen field.

To find any fault in this work is like objecting to the few clouds in an azure sky. The reviewer does, however, feel that Seelman's distinction between libel and libel by extrinsic fact is erroneous. Seelman reviews this important subject in its entirety, concluding² "that the rule based upon the *O'Connell* case³ requiring allegation of special damage in addition to the allegations of extrinsic fact ought to be discarded." He refers to the prevailing opinion of the Court of Appeals in *Sydney v. Macfadden Newspaper Publishing Corporation*⁴ stating that "it cannot be reconciled" to the *O'Connell* decision, pleading "for the restoration of the long-established right that where unholly and shameful consequences become clear, from allegation of extrinsic facts, the plaintiff possesses a cause of action without need of special damage."⁵ It is submitted that Seelman has failed to distinguish between facts descriptive of the plaintiff, and facts descriptive of the libel generally: all the cases become reconciled if only the latter facts are regarded extrinsic.

In *Smith v. Smith*⁶ the fact that the plaintiff was the first wife of the defendant (who, in an application for a marriage license, denied any earlier marriage) was referred to in the lower court as "an extrinsic fact." However, only by description of the plaintiff as the first and lawful wife with whom the defendant had cohabited, could the statement be defamatory at all; and with reference to her, the implication of a meretricious relationship was necessarily defamatory on the face of the statement. Hence, the averred facts were explanatory of the plaintiff rather than of the libel. This decision of the Court of Appeals is consistent with its ruling in the *O'Connell* case rather than with Seelman's version thereof.

The reviewer's belief that *Smith v. Smith* is consistent with the *O'Connell* and *Blake*⁷ cases is strengthened by the ruling of the Court of Appeals in the *Sydney v. Macfadden Newspaper Publishing Corporation* case. In this case, the defendant printed of the plaintiff, a married woman, that she was engaged to the late notorious Fatty Arbuckle. The fact that the plaintiff was married was not published; nevertheless, recovery was permitted without proof of special damage. Seelman treats the fact of marriage as an extrinsic fact; if it

1. Book Reviews (1934) 82 U. OF PA. L. REV. 418.

2. At 64.

3. *O'Connell v. Press Publishing Co.*, 214 N. Y. 352, 108 N. E. 556 (1915). Defendant stated that plaintiff invented a certain spring used in weighing scales involved in defrauding the Government of sugar duties. Extrinsic facts indicating participation of plaintiff in the fraud held not to enter into the case because special damage was not alleged.

4. 242 N. Y. 208, 151 N. E. 209 (1926).

5. At 65.

6. 236 N. Y. 581, 142 N. E. 292 (1923).

7. 229 N. Y. 515, 129 N. E. 897 (1920). Where a statement injures a person in his profession, the rule of pleading special damage is quite lax.

were such fact, his entire chapter on the subject would draw the correct conclusion. However, Mr. Justice Crane of the Court of Appeals held otherwise, stating:

"It has been suggested that this article says nothing about Doris Keane being married. This is true. Neither does it say she is alive, or of age, or a woman capable of being married. It speaks of Doris Keane and gives her picture. This draws with it all that Doris Keane is,—her standing, her position in society, and her relationship in life."⁸

In other words, the Court of Appeals held that the fact of marriage was not an extrinsic fact descriptive of the libel, but rather an intrinsic fact descriptive of the plaintiff; hence, recovery was permitted without proof of special damage. This distinction is carefully noted in *Ferrand v. Brooklyn Daily Eagle*,⁹ which the author cites in his supplement without comment.

The author's desire to break away from the O'Connell rule is due to his belief that the requisite of special damage "is an unjust deprivation of a right. Libel by extrinsic fact can be and many times is as deadly and destructive of character and reputation as the open accusation."¹⁰ But the requisite has a different basis. Where the statement is defamatory on its face, there is never any doubt of its damaging nature in the mind of any reasonable person. On the other hand, where the statement is reasonably susceptible of a non-defamatory meaning and therefore it is necessary to prove the existence of and the meaning contributed by extrinsic facts, there must be many readers unacquainted with those facts and to whom the statement does not appear defamatory of the plaintiff. This distinction in effect is partly recognized in the rule that the defamatory character of the first type of statement is a question of law, whereas in the latter instance the statement and attendant facts must be submitted to the jury.¹¹ The reviewer submits that it is both just and desirable to require proof of damage under the latter circumstances.

Except upon the very important subject above discussed, the book stands every acid test. An examination of its classification discloses that every subject is refined to an extent hitherto unknown in such work, and the result is a clarity never before attained. Add to this feature a superb index which leaves no page and no topic untouched, and the result is a lawyer's delight. Seelman's recommendations for improving the law include clarification of nomenclature; repudiation of the time-honored requisite of malice; and changes in connection with punitive damages, pleading and burden of proof. These speak volumes for the author's depth and foresight; the future will mark as his debtors many judges and many lawyers interested in the law of libel.

Harry Polikoff.†

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8. 242 N. Y. at 213, 151 N. E. at 210.

9. 241 App. Div. 752, 270 N. Y. Supp. 966 (2d Dep't 1934).

10. At 64.

11. *Baker v. Warner*, 231 U. S. 588 (1913); *Morrison v. Smith*, 177 N. Y. 366, 69 N. E. 725 (1904); *Abersold v. Marcus*, 272 Pa. 199, 116 Atl. 111 (1922).

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