BOOK REVIEWS


This book is a stockpile of good ore, but it contains neither any finished product nor any large proportion of the materials necessary for a result; it supplies good case material, but of a limited sort. To begin by describing what it does not include, there is no case in which a claim of innocence was found to be false, no case of innocence depending upon matter of law, no case of a corporation which ought to have been found innocent and was wronged by prosecution or conviction. The cases are of men who were sent to prison or started toward the gallows. The author even thinks he ought not to use or to submit a case which goes against his thesis: there must be a recorded admission that the convicted man was innocent, or at least an indication that his freedom was granted upon that ground. Nevertheless, the assembly of these cases is held by the author to prove a thesis or proposition. Once innocence is established, once it becomes a premise suitable for use in deductive logic, the author and his sponsors, Dean Wigmore and Professor Frankfurter, believe that a conclusion should be reached and acted upon. And certainly such a conclusion flows logically from the unqualified premise. You divide the known world of convicted or prosecuted cases; take out those where guilt is established or even possible—there are left only cases where we have used logic, constructed a premise, and cast out all doubt. Innocence is a fact as much established as conviction or prosecution. The defendant was—prout patet per recordum—always innocent, and suffered from arrest, prosecution, and conviction, or from some of these.

Now once your logical premise is granted, your logic also will permit only one unqualified result. But the friend of reform in the abstract must be deeply disappointed when he turns from Professor Borchard's logical premise to the fade-away of his conclusion. The mountain ought to labor and bring forth justice to all the oppressed. It produces no more than a draft for a federal statute and four trifling puny statutes from California, Wisconsin, North Dakota and Massachusetts: Nascitur ridiculus mus.

Once the logical premise is granted there can be only one logical result. The community sins when it arrests, prosecutes, convicts, or punishes the innocent. And such a sin requires that the innocent should have a positive right to compensation—a right which can be enforced by an adequate remedy. But the proposed federal statute and the existing state statutes are as nothing when they are judged by such a standard. In theory Wisconsin and North Dakota give some right and some remedy. The others merely say that the legislature may compensate, if a board so recommends. It is worse than that. Let us list the limitations:

(1) With the exception above stated, which may be no exception in practice, the wrong creates no right or remedy.

(2) Only sentences to imprisonment fit the statutes. It is probably an oversight that Sacco and Vanzetti, if innocent, would have had no claim merely because their imprisonment was only preliminary to electrocution. But it is intended that no fine should be a grievance: this automatically eliminates corporate defendants. An oil company might be fined $29,000,000—and baseball Landis did that—and a government might
have kept the fine. A shocking case of mistaken identity might have inflicted shame and a money penalty on an individual. But neither circumstance would bring him within these laws unless he had been imprisoned.

(3) If the intentional misconduct or negligence of the applicant has contributed either to his arrest or to his conviction that is an irremovable bar. Suppose a man gave cause to arrest him upon suspicion of murder, when he was really endeavoring to conceal the fact that he had left his automobile papers in the pocket of another coat. Even if the case went on to a life sentence for murder based on a complete mistake of identity, such a man is without any statutory grievance.

(4) It is indicated, at least, that more than $5000 is not to be granted.

(5) Only incidentally can the innocent man have the amende honorable. If he seeks a mere vindication he has no case at all.

With such a formidable list of hurdles for the applicant, it is surprising that the State should have any grievance against a statute valued at about one mouse power. But there is one. There is no provision for set-off or counterclaim. For instance, John H. Chance is one of Professor Borchard's cases of convicting the innocent. He was convicted of a murder of which he was not guilty, but he seems to have been an accessory, at least after the fact. Recently in the drama which has arisen out of the murder of Joseph Fantasio, we have seen Ciro Gangi commit assault with intent to kill (under circumstances of provocation, if you please, but still a substantial felony). Should he be compensated for being wrongfully convicted of murder? And if you take that as settled, should there be any discount off the compensation for the felonious assault, or for the other felony of perjury at his first trial—which was part of his own case at his second trial?

Here you have at least five points upon which the proposed compensation is whittled down. The net result is negligible in practice. In Massachusetts no one seems ever to have done anything, although the statute giving compensation for wrongful imprisonment is now twenty-one years of age. In the other States, little could be done and that in a limited class of cases. Still less appears to have been done. There must be some reason for this: and we think there is a good reason and an obvious one. We turn back from such evidence to Professor Borchard's book, and examine it in the light of this broad theory and this narrowly impotent practice. We observe that the whole discussion is about giving compensation to the innocent. But then we search in vain for any adequate consideration of the primary question—for the purpose of compensation, what is innocence?

Professor Borchard is indignant about the case of Lisher and Garvey, who were refused compensation in California. On the one hand, it may be true that the corpus delicti died a natural death, and it surely is true that these two men were pardoned by a board of pardons on the ground of innocence. On the other hand a court and jury had convicted them of guilt. Then, upon evidence which Professor Borchard does not give us, the body charged to adjudicate the right to compensation declined to find that they were innocent and rather felt that they were murderers. Professor Borchard implicitly asserts that any guilty man becomes innocent when the board of pardons has differed from the convicting jury and cannot again become guilty.

In quoting the Wisconsin and California Statutes, Professor Borchard enters into no discussion of the degrees of proof, or burden of proof. We all know that one acquitted of crime is merely one not proved guilty beyond a reasonable
doubt. We must—I think—interpret the California statute as calling for proof of innocence by a mere tipping of the scales of doubt. Wisconsin and North Dakota seem to require proof of innocence beyond a reasonable doubt.

But when we shall have established an apparent standard of innocence, we shall still be profoundly affected in practice by the remark of Captain Cuttle, J., that “The bearing of that observation lies in the application on it.” Take, for instance, alibis. Upon any alibi any tribunal can predicate innocence beyond a reasonable doubt. But we would expect a fine crop of compensation cases if cash in exchange for imprisonment should become the vested right of anybody who could combine an alibi with the sympathy of a jury or tribunal.

Further study, experiment and observation will be necessary before this movement can establish its right to succeed. For all the present state of the discussion can tell us, there may be no remedy better than the disease.

Richard W. Hale

Boston, Mass.


A brief examination of this volume will convince one that it is a strictly modern casebook, being made up primarily of American cases decided since 1900. It bears little resemblance to its predecessor—the tough old casebook of the 90’s—except that it contains, for the most part, selected decisions of appellate courts. To the law student of the Langdellian Period, casebooks were what Chaucer is to the student of English literature—crude, raw, source material. On the contrary, most of the cases in Professor Bauer's casebook are written in clear, cogent style, frequently illustrating the best in modern legal reasoning. Occasionally these recent cases disclose a new, practical and rational basis of decision, rather opposed to the older method of striving, with the aid of fictions, to adhere logically to what Coke called “The artificial reasoning of the law.” (See J. Cardozo's opinion, p. 102.)

The early casebook triumphed over the textbook as a basis for studying and teaching law with no borrowing of the advantages of its competitor. It contained in the main comparatively old decisions, a majority of which were English leading cases. These were chronologically arranged to present the growth of legal principles as they evolved from the common law courts. Gaps in the historical development were not bridged by footnotes of text material. Neither case citations nor footnote comments were included to assist the student; everything possible was done to make it hard for him. The purpose of the newly discovered pedagogy was to develop legal thinkers, and the theory of its technique was to introduce the student to important common law cases, then employ a teacher who by the socratic method would provoke further legal thinking, and thereafter leave the student to dig it out for himself.

This technique obviously rested upon an assumption, largely disproved by later experience, that all earnest law students would prove naturally adaptable to becoming research scholars. This technique assigned only minor significance to the complete rounding out of the informational content of a particular law course, which had been the essential aim of the textbook method of law teaching. Hardly, however, had the standard type of casebook established its superiority as a basis for law study and instruction, before casebook editors began to modify and improve their newer casebooks.

Professor Bauer's new casebook evidences an appreciation of the factors at work in this evolutionary process—a reasonable understanding of the psychology
of learning and the courage to venture into the field of untried ideas. He appears to regard as effective law teaching that which results in the greatest achievement by the largest number of students in a given period of time. His theory for a good casebook is that it should provide the most interesting cases available, that it should force upon the attention of students important collateral references at places in the book where research will be stimulated, that a few vitally important law review articles should be included to be carefully studied by all students, and that footnotes of text and case material and comment should be ample to round out the informational content of the casebook. All these things Professor Bauer has done in compiling and editing his second edition of *Cases on the Law of Damages*.

In addition to a most interesting selection of cases, the book contains twelve lists of law review articles immediately following various appropriate chapter headings. It also cites thirteen law review notes which annotate as many respective cases studied. It contains three reprints from excellent law review articles (pp. 283, 408, and 414), four sections from the Uniform Sales Act (pp. 476, 482, 488, and 489) inserted at appropriate points in the chapter on damages for the breach of contracts concerning the sale of personality, and frequent quotations of text material and numerous abridged statements of the additional cases cited in the footnotes. These additions to this casebook are all made without appreciably minimizing the opportunity for training of the prospective lawyer in legal thinking.

In comparison with Professor Bauer's first edition of *Cases on the Law of Damages*, this new volume contains fifteen fewer pages, but the pages are an inch longer. It includes seven more cases, three more chapters, and several desirable modifications in sub-topic analysis and arrangement (see pp. 172, 342, 421, 424, and 450). The main organization of material remains the same. The new chapters added are Damages Under the "Anti-Trust" Statutes (p. 698), Infringement of Patents and Copyrights and Unfair Use of Trade Marks and Trade Names (p. 705), and Damages in Workmen's Compensation Cases (p. 729).

Probably Professor Bauer's most significant innovation is the including in this casebook, as he did in his first edition, of three important law review articles. The reviewer, having observed from the use of the first edition the benefits of increased interest and of more effective class discussion obtained from assigned study of the law review articles reprinted in the casebook, heartily endorses the practice, with this limitation, that the number and kind of articles must be selected with conservative and discriminating care as has been done in this volume. Where the assigned law review articles are to be found in only one or two copies of the law review in the library, the same pedagogical advantages are impossible of attainment.

Probably the second most striking departure from the earlier casebooks is the inclusion of one or two paragraphs of quotations or comment, or both, in connection with the citation of footnote cases. To the extent that these quotations and comments repeat the legal principle or rule of the main case, they are an aid to memory, to the extent that they disclose a conflicting rule of law or conflicting reasoning, or both, they provoke thought, and to the extent that they present differing applications of the legal principle or rule of the main case to varying situations, they are informatory. Professor Bauer will most likely receive some criticism that the type of footnote which he uses tends to emphasize the informational aspect of the casebook at the expense of requiring legal thinking which should have been secured by merely stating the legal problem and not stating the answer. Just what will finally prove to be the best type, or types, of footnote only time can tell. The reviewer feels with the compiler that the matter of utility is paramount here, and regards fully and carefully edited footnotes as enhancing the utility of the casebook.
The second edition has the table of cases in the front of the book, where convenience dictates that it should be found. This new volume devotes to the subject of "Causation" only seventy-seven pages while the first edition unduly invaded the province of the law of tort by presenting one hundred and ninety-one pages of material on that subject. The pruning here appears to the reviewer to be a little severe. The subject of aggravation of damages is omitted both from the subtopical analysis and from the index of the second edition. Although this omission seems to have been purposely made, the reviewer feels that to make such an omission is an error that should not have been permitted.

In daring to stress recent cases and give his casebook some of the newness of a current volume of L. R. A. (N. s.) or A. L. R., the compiler sacrifices, as any compiler must do who adopts this method, that perspective in valuation of a case which time alone can give. This is shown by the fact that this second edition omits about 32 per cent. of the cases included in the earlier edition. This 32 per cent. of omissions is made up by adding about 12 per cent. of cases decided since June, 1923, the date of the first edition, and by substituting about 20 per cent. of cases decided prior to that date. Stated differently, about one-fifth of the cases in this second edition are newly selected from a field of cases earlier surveyed, but which Professor Bauer now judges to be preferable to those included in his first selection. Most of the cases, however, which were included in the first edition and are not reprinted in this second edition, are briefly abstracted in the footnotes.

This casebook commends itself to those who enjoy working with newer materials and in a limited way trying newer teaching methods. It is, albeit, a very good casebook which the average teacher will find helpful in arousing more than usual interest in the average class of law students.

Adolph Ladru Jensen.

University of Utah.


Mr. Meyer's treatise will be found to be a valuable addition to the library of all counsel who number among their clients either investment bankers or brokers or corporations whose securities are listed on any of the large stock exchanges. It is a large and ambitious work, covering with thoroughness in a single volume the law of the States applicable to listed securities. The Introduction presents a full and simple statement of fundamentals of exchange functioning, so that the student begins his reading with a knowledge of the methods employed by brokers in executing orders. A history of the New York Stock Exchange and the New York Stock Clearing Corporation completes the introductory part. Mr. Meyer appeals to the reader to read the Introduction, an appeal which should be heeded by all who are not completely familiar with the sometimes mystifying procedure and jargon of the broker. Of especial interest in the Introduction are Mr. Meyer's views of the existing defects in the law affecting the relations between the broker and the customer in marginal transactions, and the suggested remedies.

In the main text the law of exchanges, as such, the incidents of exchange membership and certain peculiarities of exchange partnerships are first treated. In this and other parts of the work Mr. Meyer ventures into partnership and agency law just enough to give the reader the rules of those branches particularly applicable to the subject he is interested in. He avoids, with sureness, any overlong excursion into other fields, assuming that he is dealing with counsel generally
This is by no means the least of the book's merits. Part Two is the law affecting contracts for the sale and purchase of securities (the broker as principal, ordinary contracts, short sales, puts, calls): Part Three concerns the broker's relations with the customer (dealing in large part with marginal transactions): Part Four is devoted to Remedies; and Part Five to Offenses.

Thoroughness and volume of notes and cited cases are the book's greatest asset. About 1750 cases are referred to and the footnotes occupy about one-half of the subject matter in the text proper. Especial emphasis is given to New York decisions, statute law and Exchange rules and customs, a treatment which seems justifiable in view of the position and importance of the New York Exchange. Mr. Meyer's purpose has been to be exhaustive as to New York and to create a general guide as to other jurisdictions, which in many instances is, however, faltering.

Commodity sales and brokers are given subsidiary attention which warrants the sub-title of "The Law of Commodity Brokers and Commodity Exchanges". Full reprints of, or excerpts from, the Constitution, Rules and Rules of Committees of the New York Stock Exchange, of the Constitution, By-laws or statutes affecting the New York Curb Exchange, New York Cotton Exchange and Chicago Stock Exchange, as well as excerpts from General Business Law (New York), Penal Law (New York), and other New York Statutes, the Federal Grain Futures Act and Cotton Futures Act are appended. Whatever may be thought of the desirability of the lengthening of the volume and the increasing of its cost by these reprints, no similar criticism can apply to the addition of the sixty-seven pages of forms. Here Mr. Meyer has drawn on the accumulated wealth of his experience and has made available forms whose authenticity should be a solace for counsel dealing with stock exchange problems without previous considerable practice in the field.

Mr. Meyer in his Introduction asks the legal profession to view with indulgence any deficiencies in his work. Rather should the legal profession, or at least that part of it which may be concerned with problems covered by his book, be thankful to Mr. Meyer for having made available to it, so competently and industriously, his large experience in this difficult field.

Thomas K. Finletter.

New York City.


One would expect that a casebook on Partnership, arranged by Dean Clark and Professor Douglas, would be well constructed and unorthodox in arrangement. In neither respect is there any disappointment.

It seems to the reviewer that the keynote of the book is indicated in the preface, where one object of the alignment of cases is stated to be "to lessen the traditional emphasis upon a partnership as a thing unchanging, whatever the question at issue or the function to be served. Problems as to what a partnership is and how a partnership is created, accordingly are subordinated."

To what extent this subordination should be carried may give rise to some controversy, but the editors have certainly met a real need in emphasizing the possibilities and tendencies for expansion of the law of partnership. There is, perhaps, no field of law more restricted by tradition nor where there is more pressing need for an expansion and liberalization to meet present day business conditions. This aim of the editors may be indicated by the fact that of about one hundred and eighty principal text cases, all but four or five are American cases,
and approximately one-half of the text cases were decided in 1917 and thereafter, during the war and post-war period, when business conditions and practices were almost revolutionized.

It is somewhat presumptuous for one to review a casebook unless he has taught from the book. Whether or not the editors' method of presentation of the subject is an improvement upon the traditional method, undoubtedly depends greatly upon the teaching technique of the instructor. One thing is obvious, the editors had a very definite objective and attained this objective admirably.

The cases are well selected. Part I, consisting of three chapters, deals with liabilities and assets. The distribution and marshalling of assets is given careful and detailed presentation in Chapter 3. Part II is devoted to management, and is subdivided into two chapters, the first dealing with the conduct and control of the business, the second with the enforcement of rights. The dissimilarity in the approach of this book from the traditional method, will at once be recognized by any partnership teacher. The reviewer, personally, prefers a more detailed table of contents, one which definitely segregates more particular problems for solution. This, however, is again a matter of individual teaching technique. Notes, as a rule, are short, but with very pertinent and useful case citations and with numerous references to law review articles and notes. Short case statements and editorial comments throughout the text add much to the casebook.

The reviewer feels some disappointment at the limited scope of the field covered. No casebook or combination of casebooks now gives a satisfactory basis for a combined course on incorporated and unincorporated business associations. Douglas and Shanks' series on Finance, Management and Losses is a most excellent collection of cases, but these books are obviously much too voluminous to be adaptable to many schools that do not have an opportunity to devote to the course the time and effort given to it at Yale. In view of the fact that there seems to be an increasing sentiment that a combined course is desirable, there is apparently an open field for such a casebook in a condensed form, and it is to be regretted that Dean Clarke and Professor Douglas did not cover this extended field. However, inasmuch as the writer of this review was also guilty of the same error, if error it is, he is in no position to criticize it in others.

Taken as a whole, the work is well done. If it does not meet the particular method of approach of many instructors as material for class study, it at least suggests new thoughts and methods of presentation that will be personally helpful to any instructor in this subject.

Drake University.

Scott Rowley.


Heretofore ¹ the writer reviewed Part One of the work herein considered. That part deals with the legislative basis of the Commission's authority and traces the evolution of the Interstate Commerce Act and allied statutes, showing not only the nature of the powers and duties of the Commission but also the meaning of the impact of the performance of the Commission upon the further development of its legislative structure. Part Two, herein reviewed, deals with the scope of the Commission's jurisdiction: here we see unfolding that far-reaching administrative process by which the railroads and allied utilities are being regulated. We see the assertion of federal power not only over interstate commerce but also

¹ March, 1932; 80 U. of Pa. L. Rev. 772.
over intrastate commerce. In manifold ways we see the exercise and application of that subtle process called administrative discretion. While one studies the unfolding of this process as revealed by Professor Sharfman, one wonders what has become of that age-old, Anglo-American principle known as the "rule of law". One recalls that the people of Massachusetts in making their early constitution stated that they sought to set up a "government of laws and not of men." But that principle was enunciated long before the dawn of modern industrialism. The courts of law applying that principle may have sufficed as an instrument of control under the simple economic system which gave it birth. But judicial regulation cannot protect the general interest in the field of public service today, because the courts can do no more than provide private redress for private wrongs. They cannot prescribe rules to govern future conduct. Nor can legislatures deal adequately with the regulation of modern public service: at best they can lay down only the general standards, the bold outline of the picture, but the filling in of the minute and infinite detail must be left to a corps of other artists of finer skill, or to more expert personnel informed by experience and functioning continuously. Anyone who will read the book must close it with the feeling that the Commission has been charged with an all-embracing task of infinite detail and that it has performed its task well and always with the underlying purpose of promoting the general interest, without doing violence to individual interest. One of the characteristic attitudes of the Commission is shown to be its restrained approach in the matter of asserting jurisdiction. The Interstate Commerce Act stands out as a Magna Charta, a sort of constitution. Standing alone and apart from its interpretation and application by the Commission to our modern world of transportation and industry, it is a lifeless, meaningless thing. However the author so skilfully presents his subject that we can all but see the Commission at work molding and shaping and energizing this instrument into a vital agency of government. But the Commission realizes that its authority is purely statutory. It has never sought to usurp powers that are not conferred upon it expressly or by clear implication. Informed by its own experience, the Commission has been able to make wise recommendations to the Congress with reference to amendatory legislation and very frequently those recommendations have been enacted into law. Indeed in practically all matters of jurisdictional scope, when confronted with serious difficulties arising from narrow limitations of authority, the Commission has sought relief through a further grant of power by the Congress, rather than through strained construction of existing powers.

Under the original act, and for nineteen years thereafter, the Commission's jurisdiction was very limited, both as to the kinds of utilities and the kinds of commerce within the ambit of its power. It was confined to transportation and did not reach transmission or communication. In the field of transportation it touched only railroads or joint rail and water carriage. By the Hepburn Act of 1906 the common carriers subject to control were made to embrace express companies, sleeping car companies and all pipe lines except those for transporting water or gas. The author states that this "enlargement of the Commission's jurisdiction was the inevitable outcome of compelling forces, grounded in the unity of the transportation function." Parallel to the expansion of its substantive authority, the growth of the Commission's jurisdictional scope has gone gradually forward until it has attained maturity of power for effective control of those agencies now within the ambit of its jurisdiction; but the author is of the opinion that the time is ripe for further expansion of the Commission's substantive authority over water carriers and into the field of motor carriers operating upon interstate highways and over commercial air service now emerging from the experimental stage. In his opinion this expansion is necessary to effectuate a coordinated transportation system. By the Mann-Elkins law of 1910, telegraph, telephone and cable companies were declared to be common carriers within the
jurisdiction of the Commission. The author doubts the wisdom of this latter legislation, because this service is fundamentally unrelated to that of transportation of goods and persons. As early as 1889 the Commission investigated the evils flowing from the use of private cars and from the operation of private-car lines; not until 1906 did Congress heed the repeated recommendations of the Commission concerning the regulation of these agencies. In 1917, and again in 1920, this jurisdiction was enhanced by further legislation. This experience simply demonstrates that in numerous cases there is no clear-cut separation between transportation and industry. The author's detailed treatment of the development of the Commission's jurisdiction in each of these several new fields is most illuminating. For example, he clearly shows that the Commission has been able to go the full length in preventing the use of private cars serving as an instrument of discrimination, without asserting any authority over private-car owners as such and without invading the immunities of private property.

Without usurping authority the Commission is shown to have assumed jurisdiction over agencies not expressly mentioned in the Act, such as stockyard companies and wharfage companies, declaring them to be common carriers engaged in interstate commerce because they are the terminals through which that commerce passes, thus forming a necessary link in the chain of transportation. We see the Commission ruling that motor-truck lines are not railroads, and, therefore, in general do not fall within its jurisdiction, but this does not mean that all their services are likewise beyond its control. The problem early encountered by the Commission, of assuming control over the electric lines, is elaborated by the author and is shown to culminate in the Omaha case. The author shows how and why the Commission's powers over pipe lines, to a greater extent than its powers over any other carriers, have remained unexercised. It should not be assumed, however, that those persons engaged in the petroleum industry who operated pipe lines did not bitterly assail the Commission's assumption of jurisdiction over these carriers. After the Hepburn Act declared the common-carrier status of these lines, the Commission ordered pipe line companies to file schedules of rates and charges for interstate transportation of oil. Every angle of this legislation was tested in the courts and finally upheld. The author states that, "The mere existence of mandatory power over these carriers, together with the promulgation of the usual publicity requirements, have apparently sufficed to keep the pipe-line companies within the bounds of public interest."

Any worker in that branch of constitutional law which deals with the commerce clause will profit by a careful study of the middle chapter in this book dealing with the assertion of power over intrastate commerce. This chapter, buttressed as it is by a wealth of citation and quotation from the reports of the Commission and the courts, covers a range of interpretation all the way from Chief Justice Marshall in Gibbons v. Ogden in 1824 to Chief Justice Hughes in Board v. Great Northern Railway in 1930. It is shown that the Minnesota Rate Cases provide the first important step in the evolution of federal power over intrastate rates, although no order of the Commission was involved. In the Shreveport case the Commission's authority to remove discriminations against

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3 Pipe Line Cases, 234 U. S. 548, 34 Sup. Ct. 956 (1914), reversing the Commerce Court in Prairie Oil & Gas Co. v. United States, 204 Fed. 708 (1913) and upholding the Commission's order in In the Matter of Pipe Lines, 24 I. C. C. 1 (1912).
5 Board of Railroad Commissioners of North Dakota v. Great Northern Railway Co., 281 U. S. 412, 50 Sup. Ct. 391 (1930).
6 Board of Railroad Commissioners of North Dakota v. Great Northern Railway Co., 230 U. S. 352, 33 Sup. Ct. 729 (1913).
interstate commerce effected through the operation of state regulations was upheld. Further unfolding of this power is found in Section 15a of the Transportation Act and the Supreme Court's decision in the Wisconsin case\(^8\) upholding the Commission's expanded power. Another feature of the Commission's service is found in its close cooperation with the several state regulatory Commissions, primarily through conference and hearings jointly held. This phase of the Commission's activity as elucidated by the author shows the administrative process at its very best. Any person who sees the intimate relations in world commerce can at least hope for the coming of an International Commerce Commission built around conference with national bodies.

The third and final chapter of the book, dealing with the exercise of administrative discretion, properly follows a consideration of the kinds of utilities and the kinds of commerce over which the Commission is exercising control. In many ways this chapter is the most significant portion of the volume because it reveals the working of those delicate and pliable methods known as the administrative process, "the essence of the modern state". The chief characteristics of the administrative method are shown to be informality, freedom from procedural restrictions, and relaxation of technical rules. These characteristics necessarily lay the foundation for what the author calls the "pragmatic character of the Commission's regulative process". It is seen that, while large discretionary powers are expressly conferred upon the Commission, judicial review has been very limited, due to the self-denying attitude of the courts, although the basic legislation places very few restrictions upon the reviewing powers of the courts.

Professor Sharfman concludes the volume with a thoughtful discussion of the maintenance of the Commission's independence. He shows that, up to recent years, the Commission has been singularly free from political influence from the legislative and executive branches of the government, but in recent years he sees signs of intrusion which if allowed to go unchallenged may grow into serious impairment of the Commission's independence, and therefore of its usefulness. This intrusion is seen, first, in executive efforts to influence the adjustment of controversies, and, second, in efforts to manipulate the appointing power. The author denies that the Commission should be considered as a part of the national administration to be used as a medium for the expression of political policy. The author states that during the Harding administration "there were unmistakable evidences of attempted executive influence" in connection with rate readjustments. It is further stated that "the renomination of a commissioner of proved competence was rejected by the Senate because of its apparent disagreement with a single decision in which the nominee had joined with the majority of the Commission." Other instances of similar tendencies to encroach upon the Commission's independence are cited by the author. Instances of attempts on the part of the legislative branch to warp the administrative function by political enactments in behalf of special interests are cited and discussed. It is said that "the dangers which inhere in such an approach are very real, but they chiefly concern the future of the Commission rather than its past or present performance." Professor Sharfman has performed a special service in calling attention to these tendencies of encroachment by other governmental agencies.

Any reader of this second volume of a thorough and scholarly study will gain a clear understanding of the jurisdiction of America's most vital administrative tribunal, but it is not possible to compress within a few pages the essence of a volume which is itself essence.


Robert McNair Davis.

University of Kansas School of Law.

This book is traditional in its contents and manner of presentation of the subject matter. No attempt is made to introduce radical changes in either subject matter or method of approach.

Quite a number of the cases used by Professor Grismore are already found in the compilations of Williston, Corbin and Costigan. The fact that such cases have been found by long experience to be useful vehicles for giving instruction in Contracts, is a sound reason for their insertion by Professor Grismore. There is no point in being different just for the sake of being different.

The author has selected modern cases wherever it was practicable to do so. Many of his cases have been decided in the last five years. Modern cases reflect modern conditions, and other things being equal, are much to be preferred to old cases. On account of the rapidity with which law is constantly being rewritten, there is really very little excuse or necessity, other than for historical purposes, in a few instances, for the use of antiquated material in a modern casebook prepared for students who expect to practice law. Frequently the student has to spend entirely too much time trying to figure out the meaning of language in the old cases—many of which are very poorly reported—when he might be learning some law.

Professor Grismore has included a chapter on damages. This is an excellent idea because Damages as a separate course is gradually disappearing from the law school curriculum. As a practical matter, it should not be forgotten that if a breach of contract action gets to a jury an instruction on the measure of damages must be prepared.

The order of presentation of the subject matter is logical. Beginning with formation of contracts, Professor Grismore proceeds with conditions, impossibility, breach, damages, discharge, joint and several contracts, third party beneficiaries, assignment, and concludes with the Statute of Frauds and illegality. Slightly more than one-eighth of the book is devoted to the Statute of Frauds. Doubtless that statute is of considerable importance, but I do not believe it merits such extensive treatment in proportion to the other subject matter.

The cases are well selected to meet the needs of first year students. The author has avoided cases where the facts are unduly complicated. Out of the great mass of case material which is available for such a book, he has selected cases in which the judges who wrote the opinions knew what they wanted to say and how to say it. Poorly written opinions should be avoided for first year students, and Professor Grismore has done this. In the opinion of the reviewer, the book is an excellent one, and well adapted for the purpose for which it was prepared.

Arthur A. Morrow.

Drake University Law School.


In these two volumes we have an accurate and exhaustive survey of the use of the machinery of government, particularly during recent decades, to change social and economic conditions in two leading countries, England and France. Through the language of workers' congresses, debates in parliament, and official reports, an attempt is made to describe the relation of government to the social revolution which began in the nineteenth century and had its culmination to a large extent in the three decades of the twentieth century. The development of
legislative programs and policies for such matters as factory legislation, housing and town planning, old age pensions, unemployment and health insurance, regulation of wages and hours of labor, are described through a meticulous examination of the source materials. A well informed and impartial scholar in these volumes surveys the scene in which the contending forces of industrialism and democracy engage in what has been termed an "irresistible conflict."

It is gratifying to follow the progress toward the establishment by legislation and administrative action, of minimum national standards of health, of housing, of living conditions, and of wages. The author indicates throughout the growing tendency toward the use of consultation and conference to accomplish results which formerly were dependent upon the ordinary methods of law making and enforcement. The continued use of voluntary action and cooperation has changed much of the procedure in relation to social legislation and its administration. And the formation of advisory agencies such as the French National Economic Council has opened up new methods of consultation and cooperation.

Such an exhaustive analysis has been given of the stages through which social legislation in England and France has passed, with a consideration of modern difficulties and problems, that there is a natural hesitancy to suggest criticisms of the author's point of view or conclusions. The chief difficulty with the work appears to be that too much weight has been given to the arguments of the politicians and to the efficacy of the resulting legislation for which they are so largely responsible. An administrative analysis along similar lines would yield more definite and satisfactory results as to the accomplishments gained by the legislative acts which have been so thoroughly traced in their origin and development. At times the author appears over-optimistic regarding the results secured in the field of social legislation. One may well doubt whether "the era of laissez faire has definitely passed away", and whether "the doctrine of welfare in economic theory has been given a first place." There is apparently an overemphasis on the effective recognition of the social cost to the community as a whole of an "unjust economic order". If one may venture a tentative judgment regarding law and its administration in this field, we are a long way from eliminating the injustices of the present economic system. Ideally, there is quite common agreement to the proposition that, "after all men have got to be treated as human beings and not as beasts of burden or as mere profit-making machines", but, in many phases of economic life, the attainment of the ideal remains to be accomplished.

One may well raise the query, also, to what extent the gains which have been made over a period of a half century may be checked and interfered with by economic and political causes which are more fundamental than the work of legislatures, councils, or administrative agencies. Apparently social legislation and its effective administration are suffering setbacks which shake our faith in the efficacy of legislation to permanently eliminate any but the grosser forms of evils of the modern economic and social order.

The work which Professor Pipkin has prepared is well done, and within its limitations it covers quite adequately a phase of political action which deserves the most careful study and analysis. It is only by a sympathetic understanding of the difficulties encountered and the results accomplished in the way of social legislation in such countries as England and France, that perspective may be gained to attempt to meet situations which contain not only the forces and factors common to the industrial life of the last half century, but also new economic and political ingredients.

Charles Grove Haines.

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BOOK REVIEWS


Publication of the second edition of a case-book invites consideration both of the original work and of its revised form. Judgments of case-books are individual. This reviewer found the first edition immediately attractive, and its use in the classroom has confirmed and strengthened his early impression of its excellence.

There are, in both editions, four divisions. The first and second are devoted to the functions of court and jury, the qualifications and privileges of witnesses and rules governing examination. This material gives the trial court setting of the rules of evidence. At the outset of the course, it serves to acquaint the student with the environment in which those rules have been developed and in which they must continue to function. Only those who, as teachers or as students, have struggled through a course in Evidence without an adequate introduction of this sort, can appreciate fully the value of such material. In the third division are rules of evidence. The fourth, and last, division affords shelter to that legal waif known as "The 'Parol Evidence' Rule", without admitting it to full membership in the family.

Choice of topics and their arrangement are little changed in this edition. A reconsideration of the relative importance of topics has caused some change in the comparative space allotted them. Occasional rearrangements have brought out more sharply the relationship between rules. For instance, "Required Witnesses" and "The Best Evidence"—found, respectively, in Chapters II and VI of the first edition—now appear together as Chapter 6 under the title "Preferred Evidence". Again, in the chapter headed "Opinions and Conclusions", the first edition had a third section: "Opinions Based on Examination and Comparison of Writings". This section is omitted from the second edition, its material now appearing under the general head of opinions of expert witnesses.

Of cases new to this edition, some fifty-eight are decisions which have appeared since the first edition. They have been wisely selected, and are so placed as to continue the chronological order by which the editor has, in both editions, made apparent the development of the law. The cases used in the first edition have evidently been thoughtfully re-examined and compared with other materials. The result is a real revision of the older material, with considerable substitution. The new cases commend themselves, though some of the familiar opinions will be regretfully missed.

Any temptation to increase the size of the book has been overcome. In fact there is a reduction of 125 pages.

The footnotes are very valuable. As before, they make no attempt to compete with digests or with texts. They do, however, make available especially significant cases, law review materials and annotations, with apt indications of their scope. In important places, concise statements by the editor appear. Here, again, revision has been thorough and the work has been brought down to date.

Teachers of Evidence who found the first edition of this casebook to their liking—and they must have been many—will be apt to approve this new edition. They may confidently expect to find it, as the editor modestly hopes, "a more efficient teaching tool."

Wilbur H. Cherry.

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This book is a collection of the conventions, recommendations, resolutions, reports and motions adopted by the first six International Conferences of the
American states, and of documents relating to the organization of the Conferences. It brings together for the first time an accurate, comprehensive, and thoroughly edited record of these first six International Conferences of American states. Of course any book put out by James Brown Scott will command respect, and this book will be no exception to the rule. Mr. Scott says in his introduction that the collection now making its appearance does so as a labor of love and that much is due to the trained intelligence and adequate appreciation of the late Henry G. Crocker and of Miss Ruth Stanton, both of the Carnegie Endowment Division of International Law. But it is evident from reading the introduction that this work is also a labor of love on the part of Mr. Scott himself, and the thorough editing and arrangement of the material show his handiwork. The table of contents is one of the most important parts of any book and here is of especial value. One can find immediately, in connection with any Conference, any matter of importance in which he is interested.

The annex to the introduction, relating to the Congress of Panama, June 22 to July 15, 1826, supplies the important connection between the earliest attempt at some sort of a union among the American states and the more permanent series of conferences beginning in 1889. It is especially interesting to have it pointed out so clearly how the United States came to be joined in this movement, although it was not included in the circular invitation addressed by Simon Bolivar to the governments of American states. The invitation to the United States, due to the independent act of President Santander of Colombia, is a matter of historical importance.

No one, however, would detract from the honor due to Bolivar, who, at Lima, December 7, 1824, proposed a Congress of Spanish-American states in Panama. Yet Mr. Scott shows that even before this Henry Clay had also seen the vision and had made a proposal in the House of Representatives in favor of "A human freedom league in America" which should not be confined to North America but should extend from Hudson Bay to Cape Horn. But it remains true that the Congress of Panama had prophetic importance as a point of departure on the road to complete understanding among American states. Mr. Scott makes very clear how John Quincy Adams, the President of the United States, and his Secretary of State, Henry Clay, solved the problem of Washington's address in regard to entangling alliances. They disregarded the letter that killeth for the spirit that maketh alive. We of today might well ponder this.

Mr. Scott has done well to remind us of the part which James G. Blaine played in furthering the peace of American states. Here Blaine appears in a role not often recalled and rises to the plane of great statesmanship. Let that be remembered about him.

But the Dominion of Canada has not yet joined this impressive procession of American states, and one can see from this introduction how great is the desire of those interested in the peace of the Americas that Canada should join in these Conferences. Mr. Scott says in closing his introduction that this volume is intended as an act of homage to the memory of Simon Bolivar and also to the memory of James G. Blaine—of Bolivar, whose vision foresaw the regular meeting of American republics; of Blaine, who had the wisdom to carry Bolivar's proposals into effect.

In looking through the body of this book to discern the questions with which the Conferences have concerned themselves, it is clear that in the main matters of fundamental importance have been considered. In the very first Conference the question of a uniform system of weights and measures, an intercontinental railway, an international monetary system, an international American bank, and extradition of criminals were taken up. In this first Conference, also, there is a significant recommendation on the right of conquest, which begins with the dec-
laration that there is in America no territory that can be deemed "res nullius". It is notable how the question of intercommunication obtrudes itself continually, beginning with intercontinental railways in the Conference of 1889 and ending up with the proposition of international "highways" in the Conference of 1928 at Havana. The question of a bank also keeps coming up in an effort to solve the monetary problems of the Americas. The rights of aliens, extradition of criminals and protection against anarchism show the trend of thought; and conventions on literary and artistic copyrights and the exchange of official, scientific, literary, industrial publications, and on the practice of learned professions—all these matters receive much consideration. As time goes on the Conferences turn their attention more to the status of naturalized aliens, public debts, international law, the development of an American International Scientific Congress, and the interchange of professors and students in American universities. In the fifth Congress the question of hygiene evidently becomes very important, for large consideration is given to that question. It is interesting to notice also in the fifth Congress, 1923, resolutions on measures to reduce the consumption of alcoholic beverages; and, in the sixth Congress, that much attention is given to the condition of workers, plant and animal sanitary control, the obligatory leave of absence for prospective mothers, immigration and emigration, and an attempt at a code of private international law. The book closes with the first Conference of the Inter-American Commission of Women, a development that is certain to increase in importance.

Frank Strong.

University of Kansas.
BOOKS RECEIVED


