REVIEWS AND NOTICES

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Legislative Loss Distribution in Negligence Actions. (A Study in Administrative Aspects of Comparative Negligence and Contribution in Tort Litigation. By CHARLES O. GREGORY. Chicago: The University of Chicago Press. 1936. Pp. xiii, 200. ($2.50)

The efficiency of the common law as a mechanism for distributing the burden of economic loss caused by negligent conduct has been much questioned in recent years. Responsibility at common law turns on the presence of *fault as the proximate cause of injury.* The determination of the person legally responsible for the injury depends upon many subtle doctrines which are difficult of application and which often yield results ethically and socially unsatisfactory. Two of these are the rules which (1) deny contribution between joint tortfeasors, and (2) bar contributorily negligent plaintiffs from any recovery except where the defendants were guilty of ultimate negligence.

Broadly speaking the latter rule operates as between a plaintiff and a defendant to make one of them pay or suffer the whole of the loss without regard to the fact that the other was also blameworthy in some degree. The former rule operates to make one of two or more negligent defendants liable to the plaintiff without the right of indemnity against his guilty colleagues. Together, these rules often operate to prevent any proper spread of loss as between two negligent persons.

This situation has not escaped the Legislatures, and statutes are to be found in England, the United States and Canada designed to secure a more exact justice as between parties and a better adjustment of the social loss. (For a discussion of such legislative attempts in the matter of contributory negligence generally, and of motor vehicle accidents in particular, see V. C. MacDonald, *The Negligence Action and the Legislature* (1935), 13 Can. Bar Rev. 535.) Accordingly, in the United States, in Ontario and in England (by enactment in 1935) the law as to contribution between tortfeasors has been altered. Similarly, in the United States, in England (as to maritime collisions only) and in four Provinces of Canada provision has been made for division of the loss as between negligent defendants and contributorily negligent plaintiffs.

It can be said with confidence that each of these statutory innovations has improved the law, but that there is still room for improvement in the legal technique in distributing the loss incident to the negligent infliction of personal and property damage.

Further improvement can only be effected by legislative enactments which furnish new premises for the judicial process in the field of negligence. So far the Legislatures have dealt merely with aspects of that subject, with the mode of function, and results, of specific doctrines. They have considered the subject neither as a whole, nor from the point of view of the diverse factual situations which provide the occasions for the application of those doctrines, nor have they been concerned to consider how

these situations can be handled by judicial machinery so as to achieve the best combination of individual justice and social expediency.

It is the great merit of the book written by Professor Gregory of the University of Chicago that he has done these very things, and, in particular, that he has pointed out the infirmities of legal doctrine and administration which militate against the proper distribution of loss, and, with full realization of the difficulties involved, has sought to construct a system which will effect such a distribution better than that now in vogue. Professor Gregory's "system is built upon *the principles of comparative negligence and contribution between tortfeasors combined* to effect an ideal spread of loss among all the participants materially connected with the accidnet out of which the litigation has arisen" (p. ix). He believes that such a system "administered under procedure and practice as intelligently preconceived as possible promises results far superior to those produced by the existing common-law methods" (p. 8). His book is written expressly to aid those seeking to draft such legislation and establish such practice and, as he says, if it does not aid the legislatures and courts "it will at least have warned them about the implications of embarking upon a precarious adventure without proper equipment" (p. 8).

The first part of the book deals with contribution between tortfeasors, the second with comparative negligence. In each he considers the existing common and statutory law, comparatively and critically, and in each he concludes with a draft statute. In these surveys Canadian legislation is discussed appreciatively as possessing great merit as well as definite imperfections. One may hazard the belief that the author's views on contribution will be less productive of adoption in Canada than those on comparative negligence; for it seems likely that development here will be more influenced by Part II of the (English) Law Reform (Married Women and Tortfeasors) Act 1935 (discussed by Winfield in this REVIEW, *supra* at p. 656) and by section 3 of the Ontario Negligence Act than by legislation of American origin.

On the other hand his learned discussion of comparative negligence statutes will be of great interest alike to the four Provinces which now have statutes providing for apportionment of damage in negligence cases, and to the other four Provinces which still cling to the common law. (The Quebec law also "divides responsibility in case of common fault and reduces the compensation for plaintiff's damage in proportion to his own fault" : GOLDENBERG, THE LAW OF DELICTS, (1935).)

The importance of this book to Canadians lies in two facts. First, its demonstration of the complexity of the problems involved in legislative intervention in this field and of the great value of the scientific approach to such problems as a preparation for legislative solution. Secondly, the discussion of the existing enactments and suggested amendments thereto, and the stress placed throughout on procedural and administrative factors.

The only criticism of his discussion of the Canadian statutes which can be made is that the author is not always correctly informed as to their method of operation in practice and that his study of the jurisprudence therein is somewhat incomplete. In some instances, also, his factual material is not quite up-to-date. Thus, though he refers (p. 132) to the desire of the Ontario members of the Conference of Commissioners on Uniformity of Legislation in Canada, in their 1928 Report, to find a way of protecting parties against findings of ultimate negligence, he omits to mention that

the Report concludes that "it will be unwise if not impossible" to attempt to extend the Model Act of the Commissioners (then in force in Nova Scotia, New Brunswick and British Columbia) in that direction. Again (pp. 132-3) he implies that the organized effort of the Bar to devise more perfect legislation concluded with the recommendation by a Committee of the Canadian Bar Association to the Conference of Commissioners on Uniformity of an amendment to the Model Act the chief feature of which was the provision that a finding of ultimate negligence should be "material only in fixing the respective contributions of the persons found negligent". As a matter of fact in 1934 the Nova Scotia Commissioners reported definitely against this suggested amendment (Proceedings of Conference of Commissioners on Uniformity of Legislation in Canada (1934) p. 52) and the Conference made a complete redraft of its Model Act (*ibid.*, p. 69) adopting an entirely different technique as to ultimate negligence and also incorporating the provisions of the Ontario Negligence Act as to contribution.

The main novelty of Professor Gregory's statute on comparative negligence is that it seeks to provide an enactment dividing the loss not only as between negligent plaintiffs and defendants but also as between defendants entitled to contribution against each other. This device of combining the principles of division of loss and contribution already exists (in far less elaborate form) in the Negligence Act of Ontario and the Model Act as revised by the Commissioners on Uniformity in 1934. His technique for obviating the inconveniences of the common law result consists in (A) the *abolition* of the common law doctrine of ultimate negligence and the doctrine of contributory negligence (save as a factor in diminishing the quantum of recovery), and (B) in *special findings of fact* as to (1) the pecuniary loss suffered by each claimant, (2) the proportionate negligence or fault of each party expressed in percentages, and (3) whose negligence contributed to what or whose damages (Chapter 14).

The crux of his proposal from the point of view of feasibility is the complete elimination of the doctrine of ultimate negligence or "last clear chance" as a determinant of liability, and the abolition of contributory negligence save as an element operating to diminish the quantum of damages in accordance with the plaintiff's degree of fault.

The reviewer happens to believe that this particular method of achieving the ideal in the matter of loss distribution is fundamentally unsound and impracticable, but feels it unnecessary here to re-iterate views he has expressed elsewhere (*e.g.*, in (1936), 13 Can. Bar Rev. at pp. 553 *ff.*; 14 Can. Bar Rev. at p. 368) and which, of course, may be quite wrong. By this expression of a fundamental dissent as to the desirability or feasibility of this aspect of the author's suggested remedy the reviewer does not intend in any way to discount the very real merits of the book under review, which he welcomes as a long step towards our ultimate attainment, by legislative means, of a better system of loss distribution in negligence actions. The book deserves eager study by all interested in comparative law generally and in the working of the law of negligence in particular, and by all interested in the vitally important matter of the legislative adaptation of our law to meet observed deficiencies.

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Principles of Contract. By the RIGHT HONOURABLE SIR FREDERICK POLLOCK, BT., K.C., D.C.L. Tenth edition. London: Stevens and Sons. Toronto: The Carswell Company. 1936. Pp. lxi, 762. ($9.00)

Opportunity is given to very few authors to see ten successive editions of a text-book through the press. When those ten editions cover a period of sixty years, as in the case of Pollock on Contracts, the congratulations as well as the sincere thanks of the profession are due the celebrated author, Sir Frederick Pollock. It is unnecessary to praise a book so well and favourably known to at least two generations of lawyers and students on both sides of the Atlantic. To condemn it would be not only an impertinence but something akin to sacrilege. For Pollock on Contracts, within the lifetime of its author, has undoubtedly become a classic.

In the present edition, as the author himself states, "no great novelty will be found," and those who have become familiar with previous editions will not find any radical changes, while those who may have had the temerity to disagree with some of the author's theses will find that they may still continue in their disagreement.

To the present writer it seems a pity that more use was not made of the American Law Institute's Restatement of the Law of Contract as a means of broadening the horizons of the traditionally insular treatment of law to which we have become accustomed in English text-books. In view of the author's previously expressed antipathy towards this work, (47 Harvard Law Review at p. 366) it is not surprising to find that in his preface he states it will be practically ignored. The reason he advances, that the Restatement is "all but unknown in this country," far from justifying this view, would, it might have been thought, have supported its inclusion. Certainly, comparisons with it, rather than with isolated American decisions, would seem to this reviewer at least, preferable. While Sir Frederick styles the Restatement "a critical digest" and hence remote from the need of English lawyers, it is the writer's opinion that English text-books generally could profit by a more critical approach than one is accustomed to find. There seems no reason to doubt that the English law of contracts might conceivably be improved by some study of American developments, even as the English law of torts received direct benefit from American examples in *Donoghue* v. *Stevenson*, [1932] A.C. 562, and *Haynes* v. *Harwood*, [1935] 1 K.B. 146. Professor Stallybras refers to the latter case (SALMOND, TORTS, (10th ed., 1936) p. 39, (n)) as "an interesting illustration of the occasional influence even in England of academic work and of American case law." In all humility we might suggest that there is perhaps not enough of the critical element in Pollock on Contracts, with the result that sometimes we are presented with an incomplete picture of what courts are likely to do, no matter how complete the text may appear. Thus, for example, the section on the rights of third party beneficiaries to sue on a contract, does not seem enhanced by adding(p. 207) "apparent exceptions . . . . are due to the creation of interests in property by way of trust," to which statement the case of *Harmer* v. *Armstrong*, [1934] 1 Ch. 65, is added in a footnote. No mention is made of Professor Corbin's article *Contracts for the Benefit of Third Persons* (1930), 46 L.Q.R. 12, although the views there expressed seem, in view of such a case as *Harmer* v. *Armstrong* itself, to

be gaining considerable ground. Similarly, to attempt to justify all agency situations on the basis of true contracts between principal and third persons seems impossible in view of the anomalous position of an undisclosed principal, unless indeed fiction is taken for fact.

In the present edition the reader will find a completely rewritten discussion of the so-called "ticket" cases (pp. 47-51), in which the learned author supports the views reached by the court in such cases as *Thompson* v. *L.M. & S.R. Co.*, [1930] 1 K.B. 41. His explanation, of the doubts raised by Professor Hughes in a Note in 47 L.Q.R. 459 does not seem particularly satisfactory, nor has the difference been made clear to the present writer between the "ticket" cases and such cases as *Carlisle Banking Co.* v. *Bragg*, [1911] 1 K.B. 489. Under the "ticket" cases, provided the company has done everything reasonably sufficient to give notice to the purchaser of the ticket, the contract is concluded by accepting a ticket. Does this not mean that the ticket-taker should, as a reasonable man, know the terms of the offer, and would not the jury's finding in *Carlisle* v. *Bragg* mean that the signer should have known of the terms of the offer he was signing? Section 70 of the American Law Institute Restatement reads as follows: "One who makes a written offer which is accepted or who manifests acceptance of the terms of a writing which he should reasonably understand to be an offer or proposed contract, is bound by the contract though ignorant of the terms of the writing or of its proper interpretation." It would be interesting to discover to what extent the author believes this statement to represent English law. Sir Frederick Pollock believes that *Bell* v. *Lever Brothers*, [1932] A.C. 161, is an unsatisfactory case on mistake and he hopes that it will be ignored during the next generation of lawyers (p. 498). While this may be true regarding the actual decision in the case, the present writer ventures to hope that the judgment of Lord Atkin will be preserved and studied. In linking mistake with frustration of contracts, to say nothing of dealing incidentally with cases of innocent misrepresentation under the heading of mistake, the reviewer believes the way has been prepared for someone to differentiate facts which may have an operative effect in the formation of contracts, from those which operate in the performance of contracts—a distinction that is not clearly made, so far as the reviewer knows, in any English text-book on contracts. Thus, it still appears to be doubtful whether the celebrated case of *Smith* v. *Hughes* (1871), L.R. 6 Q.B. 597, was a case which should be dealt with under performance of contracts and the implication of conditions (see Lord Atkin in *Bell* v. *Lever Brothers*, [1932] A.C. 161 at p. 222, and see notes in (1930), 8 CAN. BAR REV. 299, and (1933), 11 CAN. BAR REV. 210) or should be treated as a mistake which prevents a contract from being formed (POLLOCK, p. 501).

Sir Frederick appears to have changed his views concerning the effect of an innocent misrepresentation since publication of his last edition, since he now states (p. 525) it is "the accepted doctrine, founded on a long course of professional understanding rather than any positive authority, that if such a representation is false in fact, even though made with honest belief in its truth, the promise induced by it is voidable at the promisor's option." This is quite contrary to his previous view stated in the former edition (p. 599), and seems based on the statement of Lord Atkin delivering the Privy Council's opinion in *McKenzie* v. *Royal Bank of Canada*, [1934] A.C. 468. It is a little surprising that a decision of a court

which the author in one place styles as one not in an "English jurisdiction" (p. 32) should establish such a sweeping proposition and one which would, as applied to sale of goods, have a most peculiar effect on the accepted doctrine of conditions and warranties. (See a short discussion in (1935), 13 CAN. BAR REV. 244, and see *Hynes* v. *Byrne* (1889), 9 Queensland L.J. 154, and *Riddiford* v. *Warren* (1901), 20 N.Z.L.R. 572.) The acceptance of the rule in *Kennedy* v. *Panama Etc. Company* (1867), L.R. 2 Q.B. 580, by Lord Atkin in *Bell* v. *Lever Brothers, supra,* also makes for difficulties in agreeing with such a wide rule. The reviewer regrets that the much discussed case of *Hillas and Company Limited* v. *Arcos* (1932), 147 L.T. 503; 38 Com. Cas. 23, should not have been included under "Certainty of Terms", and, in view of the author's scheme of including restrictive covenants in an elementary treatise on contracts, one would expect to have met with the decision in *Lord Strathcona S.S. Company* v. *Dominion Coal Company,* [1926] A.C. 108. Further, in bearing out the author's contention regarding the performance of instalment contracts and interpretation of section 31 of the Sale of Goods Act, *Maple Flock Company Limited* v. *Universal Products (Wembley) Limited,* [1934] 1 K.B. 148, might well have been included, as it not only bears out the author's contention but, in the reviewer's opinion, is an excellent statement of the modern doctrine on the subject.

By extending the width of the printed lines, the present edition has been able to reduce the former bulk by one hundred pages, which is an amazing achievement in view of the fact that there seem to be very few omissions from the previous edition.

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The History of Quasi-Contract in English Law. By R. M. JACKSON, M.A., LL.B. Cambridge: At the University Press. Toronto: The Macmillan Company of Canada, 1936. Pp. xxxi, 134 ($3.50)

The present volume, a Cambridge Study in Legal History, is the third in a series emanating from that university dealing with those forms of liability usually described as quasi-contractual. These three contributions happen to represent the totality of independent treatment, up to the present, accorded to these recalcitrant and apparently protean types of obligation. The first came from the pen of Professor Winfield in 1931, (*The Province of the Law of Tort*) who attempted to prescribe, from a juridical point of view, the appropriate spheres in the common law trichotomy of tort, contract and quasi-contract. The next, a Yorke Prize Essay of March, 1932, by Mr. Kersley, (*Quasi-Contract in English Law*) was a short, valiant, but not very conclusive effort to arrange in some sort of form the available authorities on quasi-contract, and to give definition to this *tertium quid* of the common law. These two works, leaving aside isolated articles, the historical materials provided by Professor Ames and Sir William Holdsworth, and some assistance rendered by digest arrangements, represented the sum total of recorded thought on this subject in English law prior to the publication of the present work. (Of course, the abundance of American thought on this subject, and the projected Restatement of Restitution and

Unjustified Enrichment, of the American Law Institute, at present in draft form, cannot be discounted as sources of information and analogy.)

Any treatment, therefore, having the quality of the present book must be welcomed as nutriment for this neglected, but perhaps not entirely unwanted, child of the common law. Treating the problem apart from equity (no writer, apart from Professor Holland, has suggested that quasi-contract is other than a common law concept), Mr. Jackson examines with simplicity and directness Year Book authorities and cases arising under the so-called contractual forms of action (Covenant, Account, Debt and Indebitatus Assumpsit) with his attention directed to the types of liability which, though imposed at law independently of agreement, came to be sanctioned by a contractual remedy (and which were not treated as wrongs in the same way in which those acts giving rise to Trespass and Case were so treated). Having pursued this inquiry, and given promise of publication in the near future of a treatise on the modern law of quasi-contract, the author concludes with a justification of the expression "quasi-contract" on the basis of juristic usage. It has become, he says, a general and indeed an international term of jurisprudence indicating obligations falling outside the categories of contract and delict. Whether the term has such an international connotation is not however entirely clear: quasi-delicts are regarded equally as outside the dichotomy, and, indeed, in French law a distinction is drawn between quasi-contract and "l'enrichissement sans cause." (See David, *Doctrine of Unjustified Enrichment*, in 5 Cambridge L.J. 205). At the same time, as a pure question of Anglo-American usage, "quasi-contract" appears to have triumphed over the "constructive contract" of Halsbury, and the once common, if ambiguous, "implied contract".

Mr. Jackson, for the purposes of his historical retrospect, adopts the definition and classification of quasi-contracts put forward by Professor Winfield (*Province of the Law of Tort*, at p. 119). The expression thus signifies: "Liability not exclusively referable to any other head of the law imposed upon a particular person to pay money to another particular person on the ground of unjust benefit." Thus, for the present survey, quasi-contract is regarded as founded exclusively on the basis of unjust benefit; an "indebtedness" in the sense of a fixed or ascertainable sum owing to the plaintiff is not an essential; the implication of a contract or promise is excluded. The author then examines with some care the several heads of common law liability which Professor Winfield, in applying his definition, has assigned to quasi-contract. In this way such types of liability as are involved in the recovery of money paid by mistake, extortion or fraud, or upon an executory consideration which has failed, etc., are brought under topical historical review. If this approach, and the historical process thereby invoked, be valid, Mr. Jackson has made a notable contribution to the literature of this subject. In any case, scholars will be grateful for the author's careful treatment of specialized heads of liability: in particular, for his treatment under the head "Indebitatus Against a Wrongdoer" of the doctrine of waiver of tort and its sphere of effective operation (see pp. 61-81), and again, for his brief but illuminating review of a stakeholder's liability (pp. 103-4). At the same time, certain kinds of liability, for instance the liability of incapacitated persons to pay for necessaries supplied, appear to have been dismissed too summarily, and key cases, such as *Slade's Case*, have not been thoroughly analyzed.

Root difficulties, however, seem to inhere in the historical method here followed by Mr. Jackson. In the first place propositions of law ought in general to flow *from*, rather than *toward*, researches in legal history: such at any rate is the method involved in any theory of precedent. Mr. Jackson has assumed the conclusions of Professor Winfield, and, despite the great weight which must attach to the opinions of that learned scholar, he appears to have fettered himself unduly in the present historical inquiry. In the second place, it is far from clear that the description of quasi-contract afforded by Professor Winfield can be regarded as conclusive of the nature of quasi-contract in modern English law (see, e. g., the controversy which raged in the Bell Yard, numbers VIII, IX, and X, in which Professor Winfield, Mr. Landon, and Mr. Stallybrass agreed to disagree.) It is possible, for instance, that quasi-contract may fail at the present time to fit easily into the juristic cradle suggested by Professor Winfield. Indeed, it would be a matter for surprise if it did. A continental commentator (M. Boutmy, *Studies*, 7) has applauded, in relation to the English constitution, "the happy incoherences, the useful incongruities, the protecting contradictions, which have such good reason for existing in institutions, viz., that they exist in the nature of things." Is quasi-contract an "exceptional child"?

Difficulties at once appear in defining quasi-contract by exclusive reference to the doctrine of unjust enrichment. It is apparent of course, that the event of an unjust benefit will not per se found a liability in quasi-contract. (See, *e. g.*, *Marriot* v. *Hampton* (1797), 7 T. R., 269.) Then, can we safely exclude from quasi-contract such forms of indebtedness at common law as arise from statutory penalties, foreign judgments, customary dues, etc., all of which have been assigned by the digests to quasi-contract, and all of which were remedied at law first in Debt, and later in Indebitatus Assumpsit? Nor is it clear that the modern law of quasi-contract has succeeded in jettisoning the early requirement of a "promise implied in law." The several County Courts Acts in England (1888 to 1934) assume the theoretical dichotomy of common law: causes of actions for those statutes are either contract or tort. And recent cases (e. g., *Sinclair* v. *Brougham*, [1914] A. C. 398) suggest that the doctrine of unjust benefit is subject to serious disabilities through a survival of the notion of "implied contract." It is becoming increasingly clear that quasi-contract is more than what Austin (*Jurisprudence*, II, p. 912) has hopelessly termed a "sink into which such obligatory incidents as are not contracts, or not delicts, but beget an obligation *as if* etc. are thrown without discrimination." Should not, however, the task of the historian in this virgin field be to reveal what sort of obligations, independently of pre-conceived juristic definitions, were treated by the common law as contract though not founded on agreement?

Marriage between a pure juristic idea and any fragment of the common law is difficult to solemnize and perhaps impossible to consummate. A recent author (Noyes, *The Institution of Property*) has remarked that the impact of exotic theory on native practice may result in confusion and the "conflict of schematizations." In any event, can the historian and the jurist expect with confidence to walk the paths of common law in quite complete communion?

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A Digest of the Law of Evidence. By the late SIR JAMES FITZJAMES STEPHEN. Twelfth edition by SIR HARRY LUSHINGTON STEPHEN and LEWIS FREDERICK STURGE. London: Macmillan and Company. 1936. Pp. lvi, 273. (7s.6d.)

Exactly sixty years have elapsed between the publication of the first edition of Stephen's Digest of the Law of Evidence and the present twelfth edition. During those years, to thousands of English students "Stephen" has doubtless been a synonym for "Evidence". In reducing a mass of case law on evidence to a concise group of rules and principles, Sir James Stephen was undoubtedly a pioneer, and the phraseology used by him has found its way into countless judgments. The editors of the present edition have, in the main, retained the arrangement and phraseology of the original author, and have contented themselves with adding additional authorities, and making further explanatory notes dictated by recent developments in the case law.

In a new edition of "Stephen" not much else could be done, and the editors have performed the task set them in the most satisfactory manner possible. At the same time, it is questionable, to this reviewer at least, whether, in view of the work that has been done in the law of evidence since the book first appeared, it is desirable to perpetuate much that is still found in Stephen's Digest.

For example, Part I purports to deal with facts which may be given in evidence. That these facts must satisfy the test of relevancy is undoubtedly correct, and that may account for the heading "Relevancy" for this Part. Why, however, should the hearsay rule, for instance, be treated under this heading? The terms "deemed to be relevant", and "deemed to be irrelevant" are used in practically every section. This surely is unsound. Most hearsay is relevant but it is excluded on grounds of policy having nothing to do with relevancy. Why not, therefore, state simply that it is "inadmissible". To style all evidence which is excluded as "irrelevant" is not only inaccurate, but loses sight of the true reasons for its exclusion, and this may result in a very mechanical application of the exclusionary rules. (See a comment in (1936), 14 Can. Bar Rev. 688.) Similarly to speak of things "deemed to be relevant" gives rise to the belief that a court artificially admits irrelevant matter, a belief which Mr. Sturge, one of the editors, feels called on to deny in his essay on *Legal Relevance in its Relation to the Theory of Logic*, which is added to the present edition (p. 232).

Further, in attempting to catalogue in short propositions things "deemed to be relevant" and things "deemed to be irrelevant", there is a tendency to overlook the main rule of logical relevancy. For example, articles 11-13 purport to state just when evidence of similar facts is "relevant" and when "irrelevant". As the present writer ventured to point out on a previous occasion (14 Can. Bar Rev. pp. 154-156) this does not seem satisfactory, nor does it actually show that what the courts are doing is balancing the probative value of relevant evidence against the possibility of prejudice to an accused person. Similarly, the sections on burden of proof and presumptions seem most inadequate to explain the different senses in which these terms are used (see MacRae, *Evidence*, 4 C.E.D. (Ont.) pp. 752 *ff.*) and merely to say that *res ipsa loquitur* shifts the burden of proving negligence

to the defendant (p. 129), is to ignore the difficulties and inconsistencies in such cases as *The Kite*, [1933] P. 154, and *Winnipeg Electric Company* v. *Geel*, [1932] A.C. 690 at p. 699. (See further 14 Can. Bar Rev. pp. 518 *ff.*)

Stephen's Digest will doubtless remain a standard text, and the present editors have faithfully kept to the plan of its originator. A few years ago, Professor Stallybrass criticized a new edition of another English text-book on evidence for completely ignoring the really important work done on this subject in the United States. (See a review of *Taylor on Evidence* (1933), 49 L.Q.R. 122.) A similar remark could be applied to the present volume. The editors have done well, but we believe they might have accomplished more had they written a completely new text with a new approach.

C. A. W.

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Apportionment in Relation to Trust Accounts. By ALAN F. CHICK. Second edition. London and Toronto: Sir Isaac Pitman and Sons. 1936. Pp. xxii, 236. ($3.00).

Of the many problems which arise in the administration of a deceased's estate, none is more difficult nor more frequent of occurrence than the settlement of accounts between life tenant and remainderman. Practically every treatise on the subject of wills or trusts, gives a statement of the rules governing the apportionment of dividends and the method in which residuary bequests are to be apportioned in accordance with the rules in *Howe* v. *Earl of Dartmouth* (1802), 7 Ves. 137; *Allhusen* v. *Whittell* (1867), L.R. 4 Eq. 295 and *In re Chesterfield's Trusts* (1883), 24 Ch.D. 643. On the other hand the ordinary treatise on these subjects does not deal with the practical application of these difficult doctrines. The small volume written by Mr. Chick, primarily, as he says, for the use of students in and members of the accountancy profession, shows clearly and succinctly the manner in which the problems of apportionment are dealt with under the various legal rules. In every case the author gives relevant legal authorities with commendable briefness and, so far as the reviewer has been able to discover, with accuracy. The book is not intended as an exposition of legal doctrine, but anyone concerned with the administration of estates, whether lawyer or accountant, cannot fail to find the present book exceedingly useful. A knowledge of legal principles without an appreciation of the manner in which such principles actually affect the distribution of money in the hands of the trustee or executor may be sufficient to obtain a court's decision on interpretation of a will, but does not advance the practical administration which must follow such interpretation. The present volume, in showing how the complicated principles of law are applied to given sets of facts, supplies the other half of the picture which is missing from legal text books.

The book can be especially recommended for its clarity and simplicity in presenting solutions to problems which are of an extremely complicated nature.

C. A. W.

Books Received

The inclusion of a book in the following list does not preclude a detailed review in a later issue.

Legislative Processes: National and State. By Joseph P. Chamberlain, LL.B., Ph.D. New York: D. Appleton-Century Company. 1936. Pp. xi, 369. ($3.50)

Rufus Isaacs: First Marquess of Reading. By Stanley Jackson. London and Toronto: Caswell and Company. 1936. Pp. 312. (12 s. 6 d.)

Cases and Other Materials on International Law. (American Casebook Series.) Edited by Manley O. Hudson, Bemis Professor of International Law, Harvard Law School. Second edition. St. Paul: West Publishing Co. 1936 Pp. xl, 1440. ($6.50)

A Retrospect. Looking Back Over a Life of More Than Eighty Years. By Lord Parmoor. London and Toronto: William Heinemann Limited. 1936. Pp. xii, 380. (15 s.)

Without Prejudice. Impressions of Life and Law. By Sir Chartres Biron. London: Faber and Faber Limited. 1936. Pp. 368. (15 s.)

The King and the Imperial Crown. (The Powers and Duties of His Majesty.) By A. Berriedale Keith, D.C.L., D. Litt., LL.D., F.B.A. London and Toronto: Longmans, Green and Company. 1936. Pp. xiv, 491. ($6.50)