BOOK REVIEWS

Commentaries on the Law of Evidence. Based upon the Work of Burr W. Jones. Second Edition, by James M. Henderson. San Franciso, Bancroft-Whitney Co., 1926. Vol. I, pp. lxxix, 844. Vol. II, pp. xviii, 845–1807. Vol. III, pp. xix, 1809–2802. Vol. IV, pp. xviii, 2803–3781. Vol. V, pp. xiii, 3783–4711. Vol. VI, pp. vii, 4713–5719.

The last edition of these Commentaries appeared in 1913. They were then a development of the work of Professor Burr W. Jones by L. Horwitz, Esq. Mr. Henderson has now proceeded further with Mr. Horwitz's development of Professor Jones, so that the volumes are said to be "based on" his labors. Where any one of the various authors ends and another begins is thus somewhat difficult to determine. At any rate the combination has produced an encyclopedia more readable than and just as accurate as most works of that class.

The present editor repeatedly asserts his intention to serve the practicing lawyer. He expressly disavows any desire to point the way to reform. He wishes to expound only what is written in the decisions. Likewise the editor has no historical purpose; he aims, he says, to set forth the living law. Suggestions that the best evidence rule, the opinion rule, and the *res gestae* category might be subjected to critical and historical treatment are made only to be discarded as involving matters beyond the scope of the Commentaries. Thayer is almost the only modern scholar referred to frequently. The citations to Wigmore are so few as to be conspicuous. Scarcely any periodical references appear. The editor seems unaware of the controversy that has been waged over the inclusion of admissions among the exceptions to the hearsay rule; nor does he attribute any practical importance to the arguments among scholars as to the classification of cases now covered by the term *res gestae*. In addition to citing countless decisions, the editor supplies in his footnotes references to what must be all the notes on Evidence that have been printed in L. R. A., A. L. R., and Ann. Cas. In short, he gives the hurried practitioner a collection of cases and a statement of annotations which can be quickly referred to in time of need. He gives him, too, in clear English and standard phraseology a statement of what he conceives the law of Evidence as supported by these authorities to be.

The difficulty with the method chosen by the learned commentators is that to be successful it should be consistent. Either they should abstain from criticism althogether and state only what the courts have held, or they should critize what they deem deserving of criticism. The authors of the present work, however, fall between two stools. They have made it neither one thing nor the other. When backed by sufficiently impressive authority, they boldly defend one point of view. But when the question is close and complicated, they content themselves with stating the opposing arguments or shirk the matter entirely by saying that it is not vital to the practicing lawyer.

The present editor, for instance, has little trouble, in one of the new chapters he has added, in espousing the Supreme Court's attitude toward evidence illegally obtained. He will tell you too the "foundation in reason" of the hearsay rule, such as the "intrinsic weakness" and repugnance to the "spirit of the common law" of hearsay. He will assert that it is a quibble to say that a conflict of presumptions cannot exist. He will condemn the rule of some states that when the lower court has noticed a municipal ordinance an appellate court will notice it. He will assert that the doctrine

of *res ipsa loquitur* was never intended to exempt the plaintiff from the general burden of proving negligence, or circumstances making negligence a legitimate, if not an irresistible inference. He will defend the rule placing the burden of proving contributory negligence on the defendant and deny the proposition that there are no degrees of secondary evidence. He will argue that it is the "sounder view" not to admit declarations against penal interest. He will say: "It has been remarked that the general rule that facts and not conclusions should be stated is wise and salutary and cannot be too strictly followed. It tends to prevent fraud and perjury and is one of the strongest safeguards of personal liberty and private rights. Accordingly, whenever it is doubtful whether a case falls under the rule or under one of its exceptions, the wise course is to place it under the rule." And again: "Since expert testimony is an exception to the general rule of law excluding opinions from evidence, and trenches upon the province of the jury, it is not to be extended beyond the necessities of the case. The determination of the matters directly in issue is not thereby to be taken from the jury. . . . Such witnesses must not be permitted to usurp the province of the court and jury by drawing those conclusions of law or fact upon which the decision of the case depends. . . . For in many cases trials would become farcical if zealous experts were allowed to express direct opinions upon the very issue to be tried."

Thus in spite of the editor's disclaimers the Commentaries do contain comment, not much, perhaps, but enough to give the reader the impression that he can expect it. Yet where the practicing lawyer will need comment most, he will not find it. Most practitioners who have had anything to do with *res gestae* cases or admissions by predecessors in interest, for example, must have shared the experience of most teachers and have prayed for someone to give them a clue to the maze. But these Commentaries leave these subjects in as hopeless a jumble as the decisions themselves. Where there is a conflict of authority, to be told so, and no more, is not the greatest consolation to the lawyer. In emergencies he needs to know the rationale of a rule as much as the rule itself.

Nor will the reasons, if any, which underlie the law of Evidence, be clearer because of the general arrangement of the topics in these volumes or the general discussion of them. Although as a ready-reference work this edition of Jones may be more convenient than Wigmore because the scheme and the language are more conventional, the illumination of Mr. Wigmore's pages (once you have found out what he is talking about) is almost entirely missing from it. The editor intended to leave the subject where he found it; to state the law, not to improve it. Unfortunately, it is possible that in stating it as he has, he may have made it harder to improve it.

It would seem, for instance, of doubtful utility to the law of Evidence for the authors of a monumental contribution to the subject to place admissions and declarations, drawing no clear distinction between them, in a chapter apart from hearsay, and to discuss *res gestae* in still a third chapter. To gather a host of matter under the phrase *res inter alios acta* and to make an exception to the hearsay rule called Statements Prior to Existence of Controversy will not do much to clarify the law, or, one may venture to think, be of much assistance to the practicing lawyer. Is it helpful to learn that "self-serving" declarations are inadmissible unless they are a part of the *res gestae*, or to be told that admissions are admissible because they are against interest, although earlier we have been told that they need not be against interest when made? The problem is not made easier by the later suggestion that "an admission made by a party which is inconsistent with his testimony goes merely to the credibility of the witness." To insist, for example, that an agent's declarations

must be part of the *res gestae;* to warn against the invasion of the jury's province by opinion evidence (later calling such invasion an "ancient spectre"); to give "cordial approval" to Thayer's dismissal of the distinction between presumptions of law and fact and then to go on to discuss the subject as though the distinction were valid; to say that the rule forbidding testimony of the wife to the husband's non-access is founded on the "very highest grounds of public policy, decency, and morality," and that the attorney-client privilege is "essential to public justice, for did it not exist, no man would dare consult a professional adviser with a view to his defense, or to the enforcement of his rights," can do little more to facilitate progress in the law of Evidence than the statement that "when a particular declaration is a verbal act . . . it is competent . . . as part of the *res gestae;* but when it is merely a history . . . it is incompetent."

One who produces a six-volume work in any field of law would seem to owe some responsibility to posterity. Perpetuating in a treatise of these impressive proportions exploded reasons for poor rules either by approving them or by stating them without disapproval is a doubtful service to the law. If a new encyclopedia of Evidence is needed, let it be an encyclopedia which is only that and nothing more. If a new treatise on Evidence is needed, let it be a treatise which shall indicate avenues of escape from our present confusion; let it follow Dean Wigmore's example and frankly point the way to reform.

ROBERT M. HUTCHINS

The Case of Sacco and Vanzetti. By Felix Frankfurter. Boston, Little, Brown & Co., 1927. pp. 118.

The fact that the case of Nicola Sacco and Bartholomeo Vanzetti has been before the Massachusetts Courts for more than six years is extraordinary. It has become the leading *cause célèbre* of this century. Workers have held mass meetings in all the capital cities of the world. The names of these two men are known to thousands who could not name the presidents of Switzerland, France or even these United States. These men have been defended by all ranks of labor—anarchists, communists, socialists and regular American Federation of Labor members, even though when released it may well be that they will be barred from the Federation as left wing radicals. During all this time only a handful of respectables stood by. Now it has become the fashion to criticize the administration of justice in Massachusetts and persons whose pictures appear in Sunday supplements, corporation attorneys and even college professors join in petitions to the Governor of the State.

Felix Frankfurter, one of the braves of the legal profession, has for years rendered service in this and other causes involving the protection of minorities. He is one of those conservatives who still believe that the Bill of Rights contained in the first amendments to the Constitution is worth preserving. His book on the Sacco–Vanzetti case is a real contribution to the cause of Free Speech; it is, moreover, a thriller. The ordinary mystery tale, created out of the imagination of a single author, is not more interesting. The book sets forth the three main directions of the evidence. Identification of the defendants at or near the scene of the murder; expert testimony in relation to the pistol found on Sacco at the time of the arrest and to one of the bullets found in the body of Berardelli; and thirdly, evidence as to a "consciousness of guilt" much relied upon by the prosecution because of false statements made to the police by both defendants before or after their arrest.

The conflicts of evidence as to identification must be amusing to all lawyers. The testimony reminds me of those cases in New York City where a Chinese client merely asks, "How many witnesses do you want?" The Nordic difficulty of telling one Chinaman from another prompts the quantitative question. All trials will always redound with such black and white contrasts in identification and alibis.

The theory of our game called "trying cases" is that out of the conflict truth will emerge. Yet the whole basis of this theory is in the supposition that all the facts go into the sieve. In this case of Sacco–Vanzetti, the prosecutor—with what is the approval of Massachusett's highest court—withheld important evidence tending to prove innocence. Read the exciting story of Gould (page 75) whose testimony was known to the authorities, but who was never called as a witness, presumably because he would have helped prove the innocence of the condemned men. I wish Mr. Frankfurter had proceeded further to trace through the proper theory for prosecutors to follow when they come into possession of testimony of innocence. Should the prosecutor be promoted to a judgeship for withholding important testimony; should he be under a duty to send evidence of innocence to the attorney for the defense or should he himself introduce facts proving both guilt and innocence? I trust that some readers of this able book will write articles pointing more clearly to a way out of this patently unethical but presently condoned practice.

As to the second batch of testimony—the book again holds one's attention during the discussion of the evidence of the pistol expert, Mr. Proctor. Concededly, his testimony was artificially phrased so as to help get a conviction rather than the truth. Here again we have a real problem. All expert testimony is prearranged—and most of it is offered for the purpose of winning the case—rather than to place before judge and jury *all* the facts. That the judge should be misled by weasel-word questions is not often so obvious as in this case.

Finally the testimony as to "consciousness of guilt" raises the issue of radical-hunting of which Judge Thayer is accused. This examination and cross-examination is the true basis of the propaganda that has been carried on for six years. The bias of judges should not do more than amuse the members of the bar. Are not judges humans? Isn't there daily evidence of economic bias in nearly every decision of the Supreme Court of the United States? Possibly the head hunting in Massachusetts immediately after the war went further than we can now countenance. Mr. Frankfurter properly puts forth the facts, condemns the methods of Judge and Prosecutor, and wisely refrains from suggesting curative measure for the many cases even now bobbing up in Passaic, West Virginia and wherever so-called bolsheviks appear before the bar of justice.

The last few chapters of the book add greatly to the reader's excitement. The new evidence recited there recalls the direction in our early mathematics books: "For the answers see the back of the book."

Every lawyer ought to read this slender but powerful volume. And every reader ought to hope that Colonel Wigmore, whose bitter attack on Mr. Frankfurter's book appeared in the daily press, will also publish a volume as short, concise and well written as Mr. Frankfurter's but conceived as we take it to protect the fair name of justice as involved in the Sacco–Vanzetti case.

One parting comment. Throughout, Mr. Frankfurter takes the respectables' attitude of commenting unfavorably on the regular attorneys for radicals. He misses no opportunity to slur the value of their services and to wish that the respectable members of the bar had been in this case from the start. I agree with Mr. Frankfurter. But did he then, or do the

materials. Nevertheless it ought to be examined, along with Huebner (of readers of this Journal now, know a single so-called conservative respectable attorney who will handle the case of a radical at any time before the case gets to the stage of being financially profitable or internationally famous? And then, if such a conservative handles one such case, doesn't he disqualify himself *ipso facto* from handling another? I submit that the so-called leaders of the bar do not defend a Sacco for nothing, or if they do handle more than one such case, they then become those radical attorneys for whom Mr. Frankfurter has so few words of kindness. The cause surrounding the Bill of Rights are not the avenue to wealth; they involve unpopular minorities and denote battling for justice rather than victories.

MORRIS L. ERNST

Contracts in the Local Courts of Medieval England. By Robert L. Henry. New York, Longmans, Green & Co., 1926. pp. vi, 250.

This volume continues Mr. Henry's two articles in the Michigan Law Review of 1917 (vol. XV, pp. 552, 639). Almost all of the material worked over is from eight volumes of the Selden Society.

Mr. Henry has a chapter on pleading, another on wager of law and witness proof, another on inquest proof, another on parol recognisance in court. As he truly says, Maitland's sketch of the early contract law[1] "makes no attempt to go into the details of procedure with which [his own] study is largely concerned." These details are not always satisfying—it seems impossible to gather from the author's repetitious and scattered statements just how it was determined who should make the proof, and what form this should take; but there seems to be no other example of positively obscure or contradictory statement, and no doubt this example is partly due to the local variations introduced by borough ordinances or by merchants' customs (pp. 9, 47, 66, 70, etc.). Mr. Henry's chapters are more satisfactory than other descriptions of the old modes of proof in Holmes, *Common Law* (1881) and elsewhere. The chapter on recognisances is particularly valuable.

As for the other chapters of the book, there is none on the wed, generally (though of course that concept runs through the whole volume); but there are separate chapters on the God's penny and earnest and on the tally (wood, sealed, paper). The last chapter is a novel and valuable contribution. There is also a chapter on the operation of the wed concept in covenants of warranty, the pledge contract, and the surety promise.

The most noteworthy discussion of a special problem deals with the question whether debt was a real action. Mr. Henry points out that "the same debt procedure was gone through with where the suit was upon an old-type debt, where it was on a surety promise, and where it was on a parol covenant" (pp. 241-43; *cf.* pp. 214, 175); also that the denial of "tort and force" in the plea, answering the declaration that defendant "unjustly detains and deforces," was common in covenant (page 44). But the main argument is simply this: "deforces" was put into the royal writ of debt as an excuse (this is a mere assumption) for taking jurisdiction on the theory of a breach of peace; the local courts copied this (another mere assumption), their lords being moved by similar motives; thus, "between about 1166 and 1275," declarations in debt in the local courts included "detains and deforces," but "deforces" disappeared by 1291; and "detains" alone seems "non-committal on the point of ownership" (pp. 11–17). The analogy of detinue (notwithstanding it is spelled "debtinue," without com-

[1] 2 POLLOCK & MAITLAND, THE HISTORY OF ENGLISH LAW (2nd ed. 1899) 184 *et seq.*

ment!) is not even mentioned. All this is insufficient to discredit a view accepted by Langdell, Holmes, Ames, Salmond, and Maitland.[2] Those holding the general view have not so emphasized "deforces" as to obliterate *all* distinction between the property and the obligation concepts; the real problem for them has been to trace their separate development. Mr. Henry merely rejects one extreme and accepts the other. And so we reach this extraordinary conclusion: "the common declaration in debt said nothing about a promise. . . But the transaction involved the promise. Plaintiff's transaction witnesses continued . . . to be examined as to what they say and heard; and what they heard was the promise" (pp. 243–43). And on the other hand Maitland (discussing common law and Germanic precedents together) wrote, "It enters no one's head that a promise is the ground of this action."[3] Mr. Henry gives no reason for flouting the age-long distinction between pleadings and evidence.

Mr. Henry is also indifferent to problems that touch those which he specifically discusses. He dates his studies as beginning about 1154; but his materials do not alter the truth of Maitland's remark that "of what went on in the local courts about the year 1200 we know very little." Now, both Maitland and Mr. Woodbine[4] have said that the records of the local courts do not begin until the influence of the royal courts was "supreme." That is one of the two main points in Mr. Woodbine's attempt to date the origin of trespass; the other is the fact that since compromise was "one of the most fundamental ideas in Anglo-Saxon law and procedure"[5] and was manifestly inconsistent with the conception of damages, this conception must have come from outside the English law. Mr. Henry has considerable to say of damages (pp. 17, 49, 106–07, 215, 216–21, 223, 235–36)—for example, that damages in debt were earlier given in seignorial than in the royal courts; but of course his data throw no direct light on Mr. Woodbine's problem. Nevertheless one misses evidence that in reviewing his material he was conscious of such questions in fields surrounding that of his own exploration. One wonders, too, whether the little he says of lovedays, and of the inquest (borrowed from another Germanic system) as a from arbitration (p. 95), is all that could be said of the principle of compromise. Of course the fine would be included in any complete study of the topic. To give another example, Sir Edward Fry thought that equity derived its doctrine of conscience from the church's principle of *laesio fidei*—and from Rome; he ignored the Germanic contract of *fides facta*.[6] And so, strangely, does Mr. Henry in this volume—though taking account of it in his earlier essays on Anglo-Saxon law,—with no attention to the suggestions of continental writers respecting its later influence. Nor does it seem possible—to give a third example—that Mr. Henry could have said nothing valuable regarding Mr. Barbour's theories of the origin of consideration.[7] Since Mr. Henry assumes a promise accompanying *every* quid pro quo, a case of "debt" (pp. 172–74) in which the quid pro quo was merely a legal detriment has for him no special significance. But it has this to one seeking to follow the development of a mere promise into com-

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[2] *Ibid.* 203–212.

[3] *Ibid.* 210.

[4] Woodbine, *The Origins of the Action of Trespass* (1924) 33 YALE LAW JOURNAL, 799, 800.

[5] *Ibid.* 803.

[6] Fry, *Specific Performance and Laesco Fidei* (1889) 5 LAW Q. REV. 235, 241. *Cf.* HAZELTINE, GESCHICHTE DES ENGLISCHEN PFAUDRECHTS (1907) 150 *et seq.*

[7] BARBOUR, THE HISTORY OF CONTRACTS IN EARLY ENGLISH EQUITY (1914) 59–65, 166–67.

mon law consideration.[8] One wonders how much evidence of this sort Mr. Henry may have ignored under the influence of his peculiar theory of debt. On the other hand, his material on the enforcement of gratuitous contracts (pp. 133, 137, 147, 149) and parol contracts (pp. 18–19, 242, and ch. vii passim) in the local courts deserves consideration before answering finally Mr. Barbour's "burning question."

We need to know more of the interaction of the royal and local courts. The field of property in the local courts must also be examined. It may to remarked that Mr. Henry's whole book shows that the word "supreme," in characterizing the royal influence by the mid-1200's, must be greatly modified.

The same narrowness that characterizes Mr. Henry's outlook upon important problems specifically English also characterizes his neglect of viewpoints suggested by continental law. Mr. Henry's book, as a whole, is pure Germanic law. When there is any striking variation he sometimes points it out (p. 202). Indeed, his abundant and definite materials show in detail transitions which in books like Huebner's appear only as unbridged stages of growth. He brings out very clearly, for example, the law's development from the stage in which delivery of a God's penny merely created obligations in a contract of sale, through the stage in which it served also as a wed that imposed liability upon the vendor but left the purchaser subject to an obligation only, to the stage where both parties became equally obligated and equally liable (pp. 105, 183, 227, 230–31, 234 *et seq.*).[9] But Mr. Henry's treatment does not bring out the significance of this (notwithstanding that he cites Gierke, *Schuld und Haftung* (1910) in another connection (p. 203). It has become a commonplace, particularly since the papers read by Hazeltine and Pollock before the International Congress of History of 1913,[10] that "equitable" relief both in the royal and the local courts preceded such relief in chancery. The abundant illustrations of this in Mr. Henry's book (index, s. v. "specific performance" and "rescission", adding to his citations pp. 216, 220, 240) are of pure Germanic origin. Before damages were given, rescission was naturally the easiest way to treat many broken contracts; when the idea of damages came in, no matter whence, equally naturally compromises were tried (see the passages on damages in Mr. Henry's book). But the point is this: we talk about all this as *our* "law or equity," merely—whereas in reality it is rescission, as a consequence of the Germanic distinction between obligation and liability, reacting to the damages concept.

But, waiving comments upon the book's general outlook, much should be said in thanks for Mr. Henry's labors. He makes clearer than elsewhere the relation of Glanvil to the law of the local courts (pp. 2, 14, 188, 192, 193, 205, 231, 235). He gives interesting conclusions as to the relation of the law merchant to procedure in the local courts (pp. 9, 137, 148, etc). He raises interesting queries as to the history of the quid pro quo (pp. 174, 245). He makes a clear contribution to the history and origin of the formal "delivery-promise" contract and the enforcement of parol covenants. He has various acute suggestions on matters of detail—e. g. the rule of unanimity in jury verdicts (p. 101), the passing of title in sales without transfer of possession (p. 241). And these are only examples.

Merely by more attention to general ideas Mr. Henry could easily have made his book a real contribution to Germanic law, instead of leaving it a conscientious but rather narrow and uninspired study of the English

[8] *Ibid.* 61 point "(3)," 62 point "(3)," 64.
[9] *Cf.* HUEBNER, A HISTORY OF GERMANIC PRIVATE LAW (1918) 503–07.
[10] VINOGRADOFF, ESSAYS IN LEGAL HISTORY (1913).

which more copies were exported last year than sold in this country!), by everybody who reads Pollock and Maitland.

(Misprints to correct, pp. 18, 44, 52, 202, 203, two on 235; inaccurate translation, p. 52).

FRANCIS S. PHILBRICK

Handbook of the Law of Equity Pleading and Practice. By Walter C. Clephane. St. Paul, West Publishing Co., 1926. pp. xiv, 605.

Since this volume, one of the "Hornbook Series of Elementary Treatises," is pretty clearly intended to meet the needs primarily of law students rather than to exhaust the subject for the benefit of lawyers, the initial inquiry should perhaps be: What is the place of equity pleading in the study of law? On the one hand, it may be urged that in relatively few jurisdictions in the United States does equity pleading exist free from radical changes by statute or rules of court. On the other hand, however, it is a commonplace that many of the doctrines developed by the chancellors were consciously adopted by the draftsmen of the Codes as its foundation stones. Indeed, it is difficult to make much out of many dicisions under the Codes without a grasp of equity procedure. Moreover, it is certainly sound statutory construction, as it is sound pedagogy, to consider the background and history of particular provisions in attempting to interpret them. From this point of view, equity procedure is still a subject of vital interest to a law student.

In this particular book, the author has set himself rather severe limitations. On the one hand, he has avoided a discussion of the provisions of the Codes as such, although he has brought in many of the federal equity rules, generally without comment. Since the Code provisions, as well as the equity rules, determine procedure in equity as well as in law cases today, this is a serious limitation upon the effectiveness of the treatment. Even if the author did not wish to embark upon a treaties on Code Pleading, he might very properly have inserted references at pertinent points to typical provisions of the Codes, by way of danger signals. Again, the author has deliberately avoided any discussion of the substantive side of equity procedure. It is, of course, practically impossible to discuss, as the text purports to do, the necessary allegations of a stockholder's bill, for example, without any consideration of the typical situations in which this device might be used. To limit the discussion to a quotation of Federal equity rule 27 is not only inadequate, but misleading, in the absence of reference to the fact that in several jurisdictions one, at least, of the major requirements of that rule has been expressly denied to be a condition precedent to the action. To some extent, an extensive collection of forms in the appendix lends concreteness to the text, but these, of course, can present only a limited number of situations, and cannot indicate variations in different jurisdictions.

The particular treatment of the subject-matter also suffers from the brevity of statement which was evidently deemed desirable. Thus, from the point of view of modern procedure, the discussion of parties is most important, since in this field the Codes drew heavily upon equitable doctrines. Yet the discussion of parties is not very illuminating. The author states certain "guiding principles;" he accepts the designation of formal, necessary and indispensible parties set forth by the Supreme Court; but the student is left pretty much in the dark as to the application of these guiding principles to, say, an action for a foreclosure of a mortgage. Some briefs of decisions are given, but they are used rather as illustrations of the principles than as the data out of which a detailed analysis of the topic,

organized on the basis of particular controversies, might be worked out. Or to take another illustration, it appears on page 159 that service by publication does not justify the entry of a personal decree against a non-resident defendant; "personal decree" is not defined at this point; but from the discussion of the enforcement of decrees on page 395 and following, a student would surely gather the impression that a court of equity renders *only* "personal" decrees. Either statement would have been much clearer if its application in particular cases had been worked out.

The most serious defect in the book is its failure to cite the extensive periodical material in the field. Even so summary a treatment as a Hornbook permits the citation of leading articles; and the very brevity of the discussion should compel reference to other writings which give an expanded consideration of particular topics. Finally, the book is open to some criticism on its mechanical side because of the absence of page citations in the table of contents, and of any table of cases.

Most of the shortcomings of the book are doubtless attributable to the limitations of the plan of treatment. Perhaps text writers and publishers may some day decide that it is impossible to present any legal topic to law students adequately or realistically by means merely of summary statements of legal principles; that legal doctrines must be examined in the light of the typical fact situations out of which they arose and in which they function. Professor Clephane has added greatly to the contributions of his predecessor. It is not too much to hope that in a later edition he may add even more.

ROSWELL MAGILL

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