of the character and strength of the forces against which he battled. Mr. Lief has not done this, but he has prepared much of the way for the biographer who may undertake to do so.

ALPHEUS THOMAS MASON.*

TROVER AND CONVERSION: AN ESSAY. By Edward H. Warren.[1] Cambridge: Harvard Law Review Association. 1936. Pp. 110. $1.00.

Professor Warren's monograph covers most of the field indicated in its title. He discusses the qualifications of a plaintiff in an action of trover, and the various ways of committing a conversion, namely, by taking, retaining, disposing of, using and altering the condition of chattels. He does not discuss the effect of a judgment and its satisfaction, and he gives only slight attention to what a teacher of Torts calls privileges to commit what, but for the privilege, would be a conversion, for example, abatement of nuisance, self-defense, defense of property, private and public necessity, etc. He makes casual reference to the justification of an officer making a lawful seizure, but not to the justification of a bailee who surrenders goods pursuant to a court order.

In his Foreword the author states that the essay "is an attempt to give an outline of the law of conversion stated so simply that it may readily be understood by a student beginning his study of the law." This is a difficult undertaking, but the author has accomplished his purpose with amazing success. The discussion is characterized by its clarity and intelligibility. Not only are the niceties of a highly technical subject stated in simple and concise language, but what is perhaps more important, the social policy of the rules is made clear. The author's critical attitude toward the problems is dominated by the test of workability of the law. Whether a particular rule will promote or deter business and whether it will increase or limit opportunities for a "rascal" to cheat an honest business man constantly engage his attention. All this is done with skill, and what to this reviewer seems an admirable appraisal of the interests involved.

The technique employed is that of stating and discussing particular cases. Here one finds all the classic styles in the law of conversion. *The Winkfield*,[2] *Gordon v. Harper*,[3] *Armory v. Delamirie*,[4] *Jeffries v. The Railroad*,[5] *Fouldes v. Willoughby*,[6] *Hollins v. Fowler*,[7] *Donald v. Suckling*[8] and the rest are paraded before the reader in appropriate order. This is all very well and is obviously appropriate in a work designed to accomplish the purpose stated. When one has said this, however, he has said about all so far as citation of authority is concerned. It is disappointing not to find references to important modern cases which have considered, rejected or accepted rules of prime importance. Moreover, one is left just a little dissatisfied with the want of confirmation of frequent statements of "the weight of authority", "numerous cases", and "the law is so and so". Perhaps no field of the law is more

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[1] Professor of Law, Harvard Law School.
[2] [1902] P. 42 (C. A.).
[3] 7 T. R. 9 (K. B. 1796).
[4] 1 Strange 505 (K. B. 1722).
[5] 5 E. & B. 802 (Q. B. 1856).
[6] 8 M. & W. 540 (Ex. 1841).
[7] L. R. 7 H. L. 757 (1875).
[8] L. R. 1 Q. B. 585 (1866).

controversial than is this, and, therefore, it is a justifiable demand of the reader that "weight of authority" be demonstrated as well as stated. It may or may not be an answer that the essay is intended to be "mere exposition".

Occasionally the lack of authority becomes serious. For instance, in discussing *Halliday v. Holgate* [9] and *Donald v. Suckling*, the weight of authority is said to support the following proposition: "Wherever the repledge does not create in *C*, the repledgee, any greater rights in the property than *B* had, and, therefore, *A* may redeem from *C* upon payment of the amount due from *A* to *B*, the repledge is not so serious a wrong as to amount to a conversion." [10] If this means, as it must mean, that the pledgor-owner may not maintain an action of trover against a pledgee who tortiously repledges the pawn, without a tender, demand and refusal unless the repledge vested in the repledgee a property interest greater than the pledgee-repledgor himself had, this reviewer has no hesitation in stating his disagreement. On the contrary, he agrees with Judge A. N. Hand that "while *Donald v. Suckling* and *Halliday v. Holgate* have to some extent been followed in this country, they have on the whole been disapproved and have been much criticized." [11]

Occasionally, but infrequently, it is difficult to follow the author's reasoning. For example, he disapproves the rules of law governing recovery by bailors and bailees, respectively, against third persons. The bailee for a term may sue in trover and recover the full value of the converted goods, holding the excess over his own damage to the use of the bailor. The bailor, however, may not maintain trover. Professor Warren spends much time and argument to demonstrate the undesirability of such a situation. He thinks the courts have not given the owner due consideration. He thinks it an unhappy situation that a bailee with a one per cent interest may control the litigation, independent of the consent of the bailor with a ninety-nine per cent interest, while there is no corresponding right in the bailor. His contention seems unconvincing. The important thing is that the man with the ninety-nine per cent interest have an adequate remedy to the extent of his interest. Whether we call it conversion or not is immaterial. It is in part analogous to recovery by the pledgor in a suit against a pledgee for a tortious disposition of the chattel in which, upon one theory or another, the pledgor obtains only the value of the chattel less the amount of the debt.

This discussion of the doctrine of *The Winkfield* contains a further instance of what seems to be a misstatement of authority. "There is now no obstacle [in Massachusetts] to treating actions by a bailor [for a term] for a permanent injury to a chattel and actions by the bailor for the conversion of the chattel in the same manner. And such would seem to be now the Massachusetts law." [12] For this proposition there is given a quotation from *Nash v. Lang* in which Chief Justice Rugg observed that "the bailor may maintain an action against a third person for permanent injury to the chattel or for its conversion or for its replevin." [13] *Nash v. Lang* was an action for negligence against a third person by a wife who had loaned her automobile

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[9] L. R. 3 Ex. 299 (1868).
[10] P. 69.
[11] *In re* Salmon Weed & Co., 53 F.(2d) 335, 338 (C. C. A. 2d, 1931).
[12] P. 23.
[13] 268 Mass. 407, 414, 167 N. E. 762, 765 (1929).

to her husband, a physician, to make a professional call. The defendant raised the question of the husband's contributory negligence as a bar to the wife's recovery for damage to the car. In holding that the husband's negligence was not imputed to the wife, merely because of the bailment at will, the court uttered the dictum quoted, as a part of a general excursion into the nature of the relationship of the parties to a *bailment at will*. This would appear to be modest authority for the proposition for which it is cited.

It is common in book reviews to find extended discussion of the points with which the reviewer disagrees, and this is perhaps no exception. Compared to the general excellence of the work, the criticisms suggested, even if valid, are unimportant. Adverse criticism by a reviewer sometimes has the happy effect of demonstrating the validity of the author's position.

FOWLER V. HARPER.*

INCOME TAX CODIFICATION COMMITTEE REPORT. Two Volumes. Vol. I, Report and Appendices; Vol. II, Draft of an Income Tax Bill. London: H. M. Stationery Office. 1936. Pp. 541; xxii, 285. 8*s.*; 4*s.* 6*d.*

Mr. Mencken tells us that the American language is about to swallow up the English.[1] This may be the fruit of a too provincial viewpoint, but even an English author has recently suggested that the "English law of trusts will in the future be more profoundly influenced by American developments than it has been in the past."[2] In spite of these prophecies of present or prospective harmony in the Anglo-American world, reading of the present report discloses little likelihood of a similar *rapprochement* with respect to the eternal income tax.

The report has been a long time on the way. In October, 1927, a Committee was appointed by the Chancellor of the Exchequer

> "to prepare a draft of a Bill or Bills, to codify the law relating to Income Tax, with the special aim of making the law as intelligible to the taxpayer as the nature of the legislation admits, and with power for that purpose to suggest any alterations which, while leaving substantially unaffected the liability of the taxpayer, the general system of administration and the powers and duties of the various authorities concerned therein, would promote uniformity and simplicity."[3]

The magnitude of the task and the diligence with which it was performed is shown by the fact that the full Committee held one hundred fifty-four meetings while hundreds of additional meetings were held by subcommittees. It is remarkable, therefore, that the results of these efforts have been compressed into such small compass. The body of the report occupies but a

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[1] "But the Englishman, of late, has yielded so much to American example, in vocabulary, in idiom, in spelling and even in pronunciation, that what he speaks promises to become, on some not too remote tomorrow, a kind of dialect of American, just as the language spoken by the American was once a dialect of English." MENCKEN, THE AMERICAN LANGUAGE (4th ed. 1936) vi.

[2] Keeton, *Some Tendencies in the Anglo-American Law of Trusts* (1936) 13 N. Y. U. L. Q. REV. 556.

[3] P. 5.