

grande expérience, s'attaque à un problème de droit, et comment elle discute les motifs invoqués par les tribunaux dont la décision lui est déferée. Pour l'étude du droit rien de plus utile que d'approfondir ces décisions. M. Capitant fait suivre chaque arrêt d'observations qui en fixent la portée et qui, au besoin, en discutent le bien fondé. Si jamais nous adoptons en la province de Québec les systèmes de l'abus du droit et de l'enrichissement sans cause, nous devons étudier les arrêts qui sont le point de départ de la jurisprudence française sur ces questions très importantes. Nous trouverons alors dans l'ouvrage de M. Capitant tous les éclaircissements dont nous aurons besoin.

P. B. MIGNAULT

Montréal.

---

*Salmond on the Law of Torts.* By W. T. S. STALLYBRASS. 8th ed.  
London: Sweet and Maxwell. Toronto: The Carswell Co.  
1934. Pp. lx, 712.

The pre-eminence of the author and the distinction of the editor make this, the eighth edition of *Salmond on Torts*, a book to challenge the attention of the legal profession both in England and America. Since the first edition in 1907, this book rapidly attained, and has maintained, its position as a classic exposition of the law of tort. Indeed, Sir John Salmond contributed much to the development of tort law as a distinct body of rules, the coherence of which depended upon certain demonstrable legal principles. The present edition, the second by Dr. Stallybrass, is of particular interest in that it represents a great deal more than what is commonly understood as a new edition of an older text. When in 1928, the editor undertook the seventh edition of this work, he quite properly imposed that restraint upon his efforts which is to be expected when one scholar first edits the text of another. In prefacing that edition, the editor stated: "I have in general only departed from Sir John Salmond's treatment of a topic where either new cases or fresh research have made his views no longer tenable" (p. viii). In the present edition, however, the editor has felt free to depart not only from the text of his author but to abandon fundamental principles from which analytical development proceeds. In a very true sense the present work can properly be described as Stallybrass rather than Salmond on torts. For example, in the seventh edition the editor made use of the device of *excursus* in which to set forth views on particular problems which varied greatly from those held by Salmond and which presumably the editor regarded as equally or more tenable than those of his author. In the present edition, this method is abandoned, although there is no failure to indicate in fairly controversial situations wherein the views set forth differ from those held by the author. In the judgment of the reviewer, Dr. Stallybrass has performed a task of great merit. He has extended the life of a text which has enjoyed a justifiable popularity. He has qualified the text and, when necessary, altered the method of analysis of tort problems to conform to the development of legal thought in this field during the last dozen years. To do so required not only great courage but great familiarity with case-law and the writings of legal scholars over a very wide field.

The recent case-law examined in the preparation of this edition is, of course, mostly English law. More than two hundred new cases are referred to in this edition which were not incorporated into the seventh edition. In the matter of analysis, however, the author has drawn extensively upon the work of American scholars. Particularly in the field of negligence the writings of Terry, Bohlen, Edgerton, Green, Holmes, Beale, Smith, and Street, find prominent places in the references. It is some-

what disappointing to find that the Restatement of Torts by the American Law Institute is not among the American writings which are considered. This, however, may be explained by the fact that the two official volumes of the Restatement which are now available had not been published at the time when the editor was engaged in the preparation of the book. In the treatment of proximate causation, too, while most of the important essays are used, no reference is made to what is probably the outstanding contribution, namely, Professor Carpenter's articles in 20 *California Law Review*, at pp. 229, 396, 471.

In the treatment of negligence is to be found the greatest departure from the views of Salmond. "In no branch of the law" explains the editor in the preface (pp. vii-viii), "has the development during the twentieth century been more marked than in the law relating to the action of negligence. Sir John Salmond was still able in 1924 to deny the existence of any such action and to say that negligence was essentially a subjective fact. He was accordingly able to maintain his fundamental thesis that, with certain exceptions, wrongful intent or negligence was an essential condition of civil liability for tort. In 1928 when the editing of this work was first entrusted to me, I suggested in an Excursus that this thesis was becoming more difficult to uphold. In 1934 after the epoch-making decision of the House of Lords in *Lochgelly Iron and Coal Company v. M'Mullan*, Sir John Salmond's fundamental thesis is frankly untenable." Thus, we find for the first time in English writing, the analysis of the tort of negligence following a pattern set by American writers. Indeed, the chapters on negligence, breach of statutory duties, and liability for dangerous property, correspond closely to the treatment of the same subjects found in recent American books and essays on these subjects. Negligence is not a state of mind. It consists of conduct which falls below the minimum standard set by society (*cf.* pp. 453-4). Negligence exists only when there has occurred a violation of a duty of care (pp. 454, 456). The duty of care arises only as the legal result of certain relations between the parties (pp. 456-7). Negligence is determined by the application of an objective standard of socially desirable conduct (pp. 459-60). The breach of a statutory duty is treated as a form of negligence, that is, a failure to conform to a standard of conduct which is set forth with particularity by the legislature (p. 494).

So too, the rule in *Rylands v. Fletcher* is treated in a manner which conforms to the interpretation placed upon that notable case by American writers, particularly Professor Bohlen. So far as it affects modern life, this is the most conspicuous example of action at peril, that is, liability independent of any moral or social fault on the part of the actor. This is a distinct departure from the treatment of this problem by Sir John Salmond, who insisted that the rule in *Rylands v. Fletcher* was a variation of the law of nuisance.

In only one respect does the reviewer find the contributions of Dr. Stallybrass less helpful than the author's treatment of the same subject, namely, the treatment accorded to the defence of fair comment in an action for defamation. Hitherto, two competing views have been found in the English cases and in text-books. Sir John Salmond regarded the defence of fair comment as an instance of a qualified or conditional privilege (see par. 145 of the seventh edition). On the other hand, the view entertained by Sir Frederick Pollock is that nothing is a libel which is a fair comment on a matter of public interest (*The Law of Torts*, 13th ed., at p. 261). Dr. Stallybrass seems to accept neither view but suggests that "the defense of fair comment is *sui generis* and not merely a particular instance of qualified privilege" (p. 449). This, it is submitted with deference, is no analysis at all. The case which he makes for denying Salmond's view is unconvincing. Perhaps it is more so to an American lawyer who is accustomed to

regard conditional privilege as a general principle of qualified immunity which runs throughout the entire ambit of tort law and is in no sense confined to the law of defamation. (See, for example, *Restatement of Torts*, vol. I, chaps. iii, iv, v, vi, viii, and x.)

It is further somewhat disappointing to find in a work of such general merit no satisfactory disposition of the hiatus which has so long existed in English law on the question of the liability of a defamer who, without misstating facts, makes unfavourable comment upon a matter which is not the subject of public interest. The courts have dealt with the problem in *Sutherland v. Stopes*, [1925] A. C. 47 *per* Viscount Finlay, and in *Hunt v. Star Newspaper Company*, [1908] 2 K. B. 320 *per* Fletcher Moulton, although they have treated the matter as one either of justification or of fair comment, neither of which seems tenable. It is obviously impossible to demonstrate either the truth or the falsity of what is merely the expression of an opinion as distinguished from a statement or implication of fact. So too, it is impossible to apply the doctrine of fair comment when the subject of the comment is not a matter of public interest. Yet there is some latitude allowed for such defamation.

Notwithstanding some disagreement on matters of such detail, the reviewer finds this work an eminently satisfactory exposition of the law of tort. It is, he believes, an outstanding contribution to legal scholarship.

FOWLER V. HARPER

University of Texas.

---

*Le contrôle juridictionnel de l'administration: Étude de droit administratif comparé.* Par R. BONNARD. (Bibliothèque de l'Institut International de Droit Public, VI.) Paris: Librairie Delagrave. 1934. Pp. 266. (35 fr.)

The *Institut International de Droit Public* is performing a useful service in the production of a number of monographs on various aspects of comparative public law. While the earlier volumes were French translations of standard works in other languages, the later volumes are original works. The volume under review is the sixth of the series.

Professor Bonnard is concerned with the judicial control of administrative authorities. That is, he discusses the only part of administrative law to which Dicey gave any attention. It should be said at once that Dicey is not mentioned. For this, there appear to be two good reasons. The first is that he quite misunderstood the nature of French administrative jurisdiction; and the second is that Professor Bonnard, unlike some other continental writers (*cf.* Andréadès, *Le contentieux administratif des états modernes*, 1934), knows too much about English administrative law to be led to assume that Dicey's statements about it are either adequate or correct.

The book is in two parts. The first discusses the general theory of administrative jurisdiction, and the second is a comparative analysis of a number of the more prominent systems. Professor Bonnard finds a clear distinction between judicial and administrative functions, though it must be confessed that his arguments are not entirely convincing. Unlike Duguit, he regards a dispute as essential to the exercise of the jurisdiction, and asserts that essentially a judicial decision is a decision as to rights. Accordingly, he analyses the nature of rights, and concludes that the wide discretionary element which exists in administrative law sharply differentiates rights in public law from rights in private law. Though I recognize the wealth of learning and the acute-