



5-1-1940

## Book Reviews

Leon L. Lancaster

Jack C. Hynes

James J. Kearney

Joseph F. Nigro

Follow this and additional works at: <http://scholarship.law.nd.edu/ndlr>



Part of the [Law Commons](#)

### Recommended Citation

Leon L. Lancaster, Jack C. Hynes, James J. Kearney & Joseph F. Nigro, *Book Reviews*, 15 Notre Dame L. Rev. 373 (1940).

Available at: <http://scholarship.law.nd.edu/ndlr/vol15/iss4/6>

This Book Review is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact [lawdr@nd.edu](mailto:lawdr@nd.edu).

stances of the present case even though the plaintiff had been contributorily negligent as the operators of the instrumentality had no actual knowledge of the plaintiff's peril.

While it is a definite fact that the employees of the defendant in the case under discussion did not have actual knowledge of the injured person's presence under the train, they must certainly be held to have had sufficient knowledge of facts which would impose upon them a duty to make a reasonable search. This is so because as ordinary prudent men the operator and conductor under the circumstances were both aware and had knowledge of facts which caused them to make a search for a person who might have been under the train. Therefore, since they had knowledge to that extent they must be held liable for failure thereafter to use ordinary care under the circumstances. The mere fact that the search was made in view of the facts seems to be conclusive proof that actual knowledge need not be required to create a duty to act with reasonable care toward a trespasser. Thus, there was a duty owing to the injured person, and the defendant could be charged with an omission of duty in failing to discover a perilous situation of another. Since it has been established that the operator of an instrumentality who from facts within his knowledge should know of the perilous position of a trespasser is subject to liability for an injury to the trespasser, the rule of care is the same as that which arises when the trespasser's presence has become actually known by the operator. After the trespasser's presence has become known by the operator of an instrumentality, reasonable or ordinary care must be taken not to injure the trespasser by an affirmative act or force set in motion. *Walsh v. Pittsburgh Rys. Co.*, 221 Pa. St. 463, 70 Atl. 826, 32 L. R. A. 559 (1908); *Woolwine's Admr. v. Chesapeake & Ohio Railway Company*, 36 W. Va. 329, 15 S. E. 81 (1892).

James J. McGoldrick.

---

## BOOK REVIEWS

**BANKRUPTCY AND REORGANIZATION.** By Arthur W. Selverstone.<sup>1</sup> Harmon Publications. 1940. Pp. 560. \$4.00.

Bankruptcy law is a field greatly amiss in good text material, and I believe that Mr. Selverstone's book is one that will prove a firm step towards a better understanding of this subject. This work is another in the outline system published by Harmon Publications, including CONWAY'S OUTLINE OF CONTRACTS, ROTWEIN'S PERSONAL PROPERTY and CONSTITUTIONAL LAW, HUMBLE'S BILLS AND NOTES, among others. It affords the student the same concise treatment that has put these publications upon a plane of popularity above the more lengthy works.

In the Foreword, Mr. Jerome Prince, Professor of Law, Brooklyn Law School, states the purpose of Mr. Selverstone's book to be a fuller education of the public into the realm of business rehabilitation, as afforded by the Chandler Act. This piece of legislation is still new and as yet, largely untested, and it is the aim of this work to crystallize the various sections into a field of knowledge that will satisfactorily cope with the changing phases of the modern business structure.

The special value of the work lies in its expert organization. There are, in all, twenty-four chapters of text material. The first chapter deals with the Origin, Nature and Constitutionality of the National Bankruptcy Act; then there is a chapter on Who May Be Adjudicated a Bankrupt, followed by a chapter on When An Adjudication in Bankruptcy May Be Had. Chapter IV deals with the procedural elements of bankruptcy, the various processes necessary to effect re-

---

<sup>1</sup> Member of New York and Federal Bars.

organization. Chapter V treats of the various administrative officials, and their duties. The various items that may be included in the assets of a bankrupt estate are included in Chapter VI, one of the most valuable chapters. The next two chapters are excellent treatments of matter that is more specific — agricultural compositions, and interstate railroad reorganizations, including excellent matter on the Frazier-Lemke Act. Then follows a chapter on Composition of Indebtedness of Taxing Agencies. Chapter XVI is devoted to Corporate Reorganization; Chapter XVII, Arrangements; Chapter XVIII, Real Property Arrangements By Individuals. Then follow chapters on Wage Earners' Plans, Maritime Commission Liens, and Railroad Adjustments. The last three chapters are largely procedural, dealing with Costs, Expenses, and Compensation; Contempt and Crimes; and Appeals.

In the rear of the book are to be found the Bankruptcy Act in full, and the General Orders in bankruptcy proceedings. The text is freely interspersed with cases, and the student will find it is indeed an excellent supplement to any case-book on bankruptcy or creditor's rights, for the decisions cited are many and well chosen. One of the most valuable features of the book is the insertion of a reference table whereby all sections of the Bankruptcy Act and General Orders may be found in the text material. Thus, by a glance at this table, one can find text matter with cases to annotate any section of the Chandler Act.

Mr. Selverstone's style is well adapted to this work; it is clear, to the point. Despite the many cases, this work is one that could be easily read and understood by any layman interested in bankruptcy law. I believe that accountants and business men, as well as law students and practicing lawyers, will find this a most convenient shortcut to the comprehension of some of the more difficult problems in business reorganization.

*Leon L. Lancaster, Jr.*

---

HOW TO CONTROL THE HUMAN ELEMENT. by Harvey Highbaugh, Knoxville: Published by the Jackson Publishing Co. 1938. \$6.50. Pp. 237.

One of the greatest deficiencies in our law schools to-day, is the lack of courses dealing with practical techniques. Too often the void between the classroom and the trial court is attempted without a sufficient bridge. Just such a bridge is *How To Control the Human Element*, by Harvey Highbaugh.

Mr. Highbaugh's thesis is as complex as human nature, because it is the psychological study of man himself. The text is an attempt to weave rudimentary principles of psychology into a more or less uniform technique for the handling of "would-be" witnesses, with special attention to adverse parties.

The author states that fundamentally all men are the same; the variations are in tint rather than color. He then inter-relates the various emotional drives possessed by each man with the technique to be recommended in handling witnesses, so that these drives may be put to work for the interviewer rather than against him.

The book itself is written in a style somewhat similar to that of Dale Carnegie. It is abundantly illustrated because it is the author's belief that illustrations will more forcibly and indelibly impart his thoughts to the readers. Each chapter is followed by a set of questions, which, though naive in the extreme, help the reader to seize the essential thoughts of the author.

While the work is primarily designed for use by insurance claims-men, as the author suggests, the principles laid down in it, may be used to excellent advantage by the trial lawyer, in his work with witnesses.

*How To Control the Human Element* is a welcome addition to such books as *Trial Technique* by Goldstien and *Trial Strategy* by Stewart, and it like them is invaluable to the law student who is about to graduate and enter into the practice of law.

*Jack C. Hynes.*

---

MARSHALL AND TANEY—STATESMEN OF THE LAW. By Ben W. Palmer.<sup>1</sup> The University of Minnesota Press, Minneapolis, Minnesota. 1939. Pp. 281. \$3.50.

In relatively few words the author of this excellent work has described and compared the life and works of two of our ablest Chief Justices of the Supreme Court of the United States. In the author's subtitle he accurately labels each of his subjects as a statesman of the law. He further labels Marshall as "canonized" while Taney is "cursed." Such additional appellations simply restate the common feeling towards these two men, that each is partly inaccurate. Mr. Palmer clearly demonstrates.

Chief Justice Marshall is depicted in his period when the federal government was weak and the Constitution not defined. He, as a political judge, construed the Constitution and controlled the court over which he reigned for so many years. Taney, who according to the author, was more able than Marshall, in no sense dominated the Court during his tenure as its Chief Justice. Marshall's life and works have been overemphasized at the expense of Taney's. The author clearly demonstrates that the abuse and ignominy heaped upon Taney was entirely undeserved, and he is improperly classified as a "one-opinion Justice" although his decision in the Dred Scott Case was of great importance.

The chief value to this book lies in the admirable biographies of the men considered and in the sterling technique exhibited by its author who appears to be a critic of outstanding merit. He, too, seems to be a statesman of the law. His introductory chapter on "Are Judges Human Beings?" stamps him as a competent observer and critic of things legal. In it he sums up the common complaints against the law and judges, depicting the rise of the different theories of jurisprudence and eventually comes to the conclusion that a judge is like a balance, just as justice is depicted with the proverbial scales. His background and known and unknown feelings are all to be kept in check by one who is worthy of the name judge.

This work should be read by all lawyers who would certainly profit thereby. In addition to this it is the finest book for pre-legal reading that has been published in recent years. One who contemplates a study of law can get a fine picture of his future by a careful perusal of Mr. Palmer's excellent critical analysis of our two great Chief Justices.

*James J. Kearney.<sup>2</sup>*

---

PERIODICALS OF THE ISTITUTO DI STUDI LEGISLATIVI. Palazzo di Giustizia, Roma, Italy. Membership 100 Lire (Italian). Mariano D'Amelio, President.<sup>1</sup>

The Institute is an establishment for the purpose of scholarly research in the laws of the various countries of the world. Its objectives are chiefly academic with the field of comparative jurisprudence occupying a great deal of its attention. Membership may be obtained for the annual dues of 100 Lire, the Italian denomination of exchange, which entitles one to an annual YEARBOOK and a reduction in prices of the other periodicals published by the Organization.

---

<sup>1</sup> Member of the Minnesota Bar and Lecturer at the University of Minnesota.

<sup>2</sup> Member of the Faculty of the College of Law, University of Notre Dame.

<sup>1</sup> Chief Justice of the Supreme Court.

Included in their publications is the YEARBOOK which contains articles by Italian and foreign authors on Comparative law with special attention to the Civil, Commercial, Maritime and Air law of the several nations, as well as Copyright, Trade Marks, Corporate and Trade Law and Private and Public International Law. It also contains book reviews and indexes in the several languages. The treatment of each subject is generally in the language native to the country of the source of the law. This work represents an up-to-date collection of trends and developments in the entire legal world and should prove valuable to those interested in the academic phases of the several legal systems.

Appended to the YEARBOOK is a complete Bibliography that covers every country of Europe as well as Egypt and the United States. It is reasonably complete containing references to the leading reviews and treatises in every field of the law. It is thus an invaluable treasure to those seeking a digest of source material.

Among some of the other publications are included COMPARATIVE JUDICIAL DECISIONS ON CORPORATE AND LABOR LAW. In this work four languages prevail, the Italian, English, French and German. This work is especially interesting in that divergent philosophies of a law that deals with personal rights are brought under one cover. For this purpose the notes following each decision provide interesting comment as well as helpful material to the understanding of each rule. In this work one cannot help but notice the apparent liberality of the Italian labor code and the favorable comparison in some respects to the American code, but the basic philosophical distinction is evidenced in the right to strike.

COMPARATIVE JUDICIAL DECISIONS ON COMMERCIAL AND MARITIME LAW, THE LAW OF THE AIR, INDUSTRIAL LAW AND THE LAW OF COPYRIGHT as well as COMPARATIVE JUDICIAL DECISIONS ON CONFLICT OF LAWS all follow the same pattern as the work on corporate and labor law — a complete collection of judicial decisions of the courts of the various countries with annotations by well-known jurists.

These publications are completed with a REPERTORY OF WORLD LEGISLATION, which is a dictionary-like publication containing the complete list of all the statutory laws enacted in the various countries. Its purpose is simply to give notice of all the laws enacted year by year in all the countries of the world.

The criticism that can be levied at these publications is that they lose a great deal of their practical value by their limited appeal caused by the use of so many native languages in each volume. While this charge is a tribute to the scholarship of the directors of the Institute, we believe that publication could be accomplished in one language without loss of objective, thus making these valuable periodicals more accessible to a greater number. Aside from this, these books represent a masterful contribution to a better understanding of the world's legal philosophies.

*Joseph F. Nigro.*

---

RESTATEMENT OF THE LAW OF TORTS. St. Paul: The American Law Institute. 1939. Pp. 830.

With the release of this volume, THE RESTATEMENT OF THE LAW OF TORTS, the American Law Institute completes the fourth and concluding volume on this subject, containing the official draft of the final sections in Division Nine and Divisions Ten to Thirteen of the Subject. Reporters Francis H. Bohlen, Harry Shulman, Everett Fraser, Warren A. Seavey and Edgar N. Durfee give a complete and concise restatement of our common law on a varied group of legal matters, ranging from interferences with business relations by trade practices to

damages and injunctions. It will be recalled that the American Law Institute began this comprehensive review of the tort field in June of 1923, a review which was not completed until the advent of this volume.

In keeping with the object of the Institute in presenting an orderly statement of the general common law of the United States, this volume generalizes to the pertinent student of the law various problems which it is hoped will be solved in our time. With unflinching courage the RESTATEMENT surveys matters in connection with refusal to deal with another generally and in the course of labor disputes, invasions of interests in the private use of land, tortious conduct not dealt with previously in the other three volumes, defenses applicable to all tort claims, and lastly, with damages and injunctions. One here gets a bird's-eye view, a cross-section, if you will, of certain peculiar torts. There is a breadth and magnitude to this volume in keeping with the primary object of the Institute, the steadfast pursuing of which makes the RESTATEMENT OF TORTS second only to the RESTATEMENT OF PROPERTY in scope and size. As seems customary with the Institute, it still clings to an idealistic rather than to a realistic approach to the law. Perhaps because the subjects covered in this volume are "modern," the reporters have more so than in other volumes attempted to consider the law more as it ought to be than perhaps it really is. There is no gainsaying that it is far better to know what the law ought to be, if in so doing it differs from what the law really is; but it is submitted, our pragmatists, of whom there are many in American law schools, will object and object strenuously.

Part 1, referring to miscellaneous trade practices, is but the continuance of the tag end of Volume III, and deals principally with liability for disclosure or use of another's trade secret, straying here and there to restate the law on false advertising, the procurement of information by improper means, and other allied subjects. Part 2, a discussion of liability for inducing one to refuse to deal with another, is but a prelude to an invigorating analysis of labor disputes, an analysis which suffers because of its attempt to compress within ninety or so pages ninety or so years of labor entanglements. As with our national labor relation board the Institute tends, it seems, towards a very idealistic conception of the problem, an idealism tinged with the standard American sympathy toward the "underdog." The Institute accepts the propriety of certain objects of concerted action by workers which a national association of manufacturers would not always accept. It is refreshing, however, that such a sterling and concise presentation and restatement of a very muddled field of law has been attempted.

Division Ten, dealing with invasions of interests in land other than by trespass, is but the usual and ordinary interpretation of common law rules of property which are well settled and need no more comment than this: the RESTATEMENT is a welcomed aid to a student who desires to correlate case study, standard text matter, and his instructor's lecture notes. In short, with these pithy statements the student has, if you will, a thumb nail summary near at hand.

To the reviewer, it seems that the "meat" of this volume is contained in the last two divisions dealing with defenses applicable to all tort claims, damages and injunctions. Herein the student and the lawyer obtains a rich review of the entire field of torts simply by studying the Institute's restatement of the common law of defenses, damages and injunctions.

It has been said that all matters printed, no matter of how little significance, in some way or another influence a person or a group of people. How much so this volume will influence the student, the instructor, or the lawyer it is too early to judge or predict. But this much one can say: If the student, the instructor, or the lawyer but turn once to the big strident black type restating the law in our day, he will come back. For here is the law as it is, as it ought to be, and perhaps as it will be. And in this regard the Institute makes a great

forward step in a rambling field of law which sometimes defies restatement. There is little difference, if any, as far as style and method of presentation is concerned in this particular volume of the *RESTATEMENT* than there is in another except in its later date. It is still difficult reading, but then it is not a romance. More than good sound law one cannot expect from a work of this sort. And the *RESTATEMENT OF TORTS* does not disappoint in this regard.

*Louis P. Da Pra.*

---

THOMAS RILEY MARSHALL. By Charles Marion Thomas.<sup>1</sup> Mississippi Valley Press, Oxford, Ohio, 1939. Pp. 296. \$3.00.

To those wits who have long relied upon quips about the insignificance of Vice Presidents of the United States, Dr. Thomas throws down the gage in his biography of Thomas R. Marshall, "Hoosier Statesman" and Vice President during the two terms of Woodrow Wilson. Most of us probably have not realized what high time it is that such a thing should be done. However, a short consideration of the fact that one statement made by a vice president about cigars, may obscure his personality for the whole country, should bring us to our senses. A person reading this biography will find that at least one vice president was an important figure in the national affairs of his day, although most people did not realize it, either then or now.

Perhaps because this biography is so well-documented, it lacks much of the modernly popular psychological approach. For this reason it becomes real biography rather than maudlin conjecture. Certainly the book stays close enough to the facts to make the central figure seem refreshingly like a human being rather than a figure in a stream-of-consciousness novel. A re-examination of biographical approach induced by this book might do much to prevent further continuation of character creation under the guise of non-fiction.

Because Mr. Marshall was a lawyer his life is interesting to lawyers. Because he was more interested in public affairs than actual practice, his life will be familiar in note to many of them. These are mere sidelights, however; the book is readable by anyone. The era which shaped Mr. Marshall's life has probably passed, but it is none-the-less a poignant memory for those who lived its days,—an ever more important era for those who live today, whose destinies are being definitely influenced by a previous war and its outcome.

Of special note is the story of the Wilson illness. The story based on documents heretofore unused is one of dynamic interest — its lesson, perhaps of present concern. For those who enjoy, vicariously or actually, an active life, this biography will prove a new key to history of events relatively current even if little known.

*Francis Bright.*

---

<sup>1</sup> Professor, Ohio State University.