

The volume would have been improved by including an index. The table of cases is limited to those from which selected parts appear in the book and does not include references to cases in the notes, or from which extracts are given in the principal cases. While the editor is justified in omitting cases dealing with valuation and other matters affecting the determination of reasonable or confiscatory rates it would seem that *Smyth v. Ames* is deserving of more than a brief note. The *Dartmouth College Case* is disposed of in three pages consisting of statements by the editor, brief quotations from Marshall's opinion and a note containing references to several discussions of the case. The absence of any section dealing with territories and dependencies probably explains the failure to include any of the Insular cases. The chapter on "Citizenship" could have been curtailed so as to make room for a discussion of the doctrine of "unincorporated territory" or this could have been included in the section dealing with "Sole and Dual Government." The chapter on "Due Process of Law" could also have been improved by the inclusion of *Barron v. Baltimore*.

The merits of this volume far outweigh any deficiencies. Professor McGovney's long experience as a teacher of Constitutional Law has enabled him to offer a valuable aid to instruction in this subject.

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CASES ON THE LAW OF TORTS, by *Francis H. Bohlen*. 3d Ed., 1930. Indianapolis: The Bobbs-Merrill Co. Pp. xx, 1193.

The publication of this new edition of the familiar Bohlen's *Cases on Torts* is not merely a case of a little new wine being poured into an old bottle. The bottle itself has been changed, though many of the old chapter and section labels still remain to give it its unmistakable Bohlenesque appearance. The change in the form of the bottle, however, is significant. Whereas, in the former edition, the basis of distinction between Parts One and Two of the book, covering cases dealing with invasions of interests of personality and property, was mainly the degree of *directness* involved in the production of the injury, the categorical scissors are now guided by the presence or absence of the element of *intention*.

The change is revealing. And particularly so, because of the fact that the learned editor has for the last five years been engaged in the work of restating the law of torts as Reporter for the Torts Section of the American Law Institute. His experience in this "super-seminar," as he calls it, "in which the theories of the law teachers have been subjected to the test of judicial opinion," has apparently led him to adopt a more *analytical* approach to the subject, instead of the *historical* one, in which the distinction between trespass and trespass on the case and with it the distinction between direct and indirect invasions necessarily received paramount consideration. One result of this new classification is the shifting of cases like *Weaver v. Ward* and *Brown v. Kendall* from their former positions in Part I, where they served simply to illustrate the law of battery, to a position in Part II of the present edition where they serve incidentally to indicate the historical development of the law from liability without fault to liability based on moral or social misconduct, but mainly to introduce the modern law of negligence and proximate cause, for which latter purpose their use in a modern case-book is unquestionably more significant.

But the new wine in this edition is also of considerable significance, revealing as it does the remarkable judicial development that has taken place in the law of torts during the five years that have elapsed since the publication of the previous edition. In this fact lies perhaps the chief *raison d'être* of the present edition. The recent opinions of the New York Court of Appeals, under the guidance of its distinguished Chief Judge, would alone have justified the publication of a new edition. The book is also made more comprehensive and up-to-date by copious references in the footnotes to recent literature on the law of torts.

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FEDERAL REGULATION OF THE PRODUCTION OF OIL, by *James John Hayden*.  
Washington: Gallagher & Company, 1929. Pp. 130.

To what extent, if at all, can the Federal government lawfully regulate the production of oil on lands in the United States belonging to private citizens or business associations? This is the problem considered. Mr. Hayden starts with the premise that the government cannot regulate the production of oil in this country on any theory of unlimited sovereignty, that such power, if it exists, must fairly be implied from express grants of power to Congress or from any other power that Congress has by virtue of the Constitution. He then goes into the provisions of the Constitution under which legislative action by Congress might possibly be justified. Eliminating the general welfare clause and the common defense clause of the Preamble on the ground that the Preamble grants no power; the tax clause (Art. I Sec. 8) because the words "to pay the debts and provide for the common defense and the general welfare" simply qualify the taxing power therein given and do not constitute another distinct power; the commerce clause for the reason that the Supreme Court has held that the mining of coal, the manufacture of oleomargarine, the mining of iron ore, and the ginning of cotton preparatory to extracting seeds for the manufacture of cotton-seed oil are not commerce and entitled to protection under the commerce clause and, therefore, is not likely to hold that the production of oil is commerce and subject to regulation by Congress; the war powers of Congress (Art. I Sec. 8 clauses 11, 12, 13, 16) as not giving Congress power to control oil production in peace simply because oil is essential in time of war; and the incidental powers (Art. I Sec. 8 clause 18) as not giving Congress power over subject-matter not properly included in actual grants of authority, he comes to the conclusion, in support of which he calls attention to the Fifth, Fourteenth, and the Tenth Amendments, that the Federal government cannot regulate the production of oil directly.

But Mr. Hayden does not leave us without a ray of hope as to Federal regulation. He suggests a method by which Congress may, by exercise of the power vested in it under the commerce clause, assist in the solution of the problem of overproduction, recommending that the Hepburn Amendment to the Interstate Commerce Act be amended to include pipe-line companies as well as railroads within the prohibitions against carrying their own products. The factual basis of this plan lies in the ownership of more than half of the oil produced by the same interests which own and control the great pipe lines. The producers of oil are not on a par with respect to