

WASHINGTON UNIVERSITY LAW QUARTERLY

Edited by the Undergraduates of Washington University School of Law,
St. Louis. Published in December, February, April, and June at
Washington University, St. Louis, Mo.

Subscription Price \$2.50 per Annum. Single copies, 75 cents.
Back numbers, \$1.00.

A subscriber desiring to discontinue his subscription should send notice to
that effect. In the absence of such notice, the subscription will be continued.

THE BOARD OF EDITORS

FRANK ROBERT KENNEDY, *Editor-in-Chief*
JOSEPH KUTTEN, *Associate Editor*
ADOLPH K. SCHWARTZ, *Note Editor* AUBREY HAMILTON, *Comment Editor*
LACKLAND BLOOM, *Business Manager*

FACULTY ADVISOR

ALBERT SALISBURY ABEL

STAFF

PAXTON ACKERMAN	JULIUS FRIEDRICH	WILLIAM NEWMAN
CHARLOTTE ANSCHUETZ	WILBERT HOHLT	EDWIN SCHAEFER
MILTON ARONSON	AARON HOTCHNER	STANLEY SCHUCHAT
CARROL DONOHUE		BERNARD SUSMAN

ADVISORY BOARD

M. L. STEWART, <i>Chairman</i>		R. B. SNOW, <i>Secretary</i>
R. L. ARONSON	A. GARLAND	F. E. MATHES
F. P. ASCHMEYER	J. J. GRAVELY	D. L. MILLAR
G. A. BUDER, JR.	J. GROSS	R. R. NEUHOFF
R. S. BULL	A. M. HOENNY	N. PARKER
R. W. CHUBB	H. W. JONES	C. B. PEPPER
J. M. DOUGLAS	F. L. KUHLMANN	G. W. SIMPKINS
S. ELSON	T. LEWIN	K. P. SPENCER
W. FREEDMAN	A. E. MARGOLIN	E. SUSMAN

EDITORIAL NOTES

THE WASHINGTON UNIVERSITY LAW QUARTERLY

The Annual Law Quarterly Banquet was held on May 3. The principal speakers were Mr. Charles M. Hay and Mr. Daniel N. Kirby, both of whom are prominent attorneys in St. Louis. The following appointments were made to the Board of Editors for the editorial year of 1939-1940: Editor-in-Chief, Edwin Martin

Schaefer, Jr.; Associate Editor, Julius M. Friedrich; Business Manager, Sterling F. Tremayne. Law Quarterly Certificates for meritorious service on the Law Quarterly Staff were presented to Frank R. Kennedy, Lackland Bloom, Joseph Kutten, Aubrey Hamilton, Adolph Schwartz, Charlotte Anschuetz, Carrol Donohue.

The incoming Board of Editors is deeply indebted for the high standards which have been set and maintained by the staff of the past year. Mr. Kennedy as Editor, Mr. Bloom as Business Manager, and Assistant Professor Albert S. Abel as Faculty Adviser deserve special mention for the outstanding service that they have rendered to the Quarterly.

THE SCHOOL OF LAW

Mr. E. E. Hilpert of Western Reserve University has been appointed Associate Professor of Law at Washington University. He will teach Constitutional Law and a course in Law and Economic Problems.

Assistant Professor Albert S. Abel will be on a leave of absence during 1939-1940 to engage in study of Constitutional Law on a fellowship granted by the Harvard University Law School.

Assistant Professor Harry W. Jones will continue his leave of absence to serve as Visiting Lecturer in Law in Legislation and Administrative Law at Columbia University School of Law.

PRIZES

At the annual Alumni Senior Convocation the following Law School prizes were awarded: The Alumni Prize, to the senior student having the highest scholarship average for the three years, Frank R. Kennedy; the Mary Hitchcock Thesis Prize, to the senior submitting the best thesis of the year, Roy P. Cosper; the Richard Wagner Brown Prize, awarded to the student best exemplifying scholarship, leadership, and character, Frank R. Kennedy; the Breckinridge Moot Court Prizes, based upon preparation of briefs, mastery of subject matter, and presentation of oral arguments in practice court trials, were divided equally among Carrol Donohue, Charlotte Anschuetz, Frank R. Kennedy, and John Martin. The Nathan Burkan Memorial Competition Prize, to the senior submitting the best thesis on copyright law, was divided equally among Adolph K. Schwartz and Francis H.

Becker. The Samuel Breckinridge Prizes, awarded to the students having the highest averages in their respective classes: for the senior class, 1938-1939, Frank R. Kennedy, first; Francis H. Becker and Andrew Ludwig, Jr., second; for the second year class, 1937-1938, Frank R. Kennedy, first; Carrol Donohue and Andrew Ludwig, Jr., second; for the first year class, 1937-1938, Sterling F. Tremayne, first; Edwin M. Schaefer, Jr., second. The Breckinridge Law Review Editorial Prize was awarded to Edwin M. Schaefer, Jr., and Breckinridge Law Review Managerial Prize was awarded to Sterling F. Tremayne for the editorial year 1939-1940. Final honors were awarded to Lackland Bloom, Carrol Donohue, Frank R. Kennedy, Joseph Kutten, and Andrew Ludwig, Jr.

NOTES

IMPROVEMENTS BY A TENANT AS REALIZED INCOME TO THE LANDLORD

In 1919, for the first time, a United States Circuit Court of Appeals was called upon to decide whether a lessor realized taxable income upon repossession of his property after a lessee had made improvements thereon at his own expense.¹ Since then there has been wide difference of opinion as to when, if ever, a lessor realizes income as the result of improvements made by the lessee. The Board of Tax Appeals and the lower Federal Courts have decided a number of cases involving the problem, often basing their decisions on factors and circumstances given very little consideration in previous or subsequent cases. Not until recently was the question decided by the Supreme Court of the United States² and that court's opinion lends little aid in attempting a correct solution of this much unsettled question.

Probably the most important issue is as to the constitutionality of the regulations of the Treasury Department promulgated under the various revenue acts since the adoption of the Sixteenth Amendment to the Federal Constitution. That Amendment provides:

The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without appor-

1. *Miller v. Gearin* (C. C. A. 9, 1919) 258 Fed. 225, cert. denied (1919) 250 U. S. 667.

2. *M. E. Blatt Co. v. United States* (1938) 305 U. S. 267.