Reviews of Edwin Jaggard's "The Law of Torts" (1895-1896)

Table of Contents

Review	Pages
Introduction	2-3
Law Book News (November 1895)	4-7
Yale Law Journal (December 1895)	8
Harvard Law Review (December 1895)	9-10
American Law Register and Review (January 1896)	11-13
The Western Reserve Law Journal (January 1896)	14-17
The Counsellor (February 1896)	17-18

Jaggard on Torts

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Introduction

By

Douglas A. Hedin
Editor, MLHP

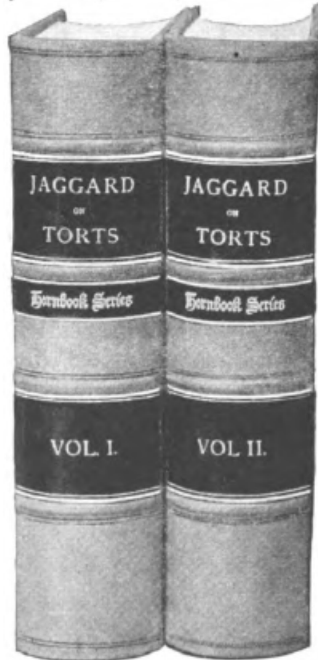
Edwin Ames Jaggard was born on June 21, 1859, in Altoona, Pennsylvania. He graduated Dickinson College in 1879, and the University of Pennsylvania Law School in 1882. He promptly moved to St. Paul to practice law. In 1891 he began lecturing at the University of Minnesota College of Law and continued for the next nineteen years, specializing in torts, taxation and criminal law.

In 1895, his two volume "Hand-Book of the Law of Torts" was published by West Publishing Company for its popular "hornbook" series. It is posted in the "Treatises/textbooks" category in the archives of the MLHP. It was reviewed in many law journals. Five follow (the excerpt from West's *Law Book News* is not a review, but just a quote of Jaggard's "Preface" in volume 1).

Because of its length—volumes 1 and 2 totaled 1,094 pages, and the index of cases and subjects added another 212 pages—West believed an abridged edition was needed. It enlisted William B. Hale, author of other hornbooks, to shorten Jaggard's treatise. His one volume revised edition was published by West in 1896.

With a growing reputation as a practitioner and scholar, Jaggard was elected to the District Court of Ramsey County in 1898, and served from 1899 to 1905. While a trial judge, he continued teaching at the Law College. In 1904 he was elected to a six year term on the Supreme Court, and re-elected in 1910. He died on February 13, 1911, at age fifty-one.

The advertisement on the first page is from 4 *American Lawyer* 190 (April 1896); the advertisement on page 3 is from West Publishing Company's *General Law Book Catalogue* 88-89 (March 1911); and Jaggard's photograph on page 8 is from *Men of Minnesota* (1902).



(Jaggard on Torts)

JAGGARD, (EDWIN A.)—On the Law o Torts. (In the Hornbook Series.) 2 vol: 1895. Buckram, $7.50 net.

Part I presents the general principles of the la of Torts. Part II discusses specific wrongs a showing the application of these principles rathe than as isolated rulings. The Hornbook arrang ment is followed, bringing the principles out boldl as a framework. There are 14,000 citations, bring ing the authorities down to date of publication.

Table of Contents

PART I. IN GENERAL.

Chapter

I. General Nature of Torts: Covering the law adjective and law substantive, distinctions between torts and crimes, common-law obligations and remedies, how and why liability attaches for torts, the mental element, connection as cause, damnum and injuria, common-law, contract and statutory duties, etc.

II. Variations in the Normal Right t Sue: Covering exemptions base on privilege of actor, as public act of states, of judicial and executiv officers, etc., and private acts au thorized by statute or common la variations based on status or co duct of plaintiff, etc.

(Table of Contents continued on following page)

Table of Contents of Jaggard on Torts—Continued

PART I. IN GENERAL—Cont'd.

Chapter

III. Liability for Torts Committed by or with Others: Covering liability by concert in action or joint torts, and liability by relationship, as husband and wife, landlord and tenant, master and servant, partners, etc.

IV. Discharge and Limitation of Liability for Torts: Covering discharge or limitation by voluntary act of party and by operation of law.

V. Remedies: Covering statutory and common-law remedies, judicial and extrajudicial remedies, damages, etc.

PART II. SPECIFIC WRONGS.

VI. Wrongs Affecting Safety and Freedom of Persons: Covering false imprisonment, assault and battery, and the defenses, as justification and mitigation.

VII. Injuries in Family Relations: Covering the family at common law, master and servant, parent and child, husband and wife.

VIII. Wrongs Affecting Reputation: Covering libel, slander, and slander of title, together with the defenses.

IX. Malicious Wrongs: Covering deceit, malicious prosecution, abuse of process, interference with contract, conspiracy, etc.

X. Wrongs to Possession and Property: Covering the nature of possession and its objects, trespass, waste, conversion, etc.

XI. Nuisance: Covering kinds of nuisance, as public, private, and mixed, continuing and legalized, parties to proceedings against, remedies, etc.

XII. Negligence: Covering the duty to exercise care, what is commensurate care, common-law, contract and statutory duties, damages, contributory negligence, etc.

XIII. Master and Servant: Covering master's liability to servant for negligence, master's duty to servant, assumption of risk by servant, various kinds of risks, fellow servants, vice principals, etc.

XIV. Common Carriers: Covering the subject generally.

2 Law Book News 339-340, 392 (November 1895).

Hand-Book of the Law of Torts,
by Edwin A. Jaggard, A. M., L.L. B., Professor of the Law of Torts in the Law School of the University of Minnesota.
In Two Volumes. St. Paul, Minn.: West Publishing Co. 1895.

FROM THE PREFACE. One purpose of this book is to use and apply Such portions of what is known as “Jurisprudence” as are especially relevant to the subject of Torts. The enormous quantity of matter daily ground out by the mills of the law is making it necessary that the practitioner, as well as the student, should again resort to the first principles. The multitude of current authorities increases the necessity of a corrected analysis, and demands a better classification of the law. There is little hope of progression in this direction from its discussion under heads of concrete objects, as dogs, horses, bicycles, ice, beer, shillalahs, or the like. Another purpose of this book has been to develop the general law of Torts as distinguished from the law of specific or isolated wrongs, and to then apply the general principles thus evolved to torts with conventional names. Specific torts were among the earliest subjects of judicial cognizance. Trespass to lands and persons, libel and slander, conspiracy, and nuisance, are among the oldest heads of the common law. But only within very recent times has the process of generalization been applied to them. Indeed, as Mr. Bishop's personal experience shows, the idea of a book on Torts, as a distinct subject, was a few years ago a matter of ridicule. His criticism on an unnamed American book, that it treated of Torts, not even as a subject, but as a collection of disconnected cases, might be justly extended to many others. The development of the general law of Torts owes its greatest debt to Sir Frederick Pollock. In his treatise on Torts (happily called by Judge Caldwell a “legal classic") he says: “The purpose of this book is to show that there is really a law of Torts, not merely a number of rules about various kinds of torts,—that there is a true, living branch of the common law, and not a collection of

heterogenous instances." He accordingly divided his discussion into two parts: (1) The general part, containing principles common to all or most torts; and (2) specific wrongs. This plan is adopted here, and an attempt is made to extend it by making the discussion of Specific wrongs more an illustration and development of the principles stated in the general text than a mere isolated exposition of rulings as to specific wrongs.

Another purpose of this book is to collate and weld together the best of the numerous and diverse contributions to the law of Torts, and to bring the subject down to date. The recent work of English authors along this line is important and valuable.

The contributions of Fraser, Pigott, Innes, Clerk & Lindsell, Ball and Shearwood, and others have most materially advanced the study of Torts as a subject; especially with regard to the evolution of the general law, and the simplification of classification. Much legal learning is to be found in books of leading cases. Also, scattered throughout a score or more of legal publications, are articles of the greatest value. The writer has been impressed with the truth of the proposition that many of the most learned, penetrating, and satis-factory discussions of debatable questions, in the law of Torts at least, are to be found in these comparatively short essays. Some of them have been written by specialists on particular topics, who have investigated their subject with a thoroughness impossible to the writer of a general text. Others come as the finished product of trials in court by the most eminent members of the bar, or as the result of dissection by learned teachers in the class room. Finally, the law of Torts has been materially advanced by writers on specific wrongs and col-lateral subjects. All these authorities and many others have been unsparingly used in the present treatise.

2 Law Book News 392 (November 1895).

[See contents and other descriptive matter on page 339, vol. 2, Law Book News.]

The first principle of this work, which is published in two volumes, is to establish and apply such portions of what is known as jurisprudence as are especially relevant to the subject of torts. It also has for its primary cause the statement of the primary principles of law, broad and general in their scope, yet qualified and distinguished by the citations which appear in great number at the foot of each page. The tremendous number of decisions which are ground out by courts of justice make it necessary for an active practitioner to have a general work from which he may start with a general principle, and then refine the knowledge he has obtained to meet the facts of the case under deliberation. The development of the law has naturally made many qualifications and refinements, and the text-book that deals with general principles and contains such a large number of references and decisions of the various states must find an appreciative welcome from members of the bar. This work also stands as a means of comparing the decisions on the subject of torts, and is useful on that account.

—Albany Law Journal.

In view of the quantity and diversity of accumulated decisions, this work ably answers the demand for a corrected classification of the law. —Yale Law Journal.

After making all deductions for defect of plan and rapidity of execution, the book is a good one. The writer has ideas of his own, and is also familiar with the best ideas of other people, notably the recent English authors who have done so much to elucidate the law of torts, and who are as yet so little known on this side of the Atlantic. Undoubtedly, Sir Frederick Pollock's book, which Professor Jaggard justly places at the head, has been largely used in the United States; but it is probable that comparatively few American lawyers have even heard the names of Clerk and Lindsell, Pigott, or Innes. Professor Jaggard has not made up his book by copying bodily from these authors; but he has made an entirely justifiable use of their works by giving from time to time judicious selections, with proper

acknowledgment. Moreover, he has grasped the leading modern conceptions in the law of torts, and has given proof that he is himself an original thinker.

The book fulfills the statement of the preface that it "is brought thoroughly down to date." The more important recent cases are generally given; and although, as has been said, fullness of citation may diminish the usefulness of the work to students, yet its value to the practicing lawyer is thereby materially enhanced. (See, for instance, note 3 on page 474, containing a full collection of authorities, and able comments on the interesting question so recently raised in Hanson v. Globe Newspaper Co., 159 Mass. 293.)

As to the topics which should be dealt with in a treatise on "Torts," there is likely to be some difference of opinion. The writer of this notice thinks that some subjects usually discussed in books on "Torts" should be left to works on "Property," while others (and this includes a large class) should be left to "The Law of Persons." But Professor Jaggard, in including such topics in the present book, is simply following the example of able predecessors.

—Harvard Law Review.

In general, he has endeavored to follow and elucidate the principles of decision, rather than to overrule the courts. As a result, he has succeeded in stating the law of torts in some three hundred rules. So far as we have examined them, they seem generally to be well stated and copiously illustrated by cases, of which there are between 14,000 and 15,000. Considering that there are only 1,094 pages of text, this is a very great number, and of itself indicates how useful the book is likely to be. —The Nation.

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5 Yale Law Journal 105 (December 1895)

BOOKNOTICES.

Law of Torts (2 vols.). By Edwin A. Jaggard, LL.D., Professor in the Law School of the University of Minnesota. West Publishing Co.

This new work contains a development of the general Law of Torts. It has been the aim of the author to apply to the subject the broad principles of jurisprudence. Instead of discussing the law of particular or isolated torts he has used the specific wrongs as an illustration of the general principles. Accordingly the first volume is devoted to the discussion of the General Nature of Torts, Right to Sue, Liability for torts Committed by Others, Discharge, Remedies, Safety of Persons, Family Relations, Regulation and Malicious Wrongs. In the second volume his subjects are more specific, such as Wrongs to Property, Nuisance, Negligence, Master and Servant and Common Carriers. The book contains contributions from the best authorities upon the subject and many recent cases are cited. In view of the quantity and diversity of accumulating decisions this work ably answers the demand for a corrected classification of the law.

EDWIN A. JAGGARD
ST. PAUL,
JUDGE DIST. COURT, 2D JUDICIAL DIST. (1899—).

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9 Harvard Law Review 366-67 (December 1895)

HANDBOOK OF THE LAW OF TORTS.
By Edwin A. Jaggard. St. Paul: West Publishing Co. 1895.
(Hornbook Series.) 2 vols. 8vo, pp. xvi, v, and 1307.

The merits of this work are very considerable, and far outweigh its defects. The author leaves the impression of a very able lawyer, who has personally investigated the authorities with great care and judgment, but who has put his book together in haste, and who has been hampered by a defect in the plan adopted by the publishers. Hence there is, to a certain extent, a lack of proportion; in some cases, over-fulness for an elementary work; in other cases, a want of definiteness, and occasional passages which are liable to be misinterpreted. The prospectus of "The Hornbook Series" names as one of its features, notes "containing a copious citation of authorities." This seems a mistake in a work intended largely for students. It would be better to follow, in this regard, those model books, Anson on Contracts and Pollock on Torts, wherein the learned authors merely cite cases enough to illustrate the text, without any attempt to make an exhaustive collection of authorities. No doubt an American author labors under especial difficulties in compressing his citations within narrow limits; inasmuch as "the American law" (to use the words of Professor Huffcut) "is the law of upwards of fifty jurisdictions, while the English law is the law of but one." Still the American writer can take Anson and Pollock for his standard, and follow their example as far as the changed circumstances will permit. A copious citation of cases is likely to react, as it were, upon the text, and is almost sure to mar "the simplicity and conciseness of the author's treatment." To put the criticism in the form of a paradox, it is, in a certain sense, true, that the success of an elementary law book depends on what is left out.

But, after making all deductions for defect of plan and rapidity of execution, the book is a good one. The writer has ideas of his own,

and is also familiar with the best ideas of other people, notably the recent English authors who have done so much to elucidate the law of torts, and who are as yet so little known on this side of the Atlantic. Undoubtedly, Sir Frederick Pollock's book, which Professor Jaggard justly places at the head, has been largely used, in the United States; but it is probable that comparatively few American lawyers have even heard the names of Clerk and Lindsell, Pigott or Innes. Professor Jaggard has not made up his book by copying bodily from these authors; but he has made an entirely justifiable use of their works by giving from time to time judicious selections, with proper acknowledgment. Moreover, he has grasped the leading modern conceptions in the law of torts, and has given proof that he is himself an original thinker.

The book fulfils the statement of the Preface, that it "is brought thoroughly down to date." The more important recent cases are generally given; and although, as has been said, fulness of citation may diminish the usefulness of the work to students, yet its value to the practising lawyer is thereby materially enhanced. (See, for instance, note 3 on page 474, containing a full collection of authorities and able comments on the interesting question so recently raised in *Hanson v. Globe Newspaper Co.*, 159 Mass. 293.)

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It seldom happens that all parts of a work are of equal merit. Professor Jaggard's treatment of Conversion seems inferior to his treatment of Deceit; while the chapter on "Wrongs affecting Reputation" is superior to the discussion of Juridical Cause. But the book, taken as a whole, is a distinctly creditable performance. —J.S.

35 The American Law Register and Review 133-134
(January 1896)

Hand-book of The Law of Torts.
By Edwin A. Jaggard, A.M., LL.B., Professor of the Law of Torts in the Law School of the University of Minnesota.
(Hornbook Series.) Two Volumes.
St. Paul: West Publishing Co. 1895.

It is interesting to a Philadelphian to note that Professor Jaggard studied law in the office of the late E. Coppee Mitchell. The thoroughness of study which distinguished Mr. Mitchell and made him so valued a member of the Bar is noticeable in the work before us.

Professor Jaggard naturally adopts the division of the subject followed in Sir Frederick Pollock's classic on the law of torts. About two-fifths of the book—it is in two volumes—are given to the principles underlying all, or at least the majority, of torts, and the remaining three-fifths are devoted to the discussion in detail of the various wrongs known to the common law. Mr. Jaggard also adopts Sir Frederick Pollock's definition, and shows by analysis and citation how immeasurably superior this definition is to any others that have been suggested. "A tort is an act or omission giving rise, by virtue of the common law jurisdiction of the court, to a civil remedy which is not an action on a contract."[1] That the definition should contain a negative is unfortunate, but probably unavoidable.

The author heads his second chapter, "Variations of the Normal Right to Sue." In it, he discusses, carefully and conscientiously, the variations based on privilege, as, for instance, the immunity of judicial officers; the variations based on status, for example, insanity and infancy; and, lastly, those based on the conduct of the plaintiff, for example, his own wrong-doing or consent.

[1] Poll. Torts, *4.

In his next chapter — "Liability for Torts Committed By or With Others" — one could wish that the section on "Independent Contractor" was a little more extended. The paramount duty of a city to keep its streets in a reasonably safe condition deserves, we think, more than a few passing references in the notes. It is stated (page 237) that this duty of the city "cannot be delegated," and that "where it lets a contract for improving its streets, and the contractor makes excavations in the streets and fails to supply proper guards or lights, and a traveler is injured in consequence of such failure, the city is liable, and it is immaterial that the city had no notice that the ditch was not guarded or lighted." Four or five cases are cited as authorities for this, the last of the list being *Hepburn v. City*, 149 Pa. St. 335. The Pennsylvania lawyer will, however, remember that in *Hepburn v. City* there was no legally executed contract in existence at the time the accident happened, and that the Supreme Court, for that reason, held the city liable. Had there been a legally executed contract in existence, the court would undoubtedly have come to a different conclusion. The case is, therefore, to be regarded only as an affirmance of the Pennsylvania rule, which, since the decision of *Painter v. Pittsburgh*, 46 Pa. St. 213, has been the contrary of the author's proposition. The latter is, however, a faithful expression of the doctrine in force in the majority of jurisdictions.

We wish we had space to give the chapter headings of the author's second part. In it, as we have said, he discusses separately and in detail the several torts known to the common law. To the more frequent and important ones, he devotes entire chapters. His black-letter analyses are admirable, and his notes are fairly bursting with authorities. His chapter on negligence is particularly full. He quotes, on page 83, the well known remark of Chief Justice Earle as to the abuse of the word "negligence," and "the pernicious effects of its undefined latitude of meaning." He calls attention to the more modern view of negligence, which, as he says, is based on practical distinctions of the law substantive. On the one hand are the cases in which a man acts on his peril—the doctrine of *Rylands v. Fletcher*—

and on the other are the cases in which the plaintiff's motives determine his liability. Between the two, separated necessarily in thought, though unfortunately not always separated in the decisions of the courts, is negligence—the failure under certain conditions to exercise due care.

At the end of his second volume the author fulfils a promise in his preface, and devotes two chapters to working out in detail the thread of relationship "always existing," as he says, "between contract and tort." This he does under two heads, "Master and Servant" and "Common Carriers," under which, as he tells us, he has grouped the cases especially illustrating the various violations of duty arising "from contract or from the state of facts of which a contract forms a necessary part."

The author's style might be a little smoother. It is sometimes a little careless, and one wishes that he had given more time to the final work of polishing off rough edges. The book, however, will be valuable to the practitioner. Its blemishes are always those of form, its merits those of substance. The latter, we believe, are quite sufficient to ensure it a long and useful life. F. F. Kane.

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1 The Western Reserve Law Journal 233-234 (January 1896)

Handbook of the Law of Torts, by Edw. A. Jaggard, LL. B., Professor of the Law of Torts in the Law School of the University of Minnesota. 2 Vols., pp. 1307. The West Publishing Co., St. Paul, Minn., 1895.

Legal textbooks may be divided into two classes:

1. Those in which the principles underlying the topic under consideration are discussed and analyzed, cases being used only by way of illustration of the principles under consideration; and

2. Those in which all the reported cases on each topic treated are conveniently gathered together under the various propositions of law enunciated, little if any stress being laid on the principles underlying these propositions.

To the student or practicing lawyer taking up a subject for the first time, a book of the second class will be of comparatively little assis- tance, a book of the first class being almost indispensable. To the busy practicing lawyer who is already familiar with the principles underlying the subject, and who is in search of authorities to sustain his case, a book of the second class is of the utmost value, provided that the citations are accurate.

The book under consideration may fairly be placed in the second class. This book, with its more than 13,000 cases cited, including the great leading cases first enunciating important rules, as well as the most recent cases, with its frequent references to all the textbooks on torts, must prove of great assistance to busy practicing lawyers; but it is doubtful whether it will prove of much value to students,— especially those students who do not enjoy the advantage of a competent instructor. While the rules of law stated in the black letter type are most of them accurate, still what the lawyer must know is

not the rule so much as the reason of the rule, so that he may know how to properly apply it in his practice. The writer is of the opinion that a student might commit to memory every one of the 298 black letter propositions of Prof. Jaggard and still know little, if anything, of the law of torts. Take, for example, the very first definition in the book: "A tort is an act or omission giving rise, by virtue of the common law jurisdiction of the court, to a civil remedy which is not an action on contract." It is submitted that even the brightest student who was given that definition alone, without any explanation of its terms, would have no notion whatever as to the exact nature of a tort.

It is, perhaps, not strange that some error should creep into a work of such magnitude. The writer will take occasion to refer to only a few of the more serious errors. The sixth black letter rule is as follows: "A tort is cognizable in courts of common law only and not in (a) Divorce courts; (b) Ecclesiastical or Probate courts; (c) Courts of Admiralty; (d) Courts of Equity." How does the author reconcile this statement with the ten or fifteen pages in which he treats of injunctions granted to restrain the commission of torts, and especially with the statement on page 15 that "there are cases where equity's peculiar remedies are necessary to do justice, and in these equitable interference is always granted. In other words, the jurisdiction of equity may be concurrent." Can it be possible that a court of equity takes no cognizance of torts and still grants injunctions to restrain their commission? Then again does it not frequently happen that ships are libelled in actions brought to recover damages for personal injuries received on them? On page 16 we meet with the startling statement that in case of deceit the defrauded party "may go into equity, have a fraudulent contract reformed and then specifically enforced." The authorities cited for this rather novel proposition are "Fetter, Eq.; Pom. Eq.; Bisph, Eq." No pages or sections are given. He might as well have said "See the cases and textbooks." It would have been just as helpful.

On page 78 we find the twenty-seventh black letter proposition: "Every violation of a legal duty gives rise (a) to a cause of action in tort, ordinarily only upon, but sometimes without, proof of actual damage; (b) to an appropriate legal remedy." The form of the statement is somewhat unusual. Is it customary to speak of the violation of a duty? Is it not more usual to speak of neglect of duties and violation of rights? But aside from the form, the substance of the proposition is at variance with all the authorities, some of which are quoted by our author. Every violation of a legal right should and does subject the wrong doer to an action even though actual damage cannot be proved. Our author himself says on page 79, "whenever there is violation of legal right there is damage done." He also quotes Mr. Justice Story to the same effect, but immediately after this quotation he again falls back upon his black letter proposition and says: "On the other hand, mere violation of duty may not constitute a cause of action in the absence of damage." Our author certainly seems inconsistent in his treatment of this subject. It may be that he had some distinction in mind which the writer fails to grasp or which may not have been set forth with sufficient clearness.

What does the author mean when he tells us in the thirty-third black letter proposition that "lawful conduct may become the foundation of a tort"? What meaning does he attach to the word "lawful" in this connection? Surely conduct which meets the approval of the law and which is, therefore, "lawful," cannot at the same time have the disapproval of the law so as to render the party liable to its penalties.

In the one hundred and seventeenth proposition, on page 344, we are told: "A release of one joint tort feasor does not release the others," and on the very next page cases are quoted and cited which hold the contrary view and no cases are cited which uphold the proposition.

Space will not permit the citing of any other errors. The one great criticism to which the author is subject is that he is too often illogical.

In many places he contradicts himself without apparently being conscious of it. However, he deserves credit for the well-chosen citations which will doubtless prove of great value to the profession.

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5 The Counsellor 150 (February 1896)

(A publication of New York Law School)

Handbook of the Law of Torts. (2 volumes.)
By Edwin A. Jaggard, LL.B., Professor in the Law School of the University of Minnesota. West Publishing Co., St. Paul, Minn.

This work shows highly commendable industry on the part of its author, and is more fully abreast of the latest decisions than any other treatise on Torts which is now before the public. About 13,000 cases have been cited, and a goodly number of them are from the latest reports. The recent English works on this subject, by Pollock, Pigott, Nines and others, have been much consulted; and the author has, evidently, been much influenced by them. Sometimes it would seem as if this had been too much the case, and as if their fondness for the originals had led him too far in the same direction. In a student's Handbook this may easily be a fault, and may occupy space which it would be better to devote to a statement of the rules of law as they stand established by prevailing authority.

In the main the author's presentation of the Law of Torts is accurate and systematic, and the fullness of the notes and the abundance of citations will make the work helpful to lawyers as well as to students. It would have been well if some matters had been developed with a little more fullness. Thus, *e.g.*, the case of *Brickell v. N. Y. Central R. R. Co.*, 120 N. Y., 290, is cited in connection with the discussion of the question, whether the negligence of a driver may be imputed to the passenger riding with him; but the special

point which this case develops — viz., that though the doctrine of imputed negligence is discarded in New York and generally in the other States, still the passenger may himself be chargeable with contributory negligence if he does not, where he has the opportunity to do so, look out for danger and avoid it, if practicable—is nowhere set forth. The *ratio decidendi* of this and other like cases is apt to be misunderstood by students.

On page 18 it is stated that the action of detinue arose out of the Statute of Westminster. This is evidently an oversight, for the authorities to which the author refers are to the contrary.

But these omissions are but slight blemishes on a work whose general excellence will be appreciated by all who consult its pages.

Posted MLHP: August 29, 2016.