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BOOK REVIEWS

Money in the Law. By Arthur Nussbaum. Chicago: The Foundation Press, Inc. 1939. Pp. xxxvii, 534. $7.50.

The Legal Aspect of Money with Special Reference to Comparative and Private International Law. By F. A. Mann. London: Oxford University Press. 1938. Pp. xxv, 334. $7.00.

The appearance of Dr. Nussbaum's long-awaited book on the law of money is an event of major importance in legal literature, on at least three counts. Notwithstanding the interrelation of money to every phase of daily life and daily law, this is the first comprehensive treatment of the subject in English and American law. The only previous writings were scattered articles in the law reviews, chapters in a few standard text-books, and incidental legal material in histories or treatises on banking and currency. It is significant of the lack of interest on the part of our Bar, that the elaboration of the topic should have been left to a newcomer. Dr. Nussbaum, formerly professor of law at the University of Berlin, is now visiting professor at Columbia. His book, if we are not mistaken, is the first authoritative law book in this country to be written by a foreigner. That it will be cited as an authority, we have no doubt. Finally, the volume sets a new standard for law books. Nearly all our books for the last decades have been little more than glorified digests of cases, useful to the practitioner, but not of constructive value. Nussbaum follows the continental practice of the more authoritative commentators; he employs both the historical and the comparative methods, and holds some vigorous opinions which he does not hesitate to express vigorously.

The book deserves a more thorough analysis than either time or space permits. The merits of the work are no more than one could expect after acquaintance with his work in German and the articles heretofore published in English in this country, which are incorporated as chapters in the book. Dr. Nussbaum established his reputation for competency in the field by his book *Das Geld* issued in 1925 (Spanish translation 1929). But the present book is in no sense a second and enlarged edition of his earlier one. Not only has much new law, and strange law, been established by the monetary crises of the last few years in so many countries, but the author's further researches into English and American law have greatly expanded the volume, and enriched the value, of his work. He very wisely drops the separation earlier made between theory and practical problems, since theory and practice should of course not be separated. He nevertheless adheres to

the general scheme of arrangement of *Das Geld* which was motivated by that distinction. A different arrangement, and a more complete index, would have made the book more suitable for the American lawyer. There are eight chapters, dealing with basic monetary conceptions in law, kinds of money (coin, paper money, bank deposits, foreign money), monetary systems (including an outline history of the dollar and its colonial predecessors), debts in general and under fluctuating currencies, gold clauses and other protective clauses (commodity and index clauses), foreign currency obligations and finally, a new and bitter subject in law, debts under exchange control.

Nussbaum's basic monetary concept is that money is an ideal unit, which for legal purposes is to be divorced from its metallic value or purchasing power value. He repeats the definition of money formulated by him in *Das Geld,* as a thing which irrespective of its composition is by common usage treated as a fraction, integer or multiple of an ideal unit, the ideal unit varying in each country (*e.g.,* dollar, pound, mark, franc, etc.) and being the product of an historical, psychological continuity. From this concept or definition follows the much controverted theory, rule, or what you will, that he designates (adopting the usual continental nomenclature) as Nominalism. "The essence of nominalism consists in the arithmetical relationship of a given money to the pertinent ideal unit (dollar, franc, etc.)" (p. 16). A corollary of the nominalist doctrine (p. 249 *et seq.*) is the principle of the immutability of the nominal amount of a debt, irrespective of changes affecting the metal value, purchasing power or rate of exchange of the unit. This corollary he apparently derives (although it is a *non sequitur*) from the indestructibility of a monetary obligation because of the fact that impossibility of performance is not a defense.

To this concept, we must register an emphatic dissent. The very word nominalism is repellent to the ear of a common law lawyer, and it is this reviewer's contention that the concept has never been incorporated, and may it please their Honors, never will be incorporated into the common law. The ideal unit notion was laughed out of court by Canning more than a century ago. His lucid exposition is as true today as then—"No dream it must be owned could be more extravagant than the visions of those practical men who have undertaken to refine away the standard of the currency of the realm into a pure abstraction". Canning further attacked "those who after exhausting in vain every attempt to find an earthly substitute for the legal and ancient standard of our money, have divested the pound sterling of all the properties of matter, and pursued it, under the name of the 'ideal unit' into the regions of nonentity and nonsense."

But we incline to the belief that, perhaps as the result of his recent researches, Dr. Nussbaum's own faith in nominalism is waning and that he is whistling in the dark when he finds support for nominalism in cases and rules where others can find none and when he cavalierly brushes aside the express language of statutes tying currency to a gold standard as merely "programmatic". Many leading cases here, in England, and in international tribunals cannot be reconciled either in language or conclusion with nominalism (The *Feist* case[1] and its successors, *Willard v. Tayloe*,[2] *Thorington v. Smith*,[3] *Bronson v. Rodes*,[4] the *Montano* case,[5] the *Serbian* and *Brazilian* cases at The Hague,[6] for example). Nussbaum's admissions, express and implied, go far to destroy his thesis. He remarks that in England a change in the metal value of money sometimes led to strange distortions in the application of old laws (p. 12). These "distortions" were nothing more than a refusal to apply the nominalist principle. The rule which he approves, that a debtor in default is not entitled to the benefits of depreciation, laid down by some early cases and followed in international tribunals, is inconsistent with the principle. His section entitled "the immutability of the nominal amount" is largely devoted to the numerous instances where the nominal amount is *not* considered immutable. He states "Although the nominalistic principle has been theoretically and actually accepted, its boundaries are still to be charted." It does not apply to damages, unliquidated claims, revaluation, executory contracts of various kinds, public utilities (p. 255 *et seq.*).

The principle seems to boil down to this: If I borrow a hundred dollars, I have to pay back a hundred dollars, *provided no very grave circumstances have meanwhile intervened.*

This obvious proposition, I submit, is an insufficient basis on which to found a monetary legal theory. We must beware of abstract overcomplication. Perhaps a sufficient basis for all necessary legal conclusions can be found in the primary function of money as a medium of exchange and in its derivative functions.

In practice, as disclosed by history, the dangers of the nominalist theory are so great, its results so devastating, that we must guard strenuously in this already dogma-shocked world against importing any such "ism", more pernicious because its poison is subtle, than other feared "ideologies".

We can, however, look with more indulgence at Dr. Nussbaum's

[1] Feist v. Société Intercommunale Belge d'Electricité, [1934] A. C. 161.
[2] 8 Wall. 557, 19 L. ed. 501 (U. S. 1869).
[3] 8 Wall. 1, 19 L. ed. 361 (U. S. 1868).
[4] 7 Wall. 229, 19 L. ed. 141 (U. S. 1868).
[5] 2 International Arbitrations 1630-38, 1644-49 (Moore, 1864).
[6] Cases of Serbian and Brazilian Loans, P. C. I. J., Ser. A, No. 20/21 (1929); 2 World Ct. Rep. 344, 404 (Hudson, 1935).

expression of his concept, not only because he restricts it to such a narrow field but because it does not prevent him from arriving at sound common-sense solutions of most of the concrete questions he discusses. For instance, he points out the limitations of the rule that foreign money is a commodity; offers the constructive suggestion that judgments in cases involving foreign money debts might well direct payment in the foreign currency, thus avoiding the injustices of the present conflicting rules as to time of conversion; limits the importance of the place of payment in conflicts of law; demonstrates in an unsurpassed way that gold coin clauses are to be treated as gold value clauses. He, however, does not do justice to what he calls the French doctrine (it in fact had many precedents, including some early American cases) as to international payments, based on the sound principle that currency statutes are presumptively territorial, and is timid in pointing out the necessity of upholding protective safeguards if international intercourse and credit are to survive.

The question of what is to be included or excluded in a book is one of the most difficult an author faces. Dr. Nussbaum has deliberately excluded some topics which I, as a practicing lawyer, would have liked to see included, *e.g.,* payment, certain aspects of banking, taxation, accounting and balance-sheets; the treatment of income taxation of foreign money is too brief to be of any value to a practitioner. Other topics, which I suggest for the inevitable second edition, many of which were probably omitted also after due deliberation, include: many constitutional questions, such as the powers of the states in connection with interest, bank restrictions, gold and similar clauses, truck acts, bank deposit guaranty laws, as to all of which there are cases, not cited by him; the extent of the congressional authority to regulate the value of foreign coin; the delegation of power to the executive. The more recent cases in regard to bills of credit are not mentioned. No treatment is given to several early English and numerous American cases as to depreciated private and state bank notes, which were a frequent source of litigation in the decades before the Civil War. Other questions of interest to the practitioner to which little or no attention is given, are rules of evidence, judicial notice, practice and procedure; the applicability of the Joint Resolution abrogating gold clauses to the obligations of a sovereign; the status of clearing house certificates, certified checks and certificates of deposit; alternative provisions to pay in money or commodities (other than gold); the rule that payment of a smaller sum does not discharge a liquidated claim, as to which a comparative law study would be useful; whether banks can carry deposit accounts in foreign currencies; the questions involved by ear-

marking gold for foreign account (the statement, p. 75, as to the legal position of a transferee government is probably too broad); the relative position of head office and branch banks as to foreign money; alternations of a bank note; set-off in connection with foreign currency claims; the liability of a cable company in connection with cable transfers; and many others.

No one who has not investigated the subject can begin to realize how scattered in the digests is our case material and therefore how difficult has been the enormous amount of research, not only of the cases but of our and continental literature, reflected in this volume. Only a few American cases of major importance seem to have been missed. The most interesting of these are the Supreme Court cases on the change of sovereignty and currency in Porto Rico, and the early case of *Ware v. Hylton*[7] enforcing the rights of British creditors to the full sovereign value of their debts under the Peace Treaty, which is discussed by Dr. Nussbaum at considerable length, though not quite accurately. The case is important intrinsically; and more so, because it points the way to a solution, by appropriate treaty provisions, of the international monetary problems confronting business. A number of less important, albeit interesting cases, have been either missed or deliberately omitted. As to cases cited, there is a tendency to over-condensation in statement, resulting in some misleading implications as to the ruling. We cannot here pause to give a bill of particulars; we can do no more than sound a cautionary note.

A graver caution is also necessary. Decades of struggle in the courts and market places have given me the courage to believe that I can better appreciate the spirit of the common law and of our equity jurisprudence than any academician. Dr. Nussbaum, in company with so many of his associates at Columbia and elsewhere, fails to fully realize that our law is based on experience. The common law is the law of the common man. No human experience is alien to it. None can be discarded from legal reasoning. Especially no Anglo-American lawyer can ever forget our classic struggles for liberty and resistance to any form of despotic control. We reject any notion that money is owned not by the individual citizen but by the State. We reject any monopolistic control of the currency, be it by a capitalist group or by a central government. Neglect of these factors and their congeners leads Dr. Nussbaum into error or misapprehension. He underestimates the real grounds of the opposition to the Legal Tender acts and the gold clause legislation. He fails in sympathy for our early currency experiments, granted that they were economically misguided. His dis-

[7] 3 Dall. 199, 1 L. ed. 568 (U. S. 1796).

cussion of *Briscoe v. Commonwealth Bank*[8] is especially defective on this score. He underestimates the role of courts of equity in our system and our insistence upon an independent judiciary. He nowhere refers to the principle, firmly fixed in the law since the days of Locke until the year of Grace 1933, of the sanctity of the mint weight of the standard money. He makes the astounding statement (despite the views of the Supreme Court in the *Perry* case[9]) that the giving of a promise by a government to redeem its obligations is in some respects more reprehensible than its breach (p. 83). He indulges, in the recent unfortunate law-school fashion, in dubiously justifiable attacks on the courts.

Dr. Mann's doctoral thesis is more limited in scope than Dr. Nussbaum's treatise, but serves well to supplement it by its greater emphasis on English law and history, somewhat slighted by Nussbaum. It analyzes more extensively and critically the recent English cases, especially in the second part dealing with foreign money obligations—a more lucid presentation than Dr. Nussbaum's, whose material on public and private international law is scattered all through the book. The first part of Dr. Mann's book deals with the legal problems of money in general. An appendix includes three heretofore unreported English cases.

Dr. Mann (a doctor of laws of Berlin and London) is a disciple of Dr. Nussbaum and an even more fervent Nominalist, notwithstanding his naive confession (p. 72) that "the scarcity of English authorities for the nominalistic principle and the complete lack of any legal discussion thereof are very remarkable indeed." He carries the principle (p. 192) to such an exaggerated extent as to practically exclude any intention of the parties however clear; he also attaches exaggerated importance to legal tender, taking issue on this point with Nussbaum. His nominalism takes the most funest form—the State theory of money—and he criticizes Nussbaum's society theory, which is sounder, or at least more in accord with our law. Nussbaum holds quite correctly that it is not sufficient for the State to declare something to be money; money must be adopted by society and custom.

The State theory of money is nothing more than a reversion to the medieval concept of arbitrary unlimited power against which every principle of English and American constitutional law firmly rebels. Nominalism is fraught with the gravest perils, as the history of less fortunate parts of the world has amply demonstrated, not only to the economic structure, but to all respect for fundamental legal institutions —to property, liberty, the pursuit of happiness and even to life itself

[8] 11 Pet. 257, 9 L. ed. 709, 928 (U. S. 1837).
[9] Perry v. United States, 294 U. S. 330, 55 Sup. Ct. 432, 79 L. ed. 912 (1935).

(executions have not been infrequent). These are not "sentimental" arguments, as characterized by Nussbaum. Repudiation or confiscation in any form or guise cannot be too emphatically condemned. Their effects cannot be insulated. No small part of the current chaos in international relations is attributable to the lack of respect for law engendered by currency monstrosities and to the bad examples set by governments. The moral position of our own Government before the world would be stronger had it also not fallen a victim.

The world's currencies today are in a pathological condition. A healthy theory of money must be built on a healthy money, not on diseased manifestations. There will come a reaction in favor of the view that the best monetary system is one that is subject to the automatic controls of commerce rather than to dictation by the State. If it has ceased to be a part of our system that "honest money is a thing of intrinsic value and cannot with impunity be tampered with", the sooner we get back to it the better.

PHANOR J. EDER.

New York City.

Government Corporations and Federal Funds. By John McDiarmid.[1] Chicago: The University of Chicago Press. 1938. Pp. xvii, 244. $2.50.

Government Corporations in English Speaking Countries. By John Thurston.[2] Cambridge: Harvard University Press. 1939. Pp. xii, 294. $3.50.

Both of these books have been written by political scientists. Neither book is, or purports to be, a law book and neither has a table of cases or a digest of the statutes referred to in connection with the respective government-owned corporations discussed therein. These omissions, coupled with the almost inextricable mixture of law, fact, and theory, have made the books of little practical value to the practicing lawyer or government administrator except for the purpose of showing the devices which have been adopted in this country within recent years to launch the Federal Government into competition with the taxpayers who support these same devices.

Professor McDiarmid urges, and Professor Thurston echoes his view with a slightly less vociferous statement, that in the interests of efficiency of operation the federal administrative spending agencies—and particularly government-owned corporations—should be permitted a wider latitude of discretion in expending public monies. Professor

[1] Department of Politics, Princeton University.
[2] Department of Political Science, Northwestern University.

McDiarmid proposes that the comptrolling functions, now exercised by the General Accounting Office which is responsible solely to Congress, be vested largely in the administration itself. In weighing the value of the theories stated in these two books it is well to bear in mind a statement made in May, 1938, by Dean Emeritus Roscoe Pound of the Harvard Law School before a subcommittee of the United States Senate Judiciary Committee, as follows:

"You have to discount a good deal you find in the books in our academic circles, because I do not think the non-lawyer or layman has quite appreciated what our legal situation was, on the one hand, or the legal situation behind the development of administration, on the other hand. It requires a good deal of understanding of legal history and legal development to appreciate a situation of that sort. . . . The doctrine of administrative absolutism is very strong in some quarters. I am afraid it is strongest in the universities."[3]

If exhibits should be required in support of Dean Pound's conclusion that there are doctrinaires of administrative absolutism in the colleges, the book by Professor McDiarmid may be offered as an exhibit.

Some of the brightest pages of Anglo-American legal history are those recounting the struggle between the governed and the governors over the control of the public purse. Even in early days practical men in government knew what some theorists apparently do not know today: that legislative control over public money cannot trust to prescribing the uses thereof. The legislative authority must go further and control the governmental machinery necessary to prevent any other use of the money.[4] As early as the reign of William and Mary this control was made good in the people when Parliament resolutely refused to permit the executive to spend without its approval before withdrawal of the public money, and without its subsequent approval of the accounts showing the expenditures. By such a control over colonial funds, the people of the various colonies triumphed in their struggles with the crown or proprietary governors.[5] The Congress of the Confederation had a similar legislative and accounting control. The men who drafted the Federal Constitution, in their concern lest the executive have the power of both purse and sword, reserved to the Congress the sole power to raise revenue, to determine its uses, and to appropriate public money for prescribed uses. After the adoption of

[3] *Hearing on S. 3676,* 75th Cong., 3rd Sess. (1938) 177.

[4] See my testimony and the documents before the committee in the hearings on *S. 2700,* 75th Cong., 1st Sess. (1937) 366, 422, and the Report of the Brookings Institution to the *Select Committee on Investigation of Executive Agencies of Government* (Senator Byrd's committee on Reorganization), 75th Cong., 1st Sess. (1937).

[5] See colonial and pre-constitution state statutes collected in footnote No. 43a to McGuire, *Legislative or Executive Control over Accounting for Federal Funds* (1926) 20 ILL. L. REV. 455, 466.

the Constitution the First Congress established the system of congressional approval of administrative expenditures and a subsequent accounting therefor. The accounting control functions were nominally a part of the Treasury Department with the requirement that the Secretary of that department report direct to the Congress and not to the president, as did the other executive agencies. While this requirement obtains to this day, nevertheless the Treasury, because of its efficiency, has been developed into a great operating and spending agency. Unless the Treasury was to be permitted to control—and account to—itself, it became necessary to take the accounting officers out of the Treasury and this was done in the Budget and Accounting Act of 1921.[6]

However, throughout this period of one hundred and fifty years no chief executive claimed or exercised the power to revise or review the audits and settlements made by the accounting officers who have been required to enforce various and sundry statutes regulating and controlling the exercise of administrative discretion in the spending of public money. While the various Comptrollers during this period of one hundred and fifty years may not have been legal giants and some of them may have made grievous errors, yet no breath of scandal has touched a single one of them in the discharge of his official duties. Generally speaking, economy-minded members of the Congress did the expected and rushed to the Comptrollers' assistance even though the errors and mistakes were not condoned; and notwithstanding the efforts to persuade it to do so, the 75th Congress refused to carry out suggestions, some of which are repeated in this book, that there be surrendered to the spending agencies control functions in the expenditure of public money.

Not being able to get around the control of Congress through the Comptrollers, or to secure repeal of various statutes[7] limiting the exercise of discretion in the expenditure of public money, an influx of corporate experienced men into the federal service during the World War resorted to the establishment of a number of government-owned corporations, referred to in both of these books. By so doing, these men used the corporate device, with which they were most familiar in private life, and they attained that freedom from legislative and accounting control which Professor McDiarmid finds to be so desirable and with which Professor Thurston seems not to be so enamoured, though he suggests that perhaps the statutes creating such corporations

[6] 42 STAT. 24 (1921), 31 U. S. C. A. §44 (1927).

[7] See Report of President's Commission on Economy and Efficiency, H. R. Doc. No 854, 62nd Cong., 1st Sess. (1911) 59-121, and H. R. 129, 67th Cong., 1st Sess. (1921).

or providing for their organization could, and should leave more discretion in the officers of government-owned corporations.

The attempt of Professor McDiarmid to make a showing of necessity for the organization since 1916 of government-owned corporations is a weak one. He refers to the work being done by the Tennessee Valley Authority, a government-owned corporation with three directors, but he wrote before the Joint Committee of the Senate and House made its investigation and report concerning such work and the dissensions among the directors, resulting in a divided report on party lines[8]—as was the general situation after a legislative investigation of the former United States Shipping Board Emergency Fleet Corporation. However, Professor McDiarmid fails even to mention the fact that the Bureau of Reclamation, in the Department of the Interior, has built more and larger dams than has the T. V. A. for nearly half a century, and particularly within the past twenty-five years, and has sold both water and electricity in connection with such dams, without any congressional investigations, without the filing of any serious charges in connection with the work, and without resort to a government-owned corporation in an attempt to escape legislative and accounting control. A similar statement could be made with respect to the vast number of great navigational dams built by the Engineer Corps of the Army during the past fifty years.

However, Professor McDiarmid does admit that he is informed by the officials in charge of the Prison Industries, a government-owned corporation for the conduct of shoe factories, furniture factories, canvas duck mills, etc., in the federal prisons, that the legislative and accounting control—the provision for which was placed by this reviewer in the hands of a Senate subcommittee which inserted it into the statute—has been of great assistance to the functioning of that corporation. This experience, as well as the instances of the Bureau of Reclamation and the Engineer Corps of the Army, demonstrates that there is no particular virtue in the corporate device for the transaction of public business, except in banking operation—and this is largely due to habit. If there must be a government-owned and operated corporation for the conduct of some public business of a specialized character, the financial control provisions in the authorizing statute for the Prison Industries are well-nigh perfect—and this statement is made without any pride of authorship.

Again, it is suggested by Professor McDiarmid that freedom in making purchases by such corporations as the Tennessee Valley Authority and the Panama Railroad Company enables the corporations to

[8] Report of the Joint Committee Investigating the Tennessee Valley Authority, 76th Cong., 1st Sess. (1939).

carry in their commissaries the supplies needed or required by their customers. Presumably he has overlooked the fact that for many years the post-exchanges and commissaries operated by the Army and Navy, respectively, for the convenience of their personnel, have made purchases for resale purposes regularly without advertising and award of contract to the lowest responsible bidder.

In suggesting that the Comptroller General went beyond his authority in requiring judgments against the United States arising out of Shipping Board Emergency Corporation matters to be sent to his office for settlement, the author overlooked the terms of a statute which prescribed such procedure for all judgments rendered against the United States except in specific instances where the terms of the appropriations permitted a different procedure.[9]

Where this book by Professor McDiarmid attempts to theorize and condemn, that is, where it departs from factual reporting of the organization and activities of the several government-owned corporations therein considered, it leaves much to be desired in that it fails to show that knowledge of legal and constitutional developments of the Federal Government and that grasp of detail with respect to both the regular federal departmental and corporate activities without which no one should attempt to suggest governmental policies in the administration of the law. I fail to see wherein any useful purpose is served by the publication of this book in its present form.

The book by Professor Thurston discloses a much more thorough investigation of the entire subject, though here the discussion of the federal corporate device is against somewhat similar corporate devices in England, Australia, Canada, and South Africa. Such a comparative study, while of value, is likewise dangerous to the uninformed because, except for the Australian Commonwealth and the United States, none of the other governments operates under a rigid constitution with a tripartite division of governmental power and in a federal system with a reservation to the states, or the people thereof, of all governmental power not expressly or impliedly delegated to the Federal Government. No parliamentary form of government—so interesting to many academicians—could exist in America with its vast territory, federated system, conflicting interests, and various other factors not present in any existing parliamentary government.

It is hoped that some lawyer will soon write a scholarly book on government-owned corporations which will not only constitute a reference for the busy lawyer and administrator but which will make an

[9] 33 STAT. 422 (1904), 31 U. S. C. A. §583(2) (1927) and 33 STAT. 41 (1904), 31 U. S. C. A. §228 (1927), as amended by the Budget and Accounting Act of 1921, 42 STAT. 23, 27 (1921).

unbiased evaluation of the work performed and expense incurred by such corporations in contrast with similar work performed and expense incurred by the regular administrative agencies of government.

O. R. McGUIRE.[10]

Arlington, Va.

The Law of Automobiles in North Carolina. By Vartanian; Second Edition by the Michie Company. Charlottesville: The Michie Company. 1938. Pp. 728. $12.00.

This volume concerns the law of automobiles. Beyond that, the title is not accurate. It might more correctly be named "The Law of Automobiles with Citation of Authority largely from Virginia, West Virginia, Tennessee and North Carolina". The text is perhaps flexible enough to be capable of use in Virginia, West Virginia, Tennessee or North Carolina, although certainly it cannot be definitely applicable to all four jurisdictions. Here the authors have the advantage of the fact that there is no North Carolina law of automobiles very different from the Virginia law of automobiles, except in matters of detail. Since most of this so-called "law of automobiles" is the application of the common law rules, principles and standards, known as the law of negligence, to modern transportation by motor vehicle, and since the statutes governing motor vehicle operation tend to conform to a uniform statute, the law of the forty-eight states is substantially in agreement.

Because of this fact, a treatise on the law of automobiles of a designated state should be sure to deal with all local deviations from the general doctrine. For this reason, section 233, dealing with the rule of *res ipsa loquitur,* is objectionable. The rule discussed in this section is stated in terms of "*prima facie* evidence of negligence". That is not the North Carolina rule of "evidence enough to get to the jury", and only three out of seventy or eighty cases cited on nine pages of text and footnotes are North Carolina cases. The leading North Carolina cases are not discussed and therefore, no matter how good the discussion is, it is not a discussion of the North Carolina law. On the application of the doctrine of *res ipsa* to skidding, the authors cite the case of *Springs v. Doll,*[1] but apparently overlook two more recent cases.[2]

[10] Chairman, Committee on Administrative Law, American Bar Association, and of the Committee on Administrative Law, The Virginia State Bar Association; Counsel to the Comptroller General of the United States; sometime Special Assistant to various Attorneys General of the United States.

[1] 197 N. C. 240, 148 S. E. 251 (1929), cited in footnote 22, p. 601.

[2] York v. York, 212 N. C. 695, 194 S. E. 486 (1938); Clodfelter v. Wells, 212 N. C. 823, 195 S. E. 11 (1938).

A similar objection is found in the discussion of negligence *per se*[3] and of the contributory negligence of minors.[4] In each case, the text misses the correct statement of the North Carolina law and fails to give an adequate analytical treatment. Important North Carolina cases are either omitted or merely cited in footnotes. There are good discussions of these topics in the *North Carolina Law Review*[5] which would be more useful to North Carolina lawyers. In fact, of the thirty-five or forty articles, notes and case comments dealing with the law of automobiles, found in the pages of the *North Carolina Law Review,* not a single one is referred to in this volume. The unusual case of contribution between insurers of joint tort feasors, *Gaffney v. Casualty Co.*,[6] discussed in 15 *North Carolina Law Review* 289, is not to be found. Closer reference to these law review discussions would have tended to greater accuracy of statement concerning the North Carolina law.

A reader of a treatise on the North Carolina law might expect that North Carolina decisions would be given a leading position in the citation order, but the publisher of this volume is a Virginia corporation and the editorial staff is more familiar with the Virginia law and may, therefore, believe that cases from the Old Dominion should always be put first, even in a North Carolina law book. There are probably twice as many Virginia cases commented upon and cited as there are North Carolina cases. For purposes of sampling, this proposition holds true on pages 18 to 27, inclusive, where illustrative cases are set out in the text. Again at page 436, the topic is "Liability to Invitees and Licensees" and seven pages are entirely devoted to the "Virginia rule", while only two and one-half pages cover the so-called "Tennessee, North Carolina, and West Virginia rule". For a treatise on North Carolina law, this is not quite orthodox, especially as the North Carolina doctrine is the common law view. But we must remember that the volume is really a general treatise with an attempt to make it applicable to particular states.

The present volume is a second edition of Vartanian, *Law of Automobiles in North Carolina,* by the same publisher in 1929, and the general outline of the earlier volume is followed. The text has been improved in many respects, the footnotes are brought up to date and there is a table of North Carolina cases, alphabetically arranged. As

[3] Sec. 16. [4] Sec. 24-26.

[5] Note, *Public Wrong and Private Action in North Carolina* (1923) 1 N. C. L. REV. 192; Note, *Negligence Per Se* (1929) 7 N. C. L. REV. 482; Note, *Contributory Negligence of Minors—Question for Court or Jury* (1936) 15 N. C. L. REV. 75 (commenting on Hollingsworth v. Burns, 210 N. C. 40, 185 S. E. 476 [1936], cited in the footnotes to §24 of the volume under review).

A complete list of the North Carolina Law Review discussions of cases referred to in the treatise or of topics relating to the Law of Automobiles would disclose much of interest to a reader interested in this field of the law.

[6] 209 N. C. 515, 184 S. E. 46 (1936).