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Book Reviews

Walter B. Kennedy
Fordham University School of Law

The class of visitors to whom the law accords the greatest measure of protection upon the land of another are the so-called "invitees" or "business guests", that is, those who came upon the land at the invitation of the owner, express or implied, to serve in some way the business interest of the owner. Where the visit is for the mutual benefit of both, it is said that the owner is bound by the duty of ordinary care, which means that he must not only refrain from active misconduct but that he must also see to it that the condition of the premises will not cause the invited guest any foreseeable harm. *Indermaur v. Dames,* L. R. 1 C. P. 274 (1866). Most courts agree that a business advantage to the owner is a requirement for the implication of the invitation extended to an "invitee". *Meiers v. Koch Brewery,* 229 N. Y. 10, 127 N. E. 491 (1920).

"Invitee" Defined

If, entirely unsolicited, the plaintiff in the *Antonio* case had entered the railroad yard in search of employment, he would be at most a bare licensee [*Larmore v. Crown Point Iron Co.,* 101 N. Y. 391, 4 N. E. 752 (1886)], and he would not be entitled to recover because of the defendant's failure to adopt precautions for his safety. *Sutton v. N. Y. C. & H. R. R. R. Co.,* 66 N. Y. 243 (1876). However, the railroad's business as a common carrier usually contemplates the loading and removal of freight by the employees of the consignee, and it would seem that while they are present at that part of the railroad yard necessary for that purpose, such employees occupy the status of invitees. *Lewis v. Terminal R.R. Association of St. Louis,* 61 S. W. (2d) 234 (Mo. App. 1933); *Houston Belt & Terminal Ry. Co. v. Rogers,* 44 S. W. (2d) 420 (Tex. App. 1931); *Santamaria v. Lamport & Holt Line, Ltd.,* 119 N. J. L. 467, 196 Atl. 706 (1938). The memorandum opinion in the case does not fully disclose the all-important fact whether the consignee had in some way sought the assistance of the plaintiff or whether he came upon the railroad property wholly uninvited. An even nicer problem would be presented, if it were customary for the railroad to permit (might we not say invite?) persons, such as the plaintiff, to be present in its yard for the accommodation of its customers. It might well be argued that in such a case the plaintiff is serving the business interest of the railroad, as well as his own.

The Antonio Case

BOOK REVIEWS

IF MEN WERE ANGELS. Jerome Frank. New York: Harper & Brothers. 1942. pp. xii, 380. $3.75.

From the title to the last page, Jerome Frank's latest book discloses an active mind, refusing to be cabined by conventional opinions, and offering distinctive theories which frequently startle the conservative cult in the law. In other words, Jerome Frank is emphatically himself, a juristic Lochinvar who came out of the West and aroused the effete East, something more than a decade ago, by his novel ideas about law. He has long been an aggressive defender of the new liberalism in the law; an outstanding legal realist—or experimentalist, as he prefers to be called[1]

1. Jerome Frank suggests that realists might be called "observationists." IF MEN WERE ANGELS (1942) 277. (Hereafter IF MEN WERE ANGELS will be cited I.M.W.A.).

—who is impatient with the quietism of traditional law and its crustacean adherence to static precedents and antiquated principles; a vigorous critic of legal scholars who believe that reason and logic are the dominant or only factors in the determination of judicial opinions; a critic of all jurists, even the liberal Cardozo, who yearn for the absolute;[2] a devoted disciple of Oliver Wendell Holmes, whom Jerome Frank denominated America's "completely adult jurist"[3] and acclaimed for his insistence, in effect, that "the Golden Rule is that there is no Golden Rule."[4]

Following his trail-blazing volume *Law and the Modern Mind,* published in 1930, legal realism assumed an increasingly important place in current American philosophies of law. Disclosing a sparkling style and adorned with a versatile display of extra-legal citations unusual in legal literature, Frank's *Law and the Modern Mind* deserved a more accurate title. It contained more *mind* than *law,* for it attempted—to borrow the introductory words of Judge Julian W. Mack—"to apply the teachings of the new psychology to a comprehensive examination of the whole nature of law and legal thought."[5] The book abounded in a sweeping indictment of traditional methods in the law, scholastic logic, syllogistic reasoning and the verbal gymnastics of the *a priori* jurists.

Ten years have elapsed since *Law and the Modern Mind* divided jurisprudential scholars into two groups, the "pointers with pride" and the "viewers with alarm." The ensuing decade has witnessed the infiltration of the Frankian philosophy of law in American law schools, especially at Yale and Columbia. During this same period, Jerome Frank has engaged in private practice and occupied with credit many important positions in government. Following occasional visits to Yale Law School as guest-professor, Jerome Frank entered government service, first acting as Counsel for the A.A.A. and later as Chairman of the S.E.C. On May 5, 1941, he was appointed Judge of the Circuit Court of Appeals, Second Circuit, generally considered the most active Circuit of the second highest Court of the Federal judicial system.

Naturally the advent to the Federal Bench of a leading realist increases the interest in *If Men Were Angels.* Herein also one may expect to find the matured thinking of a great scholar who has wandered far and wide in search of pertinent materials to aid him in valuing the fundamentals of law and the nature of the judicial process.

Let us begin, in Alice-in-Wonderland fashion, at the beginning—with his title. It runs true to the form and fashion of Jerome Frank's legal philosophy; it is distinctive and different. *If Men Were Angels* does not disclose on the surface its original source. It appears that it was derived from *The Federalist,* No. 51: "If men were angels, no government would be necessary.[6] If angels were to govern men, neither external nor internal controls on government would be necessary." A reading of the book discloses that the title is apt and well chosen. Judge Frank's thesis is that men are *not* angels and that government is therefore necessary; that

2. LAW AND THE MODERN MIND (1930) 236-239. (Hereafter LAW AND THE MODERN MIND will be cited L.M.M.).

3. L.M.M. 253-260.

4. L.M.M. 260.

5. L.M.M., introd. ix.

6. *Sed quere:* Does it follow that "no government would be necessary" if men were angels? Angelic perfection does not eliminate the necessity for some supervisory regulations.

angels do not govern men, and that external controls are needed to curb the individualized activities of government officials.

Turning to the text of *If Men Were Angels,* the first impulse of a reviewer is to compare the present book with Jerome Frank's theories of law in *Law and the Modern Mind.* A rapid and general survey indicates that Frank discloses a more sympathetic evaluation of antagonistic legal philosophies. Readers of his earlier volume will recall a rather severe indictment of scholasticism, a criticism largely based upon partisan critics of *philosophia perennis* unaccompanied by reference to scholastic sources.[7] Jerome Frank with commendable candor now confesses that he once voiced the conventional comments on scholastic thinking.[8] Scholasticism has moved ahead in the intervening years and it no longer suffices to dismiss its value and importance by an undocumented sweep of the pen. Indeed, the prediction is once more ventured that an outstanding jurisprudential issue of our day and the immediate future is: Scholasticism versus Realism.[9]

Fragments lifted out of context are concededly dangerous and of doubtful value. But the reviewer is impressed by the afterglow of Judge Frank's initial chapter entitled *Government is Human.* His concluding sentence reads: "What we, in a democracy, must insist upon is a *government of laws well administered by the right kind of men.*"[10] But who are the "right kind of men"? The author replies in the following chapter that men who make up democratic governments should consist "of decent, honest, God-fearing men,"[11] a high-minded definition of man which finds strong support and approval among those who advocate external standards and norms and seems to be somewhat more idealistic than the content of his earlier chapter, *The Religious Explanation.*[12]

One may also applaud his contention that "personal prejudices and predilections of government officers should be reduced, by statutory provisions and other means,"[13] to the end that ours may become in fact, as well as in theory, "a government of laws." There are, however, undertones of Frank's first chapter which may be questioned. He charges that some of those who advocate a "government of laws" say "that we can have it in its *full literalness.*"[14] This is a statement which lacks documentation, but needs it before acceptance. Again, he says: "They [citizens] should be warned to be most watchful of those government officers who, day in and day out, mouth that phrase."[15] To this apparent indictment of the good faith of "government-of-law" defenders, it perhaps suffices to suggest that never before in

7. *Verbalism and Scholasticism,* L.M.M., pt. 1, ch. vii. Frank concedes that he was stressing scholasticism "at its worst." *Id.* at 68n.

8. Frank, J., concurring opinion in Aero Spark Plug Co., Inc. v. B. G. Corp., 130 F. (2d) 290, 298n (1942). See also Frank, J., Ad. Op. in United Shipyards, Inc. v. Hoey, decided November 30, 1942, at p. 190n; Frank, J., dissenting in M. Whitmark & Sons v. Fred Fisher Music Co., Inc. 125 F. (2d) 949, 964-965n (C.C.A. 2d, 1942).

9. KENNEDY, Co-author, MY PHILOSOPHY OF LAW (1941) 145.

10. I.M.W.A. 9 (Italics in original).

11. I.M.W.A. 13.

12. L.M.M., pt. 1, ch. xviii.

13. I.M.W.A. 7.

14. I.M.W.A. 8. (Italics added).

15. *Ibid.*

the history of government has the concept of "government of law" been threatened as it is today in the war-torn world. We submit that we can stand a bit of repetitious "mouthing" of the phrase if only to serve as an antidote to the sinister spread of dictatorial "government by men" or by man in the world about.

Other parts of *Law and the Modern Mind* which caused criticism among those who "viewed with alarm" have been eliminated or whittled down in *If Men Were Angels*. His explanation of the demand for certainty in law as, in part, a hang-over, in adult years, of a child's craving for security, is not emphasized.[16] The vigorous criticism of scholastic logic and syllogistic reasoning, which runs through *Law and the Modern Mind*,[17] is not repeated.[18] The reviewer also desires to point out that Jerome Frank, formerly listed as an ardent semanticist who deplores the uncritical use of words,[19] herein cuts loose from the extremists, like Chase or Hayakawa, who have overemphasized the emotional effects of language. His analysis of semanticism, the science of language, is charged with warnings against "the failure of my fellows to recognize that semantics is not a universal panacea."[20] But one may register a minor complaint. Frank says: "The elimination of drugged words, while immensely helpful, will not, *alone*, do the trick."[21] The reservation "alone" does not wholly satisfy a critic of modernized semantics who believes that "drugged words" are superficial and remote factors which have been ballooned beyond all reality into emotional blockades allegedly controlling human actions.[22] Yet the

16. I.M.W.A. 296-297; GARLAN, LEGAL REALISM AND JUSTICE (1941) 12-13.

17. L.M.M. 63-68, 75, 94, 146.

18. Defenders of Thomistic philosophy were quick to point out that Jerome Frank's partial parallel between the "word magic" of scholasticism and legal verbalism was in truth partial, for it was framed without adequate citation or analysis of scholastic authorities, medieval or modern. To his critique of formal logic and the use of the syllogism, it was answered that the syllogism does not purport to underwrite or guarantee the truth of the premises used by the logician; the particular major or minor premise tentatively used must prove its worth in competition with other propositions or be discarded. The syllogism merely weighs the *quantity*, not the *quality* of the premises used. So it is in the law when opposing counsel state their antagonistic position in syllogistic form; it is true that each advocate may work within the framework of the syllogism in presenting his argument; but victory is reserved for him who can defend his premises against any and all attack.

19. *Intellectual on the Spot* (1940) 35 TIME 75; CHASE, THE TYRANNY OF WORDS (1938) 324.

20. I.M.W.A. 313.

21. *Ibid.* (Italics added).

22. For samples of the extreme emphasis upon the so-called "emotional" force of language, see CHASE, THE TYRANNY OF WORDS (1937). He offers romantic semanticism as a cure for the love-lorn (p. 165), charges that the misuse of words is a formidable cause of wars (p. 20) and argues for the exclusion of all words without definite "referents" i.e., words which do not define concrete, two-by-four things. Frank makes clear that he deplores the tendency of semantists who "discredit all phrases embodying generalizations and abstractions." I.M.W.A. 314. See also Frank, J., Ad. Op. in United Shipyards, Inc. v. Hoey, decided November 30, 1942, at p. 190n *Cf.* Book Review (1938) 7 FORDHAM L. REV. 296.

general tone of Frank's survey of streamlined semanticism deserves the support and approval of the anti-semanticists.

It is hardly necessary to warn the reader that the indorsement of stated passages, which indicate a more sympathetic criticism of traditional law and orthodox legal philosophy, does not carry the implication that the trunkline formulation of Jerome Frank's legal philosophy, first advanced in *Law and the Modern Mind,* has been substantially altered in the passing years. Nor does the approval of the given parts of *If Men Were Angels* imply that the reviewer finds no material herein calling for reasoned criticism or adverse comment.

Jerome Frank is still the ardent defender of realism in general, and a particularly vigorous defender of his own brand of realism. In fact, his defense of realism proceeds on two distinct, and somewhat inconsistent, planes. Frequently he assumes the burden of carrying the load of an all-out approval of realists *en bloc.* Then again, he warns that *his* realism has been confused and distorted by a failure of the anti-realists to distinguish between Frank's realism and the realism of Cook, Llewellyn and other realists.[23]

It is certainly true that legal realism is not one thing or school; it is diversified into many branches and no fair critic could amalgamate all the variant brands and weld them into one simple formula. But when Judge Frank takes upon himself the gratuitous burden of speaking for all his neighbors in the realist camp, he cannot object when opponents insist that he is covering too much ground and that *there are in fact realists who hold views differing widely from his own.* But even when he writes *pro domo sua,* Judge Frank still fails to convince that his own particular sort of realism, or experimentalism, or observationism, is free from defects when tested in the scales of traditional doctrine.

Perhaps an example of his realist apologetics may serve to illustrate the ground of the reviewer's criticism. For example, Frank objects to the charge that realists tend to eliminate reason as the means of ascertaining the content of "ought" in the law.[24] After asserting his own freedom from such charge, Frank contends that no realists take this stand.[25] Since the reviewer has made similar charges against *some* realists, he may be permitted to supply a few realist theories which go very far in the direction of negativing reason as a means of reaching the "ought" of legal rules and principles. Hutcheson's hunch-theory, Arnold's indictment of the "thinking man," Dean Green's analysis of judicial decisions, Hamilton's probing of judicial thinking and Moore's formulas of institutional behaviorism—all come to mind as realists' assertions or implications that reason is not only absent in the search for the true "ought" of law, but in effect they strip man of the *power* to reason independently in competition with the external stimuli of hunch, bias, prejudice, behavior, opportunism and so on through realist writings.[26]

The divergences of realist doctrine—which Frank correctly stresses—should make him wary of assuming that realism, like a negotiable instrument, is a "courier without luggage." One must realize that since *Law and the Modern Mind* was published, many sur-realist writers have appeared who have gone far ahead under

23. I.M.W.A. 277.

24. I.M.W.A. 295.

25. I.M.W.A. 296.

26. Kennedy, *Psychologism in the Law* (1940) 29 GEO. L. J. 139.

the banners of realism. Some have been discredited by the oldsters in the rear ranks, but the agile juveniles are still insisting quite logically that they are merely harvesting the crop of intellectual skepticism sown by their more distinguished mentors.[27]

Jerome Frank is on firmer ground when he writes in defense of his own realism. He shows clearly that he is not in complete agreement with other tenants in the realist household. Throughout the volume, he stresses the "leaky character of the 'facts' in lawsuits" and states that his fact-approach is quite different from "many of the other so-called 'realists' and their critics."[28] True indeed, for many realists are positively naive in their ready acceptance of psuedo-facts and their tender of spurious "scientific" findings as bases for the revaluation of settled principles of law.[29] Frank also has explained his restricted use of the word "law" in *Law and the Modern Mind* by pointing out at great length that he was largely interested in the uncertainties of litigation—law in action—herein called *Courthouse "facts."*[30] He also finds a place for idealism in his philosophy however difficult it may be to translate ideals into legal action, due to the failings of man.[31]

Judge Frank has written a book, interesting, provocative, timely.[32] Published at a time when he is beginning his judicial career, it has added value as a scholarly attempt to describe how judges should, and do, decide cases. Herein the "ought" and the "is" of the judicial process are analyzed by a learned philosopher, made judge.

WALTER B. KENNEDY†

FEDERAL TAXES ON ESTATES, TRUSTS AND GIFTS. By Robert H. Montgomery. New York: The Ronald Press Company. 1941. pp. iii, 761. $7.50.

Mr. Montgomery and his assistants have published a Federal tax manual regu-

27. RODELL, WOE UNTO YOU, LAWYERS! (1939).

28. I.M.W.A. 284.

29. Frank erroneously lists the reviewer as one of the "critics" who overlooks the "leaky character of facts." I.M.W.A. 114n., 285n., *cf.* 297n. On the contrary, the contention has been frequently made that realists (in general) fail to check their facts; that "iffy" postulates are boldly set down as "scientific" findings. See Kennedy, *Principles or Facts?* (1935) 4 FORDHAM L. REV. 53 and later articles.

The conceptualist is not afraid of the "facts of life," as Frank charges, (I.M.W.A. 5) but he does insist that facts, brute or beautiful, be proven and not merely assumed.

30. I.M.W.A. ch. vii-viii.

31. I.M.W.A. 297-300. But exception is taken to the following statements: "No one can deny that Holmes is one of the finest idealists of our time." Cf. FORD, *The Fundamentals of Holmes' Juristic Philosophy,* PHASES OF AMERICAN CULTURE (1942) 51. Again, is it true that "they [realists, i.e. all of them] are *unflagging idealists"?* I.M.W.A. 298-299, (Italics supplied).

32. Many chapters of his book are devoted to a vigorous defense of administrative law, based naturally upon his own experience on governmental boards. I.M.W.A., ch. ix. x, xi, xvi, xvii.

† Professor of Law, Fordham University, School of Law.

larly since 1917 and have included this notable volume as a part of the twentieth edition. It is divided into four parts: (I) income tax on estates and trusts, (II) estate tax, (III) gift tax and (IV) methods of estate distribution.

The first part deals exclusively with the income tax on estates and trusts. Insofar as it deals with items of gross income and deductions which must be considered, it is essentially the fiduciary's handbook. However, the emphasis placed upon the effects of unwary planning in drafting of wills and trusts goes beyond the interests of the fiduciary, and illuminates for the testator and donor the narrow passages remaining in the shadows of the Internal Revenue Code.

Parts II and III dealing with the estate and gift taxes are especially welcome additions to tax lore. Although innumerable works are published in the field of income taxation, there are remarkably few reference materials on the estate tax and its companion the gift tax. In these fields the elementary questions of the incidence of the tax have become fairly well crystallized, and fewer problems remain in connection with the allowable deductions. The taxation of transfers of property before, at and in contemplation of death remains in a state of flux and presents increasingly difficult problems. If the solutions are not found in these chapters at least the discussion of the cases' construing the law is ample. For example, the Hallock[1] cases, in which the Supreme Court reversed a holding of long standing, are discussed in nineteen places. The effect of these and other recent cases upon both gift and income taxes as well as the estate tax is well considered.

The 700 pages of text constitute neither an encyclopedia nor a creative synthesis of taxation. The author does not hesitate to criticize either legislation or judicial determinations, but in doing so he retains a judicial not an emotional point of view. His purpose should not be misunderstood. This is not a treatise on tax avoidance. The author's expressed object is "to explore and explain what can and what cannot be done at the present time", in the hope that some pitfalls may be avoided. By explaining the theory and the practice of the relative sections of the tax code the methods of reducing surtaxes by division of property are presented. The wisdom of distributing property by a substitute for testamentary disposition in these days, when the taxpayers always seem to be wrong in the eyes of the courts, is a matter upon which there is divided opinion. For those who incline in favor of this practice many aids will be found in these pages.

The author uses the now familiar practice of setting forth both the sections of the code and the related sections of the regulations. The correlation of departmental rulings under these various sections makes this a useful reference book. The readers who have been irked by the disdain of Internal Revenue Agents for Board of Tax Appeals decisions will be grateful for the author's indication of the Commissioner's acquiescence in his frequent citation of cases.

The last part deals with planning the distribution of an estate, and contains many valuable hints to the draftsman of wills.

It might be suggested that the index be expanded into a fifth part. This index is not a poor one as indices go, but it is not in keeping with the quality of the text.

HAROLD H. MEYERS†

1. Helvering v. Hallock, 309 U. S. 106 (1940).

† Member of the New York Bar.

CORPORATE TAXATION IN NEW YORK (with forms). By Henry M. Powell. New York: Boyd Press. 1942. pp. viii, 547. $10.00

The author, one of New York's best known writers on taxation, a former Assistant Corporation Counsel of the City of New York and Counsel to the Mills Tax Revision Committee of 1915, has followed a sure instinct in gauging the text-book needs of the New York Tax Bar. The lawyer, the accountant, the business executive, in this day of tax multiplicity and complexity need an instrument to support their already overloaded hands when faced with a franchise tax problem. Mr. Powell has provided them with the needed support.

This function has been performed for the person concerned with New York corporation taxes by gathering into one volume the applicable statutes, decisions and regulations, as well as a description of the practices and procedures in franchise tax matters. The book will be heartily welcomed by those who must meet tax dates and have not the time to make thoroughgoing historical and analytical studies before the deadline. For example, in chapters VIII through XVIII, the author deals with the reports that the various types of corporations must make to the State, reports of business corporations, insurance corporations, real estate corporations, banks, etc. Not only does he give an accurate description of the precise type of income which must be reported, based upon Court decisions as well as statute and regulations, but he takes up the various forms that these corporations have to file and integrates the analysis of the appropriate law with each line and item of the returns.

This reviewer is especially happy about the author's treatment in chapter XIX and XXI of the collection of the tax and remedial procedure to correct excessive and illegal franchise tax assessments. Experience has shown that many taxpayers are bothered with the methods that must be invoked in order to review tax liability rather than with the question of liability itself. Form is important since if the highly technical procedure is not followed the taxpayer may lose the right to review. The taxpayer's actual decision as to whether or not he will contest on the merits is usually postponable. But if he at all contemplates review, there are measures which he must take as early as the return date. The author has performed a valuable service in guiding the taxpayer for his own protection.

If limitation there be, worthy of discussion, this reviewer feels that certain chapters of the volume may be short on analysis, as distinguished from description of actual decisions. However, considering the audience to which the author addresses himself, this may not be a handicap. For the author is not thinking in terms of the lawyer who is about to litigate a novel question and must avail himself of historical and analogical learning and economic theory.

Certain chapters fail fully to exploit the flood-gates that have been opened by recent decisions of the Supreme Court of the United States. In this respect the treatment by the author of the subjects of "intergovernmental immunities", "jurisdiction of the states to tax foreign corporations" and governmental tax liens and priorities in insolvent estates suffers. New vistas have been opened in these fields by the Supreme Court in its recent decisions.[1] However, it is quite evident that the book is geared almost entirely to the taxpayer's viewpoint and does not represent

1. Stone v. Interstate Natural Gas Co., 103 F. (2d) 544 (C.C.A. 5th, 1939), *aff'd*, 308 U. S. 522 (1939); Wisconsin v. J. C. Penney Co., 311 U. S. 435 (1940) (jurisdiction to tax); Alabama v. King & Boozer, 314 U. S. 1 (1941) (intergovernmental immunities).

the viewpoint of some contemporary tax administrators, a viewpoint looking to an expanding concept of jurisdiction to tax.

Particularly adequate seem to be Chapter V on "Doing Business" and Chapter VII on "Allocation". These chapters are beyond criticism, and exhibit an analytical approach not present in some of the others, as well as completely digesting the current decisions.

Finally, this reviewer must confess that his work has been mostly in the fields of sales and excise taxes. His experience in excise tax litigation has necessarily involved familiarity with most of the pertinent decisions that the author discusses in connection with corporation taxes. But the reading of this text proved its value by imparting to him a more integrated comprehension of the franchise tax as a whole fabric. The text for him was a loom, which cast into a finished design the decisional threads with which he had become familiar.

SOL CHARLES LEVINE†

THE LAW OF PROPERTY IN SHAKESPEARE AND THE ELIZABETHAN DRAMA. By Paul S. Clarkson and Clyde T. Warren. Baltimore: The Johns Hopkins Press. 1942. Pp. x, 346. $3.50.

Since 1778 there have appeared at almost regular intervals books written as briefs in support of the proposition that Shakespeare was either a lawyer, or at least must have served an apprenticeship in an attorney's office. Edmund Malone seems to have been the first commentator to have made this assertion; and among those who have fallen victims to this infection have been Lord Campbell—the author of the famous "Lives"—and Mark Twain. Other books have been written on the general subject of law in Shakespeare, but without trying to uphold any particular thesis.

The present work presents several novel and interesting aspects. The authors are lawyers professionally, and students of the drama incidentally. They attack the validity of the argument that because many legal terms are found in Shakespeare, and generally are used correctly, it necessarily follows that he must have studied law at some time—perhaps during the few years interval as to which our information about him is practically a complete blank. The mere statement of this argument should seem to refute it; but many men of admittedly outstanding intellect have fallen victim to the fallacy. Even the Baconian question is sometimes dragged into the controversy; there is so much law in the plays that the author must have been a great lawyer; Bacon was a contemporary and a great lawyer; *ergo,* Bacon wrote Shakespeare. The authors point out that the identical argument could ascribe the authorship to either Coke or Sir John Popham.

In an amusing paragraph, the authors of the present work point out that books by the score have been written "to demonstrate the great poet's intimate and all-pervading knowledge of such diverse subjects as angling, hunting, falconry and horsemanship, military life, tactics and equipment, navigation, both of peace and of war; an almost philological erudition in classical mythology, folklore and Biblical lore; and a sweeping knowledge of natural history, flora as well as fauna. Nor is this list exhaustive", for one might mention agriculture, music, heraldry, precious stones and even typography.

† Senior Tax Counsel, Excise Tax Division of the Office of the Corporation Counsel of the City of New York.

The present authors do not confine themselves to Shakespeare, but in addition have examined the works of seventeen of his contemporaries. They consider the Elizabethan age of the drama to cover the span of fifty years from 1585 to 1635. Their method of treatment has been to group and discuss all legal allusions by all the playwrights surveyed, according to legal subject matter. Previous works on the subject have been either a list of comments, play by play and line by line, or a mere list of legalisms, unconnected and unrelated. They also decided that the subject of law in the Elizabethan drama is so broad that it should best be treated in installments; and property is the first of several works contemplated, in which are included Equity, Marriage and Divorce and Criminal Law.

The term "property" is so broad that the work is a fairly complete legal treatise on tenures; estates in and not in possession; conveyances; personal property; the law of descent and distribution; wills and executors. There is an excellent bibliography of all the dramatists, of the various legal texts cited, of works on the law in Shakespeare, a list of cases and an index to dramatic citations.

The authors' conclusions are naturally very interesting. The use of legal allusions is by no means confined to the plays of Shakespeare. About half of his contemporary dramatists employed on the average more legalisms than he did—some a great many more; and most of them exceed Shakespeare in the detail and complexity of their legal problems and allusions. The age was litigious; and there was a wide public interest in the law, the courts and legal proceedings generally. What law there is in Shakespeare can be explained upon some ground other than that he was a lawyer, an apprentice or a student of the law. They do not say dogmatically that Shakespeare was *not* a lawyer; they merely say that they do not know, and that the internal evidence from his plays is wholly insufficient to prove such a claim. Our knowledge of the lives of some of his contemporaries is quite complete, and we know that the ones in question never studied law, although their legal allusions, as I have said, often exceed Shakespeare's in number and complexity.

This work should be of great interest to lovers of the Elizabethan drama; to lawyers and law students; and to those interested in the antiquity and development of both our legal and literary heritage.

FRANKLIN F. RUSSELL†

BOOK NOTE

CITY LAWYER. By Arthur Garfield Hays. New York: Simon and Shuster. 1942. pp. xvi, 482. $3.00.

"From art to business—from the individuals to corporations, from salaries and royalties to dividends—from small sums to millions—all in the day's work of the city lawyer." This entire book is devoted to the fulfilment of this statement. *City Lawyer* is a promise to the novices in the law that their future can hold as much diversification and interest as they in their boldest dreams ever hoped for. Not every practice need be stereotyped with a continuous stagnated routine—witness Mr. Hays'. His rather unpretentious and humble induction into the category of

† Captain, Signal Corps, U. S. A.; Professor of Law, Brooklyn Law School of St. Lawrence University.

practicing attorneys will intrigue the neophytes. His subsequent escape from an unwitting mistake that could have ruined his career leaves one squirming. To the oldsters of the law, *City Lawyer* is an interesting "Autobiography of a Law Practice" with which they may compare notes and reminisce joyfully.

A burning passion for civil liberties is a predominating underlying note throughout the book. The discussion of civil liberties is not a blind bigotry, but an understanding appraisal for, as he says, "When we get to know people, we lose our prejudices." The "Ten Commandments for Civil Rights" are well worth considering, as they truly could be the basis of the civil liberties that we so take for granted as an integral part of our Democracy. Because of an endless struggle for progressive politics and his broad view he has been called "a liberal" (and as is suggested, try and define this term). He condemns, to the surprise of all, the unfair and unreasonable restrictions on Wall Street. It is rare to hear a "liberal" protect the rights of an unnamed minion in society, and similarly defend a Wall Street magnate. This is a correct interpretation of Civil Rights, *i.e.,* our Bill of Rights is the same for all and does not vary because of one's pecuniary standing in society.

The behind-the-scenes descriptions of such famous cases as the Wendell Will case, Reichstag-fire trial, and the Gross case discussing "What is death?", make extremely interesting reading and show the romance of trial work. The drama and pathos of the Tommy Jordan case is a poignant challenge for lawyers to realize their responsibilities and the seriousness of their undertakings.

The caricatures and anecdotes concerning such personages as Clarence Darrow, Samuel Untermyer, William C. Bullitt, Billy Rose, Robert La Follette, Sr., and William Fallon are interesting and illuminating. These anecdotes are human, a quality that pervades the book, and the unaffected description of these and other notables give us an excellent insight into their characteristics and personalities.

The book is timely, for it takes us through a period in our history comparable to the war era we are undergoing today. The warnings to be wary of imposing oppressions needlessly, caused by blind war hysteria, should not go unheeded.