Bailey case,[2] she concludes that "in few cases . . . has an opinion been delivered which can safely be treated as that of the Court."[3] This, of course, is a contradiction in terms, since the decision of the majority is *the* decision of the Court, regardless of the nature or extent of dissenting opinions. She characterizes the Government's position as a demand that national security must outweigh claims of free speech and due process, and then attempts to extricate herself from the resulting dilemma by extensive quotations from dissenting opinions or majority decisions subsequently reversed by a higher court. Miss Bontecou would be much fairer to the reader if she stated frankly the simple fact that there has yet been no final decision declaring any portion of the Loyalty-Security Program to be unconstitutional other than the listing of subversive organizations by the Attorney-General without notice or hearing.

And finally, notwithstanding the unquestioned documentary value of this book, it is not light summer reading.

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CASES ON SECURITY, Vol. II, Suretyship. By Edgar N. Durfee. Indianapolis: The Bobbs-Merrill Company, 1953. Pp. xiii, 352. $6.00.

THE size of this book represents the shrinking attention given to suretyship in American law schools. Arant's *Cases on Security* (1926), for example, contained 1074 pages while the book here reviewed has only 352 pages. The tendency to eliminate suretyship as a separate course and to combine it with other subjects under such captions as "Security," "Security Transactions," and "Credit Transactions" goes on apace. Professor Durfee has recognized this trend, and hedged against it by preparing his two-volume work entitled "Cases on Security," segregating suretyship in the second volume, so that the books may be used either in a combined or separate course.

The two volumes together cover the usual range of security transactions, including mortgages of real, personal, and intangible property, pledges, conditional sales, and trust receipts. The author has divided the two volumes by including all of these devices in Volume I, and by restricting Volume II generally to suretyship and "quasi-suretyship." All the transactions treated in the first volume are legal devices "by which the creditor is given some sort of hold on a particular thing—land, goods, or intangibles. In this respect suretyship is radically different. It gives the creditor no claim upon any particular thing, but a claim against a particular person. . . ."[1] The author calls the items covered in his Volume I "property security," and those in Volume II "personal security." Quasi-suretyship, included in Volume II, is defined by Professor Durfee as "things that are talked of as suretyship but don't involve credit-lending."[2] In this category he places transfers of mort-

2. Bailey v. Richardson, 341 U.S. 918 (1951) (per curiam).

3. P. 220.

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1. P. v.

2. *Ibid.*

gaged land and other properties and some other situations commented on below.

Here reviewed is Volume II. In his introduction, Professor Durfee points to the "needless confusion" in the law of suretyship resulting from carelessness in framing definitions. He then undertakes to resolve the confusion. He does this by setting out the definitions arising from "two divergent ideas of suretyship . . . I—Functional Definition of Suretyship and, II—Analogical Definition of Suretyship—or Should We Say 'Quasi-Suretyship'?"[3] Efforts to seek a satisfactory definition or description of suretyship produce some colorful, "folksy" language: "These cases can't be sneezed away,"[4] and "I don't mean to say that Judge Cooley was out of bounds."[5] While the use of layman's language can be overdone, this reviewer feels that the average student will absorb better, and remember longer writings which are cast in striking rather than stilted, pedantic phrasing. Moreover the introduction contains an extensive analysis of Judge Boldin's "functional" definition of suretyship in *Rollings v. Gunter*: "Suretyship is the lending of credit to aid a principal who has not sufficient credit of his own."[6] The author points out the inadequacies and errors of this definition; in the process he discusses the extension of credit by both "professional" and "amateur" sureties, the sale of traveler's checks, the issuance of letters of credit, and gives a passing glance at the "expensive mistake" of the "spurious distinction" between suretyship and guaranty.

Under the caption "Analogical Definition of Suretyship," the author considers Chief Justice Cooley's popular definition of suretyship in *Smith v. Shelden*.[7] Here Professor Durfee suggests revision of the definition, but finally gives somewhat qualified approval to the two definitions, suggesting later in his introduction that the student may, if he desires, disregard them and "Try this—Suretyship is personal security."[8] This last may well be regarded as the principal theme of the book. The principal difficulty with Professor Durfee's definition is that it would not be sufficiently broad to cover those cases where both property and personal security are given to secure the debt of the principal—a transaction usually regarded as a suretyship contract, as the author admits in the last page of his introduction.[9]

3. P. 642.
4. P. 639.
5. P. 644.
6. 211 Ala. 671, 672, 101 So. 446, 448 (1924).
7. "A surety is a person who, being liable to pay a debt or perform an obligation, is entitled, if it is enforced against him, to be indemnified by some other person, who ought himself to have made payment before the surety was compelled to do so. It is immaterial in what form the relation of principal and surety is established, or whether the creditor is or is not contracted with in the two capacities, as is often the case when notes are given or bonds taken; the relation is fixed by the arrangement and equities between the debtors or obligors, and may be known to the creditor, or wholly unknown." 35 Mich. 42, 48 (1876).
8. P. 649.
9. P. 650.

The introduction is interestingly done, but I am not sure that it will dispel the average student's confusion. And this, after all, was the author's objective in writing it. He admits this limitation: "In final conclusion you'll perhaps say that nothing comes clear except that, in practical effect, in cases covered, there's little difference between the credit-lending idea [Judge Boldin's definition] and the personal security idea [Professor Durfee's definition], really a microscopic difference compared to the spread between either of these ideas and the Cooley idea, obligation plus the right of indemnity."[10] I fear that at this point Mr. Average Student will have only a lot of burning questions—not really a bad result after all, if he will seek and find the answers.

The book is divided into three chapters. The first is entitled "Emphasis on Obligation of Surety to Creditor." This chapter comprises almost half of the entire book. It is divided into two sections: the first is entitled "Creation of the Obligation; Scope of the Obligation." The cases placed here cover the topic very well. An interesting departure from the some 65 page coverage of the Statute of Frauds in the casebook this reviewer has been using [11] is the author's dismissal of the Statute of Frauds in a two-page note.[12] He maintains that "English and American judges have overlayed the statute with decisions that now bury it as deep as the sands of the desert buried ancient Troy."[13] Hence he considers it a "plain waste of your time to learn the law [Statute of Frauds relative to suretyship] in any sense except to learn what to fear—the method of the caveat, the technique of the bell-buoy."[14] He contents himself by referring the student to Corbin and Williston on the matter. I should prefer a few cases, so that Professor Durfee's "caveat" would be dramatized for the student.

Section 2 of Chapter I is entitled "Secondary Liability" and is the longest single division of the book. In 114 pages the author covers, *inter alia*, bills for exoneration, actions for indemnity, guaranties, the *Pain v. Packard* doctrine,[15] some effects of the Negotiable Instruments Law, effect of principal's infancy, fraud, duress, release of the principal, release of the co-surety, extension of time to the principal, laches and lack of diligence of the creditor, third party beneficiaries, effect of change articles, etc. The cases are well selected and the author has done an excellent job of covering a large field in so few pages. Yet one could well quarrel with the inclusion of some of these topics in Chapter I rather than in Chapter II, which deals with the rights and remedies of the surety. The author anticipates this criticism: "At the beginning of Chapter I, some loose remarks are made to the effect that everything in Chapter I belongs in Chapter II and vice versa."[16]

10. *Ibid.*
11. WALSH & SIMPSON, CASES AND MATERIALS ON THE LAW OF SURETYSHIP (1942).
12. Pp. 661-2.
13. P. 661.
14. P. 662.
15. Pp. 707-08.
16. P. 804.

Chapter II is captioned "Emphasis on Surety's Rights and Remedies." The inclusion of certain above-mentioned remedies in Chapter I, in the reviewer's opinion, takes a great deal of the fire out of Chapter II. The first section of Chapter II deals with the surety's rights and remedies "As against Creditor, Principal, Creditors of Principal, and Transferees of Principal." Section 1 covers, *inter alia*, matters of subrogation, claims in bankruptcy against various parties, effects of principal's bankruptcy on surety's obligation, and application of funds. Section 2 "As Between Sureties" covers succinctly the rights and remedies of the surety *vis-à-vis* the other sureties.

The third and final Chapter, "Emphasis on Quasi-Suretyship," includes material which the author defines earlier as "things which are talked of as suretyship but don't involve credit-lending."[17] The first Section is entitled "A Wrongful Act Imposes Liability on or Fixes a Lien on the Property of Two or More Persons." Here Professor Durfee considers contribution among involuntary sureties and joint tort-feasors, subrogation against third party participants in the principal's default, contribution between indemnity-bond insurers, and the like. The next Section of this Chapter is captioned "By a Transfer of Mortgaged Land, the Burden is Placed on Two or More Persons: Comparable Situations Involving Other Types of Liens and Other Kinds of Property." Here is the only section of the book which contains a detailed outline of the sub-headings covered. In a few pages, the author comprehensively covers the suretyship aspects of sales of property, real or personal, which are encumbered by mortgages or other liens. A large portion of the last section consists of note or text discussion.

For the statistically minded, the book contains 344 pages excluding the indexes. Of these 344 pages, 46 pages are text, 298 pages cases and extensive notes and questions. There are 69 cases reported at length and 137 cases digested, quoted, or discussed. The volume appears sufficient for a one hour per week course for a semester in Suretyship. To stretch it to two hours would necessitate some outside work for the students. But the length is sufficient for the time allowed in the average law school today.

Viewing the book as a whole, I find it well-prepared, nicely-balanced and with a fine selection of cases. The notes are printed in a large type suitable to the impaired vision of the usual law school professor. The cases provide a reasonable apportionment between the "old faithfuls" and the more recent decisions, thus consoling the professor with his old friends and giving the student the feeling of "up-to-dateness." A large number of thought-provoking questions appear in the notes. Professor Durfee is to be commended for producing this little book, and I urge its thoughtful consideration by my colleagues who may feel that it is time for a change.

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17. P. v.

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