

Louisiana Law Review

Volume 3 | Number 2

January 1941

ANTIQUITIES OF BAIL: ORIGIN AND
HISTORICAL DEVELOPMENT IN
CRIMINAL CASES TO THE YEAR 1275, by
Elsa de Haas. Columbia University Press, New
York, 1940. Pp. xii, 174.

S. E. Thorne

Repository Citation

S. E. Thorne, *ANTIQUITIES OF BAIL: ORIGIN AND HISTORICAL DEVELOPMENT IN CRIMINAL CASES TO THE YEAR 1275*, by Elsa de Haas. Columbia University Press, New York, 1940. Pp. xii, 174., 3 La. L. Rev. (1941)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol3/iss2/15>

This Book Review is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

fining and administering the judicial power. It is certainly a book which every lawyer and judge interested in this delicate and difficult subject should read thoughtfully and carefully.

The chapter headings clearly and correctly designate the subject matter of each chapter. Each chapter, in a thorough though, because of the writer's tendency to follow his leaders, a somewhat hackneyed way, presents in scholarly fashion the matter with which it deals. The whole is a book which, despite its lack of objectivity, its impression that our author is a hero with a mission to perform to set right what the judges have marred in making, is a very worthwhile book upon a very interesting subject. I only hope the writer will write again in the judicial field, writing next time more as a chronicler, less as a caviler, and that it will be my lot to review his next book.

JOSEPH C. HUTCHESON, JR.*

ANTIQUITIES OF BAIL: ORIGIN AND HISTORICAL DEVELOPMENT IN CRIMINAL CASES TO THE YEAR 1275, by Elsa de Haas. Columbia University Press, New York, 1940. Pp. xii, 174.

Though the present volume throws light upon some minor points, Miss de Haas has been notably unsuccessful in adding materially to current knowledge of the subject upon which she has chosen to write. It is (to say the least) doubtful whether the early history of bail can be approached to advantage by isolating its criminal and civil aspects, but apart from this, her work consists to a surprisingly large extent of the repetition of sufficiently known statements which have been in effect annotated, often to a remarkable extent, by corroboratory instances and examples gleaned from the printed records. Miss de Haas recognizes, paradoxically, that her thesis does not prove any particular thesis, and on this observation agreement may easily be had, for her chapters serve only to bring together conclusions expressed elsewhere and make no attempt to synthesize these often casual remarks by a careful reexamination of the problem and its implications. Her inquiry into the origins of bail is confined to summaries of the views of several modern scholars, among which she selects as most useful that put forward some years ago by Franz Beyerle. The alignment of the tangled and conflicting Germanic

* United States Circuit Judge, Fifth Judicial Circuit.

and Anglo-Saxon sources is admittedly difficult, especially since one must deal with undifferentiated transactions that will only later separate into contract, suretyship and pledge, but there is no attempt to answer the objections that have been made to Beyerle's view nor is her discussion aided by the frequent use of the word 'contract' which simply begs the question in issue. The clear-cut distinction drawn between the 'bail surety' and the general surety arrangements of the Anglo-Saxon period is not in all respects convincing; there is more to be said for rejecting Holdsworth's theory as to the relation of frankpledge and bail, though this is perhaps treated at greater length and with more consideration than it warrants. It is not true that 'since the writ *de homine replegiando* was not customarily issued in homicide cases, the writ *de odio et atia* was evolved,' for as Miss de Haas indicates elsewhere there was more behind its appearance than the desire to release persons suspected of homicide from custody. Despite the italics and the roll references cited in its support, that the *de odio et atia* soon decided more than 'hate and spite' has long appeared in standard histories of English law. Miss de Haas has, to be sure, some modifications to suggest: for example, that the accused need not necessarily be, though on many occasions he was, in prison when the writ of inquisition was sued, but little turns on this correction of Coke's remark which has been repeated several times since the seventeenth century and was based only upon the statement in Westminster 2, ca. 29.

The volume is marred by the frequent quotation of the same passages, the adoption of conflicting positions on the same issue, and by an effort to substantiate every statement, no matter how subsidiary or familiar, by lengthy footnotes. This makes the book a curious mixture of passages written seemingly for the beginner and of others apparently directed toward the requirements of the specialist. It is difficult to resist the conclusion that the work was written in haste or, in the alternative, that Miss de Haas did not have her subject clearly in mind: many pages give the appearance of a collection of materials from which a carefully thought out history of release procedures might be written rather than that history itself. Like those provided in most theses the bibliography is impressive and the reproductions of seven facsimile pages from early Registers of Writs provides an air of scholarly respectability, but clearly for Miss de Haas there is no difference between the Rolls Series and any series of printed rolls and the use made of the Registers hardly necessitates their in-

clusion. It should be pointed out as well that Deiser edited but one of the Richard II Year Books, that though Bracton's name has been Englished Staunforde's has not, that the correct form of the place name in Appendix C is Bermondsey.

S. E. THORNE*

THE LAW OF JOURNALISM, INCLUDING MATTERS RELATING TO THE FREEDOM OF THE PRESS, LIBEL, CONTEMPT OF COURT, PROPERTY RIGHTS IN NEWS, AND REGULATION OF ADVERTISING, by Robert W. Jones. Washington Law Book Company, Washington, D. C., 1940. Pp. xxii, 395.

This book is apparently designed as a textbook for courses in journalism schools and for practicing journalists who may need a reference work on laws pertaining to the press, though it will also be found useful by the attorney, particularly because of the new light it throws on recent developments and trends in the journalistic field. The author is professor of journalism at the University of Washington, a member of the Missouri bar, and a former newspaper reporter and editor. Therefore, he writes from the point of view of the trained attorney as well as teacher and experienced newspaper man.

The volume consists of eleven chapters as follows: "Freedom of The Press," "Characteristics of Libel," "Defenses to Libel," "Interpretation of Libel," "Contempt of Court," "The Right of Privacy," "Blasphemous Publications," "Property Rights in News," "Copyright Matter and Its Use," "Legal Advertising," and "Regulation of Advertising." An Appendix gives useful information, and there is a complete Index but no table of cases.

It is unfortunate that the first chapter of any book should be the weakest, but this is true of Professor Jones's volume as his discussion of freedom of the press leaves much to be desired. Writers on press freedom weaken their positions when they become defensive concerning the rights of the press and attempt to refute charges leveled against the newspaper by extolling the United States press in comparison with the controlled press of totalitarian countries. When an author gives quotation after quotation to disprove charges made against newspapers of the United

* Associate Professor of Law and Law Librarian, Northwestern University.