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The Province of the Law of Tort

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his text bears an English rather than an American slant. He presents, however, a fair review of what has been written on the subject and follows it with his own proposal of a comprehensive scheme for compensating those who make scientific discoveries. Appendices contain essays by American lawyers so as to more clearly tie the matter into attitudes on this side of the Atlantic. Anyone interested in the subject will find here collected in a single volume sufficient information to let him make up his mind upon the desirability and possibility as a practical matter of compensating those working in pure science.

In general those having to do with patents and inventions are less than lukewarm on the subject, not as a matter of sentiment but because the difficulties of working out a satisfactory scheme seem insurmountable. Possibly a Constitutional amendment would be necessary since the courts in the United States seem to have defined the term inventor used in the Constitution in such a limited way as to exclude those working in pure science whose discoveries as such are not immediately practically useful.

—KARL FENNING.

Washington, D. C.

THE PROVINCE OF THE LAW OF TORT. By Percy H. Winfield. Cambridge: At the University Press; New York: The Macmillan Company. 1931. Pp. xii, 254.

In this small volume, which embodies the Tagore lectures for 1930 delivered by Professor Winfield at the University of Calcutta, an eminent legal historian undertakes "to trace the *liaison* between tortious obligation and other regions of the law".¹ It is not a treatise on the law of tort. It is merely an attempt "to separate liability in tort as sharply as possible from liability arising from crime, from contract, from trust, from bailment, from the law of property, from quasi-contract and from quasi-tort".² The author is not the first to attempt this task, but certainly no one has performed it with more care and thoroughness.

With some of Professor Winfield's views the reader may not agree. If he belongs to the "pessimistic school" which denies the existence of any general principle of liability in the law of torts and consequently has abandoned hope of defining it, he will dis-

¹P. V.

²Pp. 2, 3.

agree with the author's thesis that such a general principle is found in the proposition that all unjustifiable harm done by a man to his neighbor is actionable. In this position the author takes sides with Sir Frederick Pollock in the latter's well known disagreement with the late Sir John Salmond as to the foundation of liability in tort. Likewise, the followers of the "revolutionary school" which would class cases of liability without fault under a distinct head, will discover that he finds it unnecessary to subscribe to their theory since his broad principle covers cases of absolute liability as well as those in which fault on the part of the defendant is requisite. In short, Professor Winfield presents a conservative theory which allows for an orderly expansion of this branch of the law without necessitating any change in the present generally accepted classification.

The portion of the book which will be read with the greatest interest, perhaps, is the chapter dealing with tort and quasi-contract. In attempting to differentiate these two forms of liability the author has found it necessary to determine first the province of quasi-contract. The result is a monograph on a subject which has not been accepted as a separate branch of English law and, consequently, has received but scant treatment by English writers. A general historical sketch is followed by a grouping of "the most conspicuous quasi-contracts in English law"¹ under the following heads: pseudo-quasi-contracts; pure quasi-contracts; quasi-contract which is alternative to some other form of liability; doubtful quasi-contracts. As a classification this probably will not meet with general approval, but it suggests the difficulties which beset the path of both teacher and writer in this field and which will make the task of restating this branch of the law a peculiarly difficult one.

—EDMUND C. DICKINSON.

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¹P. 148.