unflagging interest. He represented a type which is becoming too rare in both public life and the law, — a type in which culture and learning led to, rather than away from, public affairs and community interests. Since he was an active-minded man his convictions had colour and he may seem to some to have been too clearly marked with political affiliations for academic commentary. But he belonged to a broad-minded group who surveyed politics neither to satisfy a shallow and cynical aloofness nor to promote a chosen class or section. He had a genuine feeling for the Constitution as a part of a moral system and not as an opportunity for dialectical virtuosity. By his character and capacity he did much for his fellows — and he deserves to be well remembered by them.

P. D. PHILIPS *

Pollock's Law of Torts: Fifteenth Edition. 1951. By P. A. Landon, M.A., M.C., Fellow and Tutor, Trinity College, Oxford; pp. xliv and 446 and (index) 34. London, Stevens & Sons Ltd. Australasia, The Law Book Co. of Australasia Pty. Ltd. (£4/8/- in Australia.)

If the value of a text-book be assessed by reference to the criterion whether it conveys an up-to-date, dynamic impression of the law, this second posthumous edition of Pollock's treatise on Torts must be regarded as a failure. Almost a quarter of a century has now elapsed since the appearance of the last edition prepared by Sir Frederick himself, and the deficiencies of the present volume are inevitably measured by the extent to which this branch of law has developed since 1929. The law of torts is peculiarly sensitive to the 'social climate' of the environment in which it operates and, consequently, exposed to judicial experiments of an order which do not find a parallel except perhaps in the constitutional field. The editorial policy of preserving the text of the 13th (1929) edition intact without amendment (except by exclusion where the "treatment is *obviously* out-of-date") already lends the book an antiquarian flavour which in the Olympian atmosphere of Oxford might be regarded as a mark of commendation but could elsewhere be diagnosed as a symptom of sterility. No disrespect to Pollock is implied by doubting whether it is appropriate to throw a halo of sacrosanctity around a once-standard treatise which, throughout the author's lifetime, was intended as no more than a representation of contemporary, living law. In such a field as this, it is a misconception to regard any text as a 'classical' exposition of the subject capable of withstanding unscathed the passage of time.

The editor seeks to meet these objections to some extent by the use of footnotes and brief additions to the text which are prominently segregated from Pollock's *ipsissima verba* by resort to square brackets. The result is anything but happy. Much material has in the process been omitted and, perhaps more substantially, bare citation of a string of cases accompanied by sparse, if any, comment, is an inept device to acquaint the reader with significant changes in judicial orientation.[1] Mr. Landon's decision to reproduce verbatim the section on Contributory Negligence, in the teeth of the author's own admission that "some re-writing was required", is a questionable service to Pollock's memory.

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[1] See, e.g., the treatment of the nervous shock cases at 37-39 and, in particular, the editor's addition to n. 74.

The editor claims that Pollock's "acute analysis of 'causation' . . . remains of considerable value". In the reviewer's opinion, it is little short of disastrous. Throughout the treatment, there is evident a confusion between 'responsibility' and 'causation', produced by the desire to construct some spurious scientific theory based on the latter notion. We are regaled with meaningless distinctions, such as that between proximate and inducing causes, between cause and condition, and, to crown it all, have to swallow the comment that "the contrast of 'cause' and 'condition' is dangerous to refine upon: the deep waters of philosophy are too near". Were it not for the infinite mischief which this type of analysis has wrought in legal thinking for so long[2] it could be held up as an instructive example of the pitfalls of false conceptualism, a target for well-merited ridicule by second-year students. As it is, Mr. Landon's own evident predilection for this kind of legal jargon is the deplorable symptom of a canker which our courts are only now beginning to excise from their opinions.[3]

Apart from this, however, within the short time since the coming into operation of the apportionment statute, judicial reaction towards issues of contributory negligence has belied Mr. Landon's belief that it is still safe to place reliance on the pre-1946 case law provided that "wherever Pollock speaks of the plaintiff's remedy being barred, there should be substituted some such phrase as 'the plaintiff's right to compensation is liable to be affected by the new Act' ". Experience has shown that, freed from the common law straitjacket, the courts have taken little time to abjure the old verbalisms and subterfuges and are fast laying the foundations for a more rational and intelligible approach to these problems.

More controversial are Mr. Landon's own, more extensive contributions in his several *excursus*. Incidentally, two of these (E and F) are omitted from the Table of Contents and one is there falsely described as D instead of C.[4] What is perhaps most striking about them is the revealing lack of sympathy between author and editor and the fact that Mr. Landon repeatedly reproaches Pollock with "intransigeance" in holding to opinions in the face of contrary judicial authority[5] which characterises so much of his own contributions (as in Excursus B, dealing with the defence of inevitable accident). In view of Mr. Landon's own staunch enthusiasm and strength of resistance in the face of adversity, this is a case of the pot calling the kettle black. For readers with a sense of humour, some of these passages are not devoid of amusement. Thus, Excursus A commences with a laudatory commendation of Pollock as a man who was "not a juristic speculator. He was little interested in the law as it ought to be. He was content to accept the body of rules handed down to us by our ancestors".[6] Only five pages further, however, we are told that his fault theory "is typical of the legal philosopher", coupled with a sarcastic reference to "the law as taught in the professor's study".[7] Mr. Landon's enthusiasm for the propagation of diehard points of view has deservedly gained him a place of prominence. Fortunately, his heterodoxy manifests itself mainly in the espousal of *lost* causes, and in this respect he is perhaps doing no more than perpetuating an old Oxford tradition. Most of his prejudices are based on an unwillingness to recognise the social changes of our time, but fundamental to his outlook is his refusal to concede that law is a method of social control, not an abstract intellectual exercise. His repeated emphasis on the self-sufficiency of 'rules' created by "just men of past generations" (the older, the better) and his contempt for "the fluid and ephemeral morality and sociology which, in some circles, especially in America, are nowadays set up as the sole objective of modern law"[8] reveal a mind funda-

[2] *Cf.* its ugly manifestation in *Caswell* v. *Powell Collieries* (1940) A.C. 152.
[3] See, e.g., *Davie* v. *Swan Motor Co.* (1949) 2 K.B. 291.
[4] At xiv.
[5] See, e.g., at 43 and 133, n. 52.
[6] At 41.
[7] At 46.
[8] At 41.

mentally out of sympathy with contemporary law and legal thought. The law of torts, in any event, is a singularly unrewarding subject for indulging one's bent for traditionalism.

A few words must suffice to indicate specific points of criticism. Mr. Landon's attempts to reconcile the rule in *Re Polemis*[9] and *Hadley* v. *Baxendale*[10] by the assertion that, both in contract and in tort, the defendant is accountable for all damage which (a) flows directly from the wrong, or (b) should have been contemplated as likely to flow even indirectly from the wrong, etc., is difficult to reconcile with Lord Sumner's judgment in *Weld-Blundell* v. *Stephens*[11] which, in laying the foundation for the 'directness' test, explicitly repudiated liability for foreseeable harm which is not direct. Excursus C (conspiracy) contains an attack on Lord Maugham's speech in the *Crofters Case*[12] insofar as it suggests that the burden of proving justification lies on the defendant. This is said to come "perilously near the resuscitation of the outlook . . . that, wherever damage is caused, the defendant must justify". Not only is this comment misconceived because it ignores the presence of the element of combination, but in any event the controversy whether or not there is a comprehensive general principle or tortious liability in English law has nothing to do with burden of proof: it is a question of law, not evidence.

Although the editor's excursus on Negligence contains a valuable warning against Lord Atkin's universality test of duty, the level of discussion makes his argument less persuasive than Dr. Morison's valuable inquiry in *11 M.L.R. 9*. The shortcomings of the foresight criterion are better demonstrated by reference to the differing policy values involved in the various type situations than by a merely analytical demonstration that, on the basis of authority, responsibility for negligent conduct is precluded in a few situations. Here, as elsewhere, the editor's outlook is primarily coloured by his ultra-conservatism, his reluctance to swallow the extension of liability to manufacturers and others in the face of such decisions as *Winterbottom* v. *Wright*[13] and *Earl* v. *Lubbock*[14] which to Mr. Landon represent the crystallization of immutable wisdom. As a result, he shows little understanding of the different problems arising in connection with liability for dangerous chattels. His submission that *Longmeid* v. *Holliday*[15] is inconsistent with *Donoghue* v. *Stevenson*[16] is based on a failure to appreciate the distinction between distributors and manufacturers. Again, *Thomas* v. *Winchester*[17] raised a problem quite different from the preceding case: it was an instance of malfeasance (wrong labelling), not mere non-feasance (failure to inspect). On the whole, Pollock's own account of these matters is confusing and stands badly in need of complete recasting. That the author would himself have undertaken that task is indisputable in view of his discerning comment on *Donoghue* v. *Stevenson*[18] which is here reprinted from the L.Q.R. in appendix B. Some of Pollock's prognostications have stood the test of time, others would have required revision in the light of subsequent developments.[19]

What is particularly regrettable about this, as the previous edition, is the failure to keep up-to-date the references and discussion on American authorities which were such a useful feature of the original Pollock on Torts. In the result, the older American case law has been retained in text and footnotes, but with the passage of time this becomes an increasingly less reliable source of information and may lead the unwary to misapprehension and error.

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[9] (1921) 3 K.B. 560.
[10] (1854) 9 Exch. 341.
[11] (1920) A.C. 956.
[12] (1942) A.C. 435.
[13] (1842) 10 M. & W. 109.
[14] (1905) 1 K.B. 253.
[15] (1851) 6 Ex. 761.
[16] (1933) A.C. 562.
[17] (1852) 6 N.Y. 397.
[18] (1932) A.C. 562.
[19] See F. C. Underhay, "Manufacturers' Liability: Recent Developments of *Donoghue* v. *Stevenson*", 14 *Can. Bar Rev.* 283.

In fine, short of resuscitating Pollock on Torts along the lines of Salmond, no useful purpose can be seen in continuing the present editorial policy of periodically launching further editions of this work. Nor is it believed that the legal profession would suffer any irreparable loss by an abandonment of these reprints which are offered at a price that is no longer commensurate with their intrinsic usefulness.

J. G. FLEMING *

Cases on Private International Law: by J. H. C. Morris, D.C.L., Fellow and Tutor of Magdalen College, Oxford, All Souls Lecturer in Private International Law, etc.; pp. i-xxviii, 1-417. Oxford University Press, 2 ed. 1951. (Price in Australia £2/16/0.)

Dr. Morris' second edition has appeared at a time when quickening interest is being shown in Australia in the subject of case books in general. In part this is due to the growth of the numbers of students attending law schools, with resulting strain on library facilities. But signs are not wanting that a more fundamental reason is the existence of a questioning attitude to traditional methods of legal instruction. Nor is this attitude unconnected with the development of closer intellectual contacts between Australian and American legal scholars in the past few years. The visits to Australia of Dean Griswold of the Harvard Law School and Professor Gregory of the University of Virginia, both leading exponents of the case method of instruction, have emphasised the Australian interest in the subject.

There is, of course, nothing novel and nothing distinctly American in the notion of a case book. Old established English case books such as *Kenny on Crimes* have passed through many editions. But the character of a case book depends very largely on the author's view of the ends which it should serve. One hears from time to time of the "all purpose case book", but an examination of existing case books suggests that it is practically impossible for a case book to be produced which can be utilised equally well for all methods of instruction. Insofar as it is possible to generalise, the typical English development has been the production of case books which will serve as companions to particular text books. Well known examples are Kenny's *Cases on Crimes*, Winfield's *Cases on Torts*, and Professor Graveson's *Cases on the Conflict of Laws*.[1] C. H. S. Fifoot's *History and Sources of the Common Law*[2] follows the general pattern except that the text is shortened and made somewhat more tentative, while the cases are incorporated with the text in the one volume. By contrast the typical American case book of the present century is designed largely to replace the text book. The author's exposition is confined to introductions with interstitial comments usually in the shape of footnotes. The physical volume of case material is much greater than in English case books, since the function of the cases is to enable the student to spell out the legal principles rather than merely to illustrate propositions which he has studied from other sources.

Dr. Morris' book is in the English tradition. "This book", we are told in the Preface[3], "is intended primarily as a companion volume to Dr. Cheshire's *Private International Law*".[4] The student is not, therefore, intended to approach each case as a mystery to be investigated and solved. He will have studied the

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[1] (1949). [2] (1949). [3] At vii. [4] Now in its fourth edition (1952).