

Michigan Law Review

Volume 16 | Issue 2

1917

Book Reviews

Frank Egleston Robbins

University of Michigan Law School

Willard Barbour

University of Michigan Law School

Joseph H. Drake

University of Michigan Law School

Ralph W. Aigler

University of Michigan Law School

Edwin C. Goddard

University of Michigan Law School

See next page for additional authors

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Other Law Commons](#)

Recommended Citation

Frank E. Robbins, Willard Barbour, Joseph H. Drake, Ralph W. Aigler, Edwin C. Goddard, Horace L. Wilgus, John B. Waite & John R. Rood, *Book Reviews*, 16 MICH. L. REV. 139 (1917).

Available at: <https://repository.law.umich.edu/mlr/vol16/iss2/5>

This Book Reviews is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

Book Reviews

Authors

Frank Egleston Robbins, Willard Barbour, Joseph H. Drake, Ralph W. Aigler, Edwin C. Goddard, Horace LaFayette Wilgus, John B. Waite, and John R. Rood

BOOK REVIEWS

THE PROSECUTION OF JESUS: ITS DATE, HISTORY AND LEGALITY. By Richard Wellington Husband. Princeton: Princeton University Press, 1916. Pp. 302.

Professor Husband's book deals with two problems, the date of the trial and crucifixion of Jesus, and the legal aspects of the proceedings against him. In both divisions of the subject his conclusions are novel and are supported by able argumentation.

The date of Jesus' trial is discussed in the third of the nine chapters of the book and occupies 35 of its 302 pages. Recalling the quartodeciman controversy of the early church and the discrepancy between John and the synoptic writers, the author adopts the account of John, which places the crucifixion before the eating of the Passover meal, basing his conclusion upon the expressions of St. Paul and upon certain traces of uncertainty or inconsistency in the Synoptics. Inasmuch as all four Gospels agree in reporting that the crucifixion occurred on Friday and the resurrection on Sunday, Professor Husband looks for a year in which the Jewish Passover was eaten on Friday evening, instead of Thursday, and finds it in the year 33 A. D. (in 30 A. D., the generally accepted date, the meal was eaten Thursday evening). Professor J. M. Poor of Dartmouth College has furnished him the astronomical data on which to base his calculations. This is the essential contents of the chapter; the author, however, discusses as well the chronological datum of Luke 3:1-2 and the Synoptists' notion of the length of the ministry, and adduces as an additional argument for a date later than the accepted one the fact that Pilate had had time to institute the practice of releasing a prisoner at the time of the Passover. In the discussion of these subsidiary matters the author is perhaps less convincing than in that of the main issue, although he cannot be charged with slighting evidence or with unwillingness to seek for it laboriously and keenly. But it is certainly worth inquiring, for example, whether Luke's datum represents anything more than an attempt to give a date consistent with Luke's own view of the chronology, and the argument derived from Pilate's custom involves the subjective factor, how long it takes to establish a custom, as well as the delicate question of the use of the imperfect tense. The matter can hardly be considered settled in a chapter's argument.

To the discussion of the legal proceedings Professor Husband applies a new and a praiseworthy method, because it is scientific and highly rational. He very properly discards at the outset any thought of explaining matters on the basis of Jewish law alone, or of Roman legal procedure as followed in the capital city, or of the codes compiled hundreds of years later, and bases his theories upon the criminal law of the Roman provinces, now known better than ever before through Egyptian papyri which have been available for the past fifteen years. This evidence of course applies directly to the province of

Egypt alone and can be used in the case of Palestine only by analogy. The author points out that in Egypt the governor (*praefectus*) possessed the sole power to decide criminal cases and actually did decide them when their importance warranted, delegating only the relatively unimportant ones to his subordinates; that the preliminary proceedings were held before the presidents (*strategoï*) of the districts (*nomoi*) and that the cases were prepared in their courts for the governor's inspection; and that the governor regularly went the circuit of the administrative centers of his province, holding assizes, a custom which forced him to dispose of a great many cases in a short time and necessitated in the provincial courts the adoption of a more expeditious, less cumbersome procedure than was the rule in Rome itself. With this as a fair sample of criminal procedure in Roman provinces, Professor Husband argues that the trial of Jesus before the Sanhedrin was in the nature of a grand jury hearing, for the purpose of bringing an indictment before Pilate, who alone could render a verdict, and that it was analogous to the preliminary proceedings before the Egyptian *strategoï*. This view of the matter relieves the critic of the necessity of charging the Sanhedrin with the most atrocious infractions of their own law and with a stupidity in the conduct of the whole case of which they would hardly be guilty, whatever their motives. Their "verdict," then, was not a verdict in the sense of a valid court decision, and I think Professor Husband is right in his contention that the Romans would never allow one of their own courts to be placed in the position of merely affirming the decision of a native provincial court and of pronouncing and executing the appropriate sentences. The only real trial of the case, he contends, was that held by Pilate. The accusation brought by the Sanhedrin was of an ecclesiastical nature, substantially one of "false prophecy" (a crime which lay within their competence), for they had decided that Jesus falsely claimed to be the Messiah. Pilate was naturally inclined to recognize the political implications of the Messiahship, and although he had to find Jesus technically guilty, he felt that he was not practically dangerous to Roman rule nor guilty of treasonable intent, and tried without success to induce the prosecutors to withdraw their suit before a verdict should have been pronounced.

This brief account of the argument of Professor Husband's book cannot do justice to the amount of labor he has expended upon the minor aspects of the case nor to the care he has taken to weigh every word of the sources. One feels that he has presented a strong argument tending to show that the prosecution of Jesus was legally conducted and in accordance with contemporary procedure, a result which may increase, rather than adversely modify, our confidence in the gospels as trustworthy records. His theory, in its broader aspect if not in every detail, will have to be taken into account by New Testament historians. A professed specialist, with more than a classicist's acquaintance among the intricacies of the synoptic problem and of late Greek idiom, would doubtless handle this material with more authority, but would most likely be lacking in Professor Husband's ability to deal with the general questions of Roman provincial administration. The present reviewer, however, believes that he should have stated definitely his own theory of the

relations between the Gospel sources, or else have supplied more specific references to the published views of modern investigators.

The book is typographically attractive, and the only misprint which forces itself upon the reader is "Why asketh thou?" (p. 103).

FRANK EGGLESTON ROBBINS.

THE DEPORTATION OF WOMEN AND GIRLS FROM LILLE. New York: George H. Doran Company. Pp. 81.

In April, 1916, some 25,000 French (the exact number is not known) were taken by the German military authorities from their homes at Roubaix, Tourcoing, and Lille, separated from their families, and compelled to do work of various sorts in the Departments of the Ardenne and Aisne. The people thus taken consisted not only of men up to the age of 55, but also of girls between 16 and 20 years of age and young women. The effect of this action upon the people of the occupied districts is well set forth in the ringing protest of the Bishop of Lille to General von Graevenitz: "The German officers who have been billeted for a long time in our homes know how deep in our hearts we of the North hold family affection and that it is sweetest thing in life to us. Thus, to dismember the family, by tearing youths and girls from their homes, is not war; it is for us torture and the worst of tortures—unlimited moral torture. The violation of family rights is doubled by a violation of the sacred demands of morality. Morality is exposed to perils, the mere idea of which revolts every honest man, from the promiscuity which inevitably accompanies removals *en masse*, involving the mixture of sexes, or, at all events, of persons of very unequal moral standing. Young girls of irreproachable life—who have never committed any worse offense than that of trying to pick up some bread or a few potatoes to feed a numerous family, and who have besides paid the light penalty for such trespass—have been carried off. Their mothers, who have watched so closely over them, and had no other joy than that of keeping their daughters beside them, in the absence of father and sons fighting or killed at the front—these mothers are now alone. They bring to me their despair and their anguish. I am speaking of what I have seen and heard."

This protest and likewise that of the Mayor of Lille were of no avail. The deportations were carried out with all the organized, efficient barbarity of which the German war machine is capable. The fact of deportation is admitted by the German government itself. That it was directly contrary to the Hague conventions cannot be denied. The present brief volume consists of transcripts of official documents, letters and depositions, which seem to establish beyond doubt the harshness and unnecessary cruelty of the procedure. The depositions which were made by refugees who succeeded in finding asylum in other parts of France, may not be correct in all details but the evidence collected comes from so many sources and it is so much to the same effect, that it carries conviction of its general truth. Had it been the intention of the German government to impugn the truth of these statements, it might have opened the whole matter to an impartial investigation. Such a

course has not been taken; nothing but a general denial has been entered. This is probably sufficient for any German.

The evidence shows that large parts of the civil population were taken from their homes indiscriminately at early hours in the morning and sent off to parts unknown. Troops with fixed bayonets barred the streets, and machine guns commanded the roads,—all this against unarmed, unresisting people. Those who were thus deported were compelled to do hard and often disgusting work, not infrequently of a military character; they were ill-fed, and constantly mistreated. Statements to this effect are all too numerous. Witness one deposition: "All we women were subjected to inspection every five days like women of the town. Those who did not accomplish their task (namely, sewing 25 sacks) were beaten by the Germans, especially with a cat-o'-nine-tails. * * * For the least thing the Germans used to insult and threaten us. * * * One girl * * * was beaten with the cat and had a jug of water poured over her head because she asked for something to eat. A certain A— * * * was so severely beaten that she was taken to the hospital, and we did not see her again." (Annexe 37.) This is but typical; in fact it is among the least harrowing. Not alone were these civilians forced to do hard labour, but they were employed as a shield by German troops advancing against the French. (Annexes 161-186). But no review can do justice to this book.

It presents a terrible picture; one, however, which we must perforce look at. If it be but the result of madness in a great nation, it should not lessen one whit our resolve to make an end of these things for all time. And it might be well for some pacifists to spell through, word by word, the painful story told in these moving documents.

WILLARD BARBOUR.

CASES ON THE LAW OF PROPERTY. Volume I. Personal Property, by Harry A. Bigelow, Professor of Law in the University of Chicago. American Case Book Series, William R. Vance, General Editor. St. Paul: West Publishing Company, 1917. Pp. xx, 404.

As the new case books on property have been designed primarily for the purpose of improving the methods of presentation of the subject, they must be judged mainly on their pedagogical merits. We are guaranteed excellence in this respect for this volume by the long experience of the editor in teaching the subject. He begins with distinctions between real and personal property and then gives a chapter on rights of action based on possession and ownership. Although the editor thinks that this chapter on forms of action may seem too long, most teachers will welcome the more extensive treatment, especially in those schools in which the systematic discussion of forms of action is not given until the second semester. In fact one must confess to some disappointment at not finding here a suggestion of the analogy of *detinue* in its primitive form to the old real action. This, however, would seem to be impractical by reason of the strict separation of personal property from real in this connection and the treatment of possession prior to ownership.

Possession is treated in the logical order beginning with finding and developing the subject through lien to the well defined *jus in rem* of the pledge. Ownership in like manner proceeds from mere taking of possession, through adverse possession, to the acquirement of title by accession, confusion, judgment and gift. Fixtures have been taken from their old position in real property and are given just after ownership. The volume closes with a chapter on emblements.

The book has what most teachers will consider decided improvements in editing; namely, omission of names and arguments of attorneys, and frequent elisions of matter in the opinions that does not help to bring out the principle of law involved in the cases. Such omissions are indicated by stars. The editor frequently rewrites the statements of facts. This matter and any other additions to the text of the decisions are enclosed in brackets.

Perhaps the most noticeable feature of the new editing is the departure from the chronological order in the printing of the cases and their presentation on some logical order of development in the several sub-topics. This saves the time of the student in working out the logic of the law and makes it easier to arrive at a clear statement of what the principle of law is, but some of us regret that it takes from both instructor and student the joy of discovery, particularly that wicked joy of depraved human nature in noting the blunders and vacillations of the courts in their progress toward the truth.

The presentation of the subject of possession before that of ownership also shows this swing from the historical to the logical method, but we have the assurance of the editor that this method of approach has been found preferable in his large experience in teaching the subject.

As evidence of the independent working over of all the cases by the editor it may be noted that only about one-fifth of the cases used in the old case books appear in the body of this volume and the new cases used indicate most careful discrimination on his part and a selection of those that have been practically tested and found to develop the principles in the best way.

Any criticism of the new method of presentation prior to a class room test of the volume is liable to dribble off into subjective "it seems to me" and "I think so." It is evident that the tendency of the best modern case books is toward this greater stress upon the systematic presentation in accordance with some logical principle of development. The present volume is a welcome addition to our instrumentalities for making the practical test of the efficiency of this method.

JOSEPH H. DRAKE.

HANDBOOK OF THE LAW OF TORTS. By H. Gerald Chapin, L.L.M., St. Paul: West Publishing Company, 1917. Pp. xiv, 695.

This book, one of the "Hornbook Series," with its accompanying case-book edited by the author, is of course intended primarily for student use. In schools using the case method these books obviously could not form the basis of the instruction; but in those schools using a combination of text and illustrative cases they will be found very useful. And though not designed particularly for the use of the practitioner, the book under review

will be found, because of its clear statement of principles, and well selected cited cases, indeed very helpful.

As an independent subject "Torts" is so new and the growth of the law in many of the topics included therein has been so rapid that text-books well done are welcome additions to the literature upon the subject. Professor Chapin has made a real contribution. Though lacking the charm of Mr. Salmond's delightful little book and the keen analysis of Sir Frederick Pollock's work, this book, it is believed, is entitled to be ranked with the very best of the short treatises on the law of torts.

The arrangement of topics is quite similar to that adopted in the standard books. This is, first, a consideration of the general principles of tort liability and of the defenses that are common throughout the field. Under this head is included very appropriately the matter of parties. There follows a discussion of the specific torts.

Not only are the familiar, landmark cases referred to and in many instances commented upon, but recent cases showing the development and trend of the law are intelligently selected from out of the mass of decisions and cited. Frequent reference is made to the worth while periodical literature.

RALPH W. AIGLER.

THE LAW OF EMINENT DOMAIN, by Philip Nichols. Albany, N. Y. Matthew Bender & Co., 1917. Pp. cclii, 1577.

The first edition of this work the author confined to the narrow field of the constitutional principles underlying the law of eminent domain, that is the taking of private property for a public use. After eight years he recognizes that these limits prevented the work from being of much practical value to the average lawyer dealing with condemnation cases who usually was most concerned with matters of procedure and compensation. Accordingly this second edition is enlarged to two volumes, with almost four times as much matter, and attempts to cover all phases of the law of eminent domain.

This is a field that has been well worked by other writers in recent years, but the excellence of the present work justifies its appearance notwithstanding. The presentation is clear, full and suggestive. While the author is inclined to conservatism and often deplures departures from the good old principles of the common law, he nevertheless recognizes that changes in the law are necessary because of social and industrial progress and resulting changes in the relations between the public and private owners of land. Though some of the text of the first edition appears with little change in the second (compare, for example, "What constitutes a taking," Sections 52 ff. of the first edition with Section 108 ff. in the second) yet the bulk of the text has been entirely rewritten or consists of additional matter not appearing at all in the first edition. Even where the text of the first edition is incorporated in the second it is usually amplified and extended to cover new ground. Five new chapters are added on procedure. The book in its present form will not only maintain the reputation of the first edition with the bench by which it has often been quoted, but will now be of immediate practical value to the lawyer in his practice.

EDWIN C. GODDARD.

THE LAW OF INTERSTATE COMMERCE AND ITS FEDERAL REGULATION, by Frederick N. Judson, of the St. Louis Bar. Chicago: T. H. Flood & Co., 1916. Pp. xxix, 1066.

In the third edition of this standard work on interstate commerce the author has shown fine restraint in that he has not greatly enlarged the book. The subject of carriers when Story wrote his classical text on Bailments and Carriers occupied but a few pages at the end of the book. A little later it became the subject of treatment in separate works, and so rapidly has the law and its applications increased that the one volume of Hutchinson on Carriers has in the last edition of that work expanded to four. The present author has taken out of the subject of carriers this sub-topic of interstate commerce which of itself makes a good-sized volume. With less restraint another writer might have made several volumes of this.

The third edition makes such statutory additions as the Clayton Act and the Federal Trade Commission Act and the Cummins Amendment to the Carmack Amendment of the Hepburn Act, but of course does not include the amendment to the Cummins Amendment, enacted in August, 1916, nor the Adamson Act earlier in the same year. It adds such important cases as *The American Express Company v. Croninger*, *George N. Pierce Company v. Wells Fargo & Company*, *Boston & Maine Railroad v. Hooker*, and the *Minnesota Rate Case*. The Interstate Commerce Act is printed with the use of italics so as to show clearly how this act has been built up by amendment and addition to its present form, especially by the acts of 1906, 1908, 1910, 1914 and 1915.

Like the previous editions, part two of this work, which is much the larger portion, differs from the usual law text-book, with the text matter exemplified by extensive citations. Instead our author gives the statutes *in extenso* and follows this with discussions of the few important cases construing the various sections, and his text in this part consists largely of such discussion, or else of direct quotations from the cases and the opinions of the Interstate Commerce Commission. In this way he has gathered together a large amount of valuable material and has relieved the lawyer of the necessity of eliminating from a great number of citations the many less important cases.

EDWIN C. GODDARD.

THE PRINCIPLES OF LEGAL LIABILITY FOR TRESPASSES AND INJURIES BY ANIMALS, by William Newby Robson, LL.D., Cambridge, at the University Press, 1915. Pp. xiv and 180.

This small work in Part I classifies animals as wild and domestic, for the determination of rights of property therein. The same classification is also a basis for determining liability for trespass. Wild animals include lions, tigers, bears, wolves, elephants, monkeys, rabbits, deer, pigeons, etc. Domestic includes all tame animals, such as cats, dogs, horses, cattle and others of like nature. Animals are, according to their propensities, naturally, of a ferocious or of a harmless disposition. The author suggests it would be well

to use "dangerous" and "harmless" instead of "wild" and "domestic." Courts take judicial notice that certain animals are dangerous, and others harmless. Many originally, naturally dangerous have acquired a harmless disposition by long domestication.

Part II consists of a series of propositions relating to the liability of the owner or keeper of animals for trespasses committed by them. These are printed in one size of type, with comment upon them in smaller type. Part III printed in the same way, gives rules relating to injuries to persons and to other animals, and to goods.

All of the propositions are supported by extensive quotations from and comment upon the English, Irish and Scotch cases. No reference is made to the American cases.

The book is a very handy and accurate reference to what has been said upon liability for injuries by animals, by the English, Scotch and Irish Courts. In many cases what has been decided by the American Courts, could have been referred to with advantage, upon matters discussed incidentally, but not decided by the cases reviewed.

H. L. WILGUS.

HUDDY ON AUTOMOBILES, 4th Edition, by Xenophon P. Huddy. Albany, N. Y. Matthew Bender & Company, 1916. Pp. xxxii, 576.

To one who conceives of law as particular rules of conduct which change, sooner or later, in correspondence to conventional ideas of right, an ideal text-book presents an analytical study of decisions in order, by inductive ascertainment of principles, to furnish a basis from which future decisions and changes of principle may be deduced. Anything which merely sets out the decisions without analytical correlation and comparison is only a more or less complete digest. If, however, one conceives of law as a science, perhaps all one can expect of a text-book is an exposition of its phenomena in reference to a particular phase. Mr. Huddy's book is of this latter type. It sets out an orderly arrangement of judicial decisions fixing the rights, duties and liabilities, of various persons concerned, arising from the operation of automobiles, and the employment of chauffeurs and garage men. One can not review the substance of the work since it merely compiles actual decisions. The compilation, however, appears to be well arranged, complete and exact. For the lawyer the book has the same advantage as any good digest classified according to objective circumstances of the cases. It has the defect that it does not digest cases involving the same principle but not directly concerned with automobiles. For the layman, who is naturally more concerned with the demonstrable past of the law than its possible remote future and with actual decisions upon particular facts, the book is undoubtedly of real value. In clear and positive form it states what courts have decided in a great variety of circumstances similar to that in which a motorist may find himself at any time. That the public considers it worth while is evidenced by the fact that this is the fourth edition.

JOHN B. WAYTE.

HANDBOOK OF THE LAW OF WILLS, by George E. Gardner, Professor of Law in the Boston University School of Law; Second Edition by Walter T. Dunmore, Professor of Law in the Western Reserve University Law School. St. Paul: West Publishing Co., 1916.

This book is a revision of the work of Professor Gardner, which was published in 1903. Professor Dunmore considered the scope of the original work so broad that it was unwise for him to venture on the treatment of topics not touched on in the original work; and so he has confined himself to occasional additions of matter under topics before treated, and to incorporating citation of the cases of importance touching the matter treated in the first edition but decided during the thirteen years that have elapsed since the first appeared. This book, as is well known, was prepared by Professor Gardner as a unit of and conforming to the plan of the Hornbook Series, the distinctive feature of which is a black-letter paragraph with appended exposition and comment, followed by another black-letter paragraph and further comment, etc. In his preface Professor Dunmore says, that while realizing the danger of general statements being misunderstood and leading to error, the original style has been retained, and he attempts to avoid error made by revision of the original paragraphs wherever he thought there was probability of error in the reader's understanding of the matter, by stating in the paragraphs in black-letter that the cases are in conflict in many instances in which this fact did not appear by the black-letter paragraphs in the former edition. Another distinctive feature added to this edition is printing in capitals the names of the cases cited that appear reported at large in Professor Dunmore's selected cases on the law of wills, whereby the student's attention is the more readily directed to those cases with which he is familiar or to which he has ready access. The fact that the reporter series, L. R. A., and Trinity series of reports are cited, also enables the reader quickly to select the cases in which he is likely to find review of authorities and the best discussion.

J. R. ROOD.

