

that such legislation has been passed, and such rules and regulations adopted. Time was when he was only an unheeded voice crying in the wilderness. Now, what he once scarcely dared to hope for (see old notes in Property 1) has become reality.⁴

In conclusion the author appraises what he terms the most difficult intellectual problem in the whole law of pledge, the separation of debt and security, involving cases where the pledgee wrongfully negotiates or assigns to a third party the right to receive payment of the debt due from the pledgor, and sells or repledges the security for the debt to a fourth person. The author attempts to solve these problems by an analysis of a series of hypothetical cases for the reason that "Anyone who steps into the authorities will flounder as in a bog" and "The wisest (and also the kindest) thing to do with respect to some decisions on this topic is not even to mention them."⁵

Professor Warren soundly concludes that stockbrokers who are acting as pledgees are subject to the long-established principles of law applicable to all pledgees and should be required to comply with these principles. In fact, it appears that if a difference exists between stockbrokers and other pledgees, it is that a stockbroker is also acting as agent for the customer, which subjects him to fiduciary obligations not applicable to an ordinary pledgee. It is strongly to be desired that the author's views prevail.

The issues discussed by Professor Warren invite attention to the important problems arising out of the use by stockbrokers in their own business of customers' free credit balances. The urgency of these problems is demonstrated by the fact that a recent Federal Reserve Bulletin⁶ indicates that at the end of August, 1941, the free credit balances of customers of member firms of the New York Stock Exchange amounted to 262 million dollars and at the same time such firms had as cash on hand and in banks only 189 million dollars.

This book is unique in that, while describing the law of pledge as conventional law books do, it is the first legal work that actually has a plot which absorbs the interest of the reader until the very climax, the destruction of Judge Cardozo's decision in *Wood v. Fisk*. Moreover, the book is written with vigor, freshness, indignation, and homeliness—traits regrettably not characteristic of most legal writings. Here is the "dry" law of pledge cast in the form of a crusading polemic which will not only enlighten the reader both as to the decisions in this field and Professor Warren's gusty reactions to them, but will also entertain and amuse him in the learning process. This work should become a handbook that will render valuable assistance to every lawyer with a case involving conversion, the law of personal property, or a procedural question requiring consideration of the forms of action respecting personal property.

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Digest of International Law. Vols. 1 and 2. By Green Haywood Hackworth.* Washington: United States Government Printing Office, 1940. Pp. ix, 803 and v, 829. \$2.00 and \$1.75.

These two volumes follow the plan of the *Digest of International Law* edited by John Bassett Moore and published in 1906. They contain extracts from diplomatic

⁴ P. 365.

⁵ P. 394.

⁶ October, 1941.

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correspondence, judicial decisions, text writers, and other sources of international law with explanatory material by the editor. The classification followed by Hackworth is about the same as that followed by Moore. Certain subjects such as "domicil," "conventional and diplomatic relations," and "intervention" are omitted, but material on these subjects is distributed among other sections. Hackworth's *Digest* begins where Moore's *Digest* left off and thus covers a period of about thirty-five years, but apparently it will be about as long as Moore's *Digest*, which covered a period of one hundred and twenty-five years. The first two volumes now published get very little further in the classification than did Moore's first two volumes.

One of the most significant statements in the work is the first sentence of the preface: "As early as 1877 the Department of State felt the need for a Digest of International Law in the conduct of its daily work." The result was Cadwalader's *Digest* (1877), followed by Wharton's *Digest* (1886) and Moore's *Digest* (1906); the last in eight volumes incorporated the material of its predecessors and superseded them.

In 1928 the historical adviser of the Department of State explained to a conference of teachers of international law and related subjects why there would never be a continuation of Moore's *Digest*. Such a publication, he said, made it too convenient for other governments to find precedents to use against the United States in current diplomatic controversies. It is a tribute to the vitality of international law and also to the reality of Secretary Hull's conviction that respect for that law must be reestablished, that in the midst of world war that earlier opinion of the Department of State should have been revised. The United States apparently wishes to abide by international law, and wishes it so strongly that it is ready to have its own precedents available to its opponents. It is ready to aid in the ascertainment of the law even when the application of law might interfere with its current policy.

It is not possible to compare Hackworth's *Digest* with Moore's *Digest* in detail within the limits of this review, though such a comparison would contribute to an understanding of the changes in international law during the past three dramatic decades.

One notable feature is the greatly increased quotation from the opinions of international tribunals, particularly of the Permanent Court of International Justice. Although the United States did not become a party to the statute of that court, it apparently recognizes the World Court's opinions as important sources of international law.

The section dealing with the nature and sources of international law gives more emphasis than did Moore's *Digest* to the significance of "general principles of law," "equity," "law of nature," and other such subjective sources in the development of international law. This less positivistic tone is perhaps a reflection of the revolutionary character of the period with which the volumes deal. Jurists, courts, and foreign offices were searching for fundamental principles instead of blindly following established custom.

A similar conclusion may be drawn from the section on recognition, a field in which international law becomes closely linked with world politics. The important documents are reproduced covering the recognition by the United States of fourteen new states, and of new governments in thirty-two states, as well as of many cases of belligerency. Some of this material may point to significant innovations in international law. While the policy followed for a time of not recognizing revolutionary governments has been in large measure abandoned, that of not recognizing new states or conditions

established in breach of international obligations is still followed. Although the United States during this period several times restated its traditional policy of recognizing *de facto* governments and states which gave evidence of permanency, popular support, and willingness to abide by international law, in practice it departed from this policy on many occasions. These new policies have made necessary in the *Digest* considerable sections on conditional recognition, acts falling short of recognition and effects of non-recognition.

Among other sections of political as well as juristic interest are those concerning arms embargoes and other sanctions, mandates, plebiscites and the doctrine of self-determination, opposition to conquest, title to arctic and antarctic regions, and efforts to extend the marginal seas beyond the three-mile limit. Some of these topics, though of great importance, are tucked away under other headings which figured in Moore's *Digest*. The material would doubtless have suggested a more extensive revision of Moore's classification though the convenience of preserving that classification, so far as possible, undoubtedly justifies Hackworth's decision.

The present work is scholarly and convenient to use. The material is indispensable to the international lawyer and to foreign office officials and will also be of value to diplomatic historians. The editor, who is at present Legal Adviser of the Department of State, is to be congratulated on carrying on the work in spare hours of a life well occupied with contemporary problems. It is to be hoped that the increasing gravity of the world crisis will not delay the production of the remaining volumes.

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Handbook of the Law of Torts. By William L. Prosser.* St. Paul: West Publishing Co., 1941. Pp. xiii, 1309. \$5.00.

The task of reviewing a textbook on torts is not an easy one. Professor Prosser's book is well over eleven hundred pages long; and this reviewer has deemed it impracticable, in view of other commitments on his time, to read the book from cover to cover. Instead of doing this I have looked it through very carefully and have read the parts dealing with subjects on which I have done a considerable amount of investigation and with respect to which I may be said to have more or less educated convictions. As a result of this, I have come to the conclusion that the book is an excellent, concise treatment of the subject of torts and I believe it to be the most useful and thorough compendium and panoramic work of its kind between two covers. At the risk of being thought to have made an invidious comparison, I cannot keep from openly judging it by the high standard already set by Professor Harper, whose book I have used with great appreciation as a necessary supplement to my casebook and classroom hours in teaching torts. While not belittling *Harper on Torts* in any way, I would like to suggest that Professor Prosser's treatment of the subject is considerably more catholic than Professor Harper's. The latter's established work, in my opinion, is inclined to be conventionalized and to reflect too obviously the *Restatement of Torts* as a standard and as a point of departure. Nor do I wish to belittle, in turn, the *Restatement*, which is a monumental tribute to the integrity and industry of its various reporters, chiefly Pro-

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