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Edward G. Hudon

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Lord DENNING, *Landmarks in the Law*, London, Butterworths, 1984, xvii, 374 pages. ISBN 0-406-17603-5.

Landmarks in the Law was written to satisfy Lord Denning's desire "to write just one more book". He tells us in his preface that, as he was casting about to decide what this "one more book" [1] might be about, he thought that he would like to write a play. He gave this idea up because he could not think of a plot. Next, he dallied with the idea of a novel. He gave this idea up also because, as he states it, "I could not invent the characters or situations".[2] So, preferring fact to fiction, he once more turned to the law.

Having decided that this "once more book" would be about the law, the next question was "what part of the law"?[3] He rejected the idea of a textbook or of a treatise on jurisprudence because, to use his own words, he "was never any good at things of that kind".[4] The outcome was *Landmarks of the Law*, a book about great cases of the past that have gone to make England's constitution.

The title of the book is very appropriate. All of the cases included in Lord Denning's "one more book" *are* landmark cases. They are cases that should be known to every student of the law or of history. Altogether too often, they are not. At best, many have but a nodding acquaintance, if any knowledge at all, of these cases which are likened to "lighthouses from which our forefathers have taken their bearings".[5]

The book is not a connected story with a central theme. It was not intended to be. Instead, it is a book — a "hotchpotch", Lord Denning calls it —[6] into which one can dip at will. One can start at almost any place in the book and find something interesting to read.

The cases included portray dramatic situations that involve characters that are real and scenes that are true. To add color to the cases, Lord Denning has added sketches and stories about those involved one way or another in the cases, as well as about the situations that the cases present. Sufficient background material is provided to give a clear understanding of what each case is all about.

With an eye for detail, Lord Denning tells us how many blows it took the executioner to chop off Sir Walter Raleigh's head,[7] and how many it took to chop off Sir Thomas More's.[8] We are also told that the former refused the benefit of a blindfold as he placed his head on the block,[9] and that the latter expressed concern about the unsafe scaffold which he had to mount to be executed.[10]

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1. P. v.
2. *Ibid.*
3. *Ibld.*
4. *Ibid.*
5. P. vi.
6. P. v.
7. Two blows were required (p. 14).
8. One blow was enough (p. 78).
9. P. 14.
10. P. 78.

With equal attention for detail, in the case of the trial of John Wilkes for having published a seditious libel, we are told that one of the journeymen printers arrested was cared for very well during his six-hour detention — that he was treated "with beef-steaks and beer".[11]

The cases are arranged under twelve different headings, depending on the subject-matter of each. First there is high treason, followed by torture and bribery, the Chancellor's foot, martyrdom, freedom of assembly, matrimonial affairs, freedom of the individual, international terrorism, general warrants, freedom of the press, persecution, and murder. Under the thirteenth heading, "My Most Important Case", Lord Denning discusses just that, what he considered to be the most important of his career. That is followed by an epilogue in which he discusses his library, cricket, a walk around, and his family. He concludes the book with the thoughts of St. Paul which he lists under "think on these things", and about which he expresses the hope that material will be found in the six books that he has written.

HIGH TREASON

Under High Treason, which is Part One of the book, there is included the trial of Sir Walter Raleigh, that of Sir Walter Casement during World War I, and that of William Joyce — "Lord Haw-Haw" — at the end of World War II. Each was tried for, and found guilty of, high treason, which is the most heinous offence known to English law. It is still punishable by death. Even in 1986, it is governed by a statute written in Norman French which was enacted in 1351, over 600 years ago.

Each of the three cases has its own unique question of law. In the first, the trial of Sir Walter Raleigh, the question was the uncorroborated evidence used against Raleigh, all of which was hearsay, rumor, and conjecture. Much of the evidence was that of a self-confessed accomplice. None of it was taken in Raleigh's presence, and he neither had the opportunity to cross-examine nor even see the witnesses.

The conduct of Raleigh's trial was such that it caused condemnation of the prosecutor, Sir Edward Coke, the Attorney General. Under today's rules of procedure, the evidence used against Raleigh would have been inadmissible and he might well have been found not guilty.

After he had been found guilty, Raleigh was not executed until fifteen years later — after he had been released from the Tower to lead an expedition to Guiana in search for gold. Unfortunately, the expedition failed. Raleigh's argument that his release to lead the expedition discharged him from the judgment brought against him was to no avail. He lost his head.

The point raised in the trial of Sir Roger Casement was that the act of treason with which he was charged had not been committed in England, but in Germany. An ardent Irish nationalist, at the start of World War I he made his way to Germany where he was given permission to visit prisoner of war

11. P. 263.

camps to induce Irish prisoners to join him and form an Irish Brigade to fight for the independence of Ireland. His defence was that the statute defining treason did not extend to conduct outside the realm. He argued that to come within the statute, conduct giving aid and comfort to the King's enemies had to be within the realm. The argument was rejected, and he was found guilty and hanged.

William Joyce's trial raised still a different point in defence. He was an American and, as such, owed no allegiance to the King. However, he held a British passport which he had obtained in 1933 and in which he had described himself as a British subject. The passport was renewed in 1938, and again in 1939, just before he left England for Germany where he worked for a German radio company, broadcasting propaganda in behalf of England's enemy. In 1945, after the end of the war, he was arrested in Germany, brought back to England, and charged with treason.

Though Joyce was an American, the British passport was said to give him rights, and to impose obligations on the sovereign. The passport entitled him to the protection in a foreign country that is extended to British subjects. By his own act he was said to have "maintained the bond which while he was within the realm bound him to his sovereign".[12] Joyce was found guilty of treason. His conviction was upheld at the highest level and he was hanged.

TORTURE AND BRIBERY

Part Two of Lord Denning's book relates to torture and bribery. Though extinct today in England, both once thrived there. The first, torture, was used to get a man to confess guilt; the second, bribery, was used to influence judges in their decisions.

Torture is illustrated by the account given of Sir Francis Bacon's torture of Edmund Peacham, a Puritan clergyman. Peacham's mistake was to draft a sermon exposing the misdeeds of the King and then placing it in a "lidless cask" where it was found by officers who searched his room. The sermon was neither delivered nor intended to be delivered.

When he was told of the sermon, the King feared that there was a conspiracy against him. Peacham was questioned, but would say nothing. After that, Bacon, then Attorney General, was consulted. Bacon advised the use of torture. Though this was forbidden by the common law, Bacon was of the opinion that its use was within the royal prerogative. The Privy Council was prevailed upon to allow the torture and a writ authorizing it was issued.

It is not known whether the torture administered was by the use of the "rack", the usual method, or by the use of Shevington's irons, a machine that compressed the body by bringing the head to the knees and forcing blood out through the nose and ears. At any rate, torture did not work and Peacham did not confess.

Next to be tried was to have each of the judges of the King's Bench approached singly and asked whether what Peacham had done amounted to

12. P. 26.

treason. All except Sir Edward Coke agreed that it was. Coke objected that the "auricular taking of opinions" was contrary to the custom of the realm.[13] Once he had received Bacon's report of the questioning of the judges, the King considered that there was plain proof that Peacham "intended to compass or imagine" the King's destruction.[14] This was enough to have Peacham indicted for high treason, tried, found guilty, and sentenced to death. However, Peacham died before the sentence could be carried out.

Bribery as it once prevailed in England is illustrated by Bacon's later conduct once he became Lord Chancellor. After a number of litigants complained, a committee of inquiry of the House of Commons found that Bacon had accepted bribes from those who appeared before him. He was charged with bribery and corruption by the House of Lords, removed from office and carried a prisoner to the Tower. He was soon released, but after that he is reported to have spent most of his time in his chambers in Gray's Inn, reduced in abundance "to so low an ebb, as to be denied beer to quench his thirst".[15]

But, as Lord Denning points out, judges had been taking bribes long before Bacon's time. Seventy years earlier it had been condemned as follows : "a princely kind of thieving [...] waged by the high, either to give sentence against the poor, or to put off the poor man's cause. This is the noble theft of princes and magistrates. They are bribe-takers. Nowadays they call them gentle rewards. Let them leave their colouring, and call them by their Christian name — bribes".[16]

THE CHANCELLOR'S FOOT

In Part Three of the book entitled "The Chancellor's Foot", there is an account of the rise and fall of three Lord Chancellors : Thomas Wolsey, Thomas More, and John Scott.

First, as to the phrase, "The Chancellor's foot". That is said to have been first used in 1617 bu John Selden as he wrote as follows of the office of Lord Chancellor in England :[17]

> Equity is a roguish thing; for law we have a measure to know what to trust to. Equity is according to the conscience of him who is Chancellor : as it is larger or narrower so is equity. Tis all one as if they should make the standard for the measure we call a foot to be the Chancellor's foot.

Or, as Lord Denning adds : "The standard measure of a 'foot' is certain. It is 12 inches. But the 'Chancellor's foot' [...] varies as much as the foot of one Lord Chancellor varies from that of his successor".[18]

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13. P. 38.
14. *Ibid.*
15. P. 49.
16. *Ibid.*
17. P. 57.
18. *Ibid.*

Thomas Wolsey and Thomas More were both great Lord Chancellors. "Beyond a doubt the two greatest of our Lord Chancellors", Lord Denning calls them. Though the former was the last ecclesiastic to serve as Lord Chancellor, and the latter the first lay Lord Chancellor, they both had one thing in common : both their downfalls were due to the charms of Anne Boleyn whom Henry VIII wanted to marry.

The Pope had appointed commissioners to examine the validity of the King's marriage to Katherine when he had been asked to declare that marriage invalid so that Henry could marry Anne. When these proceedings were delayed, Anne blamed Wolsey and got the King to get rid of him as Lord Chancellor. Wolsey was replaced by Thomas More. On his part, More refused to attend the Coronation of Anne Boleyn as Queen of England. Furthermore, after the *Act of Succession* was enacted by Parliament, More was ready to swear to the oath required that would have given succession to the throne to the child of Henry and Anne; he refused to subscribe to that part of the oath that made the King head of the Church of England. That cost him his head. He was arrested, confined to the Tower, tried for and convicted of high treason, then executed.

John Scott was anything but one of England's greatest Lord Chancellors. Yet, as Lord Eldon he served longer than any other Lord Chancellor before or since — from 1811 until 1827 when he resigned at age 76. It was written of him as Lord Chancellor :[19]

> Yet he not unfrequently expressed doubts — reserved to himself the opportunity for further consideration — took home the papers — never read them — promised judgment again and again — and for years never gave it — all the facts and the law connected with it having escaped from his memory.

MARTYRDOM

In his introduction to Part Four of the book, Lord Denning gives us an interesting definition of a martyr. He writes :[20]

> A true martyr is one who does not seek credit for himself. He suffers death or grievous pain because of the faith in which he believes. He is called upon to renounce it, but refuses to do so : and is punished for his refusal. Those who are of the same faith call him a martyr. Those who are of a different faith call him a heretic or misguided.

This definition of true martyrs serves as an introduction to an account of the Martyrs' Memorial and the Tolpuddle Martyrs. The first marked the site where Nicholas Ridley and Hugh Latimer were burnt alive in 1554 after they had been condemned for heresy for not accepting the doctrine of transubstantiation. The second, the Tolpuddle Martyrs, were six farm workers

19. CAMPBELL, *Lives of the Lord Chancellors*, v. VII, quoted by Lord DENNING, p. 84.
20. P. 89.

from a village called Tolpuddle, on a stream called the Piddle, who sought to induce farm workers from another village called Affpuddle, also on the Piddle, to form a trade union. This happened in 1833. The objective of the farm workers was to get a raise in wages — from nine to ten shillings a week.

The six Tolpuddle men induced five men from Affpuddle to join a newly-formed trade union. Membership meant a mystic initiation ceremony and an oath to secrecy. Though, as a result of statutes enacted in 1824 and 1825, it was no longer illegal to combine into a trade union to raise wages, there was still the *Mutiny Act* of 1797. That Act served as a basis for the conviction of the six Tolpuddle men for having administered unlawful oaths. The six were sentenced to be transported for seven years. Five were sent to Botany Bay, now Sidney, the sixth to Tasmania. However, there were such protests against the sentences and such a movement throughout England for their release, that after two years they were pardoned and returned to England.

FREEDOM OF ASSEMBLY

Part Five of the volume relates to Freedom of Assembly. Among others, here we find an account of the trials of William Penn and William Mead, both Quakers, who did not subscribe to the doctrine of the Church of England, and held religious meetings of their own.

On Sunday, August 14, 1670, at about 11 o'clock in the forenoon, Penn was preaching to 300 or 400 people gathered outside their meeting house that had been closed. Mead was standing nearby. Both were arrested and charged with unlawful assembly.

At the trial which took place on September 3, 1670, there was much to do about hats. Penn and Mead refused to remove their hats before the Court. When asked why, they said that they did not consider that a mark of respect. That provoked a fine of 40 marks for contempt of court.

At the end of the trial during which Penn and Mead quoted from Coke's *Institutes*, after the jury had deliberated for one-and-a-half hours, eight of the twelve jurors came down from the room where they had deliberated, but four remained in the room. That resulted in a fine of one mark on one Edward Bushnel, the leader of the four who had not come down. The jurors were sent back to deliberate further. After some time they came down and reported a verdict of "Guilty of speaking on Grace-church street".[21] Since this was not a verdict of "Guilty" or "Not Guilty", it was not accepted. They were sent back to deliberate further. After a half hour they returned a second verdict that found Mead not guilty and Penn "Guilty of speaking or preaching to an assembly, met together in Grace-church street, the 14th of August last, 1670".[22] Again the verdict was not accepted.

After having been threatened with being locked up without meat, drink, fire and tobacco, the jury was made to deliberate a third time. The third

21. P. 143.
22. P. 144.

verdict was to the same effect as the first and second, as was the fourth. Finally, after the jury had been made to deliberate a fifth time, a verdict of "Not Guilty" was returned for both Penn and Mead. But that was not the end of the affair. They were both fined 40 marks by the Recorder and imprisoned until Penn's father had paid the fines for both.

Ten years later, at age 38, Penn went to America to found Pennsylvania.

MATRIMONIAL AFFAIRS

In Part Six of the book entitled "Matrimonial Affairs", there is an account of *Queen Caroline*'s case. This involved George IV's efforts to rid himself of Caroline, his wife, whom he had married while still Prince of Wales.

It appears that George was quite a dissolute profligate spendthrift, as Lord Denning calls him. At 18 he had an affair with an actress who blackmailed him; at 19 he became involved with a Hanoverian officer's wife; at 22 he feel in love with a twice widowed women whom he married without the King's consent because, without marriage, she refused to have sexual relations with him; at 32 and completely insolvent, he married his cousin, the 20-year old Princess Caroline of Brunswick. The two spent only one night together from which a child was born exactly nine months later.

Separated from her husband because he would not live with her, the Princess drifted into bad society and was guilty of levity, indecorum, and perhaps adultery. When her husband became King upon the death of his father, he had the *Book of Common Prayer* changed to exclude a prayer for Queen Caroline. In Italy at the time, Caroline learned of this from a newspaper and hurridly returned to England.

Still determined to rid himself of his Queen, the King had a Bill introduced in Parliament to deprive the Queen of her title and dissolve the marriage. By special order, counsel were heard and witnesses examined. There followed a trial devoid of any element of fairness during which the Queen was refused particulars of the charges and places where she was supposed to have offended. She was refused permission to give evidence of her husband's conduct.

The outcome was a divided House of Lords. Half were willing to degrade her from her royal state and dignity, half were not willing to find her guilty of adultery when they knew that the King himself was guilty of adultery many times over. After a close vote against the bill, by motion for further consideration the bill was adjourned for six months, the equivalent of dismissal. In spite of this victory, the Queen's wish that she be crowned Queen at the coronation of the King was refused.

Lord Denning concludes his account of the matter with the statement : "He was King for ten years : and he never did any good".[23]

Also included in the part of the book on Matrimonial Affairs is an interesting little section on "Hotel bills".[24] In England, after 1923 a wife could

23. P. 184.
24. P. 191.

divorce her husband for adultery, just as the husband already could divorce his wife for adultery. This gave rise to the "hotel bill" cases. The husband would go to a hotel with a women not his wife and afterwards send his wife the hotel bill. From this, courts could infer adultery even though it might never have taken place. Lord Denning comments that while he was a divorce judge, "hotel bill" cases went through "on the nod".[25]

FREEDOM OF THE INDIVIDUAL

Part Seven of the book includes a section on slavery. Among the slavery cases, certainly the most celebrated is that of James Somerset, an African who was brought to Virginia on a slave ship and sold to one Charles Stewart. When Steward went to England in 1869, he took Somerset with him, intending to bring Somerset back to Virginia when he returned. However, two years later, while still in England with his master, Somerset escaped. After he had been recaptured and placed in irons on a ship bound for Jamaica where his master ordered that he be sold, the matter was brought before Lord Mansfield on a writ of habeas corpus.

Mansfield recognized that the contract for the sale of a slave is good. Nevertheless, as reported by Lord Campbell, Lord Mansfield came to the following eloquent conclusion :[26]

> Every person coming into England is entitled to the protection of our laws, whatever oppression he may heretofore have suffered and whatever the colour of his skin. The air of England is too pure for any slave to breathe. Let the black go free.

The official report of the case, which appears in 20 *State Trials* 1, does not give that eloquent a conclusion.[27] Nevertheless, as a result of *Somerset*'s case, between 14,000 and 15,000 slaves in England went free.

INTERNATIONAL TERRORISM

Part Eight of the book relates to "International Terrorism". Here, Lord Denning examines the exploits of Colonel Gadaffi and his so-called "student" supporters who went to England on student visas and enrolled in private educational establishments. He relates the April 17, 1984 incident when shots were fired from the Libyan People's Bureau in London, causing the death of one person and wounding twelve others.

The Bureau had been accorded diplomatic status. For that reason, the police did not enter the building, no one was arrested, and all of the people in the building were allowed to go free. Under police protection, all were permitted to board aircraft bound for Libya. Everybody, including Lord Denning, wondered why.

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25. *Ibid.*
26. P. 219.
27. *Ibid.*

GENERAL WARRANTS

The trial of John Wilkes, one of the cases that questioned the validity of general warrants, appears in Part Nine of the volume entitled "General Warrants".

In 1762, John Wilkes founded *The North Briton*, a weekly political newspaper that attacked the government of the day. In No. 45 that appeared on April 23, 1763, Wilkes heaped invective in his condemnation of the speech that the King made from the Throne at the opening of the new session of Parliament on April 19th. The speech was said to be without parallel in the annals of the country, as having sent a spirit of discord through the land that would never be extinguished but by the extinction of the ministers' power. Lament was expressed at having seen the honor of his majesty's crown "sunk even to prostitution".[28]

Not only did the Government become angry at this, but so also did the 25 year old King. After having been advised by the Law Officers that this was seditious libel, a general warrant was issued "to make strict and diligent search for the authors, printers, and publishers of a seditious and treasonable paper, intitled 'THE NORTH BRITON, NUMBER XLV, SATURDAY, APRIL 23, 1763'...".[29]

The warrant was used to search the premises of one Dryden Leach, a printer, where papers for the next issue of *The North Briton* were found. For that reason, Leach was arrested, as was one of his printers named Huckle. Huckle was released after six hours, but Leach was held for four days. It was that long before the Secretary of State could see him, decide that he did not print the offending issue of *The North Briton*, and release him.

John Wilkes was arrested on April 30, his premises were searched, and a warrant issued to have him committed to the Tower where he was held incommunicado over the weekend. On Monday, Wilkes was brought before the Court on a writ of habeas corpus. A motion for his release was made on the grounds that went to the sufficiency of the warrant, and that as a Member of Parliament he was free from arrest except in cases of treason, felony, and actual breach of the peace. As a result, he was set free.

In a spate of actions against the King's messengers, Leach recovered £400, Huckle £300, 15 others £200 each, and Wilkes £1,000.

Subsequently, Wilkes fled to France rather than remain in England where he would have lost his privilege from arrest for misdemeanors or debt once he was no longer a member of Parliament. While he was in France, an information was laid against him for having published a seditious and scandalous libel. He did not appear at his trial and therefore was found guilty and outlawed. Four years later Wilkes returned to England, was elected to Parliament, and the outlawry reversed on technical grounds. Nevertheless, Wilkes' conviction for publishing a seditious and scandalous libel was still valid. For that he was fined £500 and sentenced to ten months imprisonment which he served.

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28. P. 261.
29. P. 262.

FREEDOM OF THE PRESS

The celebrated trial of Henry Woodfall for seditious libel is found in Part Ten of Lord Denning's book under the heading "Freedom of the Press". Woodfall's offense consisted of being the author of letters signed *Junius* that were critical of the Government. The letters were published in the weekly *Public Advertiser* and other periodicals.

It was bad enough to be critical of the Government, but when, in December, 1769, Woodfall brought the King into it and reproached him for allowing himself to be misled by his ministers, that was too much. Informations for seditious libel were laid against Woodfall, and against a publisher and a bookseller.

At the trial which took place on June 13, 1770, Lord Mansfield charged the jury in the usual way, telling the jurors that the words in the information alleging intention, malice, sedition, etc., were mere formal words with which jurors were not to concern themselves. But apparently the jurors did concern themselves with these words. Instead of returning a verdict of Guilty or Not Guilty, they returned a verdict of "Guilty of printing and publishing only".[30] The "only" threw the whole thing up into the air. On November 20, in an elaborate judgment Mansfield decided that this word caused ambiguity and raised doubts about the verdict which made the court lean "in favour of a new trial".[31] But there never was a new trial since the prosecution decided not to go on with the case.

Judges continued to charge juries the way Lord Mansfield had in the trial of Henry Woodfall. That is, they continued until the *Fox Libel Act* of 1792 was enacted. That declared that in a trial for libel a jury could give a general verdict of Guilty or Not Guilty upon the whole matter put in issue; a jury could no longer be directed to find a defendant Guilty merely upon the proof of the publication of the paper charged to be a libel.

PERSECUTION

In Part Eleven of his book, Lord Denning delves into the matter of "Persecution". Here he discusses "The Jews in legend and literature", and "The Jews in England". He traces the status of Jews in England from the time of the Norman conquest to modern times. He comes to the conclusion that even today, "many are inclined to disparage the Jews, again with racial overtones".[32]

MURDER

Part Twelve of the book relates to "Murder".

Until 1969, in England the only sentence for murder was death. For that reason, in nearly every instance where one was accused of murder, the

30. P. 288.
31. P. 289.
32. P. 328.

defense sought to have it reduced to manslaughter. The outcome was a controversy over the state of mind. If one shot another intending to kill him, there was no problem. That was murder. However, if one hit another over the head with a hammer not intending to kill him, but only to hurt him, but he did — was that murder or manslaughter? Using this example to state the question, Lord Denning gives a series of cases to illustrate how the law seemed uncertain on the point.

MY MOST IMPORTANT CASE

In Part Thirteen of his book entitled "My Most Important Case", Lord Denning discusses the *Profumo affair* of 1963. This affair fed on rumor so much that it placed the Macmillan Government in jeopardy.

It all started with one Stephen Ward who picked up pretty young girls and procured them to be the mistresses of his influential friends. One of these girls was Christine Keeler. Miss Keeler had an affair with John Profumo, the Secretary of State of War, at the same time that she was friendly with one Captain Eugine Ivanov, a Russian diplomat. That raised the question of whether she was obtaining information from Profumo that she was passing on to Ivanov. Once the rumor mill started, it gained momentum until just about every ranking member of the Conservative Party was suspect.

As is usual in such situations, there was an inquiry. Lord Denning was in charge. Throughout it all, Christine Keeler stole the show. She was the leading lady — the central figure in the biggest sex scandal of the century. Indeed, her place in history was assured. Lord Denning assures us that due to his inquiry the rumors were put away, the ministers were cleared. The great merit of it all was, he writes, "Justice was done" [33] Interesting!

Lord Denning's collection of cases, past and present, ranges far and wide. He has presented them in an interesting manner. As he points out in his preface, "The law never stands still. It goes on apace". [34] He has done much toward giving us an account of what has gone on in the past, and he has brought us abreast of what is happening today. All that all of us need do now is keep up with the developments that take place in the future. It is true, as he points out, that we may have to run fast to keep up because of today's ever increasing pace, but he has given us the advantage of a good starting point.

Edward G. Hudon
Former Librarian, Supreme Court of the United States; former Professor of Law, Faculté de Droit, Université Laval; member of the bars of the Supreme Court of the United States, the District of Columbia, and the State of Maine

33. P. 365.
34. P. vi.