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Recent Cases

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to the essential requirement of a child's welfare. Let equity look to these things, and then determine whether or not prenuptial agreements ought to be enforced.

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RECENT CASES

CONFLICT OF LAWS—MARRIAGE AND DIVORCE—COURT MAY CHARGE FORMER HUSBAND'S ESTATE FOR WIFE'S MAINTENANCE IN SPITE OF EARLIER EX PARTE DECREE IN ANOTHER STATE ON HUSBAND'S SUIT FOR DIVORCE—Plaintiff and defendant were married in Connecticut in 1948. Shortly after the marriage, they set up domicile in California where they resided until 1952, at which time they separated. Defendant returned to Nevada where he had been previously domiciled and procured a decree of absolute divorce. This decree was *ex parte,* the plaintiff not making an appearance or answer. Ten months later, the plantiff, who had during this time taken up residence in New York, brought an action for separation and maintenance serving the defendant by publication. By order of the court, the defendant's assets in the State of New York were seized and placed in the hands of a receiver. The defendant appeared specially to challenge the jurisdiction of the court. Held: Although the court was obliged to give full faith and credit to the Nevada decree, it was unenforceable insofar as it attempted to determine the property rights of the wife. *Vanderbilt v. Vanderbilt,* 1 N.Y.2d 342, 135 N.E.2d 553 (1956), *cert. granted,* 352 U.S. 820 (1956).

It is well settled that a sister state can be required to give full faith and credit to an *ex parte* divorce decree obtained in another state so long as the party obtaining the divorce is properly a domiciliary of the state granting the divorce. *Williams v. North Carolina,* 317 U.S. 287 (1942); see *Gray v. Gray,* 320 Mich. 49, 30 N.W.2d 426 (1948), *Rice v. Rice,* 134 Conn. 440, 58 A.2d 523 (1948), *Marshall v. Marshall,* 69 Cal. App.2d 20, 157 P.2d 854 (1945), *Evans v. Evans,* 149 F.2d 831 (D.C. Cir. 1945), *cert. denied,* 326 U.S. 738 (1945), *Marchman v. Marchman,* 198 Ga. 739, 32 S.E.2d 790 (1945), *Koscove v. Koscove,* 113 Colo. 317, 156 P.2d 696 (1945). Whether this means that full faith and credit must be given to the foreign decree in its entirety or only to the extent that it adjudicates the marital res and marital status of the parties is the subject of much dispute. It has been argued by some that because of the holding in the *Pennoyer* case [*Pennoyer v. Neff,* 95 U.S. 714 (1877)], the wife may bring an action for maintenance or support when the divorce decree was obtained without personal service upon the wife. This reasoning has led the courts to apply the concept of "divisible divorce." See Morris, *Divisible Divorce,* 64 Harv. L. Rev. 1287 (1951).

The doctrine of "divisible divorce" was invoked by the Court in the *Estin* case [Estin v. Estin, 334 U.S. 541 (1948)] and applied to a factual situation much like the one in the instant case. An action had been brought by the wife for maintenance, and, subsequent to this, the husband obtained an *ex parte* divorce

in Nevada. The Court, holding full faith and credit must be given to the Nevada decree insofar as it adjudicated the marital res, still would not allow Nevada, in the absence of personal service upon the wife, to adjudicate property rights belonging to her. Though the *Estin* case can be distinguished from the instant case on the ground that the action for maintenance was brought prior to the obtaining of the divorce by the husband, the New York Court of Appeals felt that it gave sufficient support to their decision in the principal case.

The United States Supreme Court will have to decide whether the statute under which this action was brought is violative of the full faith and credit clause of the Constitution (U.S. CONST. art. IV, §1), and also whether there is a violation of the equal protection clause of the Fourteenth Amendment in that the statute denies to a non-resident husband the protection of the laws equal to that afforded to New York husbands. U.S. CONST. amend XIV, §1. The New York statute provides that in an action for divorce, separation, or annulment, where the court denies relief because of a finding that the marriage had been previously declared a nullity, in an action where the husband did not have jurisdiction over the person of the wife, the court may nevertheless render in the same action such judgment as justice may require for the maintenance of the wife. N.Y. CIV. PRAC. ACT § 1170-b.

It was the contention of Judge Fuld, in his dissent in the instant case, that the statute was meant to apply only when the facts were similar to those in the *Armstrong* case. *Armstrong v. Armstrong,* 350 U.S. 568 (1956). The Court in this case held that an *ex parte* decree in Florida did not adjudicate the wife's right to alimony and that Ohio could allow the wife alimony when it had personal service on both parties. The decree in the instant case, however, provided "they hereby are freed and released from the bonds of matrimony and all the duties and obligations thereof." *Vanderbilt v. Vanderbilt,* 1 N.Y.2d 342, 348, 135 N.E.2d 553,559 (1956). There can be no doubt that the Nevada court by this decree was attempting to cut off the right of the wife to alimony. See *Lynn v. Lynn,* 302 N.Y. 193, 97 N.E.2d 748 (1951). Whether they had the right to make such a decree is left to the United States Supreme Court to determine. If the Court adopts the reasoning of Mr. Justice Black, who wrote a concurring opinion in the *Armstrong* case, they will uphold the constitutionality of the statute. Mr. Justice Black stated, "We believe that Ohio was not compelled to give full faith and credit to the Florida decree denying alimony to Mrs. Armstrong. Our view is based on the absence of power in the Florida Court to render a personal judgment against Mrs. Armstrong depriving her of all right to alimony, although she was a non resident of Florida, had not been personally served with process in that state, and had not appeared as a party." *Armstrong v. Armstrong,* 350 U.S. 568, 576 (1956).

Alimony includes every provision in a judgment of divorce or separation made for the support and maintenance of the wife, and the fact that the right to alimony is considered a property right is well settled. *Estin v. Estin,* 334 U.S. 541 (1948); *May v. Anderson,* 345 U.S. 528 (1953). That such a right is not to be taken from the wife in the absence of personal service has been indicated by the Court. Mr. Justice Douglas, in a concurring opinion in the *Esenwein* case, stated, "It is one thing if the spouse from whom the decree of divorce is obtained appeared or is personally served. See Yarbarough v. Yarbarough, 290 U.S. 202; *Davis v. Davis,* 305 U.S. 32. But I am convinced that in the absence of an appearance or personal service the decree need not be given full faith and credit when it comes to maintenance or support of the other spouse or the children." *Esenwein v. Commonwealth,* 325 U. S. 279, 282 (1945).

The second objection to the New York statute, that it violated the equal protection clause of the Fourteenth Amendment, was disposed of in the instant case. The majority was of the opinion that the statute could be applied where the prior judgment was obtained in New York. They interpreted the statute as not attempting to draw any distinction between a divorce obtained in New York and one obtained elsewhere. A close reading of the statute would seem to support the conclusion of the court as to this point. It provides that the court may apply the statute when ". . . a divorce, annulment or judgment declaring the marriage a nullity had previously been granted to the husband in an action in which jurisdiction over the person of the wife was not obtained. . . ." N.Y. CIV. PRAC. ACT § 1170-b. In the absence of cases interpreting this statute not to apply to New York husbands, it would seem an unjust conclusion for the Supreme Court to so hold.

The outcome of the decision in the principal case will depend upon whether the Supreme Court follows the doctrine of "divisible divorce" as laid down in previous decisions or rejects this concept and overrules the long established principle of the *Pennoyer* case. *Pennoyer v. Neff*, 95 U.S. 714 (1877). The fact that this case is merely an extension of a doctrine already enunciated by the Court in previous decisions would lead one to believe that the Supreme Court will uphold the constitutionality of the statute by affirming the decision handed down by the New York Court of Appeals.

ROBERT J. PERRY

CRIMINAL LAW—PUBLICITY OF PROCEEDINGS—COURTROOM BARRED TO PUBLIC—During a murder trial, defendant moved to exclude the public from the courtroom, and the prosecution agreed. The trial court granted the motion on the ground that the defendant's emotional condition would prevent her from testifying freely on certain abnormal sexual practices and, therefore, deprive her of a fair trial. Petitioners were newspaper publishers and reporters who asked that the order of exclusion be set aside. Although there was no abstract or practical benefit to the petitioners, the court ruled on the case as a moot question of great public interest. Held: It was within the discretion of the court to exclude the public during the time defendant was on the stand, but, in the light of a statutory provision providing for open court, the trial judge's order was too broad. The exclusion should have been limited to the time during which the defendant testified. *Kirstowsky v. Superior Court*, 300 P.2d 163 (Cal. 1956).

The right of the accused to a public trial in a criminal case traditionally has been guaranteed in our English common law heritage, probably accompanying the ancient institution of trial by jury. Radin, *Right to a Public Trial*, 6 Temp. L.Q. 381-384 (1931). "The traditional Anglo-American distrust for secret trials has been variously ascribed to the notorious use of this practice by the Spanish Inquisition, to the excesses of the English Court of Star Chamber and to the French Monarchy's abuse of the lettre de cachet." *In Re Oliver*, 333 U.S. 257, 268-269 (1947). The right is universally recognized in this country. The Federal Constitution clearly provides that, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . ." U.S. CONST., Amend. VI. Today nearly every state by constitution, statute or judicial decision requires that criminal trials be open to the general public. Forty-one states have incorporated a constitutional guarantee to this effect; two states, Nevada and New York, so provide by statute; and the Maryland courts have settled the matter by judicial decision. *Dutton v.*

State, 123 Md. 373, 91 Atl. 417 (1914). Four states, Massachusetts, New Hampshire, Virginia, and Wyoming, do not have specific statutory or constitutional provisions but in the latter state it has been presumed that, since the public trial was a common law right and the courts have accordingly adopted the common law, it is as good a guarantee as if written. *State v. Holm,* 67 Wyo. 360, 224 P.2d 500 (1950).

The accepted view on the right to a public trial is said to be, "The requirement of a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions; and the requirement is fairly observed if, without partiality or favoritism, a reasonable proportion of the public is suffered to attend, notwithstanding that those persons whose presence could be of no service to the accused, are excluded altogether. COOLEY, CONSTITUTIONAL LIMITATIONS 647 (8th ed. 1927); see, *State v. Haskins,* 38 N.J. Super. 250, 118 A.2d 707 (1955).

While it is generally assumed that the benefit of a public trial is for the accused, some courts have taken the attitude, and with some merit, that "while public trial is *primarily* for the benefit of the accused, the situation likewise involves questions of public interest and concern." *State v. Keeler,* 52 Mont. 205, 156 Pac. 1080 (1916) (Emphasis added). It has been said that the right of the public to *attend* a criminal trial stems from the deep roots of the common law [*United Press Assoc. v. Valente,* 308 N.Y. 71, 123 N.E.2d 777 (1954) (Emphasis added)]; that the people are entitled to have the right to know what is being done in their courts [*State v. Hensley,* 75 Ohio St. 255, 79 N.E. 462 (1906)]; and that a public trial is one in which the public is free to attend even though certain classes have no interest whatsoever except to see that justice is attained. *Davis et al v. United States,* 247 Fed. 394 (8th Cir. 1917).

The concept of the right of the public is more in the line of theory than actual practice. The only real importance of the doctrine would appear to be that it acts as a limitation on the right of the accused to waive a public trial and as a salutary restraint on judicial abuse in the courtroom. *State v. Haskins,* 38 N.J. Super. 250, 118 A.2d 707 (1955). Ostensibly, the only real interest of the public is to see that justice is done. There are few cases on the subject. The writer has found only one case where an individual has sought admission to a courtroom. In that case it was ruled that a duly licensed and practicing attorney, who was employed to defend a client facing the same charge as the present accused, could not be excluded. *Beauchamp v. Cahill,* 297 Ky. 505, 180 S.W.2d 423 (1944). It would appear that an attorney has a personal or professional interest in the legal machinery of the courtroom.

Such circumstances as the instant case where the press has instituted an action are also exceedingly rare. Two cases, widely publicized, have recently considered the question. The two jurisdictions involved reached different conclusions as to the right of the general public, although both were interpreting very similar constitutional and statutory provisions. The New York court held that no individual member of the public, who is not a party to the case, has a cause of action to demand that a trial be public. *United Press Assoc. v. Valente,* 308 N.Y. 71, 123 N.E.2d 777 (1954); see 48 A.L.R.2d 1438-1439 (1956). The court remarked that the right belonged to the accused alone and can be exerted only by him. Similar exclusion to prevent the publication of salacious details has also been upheld. *Bloomer v. Bloomer,* 197 Wis. 140, 221 N.W. 734 (1928. Freedom of

the press is in no way abridged by an exclusionary ruling which denies the press the opportunity to see and hear what transpires in a court room [*In Re Mack,* 386 Pa. 251, 126 A2d 679 (1956)]; freedom of the press does not give a constitutionally protected right to gather news. *United Press Assoc. v. Valente,* 308 N.Y. 71, 123 N.E.2d 777 (1954).

In the second case, an Ohio court held that the right of public trial belongs to the public in general as well as to the accused and he cannot waive the public right. Members of the public have a cause of action to enforce this right against a judge who excludes them arbitrarily and unreasonably, even upon the motion of the defendant. *E. W. Scripps Co. v. Fulton,* 125 N.E.2d 896 (Ohio 1955). This interpretation of the problem is apparently based on the theory that a democratic society demands an informed public and that knowledge of what transpires in a courtroom should be transmitted to the public through the medium of the press. *Craig v. Harney,* 331 U.S. 367 (1947). Other courts are in accord with this reasoning. Thus, it has been held that the constitutional right to a public trial is abridged if the press is excluded. *In Re Hearings Concerning Canon 35,* 296 P.2d 465 (Colo. 1956). These cases seem to spell out the fact that irrespective of the publicity of the proceedings, which in some cases may be deplored by the trial judge, the court cannot enforce its notion of public decency by such exclusionary measures. *People v. Jelke,* 308 N.Y. 56, 123 N.E. 2d 769 (1954).

The diversity of opinion as to where the right to a public trial really resides, in the accused or in the public, is sharply pointed up by the conflicting views as to whether or not the defendant may waive his right of public trial. Quite a number of cases hold that the right of public trial is one in which the state has no special interest, and it has been found without question that the defendant may waive his right in this respect. Anno., 129 A.L.R. 574 (1940). Some cases find that the right of the accused to waive is not an absolute one [*State v. Lea,* 228 La. 736, 84 So.2d 173 (1955)] and that the defendant, in some instances, cannot waive the right of the public to have the trial open. *E. W. Scripps Co. v. Fulton,* 125 N.E.2d 896 (Ohio 1955). As for the actual waiver of the right, it is generally held that the defendant may waive his right expressly. *United States v. Sorrentino,* 175 F.2d 721 (3rd Cir. 1949), *cert. denied,* 338 U.S. 868 (1949). This may be done by himself [*Carter v. State,* 99 Miss. 435, 54 So. 734 (1911)] or by his counsel. *State v. Keeler,* 52 Mont. 205, 156 Pac. 1080 (1916). The accused's right may also be waived by failure to object to the court's exclusionary order. *United States v. Sorrentino,* 175 F.2d 721 (3rd Cir. 1949), *cert. denied,* 338 U.S. 868 (1949). But there are cases *contra* to be found on this point. *State v. Haskins,* 38 N.J. Super. 250, 118 A.2d 707 (1955). Furthermore, it has been held that the defendant's right to a public trial cannot be waived by his attorney who so stipulates without the knowledge of the defendant [*State v. Delzoppo,* 86 Ohio App. 381, 92 N.E. 462 (1906)]; and one court has claimed that the right cannot be waived by silence. *State v. Hensley,* 75 Ohio St. 255, 79 N.E. 462 (1906); see *Stewart v. State,* 18 Ala. App. 622, 93 So. 274 (1923), *State v. Marsh,* 126 Wash. 142, 217 Pac. 705,706 (1923), *Wade v. State,* 207 Ala.1, 92 So. 101 (1921). *But see* 6 WIGMORE, EVIDENCE § 1832 n. 1 (3rd ed. 1940). *Contra; E. W. Scripps Co v. Fulton,* 125 N.E.2d 777,781 (Ohio 1954), *Keddington v. State,* 19 Ariz. 457, 172 Pac. 273 (1918), *Benedict v. People,* 23 Colo. 126, 46 Pac. 637 (1896).

While the right of public trial exists, either in the accused or in the public, the courts are not in harmony as to what constitutes a public trial or to what degree the court may act in excluding spectators. Annot., 48 A.L.R.2d 1438 (1956).

It is generally agreed that some exclusionary power is vested in the sound discretion of the presiding judge. *State v. Clifford,* 162 Ohio St. 370, 123 N.E.2d 8 (1954), *cert. denied,* 349 U.S. 929 (1955). Many states by decision have sustained the inherent power of the courts to regulate the admission of the public to the courtroom while a trial is in progress so that such admissions will not interfere with the due administration of justice. *Bloomer v. Bloomer,* 197 Wis. 140, 221 N.W. 734 (1928). Other states have recognized this power by statute. *Reeves v. State,* 88 So.2d 560 (Ala. 1956). Generally speaking, the courts are agreed that youthful spectators may be excluded when the case involves indecent or immoral acts [*State ex rel Baker v. Utrect,* 221 Minn. 145, 21 N.W.2d 328 (1946), *cert. denied,* 327 U.S. 810 (1946)]; to enable an immature, embarrassed or emotionally disturbed witness to testify [*State v. Holm,* 67 Wyo. 360, 224 P.2d 560 (1950)]; where the courtroom is overcrowded in order to preserve healthful and sanitary conditions [*Neal v. State,* 86 Okla. Crim. 283, 192 P.2d 294 (1948)]; or where the court feels there is no necessity for the morbid curiosity of a prurient spectator.

Both state and federal courts have differed over what classes of spectators, if any, could properly be excluded from a criminal trial. 6 WIGMORE, EVIDENCE § 1835 (3rd ed. 1940). There are two viewpoints on the subject. One theory expresses the opinion that even though the case is of an indecent nature the constitutional guaranty stands as a mandate against exclusion of members of the public from the courtroom. *State v. Haskins,* 38 N.J. Super 250, 118 A2d 707 (1955). It has been recognized that some special necessity must exist before the right of the public may be restricted and it cannot be entirely denied. *People v. Byrnes,* 84 Cal. App.2d 72, 190 P.2d 290 (1948), *cert. denied,* 335 U.S. 847 (1948). A trial judge may for special causes exclude spectators when the conditions demand such action, but he cannot make the exclusion order extend any further than the special issues in the particular case warrant. A sweeping order will not be sustained. *Neal v. State,* 86 Okla. Crim. 283, 192 P.2d 294 (1948). It has been held that the exclusion of all persons, except the officers of the court and the defendant, was reversible error. *People v. Hartman,* 103 Cal. 242, 37 Pac. 153 (1894). Also, where the trial judge excluded every person except the jury for ten minutes, it was felt to be a denial of a fair and public trial [*Hogan v. State,* 86 S.W.2d 919 (Ark. 1935)]; nor were statutory requirements satisfied simply by allowing friends or relatives of the defendant's choosing to be present. *United States v. Kobi,* 172 F.2d 919 (3rd Cir. 1949). It has also been said that situations which will justify an exclusion of the entire public, even temporarily, are rare and the exclusion power should be exercised with extreme caution. *State ex rel Baker v. Utrect,* 21 N.W.2d 328 (Minn. 1946).

Other cases take a less rigorous position. As long as the trial was not secret, specific classes may be excluded. *Keddington v. State,* 19 Ariz. 457, 172 Pac. 273 (1948). It has also been held to be a public trial where just the witnesses, court officers, and all members of the bar were allowed to be present. *Regan v. United States,* 202 Fed. 488 (9th Cir. 1913). The presence of witnesses, defendant's relatives, and reporters has been held to constitute a public trial. *Benedict v. People,* 23 Colo. 126, 46 Pac. 637 (1896). Exclusion of women has been upheld [*State v. Croak,* 167 La. 92, 118 So. 703 (1928)]; and the exclusion of a ten year old witness for ten minutes due to his embarrassment has been sustained. *Moore v. State,* 151 Ga. 648, 108 S.E. 47 (1921).

It is submitted, therefore, that the principal case rests on solid reasoning. It is within the duty and sound discretion of the court to protect an emotionally

or embarrassed witness by excluding the public to enable her to testify freely. The fact that the defendant may waive the trial or make a motion to exclude the public does not *per se* give him the prerogative of public exclusion. The public has a valid interest to see that a fair and orderly system of justice is maintained.

While the cases reiterate the fact that the press has no greater right to be present at the trial than the general public, a large body of case law has been built up which indicates that a fourth estate has been created. This is an institution of special privilege and is accorded a most solicitous preference over the general class of the public in disseminating news. Publicity of the proceedings is calculated to secure the same advantages as would be obtained through personal attendance. It is true, however, that the press in the United States carries fewer legal proceedings than do their English bretheren. There are often fragmentary and misleading statements, especially in highly sensational criminal trials. The only answer appears to be that the court has the power to commit for contempt in order to discipline the press, but it has been consistently reluctant to do so in this country.

It is suggested then that there should be a balancing of interests. The preservation of the right to public trial is of prime importance both to the individual and to the community at large. Today there can be found little precedent which affirms a sweeping order of exclusion. The test should be whether or not the judicial power has been abused. The defendant only under extenuating circumstances should be able to waive his right but not to demand absolute exclusion of the public since that power lies only with the court. Finally it is offered that the court should recognize a special interest which the press carries and it should not be excluded unless absolutely necessary.

MORGAN D. DOWD

TRUSTS—LEASES BEYOND THE TERMS OF THE TRUST—In a proceeding by a bank as trustee under the last will and testament of decedent and as guardian of an incompetent who held an interest in the lease involved, the bank sought to extend the lease fifty years with an option until the year 2105. The district court authorized the bank to join in execution and delivery of the agreement. Appeal was taken by the guardian *ad litem* for ten minor contingent remaindermen under the trust. Held: Where circumstances show extended lease would be for the best interest of the trust estate and its beneficiaries, authority to extend the lease will be granted even though it prolongs the term beyond the known or probable termination of the trust. *In Re Menzel's Will,* 77 N.W.2d 833 (Minn. 1956).

The instant case appears to fall among those situations where long term leases of trust property were allowed because the court deemed such action to be beneficial to the estate. In an even stronger illustration of similar judicial discretionary power, a court has allowed the execution of a ninety-nine year lease as necessary to preserve the corpus of the trust even though the settlor specifically provided that no lease should extend for longer than ten years. In the course of the opinion, the court stated, ". . . business judgment of the donor was no doubt correct at the time, but as is so frequently true, it is not within the power and judgment of man to infallibly anticipate future events and direct which shall be the wiser course." *Marsh v. Reed,* 184 Ill. 263,267, 56 N.E. 306, 310 (1900). An extreme illustration of the same juristic process is provided by the *Denegre* case in which the court, determining that it was for the best interest of all concerned, permitted a ninety nine year lease of the trust property *when the trust was to terminate within the year. Denegre v. Walker,* 214 Ill. 113, 73 N.E. 409 (1905). In another case in which the court approved a ninety-nine year lease as a reason-

able exercise of the power of a trustee, it was noted that, ". . . the court must stand in place of the creator of the trust . . . and speak by his implied directions under new conditions." *Upham v. Plankinton,* 152 Wis. 275,281, 140 N.W. 5, 12 (1913). The usual rationale for permitting long term leases which exceed the probable duration of the trust is generally expressed in terms of necessity, and such necessity may arise for several reasons. Thus, ninety-nine year leases have been approved as necessary because of a changed characteristic in the neighborhood [*Packard v. Illinois Trust and Savings,* 261 Ill. 450, 104 N.E. 275 (1914)]; or because the lessee desired to erect a modern building. *Marshall's Trustee v. Marshall,* 225 Ky. 168, 7 S.W.2d 1062 (1928). Perhaps the most frequent situation which evokes such a judicial attitude arises when the property is leased for business purposes. In such a situation, a long term lease is frequently demanded and often regarded as necessary. *In re Clayton's Estate,* 259 P.2d 617 (1953), *Smith v. Widmann Hotel Co.,* 74 S.D. 118, 49 N.W.2d 301 (1951), *Lindenberger v. Kentucky Title Co.,* 270 Ky. 579, 110 S.W.2d 301 (1937), *Montgomery Ward and Co. v. Norton's Trustee,* 255 Ky. 244, 73 S.W.2d 41 (1934), *Campbell v. Kawananakoa,* 21 Hawaii 500 (1930), *Russell v. Russell,* 109 Conn. 187, 145 Atl. 648 (1929).

It is difficult to reconcile the preceding cases, and particularly the instant case, with the *Hubbell* case where the court postulated a few rules in regard to the leasing of trust property. Trustees should lease for reasonable terms to procure reasonable income from the property. These terms should not extend beyond the period of the trust except for a showing of reasonable necessity. Only upon a showing of such reasonable necessity will the trustees be authorized to bind the estate so as to deprive those ultimately entitled of the property itself, and, should a lease extend unreasonably beyond the life of the trust, the excess will be void. *In Re Hubbell Trust,* 135 Iowa 37, 113 N.W. 512 (1907). Many courts are in accord with the view expressed in the *Hubbell* case. Thus, the trustees of property were refused permission to execute a new lease for ninety-nine years when the court found no *imperative* need for placing such a lease on the property [*St. Louis Union Trust Co. v. Van Raalte,* 214 Mo. App. 172, 259 S.W. 1067 (1924)]; and leases extending beyond the life of the trust are frequently found void. *Grandy v. Robinson,* 180 Ore. 315, 175 P.2d 463 (1946), *City Bank Farmer's Trust Co.,* 263 N.Y. 292, 189 N.E. 222 (1934), *Sweeney v. Hagerstown Trust Co.,* 144 Md. 612, 125 Atl. 522 (1924).

Since the cases are in such a state of discord, and since the problem involves numerous conflicting interest, no flat statement can, or perhaps should be, laid down. Courts must be free to exercise their best judgment, but this discretion should be exercised with great caution. It has been well said that a ". . . trustee having a power to lease must exercise that power to lease reasonably, having regard to the rights of the beneficiaries and those ultimately entitled to the property." *Russell v. Russell,* 109 Conn. 187, 192, 145 Atl. 648, 654 (1929). The *Hubbell* case added the thought that, "It may be that the method proposed might produce a greater income from the realty, but it must be borne in mind that courts are more concerned in ascertaining the obligations of the trust and in seeing that these are fulfilled by the trustees than in speculating on future contingencies or in increasing the income of the cestuis que trust." *In Re Hubbell Trust,* 135 Iowa 37, 48, 113 N.W. 512, 523 (1907).

It is, therefore, submitted that the best interest of the trust estate, as mentioned in the instant case, should include a consideration of the passage of the property unincumbered to those entitled thereto at the termination of the trust.

Property burdened by such long term leases results in a purely nominal distribution of the corpus. The better rule would seem to be to limit such a lease to the known or probable duration of the trust unless a lease extending beyond its termination is absolutely necessary for the preservation of the corpus itself. In the instant case, no facts showed that the increased revenue was necessary to sustain the property, yet the court authorized a lease which may extend to the year 2105.

LEONARD E. MUDD

JOHN B. HAUSNER

BOOK REVIEW

FROM EVIDENCE TO PROOF BY MARSHALL HOUTS. Springfield, Ill.: Charles C. Thomas, 1956. Pp. xiv, 396. $7.50.

The past few years have brought an intense interest in "demonstrative evidence." Its psychologically strong effect in the courtroom has been so greatly publicized by a few outstanding personal injury attorneys who get enormous verdicts through its skillful use that its misuse by less skillful lawyers has created some serious problems of judicial administration. Scientific evidence, too (apart from traditional medical evidence) has come to play a prominent role in modern trial work, perhaps preponderantly in the criminal law field; yet lawyers and judges are much less aware of the many limitations on the extent, utility and reliability of existing scientific knowledge in many fields than of the almost routine, though sometimes erroneous or unwarranted, applications being made of it in our courtrooms. And better-informed teachers of Evidence have not been content to impart only the technical rules of admissibility and their development, but have been striving to convey to their students the insights which the behavioral sciences give into the reliability of various sorts of evidence, so that as lawyers they may help to achieve better evaluations by fact triers of the probative force of evidence, and thus sounder and juster results in trials.

All these matters are the subject of this provocative and important book. The author is a lawyer, former FBI and OSS man, and General Counsel of Erle Stanley Gardner's "Court of Last Resort," which has through painstaking investigation succeeded in clearing and freeing numbers of persons wrongly convicted of crime, and thus remedying some of our miscarriages of justice. He has also taught, with Mr. Gardner, special courses in California for law students, lawyers and judges in Proof and Investigation. He thus speaks from a rich background of training, study and experience, and of association with numerous qualified specialists, in the fields of which he treats. He writes in an animated, emphatic, almost shockingly unconventional style, which matches his unconventional arrangement of these diverse materials into brief, telling chapters around the central objective of bringing the truth to light more effectively in the courtroom. Much of what he has to teach us is unorthodox indeed and generally unknown, and should occasion re-thinking of many accustomed notions and new approaches to many problems of proof.