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The Principles of Judicial Proof or the Process of Proof

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THE PRINCIPLES OF JUDICIAL PROOF OR THE PROCESS OF PROOF. By John Henry Wigmore. Boston, Massachusetts: Little, Brown and Company. 2d ed. 1931. Pp. xix, 1056.

"There is, and there must be, a probative science—the principles of proof—independent of the artificial rules of procedure; hence, it can be and should be studied. This science, to be sure, may as yet be imperfectly formulated. But all the more need is there to begin in earnest to investigate and develop it." It is with this confession of faith that Dean Wigmore embarks upon the task of expounding the "principles of judicial proof as contained in logic, psychology and general experience and illustrated in judicial trials." It is apparent that he believes: (1) in the possibility of developing a *system* of proof based upon "the natural processes of the mind in dealing with evidential facts" and (2) in the necessity of developing such a system if evidence is to be weighed and understood by the trier of the facts, whether judge or jury. With the relaxation of our rules of admissibility he feels that a "scientific" system of proof will save American courts from the plight which he asserts exists in continental Europe due to the lack of any science of proof there.

What is the nature of this "science" and how is it to be developed? Dean Wigmore has taken one thousand fifty six pages to answer this question and a very stimulating answer it is. An adequate explanation of it cannot be given here but those who peruse these pages for themselves will agree that the distinguished author makes out a fair case for the existence of a probative science. Although he does not propound any "laws" of thought by which we may test the validity of our conclusions, what he does propose is a scheme which he suggests will aid the mind in analyzing and weighing a mixed mass of evidence, not by showing what conclusion ought to be drawn from a given set of facts, but by indicating the various conclusions which may be drawn and the mental processes upon which they are based. In other words, it is the purpose of this book to make us more conscious of the processes of thought by which we weigh and appraise evidence.

The general outline of the book remains the same as it was in the first edition. After a general description of the probative processes, the subjects of circumstantial evidence, testimonial evidence and autoptic proference (real evidence) are treated in order. The arrangement of the subdivisions under each subject is quite similar to that followed in the author's treatise on evidence.

* P. 3.

The last part of the book consists of a number of cases which are intended to serve as subject matter for analysis. The first four parts have been entirely rewritten in text form so as to make a continuous exposition of the system and in this respect the second edition is a decided improvement on the first. Numerous charts are included for the purpose of illustrating the use of the system as applied to a complicated set of facts but the reviewer must confess that on first examination they have appeared to him more confusing than illuminating.

Dean Wigmore is pioneering in a field which has received entirely too little attention. His book not only should be read but studied by all those interested in the problem of proof whether they be practitioners or scholars. However, it is doubtful whether the work can receive very wide use in the class room. In the hands of the author it undoubtedly would form the basis of a very valuable course but when used by others it might serve only to present material which could more profitably be studied in the court room.

—PAUL W. BRUTON.

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WHAT PRICE JURY TRIALS. By Irvin Stalmaster. Boston, Massachusetts. The Stratford Company. 1931. Pp. ii, 143.

In this small volume the author has set out to state a case. This time it is the jury that is on trial. The verdict sought is death—the complete abolition of the jury in civil cases. Although, as the author points out, limitations have been imposed upon the right to jury trial in a number of states, one is moved to suggest that his case will out-last that prize litigation, *Jarndyce v. Jarndyce*, before the cause is won. The attitude of the legal profession and the inertia of the public mind are obstacles of no small moment. They stand squarely in his path.

The thesis is developed in simple non-technical language with the expressed purpose of presentation to all interested minds. Thus it has what might seem to a lawyer an elementary though rather refreshing flavor.

Turning to the substance of the argument the reader is likely to find nothing unusual, certainly so if he has had sufficient interest in the topic in the past to subject it to reflection and discussion. The merit of the book lies in the force of its presenta-