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Recent Legal Literature

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HINTS FOR FORENSIC PRACTICE. A Monograph on Certain Rules appertaining to the Subject of Judicial Proof. By Theodore F. C. Demarest, A.B., A.M., L.L.B., New York: The Banks Law Publishing Company, 1905, pp. x, 123.

The author of this little monograph has very successfully attempted an exposition of the legal principles underlying the decisions of the courts upon the use of the objections to evidence as "incompetent, irrelevant and immaterial," and of those principles which should control in determining whether evidence once received shall be considered though not objected to when received.

The frequent use of the objection that evidence is "incompetent, irrelevant and immaterial," or that it is subject to one or more of these objections, has not escaped the attention of any one with much experience in the trial court. And yet there have been few indeed who have had any very definite idea of what the objection really was in legal effect.

The author has certainly accomplished a real service in pointing out quite clearly that the objection "incompetent," upon both principle and authority, means nothing more than would be meant by a general objection that the evidence is inadmissible; and in showing just what is the legal signification and effect of an objection to evidence as "irrelevant" or as "immaterial," and that the use of both is tautology.

He is not less helpful in his discussion of the position of that party to litigation who has permitted the reception of evidence without objection, when it was apparent at the time it was offered that it was subject to objection. The author's caustic comment upon the attempt to distinguish between a motion to strike out and one for instruction to disregard is well deserved.

The book can be read at a single sitting, and while printed in large type on good paper and being well bound in cloth it is inexpensive, and the trial lawyer can ill afford to pass it by without reading. V. H. LANE.

AN ESSAY ON THE PRINCIPLES OF CIRCUMSTANTIAL EVIDENCE, Illustrated by Numerous Cases. By William Wills, Esq., Fifth Edition by Sir Alfred Wills, Knt. Wills' American Notes, by George E. Beers and Arthur L. Corbin, of the Faculty of the Yale Law School. Boston: The Boston Book Company, 1905, pp. xiii, 448.

The first edition of this work was published in England in 1838, and its value is attested in the demand which brought out the fifth English edition in 1902, which was put out under the editorship of Sir Alfred Wills, Knt., one of England's judges of the High Court of Justice and son of William Wills, Esq., the author. The present American edition is the first authorized edition published in this country, though Judge Wills makes some very caustic comments in the preface to the last English edition in criticism of

the wholesale appropriation by one Arthur P. Will of the matter of the edition of 1862 for a *Treatise on the Law of Circumstantial Evidence*, published in Philadelphia in 1896. This appropriation furnishes an occasion for some rather severe criticism of our copyright laws which make possible such depredation.

The present edition is a reprint of the text of the last English edition with American notes by Professors Beers and Corbin.

The text is limited in its discussion to circumstantial evidence as applicable to issues in criminal cases, and the plan of treatment is to present a statement of the rules controlling some special phase of circumstantial evidence, developed through a brief discussion of the particular matter, and to illustrate with typical cases.

This treatment of a particular phase is followed immediately with the "American Notes." Their chapters deal with other divisions of the subject and are likewise followed by the discussion of the American editors.

In the wealth of new material at the lawyer's hand in this general field of the law of evidence this little book is not to be overlooked, particularly by those interested in the administration of the criminal law.

The work is scholarly and the selection of cases most excellent. Mr. Beers through his special work in the field of evidence is well qualified for its editorship, and the profession will find the book what it purports to be—a convenient and accurate exposition upon principle and authority of this interesting branch of the law.

V. H. LANE.

PROCEDURE; ITS THEORY AND PRACTICE. By William T. Hughes, LL.B., author of Technology of Law and of the Law of Contracts, Chicago: Callaghan & Co., 1905. Two volumes, pp. x, 1289.

A work like this one, evidently undertaken and written with a conscientious ambition to classify and co-ordinate the myriad phases of modern law, and unquestionably showing a vast amount of labor and research, should not be carelessly criticised by a hasty reviewer. The author, in his preface, appeals to the obvious difficulties met with in its preparation, as considerations sufficient to protect it against a hurried and harsh criticism. A reviewer can seldom do an author full justice. But since reviews must be written, the writers of them may at least try to bear in mind that it is easier to find defects in a book than to write a better one.

However, after every allowance is made, this treatise, we are obliged to confess, is somewhat puzzling. It is built upon the very excellent basic theorem, that, inasmuch as procedure runs through all the substantive branches, it may be considered the unifying principle upon which a well co-ordinated system of law can be constructed. This, it seems to us, is sound doctrine. Procedure is thoroughly fundamental. About it as an axis, the substantive titles revolve. Ignorance of procedure is ignorance of the law. No man can be a sound and safe lawyer who has not made procedure the touchstone of his legal studies.

To reconstruct the body of the law upon this principle seems to us a most

illuminating and fruitful ideal. P rhaps it is the difficulty of the task that has deterred modern writers from attempting it in a systematic and thorough way. Greenleaf, in the second and third volumes of his work on Evidence, showed in a limited fashion how practicable the method was. But a thoroughgoing resort to it, as a method capable of universal application, has not heretofore been made, so far as we are aware.

The writer of the work under review has attempted just this,—the task of stating the principles of substantive law in terms of procedure. But while he has not attained a conspicuous success, he has not altogether failed. His views are frequently very suggestive. But they are not uniformly so. There is a lack of logical connection, a prevalence of generalities, a looseness in the use of words, and a vague and bewildering confusion of legal concepts, that leaves the reader in a very unsettled state of mind. This is perhaps particularly noticeable in volume one, which deals with general principles. One is continually meeting elaborate literary metaphors, sometimes showing a tendency to become mixed, there is a painful abundance of Latin phrases and names of cases, and a wearisome recurrence of "dominating principles," "high policies," "great cases," "fundamental conceptions," "the mandatory record" and a score of other high sounding phrases which are used with annoying looseness and frequency.

Here is a typical example of the author's disconnected style of treatment. "Jurisdiction is conferred by (1) organic law; and (2) by the pleadings defining and describing a certain specific and particular thing, which limits the court's powers. Certainty is essential throughout the law. Every contract must be certain. The statute of frauds demands certainty; a bill or note must be certain; the description of a patent must be certain. Certainty is essential for protection, education, and moral advancement, and is most important throughout procedure. Pleadings must be certain for reasons found in *Davis* v. *Burns, Cromwell* v. *County of Sac,* L. C. 26; *Russell* v. *Place,* and for reasons found in *Furman* v. *Nichols* and *Freeman* v. *Howe,* L. C. 287. All pleadings are governed by the rule requiring essentiality, strict definition and description. A pleading can be too broad or in the alternative. It thus appears that one specific, certain thing must be enumerated and defined in order that jurisdiction can be exercised with certainty. Consequently, if one is making objections and taking exceptions, he must be specific —not too broad, nor too narrow, nor in the alternative. The importance of certainty is shown in multitudes of cases." [P. 275.]

The work is grounded upon Latin maxims and leading cases. But surely there is no such potent influence, as the author supposes, in either one of them. A maxim is useful enough, but it is not an Alladin's lamp which needs only to be touched to bring all the genii of the law to one's feet. So with leading cases.

The second volume seems to us the more valuable, and it represents much more labor. It is an index-digest of the law. Maxims, legal terms and leading cases are arranged, alphabetically, with copious annotations under each. This portion of the work is comparatively free from the pseudo-philosophic reflections which render the first volume so vague and unsatis-

factory as a legal treatise. It is really a valuable digest, but rather, we should say, from its suggestiveness than from its accuracy of classification. It is something of a hotch-potch, but one is continually running upon analogies and new points of view that are undoubtedly of solid value. One who should use this digest in connection with his professional work would be sure that he would not be allowed to stay in the rut which conventional classification has worn. The author says on page 841, "It is instructive to observe how the rules and the requirements of one subject act and re-act on another." To illustrate this important principle is one of the conspicuous purposes of his work, and this purpose he has admirably accomplished.

EDSON R. SUNDERLAND.

LINCOLN THE LAWYER. By Frederick Trevor Hill of the New York Bar. Published in the *Century Magazine*. Chapters X-XIV, February issue; chapters XV-XVIII, March issue.

In these chapters Mr. Hill depicts Lincoln's career from the time when he was managing clerk—and a most unmethodical one—till he became the recognized leader of the local bar. He was evidently during the early years of his practice not much of a "man of business," but his "mind was orderly, though his methods were not. He neglected details because his thought, which was 'as direct as light,' passed instantly to the vital spot, and all else seemed unimportant." For many years Lincoln appears to have been not only indifferent to the commercial advantages of the legal profession, but somewhat negligent of his clients' best interests in his failure to prepare properly for the trial of causes entrusted to him. His association with Judge Logan undoubtedly induced him to form more studious habits, and the partnership of Logan & Lincoln acquired an extensive practice.

Mr. Hill gives an interesting account of riding the circuit, the hardships and pleasures of which formed an important part of Lincoln's life for several years. Lincoln's wit often lessened the hardships of his friends on the circuit, but, as one of his surviving contemporaries says, "Nothing can be more absurd than to picture Lincoln as a combination of buffoon and drummer. He was frequently the life of our little company, keeping us good-natured, making us see the funny side of things, and generally entertaining us; but to create the impression that the circuit was a circus, of which Lincoln was the clown, is ridiculous. He was a lawyer engaged in serious and dignified work, and a man who felt his responsibility keenly."

We believe Mr. Hill is giving us a true picture of the man about whom so much that is unreliable has been written. One cannot read these papers without having an increased admiration and respect for Lincoln's ability, integrity and modesty.