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The Science of Judicial Proof

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of the "long and short haul clause", and indeed of the Interstate Commerce Act, itself. Similarly, after reading the rather complicated story of the railroad rebates on oil shipments, one can understand the imperative necessity for ultimate passage of the Elkins Act. In truth, this work is strikingly practical, for it teaches not only the rules which governed industrial expansion in the past, but indicates the mode for their application in solving future problems of the state.

The style of the author is both clear and interesting. Unquestionably the book will be of service in tracing the growth of legal doctrine, in the legal history of the state that is yet to be written. Dr. Summers is to be commended for a most satisfactory performance of his undertaking.

The volume has an excellent index.

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A treatise by Wigmore dealing with the subject of evidence requires no introduction. In The Science of Judicial Proof, the author considers, not the trial rules governing the admissibility of the evidence, but the greater and far more important field dealing with the valuation of the proof. Our formal legal studies deal largely with the former and the latter is left to the realm of chance, to be acquired, if at all, through experience. After the evidence is admitted, what use will be made of it? Will it be effective in proving the point at issue, will it contribute to such proof or will it be successfully refuted by the opponent? The trial rules are necessary because it is impossible for the court in the limited time at its disposal, and because of the untrained personnel of the tribunal (untrained in the various scientific fields) and the diversity of interest of the litigants, to consider all the evidence, evaluate each item and eventually reach a conclusion. Much of the evidence which a scientist would consider and place some value upon (even though a negative one) must be omitted from the trial.
The tribunal considers the various items of evidence which have been admitted and upon its appraisal of the evidence as a whole decides the question at issue. It is this question of evaluation which Mr. Wigmore considers and the present volume is well worth the time of any one engaged in trial work. The author assumes there is a science of proof although he admits it is as yet imperfectly formed. The present work does much, however, to clarify and limit the boundaries of this science. As in other sciences there is something to be proved (probandum) and certain evidentiary facts (factum probans) offered to prove it. Do these facts prove the probandum? This is what the jury must decide, and is what the trial attorney must consider at all steps throughout the trial. Is the evidentiary fact in reality a fact, or is it merely a probandum, a proposition to be proved by other facts? The evidentiary fact may be either testimonial, circumstantial or autoptic preference, the latter being the presentation of the fact itself to the inspection of the court, such as the weapon with which a murder was committed. Aside from the presentation of the fact in court all evidence involves an inference from some fact, which inference relates to some fact to be proved. For example, A testifies to seeing B at a certain time and place, therefore we are to assume that B was present at that time and place; or establishing B’s presence at that time and place we are to assume that B committed a certain act.

In legal trials however, the situations are never as simple as those outlined above. Each fact presented tending to prove the main issue may, and very likely does, become a proposition to be proved. In the final analysis some will be proved and others will not. What weight should be given those proved as against those not proved and the proved propositions of the opponent? *The Science of Judicial Proof* builds up methods of clarifying and focusing attention upon the various steps of proof whether it be the offering of the fact tending to prove the specific conclusion, the attempt to explain away or to deny the fact by the opponent or to offer a new fact to offset or disprove the probandum of the opponent. To trace through complicated situations the author presents a key or code whereby different situations are set forth graphically and the entire case may be encompassed in a relatively small space and with each issue and fact clearly defined and their interrelations noted. Such a system requires time to master but
its use would bring facility and a person doing trial work should find such a methodical approach an improvement over other less formal methods.

In addition to laying the foundation for a science of judicial proof, the book also cites numerous cases, showing the application of the principles laid down. Many of the newer methods of criminal investigation are illustrated and in order to discuss them it has been necessary to describe the scientific principles upon which these methods are based. This has been done in an interesting manner and one readily understandable by a person not familiar with these methods. Thus, the principles of optics are set forth and then applied to the microscope, the spectroscope is explained, radio, the telephone and telegraph, the dictaphone, etc., all have their uses in trials and are explained here together with cases involving their use. The question of personal identification involves the use of the Bertillon system, finger-printing, etc. The use of bloodgroups throws some light upon the paternity of the child. The principles of permutation and combinations and the theory of probability are set forth briefly and clearly and their meaning demonstrated by examples taken from legal situations. In short, the book is a compilation of information relating to what the author aptly calls the science of proof and is a veritable mine of interesting and useful information, both factual and theoretical, of use to the practicing attorney, the district attorney or the judge.

It is not intended to convey the impression that Mr. Wigmore has originated the science of judicial proof. As he himself points out there have been other works dealing with the subject but generally only in a fragmentary manner. The author feels, however, that this book is the first attempt in English since Jeremy Bentham (1748-1832) to distinguish between the principles of proof and admissibility of evidence. He points out that the rules governing the admissibility of evidence are apt to lessen in importance in the next period of our development and that the change, when it comes, will emphasize the importance of proof. When the shift comes, will we find ourselves in the position of continental Europe in the early 1800's when the numerical system of legal proof was abolished and no system was set up to take its place?

Those familiar with the earlier editions of this book may be interested in the new material and arrangement of this revised edition. Rapid development in the various scientific fields necessi-
tated the inclusion of new material dealing with such subjects as blood-grouping, principles of permutations and combinations, theory of probability, new situations arising from the use of scientific apparatus or processes such as the microscope, spectroscope, X-ray, radio-telephony, telautograph, the establishment of identity of individuals through body marks and measurements and of miscellaneous objects such as wire, knives, timber, etc. New material has also been added dealing with the use of models, maps, charts, photographs, X-ray pictures and motion pictures. Over one hundred new cases and anecdotes and twenty new text passages are quoted. In order to make room for the additional material and also for many of the anecdotes originally printed in the first edition but omitted from the second edition approximately 260 pages of verbatim trial reports included in the second edition are omitted from the present edition.

The present edition is a comprehensive treatment of the science of proof as it is to-day. The processes dealing with proof outlined by the author and the application of logic, psychology, and the various physical sciences are grouped together and the interrelation of the various parts are clearly shown.

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