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Selected Cases on the Law of Evidence

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This is the finest casebook that the reviewer has ever "examined". That word is used advisedly, for no pretence is made that he has read more than a few of the cases and materials. And this, incidentally, entails some self-control, for the matter is so well-chosen and interestingly presented that it is difficult to lay aside the book. In the preface, Dean Wigmore states that his object has been to bring the previous edition down to date. About 200 cases and extracts have been substituted, representing decisions since 1913, illustrative of rules of evidence and transactions most commonly found in contemporary practice. In addition, the foot-notes contain full references to leading articles in the law reviews. There is a most comprehensive table of contents, covering thirty pages, in which the style of each case is given, followed by a parenthetical note as to its nature, e. g., "Olmstead v. U. S. (violation of the Fourth Amendment; telephone wire-tapping)". The appendices contain (1) an elaborate program for a law-school course in Evidence; (2) the principal rules of evidence summarized in questions for review, e. g., "May a prior conviction of crime be shown to discredit a witness; and if so, by what means may it be evidenced?"; (3) borderland topics for search in unfamiliar fields, e. g., "Was the trial of John Brown, the antislavery leader, fairly conducted, from the point of view of evidence?"; (4) problems from examination papers; (5) problems from bench and bar, consisting of 104 questions which have been submitted to the editor for solution; and (6) trial practice in presenting evidence, consisting of specific matters to be proved, one student offering the proposed evidence and another opposing its introduction.

From the point of view of the law-teacher, this work would seem to be the fulfillment of wishes hardly to be dreamt of. Nothing, apparently, has been omitted, with the possible exception of some handy gadget for grading examination papers, although it is doubtful whether the time-honored device (rumored to exist) of throwing them down the stair-case can be improved upon. But on these points, the reviewer expresses no opinion. Nevertheless, every student of the law, be he teacher, practitioner or judge, must acknowledge admiration and respect for the learned editor. The amount of research, thought and physical labor which must
have been necessary for the production of this and other works of Dean Wigmore is simply appalling: ample to have developed round-shoulders and quarrelsomeness in any dozen professors of law.

From the point of view of the reviewer, as a practicing lawyer, the book serves as a memorandum to refresh recollection upon nice points which, presumably, were once learned, but gradually forgotten. It may also perform the limited service of supplying primary authorities, as distinguished from text-books and encyclopedias, in those communities in which the lawyer does not have access to a complete library. But on the whole, reliance will probably be placed most heavily upon the editor’s treatise, rather than upon the casebook.

Notwithstanding the years of labor devoted to the subject, Dean Wigmore is able to state calmly in his preface that:

"Credible report has it that few practitioners to-day (in the large cities at least) know well the Trial Rules of Evidence . . . Hence, the subject of Evidence need not in a law school curriculum play the essential part that was formerly its due."

Only a great and courageous man could have said that. It is as if Shakespeare had remarked that after all the writing of dramas and sonnets was not to be taken seriously. Or, as (James) Branch Cabell concluded: that fiddling with pens and ink was no fit occupation for a grown man.

The reviewer is inclined to disagree with Dean Wigmore’s conclusion. It is submitted that Evidence, as a law-school course, will continue to be an essential part of the training. That is, unless we prefer to turn out philosophical jurists rather than lawyers. There is a tendency to-day to minimize the importance of the advocate. There is the desire among lawyers to "specialize". Bright young men acquire a ready cynicism toward the general practitioner, the jack of all branches and master of none, but who somehow has continued to render a necessary service to the community, with indifferent financial reward. But this, of course, is not the place to discuss whether or no the practice of law is, or ought to be, a business rather than a profession.

The general public, too, perhaps believes that unplumbed depths of wisdom and success are connoted by such shibboleths as "corporation lawyer"; i.e., a gentleman in a wing collar, sitting in an office of fabulous splendor and who, by a wave of the hand keeps his clients out of court. But, however greatly the pub-
lie may be mislead by Hollywood conceptions of the good, the true and the beautiful, it is also accustomed to believe that a lawyer is a man who can try a jury case. And that one who cannot or has not, is, after all, not a completely trained lawyer. It is submitted that there is an unique benefit derived by the nation from the proper trial of cases in court: the average man sees the law in action; he may participate as a party or as a juror. If the trial is competently conducted, the dignity of the court should be recognized and respect for the law should be increased. For it is not so important that justice be administered as that it should seem to be so. Only thus can the losing party be reconciled to the result. This is not to say, of course, that litigation should be encouraged as a kind of public instruction in government. But what litigation there is should be competently conducted. This can only be made possible for the future by thorough instruction in the materials presented by books such as Dean Wigmore’s.

In conclusion, it should be added that the book contains several indices. Which fact being admitted, the reviewer can find no possible ground of destructive criticism.

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