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It has been said that a mule has neither "pride of ancestry nor hope of posterity." Josh Billings remarked that if he had to preach the funeral of a mule he would stand at his head. Men love and pet horses, dogs, cats, and lambs. These domestic animal have found their way in literature. Shakespeare said of a horse:

"I will not change my horse with any that treads but on four pasterns; when I bestride him I soar, I am a hawk; he trots the air; the earth sings when he touches it."

But nobody loves or pets a mule. No poet has ever penned a sonnet or an ode to him, and no prose writer has ever paid a tribute to his good qualities. He is kicked and cuffed, and beaten and sworn at, and frequently underfed and forced to work under extremely adverse conditions; yet, withal, he has a grim endurance and a stubborn courage which survives his misfortunes and enables him to do a large portion of the world's rough work. It is a matter of common knowledge among men who know mules and deal with them that they are uncertain, moody, and morose. This particular mule, charged with injuring plaintiff, was referred to in the oral argument as an "unsafe mule" and as an "unsafe tool and appliance." The idealist may dream of the day when the "world is safe for democracy," but this event will perhaps arrive long before the world will be safe from the heels of a mule.

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## BOOK REVIEWS

*The Missouri Crime Survey*, Conducted by the Missouri Association for Criminal Justice; Edited by Raymond Moley; The Macmillan Company, New York, 1926. Pp. xxvi, 587.

No state, contemplating changes in its methods of administering criminal justice, can afford to overlook the surveys which have been recently made in a few of the states and the results which they have produced. Outstanding among these is the report of the survey just completed in the state of Missouri. Nothing so comprehensive has yet been done in any other jurisdiction. The nearest approach is the now famous Cleveland Survey, but there the governmental unit studied was a single city and the picture of administration there portrayed is necessarily limited to the big city situation. For a state such as North Carolina, the report of the Missouri Survey is particularly suggestive.

Attention should first be called to the way in which the survey was organized and carried out. The first inspiration for the work came properly enough from the Bar Association. Next an organization was formed called the Missouri Association for Criminal Justice, including in its membership representatives of a large number of "civic, commercial, fraternal and other important organizations." The Association acted through the agency of a board of thirty directors. An executive committee of ten, a survey committee of seven and staff of five members carried on the work. The participation of such prominent persons as Herbert S. Hadley, former governor of the state, who acted as chairman of the executive committee; Guy C. Thompson, President of the Missouri Bar Association, who acted as chairman of the survey committee; J. P. McBaine, Dean of the State University Law School; and others, indicates the interest which was developed in the work.

The report consists of eleven parts each written by a selected author, and based upon a comprehensive study of conditions in the state. The whole report is edited by Raymond Moley, of the School of Public Law and Jurisprudence of Columbia University, who as Director of the Cleveland Foundation was largely responsible for the success of the crime survey made in that city.

The phase of the administration of criminal justice relating to detection and apprehension of criminals is considered in Parts I and II of the report. Part I entitled "The Metropolitan Police System" is by Bruce Smith of the National Institute of Public Administration, and author of a recently published book, "The State Police." Part II entitled "The Sheriff and the Coroner" is by Professor Moley. The contrast presented by these two studies is striking, revealing as it does the hopeless inadequacy of rural police protection. Mr. Smith's recommendations relate to an organization which has at least a substantial foundation, weak as it may be in administration and method. Professor Moley's study indicates the necessity for a complete reorganization and the adoption of a more modern system.

The second phase of administration, namely the preparation of the case for trial and its progress through the courts is covered by Parts III to VIII inclusive. Part III has been written by Arthur V. Lashly, a St. Louis lawyer, formerly a prosecuting attorney in St. Louis County. It is entitled "Preparation and Presentation of the State's Case." The author has written with an understanding of the strengths and weaknesses of the present procedure which could

hardly have been expected of any one who had not actually served as a prosecutor.

Part IV entitled "Judicial Administration" is the joint product of Mr. Lashly and J. Hugo Grimm, formerly Judge of the Circuit Court of St. Louis. It deals with the trial process and with judicial paroles. Part V is a scientific piece of work done by Professor Moley and entitled "Bail Bonds." Here is a splendid picture of one of the weakest links in the chain of procedure. Part VI is an interesting study made by Judge Grimm entitled "Ten Years of Supreme Court Decisions," which indicates that the Judges of the Supreme Court are to a large degree blameless for such mal-administration of criminal justice as now exists. The popular pastime of the magazine writers in pointing the finger of criticism in this direction is based upon a misconception of present day conditions. Part VII entitled "A Statistical Interpretation of the Criminal Process" is the work of C. E. Gehlke, of the Department of Sociology, of Western Reserve University, and formerly statistician of the Cleveland Foundation. Here again the report reaches a very high standard. The function of this chapter is to appraise the work of those engaged in the administration of criminal justice. In the form of tables, charts and graphs, interpreted by appropriate text, we find here a very usable "summarization of the important facts" revealed by the 10,500 cases studied by the survey staff. Part VIII is a report written by Chancellor Herbert S. Hadley, entitled "Necessary Changes in Criminal Procedure." The author served as a prosecuting attorney and as an attorney-general prior to his term as governor, and during the past two years has been Chairman of the Committee on Criminal Procedure of the National Crime Commission. Here again we have a report which comes out of a long experience with the administration of the criminal law as it actually happens rather than as it is described in the books. Jesse W. Barrett, another former attorney-general, also participated in the writing of this chapter.

Part IX is a study of record systems in the various offices. It is suggestive of changes which might be used to simplify procedure. J. E. Boggs, formerly President of the Missouri Circuit Clerk's Association, and William C. Jamison, Secretary of the Survey Committee are the authors. Part X entitled "Mental Disorder, Crime and the Law" is by M. A. Bliss, M. D., a St. Louis psychiatrist. The title is indicative of its contents.

Part XI, again, is an important contribution to research upon

this subject. Its title is "Pardons, Paroles and Commutation." Its author is Professor A. F. Kuhlman, of the Department of Sociology of the University of Missouri. The subject is one of vital importance. Much criticism has been directed at those officers in whose hands these important functions are placed. Professor Kuhlman's study indicates the abuses which may be practiced, and suggests ways and means for saving and improving the system of rehabilitating human derelicts.

It is to be regretted that lack of finances made it impossible for the Association to study other vitally important phases of the subject, such as the cause of crime, juvenile delinquency, the organization of courts, the jury system, and the relation of the press to the administration of criminal justice. It is to be hoped that the other states may eventually do all and more than Missouri has done.

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JUSTIN MILLER.

*Commentaries on the Law of Evidence.* Burr W. Jones. Second Edition by James M. Henderson. Bancroft-Whitney Company. San Francisco. 1926. 6 vols. Pp. lxxix, 5719.

Legal textbooks today fall into four groups: (1) Elementary handbooks, (2) monographs upon narrow topics, (3) extending statements of the existing rules of a subject with the aim chiefly of collecting and arranging in encyclopedic fashion all of the pertinent decisions, and (4) systematic, scientific treatises wherein the rules of a subject are stated in the light of their history and purpose, and where the collection of the decisions is a subordinate aim. A successful work of the last type frequently effects a reshaping of the law of the particular subject, and such textbooks are a principal factor in legal evolution. At least twice the law of evidence has thus been recast, i.e., by Greenleaf and later by Wigmore.

Apparently Judge Jones, the author of this treatise in its original form, never set himself to this larger task of remolding the material in the law of Evidence into a new form, though his career as a practitioner, University teacher of the law of Evidence and Supreme Court judge in Wisconsin might have well furnished the equipment for such an undertaking. But beginning with his first edition of this work in 1896 in three small volumes he produced a sound conservative book of the third type, that is, a collection and arrangement for the practitioner of the results of the decided cases. It has since

appeared as a one-volume work,<sup>1</sup> and it has likewise continued to appear in the multiple volume form under the title of "Commentaries," of which the present treatise is the last edition.

Wigmore's great work is indispensable to any lawyer who feels that membership in a learned profession makes it incumbent upon him to know something of the history and underlying philosophy of the subject of Evidence, as well as the more practical craftsmanship of the subject. Even from the view of mere craftsmanship Wigmore is probably still indispensable, for no doubt the working rules of Evidence have taken more impress from Wigmore than from any decisions of any American court. But the predominant aim of the busy practitioner is usually the search for the decisions in point, and for this purpose the present work is undoubtedly the most complete single source book. Rough estimates from sample pages of the Table of cases of each work indicate that Wigmore cites about 50,000 cases, the present work about 80,000. Wigmore's text runs to 5325 pages, Jones to 5719. On the other hand, Jones attempts no collection of statutes, which Wigmore gathers exhaustively, and Jones' citations of cases are seldom accompanied by the terse but specific references to the facts of the case which characterize Wigmore's notes. The present work, unlike Wigmore's, is limited to a consideration of the rules of Evidence as applied to civil cases.

Qualitatively, this is an accurate and workmanlike encyclopedia of Evidence. One can certainly come nearer to finding all the cases on a given point here than from any other single source, and the result of the decisions will be found summarized in the text in a lucid paraphrase of the opinion. The fairly servile following of the traditional terminology of the subject has the merit of making the work more accessible to the practitioner who has never, for the good of his soul, absorded such Wigmorean terms as "viatorial privilege" and "partial integration of jural acts." The index, which is the essential "open sesame" to such a work as this, is likewise exceedingly full, well devised, and helpful. It is apparent that the saying of space in this, one of the world's largest legal text-books, was not an object,—and consequently one wonders why it was not thought worth while to enrich the notes with references to the leading law review articles. The excellent L. R. A. and A. L. R. annotations and a very few

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<sup>1</sup> The last edition of the one-volume work is Jones on *Evidence, Civil Cases*, 3rd edition (1924), revised and enlarged by Dean William Carey Jones. Bancroft-Whitney Company.

older law review articles are referred to, but the work of such men as Bohlen, Hinton and Morgan is ignored, though the Supreme Court of the United States does not hesitate to cite such articles. The lack is particularly noticeable in the discussion of matters which are still in the fluid stage, such as the chapter on illegally secured evidence. One sees signs that the policy of publishers is likely to undergo a change in this respect.

This book fulfills its modest purpose of mirroring the state of the Anglo-American decisions on evidence in civil cases better than any other similar work. Any lawyer who aspires to collect a first-rate library on Evidence will face the necessity of purchasing this expensive set.

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*The Trial of Jesus.* George W. Thompson. Bobbs-Merrill Co. Indianapolis. 1927. Pp. 176.

In this little volume which is announced on the fly-leaf as being "A Judicial Review of the Law and the Facts of the World's Most Tragic Court Room Trial," Professor Thompson has told the story of the arraignment and trial of Jesus in a manner that cannot fail to interest anyone who is concerned with the events leading up to, and the legal aspects of, that trial. Briefly, but without excluding any of the necessary facts of the story, the book gives the rules of the Jewish and Roman law which are applicable to the case. Perhaps a few more citations would have been welcome, or, rather, the few general citations made should have been more specific. The author, after saying that this presentation might be likened to a lawyer's brief on appeal, states that the Jewish substantive law applicable to the case may be found in the Pentateuch, and that the record of the arrest, trial, conviction and execution of Jesus can be found in the Four Gospels. The sections of the "statutes" applicable are not given, although a splendid summary of the law in point is set forth.

1 In addition to stating the law applicable to the trial, the author explains the diverse religious and political views held by the different classes of the Jews—the Pharisees, Saducees and Herodians—and how the personal feelings generated by these differing views were laid aside in a common conspiracy against the teacher who

threatened their established order. There is also depicted the arraignment before the Great Sanhedrin, the Jewish high court, and how the judges prostituted principles to prejudice to accomplish their desire to rid themselves of the accused. Lastly is shown the trial before Pilate, in which case the enlightened Roman procedure in criminal trials was nullified by the wavering and vacillating politician who sat on the bench.

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S. E. VEST.

*The Negotiable Instruments Law Annotated.* By Joseph Doddridge Brannan. Fourth Edition, by Zechariah Chafee, Jr. The W. H. Anderson Company. Cincinnati. 1926. Pp. clxvii, 1041.

A word, though belated, may not be amiss about this important and useful work. This edition of our oldest and most significant Uniform Law (if we leave out of account such loosely copied models as the Statute of Frauds and Lord Campbell's Act) is all that an annotated statute should be. It consists, *inter alia*, of a Table of Cases, lists of adopting states and territories (only Porto Rico and the Canal Zone remain without the fold), with dates of adoption; tables of sections which have been locally amended (North Carolina has changed fifteen of the sections); tables of corresponding sections of the law in the various states, which elicit the regret that the uniform numbering of sections has been abandoned in so many states, North Carolina among them; the Act, with annotations; the English Bill of Exchange Act, so far as not adopted in our Uniform Law; and a real index. The annotations under each section seem to cover all the pertinent decisions on bills and notes, including even those which do not cite the Act, rendered since its passage, and the more significant of these cases are abstracted, and the trend of the holdings is stated, and where a conflict appears the reasons *pro* and *con* are discussed. Law review articles are freely cited. Any investigation of a point in the law of bills and notes could best be begun with this volume. Some day, it is to be hoped, the necessarily scattered and repetitious treatment of the subject which is furnished by this sort of commentary will be supplemented by an ordered treatise. No more incisive mind nor more trenchant pen could be summoned to that task than those of Professor Chafee, the Editor of the present work.

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*Preparation and Construction of Wills:* Clarence M. Lewis:  
Albany, N. Y. Matthew Bender & Co., Inc. 1926. Pp. viii, 1115.

I have found this an interesting, instructive and helpful book. To a lawyer engaged in active practice it should prove even more so than to a teacher or student, and yet, if properly used, it will save the latter a great deal of labor. By using only clauses of wills instead of repeating the entire form, and giving abstracts of cases instead of either a mere reference or a complete report the author has presented much useful material in short compass. A lawyer who undertakes to frame or draw a will has as his traditional tools such things as text-books and statutes stating the applicable principles and rules, and form books and precedents giving examples of the types of clauses he desires to use. The present work is an ingenious and highly practical combination of the two. It consists of such chapters as the following: Schedule of Information for Preparation of Will, Record of Check Sheet, Short Form of Will, Forms of Clauses in Wills, Introductory Clause of Will; and a discussion of the different possible clauses of a will, such as Revocation, Payment of Debts, Funeral and Administration Expenses, Authority to Continue Investments, Appointment of Executors, Bond Not Required, Power of Sale, Tax-Free Legacies, Advance of Principal by Trustees, Posthumous Children, Bequest in Lieu of Dower, Provision Against Contest, Advancements, Specific Bequests, Residuary Clause, Concurrent Death Clause, Dividends Clause, Sinking Fund Clause, Cancellation of Debts, Authority to Distribute in Kind, Authority to Settle Claims, Authority to Vote Stock, Account of Partnership, Annuity, Conditions in Restraint of Marriage, Trust, Life Estate with Right to Use Corpus, Precatory Devise or Bequest, Authority to Continue Business, Legacy to Executors in Lieu of Commissions, Devise of Real Estate, Limitation of Liability of Executors, Appointment of Testamentary Guardian, Declaration of Holding Property of Other Persons, Bequest for Maintenance of Cemetery Plot, Residuary Clause, Life Estate with Power of Appointment, Directions as to Burial, Devise of Residence, Authority in Regard to Investments, Power to Enter Reorganizations, Partial Invalidity, Signature, and Attestation.

In addition the complete wills of several prominent men are published, including the wills of Benjamin Altman, James Gordon Bennett, Henry P. Davidson, William G. Rockefeller, Alfred G.

Vanderbilt, Artemas Ward, Russell Sage, Theodore Roosevelt, Woodrow Wilson, Warren G. Harding and William Andrews Clark.

On the whole, this book should prove to be a decidedly helpful addition to any law library and well worth the price.

But there is some room for improvement, and I suggest the following, hoping that some day a second addition will appear:

(a) The list of case books on wills should include Costigan's and Warren's.

(b) The citation of law review articles and notes is very helpful, but it could be made more complete by reference to the Index to Legal Periodicals.<sup>1</sup>

(c) On p. 20, in citing the case of *Owens v. Owens* (1888) 100 N. C. 240, attention should have been called to fact that for about thirty-five years this rule has been different in the jurisdiction where the case was decided, due to a legislative enactment resulting from the decision.

(d) There are some typographical errors: p. 435, "leasing issue" for "leaving issue"; p. 27, "overworked" for "overlooked" and "lex rea sitae" for "lex rei sitae."

(e) Cases are unnecessarily stated twice under the same heading. See *Allen v. Allen* on p. 192 and p. 203. Also compare pp. 347 and 377, pp. 371 and 375. Also the notes on pp. 23 and 49 might be put together.

Examples of value to the local practitioner are found in the references to *Ginn v. Edmundson*<sup>2</sup> cited as contra to the general doctrine discussed in 32 Harv. L. Rev. 296 and *R. I. Hospital Trust Co. v. Doughton*<sup>3</sup> cited as contra to doctrine referred to in 38 Harv. L. Rev. 809. Attention should be called to the fact that this latter case has been overruled by the United States Supreme Court.<sup>4</sup>

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<sup>1</sup> Perhaps I am prejudiced because the author omitted my article on "Attestation in the Presence of the Testator," 2 Va. L. Rev. 403.

<sup>2</sup> 173 N. C. 85, 91 S. E. 696. See Lewis on *Wills*, pp. 124-5.

<sup>3</sup> (1924) 187 N. C. 263, 121 S. E. 741.

<sup>4</sup> *Trust Co. v. Doughton* (1926) 46 Sup. Ct. 256, and comment in 4 N. C. L. Rev. 92.