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Book Reviews

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The judicial system ought not to be subject to such hazards. It ought to stand on its own merits without regard to political faction.

With the prestige of the Superior Court bench threatened by competing interests, there comes the tendency to abolish rotation as a means of adding to the prestige, if possible. That would mean the Superior Courts would become local courts. No longer would there be a state system of courts. It would mean nothing less than an abdication of a principle, as thoroughly written into the life of the state as the Bill of Rights. The Supreme Court is an appellate court. It touches the life of the people only indirectly.

To abolish rotation would mean putting the state in reverse on its court system at the very time it is succeeding so well with its state system of schools and state system of highways. It would be going in reverse with the one institution that has done more than anything else to make possible the magnificent system of roads and the establishment of a state system of schools.[15]

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BOOK REVIEWS

The Law of Evidence, by Legal Research Committee of Commonwealth Fund. Yale University Press, New Haven, 1927. Pp. xxii, 98.

The authors include among their number eminent jurists and scholars, including Professor Wigmore. The purpose of the book is to demonstrate and emphasize the necessity of five specific reforms in the trial of lawsuits. The experiences and opinions of practicing lawyers and trial jurists (largely embodied in answers to questionnaires) furnish the data upon which the committee bases many of its conclusions. The method is perhaps unique and the result interesting. The reviewer must, however, confess to an impression that in some instances the data is somewhat colored and the reasoning somewhat strained in an effort to support preconceived opinions of the committee.

After discarding as impractical any effort toward either radical or comprehensive changes in the rules of evidence, the committee

[15] The above article was prepared for the NORTH CAROLINA LAW REVIEW by Mr. Livingstone, following substantially an article which appeared in the Raleigh *News and Observer* on August 14, 1927.

selects rather at random "the most fertile subjects for practical investigation." The first recommendation is that the trial judge be given power to disregard the rules of evidence in the establishment of facts about which there is no bona fide dispute, even though these facts are at issue under the pleadings. Obviously, objection will be raised to the additional discretion and authority given to the judge; but there is convincing strength in the argument of the text that the proposed change would eliminate some of the "gaming" elements of a lawsuit in favor of justice for the litigants.

The second recommendation is that the trial judge be permitted to comment on the weight and credibility of evidence. Some of the arguments advanced by the committee seem unreal and find little support in the answers to the questionnaire; but soundness of reason and even a slight preponderance of practical opinion (as shown by the questionnaire) support the view that this change would aid in the ascertainment of truth. The presentation is impressive.

The third and fourth suggestions are closely related. By the former an interested person would not be disqualified from testifying as to a communication or transaction with a deceased or insane person; and by the latter all declarations of deceased and insane persons would be competent if the court found them to be made in good faith before the suit. In discussing the third change the authors brand the present statutory disqualification as an illogical "remnant of the common law disqualification of all interested witnesses"; and they find practical support for the suggested change in the opinion of experienced attorneys practicing in Connecticut, where the disqualification has been removed. The fourth recommendation, of course, involves a wide exception to the hearsay rule. It has been tried by only one state, Massachusetts; but the questionnaire discloses that on the whole the attorneys of that state consider the experiment helpful in the ascertainment of truth.

The last recommendation is for a less exacting and more practical method of proving commercial transactions, that is, by admitting in evidence any entry made in the regular course of business. This simple rule, the authors say, would cut through a mass of hybrid rules, now confusing if not actually conflicting, and would meet the needs of complex modern business.

In the final pages of the short volume the committee voices with admirable candor "the disheartening truth" that the outlook for these reforms are not bright. Of course, this thought has occurred to the

practicing attorney and has remained with him as he has read the text. But the apparent impossibility of immediate results does not prevent the pioneer work of the committee from being a worthwhile contribution to the progress of the profession toward an ideal of truth and justice.

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The Law of Radio Communication, by Stephen Davis. McGraw-Hill Book Co., Inc., New York, 1927. Pp. ix, 206.

This small volume is certain to arouse a fair amount of interest even before the reader opens it, for two reasons: It is the first book to be published covering a new and increasingly important subject, and it was awarded the Linthicum Foundation Prize by the faculty of law of Northwestern University for the "best essay or monograph" submitted on the Law of Radio Communication. It is neither a complete nor a detailed analysis of the problems in the field of radio communication, and the author frankly states that fact. Quite obviously Judge Davis chose to present in monograph form the various problems in the field, rather than to furnish a complete solution. Few cases involving radio were decided under the Act of 1912. None have arisen under the recent Act of 1927. As the law is decidedly in the speculative stage, the volume is prefaced with the significant statement that, when Lord Chancellor Francis Bacon found it impossible to write a history of what was known, he "wrote one of what it was necessary to learn."

After a brief resume of the conditions obtaining in the field of communication by radio, including radio telephony, point-to-point radio telegraphy, and general broadcasting, Judge Davis discusses the "Right to Engage in Radio Communication." He submits that every person has a "natural right" to build and operate a radio transmitter; that the exercise of this "right" may be the subject of governmental regulation; and that such regulation does not find its source in governmental ownership of the ether as the medium through which the transmitted force passes, but is based on the power of the government to regulate the commerce utilizing that, as well as any more common, medium. Nor is the regulation the only limitation upon the exercise of this natural right. The *sic utere tuo* maxim must also be applied. Under "Federal Jurisdiction" the

author bases the regulatory power of the Federal Government upon the Commerce Clause in the Constitution. He then takes up with fair detail the two outstanding regulatory measures, namely the Acts of 1912 and 1927, showing how the power under the former was broken down by the *Zenith* and *Intercity Radio* cases and the subsequent opinion of the attorney-general, thus making the 1927 Act a necessity if Federal regulation was to continue. It is interesting to note that, in discussing the new act, Judge Davis gives answer to recent claims that it is unconstitutional because an exercise of the power to revoke licenses amounts to a taking of property without due process, by the contention that the commission hearing plus the opportunity of appeal to the courts, guaranteed under the act, supplies the element of due process. There follows a treatment of state jurisdiction over local problems, dependent upon the police power, and a chapter dealing with rights of reception, wherein the author applies the analogy to the law of nuisance, and the rights of transmission, covering priorities between broadcasters. Copyrights, control of programs, libel and slander via radio, and a short statement of the problems of international communication, complete the volume.

Judge Davis was peculiarly well situated, by reason of his connection with the Department of Commerce during the rapid growth of radio communication, to give us an intimate discussion of the problems attendant upon that growth. He has sketched the picture. If he is thought to have stopped short of a complete analysis of those problems, perhaps he will repair the deficiency by a more comprehensive work in the future, written in the same excellent style.

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