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CURRENT LEGAL PERIODICALS AND BOOK REVIEWS.

A TREATISE ON THE SYSTEM OF EVIDENCE IN TRIALS AT COMMON LAW, INCLUDING THE STATUTES AND JUDICIAL DECISIONS OF ALL JURISDICTIONS OF THE UNITED STATES. By JOHN HENRY WIGMORE, Professor of the Law of Evidence in the Law School of Northwestern University. In four volumes. Boston: Little, Brown & Co. 1904.

Professor Wigmore has set himself a most stupendous task, no less a one than that of stating in a logical form and in an orderly manner the Law of Evidence. In the preface he quotes this canon of Sir James Stephen: "A complete account of any branch of the law ought to consist of three parts, corresponding to its past, present, and future condition respectively. These parts are its history, a statement of it as an existing system, and a critical discussion of its component

parts with a view to its improvement. Professor Wigmore has kept this object before him.

The work so far is in three large volumes, and the number of cases cited is enormous. It is, however, not too much to say that the result is such as to justify fully the labor expended. The subject has been treated with the utmost particularity. Perhaps the most obvious criticism is that it is treated too much in detail, and yet it would be hard to say what part, if any, of these three volumes could have been omitted without loss.

The Law of Evidence is stated logically and clearly. The historical development is fully, though briefly, traced in each particular instance. The theories underlying and the principles governing the various rules are accurately set forth. Their exposition is in the highest degree scientific and convincing. Subject after subject as he deals with them is freed from the tangle of confusion resulting from a great mass of decisions, often hasty and ill-considered nisi prius decisions so peculiar to this branch of the law.

The book shows deep research into the very sources of the law, and at the same time an ability to use the material so obtained in a practical manner. The theories set forth do not build up an ideal, though non-existent, state of the law. They serve to exhibit the law as it is in an orderly manner, to reconcile the conflicting decisions.

Professor Wigmore's book is singularly free from contentious writing. His purpose is not to support a thesis, but to state the law as it is, and at the same time to exhibit the steps by which it has developed and to point out the road for further progress. In many ways his work shows the influence of that great master of the Law of Evidence, the late Professor James Bradley Thayer, whom he quotes with evident admiration and appreciation. Those whose ideas of the Law of Evidence are based upon older text-writers will be at first confused by the arrangement of the present volume, which is highly elaborate. The subject is divided into four books, the first of them, dealing with "Admissibility," the most important. In fact, the first three volumes have so far been devoted to this subject. It is divided again into four parts, each part divided into titles, sub-titles, and topics. While the arrangement is elaborate, it is apparently logical, and tends to simplify the subject. Some of the terminology will sound strange and perhaps pedantic to the ear of the profession. To speak of prophylactic rules scarcely conveys any very definite idea to the average mind. As explained by Professor Wigmore, it is seen that it does accurately express his meaning.

It would appear to be better, if possible, to express a similar meaning by a more usual term. Much more of the terminology will be found to be novel. While this originality is of doubtful value, there can be no question that where a new arrangement of the subjects has been introduced, the new arrangement is not merely theoretically and historically sound, but is practically superior to the old, tending to the simplification of the subject and to the removal of erroneous analogies.

To class admissions as instances of testimonial impeachment is certainly novel. While its soundness may be perhaps a question, it is certain that they are not, as usually stated, exceptions to hearsay, nor is their admissibility in any way subject to the same requirements or based upon the same consideration. Their removal from this group tends to remove a great deal of existing confusion. The treatment of the whole subject of "Hearsay" is particularly good.

The manner in which the so-called *res gestæ* rule is dealt with is particularly convincing, and brings something at least approaching order out of the chaos in which that subject has seemed irrevocably plunged. It is fundamentally sound and practical. His treatment of such practical matters as cross-examination, production of documentary originals, testimonial impeachment, and similar subjects is an admirable blending of theory and practice.

To review at length a work of this magnitude would be impossible. It only remains to say that it represents the highest type of text-book, such a work as exhausts the subject historically, theoretically, and even as a digest. It will be surprising if it is not regarded by the profession in all its branches as the authoritative work upon the subject.

There are some few faults in the make-up of the book. The inclusion in the text of copious quotations of judicial opinion, while extremely valuable, perhaps, unduly swells the size of the work. Some of the grouping, much of the terminology, may be regarded as strained and pedantic, but the more the book is read, the deeper becomes the impression of the soundness of its treatment of the subject, of the accuracy of its expression of the law, and of the completeness with which the authorities have been examined and compiled.

Francis H. Bohlen.