

## BOOK REVIEWS.

---

QUESTIONED DOCUMENTS.—A STUDY OF QUESTIONED DOCUMENTS WITH AN OUTLINE OF METHODS BY WHICH THE FACTS MAY BE DISCOVERED AND SHOWN. By Albert S. Osborn, Examiner of Questioned Documents, Rochester, New York. The Lawyers' Co-operative Publishing Co. 1910.

We have read this book from cover to cover, with an interest that has been somewhat diminished by its numerous, and as it seems to us, unnecessary repetitions, which have swelled the text to a much larger size than seems necessary.

In the introduction by Professor Wigmore he states that, "the feature of Mr. Osborn's book which will perhaps mark its most progressive aspect is its insistence upon the reasons for an opinion and not the bare opinion alone."

So far as our experience of over twenty-six years goes, no professional expert ever willingly gives his mere opinion unsupported by reasons. In "The Handwriting of Junius," by Mr. Chabot, published in 1871, the reasons for his opinion are given at great length. In Mr. Ames' book on forgery, published in 1899, among other things, he uses this language: "I cannot conceive of an opinion worthy of consideration for which a reason cannot be given. \* \* \* It is scarcely credible to any witness to express opinions for which he can give no reasons, or to a court to permit such to be given as expert testimony; for how can court and jury place the proper value upon opinions unsupported by reasons?" etc., etc. The principal question, so far as we know, has hitherto been whether the reasons should be given on the direct or on the cross-examination. In *Neil v. Beland*, decided not long ago by the Appellate Court of Illinois, not reported so far as we can ascertain, a new trial was granted because the trial court, presided over by Judge Gary, would not permit the expert to give the reasons for his opinion on his direct examination. There was of course no cross-examination. In this respect, therefore, Mr. Osborn's book simply follows a well-settled practice. In this as in every other department of expert testimony reasons that can stand the test of cross-examination are the principal criterion of truth.

We quite agree with the author in his strictures upon the common law of evidence respecting the admission of standards, as it prevails in Illinois and some other jurisdictions. This rule is a disgrace to the law and offers a constant premium for fraud. Certain it is, however, that the rule as to the admissibility of evidence in criminal cases is, with a few exceptions, not different from that which prevails in civil cases, and the statement of the author to the contrary on pages XXII and 17 is clearly incorrect. See Chamberlayne's *Best on Evidence*, Pt. 1, Sec. 94 and Pt. 2, Sec. 499 and authorities therein cited.

On page 105 the author defines the word "characteristic" as "that which distinguishes or helps to distinguish" and then describes "the varying constituents of the handwriting as its characteristics. A handwriting characteristic then is anything about it that serves to identify it in any way or in any degree." On page 28 writing characteristics are classified as: "(1) permanent or fixed; (2) usual or common; (3) occasional, and (4) exceptional or accidental." It seems to us that to describe an exceptional or accidental feature of a writing as a characteristic is contrary to the general use of the term and deprives it of all significance, for if it is ex-

ceptional or accidental it does not distinguish. See Blackburn and Cad-dell, pp. 7-9; Hagan, *Disputed Handwritings*, pp. 42-43; Ames on Forgery, pp. 20, 47, *et seq.*

Mr. Osborn has in our opinion throughout his whole book exaggerated the importance of photography as a means of investigation, and has not limited its use, as stated on page 37, "to illustrate, test and interpret the original." As a means of *illustration* we concur with all he has stated, but in our experience we have seen only one case in which photography revealed what could not be equally well seen by a low magnification of a simple microscope. This was a case of an offset from writing on the opposite page where the light yellow outlines were so faint as to be illegible. In cases of this sort photography by its cumulative action, as in stellar photography, aids in investigation. It is valuable to record results for convenient use but should be strictly subordinated to the original document if in court, and should not be considered primary evidence. The danger from its general unrestricted use is a real one and no expert should ever venture to give more than a provisional opinion from mere photographs or to testify in court from anything but the original if it can be had. We recently had a case in which a photograph by a reputable artist, uncorrected by the original, would have led to an entirely different and incorrect conclusion. See also Mitchell & Hepworth on Inks, pp. 130, 131.

Then again, where the amount involved in litigation is small, the expense of the photographs recommended by the author would often be prohibitive; in a great case this would of course be a matter of minor importance.

The author justly insists on the principle of exemplifying everything to the court and jury, and for that purpose makes great use of the compound microscope. This instrument has in our observation been too frequently used *in terrorem* or as a paralyzing agent. In our judgement a magnification of over 10 diameters is rarely necessary, and the use of as high a power as a  $1/6$  with the eye-pieces ordinarily used giving powers ranging from 205 to 720 diameters depending on the supra-amplification, would be a positive obstacle and not an aid to investigation.

The author's treatment of pen-position, pen-pressure, spacing, characteristics, etc., etc., is substantially the same as that of his best known predecessors in this country. Perhaps it may be stated to be a little more complete and satisfactory and the text is much better illustrated.

It seems to us that in his treatment of the comparison of handwriting, the sequence of cross lines, etc., the author claims in general a far greater degree of precision and certainty in results than the facts will ordinarily warrant. But in this he is not without support from other writers. The examination and comparison of hand-writing is not an exact science. Every case depends on its own facts; and the conclusions arrived at vary from a slight probability to a high degree of moral certainty.

We dissent emphatically from the author's position with reference to the identification of the pen with which a questioned writing has been executed, by the measurement of the width of the pen strokes. The factors involved in this question are altogether too numerous and variable to warrant the degree of precision claimed. The case must be exceptional in which the pen can be identified by its work.

The treatment of pencil-marks is satisfactory so far as it goes, but no mention is made of any but ordinary lead or graphite pencils.

The treatment of systems of writing is in our opinion judicious.

With reference to the author's treatment of traced forgeries, there is little to be said. There are a few unimportant errors that have come to our notice. The 30th power of 5 is not 931 with 18 ciphers following it, but 931322574615478515625. The real relation, however, is not that of 1 to the 30th power of 5, but 1 to the 30th power of 4.85. Using a 10 place table of logarithms the 30th power of 4.85 is 37346693540000000000 plus or minus 0.0000000023 q, in which q represents the 30th power of 4.85.

In the note on page 277 it is stated that the case of *Green, et al. v. Mun-*

dell, *et. al.*, commonly known as the Howland will case, was finally decided on a point of law and that the facts were never passed upon by the court and jury. This case was a bill in Chancery in the United States Circuit Court for Massachusetts, was tried on bill, answer, replication and proofs by the court without a jury. and a final decree entered dismissing the bill with costs, from which an appeal was filed Dec. 17, 1865, to the Supreme Court of the United States, the docket number being 389. The record was printed but the case never came to a hearing in the United States Supreme Court but was compromised.

The author states on page 291 that "diligent effort has been made to secure photographs of the signatures in all traced forgery cases referred to in the decisions and in all other important cases tried but not appealed." Had he inquired of the writer he could have procured photographs in several important cases not referred to by him. The Senator McDonald will case, tried at Noblesville, Ind., about 1891, appealed and affirmed in the Supreme Court of Indiana, and that of Foulds v. Bowler in the Court of King's Bench at Winnipeg, Manitoba, involved the question of traced signatures and were interesting and important cases. They will be found briefly described in an article on "Identity of Signatures as Evidence of Forgery" published in *The Lawyer & Banker*, Tacoma, Wash., for August 1909, pp. 94-96. See, also, an article entitled "A metric study of 2000 Check Signatures," *Am. Law Register*, 1893, p. 709.

The subject of Ink, chapter XVIII, is to our mind treated neither exhaustively nor satisfactorily. Colored inks are not treated at all. In the Gordon will case, 1891, the ink in question was red ink and its identification was a matter of great importance and sharply litigated. We find no reference whatever to the Massachusetts State Record Ink., the specifications for which were prepared by Dr. B. F. Davenport, Boston, Mass. Certainly a matter of such importance merited some attention.

We are astonished at the claim of the author that logwood and nigrosine inks can be identified visually by their color as seen through a microscope. See page 349, Note. We regarded this question as settled as long ago as 1891 in the Davis will case, not referred to by the author. The ink in that case was claimed by experts for the contestants on a microscopical examination to be nigrosine; it proved on a chemical test to be logwood.

On page 349 the author gives three series of readings of color with the so-called color-microscope, at intervals of 30 minutes, 1 year and 1 month and 4 years and 6 months, each of the three readings on the red, yellow and blue respectively being identical. This result in itself is to our mind conclusive evidence that this instrument is not an instrument of precision, for if it were there would be small differences in the readings. See any book on physical measurements. The principle of the instrument, of which the author claims to be the inventor, is not new. See *Journal of the Royal Microscopical Society*, 1886, page 507, and 1887 page 463, describing the instrument of Inostranzeff and VanHeurck. This so-called color-microscope is, however, when its errors are known, useful and convenient for the comparison of the colors of inks in the same and different instruments. The author does not, however, seem to have determined its errors. At least he does not state them.

The chapter on paper, XIX, while not exhaustive nor valuable to the expert, is to the general reader instructive; more so, perhaps, than in any other similar works.

Chapter XXV on questioned typewriting, though by no means new, is entitled to unqualified praise, and is by far the most satisfactory chapter in the book. The first case on this subject that ever came to our notice professionally was the McDonald will case, in 1891, by us referred to, in which the questioned will was typewritten in duplicate, one with black and the other with green ink, and is the only case we have seen or heard of in which a will was so executed in duplicate. This fact furnished the means for defeating it, as all the signatures of the testator and subscribing witnesses, respectively, were practically identical.

The mechanical execution of the book is excellent. The illustrations are good. We have noticed only two or three typographical errors, one on page 166, 5th line from bottom, and one on page 434, lines 17, 18 and 19. This last error occurs probably through no fault of the author, though it is a bad blunder on the part of the "make-up."

The author very frequently refers to cuts in other parts of the work by their numbers, without giving the pages on which they are found. This is simply maddening. The number of the cut and the page on which it is found should both be given. The paper upon which the book is printed contains no mechanical wood-pulp to impair its lasting qualities.

Quite a number of topics usually treated in books on this subject are not treated at all in this work. For example: Guided handwriting, left hand writing, writing in the hypnotic state, insane handwriting, copying, colored and safety inks, and some other topics of more or less importance.

The appendix on "Finger Prints" has no relevancy whatever to handwriting, and in it the author is in error. On page 479 he states that "it is clear that no two human hands in all the world can be just alike in all these complex parts." The italics are our own. This statement shows how dangerous it is to deal in bright and glittering generalities, especially in fields of learning with which one is not familiar. If the reader will consult "The World Today," Vol. IX, page 1000, he will find a truly remarkable case where not only the Bertillon system but the Galton system of identification by fingerprints utterly failed to distinguish persons charged with crime.

Altogether, however, the book is an advance on all of its predecessors on the subject of disputed handwriting, except one, and that one, though not a general treatise, is to our mind the most satisfactory exemplification of the art of identifying disputed handwriting of anything ever published. We refer, of course, to "The Handwriting of Junius," by Mr. Chabot, unfortunately long since out of print.

*Marshall D. Ewell.*

Chicago, Ill.

CASES ON WILLS, DESCENT AND ADMINISTRATION. By George P. Costigan, Jr., Professor of Law in Northwestern University. American Case Book Series. St. Paul: West Publishing Company. 1910. Pp. 781.

This is the latest volume of the American Case Book Series. It is believed to be the most thorough collection yet published on this subject. Much matter that finds no representation in Professor Gray's Cases on Property, Vol. IV, is here touched upon. For example, the matter of "Testamentary Capacity and Intent" is adequately treated, as is also the distinction between wills and other dispositions of property. The subject of "Descent" is very well treated. This subject is particularly difficult of presentation in a case book which is intended for use in different jurisdictions in America, and the author has covered it very well, not devoting an inordinate space to it.

An examination of the cases cited shows that the English authorities which lie at the foundation of many of the doctrines treated in the book, and which may well be said to be classical, are freely used. In addition, the book contains many recent cases from the American courts. An examination of the American cases cited shows that the author has used excellent judgment in his selection of them, both in the matter of the jurisdictions from which they are chosen and in the choice of strong, well-written opinions. An appendix contains the English Statutes, which are largely the model of American Statutes, on the subject of "Wills." The book has a good index, and the matter of footnotes has been very well handled, as they are not overloaded with citations.

*O. J. R.*