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Selection of Cases on Evidence

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in holding legislation unconstitutional. One should not fail to read Chapter V, entitled "Congress as a Final Arbiter".

Considering the effect of these decisions, often by state courts, annulling remedial laws, we cannot forget the warnings of Professor Thayer in 1908:

"No doubt our doctrine of constitutional law has had a tendency to drive out questions of justice and right, and to fill the mind of legislators with thoughts of mere legality, of what the Constitution allows. And, moreover, even in the matter of legality, they have felt little responsibility. If we are wrong, they say, the courts will correct it. Meanwhile, they and the people, whom they represent, not being thrown back on themselves, on the responsible exercise of their own prudence, moral sense, and honor, lose much of what is best in the political experience of any nation, and they are belittled, as well as demoralized." *Legal Essays*, (1908) 38, 39.

Mr. Justice Holmes has said that, if the power of judicial review were destroyed, "the United States would not come to an end." However, if the so-called "Reconstruction Acts", passed just after our Civil War, had not been judicially annulled, it would be hard to conjecture what the United States would have become!

Mr. Warren points to the recent spread of this judicial power to check legislation in other countries. Those that have in their constitutions authority given to the courts to interpret the Constitution, and prevent violation of its provisions, are Colombia, Czecho-Slovakia, Honduras, Irish Free State, and Portugal. The power of judicial review is exercised today in the highest Courts of Australia, New Zealand, South Africa and Canada, also in Argentina and Brazil. In a more, or less, modified form, it exists in Roumania, Bolivia, Costa Rica, Cuba and Venezuela.

Space does not admit of an adequate review of this recent heresy of "minority decisions"—where unless seven justices of the Supreme Court shall concur in declaring an act invalid, the Court shall hold it valid. In this way a minority of three could control the other six justices!

A valuable Chapter, VII, entitled "Labor and the Supreme Court" shows that out of over one hundred Supreme Court labor decisions not more than twenty were decided in such a manner as to be regarded as adverse to labor. Out of these twenty decisions, only six involved the constitutionality of an Act of Congress. All of these that touched Federal Statutes are clearly analyzed, especially those under the Clayton and the Sherman Acts. Mr. Warren reminds these critics that Congress may amend these statutes so as to meet the Court's objections. It appears further that at least sixty decisions in the Supreme Court have upheld state labor laws. Indeed, that Court has upheld every state employers' liability law that has come before it, also every other state statute that has abrogated or modified the fellow servant doctrine. Mr. Warren also adds that the Federal Workmen's Compensation Law (Act of June 10, 1922) affecting Admiralty, which was held void (*State of Washington v. Dawson* (1923) 264 U. S. 219), can be cured by a properly drawn federal statute.

This latest work of Mr. Warren is not alone for courts and lawyers. A perusal of its valuable data should dispel much of the unfounded prejudice that is growing up regarding the functions of our highest Court.

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Cases on Evidence. By James Bradley Thayer. Revised edition by John MacArthur Maguire. Cambridge, Harvard University Press, 1925. pp. xv, 1033.

The third edition of Thayer's *Cases on Evidence* is so called in order, apparently, to honor a great name in the history of law teaching. It may

come to be known as Maguire's *Cases on Evidence*. If so, the title will be a more accurate description and at the same time a deserved compliment.

So far as the writer's brief and limited experience goes Mr. Maguire has set a new and a high standard in case books. His case book is one that any practitioner who desires to be thorough should have in his library. There is a collection and an apt citation of law review articles and notes. This feature seems to be complete in so far as it concerns law magazines that have more than a local circulation. Add to this case book Wigmore's great treatise and the practitioner should be prepared to face the world with confidence. This is also a very valuable feature for a teacher of law, particularly for the teacher who is not an expert of long experience in the law of evidence. How many teachers of that subject possess such a complete collection as Mr. Maguire has furnished?

The feature known as "problem cases" would also be valuable to the lawyer in practice. It should be more valuable (if the writer be permitted a guess) to the teacher and the student. The guess is offered because experience will be necessary before judgment can be rendered. It is easy enough for a teacher, even a conscientious one, to pass by problems that may be hidden in cases cited in a footnote. Too often cases so cited are only in accord or contrary to the decision printed in the case book. Mr. Maguire seems to have placed his "problem cases" in such prominence that the instructor can hardly avoid an investigation of them. If he does not, may not interested students ask about many of them? Furthermore, this feature seems to be designed to complete the material on the various topics. The serious danger in the "problem cases", so far as the writer has anticipated, is that they may impede progress in the teaching of the course. Only a few case book courses are ever finished and most students go out with no acquaintance of the omitted topics.

Mr. Maguire has introduced a simple device of numbering every fifth line. One teacher, at least, frequently wishes to call attention to a particular statement, and he has had the conviction that the attention of the students was not secured in an adequate manner unless time was lost by counting lines from the top or bottom of the page or from top or bottom of a paragraph otherwise identified. Occasionally a student wishes to ask an instructor about a statement in an opinion and the same fumbling process frequently ensues. Mr. Maguire has solved the difficulty by using a method already known. It is hoped that case books in the future will profit thereby.

No emphasis on the historical method has its place in Mr. Maguire's selection of cases. On the contrary it is strictly up to date. In his preface the author states that most of the two hundred and eight cases which appear for the first time have been decided in recent years. With this point of view in the teaching of the law of evidence the writer agrees. His experience has been that, on the whole, cases which are inserted for their historical setting are usually ignored or not understood by the students. That is a good reason for omitting them. The historical background (so thoroughly developed by Thayer and Wigmore) can best be developed by the instructor in explaining the way the courts function today. But what a paradox is this for Thayer's *Cases on Evidence*.

It seems to be customary to review a case book by uttering a compliment which is followed by many objections and regrets. This topic is slighted. The arrangement is undesirable. The instructor may be sorry that this case or that with which he is familiar is no more. There is a slight error here or there in spelling, punctuation or what not. Some suggestions of this sort might be offered and space be wasted thereby. Suffice

to express an opinion that Mr. Maguire should be proud that he has published an excellent case book. It has impressed the writer as the most carefully edited and the most thoroughly prepared case book it has been his privilege to know. He hopes that the pleasure will be his to teach from the book and that full experience will confirm this prophecy.

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BOOKS RECEIVED

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Depreciation in Public Utilities. By Delos F. Wilcox. New York, The National Municipal League, 1925. pp. 112.

The Genesis of the Constitution of the United States of America. By Breckenridge Long. New York, The Macmillan Co., 1926. pp. 260.

Justice and the Poor in England. By C. G. Gurney-Champion. London, George Routledge & Sons, Ltd., 1926. pp. x, 245.

An Introduction to Roman-Dutch Law. By R. W. Lee. Second edition. New York, Oxford University Press, American Branch, 1925. pp. xlviii, 424.

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