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Recent Cases

J. F.

RECENT CASES

INJUNCTION—NUISANCE—BALANCING OF EQUITIES... Defendant owned a sawmill which threw soot, ashes, and cinders on plaintiff's premises causing substantial injury *Held*: That damages could be recovered, but that plaintiff could not obtain an injunction because plaintiff's property was of comparatively small value and importance, while that of the defendant was of great value. *Mattson et al. v. Defiance Lumber Co.*, 54 Wash. Dec. 361, 282 Pac. 848 (1929).

The granting of preliminary injunctions is clearly within the discretionary power of the equity court. *Sellers v. Parvis & Williams Co.*, 30 Fed. 164 (D. Del. 1886). It is a much mooted question, however, as to whether equity should balance the conveniences in cases of permanent injunctions. Courts will balance equities where the right sought to be protected is a mere technical or unsubstantial right. *McCann v. Chasm Power Co.*, 211 N. Y. 301, 105 N. E. 416 (1914). On the other hand courts will refuse to balance equities where the injury complained of is tortious or wrongful in itself. *Woelpper v. Pennsylvania Water & Power Co.*, 250 Pa. 559, 95 Atl. 717 (1915) The real conflict arises where the injury, as in the principal case, is substantial. Some courts hold that where the injury caused by continuance, even though substantial, is comparatively small, as compared with the injury from enjoining the business, they will refuse to grant the injunction upon the theory that the granting of an injunction always rests in the discretion of the court. *Bliss v. Anaconda Copper Mining Co.*, 167 Fed. 342 (1909) *Madison v. Ducktown Sulphur Copper & Iron Co.*, 113 Tenn. 331, 83 S. W 658 (1904).

The following arguments have been made against this doctrine. It is said to threaten the rights of the poor while furthering the interests of the rich. Perhaps the stock objection is that it works a condemnation of property for private use by forcing a man to sell his right to a peaceful possession of his property, for damages. *McCleery v. Highland Boy Gold Mining Co.*, 140 Fed. 951 (1904). It is also said to give a large amount of freedom to the courts. 36 HARVARD LAW REVIEW, 215. The majority of courts, however, hold that where the existence of a nuisance is clearly shown, together with the fact that it is causing another material, substantial and irreparable injury for which there is no adequate remedy at law the injured person is entitled, as a matter of right, to the issuance of an injunction without reference to the comparative benefits conferred thereby, or the comparative injuries resulting therefrom; and in such cases the issuance of the injunction is not discretionary with the court, but is a matter of right for the plaintiff. *Hulbert v. California Portland Cement Co.*, 161 Cal. 239, 118 Pac. 928, 38 L. R. A. (N. S). 436 (1911).

The question as to whether public interest will further the operation of the doctrine is also a field of controversy. While some courts have held that where a public interest is involved the court will balance the equities, *Madison v. Ducktown Sulphur Copper & Iron Co.*, 113 Tenn. 331, 83 S. W 658 (1904), others have held that this should bear no weight in the matter. *Hulbert v. California Portland Cement Co.*, 161 Cal. 239, 118 Pac. 928, 28 L. R. A. (N. S.) 436 (1911). Evidently the Washington court lays some stress on this because it mentions that lumbering is one of the largest industries in the state and that mills must exist some place, so a court should "not unnecessarily interfere with the industry."

The only prior case in Washington in which the balancing of equities doctrine is specifically mentioned is *Bartel v. Ridgefield Lumber Co.*, 131 Wash. 183, 299 Pac. 306, 37 L. A. R. 683 (1924), which the court in the principal case follows. Therefore, it would seem that Washington is following the minority doctrine. In view of the fact that the balancing of equities doctrine is more beneficial to the growth of industries and public welfare, Washington has probably taken a better stand on this point. The

majority rule seems to savor of what Judge Cardozo calls "the passion for *elegantia juris.*" J. F

WORKMEN'S COMPENSATION—CLAIM FOR INJURY—TIME OF FILING. Plaintiff's eye was injured while he was engaged in wrecking a building. The injury was sufficient to create a claim for minor compensation, but specialists had no fear of permanent injury. Two years after the accident, plaintiff first realized that he was going to lose his sight, and filed a claim with the department of labor and industries. The claim was rejected under Rem. Comp. Stat., Sec. 7686, which provides that "No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the right thereto accrued." *Held*: The right did not accrue unntil plaintiff's vision was seriously impaired and it became manifest that the injury had culminated in a permanent disability. *Fee v. Department of Labor and Industries*, 151 Wash. 337, 275 Pac. 741 (1929).

In general, in an action sounding in tort, the statute of limitations begins to run when an act which constitutes a legal injury is committed, despite the fact that the extent of the injury resulting from that act is not yet known or developed. *Aachen, etc., Fire Ins. Co. v. Morton*, 156 Fed. 654, 13 Ann. Cases 692 (1907) *Fairbanks v. Smith*, (Tex.) 99 S. W 705 (1907) *Lattin v. Gillette*, 95 Cal. 317, 29 A. S. R. 115 (1892) *Northrop v. Hill*, 57 N. Y. 351, 15 Am. Rep. 501 (1874). In cases of personal injuries, the injury occurs and the statute begins to run at the time of the injury, even though the full extent of the damage is not known or has not developed. *Pillor v. Southern Pac. R. Co.*, 52 Cal. 42 (1877) *Leroy v. Springfield*, 81 Ill. 114 (1876) 37 C. J. 897. But when the act itself affords no cause of action, the statute begins to run against an action for consequential damages only from the time the actual injury ensues. *Smith v. Seattle*, 18 Wash. 484, 51 Pac. 1057 (1898), 37 C. J. 897. For collection of cases, see 13 Ann. Cases 696.

Does the fact that this statute is a part of the Workmen's Compensation Act justify a holding contra to the general rule as to when a right of action accrues? In *Stolp v. Department of Labor and Industries*, 138 Wash. 685, 245 Pac. 20 (1926), which was cited as supporting the holding of this case, it was merely held that the statute of limitations could not run until there was some compensable injury. Some courts have held that the Workmen's Compensation act ought to be construed liberally in order to effectuate its purpose, and therefore the statute of limitations does not begin to run until the ultimate injury has been suffered. *Johanson v. Union Stock Yards Co.*, 99 Neb. 328, 156 N. W 511 (1916) *Brown's Case*, 228 Mass. 31, 116 N. E. 897 (1917) and *Hornbrook-Price Co. v. Stewart*, 67 Indiana App. 400, 118 N. E. 315 (1918). See also a note in L. R. A. 1918 E. 558. The Michigan court has held that the cause of action cannot be separated, and therefore the right accrues and the statute begins to run as soon as there is any compensable injury. *Cooke v. Holland Furnace Co.*, 200 Mich. 192, 166 N. W 1013 (1918) The Supreme Court of Oregon has adopted the view of the Michigan court, holding that a strict compliance with the literal terms of the statute is a condition precedent to a right to recover. *Lough v. State Industrial Accident Commission*, 104 Ore. 313, 207 Pac. 354 (1922).

It is doubtful if the decision in the instant case can be justified on the ground that the statute in question is part of the Workmen's Compensation Act. Chapter 310, Sec. 4(h) of the Session Laws of 1927 provides that a claim for an increase in damages may be filed within three years of the establishment of a claim, thus giving the workman nearly four years to establish his consequential injuries, by the simple procedure of filing a claim for minor injuries within one year. If a workman has not complied with this requirement, the courts should not excuse his carelessness by giving the language of the statute an interpretation not usually applied. If the requirements are too severe, that is a matter for legislative reform,

as was done in Michigan following the decision in *Cooke v. Holland Furnace Co., supra.* The legislative intent was to compel an early submission of claims, so that the commissioners of the department of labor and industries would have a reasonable opportunity to determine the validity of each claim, to trace the development of the injury and to determine the probable future result. The rule of the principal case practically nullifies the section of the statute which requires such early submission of claims, and makes the presentation of fictitious and dishonest claims relatively easy by opening the door to claims years after the accident occured. It is submitted that a holding that the statute of limitations begins to run as soon as a right to any compensation accrues would more adequately carry out the purposes of the act, and is the only safe rule to follow. C. A. E.

EVIDENCE—PRESUMPTION AS TO FOREIGN LAW—COMMON LAW AND STATUTORY LAW. Plaintiff asked for modification of a decree of separate maintenance, alleging that after entry of the decree, he had procured a decree of divorce granted by the Civil Court of First Instance in the State of Sonora, United States of Mexico. *Held*: Since the laws of Mexico are not pleaded, the court "must necessarily presume" that the Mexican law is the same as Washington law. By Washington law the court would not have had jurisdiction unless the plaintiff were a bona fide resident. Plaintiff was not a bona fide resident of Mexico; therefore the Mexican court did not have jurisdiction. *Dailey v. Dailey*, 54 Wash. Dec. 358, 282 Pac. 830 (1929).

Common law presumptions are based on the great probability, derived from human experience, of the existence of the fact presumed, presumptions can never be safely admitted unless observation and experience have shown that in a large majority of instances one fact is the uniform concomitant or result of another, so that the same may be at least *prima facie* assumed to be the case in the present instance. *Dupree v. Dupree*, 49 N. C. 387, 69 Am. Dec. 757 (1857) 10 R. C. L. p. 868.

Hence, in the absence of pleading and proof, most courts presume that the common law of sister states is the same as their own because they are of common origin and rooted in the same great homogeneous system. *Cherry v. Sprague*, 187 Mass. 113, 72 N. E. 456 (1904) 22 C. J. pp. 151-2. As a corollary, there is also a presumption, by weight of authority that the common law is in force in the state where the cause of action arose, even though the *lex fori* is statutory *Murphy v. Collins*, 121 Mass. 6 (1876) *Ellis v. Maxson*, 19 Mich. 186 (1869) *In re Hamilton*, 76 Hun. (N. Y.) 200, 27 N. Y. Supp. 813 (1894). The presumption that the common law is in force where a transaction occurred is indulged in only in reference to England and those jurisdictions which have taken the common law from England. *Crashley v. Press Pub. Co.*, 179 N. Y. 258, 71 N. E. 258, 1 Ann. Cas. 196 (1904) that is to say, only in reference to those which are judicially known to be of common law origin (10 R. C. L. p. 894) the nature of the system of jurisprudence of a state or country being a proper subject of judicial notice, since it is a matter of common knowledge. *Burielle v. Betteman*, 199 Fed. 838 (1912) *Banco de Sonora v. Bankers Mutual Casualty Co.*, (Ia.) 95 N. W 232 (1903) *Boot v. Scott*, 276 Mo. 1, 205 S. W 633 (1918) *Matter of Hall*, 70 N. Y. Supp. 406 (1901) 10 R. C. L. p. 894, 12 C. J. pp. 200-201. For instance, the common law is not presumed to exist in Louisiana, *Peet v. Habaker* 112 Ala. 514, 21 So. 711, 57 A. S. R. 45 (1896), nor in Cuba, *Cuba Railroad Co. v. Crosby*, 222 U. S. 473, 56 L. Ed. 274, 32 Sup. Ct. 132 (1912), nor in Mexico, nor France, nor Russia. Note 67 L. R. A. 40.

By the great weight of authority, however, there is no presumption that the statutory law of another state or country is the same as that of the former, inasmuch as there is no proper foundation for the presumption in human experience, lack of statutory uniformity being commonly recognized, especially in the United States, as a perplexing problem. 10 R. C. L. p. 895, 22 C. J. p. 154, *Cuba Railroad Co. v. Crosby, supra*, where the United States Supreme Court, speaking through Mr. Justice

Holmes, said: "The presumption should be limited to cases where it reasonably may be believed to express the fact. Generally speaking, as between two common law countries, the common law of one may reasonably be presumed to be what it is decided to be in the other, in a case tried in the latter state. But a statue of one would not be presumed to correspond to a statute in the other, and when we leave common law territory for that where a different system prevails obviously the limits must be narrower still."

The supreme court of Washington, after first laying down the rule that the presumption of identity as to foreign law applies only to the common law and not to statutory law, *Yeaton v. Eagle Oil & Refining Co.*, 4 Wash. 183, 29 Pac. 1051 (1892), later in *Gunderson v. Gunderson*, 25 Wash. 459, 65 Pac. 791 (1901) adopted the opposite view without referring to the earlier case, and later deliberately adhered to that view on the authority of the *Gunderson* case. *Clark v. Eltinge*, 29 Wash. 215, 69 Pac. 736 (1902). For instance, the court has presumed that the bankruptcy laws of China are the same as our own, *Fletcher v. Murray Commercial Co.*, 72 Wash. 525, 130 Pac. 1140 (1913) that British Columbia has no statute on a subject on which Washington has none, *Daniel v. Gold Hill Mining Co.*, 28 Wash. 411, 68 Pac. 884 (1902) and it has been presumed that our statutory community property system exists in Alaska, *Marston v. Rue*, 92 Wash. 129, 159 Pac. 111 (1916), in Oregon, *Gunderson v. Gunderson*, 25 Wash. 459, 65 Pac. 791 (1901), and in Montana, *Clark v. Eltinge*, 29 Wash. 215, 69 Pac. 736 (1902) although the fact is commonly known to be to the contrary and should therefore be judicially noticed to be so, by way of analogy to the principle announced in *Barielle v. Bettman, supra*, and *Peet v. Habaker, supra*, and see *Murphy v. Collins, supra*. Rather than indulge a presumption, contrary to the theory on which all true presumptions are founded, it seems clear that where a transaction is governed by foreign law or a cause of action is founded on foreign law, and where the presumption cannot be properly indulged, on the principles hereinbefore announced, that the common law prevails in the foreign jurisdiction, a court should dismiss the suit for failure of proof. See *Cuba RR. Co. v. Crosby, supra*. The result of the Washington cases is to go far beyond the rule of logic and experience and of the authority even of those states adopting a presumption as to statutory identity, since those jurisdictions appear to confine the rule to statutory identity between common law jurisdicitions, having the same political background and system of jurisprudence, and not to extend it to statutes of countries having a wholly different legal system. F.C.

VENDOR AND PURCHASER—ATTACHMENT—ATTACHABILITY OF PURCHASER'S INTEREST AS REAL PROPERTY. A further word on the rights of a vendee under an executory contract for the sale of realty has been added in a recent decision by the Washington Supreme Court indicating the present trend on the subject. Two non-resident defendants in possession of orchard land in Eastern Washington, which they had purchased under an executory forfeitable contract calling for installment payments, were subjected to service by publication through the attachment of their interest in this property as "real property" under the attachment statute, Rem. Comp. Stat. Sec. 659. The service was quashed upon motion by them, and the plaintiffs petitioned for *certiorari* to review the order. *Held*, reversing the order quashing the service, that the purchasers in possession of lands under an executory forfeitable contract of sale have such rights as come within the designation of "real property," and that the attachment was properly levied in the manner provided for the levy of the writ upon real property. *State ex rel. Oatey Orchard Co. v. Sup'r Court for Chelan Co. et al.*, 53 Wash. Dec. 301, 280 Pac. 350 (1929).

In defining real property the court adopted the comprehensive definition given in 3 Bouvier's Law Dictionary, p. 2816, which refers to it as "land,

and generally whatever is erected or growing upon or affixed to the land. *Lanpher v. Glenn*, 37 Minn. 4, 33 N. W 10 (1887). Also rights issuing out of, annexed to, and exercisable within or about same."

The case of *Ashford v. Reese*, 132 Wash. 649, 233 Pac. 29 (1925), denying the legal or equitable title of the vendee under an executory forfeitable contract for the sale of land, held that the loss falls on the vendor because the vendee has no interest in the land. Since that decision an attempt has been made to give some recognition to the vendee's rights, and it has been held that the contract of sale is not a nullity and that a purchaser has rights in relation to the land, though not any interest amounting to title. *Pratt v. Rhodes*, 142 Wash. 411, 253 Pac. 640 (1929) *Kateva v. Snyder* 143 Wash. 172, 254 Pac. 857 (1929) *Oliver v. McEachern*, 149 Wash. 433, 271 Pac. 93 (1928)

The distinction, if any between "right" and "interest" is a difficult one to see. Bouvier's Law Dict., 2d ed. p. 1137, defines interest in property broadly as including "any right, title, or interest, in or lien upon real estate. 117 N. W 470." And again, "interest in common speech in connection with land includes all varieties of titles and rights and comprehends estates in fee, for life, and for years, mortgages, liens, easements, attachments and every kind of claim on land which can form the basis of a property right. 99 N. E. 1093."

Right is defined as a well founded claim, founded in or established by law. 3 Bouvier's Law Dict. 6 2960. Also, "right denotes among other things 'property 'interest, 'power, 109 Pac. 584." 4 Bouvier's Law Dict. 2d ed. 386.

The Washington decisions to date dealing with the rights of vendees under executory contracts for the sale of land have received thorough treatment and analysis in prior issues of this publication. 1 Wash. Law. Rev. 9 (1925) 2 Wash. Law Rev. 1 (1926) 2 Wash. Law Rev. 205 (1927) 3 Wash. Law Rev. 1 (1928) 3 Wash. Law Rev. 80 (1928) 4 Wash. Law Rev. 85 (1929). The only possible conclusion seems to be that Washington has refused to place risk of loss on the vendee under such contracts by denying equitable conversion in such cases, but by subsequent decisions, *supra*, has repudiated the broad language of *Ashford v. Reese*, *supra*, and has recognized that the vendee has rights annexed to and exercisable with reference to the land.

In tracing the logical consequences of the decision of the principal case, the question naturally arises as to whether the vendee's interest is subject to a judgment lien. In *Schaefer v. Gregory Co.*, 112 Wash. 408, 413-14, 192 Pac. 968 (1920), the Court said: "We have held that a contract such as the one before us, while it remains executory and forfeitable, creates no interest in the land in the vendee, and that he has no legal or equitable title to or interest in the land until the contract has been fully performed, that a judgment obtained agaisnt the vendee would not be a lien upon such property." In *Casey v. Edwards*, 123 Wash. 661, 212 Pac. 1082 (1923) it was held that although the purchaser's interest is no more than personal property it is liable to be seized as personalty for a judgment against the purchaser. This last case is considered in the decision of the *Oatey Orchard Co. Case*, *supra*, and the Court concludes that "the language of that case so far as it is out of harmony with what is hereinbefore said will be considered set aside." It would seem that if the vendee's interest may be attached as real property, as a necessary incident, such interest should be subject to a judgment lien, notwithstanding the statement in *Schaefer v. Gregory Co.*, *supra*, and this appears to be a necessary deduction from the Court's explanation in the instant case of *Casey v. Edwards*, *supra*. If this is correct, then that portion of *Schaefer v. Gregory Co.*, *supra*, stating that a judgment is not a lien on the vendee's interest must be considered overruled.

Moreover, does the vendee, who is now held to have an attachable right, and probably a lienable right, also have a condemnable right, as was held in early cases, *State ex rel. Trimble v. Sup'r Ct.*, 31 Wash. 445, 72 Pac. 89 (1903), or will the rule remain as announced in *Schaefer v.*

Gregory Co., supra,—that an executory forfeitable contract for sale of land creates no interest in land in the vendee, and he is not one of the parties necessary to condemnation proceedings, under Laws 1917, ch. 3, and has no interest in the award made.

There are other interesting problems to be worked out on the basis of the recent decisions. Whether the next step to be taken by the Washington Supreme Court will be to expressly overrule those decisions logically inconsistent with its present position remains to be seen. One judge, in his concurring opinion in the *Oatey Case, supra,* has flatly declared that he was unable to concur in the result reached in the opinion without expressly overruling certain prior decisions (*Ashford v. Reese, supra,* and *Schaefer v. Gregory Co., supra*).

H. R. M.

BROKERS' CONTRACTS—ACCEPTANCE BY VENDOR—COMMUNICATION TO PURCHASER. Defendant entered into negotiations with plaintiff for purchase by defendant of certain realty owned by one Tevis and one Koch; plaintiff being a real estate broker with whom property was listed for sale. Defendant paid $500 down, and received an earnest money receipt with the provision, "It is understood and agreed that this agreement is entered into subject to the approval of the owner thereof within three days." The owners gave approval to the broker, who, however, failed to notify the defendant purchaser of the acceptance within the time specified. *Held*: The defendant cannot be forced to complete the contract. *Keopke Sayles & Co. v. Lustig*, 55 Wash. Dec. 29, 283 Pac. 458 (1929).

The case raises: First, the point as to whether the agent was authorized to receive the notice of acceptance for the purchaser; and second, the point as to whether it was necessary for the broker to communicate to the purchaser notice of acceptance of the vendor, made by the signing of the memorandum of sale, in view of the stipulation that the agreement was entered into subject to the approval of the owner within three days.

The purchaser makes an offer to the vendor, to buy his property. *Montray Realty Co. v. Arthurs*, 30 Del. 168, 105 Atl. 183 (1918). There must be an acceptance of this offer to show a meeting of the minds, and a valid contract. *Fowler v. Gray*, 141 Wash. 372, 251 Pac. 570 (1927). The vendor himself assented to the contract when he signed, and the broker knew of this assent, the question, therefore, is whether the vendee had authorized the broker to receive the notice of acceptance, as his agent, in completing the contract negotiations. A principal may empower his agent to receive acceptance of a contract so as to bind him. *Kramer v. Walters*, 103 Kan. 135, 172 Pac. 1013 (1918). But the broker cannot be considered the agent of the vendee in this case. A broker is held to be a middleman between the parties; *Chambers v. Kirkpatrick*, 142 Wash. 630, 253 Pac. 1074 (1927) his whole duty and authority being merely to find a purchaser who is ready, willing, and able to complete the contract they agree on. *Stemler v. Bass*, 153 Cal. 791, 96 Pac. 809 (1908). If he is the agent of anyone, in arranging the sale, he is the agent of the seller, being originally employed by him, and his interest being to negotiate the sale for him. The court states expressly in the case that the plaintiff broker was the agent of the seller, saying: "The appellant was employed by the owners to find a purchaser for the property. In dealing with the respondent, its interests were adverse to him; it was its purpose, and its duty, to obtain from him as favorable an offer for the property as it could. The court further points out that in the instrument containing the offer, the plaintiff expressly designated himself the agent of the vendor, in expressing his relationship. The policy of the law is in line with the holding that the broker does not represent the purchaser; for since his whole interest is to secure a sale, in order to gain his commission from the contract, a broker would be likely to "push" dealings, and represent, if possible, that a contract had been completed where none had really been made, if he had it in his power to complete the transaction without notifying the interested parties to the transaction.

The holding as to communication, also, is largely one of policy contem-

plating reciprocal promises of the parties, and actual notice to each that the agreement has been reached. The stipulation for acceptance might be construed in one of two ways, either as meaning that an actual act of acceptance on the part of the vendor would be sufficient, without notice, or as requiring that the acceptance be communicated to the vendee, by the broker who knew of it; so that he, as well as the vendor, would have actual notice. Acceptance of the offer may be made in the manner suggested by the offer· *Tayloe v. Merchants Fire Ins. Co. of Baltimore*, 3 How. 390, 13 L. Ed. 187 (1850) and where the offeror has prescribed the mode of acceptance, anything showing the offeree's acceptance, done so that it will come to the notice of the offeror, will be a valid acceptance. *Steinbrenner v. Minot Auto Co.*, 56 Mont. 27, 180 Pac. 729 (1919). But where the nature of the act which would constitute acceptance is such that it would not come easily to the attention of the offeror, there must be an actual communication. *Bascom v. Smith*, 164 Mass. 61, 41 N. E. 130 (1895). Further, when the offer demands acceptance in a specified time, the acceptance must be made within that time. *Horne v. Nover* 168 Mass. 4, 46 N. E. 393 (1897). What constitutes the approval of the owner, as required by the memorandum, therefore, seems to be an actual notice of the owner's acceptance communicated by the broker to the vendee. If the signing alone were to be considered notice, an agreement must be implied to the effect that this act would be a final acceptance. But the act is one which cannot come to the knowledge of the offeror except through a notification of some kind, and the time stipulation indicates that the parties intend that the negotiations will be specifically agreed on by them within the three days, as the time is made an essential part of the acceptance. Since the vendee has dealt with the vendor wholly through the broker, it is natural to assume that the notice, which must, by its nature, be one by actual notification, will come through the broker.

W J. P

BOOK REVIEWS

THE EXPERT. By Oscar C. Mueller. Los Angeles: Saturday Night Publishing Company 1929, pp. iv, 74.

This little handbook of seventy-five pages contains a review of the unfortunate conditions that have arisen through the use of expert testimony supplied by the respective parties in a civil or criminal proceeding. A brief review is given of the use of expert testimony in such celebrated cases as the Thaw case, the Remus case, the Hickman case and the Northcott case, in which the elaborate and highly conflicting testimony of the experts on the respective sides tended to confuse the issues and make a travesty of the administration of justice. The pleas of the author supported by a tremendous volume of professional opinion, both legal and medical, is to have a statute authorizing the court in any case in which expert testimony is desired to appoint impartial experts to advise the court or jury upon the technical subject in issue. Among the many who support this view are Sir Gilbert Calvin of England, Hon. Orrin W Carter of the Supreme Court of Illinois, John H. Wigmore, Charles W Eliot, former president of Harvard University Henry W Taft, and Roscoe Pound. And the American Medical Association in 1926 through its house of delegates adopted a resolution intended to relieve the legal and medical professions of the public criticism now received, providing that in civil and criminal cases medical experts should be appointed by the court and compensated at public expense and that appropriate leglisation be indorsed for achieving this end. Mr. Mueller's interesting little volume concludes with a verbatim statement of the California statute adopted in 1925, which constitutes the pioneer legislation on this subject in the United States. This act applies to all proceedings, civil or criminal, provides that the judge may either upon motion of the parties or upon his own initiative,