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The Expert, by Oscar C. Mueller (1929)

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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.

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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,

appoint one or more experts, that the court may fix the compensation in criminal cases to be paid by the county, in civil cases to be borne by the defeated party· nothing in the act prevents either party from getting additional experts if he is dissatisfied by the experts appointed by the court, and either party has the right to examine and cross-examine the expert appointed by the court. In 1929 a section was added to the penal code of California, specifically providing for the appointment by the court of alienists in cases where the defendant pleads not guilty by reason of insanity.

Mr. Mueller's book, which can be read in an hour and which interestingly accumulates a large amount of material, both serious and humorous, upon the subject of expert testimony, should have a substantial influence in procuring legislation in other states similar to that now enacted in the state of California. It is a book that can be thoroughly recommended to members of judicial councils and of judiciary committees of bar associations and legislatures. ALFRED J. SCHWEPPE.

THE LABOR INJUNCTION. By Frankfurter and Green. New York: The Macmillan Co., 1930, pp. 343.

In this volume the authors have undertaken, with more than ordinary success, an analysis of one of the most controversial and involved problems in the present-day law. Confining themselves to the labor injunction cases emanating from the Federal, New York, and Massachusetts courts (which includes the great majority of cases dealing with the subject) they have interestingly traced the historical development of the labor injunction, described its technique and criticized its use. This much they have done and more. Indeed, one cannot help but feel that the real purpose of the authors transcends such familiar stuff as description and academic criticism—that the totality of its parts is intended as a complete indictment of the political attitude that allows of the injunction as a legal adjustment in capital-labor struggles for supremacy. Mechanically the work is nearly perfect. In the first chapter the substantive law of capital-labor controversies is built up against a chronological background of cases, beginning with the earliest English authorities and including practically all of the decisions of the three chosen jurisdictions. Interwoven with this there are specific references to the injunction and the part it played in the development of the labor law. Chapter ii deals with the procedural aspects of the restraining order—the form and content of the pleadings and the method and kind of proof upon which the orders are issued. Chapter iii is a detailed discussion of the form, content, context, and interpretation of the restraining orders; the authors inquire who is bound to do or refrain from doing what, and why? Attention is directed in the fourth chapter to both general and special legislation affecting the range and validity of labor injunctions, and in the last chapter the authors offer a panacea for the alleged shortcomings of the present system in the form of a statute, not all the details of which are agreed upon, but which in general follows the theory of Senator Shipstead's Senate Bill 1482, introduced in December, 1927, by the provisions of which the powers of courts of equity to interfere by injunctions in labor controversies are radically diminshed. In the appendices are included a valuable tabulation of all the reported federal labor injunction cases and many of the New York cases, indicating the nature of the proceeding, its history and culmination. There also is the context of several typical restraining orders, particularly those in the Debbs case and against the Railroad Shopmen and United Mine Workers.

Much could be said about a book such as this one. In fact, one might almost write a volume in expressing personal opinions upon the matters discussed in the treatise, but that is not the function of the reviewer. It is sufficient to point out that the theme of the book is quite evidently partisan in view of the tendency to magnify the evils of the labor injunction, while entirely omitting recognition of its possible benefits. No one can deny the presence of serious defects in the present system, but it may