

long continued living together as man and wife, is often the best and only evidence that can be obtained," a point which has nothing whatsoever to do with the best evidence rule.

In his chapter on DECLARATIONS²⁷ his citation of the case of *Higgins v. Goerke-Kirch Co.* 91 N.J.L. 464 is ill-advised, since the case more appropriately belongs in his chapter on RES GESTAE²⁸ in which it is not mentioned. The same can be said of his citation²⁹ of the case of *Brewer v. Porch*, 17 N.J.L. 377, which is out of place there, and belongs in the chapter on EXAMINATION OF WITNESSES³⁰ where, however, no reference to it is found. Indeed a test-examination of the cases which are embodied by the author in a single chapter, viz. the chapter on "Parol Evidence" (p. 122, et. seq.) demonstrates this erroneous tendency to an exceptional degree. In at least sixteen instances in that chapter alone the cases cited and made use of are unrelated to the "Parol Evidence Rule" or to the title of "Parol Evidence" as conveniently understood. These cases are: *Homeopathic Mutual Life Ins. Co. v. Marshall*, 32 N.J. Eq. 103 (p. 133); *Ruckman v. Ransom*, 35 N.J.L. 565 (p. 135); *Gansevoort Bank v. Carrigan*, 69 N.J.L. 404 (p. 135); *State v. Overton*, 85 N.J.L. 287 (p. 135); *Veader v. Veader*, 89 N.J.L. 399 (p. 137); *Meurer v. Kilgus*, 86 N.J.L. 243 (p. 142); *Clark v. City of Elizabeth*, 40 N.J.L. 172 (p. 142); *Vanderveere v. Gaston*, 25 N.J.L. 615 (p. 145); *State v. Manetti*, 90 N.J.L. 582 (p. 147); *Halpern v. Shurkin*, 98 N.J. Eq. 28 (p. 150); *Mairs v. Sparks*, 5 N.J.L. 606 (p. 150); *Ware v. Chew*, 43 N.J.L. Eq. 493 (p. 150); *Veghte v. The Raritan Water Power Co.*, 19 N.J. Eq. 142 (p. 151); *Den v. Clark*, 10 N.J.L. 217 (p. 151); *Freeman v. Marsh-Albertson v. Smith*, 3 N.J.L. 65 (p. 151).

While these defects of form and substance seriously impair the value of the work considered as a digest, the fact remains that it embodies in a neat and handy volume most of the rulings on evidence in our reports; and on that account the book may be acceptable to many lawyers as a ready survey of the field.

WALTER J. BILDER.

NEWARK, N. J.

A JUDGE TAKES THE STAND. By Joseph N. Ulman. New York: Alfred A. Knopf. 1933, pp. 285.

In an interesting informal manner, and with disarming candor, Judge Ulman in his book simplifies for the layman some of the apparent intricacies of our legal machinery, and reveals to the lawyer and jurist his observations of the nature of law as a social force.

While Judge Ulman ostensibly wrote for the layman, he in fact makes an invaluable contribution to the student of the law. He does not write with the purpose of proving a thesis. His opinions emerge boldly through the interesting recital of his experiences on the bench. In the main he seeks to describe "law in action," that is the actual administration of the law as distinct

²⁷ p. 92, et seq.
²⁸ p. 252, et seq.

²⁹ p. 95.
³⁰ p. 266, et seq.

from "law in the law books,"—the essential difference between the two being the effect of the human and social influences upon judge and jury. "Law in the law books" says if the defendant is negligent and the plaintiff is contributorily negligent, the plaintiff can not recover. Yet Judge Ulman cites a case in which the plaintiff's negligence was slight, his injuries were serious, and the jury awarded a verdict for the plaintiff which was not set aside. If the jury here is in fact applying the doctrine of comparative negligence, and if the result is justified, why not advocate the acceptance of that doctrine?

Judge Ulman stoutly defends the jury system because it relieves against the harshness caused by the rigid application of general principles of law, and because from his experience, verdicts of juries have been in substantial agreement with his opinions. He advocates juries of experts in cases involving specialized knowledge. He is pleased with the operation of Workmen's Compensation Laws, but is highly dissatisfied with the existing methods for handling the so-called automobile cases and recommends a thorough study for some helpful change in this procedure.

Among some of his other observations, Judge Ulman feels that judges as a class are "an extremely conservative and property conscious group." He advocates permitting lay witnesses testifying in a cause to express opinions on an issue such as negligence, for this may tend to show whether the facts are given in support of a previously formed opinion. He opposes judges being slaves to the doctrine of *stare decisis*, advocates intercession of judges in settling cases even by the method of "splitting the difference," and believes that in the conduct of a trial a judge should not act merely as an umpire in a game between litigants, but as one who is interested in ascertaining the facts of the case.

In his chapter on "The Thirteenth Juror," or the judge who erroneously substitutes himself for the jury in directing and setting aside verdicts, Judge Ulman emphasizes the personal equation in the law. Speaking of the types of judges who differ in their attitude towards juries, he says: "Probably each (judge) has acted and will continue to act in obedience to a set of emotional commands that spring from the inmost depths of his being, and never come into the realm of his conscious thinking mind. Therefore I say again the law in action is, and always will be less uniform than the law in the law books. It has to be so until a way is found to administer it by machines instead of by men." This is indeed a startling statement coming from a judge. Does this appear to be the handicraft of a Pirandello or a Freud? If this be true would it not seem essential before passing on a judge's qualifications for office to attempt to probe "the inmost depths of his being," to search for his "law in action"?

Further emphasizing that "law is not a cold, dead abstraction," but that "law is alive," "a living product of many human minds," Judge Ulman makes the plea for the constant need of reshaping and remoulding the machinery of the law to conform to the changing ideals and demands of society. The goal of the law in its administration is "the perfect service of man's social needs".

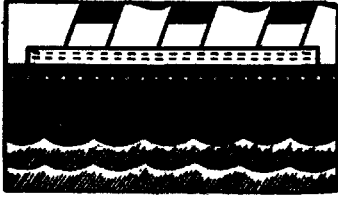
If society favors granting of divorce based on consent of both parties, why insist upon sham proceedings to establish a lack of consent as evidence of an absence of collusion, inquires the author in his section dealing with divorce law.

In the field of criminal law, Judge Ulman is in accord with our advanced thought in urging "that the penalties of the law must be chosen and imposed upon an individual basis. They must be made to fit not the crime but the criminal." Imposition of sentence by judges is an historical survival which should be discarded. He is a staunch advocate of the probation system. He does not believe in capital punishment nor in purely punitive justice. "An outworn philosophy of retributive punishment has been allowed too long to cast its shadow over the newer conceptions of social utility." He pleads for the reformation of the criminal with "every prison a reformatory" as a slogan. The Duker case, that of a confessed murderer, plainly shows how our criminal jurisprudence in its test of insanity, has failed to keep abreast of medical science. While legally sane, Duker was clearly a "psychopathic personality" and incapable of normal social conduct. In an unprecedented opinion, Judge Ulman condemned Duker to be hanged, not as a punishment for his crime, but because he felt that the defendant was incurable and could not be confined to a prison with safety to its inmates or keepers. On this point the Judge was reversed by Governor Ritchie who commuted Duker's sentence to life imprisonment.

Judges have, as a rule, been reluctant to reveal their reactions to the workings of the law. Books in which a judge frankly and honestly relates his experiences with our legal machinery are not common. Such books furnish valuable guide-posts to those concerned with the understanding and shaping of that machinery. We welcome more of them.

ALEXANDER AVIDAN.

NEWARK, N. J.



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