

Louisiana Law Review

Volume 6 | Number 4

The Work of the Louisiana Supreme Court for the

1944-1945 Term

May 1946

Evidence

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Repository Citation

Robert A. Pascal, *Evidence*, 6 La. L. Rev. (1946)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol6/iss4/9>

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heirs of the third opponent¹¹¹ were still the owners of the contract, the parties, like the puppy mentioned above, were right back where they had started from. Third opponent had appeared in the case solely because of the proposed sheriff's sale and as the sale had been annulled, there was nothing left in the case upon which a judgment for the third opponent could be based.

VII. EVIDENCE

*Robert A. Pascal**

Opinion Evidence

The admissibility of opinion evidence on matters of sanity and competency is now generally recognized, as long as such opinions are conclusions based on observed data and not merely expressions of belief without foundation in the experience of the witness.¹ The extent to which the background data, or "facts on which the opinion is based," must be made known varies from court to court.² In *Interdiction of Escat*³ the supreme court declared error the admission of opinions of a psychiatrist and a layman as to the capacity of the defendant to manage her affairs on the ground that "Neither of these witnesses, as a predicate for his opinion, has stated any facts or circumstances upon which it is based and *from which the court is able to form and decree its own conclusions.*"⁴

It is no doubt wise for a court to ascertain that the experience of an expert or lay witness qualifies him to render the opinion offered in evidence; but to require a statement of the facts on which the opinion is based so *that the court may form its own opinion* is another matter. This, in effect, is to pit the opinion of the witness against that of the court and in so doing to overlook the reason for accepting opinion evidence. An opinion is admitted, if at all, because in the particular instance the witness is better able than the court to evaluate the data correctly.⁵ The expert witness' special training or experience renders him more qualified than the court to interpret facts perhaps equally available to both. A layman's opinion may be more valuable than

111. The third opponent died during the pendency of the suit, but it is small wonder—this type of litigation would worry anyone to death!

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1. Wigmore, *A Treatise on the Anglo-American System of Evidence in Trials at Common Law* (3 ed. 1940) §§ 1933-1938.

2. *Id.* at § 1938.

3. 206 La. 207, 19 So. (2d) 96 (1944).

4. 206 La. 207, 212; 19 So. (2d) 96.

5. *Cf.* Wigmore, *op. cit.* supra note 1, at §§ 1917(8)-1924.

the court's if the observations on which his opinion is based are peculiarly within his experience and cannot be transmitted completely or accurately to the court. In fact, when the principal qualification of a witness to render an opinion is his technical background or training or his long acquaintance with the person or situation in question, the witness is actually incapable of remembering all factors affecting his judgment. Even if he tries to remember them, he is unlikely to succeed in conveying to the court the impression they made on him.⁶ Facts convincing to the witness and which would have been convincing to judge or jury had they observed them are lost or rendered unconvincing in the process of intermediate communication. The court should not, therefore, attempt to reach its own conclusions on the second-hand facts. It should accept an opinion if it can be ascertained that the witness has been in a position to observe the facts, has actually observed them, and is capable of forming thereon a relevant conclusion. In the case under consideration the psychiatrist had treated the defendant for at least six weeks prior to her transfer to a sanitarium and after her return therefrom. The lay witness apparently had known the defendant for about fifteen years. Their qualifications could have been considered sufficient for the admission of their opinions.

Confessions

In *State v. Ellis*⁷ the supreme court correctly held error the admission of a written confession alleged to be voluntary, but which showed on its face that an inducement for confession had been offered by the interrogating officer.⁸

VIII. CRIMINAL LAW AND PROCEDURE

*Dale E. Bennett**

A. CRIMINAL LAW

Only three of the numerous criminal cases which were appealed to the Louisiana Supreme Court during the 1944-1945 judicial terms involved questions as to the interpretation and

6. *Id.* at § 1924.

7. 207 La. 812, 22 So. (2d) 181 (1945).

8. Art. 451, La. Code of Crim. Proc. of 1928: "Before what purposes to be a confession can be introduced in evidence, it must be affirmatively shown that it was free and voluntary, and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises."

In view of the very definite statement of the above article, it is somewhat discouraging to note that the court cited decisions of the United States Supreme Court and some of its own on the same point. One of the alleged advantages of codified law is economy of effort.

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