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Editorial Notes

CONTRIBUTORS TO THIS ISSUE

ISIDOR LOEB, B.S., University of Missouri, 1887; M.S., University of Missouri, 1893; LL.B., University of Missouri, 1893; Ph.D., Columbia University, 1901; LL.D., University of Missouri, 1933; who contributes *Constitutional Interpretation In A Transitional Period* is Dean of the School of Business and Public Administration at Washington University. He is a former President of the American Political Science Association.

ABRAHAM LOWENHAUPT, Ph.B., Michigan University, 1900, contributes *The Power of Congress To Impose Excise Taxes Retroactively.* He is a member of the St. Louis Bar.

Notes

PRIOR INCONSISTENT STATEMENTS AS SUBSTANTIVE EVIDENCE

In the recent case of *Pulitzer v. Chapman*[1] suit was brought in the Circuit Court of St. Louis to contest a will on the grounds of undue influence and fraud. The jury sustained the will, but the Court granted a new trial, assigning as its reasons that the verdict of the jury was against the weight of the evidence on the issue as to undue influence, and that there had been error concerning two instructions, neither of which is relevant to the ensuing discussion. The question of evidence pertinent to the issue of undue influence related to the effect of certain statements contained in a prior deposition taken in the same case from the will scrivener, as witness for the proponents, which statements were inconsistent with certain of his later testimony at the trial. These statements represented the only substantial evidence of undue influence in the case, but they were sufficient, if admissible as substantive proof, to sustain the order of the Circuit Court concerning the verdict of the jury.[2] After the witness had testified directly for the proponents, the contestants, during the cross-examination, read to him the identical questions and inconsistent answers contained in the prior deposition, and upon interrogation, he admitted having made such answers to the very questions. On appeal to the Supreme Court of Missouri, it was urged by the defendant-proponent-appellant that the above-mentioned statements were admissible only for purposes of impeachment, and not as substantive evidence of the facts contained therein, and it was contended by the plaintiff-contestant-respondent that such statements were admissible for both purposes. The Supreme Court, expressly negativing an intention to announce a general

[1] (Mo. 1935) 85 S. W. (2nd) 400.

[2] In Mo. where there has been an order granting a new trial because the verdict of the jury was against the weight of the evidence, the appellate court can interfere only where it finds that *no* verdict for the respondent would be allowed to stand i. e. the inquiry is limited to whether there was any substantial evidence to sustain the action of the trial court. Security Bank of Elvins v. Nat'l Surety Co. (1933) 330 Mo. 340, 344, 62 S. W. (2nd) 708, 709, and cases there cited.