TRIAL PRACTICE—BILL OF EXCEPTIONS SIGNED BY JUDGE NOT TRYING THE CAUSE—PRESUMPTION OF REGULARITY—[Missouri].—In *Gnekow v. Metropolitan Insurance Co.*[1] the judge who signed the bill of exceptions was not the same judge who had tried the cause. The St. Louis Court of Appeals, indulging the presumption of regularity in trial proceedings, held that the bill of exceptions was authentic, in the absence of direct proof that the judge who had signed it was unauthorized by statute to so act.

At common law it was necessary that the judge who tried the cause be the one to sign the bill of exceptions,[2] for signing and sealing gave the appellate court jurisdiction to review all matters outside the record proper.[3] By statute,[4] in Missouri, the common law has been changed in those instances where the judge who tried the case goes out of office before the signing of the bill of exceptions.[5] The *Gnekow* decision and the Missouri statute, therefore, are in accord with the present tendency to liberalize proceedings for an appeal.[6]

A comparison of the cases in neighboring states upon this problem shows a great variety of results. In Arkansas a statute[7] has modified the common-law rule by providing that where the judge who presided at the trial dies, becomes insane, or for any other cause becomes incapacitated before he has signed the exceptions, his successor in office shall allow, or correct, and sign the exceptions. In *O'Neal v. State*,[8] therefore, it was held that when a judge goes out of office, he still retains authority to sign bills of exceptions arising out of cases which he had tried prior to the expiration of his term.

Kentucky, which adheres strictly to the common law on this point, holds as a settled rule that a judge who had not presided at the trial has no power to sign the bill of exceptions.[9] Furthermore, the judge who had presided at the cause has no authority to sign the bill of exceptions after the cessation of his term of office.[10] In Oklahoma, the statutory substitute for the bill of exceptions is the so-called case-made. In that state, provision is

1. (Mo. App. 1937) 108 S. W. (2d) 621.
2. 2 Tidd, *Practice* (Am. notes 1856) 863 (note A); Law v. Jackson (1827) 8 Cow. (N. Y.) 746; Kruse v. People (1899) 84 Ill. App. 620.
3. Modern Woodmen of America v. Blair (1931) 263 Ill. App. 387.
4. R. S. Mo. (1929) sec. 1012, provides: In any case where the judge who heard the cause shall go out of office before signing the bill of exceptions, such bill, if agreed to be true by the parties to the action, or their attorneys, or shown to the judge to be correct, shall be signed by the succeeding or acting judge of the court where the case was heard."
5. In accord with the liberal tendency evidenced in the Gnekow case is Fenn v. Reber (1910) 153 Mo. App. 219, 132 S. W. 627, where it was held that a bill of exceptions, signed by a judge succeeding the judge who tried the cause in a certain division of the circuit, was signed correctly by the succeeding judge as the statutory phrase, "going out of office," was applicable to a change of division.
6. Yancey v. Patterson (1903) 97 Mo. App. 681, 71 S. W. 845; Lambert v. Lambert (Mo. App. 1919) 208 S. W. 118.
7. Ark. Pope's Digest (1937) sec. 1546.
8. (1911) 98 Ark. 449, 136 S. W. 936.
9. Combs v. Combs (1917) 175 Ky. 523, 194 S. W. 790.
10. Ibid.

made by statute for the case-made to be signed, settled, and certified by the judge trying the case, even though he is out of office.[11]

Kansas and Illinois have adopted the most efficient and liberal views in the matter of review on appeal by providing for an automatic transfer of the entire record. The Kansas court in interpreting its statute held that exceptions to rulings were abolished by the legislature by striking from the code all provisions relating to exceptions.[12] Illinois, prior to 1933, was strict in requiring the judge who signed the bill of exceptions to be the same judge who tried the cause.[13] But with the passage of the new Illinois Practice Act,[14] the entire record, similar to the record in equity, will be brought up for review, and the only authentication requirements are prescribed by the appellate courts, as they deem advisable.

The instant case seems to be a trend in the right direction. It is submitted, however, that Kansas and Illinois have adopted a more direct and desirable method of treating this problem.

I. B.

UNFAIR COMPETITION—RIGHT TO PRIVACY—PERFORMER'S INTEREST IN HIS RECORDED PERFORMANCE—INJUNCTION—[Pennsylvania].—Has a musician such a common law property interest in his recorded interpretations of a composition[1] as to afford him equitable relief from the unauthorized broadcasting of such recordings by a radio station as part of its sustaining program?[2] In a recent case[3] the Supreme Court of Pennsylvania held that the

11. Okl. Comp. Stats. (1921) sec. 787. This is a statutory modification of the common law, similar to the Missouri and Arkansas statutes, supra. The Oklahoma statute modified the rule laid down in Mitchell v. Bruce (1922) 80 Okl. 53, 204 Pac. 281, and affirmed in 1927 in Ark. Fertilizer Company v. Brattin, 127 Okl. 9,260 Pac. 43, that a case-made signed and settled by the successor of the judge who tried the cause, in the absence of a showing of inability of the trial judge to sign is a nulity. This view would be contra to the Missouri presumption of regularity in trial court proceedings.

12. Cobe v. Coughlin Hardware Co. (1910) 83 Kan. 522, 112 Pac. 115. To the same effect see Bowen v. Timmer (1912) 87 Kan. 162, 123 Pac. 742; Baker v. Readicker (1911) 84 Kan. 489, 115 Pac. 112; Readicker v. Denning (1912) 86 Kan. 79, 119 Pac. 533.

13. Independent Electric Company v. Donald (1899) 86 Ill. App. 166; but see Corbly v. Corbly 202 Ill. App. 469.

14. Illinois, McKaskill's Practice Act (1936 Supp.) sec. 74 (2).

1. Copyright Act (1909 as amended 1912) 35 Stat. 1076, 17 U. S. C. A. sec. 5. Subjects of copyright listed; right of performer in his performance not included.

2. Plaintiff made recordings for the Victor Talking Machine Co., agreeing at the time that the legend "not licensed for radio broadcasting" be put on the face of each record. Defendant secured license from the American Society of Composers, Authors, and Publishers, to whom both composer and publisher had assigned their rights, and played the record on one of its programs, announcing it as a Fred Waring recording. Plaintiff seeks an injunction.

3. Fred Waring v. WDAS Broadcasting Station, Inc. (Pa. 1937) 194 Atl. 631.