1890

Confessions and Admissions as Evidence

Charles R. Coville
Cornell Law School

Follow this and additional works at: http://scholarship.law.cornell.edu/historical_theses

Part of the Law Commons

Recommended Citation
Coville, Charles R., "Confessions and Admissions as Evidence" (1890). Historical Theses and Dissertations Collection. Paper 118.

This Thesis is brought to you for free and open access by the Historical Cornell Law School at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Historical Theses and Dissertations Collection by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.
THE S I S

COMMISSIONS AND ADMISSIONS AS EVIDENCE.

- BY -

Charles R. Sovilla,

School of Law, Cornell University,

1930.
CONTENTS

INTRODUCTORY ............................................. 1.

COMMISSIONS ................................................ 4.

ADMISSIONS .................................................. 16.

CONCLUSION .................................................. 23.

O----X----O
In considering the subject of evidence we are carried backward through many years, following the stream of advancement in judicial decisions and legislative enactments, until finally, as it contracts towards its source, its silver thread is lost in the clouds and mists of antiquity.

As the first laws that society demanded were penal laws, we must here look for the first trace of evidence, motives were comparatively little considered in early penal laws or in judicial proceedings founded upon them. Gibbon's remark "that the life or death of a person is determined with less caution and delay than the most ordinary question of covenant or inheritance", is true only of the earlier English jurisprudence.

A comparative disregard of the rules of evidence is a characteristic of the earlier administration of the law. The fact of being charged with a crime, especially if there be some strong circumstances of suspicion, naturally induces a prejudice against the accused; he is deemed guilty until proven innocent, contrary to the more humane axiom of a later age, he is deemed innocent until proven guilty. The patient investigation of a case, the careful weighing of all the evidence, the impartial judgment unswayed by popular excitement, must of necessity belong to a more advanced age.
of civilization and jurisprudence.

The Code of the Twelve Tables was abolished by the humanity of the judges, but the false witness was thrown headlong from the Capitol. Then came a general amelioration of the laws, when the Senate was made the instrument of Imperial power for the condemnation of criminals charged with offenses against the state, and the ordinary magistrates became invested with powers, which under the Republic had been reserved to the people either in the comitia or in the popular body of the judices, who sat with the praetor—we see in Rome the first system of evidence.

But it is my object to discuss a division of secondary mediata evidence—Confessions and Admissions. Treating admissions as separate from the res gestae.

There is no branch of the law of evidence in such inextricable confusion as that relative to confessions, cases there are in abundance, where in one instance, a confession has been clearly held admissible; where a confession in like circumstances in all substantial particulars, has been held clearly inadmissible. As to admissions the law is comparatively settled and a more definite result is to be obtained.

It will be my endeavor to so state the rules relating to the admission of confessions and admissions as evidence,
and support them by illustrative cases and authorities; as to afford a ready reference to the leading cases bearing upon that branch of the law of evidence.
CONFESSIONS.

§1. Preliminary proof necessary to show volition.

§2. Preliminary question to be decided by the court.

§3. Right by accused to cross-examine and call another witness on the cross-examination.


§5. " obtained by artifice.

§6. " in answer to questions.

§7. " made under encouragement to tell the truth.

§8. " made while the accused was intoxicated.

§9. " made to officer in charge.

§10. " made on preliminary examination.

§11. " by acts of a guilty conscience.

§12. Qualification of witness.

§13. Conviction not warranted by confession alone.

§14. Rule as to weight of confessions.


§1. PRELIMINARY PROOF NECESSARY TO SHOW VOLITION.

When a confession made by the accused is offered in evidence against him, it is necessary for the prosecution to lay a foundation for the introduction of the confession.

It is elementary law that before a confession can be received in evidence in a criminal case, it must appear that it was voluntary. "A free and voluntary confession is deserving of the highest credit, because presumed to flow from the strongest sense of guilt, and, therefore, it is admitted as proof of the crime to which it refers; but a confession forced from the mind by the flattery of hope or the tortures of fear, comes in so questionable a shape when it is to be considered as the evidence of guilt, that no credit ought to be given to it." (Territory v. Underwood, 19 Pac. R., 396.)

In Read v. State, (69 Ala., 255), the court said: "all confessions are prima facie involuntary, and they can be rendered admissible only by showing that they were voluntary, and not constrained, or in other words, free from the influence of fear or hope applied to the prisoner's mind by a third person."

People v. Soto, (49 Cal., 67) gave the rule that it was
incumbent on the prosecution to lay a foundation, showing prima facie that the confession was freely made.

The weight of authority seems to hold the above rule, inasmuch, as the proof of volition brings out more sharply the extrinsic facts of a confession. (Jackson v. State, 3 So. Rep., 847; Clark's Crim. Dig., 336; Roscoe v. State, S Atl., 571; Greenleaf, Ev., §219; Murphy v. State, 63 Ala., 1.)

Contra, Rufer v. State, 25 Ohio St.; the court saying, "Confessions are presumed to be voluntary, until the contrary is shown".

§2. PRELIMINARY QUESTION TO BE DECIDED BY THE COURT.
The admissibility of an alleged confession must be determined by the court, on a careful consideration and comparison, of the age, situation and character of the accused, and the circumstances under which it was made; when all of these are considered, if it satisfactorily appears that it springs from the volition of the accused, and there is an absence of evidence that any person had exerted any influence to induce it, it is admissible. (Hector v. State, 23 Am. Dec., 434; Greenleaf, Ev., §219).

The court in U.S.v. Stone, (2 Crim. L.Cas., 769 - 795)
gave as the true test to be applied on the trial of the pre-
liminary question -- "Had the person to whom, or in whose
presence, or by whose sanction the alleged confession was
made, any authority? Were the threats or promises of that
character that should exclude the confession as one made in-
voluntarily?" If answered negatively, the confession should
be admitted.

It is error to rule on a preliminary question and allow
the evidence to go to the jury, as if the question were ex-
clusively for them. (Wharton's Crim. Ev., §639; State v.
Elliott, 49 Iowa, 426.) The preliminary question is for
the court and not the jury, (Ellis v. State, supra; 1 Green-
leaf, Ev., §319; Reed v. State, 60 Ala., 253) and the coun-
sel for the accused can ask for the removal of the jury during
such trial of the preliminary question. (Ellis v. State, 3
Southern Rep., 168). But where evidence is conflicting, as
to whether defendant's confession was voluntary, the court
properly submitted the question to the jury. (Volkavitch v.
Comm., 12 Atl., 84; Comm. v. Howe, 9 Gray, 110; Comm. v.
Smith, 119 Mass., 305.)

The judge's conclusion upon the preliminary question is
not subject to review, unless it involves a ruling upon a
matter of law, or the whole evidence is reported for the de-
termination of the appellate court; or the court refuses to hear competent testimony upon the preliminary question.

(Comm. v. Morrill, 30 Mass., 542; Comm. v. Precce, 140 id., 376.)

§3. COUNSEL FOR ACCUSED MAY CROSS-EXAMINE AND CALL ANOTHER WITNESS ON THE PRELIMINARY QUESTION. The counsel for accused may cross-examine on the preliminary question as to volition, and such cross-examination cannot be postponed until after the confession is introduced, (Ruffer v. State, supra; State v. Filman, 35 Iowa, 311) and the counsel for accused can call another witness on the preliminary question as to whether it was voluntary or not. (Comm. v. Culver, 126 Mass., 408).

§4. CONFESSION MADE IN EXPECTATION OF leniency. A confession made in hope of favor from the prosecution or those representing it, is inadmissible. (Comm. v. Krapp, 20 Am. Dec., 441; People v. Ward, 15 Misc., 231; Territory v. Underwood, 19 Pac., 398). In People v. Phillips, 42 N.Y., a confession made after the officer had told the prisoner "it would be better for him to own up", was held admissible. And the general tendency of modern adjudication is to depart from the above rule which has so long been considered with-
and disregard any objection as to the admissibility of a confession not based upon a threat or promise made or sanctioned by a person in authority. In Reg. v. Baldry, 12 Eng. L. & E., 500, Parke, B., observed: "I cannot look at some of the decisions without shame, when I consider what objections have prevailed to prevent the reception of confessions in evidence; and I agree that the rule has been extended quite far, and that justice and common sense have too frequently been sacrificed at the shrine of mercy." The New York Code of Criminal Procedure, §395, excludes only where made under influence of fear, or upon stipulation of district attorney not to prosecute. (People v. Deckwith, 108 N.Y., 67). In People v. McCallum, 103 N.Y., 387, s.c. 9 N.E., 502, the words of a constable addressed to a person charged with larceny, that "she might as well own up," as they had proof enough to convict her" will not render the confession inadmissible under §395 N.Y. Crim. Code.

§5. Confession obtained by deception and artifice. The fact that a confession is obtained by the use of artifice, cunning, falsehood and deception to obtain disclosure, does not render the confession inadmissible; and no law is better settled than that such practices will not render inadmissible a confession obtained by such means. (State
36. CONFESSION MADE IN ANSWER TO QUESTIONS. The one fact, that the confession was made in answer to questions put by anyone, even an officer having the accused in custody, does not render it incompetent, (Cox v. People, 50 N.Y., 300; People v. McGloin, 91 N.Y., 241) and where the officer told the prisoner that he was not obliged to answer any questions, and then questioned him holding out no inducement, it does not render such confession inadmissible. (Comm. v. Holt, 121 Mass., 61; Comm. v. Sturtevant, 117 Mass., 132).

37. CONFESSIONS MADE UNDER ENCOURAGEMENT TO TELL TRUTH. Simple encouragement to tell the truth, as distinguished from encouragement to make a confession, does not render the confession subsequently made inadmissible. (Comm. v. Kott, 135 Mass., 269; Comm. v. Smith, 119 Mass., 365.) In Peo. v. Smith, 3 How. Pr., 323, the constable on arresting the accused, said to him: "If you burned the barn, you had better tell me", held admissible where the accused made a subsequent confession; and in Fouts v. State, 8 Ga. St., 89, where the accused being placed in custody, was told by his custodian, "If he was guilty, it would not put him in any worse condition, and he had better tell the truth at all
times", held, no ground for excluding the confession.
More advice to tell the truth, in absence of a threat, is
not sufficient to exclude. (Comm. v. Proecco, 5 N.Y.,
494; Nilat v. State, 36 N.Y., 526).

33. Confessions Made While the Accused Was Intoxicated.
Where the accused was intoxicated, but not so as to incapacitate
him from telling a connected story, the confession
would be competent. (State v. Grear, 41 Am. Rep., 236)
And the fact, that liquor was furnished by an officer having
accused in charge, would not make confession inadmissible.
(Delbo v. State, 80 N.Y., 495.)

The degree of intoxication may always be shown on cross-
examination, and the jury shall determine how much reliance
shall be placed on the confession. (State v. Felts, 51 Iowa,
495; Rex v. Spilsbury, 7 Car. & P., 137; Jeffords v. People,

The following charge in Comm. v. Hove, 9 Gray, 118,
was held proper: "The evidence of intoxication is an objection
to the weight and not to the competency of the testimony, and
that if the defendant was so much under the influence of
liquor as not to understand what he was confessing, they should
disregard the confession altogether."

The above rule is followed by the majority of courts,
but the Supreme Court of Pennsylvania, in a well reasoned case, (McCabe v. Comm., 3 Atl., 45) gave the rule that where liquor was supplied to a prisoner charged with murder by the officer in charge, and the prisoner while under its influence made certain statements; that such statements should not be admitted in evidence or be given any consideration in determining the question of guilt. This case is a basis for a very just criticism upon the rule above stated,

1. It is impossible for the jury to determine the degree of intoxication; 2. The effect of intoxication varies in different cases (Richardson's Diseases of Modern Life);

3. The advantage which would be taken of an intoxicated person, by those anxious to secure his conviction.

- It would seem that the Pennsylvania rule, although with a minority support, is more just and more consistent with the idea of modern jurisprudence.

30. CONFESSION MADE TO OFFICER IN CHARGE. The one fact alone, of a confession being made to the officer in charge of the prisoner; is not sufficient to exclude his confession, whether made to the officer or third parties. (People v. Rogers, 72 Am. Dec., 484; People v. Brusa, 166 N.Y., 630; Hoyt v. People, 110 U.S., 574; People v. Abbott, 4 Pac. R y., 709).

§10. CONFESSIONS MADE ON PRELIMINARY EXAMINATION. The confession of a defendant voluntarily made during the preliminary examination of another person, is admissible against him in the prosecution of himself for the same crime. (State v. Lewis, 8 Southern Rep., 343.) And where the statement of defendant refused to writing, on a preliminary examination, having been excluded from the jury at his instance; it is not error to admit oral proof of such part of his voluntary statement as was not drawn out by questions of the district attorney, especially as there was no variance between such oral and written proof. (Bailey v. State, 9 S.C., 270).

§11. CONFESSION BY ACTS, OF A GUILTY CONSCIENCE. The acts and conduct of a party at or about the time when he is charged to have committed a crime are always received in evidence of a guilty mind, and while weighing such evidence ordinary caution is required. (Roscoe's Crim. Ev., 31-2). While the manifestations at such a time, sometimes indicate excitement and great disturbance of the physical system, and do not always sanction an inference of guilt, they are admissible evidence for the jury to pass upon in view of the
circumstances. (Greenfield v. People, 33 N.Y., 85)

"The conduct of a prisoner under the trying ordeal is to be weighed by the jury, and for them to determine, whether it is contrary to the ordinary behavior of a person charged with a crime, as evincing guilt or innocence." (Lindsley v. People, 63 N.Y., 143). In People v. O'Neill, 112 N.Y., 385 (errosen), the prosecution was allowed to prove that while the adjustment of the fire losses was in progress, defendant had a bottle of liquor with him and drank from it very often.

§12. QUALIFICATION OF WITNESS. Witness must understand and remember in substance all of the confession. (State v. Pratt, 30 N.C., 239). A confession cannot be proved by witness who does not remember the substance of all that was said in the same conversation. (Serry v. Com., 1 Am. Crim. Rep., 272).

§13. CONVICTION NOT WARRANTED BY CONFESSION ALONE. An extra-judicial confession, uncorroborated, is insufficient to authorize conviction. All experience has shown that verbal confessions of guilt are to be received with great caution, the danger of mistake from misuse of words, the failure of the party to express his meaning, the misapprehension of want of recollection of the witness, or his zeal in pursuit of evidence; all admonish us to receive such testimony with great care. (People v. Hennessy, 15 Wend., 147; People v. Par-
§14. RULE AS TO THE WEIGHT OF CONFESSIONS. This rule may be best expressed in the words of Judge McConnell in his charge to the jury in the trial of the Cronin suspects:

"Testimony of verbal confessions, statements and conversations, ought to be taken by you with great care, because that sort of testimony is subject to much infection and mistake. And when the verbal confessions of persons charged with crime is offered in evidence, the whole confession should be taken together, as well as that part which makes for the accused, as that which makes against him; and if the part of the statement which is in favor of the defendant is not disproved and is not apparently improbable or untrue, when consistent with all other evidence in the case, then such part of the statement is entitled to as much consideration from the jury as any other part of the statement."
ADMISSIONS.

§1. Admissions made by a party against his own interest.

§2. " in pleadings.

§3. " by partners or persons jointly interested.

§4. " by former owners.

§5. " by mere third parties.

§6. " by conduct.

§7. " by agent or attorney.

§8. Rule as to admissions as evidence.

Conclusion.
ADMISSIONS.

91. ADMISSIONS MADE BY A PARTY AGAINST HIS OWN INTEREST.
The rule that a voluntary admission, and all admissions are
prima facie voluntary (Plainsing Mill Co. v. Schuda, 39 N.W.,
338) when made against the interest of the declarant, are
admissible against such declarant, is a well established
exception to the rule rejecting hearsay evidence, and is
based upon the ordinary motives of human conduct as a suffi-
cient warranty of the truth. Thus the ordinary tests are
properly done away with, as e.g., an entry by a physician
that he had received payment for performing a certain opera-
tion (Higgin v. Ridgway, 10 East., 109: s.c. 2 Smith's Leading
Cases, 133). But any admissions made under duress are inad-
missable, as when the party is illegally arrested (Tiley v.
Devin, 11 Cush., 207). The party making any admissions
may show that it was untrue, or made under a mistake, unless
someone has acted upon it so as to estop him (Ray v. Bell,
34 Ill., 444).

A party's own admissions are in all cases admissible in
evidence against him, though such admissions may involve what
must necessarily be contained in some writing or deed. Thus
the statement of a party that certain land had been conveyed
might be admitted though the converse must be by good re-
corded. (Smith v. Palmer, 6 Cush., 341; Barlo v. Ficken,
5 Cal. 3 P., 342; Lewis v. Wallens, 8 Gray 337).

§2. ADMISSIONS IN PLEADINGS. Admissions in pleadings
are evidentiary in their character, and are an absolute es-
toppel upon the party making them, unless he seasonably with-
draws them by remonstrance; and obviates the necessity of the
other party proving the facts thus admitted. There are
implied as well as express admissions, and any incongruities
or contradictions are to be taken most strongly against the
pleader.

Take for instance the following case (Derby v. Gallup,
5 Ill., 119), where the action was replevin for unlawful
taking the plaintiff's goods, and the answer contained two
defenses, (1) a general denial of the allegations of the com-
plaint, (2) a justification of the taking under levy upon ex-
ecution -- it was held that the answer admitted the taking
for the purposes of the trial, and to that extent, the second
defense vacated the first. See also Vale v. Stone, 13 Iowa,
334; N.P.R.R. v. Paine, 7 Supp. 6t. Rep., 633; Scott v. King,
7 Ill., 492.

§3. ADMISSIONS BY PARTNERS OR PERSONS JOINED.
Where persons are jointly interested in a common enterprise, the admission of one of them, if relating to the matter of the joint business, is receivable in evidence against the others, as well as against himself. (Kemble v. Marie, 5 Car. & P., 693; Davis v. Keane, 33 Va., 35; Grippen v. Hersch, 12 N.Y., 65.) But this rule does not allow the admission of one partner against the other to prove the partnership. (Smith v. Collins 115 Md. 324.)

While the partnership continues, the declarations or admissions of either of the partners in respect to firm and business of firm, will bind it, but upon the occurrence of a dissolution the power is at end. "The power to bind ceases with the partnership relation." (Shelimore's Appeal, 70 Pa. St., 266; Munson v. Lake, 21 Conn., 613; Baker v. Stackpole, 9 Cow., 420; Wharton's Civ., 11, 3196).

It matters not whether such admissions are oral or written. (Winslow v. Newlan, 49 Ill., 146).

There is some authority holding that admissions made after dissolution are competent as evidence to bind the firm. See Loomis v. Loomis, 20 Vt., 108; Daly v. Sheppard, 11 Pick., 230.

94. ADMISSIONS BY FORMER OWNERS. The rule is now well settled that the admissions made by a party when in possession of land, are as against those claiming under him, com-
potent evidence to show the character of his possession, and the title by which he held. (Dodge v. Freedman's Savings & Trust Co., 93 U.S., 379).

For the old rule previous to the above decision, see Gilman v. Merckley, 64 N.Y., 303; Jackson v. Yassough, 7 Johns., 120; Jackson v. Miller, 3 Cow.)

But the rule will not apply if the admission is made subsequent to the grant. Peckman v. Montgomery, 59 Am. Dec., 219; Boker v. Haskell, 53 Am. Dec., 466.

The above rule allows the admissions of a accidient to bind the executor, as well as a landlord's to bind the tenant. (Winston's Ev., 31158)

The rule does not extend to admissions made by the holders of chattels or promissory notes while in the hands of such holders; such admissions are not competent evidence in a suit upon such chattel or note by a subsequent owner. (Dodge v. Freedman's Savings Inst., supra; Page v. Pagevin, 7 Hill, 291). Nor is the declaration of a mortgagee admissible against an assignee of the mortgage to show usury. Totley v. Barry and wife, 18 N.Y., 497.

The rule as to boundaries has been quite extended, for it is held that the declarations of a person, while in the possession of lands claiming as owner, that his line extended to a certain boundary, which he pointed out at the time of
taking the declaration and before any controversy about the boundaries, is admissible in evidence after his death, on a trial of a question concerning the boundary line of the same tract of land. (Inglett v. Shaw, 3 Nuth., 223), but the declaration must appear to have been made while in the act of pointing out the boundary. (Long v. Colton, 116 Mass., 414). See the following section.

35. ADMISSIONS BY MERE THIRD PARTIES. Boundaries may be proved by the declarations of aged persons, deceased at the time of trial; also as to the existence of an ancient channel. (Asington v. North Bridgewater, 23 Pick., 170; see Hurry v. Richard R.R., 127 Mass., 571).

36. ADMISSIONS BY SILENCE OR CONDUCT. The often quoted maxim, "Silence gives consent", should be applied only when all the facts and circumstances surrounding such admission are taken into consideration. (Thompson v. Blanchard, 4 N.Y., 309; Bezzell v. Odell, 3 Hill, 215 at p. 214).

Where a party to whom a note was presented for payment remained silent, it is competent evidence that his signature is genuine, or in case it is not genuine, that he will be bound by it. (Cerbon v. Paul, 21 N.H., 24; Greenwood Bank v. Kraft, 2 Allen, 209), and statements made in the pres-
ence of a party who remains silent will be admissible against him. (Gibney v. Conley, 34 V.Y., 361; Blanchard v. Hill, supra).

37. ADMISSIONS BY AGENTS OR ATTORNEYS. Before such admissions will be allowed in evidence, it is incumbent on the party offering, to show agency. (Rosenstock v. Tomay, 32 N.C., 109) But the agency cannot be proved by the agent's own declarations. (Baker v. Gerrish, 14 Allen, 201).

Admissions made by agents, are admissible against their principals only when part of the res gestae. (Cooley v. Norton, 4 Cush., 63) unless such authority is expressly or indirectly given. (U.S. Frig v. Burtette, 9 Peters, 533-9).

When an admission is offered against a person in a representative capacity it must be shown that it was made while acting in such capacity. (Stephens's Dig. of Ev., 33-4; Bent v. Bent, 3 Gill, 428).

Attorneys may admit facts on the trial or in pleading, waive a right to appeal and confess judgment. (Pike v. Therson, 5 N.H., 333; Alton v. Gilmanton, 2 N.H. 309; Wilson v. Spring 66 Ill. 14) And in the foreclosure of a mortgage, he has the power on the hearing of the case to make admissions as to the sum due his client. (Wilson v. Spring, supra.)
§3. RULE AS TO ADMISSION AS EVIDENCE. Admissions should be received with great caution, as they are generally very damaging to the opposite party, and it often follows, that the witness testifying to such admissions, in his zeal to benefit his side of the case often makes the statement too broad.

While a witness testifying to an admission should give, if possible, the exact words used, yet a general answer embodying the substance or purport of the admission is not objectionable; where that is all the witness can remember. (Chambers v. Hill, 34 Mich., 523; Hitttidge v. Russell, 114 Mass., 67) But the rule will not allow a statement of anything else than the substance of the language which was employed, and does not permit the witness to state merely his conclusion from the testimony. (Sein v. Furtrett, 53 Ill., 525-531), although it has been held that when an witness is unable to state an admission it was error to refuse to allow him to state the impression which the conversation made upon his mind. (Wilder v. Persey, 41 Mass., 370, and Miles v. Roberts, 34 Vt., 316, supports the view that a witness may state what he understood to be the effect of it.)

The whole of the statement containing the admission is to be received together. (Morlopes v. Northrup, 39 Ark.
Dec., 811) and part of an admission cannot be admitted and

CONCLUSION.

Confessions and admissions as evidence unsatisfactory,
but necessary. Immediate testimony is that given under the
solemn sanction of an oath, publicly, in the presence of
the jury; whether the witness is willing or reluctant, is
noted. On the cross-examination his interest in the case,
his motives, memory, situation, and age, are brought before
the jury. In these important particulars confessions and
admissions are usually defective.

Allow no doubt that the witness heard from another the
statement, yet as it was not made under oath, there creeps
in a moral suspicion that all is not right; innocent actions
may be misinterpreted because they presume guilt. The
feelings by which men are actuated too often lead them to as-
cume that probable events are true when in search of facts
to support their belief.

The rule excluding hearsay evidence is based first
upon the serious inconvenience which would result from the
admission of statements that would convince the ordinary man
or the existence or non-existence of alleged facts.; second, the solemn sanction of an oath cannot be applied.

But where immediate evidence cannot be obtained, shall a wrong go without a remedy or an injury without redress, because of this rule? In the maintenance of justice, an encroachment on this arbitrary rule was necessary. As a result certain exceptions to it are allowed -- those in whose favor there exists the strongest presumption of truth.

To classify and systemize these exceptions, which have been a stumbling block to the trial lawyer, has been an important part of the work of jurists in the past and to perfect the system will require much earnest labor in the future.