Courts on Trial (Jerome Frank, 1949)

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Court, however, in the recent case of Miami Beach v. First Trust Company, at first recognized the validity of zoning based on aesthetics, but on rehearing denied it. One prior decision, however, does seem to take into account the validity of zoning based on aesthetics, if the loss to the property owner be not too great. Thus the Florida doctrine in this field remains in doubt at the present writing.

One word more should be said as to the limitations of this work. It is especially useful in this jurisdiction because it considers many of our Florida cases more fully than do the textbooks on the law of zoning or the legal encyclopedias such as Corpus Juris Secundum. On the other hand, a number of secondary issues not yet adjudicated in Florida are omitted; accordingly, when a lawyer has a case of first impression here, he may find a case from another jurisdiction in one of these other works. It should also be noted that the law on issuance of building certificates is not covered.

The book is well organized and clearly written, and the material is presented with thoroughness. Indeed, in some instances certain legal issues are considered at such length that the lay reader may wish to skip part of the argument. But an important service has been rendered in drawing together in one place the material on zoning at the city level as adjudicated in Florida.

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Judge Frank, in a brilliant style that is familiar to readers of his earlier books, Law and the Modern Mind (1930), and If Men Were Angels (1942), describes Courts on Trial as a study of “myth and reality in American justice.” It is intended, he says, “for intelligent non-lawyers as well as lawyers.” The emphasis throughout the book is upon “court-house government,” its importance, mystery and weaknesses. A decision of a trial court, he states, is generally regarded as

245 So.2d 681 (Fla. 1949).
345 So.2d 687 (Fla. 1950).
the result of applying legal rules to established facts. In a dynamic society, with rapidly changing economic and political conditions, and with an increasing multiplicity of rules, there is bound to be increasing uncertainty as to the rule that a court will apply in a particular case. The assumption of Langdell that a rule exists for every case, and that the duty of the court is simply to find it on the shelves of a well-stocked library, and to apply it to the facts at hand, is pure myth.

A determination of the "actual, objective facts," Judge Frank contends, is a far more difficult problem than arriving at the applicable rules of law. Faulty recollection, interest, bias, ignorance or death of a witness, varying abilities of counsel, incompetent jurors and unqualified judges are factors that contribute to the almost utter lack of predictability of the "facts" upon which a case will be decided. An appellate court will rarely disturb the findings of a judge or the verdict of a juror on questions of fact; hence, the role of the trial court is of far greater importance to the litigant than that of the appellate court.

With puckish delight, and with the elan of a discoverer, Judge Frank punctures many a legal myth which has not been seriously accepted by the legal profession since Bentham wrote on Blackstone. He also makes numerous references, many of them esoteric, to the fields of anthropology, history, psychology, and music. Suggested reforms, some of them novel, are found in almost every chapter.

It is regrettable that Judge Frank does not give greater attention to the solid work of the American Bar Association, and of local bar associations, and their efforts to improve legal and judicial practices. For example, Arthur T. Vanderbilt's Minimum Standards of Judicial Administration and The Improvement of the Administration of Justice, a handbook prepared by the Section of Judicial Administration of the American Bar Association, to which no references are made, suggest the solutions to many of the problems discussed by the author.

While the book is expertly written, it is submitted that it will not give to the intelligent non-lawyer an altogether fair picture of the legal and judicial practices in the United States today.

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