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Famous Jury Speeches, by Frederick C. Hicks (1925)

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Mere inadequacy of price is no ground for charging the trustee with lack of ordinary care, or setting aside the sale, providing the transaction is otherwise properly conducted. *Franklin v. Osgood*, 14 Johns. 52 (1817), *Singleton v. Scott*, 11 Iowa 589 (1859) *Glenn v. Augusta Perpetual Bldg. & L. Co.*, 99 Va. 695, 40 S. E. 25 (1901).

The principal case holds that the court order for the sale to be made within six months is "directory and not mandatory," and that the omission to sell within the time of the decree is not *per se* mismanagement, citing *In re Abram's Estate*, 114 Wash. 51, 194 Pac. 787 (1921).

L. S.

BOOK REVIEWS

FAMOUS JURY SPEECHES. By Frederick C. Hicks. St. Paul: West Publishing Co., 1925. pp. 1180.

Mr. Hicks has published a timely book in this collection of 24 arguments of noted American advocates ranging in period from 1884 to 1924, and in style from Choate to Darrow. His title, however, conveys only a half truth, for 12 of the arguments reported were delivered before Courts without juries in Admiralty Equity, Probate, etc.

Your reviewer chooses to take the author at his word in attaching special significance to the type of tribunal addressed, and to emphasize the method and manner of presentation rather than the analysis of the law involved.

After all, the chief interest of the book lies in its reflected illumination of the jury system, and all the light we can get on that subject should be welcomed by those interested in legal reform. For the Trial Jury is itself definitely on trial in this 20th century, the 7th of its institutional existence among us of Anglo-Saxon tradition. Its precursor and long time companion device for securing the liberty of the individual, the jury of Presentment, has already, for practical purposes, lapsed into a state of innocuous desuetude, though still formally employed (of necessity by the Federal government) to register the decisions of the official prosecuting agency. Its original *raison d'être* becomes less and less cogent with the growth of urban communities. Likewise we find the trial jury becoming the victim of another aspect of the same circumstances. Complex industrial and business relationships determine the character of a greater and greater portion of our litigation both civil and criminal, and this matter of "taking the lay mind" of the community on the facts in dispute taxes to the breaking point the capacity of both the advocate and the judge who conscientiously attempt to unravel the technical evidence introduced for the benefit of the jurymen.

In view of these facts it is encouraging to read the text edited by Mr. Hicks, for it is only fair to say that the speeches selected are, most of them, remarkably temperate in tone, keen in analysis, and well ordered. No man's judgment on the jury system is more to be relied upon than that of the practitioner, and the real nature of that judgment is best indicated by the character of the appeal made to the twelve men in the box.

Public interest in the operation of the jury centers upon its application to criminal procedure both because of the more spectacular character of the trial, and the immediate vital human interests involved. Mr. Hicks has incorporated five speeches delivered by counsel in such cases. It is interesting to note that more attention in the selection has been given to the presentation of the case for the State than for the defense. Having in mind both the inherent disadvantages of the prosecution due to Constitutional safeguards, as well as the almost invariable lack of experience on the part of those charged with the prosecuting function, we are warranted in feeling some solicitude for the effectiveness of this particular part of the administration of justice. Francis

Wellman's summation for the people in the Carlyle-Harris murder trial of 1892 is a remarkable effort and well worth reading. His disposition of the case for the defense is complete, and he reserves a very well put exhortation to the last two paragraphs of his address. The jury is reminded of the subversive influences it is exposed to in modern times beginning with the delays of the law which tend to dissipate the just indignation of the community, and ending at the trial with the tearful presence of the accused and his family, by calling their attention to the methods of the earliest juries which were summoned immediately on commission of the crime to the scene of the defendant's wrongdoing, there to be confronted by a mute appeal for justice in the presence of the defendant's victim.

There is also included, the summation for the People of William E. (later Senator) Borah in the Coeur d'Alene Riot murder trial, and Francis Garvan's address for the People in the Thaw murder trial. The outstanding example of defense pleading is the closing address of Clarence Darrow in the Leopold-Loeb trial.

On the civil side the most interesting selection for the layman will probably be the argument for the Socialists delivered by Morris Hillquit in the course of the investigation of the New York Socialists by the Assembly, March 3rd, 1920. For the lawyer, the speeches of Walter G. Merritt and Daniel Davenport in the Danbury Hatters case should be of more than passing interest, for questions of conspiracy in restraint of trade, inducements to breach of contracts, boycotts, and injuries in industrial relationships generally, are here involved, and these are right at the growing point of legal development today.

K. C. COLE.

CASES ON TRUSTS. By George P. Costigan, Jr. St. Paul: West Publishing Co., 1925, pp. xxxii, 1016.

This new book, by Professor George P. Costigan, Jr., is composed of cases fully as well selected as those presented by him in his excellent case-book on WILLS. The work discloses a very high degree of intelligent care in the use of just such cases as well illustrate the point of law or principle of equity involved in the particular classification, and in the judgment of this critic, the book will find general adoption in American law schools. Since the publication of Professor Kenneson's CASES ON TRUSTS, the law of this subject has developed very rapidly in this country, and there was ample room for a new work more comprehensive in its scope than was possible in earlier works.

The author justly acknowledges his obligations to the late Dean Ames for his knowledge of the subject, first acquired while a student under the dean's personal instruction and later on from the study and use of AMES' CASES ON TRUSTS. He also admits that Professor Scott's case-book has furnished inspiration.

We are told that less than one-third of the cases presented in the work under review have appeared in prior case-books, but that the author has retained those of historical value or intrinsic worth because they are landmark cases which should appear in every book of similar scope.

Chapter I is of great importance to student and lawyer because of the unusual space and selective ability given to mark the distinctions between strict trusts, on the one hand, and on the other, Uses, Agency Relations, Partnerships, Community Property Ownership, Bailments in General, Mortgages, Pledges and Conditional Sales, Equitable Charges, Specifically Enforceable Contracts, Debts, Obligations of Corporation Promoters and Directors, Executorships, Guardianships, Receiverships, Assignments of Legal Choses in Action and Non-Trust Gifts.

The writer is of the opinion that this first chapter alone fully justifies the publication at this time.

The remaining chapters furnish the usual classification in other works on the subject, namely: Chapter II—The Elements of a Trust; Chapter III—Remedies of the *Cestui*, the Nature of His Interest, and the Remedies of His Creditors; Chapter IV—Some Duties, Powers and Liabilities of Trustees;