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BOOK REVIEW

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VOICES IN COURT: A TREASURY OF THE BENCH, THE BAR, AND THE COURTROOM.
Edited by William H. Davenport. New York: The MacMillan Company, 1958. Pp. 588. $6.95.

In undertaking to review this anthology it is obvious that any effort to comment upon the content of any appreciable number of the forty-five selections from the literature of the bench, bar and court room contained in *Voices in Court* is impossible.

Dr. Davenport has brought together in this volume varied, interesting and entertaining articles from various publications that deal with the law and its applications in various times. Obviously there are a number of chapters dealing with the United States Supreme Court in the various decades of its history. John Marshall's autobiographical "Letter to Joseph Storey," Beveridge's chapter on Marbury versus Madison from "The Life of John Marshall," Willard King's treatment of the court under Chief Justice Fuller, Carl Swisher's discussion of the court under Taney and the rambling remarks of Justice Felix Frankfurter on "Chief Justices I Have Known" give a bird's eye view of the history of our Court from its beginning to modern times. In the light of the contemporary discussion of whether a Justice of the Supreme Court, in passing upon the issue of whether state legislation or action violates due process, should be guided solely by whether the state action is within the state's power or whether he should decide the case on the basis of his own idea of what is right and wrong or what is wise, the discussion of the views of Holmes and Brandeis by Alpheus Thomas Mason takes on added interest. According to Mr. Mason, Brandeis' yardstick for upholding or setting aside legislation depended upon whether the statute conformed to certain standards of social justice. Holmes looked only to see if there was power. He was not concerned with policy. In the fifteen years in which Holmes and Brandeis were together on the Court they were frequently together in dissent but apart in their reasons.

A second group of selections, including Catherine Drinker Bowen's "Trial of Sir Walter Raleigh," McCaulay's picture of "Jeffreys, the Hanging Judge," and Gray's story of some of the Scots Judges brings home to us the great difference in the administration of criminal justice 400 years ago and the protection thrown around

a defendant today. Then when a political party came into power the guilt of a political opponent was established by his active participation in the affairs of the defeated party. Such justice reminds me of the story which Mr. Justice Jackson brought back from the Nurnberg trials in 1946. His story was that the chief Russian prosecutor's attitude with reference to the German war criminals was that since Stalin, Churchill and Roosevelt had denounced these people as criminals their guilt was established without the necessity and inconvenience of trial.

The volume also presents a number of selections from famous trials dealing with the examination of witnesses. While something of the drama of the battle of wits between a competent witness and an able cross examiner is lost by not being actually present, Wellman's comments on "The Cross-Examination of Mrs. Reginald Vanderbilt," the cross examination of Oscar Wilde by Sir Edward Carson and of Sir William Gordon-Cumming by Sir Charles Russell are examples of the artistry of able advocates at their best. "Trouble With the Volstead Act" and "The Seddon Case" illustrate the danger of asking one question too many on cross examination.

There are many unforgetable pictures from fictional literature. No one can forget the intellectual duel between "The Devil and Daniel Webster," the excerpt from "The Pickwick Papers," or the divergent views on cannibalism set forth in "The Case of Speluncean Explorers." Those who remember the "music" of his opinions will enjoy Justice Cardozo's "Law and Literature" as well as John Mason Brown's "Language, Legal and Literary."

"The Jim Wheat Murder Case" shows the true friendship which exists between the Southern Negro and the white lawyer who stood by in his time of trouble. It illustrates too the compelling force of the truth as simply told by uneducated witnesses.

While the volume will be of principal interest to lawyers, law students and judges, it has something for the many who enjoy the drama of life so often associated with the court room.

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TRAFFIC VICTIMS — TORT LAW AND INSURANCE. By Leon Green. Northwestern University Press, 1958. Pp. 128. $4.00.

The title of this book suggests a much narrower compass than it actually embraces. Even the sub-title, which is more nearly descriptive, does not reflect the true breadth of its scope. In fact, it is a summary review of tort law over the past century and a half in addition to a proposal for a new method of handling personal injury cases arising out of automobile accidents. To one who has used Professor Green's casebook on torts, the first three of the four chapters of this book will be no surprise. The author follows the same classifications by fact patterns which are basic in his approach to the study of the subject. Those who are not familiar with Professor Green's classifications by fact patterns which cut across the traditional classifications by doctrine, will find the different approach stimulating and instructive.

Professor Green's thesis is that negligence law and jury trial have run their course in the handling of motor traffic risks. He contends that a similar failure by these same instruments of justice in meeting the risks of industrial employment resulted in the adoption of Workmen's Compensation; that the time has come to utilize more fully the tremendous development of insurance for loss distribution in traffic cases.

His proposal would impose compulsory loss insurance upon the registration of any motor vehicle, abolish the requirement of negligence and substitute strict liability with the determination of questions of identity, cause and damages to be made by a master appointed by and supervised by the local court, thus eliminating the jury. In addition the proposal would eliminate pain and suffering as an element of damages.

Though no one will challenge the desperate need for solving the problem of motor vehicle accidents, and no doubt everyone could agree with some phase of the proposal put forth, it is doubtful indeed that the majority of lawyers will agree with all of the proposal.

The insurance industry is overwhelmingly opposed to compulsory liability insurance as evidenced by their long and bitter fights against such proposals in state after state. No doubt its attitude would not be changed toward compulsory loss insurance. Not many lawyers representing plaintiffs, many of whom already feel that their clients have too often been denied a just verdict by trial and appellate judges, will look with favor on the abolition of the jury. That there seems

to be some ground for this feeling could be supported by the following quotation from this book:

> No doubt the most remarkable aspect of the traffic doctrines is how by a process of fragmentation they have shifted power from the jury to the court, and particularly to the appellate court. (p. 72).

In so short a space the author could not have attempted to present all the arguments and proof which might be marshalled to support all the features of his proposal. Perhaps this weakens the strength of the proposal in that its opponents may more successfully criticize those features which have little support in the text: for example, the elimination of pain and suffering as an element of damages.

Regardless of the case made for the proposal in all of its phases, the case made for the elimination of negligence as a basis for liability in traffic cases is overwhelming. That proximate cause has become a shield behind which the courts do whatever they are persuaded to do with individual cases is undeniable. In the words of Professor Green:

> The proximate cause doctrine has become the master doctrine of negligence law into which every difficult problem may be resolved. When other doctrines prove indecisive the case is resolved by a determination of the proximate cause. This role of master doctrine meshes so perfectly by the shift of power from trial court and jury to appellate court that its value cannot be exaggerated or its usage gainsaid. It is nothing more than the final word of supreme power. "In the Beginning was the Word; and the Word was with God; and the Word was God". Proximate cause is the ultimate "word" of negligence law. (p. 74).

The author of this book writes from long experience in the field of law. He has been a law teacher and/or practitioner since 1915, including several deanships. He is the author of several other books and numerous articles on legal subjects. No person interested in tort law could fail to profit from reading it, whether law student, practitioner or professor. One does not have to agree with the analysis of each case discussed to enjoy a rewarding perspective of the vast scope of tort law and the direction of its development.

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