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Book Reviews

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BOOK REVIEWS

ARGUMENTS AND ADDRESSES OF JOSEPH HODGES CHOATE. Compiled by Frederick C. Hicks, LL.B., Litt.D. West Publishing Co. pp. xv, 1183.

"We all feel that a great oak has fallen in the forest of our public life, and of our private friendships. That great oak fell, not when its leaves had gone and its branches were bare and it had lost its beauty, but it fell at the very height of its perfection, of its usefulness, and of its charm. It was still putting out new branches; its leaves were yet green; its roots struck daily deeper into the soil of our affections; then suddenly, in obedience to the inexorable law of life, which is death, it came to its beautiful end." This is the magnificent tribute paid by Nicholas Murray Butler to the Honorable Joseph Hodges Choate. It would be an interesting diversion to pause for a few moments and conjure up the dead deity who inspired such a thought; to speculate on his appearance, his ability, and his sublime simplicity.

A towering structure which was surmounted by a classic head, gracious in manner and kind in deed; a man whose mien distinguished any crowd.

On the twenty-fourth day of the year eighteen-thirty-two, in Salem, Massachusetts, Rufus Choate had the pleasure of announcing to the world the arrival of a new Republican, namely, Joseph Hodges Choate. Twenty years later Joseph H. Choate was graduated from Harvard and started on a career which was crowded with success and lasted more than half a century. He was one of the founders of the New York Bar Association; a member of the Commission of 1890 appointed by the Governor under legislative authority to report a revision of the judicial system of the State of New York; president of the Constitutional Convention that in 1894 framed the Constitution under which the people of the state still live; Ambassador to Great Britain from 1899 to 1905; Ambassador to the Second Hague Conference, where he contributed an important part to the substantial advance in the establishment and definition of international Law and Procedure accomplished by that Conference; and during this time was awarded the Doctor of Laws by Amherst, Harvard, Yale, Williams, Union, University of Pennsyl-

vania, McGill, Toronto, Cambridge, Edinburgh, St. Andrews and Glasgow, and a Doctor of Civil Law by Oxford.

Mr. Choate successfully prosecuted his first case and secured damages for two carloads of frozen potatoes; for the service he was given the munificent sum of two dollars. It was here that he realized the permanence of the legal profession. . . . "And the poor you shall have with you always." Francis Bacon observed that every man owed a duty to his profession, but Choate contended that every man owed a duty to the legal profession and sometime, somewhere, between the cradle and the grave he was bound to recognize the liability and to pay the debt. A further insight on Joseph Choate's sense of humor might be found in his discourse "Blessed are the Peacemakers." "But my attention must be called for a moment, before I sit down to the rather remarkable phraseology of the toast. I have heard lawyers abused on many occasions. In the midst of strife we certainly are the most active participants. But you apply the phrase to us: 'Blessed are the peacemakers.' Well, now, I believe that is true. I believe that if you will devote yourself assiduously enough, and long enough, to our profession, it will result in perfect peace. But you never knew—did you?—a lawsuit, if it was prosecuted vigorously enough and lasted long enough, where at the end there was anything left for the parties to quarrel over."

One of the notable achievements of Mr. Choate was the Fitz John Porter Case. General Fitz John Porter was court-martialed during the Civil War and convicted of disobedience of orders and treasonable inactivity in the presence of the enemy, dismissed from service and declared to be forever disqualified to hold any office of honor or profit in the United States. In 1878, President Hayes appointed an advisory board of officers to examine into the findings of the court-martial. Mr. Choate volunteered his services and secured for General Porter an absolute vindication.

Elihu Root described Choate as being "the delight of juries who yielded gladly to his charm, and the pride of courts who felt the dignity of their office enhanced by his appearance before them." "His shining example was an inspiration to the Bar and the despair of emulation."

The book is admirably and ably compiled by Frederick C. Hicks, Librarian of the Columbia University Law School. The discourses

range from post-prandial endeavors to forensic speeches and arguments.

F. A. McK.

SELECTED ARTICLES ON CRIMINAL JUSTICE. Compiled by James P. Kirby. H. W. Wilson Company: New York.

Every author represented in this volume starts his article on the assumption that there is something wrong with Criminal Justice. The only difference among the various writers is in the subject of attack. Some start upon the theory that the cause for present delinquency is attributable to the police. "Police standards are lamentably low. Improvement may not be expected while politics rules police departments. And I know of no city in which politics does not rule" (page 90). Others place the blame on the grand jury; one of the essays is entitled "The Grand Jury, a Venerable Nuisance". Some more accuse prosecutors of deliberately closing their eyes to real vice conditions and instituting proceedings only when there is no danger of compromising political success. The courts are dissected and found to be suffering from ignorance of modern science. And in what is perhaps one of the most analytical articles reprinted, Professor Elmer Barnes excoriates our modern jury. Says he (page 216) "We have thus the spectacle of a 'fixed' or 'selected' jury, or one of colorless liars and illiterates deciding the matter of the corporeal existence, public reputation, property rights or personal freedom of a fellow-man upon the basis of prayer, lottery, rhetoric, acrimonious debate or intimidation, in ignorance or defiance of legal rulings which they do not understand and of testimony, perhaps dishonest, which they have only imperfectly followed, and from an intelligent comprehension of which they have been diverted by the fervid emotional appeals of counsel." The Professor does not quite believe a jury to be composed of "twelve good men and true." Judges are not free from taint, say some writers; more attention should be given to judicial elections. Finally, the entire bar is urged to pay more attention to the medical phase of the criminal law. The old criterion of ability to discriminate between right and wrong is an anachronism, and must give way to new principles of psychiatry. There should be no more time sentences; every criminal is defective, and should be segregated only as long as he

remains in such condition. When he has become sufficiently normal to resume his place in society, he should be released. . . . Thus every phase of criminal law is attacked; that something is wrong is taken for granted. The only difficulty is in the mode of reform.

One of the striking features of the book is the frequent reference to the Loeb-Leopold case. All of the writers seem to be profoundly impressed by it, and all agree that it is a typical example of the failure of judicial administration, differing from others in degree only. Before this great hearing was thrust on the public, everyone seemed to have an idea that all was not what it should be, but that idea was vague; now all the fears have crystallized into a vigorous demand for reform. The psychiatrists have not failed to take advantage of the popular feeling; articles are more frequent and more impassioned. If there ever was any doubt in the minds of many about criminal justice, that doubt is resolved now. The public is very susceptible to strong, fervid appeals.

One who has learned to revere the law cannot help feeling a little discouraged after reading these articles, well-selected and representative of the modern trend. Nothing considered as elemental in colleges of law is accepted here; lawyers themselves are ruled out of court—"Modern criminal science, indeed, makes it clear that a lawyer is a wholly improper person to have any dealings whatever with criminals" (page 218). The theory that a criminal is *prima facie* liable to the state for his violations of law is dissipated, and he is viewed simply as an abnormal, mentally diseased person who needs a doctor instead of a jailer.

C. J. R.

CASES ON FEDERAL TAXATION. By Joseph Henry Beale and Roswell Magill. New York: Prentice-Hall, Inc., 1926. pp. xv. 719.

Until a few years ago, most professors believed that the subject of federal taxation was not important to warrant special treatment, and considered a case book devoted entirely to tax problems a superfluity. A few cases on the constitutional aspects of the subject had always been inserted in the books on Constitutional Law, and the professors had delivered a few perfunctory lectures on them; this was the extent of the students'

opportunity to master tax problems, and it was considered adequate. Of late, however, taxation has graduated from the inferior position hitherto occupied, and law faculties are beginning to realize that the subject is worthy of a separate place in the curriculum. Indeed, in this age of gigantic industries and extraordinary wealth, both of which are greedily watched by the Federal Government, a lawyer must have a knowledge of the principles underlying taxation if he wishes to be a successful commercial lawyer.

Beale and Magill's case book on Federal Taxation is an analysis of the power of the United States to tax individuals, corporations and estates. The work is divided into four parts, dealing respectively with The Income Tax, The Estate Tax, The Gift Tax, and The Capital Stock Tax. In order that the student may not be troubled with the attempt to reconcile the various tax laws with the Constitution of the United States, Chapter I of the first part is devoted to the constitutional aspects. The difficulties of Congress in devising an income tax which would be constitutional are clearly outlined. The first case in the book is the famous one of *Pollock v. Farmer's Loan and Trust Company*, (1895) 157 U. S. 428, in which Chief Justice Fuller declared the Act of 1894 unconstitutional as being a direct tax not "in proportion to the Census or Enumeration." The meaning of the Sixteenth Amendment—passed and ratified to avoid future legal complications—is considered in following cases.

Some criticism has been directed at the book because the various taxing agencies are so busy devising new ways and means to collect money, that a case book endeavoring to cover the subject is out-of-date almost before it is ready for use. In support of this contention, attention is drawn to the fact that Beale and Magill use the Revenue Act of 1924 as the basis for their work, but hardly had the book been published six months when a new Revenue Act (1926) supplanted the old. But what case book was ever intended to be a digest? All that the student hopes to learn in a class is the principles underlying the subject, and these principles, once learned, survive formal changes. A house does not merit condemnation every time a new coat of paint is given it. The substance remains, despite the changes of mere accidental qualities. . . . The neat distinction between

trespass and case has been abolished in most jurisdictions, but *Scott v. Shepherd* (1773) is still accorded a place in torts, as an illustration of the enduring principle of causality. The form only has changed; the essence still remains. Once principles are mastered, applications can readily be made to changing circumstances.

Federal Taxation is a new subject, and one that is developing rapidly. Are we to wait until it becomes stagnant before a case book is published? Is the fact that a science is new and complex to be allowed to militate against its teaching, instead of in its favor? Must a subject be dead before it receives attention? Surely there must be something that can be studied with profit, something fundamental in taxation that can be seized from the flood of modern legislation. Some motivating principle must be present; taxation is not left entirely to the whim of legislators. And an examination of the cases will show that a motivating principle *is* present, and endures.

C. J. R.