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What Price Jury Trials

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The last part of the book consists of a number of cases which are intended to serve as subject matter for analysis. The first four parts have been entirely rewritten in text form so as to make a continuous exposition of the system and in this respect the second edition is a decided improvement on the first. Numerous charts are included for the purpose of illustrating the use of the system as applied to a complicated set of facts but the reviewer must confess that on first examination they have appeared to him more confusing than illuminating.

Dean Wigmore is pioneering in a field which has received entirely too little attention. His book not only should be read but studied by all those interested in the problem of proof whether they be practitioners or scholars. However, it is doubtful whether the work can receive very wide use in the class room. In the hands of the author it undoubtedly would form the basis of a very valuable course but when used by others it might serve only to present material which could more profitably be studied in the court room.

—PAUL W. BRUTON.

Yale Law School

WHAT PRICE JURY TRIALS. By Irvin Stalmaster. Boston, Massachusetts. The Stratford Company. 1931. Pp. ii, 143.

In this small volume the author has set out to state a case. This time it is the jury that is on trial. The verdict sought is death—the complete abolition of the jury in civil cases. Although, as the author points out, limitations have been imposed upon the right to jury trial in a number of states, one is moved to suggest that his case will out-last that prize litigation, *Jarndyce v. Jarndyce*, before the cause is won. The attitude of the legal profession and the inertia of the public mind are obstacles of no small moment. They stand squarely in his path.

The thesis is developed in simple non-technical language with the expressed purpose of presentation to all interested minds. Thus it has what might seem to a lawyer an elementary though rather refreshing flavor.

Turning to the substance of the argument the reader is likely to find nothing unusual, certainly so if he has had sufficient interest in the topic in the past to subject it to reflection and discussion. The merit of the book lies in the force of its presenta-

tion. Mr. Stalmaster's chief points against the jury may be summarized in brief in the order he develops them: The civil jury is a decidedly inexpert body relied upon to determine important questions which demand specialized training and experience. Historical trial by jury has come to share a sacredness in civil cases rightly attributable only to the criminal jury. The civil jury it outworn—it served out its usefulness under a simpler organization of society. "Boards, commissions, executive heads, departments, bureaus, agencies, committees, and a thousand and one other branches have been created to administer laws and enactments, properly the function of a judicial officer, simply because to make their realization and enforcement effective, a jury trial is avoided." Judges whose superior ability to try cases, and whose responsibility have been thoroughly established in equity are hampered by juries when sitting on the law side of a court, and, in fact, are relegated to the position of umpires. The civil jury does not supply that very important element in the administration of justice, responsibility, but is rather a group of strangers drawn at random from a list without regard for qualification and called together for a brief service involving only joint and not individual responsibility. The jury system tends to corrupt the standards of lawyers because of the strong inducement to resort to irrelevant emotional and dramatic factors to influence verdicts. The notion that jurors are better judges of witnesses than judges and thus can better get at the truth is false; else experience and specialization of function mean nothing in this instance.

The writer has developed his argument convincingly. His illustrations are apt and his statements of the law and historical matter, though not supported by references, are accurate. This reviewer, moreover, finds so much in the book that coincides with his own views that he probably is ill-fitted to give an estimate of it. However, there is this noteworthy feature that could not escape the most prejudiced mind:—the writer has gone courageously and directly to battle with an institution so enshrouded by tradition and sentimentality that less bold souls fear to touch the subject. The challenge goes primarily to the legal profession—it is the strategic group in effecting legal reform. Whether Mr. Stalmaster is right or not he has stated a case too plain for summary dismissal or evasion. He is entitled to a hearing. We hope he will get it.

—JEFF B. FORDHAM.

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