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Book Review

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Book Reviews

Reviewed by William K. Gardner*

THE ART OF SUMMATION, Melvin Block, Editor. Published by New York State Association of Trial Lawyers, New York, N. Y., 394 pages, 1963.

Like the riderless horse, this book has no author, but among other things, it is a transcript of seminar programs, in which several New York negligence trial lawyers participated, among whom are Herman B. Glaser, as moderator, and James Dempsey, NACCA President Jacob D. Fuchsberg and Moe Levine, as panelists.

Chapter 1, entitled "Exploring the Many Facets of the Art of Summation," in which numerous suggestions and examples are given as to effective argument to a jury.

Chapter 2, entitled "Summation and Death Actions," in which various elements of substantial damages are discussed.

Chapter 3, entitled "Summation and Contributory Negligence," in which examples are given by means of which the defense of contributory negligence may be exploded by plaintiff's counsel in argument to the jury.

Chapter 4, entitled "Summation," in which several arguments to the jury in cases actually tried are reproduced.

Chapter 5, entitled "Trial Demonstrations," which includes direct and cross examinations of medical witnesses.

It is not probable that any of these summations will go down in history as a Demosthenes or a Cicero oration, but these gentlemen appear to be capable trial lawyers in their field—personal injury and death actions, and also psychologists of no mean stature, with a somewhat profound knowledge of mankind. The impression one gains from the book is that these lawyers consider sincerity and the appeal to logic more effective than emotional tirades, and they recognize that the modern juror is not as gullible as some believe.

Perhaps the outstanding tenor of the book is means and methods of obtaining substantial damages in injury and death actions, without resort to flamboyancy or questionable conduct. It is noted that the "Golden Rule" and the Mathematical or *per diem* Value of Pain and Suffering in argument to the jury is not especially recommended. These types of argument have met with

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both approval and disapproval by courts throughout the country. Some judges consider them inflammatory. Others disapprove of them but sometimes permit a remittitur rather than reverse.

However, the book gives considerable stress to the pecuniary value of pain and suffering, with examples of methods of conveying to the minds of the jurors the importance of pain and suffering as an element of damages.

The term "conscious" pain and suffering is frequently employed in the book. In *Flory v. New York Cent. R. Co.*, 170 Ohio St. 185, 10 Oh. Opp. 126, 163 N. E. (2d) 902, the defendant contended that since the injured party was unconscious from the time of his injury until his death, approximately eleven hours later, there could be no recovery for pain and suffering, and authority was cited to that effect. The opinion stated that "we are not required to pass upon the negative of the proposition, since there is in the record before us * * * * affirmative evidence tending to show that the decedent was not completely unconscious during the interval between accident and death, and that he was therefore capable of experiencing pain and suffering." A verdict of \$7500.00 for pain and suffering was affirmed. This is a subject which should not be overlooked in presenting the evidence in a similar case.

There is also considerable discussion in the book as to matters to be taken into consideration in the assessment of the amount of damages in wrongful death actions, and especially in cases of the death of a wife or a young child. Since recovery under the New York and Ohio statutes, as in most other jurisdictions, is limited to the "pecuniary" injury or loss sustained by the surviving spouse and next of kin, where there is no present contribution to support by the deceased, it has been generally considered in the past that such pecuniary loss is not great. The panelists participating in the seminars devote considerable time to the discussion of the expense which would probably arise in replacing the various services of the wife to the family, and also as to the probable anticipatory pecuniary contribution of a minor child to the parents had he lived, as being proper consideration to call to the attention of a jury in assessing damages.

There is no doubt but what this book would be invaluable to the sometime-trier of injury or death actions, on the plaintiff's side. It should also furnish some guide in the determination of the settlement value of such claims. It is believed that the book would also be of interest to the specialist. It affords interesting reading, and would no doubt be considered a desirable possession to the members of the profession in general.