

35 La. Ann. 668 (1883); *People v. University of Illinois*, 328 Ill. 377, 159 N. E. 811 (1928). Thus the case seems to fall within the rule that property held in trust by a state or municipality is taxable where the trust is not for the benefit of the state or municipality. *People v. University of Illinois*, *supra*; 2 COOLEY, TAXATION (2d ed. 1924) § 629.

TRUSTS — TERMINATION — TRUSTEE'S PURCHASE OF BENEFICIARY'S INTEREST. — Under the provisions of a testamentary trust, a certain percentage of the annual income was to be paid to the beneficiaries, the remainder to be accumulated for twenty years, and at the end of that time the principal and accumulated income were to be divided proportionately among the surviving beneficiaries. One of the beneficiaries, who was also the testator's heir and would take in the event of an intestacy, was sixty-two years old at the time of the testator's death. The will further provided that she should receive \$400 each year from the income and \$70,000 upon the termination of the trust. The other beneficiaries requested the trustee to invest \$20,000 in purchasing the share of this aged beneficiary so that she would have a satisfactory income. The trustee brings a bill asking for instructions. *Held*, that a decree be entered authorizing the purchase. *Cady v. Tuttle*, 141 Atl. 188 (Me. 1928).

Equity may authorize a trustee to invest trust funds in unusual or speculative ways if the best interests of the trust estate so require. *Drake v. Crane*, 127 Mo. 85, 29 S. W. 990 (1895); *Old's Estate*, 176 Pa. 150, 34 Atl. 1022 (1896). But it is only in extraordinary cases that this will be permitted if contrary to the express or implied wishes of the testator. *Hackett's Ex'r v. Hackett's Divisees*, 180 Ky. 406, 202 S. W. 864 (1918); *In re Snyder's Will*, 136 N. Y. Supp. 670 (1912). Since the testator in the principal case made specific provision for the beneficiary, it seems clear that he never intended the trust estate to be used to purchase her interest. Moreover there can be no real "investment" without a substantial expectation of profit. See *Drake v. Crane*, *supra*, at 103, 29 S. W. at 994. The practical effect of the instant case is to permit the termination of a trust before the specified time for enjoyment, a result contrary to the rule in most American jurisdictions. *Ackerman v. Union Trust Co.*, 90 Conn. 63, 96 Atl. 149 (1915); *Clafin v. Clafin*, 149 Mass. 19, 20 N. E. 454 (1889); *Stewart's Estate*, 253 Pa. 277, 98 Atl. 569 (1916); see (1925) 38 HARV. L. REV. 838. Some courts, though nominally observing the general rule, readily depart from it when unforeseen circumstances make the continuance of the trust undesirable. *Black v. Bailey*, 142 Ark. 201, 218 S. W. 210 (1920); *Bennett v. Nashville Trust Co.*, 127 Tenn. 126, 153 S. W. 840 (1912). But the principal case does not fall within this exception. It seems, therefore, that the court utilized the theory of "investment" merely in order to evade the rule of *Clafin v. Clafin*.

BOOK REVIEWS

THE INQUIRING MIND. By Zechariah Chafee, Jr. New York: Harcourt, Brace and Company. 1928. pp. xi, 276.

This is a collection of addresses and of essays, nearly all of which have appeared in various periodicals. The reviewer was at first startled to find a contemporary law teacher at a stage in life where he could publish a volume of collected speeches and writings. But on second thought the conclusion

seemed justified that this was highly proper, in the present instance at least, even if it ought not be taken as a precedent for law professors in general. For all these papers deal with a single topic—the duty and the struggle to obtain freedom of thought and expression. The volume thus is a supplement to the author's definitive study, *Freedom of Speech*, published in 1921.

The first two essays, bearing the titles "The Inquiring Mind" and "Give Your Minds Sea Room," constitute a noble plea for the open mind in education. In these, particularly in the second, there is much valuable advice to the student as to the proper critical attitude he should assume towards ready made conclusions placed before him. But there is also an especially fine statement of the true function of the teacher. The first essay closes with an attractive picture of the teacher as one would like to see him. Professor Chafee has just quoted Mr. Howard Elliott's well known remarks that as the physical nourishment of young people should be looked after, so in giving them mental nourishment, "un-American doctrines and ideas" should not be laid before "young and impressionable men and women." This he criticizes, saying that the teacher "is not the gentleman behind the quick-lunch counter that Mr. Elliott's criticism suggests." Then he continues: "He is more like the leader of a group of miners going into partially opened country. He has been there before; he knows more than they do about the technique of exploration and detecting the metal they seek, but he cannot give them definite directions which will enable them to go to this or that spot and strike it rich. He can only tell them what he knows of the lay of the land and the proper methods of search, leaving it to them to explore and map out for themselves regions which he has never visited or rivers whose course he has erroneously conceived."

Most of the remaining essays are critical reviews of legal decisions concerning free speech and civil liberties. These include critiques, among others, of the *Gilbert*,¹ *Gitlow*,² and *Whitney*³ cases in the United States Supreme Court dealing with state sedition acts, the Rand School injunction case⁴ in New York, the I. W. W. injunction⁵ in California, and the Bimba blasphemy case⁶ in Massachusetts. Other papers deal with the use of injunctions in labor controversies, freedom of speech and assemblage in Boston, compulsory confessions, the Inter-church Steel Report, and Economic Interpretation of Judges. This is by no means a complete list, for the essays, within their general subject matter, take a wide range. Thus we see, "Mill Today," next, "The British Empire," followed in turn by "Woodrow Wilson" and "John Marshall."

Naturally the reprinting of essays originally prepared for other use results in a discursive presentation of the author's ideas. One could not expect the consistent development of a single subject found in the *Freedom of Speech*. But with the idea of the book in mind, we find an attractive volume constituting a distinct addition to the author's distinguished contributions to the cause of tolerance towards expression of opinion. We naturally expect Professor

¹ *Gilbert v. Minnesota*, 254 U. S. 325 (1920).

² *Gitlow v. New York*, 268 U. S. 652 (1925).

³ *Whitney v. California*, 274 U. S. 357 (1927).

⁴ *People v. American Socialist Society*, 202 App. Div. 640, 195 N. Y. Supp. 801 (1922).

⁵ *In re Wood*, 194 Cal. 49, 227 Pac. 908 (1924).

⁶ Decided in the district court at Brockton, Mass., March 2, 1926. Pending appeal, the district attorney entered a *nolle prosequi*.

Chafee to be an advocate of the freedom of expression and to be critical of legal decisions permitting restrictions upon such freedom. But it is interesting to see just how far from being a radical or a "red" he actually is. Here is a conservative in opinion deeply troubled because his class, being now in power, has not in his judgment played fair with the attempts of minority opinion to get a hearing. For this not entirely unorthodox view many would include him as of the undesirable minority. A reading of these essays, with their moderate and reasoned conclusions, should show how unfair such a judgment is.

On the whole, however, one is likely to close the book with a feeling of depression. Since the war the gains for tolerance seem slight indeed compared with the losses. Human nature being what it is, it is clear that the more one's cherished views are assailed, the more bitterly one will strike out with all the weapons at his command, legal or otherwise, against the assailant. It is only here and there that voices may be raised attempting to restore a milder and saner attitude. This is the task to which, in the intervals of a busy teaching life, Professor Chafee has set himself. Perhaps another and less nervous generation than our own may appreciate what he has done in making its healthy state possible.

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SURETYSHIP: ITS ORIGIN AND HISTORY IN OUTLINE. By T. Hewitson. London: Sweet and Maxwell, Limited. 1927. pp. xix, 188.

OUTLINES OF SURETYSHIP AND GUARANTY. By Earl C. Arnold. Chicago: Callaghan and Company. 1927. pp. xvi, 620.

The outstanding importance of the law of suretyship makes the peculiar dearth of good books on this subject somewhat remarkable. Recent months have added to this field two volumes entitled to notice. One of these is an examination into the foundations of suretyship, undertaken by Mr. Hewitson of Australia. The scope of this work is well pictured by W. Harrison Moore in the foreword as follows: "In the result, we have not merely the 'German warp and woof' and the Roman institutions that made the law of Europe from Scandinavia to Spain, but the Hebrew law, the code of Hammurabi, the Brehon Laws, and the Mohammedan law among the antiquities, and research among modern systems extending from Japan to Mexico and Chili." The book is divided into four parts: I—Suretyship in Legal History in the East; II—In the West; III—In Britain and Ireland; IV—The Part of Equity in the Development of Suretyship.

The author's breadth of vocabulary and precision of thought enable him frequently to let a single word suffice where another writer might make use of a more general term followed by a qualifying or explanatory clause. At times this is carried almost to a fault. His researches, even "at the ends of the Earth," uncovered a wealth of source material, as shown by his bibliography, although the utter lack of any reference to legal periodicals will hardly escape the attention of the American reader. The book gives just a suggestion of having been written piecemeal; moreover, matters quite collateral to the problem under investigation seem at times to encroach unduly.¹ The critic

¹ For example, the concluding chapter on "The Bill of Exchange as a Source of Suretyship Law" suggests a very interesting field of inquiry which is largely crowded out by giving chief attention to the general history of such instruments.