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BAR BULLETIN

Editor ----------KENNETH C. SEARS

Associate Editor for Bar Association ----------W. O. THOMAS

OFFICIAL PUBLICATION OF THE MISSOURI BAR ASSOCIATION

CONSTITUTIONAL SUPREMACY—I do not think the United States would come to an end if we lost our power to declare an Act of Congress void. I do think the Union would be imperiled if we could not make that declaration as to the laws of the several States. For one in my place sees how often a local policy prevails with those who are not trained to national views and how often action is taken that embodies what the commerce clause was meant to end.—Mr. Justice Holmes, Collected Legal Essays, p. 296.

DECLARATORY JUDGMENTS—The Supreme Court of Michigan (Sharp and Clark, JJ., dissenting) has held a declaratory judgment act unconstitutional. It is hoped that the decision (*Anway v. Grand Rapids Railway Co.* 179 *N. W.* 350) will meet the same fate that *Ives v. So. Buffalo Ry. Co.* 200 N. Y. 271 met. The latter case held a workman's compensation act unconstitutional. But progressive legal opinion would not stand for such a result. There is an excellent comment on the *Anway* case in 19 Michigan Law Review 86. It would seem that the majority of the Michigan court reasoned poorly. There is another article concerning the case in the Journal Issued by American Bar Association, Vol. 6, p. 145.

STOCK WITHOUT PAR VALUE—Twelve states—Alabama, California, Delaware, Maryland, Maine, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Virginia and West Virginia—authorize corporations to issue capital stock of no par value. 19 Michigan Law Review 96. A similar law has been suggested for Missouri. 20 Law Series 66. The object of such legislation is to restrict the possibility of fraud by promoters and stock sellers. The certificate of stock under such a law does not represent on its face that it has any particular value. The only representation is that the owner of the certificate has a certain number of units in a corporation with a certain authorized number of units. It is the dollar mark on the certificate that misleads the unwary.

JUDICIAL SELECTION—In the First Judicial District, consisting of Manhattan and the Bronx, nine Justices of the Supreme Court are to be elected next Tuesday. Five of the sitting Justices, Erlanger, Ford, Giegerich, Guy, Platzek, are indorsed by both parties and will be re-elected. The names of these five have both the party emblems, the eagle and the star, before their names and after them the words "Republican" and "Democratic." Voters should not be confused by this and make the error of voting only for the four candidates who have but the single emblem and the single party description on the ticket. They should vote for nine candidates, not for four merely.—Editorial, New York Times, October 30, 1920.

This is concrete proof of the success the bar associations in the City of New York have had in their efforts to influence the selection of judges. See the articles by Mr. Louis F. Doyle in 20 Law Series 69, 72. There is a committee of the Missouri Bar Association for consideration of the problem.

EDUCATION AND ETHICS—Moreover, education brings with it a sense of proportion and appreciation of essential values which fit the lawyer to bear the moral responsibilities of his profession. It is not without significance from the educational viewpoint that the members of the bar who have been disciplined by the Appellate Division of the Supreme Court in New York City (which has won an almost national reputation by its efforts to rid the bar of its unworthy members) are almost without exception men without any liberal education. The superiority as a whole of the English bar over our own, despite its inferior legal education, is due, I believe, to the fact that most of its members are educated at the universities.—Harlan F. Stone, President's Address, Association of American Law Schools, 1919.

JUSTICE WINSLOW'S SUCCESSOR—Honorable Burr W. Jones, of Madison, a learned and accomplished lawyer, perhaps not inaptly referred to as the Nestor of the Bar of that state, has been appointed to fill the vacancy on the Supreme Court of Wisconsin created by the death of Chief Justice Winslow. As indicating the scrupulous effort made in Wisconsin to keep the selection of members of that Court out of the strife of partisan politics, it is to be noted that Governor Philipp, a Republican, in view of the fact that the late Chief Justice was a Democrat, appointed Mr. Jones, a life long Democrat, to fill the vacancy until an election in 1922. The latter does not succeed, however, to the Chief Justiceship as that goes to the Justice oldest in commission.—VI. Journal Issued by American Bar Association, p. 67.

If the Wisconsin point of view could obtain in Missouri a long step in advance would have been taken.

BAR ASSOCIATION INFLUENCE—The vacancy on the public service commission, made by the resignation of Judge John Kennish, will be filled by John E. Kurtz, an attorney here, it was announced late today.

When Judge Kennish resigned to become master in chancery in the street railways receivership here, Governor Gardner told Arthur M. Hyde, governor-elect, he would appoint to fill the vacancy the man Hyde named. Mr. Hyde asked John Pew, President of the Kansas City Bar Association, to name Judge Kennish's successor. Mr. Pew conferred with members of the association and decided upon Mr. Kurtz.—The Kansas City Star, December 3, 1920.

Governor Hyde started his administration auspiciously. There is a need for bar associations and lawyers should be alert to their public responsibility. The public is ready to listen to the advice given by responsible and well conducted bar associations as to the qualifications of men for judicial or quasi-judicial offices.

HATEFUL MONOPOLIES—Monopolies are hateful to the law. It is against sound public policy to encourage them.—Williamson, J., in *State v. Cupples Station Light, Heat & Power Co.*, 223 S. W. 1. c. 83.

But can it be said to be against public policy for a monopoly to exist among public service institutions? See Wyman on Public Service Corporations, Vol. 1, Sec. 51. Nor were monopolies at all hateful in an early day. "Indeed, a regulated monopoly with the corresponding obligation of public service seemed in that age to the great majority of people far better than an unregulated competition without public obligation." Wyman on Public Service Corporations, Vol. 1, Sec. 2.

MISSOURI BAR ASSOCIATION MEETING

The annual meeting of the Missouri Bar Association was held in St. Louis December 3 and 4. The attendance was disappointing. The program was interesting and above expectation. More important, the association displayed a willingness to do something more than talk. The action taken was largely in the way of appointing committees. If careful selections are made and the proper energy is placed behind the organization during the present year there is reason to hope that the association will enter upon a new era.

The opening address of Mr. Frederick W. Lehmann, president of the St. Louis Bar Association, emphasized the necessity of doing everything possible to make criminal law and criminal procedure effective in order to prevent the hordes of vice from overrunning us. He also directed attention to the work of the St. Louis Bar Association with reference to judicial candidates in the primary and general elections and predicted that hereafter the recommendations would be given greater consideration by political organizations.

The response was well handled by Mr. Murat Boyle of Kansas City, who advocated the elimination of meaningless refinements and restrictures which now surround the preparation of an abstract of the record.

President Lamar delivered an interesting address. He advocated two measures of importance. The first concerned the movement to secure court made rules of procedure. Such has been the position of the American Bar Association for some years and there is reason to expect that Congress soon will authorize the Supreme Court of the United States to make the rules on the law side as it now does on the equity and admiralty sides. The other measure would secure a legislative reference bureau for Missouri. On motion the first proposal was referred to the Committee on Judiciary, Amendments and Procedure, which, unfortunately, for lack of a quorum failed to have a meeting. The second was adopted by the association and included in its legislative program.

The address delivered by Commissioner John T. White dealt with a subject about which nothing new can perhaps be said. Nearly every lawyer has a definite opinion upon the justification given by the courts in declaring laws unconstitutional. Perhaps the importance of the subject is overemphasized. At least Mr. Justice Holmes has ventured to assert that in his opinion society would continue to function even if state courts were denied the power and the federal courts were denied the power so far as the acts of Congress are concerned. On the contrary he has thought that the United States of America would be in danger if the various states could adopt laws in violation of the federal constitution. In any event Commissioner White achieved distinction by the literary style of his argument that made its reception a pleasure.

JUDGE OLSON

No doubt the feature of the program was the address delivered by Judge Harry Olson on the "Municipal Court of Chicago and Its Psychopathic Laboratory." There seemed to be no doubt that the speaker convinced his audience that justices of the peace should be supplanted by a municipal court in large urban communities. Later the association went on record as favoring a system of municipal courts for the larger cities of Missouri provided it would not be in conflict with the constitution of the state.

Judge Olson is a very entertaining speaker and tho his address lasted about two hours those in his audience were sorry when he ceased. Since then he has been heard by the Kansas City Bar Association. The state will owe him a debt of gratitude if his influence results in the abolition of justices of the peace in St. Louis and Kansas City. As Judge Olson said in St. Louis, justices of the peace were established in an early day in England to combat brigandage in rural districts but in the present generation it had been found necessary to establish municipal courts to stop the brigandage of the justices. It is an idle dream to attempt to render justice through men who are untrained for the task and without any professional ideals.

SOCIAL AFFAIRS

The St. Louis Bar Association very pleasantly entertained the members of the Missouri Bar Association the night of December 3 with a buffet supper at Hotel Jefferson. The feature of the evening was a very brilliant oratorical address on "The Country Lawyer" by Mr. Thomas Dumm of Jefferson City.

Saturday night the annual banquet was held in the Statler Hotel. Judge John S. Farrington presided as toastmaster. Mr. Fred Dumont Smith of Hutchinson, Kansas, spoke learnedly about "The Kansas Industrial Court." Apparently he convinced some who had been skeptical of the plan. He insisted that the organization was not for the purpose of securing compulsory arbitration under the name of a court but that the purpose was to avoid compromises (usually the result of arbitration) and to obtain a legal determination upon principles of justice.

Judge K. M. Landis delivered a characteristic address. He spoke on the enforcement of criminal law and the parole system. He also took occasion to announce that he expected to spend the next seven years as the head of organized baseball and at the same time retain his judicial position. He recognized the criticism he had received and announced that he was ready to resign if Congress should so request.

COMMITTEE REPORTS

The most carefully considered and the most important report presented was that of the Committee on Legal Education. The chairman, E. L. Alford, presented a proposed bill which, if enacted, would provide two requirements preliminary to the examination given by the State Board of Bar Examiners. One is that the applicant shall have had a standard high school education and the second is that he shall have undergone a course of legal training for three years of thirty weeks each year in some law school or office approved by the Supreme Court. The bill was made a part of the legislative program with the understanding that the second requirement could be met by combining training in an approved law school with that received in any office approved by the Supreme Court.

The Committee on Uniform Legislation recommended that the uniform law for probate of wills be urged upon the legislature and that the latter body be requested to provide for expenses of the Commissioners On Uniform State Laws.

MISCELLANEOUS BUSINESS.

On the motion of Mr. John M. Atkinson, a committee was authorized for the purpose of doing as much work as possible on suggestions for the constitutional convention in case one is authorized by the voters at the special election to be held next August as was provided by the adoption of Constitutional Amendment 15 last November. This is an important work. Conventions have been held in several states in recent years including New York, Arkansas, Nebraska and Illinois. We should know the proposals before these conventions, the arguments and the determinations.

Senator G. H. Whitecotton of Moberly, presented a proposal to withdraw judicial candidates from the primary system. The proposal was approved and it is hoped that the present administration will favor the suggestion.

CONSTITUTIONAL AMENDMENTS

The Association adopted an amendment to its constitution providing that the Secretary shall be elected. The desire was that the Secretary should be practically permanent in order that there may be continuity in the work of the Association. The annual election makes it possible to make a change whenever the Secretary proves unsatisfactory.

The proposed amendment which would provide a method whereby the Bar Association would become an active force in the selection of

candidates for the appellate courts was the subject of interesting discussion. All but one speaker favored the general plan but it was decided to refer the matter to a special committee of three to be appointed by the President. It is anticipated that the report of this committee will be one of the main subjects of discussion at the next annual meeting. The Michigan Bar Association has a similar proposal under consideration. As long as our judges are elected by the voters and are also subject to the primary system some such system seems to be the only way out of the wilderness.

Columbia, Missouri. KENNETH C. SEARS

COMMITTEES—President Curlee has appointed members to the various committees. It is believed that he has displayed sound judgment. He evidently acted upon the principle that it is necessary to appoint men who are interested in the work rather than men who are either personal friends or who would give merely distinction to the committee because of their positions or attainments. The Missouri Bar Association should become more efficient under the leadership of the committees and none of the sociability will be lost.

The Committee on Grievances and Legal Ethics is of particular interest. In less than a month after the St. Louis meeting three complaints of Missouri lawyers had been received by the Secretary. One was from a business organization in New York. It should be obvious that there should be a clearing house for such complaints. Otherwise, the profession in this state would suffer. The Missouri Bar Association should be the general clearing house.

LEGAL EDUCATION—The by-laws of the Section require the Council to investigate the entire subject of legal education and make a report as to what course is needed to bring about reform. In plain language, the purpose is to show up the proprietary law schools which have slight facilities for teaching law and exist for the benefit of their owners rather than for the good of the students or the public. In no other profession have requirements been so slack in recent years. Law teaching is overdue for a cleaning up. But the work is unpleasant. Apparently afraid that the Council would not do its full duty in the premises, a motion was offered by William Draper Lewis to create a special committee to do what the by-laws require of the Council. Action was deferred until the last session and then the resolution was modified so that it merely directs the Council to investigate and report.—Editorial Note, American Bar Association Meeting, Illinois Law Review, Vol. XV, p. 208.

ELECTION RESULTS FROM ST. LOUIS

The result of the general election in St. Louis in November is an encouragement to all who are sincerely interested in placing judges on an elevated plane. The St. Louis Bar Association made certain recommendations for the judicial candidates of the two leading parties prior to the primary. These were accepted by the Democratic organization. The Republican organization (except the Koeln-Foristel forces) felt certain of its power and insisted upon judicial offices as a spoil. The result of the primary indicated that in St. Louis the independent voter was ready to welcome the advice of the Bar Association though only one out of four Republican candidates recommended was nominated.

But the contest, thus started, continued into the general election. Kimmel, Killoren and Krueger, the three candidates nominated by the machine, met with organized opposition. Many women organized to contest candidates for judicial offices who were without the support of the Bar Association. The St. Louis Globe-Democrat, the St. Louis Post-Dispatch, and the St. Louis Star gave encouragement to the contest and called upon the Bar Association to carry on. Since the election of Judge Grimm, the only Republican nominee recommended by the Bar Association, seemed practically certain, C. B. Williams, one of the Democratic nominees, in order to concentrate the vote against the other two Republicans, withdrew from the race and thus allowed the vote to be concentrated upon Judge Grimm, Republican, and Franklin Miller and R. A. Jones, Democrats, all of whom had the endorsement of the Bar Association. The result was the election of Judge Grimm and of Franklin Miller. Mr. Jones failed of election by a small margin.

The other contest was over the judgeship of the Court of Criminal Correction. There Anthony Hochdoerfer, Democratic candidate and endorsed by the Bar Association, defeated the Republican candidate who was nominated in opposition to the recommendation of the Bar Association.

The result is exceedingly encouraging in view of the very large majority given to the Republican candidate for President in St. Louis. The St. Louis Bar Association is to be congratulated. So are the women who believed that justice is above the party. So is C. B. Williams, the Democratic candidate, who asked voters not to vote for him in order to concentrate strength upon the others who had been endorsed by the Bar Association.

Meantime the Kansas City Bar Association was unwilling to undertake a like public service. So it would seem. Perhaps the officers alone were not alert and failed to recognize their duty.

In view of the experience in St. Louis and in view of the excellent work done in New York, it is time for the Missouri Bar Association to

undertake a like service with reference to candidates for state appellate courts.

It must be remembered that in so doing the Missouri Bar Association would be giving effect to the principle so often adopted and endorsed. The second of the Canons of Ethics reads as follows:

"It is the duty of the Bar to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges. It should protest earnestly and actively against the appointment or election of those who are unsuitable for the Bench; and it should strive to have elevated thereto only those willing to forego other employments, whether of a business, political or other character, which may embarass their free and fair consideration of questions before them for decision. The aspiration of lawyers for judicial position should be governed by an impartial estimate of their ability to add honor to the office and not by a desire for the distinction the position may bring to themselves."

Columbia, Missouri. KENNETH C. SEARS

CASE SYSTEM—Within the recollection of most of us many of the abler practitioners of the bar doubted the efficacy of the case system and questioned whether the methods of instruction and the general aims of Harvard, Columbia, and the University of Pennsylvania, which at that time were the only schools using that system, were desirable, or would produce well-trained lawyers. The apprentice-trained students and the graduates of the part-time law school had no difficulty in securing positions in the best offices. Most of us have witnessed a complete change of attitude in these two respects. The greater number of schools in the country are following, or trying to follow, the methods of instruction which were then followed by the three schools first mentioned, and which are now advocated by this Association, and even some of those which do not follow it advertise that they do.

In the large centers the offices which are doing the important work of the profession desire as clerks only those students who have had the best law school training. The preponderance of college graduates in the schools of this Association (to be exact, 74 per cent. of all college graduates studying law are students in Association schools) indicates clearly enough the preference of educated men for schools founded on sound educational principles.—Harlan F. Stone, President's Address, Association of American Law Schools, 1919.

COMMITTEES

EXECUTIVE COMMITTEE: Francis M. Curlee, St. Louis; Dell D. Dutton, Kansas City; Robert Lamar, Houston; James C. Jones, St. Louis; William O. Thomas, Kansas City.

COMMITTEE ON AMENDMENTS, JUDICIARY AND PROCEDURE: Chairman, Forrest C. Donnell, St. Louis; Haywood Scott, Joplin; Walter J. G. Neun, St. Louis; James Ellison, Kansas City; Lee Montgomery, Sedalia.

COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR: Chairman, Murat Boyle, Kansas City; H. E. Sprague, St. Louis; John M. Stephens, Salem; Perry T. Allen, Springfield; H. B. Irwin, De Soto.

COMMITTEE ON BAR ASSOCIATIONS: Chairman, J. M. Lashly, St. Louis; Benjamin A. Wood, St. Louis; Ben E. Hulse, Hannibal; J. P. Swain, Mountain View; Ralph Wammack, Bloomfield.

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COMMITTEE ON GRIEVANCES AND LEGAL ETHICS: Chairman, Edwin E. Huffman, St. Louis; Ras Pearson, Louisiana; J. H. Haley, Bowling Green; A. M. Spradling, Cape Girardeau; Wm. S. Bedal, St. Louis.

COMMITTEE ON UNIFORM STATE LAWS: Chairman, Alexander H. Robbins, St. Louis; J. P. McBaine, Columbia; W. L. Sturdevant, St. Louis; John H. Atwood, Kansas City; David Proctor, Kansas City.

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SPECIAL LEGISLATIVE COMMITTEE OF THREE TO PROCURE THE CREATION OF A LEGISLATIVE REFERENCE BUREAU: Chairman Robert Lamar, Houston; Henry S. Caulfield, St. Louis; Jesse W. Barrett, St. Louis.

SPECIAL COMMITTEE TO CO-OPERATE WITH THE COMMITTEE APPOINTED BY THE CONFERENCE OF JUDGES ON MEASURES PRESENTED TO THE LEGISLATURE PERTAINING TO AMENDMENTS AND ACTS HERETOFORE OFFERED AND FAILING OF PASSAGE: Chairman, David H. Harris, Fulton; A. T. Dumm, Jefferson City; Henry Kortjohn, St. Louis; James C. Jones, St. Louis; R. D. Rogers, Mexico.

SPECIAL COMMITTEE OF THREE TO PREPARE AND PRESENT TO THE LEGISLATURE SUCH LEGISLATION AS WILL CORRECT THE EVIL OF SOLICITING LEGAL BUSINESS BY LAWYERS AND OTHERS: Chairman, Wm. S. Bedal, St. Louis; Everett Paul Griffin, St. Louis; L. M. Henson, Poplar Bluff.

SPECIAL COMMITTEE OF THREE ON PROPOSED AMENDMENT OF ARTICLE IV OF THE CONSTITUTION OF THE MISSOURI BAR AS-

SOCIATION: Chairman, Kenneth C. Sears, Columbia; John T. Barker, Kansas City; Henry T. Ferris, St. Louis.

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SPECIAL COMMITTEE TO PROCURE ENACTMENT OF MUNICIPAL COURTS BILL: Chairman, Emanuel M. Grossman, St. Louis; Frederick W. Lehmann, St. Louis; Charles Claflin Allen, St. Louis; Elliott H. Jones, Kansas City; Ewing Cockrell, Warrensburg.