University of Missouri Bulletin Law Series

Volume 20 *November 1920* Article 6

1920

Bar Bulletin

BAR BULLETIN

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OFFICIAL PUBLICATION OF THE MISSOURI BAR ASSOCIATION

PROPOSED CONSTITUTIONAL AMENDMENTS

It is proposed to amend Article 4 of the Constitution by inserting after the twenty-seventh line thereof the following:

9. On Judicial Candidates,

and by inserting at the end of the thirty-second line thereof the following:

> The Committee on Judicial Candidates shall meet at the call of the chairman prior to the primary nomination or appointment of any person as a member of any state appellate or any federal court in this state. The chairman shall invite like committees of local bar associations in this state to join in the deliberations. The joint organization shall determine the advisability of making recommendations to the appointing power or to the voters in a primary election as to the fitness of judicial candidates. Such organization shall also consider means of securing men of proper qualifications as candidates for such offices. The report of the organization shall be given publicity prior to the appointment or primary election.

It is also proposed to amend Article 4 of the Constitution by inserting after the word "Treasurer" in the third line thereof the words,

"a secretary," and by striking out all of the fourteenth and fifteenth lines of Article 4.

CHARITABLE TRUSTS

AN ACT to make valid any gift, grant, devise, or bequest of property for charitable purpose despite the indefiniteness or uncertainty of the beneficiaries or objects, and to provide for vesting the legal title of property so disposed of.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI AS FOLLOWS:

Section 1. No gift, grant, devise, or bequest to religous, educational, charitable or benevolent uses, which shall in other respects be valid under the laws of this state, shall be deemed invalid by reason of the indefiniteness or uncertainty of the persons, objects or institutions designated as the beneficiaries thereunder in the instrument creating the same, or because the party creating the trust has delegated to another the power or duty of determining what reliigous, educational, charitable or benevolent uses the money or property shall be devoted to. If in the instrument creating such a gift, grant, devise or bequest there is a trustee named to execute the same, the legal title to the lands or property given, granted, devised or bequeathed for such purposes shall vest in such trustee. If no person be named as trustee then the title to such lands or property shall vest in the circuit court having jurisdiction where the real property is located and in the case of personal property the circuit court having jurisdiction of the domicile of the trustor or, in the event that he is a non-resident, of the place where the personal property is located. The title shall remain in the circuit court until a trustee shall be duly appointed and qualified.

Section 2. All laws in conflict with the provisions of Section 1 are hereby repealed.

The above proposed act has been prepared with a view to correcting the unfortunate rule of law prevailing in this state which invalidates charitable trusts because of the indefiniteness of the purpose or object of the trust. The reader is referred to the review of Jones v. Patterson, page 53 of this bulletin.—Ed.

PROPOSED ADDITIONS TO CORPORATION LAW

Any corporation may, if so provided in its Certificate of Incorporation or in an amendment thereof, issue shares of stock (other than stock preferred as to dividends or preferred as to its distributive share of the assets of the corporation or subject to redemption at a fixed price) without any nominal or par value. Every share of such stock without nominal or par value shall be equal to every other share of such stock,

except that the Certificate of Incorporation may provide that such stock shall be divided into different classes with such designations and voting power or restriction or qualification thereof as shall be stated therein, but all such stock shall be subordinate to the preferences given to preferred stock, if any. Such stock may be issued by the corporation from time to time for such consideration as may be fixed from time to time by the Board of Directors thereof, pursuant to authority conferred in the certificate of incorporation, or if such certificate shall not so provide, then by the consent of the holders of two thirds of each class of stock then outstanding and entitled to vote given at a meeting called for that purpose in such manner as shall be prescribed by the by-laws, and any and all such shares so issued, the full consideration for which has been paid or delivered, shall be deemed full paid stock and not liable to further call or assessment thereon and the holder of such shares shall not be liable for any further payments under the provisions of this Chapter.

In any case in which the law requires that the par value of the shares of stock of a corporation be stated in any certificate or paper, it shall be stated, in respect of such shares, that such shares are without par value and wherever the amount of stock, authorized or issued, is required to be stated, the number of shares authorized or issued shall be stated, and it shall be stated that such shares are without par value. For the purpose of the taxes prescribed to be paid on the filing of any certificate or other paper relating to corporations and of franchise taxes prescribed to be paid by corporations to this State, but for no other purpose, such shares shall be taken to be of the par value of One Hundred Dollars each.

Within ten days after the issuance by the corporation of any of its shares of stock of no par value for property or cash, a statement, verified by the President and Secretary of the corporation showing the number of shares issued and the character, amount, and value of the property or cash received therefor, shall be filed with the Bank Commissioner of the State of Missouri. Failure to file the statement as herein provided shall be deemed sufficient grounds for the revocation of the certificate of incorporation.

It shall be lawful for any corporation organized under the laws of the State of Missouri, if it shall be so provided in its certificate of incorporation, to purchase or otherwise acquire, hold, and sell or otherwise dispose of shares of its capital stock and the shares of the capital stock of any other corporation, whether engaged in a similar business or not.

[The above has been proposed by Mr. Burr S. Stottle, 920 Commerce Building, Kansas City, Missouri, as the basis of needed legisla-

tion in this state. The proposal seeks to provide (1) for corporations with capital stock of no par value and (2) that corporations may acquire, own and sell the capital stock of other corporations without limitation.—Ed.]

JURY-EQUITY-TERMINOLOGY—We adopt this rule with all its rigor, but with a consciousness that juries in exercise of their equity powers do in practice correct many matters in which the law, by reason of its universality, is deficient.---Sturgis, P. J., in *Davis v. Springfield Hospital*, 218 S. W. 696.

If it is meant that the rule of law given the jury in certain cases is not followed and that the jury decides the case upon some other principle which is more just should this situation be tolerated as a satisfactory condition of our jurisprudence? Perhaps the rule of law is not the best rule that may be devised. Perhaps no general rule can be devised to meet justly all similar situations. Perhaps exceptions should be made. But do we improve our body of the law by leaving it to the jury to find a way, often upon no fixed principle, when the rule we have is not satisfactory?

Furthermore, if anything is to be gained by a scientific terminology it is difficult to understand how it will contribute toward legal science to write of the "equity powers" of a jury. Without doubt accurate legal terminology is a great aid to accurate thinking and the administration of justice.

BURDEN OF PROOF.—The burden was on the defendant to prove that the death under such circumstances was intentional and not accidental; that is, the burden would be upon the defendant, in a case of suicide, to prove that the insured was sane, and committed the act which took his life with the intention of committing suicide.---White, C., in *Andrus v. Business Men's Acc. Ass'n*, 223 S. W. 1. c. 74.

If the court meant "burden" in the sense of the duty of convincing the trier of the fact then the situation is that the plaintiff having pleaded that the death was by accidental means and the defendant having denied that allegation, still defendant would have the duty of convincing the trier of the facts that plaintiff's allegation—a necessary allegation— is not true. Such a result is anomalous. Are there not already enough anomalous situations in the law of insurance?

But the court may have meant to use the term "burden" only in the sense of going forward with the evidence. See note by J. A. Walden, Law Series 17, pages 64-65.

SELECTION OF JUDICIAL OFFICERS

In the State of New York, there is, in addition to the State Bar Association, a local bar association in each of the sixty-two counties.

The City of New York is comprised of five boroughs—Manhattan, The Bronx, Brooklyn, Queens and Richmond—co-terminous with the Counties of New York, The Bronx, Kings, Queens and Richmond, respectively. The Boroughs of Manhattan and The Bronx constitute the First Judicial District of the State of New York, and the Boroughs of Brooklyn, Queens and Richmond are included in the Second Judicial District. There is a County Lawyers' Association in each of these borroughs and in the Borough of Manhattan there are two bar associations —The Association of the Bar of the City of New York and the New York County Lawyers' Association.

The Association of the Bar of the City of New York, probably the oldest bar association in the United States, was organized in 1870 and has a membership of from 1700 to 1800. The New York County Lawyers' Association, of which the Hon. Charles E. Hughes, former justice of the Supreme Court of the United States, is president, was organized in 1908 and has a membership of about 3600. Many lawyers in the City of New York are members of both these associations.

The by-laws of the New York County Lawyers' Association provide for certain standing committees of the Association, including, among others, a Committee on Judiciary. (Article XI. Sec. 1). This committee consists of twenty-one members, divided into three classes of seven members each, appointed annually by the president for a term of three years. (Article XI. Sec. 2). The president, vice-president, secretary, and treasurer of the association are ex-officio members of this Committee and entitled to participate in its proceedings as members. (Article XI. Sec. 4). This Judiciary Committee, of which Hon. James A. O'Gorman, former United States Senator from the State of New York, is chairman, has, among other powers, the following:

> "Prior to the fourth Monday in September in each year in which a judicial office is to be filled by election in the County of New York the Committee on Judiciary and the Directors shall meet on the call of five members of either, to decide whether a general meeting of the association shall be called for the purpose of determining whether the Association shall take any action in nominating candidates for such office or recommending candidates to the respective political parties for nomination. Said Committee and the Board of Directors acting as a joint Committee on Nominations shall make rules for the calling and conduct of such general meeting of the Association and for the voting thereat. Seven hundred and fifty members shall constitute a

quorum at such meeting. If at such meeting it shall be determined to nominate or recommend candidates for such office or offices, then an adjournment of the meeting shall be taken for not less than one week; at such adjourned meeting a like number shall constitute a quorum, and there shall be submitted at such meeting a printed ballot to be made up of candidates proposed by the Directors and Judiciary Committee of the Association acting as a Joint Committee on Nominations and also candidates nominated by petition of at least two hundred and fifty members of the Association, provided such nomination or nominations by petition shall have been given to the Chairman of the Directors forty-eight hours before the adjourned meeting. The ballot shall contain the names of persons so nominated alphabetically arranged and the office for which the nomination is made, distinguishing the nomination by the Joint Committee on Nominations, and the voting upon such ballot shall be by making a cross before each name voted for. The Candidates on such ballot chosen by two-thirds of the members present and voting at such meeting shall be the candidates of the Association; and if it shall be resolved to nominate candidates, the said Joint Committee on Nominations shall cause to be circulated the necessary petition for such nomination to be filed with the proper officers in order that the candidates may have a place upon the official ballot; and it shall select the party symbol and designation under which the said ticket shall appear on the official ballot when this shall be necessary under the form of ballot then existing, and do all other things necessary in the premises. The rules governing the voting at such adjourned meetings shall be made by the said Joint Committee." (Article XVII., Sec. 3).

"The Committee shall have power to consider the fitness of candidates nominated or proposed to be nominated for election or appointment to judicial office, and shall have the right to confer on that subject with other organizations. The Committee shall report its recommendations to the Board of Directors for such action thereon as the Board may deem advisable and the Board of Directors may also, in the case of candidates for appointment to judicial office, report its recommendations directly to any public officer charged with a duty in the premises upon request of such officer." (Article XVII., Sec. 4).

Pursuant to the foregoing powers, the Judiciary Committee of this Association, upon the occurrence of a vacancy in the Judiciary, or, in the event of an election both prior to and after nominations for judicial office have been made, considers the qualifications of prospective candidates or nominees, and embodies its recommendations in a report to the Board of Directors, which, after further consideration, takes such action as it deems advisable. (Article XVII. Sec. 4).

In exceptional cases preliminary steps are taken to secure the re-

nomination and re-election of judges whose records have been satisfactory. (Article XVII. Sec. 3.) Such action is taken at a general meeting of the Association called at the instance of the Committee on Judiciary and the Directors.

The Judiciary Committee of the Association of the Bar of the City of New York is vested with substantially similar powers and the two associations generally act in concert in these matters, the respective committees on the judiciary frequently co-operating very effectively.

The recommendations of this Committee are given a wide circulation in the public press throughout the State.

In this manner a wholesome influence is exerted upon the selection, as well as the election, of candidates for the Federal, State and local bench. Laymen are strongly influenced by the recommendations of the local Bar Association in respect to the qualification of candidates for judicial office, and the Associations, in turn, conscious of the reliance placed upon their recommendations by the laymen, strive conscientiously to prove themselves worthy of this responsibility. So desirable is the endorsement of these several associations, that executive officers enjoying the power of appointment to fill vacancies in judicial offices, as well as political organizations, usually assure themselves that a candidate for judicial honors will receive the endorsement of the bar associations interested, and a nomination that is sure to invite the opposition of these associations is rarely made and seldom successful.

The keen appreciation on the part of these associations of their responsibility in reporting upon the qualifications of candidates for judicial office is best evidenced by the personnel of these committees, consisting, in the case of the New York County Lawyers' Association, of the following members, many of whom are of national distinction:

COMMITTEE ON THE JUDICIARY

James A. O'Gorman ..... Chairman
Louis F. Doyle ..... Secretary

Class of 1920

Francis S. Bangs (deceased)		James A. Gorman
Louis Marshall		Alton B. Parker
Walter C. Noyes	George W. Wickersham	Archibald R. Watson

Class of 1921

Lewis L. Delafield		Frederic C. Leubuscher
Job E. Hedges		David Leventritt
D. Cady Herrick	Thomas Thacher (deceased)	James R. Sheffield

Class of 1922

Charles F. Brown		Charles E. Lydecker (deceased)
Edward S. Clinch		William M. K. Olcott
Louis F. Doyle	Henry Wollman	Clarence J. Shearn

New York LOUIS F. DOYLE

THE NEW YORK METHOD

The following excerpts from the report of the Committee on Judiciary of the New York County Lawyers' Association will demonstrate the method pursued in obtaining proper judicial officers in the State of New York. They should be considered in connection with the article by Mr. Louis F. Doyle and with the proposal for an amendment of the Constitution of the Bar Association to the end that the same excellent work may be accomplished in Missouri.

New York, October 14, 1919

To the Board of Directors of the

New York County Lawyers' Association:

The Committee on the Judiciary submits the following report:

The several political parties have now made their respective nominations for the offices of Justices of the Supreme Court of the First District, Surrogate of the County of New York, Justices of the City Court of the City of New York and Justices of the Municipal Court of the City of New York, to be filled at the approaching general election. The Committee on the Judiciary has considered the fitness of the candidates so nominated and respectfully reports to the board of directors its recommendations, as follows:

That, in the opinion of the Committee, each of the following named candidates is fitted by learning, character and professional experience for the office for which he has been nominated, and will, if elected, discharge the duties of his office with ability and fidelity:

Candidates for Justice of the Supreme Court.

Honorable Joseph E. Newburger, now a justice of the Supreme Court.

Honorable Robert L. Luce, now sitting by appointment as a Justice of the Supreme Court.

Irwin Untermyer, Esq., and

Philip J. McCook, Esq.

Candidates for Surrogate

Honorable James A. Foley, and

James O'Malley, Esquire.

* * * * * * * * *

Respectfully submitted

JAMES A. O'GORMAN, Chairman;

LOUIS F. DOYLE, Secretary.

Upon the presentation of the foregoing report at a meeting of the Board of Directors held October 22nd, 1919, the following resolutions were adopted:

Resolved that the report presented by the Judiciary Committee be, and the same hereby is, approved by the Board; and it is

Further resolved that in approving the report of the Judiciary Committee, the Board of Directors of the New York County Lawyers' Association reaffirms its adherence to the principle embraced in the resolution adopted by this board on April 3, 1919, towit: 'The principle of retaining in office judges of experience and proved ability is now well established and has the hearty approval of this association and of the Bar and of the public generally,' and that the board of directors believes that this principle should be applied to the case of Mr. Justice Newburger and that of Mr. Justice Smith, and that they should be reelected.

On November 12th, 1919, the Committee again met and in the exercise of its power adopted resolutions, pursuant to which the following report was presented to the Board of Directors, which unanimously adopted the report at a meeting held November 12, 1919:

Whereas the designation of Mr. Justice Frank C. Laughlin as a Justice of the Appellate Division of the Supreme Court in the First Department expires on December 31, 1919; and

Whereas his judicial service as a Justice of the Supreme Court for the past twenty-four years, eighteen of which have been spent in the Appellate Division of this Department, has been distinguished by learning, industry, and unremitting devotion to the duties of his office; and

Whereas the ever increasing business of the Appellate Division of the First Department requires the services of able, trained and experienced judges; therefore be it

Resolved that the Judiciary Committee of the New York County Lawyers' Association respectfully recommends to Governor Smith the redesignation of Mr. Justice Laughlin on the expiration of his present term.

JAMES A. O'GORMAN, Chairman;
LOUIS F. DOYLE, Secretary.

At a meeting held on March 13th, 1920, the Committee considered the forthcoming vacancies in the Court of Appeals and made recommendations in regard thereto to the Board of Directors, which adopted the following resolutions at its meeting on April 1, 1920:

Resolved, that in respect to the two Judges to be elected to the Court of Appeals at the coming election, this Board strongly urges that nominations by the several political parties be made upon a non-partisan basis, and that the same candidates be nominated by all parties.

Further Resolved, that this Board recommends the nom-

ination as Associate Judges of the Court of Appeals, of Judges Frederick E. Crane and Abram I. Elkus, whose terms are about to expire, both of whom are in all respects well qualified for such office.

Respectfully submitted,

(signed) JAMES A. O'GORMAN, Chairman

(signed) LOUIS F. DOYLE, Secretary.

SUBROGATION AND ASSIGNMENT—The principle governing subrogation is equity, while that governing assignment is law.—Ellison, J., in *Kansas City etc. v. Southern Surety Co.*, 219 S. W. 727.

Such a statement arouses interest. It ignores the vast amount of history lying behind assignment. "As will appear from the following section important consequences follow from the answer given to the question whether the assignee's right is legal or equitable. If the matter is looked at from a historical point of view it is obvious that the protection of the assignee's right has been largely due to courts of equity....." Williston on Contracts Vol. I, Sec. 446a.

Nor is the statement accurate if our present day law is alone considered.

".....It seems, therefore, that the authorities referred to in a preceding section holding that merely procedural changes have been effected by modern statutes are sound and that the assignee's right should still be regarded as equitable in the sense of being governed and defined by the principles originally established by courts of equity." Williston on Contracts, Vol. I. Sec. 447.

HIGHEST QUALITIES DEMANDED—The Supreme Court's power as the ultimate law giver puts too heavy a strain upon ordinary men. Since it is, as we are constantly told, an extraordinary power it demands extraordinary men to exercise it. We shall never face the issues until there is a general recognition of the fact that the Supreme Court in cases of public concern is not exercising ordinary judicial powers but powers that demand qualities deeper and different from those possessed by ordinary judges. They are the deeper problems of statesmanship. They require for their disposition either men like Chief Justice Marshall, the late Mr. Justice Moody, or Mr. Justice Hughes, who came to the court after wide and far-sighted experience in affairs; or that rarer type, men like Mr. Justice Holmes, who are gifted with imagination to transcend their own limited experience.——The New Republic, Vol. XXII, No. 281.

AN UNFORTUNATE DISSENT

I cannot help but feel that the dissent of Mr. Justice Holmes, in which Mr. Justice Brandeis concurs, in *Jacob Abrams et al. v. United States,* decided by the Supreme Court of the United States, November 10th, 1919, is a most unfortunate one.

Abrams and his fellow conspirators were prosecuted under the Espionage Act; in count 1 for unlawfully uttering etc. "disloyal, scurrilous and abusive language about the form of government of the United States;" and in count 2 language "intended to bring the form of government of the United States into contempt, scorn, contumely, and disrepute;" and in count 3 language "intended to incite, provoke, and encourage resistance to the United States in said (the war with Germany) war;" and in count 4 with conspiring "when the United States was at war with the Imperial German Government, * * unlawfully by utterances, etc. to urge, incite and advocate curtailment of production of things and products, to-wit: ordnance and ammunition, necessary and essential to the prosecution of the war."

Abrams purchased a printing outfit which was concealed in a basement room where the printing was done at night. The circulars were distributed secretly in New York City, some of them being thrown from a window of a building where one of the defendants was employed.

There were five defendants and the majority opinion states that they were intelligent, had had considerable schooling and had lived in the United States for terms varying from five to ten years, but none had ever applied for naturalization.

The majority opinion also states that four of the defendants testified frankly that they were "rebels," "revolutionists," "anarchists," having no *belief* in government of any form and no *interest* whatever in the government of the United States. That the fourth defendant testified that he was a "socialist" and believed in a proper kind of government, but not in *our* government, which he termed as *"capitalistic."*

One of these inflammatory articles printed and disseminated by this "gang" is headed "The Hypocrisy of the United States and her Allies," and after the use of most abusive language, ends with these ringing paragraphs:

> "The Russian Revolution cries: Workers of the World! Awake! Rise! Put down your enemy and mine!"
>
> "Yes, friends, there is only one enemy of the workers of the world and that is CAPITALISM."
>
> "Awake! Awake, you Workers of the World!"

And the circular is signed "Revolutionist."

Obviously, as the majority opinion points out, this is "clearly an ap-

peal to the 'workers' of this country to arise and put down by force the government of the United States, which they characterize as their 'hypocritical,' 'cowardly,' and 'capitalistic' enemy."

The circular above referred to was published in English. Another circular was published in Yiddish and the translation of the heading is "Workers—Wake up."

In this circular the President is referred to as "his Majesty, Mr. Wilson, and the rest of the gang; dogs of all colors!" And therein the following occurs:

> "Workers, Russian emigrants, you who had the least belief in the honesty of *our* government, must now throw away all confidence, must spit in the face of false, hypocritic, military propaganda which has fooled you so relentlessly, calling forth your sympathy, your help, to the prosecution of the war."

It was admitted on the trial of the case that the reference in the quotation last made was to the Government of the United States.

Another sentence in this circular is as follows:—

> "Workers in the ammunition factories, you are producing bullets, bayonets, cannon, to murder not only the Germans, but also your dearest, best, who are in Russia and are fighting for freedom."

Further on in this same circular we find the following:—

> "Workers, our reply to the barbaric intervention (referring to the presence of the Allied Armies on Russian soil) has to be a general strike! An open challenge only will let *the government* know that not only the Russian Worker fights for freedom, but also *here in America lives the spirit of Revolution.*"

And further we find the following:—

> "Do not let *the government* scare you with their wild punishment in prisons, hanging, and shooting. We must not and will not betray the splendid fighters of Russia. Workers, up to fight."

(The italics are mine.)

This circular is signed "The Rebels."

There were other circulars just as inflammatory and abusive, cleverly designed to provoke discontent in the minds of the "workers" and to kindle and fan into flame a spirit of resentment toward, and intolerance of, the Government of the United States.

All five of the defendants were convicted below, and the case was affirmed on appeal in an opinion by Mr. Justice Clarke, from which (as

heretofore noted) Mr. Justice Holmes and Mr. Justice Brandeis dissented.

I presume dissents are necessary because human minds in administering justice, as in every other walk of life, arrive, and honestly so, at different conclusions; but the dissenting opinion of Mr. Justice Holmes in this case is to my mind unfortunate and indeed deplorable. It would have been far better if the two non-concurring justices had merely announced their dissent; that would have been regrettable, but when the ground of the dissent is, that the conviction of these men, based upon the preparation and dissemination of the circulars involved, is a violation of that provision of our Constitution protecting freedom of speech, the result approaches a positive menace to society and this Government.

One of the points made by Mr. Justice Holmes and relied upon in support of his dissenting view, is, that under count 4, which it will be recalled charged the defendants with conspiring when this Government was at war with Germany and in uttering, writings, urging, inciting and advocating the curtailment of production of ordnance and ammunition, necessary and essential to the prosecution of the war, it was necessary to make the conduct criminal, that there should be proved an intent on the part of the defendants to cripple or hinder the Government in the prosecution of the war by the effort to influence workers in ammunition factories to curtail the production of bullets, bayonets and cannon. And in that connection he indulges in this refinement of argument:

> "I am aware, of course, that the word 'intent' as vaguely used in ordinary legal discussion means no more than knowledge at the time of the act that the consequences said to be intended will ensue. Even less than that will satisfy the general principle of civil and criminal liability. A man may have to pay damages, may be sent to prison, at common law might be hanged, if at the time of his act he knew facts from which common experience showed that the consequences would follow, whether he individually could foresee them or not. But, when words are used actually, a deed is not done with intent to produce a consequence unless that consequence is the aim of the deed. *It may be obvious, and obvious to the actor, that the consequence will follow, and he may be liable for it even if he regrets it, but he does not do the act with intent to produce it unless the aim to produce it is the proximate motive of the specific act, altho there may be some deeper motive behind.*
>
> "It seems to me that this statute must be taken to use its words in a strict and accurate sense. They would be absurd in any other. A patriot might think that we were wasting money on aeroplanes, or making more cannon of a certain kind than we needed, and might advocate curtailment with success; yet, even if it turned out that curtailment hindered and was thought by other minds to have been ob-

> viously likely to hinder the United States in the prosecution of the war, no one would hold such conduct a crime. I admit that my illustration does not answer all that might be said, but it is enough to show what I think and to let me pass to a more important aspect of the case."

(The italics are mine.)

I seriously object to coupling, even by the way of illustration, a patriot with the defendants in this case, and I am not surprised that the writer of the language quoted should have had doubts of the soundness of his argument, as is evident from his admission therein.

I am unable to conceive how a man with the antecedents, education, learning, attainments and experience of the learned author of this dissenting opinion can refer to the circulars involved as "a silly leaflet" and later as "poor and puny anonymities."

Equally untenable in my opinion is the argument of the learned justice in respect to the third count, which it will be recalled charged an intent "to incite, provoke and encourage resistance to the United States in said war."

His conception of the statute is that:

> "Resistance to the United States means some act of opposition, to some proceeding of the United States in pursuance of the war. I think the intent must be the specific intent that I have described, and for the reasons that I have given I think that no such intent was proved or existed in fact. I also think that there is no *hint* at resistance to the United States, as I construe the phrase."

(The italics are mine.)

But even more to be regretted is the following statement of the learned Justice:

> "In this case sentences of twenty years' imprisonment have been imposed for the publishing of two leaflets that I believe the defendants had as much *right to publish as the Government has to publish the Constitution of the United States* * *."

(The italics are mine.)

The deliberately planned vagaries of the defendants are by the learned Justice elevated to the dignity of a "*creed*" which he states he believes to be the result of ignorance and immaturity.

When it is remembered that the conspiracy charged was hatched and carried into full fruition with the utmost cunning and acumen, carefully guarding at every point the danger of discovery, it becomes impossible for me, at least, to agree that these men were ignorant or that their vagaries or beliefs were the result of immaturity.

I cannot close without quoting from the concluding paragraph of this remarkable dissenting opinion.

> "Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care whole-heartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas,—that the best test of truth is the power of the thought to get itself accepted in the competition of the market; and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country."

I confess great difficulty, in fact inability, to comprehend exactly what is meant by the language just quoted, but I assume that thereby is meant that "rebels" and "revolutionists," as these defendants admitted themselves to be, can advertise themselves as such, can speak and write anything which their fertile brains can conjure up, no matter how abusive of, and derogatory to this Government it may be, and yet they cannot be punished under the Espionage Act until they lay their hands actually upon the throat of the Government itself.

If that is a correct interpretation of the existing law, it is high time that a law be written which will prevent the perpetration of such outrages.

The conception of the defendants' acts and motives, as expressed by the majority opinion, is in my judgement not only more logical and reasonable, but is the only conclusion which can legitimately and properly flow from the facts.

I quote but one sentence, altho the whole opinion should and could be read with great profit.

> "These excerpts (taken from the circulars involved) sufficiently show that while the immediate occasion for this

> particular outbreak of lawlessness on the part of the defendant alien anarchists may have been resentment caused by our government sending troops into Russia as a strategic operation against the Germans on the eastern battle front, yet the plain purpose of their propoganda was to excite, at the supreme crisis of the war, disaffection, sedition, riots, and, as they hoped, revolution, in this country, for the purpose of embarrassing and if possible defeating the military plans of the government in Europe."[1]

In West Publishing Company's docket for February, March, 1920, the opinions in this case are printed with a head note to the effect that the radical and revolutionary forces (which are unfortunately actively at work in this country and as we all know ready to grasp at anything and every thing lending color to their efforts) are making use of this dissenting opinion as a justification for their propaganda.

Of course, the "Rebels" and "Revolutionists" will be quick to seize upon this dissenting opinion and every phrase therein, and send it out as propaganda to their fellows, thus destroying in large measure the beneficient result of the conviction of these defendants and the otherwise salutary effect of the affirmance of that conviction by a majority of this great court.[2]

Kansas City, Missouri. C. W. GERMAN

NOTES:

1. Mr. Zechariah Chafee, Jr., states in 33 Harvard Law Review 758-759, that the "excerpts" had reference not to the articles which were the foundation of the prosecution but to two manuscripts taken from the person of Lipman and from a closet in Abrams' rooms. Lipman and Abrams were two of the defendants.—Ed.

2. *Abrams v. United States* is reported in 250 U. S. 616, 40 Sup. Ct. Rep. 17. The decision has been the subject of comment in 33 Harvard Law Review 442, 33 *id* 747, 29 Yale Law Journal 337, 6 Journal American Bar Association 28, and in an article by Dean Wigmore which appeared early this year in the Illinois Law Review. The general subject was ably discussed by Honorable A. J. Beveridge in an address before the American Bar Association in St. Louis, August, 1920.—Ed.

PARTNERSHIP TENURE—According to our conception of the law, it is immaterial whether the grantees in the deed from Finch to Joseph A. Smith et al., dated March 13, 1873, be considered as tenants in common or co-partners.—Mozley, C., in *Allison v. Cemetery Caretaking Co.*, 223 S. W. 1. c. 43. One might think that the Commissioner had the view that there is such a thing as a distinct partnership tenure. Professor Mechem has advocated such a view, but most prefer to say that partners hold real estate as tenants in common. Bates on Partnership, Sec. 280.

REPORT OF COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR

To the Missouri Bar Association:

At each session of the Bar Association since 1916 the committee on Legal Education and Admission to the Bar has in its reports hearkened back to, approved and reiterated, a most exhaustive, elaborate and careful report made by Judge Goode as chairman of the committee in 1916. A careful study of the report of 1916, and its various reiterations since that date, has convinced your present committee that the report of 1916 could hardly be improved, and that the work of this committee might be concluded by simply recommending to the Association that the 1916 report be adopted again. However, we deem it advisable to point out the prominent features of the report of 1916 and to call briefly to attention the several prominent recommendations it contained. These briefly summarized are as follows:

1. That a general education equivalent to the completion of a four year course in a standard first class high school should be required.

2. That at least three years of professional education, obtained, either by attendance in a law school, or by studying in a law office, should also be required.

The report referred to further recommends that Common Law Pleading be dropped from the list of examination subjects, and that the required fee of applicants for examination be increased from ten to twenty dollars.

We are agreed that the present requirement as to general education is ridiculously insufficient. Under Section 940 Revised Statutes for 1909, an applicant for license to practice law is required only to complete the course in a grade school, or to have acquired education equivalent thereto. This means an applicant for admission to the Bar need only have the same general education that is now generally and ordinarily obtained by the average child at fourteen years of age. This is a condition which should not be longer tolerated. If reason ever existed for such loose requirements, it certainly no longer exists. It is inconceivable that any person desiring to practice law cannot readily obtain the high school education. Standard first class high schools are to be found in practically every community in the state, often two or three in a single county. We recommend therefore that Section 940 be so amended as to provide that all applicants for admission to the Bar shall prove that they have acquired general education equivalent to that obtained by the completion of a four year standard first class high school course.

Your committee fully concurs in that part of the report of 1916 which recommends additional requirements in the matter of professional

education. At present there is no required time fixed for professional study. If one is able to do so, he may within three to six months read law and be admitted to the Missouri Bar. This is an intolerable condition. It opens the way, and places a premium on mere stuffing for an examination, the primary purpose being merely to enable the applicant to pass the Bar examination, and absent the purpose of fitting himself for professional life. The people of the state are interested in a competent professional class and this can not be had so long as the way to the Bar is as easy as it now is. There is no demand or need in Missouri for more lawyers but a demand and need for better trained lawyers, and the state, in the interest of the whole people, should enact such laws as will produce a competent class of lawyers rather than such laws as will permit anyone, who has the desire, to practice before the courts. A situation should be created that when one is admitted to practice law there will be reasonable assurance that he is fairly competent to transact the business which may come to his office. Your committee is therefore of the opinion that the legislature should by statute require that applicants for license to practice law should furnish proof that they have had at least three years of professional education, obtained, either in a law school or in studying in the office of a lawyer. It is our further opinion that the law school or the lawyer to which the student turns for his professional education should be approved by the Supreme Court of the State.

In this connection we are reminded that in most of the states of the union a period of study in a law school or in a law office is required of an applicant for admission to practice law. In twenty-four states, the District of Columbia, Hawaii, and the Philippine Islands a period of three years of study in a law school or in an office is required. In nine states and in Porto Rico two years of study is required. This was the situation in 1916, and while your committee has not examined the statutes of the various states to discover what changes, if any, have been made in the past four years, yet it knows of no state lowering its requirements, and it is highly probable that some states have raised their requirements. It will appear that Missouri is lagging behind in its regulation of the practice of law.

Your committee therefore, while calling particular attention to certain recommendations of the 1916 report, desires to recommend that the Bar Association again go on record as approving said last named report and its several recommendations.

While this association has repeatedly approved the recommendations of the 1916 report, nothing has ever been done to secure the needed legislation. The association has apparently been satisfied with mere approval, and has taken no active steps toward securing what it has declared to

be a needed reformation. Your present committee, in the hope that definite results may be obtained, has prepared a bill, hereto annexed and made a part of this report, embodying the recommendations herein made, the same to be submitted to the Legislature for passage, provided it meets with the approval of the association.

Respectfully submitted—E. L. ALFORD, *Chairman*, O. M. BARNETT, JOHN T. STURGISS, EUGENE MCQUILLEN, JAMES A. PARKS.

AN ACT TO REPEAL SECTION 940, *REVISED STATUTES OF MISSOURI*, 1909, *RELATING TO QUALIFICATIONS OF APPLICANTS FOR ADMISSION AND LICENSE TO PRACTICE AS ATTORNEYS AT LAW, AND TO ENACT A NEW SECTION IN LIEU THEREOF.*

Be it enacted by the General Assembly of the State of Missouri as follows:

Section 1. That Section 940 of the Revised Statutes of Missouri, 1909, relating to qualifications of applicants for admission and license to practice as attorneys at law, be and the same is hereby repealed and a new section enacted in lieu thereof to be known as Section 940, and to read as follows:

Section 940:—Every applicant for such admission and license must be at least twenty-one years of age, of good moral character and a resident of this state. Every such applicant, in addition to furnishing proof of his compliance with the above qualifications, must also have actually and in good faith acquired a general education substantially equivalent to that obtained by the completion of a standard first class high school course of study, and shall possess fair knowledge of history, literature and civil government. Every such applicant shall have completed a course of professional study of law in a law school, such course of study to consist of at least three years of not less than thirty weeks each year, with at least ten hours of class room work in each week, such law school to be approved by the Supreme Court of the State. Provided that in lieu of such course of study in an approved law school the applicant may furnish satisfactory evidence that he has actually and in good faith studied law in the office and under the instruction of a practicing lawyer for at least three years of ten months each, and that he has devoted substantially all of such time to the study of the subjects upon which he shall be examined, as provided in section 944. In all cases the lawyer with whom the applicant purposes to study law shall first be approved by the Supreme Court, as such instructor, and upon such conditions and under such regulations as such Court shall prescribe.

TENTATIVE PROGRAM FOR MISSOURI BAR ASSOCIATION, 1920. STATLER HOTEL, ST. LOUIS.

Friday, December 3rd.

MORNING SESSION.

Address of welcome ..... (some St. Louis man)
Response ..... (man to be selected)
President's address.

Luncheon.

AFTERNOON SESSION.

Address ..... (Hon. Bainbridge Colby has been invited)
No reply yet.
Address "The Constitution and the Courts"
Judge John Turner White, Supreme Court Commissioner.
Reports of committees, discussion and miscellaneous business.

EVENING SESSION.

Smoker by St. Louis Bar Association ..... (speakers not yet chosen)

Saturday, December 4th.

MORNING SESSION.

Address ..... Judge Harry Olson, Chief Justice of the Municipal Court of Chicago.
Nomination of officers.
Committee reports.

AFTERNOON SESSION.

Memorials.
Miscellaneous business.

EVENING SESSION.

Annual Banquet
Principal speaker.....Hon. Fred Dumont Smith, Hutchinson, Kansas.

(The above was based on information at hand October 20.—Ed.)