"Why do you refuse to answer the question, madam?" asked a lawyer of a lady witness, scenting a favorable disclosure. "Because my answer ought not be heard by any honorable person," replied the witness. "Well, then, madam," said the counsel, "whisper it in the ear of the judge."

The whisky deceased had on the seat in which he was riding, unsupported and with a serenity worthy of a better cause, withstood the drive over said depression, and was taken therefrom without breaking a bottle or spilling a drop.—Mozley, C., in Reese v. City of St. Louis, 216 S. W. 315.

A suit has been instituted in Caldwell County by Maud L. Meredith against the Business Men's Accident Association of Kansas City because of the death of her husband (the insured) as the result of the falling of an airplane in which he was a passenger at the rate of $1.00 per minute. One clause of the policy provides that the policy shall be void if the accident occurs while the insured was participating in aeronautics.
BURDEN OF PROOF—The cause of action is founded on the negligence of the bailee. While the burden of proof is upon plaintiff to show such negligence, and that burden never shifts, plaintiff sustained the burden upon him by merely pleading and proving the fact of bailment, and the failure or refusal of defendant to return the property on proper and timely demand. The burden of bringing forward evidence, but not the burden of proof, then shifted to the defendant, to excuse his failure to return the property by showing that the loss was due to a cause consistent with the exercise of reasonable care on his part. If defendant's evidence disproving negligence on his part and the proof of negligence arising in favor of plaintiff on his showing were equally balanced, then the verdict must have been for the defendant, as it was not the duty of the defendant to show by the preponderance of the evidence that he was not negligent. On the other hand, it was the duty of plaintiff to show by the preponderance of the evidence that the defendant was negligent.—Bland, J., in *Vaughn v. Jackson*, 216 S. W. 331.

Well stated and very refreshing after reading many decisions wherein the phrase “burden of proof” is handled without any discrimination.

Since the present consolidation of The Bar Bulletin and The Law Series has been arranged, two communications of interest have been received. One was from the School of Law at the University of Iowa, which publishes a bulletin and which is planning to make its bulletin the official publication of the Iowa Bar Association. The other was from Dean Richards of the Law School at the University of Wisconsin, which contemplates starting a bulletin, and consideration is being given to making it the official publication of the Wisconsin Bar Association.

Not long ago, an Irish lawyer, while arguing with the earnestness of his race, stated a point which the court ruled out. “Well,” exclaimed the attorney, “if it plaze the court, if I am wrong in this I have another point that is equally as conclusive.”

These two constructions of this law (Section 6354, R. S. Mo. 1909) have already led to inconsistent and conflicting opinions, as will be seen by turning to the last case we have been able to find, decided by the Supreme Court, where a great many cases are discussed in an opinion by Woodson, J., it being the case of *Wagner v. Binder*, 187 S. W. 1128.—Farrington, J., in *Stratton v. Cole et al.*, 216 S. W. 976.

The section is being held in reserve for an article which it is hoped to present during the next scholastic year.

CODE OF ETHICS—After the receipt of the article written by Mr. Ashley of Kansas City, published in Law Series 18, the Secretary of the
Association called attention to the fact that the Constitution of the Missouri Bar Association as amended in 1918 contains the following: "Article 5.—This Association hereby adopts the Canons of Ethics adopted by the American Bar Association at its thirty-first annual meeting, as contained in Volume XXXVIII of the reports of the American Bar Association." *Reports, Missouri Bar Association*, 1918, p. 28. It is hoped that these canons may be published from time to time in the Bar Bulletin. Meantime, if the Supreme Court will adopt Mr. Ashley's suggestion there will be no excuse for an accused lawyer to set forth his ignorance even in extenuation.

With nine divisions of the Circuit Court in Kansas City from January 1st to April 1st, 1919, 153 jury and 113 court or jury waived cases were tried and disposition was made of 239 default cases. But the cost to Jackson County was $50,000.—John S. Wright, Kansas City Bar Association Banquet, March, 1920.

FIRST CANON—There are at least two methods of enforcing the first canon. If it is violated the Bar Association can pass a resolution condemning the guilty attorney. If the conduct was inspired by ulterior motives such as a desire to satisfy political ambitions then the members of the Bar should refuse to support for any office any man who has resorted to such means. *Nota*, reader:

It is the duty of the lawyer to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

CANDIDATES FOR APPELLATE COURTS.—Attention is directed to the action of the St. Louis Bar Association in appointing a committee to investigate the qualifications of the candidates for positions on the appellate courts. President German of the Kansas City Bar Association has expressed his desire to cooperate with the St. Louis Bar Association. This action is only a recognition of the second canon and will have the approval of all forward looking lawyers. It is our expectation to publish the report of the committee. Meantime, the Bar should consider the second canon:

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 there-to only those willing to forego other employments, whether of a business, political or other character, which may embarrass 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.

SELECTION OF JUDGES—There is a need for considering the subject of judicial selection and tenure as long as there are a large number of persons who think that experts can be successfully chosen with current election methods. Under the convention system of nominating this question was not fairly presented for more than half a century. Nominating was limited to a few and there was usually some degree of expertness available. If both of the leading parties nominated good candidates, which was always possible, popular election appeared to be very successful, tho in fact it was not popular election at all, but only a form of appointment by party leaders.

Primary nominations have largely ousted party leaders from this function, and to that extent have reduced the elements of responsibility and expertness which existed under the convention system. We have far more candidates for judicial office now than ever before, and there are more lawyers possessing judicial qualifications who refuse to be candidates than ever before.—Journal of the American Judicature Society, April, 1920.

LEGAL EDUCATION—I have consumed so much time that I will not dwell upon the desirability of a college law education. Without being dogmatic, but because impressed with its extreme importance, I may, however, be allowed to say that I have never heard an argument against it worthy of the name, except that it deprives the indigent youth of an opportunity to enter into a profession of which he might become a worthy and perhaps ornamental member. The argument, however, forgets that individual aspirations yield to public necessity; that the lawyer is an officer of the state, placed as a guardian between the right and the wrong, between justice and injustice; and that it behooves the state to make no mistake in the protection of its citizens against the errors of the uninformed and incompetent. At this day no one protests against a technical collegiate course for a physician, and surely the health and life of the citizens of a commonwealth are not of more moment than their fortunes, reputations, and morals, all of which are clearly within the influence and care of members of the legal profession.—William A. Blount, Pensacola, Florida, Bar, at American Bar Association, September 3, 1919.
January 22, 1920.

Calvin & Rea,
Kansas City, Mo.

Gentlemen:

Inclosed find return on Tracy service. Kindly mail check $4.00 charges.

Very truly yours,

JOHN F. DOWDEN,
Sheriff.

Defendant says, "she needn't be a damned bit alarmed I won't appear."

Suggestions addressed to the editor of the Bar Bulletin, Columbia, Missouri, as to needed legislation which will come within the purview of the association are invited. They will be referred to the appropriate committees.

Letters have been sent by the President and Executive Committee of the association to the local bar associations in Missouri, most of which were organized in the last two years, urging them to hold meetings, if they have not done so, and to make reports of their activities, so Bulletin readers may know how they are progressing. The committee offers to furnish speakers at such meetings if so desired. The greater local interest, the more successful will be the state work.

The Bulletin staff is somewhat inclined to become self congratulatory over this issue. Without disparaging the other able communications, special attention is directed to the stirring address to the lawyers of Missouri by Mr. Hampton L. Carson of Philadelphia, President of the American Bar Association. On two occasions Mr. Carson has appeared before the Missouri Bar Association, and his scholarly addresses are found in the annual reports. His present message is most timely in view of the fact that St. Louis will have the honor of entertaining the American Bar Association in August of this year.

In the past criticisms were heard that the Missouri Bar Association was run by a clique; that corporation lawyers controlled its activities in behalf of their clients; that the Association accomplished nothing, etc. If any reasons for such inferences ever existed, they are of the past. The Missouri Bar Association is composed of lawyers dominated in their combined work with the desire to advance the standards of their profession and render service to the commonwealth. The war work showed the true spirit of the lawyer. His patriotism was then aroused and most nobly and sacrificially he did his bit. While the war has been won, its aftermath still disturbs. The perilous days of reconstruction have not
yet passed. Of course the lawyer will still perform his patriotic duty, but
he can be much more efficient through cooperation with his fellow law-
yers. If he is weak he will be strengthened; if he is strong he will im-
part his strength to others and gain by giving. Every consideration,
whether selfish or altruistic, impels the lawyer to take part in the coopera-
tive work of the association. These suggestions are addressed to the two
thousand lawyers of Missouri who are not members of the Missouri Bar
Association. Come in, the water is fine.

One of the charming graces attendant upon greatness is modesty.
Her gentleness, her smiling timidity, her blushing bashfulness, her gra-
cious self-abnegation, all conspire to smooth the rough edge of talent
and lay weight upon the sturdy wings of presumption. And yet (pardon
the mixed metaphors) sometimes she becomes the mistress of genius,
who, while reposing in her lap, she Delilah like, shears him of his strength.
In something of this manner various and sundry lawyers and judges of
talent and reputation throughout Missouri, who have been requested on
the principle of noblesse oblige to contribute of their intellectual wealth
to the Bar Bulletin, have been so soothed by the stroke of Modesty's
hand as to forget to even answer the requests. The mysteries of some
human natures are surely mysterious.

At the last meeting of the State Judicial Conference held at Kansas
City on October 2, 1919, a resolution was adopted providing that the
chairman should appoint a committee of five on Amendments, Judiciary
and Procedure, to act in co-operation with a similar committee of the
State Bar Association. In compliance with this resolution, the chairman
of the Judicial Conference has appointed the following committee: Judges
James Ellison, Ralph Hughes, J. Hugo Grimm, B. G. Thurman and E. M.
Dearing.

"Hon. James C. Jones, Attorney, of St. Louis, delivered the annual
address: subject, 'Why Is the Constitution of the United States?' before
a fine audience filling the Supreme Court room.

"At the conclusion of the address Robert Stone voiced the sentiments
of all present in stating that the address was a very remarkable one, an
inspiration to every lawyer in Kansas to render a distinct and valuable
service to his country in standing for the constitution of the United States,
and in helping to educate the people of his state to an understanding of
that great document which has preserved the liberties of the people of this
country and thru them has saved those liberties to all the world. Mr.
Jones' address was remarkable in that it had shown to the members of
the bar a way in which they could render this service to their country."
In recognition of the service which Mr. Jones had rendered, Mr. Stone moved that he be made an honorary life member of the Association. The motion was unanimously adopted.

"J. S. West suggested that in view of the wonderful scope and strength of the address and the awakened interest in the subject at this time, the speaker be asked to furnish to the Secretary of the Association copies of his address for publication in the two Topeka daily newspapers. The suggestion was put in the form of a motion and unanimously adopted."—(Proceedings 1920 Bar Association of Kansas, p. 20.)

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A MESSAGE FROM THE PRESIDENT OF THE AMERICAN BAR ASSOCIATION

There are many substantial reasons in favor of the claims of the American Bar Association upon the loyal support of lawyers throughout the entire country, and there are many advantages to be secured by membership in such a body. I cannot within the limits of a short article state them all, nor can I elaborate, but the following are the salient features.

I. The American Bar Association represents a great brotherhood in the purest sense. It is the tie of fraternal interest in all that concerns the profession that binds it together. It is not a corporation for profit; it is not a partisan organization; it is not a social club; it is not a selfish nor exclusive coterie. It is a voluntary association to promote the highest aims of the profession, to broaden its knowledge, to uplift and sustain its ethics, to simplify and coordinate principles and practice, to unify law upon subjects of common concern, to facilitate an interchange of views, to promote rational reforms, and to cultivate good fellowship.

II. Its organization is thoroughly representative of the Bar Associations of all the states. Every State Bar Association is notified to send and in practice does send delegates and alternates to the annual meeting of the National Association. These, with visiting members of the said state, meet every year in separate State Conferences on the spot and elect one of their number as a member of the General Council, which thus consists of a single member from each state in the Union, and of a representative from Porto Rico, Alaska, Hawaii, the Philippines and the American Bar of China. Thus the Council is free from any sectional or local control and represents the Bar Associations of every State in the Union as completely as the Senate of the United States represents the States. The Council chooses its own Chairman every year, the same chairman being ineligible for re-election after three years of successive service, if he should be so chosen. The Council nominates not from its own membership, but from the members of the Association at large, an Executive
Committee, whose functions I will touch upon presently. The Council also nominates to the Association at large the officers for the ensuing year, whose functions and powers are defined in the Constitution and are regulated by the By-laws. The election of these officers is by the Association itself in open session, in practice by acclamation, but in theory and in power within the rights of the association to act otherwise.

The Executive Committee consists \textit{ex officio} of the President, the last retiring President, the Chairman of the General Council, the Secretary and the Treasurer, together with eight other members elected by the Association upon nomination by the General Council, but no member shall be elected more than three years in succession. The Executive Committee is charged with the executive business of the Association; it passes on the nominations for membership made between the sessions of the Association by the State Local Councils, it plans and arranges the program of exercises for the next annual meeting, including two and sometimes three addresses from jurists, statesmen or publicists of position, and the selection of the speakers at the banquet. All requests for the appropriation of money made by the Chairmen of Standing Sections or of Special Committees as well as allowances to the officers for actual expenses, must be approved by the Executive Committee. There is no power to bind the Association by implication and not a dollar of salary or compensation of any kind for services, however arduous or prolonged, has ever been received by any officer since the birth of the Association forty-three years ago, and during all that time there have been but two treasurers and but three secretaries, whose unselfish devotion and loyalty to the work have contributed immeasurably to our success. Ardor, pride, honor and loyalty have not been bought.

III. The membership is open to every lawyer in good standing of the Bar of any State for a period of three years next preceding his nomination. Nominations for membership must be approved by the Local Council of each state, and these nominations, as approved and passed upon by the Local Councils, must be approved by the Executive Committee in the interim between sessions and by the general Association at annual meetings. A vote is taken \textit{viva voce} unless a ballot be demanded. Five negative votes from the floor shall prevent an election and one negative vote of the Executive Committee shall prevent an election.

IV. The professional work of the Association is entrusted to six Sections and eleven Standing Committees. The scope and character of the work are sufficiently indicated by the following sub-titles: Legal Education and Admission to the Bar; Patent, Trade Mark and Copyright Law; Judicial Section; Comparative Law; Public Utility Law; Criminal Law and Criminology; Commerce, Trade and Commercial Law; International Law; Insurance Law; Jurisdiction and Law Reform; Professional Ethics
and Grievances; Admiralty and Maritime Law; Publicity; Publications; Noteworthy Changes in Statute Law; Membership; Memorials.

The sections formerly existed in the shape of Standing Committees acting largely on their own initiative as to expenditures and programs, but under the recent amendment of the Constitution, they became integral parts of the organization and are thus brought into close, definite and uniform relationship to the Association itself. In this way clashes of arrangements and unequal, undue drafts upon the treasury are avoided.

As to the work done, it would require a volume to digest the results of what has been voluntarily undertaken and admittedly discharged in the various lines indicated. The effects of the work upon Congressional and State legislation, as well as upon judicial sentiment and professional scholarship, are readily traceable thru the annual reports. The body of legal literature thus built up, representing the best and ripest thoughts of the professions, has commanded respect both at home and abroad and has served the useful purpose of co-ordinating the labors of law teachers, practitioners, legislators and reformers, fusing the thoughts of men of affairs with those of students and theorists working with a common zeal for the common good.

No one who takes the pains to examine consecutively the annual reports can fail to perceive a steady, continuous, expansive and progressive development in all the fields of legal activity and a gratifying elevation of standards of conduct and of thought. Impulsive reformers have been checked by prudent conservatism, and stubborn prejudices in favor of the past have given way to rational improvements.

V. To enlarge the bounds of discussion and afford opportunity to those anxious to appeal to the conscience and intellect of the profession, two new features have been added to this year's program. The first relates to an Open Forum, and the second to improvement of the Journal.

As to the first, there will be an open debate between masters of the subject upon Legal Aid Societies. The participants will be eminent.

A second session will be devoted to an open discussion upon "How can we best promote the welfare, interest and scope of action of the American Bar Association?"

As to the Journal, a special committee, or successor of previous committees, has held numerous sessions and will shortly announce a plan by which the Journal will in the course of time be elevated to the highest rank as a professional organ of opinion and as a useful bulletin of achievements accomplished throughout the year, thus bringing to the knowledge of all members of the association at the earliest practicable moment the work of the courts, of Congress, of State legislators, of scholars, of practitioners and of reformers, so that the reader may be in constant touch with the real life of the profession. All that has been done or is doing, all that is in the air, as well as all that has been accepted as wholesome, will
be entitled to notice. The success of the Journal depends upon the support that it can command. The enormous energies of the profession, its best brain power, as well as its highest aspirations, can here find expression. Like a fully equipped orchestra it can render an adequate professional symphony, if time and care are expended in the selection and drilling of the staff. The Journal of the American Bar Association can be made and should be made the most conspicuous and influential publication of the year. It should be the ambition of every member to see that it is so. But it would be manifestly unfair to allow the weight of so great an undertaking to rest upon the shoulders of a few. To make it a success, generous expenditures will be required and a greatly enlarged membership must be enlisted in its support. Time, patience, and loyalty will solve the problem. The right to receive this journal is one of the privileges of membership, and is included in the payment of the modest annual dues.

VI. Let me add a few words upon the educational advantages of membership. No lawyer, wherever resident, will be disposed to deny that he is benefited by contact with his fellow practitioners, and that as the circle of his relationship broadens from town to county, and from county to state, his perceptions are sharpened, his judgments strengthened and his sympathies nourished by the big problems of administrative justice. The step from membership in a State Bar Association to that of membership in the American Bar Association is a normal advance, and the breadth of view thus gained is inspiring. New light breaks in even upon purely local questions, while there is a keener recognition of the might, the majesty, the vitality, the all pervading sufficiency of the common law. Men of the great cities hail as brothers the men of the plains and the mountains, and the mountaineers and plainsmen are enlightened as to the perplexities and intricacies of questions affecting congested communities. Exchange of views between men from different states is wholesome, and a mental exhilaration follows as beneficial as that derived from travel amid new scenes, whether foreign or domestic.

Then, too, the sight of the leaders of the bar of the nation is stimulating. It adds much to the interest with which a decision of a court is read, if the judge delivering the opinion is not an abstraction, but a creature of flesh and blood whose personal appearance is known and whose voice has been heard. The same is true of the great advocates. I recall with pleasure the circumstances of having seen and heard E. J. Phelps, of Vermont, while discoursing upon John Marshall; Thomas J. Semmes of Louisiana, eulogizing Roger B. Taney; Henry Hitchcock, of Missouri, comparing views with Professor James Bradley Thayer, of Massachusetts, upon the growth of Constitutional Law; Courtland Parker of New Jersey, holding up the career of Sir Matthew Hale, as a model judge; John Dillon in conversation with Justice Joseph P. Bradley as
to the new features of the latest edition of "Dillon on Municipal Corporations"; Joseph H. Choate swapping stories with John Randolph Tucker, of Virginia; George H. Williams, Attorney General of the United States in Grant's Cabinet, fencing with Wayne Mac Veagh. I need not further illustrate, altho I might do so indefinitely. Judging from the effect on myself as a young man, I believe young men, and even those of middle age, would derive similar inspiration and enlightenment from seeing and hearing the leaders of today while grappling with the most pressing of problems. Of these things I am sure, that the sense of brotherhood, belief in the friendliness and nobility of the profession, will be strengthened by such contact, and faith in the wisdom and justice of the law will be justified by experience. The reserve potential strength of a profession such as ours can be summoned to effective exercise only thru an association, national in its scope, and wielding the consolidated strength of a united and thoroughly patriotic Bar.


HAMPΤΟΝ L. CARsoν.

RULES OF PROCEDURE

The Senate of the United States has under consideration Senate Bill 1214 which was introduced by Senator Kellogg and which is intended to vest authority in the Supreme Court to make rules of procedure in law cases as the court has already done in equity cases.

The Bill reads as follows:

To authorize the Supreme Court to prescribe forms and rules, and generally to regulate pleading, procedure, and practice on the common-law side of the Federal courts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Supreme Court shall have the power to prescribe, from time to time, and in any manner, the forms of writs and all other process; the mode and manner of framing and filing proceedings and pleadings; of giving notice and serving writs and process of all kinds; of taking and obtaining evidence; drawing up, entering, and enrolling orders; and generally to regulate and prescribe by rules of the forms for and the kind and character of the entire pleading, practice, and procedure to be used in all actions, motions, and proceedings at law of whatever nature by the district courts of the United States and the courts of the District of Columbia. That in prescribing such rules the Supreme Court shall have regard to the simplification of the system of pleading, practice, and procedure in said courts, so as to promote the speedy determination of litigation on the merits.

Sec. 2. That when and as the rules of court herein authorized shall
be promulgated, all laws in conflict therewith shall be and become of no further force and effect.

The present law provides as follows:

Sec. 914. (Practice and proceedings in other than equity and admiralty causes.) The practice, pleadings, and forms and modes of proceeding in civil causes other than equity and admiralty causes in the circuit and district courts shall conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding existing the time in like causes in the courts of record of the state within which such circuit or district courts are held, any rule of court to the contrary notwithstanding.

It was the purpose of Congress in enacting this statute which was originally passed in 1872 (17 Stats., 197, sec. 5), to make the practice in the federal courts more simple, and to obviate the necessity of the Bar becoming familiar with two different and entirely distinct systems of procedure in the same locality; namely, the procedure used in the State courts and the procedure used in the federal courts.

The necessity of a simplified procedure has always been recognized both by the Bench and the Bar. Statistics bear out the general proposition that more than fifty per cent of the points actually decided by appellate courts in cases coming before them on appeal are points of practice as distinguished from points of substantive law and such a condition is intolerable.

The federal courts, in construing the law above set out, very early announced the rule that it was the duty of the federal courts, as well as their right, "to reject any subordinate provisions of the state statutes and any rule of practice of state courts which in their judgment, will, unwise-ly incumber the administration of the law or tend to defeat the ends of justice in their tribunals." O'Connell v. Reed, 56 Fed. Rep. 531, 538. The adoption by the federal courts of the state court's rules of procedure is not absolute but only "as near as may be" and there is therefore under the present practice a combination of federal rules and state rules in every federal court and that tends to confusion.

In 1873 and 1875 the English Parliament vested the whole authority for making detailed rules of practice, procedure and pleading upon the courts and the effect has been most gratifying in a resulting simplicity of practice. It may be safely said that the English Bar is, to a man, in favor of the plan which has been so successfully tested for so many years.

Some states have already adopted laws vesting in the courts the power of making rules of procedure, particularly in New Jersey, Colorado and Virginia. In New Hampshire the courts themselves have held that they possess the authority to regulate the details of practice when there is no legislative prohibition in the matter.
The American Bar Association and the State Bar Associations throughout the country are strongly in favor of the passage of the Bill and have again and again sent delegations to Congress supporting the wisdom and the efficiency of its provisions.

The arguments generally made in favor of the Bill are:

A. That the same reason which led the Supreme Court to promulgate rules in equity cases which have been generally approved and cordially accepted applies to the law side of the court.

B. That definite rules, the same in every Federal court, tend toward simplicity, lessen points of dispute in regard to matters of procedure and make for efficiency in the prompter final determination of pending litigation.

C. That the Supreme Court is most familiar with rules which are necessary in practice and first to appreciate the necessity of any change or modification, and with the power vested in them of making such rules there will result an immediate revision that can not be accomplished by Congress.

D. That the need of rules of procedure in law cases which are capable of clear understanding and which can be easily applied is generally recognized and that no agency exists which can accomplish this purpose so accurately, so quickly or so satisfactorily to the Bar as the Supreme Court.

E. That it is most unfortunate to have different forms of procedure in federal courts of equal jurisdiction located in different states.


G. That any alteration that may be necessary arising out of any changed conditions can be instantly effective if the Supreme Court is given power in the matter, whereas if, as is now the case, an Act of Congress is necessary in the premises, it becomes at once practically inefficient.

H. That any vesting of the power in the Supreme Court to make rules would not deprive Congress of its complete control, if at any time it desired to exercise it.

The objections urged against the Bill, so far as I have become familiar with them are:

a. That its constitutionality is not beyond doubt.

b. That it will require the practitioner to become familiar with two modes of procedure, one for his work in the state court and one for his work in the federal court.

c. That Congress should alone exercise the power of making any general rules of procedure because the formation of such rules is more legislative than judicial in character and can be best exercised either by
the direct action of Congress or as the result of the work of a commission authorized by Congress.

d. That the general rules already adopted in equity cases have not proved simple or satisfactory.

The Bill has been referred by the Judiciary Committee of the Senate to a sub-committee consisting of Senator Colt, Senator Dillingham and Senator Walsh. My information is that a majority of the sub-committee and a majority of the committee of the Judiciary are in favor of the Bill.

Washington, D. C.

Selden P. Spencer.1

CARRIER'S LIABILITY FOR NEGLIGENCE OF DIRECTOR GENERAL OF RAILROADS

The liability of a carrier for negligence during Government operation of the railroads has been differently determined by the courts of different jurisdictions.

While the United States Supreme Court has not clearly passed upon this question as yet, under the logical reasoning of Chief Justice White, in the case of Northern Pacific R. R. Co. v. State of North Dakota (1919) 250 U. S. 135; s. c. 172 N. W. 324, there would seem to be no doubt but that the Director General of Railroads will be held solely liable for damages resulting from his negligence or that of his agents or employes during the period that the Government was in possession of and operating the railroads, and that a carrier cannot lawfully be held for the negligent acts of the Director General or his agents or employes.

In the North Dakota case, the Supreme Court said: "No elaboration could make clearer than do the act of Congress of 1916, the proclamation of the President exerting the powers given, and the act of 1918 dealing with the situation created by the exercise of such authority, that no divided but a complete possession and control were given the United States for all purposes as to the railroads in question. But if it be conceded that despite the absolute clarity of the provisions concerning the control given the United States, and the all-embracing scope of that control, there is room for some doubt, the consideration of the general context completely dispels hesitancy. How can any other conclusion be reached if consideration be given the comprehensive provisions concerning the administration by the United States of the property which it was authorized to take, the financial obligations under which it came and all other duties and exactions which the act imposed, contemplating one control, one administration, one power for the accomplishment of the one purpose, the

1. Senator Spencer is the junior senator from Missouri and for some years has been special lecturer on Corporation Law in the School of Law.—Ed.
complete possession by governmental authority to replace for the period provided the private ownership theretofore existing."

If the conclusion reached in this case by the highest court in our land is correct, i. e., that the act of Congress and the proclamation of the President resulted in transferring "the complete possession by governmental authority to replace for the period provided the private ownership theretofore existing," and "that no divided but a complete possession and control were given the United States for all purposes as to the railroads in question," then, how can it be claimed that the railroad company, deprived of all control during the operation of its property, may yet be held liable for negligence in its operation?

Clearly such a holding would be counter to fundamental principles of organic law, since it would take the property of one citizen to pay the debt or obligation of another, when that other was in no legal sense empowered to bind the party held.

During the period of Government operations, the agents and employes engaged in the operation of railroads were clearly employes of the Director General, who was engaged in the operation of trains and railroads thru his agents and employes.

Contracts for transportation by passengers were clearly, during this period, the contracts of the Director General and not of the carriers, who had been completely dispossessed of their property during the period of Government operation.

The railroad companies, during the period of Government operation, were clearly not engaged in the business of a common carrier, since they had no trains to operate, nor any agents or employes engaged in the operation of trains, but the property of the carriers, after the President's Proclamation, according to the opinion of the Supreme Court of the United States, was completely transferred to the Director General of Railroads "for the period provided."

As reasoned by Judge Booth, in the case of Dooley v. Penna. R. R. Co., 250 Fed. 143: "It needs no argument to show that it was necessary, in order that these powers be made effective, that the possession, the control, and the utilization of the property should be exclusive, and not subject to interference by private parties."

Judge Booth's opinion is quoted and approved by Judge Ray in United States v. Kambeitz, 256 Fed. 247, wherein it was said: "Neither the United States, nor the President, nor the Director General, is doing this as agent for the railroads or the transportation companies. The United States, thru its officers and agents, is doing all this on its own purposes, including service to and for the general public. The United States is not in partnership with these transportation or railroad systems."

Some of the state courts have predicated the liability of the carrier, during the period of Government operations, upon the provisions of
Section 10 of the act of Congress, which provides: "Carriers, while under federal control, shall be subject to all laws and liability as common carriers whether arising under state or federal laws or at common law, except insofar as may be inconsistent with the provisions of this act" etc.

In *Ault v. Missouri Pacific R. R.*, the Supreme Court of Arkansas held that the carrier was liable under this section of the act of Congress for the wages due an employe, during the period of Government operation, who before had been paid by the Director General of Railroads. This case was decided November 17, 1919, and is now pending in the Supreme Court of the United States.

The reasoning of the Federal Courts, however, is almost uniformly to the effect that the predication of liability against the carrier for acts of the Director General, during the period of Government operations, would be "inconsistent with the provisions" of the act of Congress, and that it was not the intention of Congress to make the carriers liable for the negligence of the Director General. *Rutherford v. Un. Pac. R. Co.*, 254 Fed. 880; *Haubert v. B. & O. R. R.*, 259 Fed. 361.

Judge Munger, in the Union Pacific case, held that the office of Director General was analogous to that of receiver of railroad companies, and, in the B. & O. case, Judge Westenhaver observed: "Manifestly, it seems to me that in view of these conditions no liability exists against the railroad company itself for a personal injury due to operation under federal control, and that no judgment can be rendered therefor which will become a lien upon the corpus of its property or payment compelled therefrom."

In *Nash v. Southern Pacific Co.*, 260 Fed. 280, Judge Van Fleet sustained a motion to substitute the Director General as defendant and to dismiss the railroad company upon the same line of reasoning, and, in *Hatcher & Snyder v. A. T. & S. F. Ry. Co.*, 258 Fed. 952, Judge Lewis reached the same conclusion as the result of an exhaustive and logical opinion.

Non-liability of the company was adjudged nisi prius in the case of *Schumacher v. Penna. R. R. Co.*, 175 N. Y. Supp. 84; and see also *Dahn v. McAdoo*, 256 Fed. 549; *Southern Cotton Oil Co. v. Atlantic Coast Line Railroad*, 257 Fed. 138; *Wood v. Clyde Steamship Co.*, 257 Fed. 879.

Judge Hand, for the Southern District of New York, in *Jensen v. Lehigh Valley R. Co.*, 255 Fed. 795, construing section 10 of the act of Congress, held that Congress intended that "The 'carriers,' the corporations, themselves," should be held liable until their liability was changed by some valid provision. But Judge Hand and the Supreme Court of Arkansas are clearly at variance with the reasoning and logic of the Supreme Court of the United States in the North Dakota case (250 U. S. 135), and with the conclusion of the Springfield Court of Appeals (Missouri) in the recent case of *W. W. Cravens and the Bank of Poplar Bluff*.
v. Mo. Pac. R. R. and Walker D. Hines, Director General, 218 S. W. 912. See, also, Ringquist v. Duluth, Missabe & Northern R. R. decided by the Supreme Court of Minnesota.

Upon this subject, the decisions of the United States Courts are controlling upon the State Courts. In Mardis v. Walker D. Hines and the Missouri Pacific Railroad Company, 258 Fed. 945 the District Court of the United States for the Western District of Arkansas sustained a demurrer on behalf of the railroad company to a joint action against the Director General and the Railroad Company, and the case is now pending on writ of error in the United States Circuit Court of Appeals for the Eighth Circuit. As this is one of the strongest courts in the country, the opinion in this case, when rendered, will reflect both the logic and the law upon this subject.

St. Louis, Missouri.

EDWARD J. WHITE. 1

COMMITTEE REPORT

In view of the fact that the Minutes of the 1919 meeting of the Missouri Bar Association have not yet been published, the following report of the Committee on Amendments, Judiciary and Procedure will be of interest to the many attorneys who did not attend the meeting:

Kansas City, Mo., October 3rd, 1919.

To the Missouri Bar Association:

Your Committee on Amendments, Judiciary and Procedure would report that in compliance with the will of this body, as expressed at the 1918 meeting thereof, legislative bills covering the seven measures approved were presented to the last General Assembly for enactment, as follows:

1. An Act repealing Sections 950 to 963, inclusive, of Chapter 9, R. S. 1909, relating to the disbarment of attorneys, and enacting ten new sections in lieu thereof.

2. An Act repealing 125 sections of Chapter 21, R. S. 1909, relating to civil procedure—general code, and enacting 104 new sections in lieu thereof.

3. An Act amending Chapter 35, R. S. 1909, relating to courts of record, their general powers and duties, by the addition of two new sections thereto, in which the judge of any circuit or criminal court is authorized to hold special terms at any time when its business or the public good demands, upon reasonable notice given, and providing that no trial shall be terminated by the expiration of the term, but that such trial may be concluded or the case continued, in the discretion of the court.

1. Mr. White is a graduate of the School of Law, University of Missouri, and is now General Solicitor for the Missouri Pacific Railroad Company.—Ed.
4. An Act repealing 28 sections of Chapter 37, R. S. 1909, relating to criminal procedure, and enacting 35 new sections in lieu thereof.

5. An Act amending Sections 6345, 6355, 6356, 6359, 6364 and 6396 of Chapter 46, R. S. 1909, relating to Evidence.

6. An act providing for the appointment of three Commissioners for the St. Louis Court of Appeals, to serve for a term of 2 years.

7. An Act authorizing the Supreme Court to prescribe rules covering procedure in civil cases in courts of record in this state. This bill, as drafted by your committee and presented to the legislature, was as follows:

"Section 1. The Supreme Court shall have the power to prescribe from time to time, the forms and manner of service of writs and all other process; the mode and manner of framing and filing proceedings and pleadings; of giving notice and serving process of all kinds; of taking and obtaining evidence; drawing up, entering, and enrolling orders; and generally to regulate and prescribe by rule the forms for the entire pleading, practice and procedure to be used in all actions, motions, and proceedings whatsoever in civil cases in all courts of record in this state, except county and probate courts.

"Section 2. When and as the rules of court herein authorized shall be promulgated, all laws in conflict therewith shall be and become of no further force and effect."

It will be noticed that the above bill is an almost exact copy of the Webb bill relating to procedure in the federal courts, heretofore introduced and for some time pending in Congress.

Of these proposed measures, two only were enacted by the legislature, to wit: the act relating to the disbarment of attorneys, and the act providing for the appointment of three Commissioners of the St. Louis Court of Appeals.

The bill relating to the disbarment of attorneys was emasculated to some extent in its passage through the legislature. This could not be prevented, but it is believed that the bill as finally passed is some improvement over the old law.

In addition to the above, the act creating a Supreme Court Commission was extended for another period of four years and the number of commissioners increased from four to six.

The other bills reached various stages in the legislative process, but suffice it to say they all failed of passage. Some opposition came from members of the legislature and persistent opposition was encountered to some of the bills from attorneys representing special interests, but it is believed that the primary reason for the failure of the legislature to enact these proposed measures was the lack of interest manifested by the lawyers of the state, generally, and their failure to co-operate with the Committee in their promotion.
As to the proposed measure authorizing the Supreme Court to formulate rules of procedure to take the place of the present civil code, so much opposition was manifested by the members of the legislature that this bill did not get beyond the initial stage of introduction and committee reference.

It cannot be asserted too often that if the Missouri Bar Association expects the General Assembly to enact its proposed measures relating to procedure, it will have to get unitedly behind the measures and continuously urge and promote their passage by a strong legislative committee remaining constantly at the scene of action. Experience has demonstrated the fact that an occasional visit to the legislature by one or more members of the Bar Association Committee, and formal presentations of the proposed measures before the several legislative committees, will not accomplish results. Unless the Association is willing to go about this matter in a business-like way, it had as well cease its efforts to secure from our General Assembly any substantial change, or amendments, of our present procedural law.

There was, however, considerable activity on the part of the legislature, upon its own initiative, with the following results touching procedure:

Amendments

Section 869, relating to arbitration, amended by eliminating the exception as to married women.

Section 2298, relating to bonds in attachment proceedings, amended by the addition of certain provisions. It is suggested, however, that this act is probably invalid on account of a defective title and a failure to comply with the provisions of Section 34, Article 4, of the constitution.

Section 2360, relating to condemnation proceedings by a corporation, amended so as to include oil, pipe-line and gas companies.

Sections 2512, 2513, 2514, and 2527, relating to injunctions, amended by taking from the probate courts the right to issue writs of injunction. It is presumed that this amendment was made for the purpose of harmonizing the statute with the ruling of the supreme court in the case of State ex rel. v. Locker, 181 S. W. 1001.

Section 1887, relating to the period of limitation in personal actions, amended by adding certain words of interpretation. It is suggested that Section 1 of this act is defective, but perhaps not fatally so.

Section 2998, relating to the notice required in proceedings to dissolve corporations, amended by the addition of a provision requiring the secretary to mail a copy of the application to all non-residents of the county.

Section 2996, relating to the voluntary dissolution of corporations,
amended by the addition of a provision to the effect that a dissolution may be effected in certain cases simply by the filing of an affidavit with the secretary of state.

Section 3882, relating to punishment by courts for contempt, amended by striking out all that part of the present section in which a limit is placed upon the punishment. This amendment was, presumably, made to meet a criticism by the supreme court in the case of Railway vs. Gildersleeve, 219 Mo. 170, and other cases.

Section 5316, specifying certain defects for which judgments shall not be reversed or persons discharged by writ of habeas corpus, is amended by striking out that part of the section relating to discharges under the habeas corpus act. The purpose of this amendment is not apparent unless it be to enlarge the power of appellate courts to discharge from custody on account of technical errors occurring in the lower courts.

Section 5549, relating to petitions for the establishment of drainage districts, amended by striking out the provision requiring the posting in the proposed district of notices of the presentation of the petition.

Section 6423, relating to the serving of notices to take depositions in proceedings to perpetuate testimony, is amended by eliminating the provision relating to married women.

Section 6445, relating to the serving of notice to take depositions in proceedings to establish land boundaries amended by eliminating the provision relating to married women.

Laws Repealed.

Section 2611, relating to appeals and writs of error in partition proceedings is repealed. The reason for repeal of this section is not known unless it be on the theory that the section was not necessary, in view of Section 2038, which is a general statute and evidently intended to cover appeals from the circuit court in all civil cases.

New Laws.

1. A new section, providing that in all cases in which a referee has been appointed and made report, the appellate court shall, on exceptions properly preserved, review the evidence and the findings of fact and conclusions of law of the referee and the trial court and give such judgment as shall be conformable to the law under the evidence. This statute has an emergency clause, wherein it is stated that there is now no adequate law governing appellate procedure in reference cases. (Acts of 1919, pg. 213.)

2. A new section, prescribing the time in which executions may be issued on judgments assessing benefits and damages in proceedings in-
stituted by cities for the purchase or condemnation of property for public uses. (Acts of 1919, pg. 221.)

3. A new section, providing that in all criminal cases the fact of a former acquittal or conviction of such defendant for the same offense may be shown under the general issue or plea of not guilty. (Acts of 1919, pg. 287.)

4. A new section, making it lawful for any blind person over the age of 18 to agree with his or her employer to waive his or her right to damage or compensation for personal injuries arising out of or in the course of his or her employment for an injury for which such blindness was the direct or contributing cause. (Acts of 1919, pg. 289.)

5. A new section, providing that in the trial of suits involving the title to real estate, the recitals in deeds conveying such real estate, and affidavits made in connection therewith and attached thereto, may be received in evidence under certain circumstances as the testimony of the person making such deed or affidavit. (Acts of 1919, pg. 289.)

6. Three new sections, providing for the taking of affidavits and depositions without this state of persons engaged in the naval or military service of the United States. (Acts of 1919, pg. 291.)

7. A new section, for the benefit of persons absent from the state and engaged in the military or naval service of the United States and extending “during the continuance of the present war and for the period of one year after peace is declared” the time limited by the laws of this state for the institution of legal proceedings. (Acts of 1919, pg. 492.)

8. A new section, prescribing the limitations within which actions by married women shall be brought for the recovery of real estate or any interest therein. (Acts of 1919, pg. 496.)

9. A new section, providing that as a condition precedent to the institution of a suit for damages against a city of the third class on account of injuries growing out of defective streets, side-walks or bridges, written notice to the mayor must be given within 90 days of the occurrence, and therein stating the place where the injury was received and the character and circumstances of the injury and that damages will be claimed from the city therefor. (Acts of 1919, pg. 568.)

10. A new section, prescribing in cities of over 300,000 inhabitants the time in which suits for damages arising from a change in the grade of streets and alleys shall be filed. (Acts of 1919, pg. 601.)

Respectfully submitted,

DAVID H. HARRIS,
JOHN M. ATKINSON,
ROBERT LAMAR,
HUGO MUECH,
A. T. DUMM.
ST. LOUIS NOTES

A meeting of the St. Louis Bar Association was held at the Planters Hotel, Thursday evening, April 15th. The judges of the St. Louis Circuit were the guests of honor upon this occasion. An informal dinner was served at 6:30 p.m. Afterwards Honorable Albert J. Beveridge delivered the address. His subject was: "Marshall and the Constitution." This brilliant address covered a period of three hours, but to the end the large audience gave the speaker the most profound attention.

The St. Louis Bar Association has appointed committees to cooperate with the committees of the American Bar Association for the entertainment of the members who will attend the meeting of the American Bar Association which will be held at St. Louis, August 26th, 27th, and 28th.

A committee has been appointed by President Marion C. Early, of the St. Louis Bar Association, to report on the revision of the Missouri Constitution. The chairman of the Committee is Honorable Walter D. Coles, and the following members will act with him: Messrs. Joseph M. Bryson, Charles W. Bates, C. P. Williams and Lambert E. Walther.

President Early was authorized by the Executive Committee of the St. Louis Bar Association to appoint a committee of three to serve as a Committee on the Illegal Practice of the Law. This committee is distinguished from the Grievance Committee in that the Grievance Committee has jurisdiction over offenses committed by licensed attorneys, whereas the new committee will look after cases in which persons practicing law have not been licensed.

Another committee has been appointed, consisting of Guy A. Thompson, Forrest C. Donnell and W. L. Sturdevant, to draft a plan for the St. Louis Bar Association to express its approval or disapproval of the candidates for judicial office at the coming election.

W. SCOTT HANCOCK.

KANSAS CITY NOTES

Mr. Roy D. Williams, of Boonville, has moved to Kansas City and has become associated with the firm of Warner, Dean, Langworthy, Thomson & Williams.

Of the ten members of the circuit bench of Jackson County Judge Clarence A. Burney is the only bachelor. While he is penalized as a single man under the income tax laws, he contends that he will play even when the women get to vote.

John Milton Fox, for nearly forty years a member of the firm of Lathrop, Morrow, Fox & Moore, died on April 1st. Mr. Fox was a
Yale graduate. He stood very high as a lawyer and Christian gentleman. His is the first death in his firm since its organization.

Judge Latshaw, of the Criminal Court, is authority for the statement that Kansas City sends more criminals to the penitentiary than any other city in Missouri. Three-fourths of these, he says are transient persons. Kansas City produces about one-fourth of the entire number.

The Kansas City Bar Association held its thirty-first annual banquet on March sixth. Mr. Charles W. German, the President, presided. Mr. John S. Wright, the only local speaker, gave some interesting data concerning the courts of the state. Mr. John M. Zane, of Chicago, had a unique paper entitled “A Picaresque Maiden” (see dictionary), which was a most remarkable account of an adventuress and her exploits, marital and otherwise, in many lands. Judge Van Valkenburgh, an old time friend of Mr. Zane, in introducing him related a number of mutual college experiences which one would not ordinarily associate with the staid and dignified Federal Judge. Ex-Senator J. Ham Lewis, of Illinois, was one of the distinguished guests, and delivered a characteristic address.

The Kansas City Law School gave its fifteenth annual Washington Birthday dinner at the Baltimore Hotel on February 21st. With the exception of Judge John Dawson, of the Supreme Court of Kansas, the program was furnished by the students, who surprised their elders by the brilliancy of their addresses. Judge Dawson's subject was “The Three Parties to a Law Suit.” The third party in this instance was the Supreme Court, and Judge Dawson gave in detail the course of a case in the Kansas Supreme Court after it had been argued and submitted. The Judge said it was not infrequent in writing an opinion that he would not state his own conception of the law of the case but would attempt to express the opinion of the majority of the court. This keeps out dissension.

The January meeting of the Kansas City Bar Association was addressed by Judge W. L. Huggins, the father of the bill creating the new Court of Industrial Relations of Kansas, and now a member of that court. Judge Huggins gave a thorough resume of the bill and the conditions leading to its enactment, which, as we all know, was brought about by the recent coal strike. In brief, the purpose of the bill is to prevent strikes by affording a judicial remedy for the troubles out of which strikes originate. The powers of the court are limited to industries involving the essentials of food, fuel and transportation. In addition to fixing the rate of wages, the court has the power to take over the operation of these various industries. In Judge Huggins' opinion the constitutionality of it will be sustained upon the broad grounds of public welfare and necessity.

Some years ago at the annual banquet of the Kansas City Bar Association Mr. John T. Harding, then of Nevada, who had recently been a candidate for the State Senate, responded to the toast, “The Country
Lawyer and The City Lawyer." Following the toastmaster's introduction, the genial John, then a stranger to most of the Kansas City Bar, who was inconspicuously seated with some convivial friends, filled with the spirit of the occasion, was literally lifted by them on to the table. From this somewhat prominent position was visible a gentleman, faultlessly attired, who, even then, supported a remarkably bald head. Apparently unembarrassed, he plunged into his subject. "Gentlemen," he said, "There are marked differences between the country lawyer and the city lawyer. One bags at the knee and the other bags at the belt. The first is a disciple of Saint Peter, the latter of Bacchus. But gentlemen, this is not all. Usually there is a political bee buzzing in the bonnet of the country lawyer. One got after me and I thought I was in it until after the first ballot at the nominating convention, when away went the bee, the buzz and the bang and left me a bald headed immune."

COMMITTEES

EXECUTIVE COMMITTEE: James C. Jones, St. Louis; W. O. Thomas, Kansas City; O'Neill Ryan, St. Louis.

COMMITTEE ON AMENDMENTS, JUDICIARY AND PROCEDURE: Chairman, Robert F. Walker, Jefferson City; Virgil Huff, Marshall; M. E. Morrow, West Plains; J. D. Hotstetter, Bowling Green; James W. Suddath, Warrensburg.

SPECIAL COMMITTEE TO COOPERATE WITH THE NEW CONSTITUTION ASSOCIATION OF MISSOURI: Chairman, John M. Atkinson, St. Louis; Henry Lamm, Sedalia; Roy Williams, Boonville.

COMMITTEE ON ILLEGAL PRACTICE OF LAW BY LAYMEN: Chairman, Boyle Gordon Clark, Columbia; W. H. Piatt, Kansas City; James C. Jones, St. Louis; W. C. Irwin, Jefferson City; J. M. McPherson, Aurora.

COMMITTEE ON BAR ASSOCIATIONS: Chairman, Lawrence T. McGee, Salem; Roy Rucker, Keytesville; Ben Marbury, Farmington; Sam O. Hargus, Kansas City; Charles M. Hay, St. Louis.

COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR: Chairman, E. L. Alford, Perry; John T. Sturgis, Springfield; James Park, Clinton; O. M. Barnett, Columbia; Eugene McQuillin, St. Louis.

COMMITTEE ON UNIFORM STATE LAWS: Chairman, Frank W. McAllister, Jefferson City; James T. Blair, Jefferson City; Vinton Pike, St. Joseph; A. H. Robbins, St. Louis; R. M. Sheppard, Joplin.

COMMITTEE ON LEGAL BIOGRAPHY: Chairman, Shepard Barclay, St. Louis; W. N. Evans, West Plains; O. H. Dean, Kansas City; J. W. Halliburton, Carthage; George Mahan, Hannibal.

COMMITTEE ON GRIEVANCES AND LEGAL ETHICS: Chairman, F. M. McDavid, Springfield; Oak Hunter, Moberly; Ed J. White, St. Louis; Frank P. Sebree, Kansas City; Ralph Wammack, Bloomfield.

COMMITTEE ON LEGAL PUBLICATIONS: Chairman, W. O. Thomas, Kansas City; J. P. McBaine, Columbia; R. A. Brown, St. Joseph; C. B. Faris, St. Louis; A. D. Burnes, Platte City.