

The Justinian

Volume 1933
Issue 1 *January*

Article 1

1933

The Justinian

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Recommended Citation

(1933) "The Justinian," *The Justinian*: Vol. 1933 : Iss. 1 , Article 1.
Available at: <https://brooklynworks.brooklaw.edu/justinian/vol1933/iss1/1>

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Current Legal Tax Service Decisions Offers Field For Lawyer

Foreclosure—Landlord and Tenant—Negligence—Gifts —Replevin

Foreclosure—Receiver—Tenant
The Prudence Company, Inc. v. 160
West 73rd Street Corporation, 260
N. Y. 205. November 22, 1932.

A foreclosure action was commenced, in which the occupants of the mortgaged premises, who were in possession by virtue of leases subordinate to the mortgage, were made parties. A receiver of rents and profits was appointed. He applied for and obtained an order fixing the reasonable rental value and directing the occupants of the mortgaged premises to pay the sum so fixed, which sum was larger than that which they had agreed to pay.

The Court of Appeals held that a court is without power to grant such order. "Until the lien of the mortgage is foreclosed the mortgagee has no paramount title which would justify eviction of the occupants or abrogation of the agreements." It should be noted that the leases in this case were not attacked on the grounds of fraud.

Landlord and Tenant—Summary Proceedings

Koss et al. v. Aaront, et al., 260
N. Y. S. 387. November 15, 1932.

The lease in question contained a provision to the effect that it may at the option of the landlord be declared terminated "if the tenants shall be or shall be declared to be insolvent or have been adjudicated a bankrupt." The tenants became insolvent, and the landlord, exercising his option, terminated the lease. Thereafter he commenced summary proceedings to recover possession of the property.

The Municipal Court dismissed the proceedings on the ground that the mentioned provision is a condition subsequent and not a conditional limitation. Summary proceedings will not lie for a breach of a condition subsequent. The landlord is relegated to an action of ejectment.

Negligence—Abatement—Public Policy

Doures v. Storms, 260 N. Y. S. 335.
November 16, 1932.

Plaintiff and defendant's decedent, both residents of New York, were involved in an accident in Pennsylvania. A statute of Pennsylvania permits the injured party to maintain an action for personal injuries against the executor or administrator of the deceased wrongdoer. In this action plaintiff seeks to enforce that statutory right of action.

The Appellate Division, Fourth Department, one Justice dissenting, reversed a judgment of the Trial Court dismissing the complaint. The appellate court held that the action is a transitory one and is not contrary to our public policy. Had this accident occurred in New York, plaintiff's cause of action would not have survived the wrongdoer's death. That fact alone, however, is not sufficient to show that it is against our public policy to enforce the foreign right of action. "Courts... do not close their doors unless help would violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal."

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Dr. Joseph Klein Urges Law- yers to Awaken to New Op- portunities for Income

ACCOUNTANTS NO BAR

Attorney's Aid Needed Despite
Virtual Monopoly Obtained
by Old Statute

"Lawyers should awaken to their opportunities and participate, actively, in a lucrative branch of legal work," said Dr. Joseph J. Klein in an address sponsored by the Committee on Lectures of the New York County Lawyers' Association last week, in discussing the income tax practice, the relationship between attorney and accountant, and the attorney's place in such practice.

Dr. Klein stated that the Corporation Excise Act of 1909 was the real forerunner of our present Federal Revenue Statutes. Explaining that lawyers were slow to realize and take advantage of a lucrative field for income, he showed how they were handicapped at the start by the complicated Federal Statutes. The Treasury officials placed the entire burden of tax returns on the accountants who were looked to for interpretation and administration.

Points Out Five Fields

The speaker pointed out that in 1917 "attorneys began to wake up, began to realize that they were losing control of a lucrative field of income." A year later they appealed to the Treasury Department to confine to lawyers in the department the interpretation of the revenue laws and to members of the bar that phase of tax practice which involved representation before the Revenue Bureau.

Dr. Klein continued by saying that clients are turning to the accountant rather than to the lawyer for tax service because they believe that the accountant is the specialist in this field and will be able to aid them in a more efficient manner.

In illustrating the manner in which he would have lawyers assume a

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BROADCASTS TO CONTINUE

The Alumni Association of Brooklyn Law School has announced the beginning of another series of radio broadcasts featuring prominent legal authorities. This Legal Forum is to be presented bi-weekly at 8 P. M. over station WNYC, the first one to be held Thursday, January 26.

These broadcasts are a continuance of the program inaugurated last spring and will offer addresses and discussions on important legal questions.

Judicial Reform Urged by Alger

To Discuss Judicial Selection at
State Bar Association
Meeting

POLITICIANS IN CONTROL

George W. Alger, who polled a large number of votes in the recent elections as a candidate of the Independent Judges party, has proposed a plan whereby would be preserved "the benefits of a more responsible form of appointment by the Governor as the responsible head of the State government, instead of by politicians, subject, however, to check by independent nominations in case appointments made by the Governor should prove unworthy for any reason."

The method of the selection of judicial candidates for office will be the main topic of discussion at the fifty-sixth annual meeting of the New York State Bar Association on January 26, 27, and 28. The association will convene to consider and discuss current problems concerning the administration of justice, and leaders of the Bar will debate the question of judicial candidates.

Mr. Alger, stating that there is no higher function which a Bar Association can exercise than to perform a positive rather than a negative interest in judicial candidates, believes that such association would have an admirable opportunity for effectiveness, its influence depending upon the character of the organization itself

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Means of Choosing Judicial Nominees To Be Debated At State Bar Meeting

The fifty-sixth annual meeting of the New York State Bar Association will be held on Thursday, Friday and Saturday, January 26, 27 and 28, at the Association of the Bar of the City of New York building, 42 West 44th Street to consider and discuss current problems of the administration of justice.

The first session will be opened at two o'clock, Thursday afternoon by President Seabury to hear the reports of the Executive Committee, the Committees on Nominations and Grievances and of the Treasurer.

To Debate Questions
On Friday morning at nine-thirty the order of business will be continued. At half past eight Honorable William D. Mitchell, Attorney-General of the United States will deliver the annual address in the ballroom of the Waldorf Astoria.

"The Question of the Method of Selection of Judicial Candidates for Office" has been selected as the main topic for discussion. Leaders of the

Bar are to debate the question following a report on the subject by a special committee headed by Frederick R. Coudera. This report will be presented on Friday afternoon at two-thirty o'clock.

To Hold Annual Dinner

A paper on "Bankruptcy Law" is to be read by James N. Rosenberg. Eugene Raines will read a paper on "Eighteen Years Under the Workmen's Compensation Act." Harry D. Nims, a member of the State Commission for the Administration of Justice, will deliver an address on some of the subjects which are under consideration by the Commission.

The annual dinner is to be held in the Waldorf Astoria on Saturday evening, January 28th, at seven o'clock. President Seabury will preside and addresses will be delivered by Chief Judge Pound of the Court of Appeals, Dr. Armistead M. Dobie, Dean of the Law Faculty of the University of Virginia, and Martin Conboy of New York.

Law Student Is Cultured, Dean Maintains

Takes Issues with Prof. Z. Chafee, Jr., of Harvard, Who
Holds to Contrary

REQUIREMENTS ARE MET

Notes Trend Toward Revival of
General Culture, Rather Than
Specialization

Taking issue with the statements of Professor Z. Chafee, Jr., of Harvard, Dean Richardson of the Brooklyn Law School on December 28 maintained that the ordinary law student was not ignorant in matters pertaining to "Science, literature or history" due to the lack of cultural education.

Dean Richardson took exception to Professor Chafee's assertions, incorporated in the report of the committee on curriculum of the Association of American Law Schools, which held a three day session in Chicago at the end of December, that 50 percent of law students are lacking in the knowledge of science, literature and history.

Less Specialization Today
"If from two to four years of study general arts fails to equip a student with a fair knowledge of general cultural subjects," Dean Richardson said, "I hardly know how such knowledge may be attained."

The Dean asserted that there is today a general trend to a revival of cultural subjects, with less stress on specialization throughout the larger American universities and colleges.

"Out of the students registered last Fall with Brooklyn Law School, fifty-two colleges and universities throughout the country were represented. Forty-two per cent of these students had Bachelor of Arts degrees, denoting four years of general arts education. The requirements of the law

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Law Curriculum At Yale Altered

Individual Investigation of Legal
Problems Extended
to Two Years

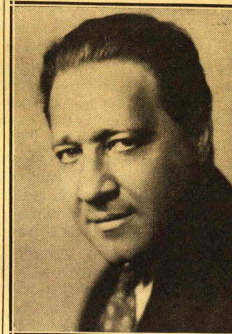
Under a new plan, announced December 31 by Dean Charles E. Clark of Yale Law School, students in that school will be permitted to devote two-thirds of their three year course for the degree of bachelor of law to the individual investigation of legal problems. This plan will give the students almost complete freedom from formal courses and lectures. "After the first term of the first year," explained Dean Clark, "a student may take two-thirds of his entire course in this manner under the concurrent direction of two members of the faculty."

"Within two weeks of the opening of school," the Dean continued, "students are beginning to do for themselves the very kind of work which they will be called upon to do in active practice. It is essentially a process of doing by learning."

This general reorganization of the content of the curriculum has been made to emphasize the functional approach in law. "The changing con-

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TREATS EXTRADITION



Arthur Garfield Hays

Hays Discusses Extradition Law

Sound Public Policy for Govern-
or to Use Discretion
in Such Cases

BURNS CASE IS CITED

"The exercise of gubernatorial discretion in dealing with extradition is a matter of sound public policy," said Arthur Garfield Hays in an interview with a Justinian reporter. "Certainly, if a criminal were a citizen of the United States and some foreign country demanded his extradition, there would be a tremendous wave of public sentiment and even resentment involved."

Mr. Hays went on to explain that the differences in temperament, background and system of punishment between states may be quite as great as between that of nationalities. "There is, on the surface, no reason why a criminal should have refuge in any state if he is a criminal. But occasionally we come upon a case in which public sentiment in the community where the crime has been committed is so grossly weighted against the offender that fear is occasioned lest a fair trial be denied, or the charge is not universally considered justifiable as a crime, or extradition is demanded for some ulterior purpose."

Cites Burns Case

Continuing, Mr. Hays cited the Burns case. "It is difficult to conceive how justice of any kind would have been benefited by the return of Burns. It might have satisfied the dignity of the state of Georgia," he said, "but certainly there was no reason to demand that he be returned to the chain gang."

When the Governor of Georgia refused to return Percy J. Fuller to New York on request, the Governor felt that the criminal machinery was being used as an instrument for the collection of a private debt. Other cases where extradition has been refused, it was pointed out, were those involving negroes who were threatened by lynchings at home and the Governor felt they would not be afforded a fair trial. In the well known Johnson case in Massachusetts, Governor McCall refused to return him because he felt that Johnson could not get a fair trial in the State of West Virginia.

Mr. Hays pointed out that under the Constitution the language is mandatory and the Governor is bound to return an escaped convict or one who has been indicted. "The law intends

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Lawyers Fight Irving Trust Receiverships

Heated Discussions at N. Y.
County Lawyers' Association
Meeting Deplore Condition

TUTTLE IS A PROPONENT

Seeks Legislative Aid to Determine
Legality of Receiverships
in New York

Corporate receiverships were vigorously denounced at a meeting of the New York County Lawyers Association recently held in the Auditorium of City College. After short addresses by the treasurer, Benno Lowenstein and Charles H. Boston, president, a resolution was read by H. W. Beer, president of the Federal Bar Association of New York, New Jersey and Connecticut in which it was strongly urged that a close examination be made of the rule by which the Irving Trust Co. has been appointed standing receiver and trustee for bankruptcies in the Southern District.

The Irving Trust Co. was made the focal point of the attack on the present system, which Mr. Beer in his address claims, is depriving the legal profession of its right to practice. He said that years of inactivity on the part of lawyers has made it possible for the present system to grow, and, as a result we now have corporations such as banks and trust companies giving legal advice and managing estates. This deplorable condition has prevailed for the past twenty-five years, and can only be changed by a concerted and continued effort on the part of the profession, he claimed.

Corporations Inefficient

From the fact that the banks have often failed to fully and properly settle bankruptcy claims and have tied up millions in assets, he drew the conclusion that corporate receivers are not as efficient as individual receivers and trustees. He concluded his talk with an appeal to the assembled meeting to stamp out "Justice, Inc." as he termed the Irving Trust Co.

W. R. Montgomery, Chairman of the Committee on Bankruptcy, spoke in opposition to the proposal of Mr. Beer. He offered a different resolution which suggested that the various local bar associations and business organizations appoint committees to

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The Justinian Brooklyn Law School St. Lawrence University

Vol II, No. 4 Tuesday, January 17, 1933

Published monthly during the school year by the Publications Department of the Brooklyn Law School, St. Lawrence University, at 576 Pearl Street, Brooklyn, N. Y. The subscription rate is \$1.00 a year by mail. Advertising rates may be had on application.

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Printed by F. Waldner Printing & Publishing Co., 1109-1111 DeKalb Ave., Brooklyn, N. Y., Tel. FOxcroft 9-2046

LEGAL PRAGMATISM

As Professor Walter B. Kennedy observes in his admirable *Men or Laws* in the current issue of the Brooklyn Law Review, "the juristic pendulum has been swinging away from the belief that the law is composed of hard-and-fast principles" and is veering towards the belief that the strictly human element plays an important, if not dominant role, in the formulation of the legal decision.

Evidence of that change is not lacking. In a recent issue of the Cornell Law Quarterly, Jerome Frank asserts that the fundamental legal assumption that ours is a government of laws, and not of men, is not in accord with the observable events in the legal world. He suggests, indeed, that we abandon that assumption and accept, tentatively at least, the postulate that "The human element in the administration of justice is indispensable." Professor Justus L. Rothschild, to cite another but more restrained critic of legal certainty, in his extremely able *Men or Laws* in the initial number of the Brooklyn Law Review, takes the position that it is now quite accepted that the statement that this is a government of laws, and not of men, is a statement "merely of an ideal, and not the formulation of a dynamic principle."

It is extremely interesting, therefore, to note Professor Kennedy's contention that strict adherence to precedent is still to-day the rule, and departure from it the exception; and that it is the over-emphasis of the unusual departures which has led the pragmatist to the erroneous conclusion that certainty is not the "general order of things legal."

It seems difficult to agree with Professor Kennedy. Of course, cases where a court, in the interests of justice, or to satisfy public clamor, or a public need, openly overrules precedent or drastically modifies well-settled rules are in the small minority. These are the unusual departures. But the legal pragmatist cannot, and does not, rely upon them either for his sole authority or for his sole illustrations. As Professor Rothschild has said, even in the ordinary case between private parties, involving issues of no direct public interest, the judge's emotional reactions, conscious or subconscious, will determine or help determine his decision. In the light of modern psychological studies, it is difficult to understand how the judge, being human, can escape the influence of his "emotional reactions," his "hunches," "intuition" or notions of "abstract justice."

The mere fact that a judge's decision is supported by formal legal reasoning or is backed by an opinion bristling with citations is no evidence that the decision was the product of that reasoning or a natural result of the force and authority of those citations. The *good reason*, as James Harvey Robinson reminds us, is so very often not the *real reason*. A member of an appellate court once told Jerome Frank that the chief justice said to him after the argument of a case, "We'll have to lick that plaintiff somehow and it's up to you to find some theory and authorities that will help us do it."

There is something extremely comforting and attractive about a theory of decision-making as

an impersonal, machine-like process. As we understand it, however, the question is not one of desirability but one of accuracy. And it seems to us that any concept of the formulation of a decision which does not recognize the highly important factor of the psychological make-up of the judge—or, if you will, his "personality" or "emotional reactions"—is not in accord with our present psychological and legal information.

IMPRISONMENT FOR DEBT

Most of us look with horror on the mediaeval practice of imprisoning debtors, but despite this fact there is still one form of debt for which men may be incarcerated. The alimony debt, still remains as one of the crudest weapons woman is legally permitted to wield. The theory behind the use of such a weapon is contempt of court. Failing to pay alimony, whether or not the man can afford to, is a direct affront to the judiciary, resulting in an enforced stay in jail. A trial is not accorded the husband, he is summarily imprisoned and must so remain until he either posts a bond or pays. While he is in jail the alimony accrues and when he is released his wife, or ex-wife, may have him resentenced for non-payment of the alimony which accrued while he was in jail. Although the law permits a man to be sentenced for no more than six months for this offense, many unfortunates have had to idle away their time for many years in jails because of the present system.

While languishing in jail the defendant is certainly an economic waste. If he could not pay the alimony when jailed, he surely cannot be expected to meet current obligations for his own support or for the maintenance of any other person.

In order to avoid this situation, "The Justinian" favors the passage of a bill in the coming sessions of the legislature providing for a commission or special officials to thoroughly investigate the financial status and income of divorce defendants. Under this scheme, defendants claiming that they could neither pay nor give bonds or security for payment would be put on parole. They would then have the opportunity of attending to their business so that they could afford to pay reasonable alimony.

THE BAR SPEAKS

In passing resolutions disapproving in no uncertain terms the practice which has obtained for several years in the United States District Court of the Southern District of New York, under which the Irving Trust Company has been acting as the official standing Receiver in bankruptcy cases, the New York County Lawyers Association served notice that it has abandoned the practice too often followed by bar associations of "pulling their punches" in controversies which vitally affect the Bar. The Association is to be congratulated on the position it has taken in this matter and on the definite manner in which it went on record against corporate receiverships.

At the special meeting at which the resolutions were passed, a group apparently interested in continuing the present situation sought to emasculate the resolution under the guise of an "amendment." This so-called amendment, however justified by rules of parliamentary procedure, was really a counter-resolution, opposed to the original resolution both in spirit and effect. The group sponsoring the "amendment" sought to put the New York County Lawyers Association squarely behind the following "basic principles": first, "It should be the aim of all procedure in receiverships to administer the estates in such a manner as may be most efficient and economical"; and second, "Appointments of receivers in all cases should be made for this purpose, and this alone, without regard to whether receivers so appointed are corporations or individuals and whether there be one or several." The amendment then provided for an investigation, which would inevitably result in a great deal of unnecessary delay.

The Association, however, refused to be satisfied merely with repeating and reaffirming trite and obvious basic principles.

Now that the New York County Lawyers Association has so definitely gone on record, we may expect to see other Bar Associations pass live resolutions equally full of purpose and meaning.

Hoots in the Roots
Of the Law

(M. S. B.)

"A sign 108½ feet long and 50 feet high containing a perfect likeness or picture of a Durham bull, painted on the side of a store, is not so immodest or indecent as to prevent the most fastidious or refined ladies from visiting such store." Shiverick v. Gunning Co., 58 Neb. 29, 78 N. W. Rep. 460.

"A 'paranoic' is one who has a mania for litigation and an ungovernable desire and anxiety to be successful. This species of lunacy or mania is more common among attorneys than litigants." Bateman v. Ryder, 106 Tenn. 712, 64 S. W. Rep. 48.

"For a man to swear while trying to button his shirt-collar is not to be regarded as a symptom of softening of the brain." Keithley v. Keithley, 85 Mo. 217, per De Armond, C.

"It is not error to instruct the jury to use common sense." People v. Kelly, 132 Cal. 430, 64 Pac. Rep. 563.

"The wisdom of the common law is so profound as to be quite undiscernible." Illinois etc., R. Co. v. Johnson, 77 Miss. 727, 28 So. Rep. 753.

"If matrimony produces bankruptcy, it is all wrong; but, if bankruptcy produces matrimony, it is all right." In re Steed, 107 Fed. Rep. 682, per Purnell, J.

"A natural lake is property, but it is not a house or building." Com. v. Lambrecht, 3 Pa. Co. Ct. 323, per Arnold, J.

"No man's life, liberty or property are safe while the legislature is in session." Anonymous, 1 Tuck. (N. Y.) 247.

"Where two men are hanged at the same time, the fact that one shakes his legs after the other has become quiet is evidence of survivorship." Broughton v. Randall, Cro. Eliz. 502.

"Acute gastritis" is, it would seem, the same as "belly-ache." Billings v. Metropolitan Life Ins. Co., 70 Vt. 477, 41 Atl. Rep. 516.

"The court cannot take judicial cognizance of the fact—if it be a fact—that 'Gün Wa' is the Chinese synonym for 'Smith'." U. S. v. Smith, 45 Fed. Rep. 476, per Jenkins, J.

"It is not a ground for a new trial, that the jury in a murder case were taken to church and allowed to hear a lecture on Doubting Thomas." State v. Kent, 5 N. Dak. 516, 67 N. W. Rep. 1052.

"Under our benignant system of government.....correspondence is nearly as cheap as talk." From a charge to Grand Jury, Chase's Dec. 263, per Chase, C. J.

"Water is land." Northern Pac. R. Co. v. Carland, 5 Mont. 146, 3 Pac. Rep. 134.

"An elevated railroad is not an electric-lighting plant." Bly v. Edison Electric Illuminating Co., (N. Y. 1902), 64 N.E. Rep. 745, per Haight, J. and broken bottles.

THE SELECTION OF JUDGES

By GEORGE W. ALGER, Esq.

(Continued from Page 1)

and its reputation for disinterested supervision.

Mr. Alger's statement follows:

The method of selecting judges is more in the public mind at the moment than it has been for years. The recent election indicates a thoroughly aroused public interest in the general subject, an interest, moreover, which should not be lost but be maintained. Everyone agrees that our present method is in effect an appointive system but that the appointments normally made are made by politicians as a reward for political service or for favors received, or for other reasons which have nothing to do with the character or ability of the judge himself. The recent Brooklyn "deal" aroused a protest in which over 100,000 citizens voted for an independent list of judicial nominees as opposed to a list selected by a deal between the Republican and Democratic political leaders and without any real participation even by the judiciary committees of their own political organizations. The so-called Hofstadter-Steuer "deal" is still fresh in the public mind and nearly 300,000 protest votes were registered at the past election.

We all agree, lawyer and layman alike, that the system is wrong. The results on the whole are bad, with occasional exceptions and that the general quality of our justice through the courts is not what it should be largely because the judges themselves do not measure up to the demands of the judicial office.

System Too Radical

An appointive system by which judges are appointed by the Governor, subject to confirmation by the Senate, is perhaps too radical a step to be practicable. We have a few instances in which the theoretical power of the people to elect public officers has been changed as to important offices such as the higher judicial offices by giving

that power to an individual. A middle ground is doubtless more practical. This middle ground should be a method which preserves the benefits of a more responsible form of appointment by the Governor as the responsible head of the state government, instead of by politicians, subject, however, to check by independent nominations in case appointments made by the Governor prove unworthy for any reason.

Governor Should Nominate

If we confer upon the Governor, in addition to the power to make interim appointments, the power to make nominations for judicial office, and then require that the nominees for judicial office bear no party label, we shall have made a substantial step forward. There should be no party column for judicial nominees, no voting under the star or the eagle, no straight ticket. If the public has a list of nominees bearing no party emblems and one of these lists is identified by carrying the statement that the candidate is nominated by the Governor, the voter will have a real chance to make intelligent selection. He will then either accept the Governor's nomination, which is more than likely, or he will be at least obliged to make a *personal* selection from the remaining list. I see no reason why there should not be, if necessary, further nominations than those made by the Governor. If for any reason the Governor's nomination should be bad, there should be a distinct opportunity given to interpose vote against bad nominations by the Governor, precisely, but with better chance of success, as the protest vote in the last election was made against judicial nominations by two political bosses. The only effect would be, and it is important, that the advantage of the party label would be taken from political organizations in case they chose to oppose the Governor's nomination and their nominees would

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PRESS BOX

Little Rock, Ark.—The first enforcement of a law apparently few people knew was on the statute books—that prohibiting betting on elections—had come to light today with the remission by Governor Purnell of a \$50 fine imposed upon Dr. C. M. Peeler, of White County.

The record did not show what election Dr. Peeler wagered on, but he lost. The record recited that some of his "unfriendly" neighbors decided to have the 1911 statute enforced, but Dr. Peeler beat them to it and pleaded guilty.

Houston, Tex.—Deputy Prohibition Administrator C. H. Kellogg halted his automobile at a stoplight. His load of confiscated whiskey and beer rattled loudly.

"What you got in there?" asked another motorist.

"A little beer and whiskey," replied Kellogg.

"Better look out, for old man Kellogg will get you," was the warning. "He wouldn't take my car, would he?" asked the agent.

"Take your car! Why he'd even take his grandmother's car." The green light went on, so did Kellogg.

Detroit, Mich.—It looked as if William Van Winkle had solved that perplexing question of what to do with used safety razor blades—until his neighbor went to court about it. The short-lived solution came to light when Liebert E. Foltz was granted a Circuit Court injunction restraining Van Winkle from using his yard as a dumping ground for razor blades and broken bottles.

Towanda, Pa.—Herbert Patton, Stevensville farmer, wants to go to jail "to satisfy my neighbors."

He pleaded guilty to setting fire to some woods yesterday.

"Tell us about it," said the Court. "I can't, I didn't set fire to them," Patten answered. "But my neighbors won't be satisfied until I'm locked up."

The Court refused to pass sentence.

West Chester, Pa.—Judge W. Butler Windle issued a permanent injunction today restraining operation of the Sky Haven Airport.

Judge Windle said that "planes may not operate without regard to the rights of other people."

Rome, Italy.—Premier Mussolini paid a compliment to the Italian lawyers today at their national convention by ascribing to them a place higher than that of the poets and philosophers who produced the Renaissance. The honor, he said, was due the lawyers because they had revived the Roman law. Rome, he added, would have been less great if it had not been for its law.

Evanston, Ill.—Harry H. Porter walked up to Harry H. Porter in the latter's police court and said:—

"Don't let the similarity in names influence you Judge; I'm guilty and should be fined."

Judge Porter accommodated him with a \$5 fine.

A traffic violation was the fine.

Port of Spain, Trinidad.—The matrimonial courts here will charge \$10 for the first two hours of hearings in divorce cases and \$2.50 an hour afterward, according to the rules made by the judges for the opening of the first divorce courts in the history of Trinidad on January 1.

STATE TAX LAWS

By BERNARD S. BARRON

State tax legislation is, of necessity, involved. Its complexity increases when the taxing power seeks to reach domestic corporations doing business within and without the State. Such law must be carefully planned so that it keeps clear of the reefs and shoals of constitutional limitations.

To one engaged in daily practice in the presentation of tax matters the divergent opposite methods employed by the Federal Internal Revenue Department and the State Tax Commission are most striking. The Federal agency permits a full and fair contest of assessed taxes and renders complete information as to the method and manner of assessment before compelling payment. The State method does not.

Under Section 9A of the State Tax Law the State has the power of taxing (among others) domestic corporations doing business both inside and outside the State of New York. The formula and method of computing this tax is specifically prescribed in Section 214 of the Law. Of necessity, any such legislative formula must be arbitrary, but if the formula, though arbitrary in concept is reasonable in principle no complaint can be found with it. The New York Statute in addition to laying down a formula also gives to the State Tax Commission the right (Section 211) "to equitably adjust the tax upon the basis of corporate activity or the business done within and without the state rather than upon capital or assets employed * * * if * * * the segregation of assets shown by the report does not properly reflect the corporate activity or business done, or the income earned from the corporate activity or from business done in this state because of the character of the corporation's business and the character and location of its assets."

Try to Increase Revenues
The State Tax Commission composed of admirably able officials, in a commendable desire to increase, as greatly as possible, the revenues of the State has very often disregarded the formula provided in Section 214 of the Tax Law and has instead invoked the so-called "equitable provisions" of Section 211 of the Law. It might be added that this use of the "equitable provision" has invariably resulted in an increase of the amount of the tax payable by the corporation.

In a recent case presented to the Court of Appeals this "equitable provision" of Section 211 was attacked on constitutional grounds:

(a) That the power to tax was vested solely in the Legislature and that to grant

to the State Tax Commission the power to impose a tax or method of computation not prescribed by the Legislature, was, in effect, a delegation of the taxing power.

(b) That the section in question was ambiguous and laid down no definite rule or method of computing the tax.

Upheld by Appellate Court

These contentions were upheld by the Court of Appeals and in the particular case in question, the tax as computed under the legislative formula and as set forth in Section 214 of the Law, was imposed.

It is the consideration of State practice in these cases, however, which I desire particularly to present here. Under the Law a taxpayer must first pay the tax (no matter how unjust or arbitrary it may be) before he can complain. He must then within a specified time present a formal application for revision to the State Tax Commission and have a hearing thereon. If the State Tax Commission does not grant the requested relief the taxpayer must post a bond for costs in the sum of \$500 and then sue out a writ of certiorari in the Supreme Court of Albany County. If the writ is granted (and it always is if the papers are jurisdictionally correct and in proper form) the return or case is made in the Appellate Division of the Supreme Court, Third Department on printed papers and briefs and presented there in the same manner as an appeal from the Supreme Court. It is quite apparent that this method is expensive and as against the taxpayer of small means a very effective method of compelling him to submit to the assessment without recourse to the courts.

Taxes Refunded

Should the taxpayer be successful in Court the refund is paid to him by the State Tax Commission if it has funds available. In no event, however, does the Taxpayer collect interest on the amount of the recovery, no matter how arbitrary, inequitable or unjust the imposition and collection of the tax was in the first instance. This practice has not been without judicial criticism. The Federal Courts have at times been invoked to restrain collection of the tax on the ground that the legal remedy provided by the State Statute for the recovery of the taxes after payment falls short of adequacy in at least two respects: (a) Refund, if any, is expressly without interest. (b) It is at least doubtful if any refund can be compelled. The Federal courts have exercised their equity powers in these situations—and very properly so.

Proposed System

It must seem a proper conclusion that the present state law has not kept pace with the progress of modern business methods. The State despite its sovereign powers and the ability to impose its will on the citizens subject to its jurisdiction should not be permitted to indulge in practices, which, if employed by a citizen, would be subject to severest censure and criticism. It would be an easy matter, and certainly far more compatible with simple justice if the tax law of the State were amended to conform, procedurally, at least, to the practice specified and found uniformly successful by the Federal Bureau of Internal Revenue, to wit:

To permit the taxpayer to contest the illegality and inequity of the assessment before compulsory payment.

To compel the taxing authorities to acquaint the taxpayer of the method and manner employed in the assessment and computation of the tax.

To insure the definite repayment of the tax to the taxpayer in the event that the tax has been paid, and

To compel the State to pay interest on the amount improperly exacted during the period in which the taxpayer has been deprived of the use of the funds involved.

Our Alimony System an Anachronism And a Disgrace, Says Irving Aaron

The present alimony system provides no leeway in times of depression, said Irving Aaron, prominent attorney in an interview with a Justinian reporter. Its rigidity, unaffected by hard times, slack seasons or unemployment makes no distinction between a willing but unfortunate debtor and a willful defaulter. The laws are designed for the latter class and those in the first category are ensnared in toils created for the unwilling debtor, he said.

He feels that the presiding judge should be given greater discretion on motions to punish or incarcerate alimony debtors. Jail sentences should be materially reduced, he said, and temporary alimony and counsel fees so reduced as to compel plaintiffs to conscientiously litigate their actions to final disposition.

Should Study Income

In all proceedings for the purpose of fixing alimony payments of any nature, the same careful scrutiny should be made of the plaintiff's income, position and ability to support herself partially or in toto, as is now made of the husband's financial status. With both financial standings as a basis, the alimony should be equitably fixed.

Mr. Aaron stated that the original purpose of the law was to prevent marital disruption from casting charges into the hands of an already burdened community. Also, the law, ever desirous of protecting its wards, the children, made provision for their support by the husband. The laws had their birth in an age when the equality of the sexes was unknown and the sole "breadwinner was the male."

Continuing, the speaker said that the original purposes of the laws are forgotten in their present use. "Demanding wives and conniving attorneys have employed them to harass the unfortunate divorced husbands to such an extent every last penny must be surrendered to their voracious demands and then, with funds depleted and friends alienated by the constant trouble and persecution, incarceration in the alimony jail faces the willing but impoverished debtor."

System Disgraceful

He held that "the alimony system

is an anachronism, a throwback, a disgrace to our modern civilization. In ancient days debts were punishable by death. Later, this was mitigated and imprisonment took its place. Now, it was pointed out, civilization has done away with this evil and but few traces remain. Incarceration for alimony arrears, however, does remain, and the fair-minded citizenry and the bench and bar are convinced that it, too, must be relegated to the limbo of outmoded punishments."

It was asserted that it was necessary to analyze the background and upbringing of each individual judge in order to diagnose his probable reactions in sentencing alimony debtors. Religious faith, family circumstances, personal feelings, temper and condition of health all have a bearing on the administration of this archaic law. Some are appalled at the iniquitous results created by the system; some are unduly sympathetic to the wives who, at times present such tragic tales on affidavits that "East Lynne" pales by comparison. Of course, many women present true cases of hardships. But, avers Mr. Aaron, incarceration in jail is non-productive, neither party benefits. Of what use, therefore, to continue this malignant system when its original purposes no longer exist.

Cotillo Is Praised

Justice Cotillo's liberality and keen understanding of the various complications involved in marital disputes were pronounced and most helpful. He attacked the matrimonial calendar with considerable vigor and, through strenuous effort, brought it up to date for the first time in many years. Mr. Aaron spoke of the numerous newspaper statements and announcements in which the judge repeatedly said, in substance, that he would not further countenance any form of the alimony racket in the Tribunal in which he sat; and that harsh and scheming wives would not be permitted to incarcerate their husbands who had defaulted in alimony payments, unless such defaults were willful. He could not, he felt, lend his office to a perpetuation of the system whereby willing but unfortunate debtors would be imprisoned for non-payment of what is no more than financial obligation.

The Selection of Judges

By GEORGE W. ALGER, Esq.

(Continued from Page 2)

have to go to the polls on their merits as candidates. The net result would have been better candidates, a perhaps smaller vote upon judicial offices, but a far more intelligent vote at that.

Must Have Creditable Motives

The nomination by the Governor idea would give, I think, Bar Associations an admirable opportunity for effectiveness. The influence of Bar Associations, like every other institution, must depend upon the character of the organization itself. Its approval or disapproval of a Governor's nomination would be valuable only if the association itself were known to be disinterested, known to be acting for creditable motives in which the interests of the public and the bench, as a means of insuring a high quality of judicial service, are paramount. Appointments made by the Governor would greatly increase the proper influence of proper Bar Associations, entitled to influence upon a judicial selection made by the Governor. There is no higher function which a Bar Association can perform than a positive rather than a negative interest in judicial candidates. No one should know more about the professional qualifications and standing of a nominee for the bench than lawyers themselves. If Bar Associations wait until political nominations have been made and then try to make up their minds whether or not the nominations are so bad as to require opposition, they are failing to perform a most useful public service. They should be in a position to recommend to the Governor proper appointments and to

oppose improper appointments. The more fearlessly they do this work, the better for the judiciary and the better for the Bar Association. Let me repeat something which I have already said. The test of whether or not a Bar Association, as such, will have influence either with the people or with the Governor, on such matters, depends upon its own character as an organization. If it is a semi-political organization, one in which politically minded lawyers are active and in control, the association will have relatively little influence and should have none. The power of appointment in the Governor would have a collateral effect upon the Bar Associations themselves of prime importance. Either they would be dominated by political groups having ulterior motives and able to make their associations a mere political adjunct to a party or the association will be compelled to develop disinterested, aggressive, public-spirited leadership, entitled to receive public confidence and highly influential in the field in which the influence of the Bar at its best should be of supreme value to the public and to the administration of justice.

If the present interest of the profession, and particularly of the younger members of our profession, who have no ax to grind, and of public-spirited laymen can be maintained at the high level which it has attained during the past campaign, we have every reason to assume a forward step on this long discussed problem of how to select our judges and get good ones. It cannot come too soon.

CONTEMPT OR PERJURY?

By VICTOR ROUDIN, Esq.

When is a witness who answers "I don't remember" guilty of refusal to answer?

The law is settled that a witness who gives such an answer, though he perjures himself, is not guilty of a refusal to answer, constituting a contempt. That subject is discussed at length in the New York Law Journal of March 7, 1932, and in 11 Amer. Law Reports 342.

The case usually cited as authority for the proposition is *Matter of Silberman v. Econopouly*, 177 App. Div. 97, and the court there decided that where the judgment debtor in supplementary proceedings did not truthfully answer some of the questions asked of him, that he nevertheless could not be convicted of contempt. Judge Lehman, while citing in the Appellate Term in the First Department, followed the rule in *Moyinhan v. Devaney*, 90 Misc. Rep. 346, that false swearing in the action was not a basis for an order punishing the witness for contempt.



V. Roudin

Notable Dissent Cited

There have been two notable dissents which are frequently cited, but are not followed. (*Miell v. Acierno*, 122 Misc. 872, a decision by Judge Cropsey; and *Ferguson v. Perk*, 138 Misc. 326, a decision by Judge Koch in the City Court.)

But what happens when the witness says "I don't remember"? Has he answered or has he refused to answer? If we ask him what his name is and he tells us he does not remember it, "it would probably be quite clearly a refusal to answer—the witness merely using the words 'I don't remember' in lieu of 'I won't answer.'" But suppose we ask him what he did last July 7. Perhaps he remembers, because it may be an important date in his mind, and the events of that day are safely stored away in his memory. Can the court charge him with contempt for refusal to answer? In order to find him guilty of contempt, the court would have to decide as a fact whether or not the witness did remember.

Out of that, the courts have developed what at first sight seems to be a startling rule. All of our law school teachings have been devoted to the proposition that courts are established to decide facts so that the law may be applied to those facts. In civil cases, the courts weigh the preponderance of the evidence, and in criminal cases, they must decide whether the facts warrant a finding that the defendant is guilty beyond a reasonable doubt.

Now Have Third Rule

Most of us have undoubtedly believed that it is either the one rule or the other which applies. But now we find a third rule. That is the rule where a witness is charged with contempt for refusal to answer because he answers "I don't remember." There can be no question of fact before the court. The court, in such a proceeding, cannot weigh the facts; it is no longer a fact finding tribunal. What has become of its fact finding function?

Certainly, the court cannot take judicial notice that you or I remember where we were or what we did last July 7. If it can be proved by outside evidence that the witness is lying when he says he does not remember, he can be prosecuted for perjury, but that fact may not be established collaterally on a contempt charge.

The United States Supreme Court has said that "I don't remember" may be a refusal to testify, but "this power must not be used to punish perjury, and the only proper test is, whether on its mere face, and without inquiry collaterally, the testi-

mony is not a bona fide effort to answer the questions at all." (U. S. v. Appel. 211 Fed. 495, approved by the U. S. Supreme Court in *Ex Parte Hudgings*, 249 U. S. 348); and Judge Hand (in *Re Cantor et als*, 215 Fed. 61), put it very well when he said that the case must be so plain that any further attempt to examine the witness would be a farce; so obvious that any observer present could see for himself that the witness was not answering, but merely trifling with the proceeding.

The borderline is a very difficult one for the courts. It must be drawn very closely in order to make judicial tyranny impossible. Unless the matter inquired into is so obviously in the witness' power to answer that the court may take judicial notice of the fact that he knows the answer, the court cannot punish for contempt.

Culture in Law Dean Maintains

(Continued from Page 1)

schools of the State have increased greatly in the past thirty years.

Requirements Increased

"In 1901 only twenty-eight credits were necessary for admission to law school. These credits could be obtained in two years of high school. Later the requirements were raised to three years of high school, later to four years, still later one year of college, and now two years of college must be completed before a student is admitted. Surely two years of college education should fit a student for some knowledge of cultural subjects, in spite of Professor Chafee's statement to the contrary."

The Association's report, Dean Richardson explained, may lead to an attempt to increase the requirements for admission to law schools, due to the fact that the legal profession is overcrowded, as are nearly all professions. The association, he added, does much to uphold the ethics of the legal profession, but must justify its existence to a greater extent by keeping its findings before the public eye.

Students Are Cultured

"I found no such ignorance in law students as Professor Chafee seems to have found," Dean Richardson said, "but there are several states whose requirements for admission to law schools are weak, the Southern States particularly. The trends of American colleges toward a revival of cultural education and less stress on specialization is becoming more marked each year. Several great educators have seen the evils attendant upon too great stress on a strict vocational education. The realization of this fact may be one of the reasons for Professor Chafee's statements."

Kramer Heads N.Y.U. Law Club

The New York University Club was organized and officers were elected at a meeting held Friday in the new College Room.

Professor A. Rotwein, faculty advisor, gave a short talk in which he outlined the purposes of the club and the responsibility of every member to keep alive and foster interest.

Papers on topics of general interest were read and discussed. The meeting was then adjourned with a resolution to reassemble on the first Friday in February.

The officers elected are:
Irving Kramer.....President
Sidney Newman.....Vice-President
Eleanore Shacht.....Secretary
David Seid.....Treasurer

Society Favors Interclub Talks

A resolution that "no question be given on the bar examination which has not yet been adjudicated by the courts" was passed at the monthly dinner of the Union College Club of Brooklyn Law School, which took place January 4, at the Hotel Westover, New York City.

This aims to eliminate the present arbitrary power of the bar examiners in correcting the papers. Before this discussion, Professor Edwin W. Cady of the Law School, read a paper stressing suggested moot questions which could be answered in more than one way; the answer being right or wrong depending entirely upon the judgment of the examiner.

The club, at this meeting, also passed a resolution favoring interclub and fraternity debates. This would greatly aid in creating closer relationships among the students, and offer opportunities of discussing the problems confronting the legal profession.

The guest speaker of the evening was William Dyke Reed, former trial counsel of the United States Fidelity and Guarantee Company. President Ralph J. Stark presided.

Immigration Evils and Remedies

By NATHAN SINKMAN, Esq.

(In a previous article the writer explained the procedure of the United States Labor Department in deporting aliens and the laws applicable thereto. At this time an attempt will be made to cite some of the abuses alleged to be committed by the Bureau of Immigration and recommendations for their correction.—Editor's Note.)

The report of the Wickersham Commission to the President of the United States stated, among other things, that the Immigration Bureau arrests, prosecutes and sits in judgment on aliens and that under a system of democratic government it is little short of tyranny that the same agency or bureau should combine all these activities. Therefore, it is proposed to create a Board of Alien Appeals of five members to be appointed by the president, independent of the Department of Labor, to sit in judgment on alien cases, particularly deportations. This Board would have quasi-judicial powers and sit as a court of equity, molding its decrees according to the nature of the case and to avoid unnecessary hardship on anyone. Little fault is found with such proposal, except that instead of centralizing authority and holding the Secretary of Labor responsible for the deportation of aliens, authority would be diverted to an independent body.

Board Humane; Is Not Technical

Let no one studying this proposal be misled into believing that the Bureau of Immigration is a cold-blooded, cruel-hearted agency of the government. The term "Star-chamber practices" is harmful as used in the Wickersham report. At present, there is a Board of Review sitting in the capacity of a judicial body but really advisory. Every deportation case is passed upon by this Board. Attorneys are permitted to appear and ask that discretionary power not inconsistent with the Statutes of Congress be exercised to avoid unnecessary hardship. Thus, there has arisen the practice in certain instances of granting deportable aliens permission to leave this country at their own expense without warrants of deportation and enabling them to immediately apply at their foreign destination for a visa to return. No statute expressly authorizes or prohibits this and humane results follow in such instances.

Deportation May Incur Danger

Another recommendation is that if a deportable alien can show satisfactorily that deportation to his native land will endanger his life or liberty he should be dealt with differently. The Commission probably had in mind the deportation of male aliens to Russia who had fled from the Bolsheviks and to other countries where military service is required of all male residents. It is safe to say that there are many thousands of aliens in this country who had fled their native hearth to avoid military service or who had deserted the army after a period of service. Should these men be deported to their native shores they would probably face a firing squad upon con-

Status of Alien Is Weighed

Another proposal is to lodge in this Board of Alien Appeals, discretion to permit desirable aliens, illegally in this country, to remain. This is probably the greatest point of variance with the present policy of the Department. The Board of Review decides countless cases daily involving aliens, many of whom are desirable, yet it lacks authority to avoid a deportation on the sole ground that the alien is desirable. If the alien's occupation is an especial one or if engaged under a contract for a certain number of weeks as a night club entertainer or actor, the Board will usually extend his deportation to a date beyond the expiration of his contractual obligation. But merely because an alien is desirable and has never been convicted or arrested for crime and has always conducted himself with decency and propriety and is the type of individual we would be proud to number as a citizen, is not in itself sufficient to avoid a deportation. When this country was developing its natural resources two generations ago, alien laborers were greatly in demand. Italians, Greeks, Swedes, Poles and in fact, natives of most European countries came here in floods and were all put to work.

Desirability Is At Board's Discretion

Today, states and municipalities are all in bad financial condition and vast construction programs as in the days of yore are not undertaken. With the improvement in economic conditions or with the floating of great bond issues, land and other development projects would assume added impetus and manual laborers will again be greatly in demand. This demand will not be filled by our own Americans who, unconsciously and wrongly seem to look with disfavor on manual labor jobs. Witness the few Americans on any house-building or street-paving project.

Trouble will undoubtedly arise when it is attempted to define what is a "desirable" alien. This will rival the conflict in defining the word "intoxicating" as applied to the Prohibition problem. Is an alien desirable because he has been here a number of years and is thrifty as shown by his accumulated savings' bank deposits? Is he desirable because he has never been arrested for crime and is law-abiding? Is he desirable because there are comparatively few others in the country doing his type of work and at some future date, a real shortage of labor may be at hand? These are all fine and delicate questions lodging untold discretion in a Board of Alien Appeals.

Immigration Officials Are Well Schooled

Another important provision would require more rigid tests and training of applicants for immigration service before they are allowed to engage therein. Immigration officials are both arresting and prosecuting officers. As such they should be adequately trained for their positions. Today the great majority of them are men of fair education and well informed as to the immigration laws. The work of the Immigration Bureau is finely subdivided and the writer doubts the wisdom of commencing a training school. Demands on Congress would be made for appropriations, much time would be spent and abuse would follow. Because of the many immigration offices, ports of entry and the immense size of this country many schools would have to be set up. The work in this Bureau is so practical that one has really to be "in it" to do it properly.

These, briefly, are the recommendations of the Wickersham Commission for correcting some of the evils in the deportation process and the opinion of the writer on them.

Speedy Convictions and Sentences For Criminals Favored By T. P. Peters

In 1926, this State adopted Section 1944 of the Penal Law, which is headed "Committing Felony When Armed." In 1927, the Legislature remodeled the section, but no change was made in the section as to alter its aspect so far as it affects this article.

This section provides that, a person who, while in the act of committing a felony, or attempting to commit one, shall be armed with a pistol, or any other weapon specified under three other sections of the Penal Law, shall have a punishment inflicted upon him in addition to the regular punishment provided for his crime.

The Appellate Division, First Department, and the Court of Appeals of the State of New York, (Judge Crane writing the decision,—"People vs. Paradiso, 248 N. Y. 123"), have both unanimously held this to mean only actual possession of the weapon, and not constructive possession.

Two in Common Felony

The Appellate Courts have held that if two or more men are engaged in a common felony, and only one possesses a revolver, and only one who shall receive additional punishment. They have so decided in spite of the Penal Law, which, in Section 2, holds that a principal is "...a person concerned in the commission of a crime, whether he directly commits the act constituting the offense or aids and abets in its commission, and whether present or absent, and a person who directly or indirectly counsels, commands, induces or procures another to commit a crime."

They have repeatedly broadened the meaning of this word "principal" so that it is held that each one engaged in a general criminal undertaking is guilty of whatever any one of the principals does. This has been held in the following cases, to refer to only a few of them:

People vs. Paradiso, 248 N. Y. 121; People vs. Michalov, 229 N. Y. 325; People vs. McKane, 143 N. Y. 455; People vs. Flanagan, 174 N. Y. 356; People vs. Giro, 197 N. Y. 152; People vs. Madas, 201 N. Y. 349; People vs. Giusto, 206 N. Y. 67; People vs. Kuhn, 205 N. Y. 67.

It has been said in *People vs. Madas, 201 N. Y. 349*, at page 352, "If one of the defendant's confederates in fact seized the money, in the eye of the law the defendant seized it also, the same as if each had laid his hands upon it at the same time and they had jointly carried it away."

Holding of Courts

So the Courts have practically held that if four defendants are accused of robbery, and if one of them, holding a revolver in his hand, shoots a person, the entire four are guilty of holding the revolver and of having done the shooting, and are answerable for murder committed in the act of committing a felony. And they now, in this decision, hold that one may not be held to be in the possession of a revolver unless he actually had it in his physical possession. Although in the actual possession of one confederate, who shoots a person, all of the other confederates are guilty of having possessed a revolver, and of having committed the murder, but if one merely carries the revolver on his person, his associates are not constructively doing the same thing.

The Courts are in the practice of saying that a person may be constructively guilty of murder, and lose his life, but he cannot be constructively guilty of merely possessing a weapon, and receive a few additional years in prison.

Intention of Legislature

The Court said, in *People vs. Paradiso, 248 N. Y. 123*, at page 126, "Where one of two or more criminals has a dangerous weapon, the degree of the crime which all commit may be raised by reason of the weapon—all acting together are guilty of the same crime, but when it comes to the punishment, the one having the weapon is to get an additional sentence as provided in Section 1944. The intention of the Legislature was to discourage the carrying of weapons and to make an added risk in committing crime to the one having the pistol or the gun. Heretofore the one with the gun ran no more chances than the others without weapons—now he will give five to ten years more for his cowardice."

I claim that the aim of the Legislature was to discourage the commission of all crimes by the use of pistols or certain other dangerous weapons. It is true that the Legislature did not mention constructive possession of a weapon, but who can say that the Legislature did not have constructive possession, as well as actual possession, in its mind when it enacted this law? Even a body of laymen, who took similar action, could not be said to have such intention because of the section already quoted, which describes a principal, and when we consider that the Legislature is composed of from 65% to 80% lawyers, we can hardly doubt that they had that section in their minds when they adopted Section 1944, and it should be construed with the definition of a Principal, as set forth in Section 2.

Give Narrow Interpretation

It has often appeared to me to be the whole aim of our Appellate Courts to narrowly interpret any new criminal sections that may be passed by the Legislature. As far as possible they seek very narrowly to apply them, giving but little power to the Legislature to change or enlarge the common law rules of the State.

Section 21, of the general provisions of the Penal Law, provides:

"The rule that a penal statute (the Penal Law) is to be strictly construed does not apply to this chapter or any of the provisions thereof, but all such provisions must be construed according to the fair import of their terms, to promote justice and effect the objects of the law."

This rule, in my opinion, is seldom observed by Appellate Courts, although the trial courts have, at times, been brave enough to obey it, only to find themselves reversed. Although the Legislature has distinctly overruled the common law rule that a penal statute must be strictly construed, the Appellate Divisions of the State and the Court of Appeals have failed repeatedly to recognize this new rule, and have done so in a marked degree in *People vs. Kevlon, 221 A. D. 224*, which is the case under consideration, and which was affirmed in *248 N. Y. 123*.

MONTAGUES AND CAPULETS?—REQUIESCAT IN PACE!

By Jack Isaacson

Romeo and Juliet would still be turning in their graves, remarking wistfully to their spiritual selves about the fickleness of fame if it were not for the capricious whim of the editor of *The Justinian*.

The editor read that in submitting the question "Who were the Montagues and Capulets?" Professor Z. Chafetz, Jr., of Harvard found that barely half of his class knew that they were the respective families of "Romeo and Juliet."

To the first ten men of the Staff who walked into his office, he shot the question, "Who were the Montagues and the Capulets?" and like a flash each answered correctly.

The editor believes that Romeo and Juliet will stop their sad lament and rest peacefully in their graves now that they have been returned once again to their former prestige and glory.

Pardoning Power of President

By DR. MAURICE I. HART

The United States Constitution says that the President "shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment." (Ar. II, sec. 2.) There are according to this grant only two constitutional restrictions thus placed upon the President in exercising this power, namely, he cannot pardon when the offense is not against the United States, and he cannot pardon in cases of impeachment.

There have been added to these two further limitations by the Supreme Court. The first is that fines or other pecuniary penalties paid and covered into the Treasury of the United States, as well as offices lost, are not subject to restitution by a pardon. (*Knote v. U. S.*, 95 U. S. 149.) The second is that the President may not pardon for civil contempts of court, though of course he may for criminal contempts. (Ex parte Grossman, 267 U. S. 87.)

Apart from the foregoing there are no limitations, thus leaving the President free to pardon at will, anyone, at any time, fully or partially, conditionally or unconditionally. It would seem then that there is little cause for deliberation, doubt or consideration in regard to this power. Yet the present status of the same, is such as to cause wonderment and apprehension to one examining the whole question.

Nature of Pardon Has Changed

The fact that the nature of a pardon and the method of applying such are no longer what they were when the constitution was adopted is partially responsible for the resulting amazement and alarm. More so however is the vivid realization that the Supreme Court of the United States has quietly taken upon itself the unassigned task of amending the United States Constitution.

The two points in connection with the pardoning power which I shall treat here concern, first, the nature of the pardon, and second, the question of its validity depending on acceptance by the individual to whom it is tendered. Both will be discussed simultaneously.

The trial of Aaron Burr for treason was one of the first occasions where the validity of a pardon was questioned. The testimony of one, Bollman, himself under indictment, was desired, but he pleaded immunity on the ground that he might incriminate himself. In order to break down his immunity, President Jefferson was prevailed upon to extend to Bollman a pardon for the offenses committed. Bollman, however, refused the pardon and his testimony was never secured.

Marshall Discussed Basis of Power

In 1833 Chief Justice Marshall discussed at some length the nature and basis of this power. (*U. S. v. Wilson, 7 Peters 150*.) He declared that it was the same as that exercised by the king of England and that "we adopt their principles respecting the operation and effect of a pardon, and look into their books for the rules prescribing the manner in which it is to be used by the person who would avail himself of it. (*Ibid.* 160.)

Such was a sensible and in fact the only conclusion which the eminent Justice could have reached, especially since in the convention which framed the Constitution, no effort was made to define or change the meaning of a pardon. "We must then," said Mr. Justice Wayne in 1855, "give the word the same meaning as prevailed here and in England at the time it found a place in the Constitution." (Ex parte Wells, 18 Howard 307.)

Marshall defined a pardon as an act of grace, a favor conferred or benefit bestowed, which exempts the individual upon whom it is conferred from the penalty the law inflicts for a crime committed. "It is," he continued, "the private, though official act of the executive magistrate, delivered to the individual for whose benefit it is intended." That a pardon is an act of grace is sustained by Coke's designation of it as "a work of mercy." (3 Inst. 233.)

Taney Held Pardon Was a Grant

The main question which confronted the Chief Justice in the *Wilson* case was however, whether the pardon, to be valid and effective, had to be accepted by the individual and pleaded by him in some manner. Attorney General Taney (later Chief Justice of the Supreme Court) representing the Government pleaded that the pardon was a grant to Wilson, that it was his property and that he might accept or reject it as he pleased. Further than that, he insisted that unless Wilson pleaded it or in some way claimed its benefit, thereby denoting his acceptance, the court could not notice it.

The Court agreed fully with such a stand and Marshall in his decision declared clearly and definitely that, "A pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance. It may then be rejected by the person to whom it is tendered; and if it be rejected, we have discovered no power in a court to force it on him."

Nor was such a stand based solely on reason and without sound precedent, for the Court in its decision showed conclusively that it was and always had been the practice in England in regard to the king's pardon. The concurring judgment of legal talent, backed by precedent for centuries leaves little doubt as to the exactness and soundness of the principle involved and declared.

Advancing chronologically in our discussion we find that the Supreme Court was still of the above opinion when it decided the *Wells* case in 1855. The Court at this time stated that "the power to offer a condition, without ability to enforce its acceptance, when accepted by the convict, is the substitution, by himself, of a lesser punishment than the law has imposed upon him, and he cannot complain if the law executes the choice he has made." The position maintained is unmistakably in conformity with that of Marshall and Taney.

Pardon Is an Appeal for Mercy

From an opinion rendered to the President by the Attorney General in 1865, it is noted that the nature of a pardon had not changed, for it is spoken of as "this great and sovereign power of mercy." More specifically still Attorney General Speed on the occasion mentioned, stated: "It is a deed of mercy given without other fee or reward than the good faith, truth and repentance of the culprit.... as an act of grace freely given.... it should be liberally construed in favor of the repentant offender." And again he spoke undeniable truth when he said, "When men have offended against the law, their appeal is for mercy, not for justice." Note the previous sentence, well as it seems to have been forgotten in our modern civilization. Finally the Attorney General was of one opinion with former decisions of the Supreme Court in that "after the pardon has been accepted, it becomes a valid act." (11 Ops. Atty. Gen. 227.)

It was in 1915 that the Supreme Court found itself confronted with a factual situation similar to that in regard to Bollman at Burr's trial, and involving the principle already settled in 1833, pertaining to the validity of a pardon and acceptance by the prisoner.

Burdick, the city editor of the New York Tribune was called as a witness to testify before a federal grand jury in an investigation of the customhouse and refused to answer questions relative to the source of information which led him to publish an article regarding the conduct of the customhouse. President Wilson was thereupon induced to issue to Burdick a full and unconditional pardon for all offenses he might have committed and concerning

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LEGAL PERIODICALS

By IRVING BRODY

An alien entering the United States surreptitiously may be taken into custody and deported at any time within three years after such entry. The George Washington Law Review reports the case of *United States ex rel Staph v. Corsi*, United States Supreme Court Docket No. 10 (Nov. 7, 1932) which is pertinent to this statutory enactment. A German resided in the U. S. for six years, after having deserted his ship in the New York port in 1923. He returned to Germany in 1929 and returned as a member of the crew of an American vessel. There is nothing which would warrant the presumption that he went ashore at the foreign port. He was taken into custody by the Department of Labor several months after the return from this voyage, and was ordered deported as an alien who had unlawfully entered in 1929. He maintained that his return from the voyage was not an "entry" within the provision of the Immigration Act, since the statutory time, within which he might have been deported, had run in his favor; and the voyage on an American vessel did not break the continuity of his residence here. However, his contention was not upheld, for the court stated that the return from this trip to a foreign port constituted an entry from which the statutory time commenced to run anew. Although the word "entry" includes a re-entry after a temporary absence, it is not an encroachment on the Legislative purpose in creating the period of limitation, for former decisions have supported this rule, and the conclusion is logical.

That an injury to an artificial member of the body is within the purview of the Workmen's Compensation Law and is not contrary to the California Constitution is maintained in the case of *Pacific Indemnity Co. v. Industrial Accident Commission*, 83 Cal. Dec. 549, (1932), appearing in the Southern California Law Review. While A was driving a team, in the course of his employment as a teamster, the horses shied, causing him to fall, and breaking his artificial leg into bits. He had no funds to buy a new leg, and was unable to continue his work without one. He recovered a judgment. The recovery, however, was resisted on the ground that the statute permitting recovery for injury to artificial members was prohibited by the Constitution. The court stated that the California Constitution did not prevent a recovery for injury to artificial members. Injury, in the Workmen's Compensation Law, includes "injury or disease arising out of employment, including injury to artificial members."

Justice Berkley is quoted in the United States Law Review as stating in the case of *Cleveland v. Chambliss*, 64 Ga. 352: "On appeal, a point which appears in its virgin state, wearing all its maiden blushes, is out of place."

The University of Cincinnati Law Review reviews the case of *Benes v. Campion*, 244 N. W. 72 (Minn. 1932) wherein recovery was allowed to the wife for injury to her husband while drinking "moonshine" offered by the buyer from the original illegal makers and sellers. One Campion purchased a gallon of "moonshine" from a manufacturer and seller. He gave a few drinks of it to Mr. Benes. Benes fell by the roadside unconscious, as a result, and froze his hands and feet. This necessitated amputation of both. Mrs. Benes sued Campion for injury to her right of support under a Minnesota statute, permitting the wife to sue any person who, by selling or giving intoxicants, shall have caused the intoxication of her husband which was the proximate result of injury to her.

The furnishing of feed or feed loans to individuals is not a public purpose warranting the levying of taxes for the execution of such a plan. This conclusion is stated in the Michigan Law Review, in *In Re Opinion of the Judges*. This decision was an answer asked by the Governor of South Dakota, pursuant to a Constitutional provision enabling such action. The question was: "Could the legislature enact legislation which would permit the several counties as a county enterprise to raise funds either by a supplemental budget or bond or warrant issued with which they might in turn furnish feed loans or even distribute feed as a part of a country poor relief system. . . ." It is well settled that taxes can be levied only for public purposes. The South Dakota court has deemed that such a scheme would not be for a public purpose.

While testifying in her own behalf in a murder prosecution, the accused denied writing certain words in a druggist's poison register. On cross-examination, she was compelled by the court to write certain signatures in the presence of the jury to enable a comparison. Although she objected, the court rebuked her contention that she was being forced to give evidence against herself in violation of her constitutional privilege. This is the case of *Long v. State*, 48 S. W. (2d) 632 (Texas 1932), appearing in the New York University Law Quarterly Review. Compelling the making of a writing for comparison for the jury is not giving testimonial evidence against oneself within the meaning of the constitutional provision, but is merely the exhibiting of one's handwriting as one might exhibit a bodily feature, the court asserted.

The Wisconsin Law Review discusses the case of *David v. David*, 157 Atl. 755 (Md. 1932). The plaintiff, a married woman, sued the defendant partners for injuries sustained while lawfully on the premises, by falling into an unguarded elevator shaft. The defendants pleaded the marital relationship existing between the plaintiff and one of the partners. She did not recover, for the dictates of public policy which preclude a married woman from suing her husband in tort, prohibits her from suing a partnership of which her husband is a member. The entity theory of a partnership prohibits the recovery, since the husband would be liable to contribute should a recovery be had. Thus, partnership cases assume the proportions of an ordinary case of a suit between a husband and wife.

COLLATERAL BOOK LIST

The following list of books may be of interest to both law students and practicing attorneys. This list of collateral reading was compiled by Mr. Arthur S. McDaniel, Assistant Librarian of the Association of the Bar of the City of New York, and sent to THE JUSTINIAN by Mr. Joseph L. Andrews, the Reference Librarian: Birkenhead, Earl of . . . "Famous Trials of History" (1926).

"Mr. Justice Brandeis," essays by C. E. Hughes, Max Lerner, Felix Frankfurter, D. R. Richberg, H. W. Bilke, W. H. Hamilton. Edited by Felix Frankfurter; with an introduction by Oliver Wendell Holmes (1932).

Cardozo, Benjamin N. . . . "The Growth of the Law" (1924).

"Law and Literature, and Other Essays and Addresses" (1931).

"The Nature of the Judicial Process" (1921).

Carter, James C. . . . "Law; Its Origin, Growth and Functions" (1907).

Choate, Joseph Hedges . . . "Arguments and Addresses" collected and edited by F. C. Hicks (1926).

Cohen, Julius Henry . . . "The Law Business and Profession" (1927).

Frank, Jerome . . . "Law and the Modern Mind" (1930).

Gray, John Chipman . . . "The Nature and Sources of Law" (1921).

Guthrie, William D. . . . "Magna Carta and Other Addresses" (1916).

Herbert, A. P. . . . "Misleading Cases in the Common Law" (1928).

"More Misleading Cases" (1930).

Holdsworth, W. S. . . . "A History of English Law" (1922-26).

Holmes, Oliver Wendell . . . "The Dissenting Opinions of Mr. Justice Holmes." Arranged, with introductory notes, by Alfred Lief (1929).

Hughes, Charles Evans . . . "The Pathway of Peace" (1925).

Jenks, Edward . . . "The Book of English Law" (1928).

"A Short History of English Law, from the Earliest Times to 1911" (1912).

Kohler, Josef . . . "Philosophy of Law" (1914).

Laski, Harold J. . . . "Studies in Law and Politics" (1932).

"Lectures on Legal Topics" delivered before the Association of the Bar of the City of New York (1917-31).

Maitland and Montague . . . "A Sketch of Legal History" (1915).

Odgers . . . "The Common Law of England" (1927).

Pepper, George Wharton . . . "Family Quarrels, the President, the Senate, the House" (1931).

Pollock, Sir Frederick . . . "The Genius of the Common Law" (1912).

Pound, Roscoe . . . "Readings on the History and System of the Common Law" (1927).

"The Spirit of the Common Law" (1922).

Salmond, Sir John . . . "Jurisprudence" (1924).

"Select Essays in Anglo-American Legal History" (1907-09).

Sherman, Charles P. . . . "Roman Law in the World" (1917).

Stammler, Rudolf . . . "The Theory of Justice" translated by Isaac Hirsik (1925).

Stimson, Frederic J. . . . "Popular Law-making" (1910).

Stone, Harlan F. . . . "Law and Its Administration" (1915).

Taylor, Hannis . . . "The Science of Jurisprudence" (1908).

"Two Centuries Growth of American Law," Yale Bi-centennial Publication (1902).

Warren, Charles . . . "History of the American Bar" (1911).

"The Supreme Court in U. S. History" (1922).

Wormser, I. Maurice . . . "Disregard of the Corporate Fiction and Allied Corporation Problems" (1929).

Pardoning Power of President

By DR. MAURICE I. HART

(Continued from Page 4)

which he might be questioned. This was to break down his claim to immunity, but when questioned further Burdick refused to testify and was forthwith committed till he was ready to divulge the information sought.

Strangely enough the Solicitor General, representing the Government, on this occasion took a stand diametrically opposed to that of Taney in 1833, maintaining that the acceptance of a pardon was not necessary to its complete exculpatory effect. Justice McKenna predicated his opinion squarely upon that of Marshall's in the Wilson case. "That a pardon by its mere issue has automatic effect resistless by him to whom it is tendered, forcing upon him by mere executive power whatever consequences it may have or however he may regard it, which seems to be the contention of the government in the case at bar, was rejected by the decision as unmistakable." (Burdick v. U. S., 236 U. S. 79.) Furthermore the court pointed out that a pardon had been designated as a "private" act or deed, not unintentionally but advisedly to mark the incompleteness of the deed without acceptance.

Guilt Not Erased

We have omitted up to the present a consideration of the relation of guilt and pardon. Does a pardon wipe out the guilt attached to the commission of a crime? A pardon has the effect of obliterating entirely the consequences of a crime, the penalties demanded by society for the abrogation of its law, and restoring the individual affected to the state of innocence in the eyes of the law. But of its very nature it cannot reach the guilt incurred in the commission of the crime, which is factual, in the past and incapable of destruction, save by a verdict of "not guilty" after trial which in turn is the affirmation that the individual did not commit the

crime with which he is charged. The taint then remains with the individual even though a pardon should restore him at once to society and he will be marked wherever he passes.

Supreme Court Opinion

This may be doubted by some and therefore we offer confirming evidence of the soundness of this view. Cynyn in his Digest states: "If a man has a charter of pardon from the king, he ought to plead it, in bar of the indictment; and if he pleads not guilty, he waives the pardon." Again Blackstone declared that, "if a man is indicted and has a pardon in his pocket and afterwards puts himself upon his trial, by pleading the general issue, he has waived the benefit of such pardon." Therefore it is quite apparent that if pardon affected the guilt and restored the individual to the same status as when a jury after trial declares him not guilty, there would be no purpose in his waiving the pardon and standing trial. But because it does not affect the guilt and because an innocent individual might be sensitive to the guilt imputed in a pardon, he has the right to plead the general issue, with the understanding that when he does so, he has waived his claim to the pardon.

In this connection the Supreme Court in the Burdick case deliberated as follows:—"This brings us to the differences between legislative immunity and a pardon. They are substantial. The latter carries an imputation of guilt; acceptance a confession of it. The former has no such imputation or confession. It is tantamount to the silence of the witness. It is noncommittal." This is important as we shall see shortly.

It was in 1925 that Gerald Chapman, having been previously sentenced to 25 years imprisonment in the Atlanta penitentiary, and later escaping from the same, was charged with and tried for murder in the state of Con-

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Illegal Practices by Notaries

By DANIEL GUTMAN, Esq.

Discussion with reference to the legal profession during recent months has centered about the difficulties encountered by lawyers, seeking to attain success at the Bar. Much has been said about the effect upon the business end of the profession, that has resulted from the annual admission of so many new lawyers. Various corporations, groups and agencies which have assumed duties that are properly functions of lawyers, have been subjected to severe criticism, and have been made the subject of numerous addresses to legal groups.

On occasion the subject has even been aired in the courts. A few hair-splitting decisions, some more speeches, and there the matter has rested.

Worst Offenders Are Notaries Public

Some time ago, the writer had occasion to address the members of the Justice Brandeis Law Society. At that time I discussed various phases of the legal profession which needed reform, and among other matters, made reference to the illegal practice of the law by individuals who are not members of the Bar. The worst offenders in the latter class, seem to me to be the notaries public, who, licensed by the state, are clothed with an appearance of authority that is misleading to the public, and has caused irremediable damage and loss.

A considerable amount of interest was aroused by the discussion, and expressed itself in the form of a vast number of letters and editorials, written to and published in the New York Law Journal. As one of the correspondents stated, the members of the Bar seemed to be aroused from their lethargy, and were loud in their denunciation of an evil which had long been permitted to go unheeded. A law tending to remedy the practice of notaries was introduced, but not passed, as the members of the Bar felt that it did not sufficiently cover the subject. The Bar Associations, for some reason or other, refused to endorse a proposal that with a few necessary exceptions, only attorneys be permitted to qualify as notaries. Legislators who were requested to introduce legislation satisfactory to the bar, refused to take any steps unless sanctioned by the Bar Associations of the city.

Encroach Upon Lawyer's Duties

So that we are faced with this situation,—an evil exists which is harmful to the public. At the same time it constitutes an encroachment upon the functions of members of a profession, admission to which is obtained only after years of study and hard effort. And yet the recognized spokesmen of that profession, in spite of great demand by the rank and file, refuse to sponsor or sanction any steps to eliminate the evil.

Now it is a matter of common knowledge, that notaries throughout the city are abusing the duties of their office. Most of them operate a lively business of preparing legal documents and instruments, closing titles, and even offering legal advice and assistance. The availability of printed legal forms has particularly enabled the notary public to do work which constitutes practice of law.

Many people are ignorant of the fact that notaries do not have the right to prepare legal instruments. Attracted by the cheapness of rates, they are frequently the victims of the improper performance of legal work, and find themselves parties to meaningless and ineffectual agreements.

Foreign Born Mistake Notary's Function

Among the foreign born, too, there often lingers a memory or the notary of the "old country," who functions in the capacity of a solicitor, preparing legal papers. This often serves to lead them to the office of a notary instead of an attorney, with results that can best be illustrated by a few quotations from interested members of the bench and bar.

I find in the pamphlet entitled, "The Making of Your Will," furnished by the author, Mr. Thomas H. Smith of the New York Bar, the following: "Judge James A. Foley, Surrogate of the County of New York, condemned the practice of notaries public drawing wills, and in a decision attacked the practice as most vicious. It was disclosed before the Surrogate in the proving of the will of one John Barry, that his will had been drawn by a Notary Public who kept a soda water stand, who called in as a witness the bootblack in front of the store."

"Surrogate Foley, in speaking of this practice, said that the difficulties which arose in that case, were occasioned solely by the pernicious practice of notaries public, who in ignorance of the law, draw wills, and carelessly supervise the execution thereof; and the opinion of such an eminent authority as Surrogate Foley who is daily engaged in the construction of wills, involving the disposition of vast estates, should be heeded by those who are about to dispose of their property by testamentary disposition."

Wills Drawn By Notaries A Dangerous Practice

"Professor Wormser, former editor of the New York Law Journal, in commenting upon the decision of Surrogate Foley, stated, 'The practice of allowing ignorant notaries public in violation of law, to draw your will, should be avoided by everyone who desires to avoid trouble in distribution of his property.'"

And yet notaries are daily drawing wills for people who are themselves ignorant of the ignorance of these functionaries.

Hon. J. Joseph Lilly, Assistant Corporation Counsel of the City of New York, and one of the leading lawyers in the State, said in a letter to the Law Journal, "The proposals made would do much if enacted into law, to ameliorate the defective drafting of essentially legal documents by totally unskilled persons which has been productive of so many unintended consequences, particularly with regard to wills, deeds and contracts relating to real property."

Ernest J. Magan, another lawyer of high standing, wrote: "The suggestion to confine the office of notary public, with one or two exceptions to members of the bar, seems to be a good one."

N. J. Bar Members Are Automatically Notaries

He says, "For those who consider such a change revolutionary, it might be well to call attention to the fact that in our neighboring state of New Jersey, every member of the bar may by virtue of that fact exercise the function of a notary public. Such a provision of law would in itself dispense with the necessity of appointing a large number of notaries public, who certainly are less qualified to act as notaries and to whom attorneys are constantly obliged to resort, in itself an absurd situation and one that invites abuse on the part of all concerned."

"The practice in New Jersey is both convenient and salutary."

Emil Kreis, a lawyer in Brooklyn, refers to a case, the trial of which lasted an entire week, and which resulted from the improper drawing of a guarantee by a notary public, who had no legal right to prepare such an instrument.

Thomas W. McKnight, of New York, writes, "There is hardly a week that some paper does not come into my office that is absolutely useless because it had been prepared by a notary. . . . It is pretty near time that lawyers got together in some way and stopped this practice."

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Fraternities and Sororities

Delta Theta Phi

On Friday, evening, December 23, 1932, at the Delta Theta Phi House, the following men were initiated into the fraternity: Marvin Ashley, Franklin Crawford, John Delves, Anthony Forbes, David Pavlucci, Charles Blodgett, and David Potts. Several other men who are still under consideration will be initiated during the ensuing semester. A catered dinner followed the initiations at which affair several of the alumni brethren were present.

Iota Theta

The 1933 initiation will see 15 new members inducted into Iota Theta. The festivities will take place Saturday evening, January 14th, 1933, in the New Yorker Room of the Happiness Restaurant at Fifth Avenue and 44th Street, New York City. Professor Cady will be the guest of the evening, at which time he will present to the fraternity a copy of the scroll which he presented to the University of Palestine. The initiation committee is headed by Norman Kemper, assisted by Isadore Wachtel, Milton Gershanson, Irving M. Reiman and George Waldheter.

Alpha Gamma

The annual Formal Dinner Dance held during Convention Week took place at the Hotel Biltmore on December 25th, 1932. This affair was attended by all the undergraduates of Gamma chapter and many of its active alumni.

Phi Kappa Delta

The Annual Dinner Dance and Convention of Phi Kappa Delta was held on New Year's Eve in the Grand Ball Room of the Ritz Carlton. Over 200 celebrants attended.

The induction and initiation of pledges was held on Sunday, December 18th, at the Moulton Range in Brooklyn. Address of welcome ushered the newly elected members into brotherhood. Those men elected were: Bernard M. Singer, Irving Kesselman, Morris Udoff and Harold Olian. The opening smoker of the next semester will take place in the last week of February, at which time a leading pathologist and surgeon of New York State will speak on a topic, yet unannounced.

Lambda Gamma

On Saturday, January 21st, 1933, at 8:30 P. M. the fraternity will tender a Dance to be held in the Grand Salon of the St. George Hotel. Tickets or reservations may be obtained from H. Mines, 270 Broadway, Room 1515, New York City, or Harry H. Kaufman, 191 Joralemon Street, Brooklyn, Room 509. All are cordially invited to attend.

The latest group of students to be pledged include Ben Weshnawitz and Harry Herman.

The Annual Dinner Dance affair of Alpha Gamma was held at the Hotel Biltmore on December 25th, 1932.

On Saturday, January 28th, 1933, a dance will be given by Alpha Gamma at the Yorkville Temple, 157 East 86th Street, New York City.

Phi Delta Phi

An innovation is being instituted, following the practice now in full sway at the Law School in the form of Moot Court work. Phi Delta Phi in completing its arrangements for the fall season, has arranged for Moot trials for their chapters located at the Law School of New York University and also the law school at St. John's.

At a recent meeting Ferdinand Van S. Parr was elected master of the fraternity.

Preparations are being made for a winter dance which will be held some time in February at the Downtown Athletic Club, which will be run in collaboration with the chapter at St. John's. On Friday evening, January 20th, 1933, the fraternity will hold its next regular meeting in the fraternity rooms at the law school.

Pan Hellenic Council

On Tuesday evening, January 10, 1933, the Pan Hellenic Council held a meeting in the office of Miss Curnow, at the Law School.

Miss Rose Goodson, President, sponsored the idea of a Spring Tea which was heartily subscribed to by all of the members. As yet no definite date has been set for the event.

Miss Fanni Segartel was elected to the Student Council.

Iota Alpha Pi

On Sunday evening, December 18th, 1933, Gamma Chapter held a pledge meeting at the home of Miss Edythe Morris. At this meeting the Misses Jeanette Vordy, Frances Miller and Florence Picker were selected as pledges.

On Christmas Eve, the sorority held its annual Convention Dance at the Italian Gardens of the Ambassador Hotel. A large attendance was present at this occasion.

Miss Gertrude Cohen of Gamma Chapter and alumna of Brooklyn Law School was unanimously chosen Dean of the Capital National Council at the Convention Tea Meeting, which was held on Wednesday, December 28th, 1932, in the Hotel Westover.

Tau Alpha Pi

At the China Royal Restaurant in Brooklyn, on Sunday afternoon, January 8th, 1933, the sorority held its annual pledge party at which time the Misses Mildred Satter and Sylvia Rothman were pledged. The pledges were presented with a bouquet of flowers and a pledge pin.

The next regular meeting of the sorority will be held at the sorority rooms at 1467 49th Street, Brooklyn, N. Y., on Tuesday evening, January 17th, 1933.

Tau Upsilon Delta

Tau Upsilon Delta held a Grand Council Meeting at the Park Central Hotel on Saturday, January 3, 1933. At the meeting arrangements were completed for a Bridge, Tea, and Dance to commemorate the 10th anniversary of the sorority, which will take place on February 19, 1933.

The Justinian, Vol. 1933 [1933], Iss. 1, Art. 1 SOME OBSERVATIONS

By LOUIS C. WILLS, Esq.

To lay the foundation for a successful legal career one must begin early. He may actually undertake the study of the law late in life, but in such a case certain qualifications must then already have been acquired.

Above all else the primary consideration for anyone selecting a legal career is character and integrity. Lacking these and possessing knowledge will develop the cunning lawyer who is found out sooner or later, and there is no room for such a type in the profession, nor is he knowingly tolerated by his associates.

Character and integrity are so vital, because of the daily confidences entrusted to the lawyer—confidences so sacred as to involve family relationships and fortunes and the destinies of business enterprises.

Future Based on Integrity

These are indeed responsibilities, and no one has a right to trifle with them or to commit a breach of confidence which may cause family or business ruptures, or bring about financial loss. The lawyer must, therefore, by his personal conduct not only in his office, but in his activities elsewhere, realize at all times that he is under observation, and should conduct himself accordingly.

The early years in building a legal future call for perseverance, patience and attention to business. When a practice is not large and the lawyer's time is not filled in advance with engagements, there is a great temptation to leave the office for a round of golf or a baseball game, or some other diversion to "kill time," and I know of no greater mistake, for by being out when one should be in opportunities are lost which might be stepping stones to bigger things, and that reputation for dependability and industry which is admired by all business men is lost. Self-improvement can be gained during idle hours in the office, while the habit of industry, incidentally, is cultivated.

Must Understand Business

A proper understanding of human nature and a knowledge of business and banking generally are essential, if one is going to be able to talk intelligently and properly advise a client. Remember, if your client is a business man, he only consults his lawyer when he thinks he has a problem. Strange as it may seem, it is a fact that a large percentage of ques-

tions submitted by business men to lawyers are questions the business man might reasonably be expected to be able to answer for himself, but he is willing to pay a lawyer to have his own judgment confirmed. If in the course of such an interview, it appears the lawyer has no comprehension of business and no constructive suggestions, the client will soon recognize this fact, and will naturally seek more experienced counsel.

Tact Is Essential

Clients are often wrong, and when it is evident that they are wrong, a lawyer should help them to see the facts in the proper light. In matters involving family relationships, every effort should be made to adjust differences to avoid what may otherwise result in breaking up family circles. These occasions frequently call for the highest degree of diplomacy, and while the result of the lawyer's efforts in this respect are not always understood or appreciated, it is the wholesome end to attain.

Every busy lawyer is called upon constantly to render advice and assistance without hope of reward. The public generally has no conception of the actual demands made on lawyers by persons unable to pay, and the real amount of such services rendered every day. They all form part of the life of a lawyer.

Wide Experience Desired

Lawyers generally, in my opinion—excepting those who are politically minded—do not take a sufficient interest in their community affairs, and this is most unfortunate, because their knowledge and experience is always very helpful to business men, who usually assume this responsibility. Apart from the civic pride which alone should prompt this interest on the part of lawyers, it affords a fine opportunity for making acquaintances and enlarging one's circle of friends. It does not, necessarily, bring business, but it often affords a contact which facilitates some profitable transaction for a client.

A wide acquaintance, a pleasing personality, a reputation for integrity and character, form the strongest foundation upon which a lawyer can hope to build. With ability, on such a foundation, he will succeed; with ability, on any other foundation he will fail.

Alumni Addresses Wanted

ALUMNI ADDRESSES UNKNOWN

The Law School plans to publish an Alumni Directory during the Summer of 1933. The names of those graduates of Brooklyn Law School from 1902 through 1925 for whom no addresses are available follow. It will be deemed a favor if the Alumni will cooperate by forwarding the present address of anyone listed below.

1926

Carey, Gerald John
Cherner, Jacob
Cohen, Nathan
Epstein, Leon Lennar
Feinberg, Benjamin
Feldman, Allan Samuel
Friedman, Abraham
Gold, Benjamin
Goldman, A. Robert
Greenwald, Helen Fleurette
(Mrs. Lusterman)
Grossman, Isaac
Guilhempe, Mrs. Mary Camuso
Hirsch, William
Horowitz, Abraham Eugene
Joseph, Mrs. Augusta Mazel
Kaplan, Benjamin
Levine, Irving
Maher, Stephen Francis
Marsh, Fred Thurston
Moss, Mathilde
Pollack, A. Hillard
Rabinowitz, Israel
Schapiro, Julius Lewis
Schneider, Irving
Schwartz, Albert Ladislau
Sidman, Abraham
Silverman, Samuel
Slackman, Joseph William
Suits, Francis Earl
Sullivan, Ruth Margaret
Wagner, Leonhardt William
Weiser, Fred
Wilensky, Ruth
(Mrs. David Leibowitz)
Zaslowsky, George

1927

Barrows, Marion Ethel
Begun, Louis
Bernstein, Robert
Boos, William Henry
Brochester, Ruth
Carr, Paul Joseph
Charal, David
Dooreck, Le Abraham
Duckowney, Benjamin
Engelman, Edith
Feit, Mollie Florence
Fischler, Benjamin
Friedman, Abraham

1928

Brady, Francis James
Burk, Max Ellis
Eisenberg, Julius Leon
Geyer, Leonard
Glass, Joseph George
Horowitz, Morris Herman
Lind, J. Jay
Rubenstein, Jerome
Shapiro, Meyer
Siragusa, Anthony
Taylor, J. Stanley

1929

Abramowitz, Abraham
Abrams, Paul
Bernhard, Armin Ramon
Biernan, Emile Augustus
Christie, Thomas Frederick
Farber, Abraham
Friedman, Otto
Goldman, Max
Golub, Abraham
Greenberg, Irving
Hager, Max M.
Jacobs, Charles Allen
Katz, Abraham S.
Leider, Ruth Marshak
Luloff, Zalmie
Melter, Herman
Mendelson, Ralph
Monetti, Arnold Ernest
Moquley, Joseph John
Storino, Arthur Irving
Vigorito, Joseph
Weingard, Philip
Wilson, Charles Bernard
Saidel, Aileen Ida (Certificate)

1930

Caffrey, Francis Joseph
Felder, Samuel
Gross, Howard Arthur
Kleinberg, Abraham
Lazar, Eli Charles
Mantell, Lionel Morton
Schiff, Louis
Shulman, Moses
Solnitsky, Hyman
Stone, Bernard
Zackowitz, Alexander

1931

Chatkiss, Jacob
Greenfield, Bernard Irving
Opoczinsky, Max
Rauch, Jacob
Reice, Samuel
Rothman, Jesse
Shohat, Michael
(Formerly Moses A. G. Schouchot)
Spiegel, George
Umansky, David
Shapiro, Samuel (Certificate)

1932

Breslin, John Henry
Halpern, Michael Jerome
Kamer, Frank

Pardoning Power of the President

(Continued from Page 5)

necit. The Attorney General of the United States sanctioned his transfer from Atlanta to the Connecticut State Prison, as was his right under authorization of a congressional act which permits such transfers when deemed necessary by the Attorney General. Being within Connecticut jurisdiction, he was tried, over his protests, found guilty of murder and sentenced to be hanged.

There then ensued a legal tangle which caused some embarrassment to the Connecticut authorities, for Chapman claimed that as a federal prisoner he could not be hanged. In order to circumvent such a claim and resolve the difficulty, it was urged upon the President that he extend a pardon to the criminal, so as to withdraw federal jurisdiction and allow the individual to be executed. Calvin Coolidge, then President, thereupon issued to Chapman a partial pardon, styled a commutation, limiting the punishment to be exacted, to the term already served.

Court Gives Explanation

Let us stop a moment and reflect. Coke described a pardon as an act of mercy. Marshall said it was an act of grace, conferred upon the individual and for his benefit. Attorney General Speed in rendering an opinion to the President in 1865, characterized it as a great and sovereign power of mercy, as an act of grace freely given, and to be liberally construed in favor of the repentant offender. The Supreme Court in 1915

(Burdick v. U. S.), was still inclined to this view.

The Court in the very year in which President Coolidge issued his so-called pardon to Chapman, explained the reason of the pardoning power thus:—"Executive clemency exists to afford relief from undue harshness or evident mistake in the operation or enforcement of the criminal law. The administration of justice by the courts is not necessarily always wise or certainly considerate of circumstances which may properly mitigate guilt." (Ex parte Grossman, op. cit.)

Chapman Does Not Repent

Now then, was the pardon or commutation issued to Chapman of the above nature? Ostensibly and even confessedly, it was not. In the very document itself, by which the sentence was to be commuted, the nature of the case was discussed, and the President stated that it was being issued because "it has been made to appear to me that the ends of justice will be served by a commutation in this case." Unquestionably and undeniably this was a gross abuse of that "great and sovereign power of mercy" entrusted to the Chief Executive of the nation, by the Constitution.

Had Chapman done anything or exhibited repentance of such undoubted sincerity as to warrant his forgiveness? On the contrary his conviction for murder would argue quite the opposite. The President's position was therefore utterly indefensible. Since the prisoner did not deserve remission, the executive would be wrong in extending the pardon under the cir-

cumstances. But apparently it was to serve the "ends of Justice" that it was issued. So that a criminal might be given over to the hangman. If such be the mercy, grace, clemency, and forgiveness to be extended to those who may come under the penalties of the law, then let us earnestly hope and pray we may never have unkindness or hate extended to us.

Returning once more to the pardon as issued by the President to Chapman. The latter acting upon the well established principle that a pardon to be valid must be accepted, promptly proceeded to reject it, and pleaded its invalidity before the Federal District Court. (Chapman v. Scott, 10 Federal Reporter 156, 2nd Series.) Judge Thomas in his opinion, pointed out however that what was extended to Chapman was not a partial or conditional pardon, but a commutation. "The fact is" stated the Court, "that a distinction does exist between a pardon and a commutation, and the legal principles are no longer open to question. The rule of law is well settled that a commutation does not need acceptance by the convict in order to be operative." It was however admitted that the power to commute sentence was a part of the pardoning power. Finally the Court asserted that since there was no federal case in point, it felt impelled to adopt the rule evolved in various state jurisdictions.

Commutation Different

The power of commutation, it is to be noted, was a part of the pardoning power, but different. It is strange

that such a distinction is not to be found in the Wells case in 1855. On the contrary the terms are treated as being synonymous. It was stated that, "President Fillmore granted to him a conditional pardon." Thereupon the Court proceeded to quote from the pardon itself; "I . . . do hereby grant unto him . . . a pardon of the offense of which he was convicted,—upon condition that he be imprisoned during his natural life; that is, the sentence of death is hereby commuted to imprisonment for life in the penitentiary of Washington." (Ex parte Wells, 18 Howard, 307.) That such would be a commutation in the opinion of Judge Thomas follows from the definition given in his decision, viz.,—"A commutation is the substitution of a less for a greater punishment, by authority of law." Again the Supreme Court in speaking of the grant to Wells, said: "On the same day the pardon was accepted." That the two terms were identical in the opinion of the Court is apparent.

Judge Thomas made a further mistake in adopting the rule evolved in the various state jurisdictions, because the pardoning power of the Governor, while of the same general nature as that of the President, is hedged about by greater restrictions, e.g. The Governor cannot pardon till after conviction, whereas the President can pardon at any time, before, during or after trial, and even prior to accusation. Again the New York State Constitution, e.g., like other state constitutions, provides that,

(Continued on Page 7)

Martin, Beers Speak Before Lawyers Group

President of American Bar Association Discusses "Law in Retrospect and Prospect"

BASIC RULES STRESSED

Regional Vice-President Describes Recent Work of the National Group

Legal coordination and a reversion to the natural law for legal aspects was urged by Clarence E. Martin, President of the American Bar Association in the principal address to the New York County Lawyers' Association's meeting held Thursday, January 5th.

In an effort to coordinate the American Bar Association with the State and City Bar Associations, Charles A. Boston, invited Mr. Martin and George E. Beers, regional Vice-president of the American Bar Association of the second circuit, to speak at the meeting. In a short introductory address, Mr. Boston traced the origin and purpose of the New York County Lawyers' Association and how its constitution crystallized in various subsequent associations including the American Bar Association which was formed in 1873, seven years after the New York County Lawyers' Association. Mr. Boston went on to explain the influence of the American Bar Association in legal education, legal ethics, its activity in the science of jurisprudence and how it has been the cradle of every step toward reform and progressiveness. It was in an effort to fraternalize the American Bar Association with the smaller Bar Associations and bring them in closer contact that Mr. Boston invited these esteemed speakers.

Hopes for Professional Unity

Mr. Beers graduated from Trinity College and received his Bachelor and Master of Laws at Yale. He is a member of the American Law Institute and has edited several books on Evidence and an encyclopedia of law. Mr. Beers opened his address on "Some Recent Efforts and Accomplishments of the American Bar Association" by describing its organization. Some think that lawyers should be organized like physicians. Others feel that by membership in a local association, through a series of others a lawyer would finally become a member of the American Bar Association. The American Bar Association is working for the unity of the lawyers in the United States and hopes for a marriage between the National and State Associations. Mr. Beers went on to show the American Bar Association's move to curb the illegal invasion of the legal profession. Amongst these are advertising and ambulance chasing—both of which are injurious to the profession especially in these depressing times for they disturb the ordinary and proper distribution of business. Accident and bankruptcy cases are the only practice not affected by economic conditions. Other invasions are by those unauthorized to practice law. The lawyer should remain impervious to the competition of lay agencies. If these agencies are barred from the courts the lawyer will not have to be exploited to peddle his services out of retail and can obtain his business without looking for it. Mr. Beers closed by saying, "Business is constantly changing and expanding. If the bar would stick to its rights, it must apply itself to the proper service to meet the demands of the people. It is the hope of the American Bar Association to aid the lawyer to line up to his and the people's ideals."

Importance of Fundamental Laws

Mr. Martin is the 56th president of the American Bar Association. He was president of the West Virginia State Bar Association when it adopted the code of the American Bar Association. He has made many revisions in contract law. In his address on "Law in Retrospect and Pros-

Trust Legality To Be Decided

The determination of the legality of the appointment, by the Federal Court, of the Irving Trust Company as permanent receiver and trustee in all bankruptcy cases in Manhattan, the Bronx, and other counties will be reached by the United States Circuit Court within a short time.

At the request of a Brooklyn lawyer, representing a Brooklyn creditor of a Bronx bankrupt, the Circuit Court, presided by Judges Chase, Martin, and August Hand, granted permission to attack the appointment. At present, it is on the court calendar and should be reached within the next three weeks and determined within another fortnight.

This will be the culmination of the many protests registered by attorneys and eminent jurists individually and through their various organizations, since the monopoly was granted more than two years ago.

Technical Objection Given

The Rubel Coal and Ice Company of Brooklyn is the creditor of the estate involved, the Bronx Ice Cream Company. The attorney, objecting, on technical grounds, to the nomination of the Irving Trust Company as trustee, made by one of the represented creditors, selected an agent of his firm to act in that capacity. Referee Peter B. Olney, Jr., who presided at the election, sustained the objection and permitted the appointment to go to the Rubel's choice.

However, Judge Alfred C. Cox of the Manhattan Federal Court reversed the referee, in reconsidering the decision upon the application of the disqualified creditor, and made the Irving Trust Company trustee.

The ruling on the entire receiver-trustee procedure of the Manhattan Federal Court will be awaited with much interest.

Mr. Martin stressed the importance of finding the fundamental rules of justice in the natural law. Any law not finding its fundamentals in this is based on a false philosophy. Therefore the public should be wary when they charge that the law is slow in adjusting itself to the needs of the people. The concepts of law are based on reason and never change. It is the subject matter that changes to meet conditions. This change is made by the courts in their decisions which become the basis of all future litigation. When the law is charged with failure to adjust itself to economic change, the legal profession is held responsible for its shortcomings. But in every case, it has been the bar that has urgently pleaded legislation. Lawyers do not remain quiescent, feeling that having not been asked they need not arouse any controversies. The lawyer has been the impetus behind every move for reform.

American Bar Rebuts Attack

The American Bar Association rebutted the attack of economists and socialists with the assertion that law is based on concrete facts. Custom creeps into and becomes a body of substantive law. The courts are hesitant in allowing a social change to affect a well-founded rule. Those who hold the lawyer responsible for substantive law have no knowledge of procedure. Lawyers cannot breathe into the statute economic theories without the force of legislation and then there is always the question of constitutionality. At present, commissions aid in judicial coordination. But, Mr. Martin claims, the Supreme Court should give the Bar the power to make procedural rules. Our judiciary has sought the truth in all the years of record. It has been conservative and appreciative of social atmosphere. It will only open its throttle to progressive thought when it has well studied the signals of social change. And so closes Mr. Martin: "Put the rule-making power in the hands of the courts where it belongs and in five years more we will hear no more of the staticism of laws."

Tax Service A Fertile Field

(Continued from Page 1)

phase of practice heretofore, exclusively in the domain of the accountant, he pointed out five fields that were open to the attorney seeking compensation in tax service. First he named incidental tax service stressing the fact that the incidents of taxation should not be overlooked in negotiating a deal or in the drawing of legal documents. He further added that awareness of taxation is essential in connection with contracts of employment containing profit-sharing clauses, articles of incorporation, purchases and sales agreements, dissolutions and reorganizations, leasing, and royalty arrangements, contracts involving governmental bodies and exempt organizations.

As a second field Dr. Klein mentioned the continuous tax service, stating that there appears to be a tendency to spread the accounting service throughout the year. Thus, he said, "it would be ideal if the arrangement between the client and the attorney were such that the actual or potential tax problem were submitted to the attorney." The speaker pointed out that many attorneys rebuff the accountant when he presents to them a tax problem thus discouraging future dealings. Many accountants also believe, in many cases, that they are able to handle the tax problem without aid. Dr. Klein remarked that in the long run there is decided economy for the client in an arrangement whereby accounting advice and legal advice are continuously and concurrently available for tax problems.

Tax Returns Third Point

Preparation of tax returns was the speaker's third point. Attorneys, according to him, should not try to monopolize this field but should cooperate with the accountant in drafting the returns, making the accountant primarily responsible for the correctness of the return. Further, Dr. Klein stressed the fact that the field examinations should not be overlooked, saying that the policy of referring the revenue agent to the accountant should be continued. It is, however, sometimes the case that the attorney prevails when the accountant does not. "With respect to any items

which involve possible Board of Tax Appeals or court procedure, it is well to have the attorney present at conferences with revenue agents so as to make doubly sure that the client's interests are not jeopardized by words or action analogous to admission against interest."

Dr. Klein stated that where the case warrants the client should be represented by a capable trial attorney when the case appears before the Tax Bureau. Cases have been lost because of inadequate handling of proof. He emphasized the fact that procedure before the Board is similar to court procedure and that this should not be forgotten, since lawyers alone are able to handle litigation. But an accountant is necessary to aid the attorney in the preparation for the hearing and in the presentation of the issues.

Need for Professional Service

Refunds and additional assessments, according to Dr. Klein, is an open field for the lawyer. Need for professional service in this field is great because of the great number of refunds made and of additional assessments. "Not until the courts had been called on to deal with the sufficiency of refund claims," stated Dr. Klein, "was there general realization among practitioners that the claim was a legal document and that essential rights of taxpayers might be jeopardized or lost because of failure to set forth in claims all of the grounds on which the refund was claimed." Many phases of income taxation require the training, experience, and point of view of the attorney, and that the absence of such professional help may be fatal to the taxpayer's cause."

As other illustrations of fields in tax service open to the lawyer he mentioned constitutional matters involved in taxation, the strict interpretation of the statutes and the interpretation of the words and phrases of these same statutes.

As a conclusion Dr. Klein stated that the ways of increasing participation of the lawyer in tax service are as follows: the acquisition of a working knowledge of the income tax law, cooperation with accountants, bar association publicity showing the important role which attorneys play in the preservation of tax rights.

Illegal Practices of Notaries

By DANIEL GUTMAN, Esq.

(Continued from Page 5)

John P. McCarthy, attorney of Glen Cove, writes to endorse the suggestion for remedial legislation, saying: "Here in this city and throughout Nassau County, conditions caused by Notaries Public are serious, to say the least."

George Baker of New York, refers to a case in which his client had a chattel mortgage prepared by a notary public, who neglected to have the mortgage signed by the instrument. Two thousand dollars passed hands and that amount was lost by the victim of this piece of defective legal service.

F. Irving Hull of Mt. Vernon, deplors the submerging of lawyers by notaries public and similar poachers on the profession, and urges the Bar to take steps to protect itself.

Edward A. Fay, Treasurer of the Yonkers Lawyers Association, writes to express his surprise over the failure of the New York Bar Association to endorse legislation tending to eliminate the practices of notaries public. He also refers to the failure to improve conditions by prosecution of notaries who indulge in the practices complained of, due to the difficulty in obtaining convictions.

State Licenses Hundreds

The New York Law Journal in lengthy editorials on March 20th and March 22nd, 1930 referred to the abuses by notaries public and stated that something must be done to remedy the situation. So great was the interest aroused in the problem by

members of the Bar, that one of the editorials stated, that if all the letters received on the subject were published the publication would assume the proportions "of a Cyc or of an encyclopedia."

In spite of this, the state licenses hundreds of notaries annually, many of them ignorant or willfully unmindful of their proper functions, placing in their hands a power which they have abused to such an extent as to constitute a public menace.

It seems to me that a false pride restrains the attorneys from attacking the subject more vigorously. We should face the facts and the conditions as they exist, and false front should give way before the realization that committees are being formed and organized daily by the various Bar groups, for the purpose of dispensing charity to indigent members of the profession. It would be much more sound and more fitting if these same attorneys were protected in the practice of their profession.

Urges Limited Appointments

And so in conclusion, let me urge that legislation be passed, limiting the appointment of notaries public to duly admitted members of the Bar, with the exception of banks, steamship companies, and similar business institutions, in which cases, officers or employees may be authorized to acknowledge such papers as are frequently required to be sworn to in the usual course of their business.

Pardon Power Of President

(Continued from Page 6)

"The Governor shall have the power to grant reprieves, commutations and pardons" (Ar. IV § 5). But no such enumeration or recognition of difference is to be found in the United States Constitution.

The Circuit Court of Appeals which also passed upon the Chapman case upheld the decision of the lower court and since the attempt to bring it before the Supreme Court failed, Chapman was accordingly hanged.

Lower Court Upheld

The scene shifts once more to the year 1927. This time Justice Holmes delivered an opinion very much at variance with the past. (Biddle v. Perovich, 274 U. S. 480.) Perovich had committed murder in Alaska in 1905 and was condemned to death. President Taft commuted the sentence, "to imprisonment for life in a penitentiary to be designated by the Attorney General of the United States." Perovich was transferred finally to Leavenworth, Kansas. Having failed on several attempts to obtain a full pardon, he filed application in the Federal District Court for a writ of Habeas Corpus, on the ground that his removal and the order of the President were without his consent and without legal authority. The District Judge adopted this view and ordered the prisoner set at large.

The Supreme Court might have taken the same position as had Judge Thomas in the Chapman case, but declined to do so. Boldly, though in opinion, erroneously, Justice Holmes took his stand as follows:—"We will not go into history, but we will say a word about the principles of pardons in the law of the United States. A pardon in our days is not a private act of grace from an individual happening to possess power. It is part of the Constitutional scheme. When granted it is the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgment fixed." Furthermore, "We are of opinion that the reasoning of Burdick v. U. S., 236 U. S. 79, is not to be extended to the present case." And thus the prisoner's consent has nothing to do with the validity of the pardon.

Old Stand Repudiated

The stand of the Court is unmistakable. The refusal to go into history and the denial that in our days a pardon is a private act of grace, and that it is for the benefit of the criminal, is a definite repudiation of the position held by the Court for a century, which position in turn was based upon the English precedent of many centuries. In one fell blow the whole structure was toppled.

The Supreme Court however abused its position and overstepped its authority. No one denies the right of the Court to interpret and apply the provisions of the Constitution, but we most emphatically deny the right of the Court to radically alter the meaning of any provision of that fundamental law. The framers wisely provided definite methods for such alteration, and the Supreme Court was not mentioned in this connection.

Intention Illustrated

Our meaning is probably clear. But we shall go a little further. In the Wells case, the Supreme Court declared that, "when the words 'to grant pardons' were used in the Constitution, they conveyed to the mind the authority as exercised by the English crown, or by its representatives in the colonies. At that time both Englishmen and Americans attached the same meaning to the word 'pardon.' In the convention which framed the Constitution, no effort was made to define or change its meaning, although it was limited in cases of impeachment. We must then give the word the same meaning as prevailed here and in England at the time it found a place in the Constitution." But this is precisely what the Court in the Perovich case refused to do. Instead it proceeded to attach a

Did You Know That

The state of Ohio holds bowling to be illegal?

The law of the state of California makes it illegal to sell an orange in a California hotel room?

The city of Seattle has a city ordinance which requires every householder to set at least two rat traps daily?

In New Mexico a state law, makes it an ordinance by any vehicle to be equipped with any horn or whistle which does not produce a harmonious and ear pleasing sound?

The town of Colorado Springs has an ordinance by which a fine of \$300 can be imposed on a waiter making an insulting remark to a customer?

In Florida imprisonment is the punishment for the hiring away of your neighbor's cook?

Here in New York it is unlawful to descend from a balloon in a parachute?

There is a state law in Kansas forbidding the flying of a red flag?

In North Carolina a statute declares that twin beds must be at least 2 feet apart?

California's state law allows only a licensed druggist to sell moth balls?

In Frankfort, Kentucky a merchant may be fined \$20 or jailed for 30 days for standing in the door or beckoning to customers?

An ordinance of Hartford, Conn., forbids dramatic readings?

The state legislature of Kansas is the source of a law in that state requiring public buildings to be provided with sufficient cuspidors?

The commonwealth of Connecticut holds it to be a state offense for a public clock to indicate daylight saving time?

The town of Lake Forest, Illinois, has an ordinance of indeterminate age requiring that every auto on the street shall be preceded by a bicycle?

meaning totally foreign to the word and thereby altered that provision of the Constitution.

Justice Holmes attempted to bolster his position by declaring that if a prisoner could reject a pardon and did, the President would be required to permit an execution, which he had decided ought not to take place. The Justice however was mistaken insofar as the President has a further power at his command, viz. the reprieve, which is essentially different from a pardon, not being in any sense a forgiveness, but a mere delay in the execution of the sentence. Therefore the President by the use of this power which does not require the consent of the prisoner, may prevent indefinitely, the execution from taking place.

A final observation to illustrate the present status of the pardoning power. A President standing for reelection, may extend to his political opponent a pardon for murder, treason, and other high crimes, thereby imputing guilt in regard to such acts, to the candidate, according to the Supreme Court. The candidate not being able to reject the pardon, cannot free himself from such imputation, and thereby may suffer grave personal and political damage. Admittedly far-fetched, it nevertheless serves the purpose in the present instance.

TSK! TSK!

Detroit, Mich.—It looked as if William Van Winkle had solved that perplexing question of what to do with used safety razor blades—until a neighbor won an injunction restraining Van Winkle from using his yard as a dumping ground for razor blades and broken bottles.

Current Legal Decisions

(Continued from Page 1)

Gifts—Meretricious Relation
Re Seifter's Estate, 260 N. Y. S. 377, August 12, 1932.

Respondent, a woman, married the decedent while her first husband was living. Decedent, however, entered the marital relation with full knowledge of the existence of the first marriage and of the first husband. Subsequently the decedent established savings bank accounts in trust for the respondent, "his wife." The administrator now seeks to recover these savings bank accounts.

The surrogate held that since no fraud or undue influence was proved, the accounts must be adjudged the property of the respondent. "The existence of mere relations as between a donor and donee, in the absence of proven influence, does not furnish a basis for the recovery of gifts."

Replevin—Civil Practice Act

McLaughlin v. McLaughlin, 260 N. Y. S. 357, November 18, 1932.

Plaintiff commenced this action in replevin to recover certain securities. After the sheriff, the proper affidavit and undertaking having been delivered to him, had seized the securities, the appellant served upon the sheriff a notice of claim of ownership. Plaintiff then moved to make the appellant a party, which motion was granted under the authority of section 192 of the Civil Practice Act.

The Appellate Division, First Department, one justice dissenting, reversed the order and denied the motion. The appellate court held that section 192 "does not authorize the bringing in of parties where statutory provisions are in existence showing a comprehensive plan to administer a remedy such as is shown in article 66 (sec. 1089 et seq.), Civil Practice Act, which governs an action to recover a chattel." Nor is section 193 of the Civil Practice Act, viewed in the light of the decisions, authority for the order.

Moreover, if appellant is joined as a party to the action, she would lose the protection of the bond which the plaintiff was required to furnish (C. P. A. par. 1108).

Mortgages—Foreclosure

Clinton Trust Company v. 142-144 Joralemon Street Corp., 145 Misc. 475, September 13, 1932.

The mortgage in question covered an apartment house, "together with all appurtenant fixtures and articles of personal property belonging to the owner of said premises now or hereafter attached to or used in connection with said premises."

The Supreme Court held that by virtue of this provision the mortgage covered coal in the cellar bin at the time of foreclosure.

NEVER SAY DIE

Although it has been ninety-two years since an Irish girl of 24 left her home in Kilkenny and was never heard from again, Surrogate George A. Wingate in Brooklyn refused to declare her presumably dead.

The relatives, who live in Ireland, informed the court that Mary Feehan left Ireland in 1840 to take a position as a servant in India. She never communicated with her family. Declaring that if she were alive she would be about 116 years old, they asked the court to presume her to be dead, to enable them to take over her estate, consisting of the brother's legacy.

"No single element of an unexplained disappearance has been brought to the attention of the court," Judge Wingate said. "The departure from Ireland was a deliberate and planned venture, known to her family. The purpose of her going has been established; she left to take up a new residence thousands of miles away in India. Apparently Mary Feehan never wrote to her brothers or sisters thereafter. There is no indication that she intended ever to return."

—The New York Times

Lawyers Fight Receiverships

(Continued from Page 1)

start anew and make an impartial investigation of the Irving Trust Co. and the whole question of corporate receivers in general. He advocated great caution in condemning the situation.

Former Judge Panken spoke next and held that there should be no more delays and picaresque quibblings of the sort that generally arise when there are committee investigations. He forcefully pointed out the fact that the action of the judges of the Southern District in giving all the cases to the Irving Trust Co. amounts to a stigmatization of the New York lawyers as being unfit and untrustworthy. He said the proper thing to do was to immediately draw up a resolution covering all the points suggested at this and other meetings and thus present to the public a consensus of opinion that would denounce the system of appointing corporations as receivers and trustees. In response to the implied insinuation that the profession was not to be trusted in bankruptcy proceedings he expressed himself as holding the legal profession in the highest degree of esteem.

Legislation Proposed

The general tone of the meeting was one of indignation as is shown by the repeated demands from members on the floor that something be done to end this "rotten system," as they called it. In answer to one member's request that resolutions asking for legislation on the matter be proposed, it was said that permission has been given to appeal a case to the Circuit Court of Appeals to determine the legality of the Irving Trust Co.'s appointment.

Another speaker, Samuel Leavitt, the only dissenting member of the Committee on Bankruptcy, made a scorching attack upon that committee in which he claimed its proposed resolution was only an attempt to whitewash the Irving Trust Co. In an impassioned fashion he stated himself as being ready to prove that the attorneys appointed by the Irving Trust Co. were under retainers from that institution. He attempted to prove by means of statistics and a chart published by the trust company that the individual receivers were just as efficient, if not more so, than the present standing receiver.

Committees Dormant

The proposals made by Harry Weinberger, another member of the New York County Lawyers Association, carried the insistence that the only important question before the meeting was that of allowing the growth of corporate receiverships, which, he claims, will lead to irreparable damage in the future.

The present system had a proponent in Charles H. Tuttle, former United States Attorney General, who spoke in favor of the selection of corporations as receivers and trustees and pointed out in favor of his opinion the various abuses that were prevalent under the old system. He told of several suicides that were the result of investigations by him of shady practices of individual receivers, and insisted that such happenings are not possible with corporate receivers. He asserted that the Bankruptcy Law would not work efficiently for cases in which the assets were small, because the tremendous overhead expenses used up what little money there was. In addition to this the creditors themselves did not really manage estates, in instances where that was necessary, but left it to others. He recommended the English method whereby paid receivers are maintained who are specially trained and have experience in the field of receiverships. He also suggested, as a temporary measure, that the Irving Trust Co. be continued in its capacity until proper legislation can be enacted to make impossible the evils that are a part of the present system of individual receivers.

The Justinian, Vol. 1933, Iss. 1 Law School Unit Sponsors Affair

The members of the Brooklyn Law School unit announce that on March 4th, a dinner and dance will be given by the Marine Corps Reserve at the Navy Yard, Brooklyn. As accommodations can be made for only two hundred at the dinner, it is necessary for those interested to immediately send their remittances. Subscription price for both dinner and dance is \$2.50 per couple.

Vehicle Skids; City Is Sued

Similar to German Case Where in City Was Held Responsible

New York City now faces a \$50,000 suit for its alleged negligence in paving a viaduct. The plaintiff, Adolf Kantor, while driving his automobile on Riverside Drive Viaduct skidded on the slippery wooden pavement blocks and went through the guard rail, falling seventy-five feet. He alleges negligence on the part of the city for having paved the viaduct with these wooden blocks and for failing to have a high enough curb and a guard rail strong enough to hold a skidding car. Kantor was south-bound when the accident occurred. He claims a traffic light turned red in front of him and when he applied his brakes, his car skidded and went through the guard rail.

A case with facts almost exactly the same was decided December 27 in Berlin. An attorney whose automobile skidded on the wet asphalt pavement of that city several months ago and crashed against another car sued the municipality for negligence. Although the case involved damages amounting to only \$19, it took the court ten months to finally decide the case. The court held that the city was responsible for the accident because the street paving is extremely slippery when wet.

Law Curriculum At Yale Altered

(Continued from Page 1)

tent of the law curriculum," stated the Dean, "is the result of an attempt to view the law realistically in its place in the complex economic and social conditions of modern life. Traditionally, legal study has been the examination of reported judicial precedents." Dean Clark goes on to point out that today there is an increasing attention to the social and economic conditions which determine legal principles.

One of the research projects that will be carried out under this new plan involves the study of the trial courts in operation with a view toward securing a picture of the actual practical problems of law administration. The same viewpoint will be emphasized in the courses on procedure.

WILDEBUSH "KEEPS PEACE"

Joseph Frederick Wilderbusch has the novel distinction of being a Justice of the Peace and a student of law at the same time. He has recently been appointed Justice of the Peace of Hoboken, New Jersey, his home town, and is attending the second year class of the Brooklyn Law School.

Wilderbusch is a graduate of Columbia University. He is a second lieutenant in 310th Reserve Infantry of Englewood, New Jersey. The new Justice of the Peace is now clerking in the law office of Solomon Gelb. He is a member of the Reserve Officers Alumni organization and while at college he participated in football and is a capable rifleman.

Kraus Defines Public Nuisance

Cites Prevalent Cases of Lawful Businesses Conducted in Unlawful Manner

PUBLIC RIGHT VIOLATED

In an address recently delivered over station WBNX and WMSG, Martin Kraus, Assistant District Attorney of the Bronx, discussed the crime of public nuisance in relation to some of the very recent cases in which he participated. "Our laws guarantee the right of free speech, the right to worship as we see fit, the right to express opinions as our consciences dictate, the right to use or do with our personal and real property as we desire," he said. "Yet to each one of these guarantees is attached certain legal restrictions. One of these restrictions is the crime of public nuisance."

Case Outlined

Detailing what occurred a few months ago when he prosecuted a case in Bronx county, the charge being a public nuisance, he continued:

Where the defendant owned a two-story house in a private residential district, consisting of other similar abodes, and rented the basement thereof as a club-room, with the permission of the Building Department, he was enjoined from such use when it was shown that the lessees of the club-room were so noisy and boisterous as to cause annoyance and discomfort to the whole neighborhood. The club-room was adjudged a public nuisance, despite the fact that the Building Department had sanctioned its existence.

Indifference Cited

Those familiar with a residential section, he pointed out, will appreciate the nuisance a dance hall or club may become if conducted without restraint or in disregard of the rights of others. "The defendant was warned that the manner in which he permitted the club to be operated seriously disturbed the peace, quiet, repose and comfort of the neighborhood," continued Mr. Kraus. "He was absolutely indifferent and took no steps whatsoever to remedy the situation. In fact his answer to the people who complained was that it was his property; that he could do anything he liked with it, and that he was getting rent from the club and intended to get this income irrespective of the effect upon the neighbors."

Legality No Shield

The mere fact that the defendant had obtained permission from the Building Department to lease a club room gave him no authority to violate the law. The lawful nature of the business is no shield for unlawful acts committed in the conduct of that business. "The mere fact that the business conducted by the defendant is in itself lawful is not an excuse in law for the commission of a public nuisance," Mr. Kraus stated. "A lawful business may be conducted in an unlawful manner."

The defendant's answer that owning the property, he could do as he pleased with it shows an utter disregard for the rights of others. Such an answer emphasizes his knowledge of the conditions.

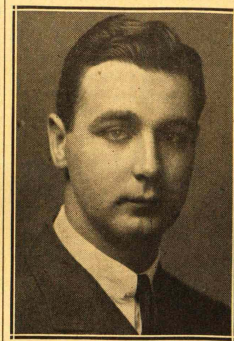
Properly Convicted

"The ever increasing unavoidable noises which are a part of the every day life of a large city should not be augmented by those which are unnecessary and which are harmful to the health and comfort of many of us," declared Mr. Kraus.

The defendant in this case was properly convicted of the crime of letting or permitting to be used a building or portion of a building, knowing that it was intended to be used for permitting or maintaining a public nuisance. The case was appealed to the Appellate Division of the Supreme Court of the State of New York and the conviction was affirmed on December 9th, 1932. The court, there, properly said that this conviction may be a step in the right direction.

Delaney Chosen As News Editor

Announcement of the appointment of Joseph L. Delaney as News Editor of THE JUSTINIAN was made by Milton E. Canter, Director of the Pub-



Joseph L. Delaney

lications Department of the Brooklyn Law School.

Delaney is the son of Transportation Commissioner and Mrs. John H. Delaney of 317 Washington Avenue, Brooklyn. He attended Marquand Preparatory School and Brown University where he distinguished himself as captain of the Lacrosse Team. He is a member of Phi Delta Phi National Legal Fraternity.

C. P. Printzlien, '17, Wins Appointment

Conrad P. Printzlien, who received his LL. M. degree in 1917, from Brooklyn Law School, has just been appointed Federal Probation Officer of the Eastern District of New York after resigning as Assistant United States Attorney. Born in Germany, Mr. Printzlien came to this country in his early youth and received his education in Manhattan. Since 1917 he has practiced law in Brooklyn and has also been very active in welfare work in the Bayridge section. Last November he was the Republican candidate for Congress in that district.

Mr. Kraus cited a Court of Appeals decision, of July 8th, 1930, which said that a public nuisance is one whereby a public right or privilege common to every person in the community is interrupted or interfered with.

Public Nuisance Defined

Judge Cardozo said: "Public nuisance is also the nuisance, committed in such place and in such manner that the aggregation of private injuries becomes so great and extensive as to constitute a public annoyance and inconvenience and a wrong against the community, which may be properly the subject of a public prosecution."

In concluding Mr. Kraus stated that although modern contrivances and inventions are of considerable benefit to the people and community at large, yet their use must be so regulated as not to injure or annoy the comfort, health, or repose of any considerable number of people.

"A considerable number of people," he explained, "does not necessarily mean a very great or any particular number of people."

"The familiar saying, 'There is no place like home sweet home,' would be an empty phrase unless we could bring to the bar of justice those who have no regard for the health or comfort or repose of their fellowmen."

Cohen Explains Legal Doctrine

"Realistic Jurisprudence," as Strictly American Trend, Described by Speaker

ORIGIN, HISTORY GIVEN

"Realistic Jurisprudence," as an outgrowth of a thoroughly American legal field, was described by Dr. Felix Cohen at the New School for Social Research recently, when he spoke before a group on "Realistic Jurisprudence and the Nature of the Law."

Continental doctrines and rules of law have prevailed in the so-called American field of law throughout the years, said Dr. Cohen. Until recently the American Lawyer hasn't had much success in being able to say "we have an American theory of law." "At present," the speaker continued, "there is being nurtured by the more important judges of the country and in the various law schools an idea that may be said to be wholly American. That is the idea of 'Realistic Jurisprudence.'"

"A prediction of the way courts will actually decide cases" is the definition of Justice Holmes which was quoted by Dr. Cohen to explain the theory. This definition, he said, is clear and there is only one side to it, no arguments can thereby arise over the meaning of the terms. He cited Blackstone's definition of law in comparison: "Law is a rule of civil conduct prescribed by the supreme power in the state commanding what is right and prohibiting what is wrong." Going into a discussion of the definition, the speaker showed the confusion resulting from this group of words and pointed out the necessity of a good definition.

Holmes First Exponent

Holmes, according to Cohen, was probably the first great exponent of the idea of "Realistic Jurisprudence." Judge Pound, is mentioned as a champion of this same doctrine, closely following the steps of Holmes. Dr. Cohen mentioned such Law Schools as Yale, Harvard and Columbia when he pointed out the fact that this theory was gaining wide recognition throughout the country. More time is being given to solving the puzzle of "what the Judge will do in a particular case" than heretofore. Judge Hutchison, one of the many brought into line with this doctrine has recently declared that law is a gamble and lawyers are gamblers.

It has been suggested, according to Dr. Cohen, that the judge be studied in an analytical manner. He stresses the point, however, that very little success has been achieved in this direction. He mentions as the most beneficial theory put forth in solving this problem, the "economic determinism" doctrine developed by many leading attorneys. According to this doctrine, the judges should be studied in connection with their economic connections of the past. It is very frequently proven, concluded Dr. Cohen, that a judge is greatly influenced by his business relations and it is worth while studying these relations when bringing a case before that particular judge, so that the manner of presentation might be worked out more beneficially beforehand.

EXTRADITION LAW

(Continued from Page 1)

that a citizen be given the protection of his own state. This leads to conflict, it is held, where extradition is demanded by the state where the crime was committed since it often necessitates removing a man from his own state. An illustration is the Burns case, which raised the question of his right to protection by New Jersey, the state in which he was a citizen.