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VOLUME II, No. 5

BROOKLYN, N. Y., TUESDAY, FEBRUARY 21, 1933

BY SUBSCRIPTION

Current Legal Decisions

Workmen's Compensation —
Wills — Evidence —
Bonds — Crimes

Workmen's Compensation — Master and Servant
Matter of Younger v. Motor Cab Transp. Co., 260 N. Y. 396, Jan. 10, 1933.

Claimant's husband, a taxicab driver, took the employer's cab from the garage and parked it at the taxi-stand in the street. He returned on foot to the garage for his pay. He was killed while returning to the cab.

The decedent was killed in the course of his employment. The case is distinguished from Matter of Cunningham v. Hunterspoint Lumber Co., 256 N. Y. 574, in that his action in first parking the cab, and then returning for his pay was not a purely personal act. It was proved that it was financially advantageous to himself and his employer to secure a position at the head of the line.

When some advantage to the employer, however slight, can be discovered in the workmen's conduct, his act cannot be regarded as purely personal and unrelated to his employment.

Wills—Election—Separation Agreement
Matter of Stolz, 145 Misc. 799. December 8, 1932.

A surviving husband who lived apart from his wife under the terms of a separation agreement by which he provided for her maintenance and support seeks to elect against the will, which made no provision for him, pursuant to sec. 18, Dec. Est. Law.

Sub. 4 of Dec. Est. Law 18 provides that no right of election shall be given a husband who has neglected or refused to support his wife or has abandoned her.

Since the abandonment contemplated by the subdivision referred to above is such as would sustain an action for a judicial separation under sec. 1161 Civil Practice Act, the plaintiff has the right of election.

To constitute such an abandonment, there must be a desertion without consent. Separation by agreement nullifies the theory of separation by abandonment.

Evidence — Rent — Documents —
C. P. A. 374a.

Funk v. Modo Lora Realty Co., 145 Misc. 805, Dec. 9, 1932.

In an action for rent under a written lease, the plaintiff was permitted to introduce in evidence the original ledger and monthly statements of the real estate agent who managed the building to prove the amount due. Defendant appeals.

The Appellate Division affirmed the lower court ruling, holding that the purpose of C. P. A. sec. 374a was "to afford a more workable rule of evidence in the proof of business transactions under existing business condition." The statute must be construed to accomplish the purpose for which it was enacted.

Bonds—Failure to Call
Hall v. Nassau Consumer's Ice Co., 260 N. Y. 417, Jan. 10, 1933.

Defendant corporation had issued bonds containing a provision that a stated number thereof would be called by lot for redemption in each of the years 1930 to 1939 inclusive. The defendant failed to call any of the bonds during the years 1930 and 1931. Plaintiff claims damages for breach of the provision.

The continuity of the plaintiff's (Continued on page 8)

Beer Decries Bank Receivers In Radio Talk

Makes Stirring Address Protesting Southern District Appointments

DEMANDS CHANGES

Claims Court Has Stigmatized Legal Profession

Henry Ward Beer inaugurated the series of radio addresses given under the auspices of the Alumni Association of the Brooklyn Law School. Mr. Beer is president of the Federal Bar Association of New York, New Jersey and Connecticut. He is also professor of anti-trust and trade restraint law at the Brooklyn Law School.

Beginning February 9, this series will be presented every Sunday evening at 8:00 p. m. over station WNYC.

The title of Mr. Beer's address was "The Dangers of 'Justice Incorporated'." The complete text follows:

In dealing with this subject, I must bear in mind that most of you do not know what I mean when I say "The Dangers of Justice Incorporated" and that the reasons for this short talk are unknown to a great many of you. But if you are a constant reader of one or more of our great New York newspapers, my subject is not new to you, because you will remember that about three years ago a great scandal was told in the daily papers from day to day concerning frauds and even suicides in the United States Courts in Manhattan. The United States District Attorney put four or five lawyers in jail, a United States judge resigned, all due to the fact that these lawyers and some other persons who had been appointed by the judges to take care of the property rights of bankrupt persons, violated their oaths of office as

(Continued on Page 7)

Junior Prom Mar. 18
at Hotel Ritz-Carlton

The Junior Prom of the Brooklyn Law School will be held Saturday evening, March 18, in the Grand Ballroom of the Ritz Carlton Hotel. All arrangements have been made by the committee which consists of the three Junior Class presidents: Alfred Chaison, Leo J. Margolin, and George Weisbard. Bernard Brandt, president of the Student Council, announced that the price will be two dollars per subscription. As the subscriptions are limited to three hundred, the committee urges those interested to procure their tickets immediately. Negotiations are still pending with several well known orchestras.

Seeks Changes In Criminal Law

Loughlin's Suggestions to Alter Code of Criminal Procedure Adopted

NEW RULES DESCRIBED

On February 7th several important amendments to the code of criminal procedure were proposed by Edward V. Loughlin, New York Assemblyman. These changes will add greatly to the powers of the prosecuting attorneys. According to great authority it is believed that these amendments will be adopted during the present legislative session and will take effect September 1, 1933.

In relation to appeals, Mr. Loughlin added the right to appeal to the court of appeals from an order of the appellate division "affirming or reversing an order granting a motion made upon the minutes of the grand jury, dismissing an indictment." At present, under section 519, the prosecuting attorney has no such right; the rights to appeal all strongly favor the defendant.

The suggested amendment to section 742 of the code relates to information filed by the district attorney in misdemeanor cases in the New (Continued on page 5)

Action Begun To Test Power Of Corporation

Practice of Law by Title and Trust Companies Attacked by Wollitzer

INJUNCTION IS SOUGHT

Attorney's Loyalty to Client Is Stressed in Plaintiff's Brief

The initial legal action to prevent title guaranty and bond and mortgage companies from what is termed "the practice of law by corporations" was begun with the service of complaints on seven such companies February 4 with Herman Wollitzer, a Queens attorney as the plaintiff. Answers will be filed within the statutory time of twenty days in the Supreme Court, Queens County, special term.

Agitation for definite actions has been raging for years in various legal groups but Mr. Wollitzer's action is the first which will provide an acid test for this debatable question. Both sides have indicated that the case will go to the Court of Appeals no matter what the outcome in special term and in the Appellate Division.

The companies served were the Title Guaranty & Trust Company, Bond & Mortgage Guaranty Company, National Title Guaranty Company, Home Title Insurance Company, New York Title & Mortgage Company, Long Island Title Guaranty Company and the Lawyers Title Guaranty Company. Representatives of these companies admitted service and stated that such action had been anticipated, the time of service only being in doubt.

Action Soon to Spread
Frank A. Belluci of Corona, Queens, former president of the Queens County Bar Association and attorney for the plaintiff asserted that similar (Continued on page 6)

Child Labor Law Greatly Abused

Depression Said to Have Lowered All Industrial Standards

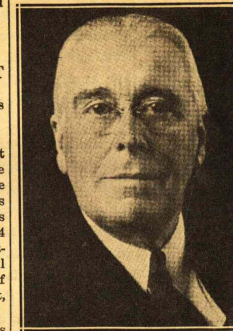
"The greatest care should be given at this juncture to enforcing child labor laws, improving tax laws, and maintaining established standards of minimum age, physical fitness, and working hours," according to the current report of the National Child Labor Committee. Because the depression has lowered industrial standards, violations of the child labor law are now frequent, this report points out.

The report states that at the recent child labor conference in Washington, called at the request of the American Federation of Labor, it was agreed to include the following items in the program for immediate state action:

1. A 16-year age minimum for leaving school and entering industry.
2. A shorter working day for minors than for adults, in no case to exceed 8 hours.
3. At least double compensation for minors injured while illegally employed.
4. Adequate administrative machinery (Continued on Page 5)

Bar Committee Indorses Judicial Appointments

BAR PRESIDENT



Judge Samuel Seabury

New Article Effective Oct. 15

Lame Duck Sessions Abolished; Succession of Chief Executives Explained

PREVENTS FILIBUSTERS

The Twentieth Amendment to the United States Constitution becomes effective October 15th. This is the last short session and President Roosevelt's successor will take office January 20, 1937, instead of March 4th. This amendment was formerly proclaimed on February 6th when Henry L. Stimson, Secretary of State, signed a certification that the amendment has become "valid to all intents and purposes as a part of the Constitution of the United States." 39 States had ratified it, New York being the first to do so.

Provisions of Amendment

The amendment provides that the president and vice-president take office on January 20th instead of on March 4th. The date for inauguration is thus a fortnight later than the opening of the Congress because the Congress must review the vote for both president and vice-president. Should there again be a case where no one has received a plurality in the electoral college, the decision will come before a new Congress whose members were elected at the time of the presidential election and not before an old one containing defeated members.

Members of Congress, according to this new amendment, shall enter upon their duties January 3rd after their election instead of thirteen months after. The new Congress convenes on that date so those who watch "the merry-go-round" will thus be saved the spectacle of the last gasps of the old Congress and the filibuster will lose its best stage effects.

Succession Plans Included
Specifications as to the succession to the presidency are included in this amendment. Should the president-elect die or fail to qualify, the vice-president-elect acts until a president shall have qualified. The Congress may provide by law for a case where both president and vice-president fail to qualify. (Continued on page 7)

Majority Report Frowns Upon Present System of Election of Judges

MINORITY PLAN ADOPTED

Pound, Raines, Jackson, Dobie, Rosch Present at Annual Meeting

The ideal method of selecting judges is by appointment by a conscientious and discriminating appointing power rather than the present elective system according to the majority report of a special committee of the New York State Bar Association read at its 56th annual meeting held recently, at the Bar Association quarters.

Three Day Meeting

During the three-day meeting papers of great interest to the legal profession as well as to the general public were read. The Honorable Cuthbert W. Pound, Chief Judge of the New York State Court of Appeals, discussed "The Independence of the Judiciary" as a subject of prime importance. Mr. Pound, a prominent attorney of Rochester, New York, reviewed the Workmen's Compensation Law through the eighteen years it has been in operation. The ever-present question of "The Law Justice in New York" was discussed by Robert H. Jackson of Jamestown, New York. The academic aspects of the meeting were well presented by two speakers; the first by Dean A. M. Dobie of the University of Virginia, Department of Law, who spoke on "The Teacher of Law" and the second by the Honorable Joseph Rosch of Albany on the subject of "The Lawyer's Obligation to the Law Student."

Widespread Interest Stirred

A hearing by the committee of the New York State Bar Association to consider the question of the method of selecting judges was held on May 26, 1932. Invitations were sent to the various Bar Associations and Federations throughout the State as well as to the representatives of different civic bodies interested in the question.

The two principal methods of selecting judges in the history of the nation and the state have been either by appointment by the Chief Executive of the United States or the respective States or selection by popular vote. As evidence of the great dissatisfaction that the majority of the committee believes is exhibited to (Continued on page 3)

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THE LAW SCHOOL FUNCTION

Of late, schools of law have been the butt of much criticism; on the one hand they are charged with giving the student a materialistic training only; conversely, they have been indicted as sponsors of theoretical thinking dissociated from reality. To the former charge it may be answered that no student survives three years of law school only on the basis of his knowledge of politics, business and the like. It is far more customary moreover, for one to come to law school with a materialistic outlook fully developed than for the law school to engender such a point of view.

The latter indictment requires more careful consideration. Recently, the argument has been advanced that the student of law is taught law as a static body, a stationary bundle of principles unaffected by contemporary economic and social mutations; it is proposed, therefore, to make economic and social training concomitant with legal training. The argument is outwardly fair, but actually quite misleading. Few are the law students of today, whether day or night apprentices of the law, who do not bring with them a background of actual economic and social participation in the extra-scholastic world. Few are the law students who confine themselves to legal halls to the exclusion of other matters of contemporaneous importance. Many colleges give special courses leading to the study of the law, in which courses economics and social history predominate; moreover, in almost all colleges the trend of the day is clearly towards social sciences—Plato has fewer disciples, while more seats are added in the Economics classroom. We doubt the wisdom and expediency of causing the law student to carry economics and social subjects along with his courses in law.

It is unjust, moreover, to assert that the student is fed principles divorced from the context of past and present origins. Any text writer or law professor of any consequence, will touch in some way the rationale of the principle enunciated, and its place in modern life. The so-called functional approach, whether openly espoused or not, is part of the present day study of the law. It may be true that it is principles of law which are largely emphasized, but why not? Certainly, the student having only three years in which to get a working knowledge of such principles, is entitled to have most of his instruction devoted thereto, especially in view of the fact that before, during and after law school, he obtains social and economic training through practical and scholastic media. Furthermore, only the dullest of legal minds, when confronted with a principle antagonistic to his cause, will forebear to adduce social and economic phenomena favorable to his position.

THE TWENTIETH AMENDMENT

The academic question, "if a President-elect should die or resign before his inauguration, who then would become President?", has finally been answered by the ratification of the XXth Amendment to the United States Constitution. Section 3 of this amendment states in part: "If, at the time fixed for the beginning of the term of the

President, the President-elect shall have died, the Vice-President-elect shall become President."

Although this problem has never arisen in the history of our country, the seriousness of the situation lies in the fact that our Constitution had not anticipated and provided for such a case. But the possibility for such a situation occurred as recently as February 15th last, when a wild-eyed individual with murder in his heart and a gun in his hand, discharged several shots in the general direction of President-elect Roosevelt. Being a duffer, he shot five other fellows, thus saving Congress the embarrassment of being forced to decide who would become President if the assassination had been successful. As the new amendment does not become effective until next October 15th, the Congress would have had to make its decision with no law to direct it.

LETTER TO THE EDITOR

A few days ago most, if not all, of the title companies operating in Queens County were sued in an action which alleges that they are practising law as a result of the various activities in which they engage in connection with insuring titles and lending money on mortgages. Many questions of great interest to the legal profession are involved in the action.

It is not the intention of this letter to discuss the merits of the particular controversy nor is it intended to discuss the question exhaustively in any way. The chief object is to set forth various matters in what is attempted to be a non-controversial way with the idea of seeing if the question can be clarified in any manner.

Title companies have been operating in New York City for about fifty years. When they first commenced their activities, there was a certain natural opposition on the part of the legal profession, who believed that their activities deprived lawyers of business which they had formerly had. The general practitioner in New York City of 1883, or thereabouts always did a certain amount of searching of titles. This is so today in the rural districts of the state where there are no title companies. The writer understands that one of the large title companies now operating in New York City was organized by lawyers as a protest against the activities of the first title company and that its policy at first was to protect the business of lawyers from the encroachments of corporations. At the present time this company apparently operates exactly as its older competitor.

Without pretending to have gone into the subject exhaustively, the writer believes that about fifty years ago general practitioners would have as clients large corporations which had a great deal of litigation, e.g., street railways, railroads, etc. Most of these large corporations now have their own legal departments, the members of which are paid fixed annual, monthly or weekly salaries. Presumably, the clients found this cheaper than paying their lawyers piecemeal.

For centuries, lawyers have enjoyed a state monopoly of practising law, whatever "practising law" may mean. (We will pass up for the moment the question as to whether certain activities constitute "practising law.") Presumably lawyers enjoy this monopoly because the state feels that it is to the interest of the state that they should enjoy this monopoly. However, it should be borne in mind that it is the interest of the state as a whole, and not the legal profession in particular, which is the chief consideration. Most legislatures have many members who are lawyers. Possibly the interest of the lawyers and the interest of the state at large are not in conflict. Possibly the public in general would be better off by having what has been termed "an independent bar," namely, a bar which is not subservient to the demands and orders of wealthy and powerful clients.

There is no doubt whatever but that a corporation, including a title company, which is about to enter into a contract, has the right—and would probably be under a duty to its stockholders—to retain lawyers to examine the terms of the contract. Whether such a lawyer for such a corporation is retained annually or on a piecemeal basis is a matter solely between the client and the attorney.

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The Forgotten Man



PRESS BOX

Cleveland, Ohio.—Police were called upon by Ellsworth Robinson to make his girl friend bring back his teeth. He explained to the Assistant Prosecutor that he and the girl had a quarrel on Saturday night. To be certain that I would return, he said, she took my teeth.

The girl, brought before the Prosecutor, said she had lost the molars. She was given until the following day to find them.

Louisville, Ky.—Crooning was a matter of concern in court today, with Mrs. Suzanne B. Nall, 45, seeking \$10,000 damages from Don Gavin, New York entertainer who played his banjo for the judge yesterday to prove his performance was not objectionable.

Mrs. Hall charges that at a performance here the spotlight was turned on her and Gavin came down from

the stage and sang into her ear a song she considered improper. As a result she said she became extremely nervous, fainted and has lost twenty pounds.

Philadelphia, Pa.—George Phillips complained in Federal Court that his "constitutional rights" were violated when the County Court cut a year and a half off his seven-year term in the penitentiary. What he wanted, really, was to get out. But the court today fixed him up by restoring his full "constitutional rights" for the next seven years behind bars.

Budapest.—Judgment rendered in suit by ex-one-legged beggar against trolley company, one of whose cars ran over him at Debrecen, severing leg: "Whereas prior to this accident

alms-seeking constituted plaintiff's means of livelihood, the court deems that the loss of second leg is of such nature as to augment plaintiff's chances of earning, and to assure him an even greater income in the future."

Debrecin, Hungary.—Because he slept through the sermon and punctuated the discourse with snores, David Fekete, a merchant was fined \$12.50.

Brooklyn, N. Y.—Alfred Rollo, burglarized a grocery store in Brooklyn and left no trace except his birth certificate which he left behind, upon the floor of the store. The police upon finding it, speedily found the not so proud owner, who at the age of 18, as indicated by the certificate, was sentenced upon a conviction of third degree murder.

It would probably not be unjust to the New York City Bar to state that probably a great majority know little, if anything, about real estate law, and that as a practical matter most of the energies of title companies are devoted to teaching lawyers how to practise real estate law. Certainly the average general practitioner today would shrink from the task of searching a title for a client who intends to buy a comparatively inexpensive residence. The amount of the fee which the business could stand would be so small that it would be out of all proportion to the amount of time spent on what has become for most lawyers an unfamiliar task.

Some months ago a bank or trust company in a western state was accused of practising law under the following state of facts:

When it was appointed executor or trustee, it conducted all legal proceedings in the name of an attorney of record who was paid a comparatively small annual salary by the bank. The attorney would in due course receive allowances from the court for the different estates or matters which he was handling, and he would turn over these fees to the bank. As a result, the bank received in the way of legal fees much more than the amount

which the attorney was paid by it as a salary. This, of course, is tantamount to practising law, and the bank was enjoined from continuing such practices.

It is the writer's understanding that under the present law of New York, statutory and otherwise, title companies may properly prepare all necessary instruments, e.g., deeds, mortgages, extension agreements, etc., in respect of titles which they are asked to insure. (People v. Title G. & T. Co., 227 N. Y. 366 [1919], Penal Law, 271-A, 280.) So far as the writer knows, there is no complaint on the part of lawyers as to this.

But in the following hypothetical case the lawyers may have a complaint:

A layman decides to buy a piece of real property. Through his broker or otherwise, he is sent into a title company since he has been told or has heard that it would be desirable for him to have title insurance. He enters a large and imposing looking office, is directed to the appropriate man and is handed a form of contract of sale prepared by the title company and is told to have this executed. The other party to the transaction may even be with him. It is conceivable that the two parties will sign the contract then and there. The title company then makes a search and will prepare the deed, mortgage or other instrument and arrange for the closing some thirty days later. The clos-

ing may be held at the title company and the deed, mortgage, etc., executed and delivered and filed by the title company as agent for both parties, and the transaction closed without the intervention of a lawyer for either the buyer or the seller. In common parlance, at least one, if not two, lawyers have been "done" out of fees for representing the purchaser and the seller. Whether such cases are at all frequent the writer does not pretend to know.

On the other hand, most, if not all, title companies make a practice of giving a percentage of the gross premium for the title policy to the lawyer who forwards the business to the company. Possibly this policy was adopted many years ago to conciliate the legal profession or such members of it as were hostile to title companies as depriving them of a certain amount of business. Those hostile to title companies have referred to this commission rebate as a "sop".

Necessarily title companies have to have legal advice, and, therefore, have to employ lawyers. In deciding whether to insure a certain title, frequently questions of law or great complexity have to be passed upon, e.g., the validity of clauses in wills or deeds involving perpetuities, or other questions which courts may ultimately decide by a divided vote. Possibly the title companies could make out a plausible argument to the effect that as a result of their existence many lawyers are given occupation who

(Continued on Page 3)

Waiver of Confrontation

By WILLIAM T. COWIN, Esq.

The economic struggle of the bourgeoisie for political and social rights, particularly in England, has left unmistakable scars in English and American criminal law. Perhaps if the struggle against the Lords and the large feudal land holders had not been so protracted and bitter, so many safeguards for defendants in criminal actions might not have been erected. In those times punishment was so severe and procedure so arbitrary that many safeguards were necessary to protect the innocent man. The privilege against self-incrimination, from which arose the prosecutor's disability to comment upon the defendant's failure to testify, the prohibition against double jeopardy, the right to indict by grand jury, and the right of trial by jury, were among the many bulwarks built to protect our English forbears.

Accused Must Be Confronted by Accusers

One of the most important of these safeguards is the rule which is still the Federal rule, that the accused shall be confronted by his accusers and by the witnesses who testify in behalf of the prosecution. Back in the eighteenth century, this principle was enunciated and recognized in *Res v. Clegg*,¹ and *Res v. Venables*.² This principle was so ingrained in the consciousness or shall we say subconsciousness of the pre-revolutionary populace that it had to be embedded in the Bill of Rights before the nascent states of the United States would be satisfied with their Constitution. We therefore find the following in Article 6 of Amendment Five of the United States Constitution: "In all criminal prosecutions the accused shall enjoy the right . . . to be confronted with the witnesses against him." This right of confrontation therefore became and now remains a check upon the United States Government.

The letter of the Amendment, "In all criminal prosecutions the accused is entitled to be confronted with witnesses against him," indicates that without a strict compliance there can be no legal prosecution of an accused.

Exceptions to Rule Due to Accuser's Fault

The exceptions, however, present themselves in instances wherein the accused has by his own acts or conduct prevented the operation of the constitutional safeguard, in which event, the decisions have held that the accused may not complain.³ While cases presenting facts constituting an exception are of rare occurrence, it is noted that during recent months the issue here discussed arose twice in New York during two trials on felony charges in the United States District Court for the Eastern District of New York. In both instances, the defendants remained in Court listening to the testimony against them, and cross-examining the Government's witnesses. When the case was called to trial on the following day (the defendants being continued on bond meanwhile), the defendants failed to appear. The trials were concluded during the absence of the defendants, convictions had, and the defendants sentenced at a later date upon their apprehension.

The situation created in the midst of a trial by the absence of the accused, while very unusual, has been passed upon in decisions of record, and the cases cited pass upon the Amendment and the exceptions referred to.

Absence of Accused No Bar to Trial in Major Offense

In *United States v. Loughery*, et al.,⁴ three defendants were placed on trial for "coining." After the trial had begun and was in progress, two of the defendants escaped from the custody of the Marshal. The trial was continued in their absence and a verdict of guilty returned. The defendants were subsequently apprehended and brought before the Court. On a motion in arrest of judgment, Judge Benedict stated:

"But the absence of the accused does not affect the proceedings when it arises from the fact that after the trial commenced the accused escaped from custody and his attendance cannot, for that reason, be had. The right of these defendants to be present during the trial was lost when they broke jail and escaped. Certainly great inducements to escape during the trial will be held out were it the law that, by an escape, further proceedings in a trial will be prevented. I see no reason for giving that effect to an escape, and I am furnished with no authority for that proposition."

The same rule applies where a defendant has absented himself from the Court, even though he has been released on bail. *Falk v. United States*,⁵ in *Dias v. United States*,⁶ the Court at page 556 states:

"But where the offense is not capital and the accused is not in custody, the prevailing rule has been, that if, after the trial has begun in his presence and if he voluntarily absents himself, this does not nullify what has been done or prevent the completion of the trial, but, on the contrary operates as a waiver of his right to be present and leaves the Court free to proceed with the trial in like manner and with like effect as if he were present."

Defendant Barred from Courtroom If Offensive

The trial may continue in the defendant's absence where the defendant has continually interrupted the District Attorney during his opening and denied certain of the District Attorney's remarks although admonished by the Court not to do so. In *Davis v. United States*,⁷ the defendant was placed outside the Courtroom where the counsel had easy access to him. The trial continued in his absence. The next day the defendant became composed and permitted to enter the Courtroom. After conviction a motion was made to set aside the judgment. The Court held that he was removed because of his own disorderly conduct, and since he created the disturbance, it was not with his mouth to complain.⁸

It is to be carefully noted, however, that the cases that have come before the Courts, govern the situation where the trial had been begun in the presence of the defendant, and he subsequently arbitrarily failed to make his appearance.

Defendant's Presence at Hearing Not Indispensable

While there are no reported cases on the proposition that if a defendant receives a hearing before a Magistrate or a United States Commissioner with the right to cross-examine all the Government's witnesses, subsequently is indicted, and the case called for trial, the trial may proceed in his absence, the Court, in the writer's opinion could properly proceed with the trial of the case without violating any of the defendant's constitutional guarantees. The hearsay rule requires that the accused have the right to cross-examine.⁹ Confrontation is nothing more or less than the right to cross-examine with the added advantage of observing the witnesses' demeanor on the stand.¹⁰ Nowhere in the Common law is there any indispensable right of confrontation as distinguished from cross-examination.¹¹ The founders of the Constitution merely enunciated the general principle of confrontation when

Judicial Appointments Indorsed

(Continued from page 1)

wards the present method of judicial selection, a resolution passed by the Nassau County Bar Association was introduced which stated in effect "that the elective system has not actually transferred the power of selection of judges from some person or group of persons to the people—as those who advocated selection of judges by popular vote contended—but has merely permitted them to vote for candidates by the managers of the dominant political party, with little or no control over the choice of the candidates, with the result that the elective system simply substitutes for a responsible agent of appointment an obscure and irresponsible one."

Evils Seen Exaggerated

Although the evils that are so manifest in the City of New York may not be as exaggerated in other localities, nevertheless, the fact remains that obvious and apparent defects which lessen the prestige of the court in one section of the state tend to have a deleterious effect on the courts throughout the state.

The majority report supports the proposal that judges be appointed for a term of fourteen years rather than a life term. In support of this contention it is argued that a judge who has made a creditable record on the bench during his fourteen years will undoubtedly be re-elected. Whereas, if during his tenure the judge did not develop such judicial fitness as to commend him to the Bar and the people, the Governor would have an opportunity to replace him.

Appointive System Superior

The appointive system offers a superior opportunity for the ascertainment of the merits of a candidate and deliberations of his qualifications. The hustle and bustle of a political campaign is not present. Political bias would be eradicated. Many eminently qualified men would be willing to accept appointments since they would be spared the expense and discomforts of a political campaign.

The minority report, which was endorsed by the New York State Bar Association favors the retention of the present elective system. No system of selection is entirely free from the effect of political preference, but the people of the majority of the state have shown on many occasions an independence of party control and have elected judges nominated by the minority party. Of course, since we are dealing with human affairs it is hardly to be expected that Utopian selections have always been made. But, nevertheless, the value of the elective system over the selective system has been amply proven. Appointments would be made, under the selective system, with the view toward party politics. It would not separate the judiciary from politics, but make it a part of political patronage for building party organizations.

Confidence Not Lacking

That lack of confidence in the administration of justice is growing is denied by Judge Pound in his speech before the New York State Bar Association. The administration of justice has always been attacked. Even Jefferson and Jackson sought to discredit the United States Supreme

Court. "The Courts are able to uphold freedom and justice and private rights and Constitutional liberties because the judges are independent of Legislatures, executive, personal or popular control," said Judge Pound. "When there has been lack of courage," continued the Judge, "when equality before the Law has given way to claims of privilege, prerogative or popularity, the administration of law has been brought into disrepute."

Fortunately, in this state, after judicial appointments have been made, the judges have been left as much to themselves as is practicable and desirable. Justice has not been tampered with, except when the Governor for moral and humanitarian reasons has seen fit, in some cases to modify the coldly legal results of certain capital cases. In closing Judge Pound stated, "Here can be expected only that cold indifference which may, and does exist, so far as may be possible in agencies not vested with Divine attributes, quite independently of party affiliations, friendships or dislikes, theories of governmental power, and personal obligations."

Medical Profession Profits

"The Workmen's Compensation Act has taken millions from the pockets of the Bar," said Mr. Eugene Raines, "but the saving has been handed to our brothers of the Medical profession." Taking this class of cases out of the ordinary classification of injury actions has deprived the lawyers of many opportunities, but the necessity of medical treatment and testimony required at the hearings of cases for awards under the Workmen's Compensation Act has increased greatly. The argument frequently advanced, that by creating a separate tribunal for the trials of such cases unnecessary delay may be avoided, has been proven fallacious by actual practice. Another objection is the right given the employer of selecting the physician to treat the injured employee. The advantage to the employer can be seen clearly. But such a practice is necessary in order to avoid the tremendous opportunities for collusion between the employer and doctor. Industry is already feeling the effects of the burden under the Workmen's Compensation Act and is giving evidence of it in the refusal of many concerns to employ men who have physical defects, or who are just past middle age.

Courts Reputed Slow

Speaking of "delayed justice in New York," Robert H. Jackson said, "It is a general observation of press and laymen that our courts are from one to four years behind in their work, and justice is denied by unreasonable delays. The door of the court is always legally open, but the doorway is impassable because it is jammed with long-suffering suitors." Central administrative control of the Judiciary may be a long sought remedy. A vast system like that of our judicial branch of the government, with a hundred-and-twenty Supreme Court Justices, three-thousand-six-hundred Justices of Peace, fifty-nine up-state City Courts, besides our own New York City Courts and Municipal Courts, require some central authority.

Loughlin Proposes Code Changes

(Continued from page 1)

York city courts of special sessions. As amended the district attorney is able to file information in a misdemeanor case with the court of special sessions "where the defendant was discharged upon an examination before a magistrate."

Deals With Fences

Section 1308 of the code relates to trials of persons charged with criminally receiving stolen goods. To this is added another section, 1308-b. By this amendment, the prosecuting attorney is given the power "to prove that, at or about the time of the commission of the crime charged, other stolen property was found in the possession, custody or control of such person without establishing from

whom such property was received." At present proof of possession of other stolen goods is not permissible.

In relation to assault, an amendment to section 242 of the penal law was proposed. This deems a person who, under circumstances not amounting to the crime of assault as specified in section 240, "assaults a witness or a person, about to be called as a witness in any action or proceeding, civil or criminal, or upon any inquiry or investigation whatever, conducted by authority of law, with intent to prevent his attendance thereat," guilty of assault in the second degree.

Proposes New Section

Mr. Loughlin also proposed adding a new section to the penal law, relating to indictment and proof in larceny cases.

SAVING CASE FOR REVIEW

By SAMUEL DEUTSCH, Esq.

That errors cannot be reviewed unless reserved by objection and exception is the general view.

Many lawyers, particularly recent practitioners in the heat of trial, will invariably forget to take their exceptions and will often, even forget to voice their objections.

Generally speaking, before error in the lower Court can be reviewed on appeal, an objection must be taken, the proper grounds for such objections given, and if the ruling is adverse, exceptions must be taken.

This is invariably the rule, particularly where the appeal is to be heard in the higher Appellate Courts such as the Court of Appeals of the State of New York.¹

There counsel is held strictly to account. No matter how flagrant the error may be, unless the proper objection and grounds for such objection have been specified and an exception taken, the higher Appellate Courts will refuse to review the question. Questions not raised in the lower court cannot be raised for the first time on appeal.²

Where substantial justice will be served, particularly where wholly incompetent evidence was admitted at the trial and injustice resulted, the lower Appellate Courts have at times departed from this general rule and reviewed errors in order to arrive at a just result.³

An objection which is overruled is the same as if no objection had been taken, unless the grounds for same were given and an exception taken. So where the objection is improperly overruled by the Court even though error, such error cannot be reviewed unless the objection was made, the proper grounds given and an exception duly taken.⁴

The failure of the defendant to move at the close of the plaintiff's case for a dismissal of the action is equivalent to an admission that the plaintiff has established a prima facie case. So also the failure to renew the motion to dismiss at the close of the entire case is equivalent to an admission that the plaintiff has established a prima facie case. The failure to take an exception to the denial of a motion to dismiss at the close of plaintiff's case and again at the close of the entire case is also an admission that the plaintiff has proved a prima facie case. In other words unless the defendant both at the close of the plaintiff's case and at the close of the entire case moves to dismiss and renews his motion to dismiss and takes an exception to the denial of each of such motions he concedes that the plaintiff has established a cause of action and cannot raise on appeal the question of whether the plaintiff has or has not established a prima facie case.⁵

Court Sometimes Reserves Decision

Sometimes the Court will not rule upon a motion to dismiss or will reserve its decision. Where no ruling is given it is too late for the Court to grant the motion after the jury render their verdict. Appellate Courts do not favor the practice of submitting the case to the jury and then passing on the motion to dismiss if their verdict should be contrary to the opinion of the Court. Counsel should insist upon a ruling and if it is not given take his exception.⁶

Another important factor necessary to preserve the right to review arises where a motion to strike out testimony becomes necessary. Oftentimes a willing witness will give an answer before opposing counsel has been able to make his objection. In such case an objection to the question raises no issue for review. The proper proceeding is to move to strike out the answer stating the same grounds that would have been available as an objection to the question had not the answer been prematurely given. Or sometimes, the question itself may be proper but the answer may not be responsive. The remedy is then the same, to strike out the answer because it is not responsive. The experienced trial counsel rarely if ever forgets to take an exception or objection when necessary. It is usually the novice who in the heat of excitement of the trial permits errors to pass by without reserving the right to review.

Difficulty, however, does often arise even with the most experienced of trial counsel where objections are temporarily overruled by the Court because counsel promises to connect such testimony by other testimony so as to make the evidence offered admissible, which otherwise, standing alone, would be objectionable because a proper foundation had not been laid for its introduction and it is only permitted to remain in the record temporarily upon the express condition that counsel offering such proposed testimony, will produce sufficient competent evidence to create the foundation for the introduction of the testimony proposed. A common example of this would be found in the trial of a negligence case. The plaintiff testifies that he received a certain injury and that since receiving such injury he has and still retains a limitation in the movement of his limb causing him to limp.

Expert Testimony Necessary to Sustain Complaint

This evidence tending to show the effect of the injury would be inadmissible unless it is supported by expert testimony of a physician showing the injury that plaintiff sustained, and that the said injury was the competent producing cause of the impairment of the limb causing the plaintiff to limp. In such case plaintiff ordinarily would be permitted to testify to the effect of the injury and to its continuance up to the time of the trial, if those were the facts, subject to connection by the physician's testimony showing that the present physical condition of the plaintiff as testified to him was the proximate result of his injury. Should the plaintiff fail to connect his testimony by omitting to offer the necessary proof on the part of the physician showing that the impairment in the use of his limb is the result of the injury sustained by the plaintiff then at the close of the plaintiff's case but not sooner, the defendant must move to strike out all of the plaintiff's testimony in this respect upon the ground that it was not properly connected and that therefore there was no foundation laid for the introduction of such testimony. If the motion is denied, and an exception taken, the error of law can be reviewed. Should the defendant, under those circumstances, fail to move to strike out the testimony at the close of the plaintiff's case and rely upon his

¹ How to Take an Appeal, Page 616, *Saulsbury v. Braun*, (1928) 229 N. Y. Supp. 70, 223 App. Div. 555 (affirmed in 1928) 240 N. Y. 618, 164 N. E. 606; *Gunsberg v. Gunsberg* (1922) 195 N. Y. Supp. 29, 202 App. Div. 757; *Valentine v. Valentine* (1903) 84 N. Y. Supp. 37, 87 App. Div. 156; *For v. Metropolitan St. Ry. Co.* (1904) 87 N. Y. Supp. 754, 93 App. Div. 229.

² *Volge Realty Corporation v. Chauncey Holt Co. Inc.* (1918) 172 N. Y. Supp. 206, 104 Misc. 581; *Dobbins v. Syracuse, Binghamton and New York Railroad Co.* (1915) 215 N. Y. 674, 109 N. E. 79 (reargument denied in 1915) 215 N. Y. 721, 109 N. E. 1073; *Atlantic Basin Iron Works v. American Ins. Co.* (1928) 226 N. Y. Supp. 676, 222 App. Div. 698 (reversed on other ground in 1929) 250 N. Y. 322, 165 N. E. 463; *Schlag v. Weiss* (1928) 227 N. Y. Supp. 338, 222 App. Div. 634.

³ *Hoar Safe Co. v. Brenner* (1917) 165 N. Y. Supp. 336, 100 Misc. 107; *McGrath v. Home Ins. Co. of City of New York*, (1903) 84 N. Y. Supp. 374, 88 App. Div. 153; *Studebaker Corp. v. Silverberg*, 199 N. Y. Supp. 190.

⁴ *Baily v. Hornthal* (1897) 154 N. Y. 648, 61 Am. St. Rep. 645, 49 N. E. 56; *Hopkins v. Clark* (1899) 158 N. Y. 299, 53 N. E. 27; *Union Pacific Railway Co. v. Daniels*, 152 U. S. 684; *Columbia & Puget Sound Railway Co. v. Hawthorne*, 144 U. S. 202.

⁵ *Klein v. Katz* (1922) 193 N. Y. Supp. 98, 200 App. Div. 473.

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⁸ 8 Mod. 3 (1721).

⁹ 8 Mod. 377 (1725).

¹⁰ The cases are cited and discussed at length hereinafter. See *infra* pages.

¹¹ 26 Federal Cases 998, Federal Case No. 15631 (1875).

¹² 15 App. D. C. 446, certiorari denied 181 U. S. 618.

¹³ 223 U. S. 442.

¹⁴ 25 Fed. Cases 773 (1875), Circuit Court, Southern District.

¹⁵ See also *Noble v. United States*, 294 Fed. 689, aff'd 300 Fed. 689.

¹⁶ *Hagen v. United States*, 268 Fed. 344.

¹⁷ *Wigmore on Evidence*, Section 1364.

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Waiver of Confrontation

(Continued from page 3)

they incorporated Article 6 of Amendment Five into the Constitution and left its interpretation to the Courts.¹² It would therefore appear that the defendants, having secured the right of cross-examination, have satisfied all the requirements that the founders of our Constitution demanded.

Amendment 5 Article 6 of Constitution Explained

If we assume a case where the defendant is apprehended, released on bail, indicted without a hearing before a magistrate or a United States Commissioner, and subsequently the case is called for trial, the Court could not proceed in such a case without the defendant being present at the time of trial, for the defendant never had the right to cross-examination. Might it be possible with the above stated facts for the Court to spell out a waiver by the defendant?

The theory of waiver alone is not sufficient to explain the reported decisions, for if the defendant's voluntary absence can effect a waiver of confrontation with some witnesses, and perhaps in some cases the most incriminating witnesses, there appears to be no basis at first glance for his voluntary absence from the beginning of the trial not to effect a waiver of confrontation with all the witnesses from the very beginning of the trial.

The Waiving of the Rule Discussed

On what basis therefore can the Court declare that the constitutional amendment demands the confrontation with at least one or some of the witnesses and that a waiver is effected thereafter. A review of the language of the amendment may lend some support to this theory, the amendment providing that "the accused is entitled to be confronted with the witnesses against him." It is to be noted that the statute at least technically demands the confrontation of the defendant with witnesses; but does not say all witnesses or every witness. Since the amendment in its language required only that the defendant be confronted with witnesses, it is arguable that the requirements of the statute are complied with when some witnesses have been called to the stand and thereafter a waiver by the defendant is effected, namely after the trial has begun.

A fundamental distinction between the Government's right to continue a trial and to commence a trial after the defendant's escape or voluntary absention is that in the latter case not only must a waiver be spelled out but a waiver in futuro. It must then be argued that the defendant has waived confrontation of witnesses that the Government may not have procured or whom the Government is not ready to present. In the former case, however, when the trial has begun and evidence taken, there exists a presumption that all the Government witnesses are at hand and can immediately be called.¹³ The waiver therefore is a waiver of an actual witness and not a theoretical waiver of any possible testimony the Government in the future might find.

¹⁰ *Summons v. State*, 5 Ohio State 341; *Fenwick's Trial*, 13 How. State Tr. 591, 638, 712; *Howser v. Conn.* 51 Pa. 337; *U. S. v. Reynolds*, 1 Utah, 322; *People v. Fish*, 125 N. Y. 150.

¹¹ Wigmore on Evidence, Section 1365:

"1827, Mr. Jeremy Bentham, *Rationale of Judicial Evidence*, b. III, c. XIX: 'Under the head of Confrontation may be found whatever advances (scanty indeed they will be seen to be) have been made in Roman procedure towards the introduction of that universal and equal system of interrogation above delineated and proposed,—consequently whatever part has been covered by the Roman law of the ground covered by the operation called Cross-examination in English law. The operation has two professed objects: one is the establishing the identity of the defendant, viz. that the person thus produced to the deponent is the person of whom he has been speaking; the other is that an opportunity may be afforded to the defendant, in addition to whatever testimony may have been delivered to his disadvantage, to obtain the extraction of such other part (if any) of the facts within the knowledge of the deponent as may operate in his favour.... (It is in Continental law) an imperfect modification of cross-examination,.... a faint shadow of it.'"

¹² Wigmore on Evidence, Section 1397.

¹³ *Campbell v. State*, 11 Ga. 374; *Lambeth v. State*, 23 Miss. 322, 357; *State v. McO'Brien*, 24 Mo. 416, 435.

¹⁴ Wigmore on Evidence, Section 1397:

"The rule had always involved the idea of exceptions, and the constitution-makers indorsed the general principle merely as such. They did not care to enumerate exceptions; they merely named and described the principle sufficiently to indicate what was intended,—just as the brief constitutional sanction for trial by jury, though absolute in form, did not attempt to enumerate the excepted cases to which that form of trial was appropriate nor to describe the precise procedure involved in it,—just as the brief prohibition against "abridging the freedom of speech" was not intended to ignore the exception for defamatory statements,—just as the brief guarantee of the right to have counsel was not intended to prohibit a prosecution where no counsel could be found by the accused,—just as the prohibition against involuntary servitude does not abolish the father's common-law right to the services of his child. The rule sanctioned by the Constitution is the Hearsay rule as to cross-examination, with all the exceptions that may legitimately be found, developed, or created therein."

¹⁵ *Reynolds v. United States*, supra; *United States v. Loughery*, supra; *Diaz v. United States*, supra.

6th Amendment Does Not Apply Where Convinnance Present

The Sixth Amendment does not apply where witnesses are absent due to the procurement or connivance of the defendants. In such cases their previous testimony may be read. In this regard the Federal Courts have followed the English Law. As early as 1666 in *Lord Morley's Case*,¹⁴ it was stated:

"That in case oath should be made that any witness who had been examined by the coroner and was then absent, or detained by means or procurement of the prisoner, then the examination might be read; whether he was detained by means or procurement of the prisoner, was a matter of fact of which we are not the judges but their lordship."

In *Reynolds v. United States*,¹⁵ the defendant was indicted in the Territory of Utah for bigamy. The absent witness was the alleged second wife of the defendant. The absent witness had testified upon a previous trial for the same offense under another indictment. The Marshal endeavored to subpoena her and went to the last known address, which was the home of the accused, with a subpoena, which by mistake, was issued in the name of Mary Jane Schofield instead of Mary Jane Schofield. When the Marshal arrived at the accused's home, he was told that the witness was not there, and in reply to a question "Will you tell me where she is?", the accused stated, "No, that will be for you to find out." The officer informed the

exceptions taken to the overruling of his objection to the testimony offered in evidence subject to connection, he will be unable to review the error on appeal.

The difficulty with this procedure is due to the fact that in a protracted trial, a number of days may intervene between the time that the objection is made and the close of the plaintiff's case. During this period of time, the defendant may forget to make his motion to strike out the testimony offered subject to connection at the close of the plaintiff's case. Several or even many of these objections may be raised in a protracted trial and evidence admitted subject to connection. So that at the end of the plaintiff's case unless careful notes were made by counsel he may not recall all of the testimony admitted under these conditions and thereby omit to move to strike out all testimony where connections were not made. The exclusion of the testimony, offered by the plaintiff subject to connection, may be just sufficient to prevent plaintiff from making out a prima facie case. It therefore becomes very important for the defendant to remember all the occasions where such proposed testimony was admitted in evidence and the promise to connect not fulfilled since his motion to strike out such testimony may be sufficient to deprive the plaintiff of all the necessary material to make out a cause of action. If the defendant permits such testimony to remain in the record by failing to move to strike it out, he thereby assists the plaintiff in proving his cause of action although there was not sufficient admissible evidence for that purpose available to the plaintiff.

Vital Procedure Overlooked

No other procedure would be more likely to be overlooked than such motions and yet none are more vital in the trial of an action.

To overcome this danger, a habit should be formed to bear in mind the making of motions to strike out testimony,—not connected, with the making of motions to dismiss at the close of the plaintiff's case, and again at the close of the entire case. It is very unlikely that any trial counsel whether experienced or inexperienced would often forget to move to dismiss so that if the habit were formed to make motions to strike out testimony at the trial which were not connected, there would be very little likelihood that such motions would be overlooked. To do this, trial counsel at the conclusion of both plaintiff's case and the entire case should mentally make motions to strike out the testimony and then proceed to make motions to dismiss.

How can this be done? While on this subject a cure for the young practitioner's failure to take exceptions to adverse rulings of objections taken, should be considered. While objections are not always raised when necessary, it is more often found that exceptions are not taken where proper objections are raised and overruled.

Another Exception Outlined

After the trial had been commenced and it appeared that the wrong name had been inserted in the subpoena, a new subpoena was issued that evening and the officer again went to the house and found there the first wife of the accused, who advised him that the witness had not been there for three weeks. The next morning the Court was advised of the facts, and ruled that evidence of what the witness had sworn to at the previous trial was admissible. In discussing the admissibility of this evidence, the Court stated at page 160:

"In this we see no error. The accused was himself personally present in Court when the showing was made, and had full opportunity to account for the absence of the witness, if he would, or to deny under oath that he had kept her away. Clearly, enough had been proven to cast the burden upon him of showing that he had not been instrumental in concealing or keeping the witness away. Having the means of making the explanation, and having every inducement to do so if he would, the presumption is that he considered it better to rely upon the weakness of the case against him than to develop the strength of his own. Upon the testimony as it stood, it is clear to our minds that the judgment should not be reversed because secondary evidence was admissible."

Another exception to Amendment Six is that in criminal contempt cases

¹⁴ 6 State Trials, 770. See also *Harrison's Case*, 12 State Trials, 851, and *Regina v. Scalfie*, 5 Cox C. C. 242 370B 258, wherein the Court held that a witness kept from the Court by the connivance of the defendant, the deposition of said witness taken before a magistrate in the presence of the prisoner might be read.

¹⁵ 98 U. S. 145.

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Federal Income Tax

The filing period for the Federal Income Tax ends March 15, 1933. Single persons who had net income of \$1,000 or more or gross income of \$5,000 or more, and married couples who had net income of \$2,500 or more or gross income of \$5,000 or more must file returns by this date. These may be filed with the Collector of Internal Revenue for the district in which the person lives or has his principal place of business. The tax is 4% on the first \$4,000 in excess of the personal exemption and credits. On the balance of the net income there is a tax of 8%. A surtax is imposed on net incomes in excess of \$6,000.

In addition to the personal exemption of \$1,000 for single persons and \$2,500 for married persons living together and heads of families, a taxpayer is entitled to a credit of \$400 for each dependent, defined by income tax law as a person under 18 years of age or incapable of self-support because mentally or physically defective. Neither relationship nor residence are factors in the allowance of the \$400 credit for a dependent. The taxpayer and the dependent may be residents of different cities. A single person supporting his aged mother is entitled not only to the \$400 credit for a dependent, but also to the personal exemption of \$2,500 as the head of a family. Under the revenue act of 1932 both the personal exemption and the credit for dependents are required to be prorated where the status of the taxpayer changed during the year.

Schedule of Income Tax

The normal tax rate is 4% on the first \$4,000 of net income in excess of the personal exemption, credit for dependents, etc.; and 8% on the remainder of such excess amount. The surtax rates begin on net incomes in excess of \$6,000. The rates increase in accordance with the amount of net income included in the varying income-tax brackets. On a net income in excess of \$6,000 and not in excess of \$10,000 the rate is 1% of such excess. The surtax on a net income of \$10,000 is \$40 and upon a net income in excess of \$10,000, and not in excess of \$12,000, the rate is 2% in addition of such excess. Information concerning the surtax on a net income of \$1,000,000 may be obtained from the Bureau of Internal Revenue.

A husband and wife living together may each make a return of the income of each, or their income may be included in a single joint return. If a joint return is filed, such return is treated as a return of a taxable unit, and the income disclosed is subject to both the normal tax and the surtax. Where separate returns are filed by husband and wife, the exemption of \$2,500 may be taken by either spouse or divided between them.

Under the revenue act of 1932 the credit for dependents as well as the personal exemption is required to be prorated where a change of status occurs during the taxable year. A fractional part of a month is to be disregarded unless it amounts to more than half a month, in which case it is considered a month.

A taxpayer, though single, who supports and maintains in one household one or more individuals who are closely connected with him by blood relationship, relationship by marriage, or by adoption, and whose right to exercise family control and provide for those dependent individuals is based upon some moral or legal obligation, is the head of a family, and entitled to the same exemption allowed a married person. He may also claim a \$400 credit for each dependent.

Gross and Net Income Different

Two of the terms used in the income tax law, namely, "gross income" and "net income", should be noted particularly, inasmuch as they are vitally important to the whole subject of the income tax.

Gross income includes in general all income from any source whatever, unless exempt from tax by law. Net income upon which the tax is assessed is gross income less the deductions allowed by law. Such deductions include business and professional expenses. Such deductions must be for an expenditure in connection with the maintenance and operation of the taxpayer's business or business properties; it must be an ordinary expense and it must be a necessary expense. Ordinary and necessary expenses are only those which are usual and essential in the case of similar taxpayers.

Certain new provisions are contained in the revenue act of 1932 concerning limitation on stock losses. Such losses may be deducted only against gains from similar transactions for the year. Such loss may not be offset against capital gains. This limitation is applicable to both corporations and individuals as well as other taxpayers. But it does not apply to dealers in securities as to stocks and bonds acquired for resale to customers or to banks or trust companies incorporated under the laws of the United States or of any State or Territory.

In defining "stocks and bonds" the statute specifically excludes therefrom bonds issued by a government or political subdivision thereof.

Losses of property by theft or burglary are allowable deductions, and need not be incurred in trade or business. Of course, losses compensated for by insurance or otherwise are not deductible. However, in the event the amount of insurance is not sufficient to recompense for the loss sustained, the excess of the loss over the amount of the insurance is deductible.

Bad debts may be treated either by deduction from gross income in respect to debts ascertained to be worthless or by a deduction of a reasonable reserve for bad debts. The burden is upon the taxpayer to show that a debt claimed as a deduction was without value during the taxable year. A statement should be attached to the return showing the propriety of any deductions for bad debts.

Charitable Contributions Are Deductible

Taxes on real estate and personal property paid during 1932 are deductible. Taxes which are assessed against local benefits, such as street paving and drainage, however, are not deductible, since they are considered as an increase to the value of the property assessed.

Charitable contributions and gifts made by an individual are deductible provided they meet the required tests. The corporation, trust, community chest fund or foundation must be operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to animals. No part of the organization's income may inure to the benefit of any private stockholder or individual.

In claiming a deduction for depreciation several fundamental principles must be observed. The deduction must be confined to property actually used in trade, business, profession, and to improvements on real property, other than property used by the taxpayer as his personal residence. In general, it applies to the taxpayer's capital assets, the cost of which cannot be deducted as a business expense. For example, a lawyer may not charge off as a current expense the cost of a library used wholly in his profession, this being a capital expenditure and the library a capital asset, but he may deduct an allowance for depreciation based upon the useful life of the library.

et al.: The Justinian

LEGAL PERIODICALS

By IRVING BRODY

The town of Green River, Wyoming, passed an interesting statute, in pursuance to the power delegated to it by the legislature of Wyoming, declaring what constitutes a nuisance and the method of abating same. The Ordinance declares that the practice of entering upon the private residences in town, by solicitors to sell, without the invitation of the occupants thereof constitutes a nuisance, and is punishable as a misdemeanor. The Boston University Law Review refers to the case of Fuller Brush Co. v. The Town of Green River, 60 Fed. (2nd) 613, in discussing this unique enactment. The plaintiff is engaged in nation-wide selling of brush merchandise by representatives, who solicit orders from door to door by going to the homes, uninited, in Green River and other townships and municipalities. The court maintained that the statute was unconstitutional and beyond the scope of the police power of the state. Canvassing, the court believed, is not in itself a nuisance and is beyond the police power. The police power is designed to protect the public health, safety, and morals. Albeit, the fields of regulation are small, the extent and scope of regulation are unlimited. To justify regulation, it must be for the best interest of the general public, and must not be an unwarranted restraint on private or property rights of an individual. Since plaintiff's business is a property right, he can pursue it without limitation, provided he does not endanger public health, safety or morals.

From various cases reported, the Legislature cannot forbid canvassing in homes, although it can prohibit selling in public places. It may also restrict the hours and require a license.

The United States Law Review quotes from the New York Legal Observer, published November, 1846.

"Sir Thomas Davenport," said Lord Eldon, "was a very dull speaker. Whilst making a very long, dull speech, to a jury in Northumberland, a boy, asleep on a window considerably high from the floor, fell, and was reported, inaccurately, to be dead. I was at that time attorney-general of the bar (a jocular office); and at the domestic court, at Appelpy, I indicted him for wilful murder, perpetrated by a long, dull instrument, viz: a speech. He was convicted and severely fined."

The name or title of a musical composition is not property although the piece is copyrighted, the New York University Law Quarterly Review discloses, in the case of Gotham Music Service Inc. v. Hoskins Music Publishing Co., Inc., 259 N. Y. 86. The plaintiffs published the song "Gambler's Blues," an old favorite which had never been copyrighted, under the name, "The St. James Infirmary Blues." They conducted a publicity campaign and popularized the song. A year later, the defendant, a rival publishing concern, published the song under the title, "The St. James Infirmary Blues, or Gambler's Blues." The plaintiffs were unsuccessful in their action to enjoin the defendant from using the title, "The St. James Infirmary Blues, or Gambler's Blues." The court said that the copyright protects the composition, not the title. The use of titles and names will be enjoined, however, to prevent unfair competition.

The George Washington Law Review reports that when Stoyou Saraliff petitioned for naturalization, it was denied. In re Saraliff, 59 F. (2d) 436. Saraliff, at the time of petitioning, was editor of a newspaper printed in a foreign language which was strongly advocating the amendment to the United States Constitution whereby the three governmental departments be abolished, the reigns of government be taken over by "producers," and that public ownership be substituted for the institution of private property. The court stated that Saraliff has not behaved as a person "attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States," as required by the Naturalization Act. The changes advocated by Saraliff would abrogate the principles enumerated in the Constitution, for which principles he professed attachment. Nor was he disposed to the Constitution, the court believed, for he was hostile and opposed to it.

Mr. Robert P. Reeder, an attorney in the Department of Justice, who has specialized in constitutional law and constitutional history, has commented "Upon Failure of Accused to Testify" in the Michigan Law Review. It is a treatise discussing the resolution passed by the American Law Institute and the American Bar Association declaring that the judge, the prosecuting attorney, and counsel for the defense may comment upon the fact that the accused, in a criminal action, does not testify, and may draw a reasonable inference therefrom. The privilege against compulsory self-incrimination is firmly embedded in the Constitution of the United States and most of the states, he declares. In commenting upon the proposed plan, he asserts that it is unconstitutional in the case of Federal legislation under the United States Constitution, and in most of the state legislatures. Furthermore, it would be expedient to provide safeguards to insure that natural inferences would be drawn by the jury. In addition, the person accused may be innocent of the crime charged. Yet, he might fear that in the cross-examination, he might disclose another offense which might injure him in the eyes of the jury. Thus, unless the scope of cross-examination were limited, it would be impossible to draw an inference worth drawing from the failure to testify. The subsection to comments would clearly be in derogation of one's constitutional rights, Mr. Reeder believes.

A rare English case is cited in the University of Pennsylvania Law Review, Rex v. The Daily Herald, (1932) 2 K. B. 402. While great public interest was aroused in case, pending in the ecclesiastical courts, which involved sexual irregularity of a rector, the defendant newspaper was held subject to punishment summarily as a "gross contempt" of the court. The paper published statements by the woman concerned that she had been bribed to make false accusations while drunk, and by the rector charging corruption and bribery of his "traders." This is an indication of the utility of the summary power as exercised by the British courts. The American practice, it is disclosed, ignores, for the most part, obnoxious sensationalism, and exercises its power in suppressing any criticism of the courts. The writer advocates increased use in respect to excessive sensationalism in criminal cases and less in curbing criticism which might be of value.

The Texas Law Review includes an interesting discussion by Prof. C. D. Potts, of the law school of Southern Methodist University of "The Declaratory Judgment." This form of relief, it is interesting to note, was in practice in Scotland in the Sixteenth Century, though introduced in the United States about seventeen years ago. The passage of the Chancery Procedure Act of 1852 introduced it into the English practice. New Jersey, in 1915, was the first state in the country to adopt it. Twenty-one states have since followed. Michigan adopted it in 1919, but it was held unconstitutional. It reappeared in 1929 with minor modifications, and its validity has been recently upheld by a unanimous court in Michigan. Professor Potts declared that it is not within the scope of the judicial power conferred upon the courts of the United States, for a proceeding for a declaratory judgment is not an actual "case or controversy" within the meaning of the Federal Constitution.

CHILD LABOR LAW

(Continued from Page 1)

ery for the enforcement of child labor laws.

Progress Has Been Sad

The history of the attempted federal child labor laws is a sad one. The first Federal Child Labor Law was approved on September 1, 1916. On June 3, 1918, the U. S. Supreme Court declared it unconstitutional. This law prohibited the shipment in interstate and foreign commerce of goods produced in mines or quarries in which children under 16 years of age were employed, or in mills, canneries, workshops, factories, or manufacturing establishments in which children 14 to 16 years of age worked more than 8 hours a day or 6 days a week, or between 7 p. m. and 6 a. m.

The second Federal Child Labor Law, included in the Revenue Act of February 24, 1919, imposed a tax upon the profits of all mines and manufacturing establishments employing children in violation of the standards mentioned in the former law. This was declared unconstitutional on May 15, 1922.

In 1924, a joint resolution was passed by the 68th Congress giving it the power to limit, regulate, and prohibit the labor of persons under 18 years of age. To date only 6 states have ratified this amendment. Ratification by 36 states is necessary for the amendment to become part of the Constitution.

Difficulties Change Approach

Because of the difficulties with federal legislation this committee is concentrating its efforts on improving the state laws. The report continues giving the present regulations in the 48 states.

A minimum age below which children may not be employed, except in

occupations such as agriculture, domestic service, and street trades is specified in most states. In some states, however, this applies only to manufacturing work, or a specified list of occupations. Most states specify a higher age below which children cannot work during school hours unless they have met certain educational requirements. In the majority of states, 39, this age limit is 14 years. The grade to be completed is the eighth grade or elementary course in 25 of these states.

State Laws Vary Greatly

Regarding dangerous occupations, most states specify a list of occupations prohibited for children under 16 years, and some states another list for children under 18 years. Many also include a general statement to cover any occupations dangerous to life, limb, health or morals, and some states give power to the labor or health department to extend this list by so ruling.

In only 21 states is there a law regulating the employment of children in street trades. Thirty-five states permit boys under 12 years and 29 states permit girls under 12 years to engage in street trades. Some cities, though, have municipal ordinances on this subject.

Courtenay Dinwiddie, general secretary to the Committee, has pointed out the great difficulties of improving legislation in this field. The various legislatures look with much suspicion upon bills proposing reforms. Some of the more important child labor bills defeated in 1932 include proposals to raise the minimum age for children leaving school for work from 14 to 15 or 16 years in Massachusetts and New York; bills to reduce working hours for women and girls over 16 in Massachusetts and Rhode Island.

Saving Case for Review

(Continued from Page 1)

action even before the plaintiff has rested. So quickly does this sometimes occur that all but the very experienced lawyer will stand dazed while counsel for the plaintiff in the next cause of action takes his place ready to begin a new trial. By the time he recovers from his stupor, the new trial is in progress and it is then too late to register his objection and objection. Another instance where the right to review is lost is where the Court fails to pass upon an objection or motion made during the trial. A failure on the part of counsel to insist upon a ruling so that an exception can be taken is fatal as far as a review is concerned. Where the Court refuses to rule, an exception may be taken to his refusal to do so and also an exception to the ruling, if adverse.

Court's Failure to Rule

The failure of the Court to rule is frequently the cause of the failure of counsel to take exceptions. On many occasions discussions arise between Court and counsel on questions of law raised upon exceptions and objections. These discussions often cause counsel to overlook the preservation of their rights by failing to note an exception in the record.

Where exhibits offered in evidence are excluded, an exception to the exclusion of such exhibits are not sufficient to raise the question of any errors on appeal. It is first necessary to have the exhibit marked for identification and then as so marked offered in evidence. If it is then excluded, an exception must be taken. If marked for identification it becomes a part of the record on appeal as though it were offered in evidence. If it is not marked for identification it will not appear in the record on appeal and there will be nothing to guide the Appellate Court in determining its admissibility in evidence.

Errors in the charge or refusal to charge are often the occasion for re-

versal. It therefore becomes important that proper measures be taken to preserve that right for review. A general exception to the charge does not raise any question on appeal. An exception to the charge must refer to the particular part of the charge complained of. It need not give the exact words of the charge but must specify it sufficiently to be recognized.

Where a request to charge is made and the Court does not charge exactly as requested it is then necessary to except to the refusal of the Court to charge as requested and also to except to that part charged by the Court which was not requested.

Where requests to charge are refused it is then necessary to take an exception.

Jury Verdict Not Unanimous

Although very rare, it does sometimes happen that the verdict of the jury, as rendered to the court, after their return from their deliberations in the jury room, is not the unanimous verdict of the jury.

After the jury is discharged it is extremely difficult, if not impossible to set aside the verdict upon the ground that it is not unanimous.

The proper procedure is to have the jury polled immediately after their verdict is announced. Each jury is then asked separately if it is his verdict. And if he should state that it is not, the verdict must be immediately set aside by the court or the jury returned to their room for further deliberations.

The motions to set aside the verdict and for a new trial and exceptions to denial of same are the final steps in the trial to preserve your rights to appeal. Although in some jurisdictions as in New York State an appeal from the judgment entered upon a verdict of a jury trial raises all questions on appeal reserved by exceptions without the formality of a motion to set aside the verdict and for a new trial.

Saulsbury v. Brown (1928) 229 N. Y. Supp. 70, 223 App. Div. 555.

Opening and Summation

By PROF. EDWIN W. CADY

The opening should be limited to a definite statement of the extent of the issues and of the nature of the proof to be presented. Care should be taken to omit all argument until the summation. The summation should be the continuation of the opening in which the case should be presented to the jury in its full logical form. To prepare a skeleton of the speeches in the 11-point sheet is necessary, not for the purpose of reference in the midst of the speech, but to enable counsel to co-ordinate in his mind the most effective arrangement of the facts and arguments; to provide for a premeditated discrimination between what is primary and what is secondary and subsidiary; and to insert arguments so staged as to persuade and convince.

The opening, therefore, should state the special issues of the complicated mass of facts and arguments that are to be reproduced before the jury through the mouths of the witnesses. The sentences should be short and correlated and contain only what is necessary to an understanding of what the dispute is about. Counsel should state which side he represents; the history and definition of the dispute; what facts are admitted by the pleadings, which are always in evidence in a case; what, for the purpose of the case, is waived or taken for granted by the side which the counsel opening represents; and what counsel's side will prove as to the controverted facts. All these matters should be stated as facts, avoiding, if possible, the use of law terms. Say "fault" instead of "negligence," etc. Exclude ruthlessly from the opening, all groups of ideas except the special issues on which the decision will rest at the close of the trial.

Fairness Demands Testimony as Basis for Facts

Neither counsel in the opening has an opportunity to anticipate and meet the arguments which will be used later by his opponent. The objection is "Summation." Counsel will be tempted to draw certain conclusions in the opening whose proper place is in the summation. But he must not, at this time, let them be foreseen, or rely at all upon the fairness of opposing counsel. Instead, one must get the premises on which he relies for winning the case, admitted into the facts through the testimony of the witnesses, mingling them in here and there, in no definite order. On the other hand, one may draw up questions to be propounded to the witnesses, adapted to prove pre-mises of these premises, so as further to conceal his point, some of which the opponent may admit by not refuting them. When you see your opponent employing this plan against you, the proper foil is an objection to the *materiality* of the question. If the court then helps you a little by asking opposing counsel what the purpose of the question is, you force a reply which may give you a thread by which you will be enabled to penetrate his design. Otherwise, the court's innocent little inquiry will force him to withdraw the question, or to disavow any particular purpose other than that of finding out what the fact is. See Schopenhauer's Aphorisms, iv, citing Aristotle, "Topica" book 8, chap. 1.

The summation is the body and the conclusion of the address of which the opening to the jury was the introduction. The weak juror has three opportunities of understanding the issues. First, they are stated to him in the opening of each counsel, but only in respect to the theory of the case of the respective counsel. Second, he hears them from the mouths of the witnesses, and in the arguments of law by counsel. Counsel should be eager to make arguments of law and should anticipate, in his 11-point sheet, questions that may be asked which will not fit in with his theory of the law of the case. Lastly, the juror receives his final instruction in the summations of counsel, and in the charge of the court. For the purpose both of deciding and defining the law involved in the case correctly, and permitting the juror to have a complete understanding of the special issues, as far as his education in this respect can be carried in the course of a trial, the argument of law should be renewed as frequently as possible, but each time in a different form, and in relation to a different question, so as not to transgress the rule that when the court has once spoken there can be no further argument. If counsel fails to present his argument on the law in as many forms as subsequent questions propounded by the opposite side would suggest, the appellate court may decide that the objection was not sufficiently pressed. Also, in passing, it may be said that the other side can be safely relied on to attempt some enlargement of any ostensible advantage that it has gained in the case, and this step will constitute a sufficient opening for the restatement of the argument.

Precognceived Theory of Case Usually Altered

The advocate's preconceived theory of the case will doubtless have received some severe shocks during the course of the trial. For instance, if he has made the unforgivable mistake in cross examining, of asking a question which by any conceivable possibility the witness can answer unfavorably to the questioner, and the witness has seized the opportunity thus afforded him, the weight of the evidence theretofore adduced may have to be shifted from one side to the other by the answer. But barring some mistake in counsel's conduct of the trial, the argument to be presented to the jury can be formulated in advance of the trial by subdivisions in the 11-point sheet. The brief on the summation should be subdivided into three parts, marked "Introduction," "Argument and Equities," and "Conclusions."

The "Introduction" to the summation should set forth the facts as to which there is no conflict, and, separately, the facts which are in dispute. Not infrequently, a most intelligent juror fails to differentiate or perceive this simple matter. For instance, in an action brought to recover from the city a portion of the sum paid for vault space representing the space covered by an ancient vault, wherein the plaintiff proved and the city by not contesting admitted that if the ancient vault had once been paid for it was not entitled to exact any sum for it altho the sidewalk and cover had been removed, it was found, after the case had been taken from the jury, that one of the jurymen had conceived the idea that the controlling issue was whether the sidewalk and cover had been removed. Title G. & T. Co. v. New York, 185 App. Div. 688, 173 N. Y. S. 718. Also, in your requests to charge, ask the court to charge, as to the non-contested facts, "That the following facts are established in the case, viz. . ."

The second part of the summation, "Argument and Equities" should be divided into heads and subheads, so as to make clear to all jurors, the crux and deciding argument, as well as the development of the evidence by which counsel has proved the elements of substantive law which had to be proved in order to win the case, or, for defendant, that he has met with an equal weight of contrary evidence, one of the elements on which the plaintiff had the burden of proof, as to which the judge will charge the jury at the appropriate time.

It is a great mistake for counsel to fail to interject in this part of his speech a discussion of the equities. In fact, if the court unduly limits the time for summation, and so renders it necessary to omit some part of the argument, the equities of the situation should never be the part to suffer. What is meant by the equities of your cause may be illustrated by quoting

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Fraternities and Sororities

PHI DELTA PHI

The Founder's Day banquet will be held at Keene's Chop House on Saturday evening, April 1, at 7:30 p. m. John J. Scott, the chairman of the committee in charge of this affair, plans on having entertainment and several prominent speakers. Listed among these speakers is Judge McCrate.

On April 24, at 8:30 p. m., a Pledge Smoker is to be given. Morris Heath has been appointed to make the arrangements for this smoker. The fact that there will be no speakers is emphasized.

The Committee on Rules and Regulations has just been announced. It consists of John J. Murphy, John J. Scott and John H. Easterday, Jr.

IOTA THETA

On January 16, 1933, Iota Theta held its Winter Initiation, at which time George Talianoff, Sam Korb, Edward J. Storek, Max Fefferman, Samuel Herman, and Mac Paley were inducted as new members.

A series of inter-chapter debates is being prepared, and the first one scheduled is to take place some time in the near future between Alpha chapter (at Brooklyn Law School), and Beta chapter (St. John's Law School). The graduate members of the fraternity are to act as proctors, and the undergraduate men are to act as the parties and counsel.

A Bridge and Dance is scheduled for February 26, 1933, at the Plaza Hotel, in New York, which is being run in connection with Iota Phi Pi Sorority. The committee is under the co-chairmanship of Miss Ida Barkin and Henry A. Robinson.

At the last regular monthly Seminar Smoker, held on Friday, February 10, 1933, Professor Frankham was the guest speaker. This forum is a regular monthly event under the direction of Milton G. Gershenson, as chairman of the Educational Committee.

PHI KAPPA DELTA

A Cultural Smoker, the first of a series introduced by N. Kenneth Gross, Reximus of Phi Kappa Delta and Chairman of the Educational Committee, will be held in the Men's Lounge in Richardson Hall on Friday evening, February 24, 1933, at 8:00 P.M. Dr. Jacob Rabinovitch, former pathologist at the University of St. Louis Medical School, and presently associated with the Surgical Staff of the Jewish Hospital, will be the guest speaker of the evening. The feasibility of the use of "Hypnosis in Legal Practice," will be the topic of discussion.

An Employment Committee composed of alumni of Phi Kappa Delta, has been organized, whose purpose will be to aid the undergraduate body of Iota chapter in securing positions in the legal field. Abraham Olian, chairman, is assisted by Milton Siegel, Lester Rothstein and Sam Borenkind.

Preparations are being completed for the Annual Spring Hop, which will take place sometime in March. The committee in charge is composed of: Henry Diemer, Chairman, Irving Kesselman and Morris Udoff.

KAPPA PHI SIGMA

Plans are being completed for the removal of the fraternity to larger quarters. The chapter which is composed of Long Island University students as a nucleus, is now endeavoring to consolidate all former students of L. I. U. for the purpose of holding moot trials.

Reximus Joseph Newman has been appointed a committee composed of Past Reximus Morris M. Hertz, Past Reximus Sol Diamond, Julius Berzinsky, and Morris Cohen, to invite Professor Paynter, of the Psychological Department of L. I. U., to lecture on Criminal Psychology.

IOTA ALPHA PI

Gamma chapter of the Iota Alpha Pi, in conjunction with Alpha chapter of Iota Theta Law Fraternity, will hold a Bridge and Dance on Sunday afternoon, February 26, 1933, at the Hotel Plaza, at 2:30 P. M.

Installation of the pledges of the Metropolitan chapters will be held on Sunday, February 19, 1933, at the Fraternity Club. A dinner will follow the rituals.

OMEGA PHI

On Sunday, January 29, 1933, a meeting was held at the Towers Hotel, Brooklyn, of the Delta chapter, at which the Misses Genevieve Finch, and Vivian Dreyer were initiated. Each member was presented with a corsage, and following the ceremony, luncheon was served to all the present.

TAU EPSILON DELTA

On February 26, 1933, the sorority tendered a Bridge and Dance which was held at the Governor Clinton Hotel in New York, in honor of the 10th Anniversary of the chapter.

Miss Anne Siegel Rich is a recent pledge.

The last meeting of the sorority was held in the home of Miss Jeanette Harris, at which meeting Miss Rose Goodson presided.

Dr. Paynter Treats Legal Psychology

"Applications of Psychology to Legal Problems" will be the subject of an address to be delivered by Dr. Richard H. Paynter at the Brooklyn Law School on Friday evening, February 17, at 8:30 P.M., in the Law School Chapel at a legal forum of the Long Island University Club.

In the course of his lecture Dr. Paynter will give a few demonstrations and tests on visual memory. He will include, also, in his discussion reports on the results of recent experiments on testimony and evidence, differences in the interpretation of events, and will give a psychological study of court decisions.

Dr. Paynter is president of the Association of Consulting Psychologists, 1932-1933, and head of the Department of Psychology at Long Island University. He is a member of the executive committee of the clinical section of the American Psychological Association and was a Psychological Examiner for the United States Army during the World War. Dr. Paynter is the author of "Psychological Study of Trade Mark Infringement" and co-author of "Educational Achievements of Problem Children."

The officers of the Long Island University Club, the sponsors of the address, are Alfred Lucia, president; Leo Margolin, vice-president, and Silvia Fingerhut, secretary-treasurer.

ALPHA GAMMA

On January 15, 1933, Gamma chapter held an initiation, and duly initiated Herbert H. Widder into the fraternity.

On January 28, 1933, the fraternity held its annual mid-winter informal dance at the Yorkville Temple in New York. Entertainment was supplied by the graduate fraters. The orchestra was composed of local talent—all being members of the fraternity.

A Grand Council Meeting was held at the Eta House in Philadelphia, on Sunday, February 5, 1933, under the auspices of the fraters of Temple University. The Saturday evening preceding witnessed an informal social give in honor of the New York representatives, tendered by the Eta fraters, and the Temple-U girls.

A Smoker was held Friday, February 10, 1933. Professor Murphy was the guest of the evening.

LAW SCHOOL PLACEMENT NOTICES BUREAU

FIRST YEAR SMOKER

On Friday, February 24, 1933, the first year, 7-9 class will tender a smoker in the Men's Lounge, under the guidance of Mr. Rosen, president. The 10-12 class will hold its smoker on the 17th of February, 1933, at the same place.

CLASS OF '32 REUNION

The first annual reunion of the class of 1932, Brooklyn Law School, 6-8 Part II, will be held on February 19, 1933, at Rosoff's Restaurant, No. 147 West Forty-third Street, New York City. For information communicate with A. Olian, in care of Giar & Swetlow, No. 130 West Forty-second Street, New York City; Wisconsin 7-0506.

BROOKLYN JUNIOR FEDERATION

Under the auspices of the Lawyers Committee of the Brooklyn Junior Federation, a series of interesting speeches have been held in the Law School Auditorium. The first of this series was held on the 21st day of November, 1932, at which time Mr. Samuel Liebowitz, noted criminal attorney delivered an interesting address on "What to do with a criminal case when you get one."

The second was held on the 16th day of January, 1933, at which time the eminent Professor I. Maurice Wormser addressed the student body on "Law and Big Business." Several distinguished practitioners have consented to deliver talks on various subjects, and the Federation is preparing an instructive program to present these different speakers at different times. Future notices will be posted in reference to the same.

FIRST ANNUAL DINNER

The 8-10 session of the class of 1932 will hold its first annual dinner Wednesday evening, March 1, at 7 o'clock at Joe's Restaurant, 330 Fulton St., Brooklyn. For particulars address M. S. Lebe, care of Baar, Bennett and Fullen, 29 Broadway, New York.

C.C. Club Chooses Scholarship Group

The last regular meeting of the City College Club was held at the College Club room in the Law School on February 3, 1933. At this meeting, a scholarship committee was selected which will continue to function for the next five years on a progressive scheme. Each member is to be chairman for one year and serve on the committee the number of years for which he has been appointed. The men and their terms of service are as follows: Abraham Olian, present chairman, is to serve for five years; Louis A. Schwartz, four years; Max Klein, three years; Samuel Schwartz, two years; Bernard Boyarin, one year. This committee is to continue making selections of first-year Brooklyn Law Men, who are former City College Men, and to present two applicants who are outstanding in excellence of scholarship and character with scholarships to facilitate their study of the Law.

At the above mentioned meeting, Professor Murphy gave an interesting address on the Martin Act, more commonly known as the Blue Sky Law, and his text was taken not from the text-book angle, but from the practical, every day, practitioner's angle. A dinner is being planned which will take place some time in March, at which affair prominent alumni of City College will be present. Members of the club, former City College men, and their friends are invited to attend this event.

David Richardson, son of Dean Richardson addressed the members, praising them for their active interest in its activities, and also pledged full-hearted cooperation from the school for all of their endeavors.

In furtherance of the efforts of the Placement Bureau of the Brooklyn Law School, The JUSTINIAN proposes to act as a contact between lawyers and law clerks seeking positions.

The services of the Placement Bureau are entirely gratuitous and it urges alumni and others seeking assistants to lend their co-operation by communicating with Miss Celia Koransky.

FEMALE

Female—Class of 1925
Attended The College of the City of New York
Fourteen years' legal experience
Expert stenographer and typist
Admitted to the Bar—G-8

Female—Class of 1931
Attended Columbia University
Six years' secretarial experience in a law office
Admitted to the Bar—G-9

Female—Second Year Evening Student
B.A. Smith College
Several months' legal experience
Knowledge of stenography and typing
—A-14

MALE

Male—Class of 1931
Attended University of Denver
Three years' general legal experience
Admitted to the Bar—G-10

Male—Class of 1930
Attended The College of the City of New York
No legal experience
Certified Public Accountant
Passed the Bar Examination—G-11

Male—Class of 1929
B.C.S. New York University
Three years' legal experience as managing clerk and attorney
Admitted to the Bar—G-12

Male—Class of 1932
B.A. The College of the City of New York
No legal experience
Passed the Bar Examination—G-13

Male—Class of 1931
Attended New York University
Seeking position in law office with civil and criminal practice—G-14

Male—Class of 1932
Attended The College of the City of New York
No legal experience
Passed the Bar Examination—G-15

Male—Class of 1932
Attended Columbia University
Two years' experience as managing clerk in law office—G-16

Male—Class of 1931
Attended The College of the City of New York
One year's legal experience
Passed the Bar Examination—G-17

Male—Third Year Evening Student
Attended The College of the City of New York
Four years' experience in all branches of stock brokerage business—A-15

Male—Third Year Evening Student
Two years at New York University
Seven years' legal experience
Prefers position in Borough of Queens or Manhattan—A-16

Male—Second Year Evening Student
Two years at The College of the City of New York
No legal experience—A-17

Male—Second Year Evening Student
Two years at The College of the City of New York
Several months' legal experience
Knowledge of typing—A-18

Male—Second Year Evening Student
No legal experience—A-19

Male—First Year Evening Student
Two years at The College of the City of New York
No legal experience—A-20

Practice Court

The Practice Court of the Brooklyn Law School, under the direction of Prof. Edwin W. Cady, resumed its sessions for this year on Saturday, February 11. The Justices at the first sessions were Edward J. Connolly, counsel for the Chase National Bank, and Arthur Joseph graduate of Brooklyn Law School in 1915.

First Session Held

The first session opened at 10:30 a. m. with Arthur Joseph presiding. "People v. Norman Arovsky" and "People v. Noah Goldberg" were the first two cases. In both cases Oscar Meierfeld acted for the people while Murray Gluck represented the defense. The next case was "Edward Murphy v. Clement C. Eicks" with Irwin Pearlman representing the plaintiff and Ruth Leah Weiss for the defendant.

The first case in the afternoon session was "People v. Oscar Miller and Harry Newman." Leon Palevsky appeared for the people and Alfred Weisten, for the defense. In the following case, "People v. John H. Easterday Jr." the people were represented by Joseph Spano and Easterday, by Louis Moscato. Irving Reiman was for the people and Irving Brody for the defense in "People v. Arthur Selverstone" which followed. In the case of "Henry Sylvester v. Ralph Weinstein," Leonard Ring was for the motion while Douglass Amann was for the plaintiff in opposition.

Connolly Presides

Edward J. Connolly, presiding at the other afternoon session, heard two cases. The first, "Kurt Widder v. Poore Gas Company," had James M. Coker for the plaintiff and Alexander Lowenstein for the defendant. In "Paul R. Carr v. Jeweler's Exchange Insurance Co. of N. Y." the plaintiff was represented by Philip Hoffer and the defendant by Julius E. Berzinsky.

The clerks for the morning session were William Campbell and Bernard Brandt; the attendants were Milton Gershenson and Irving Kramer. Harold Cohen and Solomon Diamond were

added to the list of attendants in the afternoon sessions.

Two stenographers, who are students in a secretarial and reporting course, officiated as court stenographers at the afternoon session. The stenographers desk was located next to the witness stand. They made stenographic notes and were quick to read back any question or answer called for by the court or by counsel.

Calendar Listed

The Practice Court calendar for next week, February 18 is as follows:

Before: Hon. Murray Hearn, Justice of the Municipal Court at 10:45 a. m. in room 404.

"People v. Norman Arovsky and Noah Goldberg"

Oscar Meierfeld for the People
Murray Gluck for the Defense

At 1:45 p. m. in Room 404
"Petition of Richard North to compel James Coker to settle his account as Executor"

Bernard Brandt for the Petitioner
Albert E. Wool for the Executor
"Robert Feinman v. Albert E. Wool"

Alexander Lowenstein for the Plaintiff

Leon Zaretsky for the Defendant
Before Harold R. Medina, associate professor at Columbia Law School
At 9:45 a. m. in Room 403
"Harris Gutman v. Myrtle Avenue Line"

Herman G. Schwarz for the Plaintiff

Isidore Ratner for the Defendant
"People of the State of New York v. Herman Schwarz"

Herman Edelsberg for the People
Nathan Skolnik for the Defense
At 1:45 p. m. in Room 403
"Helen Henis Kellman v. James Seery"

Isidore Feld for the Plaintiff
Louis Scharf for the Defendant

"In the Matter of the Petition of Israel Belfer to Prove the Will of John Lewis"

Milton Jacobs for the Petitioner
Arthur Selverstone for the Contestant

Corporations Illegally Practicing Law

(Continued from page 1)

actions will be instituted shortly against some of the most prominent banks and trust companies in the city of New York followed by actions against laymen who violate the law by practicing it without a license.

"The practice of law is not a business open to all, but is a beneficial right, limited to a few persons of good moral character, with special qualifications ascertained and certified after a long course of study, both general and professional, and a thorough examination by a State Board appointed for that purpose," the complaint states in part.

"The defendant herein," continues the allegations, "in addition to conducting a title insurance business, also carries on the business of selling bonds, mortgages and certificates of mortgages, evidencing payment of money secured by liens against real property. Upon information and belief that for a consideration exacted by it, the payment of the money evidenced and secured by the bonds, mortgages and certificates of mortgages above referred to, is guaranteed to the holders thereof, by this defendant, who under the pretext of securing extensions of the payment thereof, prepares all legal documents to effectuate this purpose; charges exorbitant and illegal fees, and retains same without knowledge and consent of the owners and holders thereof.

Corporations Are Executors

"Upon information and belief this defendant also acts as executor, guardian and trustee and for that purpose prepares trust agreements and all legal papers incidental thereto, all in violation of law and the sanctity of this court.

The complaint alleges that the defendant does actively engage in the practice of law by preparing legal

documents, engaging attorneys, at a weekly, monthly or yearly salary, to prepare legal documents, to defend and prosecute suits for and against the said defendant.

"An attorney owes undivided loyalty to his client, unhampered by the destructive influence of obligations to a corporate or any other employer," the complaint maintains.

Charges are made in the list of allegations that the defendant company, through its agents, solicits applications for titles, pays a commission therefor to persons who are not entitled to receive the same and that the defendants in the actions send out field men or agents to solicit applications for titles and holds itself out and does draw contracts, deeds, mortgages and other legal papers which are not part of its business nor incidental thereto.

Companies Practice Law

The complaint further charges that all fees connected or arising from the drawing of legal papers are collected and retained by the defendant companies and the defendant is guilty of practicing law without license of the Supreme Court and therefore cannot act as officers of that court.

The practice of the plaintiff has greatly suffered because of the alleged illegal practice by the defendant corporations, it is stated and an equitable remedy is asked to enjoin the defendants from performing any act in violation of law as relates to the practice of the legal profession, to prohibit the defendants from hiring licensed attorneys at a weekly or any other salary basis and to restrain the drawing of legal documents of any kind. It is requested also that the defendants be adjudged in contempt of court and be punished accordingly.

The Lawyers Title Guarantee Company is named on the face of the complaint and the other six companies are joined as party defendants.

H. W. Beer's Radio Address

(Continued from page 1)

"officers of the court" while acting as receivers and trustees and actually stole property. You must keep in mind that while the conduct of these "officers of the court" duly appointed by the judges, was indeed outrageous, nevertheless the number of lawyers and business men who were involved in these thefts was exceedingly small, compared with the great number of honest men who had conscientiously and faithfully discharged their duties as "officers of the court" during the past 100 years of bankruptcy laws. In fact, it was only a little ring or clique that operated secretly, but as the newspapers told the story, every lawyer and every business man who had a single thing to do with the many thousands of other cases in bankruptcy was branded a crook either directly or by innuendo.

Judges Adopt New Rule

So terrible was the situation pointed out, that the eight judges whose duty it was then and is now to appoint only honest men to this public office, unanimously adopted a rule for the people's court to no longer entrust the intimate affairs of men to men, but to appoint one certain banking corporation to act as the sole "officer of the court." This corporation was also licensed and encouraged to solicit the business of acting as the only "trustee officer of the people's court." So that today, this single banking corporation by act of our United States judges has been appointed nearly five thousand times as "officer of the people's court" in nearly five thousand bankruptcy cases.

What are the duties of a Receiver when he acts as an "officer of the Court"? He is, in every other United States District Court, that is in 71 out of 72 courts, all over the country, the human being to whom the bankrupt and the creditor may appeal for justice in the administration of the affairs of the man who has failed in business. It is plain and clear to every man of common sense that this relationship is quite personal and intimate. In most United States courts, when a man engaged in a particular kind of business becomes bankrupt, the custom is to appoint a business man who understands the intricacies of the business that has failed, together with a lawyer, and these two working in harmony and under proper bond make for the highest state of human endeavor, and they obtain the best possible results for the bankrupt and the creditors.

Bank Given Monopoly

But when the judges agreed to appoint the banking corporation in all cases, the bank found itself, not only running a bank, its own business, but attempting to run and operate for the people's court every known kind of a business. It has, in fact, a monopoly on the management and operation of every business that fails in the Borough of Manhattan. It claims to run business as great as world-wide monopolies to the smallest ladies cloak and suit store that fails in business. To it falls the business management of hotels, nation-wide five and ten cent stores, corset factories, butcher shops, shoe factories, etc., etc., hundreds of millions of dollars of creditors' money, a million creditors, a million customers. Every single day, this bank claims to operate more efficiently, and the judges claim more intelligently and honestly than 5,000 individual business men or lawyers could.

From the day when the judges adopted this manifestly unwise rule to remove the "face of man" from the United States courts and put in the big bank as "officer of the court," a sharp debate has taken place between the judges on one side and certain impartial lawyers and business men who are not employees of this bank, on the other side. The judges repeatedly say in public through their spokesmen, that they have permitted this corporation to act as an "officer of the court" under their special rule, because it acts more efficiently and better than a human being. If this corporation is forbidden by Congress to act, the judges say "Ghouls and

harpies" or the lowest strata of humanity will be substituted for the big bank to manage the personal affairs of men who fail in business. The lawyers on the other hand, say that they are not all "Ghouls and harpies"; that the proof shows the corporation does not work cheaper or better than a business man or a lawyer. If dishonesty were discovered in 1929, it was only among those selected by the judges themselves, because we must never forget in this argument, that it was the judges who chose the men that were accused of robbing the bankrupts, and which resulted in the scandal that followed.

Organized Lawyers Protest

More than fifteen thousand organized lawyers in New York, New Jersey and Connecticut have openly resented these insults against their honesty and integrity. In spite of what the newspapers state, kindly remember that ninety-nine percent of these men and women who are among your neighbors and friends are not fighting to abolish the use of this corporation monopoly because of a selfish desire to be appointed as "receiver or trustee." This is a contemptible charge.

I do not speak tonight for a single person other than myself. I have no personal axe to grind, nor do I intend by what I say to be disrespectful to the eight United States judges, formerly brother lawyers of mine. No harsh word against them shall come from me personally because by mistaken judgment of the judges as to the extent of their power over the people's courts, they have created and sanctioned this practice which has brought about this public discussion. Neither do I bear ill will toward banking corporations if they will confine their activities to banking and nothing else. But it would be a perversion of natural human thought, of justice and of human conscience, not to condemn upon principle that which has by rule of the people's judges removed the "face of man" from the people's courts, and put in his place a banking corporation, an artificial money changer, a thing whose only business is to get money, with judge-given powers so great and so terrific that the combined brains of all of the people's eight judges do not and cannot claim to possess them. For by judge-made rule, this great corporation claims human attributes greater than that of the combined intelligence and sympathetic understanding of 5,000 of our fellow mortals.

Bank Does Not Work Cheaply

Is it possible that the people's judges in our United States courts have forgotten that the most important thing on God's earth and the glory of this country is the transcendent dignity of man? Will you of my radio audience argue that this "corporation officer of your court" with its 5,000 cases must be continued because it works cheaper, and that that is a good reason for permitting it to hold office. My brothers who have checked the work and figures of this bank, say it is far from true that it works cheaper, but for the sake of argument, I will assume that this is so, and I state further that if this question is to be finally decided by our United States Congressmen and Senators on corporation cheapness as against the necessity for the restoration of the "face of man" in the courts, then our case in the public interest was lost before it began.

But where are your Constitution and Laws that say a man's moral character in a courtroom must compete with a corporation? Where are such laws to be found in even the most abject despotisms?

Legal Profession Stigmatized

I feel bound to say that this act of our judges in branding their former brother lawyers as they have in the public eye, their act in glorifying and exalting this banking corporation as an "officer of the people's court," this thing without a single human God-given sense, without eyes to look at you, ears to hear you, mind to reason,

(Continued on Page 8)

Higgins Discusses Problems

(Continued from page 1)

ders" and "Execution against the Person" or the various other processes, renders himself personally liable for any improper or unlawful arrest that may be made by any of his deputies. The Sheriff pointed out that thus he maintains the ambiguous position of being the only county official who is burdened with such personal liability. In addition to this, he assumes personal liability in connection with the numerous other sections of the Civil Practice Act which he is called upon to construe not in a judicial capacity, but as an executive officer.

It is this element of personal li-

bility in connection with almost all his functions that makes the Sheriff's office differ to such a great extent from that of other officials. For instance, in connection with the County jail in which are kept hundreds of persons each year, he must assume liability for everyone of them, and is personally liable for anyone who might escape.

The Sheriff's office has also a judicial capacity since he, with the aid of the jury, assesses damages in actions where there has been a default in pleading or answer and judgment cannot be taken as a matter of course by the clerk of the court.

Waiver of Confrontation

(Continued from Page 4)

the defendant is not entitled to be confronted with the witnesses against him in open court. In *Merchants Stock & Grain Company, et al v. Board of Trade of the City of Chicago*,¹⁸ an information in contempt was filed in civil suit against the Merchants Stock & Grain Company and others. The testimony was taken before a Special Examiner, who reported to the Court. The Court heard the matter upon his report and some additional evidence and adjudged the defendant guilty of criminal contempt. The defendants contended that they were entitled to confront and examine the witnesses under the Sixth Amendment to the Constitution. The Court stated that Amendment Six applied only to criminal prosecutions against the person who is to be tried by a petty jury and that a criminal contempt is not a criminal prosecution within the Sixth Amendment.

Further Examples and Exceptions to Amendment Given

Of course if the witness who is to testify against the accused is absent, not through the fault or connivance of the accused, but through the negligence of the Government, his testimony cannot be read. In *Notes v. United States*,¹⁹ Taylor and five other defendants were charged in an indictment with a conspiracy to intimidate a citizen of the United States because he had informed against the defendants for carrying on the business of distillers and having in their possession an unregistered still. In pursuance of that conspiracy the defendants had killed the citizen. The indictment was based upon Sections 5508 and 5509 of the Revised Statutes of the United States. One of the defendants, Taylor, during a hearing before the United States Commissioner, made a confession in the presence of the other defendants. All the defendants were committed to jail without bail to await the trial. While the defendants were in jail the defendant, Taylor, was taken from the jail and left with a Government witness in order that he might spend the night with his family at a hotel. The defendant, Taylor, fled the jurisdiction, and it was shown that the United States Government had made diligent search to find him. Evidence was offered that the United States Marshals were on the lookout for Taylor ever since his absence. They had photographs of him taken and sent them to various places. The testimony of Taylor at the preliminary trial was read into evidence over the objections of the defendants. The Court stated that whereas in this case the defendant was taken from the jail in violation of law and placed in charge of one not an officer, but a witness for the Government, his testimony could not be read, and the case did not fall within any of the recognized exceptions to Amendment Six of the Constitution.

Defendant May Waive Right to Be Confronted by Witnesses

The defendant may waive his right to be confronted by witnesses even in cases involving the death penalty. *Fukunaga v. The Territory of Hawaii*,²⁰ The defendant, a minor, was convicted of murder in the first degree and sentenced to be hanged. He appealed to the Federal Court and urged as a Federal question the alleged deprivation of the rights guaranteed under the Sixth Amendment. It appeared that the defendant had killed one, George Gill Jamieson. Stipulations were entered into that permitted evidence to be introduced without presence of witnesses. The contention advanced by counsel for the defense upon appeal was that the defendant had a right to be confronted with witnesses testifying against him, and that he only and not his attorney could waive this constitutional right, and that because the defendant was a minor and incapable of entering into any binding agreement, there could be no presumption of his consenting to the stipulation. The Circuit Court of Appeals dismissed this point summarily with a short statement that the defendant can waive his right and cited in support of its contention *Sallinger v. United States*.²¹

Summary of Entire Article Given

The law enunciated in the above decisions upon the question at bar might be summarized thus:

- (1) The Sixth Amendment to the Constitution does not lay down the rigid requirement that the defendant must under all circumstances be confronted with all and every part of the testimony sought to be adduced by the prosecution.
- (2) That the defendant be present in Court when his trial is commenced and he has been confronted with some witnesses.
- (3) That the defendant has the absolute right to be confronted with all the testimony against him.
- (4) That he may voluntarily make an actual waiver of his right to confrontation of witnesses to such an extent as he may desire once trial has been in progress.
- (5) That the Court will presume a waiver when the trial has been in progress when the defendant absconds, escapes or voluntarily makes it impossible for the prosecution to confront him with the individual witnesses.

¹⁸ C. C. A. 8, 201 Fed. 20.

¹⁹ See also *United States v. Anonymous*, 21 Fed. 761, in *Re: Fellerman*, 149 Fed. 244, *Counselman v. Hitchcock*, 142 U. S. 547, 9 Cyc. 47, with *Rapallo on Contempt*, page 124; *O'Neill v. The People*, 133 Ill. App. 195; *Seastream v. New Jersey Ex. Co.*, 69 N. J. Equity 15.

²⁰ 178 U. S. 458.

²¹ 33 Fed. (2d) 396, *certiorari denied*, 280 U. S. 539.

²² 272 U. S. 542, and *Diaz v. United States* *supra*. For cases involving the same proposition, see: *Grove v. United States*, 3 Fed. (2d) 965, *certiorari denied*, 268 U. S. 691; *Williams v. The State*, 61 Wis. 281; *The State v. Polson*, 29 Iowa 133; *The State v. Lewis*, 31 Wash. 75 at 88; *People v. Guidici*, 100 N. Y. 503.

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Opening and Summation

By PROF. EDWIN W. CADY

(Continued from Page 5)

Introduction (undisputed)
No contract
Not professional services
Argument and equities:
Unreasonable charge
Money retained by defendant
NOT EVER given to plaintiff
Revolutionary war
Describe Valley Forge privations
Plaintiff's husband
Soldier leaving home or army
Conclusion:
Skin defendant
Close

Clear Issue Created

Lincoln won. Note that in his argument, he did not "lead up", but started with the last and most important feature of the case, to wit "An unreasonable charge." So, he created a clear issue. The second, "Money retained not ever given to plaintiff", might be the more intriguing from the attorney's viewpoint, but to a layman, the claim that the charge was "unreasonable", however customary it may have been to make such charge, was the prime consideration in the case. Lincoln thus secured a clear cut issue, and avoided vagueness, clumsiness and obscurity, by placing it first, and immediately as soon as he reached his "Argument." The war references constituted the equities. Should government agents make a charge for securing or paying a pension? Doubtless Lincoln avoided all "sob" stuff. The excitement invoked by the effort to follow the argument, and to determine where justice lies, is all that is needed to retain the interest of the unintelligent or listless juror, and often constitutes the sole emotional factor in a law suit. The difficulty, which only experience will overcome, lies with the juror who mentally prepares a counter argument to those you present. One way to avoid this opposition is to keep this juror busy in following your argument.

Errors Often Fatal

It is obvious that the counsel who states as proved a fact that is not proved has ruined his chances with the jury. Too often it happens that counsel mistakes the approach to the unwelcome facts, and begins at the wrong place. He should approach the adverse facts warily, wrestle with them, name the witnesses as he gives their testimony, state to the jury their precise words, so as to prompt the lagging memories of jurymen, and, finally, produce a carefully prepared argument demonstrating that what looked so hostile, is, when properly considered, wholly in his favor. It is generally a mistake to state the testimony in a too simplified form. The prisoner in the dock may have committed the murder we are investigating. The theory of his guilt will account for all the facts in the case. Therefore, let him be convicted and electrocuted—thus the unthinking and careless jurymen. But this theory will not pass in court. The argument will be destroyed by the summation and the charge. Men are sceptics at general sessions, and guilt has to be established. Proof that the prisoner may have committed the crime is useless, unless we go on to prove that it could not have been committed by anybody else. The adverse witness may have dropped some word, or even used some gesture, that can be seized upon in the summation to show to the jury that the witness was one of those persons who pride themselves on their ability to inflict pain on others—Mrs. Bouncer, who embitters the life of her servants, or Mr. Polecat, who infuriates his clerks by talking at them before strangers. These

witnesses, hostile by nature to you, must be led to bring out their proclivities in the cross examination, and then be destroyed as witnesses in the summation. It most generally is a close question whether false testimony needs to be controverted by the defendant. No one is ever required in a court of justice to open his lips in his defense unless a complete case is established against him—such a case as must, if unanswered, lead to an unfavorable charge and a hostile verdict. It is a fallacy to assume in summing up that if a fairly complete case has been made out against the defendant, the fact is thereby established that he is in the wrong. Pick out the one fact that shatters the proof on one element, and parade this fact before the jury several times, and in several ways. The demonstrable superiority of indirect over direct proof is a factor that strongly aids the defendant's summation.

Finally, the character of the work that counsel has done will help him out immensely in his speeches, even in defense of a stricken cause. Inspiration fails, fatigue overcomes, but the argument carefully worked out in the 11-point sheet is still available. As John Adams wrote to John Quincy Adams, his son and a neophyte counselor at law, "It matters not whether you win or lose, if only you speak well."

New Amendment Effective Oct. 15

(Continued from Page 1)

Following is the complete text of the amendment:

ARTICLE —

"Section 1—The terms of the President and Vice-President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

"Sec. 2—The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

"Sec. 3—If, at the time fixed for the beginning of the term of the President, the President-elect shall have died, the Vice-President-elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President-elect shall have failed to qualify, then the Vice-President-elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President-elect nor a Vice-President-elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice-President shall have qualified.

"Sec. 4—The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice-President whenever the right of choice shall have devolved upon them.

"Sec. 5—Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

"Sec. 6—This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of three-fourths of the several states within seven years from the date of its submission."

Current Legal Decisions

(Continued from Page 1)

bonds might be among the number called for redemption was part of the contract for which he paid. The failure of the defendant to call the bonds was a breach of contract for which the plaintiff may maintain an action.

Crimes—Murder—Evidence—Confession
Peo. v. Alex, 260 N. Y. 425. Jan. 10, 1933.

Defendant, upon trial for murder in the first degree, sought to impeach the confession made by himself as having been obtained by coercion and physical violence. In a preliminary examination to determine the validity of the confession, evidence, tending to prove that at his first appearance before a judicial officer he complained to the magistrate of the beatings he had received at the hands of the police, was excluded.

This was reversible error. Evidence that the defendant made a timely complaint of the injury inflicted upon him is properly admissible in a hearing to determine the validity of the confession. The court points out that the same rule which obtains in prosecution for rape, namely, the admissibility of the timely complaint or declaration of the prosecutrix, is applicable here.

The refusal to admit the evidence deprived the defendant of a fair trial since the whole case of the prosecution was predicated on the confession. Under the Code of Criminal Procedure sec. 395, a confession obtained by violence or coercion cannot be received in evidence.

Crimes—Sentence—Second Offense
Peo. v. Heath, N. Y. L. J. Feb. 11, 1933.

The defendant had pleaded guilty to the indictment charging him with the crime of possessing burglar's instruments. He had previously been convicted of a crime. From a sentence of three years, the people appeal pursuant to sec. 518 Code Crim. Pro.

Section 1935 of the Penal Law provides that where a conviction shall be obtained for a felony for which no other punishment is prescribed, the punishment shall be imprisonment for not more than seven years or a fine of one thousand dollars, or both.

Section 1941 of the Penal Law provides that a person who, having been convicted of a felony, commits another felony shall be punishable for a term, not less than the longest term applicable to the second felony, nor more than twice the longest term prescribed upon a first conviction. In the present case, that should be not less than seven years, nor more than fourteen years.

The Appellate Division affirmed the sentence on the ground that the later crime was not a felony in itself but a misdemeanor. It became a felony because of the prior conviction. Such a felony was not within the contemplation of the statute, sec. 1941 Penal Law. At time of sentence, the court felt justified in regarding it as a misdemeanor.

The Court of Appeals reversed the lower courts, holding that the Court had no alternative where the statute, in language so unmistakably imperative, has defined a second offense, but must enforce its mandate. The legislature has clearly enacted that the prior criminal record of a defendant, convicted of a felony, shall be one of the controlling factors to fix the extent of the punishment.

The New Yorker Reports A Case

Government agents seized two cases of smoked tullibee and brought about unusual doings in the Federal Court last week. The tullibee is a kind of white fish suspected of carrying a parasite deleterious to the health and of being therefore inadmissible to the country. Two actions were before the court, entitled, respectively, "U. S. v. 288 Boxes of Tullibee (Sigurdson Fisheries, Claimant)" and "U. S. v. 188 Boxes of Tullibee (Sigurdson Fisheries, Claimant)". Judge Coleman presided. Assistant District Attorney de Koven represented the U. S. Mr. J. J. Weinblatt represented the tullibee (Sigurdson Fisheries, Claimant). The two actions were tried together. There was wide interest in the proceedings because when the tullibee were seized, the entire fish-importing industry arose as one man, or as five thousand men, and protested vociferously.

The trial proceeded conventionally until the Court interrupted one of the witnesses to ask him a question. The witness was, at the moment, in the midst of an impassioned speech on the harmlessness of the tullibee. What the Court asked was this: "Would you eat one of them yourself?" The witness didn't answer this orally, but instead made a motion to Mr. Weinblatt, who hurriedly passed up a tullibee weighing two pounds. The witness seized this and ate several hearty mouthfuls, handing the fish back to counsel.

The Court (to recording secretary): "Make a note that witness did not eat whole fish."

At this, the witness recovered the fish and proceeded to devour it all, except the bones and tail, which he returned to counsel.

The Court: "Make a note that witness seems unwilling to eat tail."

Mr. Weinblatt, who had sat down, smiling happily and confidently, leaped to his feet and gave the remains back to his witness, who proceeded to eat the tail. Mr. Weinblatt then went into a long oration in which he said that the tullibee, even fresh, was harmless. The Court interrupted to ask if the witness would consider eating a raw fish. Counsel submitted, with feeling, that his witness never ate raw fish, that it was unheard of in a civilized country, that only cannibals ate raw fish.

The Court: "Make a note that the witness seems unwilling to eat raw fish."

Counsel looked baffled. The witness looked anguished. The spectators all looked hopeful. After a few seconds of desperate consideration, counsel picked up a raw fish from among the exhibits and firmly handed it to the witness. The witness squared his shoulders. At this point, compassion descended upon the bench. "Make a note," said the Court, "that the witness is willing to eat the fish, even when raw."

The witness was allowed to descend from the stand, filled with fish and pride. The Court reserved decision.

Beer Decries Bank Receivers

(Continued from page 7)

heart, soul or conscience, is the most opprobrious, the most insulting and unmerited stigma that was ever cast or attempted to be cast upon the business men and lawyers of this great community in the history of our country. When and under what circumstances have we deserved this? In no other part of the United States, in not a single one of the 71 districts, can there be found a judge or a group of judges who would even think of believing that a corporation has a place in our nation's temples of justice.

Passing Judgment Noble
There is no field of human endeavor that is quite so noble as that which permits in the interest of public liberty, one man to pass upon the judgment and conduct of another man. How long will you permit a corporation to have this right to pass judgment?

Nothing in all the four corners of human society gives man greater opportunity for cementing the ties between man and man in our modern civilization than when he acts as a judge of his fellow mortals. How soon can we stop this corporation from so acting?

The immortality of our great American judges is due to their individual courage and unswerving faith in their fellow citizens, not corporations. The genius of the American Revolution coursed through their veins; the power of discretion left with them was never dangerous to the public interest. The science of jurisprudence administered by man and for man (not corporations) is the pride of the human intellect; even with all of humanity's defects and errors, it is the collected reason of the ages; it is the greatest of all sciences; it cannot be and must not be incorporated in a banking corporation.

Judges Lose Faith
For the people's judges to lose their faith in all men as men, to minimize the attributes and character of a class of their fellow citizens from which they lately came, to let a corporation in, even a single instance, act as an "officer of the court," is I believe, an "officer of the court," is I believe, an unconstitutional exercise of power which our Supreme Court will not tolerate upon its first opportunity to pass upon the question.

There is supposed to be something beautiful and sentimental between man and man in the administration of justice, but if you are in favor of the corporation officer instead of a fel-

low human being, then your high temples of justice will become mere mechanical phonographs.

You, my friends, during the past three years had no more just ground to tolerate this "corporation officer" than you had to tolerate a corporation to take the place of the eight judges, which may be called "Justice Incorporated."

"Justice Incorporated"
Suppose, that we discharge these former brother lawyers of ours and replace them on the bench with a corporation, "Justice Incorporated," and as this bank uses one of its floor walkers or one of its thousand petty clerks to talk to a broken-hearted creditor or bankrupt, who stands as in a bread line waiting for a bowl of soup, then "Justice Incorporated" may be the aid of one of a multitude of clerks and a phonograph, sentence men and women to jail. If you of my radio audience are not suffering from corporatism, you will read such a condition as much as we do. I contend that there is no more justification for the use of banking corporations as "an officer of the people's court" than there is for "Justice Incorporated." The argument always is—"But 'Justice Incorporated' is cheaper."

To save money, to do it cheaply, to dole out justice by mass production through "Justice Incorporated," you will forever destroy the noblest faculties of the soul, the cardinal virtues of the administration of Justice. We will put under our feet the most marvelous science in all Society, the science of the law which distinguishes, as Blackstone says, the criterion of right and wrong, which teaches to establish the one, and prevent, punish or redress the other. Names of men will no longer adorn the laws of our land, but "Robots" and names of Corporation Money Changers shall take their places.

Language Significant
What I have said may seem extraordinary language, but it is significant language. It is too plain to be argued against.

I am appealing with confidence to the majority of my fellow citizens against this palpable, deliberate usurpation of man's constitutional rights in the hope that it will be taken out of our courts by the voluntary act of our judges. If not, we must work and fight in the public interest to suppress it by appeal to Congress, the supreme lawmaking power of our country, which will, I am certain, destroy this "corporation officer of the people's court." As a matter of principle, we owe it to the community and to our fellow citizens to save them from "Justice Incorporated."

Gross Advises Discretion In Choice of Case

Young Lawyer's Success Depends Upon Careful Selection of Cases

DISCUSSES LEGAL DELAYS

Inefficiency, Waste Held Concomitants of Over-Crowded Courts

Fred L. Gross, Esq., President of the Brooklyn Bar Association, in the opening address to the Practice Court stressed the importance and necessity of selecting cases. He said a discriminating attitude will help the attorney build a successful practice, rather than one whose "batting-average" is low.

Advice to Lawyer

He especially advised the young lawyer to exercise the greatest of caution, that the youthful and inexperienced attorney is wrong in accepting every case offered him, on his own observation of the result of such practice. Many claims brought to a law office are hopeless, yet the client insists that they be tried. It is foolish for the attorney to try such cases. He is almost certain to receive an adverse decision, and thereby lose a fee—and a client. Neither of these events is helpful to the aspiring young lawyer, said Mr. Gross.

To prevent this unfortunate turn (which will do so much to injure a lawyer's reputation as a practitioner) the case is marked on and off the calendar for years, until it becomes absolutely hopeless thru loss of information and the disappearance of witnesses. The way to build a practice that has a high percentage of cases won, he insists, is to be everlastingly on guard against accepting matters that seem to be doubtful, or extremely difficult to prosecute.

Crowded Courts Stressed

The men who have been in the profession for a number of years do not have this difficulty. They have had the time to develop a clientele that will keep them reasonably active. This is not so true of the younger members of the profession. These tyros are so anxious to begin applying the knowledge they have acquired thru several years of strenuous labor in school and during their clerkship that they make the mistake against which Mr. Gross warned them when he said, "Do not take every case that comes along. He mentioned one lawyer who wins "more than one hundred per cent" of his cases, holding that such success is due to a constant and vigilant supervision.

Another matter upon which Mr. Gross dwelt at some length was the crowded conditions of the local courts. He pointed out that the layman often complains of the fact that he is called to court several times without having his case come up for trial. To spend futile time cooling one's heels in court is considered an inefficient waste, and does not argue well for our present system of jurisprudence. The speaker asserted that the public is demanding some method that will make possible the exact gauging of the day and hour for trial.

Defect Pointed Out

The President of the Bar Association went on to say that the entire problem of the law's delay is tied up in this glaring defect. The entire legal profession is at work on the situation, but to date there has not been much progress. Mr. Gross suggested that if any student has a desire to have statues erected in his honor he has but to solve this problem.

The counsel for the Chase National Bank, Edward J. Connolly, Esq., spoke to the afternoon session of the court. He told the student lawyers and litigants of the Practice Court that a courteous manner is a prime essential to the attorney. Such a manner is the result of a continued effort to be polite and gentlemanly under all circumstances and to all people.

Letter to the Editor

(Continued from Page 2)

otherwise would be unemployed. Opponents of title companies may argue that lawyers working for title companies are notoriously badly paid and that the dignity and income of the profession is thereby lowered. To this the title companies may rejoin to the effect that they seldom have difficulty in obtaining all the lawyers they need, and that such salaries compare favorably with those paid by other large corporations.

It is submitted that even the most intransigent title company-baiter would not want to see title companies abolished in their entirety. Undoubtedly, real estate men, including both brokers and operators, feel the same way. They perform a useful public service. Many a substantial real estate man would probably be willing to buy property without the intervention of a lawyer if he could get title insurance. It is probably a fact, regret it though some may, that it is practically impossible to sell any real estate in New York City without a policy of title insurance and that the sole question in which a real estate operator or broker is interested in respect of title is, "Will a title company insure the title?" In short, title companies are with us and are undoubtedly here to stay. Possibly, as in other cases, there are too many of them, in which event the law of the survival of the fittest will eventually apply.

The complaints in the actions referred to specify various details in which it is alleged that the title companies actually practice law, over and above the extent permitted by the present law and statutes. The writer has no desire to discuss a pending litigation. Every year bills are introduced in the New York Legislature tending to curb the allegedly improper activities of title companies, trust companies, collection agencies, etc. Much time and effort is thereby expended. The present economic depression has fallen unusually severely upon lawyers and they naturally look around to see if there are any rival agencies which, in their opinion, deprive them of business. It is quite easy at any time, and especially in these times, for an incendiary lawyer to get a receptive audience by denouncing title companies. There has been a great deal of that displayed on both sides.

Lawyers are, in many cases, the best customers of title companies, and it should be to the interest of title companies to conciliate the legal profession. The system of rebating, referred to above, was undoubtedly a step in that direction. The question should be settled once and for all. Title companies have been with us for half a century and their activities well marked out by this time. The writer believes they are absolutely necessary for the best interests of lawyers as well as laymen. Too much effort has been expended in denunciation. A similar question has been raised in respect of trust companies, and within the last couple of years various agreements have been entered into throughout the country between bar associations and trust companies, as marking out the proper limits of each. In the writer's opinion, there is no reason why this cannot be done with the title companies. I do not pretend to claim that the trust company question is identical with the title company question; I do not know. There is too much talk about "war to a finish." There should be enough intelligence in the bar and in the title companies to draw up an agreement between the bar and the title companies. After all, the law is one of the social sciences and lawyers are given a monopoly, only so long as it is to the best interests of society as a whole that they be given this monopoly.

The writer is very glad that the litigation in question has taken place, for as a result, it is possible that the question may be decided permanently.

FRANKLIN F. RUSSELL.

American Bar Begins Weekly Air Programs

Lawyer's Relation to Legal Reform and Courts Is Emphasized

NOTED JURISTS TO SPEAK

Pound, Rogers, Seabury, Clark, Strawn, Baker Listed On Program

On Sunday, February 12th, the American Bar Association began a series of fifteen weekly programs over the nation-wide network of the Columbia Broadcasting System. They are designed to acquaint the public with the lawyer's part in legal reform and legislation and to discuss his relation to the courts and to the layman. These programs will be given on Sundays at 6:00 to 6:30 P.M. Featured will be prominent attorneys from various sections of the country.

The series was opened by Colonel William J. Donovan, former U. S. Attorney General, introducing Clarence E. Martin, President of the American Bar Association. Mr. Martin's topic was "The American Bar, Its Past Leaders and Its Present Aims". His address was followed by a question and answer period which will be a regular feature of each week's program.

Following Is Schedule

February 19—"Training for the Bar"—Roscoe Pound, Dean of the Harvard Law School.

February 26—"An Interview: A Young Man in Search of a Profession asks Mr. Rogers: 'Shall I Become a Lawyer?'"—James Grafton Rogers, Assistant Secretary of State.

March 5—"The Lawyer's Influence on Public Opinion"—Judge Samuel Seabury, Counsel, New York City Investigation Committee.

March 12—"Pitfalls Along the Legal Education Road"—John Kirkland Clark, Chairman, Section of Legal Education and Admissions to the Bar of the American Bar Association.

March 19—"Should the Public Distrust a Lawyer?"—John H. Wigmore, Dean Emeritus, Northwestern University Law School.

March 26—"The Law and Business"—Silas H. Strawn, former President of the American Bar Association and of the U. S. Chamber of Commerce.

April 2—"What Is the Bar Doing to Improve the Administration of Justice?"—Guy A. Thompson, former President of the American Bar Association.

April 9th Program

April 9—"Reforming the Law Through Legislation"—Henry W. Toll, Managing Director of the American Legislators' Association, and Professor Edson R. Sunderland of the University of Michigan Law School.

April 16—"Hurdles in the Path of a Candidate for Admission to the Bar"—A Round Table Discussion—Philip J. Wicks, Secretary of the New York Board of Law Examiners; Theodore Francis Green, Governor of Rhode Island, and Robert T. McCracken, Chairman of the Philadelphia County Board of Law Examiners.

April 30—"The Lawyer Looks at His Responsibilities"—Newton D. Baker, former Secretary of War, President of the American Judicature Society.

April 30—"How the Law Functions"—Professor Karl N. Llewellyn, of the Columbia University Law School; Professor Walter Wheeler Cook, of the Institute of Law of Johns Hopkins University; Jerome Frank, of the Yale Law School.

May 7—"Restating the Law: An Attempt at Simplification—An Outline of the Most Authoritative Effort in Two Thousand Years to Summarize and State Existing Principles"—George W. Wickersham, President of the American Law Institute.