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RESERVE PLACES NOW
FOR ANNUAL ALUMNI
BANQUET ON MAY 9

The Justinian

Brooklyn Law School

St. Lawrence University



RESERVE PLACES NOW
FOR ANNUAL ALUMNI
BANQUET ON MAY 9

VOLUME III, No. 6

THURSDAY, APRIL 19, 1934

BY SUBSCRIPTION

Current Legal Decisions

Contempt — Evidence — Practice — Attorney and Client

Contempt—Supplementary Proceedings—Crimes

Matter of Foster v. Hastings, 263 N. Y. 311, January 16, 1934.

The judgment debtor was ordered to appear to submit to an examination in supplementary proceedings; and at this examination he wilfully mistated the amount of his earnings. Plaintiff moved for an order punishing defendant for contempt of court. This was denied by Special Term, and the denial affirmed by the Appellate Division. The Court of Appeals affirmed.

A court of record has power to punish for contempt a witness who, in supplementary proceedings, refuses to obey the order of a court or judge. Here the judgment debtor obeyed every order of the court, as far as the record shows; hence the court has power to punish him pursuant to the provisions of Judiciary Law, § 8, and the Practice Act, § 800. The court cannot punish the former as a contempt, unless it takes the form of a false denial of knowledge or of recollection of a fact in order to avoid answering, the purpose being not to punish, but to compel an answer. On the issue of perjury the defendant is entitled to a jury trial with all the safeguards of the criminal law.

The argument, to uphold the contempt proceedings, that if contempt proceedings cannot be had, the defendant cannot be punished at all on the ground that his "answer cannot be used as evidence against the person so answering in a criminal action or criminal proceeding" (Civ. Prac. Act § 791) is invalid. A truthful answer tending to convict the witness of fraud gives this immunity; the mere fact of testifying does not permit false swearing to be indulged in without fear of prosecution.

Evidence—Privilege—Witnesses
Matter of McCulloch, 263 N. Y. 408, February, 1934.

The testatrix made four wills, the probate of the last being the proceeding giving rise to the present appeal. Objections were filed to the probate by a legatee in the second will. She was permitted to testify on material matters. A legatee under the third will was excluded on the ground that she was an interested witness under § 347 C. P. A. A statutory next of kin, a brother of the testatrix's deceased husband, and a party contestant, was permitted to testify. Two lawyers, each of whom had prepared a prior will and had been a subscribing witness thereto, were permitted to testify to transactions with the deceased. The Surrogate found undue influence and denied probate. The decree was affirmed by the Appellate Division, but reversed by the Court of Appeals.

The legatee under the second will should not have been permitted to testify. Her interest under that will was remote and contingent when there was an intervening will in which she was not mentioned, but in view of

(Continued on page 10)

Maurice Bogart To Retire From Justinian Today

Editor for Past Year Has Been Active in Student Affairs

INSTITUTED NEW POLICY

Inaugurated Plan of Student Succession and Introduced Many New Features

Maurice S. Bogart, a member of THE JUSTINIAN for the last two and one-half years, will retire as its editor immediately after the distribution of the present issue. His retirement will close a long and distinguished student career.

After graduating from Lehigh University in 1931, from which institution he received the degree of Bachelor of Arts, Bogart entered the Brooklyn Law School. While at college, he played a prominent rôle in extra-curricular activities, particularly in the field of college journalism. He was associate editor of the Lehigh Review, a literary magazine; news and make-up editor of the Brown and White, a student newspaper; secretary of the Robert W. Blake Society, honorary philosophy organization, and assistant manager of the varsity track team. For a short period prior to his entrance into the Law School, he was engaged as a reporter for a Long Island newspaper.

Edited "Hoots" Column

Bogart first joined THE JUSTINIAN in March of 1932. He quickly rose from a position on the editorial staff to the office of managing editor. While in that position, he conducted the popular column, "Hoots in the Roots of the Law." Before the close of the last scholastic year, Bogart was elevated to the position of editor of THE JUSTINIAN. During his term as editor, he successfully inaugurated a policy of staff succession, instituted the policy of emphasizing school and alumni news and labored successfully to make THE JUSTINIAN a potent factor in the field of legal literature.

In 1933 Bogart served as associate editor of the Chancellor, the senior year book, and in 1934 he was offered the position of editor, a position he

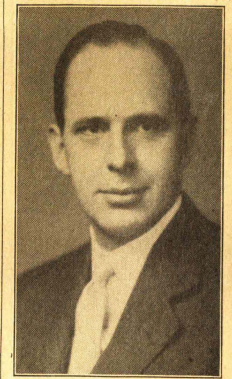
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Judge Knox Upholds Validity of NRA Minimum Price Fixing for Cleaners

In line with the Minnesota Mortgage Moratorium and Milk Price Fixing cases, Federal Judge John C. Knox decided that the Federal Government has the right to fix minimum prices under the NRA. This decision further abridges the right of the private citizen to freely contract where his right conflicts with the public need.

In rendering his decision, Judge Knox upheld the right of Congress to fix prices in order to assure a free flow of trade in interstate commerce. "Who can rightly say," Judge Knox wrote, "that government price fixing when confined to transactions in interstate commerce, is not a means reasonably adapted to legitimate ends which Congress seeks to serve? As I view the law, the court cannot rightly

NEW ADMIRALTY PROFESSOR



John Earl Purdy

Purdy to Teach Admiralty Law

Has Had Wide Experience in Maritime Practice With Father

WON SCHOLASTIC HONORS

John Earl Purdy, of Poughkeepsie, N. Y., who has been practicing law in New York City since 1928, will teach the law of admiralty in the Brooklyn Law School this year. He is the son of Dale Mattison, who taught law in former years, is, at the present time, on important business at the Paris office of the firm of White & Case, with which he is associated.

Professor Purdy received his A.B. from Harvard College in 1925; his LL.B. from Brooklyn Law School in 1928, and his J.D., magna cum laude, in 1929, also from Brooklyn Law School.

Wrote for Justinian

In an article entitled "Concurrent Jurisdiction at Law and in Admiralty under the Limitation of Liability Statute," which was published in THE JUSTINIAN, Vol. II, No. 1 (Oct. 1932), Professor Purdy discussed the jurisdiction of the state court to entertain a suit involving the limitation of liability statute and whether or not such suit could be maintained only in the federal court under the doctrine of *Langbe v. Green*.

Professor Purdy is associated with his father, who has been practicing in

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Appeal Right Not Inherent Says MacCrate

Talks on "When and How to Take an Appeal to the Appellate Term"

ENDS BAR GROUP SERIES

Lists Types of Appeals; Suggests Check-up Questions for Appealing Lawyers

"The right to appeal is not inherent," Justice John MacCrate declared in the first of two addresses delivered in the Brooklyn Law School Auditorium on March 23. His talks on "When and How to Take an Appeal to the Appellate Term" concluded a series of four discussions conducted under the auspices of the Brooklyn Bar Association. He said in part:

Three Kinds of Appeals

"There are three kinds of appeals: an appeal from the Municipal Court, an appeal from the City Court and appeals that are permitted either by the judge of the lower court or by a judge of the Appellate Term, or by the Appellate Division. On an appeal, the appellant must make a statement of the facts of the case. The City Court are not allowed to make a statement of the facts of the case. As to the rules governing appeal, Justice MacCrate said that the appellant should consider an appeal before taking such form as I can say. Is the judgment wrong? Is the judgment based on a good enough to sustain appeal? If the judge has excluded evidence on some objection of law, it is an appeal." (Continued on page 5)

Sufficiency of Appeal

Justice MacCrate pointed out that the attorney should consider an appeal before taking such form as I can say. Is the judgment wrong? Is the judgment based on a good enough to sustain appeal? If the judge has excluded evidence on some objection of law, it is an appeal." (Continued on page 5)

Weil Forwards Referee Plan

Practical suggestions for getting greatest value from the recent calendar for emergency referees to clear congested court calendars have been made by Charles A. Weil, who has studied courts here and abroad.

Such referees are not precluded from trying non-jury cases he points out, and an arrangement whereby judges tried only jury cases would dispose of many cases in arrears. To ensure honest and competent referees, fees should be raised to attract the right kind of lawyer to these positions, but the remuneration should be set by statute, he asserted.

To prevent political influence and patronage, Mr. Weil urges that associates, who could qualify as referees, be subject to the jurisdiction of the Court of Appeals for five years, sit with the emergency referees, and be subject to limitation similar to those set for judges. Each party in an action would be allowed a peremptory challenge.

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Noted Guests To Attend 32nd Alumni Banquet

WILL BE TOASTMASTER



Fred A. Keck

Ballin Is Named Justinian Editor

Kermit D. Ballin, second year student, who has been managing editor of THE JUSTINIAN for the past year, has been appointed editor of the publication for the year 1934-35, it was recently announced by the Faculty Publications Committee. Ballin, whose appointment will be effective as of April 20, 1934, will succeed Maurice S. Bogart.

Sidney Katz and Joseph Saidel have been selected associate editor and managing editor, respectively. Katz will occupy the position held by Eugene S. Levy, retiring associate editor and at present editor-in-chief of the 1934 Chancellor. Saidel will fill the vacancy caused by Ballin's elevation to the editorship.

Ballin, who is treasurer of his class, has been associated with THE JUSTINIAN since October, 1932. He is

(Continued on page 5)

Reckless Driver Avoids Liability

The need for legislation to protect pedestrians against reckless drivers was stressed by Federal Judge Grover M. Moscovitz in a case he recently decided where he allowed an automobile driver to escape liability through bankruptcy for injuries inflicted on two persons.

In a previous action, the pedestrians had recovered a substantial judgment for personal injuries received by them due to the negligence of the driver. On February 9, four days later he filed a voluntary petition in bankruptcy, listing the judgment as his only debt and showing no assets.

Judge Moscovitz in his opinion stated that a judgment for ordinary negligence is dischargeable under the

(Continued on page 10)

Banquet Will Be Held at Hotel Waldorf-Astoria, Wednesday, May 9

FRED A. KECK TO PRESIDE

Judge Crane, Dr. Sykes, Mr. Jencks and Dean Will Address Gathering

The 32nd annual dinner and reunion of the Alumni Association of Brooklyn Law School will be held Wednesday, May 9, at 7:30 P. M., in the Grand Ball Room of the Hotel Waldorf-Astoria. From all indications this affair promises to be one of the most brilliant functions which the Association has yet sponsored. An unusually large assemblage of distinguished and outstanding figures of the legal profession, including attorneys of national prominence, members of the judiciary of the Supreme Court, the Appellate Division and the Court of Appeals of the State of New York, the officers of St. Lawrence University and recognized leaders in the journalistic profession, will be present to give the toast.

Dr. Sykes, President of St. Lawrence University, who retired after 15 years of untiring and loyal service to the University and who is largely responsible for its present eminence in the educational field, will be one of the guests of honor. Similarly honored will be the Hon. Frederick E. Crane, Judge of the Court of Appeals, and one of the outstanding jurists of the day. Owen D. Young, who will also retire this June as chairman of the Board of Trustees of St. Lawrence University has expressed his intention of attending, if possible. The presence of Millard H. Jencks, who will replace Mr. Young as chairman of the Board of Trustees, will complete the list of guests of honor.

John J. Bennett, Jr., is Chairman

John J. Bennett, Jr., Attorney General of the State of New York and Chairman of the Dinner Committee has arranged to have on the dais Frederick A. Keck, who is a member of the Committee on Character and Fitness of the Second Judicial Department and who will act as Toastmaster, Judge Frank F. Adel, Hon. Jacob Aronson, Justice William B. Carswell, Judge Thomas J. Cuff, Judge James J. Dunne, Hon. Leon Grant Godley,

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A YEAR IN RETROSPECT

A farewell by the retiring editor is a mildewed custom, the origin of which has been lost in the crossing meshes of an ageless tradition. Regret at parting is inevitable. No better purpose, however, could be served in this brief space than to review briefly the achievements of the past year.

The Justinian, as was stated in an earlier issue, is an undergraduate publication, written principally by and primarily for the students of the Brooklyn Law School. A conscious effort has been made to make it essentially a school newspaper, not a law review or a professional journal. School news, during the past year, has been emphasized; alumni activities and achievements have been reported extensively.

A new policy was laid down by the publication last year. In keeping with, and in furtherance of it, these columns have conscientiously reflected and have untiringly supported every recognized function of the school. Several pages have been devoted to comment concerning student activities.

Adhering to the policy of the past year, the Justinian has continued to present its news in simple, clear journalistic style. The organization, now self-perpetuating, assures its members of fitting recognition in keeping with their service and ability.

The Justinian is now a recognized legal periodical. Outside interest it has won; public approval it has attracted and maintained. It has been quoted widely in metropolitan newspapers; journals from Maine to California have deemed it sufficiently authoritative and interesting to warrant notice and mention.

It is pleasant to have an opportunity, although editorial, to thank those members of the board and staff whose fine cooperation and unwavering assistance have made possible the splendid progress of the past year. To them great credit is due. Blinded, however, to apparent imperfections they should not be. Many departments and features yet need strengthening and development; to them will devolve the task of placing strategically the next great stone in the history of The Justinian.

To the new Editor are extended the sincere wishes of the retiring Editor for continued and progressive development.

THE ALUMNI DINNER

It is with happy expectancy that we note the approach of the thirty-second annual alumni dinner. These yearly affairs held under the auspices of the Alumni Association have done much to cement friendships first made at the Law School. With the passing years it is inevitable that the alumni body of a prominent legal institution should grow. It is significant that so many of its members should attain positions of eminence in public and professional life.

An affair which provides a rare opportunity of joining old friends and renewing old acquaintances now partially forgotten is its own recommendation. The wine of pleasant reminiscence should flow freely in an atmosphere of friendship and festivity.

The affair rightfully warrants the wholehearted support of the alumni and of those students who shortly will also take their place in the distinguished ranks of the graduates of the Brooklyn Law School.

BOOK REVIEW

CRIMINAL LAW IN ACTION, by John Barker Waite, Professor of Criminal Law and Practice, University of Michigan Law School. Published by Sears Publishing Co., Inc., New York, 1934. Pages 321.

REVIEWED BY PROF. GEORGE A. VOSS

This book deals, as the author states, with the "agents of the law rather than with its provisions."

His criticisms of the administration of our criminal law, the defenses interposed, particularly that of insanity, jury system, police and police methods, lawyer for the defense, prosecutor, judges, newspapers and the public in general, merit careful thought and consideration, since they are in most part justified by the facts set forth.

He discusses in detail the various phases of criminal jurisprudence, their complexities, nature and contradictions, and severely criticizes the decisions of our Court of Appeals in reversing the convictions in the cases of People v. Rizzo and People v. Jaffe.

In the Rizzo case the court held in effect that one Rao, who was to be relieved of a payroll, being absent at the time, the stage of fulfillment of the crime had not been reached and, therefore, there could be no attempt to commit the crime. In the Jaffe case, the court held that the stolen goods, having previously been returned to the possession of the lawful owner before their receipt by Jaffe, had lost their character as stolen property. The author in criticizing these decisions states:

(Rizzo) "If this decision alone were insufficient to demonstrate that the criminal law does not seek to forestall crime by the segregation of probable criminals there is plenitude of others to the same effect."

(Jaffe) "The court might have held, had it so desired, that the goods which Jaffe received were still, legally speaking, 'stolen goods,'" and that "since the court chose to deny that the goods were still stolen, the court was utilizing causative plausibility and dubiety of the situation for the benefit of the accused rather than for the immediate safety of society."

For the court to have held in both cases in accordance with the views expressed by the author, would, in this reviewer's opinion, have been not only illogical, but contrary to the very intent and purpose of the statute.

As to our jury system, this reviewer agrees with the author's view that the jury should be the "agent of the law" rather than the "agent of the public." The jury should be the "agent of the law" rather than the "agent of the public."

This is a strong argument without doubt, but neither the author nor the reviewer has yet suggested any workable plan or remedy "to eliminate from society those individuals who are known to be dangerous."

To clothe with such powerful purposes an impossible body would involve such purposes an impossibility.

His statement, "That the law acts retrospectively only, and never prospectively," that it deals only with people who have committed a crime, not with those likely to commit a crime, excepting "juvenile criminals," (delinquents is a better word), is, generally speaking, true.

As to our jury system, this reviewer agrees fully with the author's criticism of the calibre of the average juror. That there is room for considerable improvement admits of no doubt.

Much time is wasted in bringing cases to trial and in the selection of jurors at a trial by asking questions wholly irrelevant. This is the fault of the judge presiding. Long drawn out trials seriously affect the mentality and patience of jurors. No wonder that they resort to all kinds of devices in order to avoid service.

There is much to commend in his criticism of the defense of insanity interposed by a defendant. Those of us who have had experience in the prosecution and defense of persons charged with crime know, however, that in a great majority of cases the interposition of this defense has been unsuccessful. Of course, there are exceptions such as the Thaw, Loeb and other cases cited by the author.

As to the police, concerning their difficult manners, methods and disunion and whether they should function through a central bureau, Federal or State, much has been written heretofore.

The police of our cities have a much more difficult and complex problem to deal with in the successful apprehension of persons committing crime, for the reason that here, as the author states, our population is heterogeneous and not homogeneous and unified as in a city like London. This accounts, no doubt, for the excellent results obtained in making arrests and solving crimes by Scotland Yard.

What the author has to say in criticism of the lawyer for the defense and lawyer (prosecutor) for the people and judges has been said time and again by others.

Some Observations by Justice Lewis

Municipal Court Justice David C. Lewis, in a communication to THE JUSTINIAN, stated that no topic is more important and should be more interesting than the true administration of justice. Venturing casual observations in that connection, he wrote:—

"Congested calendars, crowded courts—and the greatest city in the world struggles for the true administration of justice."

"Commissions inquire; committees investigate; reports and recommendations are rendered. Charts, schedules, data, statistics, lifeless figures, all pretending to portray the true story of the administration of justice."

"From all sides we hear the call: More speed! More Work!—And apparently one might add in less time with less thought. Lengthen the hours, eliminate juries, restrict appeals, increase the labor of the judge, shorten the litigants' proverbial 'day in court'; speed up the trials!—and anything and everything to bring the calendar up to date."

"Do we stop to examine the quality of justice administered? Are we only concerned with the quantity? Do we sincerely believe we can time-clock the workings of the judicial brain, making a machine out of the mind?"

Rapid Justice Dangerous

"It does not require an age of apprenticeship or a lifetime of inquiry, to view with apprehension these endeavors to permanent rapid-transit justice."

"Into a single mind we shall pour the proofs, one case after the other. Never mind summations, discussion or reflection at the close of the trial. In goes the evidence, and presto! changed out comes the verdict. The price of merchandise, the appraisal of damages, the value of services, the determination of negligence and contributory negligence—all the varying twists and turns and controversies of a cross-section of the commercial and domestic life of a Democratic community."

to Justice Lewis, the "agent of the law" rather than the "agent of the public." The jury should be the "agent of the law" rather than the "agent of the public."

"Is this not the Poor Man's Court? Can we allow the time and the thought of a judicial hearing? Can there be uncertainty as to the facts or debate as to the law? Every question must be simple; every answer sure."

"Loud endorsement is at all times freely given the principle of an independent and impartial judiciary. Without economic security and certainty of tenure, even with the highest calibre of men, we cannot confidently assume the finest standards of justice."

To make this rich privilege (the true administration of justice) the common right—is the living cause of the Bench and Bar.

Lawyers Should Lead

"Either we keep the lead or surrender the authority."

And unless we show the way and shoulder the obligation, not only may we lose the right to lead, but we may forfeit that respect and confidence of the community at large without which justice can never fully function.

"Monumental jurists have graced our high courts, lending lustre to the Bench and giving light to the law. But their labors have been substantially spent in the work of judicial opinions, and the ethics of their calling has sort of cloistered them within the precincts of the Courts. Besides, no one or few men, though they be most profound in learning, can by themselves accomplish this task. It is every man's battle—just as it is every man's right."

Justice Lewis is a strong advocate of the reform of the law's delay and has many times pleaded in behalf of the "Poor Man's Court," the Municipal Court in the City of New York. In his suggestions to the Commission on Administration of Justice of New York State, he made many practicable recommendations.

The convenience of the court, counsel and client, juror and witnesses,

to his mind, invites centralization. A lack of consolidation of all civil courts, he contends, works an unjustified discrimination against litigants for to say that a party with \$1,000 or less at stake, must have his rights originally adjudicated (and most likely finally decided) in a court of limited jurisdiction, with limited facilities and of inferior standing, while the suitor, who fights for larger stakes, enjoys all the advantages and aids of a supreme tribunal certainly means discrimination.

In championing a need for simplification and modification of procedure and the elimination of all unnecessary or intermediate applications, so that there may be a more effective approach to a determination of the vital issues and a more effective control of litigation, Justice Lewis plans a central control: (1) of the issuance of summonses by the court; (2) and of litigation by parties in person; (3) of disposes proceeding and notice of destination; (4) of actions commenced by the service of summons by mail and a central posting of such actions; (5) by a central motion part; (6) by a central ex-parte part.

Suggestions Growing Important

He is in line with suggestions not so new but of growing importance as the elimination of motions for particulars and for examination of damages or injuries. He favors the creation of an automatic calendar for the settlement of triable issues and disposition of all intermediate matters and the elimination of notice of trial in the Municipal Court. Other reforms to aid litigants toward a speedier and more equitable determination of their cases include: (1) full costs for summary judgment; (2) judgment to require debtor to file proof of inability to satisfy judgment; (3) Segregation of cases and classification of litigants;

(4) a restriction of right to act as attorney in person.

Justice Lewis pointed out that under the existing system a single judge takes up the trial of cases, one case immediately after the other without any intermission or interruption. "It would be a tremendous advantage to be able to discuss a question of fact at the close of a case with some disinterested observer." He urges that there is a need for an aid or guide for judicial deliberation.

As to conciliation and arbitration, he said: "There must be a permanent active time and place, before resort to litigation, inviting if not compelling these steps, and so conducted, if a controversy is genuine, in the event of not reaching an adjustment, the matter can immediately be reduced to a controverted issue and promptly advanced to a trial for litigation."

Advancement on Merit

"Neither judicial advancement nor judicial light should be contingent on political popularity or favor. The good judge should, in common parlance 'make good.' To this end there must be a suitable agency to give the public authentic information about the justices of the court, so that there may be an intelligent public opinion, and that the right kind of public interest in the court may be encouraged."

Public confidence is necessary, he wrote, to revive and recreate the integrity of the public court and its justices. In line with this thought, he decried a lack of judicial facilities and incentives. Justice Lewis would encourage jurors to make notes and memoranda during the trial, particularly where there are statistics or where the trial is lengthy. He maintained that jurors should be schooled in the general principles of preponderance of evidence, and method of procedure.

PRESS BOX

Detroit, Mich.—Fearful that his wife might be granted "three wishes" as was the innkeeper's wife of folklore fame, John Kulcznski filed suit for divorce.

It appears that several months ago his wife had said:

"I wish you'd go out and have an accident."

Soon afterward, he was run down and lost three toes and part of his right foot.

A few months ago, Kulcznski declared his wife said she wished he'd lose his other foot. He did—in an other traffic accident.

"I want to get away from the woman before she wishes I go out and get killed," he explained.

Media, Pa.—Clarence B. Roming told Delaware County court recently that he wanted a divorce from Emma J. Roming. She:

Insisted that her pet poodle share their bed every night;

Threw out a prize batch of fish he had caught;

Served meals on paper plates, with paper cutlery, when he brought friends home; and

Usually went to sleep in the presence of these friends.

Reading, Pa.—It was not even a local offense for which police arrested Mrs. Martha Miller, 37, of Seattle, Wash. She was charged with passing a counterfeit bill.—but

Sunday—She got the measles and police had to engage a private room in a hospital to get her out of jail.

Monday—the cell block was fumigated and fumes seeped through City Hall, routing workers.

Tuesday—Federal agents served their warrant and police sighed with relief.

Wednesday—The hospital threatened the city with suit if their bill was not paid.

Thursday—The police are wondering who will pay for the guards.

Topeka, Kans.—Harvey Motter, tax expert and for several years collector of internal revenue in charge of income tax collections carefully made out his income tax return and mailed it to the Revenue Bureau with the feeling of a duty well done.

It was returned by the next mail. He had forgotten to swear to it before a notary.

Paris, France—A tax collector finally succeeded in taking the suit off a man's back.

Unable to pay the tax collector, Louis Deshouillieres, 70, put on his Sunday clothes and went to the tax collector's office. He disrobed and handed the suit over the counter.

"Here you are," he said, "I haven't any money, but take these and leave me alone."

Boston, Mass.—When Massachusetts legislators inserted in the hunting and fishing license law a provision that persons over 70 should receive licenses gratis, they did not figure on the hardness of the state's nimrods and Isaak Walton.

A total of 5,397 septuagenarians and octogenarians now hold these free permits, representing \$15,000 in revenue at the usual rate.

Yonkers, N. Y.—To accommodate alimony dodgers wishing to visit friends in the neighboring state of New York or New Jersey on Sunday when they are immune from service and arrest, the Alpine-Yonkers ferry has arranged a special schedule. One boat leaves Yonkers at 11:59 Saturday night; another arrives at 12:01 Sunday morning.

Stettin, Germany—The local police have forbidden three-concentrated criminals from marrying. They make up for this by locking in the habitual wrong-doers in their homes from 11 P. M. to 5 A. M.

et al.: The Justinian

LEGAL PERIODICALS

By MORRIS DIAMOND

An English case, cited in the Harvard Law Review (47 Harvard L. Rev. 875), has recently held that recovery could be had for injury to previously existing reputation in a breach of contract case. The plaintiff, a variety actor, was employed by the defendants to perform a sketch at the defendant's theatre for a definite period of time. Prior to the commencement of the engagement the defendants notified the plaintiff that he would not be allowed to perform. The plaintiff brought this action for damages, including loss of publicity and reputation. The jury was instructed by the trial judge to put some figure upon the loss of publicity. The jury returned a verdict for the plaintiff for the agreed salary and for £1,000 for loss of publicity. The decision of the lower court was reversed because the failure of the trial judge to instruct the jury that the plaintiff could recover, in addition to the agreed salary, only for loss of publicity which he would have gained from performance, and not for injury to his previously existing reputation, was error (*Withers v. General Theatre Corp., Ltd.*, 2 K. B. 536).

A novel situation was presented in *Woo King-Hsun v. Pemberton, & Penn* (66 F. [2d] 811), reviewed in the North Carolina Law Review (12 N. Carolina L. Rev. 174). The plaintiff and his partner were engaged in selling tobacco as commission agents of the defendant. They guaranteed payment of purchasers' accounts and made a deposit to cover the same. Each partner expressly agreed to be bound by the acts of the other. The plaintiff's partner, wishing to sell to a certain purchaser and knowing that the plaintiff did not, induced the defendant to conceal the transaction from the plaintiff. The purchaser subsequently defaulted, the partner having misappropriated the goods. The court held that in an action to recover the guaranty deposit, defendant's counterclaim for the unpaid price was valid because there was not proof of such fraud as to release the plaintiff.

The case, as described in the Canadian Bar Review (12 Canadian B. Rev. 175) was in its second day with no prospect of the conclusion in sight. The action was for damages for an alleged 40% incapacity resulting from an automobile collision.

It seemed as if the twelve triers of the facts would have to remain until after the dinner hour. The witness stand was occupied by a doctor, who was testifying as to what, in his opinion, constituted the percentage of incapacity of the plaintiff. As this point the Court took a hand in the questioning.

"What would it be," the justice demanded, "if I had a leg cut off?"

"That, My Lord," came the reply from the counsel in the case, "would be crippled justice."

"Then what would it be," continued the Court, "if a lawyer had his tongue cut off?"

But one of the jurymen had had enough. "That, My Lord," he roared, "would be a service to humanity."

The Wisconsin court was confronted with the construction of section 14 of the Uniform Conditional Sales Act, in the case of *Universal Credit Co. v. Finn* (250 N. W. 391), reported in the Michigan Law Review (32 Mich. L. Rev. 709). The section provides in substance that the vendor, upon receiving notice of the removal of the goods to another state, should refile the contract there within ten days to protect himself from bona fide purchasers or creditors of the vendee. The plaintiff, in the principal case, vendor in a conditional sale contract, received notice of the removal of the goods by the vendee to another State, but he failed to refile the contract in the other State as required by its statute. A creditor of the vendee attached the goods without notice of the conditional sale contract, but was given actual notice of it by the plaintiff during the prescribed filing period. The plaintiff, in this action, sought to recover the goods from the attaching creditor. The court held that the conditional sale contract was void as to the creditor in the absence of a refile, notwithstanding the actual notice given him during the refile period.

During the course of a case, as stated in the Bombay Law Journal (11 Bombay L. Jour. 401) the counsel of the parties set forth the boundaries of the land in question by the plot. Counsel for one party said, "We lie on this side, My Lord," and Counsel for the other party said, "And we lie on this side." The Lord Chancellor thereupon remarked, "If you lie on both sides, whom will you have me to believe?"

The same source contains a description of an address to a jury. In the course of his summation, the Counsel was considerably annoyed by the Judge shaking his head to indicate his dissent from the propositions the advocate was presenting. This continued for some time, whereupon the Counsel, continuing his address, said: "Gentlemen of the Jury, you may have noticed his Lordship shaking his head. I ask you to pay no attention to it, because if you were as well acquainted with his Lordship as I am, you would know that when he shakes his head, there is nothing in it." *Supra*, p. 403.

The Yale Law Journal (43 Yale L. Jour. 338) discusses a situation wherein the testator, leaving residuary property to a life tenant, directs the executor to delay sale for a specified time following his death and fails to state what the life tenant shall receive during the intervening period. In the case of *Gaede v. Carroll*, (169 Atl. 172), the testator provided for the creation of a trust out of the residue of his estate, the widow to receive one-third of the income for life with remainder over to his lawful issue upon her death. The executor was directed to operate an extensive show business, which was included in the residue, for such time as he should deem most advantageous to the benefit of the estate, but in no case beyond two years after the testator's death, when it should be sold. During its operation by the executor, but prior to the establishment of the trust, the business profited to the extent of \$800,000. It is contended by the widow that she was entitled to one-third of the actual income earned during the interval following her husband's death, while the executor claimed that the \$800,000 belonged to the corpus for the benefit of the remaindermen. The court held that the widow should receive no share of the profits but only the accrued equitable interest based on an estimated value of the business at the time of the testator's death.

Minimum Prices Care Needed in Upheld by Knox Taking Appeals

(Continued from page 1)

usual flow of interstate commerce in the dry cleaning industry between the States of New York and New Jersey.

"If defendant be permitted to continue its unfair prices further changes in such current and flow are inevitable, and these will contribute to the frustration of the purposes of the National Industrial Recovery Act.

"In this industry profits are dependent largely upon volume business. With due allowance for equivalency in quality of work and general type of service, the volume of the business depends largely upon price, and it will go to the establishment which charges the lowest prices.

"Such has been the result of price cutting in other parts of the country, and there is no reason to suppose that there will be a difference here. In order to overcome tendencies which divert and stem movements in Interstate Commerce Congress may act as it has, and is competent to authorize this court to take such steps as will allow interstate trade to be conducted in smoother channels and in accordance with the execution of policies that are believed to be wise and expedient.

Defendant's Plea Inadequate

"It is not enough for the defendant, in opposition to the will of Congress, to say that the policy of minimum price fixing for industrial service is not a means of which the government may properly take advantage. I agree with the proposition announced by the Supreme Court and here called to defendant's aid, that an emergency is incapable of conferring power previously non-existent, upon its victim.

"At the same time, it must be said that the victim, in an effort to extricate himself from his predicament, and to survive, can use his latent strength to the full.

"The struggle that is put forth may be ill-timed and awkward. It may not conform to precedent and it may eventuate in utter futility—far as the object to be achieved is concerned, but the strategy of the battle within the limits of strength, belongs to the authority in command.

Decision Step Forward

"In rendering my decision," Judge Knox wrote, "I know full well that it may be a distinct step beyond the boundaries which in peace time have been said to circumscribe the powers of Congress.

"If defendant be immediately restrained from continuing its violation of the minimum price of the code and my conclusion should hereafter be held erroneous, great damage will be its portion."

He then suspended its operation to give the company the chance to bring the case to the Circuit Court of Appeals.

Buckley Commission Proposes Bill For Permanent Ministry Of Justice

A bill for the establishment of a permanent agency to study the amendment and correction of the law is being proposed by John L. Buckley, chairman of the Commission on the Administration of Justice of New York State. The report of the commission shows that the time of the individual legislator is crowded with matters of government and public policy and, therefore, it is impossible for him to devote the necessary time to law reform. So many bills are sponsored in some instances that they can not properly be investigated thoroughly as to the need and expediency of the enactments. From 1927 to 1931 inclusive, 1,614 bills were introduced in New York to amend the Civil Practice Act, of which number 84 passed. The report went on to state that the bulk of the proposals for change in private law depend primarily upon individuals or organizations intent upon advancing only their own interests. Thus, special groups with relative ease may secure the enactment of special statutes designed to affect particular bodies and wholly ignore the general welfare.

(Continued from page 1)
the other side, did I get it in myself at so early a time on the trial?

"The time in which to appeal is 20 days; never take an appeal from the paper that you call a judgment until it is entered. Don't try to beat the judge. Get down definitely the judgment or order you are appealing from.

After you have decided to appeal the next step is to draw a notice of appeal and Section 178 Municipal Court Code requires that your adversary be notified as well as the clerk, and that you file with the clerk proof of service upon such adversary. Then order your minutes from the stenographer and pay your money."

Secure Notice of Settlement

After the stenographer's minutes are filed, the speaker counseled, the notice of settlement should be procured from the trial judge whenever he is in session and not in the place where the case was first heard. The clerk of the court—where the case was tried is responsible for presenting the papers to the clerk of the Appellate Court, Justice MacCrate warned, only if he is given notice of settlement, along with the opposing counsel.

"The preparation of your brief is the next problem. Briefs ought to be put in a fashion to hit the eye of the man who reads them. One good point well stated is worth a half dozen that are used simply to cover the paper. If you have one case to clinch your point, cite that—and make that as recent as you can. When you have one good case, no judge objects to hearing you quote on a particular point. But most judges do object to having twelve cases cited, repeating the same point."

Accurate Evidence Vital

He cautioned his listeners further to refrain from making points on evidence which the evidence could not sustain. On an appeal, it is stated, the attorney should never make a point as a matter of law unless he is sure that there is no evidence of it on the other side. As to the mechanics of an appeal, Justice MacCrate noted that the brief should be in triplicate, less elaborate than and never a copy of the minutes, with references to these by page numbers.

"There is something fascinating in a good argument before an appellate court," the speaker commented in discussion, the choice between arguing and submitting. "We want argument if the argument states the law and the facts in such a way that the point is made clearer to see; in this you are given 15 minutes. Statistics show that 45 percent of appeals are argued, instead of being submitted."

COURTS OF NEW YORK

By MILTON G. GERSHENSON

(This is the last of a series of four articles giving the chronological history of the courts of the state of New York.)

The middle of the nineteenth century was a turning point in the history of the judiciary of the state. Prior to that time, the judges had been appointees of the governor with the approval of the senate. For a long time, there had been a growing popular discontent throughout the state in regard to this condition of affairs. A demand was felt for popular election of judges, and a limiting of their term. In deference to these considerations, the constitutional convention of 1846 decided that the judges of the important courts should be elected. Radical as this step was, it was immediately marked by an improvement of the judiciary, its usefulness and high standing generally. Further, a change remembered most clearly by the student of pleading and practice was instituted—the distinction between law and equity was abolished.

Appellate Court Functions Changed

By the constitution of 1846, the two original functions of the appellate court, that of the trial of impeachments, and the review of cases on appeal, were separated. The purely judicial functions of the old court for the Trial of Impeachments and Errors were assigned to a new Court of Appeals, composed of eight judges elected for eight year terms. By a later reorganization in 1899, the court's composition was altered to one chief judge and six associates elected from the state at large and serving for 14 years. From 1870 to 1875, a commission of appeals, made up of four judges of the court as constituted prior to 1869 and a fifth appointee of the governor, was designated to complete the unfinished work of the old court. By amendment in 1888, the governor was authorized to designate seven justices of the Supreme Court to act as associate judges for the time being, and to form a second division of the court whenever the court should certify that there was such an accumulation of causes on the calendar that the public interest required a more speedy disposition thereof. The very same year such second division was requested, and sat for the next four years. The final legislation affecting the jurisdiction and composition of the court was passed in 1894; since that date, it has continued to act thereunder.

Court of Impeachments Created by Constitution

The Court of Impeachments was created by the constitution of 1846 to take over the remaining function of the old court. It is composed of the president of the senate, the senators, or a majority of them, and the judges of the court of appeals, or a majority of them. Where it is sitting to hear charges against the governor, the lieutenant-governor may not be a part of the court. A two-thirds vote is required.

The Court of Common Pleas of the city and county of New York was one of the oldest courts in the United States. From 1821 (when it took over the Mayor's Court) it had as its judges the most outstanding jurists of the state. It heard practically all minor litigation, encompassing among others insanity proceedings, mechanics liens, assignments for the benefit of creditors; it had jurisdiction over corporations, had naturalizing power, and was a court for the impeachment of minor officers. Its appellate jurisdiction extended to appeals from its own decisions, and from the district and city courts. As its decisions were final in a large class of cases, it determined the law so far as these courts were concerned on all matters presenting questions which had not been adjudicated by the court of last resort. This ancient and revered court ended its existence December 31, 1895, under the provisions of the constitution of 1894 consolidating several coordinate courts.

New Tribunal to Relieve Congested Courts

In 1828, a Superior Court was set up in New York City. The pressure of business in the court of common pleas and on the single justice of the supreme court necessitated alleviation either by augmentation of the supreme court or the creation of a tribunal possessing the jurisdiction of the supreme court in civil cases. The latter course was followed, and, until its abolition in 1895, the Superior Court acted in that capacity. It is of interest to note that it was the first court whose jurisdiction was not defined by cross-reference to an English court.

Under the constitution of 1846, the Supreme Court was re-organized and continued. The Court of Errors and the Court of Chancery had been abolished; the Court of Appeals set up. The Circuit Courts which had been established in 1823 were abolished, and the Supreme Court bench was enlarged to 32, divided into eight districts, having General and Special Terms. The new court had to adapt itself to the so-called "Field code" of 1848, a novel experiment in procedural codification, which, despite opposition and protest, worked very effectively. The existence of eight independent and equal branches, the general terms, proved unsatisfactory. Inconsistency of opinion, with resultant overburden of appeals, led to the modification set out in 1869 by the revised Judiciary Article of that year.

Four General Terms Abolished

Four of the general terms were abolished; the state was divided into four judicial departments. In each department, a general term was organized, having a presiding justice and two associate justices, designated from the whole supreme court bench by the governor. These general terms sat once a year to hear appeals from the special terms, from the Courts of Oyer and Terminer and from the County Courts. This new structure lasted from 1870 to 1895, when the present Appellate Division was set up. The Constitution of 1894 abolished the general terms and re-arranged the state into four departments in which a new appellate branch of the supreme court, known as the Appellate Division, was to sit, composed of one presiding, and four associate justices; a larger bench was provided in congested departments. Its function and growth was again treated under the recommendations of the Constitutional Convention of 1915 and the Judiciary Bill of 1925.

In 1897, a court was set up to hear and determine claims against the state, known as the Court of Claims, composed of three judges appointed by the governor for six years. A tendency toward the attainment of essential justice may be noticed in the proviso that no more than two of its judges may be attorneys.

In 1896, the overlapping of the courts of New York city was ended. In that year, the lives of two of the three appellate courts in the city—Supreme, Superior and Common Pleas—ended, with the supreme court assuming their jurisdiction.

The City Court continues one of the Justices Courts (1807) which handled marine causes. In 1819, it became known as the Marine Court of the city of New York, having jurisdiction up to \$500 under the constitution of 1846. Upon reorganization in 1883 as the City Court, it became the civil branch in New York county of the ordinary County Court, the court of General Sessions being the criminal branch in the county.

Other courts of record are the Surrogates Court and the Municipal

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Bankruptcy Hints

BY PERRY G. GILKES, Esq.
(Clerk of U. S. District Court)

At the outset it must be stated that this article is not intended to be a treatise on the Bankruptcy Law, but is solely for the purpose of telling beginners in bankruptcy how to do things.

A proceeding in bankruptcy is instituted by filing a petition; there are two kinds of petitions, the voluntary, filed by the bankrupt, and the involuntary, filed by creditors against the bankrupt.

The Voluntary Petition
Printed forms are used for the voluntary petition. The petition proper sets forth the name, address, place of business of bankrupt, and the kind of business the bankrupt is engaged in. It is important that these facts be correctly given. Annexed to the petition are schedules setting forth in detail the creditors of the bankrupt and the assets, and it is essential that the addresses of the creditors be correctly stated. Sometimes a bankrupt may not know a creditor's address. The bankrupt should use every effort to secure it. If the addresses cannot be ascertained, the bankrupt should annex to his petition an affidavit stating that he has endeavored to ascertain the address but has been unable to do so. The reason for this is plain. All creditors must be notified of the meetings of creditors and of the hearing on the petition for discharge. If a creditor's address is suppressed there would be grounds for such creditor to move to set aside the discharge. The petition and schedules (each separate page) must be signed and sworn to in triplicate. The three sets are filed with the Clerk of the United States District Court, with whom a deposit of \$30.00 is made, covering the Clerk's fee, \$10.00, the Referee's fee, \$15.00, and the Trustee's fee, \$5.00. On the filing of the petition, the Clerk makes the adjudication and refers the proceeding to a Referee.

It then is the duty of the attorney to appear, as speedily as possible with the Referee for a meeting of creditors. As far as the bankrupt is concerned, from this point both voluntary and involuntary matters proceed similarly.

The Involuntary Petition
A petition filed by creditors must set forth the names and addresses of the creditors, who sign, the nature of their claims and the amount thereof; the name and trade name, if any, of the bankrupt, the place and nature of the business. It must also allege specifically at least one act of bankruptcy. It is not sufficient to allege the words of the statute. Some definite statement of fact must be made. In alleging that the bankrupt has suffered a judgment or attachment to be obtained, the fact that the judgment has not been satisfied or the attachment vacated within the five days required by the law must be alleged. If the bankrupt has more than 12 creditors, three must join in petition, their debts aggregating more than \$500.00. If there are less than 12, one creditor is sufficient, but the petition must state that there are less than 12. The petition is sworn to and filed in duplicate with the same deposit as in voluntary proceedings. The Clerk issues a subpoena addressed to the bankrupt requiring him to appear and answer on or before a day certain. This subpoena must be delivered to the United States Marshal for service. Sometimes an appearance by the bankrupt is filed obviating the necessity of service of the subpoena. It is the duty of the petitioning creditors' attorney to see that jurisdiction is obtained either by service of the subpoena or by the appearance of the bankrupt, otherwise adjudication cannot be entered. The bankrupt, or any creditor, may appear and answer. If the bankrupt denies insolvency he can demand a jury trial on that one point, and on that alone. The trial, if no jury is demanded, proceeds before the Court, as in equity cases, or there may be a reference to a Master to take testimony and report thereon to the Court.

After adjudication in involuntary proceedings, it is the duty of the bankrupt, (usually he has an attorney), to prepare schedules of debts and assets. These are exactly the same as the schedules in voluntary proceedings.

First Meeting of Creditors

The Referee sets a date for this meeting and sends out notices to the creditors. At the first meeting the creditors have the right to examine the bankrupt. Proofs of debt are usually filed at this time. The Referee is required to allow or disallow these proofs of debt, for only creditors whose claims have been allowed can vote for a Trustee, who is elected at the first meeting. It may develop that further examination of the bankrupt, or of claims, prevent the first meeting from being closed, and so there may be an adjournment. When the bankrupt has submitted to examination, and when the Referee is satisfied that the bankrupt has complied with all the requirements of the Bankruptcy Act, the Referee issues a certificate showing that he has complied. Creditors have six months within which to file proof of debt. First meeting must be held before the expiration of that time, otherwise the case must be closed and nothing can be done on it.

Petition For Discharge

The bankrupt may file with the Clerk a petition for discharge at any time not less than 30 days and not more than 12 months after adjudication. In the Southern District of New York, the notices are prepared and sent out by the Referee in charge of the case. In the Eastern District, the attorney for the bankrupt prepares the notices, which are always mailed by the Clerk of the Court. Thirty days notice of the hearing is given to each creditor. On the return day creditors may object to the discharge, and specifications of objections must be filed on the return day. Exceptions to the specifications may be filed and are argued in open Court if specified amended specifications may be allowed. When filed, the specifications are referred to the Referee, as Special Commissioner. Testimony is taken, and a report thereon is filed. The report is then brought on for hearing before the Court on notice.

If no specifications have been filed, or if the specifications have been overruled, an order for discharge is signed by the Judge.

Appointment of Receivers

Creditors frequently desire to have a receiver appointed to conserve the bankrupt estate. A petition should be carefully prepared giving reasons and not excuses, for the appointment of a Receiver. A bond in \$250.00 properly executed by the applying creditor, should accompany the petition, unless the bankrupt has, in an involuntary proceeding, appeared and consented, or unless the proceeding is voluntary. The Receiver can act only in the district within which he is appointed. If property is in another district, then no ancillary proceeding is brought in that district. A petition, usually by the receiver is prepared, and attached to it should be a certified copy of the petition and order of original appointment and proof that the receiver has qualified.

It is impossible within the scope of this paper, to give details of a receiver's duties. Suffice it to say that when necessity is shown, a receiver may continue to conduct bankrupt's business. In many cases he is little more than a custodian and has none of the rights and powers of a trustee.

Examinations Under 21-a

The bankrupt, or his wife, or any other witness may be examined before or after adjudication, concerning the acts, or conduct of property of the bankrupt. A receiver or creditor may by petition apply to the Court for such an examination. In preparing the petition for this examination, care must be taken to give the names of witnesses, or so to designate them that the Court can know who are to be examined. It might be suggested that while the scope of the examination is wide, it is not necessary to prove facts

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The Justinian, Vol. 1934 [1934], Iss. 1, Art. 1 Court Trials in Literature

(The Justinian presents herewith the second in a series dealing with famous trials in literature.)

There are many movements ripe today for reforms to eradicate the law's delays. Concerted attacks are being made upon legal technicality and the obscurity of legal machinery. Judges and lawyers are the butt of much abuse and are being held in disrepute.

Charles Dickens beheld these social phenomena three-quarters of a century ago when he derided the law's delay, in writing of the Jarndyces in "Bleak House." However, unlike Victor Hugo, who attacked the legal system of his time with venom, Dickens pilloried the judges, juries, solicitors and barristers who appear in his trial scenes by cajoling and humoring them with mocking strokes of his pen.

Mr. Samuel Pickwick, that gracious character of the "Pickwick Papers," will never forget that eventful morning in July when he paced to and fro in the parlour of his apartment in Goswell Street while his landlady, Mrs. Bardell, "the relict and sole executrix of the deceased customhouse officer," dusted his apartment. Little did he realize that his most innocent remarks that morning would arm her with deductions and innuendoes foreign to his calculations; remarks and acts that were to lead him into the toils of the law. When he asked her—"Do you think it's much greater expense to keep two people than one?" Mrs. Bardell colored up to the very border of her cap, as she fancied a species of matrimonial twinkle in the eyes of her lodger, answered, "La, Mr. Pickwick, what a question?"

"Well, but do you?" he responded.

Question Excites Mrs. Bardell

A more excited Mrs. Bardell listened as Mr. Pickwick continued this odd line of conversation. It was too much for her and before he went much further she flung her arms around his neck "with a cataract of tears and a chorus of sobs."

Neither entreaty nor remonstrance were availing to aid him at this turn of events for the woman had fainted, and before he had time to deposit her, Mr. Tupman, Mr. Winkle and Mr. Snodgrass, brothers of the Pickwick Club, entered the room. Mr. Pickwick told his friends later that he could not conceive what had been the matter with the woman for he had merely announced his intentions of keeping a man servant.

Shortly after, Samuel Weller, the illustrious comic man-servant of Mr. Pickwick brought a letter, remarking that "it's sealed with a vaffer, and directed in round hand." Mr. Tupman read with a trembling voice:

Freeman's Court, Cornhill,
August 28th, 1837

Bardell against Pickwick

Sir,

Having been instructed by Mrs. Martha Bardell to commence an action against you, for a breach of promise

of marriage, for which the plaintiff lays her damages at fifteen hundred pounds, we beg to inform you that writ has been issued against you in this suit, in the Court of Common Pleas, and request to know, by return of post, the name of your attorney in London, who will accept service thereof.

We are Sir,

Your obedient servant,
Dodson and Fogg.

Mr. Samuel Pickwick.
To which Mr. Tupman murmured, "Peace of mind and happiness of confiding females."

Pickwick Claims Conspiracy

"It's a conspiracy," said Mr. Pickwick.

On the day that the court attendant in a black gown called the case of *Bardell v. Pickwick*, Charles Dickens reports, Mr. Justice Stareleigh went to sleep during the opening addresses of the barristers. When Sergeant Buzuf, plaintiff's barrister, paused in his speech, the silence awoke the justice, who, according to Dickens, immediately wrote with a pen which had no ink, drawing himself up to look unusually profound, perhaps to impress the jury with the belief that he always thought deeply with his eyes shut.

Court Is Early

At ten minutes past nine, Mr. Pickwick walked into the Court of Common Pleas, led by his solicitor, the diminutive Mr. Perkins of Gray's Inn and Sergeant Snubbin, his barrister. They sat in low seats, just beneath the desks of the King's Counsel. The seats of the courtroom were arranged in grandstand form, and since they sat on a much lower level than the great body of spectators, they were invisible to them.

It was Charles Dickens' observation that in this courtroom there appeared to be a kind of burlesque in the spectacle and ceremony of the legal process. A decided pomp and circumstance prevailed with a brigade of wigs, stuffed portfolios and umbrellas. What was the Bar without an umbrella? Spectators looked with awe at the King's Bench where the attorneys for the State sat ever ready to lend a few words of counsel to some attorney.

It was Mr. Perkins' confession, as they firmly entrenched themselves, that a good, contented jury was certainly a capital thing to get hold of. "Discontented or hungry jurymen, my dear Sir, always find for the plaintiff," he averred.

Court Attendants Pompous

No sooner had the Justice taken his seat when the officer on the floor called "Silence" in a commanding tone, upon which another officer in the gallery

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Rosalsky Demands New Laws to Check Cunning of Present Day Wrong-doers

"We have too many and too archaic laws" was the recent assertion of Judge Otto A. Rosalsky, of the Court of General Sessions, when asked for his opinion concerning the present congestion of the courts.

"What we need is new laws and new procedure to enable us to deal with the new anti-social type of criminal," continued the Judge. "The courts today are put to their severest test by the cunning of the modern criminal. For that reason we are forced to circumvent them by forced convictions."

Judge Rosalsky pointed out that under existing laws there is a division between larceny by false pretenses and larceny by trick or device which often develops into the fine question of distinguishing between these crimes. He advocated that a comprehensive definition should be handed down by the Court of Appeals to wipe out this technical difficulty.

He made a further recommendation for a change in the felony murder laws. "As it is today," Judge Rosalsky averred, "the law can bring about

the conviction for murder of a person engaged in the commission of a felony, in which human life is taken, only if the life was taken during the commission of the crime. I believe the law should be amended so that any two or more persons, engaged in the commission of a felony, where a human life is taken, either during the commission of the felony, or afterwards, during their escape, might be convicted of murder in the first degree."

Judge Rosalsky described the practice of complainants or material witnesses changing their testimony which results in the abandonment of cases by the District Attorney. He maintained that when a man is first robbed and makes his complaint, his indignation would generally insure his telling the truth about the matter. However, upon the appearance in court of such complainant, because of intimidation by criminal gangs, he is often compelled to change his testimony and, as under the present system the jury is obliged to believe the instant testimony before it, the cause of justice is often perverted.

The Quizzer's Corner

By MILTON G. GERSHENSON

1. D manufactured a secret product to be used as a waterproofing paint. In reality, it contained a large percentage of highly inflammable liquids. X, while using it on a barn, brought a lighted lantern near it, and there was an explosion which injured X, and the resultant fire destroyed the barn. The Z Insurance Company paid for the property damage under a fire insurance policy, and now seeks to recover the damages paid by it from D.

Assuming that the can of paint was marked "Inflammable—Do not use near open flame."

(a) D is not liable for the damage resulting.....

(b) D's failure to state on the can the nature of the explosives contained therein is a misdemeanor.....

Assuming that the can was not so marked.

(c) D is liable to all persons with whom it is in privity of contract for all damage proximately resulting from said explosion.....

(d) D is liable to all persons, despite their lack of privity of contract, for all damage proximately resulting from said explosion.....

(e) D is liable to everyone lawfully using the paint as such for all damage proximately resulting from said explosion.....

(f) D is not liable for the personal injuries to X.....

(g) D is not liable for the property damage to the barn.....

(h) The Z Insurance Company is entitled to maintain the action.....

(G. C. P. Fire Relief Ass'n. v. Sonneborn Sons, 263 N. Y. 463; Labor Law § 451)

2. Parol evidence was improperly offered by D upon a trial to explain a promissory note absolute on its face, and no objection or exception was taken to its reception.

(a) The parol evidence rule is a rule of substantive law.....

(b) P's request for a charge that "the written agreement does not contain any condition as claimed by D" must be denied.....

(c) As a matter of law, the contract was integrated by the writing, and as soon as P called the court's attention to that fact, the court was bound to charge the jury to disregard the oral testimony.....

(Higgs v. de Masiroff, 263 N. Y. 473)

3. (a) Where an insurer and the insured intended to insure the former's home at Somers, but the policy description used the word "Summers," a non-existent place, the insured may successfully maintain an action to reform the policy so as to truly state the location of the property.....

(b) Such action may be maintained successfully after a total loss has destroyed the building claimed to be insured.....

(Northeastern Shares Corp. v. International Ins. Co., 240 App. Div. 80)

4. T died leaving a will making a charitable bequest of property to the Saints Hospital. Prior to T's decease, the hospital became insolvent, and ceased to function as a medical institution.

(a) The Hospital may still claim the charitable bequest.....

(b) Assuming that the gift had failed, the court may designate who shall receive the bequest.....

(c) The attempted gift fails completely, and the property falls into the residuary estate.....

(Matter of Walter, 150 Misc. 512)

5. Where an executor has paid his attorney a lump sum for services rendered to the estate which he represents, the executor may later move summarily under section 231a of the Surrogates Court Act to have a claimed overpayment returned.....

(Matter of Rosenberg, 263 N. Y. 357)

6. Where testatrix has died leaving three wills extant, a person who would take under the earliest will, if

established, is disqualified from testifying to a personal transaction with the deceased upon an action to set aside the will last executed.....

(Matter of McCulloch, 263 N. Y. 408)

7. The payment by an insurance company of the proceeds of a life insurance policy to the second wife of the insured, who, by paying funeral expenses, became entitled to payment under a "facility of payment" clause, made upon a mistake of fact that she was the "widow" of the insured, is valid as against the claim of the true widow to the proceeds of the policy.....

(Wilson v. Metropolitan Insurance Co., 239 App. Div. 745)

8. An infant under the age of sixteen years killed a storekeeper while committing a robbery.

(a) The defendant was guilty of a felony murder.....

(b) The intent for such felony murder may be inferred from the commission of the felony.....

(c) The court might properly refuse to charge all the degrees of homicide, confining its charge to murder first and second.....

(Peo. v. Roper, 259 N. Y. 170; Peo. v. Murch, 263 N. Y. 285; discussed in III B'klyn Law Rev. 293)

9. (a) When a judgment debtor appears and submits to an examination in supplementary proceedings and there is no evidence tending to show disobedience to any order or direction of the court, a conviction for contempt cannot be upheld under section 753 of the Judiciary Law or section 800 of the Civil Practice Act even though he swears falsely on such examination.....

(b) Assuming the above statement to be correct, the judgment debtor may be successfully prosecuted for perjury.....

(Matter of Foster v. Hastings, 263 N. Y. 311)

10. An action by a wife against her husband to recover installments already due and accrued under a separation agreement is barred by a subsequent action by the wife for separation on the ground of non-support, since the contract for support is deemed rescinded from its inception by her later inconsistent action.....

(Breitman v. Breitman, 239 App. Div. 709)

11. X created a joint bank account for X and Y or survivor under 249 of the Banking Law, and later had Y withdraw the amount on deposit therein and place it in Y's checking account so as to make it more readily available to Y. X later died. Y is entitled to the money.....

(Matter of Southard, 150 Misc. 248)

12. A telephone company was replacing old poles with new ones. A new pole was erected alongside of an old pole, the wires having been disconnected from the old pole. One wire was left dangling from the old pole, hanging down to within three feet of the ground. The wire was left there for some time, and the company was notified of this fact. A child, while trying to climb up this attractive object, fell off and sustained severe and permanent injuries. The telephone company is not liable for these injuries.....

(Earley v. New York Telephone Co., 263 N. Y. 424)

13. Where a municipality elevates the grade of a street so as to shut off access by the abutting owners, their damage is at most incidental, and no recovery therefor may be had.....

(Mtr. of Lawrence v. Vil. of Marameck, 263 N. Y. 455)

14. An award in Workmen's Compensation will take into consideration depressed business conditions which reduce claimant's probable income.....

(Mtr. of Block v. Ready, 240 App. Div. 9)

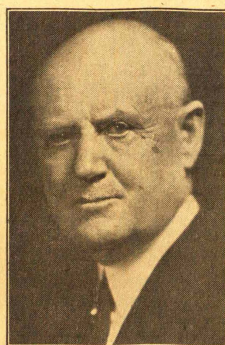
et al.: The Justinian

Prominent Guests Who Will Be Present at Alumni Dinner



FREDERICK E. CRANE

Frederick E. Crane, who has been Judge of the Court of Appeals since 1917, holds the following degrees: LL.B., Columbia, 1890; LL.D., St. Lawrence University, 1921; LL.D., Columbia, 1923.



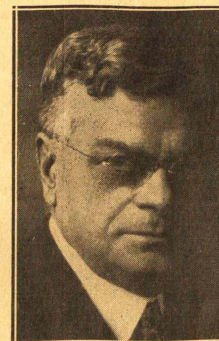
DR. RICHARD E. SYKES

Richard E. Sykes will retire this June after 15 years of devoted and loyal service as President of St. Lawrence University. Dr. Sykes will receive the title of president emeritus.



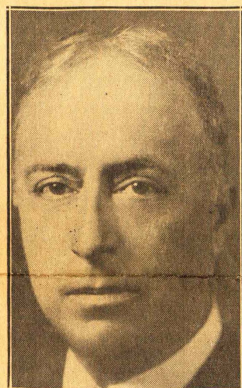
OWEN D. YOUNG

Owen D. Young, internationally prominent figure, and chairman of the board of the General Electric Company, is the retiring chairman of the board of trustees of St. Lawrence University.



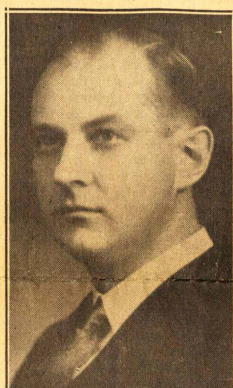
WILLIAM PAYSON RICHARDSON

William Payson Richardson, Dean and founder of the Brooklyn Law School, is a noted authority in the field of legal education and a celebrated teacher. He is the author of many outstanding texts on legal subjects.



WILLIAM BROWN CARSWELL

William Brown Carswell, a member of the class of 1908, is a Justice of the Supreme Court. He was formerly a State Senator for several terms. He has also been an Assistant Corporation Counsel of the City of New York.



JOHN J. BENNETT, JR.

John J. Bennett, Jr., a member of the class of 1926, is Attorney General of the State of New York. During the late war he was a Lieutenant of Aviation and now is a Captain of Infantry in the Officers Reserve Corps. He was also State Commander of the American Legion.



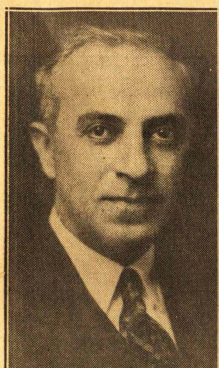
MILLARD H. JENCKS

Millard H. Jencks, who is to succeed Owen D. Young as chairman of the board of trustees of St. Lawrence, is a member of Ginn & Company.



FREDERICK A. KECK

Frederick A. Keck, a member of the class of 1908, President of the Brooklyn Law School Alumni Association, is a member of the Committee on Character and Fitness for the Second Judicial Department.



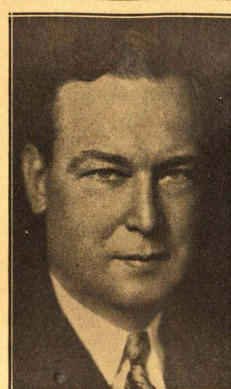
JACOB ARONSON

Jacob Aronson, a member of the class of 1906, was promoted to the vice-presidency of the Legal Department of the New York Central Railroad Company a year ago. He was made General Counsel in 1929.



FRANK FRED ADEL

Frank Fred Adel, a member of the class of 1903, is a Justice of the Supreme Court. Besides being Vice-President of the Ridgewood Savings Bank, he is a director of the Bank of Manhattan Trust Co., and also of the Empire Title and Guarantee Co.



LEON G. GODLEY

Leon G. Godley, a member of the class of 1903, is one of the New York State Transit Commission. He has been a Deputy Police Commissioner, an Assistant Corporation Counsel and a Magistrate. Mr. Godley is also a Professor of Law at Brooklyn Law School.



GEORGE V. McLAUGHLIN

George V. McLaughlin, a member of the class of 1915, is President of the Brooklyn Trust Co. He was formerly Police Commissioner of the City of New York. He is a Director of several corporations, among which are: International Trust Co., and Brooklyn Chamber of Commerce, Inc.

Bankruptcy Hints

(Continued from page 4)

on the record. The object is chiefly to locate property supposed to be hidden.

Offer of Composition

A bankrupt, before or after adjudication, may wish to settle with his creditors. If there has been no adjudication, schedules should be filed, and a petition praying for a reference for the purposes of composition presented to the Court. An order is then entered, referring the matter to a Referee to call a meeting of creditors for the purpose of examining the bankrupt, considering the offer of composition, passing on proofs of debt, and doing whatever is necessary in the premises.

Offer Presented to Referee

If there has been adjudication, the offer is presented directly to the Referee, who then calls the meeting to consider the offer. A majority of creditors, in number and amount, present at the meeting, must vote in favor of the composition, otherwise it is rejected.

The Referee, in case of a favorable vote, reports to the Court, giving the list of creditors, the amounts due each one, and the amount payable under the composition. When the report has been filed in the Clerk's office, a deposit of money sufficient to pay the composition and all expenses must be made, and a hearing, on ten days' notice to all creditors before this Court, is ordered. Objections to the composition may be made at the hearing. Specifications are filed in the case of discharge, and the proceedings thereon are similar.

Two Objective Points

It is to be remembered that there are two objective points under the Bankruptcy Act; the discharge of the bankrupt from his debts and the payment of the creditors, are as far as possible, out of his assets. Both bankrupt and creditors have rights, and the Courts expect the attorney to see that these rights are equally protected.

Ewing Outlines Aircraft Law

Addresses Bar Association; Traces Development of Legal Principles in Field

Stressing in the main the fixing of the liability of owners of aircraft for damages inflicted to property owners, Hampton D. Ewing, Chairman of the Committee on Aeronautics of the Association of the Bar of the City of New York, delivered an address on "Problems of Aeronautical Law" on April 5, at the House of the Association, 42 West 44th Street, New York City.

In discussing the ancient principle of the ownership of the airspace by the subjacent landowner, known as the *ad coelum* doctrine, and how the current doctrine of the right of flight has grown up despite claims to such ownership, Mr. Ewing traced the origin of this doctrine back to the year 1200. At that time the maxim "He who owns the soil owns upward to the sky and downward to the center of the earth" was invoked in *Benjamin v. Pope*, reported in 1 Elizabeth. Blackstone upheld this theory by asserting that all above and all below belonged to the owner of the land.

Liability Chief Problem

Today there is no antecedent doctrine in our courts of last resort giving title to airspace in reference to aircraft. However, Congress has recently passed an act giving to it the power to enact legislation to control flight, interstate and intrastate.

In a further discussion the speaker considered the most important question arising today to be, "What should be the liability of the owner of aircraft and that of the owner of the ground in reference to any accidents that might happen where both are involved?" The earliest legislation passed pertaining to this problem was enacted in Connecticut in 1911. This

(Continued on page 10)

CLASS OF '31 MEETS

The 6-8 class of 1931 held a unique and entertaining reunion in the form of a Chinese dinner, dance and bridge, on Sunday evening, March 18, at the Oriental Restaurant in Chinatown.

The dinner was the scene of the resumption of many friendships formed in the Law School and was marked by the recounting of many anecdotes and occurrences which happened in the undergraduate years of the members of that class.

What Is The Legislature To Do For The Home Owner?

By JAMES N. MACLEAN, Esq.

Since the adjournment of the last session of the legislature, there has been no perceptible lightening of the mortgage burdens of the home and farm owner, except by such relief as the Home Loan Act has been able to give.

As might be expected, the pressure upon the legislature has not abated but rather increased for such measures of relief as may be given by the state.

It will be remembered that the last session of the legislature paid very little attention to the recommendations of a commission appointed by the Governor, which urged a complete moratorium on home and farm mortgage foreclosures, and that the only laws passed suspended foreclosures on all mortgages for defaults in principal alone for an emergency period ending July 1, 1934 and, for the same period, limited deficiency judgments by requiring the real value of the property to be first deducted from the mortgage debt without regard to the amount bid at the sale.

The apparent confidence of our law makers that the depression would be over by July of this year has not been justified, and it seems only reasonable to expect that at least the emergency legislation will be extended.

There are now before the Legislature a number of bills on the subject of considerable interest, and it is to be hoped that the final outcome will be a more satisfactory law than resulted from the last session.

Perhaps the most interesting of these bills is No. 1026, introduced in the Assembly by Mr. Fitzgerald on February 15. This measure attacks the problem in a new way somewhat more like the rule-of-thumb method favored by our British cousins than is usual in American legislation, although this particular bill is similar to some which have already been passed in other states.

Mr. Fitzgerald proposes to suspend foreclosures on farm and home mortgages during an emergency period extending to July 1st, 1935, in the two following cases:

1. Where the property produces an income, and the owner either pays over to the mortgagees the surplus over expenses, or has assigned the income to the mortgagees, and
2. Where the property is occupied by the owner and produces no income, and there is paid over to the mortgagees each month 25% of the net personal incomes of the owner and of any of his relations who live in the property.

The bill also provides that the money received by the mortgagees in any of these cases shall be used first to pay taxes and water rates, before any part shall be applied to interest.

This bill is worthy of the most serious attention. It is perfectly fair to both the mortgagee and mortgagor, and imposes upon both the obligation to do exactly what each of them ought to be willing to do under existing conditions, and as long as those conditions continue.

Another bill, No. 349, introduced January 24, also by Mr. Fitzgerald, is one which assuredly should become law. This bill proposes to amend Section 1083-a of the Civil Practice Act by making the emergency provisions adopted last year as to deficiency judgments permanent.

This would remove a defect which has always existed in our foreclosure system as the same has been interpreted by our courts. This defect was removed long ago by legislation in some western states and should not have been permitted to remain so long in New York.

The defect arises from the fact that the plaintiff has always been able to secure an unjust deficiency judgment in foreclosure whenever no outsider was willing to bid more than the mortgage debt and costs. This could happen and often has happened in normal times. Under these circumstances the plaintiff can buy in the property by a nominal bid of a few hundred dollars, and need not bid anything like the real value of the property.

This possibility was brought forcibly to public notice by the experience of the past few years, and it was recognized by the passage at the last session of the present 1083-a of the Civil Practice Act, but for an emergency period only, by requiring the plaintiff who buys in the property to credit the reasonable value upon the mortgage debt, without regard to the amount of his bid, before receiving a deficiency judgment. There is every reason in the world why this should be made a permanent part of the foreclosure system, as it prevents a plaintiff from taking unfair advantage of

(Continued on page 7)

Schackno Act Is Sustained

Lehman Rules on Case Upholding Superintendent of Insurance

"Extraordinary conditions may call for extraordinary remedies," said Judge Irving Lehman, speaking for the New York Court of Appeals, in sustaining the validity of the Schackno Act, on March 20.

The Act provides for the rehabilitation of mortgage companies by the State Superintendent of Insurance, who would be empowered to administer all mortgage investments, defined to include all mortgages of real property guaranteed by guarantee companies. The stated purpose of the bill is to avert financial ruin.

The chief attack was directed against the power of the Legislature to enact such a law for the reason that it has decreed such interests shall not be enforced in strict compliance with the terms of the contracts. This impairment of the obligations of contract rendered the act unconstitutional, was the argument, a position concurred in by the Supreme Court, which held the law invalid.

In disposing of this contention Judge Lehman said: "Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. . . ."

"This principle of harmonizing the constitutional prohibition with the necessary residuum of State power has had progressive recognition in the decisions of this court. The economic interests of the State may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts."

It is common knowledge that there

(Continued on page 9)

SOLOMON, '21, TO SPEAK

Charles Solomon, '21, will participate in a broadcast over a nation wide network of the National Broadcasting Company on Saturday, April 21, from 5:30 to 6 p. m., with James C. Bonbright. Mr. Bonbright is Professor of Finance, Columbia University and Trustee of the Power Authority of New York. The subject of the broadcast will be "The New Deal and Power."

Courts of New York

(Continued from page 3)

Court. The latter is the continuation of the District Courts (abolished 1898) with the added jurisdiction of the Assistant Justices Courts which had been created in 1897 with jurisdiction up to \$25. Since 1915 it has been a court of record, possessing jurisdiction up to \$1000.

Among the various inferior courts, not of record, is the Court of Special Sessions, which was continued under the 1898 charter. It possesses criminal jurisdiction over misdemeanors (except libel) and filiation proceedings in all five boroughs. On July 1, 1915, a separate division called the Children's Court, was organized, taking over the Children's Court organized in 1898 as part of the City Magistrate's Court.

A Domestic Relations Court was organized in 1922 under sec. 18 of art. VI of the New York state constitution (see City Magistrates Court, below).

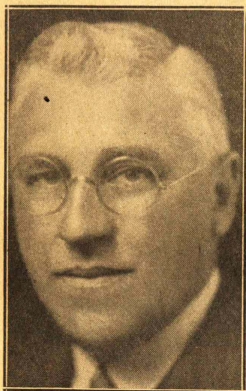
Criminal Jurisdiction Divided

The city, for purposes of inferior criminal jurisdiction is divided into districts with a City Magistrates Court to each. This court took over the old Police Courts, which were derived from the Courts of Justices of the Peace. It possesses jurisdiction over felonies, misdemeanors, or the violation of ordinances or laws. In felony cases, the magistrate decides whether to hold the defendant for the grand jury; in misdemeanors, for special sessions. Special divisions of it are: Women's Day Court; after dark, the Night Courts for Men and Women; the Domestic Relations Court (1915); the Traffic Court (1915); Probation Court (1919).

For further references in this subject, the following are suggested. At the same time, the author acknowledges the use which he has made of them as sources for the above series of articles.

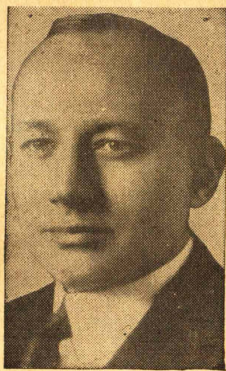
History of the Court of Common Pleas—J. W. BROOKS.
Courts and Lawyers of New York—ALDEN CHESTER.
Legal and Judicial History of New York—ALDEN CHESTER.
History of Bench and Bar of New York—REDFIELD.
History of Bench and Bar of New York—WERNER.
The Courts of New York State—SCOTT.

Prominent Guests Who Will Be Present at Alumni Dinner



MANASSEH MILLER

Manasseh Miller, a member of the class of 1902, is President of the Prudential Savings Bank and was President of the National Title Guarantee Co. He is also President of the National Exchange Bank and Trust Co.



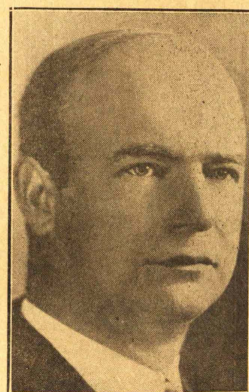
PAUL WINDELS

Paul Windels, a member of the class of 1909, is the present Corporation Counsel of the City of New York. He was formerly counsel to the New York State Bridge and Tunnel Commission.



CLEVELAND ROGERS

Cleveland Rogers, a prominent journalist, is the Editor of the Brooklyn Daily Eagle. He is active in Brooklyn civic life.



HENRY GEORGE WENZEL, JR.

Henry George Wenzel, Jr., a member of the class of 1911, is a Justice of the Supreme Court. Formerly he was a Justice of the Municipal Court of the City of New York.

Guaranteed Mortgages

By EUGENE S. LEVY

(This is the last installment in a series attempting to point out briefly the highlights in the legal campaign aimed at remedying the mortgage investment emergency—Editor's Note.)

On January 5, 1934 we read of the first set-back for the Superintendent of Insurance since he started rehabilitating 14 mortgage companies involving \$1,500,000,000 in mortgage certificates. "Court Upsets 'Dictatorship' of Van Schaick." This was the dramatic, journalistic label given to the decision of Justice Alfred Frankenthaler which condemned the Superintendent for exceeding the authority given him by law and which directed that certificate holders might have access to the names and addresses of other holders of the same issues for the purpose of devising and presenting to the court their own reorganization plans. Justice Frankenthaler said:

"The certificate holders should not be obliged to wait patiently and passively until steps are taken in their behalf by others. They have an express statutory right to take action themselves and their efforts in that direction should be encouraged and not hindered."

With this hard won sanction of the court, plans for reorganization were drawn and submitted for approval. Out of a large number of proposals, all but two were eliminated, and the proponents of these have gone to the Court of Appeals of this state in an effort to prove the merits of one or the other.

Contest Balances Plans

As was mentioned in an earlier article, the legal contest was reduced to a balancing of the "Corporate Plan" versus the "Trustee Plan." The "Corporate Plan," as proposed by the Superintendent of Insurance was, of course, based upon the power given to him under the Schackno Act and is fully set forth in a previous installment. On February first of this year, Justice Frankenthaler, in a lengthy opinion, declared the Act unconstitutional. The opinion states that there is no precedent for such legislation and found it condemned even by the majority of the United States Supreme Court in the recent Minnesota mortgage moratorium case. There, the court stated that emergencies such as exist at present vindicate legislation suspending temporarily the enforcement of property rights, but it frowned upon legislation which deprived people of their property rights permanently. Justice Frankenthaler pointed out that when two-thirds of the certificate holders agree upon a plan of corporate reorganization which compels the dissenting certificate holders to take stock for their certificates, there is being effected a permanent deprivation of property.

Checked Schackno Act

The decision, perforce, checked the functioning of the Schackno Act and the activities of reorganization under it. Many were seriously alarmed. It was thought that the only hope of the certificate holders had been removed.

Apparently sensing this sentiment, Justice Frankenthaler rendered another thorough and extended opinion, offering a solution to certificate holders. In that opinion, the court suggested that the most beneficial remedy available is the appointment by the Supreme Court of substituted trustees to act in the place of the incapacitated mortgage guarantee companies.

In other words, the opinion embodied almost entirely the "Trustee Plan" as proposed and argued by that small group of attorneys previously alluded to who early in the battle had recognized the failings of the legislative relief and the Superintendent of Insurance as its instrumentality.

The "Trustee Plan" is the procedure of appointing trustees under the court's power in equity; such trustees to be responsible to the certificate holders for every act and directly under the supervision of the court.

This plan was again upheld and the views of Justice Frankenthaler approved in a decision by Justice

Bleakley, appearing in the New York Law Journal, February 7. Space does not permit us to deal at any length with the details of this plan. It is intended only to pursue a chronological survey of the events in a most unprecedented economic problem.

The next development following the Frankenthaler decisions was the commencement of an appeal to the Appellate Division by the Superintendent of Insurance. Although he proceeded with apparent determination to contest his ouster, he seemed to recognize the difficulty of his position and, while not willing to yield on legal ground, publicly sought the aid of the Legislature.

Asks Relief of Responsibility

On February 19, in his Annual Report to the Legislature, Superintendent Van Schaick issued an appeal asking to be relieved of the responsibility imposed by the Schackno Act. He recommended that management and rehabilitation be placed under a new State agency.

"This has proved to be a tremendous task," he said, "and one of such size and difficulty that undivided attention of a specialized State agency is imperatively required."

His message went so far as to indicate his possible approval of the very "trustee plan" against which he has fought and is appealing.

"If the certificate holders in any case prefer a private trustee it is their privilege to indicate this to the court. 'However,' he continued, "there would appear to be an obligation upon the State to make available the services of a State agency... for those who choose to take advantage of it."

Immediate Action Required

On February 20, Justice Frankenthaler, stating that the right of certificate holders required immediate action, proceeded to appoint three trustees over an issue of the New York Title and Mortgage Company amounting to upwards of \$27,000,000.

This marked an important turning point in the bitterly fought controversy. The Superintendent of Insurance had been ousted from control, the Schackno Act under which he had proceeded was declared unconstitutional and finally a plan of reorganization, the "trustee plan," was promulgated, approved by the Court and initiated. Presumptively, the guaranteed mortgage situation should be considered at least temporarily solved pending the outcome of this experiment. Assumedly, the newly appointed trustees should have begun to function. But this was not the case.

As a matter of course, the trustees were stayed from acting by virtue of the notice of appeal filed by Van Schaick. The Civil Practice Act automatically grants a stay of proceedings, it was contended, in any litigation against a State officer. That appeal is still pending and is expected to come up this month. Until that time, the trustees must remain idle and thousands of certificate holders continue to receive no relief from their unfortunate investments.

Court of Appeals Approves

There is still another outstanding development in this perplexing problem. The Court of Appeals of this State, which had been confronted with an appeal involving the constitutionality of the Schackno Act, handed down its decision on March 20. This appeal was brought by the Marine Trust Company of Buffalo. The result is already well-known. The Court upheld the Schackno Act, thereby reversing the holding of Justice Frankenthaler. The opinion stressed the existing mortgage investment emergency as a justification of the granting of broad powers to the Superintendent of Insurance.

Closely following this unexpected upset by the highest Court in this State came a report from the Moreland Act Commission. George W. Alger, Moreland Act Commissioner appointed by Governor Lehman to investigate the mortgage situation, and

(Continued on page 9)

Lehman Favors Insurer Bound Council Scheme By Its Policy

Considering it as "a distinct advance on the road to improving the administration of justice in this state," Governor Lehman announced on April 1 that he had approved the bill creating a Judicial Council for the courts of the State. The bill was sponsored by Senator John L. Buckley.

Governor Lehman's comment on the charge that the measure is not broad enough was that the amendments to enlarge and strengthen the powers of the Judicial Council could always be presented during the present session of the Legislature. "This is by far the better and surer course," he explained.

Seek Court's Right to Rule

A companion bill has been introduced by William C. Breed, representing the New York City Merchants' Association, which asks the restoration to the courts of their old right to control court procedure. He believes that freedom from the delays and technicalities that now interfere with the administration of justice will not prevail until the imposition of rules by the Legislature is abolished.

The Judicial Council is authorized to make a continuous survey of the operation of all the courts in the State, consider suggestions for improvements, and to recommend all changes in rules and practice that will aid the courts in their work. A member of the bar from each judicial department, and two laymen, appointed by the Governor, will constitute the Council's personnel.

32nd Annual Alumni Dinner Will Be Held at Waldorf-Astoria on May 9

(Continued from page 1)

Commissioner of the Transit Commission of the State of New York and Professor of Law at the Brooklyn Law School, former Police Commissioner Geo. V. McLaughlin, Hon. Paul Windels, Corporation Counsel of the City of New York, Manasseh Miller, President of National Title Guaranty Company and a member of the first graduating class of the school in 1902, Judge Henry G. Wenzel, Cleveland Rogers and Preston Goodfellow, editor and publisher respectively, of the Brooklyn Daily Eagle, Dean William Payson Richardson, and Judge Crane, Dr. Sykes, Mr. Jencks, Mr. Young, and others. Millard H. Jencks, Hon. Frederick E. Crane, Dr. Richard Eddy Sykes and Dean Richardson will address the gathering.

School Holiday Announced

In honor of the affair, May 9 will be a holiday. There will be no classes on that day. The subscription is \$4.00 per single reservation, but students will be afforded an opportunity to take advantage of the special offer of \$3.50 for students only.

David A. Richardson, Assistant to the Dean, is assisting Mr. Bennett with the details and arrangements.

Reservations for tables for the alumni of various classes have been made and the representatives of such classes have been chosen as follows: 1902: Manasseh Miller. 1903: Frank F. Adel and Hon. Harrison C. Glone. 1904: Percy Gilkes and Louis Lavine. 1905: Charles Fasullo, George A. Marshall, Fred G. Milligan and Dr. Louis C. Willis. 1906: Edwin W. Cady, John J. Curtin, Thomas J. Towers and Marinus Willet. 1907: George H. Boyce, George R. Holahan, Jr., and Nathan D. Shapiro. 1908: George R. Brennan, Leon G. Godley, Frederick A. Keck, Charles C. Spedick and Abner Surplus. 1909: Henry W. Beer, James H. Gilvary and James L. Medler. 1910: Edgar F. Hazelton, William O'Hare and James Virdone. 1911: Hon. Henry G. Wenzel, Jr., and Hon. Thomas J. Cuff. 1912: Theodore M. Stitt, Aaron S. Cutler, Arthur L. Burchell and Hon. George J. Joyce. 1913: Edwin C. Morsch, Felix Benavenga and Hon. Edwin W. Wallace.

McLaughlin to Attend

1914: Harold J. Turk and Louis J. Castellano. 1915: Julius F. Newman and Hon. George V. McLaughlin. 1916: Angelo J. Cincotta and William V. Hagendorff. 1917: Hon. Thomas F. Casey, Charles N. Cohen, Joseph M. Conroy, Francis X. Giaccone and Hon. Raymond G. Pollard. 1918: Joseph H. Burkard, Russell Kruppenbacher and Joseph H. Wackerman. 1919: Harry Bass and Sam Bisgyer. 1920: Hon. Carl Pack, George D. Aranow, George A. Ostergren and Mrs. Romana K. Spivacko. 1921: Sigmund J. Rome, Joseph Katz and Harry G. Liese. 1922: Henry G. Singer, Robert S. Fleckles, Emil K. Ellis, Robert Daru and Morris Okoshkin. 1923: Hon. Jerome G. Ambro, Jacob E. Branden and Lester Rabinow. 1924: Harold Kennedy and Tom Grace.

In a decision, unique because of the facts involved, Municipal Justice George L. Genung ruled that an injured person could not be forced to submit to a surgical operation even though the operation might cure an ailment or prevent death.

In an action on a life insurance policy the plaintiff, a butcher, had purchased a policy from defendant which included a provision of monthly annuities in the event that he was permanently prevented from working by injuries. Thereafter he was forced to quit work as the direct result of injuries received while carrying meat.

Disability Clause Ignored

The insurance company refused to recognize the disability clause, contending that they were relieved from liability by the refusal of the plaintiff to undergo a surgical operation which would relieve his injury and permit him to return to work.

In its decision for the plaintiff the court, citing Cady on Insurance, Judge Genung said:

"In the absence of any stipulation in the policy requiring the insured to submit to a surgical operation, the plaintiff is under no duty to submit to an operation as a condition precedent to recovery under the terms of the policy. To hold otherwise would be to incorporate into the policy a new provision not therein contained and to impose upon the insured an obligation not stipulated in the contract."

Legislature and Home Owner

(Continued from page 6)

the fact that no outsider will bid over the mortgage debt and expenses.

Our foreclosure system was established in its present form by the adoption of the general rules of practice in 1849. It is quite possible that the framers of these rules perceived this possibility of an unfair advantage to the plaintiff, for it is otherwise difficult to understand the reason for some of the provisions placed in Rule L of that year. This rule establishes the provisions which must be contained in the final judgment of foreclosure, and states that such a judgment must contain permission to the plaintiff to become a purchaser at the sale "unless otherwise specially ordered by the court," thus apparently reserving to the court in a proper case the right to otherwise order, and consequently the power to place proper conditions upon granting this permission, such as requiring the plaintiff to credit the reasonable value of the property upon the mortgage debt if he should become the purchaser. This exact language has been continued in the rules ever since 1849, and is now in Rule 259 of the Rules of Civil Practice.

Rule Sufficient Authority

Unless this rule is absolutely meaningless as to the language above quoted, it would seem to be sufficient authority to the courts to regulate unfair deficiency judgments without the need of further legislation, but they have failed to appreciate or exercise it, and it was only after express declarations in opinions of the lack of power in the courts to prevent a situation which "shocked the judicial conscience" when the plaintiff got both the property and a deficiency judgment for the whole mortgage debt, that the emergency legislation of last year was adopted.

Inasmuch as Rule 259 has proved insufficient, there is every reason for making the emergency provisions as to deficiency judgments permanent, and thus avoid shocks to the judicial conscience for all time to come.

Bills Extend Provision

Other bills before the legislature seek to extend the emergency provisions of last year for another year, and no doubt some one of these will be adopted even if nothing else should be done, as it is quite obvious that there is even more need of the legislation now than there was a year ago.

Another bill by Mr. Fitzgerald, No. 350-1130, attempts something of a tie-in with the Home Loan Act by giving express power to the courts to grant stays in foreclosure actions to enable the applications to be made to the Home Owners Loan Corporation. Upon this point our courts have not proved so reactionary and such stays have already been granted in appropriate cases under general equitable powers. This bill limits the periods of such stays with unnecessary elaboration and perhaps would be improved by changing it to a general grant of power to make whatever stay the circumstances would warrant.

A bill introduced in the Assembly by Mr. Jacobi, No. 789, is another and a rather ingenious attack upon the problem.

Redeem in Two Years

This bill relates to redemption after foreclosure and provides that the owner, or his heirs or assigns, may redeem a foreclosed home or farm within two years after the sale by paying to the purchaser, or his heirs or assigns, the amount which was paid on the sale, with interest. This apparently innocent bill would have a far reaching effect, and if it should become law the demon of deficiency judgments would be sufficiently exorcised. It is hardly likely that any mortgagee would thereafter be inclined to bid less than the amount of his mortgage and expenses lest he should afterwards have to recover the property for a smaller amount and thus take a loss on his mortgage.

Some method of extending the equity of redemption would certainly be desirable, so that home owners who have been foreclosed should be able to redeem as a matter of right and not of favor as at present, but it is very doubtful whether this can actually be accomplished as to existing mortgages.

Unfortunately for the distressed home and farm owner suffering from the present emergency, we are living under a constitution which although somewhat battered out of shape in some respects has not yet shown signs of giving way in parts which prevent such full relief to mortgagors as legislatures might like to give.

Forbid Contract Impairment

The federal constitution forbids the states from passing any laws which impair the obligations of existing contracts. The home and farm mortgages which need relief are those already in existence, and, if we should judge solely by past performances, there would be very little chance of laws which seriously affect these mortgages being held valid by the courts.

Already in New Jersey an act requiring plaintiffs to apply the fair value on the mortgage debt before taking a deficiency judgment has been held unconstitutional as far as mortgages existing at the time of the passage of the act were concerned, and there have been a number of similar decisions throughout the country by state courts upon various attempted measures of mortgage relief.

The theory of the Constitution is that what a man has bargained for he must have in spite of all the legislatures in the country. Had Shylock lived under our constitution he must have had his pound, and "the quality of mercy" would have fallen as little heaven as any other "gentle rain from heaven."

Constitutional Law Changes

On the other hand, constitutional law is not what it was 20 years ago, and there can be no question but that the right of the state to overrule private contracts through the exercise of the police power has been and is being amplified in directions where its existence was never suspected by past generations. The United States Supreme Court in the milk cases has declared that the existence of the present emergency gives no new powers to the state but justifies the use of existing (and perhaps hitherto unthought of) powers which would be unwarranted in normal times. This is an entering wedge of great power and almost unlimited extent, and may eventually be used to pry the mortgage away from his vested rights. In fact, he would be rash indeed who would attempt to predict the constitutional decisions of the next few years. The law of necessity is greater than all man made laws and constitutions, and has again and again in our history dictated the decisions of the United States Supreme Court. The home owner may find hope in the thought that if the necessity is great enough the way will be found.

Editor's Note:—The author, a member of the New York Bar, is Chairman and General Counsel of the Home Mortgage Advisory Board in Nassau County, Chairman of the Mortgage Committee of the American Legion for Nassau County, and Supervising Chairman of the Municipal Committee for the Relief of Home Owners appointed by Hon. Bernard S. Deutsch, President of the Board of Aldermen, under the sponsorship of The Mayor and the Municipality of the City of New York.

John Duffys Have Daughter

Mr. and Mrs. John M. Duffy, who hold graduate degrees from Brooklyn Law School, announce the birth of a daughter, Kathryn Patricia, on March 15, 1934. Mrs. Duffy received her J.D. degree from Brooklyn Law School in 1932, and Mr. Duffy his LL.M. from the institution in the same year.

Fraternities and Sororities

PHI DELTA PHI

At the last meeting of Evarts Inn, held April 13, the officers for 1934-35 were elected. James E. Finnegan was elected Magister, succeeding Joseph Leary Delaney who was Magister for 1933-34. I. Hyatt Smith was elected Exchequer. He succeeds Morris L. Heath in that office. Robert G. Phelps was elected Historian, and John B. Halladay was elected Clerk. For the past year John Russell Appleton was Historian and Anthony F. Bologna was Clerk.

IOTA THETA

At a regular meeting held on Sunday, April 8, the following were nominated for office: Graduate Praetor—Leo Raucher, Milton G. Gershenson, Norman Kemper, and Isidore H. Wachtel. Vice-Praetor—Joseph H. Burns and Irving Figowitz. Graduate Custodian—Samuel Korb. Undergraduate Praetor—George J. Tallanoff and Robert Turetsky. Scriptor—Jason R. Berke and Edmund Preiss. Custodian Secundus—Herbert R. Silverman, Joseph Wahrhaftig, and Albert A. Berman.

The following men have been approved by the Membership Committee: Israel G. Seeger, Martin Youdelman, Edward J. Mintz, Harry Deitch, Samuel Clorfeine, Hyman D. Epstein, Dr. Harry Diamond, David Minkoff, and Jerome J. Jacobson.

At the final Seminar Smoker for this semester held on Friday, April 13, the guest speaker was Professor Maloney who spoke on "The Mortgage Moratorium."

Alpha Chapter held a Bridge Dancant at Le Perquet suite of the Waldorf-Astoria on Sunday afternoon, April 15, 1934. Among the large attendance were several professors of Brooklyn Law School and a number of noted practicing attorneys who are graduate members of the fraternity.

A portion of the proceeds is being donated to the American Jewish Congress for the benefit of the German Reich refugees. Robert Turetsky was chairman of the dance committee.

ALPHA GAMMA

Gamma Chapter held a mass meeting on April 4, 1934, at the Fraternity rooms in the Brooklyn Law School, at which were present a large number of the alumni brothers, some of whom were: William M. Steinberg, and Edward Silverstein, both of whom are now practicing law in Manhattan and Kings respectively.

On Friday, April 13, 1934, Gamma Chapter tendered a Gala Smoker, which was held at the Law School in the Men's Lounge. These smokers are held annually for the purpose of acquainting the newer members of the Freshman class with their classmates of the same and other sessions of the school. Vice-Dean William V. Hagedorn and Professor James Lawrence Murphy addressed the gathering.

A moonlight sail on the Hudson is being planned for the Metropolitan chapters which will take place same time in May.

Maximilian Klein and Max Shenkin, both of the class of '32 are now completing their postgraduate courses.

PHI KAPPA DELTA

At a recent pledge meeting, conducted by Vice-Reximus Louis B. Chapkin, Reuben Kaufman took the formal oath of pledgeship.

Plans are being completed for a dinner dance to be held some time in the near future at a prominent New York hotel. Plans are also being made for a stag induction to be held in May in conjunction with the alumni fraters, after the formal induction rituals at which Brother Louis Mallin, Master of Rituals, will officiate.

DELTA THETA PHI

Setting apart May 12 as Founder's Day, the Delta Theta Phi fraternity will hold an informal meeting to commemorate the occasion. Following the

meeting, a dinner will be given, at which noted speakers from the alumni senate will be heard.

IOTA ALPHA PI

On April 21, 1934, the National Council will tender its Annual Spring Charity Dance in the Hunting Room of the Hotel Astor. The proceeds of this function are to augment the Student Loan Fund, which has been successfully maintained for many years.

The Council for the Metropolitan chapters has established an Employment Bureau under the supervision and direction of Edythe Morris, an alumna of the Law School. The Bureau, although recently established, has already succeeded in placing several of the sorority women.

Gamma Chapter will entertain Iota Chapter of Long Island University on April 15, 1934 at the home of Mrs. Theresa Theilheimer Kauter. This is one of a series of inter-chapter entertainments, an established custom of Iota Alpha Pi. Gamma Chapter will in turn be feted by Delta Chapter in the near future.

TAU ALPHA PI

Zeta Chapter of Tau Alpha Pi Sorority held its Spring Rush party on Saturday afternoon, March 17, at the sorority house, 1467-49th Street, Brooklyn.

The pledges, having been duly summoned to appear at the "Dutch Court of Holland County," were entertained by the older members of the sorority with reminiscences of their experiences in court.

The sorority extends congratulations to Rose Weiss and Jack Levy, both graduates of Brooklyn Law School, upon the announcement of their engagement. Sylvia Rothman, of the third year class, won her case in the practice court on March 24.

Plans are being formulated to tender a luncheon to two of the members, Mrs. Rose Babchen Mennen and Rose Weiss, to be held Saturday afternoon, April 14.

Bogart to Leave Publication Today

(Continued from page 1)

was compelled to decline because of the pressure of his other activities. He is president of the Lehigh Law Club, a member of the Inter-Club Council and a member of various fraternities and organizations.

It is noteworthy that during Bogart's administration THE JUSTINIAN has been quoted and cited in newspapers, legal periodicals, and textbooks.

Bogart is at present a member of the Senior class and will receive his degree of Bachelor of Laws in June.

Ballin Is Named New Justinian Editor

(Continued from page 1)

secretary of the New York University club and has had extensive experience in the printing field. Before entering Law School, Ballin worked on a trade journal. He attended New York University, where he received his pre-law training.

Katz, who has been active on THE JUSTINIAN for some time, received his B.S. in S.S. degree from the College of the City of New York in 1931. While at college he was a member of the track team and its manager in 1931, for which he received his varsity letter.

Saidel, the new managing editor, received the degree of Bachelor of Arts from Union College in June, 1933. While at Union he took an active part in dramatics, debating and journalism. He was sporting editor of The Concordians, Union College newspaper and editor of the Inter-Scholastic Debater.

Marcus Speaks To N.Y.U. Club

"Before the visit of the Department of Corrections on January 24 the prison on Welfare Island was under the control of gangs, and not of the city," stated the Hon. David Marcus, First Deputy Commissioner of the Department of Corrections, at a recent open meeting of the New York University Club. Mr. Marcus, an alumnus of Brooklyn Law School, class of '27, was describing conditions found in the city's jails when they were investigated by the Department of Corrections under Commissioner Austin H. McCormack.

The gangs he mentioned had each taken one of the prison hospitals for headquarters, and, as he told the members of the club, "The leaders lived there in luxurious surroundings and ruled the inmates in a despotic fashion. I found the men in the hospital wards dressed in silk lounging robes," he said, "with one prisoner shaving them while another shined their shoes; and these men were supposed to be paying the penalty for their crimes." In contrast with this he described how the greater majority of the men were "living in horrible misery and squalor."

Majority Deprived of Supplies

"One of the leaders," said Mr. Marcus, "had never slept in a cell for the entire 13 months of his incarceration. Some of the men had but one blanket, while others had as many as 20 as a result of the free access to be had to the storerooms. The blankets were sold for as little as five cents. The same conditions prevailed in the commissary," continued the Deputy Commissioner, "an illustration of what was going on is the fact that the city supplied 1,400 pounds of meat daily for 1,500 men. Of this amount 800 pounds were used for about 200 men, and the remaining 400 pounds fed 1,300 men."

"A great variety of knives, blackjacks and other weapons was found, as well as the most complete set of burglar tools I have ever seen," said Mr. Marcus. He illustrated the mental attitude of some of the prisoners by telling how one demanded credentials when he was given an order, and refused to move until he had seen the badge.

Attempting Rehabilitation

"Vocational classes have been commenced to enable the inmates to make a new start when their terms are up. They will have a trade and can take their places as useful citizens." It was explained that the "ultimate purpose of Criminal Law is the prevention of crime, and it is this principle we are trying to apply. Treatment, rather than punishment will be the keynote," Mr. Marcus said.

The talk was followed by questions and discussion. Prof. Abraham Rotwein, faculty member of the club, introduced the speaker; Prof. Markley Frankham was present at the meeting.

Purdy to Teach Admiralty Law

(Continued from page 1)

the admiralty courts for nearly 30 years. He stated that he would in his course emphasize the practical application of the principles involved. He has been counsel in several cases which have attracted wide attention, such as the O'Donnell case concerning the interpretation of the Harter Act and treating the tug and barge as a unit, and the Caledonia Limitation case, involving res to be surrendered in a limitation of liability concerning personal injuries.

While at Harvard, Professor Purdy received his major letter in soccer. He is a member of the Maritime Law Association of the United States, the Downtown Athletic Club, the Harvard Club of New York, and the St. Albans Golf Club. He is married to the former Miss Virginia Clark, has two children and resides at 105—80th Street, Brooklyn.

NRA Discussed At Cornell Club

"The great problem that now confronts the N. R. A. is enforcement of the codes," stated Mary Donlon, guest speaker at an open meeting of the Cornell Club on Wednesday evening, March 28. "This will require a greater extension of the police power than has ever been had before, and necessitate the expenditure of large sums."

Enforcement is Difficult

"In some instances," Miss Donlon continued, "the rigid enforcement of all the provisions of a code presents difficulties which are almost impossible to overcome." The Bedding Code was suggested by the speaker as an illustration in support of her statement. The claim was made that this Code has provisions which forbid rebates, allowances and unfair competition, others for minimum wages and hours and many other details, most of them minor, so numerous as to make it practically impossible to maintain an effective check on them.

Explains A.A.A. Plan

Miss Donlon further maintained that the codes are binding on all members of an industry whether or not the individual has subscribed to one of them. The workings of the A. A. A. were explained as a means for balancing the supply and demand for farm products. Agriculturists were given bounties by the Government for "plowing under" parts of their already planted land. In the future, the farmers will receive these payments from the Federal Government not for plowing under, but for refraining from planting portions of their acreage.

"The lawyers of the next few years will undoubtedly bear the brunt of interpreting the laws now being enacted under the N. R. A.," prophesied Miss Donlon. "This will open up a great new field of litigation for those now in law schools."

College Council Slates Tourney

The Inter-Club Council, an organization of the various college groups at Brooklyn Law School, has secured the use of the College Club Room on the south mezzanine floor from 9 a. m. until 11 p. m. for all men in the college clubs. The announcement was made last week by President Theodore Becker at the group's second meeting since its organization.

A checker tournament during May will be sponsored by the Inter-Club Council to foster closer associations among the members of different college groups. If the tournament is a success, the idea probably will be extended to include similar activities next year. The pairings, as announced by Joseph Saidel, chairman, follow:

Tournament Pairings

First round: 1. Brooklyn College v. City College; 2. Cornell v. Fordham; 3. Hunter v. Lehigh; 4. Long Island University v. New York University; 5. Syracuse v. Union.

Quarter finals: 6. Winner of 1. v. winner of 2; 7. Winner of 3. v. winner of 4; 8. Winner of 5. v. 6. Semi-finals: 9. Winner of 6. v. winner of 8; 10. Winner of 7. v. 9. Finals: 11. Winner of 9. v. winner of 10.

Rules will be announced to the individual clubs, which will select candidates to represent their groups.

Facilities added to the college club room under the Council include a bulletin board and filing space for college club periodicals.

Alumni in Public Office

MANASSEH MILLER

An appointment as temporary counsel to the Prudential Savings Bank in 1909 led Manasseh Miller, a graduate of Brooklyn Law School in its first class (1902), to the presidency of that institution ten years ago. In recent years he has not engaged in active practice.

In 1918 he became the permanent counsel for the bank which he now heads, his promotion to the presidency following six years later. He holds the important post of Chairman of the Executive Committee of the Savings Banks of Brooklyn and Queens, and was, until last year, a Director of his regional Chamber of Commerce.

Mr. Miller has been active in charitable organizations and other civic groups. He is a member of the New York State and the Brooklyn Bar Association.

HARRISON C. GLORE

Of 14 graduates in the class of 1903, four have been honored by elevation to the bench: Frank F. Adel, the late Charles Joseph Druhan, Harrison C. Glore and Henry Weissman. The latter two began their careers together by organizing a law firm upon their admission to practice in 1903. One of their early cases was the Lockner matter, which tested before the United States Supreme Court the state's power to regulate the number of hours of labor. They later formed the Alumni Association.

Until 1908 Judge Glore was associated with his classmate. During part of this period he was sitting in the State Legislature, serving in the 1906-7-8 and 1909 sessions. When he left Albany he returned to the practice of law until the time of America's entry into the World War.

During that period he served as a Government Appeal Agent. He subsequently joined Frederick A. Keck, class of 1905, in practice. He went into public service for another period when in January, 1921, he was elected to a judgeship for the 7th Municipal District. At the end of the ten year term he resumed his own practice. Recently he served as a delegate to the Constitutional Convention which discarded the Eighteenth Amendment.

Judge Glore finds time for active membership in several civic and fraternal groups.

GEORGE H. BOYCE

George H. Boyce was born in 1881 in one of England's great industrial sections, Birmingham. He was educated in Brooklyn, and was graduated from Brooklyn Law School in 1907.

For ten years after he received his LL.B. he was an attorney for the Title Estate & Mortgage Company. In 1919 he was appointed to the Seventh District Municipal Court, resuming practice two years later. Prior to his appointment, Mr. Boyce served as a Government Appeal Agent for the Brooklyn board.

He is a member of three bar associations: New York State, Queens and Brooklyn. As vice president of the Gardens Corporation and the Forest Hills Taxpayers Association, he is active in community affairs. He is a member of several political clubs.

LEON G. GODLEY

An alumnus, professor of law, and holder of an honorary degree at Brooklyn Law School, Leon G. Godley has brought distinction to himself and the school in public office in New York City. Two years after he received his LL.B., he was appointed Assistant Corporation Counsel, holding that office from 1910-14. He then was made Deputy Police Commissioner for a similar term, and City Magistrate in 1919.

Governor Smith in 1926 appointed the Hon. Mr. Godley a member of the Transit Commission, Metropolitan Division of the Department of Public Service, New York State, to which position he was re-appointed by Franklin D. Roosevelt, just before he left the gubernatorial chair.

He has written an outline of Equity

and teaches that course. The honorary degree of Doctor of Laws was conferred on him at last year's Commencement.

JOSEPH SANDERS

Just over a year ago Joseph Sanders, class of 1908, was appointed by Governor Cocksack of Michigan to the Common Pleas bench of Detroit. While in New York he was appointed as secretary to Tax Commissioner Putzel, and later to the Topographical Bureau in Richmond. He practiced here until 1912.

Since 1915 he has practiced in Detroit, where he specialized in engineering jurisprudence and Supreme Court Appeals. His interests include child psychology and public speaking.

HARRY W. LAIDLER

A six months clerkship in a law office following his graduation convinced Harry W. Laidler that his true interest lay elsewhere. He turned to educational and social work, where he achieved a fair measure of success. In 1931, for example, his "Concentration of Control in American Industry" was picked as one of the 50 most significant volumes published that year.

He holds an A.B. from Wesleyan (1907), a Ph.D. from Columbia (1914), and an honorary M.A. from Wesleyan, awarded recently. He was graduated from Brooklyn Law School in 1910.

RAPHAEL R. MURPHY

Following his graduation from Kingston Academy in 1908, Raphael R. Murphy left his home town to obtain a legal education at Brooklyn Law School, graduating in 1911. A year later he was admitted to the bar. For three years he served in the office of the late Ferdinand Bullowa, and spent a short period in private practice. Then he became a partner with John A. Eubank, his classmate and now professor of law at Brooklyn Law School, leaving the firm in 1917 when he enlisted in the U. S. Naval Reserve Force.

In 1919 he began a decade-long service as secretary to Supreme Court Justice Mitchell. Four years ago Mayor Walker appointed Mr. Murphy city magistrate. Mayor O'Brien re-appointed him for a ten year term in 1933.

JOHN J. BENNETT, Jr.

Recent emergency legislation and issues as to its constitutionality have focused the light of publicity in New York State on its young and vigorous Attorney-General, John J. Bennett, Jr., who is an alumnus of the Brooklyn Law School.

As the outstanding student in his graduating class, Mr. Bennett was honored by the award of the Matheson Prize. The following year the New York Citizen's Committee on Transit and Housing appointed him secretary. In 1927 and 1928 he served with J. P. Morgan & Company, and practiced with the firm of Baar, Bennett & Fullen. During the school year of 1928-9 he taught at Brooklyn Law School. Because of the pressure of his political engagements he was given a leave of absence.

In the fall of 1930 he was elected to the office of Attorney-General, and re-elected in 1932. His second term expires this year.

He has been active in the American Legion in Brooklyn since its inception, becoming State Commander in 1929. He has also held the office of Chairman of the State Americanists Committee and State Judge Advocate. The 77th Division Association and the United States Army Athletic Association both claim him as a member.

Attorney-General Bennett is a member of Phi Delta Phi legal fraternity and the Brooklyn Bar Association. He holds the honorary degree of Doctor of Laws, which he was awarded at the 1932 commencement.

(This is the second installment of a series of articles dealing with graduates prominent in public life. The third will appear in a subsequent issue.)

Practice Court Presents Cases Before Justices

Supreme Court Justices Cuff and Cropsey Preside at Trials

HEAR INTERESTING CASES

Many Undergraduates Attend Sessions and Participate in Trials

Two sessions of the Practice Court were recently held in the Practice Court Room at The Brooklyn Law School. At the March 24 session, two cases were presented before Mr. Justice Thomas J. Cuff of the Supreme Court. The first case, *Finn v. Webb*, Rothman for plaintiff, Lipschitz for defendant, was a non-jury trial which was decided for plaintiff. The action sought the equitable remedy of reformation of a deed partitioning land held by defendant and a deceased as tenants in common.

In the case which followed, *Goldner v. Hall*, the defendant moved for summary judgment on the ground that he had documentary evidence establishing prima facie his right to judgment. The motion was opposed by the argument that the court lacked jurisdiction to grant summary judgment in a tort action, and on the insufficiency of the moving papers.

Cuff Praises Preparation

The motion was granted with leave, however, to the plaintiff to serve a reply. The case was placed on the calendar for April 14.

Justice Cuff, at the close of the case of *Finn v. Webb*, praised the attorneys for their careful preparation, but warned that a poor method of presentation may prejudice a good cause. "The zeal shown by the attorneys to get an expected answer," he remarked, "is not the best method of convincing the court of the validity and truth of a given viewpoint." He criticized the marked tendency of one of the attorneys to ask leading questions and to hurry unduly in making objections. Justice Cuff urged the cultivation of a slower approach in asking questions and gave advice on the technique of asking them.

On April 14, Mr. Justice James C. Cropsey of the Supreme Court presided over six actions during the morning and afternoon sessions. Of this number, two were sent to the jury for determination. The jury for this session was composed principally of invited students from Adelphi College and Long Island University.

Lottery and Negligence Cases

The first case on the calendar was *People v. Ragusa*, a submission in which the prosecuting attorney contended that the defendant organization was a "lottery association clothed with fraternalism." On the ground that William Schwartz, counsel for the defendant failed to distinguish the lodge's awards on the basis of merit from the apparent basis of chance, the court decided for the People.

The last case in the morning session was *Fairchild v. McLean*, a suit for damages for personal injuries sustained by a collision caused by the defendant's alleged negligence. J. Joel Levy was counsel for the plaintiff. Ralph J. Stark successfully represented the defendant.

Two motions were decided in the afternoon. The first, for a bill of particulars, went to the plaintiff by default. Irving Kesselman appeared for the petitioner. Arthur Hoffman was successful in the second motion asking for a summary judgment for his client, the Becky Dairy Corporation. The defendant Schwartz was represented by Jacob Farber. This case involved a question under the new milk price fixing decision.

The session closed with the trial of *Goldner v. Hall*, in which Alexander Cymrot won a stipulated judgment for the plaintiff who sued for damages for personal injuries. Jack Hantman appeared for the defendant and based his case on a release under seal and contributory negligence.

Before each adjournment Justice

Court Upholds Schackno Act

(Continued from page 6)

exists "a public emergency affecting the health, safety and comfort of the people requiring the provisions of this act."

"It cannot be doubted that the free liquidation of great amounts of indebtedness secured by mortgages," the opinion continues, "would result in widespread ruin to real estate owners and in probable widespread damage to investors. That situation affects the economic welfare of the community and affects the vital interests of the community. Legislation intended to relieve that situation is directed toward a legitimate end. * * * The question remains whether the means adopted by the Legislature are also legitimate and reasonable."

Limits of Power

In finding that they were legitimate and reasonable, the court considered the powers conferred upon the Superintendent of Insurance by the act. "The powers vested in the Superintendent of Insurance extend no further than to conserve the fund and, as incident thereto, to bring actions to enforce the contractual obligations which constitute the fund until a plan is adopted for the permanent administration of the fund; to charge upon the fund the expenses of the administration of the fund; and in his discretion and for the protection of the owners, to withhold payment of the balance of the fund until a plan is adopted."

"These powers are no greater than are ordinarily exercised by a receiver appointed in an equity action to conserve the fund and the Legislature may vest them in the Superintendent of Insurance."

"The essential purpose of the statute is, however, to provide for the adoption of a plan for the permanent administration of the mortgage investments in which groups of investors are interested. * * *

More is involved than contract rights. "Unreasonable insistence on contractual rights may work serious injury to the economic welfare of the people. The statute must be judged in the light of that fact. Under conditions as they exist at present, the vital interest of the community calls for legislation by which the investments of great numbers of people may be conserved and ruin averted. * * *

"The statute merely furnishes a shield against unreasonable attacks on the vital interests of the community and an additional remedy for enforcement of obligations in manner fair to all," the opinion concluded.

Notice Rule Changed

A bill to amend the Domestic Relations Law so that legal notices for dissolution of marriage on the grounds of absence will have to be published for three successive weeks instead of six was approved by Governor Lehman on March 15.

The purpose of the law, according to Meyer Altman, New York Assemblyman, is to save the applicant the cost of the additional advertising.

Cropsey commented on the manner in which the trials were conducted, and made several suggestions. He prefaced his remarks with the statement that he always found the Practice Court helpful to himself as well as to the students who tried the cases. "I learn something of law as well as human nature every time I come here," he said.

He told his listeners that every lawyer has an individuality of his own that will determine the way he will try his case, precluding the hard and fast rules of trial procedure. In direct examination, he counseled, the witness should tell part of his story directly; answers should not be anticipated; and demonstrations and directions should be so definitely presented that they go into the record.

The April 14 session was the last for this month, and the advance calendar will be announced in the near future.

Court Trials in Literature

(Continued from page 4)

cried "Silence" in an angry manner, whereupon three or four users shouted "Silence" in voices of indignant remonstrance. After the jury roll call, it was discovered that only ten special jurors were present. Two common jurors were pressed in to service, a green grocer and a chemist. The chemist protested vehemently that he had left an inexperienced clerk in his place and that there might be a murder if he didn't get back. Over these objections Mr. Justice Stareleigh decided that the wheels of justice must revolve and Thomas Groffin, chemist, was sworn in.

Buzfuz Addresses Jury

Sergeant Buzfuz proceeded to address the jury in behalf of Mrs. Bardell in pompous and grandiloquent tones. He spoke gallantly, championing the wronged woman, and like all lawyers of the time his opening remarks were directed, as Dickens reports, to an attempt to put himself on best terms with the jury. "Never, in the whole course of my professional experience," Buzfuz pleaded, "never, from the very first moment of his applying himself to the study and practice of law—had he approached a case with feelings of such deep emotion or with such heavy sense of responsibility upon him—a responsibility, he would say, which he could never have supported, were he not buoyed up and sustained by a conviction so strong that it amounted to positive certainty that the cause of truth and justice, or, in other words, the cause of his much injured and most oppressed client must prevail with the high minded and intelligent dozen of men whom he now saw in that box before him." These remarks produced a visible effect upon the jurors, several of whom began to take voluminous notes. Jurymen today seem to have lost this faculty or perhaps do not know that they can take notes during a trial.

Counsel's Oratory Florid

The learned counsel remarked that he wasn't sure of the date of the breach, and painting Mr. Pickwick, who writhed in his seat as the barrister went on, as a man of revolting heartlessness and systematic villainy, he stated that at one time the monster Pickwick had repeated to Mrs. Bardell's little boy, "How should you like another father." The jury certainly winced under that disclosure. Buzfuz announced that he was ready to prove that on one occasion Mr. Pickwick distinctly offered her marriage and that he had three witnesses, most unwilling witnesses who discovered Mr. Pickwick holding the plaintiff in his arms and soothing her agitation by his caresses and endearments."

In concluding, he introduced two letters written by Mr. Pickwick. He read:

"Garraway's twelve o'clock. Dear Mrs. B. Chops and Tomato Sauce. Yours, Pickwick."

"Dear Mrs. B. I shall not be home till tomorrow. Slow coach. Don't trouble yourself about the warming pan."

Pleads for Plaintiff

To these letters, Buzfuz argued, "Gentlemen, is the happiness of a sensitive and confiding female to be trifled away, by such shallow artifices as these? Why is Mrs. Bardell so ear-

nently entreated not to agitate herself about this warning pan unless (as is no doubt the case) it is a mere cover for hidden fire, a mere substitute for some endearing word or promise agreeably to preconcerted system of correspondence artfully contrived by Pickwick with a view to his contemplated desertion and which I am not in a condition to explain."

The first witness called to the stand was Elizabeth Cluppings who sobbed continuously during her testimony. Her answers disclosed that she had witnessed the scene in the parlour when Mr. Pickwick held Mrs. Bardell in his arms. Sergeant Snubbins intimated that he should not cross-examine the witness, for Mr. Pickwick wished it to be distinctly stated that it was for her to say, that her account was in substance correct. He was correct, but Mr. Pickwick evidently overlooked the fact that a weeping woman was testifying and that the jury might be swayed by the emotional effect produced upon them.

The three Pickwickians who witnessed the fatal scene followed on the stand. They stated what they saw; that was all that Buzfuz could get from them.

Testifies to Belief

Susannah Sanders was permitted to tell what she believed. She said that she always believed that Mr. Pickwick would marry Mrs. Bardell and that she also knew that Mrs. Bardell's being engaged to Mr. Pickwick was the current topic of conversation in the neighborhood. She averred that she did not know that Mrs. Bardell was at the time keeping company with a baker, and that the baker was then single but now married.

Calls Witness Stupid

Buzfuz confessed that he could not penetrate the stupidity of Samuel Weller in attempting to get any evidence from him, and after introducing those allegedly notorious letters, rested the plaintiff's case. Sergeant Snubbins beseeched the jury, in his summation, to render a verdict for the defendant. He pointed out that no case had been proved by the plaintiff. On the facts and evidence of the case his contention was undoubtedly right but the twelve men in the jury had to decide the case.

Mr. Justice Stareleigh arose, and gathering together as much notes as he could decipher, charged the jury:

"If Mrs. Bardell was right, it was perfectly clear Mr. Pickwick was wrong, and if they thought the evidence of Mrs. Bardell worthy of credit, they would believe it and if they didn't why they wouldn't. If they were satisfied that a breach of promise of marriage had been committed they would find for the plaintiff with such damages as they thought proper, and if on the other hand, that no promise of marriage had been given they would find for the defendant with no damages at all." With this exposition of the law ringing in their ears, the jury retired.

A quarter of an hour later they returned and found for the plaintiff in the sum of "Seven Hundred fifty pounds damages."

Mr. Pickwick remained speechless with this announcement. "Did justice triumph?" Mr. Pickwick must have thought to himself.

—Sidney Katz

Justice Finch Blames Fictitious Law Suits for Delay and Financial Loss

Law suits without merit and wholly unsubstantial defenses which result in settlements out of court are blamed for the loss of millions yearly to merchants who are thus forced to foot bills for spurious litigations, according to Justice Edward R. Finch, Presiding Justice of the Appellate Division of the Supreme Court.

No remedy can be effective, he believes, until the courts are allowed to regulate their own procedure as they did prior to 1848 when the Legislature assumed the rule-making powers. He pins the responsibility for congestion in civil courts on archaic

procedure which allows monetary profit to arise from fictitious suits. The protection he proposed would compel the posting of a bond to pay some, if not all, of a defendant's loss where he defeats a plaintiff who instituted a suit lacking merit. Justice Finch sees no reason why expenses of litigation should not be awarded against one attempting to victimize another through the courts. Such a measure would also provide for similar costs to be awarded to a plaintiff who is forced to use the courts as a remedy where the defendant in bad faith has refused to meet a legal obligation.

Central Judicial Ministry Urged

(Continued from page 8)

tion is not a new one. Mr. Justice Cardozo in 1921 advocated such an organization for law reform. The idea was kept alive by Governor Smith in 1923, who in his annual message to the state legislature recommended the creation of a temporary commission to consider the need for law revision. Such a body was formed in that year. Justice Cardozo was chairman of its committee on plan and scope. It proposed a bill for the creation of a permanent commission. In his annual address in 1925, Governor Smith approved the report of the commission and recommended legislation suitable for the creation of a permanent agency. Nothing substantial, however, was done.

Edward Gluck, member of the City Club Committee on the Administration of Justice, in an article discussing the Ministry of Justice published in the *World-Telegram* on March 21, 1934, writes, "The Commission might well concentrate at first on subjects in which there are no recognized agencies already doing the work, such as the Domestic Relations law, the Real and Personal Property laws, etc."

He further states, "The commissioners should be relatively young men who can devote the requisite time and energy to the tremendous job involved, and the same principle should apply to the personnel of the commission's organization. Only those who are able and willing to work upon the commission should have the opportunity to do so."

Mortgages and Mortgage Plans

(Continued from page 7)

his counsel, Alfred A. Cook submitted a proposal in direct opposition to the appointment of individual trustees. The Plan called for a \$100,000,000 loan from the Reconstruction Finance Corporation and the formation of a \$10,000,000 corporation in furtherance of their plan to relieve the distress of certificate holders.

The new plan for relief was sent to Governor Lehman and approved by him. It contemplated the lending of 25 per cent of the face value of defaulted certificates to holders who are in distress. The \$100,000,000 loan was promised by the R F C to finance the plan, contingent upon the advance of \$10,000,000 by banks and insurance companies. The Alger Plan, as it is called, provides for the creation of two emergency corporations; one to borrow R F C money at 4 per cent and lend it at 5 percent discount, aiming to operate on a non-profit basis, and the other to act as standing trustee in the management of all the defaulted issues.

Confer on Alger Plan

Governor Lehman held a conference with 27 leading bankers and insurance heads to consider ways and means of putting the Alger Plan into effect.

Meanwhile a counter-proposal was advocated by Senator Desmond in the form of a bill creating a State Mortgage Authority to aid in liquidating the certificates. This proposal would be carried out by State funds.

Thus a problem which seemed almost solved is thrown once again into a turmoil of attacks and counter-attacks. It is difficult to clearly describe the status of affairs at this time. The best that can be said is that the question has gradually been narrowed to reasonable proportions. There are two outstanding issues: one is the constitutionality of the Schackno Act, and the other is the determination, finally, of whether private trustees or a State agency will be directed to administer and rehabilitate the certificate issues.

As to the first proposition, an appeal to the United States Supreme Court is being prepared. As to the second, the decision will ultimately rest with the certificate holder.

Levien, '24, Aids Commission by Judgment Data

Reports on Collection of Money Judgments, Proposing Many Changes

TO RELIEVE DEBTOR

Advocates Proposals To Revise Supplementary Proceedings For Greater Effect

A. Mark Levien, '24 has prepared a study under the auspices of the Commission on the Administration of Justice in New York State on "The Collection of Money Judgments." Excerpts from his recommendations follow.

In suggesting improvements in supplementary proceedings, Mr. Levien urged that they be instituted and conducted in the appropriate court instead of before a judge or justice of that court. Thus, he pointed out, the controversy often arising over the question whether a judge other than the one before whom the proceeding was instituted may make any order in the matter, will be eliminated. In this way, it is hoped that in making the proceedings court proceedings instead of proceedings before a judge, to partially eliminate the disorder and disrespect for the proceedings now observable in some of the Special Terms in the City Court of the City of New York when judgment debtors are called, he wrote.

Urges Annual Examination
Mr. Levien advocates an annual examination of judgment debtors, because under the old system where a debtor is examined in supplementary proceedings at a time when he has no property he is led to believe that he has been absolved from payment of the judgment and that no further proceedings may be taken against him. Third party orders, he averred should be granted upon the showing that there is reasonable cause to believe that the third party has property of the debtor.

It would be advisable that a court in which proceedings are pending be authorized to make mandatory orders to meet situations directly and avoid circuitry of action, for the permissive order authorized by the Civil Practice Act, section 92, has proved a hollow mockery, he said. At the present time a receiver in supplementary proceedings of a domestic corporation is not appointable and a sequestration action is necessary. To remedy this hardship it is proposed that such receivers be authorized. It is even recommended that judgment creditors be appointed receivers in supplementary proceedings, and to effect this reform the court should have the power to appoint a receiver without notice in all cases.

To aid the judgment debtor, the report favored the acquisition by the receiver in supplementary proceedings which the judgment debtor has obtained after the appointment of such receiver. "At present, the receiver is entitled to only such property as belonged to the judgment debtor at the time of the receiver's appointment, which dates back to the commencement of the supplementary proceedings. The judgment debtor may thereafter acquire substantial property and, yet, the receiver may not take it even though a large proportion of the judgment remains unpaid."

The report concluded: "In all fairness and justice, should not a debtor who compels his creditor to go through supplementary proceedings in order to secure payment of a judgment, be required to compensate such creditor, at least in part, for the expense and trouble to which he has put him (the creditor)?"

"The actual disbursements incurred by the judgment creditor should be easily determined. Costs should be fixed by the court depending on the number and kinds of steps necessarily taken in the proceedings. This would discourage recalcitrant debtors from employing the obstructive tactics now frequently used."

(Continued from page 2)

Current Legal Decisions

(Continued from page 1)

the fact that she filed objections and made herself thus liable for, or entitled to, costs has a direct interest in the proceedings. The legatees under the third will was properly disqualified. The next of kin was not barred by his interest in the estate in the event of intestacy since there are four wills in none of which he is mentioned; but he is barred by his being a party and thus chargeable with, or entitled to, costs. S. C. A. § 314 subd. 10, defining "person interested" as one absolutely or contingently interested, does not apply to § 347 C. P. A. Only a present, certain, and vested interest disqualifies under 347. While it is true that when an attorney who drew a will signed as a witness he may testify to the preparation and execution, the client may revive the privilege by drawing a new will with new witnesses. § 354 C. P. A., providing for waiver of the privilege by having the attorney subscribe as a witness, applies only when that will is the one offered for probate.

Practice—Abatement

Russel v. Butler Grocery Co., 240 App. Div. 31, January 19, 1934.

Plaintiff's intestate brought action against the defendant for personal injuries. She recovered. Defendant appealed, and she then died. Without knowledge of this fact, the Appellate Division reversed the judgment and dismissed the complaint. Plaintiff was then by order substituted in her stead, and he moved to vacate the order of reversal on the ground that it was void. Defendant moved that upon granting plaintiff's motion, the Appellate Division again reverse the judgment, and for such other relief as the court deems proper. Plaintiff's motion denied; defendant's motion granted to the extent of entering the reversal *nunc pro tunc* as of the date of the appeal, prior to decedent's death.

Ordinarily, the death of a party to an action *ex debito* abates the action. If the death follows judgment, the tort is merged in the judgment and the matter proceeds as if *ex contractu*. A subsequent appeal is then proper. This particular case is not covered by the Civil Practice Act. The appellate court may, however, render its decision as of the date of the appeal and may authorize the entry *nunc pro tunc* of any judgment that may result. Here the reversal and the judgment dismissing the complaint shall be entered as of the date of the appeal.

Surrogate's Court — Attorney and Client

Matter of Rosenberg, 263 N. Y. 357, February, 1934.

In a proceeding under § 231-a of the Surrogate's Court Act providing for the fixing of attorney's fees by the surrogate, it appeared that the petitioner had paid the attorney \$7,000 and the Surrogate decided that the services were worth only \$4,000 and ordered the attorney to pay the difference back. The Appellate Division affirmed the decree. The Court of Appeals modified by striking out the order to pay back the surplus.

The surrogate has no power to make an order for reimbursement. § 231-a of the Surrogate's Court Act provides a method whereby an executor may pay an attorney before the final accounting without being personally liable should the amount later be questioned as being unreasonable. It empowers the Surrogate to fix the amount on the petition of any person interested or of the attorney, thus protecting the representative from liability for the difference between the reasonable value and the amount paid. But where the fee is paid voluntarily, the attorney is entitled to an action to have the claim against him established; and this is true in every case except where he wrongfully withholds money from his client. In this event the court may summarily order the reimbursement, since an attorney is an officer of the court.

Court Dismisses Style *Phredygar* Vol. 1934 [1934], Its RUMINANT FISHERMAN Inadequacy of Copyright Laws Cited

"A dress is not copyrightable," declared Judge Goddard, speaking for the United States District Court in a decision dismissing a suit for injunctive relief. "A picture of a dress is."

The plaintiff, in its bill of complaint alleged that the defendant corporation had infringed plaintiff's copyright by making and selling a dress similar to one pictured in a drawing plaintiff had copyrighted. The defendant moved for a dismissal which was granted.

Judge Goddard stressed the fact that in the copyrighting of a book or picture, no official inquiry as to its originality is made. A copyright merely prevents the reproduction of the book or any material part of it, or of the drawing. "But there is a clear distinction between the book, as such, and the art which it is intended to illustrate. * * * To give the author of the book an exclusive property in the art described therein, when no examination of its novelty has ever

been officially made, would be a surprise and a fraud upon the public."

Patent Law Not Adequate

In recognizing that the patent law does not give adequate relief to the garment manufacturers, the court regarded such surrounding circumstances as what the manufacturers themselves considered the statute to protect: "That neither the patent law nor the copyright law affords the desired protection for those who create and manufacture novel designs for dresses, seems to have been recognized in recent years bills have been introduced in Congress to amend the copyright statutes so as to include patterns for dresses and designs as copyrightable matter." This appears to be the only method of seeking relief that they have, for the copyright statutes do not protect garments; and the court is powerless to construe them as though they did give such protection.

H. D. Ewing Traces Aeronautical Law

(Continued from page 6)

law made the owner of aircraft responsible for all damages caused by his machine; but the law was modified later. Massachusetts, in 1920, passed similar legislation. In 1925 the American Bar Association proposed the Uniform State Law of Aeronautics which made the owner of aircraft liable to owners of property whether or not the damage was caused through the negligence of the aviators. This law was accepted by twenty states, but was condemned in 1931 by the Committee on Aeronautics of the American Bar Association because of its harshness to the aircraft owner.

Infinite Ownership Overruled
Mr. Ewing further stated that the *ad coelum* doctrine was no longer law as the result of the ruling in *Smith v. New England Aircraft Co.*, 270 Mass. 511 (1930), in which the court stated that the owner of land does not own the space above it to an indefinite height, despite the contrary idea of the old maxim. But the court there held that when a man takes a machine over another man's land and he knows that it is liable to do injury to that land and the structures on it, the risk shall be borne by him who takes the machine aloft.

It has been urged that the dangers of injury could be greatly minimized by the use of specific air lanes and thus eliminate the liability of aircraft owners. This, Mr. Ewing asserts, is unfounded because of the uncertainty of the elements. He claims there can be no boundary lines in the air, as compared to the freedom of the seas. Thus, there may be no restrictions on the routes taken by fliers.

Disagreement on Damages
In discussing the regulation of damage from the angle of intrastate control without any uniform law to the contrary he declares it would be very difficult to determine.

A. M. Levien, '24, Aids Buckley Commission

(Continued from page 9)

The author of the article stated that many of the rules leveled at reform should be subject to the spirit of equity, for example: costs and disbursements may be denied a judgment creditor where at the close of the proceedings the testimony and records show—1. That the judgment debtor has no property and is unable to pay the judgment in whole or in part. 2. That since the origin of the cause of action, on which the judgment is obtained, he has not committed any act designed to render the judgment uncollectible. 3. That he has not failed to refuse or appear for an examination pursuant to any subpoena or order served on him or stipulation of adjournment signed by him. 4. That he has not failed or refused to comply with any order made in the proceedings. 5. That he has not been guilty of any obstructive tactics in the proceedings.

Union Students Hear Uterhart

Talks on Extenuating Facts in Murder Trials and Ethics Involved

"In almost any murder case there are extenuating circumstances which warrant the best efforts of the defense attorney," Henry A. Uterhart told the Union College Club members on March 22, in discussing a trial in which he obtained a "Not guilty" verdict for his client. Commenting on the ethics of accepting a case in which the attorney is fully aware of the defendant's guilt, he developed the theory of extenuating circumstances by actual application to his own case and by citing the comment of prominent jurists.

Because the lawyer is an advocate and not a judge, he explained, he is no more justified in refusing to help a client than a doctor would be in denying treatment to a patient who has an evil reputation.

Press Plays Part

The press plays a larger part in murder trials, Mr. Uterhart averred, than is realized. He considers the frequently made statement of jurors under challenge that they "only read the headlines" concerning the murder more than a white lie. For that reason, he concluded, the defense attorney must often have a skeletonized defense ready for the fourth estate twenty-four hours after the murder. Sympathy aroused for the client when the news is fresh is sometimes more valuable than a star witness, he said, because of the effect made through first impressions.

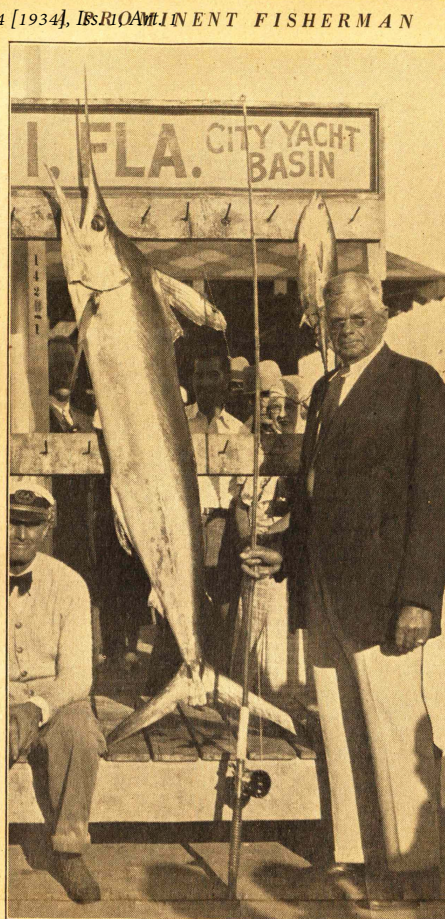
Those who have read reports of murder trials and regard the description of the defendant's clothing, when a woman is the defendant, as a "sob-sisterish" trait of journalism and a superfluity, do not realize the advantage which proper atmosphere creates, according to Mr. Uterhart.

Summarizes Experience

In summarizing his experience with homicide cases, the speaker emphasized the importance of carefully considering every detail involved to build up the set of extenuating circumstances generally to be found in murder cases. Facts which look very damaging on their face, he added, are often favorable if viewed as part of a mosaic which spells, upon its completion, a plausible justification of the offense.

Review Explains Omission

THE JUSTINIAN, in accordance with a request made by the Brooklyn Law Review, announces that the note entitled "Proper Remedy in Cases of Encroachment," appearing in the April, 1934 issue of the Review, was written by Morris Rosenthal, whose initials were inadvertently omitted.



Dean Richardson with Swordfish Caught off Miami

Dean Returns From Vacation Spent in Miami

Highlight of Stay Is Success in Landing 105-Pound Swordfish

MET MANY ALUMNI

Golfed Often With Justice Carswell at Miami Biltmore Country Club

William Payson Richardson, Dean of the Brooklyn Law School, returned last week from a ten weeks' vacation spent in Miami, Florida. He was in high spirits as he related the story of his 40-minute battle on March 14 with a 105-pound marlin swordfish. His success in hooking the fish—seven feet, eight and one-half inches in length—and landing it despite vigorous rushes and leaps, was the highlight of Dean Richardson's fishing experiences there.

The struggle occurred while he was deep-sea fishing in the Gulf Stream off the coast of Miami. The swordfish, before it tired, leaped thirty-eight times, by count of one of the men on board.

Besides fishing, Dean Richardson golfed daily with friends and attended the horse and dog races. He returned darkly sunburned and well rested, and remarked that he enjoyed his vacation immensely. His only criticism, he said, was that "the days were too short and the nights not long enough."

At the Miami Biltmore Country Club, Justice William B. Carswell, who was also in Florida then, paired with Dean Richardson for several rounds on the famous golf course. Dean Richardson also met many other graduates of the law school while in Miami.

Dean and Mrs. Richardson took an apartment at Coral Gables during their stay. They motored down, but returned by the Clyde-Mallory lines.

C.C.N.Y. Club Holds Smoker

The City College Club held an informal smoker on Friday, April 13, in the College Club Room of the school, which proved to be one of the most interesting gatherings sponsored by this club.

Departing from the usual practice of having a guest speaker, the members of the Club themselves participated in the entertainment which included anecdotes, experiences and choice bits of humor.

In accordance with the club's plan to hold a theatre party, various members have purchased tickets from a representative of the City College dramatic society for a performance of *The Mikado* to be presented at the Commerce Center of the City College School of Business, College of the City of New York, Lexington Avenue and 23rd Street on Saturday evening, April 20.

Weil Forwards New Plan for Referees

(Continued from page 1)
with further challenges on cause, according to Mr. Weil's scheme.

Equal Powers

As to their powers, he suggests that they have equal rights with the presiding referee on findings of fact, conclusions of law and writing opinions—which should be available as part of the record, although unreported. Except for dismissals, directed verdicts, and motions for new trials, the regular referee would preside and pass upon rulings. Equal voting powers would prevail, with a majority rule effective.

Mr. Weil estimates the cost of the associates would approximate \$25 per case, based on a per diem fee of \$30 to \$40 in trial term, which would be doubled for special term sessions. The possibility of elevation to the bench through such positions would induce many desirable lawyers to accept appointments.

LEGGETT IS PRESIDENT

Charles Leggett was unanimously elected president of the Syracuse University club of the Brooklyn Law School, at a meeting held recently by the group in the college club room. Edward Beyer was chosen vice-president, and George Schneider, secretary-treasurer.

The meeting was brief, with Theodore Charlebois presiding for the last time, and Prof. Allen B. Flouton as guest. Plans were discussed for numerical strengthening of the organization as well as joint meetings with other groups.

Stresses Need for Bankruptcy Change

(Continued from page 1)
Bankruptcy Act and that therefore the relator (the driver) would be discharged "scot free." He stated that he returned the writ freeing the relator with great reluctance.

He concluded as follows: "This case illustrates the need for legislation protecting pedestrians against reckless drivers by providing compulsory liability insurance on the part of drivers of motor vehicles, or some other form of security. In a case such as this the relator should not have a complete discharge in bankruptcy, but should be discharged upon condition that, in the future, he at least make some payment to those whom he injured."

"This disposition is impossible under the present law, but is contemplated in a bill before Congress. This bill, if enacted into law, would have a salutary effect."

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