PSF: THOMAS G. CORCORAN

X

Subject File

PSF: Thomas G. Corcoran

Box [redacted]

PSF: Corcoran

THE WHITE HOUSE
WASHINGTON

Midnight

Dear Mr. President -

I have just talked with Sidney Hillman.

He has asked Kennan for an appointment to see you on Tuesday.

He wants to talk about labor peace.

AFL has accepted a Hillman proposal: Hillman

THE WHITE HOUSE
WASHINGTON

says he has "never seen peace between AF of L and CIO so feasible as now"

He begs you "for the first time in my acquaintanceship", as he says, to give him "time enough" on an appointment, "really to talk things out" for peace and for 1940.

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THE WHITE HOUSE
WASHINGTON

What he would like I
course would be an evening-
tomorrow evening.

Hellman is at the Carlton:
I am going to New York
to attend Archbishop
Spellman's "coronation".
Ben and I went to the
dinner and later attended
a party @ Percy Straus'
The reception was magnificent.

Respectfully, Tom Corcoran

PSF: Corcoran

Washington
January 1

My dear Mr. President

For your many kindnesses at Christmas - the Shakespeare speech, the watch, the autographs for my telephone girls, above all the little card of friendship with the watch - I am deeply grateful.

I am sure the watch will metamorphose the very fundamentals of my character; henceforth to be normally tardy anywhere will be less majestic.

I wish that your new year will
be personally happy and historically
glorious.

Respectfully yours.

PSF
Corcoran

(1)

P.F.

July 9.

My dear Mr. President,

I can't tell you how much I appreciated your "Rough Talk" yesterday.

There are certain necessary liabilities without fault of the world - and I should have understood if they attached to subordinates who get into messes.

I don't know how I come not before O'Connor's Commission today - or how I will come not before it in

Ha and. But I to find Mr
I may have convinced Mr
Committee this morning, Mr
however few effective guns
I carry I'm a man o' war
flying one flag - and Mr
Mr. Brewster is just a
shady privateer with forged
letters of marque from both
sides!

Gratefully yours,
Tom Thumb

For the President

From Tommy Corcoran

PSF: Corcoran

Conference of Little Business Men

Unsolicited letters of abhortation to the President have an exceedingly good chance of never being read by anyone.

But early this year Secretary of Commerce Roper hoisted the average of considered communications.

He delved into a stack of recommendatory missives written to F. D. R. by small business men and women, pulled out 500 at random, invited the writers of these to come on to Washington and get their thoughts off their chests. To these 500 invitations, Congressmen badgered for bids by their constituents added 300 more.

From all reports, the thoughts came straight from the chest. Gathered in boisterous session in the Commerce Building on February 2, the bevy of 800 petty industrialists impetuously shouted solutions for the Recession.

Their muddleheaded meditations concluded, President Roosevelt discreetly declared that he considered some of the tiny tycoons' ideas good, some bad; wisely refrained from saying which were which.

That this was a conclave of contradictions was pretty well proved by Johnny-on-the-spot FORTUNE magazine. The editors submitted an anonymous questionnaire to the little business men and women, urged them to cooperate by answering queries on Government and Business.

Passed out at random to members of the group, the returned questionnaires represent at least 38 different industries, located in 18 different States.

Fifty-three per cent of them were situated in the Middle Atlantic region, 26% in the Middle West, 9% in New England, 9% in the South and 3% in the Far West.

A goodly portion (36%) of these industries had an approximate gross sales in 1937 ranging between $100,000 and $499,000. But 14% of them had less than $25,000 and 20% exceeded $1,000,000.

Fifty-seven per cent of these exiguous entrepeneurs denied a need for money. Twenty-three per cent wanted short-term loans and 15% needed new money.

Of those who needed money, 29% wanted less than $3,000; 14% of the financial requirements ranged between $5,000 and $9,999; 43% sought amounts between $10,000 and $25,000; and 10% asked for sums between $25,000 and $50,000.

Fifty-nine per cent have experienced no difficulty in getting money recently. Thirty-eight per cent claim that cash is hard to get and 3% have had partial trouble. Of those who specified their difficulty, 27% admitted they lack acceptable collateral; 23% blamed bank conservatism and pessimism; 14% asserted that banks didn't care to make small loans; 10% denounced high interest rates and 6% charged bank favoritism to friends.

Four men used this space in the questionnaire to air their views on the Administration. Said one: "We don't want to be taxed out of existence--with fair taxation we would not need government help to develop our business." Bickered another: "Too much government interference--too many taxes and too much spending. Let business alone. Show co-operation." "Taxes, taxes, taxes," pounded a third, "Let the President leave business alone and stop making threats to legitimate business. He can't change this country in eight years." The fault, said the fourth, is a "lack of a definite economic policy on the part of the Administration".

Forty-nine per cent definitely plan to expand their business. Nine per cent will enlarge their ~~enlarge their~~ enterprises pending a changed government policy and 5% will expand if their sales increase. Thirty-three per cent will not expand and 4% haven't decided.

Sixty-three per cent denied over-production in their particular industry, 12% replied equivocally and 15% conceded that there was over-production in their line. Ten per cent didn't know. Two cocky fellows admitted over-production, planned expansion.

In their respective industries, 50% have vacillating prices, 35% have stable prices and 15% have a fairly uniform price swing.

Overwhelmingly (80%) they would like to have steady prices obtain in their industry, only 20% desiring variable prices.

Seventy-three per cent of those with unsteady prices would like regular prices. Twenty per cent with irregular prices wish this condition to continue. Eighty per cent of those with unchanging prices want this situation to persist. One chap with steady prices in his industry wants them to fluctuate.

Fifty-eight per cent believe in price competition. Thirty per cent do not and 12% are equivocal.

Here appears the first great economic contradiction these gentlemen and ladies make. Forty per cent of them want steady prices in their industry but avow a belief in price competition. In other words, they believe in price competition everywhere but in their own industry. As one man put it, in his business he wants prices "anchored to solid rock" and believes in price competition because "real progress depends on this." This is a practical example of what Barbara Wooton, of the London School of Economics, pedantically calls the "centrifugal force" in capitalism.

Sixty-seven per cent of these small industrialists denied that big corporations possess the power to make prices that they are forced to follow. Thirty-three per cent felt such coercion, but 47% of these were not desirous of seeing the big corporations broken up into small parts.

A total of 30%, however, would like to break up the big corporations. Said one of these: "This would make meritorious competition possible." Of the 70% opposed to breaking up big corporations, one declared: "They are the result of individual ingenuity. Why stifle it?" Observed another: "Eggs cannot be

unscrammbled."

Sixty-eight per cent of these firms belong to a trade association. Fifty-four per cent of them believe their trade association exerts a steadying influence on prices. Forty-One per cent say it does not. Five per cent replied equivocally.

They don't want another NRA ("Hell no!"). Eighty per cent of them lustily oppose the return of the Blue Eagle.

Of the 20% who do want another NRA, 80% want it to be stronger than it was and 20% want it weaker.

Thirty-seven per cent of them approve the New Deal anti-monopoly program. Thirty-eight per cent, apparently ignorant of their own best interests as small business men, oppose the trust-busting policy. Five per cent answered equivocally.

Twenty per cent of them did not respond to this query, a far larger "no answer" proportion than in any other question. This confirms the theory, I believe, that many entrepreneurs largely pass judgment on a government policy on a "trial and error" basis. These people are waiting to see how trust-busting will affect them.

But here occurs the second great economic contradiction committed by these minor industrialists.

Of the 80% opposed to NRA (which virtually gave a license to monopoly), 47% were equally opposed to the New Deal anti-monopoly program.

They hope, I suppose, that the New Deal will "disappear into a governmental vacuum." But FORTUNE has shown that "it will disappear,

if it does disappear, into some sort of governmental substitute."

The theory of NRA, said FORTUNE, "was that private enterprise should be helped to see its own true interests and to realize them by whatever cooperative action was necessary including, principally and primarily, the limitation of competition. So far was that theory carried that in operation the New Deal condoned, if it did not actually promote, the formation of monopolies."

"The alternative to government limitation of competition," continued FORTUNE, "is government enforcement of competition."

The only other possibility is a planned economy, which means socialization of ownership and control.

Certainly the small business men don't want socialism. There remain the other two choices. Fifty-five per cent of these petty industrialists refuse to accept either of these.

Which brings us to the disconcernting conclusion that what these men want, albeit largely unconsciously, is NRA without its labor and other liberal provisions. Which is dangerously close to the corporative Fascist setup.

But even more of these chaps are cloudy on this question. Of the 20% who want NRA back, 75% also want an anti-monopoly program.

This brings us to the final conclusion that of those who unequivocally answered both the NRA and anti-monopoly questions, 78% were involved in gross contradiction.

There was no fundamental agreement as to which taxes imposed by the Federal government were most annoying to them in the last year. The undistributed profits tax, however, was highly disturbing to 45% of the firms.

Sixty-seven per cent definitely were opposed to outside labor unions and 21% thought that outside unions were all right.

Of the 27% who have had to deal with outside unions, only 36% were opposed to them. Amazingly enough, 28% who deal with outside unions believe they are a good thing. Twenty-nine per cent of them believed in the outside unions with strong reservations and certain restrictions.

Seventeen per cent did not answer the query on their belief in outside labor unions and one man remarked in this space: "The present union setup with no liability and millions a month income are stifling labor progress."

None of these small business men and women received a salary in excess of $40,000 per annum. In fact, 35% of them received less than $5,000 a year. Sixteen per cent were paid between $5,000 and $7,500; 20% got between $7,500 and $10,000; 11% made between $10,000 and $15,000; 13% earned from $15,000 to $25,000 and 5% had salaries between $25,000 and $40,000.

Of the 9% who tried to sell stock in their business during the past twenty-four months, all succeeded in disposing of the issue.

Sixty-one per cent of them owned more than 50% of their firms and 60% of these owned their business 100%.

Nine per cent more controlled more than 50% of their establishments. Approximately 70% of the group, therefore, are responsible for the fate of their business.

The question after the interrogation on whether or not stock had been placed on the market was, "Did you succeed?" Five men interpreted this is to be an inquiry on personal success. One said he was no success; three admitted they were. Preached the other: "Yes. Ingenuity and resourcefulness with sincerity of purpose will still win--in spite of adverse legislation, but eventually will be (and soon) handicapped beyond recovery."

PSF: Corcoran

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THE WHITE HOUSE
WASHINGTON

file personal

Dear Mr. President -

You just weren't fair!

You scratched the
Republicans from the Bill
of Rights!

Tom

P.

file confidential

PSF: Corcoran file Corcoran

MEMORANDUM

Re: Political Notes.

(1) Lunch last Thursday with Tom Storke -- Santa Barbara, California -- McAdoo's friend -- switch of Garner delegation in 1932.

Roosevelt can have delegation in 1940.

"All my kind of people" do not want the President to interfere with re-election of Hiram Johnson because the only available candidate on the Democratic ticket is "that Communist Lieutenant-Governor Patterson". "Johnson will have unanimous newspaper support".

Ham and Eggs election on November 7th -- very desperate situation from point of view of those who want to defeat proposal. Since it was defeated by only 200,000 votes in the general election where 75% of possible vote was polled and only 35% normally come out to any special election; therefore Storke strongly "hopes" the President will not come in to California before November 7th because of inevitable attempts to involve him (attached hereto Scripps-Howard statement of the most recent form of the referendum -- note recall of Olson dropped).

(2) Western Progressive Conference. Pursuant to instructions, during last two weeks set in on conferences at which Norman Littell, with approval of the Boettigers, was attempting to organize a Western liberal conference to meet at Salt Lake October 1,2 and 3 to be addressed by President on President's trip West.

Most people consulted (e.g. Hinckley, Chapman, Brimhall (Utah), Ickes), all afraid that ideological and personal differences among these extra-Democratic Party groups too difficult to coordinate in time available -- also dangerous to have President "tarred" with a radical meeting enroute to California and the Ham and Eggs excitement, particularly because Mormon Church Conference -- a sounding board for the opposition -- will be in Salt Lake October 6,7 and 8.

Suggested as better solution to let "liberal conferences" be held locally in October under local leadership without certainly discoverable Washington, D. C. arrangement -- in Washington State, Oregon, Idaho, as one group, California separately, another at Denver. Then have Norris, Ickes, et al. call a progressive conference at Chicago in the middle of December frankly organized by liberals in Washington, D. C. which would attempt openly to line-up the liberals of the nation not necessarily to form a third party but to constitute a conscious balance of power offerable to the highest bidder of the two major parties for the most liberal candidate and the most liberal platform.

Enclosed a memorandum from Littell and the Boettigers to Ickes after telephone conversations along these lines.

Since Littell understands that there is a tentative commitment that the President will speak at a liberal conference as originally proposed in Salt Lake, some decisions will have to be made soon.

(3) John Lewis, at least for the moment, definitely lined up with Wheeler for President -- Dave Niles has all the details from Wheeler -- Bob Allen from Lewis. Lewis is vacationing in Utah.

(4) Young Democrats. Pepper reports that Quayle, Treasurer, Democratic Committee, has definitely proposed to the new President of the Young Democrats that the Young Democrats be put on ice, fold up their Washington organization and operate out of Adams' office in Chicago on a hibernation basis until much later in the year.

(5) Garner. C.M. from Texas has turned in the attached statement by Roy Miller about the Garner strategy. "Time to sit in the rocking chair".

Also attached a letter from Archie MacLeish about an article tying up Garner and Almazan.

(6) Michaelson has suggested that if Farley is looking for a job, the ideal job to provide him is that of Czar of United States racing.

Ruppel, now with Columbia Broadcasting, is trying to get Vic Sholis to leave to go with Ruppel; it has been suggested that Sholis would be an invaluable aid to the publicity department of the Democratic National Committee and should not be lost, and possibly Ruppel should be acquired. It has also been suggested that Barry Bingham and/or Joe Davies would be valuable to replace Roberts, or even possibly Farley, in the event that either should leave the Committee.

(7) Saturday Evening Post has approached Jackson for an article "What the President should do about a third term" -- guaranteeing publication in October. A first draft of such an article by Jackson is attached.

It says, in substance, "say nothing and do nothing about a third term until after the next session of Congress when the condition of the country will be known."

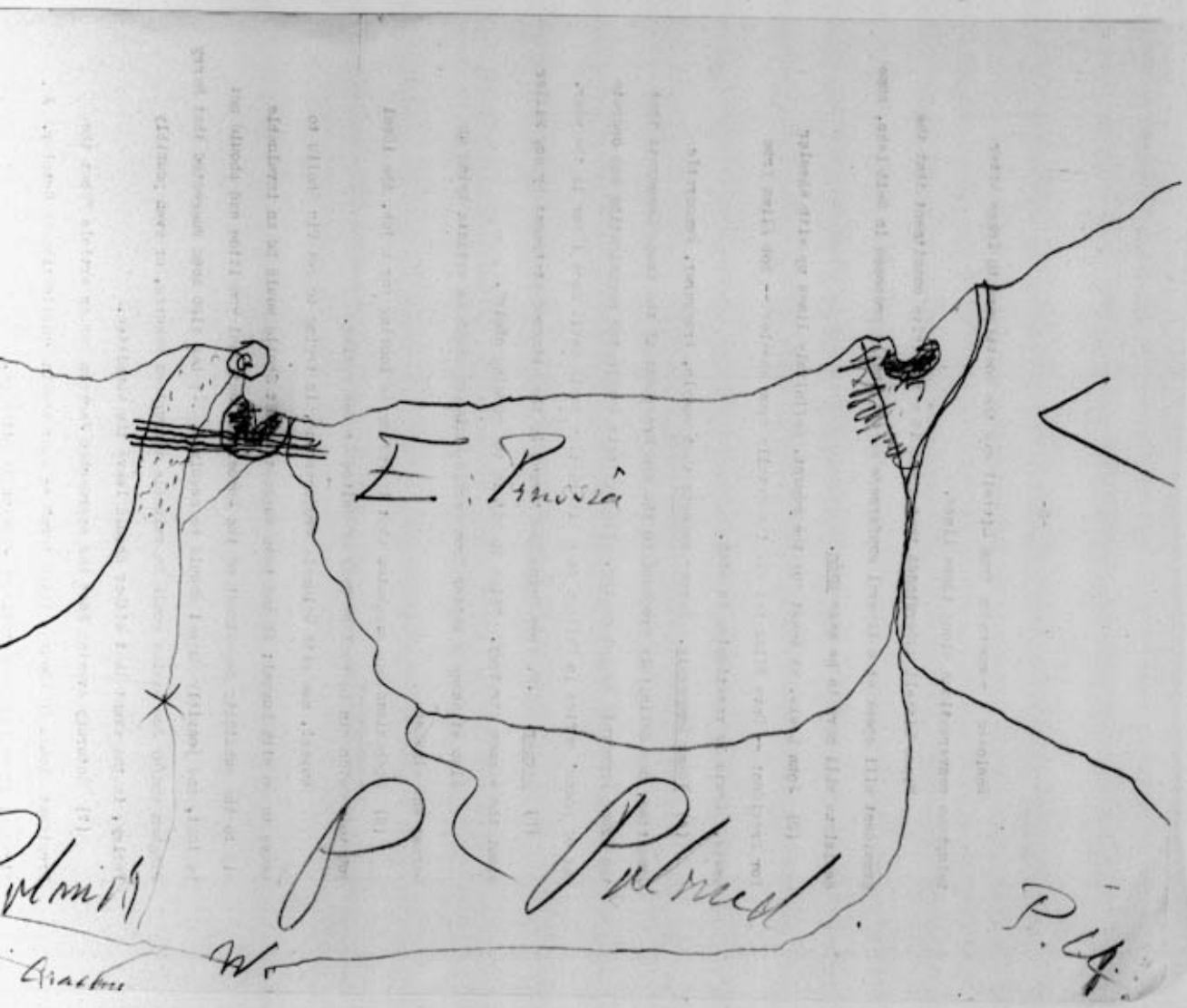
The Virginia Quarterly, with influential circulation throughout the South, will take substantially the same article in a different format for its issue to come out during November.

(8) James Cromwell. Steve Gibbons' place as Assistant Secretary of the Treasury, is open in September, the kind of a "monetary" title Cromwell would like.

(9) The Pathfinder. Five-cent imitation of "Time" -- one million circulation in rural areas -- abortively purchased by Murjo two months ago -- he wants to sell. Joe Davies?

Bckgd. Nisk. Story - Cycle

from T.G.C



file confidential COPY PSF: Corcoran, TG.

Dear Missy:-

The name of Thurman Arnold has been sent to the Senate for confirmation. It's a swell appointment for more reasons than one.

As an aftermath, however, there's a little problem of morale with another swell soldier of the Lord which can be handled very simply if you want to take care of it.

James Lawrence Fly is General Counsel of Tennessee Valley Authority. He is one of your very ablest fighting men. Through all the internal intrigue of the T.V.A., he's kept his head and <u>won his cases</u> against all the rest of the lawyers in the world.

He hoped and hoped hard for the job Arnold is getting. Why I don't understand; he has a better and bigger job now; but to him it meant "recognition" for brilliant work, a marshal's baton. Ane because he has the wrong kind of wife for a fighting man - a wife who is always goading him to go back to New York and make money -- a wife who is always goading him (like some other wives we know) that he isn't "recognized" - he's morbidly sensitive about "recognition."

It's so easy to take care of such a situation with a little personal pat on the back.

The Lord might give that pat to His servant in two ways, either or both.

(a) Write him a personal letter of which the following is a suggestion:

Dear Mr. Fly:-

Your name was among those I considered in choosing a nominee for the vacant post of Assistant Attorney General of the United States.

As I looked into your record I was greatly impressed with the devotion and competence you have given my Administration, both as a legal administrator and as an advocate. You have won great battles against great odds.

I want you to know of my admiration and gratitude.

I also want you to know that not the least of my reasons for nominating another for Assistant Attorney General is my conviction that your services to the Tennessee Valley Authority are uniquely indispensable at this time.

Very sincerely yours,

(b) Call him in on a conference concerning T.V.A. and tell him the same thing orally.

I think this is a little bit important. We haven't many good lawyers. It costs so little to keep up the spirit of those we have.

If you can't read this, Peggy will transcribe for you.

Grey Rocks Inn
St. Jovite.
Quebec
Sometime in March.

Dear Missy,

The name of Thurman Arnold has been sent to the Senate for confirmation. It's a swell appointment - for more reasons than one.

As an aftermath, however, there's a little problem of morale with another swell soldier of the Lord which can be handled very simply if you want to. You

care of it.

James Lawrence Fly is General Counsel of Tennessee Valley Authority. He is one of your very ablest fighting men. Through all the internal intrigues of the T.V.A. he's kept his head and won his cases against all the rest of the lawyers in the world.

He hoped - and hoped hard for the job Arnold is getting. Why? don't understand; he has a better bigger job now: but to him it meant "recognition" for brilliant work, a marshal's baton. And

because he has the wrong kind of wife for a fighting man - a wife who is always goading him to go back to New York and make money - a wife who is always goading him (like some other wives we know) that he isn't "recognized" - he's morbidly sensitive about "recognition".

It's so easy to take care of such a situation with a little personal pat on the back.

The Lord might give that pat to His servant in two ways, either or both.

as I write him a personal letter & while I am following it suggest him

Dear Mr. Fly

~~[Among the names I considered for nomination]~~

Your name was among those I considered in choosing a nominee for the vacant post of Assistant Attorney General of the United States.

As I looked into your record I was greatly impressed with the devotion and competence you have given my Administration

both as a legal administrator and as an advocate. You have won great battles against great odds.

I want you to know of my admiration and gratitude. I also want you to know that not the least of my reasons for nominating another for Assistant Attorney General is my conviction that your services to the Tennessee Valley Authority are uniquely indispensable at this time."

b) Call him in soon on a conference concerning T.V.A. and

2

money changer!

Thank you for the preference

Tom Grace

6.

Tell him the same thing really.

I think this is a little bit important. We haven't many good lawyers. It costs so little to keep up the esprit of those we have.

If you can't read this. Peggy will transcribe for you.

Enclosed.

Hall, Vice-President of Morgan Stanley & Co. and me. I'm landing him money! He returned me Canadian money for American money at a 2% discount. He

file: confidential

PSF: Corcoran

Corcoran-d-✓

UNITED STATES SENATE

Dear Tom:

I suppose you are wondering what happened to us in Indiana that we would throw away a victory already in our hand. Well it was over my dead body, and I mean dead body. It was a sell-out. Van Nuys had threatened to run independently—that wouldn't have amounted to a dime—but he had also threatened to expose certain Democrats for their racketeering in the State House. Two of the most prominent of these were McHole, who is McNutt's number one man, and Pursley, who is Townsend's number one man. So they made the deal to save themselves from exposure and all hell couldn't break it. Not even a message from the Boss which I carried to them personally. I think the settlement assures victory in November, but for whom? Not for the New Deal. Van Nuys will go back to the arms of Byrd, Bailey, Burke and Gerry, their hero. In the fight I got pretty badly used up, politically. The Convention endorsed me for supporting the Boss, but these "fixers" control the machinery and it is a cinch they will be after me from now on.

I know the Boss appreciates my efforts in his cause, however feeble, and I have never before thought about myself, but I do hope that if there is any chance for him to take care of me before 1940 that he will do it. I have heard it said that I was under consideration for the Bench in days gone by. As you know, I never raised my hand to say a word or have a word said for me and you will recall you brought the word to me once not to worry there would be plenty of chances for the Bench. Maybe so, but my time draws near. If I am in the picture now, I hope you will be good enough to say a word in my behalf. On the vacancy now on the big Court, I am sure he will be looking for some one of his gang.

Please let me know what you think.

Sincerely,

/s/ Sherman Minton

file PSF: Farley

THE WHITE HOUSE
WASHINGTON

February 1, 1937.

MEMORANDUM FOR THE PRESIDENT

T. G. C. called the other day to tell you of the great victory in the Electric Bond and Share case.

He also said that Copeland objects to Horton of Scripps-Howard for the Maritime Commission and he says as long as you want to do something for Senator Couzens' secretary, they probably would all agree on him and you could put Horton on the Federal Trade Commission.

April 27/37

Dear Mac:

Here is something which shows Mr. Rheinstein has pretty much the same views as the President. It was written in 1934 and is worth reading if he should be considered.

I believe Judge Dunne, of San Francisco has a pretty good idea of Rheinstein's views & character.

Sincerely, C. H. M.

Eugene Rheinfrank - PSF: Corcoran

NOVEMBER 26, 1934

The Ohio Law Reporter

AND WEEKLY LAW BULLETIN

CONTAINING OFFICIAL ADVANCE SHEETS FOR

OHIO OPINIONS

Volume 1: pages 67 to 98

The *Latest* in Case Law—The *Best* in Current Legal Thought

ROWLAND SHEPARD, Editor.

In This Issue

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DIGEST OF THIS NUMBER

ATTACHMENT AND GARNISHMENT—

§59. By virtue of Section 12 of the Seaman's Act of 1915, wages of seamen engaged in coastwise trade are exempt from attachment or arrestment from any court. White vs McClure. 1 O.O. 127.

ATTORNEYS—

§11. Conviction of attorney on plea of guilty to indictment for embezzlement of client's property, held to require disbarment. In Re Vogt. 1 O.O. 125.

§11. Incarceration of attorney in state penitentiary following conviction of embezzlement of client's property, held not to prevent disbarment on grounds of same transaction, where only defense to charge in disbarment proceedings was a denial. Id.

BUILDING AND LOAN ASSNS.—

(Syl) Under Sections 9643, 9643-1, 9643-2 and 9643-3, General Code, before a certificate of amendment to the articles of incorporation of a building and loan association or a certificate of reduction of its authorized capital may be filed with Secretary of State, the authorization of superintendent of building and loan associations must be secured. State ex rel Doan Loan Co. vs Myers. p. 23.

CRIMINAL LAW—

§47. Common Pleas Court has original jurisdiction of a prosecution under Section 13194, General Code. The word "final" as there used to describe the jurisdiction of a justice of the peace, is not equivalent to "exclusive" as used in Section 13422-5, to limit the jurisdiction of the Common Pleas Court. The grant of final jurisdiction to a justice of the peace does not deprive the Common Pleas Court of its original concurrent jurisdiction. Small vs State. 1 O.O. 102.

DIVORCE—

§97. In proceeding for alimony alone, court possesses no equity power, but is controlled by statute regarding proceedings on petition for alimony alone. Daily vs Daily. 1 O.O. 121.

§107. In suit for alimony only, alimony comprehends an allowance for purpose of maintenance during separation and not a division of property. Daily vs Daily. 1 O.O. 121.

ERROR—

§386. A verdict will be set aside as excessive where the amount awarded is not warranted by the evidence and it is apparent that it was rendered under the influence of passion and prejudice resulting from the jury concluding from repeated suggestions by plaintiff's counsel that the defendant was insured. Bliss vs Hartnett. 1 O.O. 119.

(Syl) Court of Appeals has jurisdiction under Section 6 of Article IV, Constitution of Ohio, to reverse a judgment granting or denying a divorce, on the ground that it is contrary to weight of evidence. Campbell vs Campbell. p. 23.

(Syl) Where a Court of Appeals reverses a judgment of the Common Pleas upon a consideration of the weight of the evidence, it is not authorized to render a final judgment but must remand the case. Id.

(Syl) The terms "modify" and "reverse," as used in Section 6 of Article IV, Constitution of Ohio, are distinguishable. Id.

(Syl) The action of a Court of Appeals granting a divorce decree, which had been refused by the Common Pleas, is not a modification but a reversal, although questions of alimony and custody of child were incidentally involved. Id.

INJUNCTION—

§116. Where city employees have agreed to a deduction from their salaries over a certain period, with provision that deducted amount would be restored if sufficient revenue be later received, subsequent payment of amounts deducted may be enjoined when financial condition of city is not improved. Lehman vs Toledo. 1 O.O. 108.

JUDGMENT—

§166. The record of conviction of a crime, unmodified or unreversed, may not be contradicted or impeached by the defendant in any collateral proceeding. In Re Vogt. 1 O.O. 125.

LANDLORD AND TENANT—

(Syl) Promise by lessor to make repairs of premises leased, does not impose upon lessor liability in tort to persons entering thereon at invitation of lessee. Berkowitz vs Winston. p. 24.

(Syl) Liability in tort is an incident to occupation or control; occupation and control are not reserved by an agreement to make repairs. Id.

(Syl) An owner of real estate, who has surrendered possession thereof to a lessee, is not liable to an employee of such lessee for personal injuries resulting from a defective condition of the premises, though he had promised the lessee to make repairs. Id.

MUNICIPAL CORPORATIONS—

§310. The fact that the finance director refused to pay salaries of any city employees unless all acquiesced in a salary deduction does not prevent such deduction from being voluntary. Lehman vs Toledo. 1 O.O. 108.

NEGLIGENCE—

(Syl) A storekeeper owes to a customer the duty to exercise ordinary care to keep his storeroom in a reasonably safe condition. Penny Co. vs Robison. p. 22.

(Syl) It is not negligence per se to have an oiled floor in a storeroom, the duty of the storekeeper to his customers in respect thereto being the exercise of ordinary care in application of oil, and the maintenance of the floor thereafter. Id.

(Syl) The standard is that degree of care which persons of ordinary care and prudence are accustomed to use in oiling the floor of a storeroom and maintaining such floor in its oiled condition, having due regard to the rights of others and the objects to be accomplished. Id.

(Syl) In an action for personal injury, brought by a customer against a storekeeper predicated upon the alleged negligence of the storekeeper in oiling and maintaining a floor in such storeroom in a dangerous condition, it is not enough to produce testimony showing that the customer slipped and fell on an oiled floor in such storeroom. There must be testimony tending to show that some negligent act or omission of the storekeeper caused the customer to slip. Id.

(Syl) Testimony that after customer fell there was a mark on floor where customer's heel had slipped, that she had some oil on

DIGEST—Continued

her hand, and that rubber tap had come off heel of her shoe, affords no question for the jury. Id.

PAUPERS—

§2. Section 3476, General Code, imposing upon a municipality liability for relief of its indigent residents, is not repealed by Senate Bill No. 60, approved February 28, 1933, which centralizes control in the administration of relief. Kearney vs State Relief Comm. 1 O.O. 128.

§2. The State Relief Commission is not liable for the support of indigent residents of a municipality; hence, an action brought by an indigent person to compel the granting of certain relief by the Commission is not maintainable. Id.

PUBLIC UTILITIES COMMISSION—

§22. Statutory jurisdiction of Commission to direct repayment of money collected from patrons by a telephone company under bond during pendency of a rate proceeding resulting in a finding that such rates are excessive, is exclusive. State ex rel Telephone Co. vs Court of Common Pleas. 1 O.O. 99.

§45. One claiming to act for all persons entitled to refund of excessive telephone rates, may not maintain action in Common Pleas Court for an accounting and appointment of a receiver. State ex rel Telephone Co. vs Court of Common Pleas. 1 O.O. 99.

(8yl) Commission has complete jurisdiction over subject matter of granting and extending certificates of convenience and necessity over highways of the state. Failure to give written notice pursuant to Section 614-91, General Code, pertains to jurisdiction over the person, which may be waived. Liberty Highway Co. vs Pub. Util. Comm. p. 23.

(8yl) Failure of complainant to protest lack of notice required by Section 614-91, General Code, and delay of two years before filing complaint, constituted a waiver of its right to seek an order vacating order of Commission extending certificate of competitor company. Id.

STATUTES—

§88. The 1926 codification of Federal statute law did not constitute a reenactment of any sections contained therein. White vs McClure. 1 O.O. 127.

TAXATION—

(8yl) Land trust certificates represent an intangible right within purview of Section 5323, General Code, and are taxable as such, notwithstanding fact that the particular real estate out of which such rights issue is likewise taxed. Senior vs Braden. p. 23.

(8yl) Such rights are taxable in the state where owner is domiciled, regardless of location of real estate against which such certificates are issued. Id.

(8yl) Section 5323, General Code, violates no federal or state constitutional right of the holder of such certificates. Id.

TRIAL—

§148. Where in his charge to the jury the trial judge follows the rule announced by the Supreme Court in a decision which is subsequently overruled, such charge is erroneous and constitutes prejudicial error. Bliss vs Hartnett. 1 O.O. 102.

(8yl) Under our law it is just as pernicious to submit a case to a jury when no question for the jury is involved, as to deny to a citizen his trial by jury when he has the right. Penny Co. vs Robison. p. 22.

TRUSTS—

§85. Even where the power of appointment of a successor trustee is conferred by the trust instruments upon an individual, a court of equity may control its execution to prevent abuse of discretion. Nat. City Bk. of Cleve. vs Schmoltz. 1 O.O. 103.

§87. A court of equity has inherent power over appointment and removal of the trustee of an express trust. Nat. City Bk. of Cleve. vs Schmoltz. 1 O.O. 103.

§91. In the removal of a trustee and appointment of his successor, the wishes of the creator of a trust may be outweighed by the interests of all the beneficiaries and the effectual performance of the trust. Nat. City Bk. of Cleve. vs Schmoltz. 1 O.O. 103.

§91. The power vested in the beneficiaries of an express trust, to appoint a successor trustee upon the incapacity of the original trustee, is subject to the condition that it be exercised within a reasonable time. Id.

§91. Upon failure of certificate holders of a land trust issue to take any steps toward appointment of a successor trustee until more than a year after the original trustee has been taken over for liquidation, and one of the beneficiaries may file a petition in Common Pleas Court praying for appointment of a successor trustee. Id.

§91. In such case a refusal of the court to permit filing of answers by other certificate holders seeking to intervene for purpose of asserting their right to make an independent appointment without interference by the court, is not error, and does not deprive such persons of any constitutional right. Id.

TRUSTS—

(8yl) Land trust certificates in the following trusts, Lincoln Inn Court Ground Rent, Cincinnati, Ohio; Clark Randolph Building Site, Chicago; Woman's City Club, Cincinnati; Rockefeller Building, Cleveland; Insurance Exchange Building, Boston; City National Bank Building, Omaha; and Fidelity Mortgage Co. Building, Cleveland, are mere evidences of an existing right to participate in the net rentals of the real estate being administered by the respective trusts. Senior vs Braden. p. 23.

(8yl) The holder of such certificates is at best the owner of equitable interests in real estate divided into shares evidenced by transferable certificates. Id.

WILLS—

§363. A provision in a will devising certain property to one of the testator's children "and to her heirs when she shall arrive at the age of twenty-two years" vests in such daughter a fee simple estate at the date of distribution. Jones vs Jones. 1 O.O. 111.

§363. The fact that such daughter died without issue after attaining the specified age and after the death of the testator does not operate to vest the fee in the other heirs of the testator by virtue of a subsequent item in the will providing that should any of said heirs "die without issue, the share of the one dying shall go to the others, share and share alike, or their heirs." Id.

§363. Positive, express language creating a fee simple estate cannot be cut down by another disconnected provision of the will. Id.

(Continued on 3d page of Cover)

The Ohio Law Reporter

and Weekly Law Bulletin

November 26, 1934.

A Gratifying Appointment

Few men on the Common Pleas bench in Ohio are more widely or more favorably known to the legal profession over the state than Judge Arthur W. Overmyer, of Fremont.

It was a source of especial gratification, therefore, when the Governor selected Judge Overmyer to take the place on the sixth district Court of Appeals bench to be vacated by Judge Roy H. Williams upon the latter's promotion to the Supreme Court.

It is said of Judge Overmyer that he has never been reversed by the highest court. Whether that is true or not is perhaps immaterial. The more important fact is that he possesses that none too common trait, the judicial temperament. And he has those other traits of character and industry which are essential in the make-up of a good judge. He can be expected to render good account of himself in his wider field of service.

The promotion of seasoned men from the trial courts when vacancies occur in reviewing courts, a policy of which Ohio governors have not always seen the wisdom, commends itself to the profession as perhaps the best method at present available of getting high grade judges in the higher tribunals. Why does not the Bar insist that such a policy be followed, to the end that men of Judge Overmyer's ability predominate in the Appellate Courts?

Oppose Integration Plan

It is unfortunate for the progress of the plan to integrate the Ohio Bar by Supreme Court rule that the Bar Association committee promoting the movement does not see fit to get an expression of the profession's thought on the matter.

Robert Guinther, Akron, chairman of the committee, together with other members of his group, has done a considerable amount of spade work in telling the Bar about the plan, but, so far as we can learn, has never sought to ascertain whether the Bar really wants to be integrated, or, as the facetious brethren term it, "disintegrated."

True, there was a perfunctory vote at the State Bar convention last winter which appeared to favor the idea in principle, but no vote was permitted at the annual meeting in July, after the idea had been somewhat more crystallized, and the committee appeared determined to ride rough shod over any opposition that might develop.

If the committee regards its function as similar to that of the stern parent administering castor oil to a child who doesn't know what is good for it, then the present course is perhaps justifiable. But lawyers after all are supposed to be adults, and their wishes with regard to administration of the integration medicine ought to be known.

Need Vote of Whole Bar

It is submitted that the only way to ascertain the profession's opinion is to conduct a vote by mail of the entire Bar; and the Supreme Court should insist that such a course be followed before it acts on the committee's suggestions.

At a meeting of the committee at Columbus last week, smoldering opposition on the part of the Cuyahoga County Bar Association broke into open flame, with Joseph L. Stern, president of that organization, informing the committee that the trustees of the association had unanimously voted a protest against adoption of the integration rule and had requested the Supreme Court to allow an open hearing on the proposal.

While the integration committee overrode the objections brought up by Stern and gave Guinther a renewed vote of confidence, it is well that the objections be made known, and for that purpose they are printed below. Lawyers should study these objections carefully. Perhaps some or all of them are unfounded. Perhaps there are others that have not been mentioned. At any rate the Bar should not rush into a new form of organization without knowing where it is going.

The Ohio Law Reporter does not subscribe to the reference in these objections to "suspicion of sinister motives." It believes Mr. Guinther is entirely sin-

cere in doing what he believes will be a good thing for the profession, and that his character is above reproach. Nevertheless it is for the good of all to record what at least one large Bar association thinks, as expressed in the objections of its president.

List Sixteen Objections

The sixteen objections are as follows:

1. The proposed rule is confessedly attempted force and coercion by a minority over the majority, with no voice or expression permitted by the majority.

2. The same groups of lawyers engaged in the defense of unauthorized practitioners favor the integrated Bar, so-called, just as those usurpers of the lawyers' franchise have been engaged in constant publicity of alleged dishonesty of the members of the Bar.

3. The proposed rule does not even pretend to make a commitment as to whether the giving of legal advice out of court is practicing law and within the exclusive realm of those solemnly licensed to practice,—a question with which our Supreme Court has been wrestling for several years without a decision or announced conclusion.

4. Said proposed rule gives less rights to accused lawyers than is given to imposters and usurpers of the franchise.

5. No provision is made therein for meetings of the members of the so-called State Bar Association, nor is any method provided for expression by members.

6. How by-laws will be adopted or other important measures will be adopted or discussed, does not appear therefrom.

7. Everything connected with the management of the business or affairs of the so-called Bar Association is delegated to a board to be elected through a political system.

8. City lawyers, though in the majority, will be under the dominance of the country lawyers' board members, there being more rural districts than city districts.

9. Annual license fees, so-called, may be increased beyond the ability of the average lawyer to comply, and the funds thus raised used for legislative lobbies and politics.

10. The movement appears to be a part of the general trend toward Fascism.

11. It is a job-creating device, with provisions for the payment of fees for disciplining lawyers, a system somewhat akin to the justice of the peace system, in that there is an incentive to stir up unwarranted complaints against lawyers.

12. Present General Code Sections 1707 to 1709 provide adequate machinery for judicial discipline, suspension and disbarment of lawyers.

13. The proposed rule creates another bureau or board to whom judicial functions are transferred without protection against subsequent court trial on statutory procedure against lawyers previously acquitted by the bureau.

14. The scheme is bound to weaken if not totally destroy local voluntary bar associations.

15. The proponents of the scheme laud the ancient traditions of the profession as an argument in support of a plan totally out of harmony with the ancient practices of what the proponents concede to a noble profession, of which only a very small percentage are recalcitrant.

16. If the proponents are sincere in their arguments and claims concerning the profession, they could best exemplify that sincerity by a relentless campaign for housecleaning under the present adequate machinery, and thereby escape the suspicion of sinister motives.

SUPREME COURT OF OHIO

Syllabi

24737 The J. C. Penny Co. Inc. vs Maude Robison. Certified by the Court of Appeals of Wayne county.

Stephenson, J.

1. A storekeeper owes to a customer, shopping in his store, the duty to exercise ordinary care to have and keep his storeroom in a reasonably safe condition.

2. While the oiling of floors in storerooms is by no means a universal practice, it is quite common and it is not negligence per se to have an oiled floor in a storeroom. The duty on the part of the storekeeper toward his customers in reference thereto being the exercise of ordinary care in the application of the oil to the floor, and the maintenance of the floor thereafter.

3. The standard would be that degree of care which persons of ordinary care and prudence are accustomed to use in oiling the floor of a storeroom and maintaining such floor in its oiled condition, having due regard to the rights of others and the objects to be accomplished.

4. In an action for personal injury, brought by a customer against a storekeeper, predicated upon the alleged negligence of the storekeeper in oiling and maintaining a floor in such storeroom in a dangerous condition, it is not enough to produce testimony showing that the customer slipped and fell on an oiled floor in such storeroom. There must be testimony tending to show that some negligent act or omission of the storekeeper caused the customer to slip.

5. Testimony to the effect that after the customer fell there was a mark on the floor where the customer's heel had slipped, that she had some oil or black substance on her hand, dress and stockings, and that the rubber tap had come off the heel of the customer's shoe in falling, affords no question for the jury. Considering such testimony in its most favorable light toward the customer, it constitutes no proof of negligence on the part of the storekeeper.

6. Under our law it is just as pernicious to submit a case to a jury and permit the jury to speculate with the rights of citizens when no question for the jury is involved, as to deny to a citizen his trial by jury when he has the right.

Judgment reversed.

Weygandt, C. J., Jones, Matthias, Bevis, Zimmerman and Wilkin, JJ., concur.

24756 Max Senior vs George C. Braden et al. Error to the Court of Appeals of Hamilton county.

Stephenson, J.

1. Land trust certificates in the following trusts, Lincoln Inn Court Ground Rent, Cincinnati, Ohio; Clark Randolph Building Site, Chicago, Illinois; Woman's City Club, Cincinnati, Ohio; Rockefeller Building, Cleveland, Ohio; Insurance Exchange Building, Boston, Mass., City National Bank Building, Omaha, Neb.; and Fidelity Mortgage Co. Building, Cleveland, Ohio, are mere evidences of an existing right to participate in the net rentals of the real estate being administered by the respective trusts.

2. Ascribing to such certificates all possible virtue, the holder thereof is at best the owner of equitable interests in real estate divided into shares evidenced by transferable certificates. Section 5323, General Code, does not provide for a tax against the equitable interests in land but does provide a tax against the income derived from such equitable interests.

3. Such certificates represent an intangible right within the purview of Section 5333, General Code, and are taxable as such, notwithstanding the fact that the particular real estate out of which such rights issue is likewise taxed.

4. Such rights are taxable in the state where the owner is domiciled, regardless of the location of the real estate against which such certificates are issued.

5. Section 5329, General Code, violates no federal or state constitutional right of the holder of such certificates.

Judgment affirmed.

Weygandt, C. J., Jones, Matthias, Bevis, Zimmerman and Wilkin, JJ., concur.

24567 Percy Alphonso Campbell vs Mabel Van Duyne Campbell. Error to Court of Appeals of Cuyahoga county.

Matthias, J.

1. The Court of Appeals has jurisdiction under Section 6 of Article IV of the state Constitution, to reverse a judgment granting or denying a divorce, on the ground that it is contrary to the weight of the evidence (Weeden vs Weeden, 116 Ohio St., 834, approved and followed.)

2. Where a Court of Appeals reverses a judgment of the Court of Common Pleas upon a consideration of the weight of the evidence, it is not authorized to render final judgment but must remand the case to the trial court.

3. The terms "modify" and "reverse," as used in Section 6 of Article IV of the state Constitution are distinguishable.

4. The action of a Court of Appeals granting a divorce decree, which had been refused by the Court of Common Pleas, is not a modification but a reversal of the judgment under review, although questions of alimony and custody of child were incidentally involved.

Judgment reversed.

Weygandt, C. J., Stephenson, Jones, Bevis, Zimmerman and Wilkin, JJ., concur.

24664 and 24788 The State ex rel The Doan Savings & Loan Co. vs George S. Myers, Secretary of State (Two cases). In mandamus.

Bevis, J.

Under the provisions of Sections 9643, 9643-1, 9643-2 and 9643-3, General Code, before a certificate of amendment to the articles of incorporation of a building and loan association or a certificate of reduction of its authorized capital may be filed or recorded with the Secretary of State, the authorization of the Superintendent of Building and Loan Associations must be secured.

Writs denied.

Weygandt, C. J., Stephenson, Jones, Matthias and Zimmerman, JJ., concur. Wilkin, J., not participating.

24744 The Liberty Highway Co. et al vs The Public Utilities Commission. Error to the Public Utilities Commission.

Jones, J.

1. The Public Utilities Commission has complete jurisdiction over the subject matter of granting and extending of certificates of public convenience and necessity over the highways of the state. Failure to give written notice pursuant to Section 614-91, General Code, pertains not to jurisdiction of the subject-matter but to jurisdiction over the person, which may be waived.

2. On April 30, 1931, a motor transportation company secured an order from the

commission amending its certificate so as to extend its route over a portion of that for which a complaining company also held a certificate of public convenience and necessity. With full knowledge of the operations under the amended certificate of extension, the complaining company, two years and seven months after such order was made, applied to the commission for the vacation thereof for the reason that the commission had not given complainant the written notice required by Section 614-91, General Code. *Held*, By failing to make timely protest after such knowledge and by waiting so long a period before filing its complaint, the complainant waived its right to seek an order vacating the order of extension granted on April 20, 1931. (Erie Rd. Co. vs Public Utilities Commission, 123 Ohio St., 472, distinguished.)

Order affirmed.

Weygandt, C. J., Stephenson, Matthias, Bevis, Zimmerman and Wilkin, JJ., concur.

24774 State ex rel Frank Cundiff vs Industrial Commission. In mandamus.

Bevis, J.

1. The Industrial Commission of Ohio speaks only by its record (Industrial Commission vs Hogle, 108 Ohio St., 363, approved and followed.)

2. Where the record of the official act of the Industrial Commission shows that a case within its jurisdiction has been continued and, during the pendency of such continuance, an application for modification of a prior award has been made, the claimant is legally entitled to have the commission hear and determine his application.

Writ allowed.

Weygandt, C. J., Stephenson, Zimmerman and Wilkin, JJ., concur.

Matthias, J., not participating.

24968 Rachel Berkowitz vs Sam Winston. Certified by Court of Appeals of Hamilton county.

Matthias, J.

1. Promise by the lessor, to make repairs of premises leased, does not impose upon the lessor liability in tort to persons entering thereon at the invitation of the lessee.

2. Liability in tort is an incident to occupation or control; occupation and control are not reserved by an agreement to make repairs.

3. An owner of real estate, who has surrendered possession thereof to a lessee, is not liable to an employee of such lessee for personal injuries resulting from a defective condition of the premises, though he had promised the lessee to make repairs.

Judgment reversed.

Weygandt, C. J., Stephenson, Jones, Bevis, Zimmerman and Wilkin, JJ., concur.

General Docket

Wednesday, November 21.

24639 John Redman vs North River Ins. Co. Error to the Court of Appeals of Miami county. Judgment affirmed. Weygandt, C. J., Stephenson, Jones, Matthias, Bevis, Zimmerman and Wilkin, JJ., concur.

24667 Percy Alfonse Campbell vs Mabel Van Duyne Campbell. Error to the Court of Appeals of Cuyahoga county. Judgment reversed. Weygandt, C. J., Stephenson, Jones, Matthias, Bevis, Zimmerman and Wilkin, JJ., concur.

24684 State ex rel Doan Savings & Loan Co. vs George S. Myers, Secy. of State. In mandamus. Writ denied. Weygandt, C. J., Stephenson, Jones, Matthias, Bevis and Zimmerman, JJ., concur. Wilkin, J., not participating.

24689 Indus. Comm. vs Etta St. John. Error to the Court of Appeals of Montgomery county. Judgment affirmed. Weygandt, C. J., Stephenson, Jones, Matthias, Bevis, Zimmerman and Wilkin, JJ., concur.

24727 J. C. Penny Co. vs Maude Robison. Certified by the Court of Appeals of Wayne county. Judgment of the Court of Appeals reversed and that of Common Pleas Court affirmed. Weygandt, C. J., Stephenson, Jones, Matthias, Bevis, Zimmerman and Wilkin, JJ., concur.

24744 Liberty Highway Co. et al vs Pub. Util. Comm. Error to the Pub. Util. Comm. Order affirmed. Weygandt, C. J., Stephenson, Jones, Matthias, Bevis, Zimmerman and Wilkin, JJ., concur.

24756 Max Senior vs George C. Braden et al. Error to the Court of Appeals of Hamilton county. Judgment affirmed. Weygandt, C. J., Stephenson, Jones, Matthias, Bevis, Zimmerman and Wilkin, JJ., concur.

24774 State ex rel Frank Cundiff, vs Indus. Comm. In mandamus. Writ allowed. Weygandt, C. J., Stephenson, Bevis, Zimmerman and Wilkin, JJ., concur. Matthias, J., not participating.

24788 State ex rel Doan Savings & Loan Co., vs George S. Myers, Secy. of State. In mandamus. Writ denied. Weygandt, C. J., Stephenson, Jones, Matthias, Bevis and Zimmerman, JJ., concur. Wilkin, J., not participating.

24799 State ex rel Frank T. Cullitan, Pros. Atty., vs Edwin C. Hastings et al. In quo warranto. Dismissed by relator, without prejudice, at his costs.

24958 Rachel Berkowitz vs Sam Winston. Certified by the Court of Appeals of Hamilton county. Judgment of the Court of Appeals reversed and that of Common Pleas Court affirmed. Weygandt, C. J., Stephenson, Jones, Matthias, Bevis, Zimmerman and Wilkin, JJ., concur.

24978 Ed Sorgen vs State of Ohio. Error to the Court of Appeals of Cuyahoga county. Dismissed, no debatable constitutional question involved. Weygandt, C. J., Stephenson, Jones, Matthias, Bevis, Zimmerman and Wilkin, JJ., concur.

24979 Ed Sorgen vs State of Ohio. Error to the Court of Appeals of Cuyahoga county. Dismissed, no debatable constitutional question involved. Weygandt, C. J., Stephenson, Jones, Matthias, Bevis, Zimmerman and Wilkin, JJ., concur.

25024 Cincinnati, Middletown & Dayton Motor Freight, Inc. et al vs Public Utilities Commission. Error to the Pub. Util. Comm. Petition in error dismissed. Weygandt, C. J., Stephenson, Jones, Matthias, Bevis, Zimmerman and Wilkin, JJ., concur.

Motion Docket

Motion to Certify Overruled.

24939 Lincoln Mutual Indemnity Co. vs Ollie F. Fisher. Seneca county.

24948 Cleveland Ry. Co. vs Lucile Kidd. Cuyahoga county.

24953 Mattie Graham vs William V. Cooper et al. Summit county.

24954 United States Fidelity & Guaranty Co. vs Fred Scheibel. Cuyahoga county.

24954 United States Fidelity & Guaranty Co. vs Fannie Weiss. Cuyahoga county.

24955 United States Fidelity & Guaranty Co. vs Jake Reder. Cuyahoga county.

24956 United States Fidelity & Guaranty Co. vs Rose Zucker et al. Cuyahoga county.

24957 Gerald J. Walsh vs Western Bank & Trust Co. et al. Hamilton county.

24965 John D. Gaydos et al vs Anton Cerny. Cuyahoga county.

24967 Frank T. Sheehan et al vs Syndicate Parking, Inc. Cuyahoga county.

24978 Ed Sorgen vs State of Ohio. Cuyahoga county.

24979 Ed Sorgen vs State of Ohio. Cuyahoga county.

24996 Metropolitan Life Ins. Co. vs Regina A. Reardon. Summit county.

Motion to Certify Allowed.

24925 Walter H. Davidson vs Miners & Mechanics Savings & Trust Co., Exr. et al. Jefferson county.

24926 Walter H. Davidson vs Miners & Mechanics Savings & Trust Co., Exr. et al. Jefferson county.

24927 Walter H. Davidson vs Miners & Mechanics Savings & Trust Co., Exr., et al. Jefferson county.

24950 John A. Hadden et al vs Thomas G. Rowe. Cuyahoga county.

24964 Trustees of Kenyon College vs Cleveland Trust Co. et al. Lorain county.

Other Motions and Demurrers.

24970 Ed Sorgen vs State of Ohio. Motion by defendant in error to dismiss petition in error filed as of right. Sustained.

24979 Ed Sorgen vs State of Ohio. Motion by defendant in error to dismiss petition in error filed as of right. Sustained.

24995 In Matter of Exceptions of Prosecuting Attorney of Stark County, State of Ohio vs Charles G. King et al. Motion for leave to file bill of exceptions to Court of Common Pleas of Stark county. Overruled.

25024 Cincinnati, Middletown & Dayton Motor Freight, Inc., et al vs Public Utilities Commission. Motion by defendant in error to dismiss petition in error. Sustained.

New Cases Docketed in the Supreme Court

25064 State of Ohio ex rel Alex Patterson vs Paul G. Schirmer et al. In mandamus. Attorneys for plaintiff, Robert A. Taft, Cincinnati. Filed Nov. 14.

25065 Marvin S. Grove et al vs Summit County Board of Education et al. Motion to certify. Summit county. Attorneys for plaintiff, W. E. Snyder, M. E. Snyder, Akron; for defendant, C. B. McDonald, William S. Spencer, Akron. Filed Nov. 15.

25066 Ohio Bell Telephone Co. vs Anna E. Lung, Admx. etc. Motion to certify. Stark county. Attorneys for plaintiff, Henderson, Burr, Randall & Porter, Columbus, R. H. Treffinger, Columbus, Burt, Klinnison, Carson & Shadrach, Canton; for defendant, Donald W. Seiple, James L. Amerman, Canton. Filed Nov. 14.

25067 State of Ohio vs E. D. Shively. Motion for leave to file petition in error. Guernsey county. Attorneys for plaintiff, Willard D. Campbell, Cambridge; for defendant, Milton H. Turner, Cambridge. Filed Feb. 3.

25068 Peter D. Treadway vs State of Ohio. Motion for leave to file petition in error. Cuyahoga county. Attorneys for plaintiff, DuLaurence & DuLaurence, Cleveland; for defendant, Frank T. Cullitan, Cleveland. Filed Nov. 10.

25069 State ex rel The Standard Oil Co. vs John Combs, Dir. etc. In mandamus. Attorneys for plaintiff, Clarence A. Graham, Zanesville. Filed Nov. 16.

25090 Luella Hutchison vs Industrial Commission. Motion to certify. Stark county. Attorneys for plaintiff, Wm. B. Quinn, Canton; for defendant, John W. Bricker, Columbus, D. Deane McLaughlin, Canton. Filed Nov. 16.

25091 The White Co. vs The Canton Transportation Co. Motion to certify. Stark county. Attorneys for plaintiff, Lynch, Day, Pon-

(Continued on 3rd page of cover)

Proposal to Consolidate the Supreme Court and the Courts of Appeals

By EUGENE RHEINFRANK of the Toledo Bar.

The proposal to reform the appellate judicial system of Ohio should command public attention. The cause is not only just; it should be popular. In this period of financial depression, the public will be particularly interested in any plan to make a governmental agency more efficient and more economical. The legal profession of Ohio, composed of more than eight thousand members, would naturally become interested in a program of court reform that so vitally affects their daily business and so trenchantly influences the jurisprudence of this state.

The plan contemplates the consolidation of our Supreme Court and our nine Courts of Appeals into a single reviewing court to be known as the Supreme Court of Ohio. In effect, it seeks to abolish the intermediate Appellate Court; to save the taxpayers hundreds of thousands of dollars each year; to convert into permanent, authoritative jurisprudence the vast amount of unproductive work now done by the thirty-four judges of all our Appellate Courts; to give to every citizen the absolute right to submit his question to a court of last resort and to secure a written opinion upon the merits of his cause; to make the administration of justice more expeditious and less costly; to make Ohio a safer place in which to carry on business because of the clarification of our laws; and to raise the standing of the Ohio judiciary among the judiciaries of the sister states of the Union.

The adoption of the plan of consolidation will meet the statewide criticism of our Supreme Court because of its failure to allow more motions to certify and because of its omission to give or write opinions in nearly four-fifths of the cases; it will decrease the volume of appellate litigation because the number of cases settled or finally disposed of in the Common Pleas Courts will be greatly increased on account of the added certainty and clarification in our laws, and also because the incidental simplification of the rules of procedure will reduce the necessity for any large number of judicial interpretations; it will probably reduce the expense of legal publications by at least half, with a consequent saving to lawyers of many thousands of dollars each year; it will naturally improve the quality of the judicial opinions rendered by the judges of the Courts of Appeals who will have an incentive inspired by the fact that their opinions are to become authoritative and to become incorporated into the body of our permanent jurisprudence.

Uncertainty, Delay, Expense, Unproductiveness

Nine practicing lawyers out of ten in this state will agree that Ohio jurisprudence is below the average established and maintained in the other states. The three major criticisms are, uncertainty, delay and expense. The element of unproductiveness might well be added. With twenty-seven appellate judges turning out opinions that are not authoritative and with seven justices of the Supreme Court hearing and deciding more than three hundred cases each year without rendering opinions or publishing reasons, it can be stated that a very large part of our judicial work is unproductive in that it contributes nothing to our permanent jurisprudence. This fact alone is reason enough to condemn our existing Appellate Court system.

The Huge Cost of the Existing Unproductive System

According to the book published by Reticker, "Expenditures of Public Money for the Administration of Justice in Ohio, 1930," the total expenditure for the Courts of Appeals was $317,783 of which $256,685 was expended by the state and $61,098 by the counties. For this huge amount of money, the litigants get one more decision in the case but the public at large gets only whatever a volume of approximately one hundred opinions is worth which are not authoritative and which, therefore, are of no permanent value in the building up of our state jurisprudence.

For the $130,859 spent by the state in the year 1930 on account of the maintenance of the Supreme Court, what did the taxpayers get? 131 Opinions of the court.

Again, the cost to litigants of having an intermediate Court of Appeals amounts in the aggregate to millions of dollars each year for which the unsuccessful party gets nothing except the opportunity to take his case before another body of judges, presumably of no greater ability than the first tribunal.

Lawyers are Mentally Enslaved by Precedent

The lawyer is constitutionally a slave to precedent. From the time he takes up his first law book in the class-room until he closes his career, he is apt to consider all problems in the light of precedent.

This domination of the idea of precedent is the chief cause of the lack of progress in the creation of legal machinery and in jurisprudence. The great minds in the arts, the sciences and the industries have gone ahead by leaps and bounds to create a civilization the activities of which are beyond the dreams of men living a century ago. The mode of life has been wholly changed; the relationships between individuals are affected by forces which never came into being until after the invention of the steam locomotive, the airplane, the submarine, the radio, and hundreds of other startling inventions. Yet, because of the slavery imposed by legal precedent, we are seeking to apply horse-and-buggy laws in an age in which vehicles travel our highways at 100 miles per hour, when planes travel our airways at a speed of 450 miles per hour, when locomotives thunder over steel rails at 110 miles per hour and in which we have means of communication which, in the matter of time, have reduced days to seconds. It is only because we have been slaves to precedent that we have tolerated the cumbersome legal machinery known as our Appellate Court system and our Appellate Court procedure.

System of one Trial and One Appeal is Not New or Untried

There is nothing new in the suggestion that every state should provide one trial and one appeal or review. At least eight states have no intermediate Appellate Court. Our neighboring state of Michigan affords a most excellent example of the efficiency in the administration of justice that can be obtained by having one trial and one review. Our intermediate court has been the object of jests ever since it was created and I recall that thirty years ago one of the judges of the Circuit Court in a speech characterized it as "the court of intermediate conjecture." Again, it has been spoken of as "the door-mat to the Supreme Court," and as the "fifth wheel" in the machinery of our legal jurisprudence.

Decisions not Authoritative and Therefore, not Constructive

Moreover, aside from the result of deciding the case before it, the Court of Appeals makes no contribution to our jurisprudence and its work is, therefore, unproductive from the standpoint of the public.

Its decisions are not authoritative. Chief Justice Marshall, in his dissenting opinion in the Masterson v. Cleveland Railroad Co. case, declared as follows:

"We must, however, protest against any opinion of any member of this court declaring that the overruling of a motion to certify constitutes an adherence "to the principles announced by the Appellate Court, otherwise, it would have admitted and reversed the case." The contrary of that declaration has been stated a score of times from the bench during the last few years, and in at least one opinion the bar has been advised that the overruling of motion to certify does not amount to any declaration of legal principles. In the nature of things, it must be so because no reason is ever announced for the overruling of a motion to certify."

The objectionable statement first published in the OHIO LAW BULLETIN & REPORTER on Feb. 6, 1932 was deleted from the opinion published in 126 Ohio St., 47. Chief Justice Weygandt, in a speech at Toledo, Ohio, shortly after his election, stated flatly that the decisions and opinions of the Court of Appeals did not constitute authoritative law.

Judgments of Intermediate Court Have no Finality

Besides having no authoritativeness, the judgments of the Court of Appeals have no finality. The losing party still has a chance to spin the wheel of fortune twice; the first time, by filing in the Supreme Court a motion to certify and, if he strikes a lucky number, if he has the one case that is admitted out of every five filed, then he can file a petition in error and have a decision and opinion by a court of last resort. It would be strange indeed if out of eight thousand or more attorneys, in Ohio, we could not find a body of competent judges who were able to give one thorough review of a case and to render, with opinion, a sound decision that would be final. I believe the members of our Supreme Court would be the last to claim that they were the only set of men fitted by education, training and intellect, to review and correctly decide cases taken up from our Common Pleas Court.

Judicial Power Should not be Exercised Without Opinion or Published Memorandum

During the past six years, about two thousand litigants have been denied admission of their cases to the Supreme Court. Their motions to certify were overruled without opinion. Here in Ohio, then, where supposedly we have a very democratic government, we have a power and authority exercised by a tribunal that is not required to give any reasons for its exercise or any opinions to support the manner of its exercise. No autocrat, no king in all history possessed greater opportunity than that for the arbitrary exercise of power. This species of autocracy created by our judicial system automatically arises through the action of our people themselves who in their Constitution forged their own bonds. In short, the Constitutional convention of 1912 created an impractical Appellate Court system which we have endured for 21 years and which should be changed at the first opportunity provided or permitted by law.

Cases Involving Questions of Public and Great General Interest

The provision in the Constitution which gives the Supreme Court jurisdiction on appeal or error in cases of public and great general interest is fundamentally unsound. It operates to preclude any chance for the success of our Appellate Court system. It gives the Supreme Court the absolute power to dictate what cases may be submitted to it for final determination. In the exercise of that power, the Supreme Court is required to answer to no one. It is silent as to the reasons which support its decisions to bar four-fifths of the cases which clamor for admission and for determination. With this absolute power, it is no wonder that the Supreme Court can keep its docket "cleaned up."

The Judiciary is Not to be Blamed

However, strange as it may appear to the layman, this deplorable result is not the fault of the members of the Supreme Court or of the Court of Appeals. They have done at least as well as any equal number of men could have done under the same system. They should be the first to rejoice at any change which will bring to them the just reward for their public service rather than unjust criticism for the dissatisfaction created as a result of our obsolete and cumbersome court machinery.

Volume of Business not too Great for One Appellate Court

The argument sometimes made that an intermediate Appellate Court in Ohio is necessary because of the great volume of litigation is unsound. A Supreme Court organized in divisions may easily be made flexible enough to take care of any volume of business no matter how large. Moreover, we assert that the large volume of appellate business during the past twenty years in Ohio is at least partly due to uncertainty as to the interpretation which our courts will give to our law, the consequent inability of attorneys to correctly advise their clients as to what the law is and to properly advise them as to settlement of any proposed litigation. On account of the uncertainty in our judicial decisions, thousands of litigants have decided to take a gambling chance upon the outcome in the courts whereas if our jurisprudence were made as clear and certain as it is in Michigan, thousands of cases would never have been brought to clutter up our courts.

It should be just as easy to create legal machinery and legal procedure to take care of a large and ever increasing volume of law business as it has been for men to take care of other conditions which have arisen in our advancing civilization. Our forefathers in the law and in business found that it would be too slow and laborious to communicate by longhand writing, so the typewriter was invented. They found it was too slow to send messages by courier, by post-chaise and by messenger, so they invented the telegraph, the telephone and the radio. They found it was too slow to walk to places where they wished to transact business or to use the horse, or the ox, or the ass, so they invented first, the train, then the electric street car, the motor vehicle and finally, the airplane. They found transportation on the water too slow and too uncertain when dependent upon the wind and oars, so Robert Fulton devised the steam boat which finally grew into the great trans-Atlantic lines with service to Europe in less than five days.

Isn't it about time for the lawyers to find some new vehicles to use in the administration of justice? Isn't it about time, for example, to abandon the ancient Westminster form for a Bill of Exceptions—adopted in England in 1285 A. D. but discarded many years ago, and still used in Ohio?

Comparison of Supreme Court Opinions in 22 States

While the work of our Supreme Court is of a high quality, let us compare its productiveness with that of some of the similar courts in our sister states. According to Professor Silas A. Harris, of Ohio State University, who has also been a member of our State Judicial Council, the work of writing opinions does not compare very favorably with that done by the Supreme Courts of other states. Here is a tabulation:

State	No. of Judges	Opinions per year	Cases Heard
Kentucky	7-d Com.	935	1,100
Oklahoma	9	569	1,200
Alabama	7	561	about 575
Washington	9	520	540
Iowa	9	476	489
Kansas	7	429	512
Illinois	7	427	626
Michigan	8	400	
Wisconsin	7	378	
California	7	297	754
South Dakota	5-2 Com.	288	
Oregon	7	278	177 (1917, 1929)
West Virginia	5	213	238
North Dakota	5	190	275
Ohio	7	181 (Plus Motions)	286
Montana	5	176	195
Idaho	5	175	250
New York	7	146 (Plus 471 Motions)	517
Rhode Island	5	95	
New Mexico	5	87	
Indiana	5	73	376
Wyoming	3	60	75
U. S. Supreme Court	9	194 (Plus Motions)	288

Prof. Edson R. Sunderland, an authority on the subject of Appellate Court procedure and secretary of the Judicial Council of Michigan, says in his report for June, 1933 that in Illinois, Massachusetts and Michigan, the reviewing courts write opinions in practically all cases. Seven judges of the Supreme Court of Illinois have been rendering an average of four hundred opinions per year. The Supreme Judicial Court of Massachusetts, consisting of seven judges, writes an average of more than 476 opinions a year.

The Constitution of Ohio (Article IV, Secs. 1, 2, and 6) should be amended and appropriate legislation should be passed to create an organization of our Appellate Court system along the following lines:

Supreme Court: How made up:

The Supreme Court shall, until otherwise provided by law, consist of a chief justice and eighteen associate justices, and the judges now in office in that court court shall continue therein until the end of the terms for which they were respectively elected, unless they are removed, die or resign.

Jurisdiction of Supreme Court:

It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, and appellate jurisdiction in all other cases; also such revisory jurisdiction of the proceedings of administrative officers as may be conferred by law.

Term of court:

It shall hold at least one term in each year in each judicial district, and such other terms as may be provided by law.

Six divisions to hold court in six appellate judicial districts:

The state shall be divided by the legislature into six appellate judicial districts of compact territory bounded by county lines in each of which a division consisting of three judges of the Supreme Court shall regularly hold court.

Mode of election of justices in each district:

The people of each district shall elect the three justices of the Supreme Court who are to constitute the regular members of the division of the Supreme Court that is to hold sessions in such district. The chief justice shall be elected at large.

Divisions to hold regular sessions in centers of population:

There shall be a division of Supreme Court for holding regular court sessions in Columbus, Cleveland, Cincinnati, Toledo and in such other centers of population in each of said six judicial districts as the chief justice shall designate or as may be provided by law.

Terms of offices of Chief Justice and associate justices:

Until otherwise provided by law, the terms of office of the chief justice and associate justices of the Supreme Court shall be six years.

Manner of transition from present judicial system to new judicial system; Court of Appeals judges to become justices of the Supreme Court:

All judges of the Court of Appeals shall, upon the passage of this amendment, be known and designated as justices of the Supreme Court and shall, together with the seven members, heretofore constituting the court, be and constitute members of the Supreme Court until the expiration of the terms for which they were respectively elected, unless they are removed, die or resign.

Plan for reducing number of appellate judges from 34 to 19:

When, on account of expiration of term, the number of judges in any district who had been elected to sit on the Court of Appeals is reduced to two members, then one additional judge of the Supreme Court shall be elected in that district for the term of six years or as may be provided by law, and thereafter one judge shall be elected by such district each two years for a like term of office. In case of death, resignation or disqualification of any judge heretofore elected to the Court of Appeals, the number of justices in any district is reduced to two members, then a third justice shall be appointed by the Governor of the state of Ohio for the unexpired term.

Assignment of work for judges during transition from old system to new system:

If there are more than three judges of the Court of Appeals in any one of the newly constituted appellate judicial districts, the chief justice shall assign such additional judges to sit in those districts where the pending cases are most numerous. During their remaining terms of office, the six associate justices heretofore constituting with the chief justice the Supreme Court shall sit in divisions of three each and shall be subject to assignment by the chief justice for work in one or more of said six appellate judicial districts.

Duties of Chief Justice; Common Pleas judges to act on Supreme Court:

The chief justice shall direct the work of all divisions and shall whenever he deems it necessary transfer the members of any division of any district, or any of them, to perform judicial duties in some other district; and the chief justice may, if and when he deems it necessary to expedite the work of the Supreme Court, create and constitute additional divisions of the Supreme Court consisting partly or wholly of judges of the Court of Common Pleas selected by him who shall act temporarily as associate justices of the Supreme Court.

Decisions and Opinions of divisions to be submitted to all judges before publication for approval or dissent:

The decision and opinion of any division of the Supreme Court shall be the decision and opinion of the court, unless modified by the special reviewing division as hereinafter provided. Upon reaching a decision, each division shall before announcing the same, send a copy of the syllabus and opinion to the chief justice, who shall thereupon cause copies to be sent to every member of the court in the other districts—unless within two weeks after receipt of such copies, at least six judges dissent from said decision, syllabus and opinion and send notice of such dissent to the chief justice, then such decision, syllabus and opinion will stand approved and may be announced by the division.

Method of reviewing decision of division where there is dissent or conflict: special reviewing division, how constituted:

If six judges dissent from any decision, syllabus or opinion, the chief justice shall assign the case for rehearing before a special reviewing division of five judges. Such reviewing division shall consist of the chief justice, the presiding judge of the division that rendered the decision, two judges who did not dissent or disapprove of said decision and one judge who dissented therefrom. Said last mentioned three judges shall be selected by the chief justice from divisions other than the one rendering the decision to be reviewed. The decision of the majority of the members of the special reviewing division shall be the decision of the Supreme Court.

Presiding judge in each division: Chief Justice and six presiding judges to establish rules of practice:

The judges in each district having the shortest term to serve, and not holding his office by appointment to fill a vacancy, shall preside. In case of his absence, the judge having in like manner the next shortest time to serve shall preside. The chief justice and the six presiding judges shall select the opinions that are to be published in the Ohio State Reports and shall establish all rules of procedure not inconsistent with the provisions of the general code.

128 Ohio St., 588.

The State, ex rel The Ohio Bell Telephone Co., v. Court of Common Pleas of Cuyahoga County et al.

Supreme Court of Ohio.

(Decided October 24, 1934.)

Public Utilities Commission—Exclusive jurisdiction over refunds during pendency of rate proceedings—Action for accounting and receivership may not be maintained.

1. Digg *Public Utilities Commission § 22.* The jurisdiction specifically conferred by statute upon the Public Utilities Commission, to direct, supervise and enforce the repayment of money collected from patrons by a telephone company under bond during the pendency of a rate proceeding resulting in a finding that such rates are excessive, is exclusive.
2. Digg *Public Utilities Commission § 45.* One claiming to act for himself and all persons alleged to be entitled to a portion of the funds created by collection under bond, pursuant to statute, of telephone rates found by the Public Utilities Commission to be excessive, may not maintain an action in a Court of Common Pleas for an accounting between such telephone company and all such subscribers and for the appointment of a receiver to take possession of and disburse such funds.

In Prohibition.

The facts are stated in the opinion.

Henderson, Burr, Randall & Porter, Tolles, Hogsett & Ginn, William B. Cockley and Walter J. Milde, of Cleveland, for relator.

Halle, Haber & Berick, of Cleveland, for respondents.

MATTHIAS, J.

This is an orginal action in prohibition instituted in this court. By demurrer to the petition and supplement thereto, the question presented is whether one claiming to be entitled to a portion of the money ordered repaid to telephone subscribers by the Public Utilities Commission of Ohio as a result of a telephone rate proceeding, acting for himself and all other persons alleged to be entitled to a portion of funds created by collections under bond pursuant to statute, may maintain an action in a Court of Common Pleas for an accounting between such telephone company and all such subscribers, and may have a receiver appointed by the court to take possession of and disburse such funds.

The question is one of jurisdiction only. Jurisdiction of Courts of Common Pleas is conferred only by statute, pursuant to Section 4, Article IV of the state constitution, which provides that "The jurisdiction of the Courts of Common Pleas, and of the judges thereof, shall be fixed by law."

It is not claimed that jurisdiction in such matter as that presented by the pleadings before us is specifically conferred upon the Court of Common Pleas by statute. The general terms and provisions of the statute are relied upon as conferring the jurisdiction invoked in the action which is here sought to be prohibited.

Juridiction of the Public Utilities Commission of the state is likewise conferred by statute, and it has no authority except that thus expressly conferred.

A careful consideration of those statutory provisions, however, compels the conclusion that thereby the Public Utilities Commission of the state has been vested with full and complete power and jurisdiction over public utilities, including the fixing of rates for service and the restoration of funds resulting from charges found by it to be excessive, but permitted to be collected upon the giving of bond executed pursuant to the statutory provision.

The only question presented in this case is whether the jurisdiction vested and the procedure prescribed by the public utilities law are exclusive. The difficulty, if not impossibility, of supervision of the distribution of such funds by two separate tribunals is obvious.

Our question is not one of policy. It is only a question of power, and its solution must be found in the statutes themselves, since, as we have seen, the jurisdiction and power in question are entirely of statutory origin and delegation.

By the provisions of Section 614-3, General Code, Public Utilities Commission of the state is "vested with the power and jurisdiction to supervise and regulate 'public utilities.'" Subsequent sections authorize and direct the commission to hear and determine utility rate controversies, the method of proce-

Digg For other cases, see same topic and number in Page's Ohio Digest, Lifetime Edition.

dure being particularly prescribed by the provisions of Section 614-20, General Code. There jurisdiction is explicitly conferred upon the commission to determine whether any portion of the rate collected under bond furnished as therein prescribed is unreasonable and excessive and requires that the utility shall repay such sum collected as has been found to be excessive, and it is there further provided that repayments shall be made by the utility to the consumers entitled thereto at such times and in such amounts as the commission shall order.

It may be here stated that, pursuant to such authority, the commission, by order issued September 6, 1934, modified its previous orders respecting such refunder and gave further and detailed directions to said telephone company relative to the repayment of charges theretofore found to be excessive, and required a report to the commission within sixty days thereafter showing the amount of such excess collected in each exchange involved in such proceeding during the period in question, and stated that it retained jurisdiction for the purpose of making such audit or further order as may be necessary.

By the provisions of Section 614-64 and Section 614-65, General Code, strict obedience to "every order, direction and requirement of the commission" is enjoined, and severe penalties for the violation thereof are prescribed, which include not only a fine but imprisonment of officers and agents of any such utility.

The manner of the enforcement of obedience to the orders of the Public Utilities Commission and the procedure for the exaction of penalties for failure to comply with its orders are specifically provided by statute. Section 614-67, General Code, provides that "Whenever the commission shall be of the opinion that any public utility or railroad has failed, omitted or neglected to obey any order made with respect thereto, or is about to fail or neglect so to do, or is permitting anything, or about to permit anything contrary to, or in violation of law, or an order of the commission, duly authorized under the provisions of this act, the attorney general, upon the request of the commission, shall commence and prosecute such action, actions, or proceedings in mandamus or by injunction in the name of the state, as may be directed by the commission, against such public utility or railroad, alleging the violation complained of and praying for proper relief, and in such case the court may make such order as may be proper in the premises."

Section 614-68, General Code, subjects a public utility to liability for damages for injury resulting to any person from a failure to comply with its order, and specifically provides that such recovery shall not affect recovery by the state of the penalty otherwise provided.

It is to be observed that the only statutory provisions for the enforcement of the order of the commission is one based upon a finding by the commission itself of disobedience or disregard thereof, and that requires action by the attorney general of the state, upon the request and under the direction of the Public Utilities Commission of the state. The only reference made to a court in connection therewith is that upon suit instituted as authorized by the statute, "the court may make such order as may be proper in the premises."

All final orders made by the commission are subject to revision by the Supreme Court, and, under the provisions of Section 549, General Code, every other court, in clear and explicit language, is precluded from reviewing, suspending or delaying any order of the commission, or from interfering with the commission or any member, in the performance of official duties.

It is disclosed that the rate proceeding in question, including the orders of the commission relative to repayment of funds created by rate and charges found to be excessive, is now in this court for review. An anomalous situation would be presented if a proceeding may be instituted and maintained in a Common Pleas Court to enforce an order which that court is expressly precluded from reviewing or interfering with in any way, which order, by the only proceeding authorized by statute, is now pending in this court for review.

The jurisdiction specifically conferred by statute upon the Public Utilities Commission over public utilities of the state, including the regulation of rates and the enforcement of repayment of money collected under bond from patrons during the pendency of the proceeding, resulting in a finding that such rates are excessive, is so complete, comprehensive and adequate as to warrant the conclusion that it is likewise exclusive.

The principle announced and applied in the case of State, ex rel Bettman, atty. gen. v. Court of Common Pleas of Franklin county, 124 Ohio St., 269, 178 N. E., 258, 78 A. L. R., 1079, is likewise applicable in this case and leads us to the conclusion that the Common Pleas Court has not the jurisdiction sought to be invoked in the action there instituted. Accordingly, the demurrer to the petition in this case is overruled, and, it having been indicated that the parties do not desire to further plead, the writ of prohibition sought is awarded.

Writ allowed.

WEYGANDT, C. J., STEPHENSON, JONES, BEVIS, ZIMMERMAN and WILKIN, JJ., concur.

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128 Ohio St., 558.

State ex rel Gerard v. Industrial Commission.

Supreme Court of Ohio.

(Decided October 17, 1934.)

Workmen's Compensation—Claimant entitled to rehearing, when—Denial of compensation must be based on lack of jurisdiction—Section 1465-90, General Code.

1. *Workmen's Compensation § 77.* Compensation claimant is entitled to rehearing only when Industrial Commission bases denial of claimant's right to receive, or to continue to receive, compensation on finding that commission has no jurisdiction of claim, and not where denial is based on finding that claimant's earning capacity was not impaired and had not been impaired since last compensation payment (Section 1465-90, General Code).

Samuel Freifield, Stuart B. Moreland, and A. W. Moreland, of Steubenville, for relator.

John W. Bricker, atty. gen., and R. R. Turmehly, of Columbus, for respondent.

BY THE COURT.

This is an original action in this court for a writ of mandamus to require the Industrial Commission to grant the relator a hearing upon an application for rehearing of his claim for compensation. Issue is made by demurrer to the petition.

The relator sustained an injury August 1, 1929, while working for the Wheeling Steel Corporation, a self-insuring employer, and he was paid compensation for varying degrees of disability to April 27, 1933. Thereafter the Industrial Commission, on a review of relator's claim, based upon a special report of its medical examiner and other proofs on file, found that relator was then receiving a normal wage and that his earning capacity was not then impaired and had not been since the last payment of compensation.

Clearly, there has been no denial of compensation upon jurisdictional ground. On the contrary, the Industrial Commission found all jurisdictional facts in favor of the relator; that he was injured in the course of his employment, while engaged in work for an employer amenable to the Workmen's Compensation Law. Having assumed jurisdiction, the commission found the disability suffered was due to the injury claimed, and determined the extent of disability and the impairment of earning capacity. In that matter it has continuing jurisdiction.

The provisions of Section 1465-90, General Code, are determinative of the question presented. The commission has "full power and authority to hear and determine all questions within its jurisdiction, and its decisions thereon, including the extent of disability and amount of compensation to be paid in each claim, shall be final."

It has been announced in numerous decisions of this court that under this statute a claimant is entitled to a rehearing only when the Industrial Commission bases it denial of the right of claimant to receive compensation, or to continue to receive compensation, upon its finding that the commission has no jurisdiction of the claim.

It follows that the demurrer must be sustained and writ denied.

Writ denied.

WEYGANDT, C. J., STEPHENSON, JONES, MATTHIAS, BEVIS, ZIMMERMAN and WILKIN, JJ., concur.

For other cases, see same topic and number in Page's Ohio Digest, Lifetime Edition.

128 Ohio St., 548.

Small v. The State of Ohio.

Supreme Court of Ohio.

(Decided October 24, 1934.)

Criminal Law—Jurisdiction of Common Pleas in prosecution for intoxication — "Final" jurisdiction of justice of peace not "exclusive"—Sections 13194 and 13422-5, General Code.

1. Page Criminal Law § 47.

The Court of Common Pleas has original jurisdiction of a prosecution arising under Section 13194, General Code. The word "final," as used in that section to describe the jurisdiction of a justice of the peace, is not the same as, or the equivalent of, the word "exclusive" as used in Section 13422-5, General Code, to limit the jurisdiction of the Court of Common Pleas. The grant of final jurisdiction to a justice of the peace does not deprive the Common Pleas Court of its original concurrent jurisdiction.

Error to the Court of Appeals of Scioto county.

Miller, Searl & Fitch, of Portsmouth, for plaintiff in error.

Emory F. Smith, prosecuting attorney, of Portsmouth, for defendant in error.

Wilkin, J.

There is no dispute as to the facts in this case. The plaintiff in error, Horace L. Small, was indicted by the grand jury of Scioto county, tried in the Common Pleas Court, convicted and fined for intoxication in violation of Section 13194, General Code. The judgment of the Common Pleas Court was affirmed by the Court of Appeals, and the case came into this court upon allowance of motion to certify.

The only question presented in this court is whether the Court of Common Pleas had jurisdiction of the case. Upon arraignment the plaintiff in error filed a demurrer to the indictment upon the ground that the Common Pleas Court lacked original jurisdiction.

Section 13194, General Code, which describes the offense and imposes the penalty, says in the last sentence: "A justice of the peace shall have final jurisdiction to hear and determine any prosecution arising under this section." It was the contention of the plaintiff in error that the Municipal Court of the city of Portsmouth had exclusive jurisdiction of the case because it had been invested with all the jurisdiction of justices of the peace in Wayne township, where the offense was committed. (Section 1579-461 *et seq.*, General Code.)

But Section 13422-5, General Code, provides:

"The Court of Common Pleas shall have original jurisdiction of all crimes and offenses, except in cases of minor offenses, the exclusive jurisdiction of which is vested in courts inferior to the Court of Common Pleas."

Now the plaintiff in error contended that the term "final jurisdiction" in Section 13194 was the equivalent of "exclusive jurisdiction" as used in Section 13422-5, and that the grant of final jurisdiction to the magistrate was an exclusion of such cases from the general jurisdiction of the Common Pleas Court.

With such contention this court cannot agree. The use of the word "final" to describe the jurisdiction of the lower court is not sufficient to preclude the general original jurisdiction of the Common Pleas Court as granted by Section 13422-5. That section, when read in the light of Section 13436-5, General Code, which invests the Common Pleas Court with general authority through the grand jury "to inquire of and present all offenses committed within the county," is so expressive of an intent on the part of the Legislature to vest such jurisdiction in the Common Pleas Court that it cannot lightly be disregarded. The jurisdiction so clearly granted cannot be taken away by an inference or implication.

Just what the Legislature meant by the phrase "final jurisdiction" in Section 13194 it is not necessary to determine in order to dispose of this case. It would seem, however, that the language employed merely gives to the judgment of the lower court such finality as would preclude another trial upon the facts. Owing to the provisions of Section 11215, General Code, appeals from magistrate courts to the Court of Common Pleas have generally been confined to civil cases. But

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Section 10582, General Code, provides that an appeal may be prosecuted from the judgment of a justice of the peace to the Court of Common Pleas in all cases not otherwise specifically provided for by law. And it has been held that such section authorizes appeals in cases instituted for the collection of penalties and fines. Bittle, Supervisor of Highways, v. Hay, 5 Ohio, 269; Wright v. Munger, Paymaster, 5 Ohio, 441; Hill v. Supervisor of Road District No. 6, Stonecreek Twp., 10 Ohio St., 621. The legal effect of the language employed in Section 13194 is to remove all question, if any existed, as to whether proceedings thereunder are appealable, and to restrict all right of review to proceedings in error, as provided by Section 13423-1, General Code.

In any event the language employed in Section 13194 is not sufficient to decrease the original jurisdiction of the Court of Common Pleas or to exclude therefrom prosecutions under such section. The judgment of the Court of Appeals will therefore be affirmed.

Judgment affirmed.

Weygandt, C. J., Bevis and Zimmerman, JJ., concur.

Matthias, J., not participating.

National City Bank of Cleveland et al. v. Gertrude Schmoltz, et al.

Court of Appeals, Cuyahoga County.

(Decided October 29, 1934)

Trusts—Appointment and removal of trustee by court of equity—Wishes of settlor outweighed by interests of beneficiaries—Power of appointment controlled by court to prevent abuse—Power vested in beneficiaries must be exercised within reasonable time — Right of one beneficiary to bring action seeking court appointment of successor trustee—Refusal of court to permit intervening answers asserting right of appointment.

1. Page Trusts § 87.

A court of equity has inherent power over the appointment and removal of the trustee of an express trust.

2. Page Trusts § 91.

Although the wishes of the creator of a trust are considered by a court of equity in the removal of a trustee and the appointment of his successor, such consideration may be outweighed by the interests of all the beneficiaries and the effectual performance of the trust.

3. Page Trusts § 85.

Even where the power of appointment is conferred by the instrument of trust upon an individual, a court of equity may control its execution so as to prevent an abuse of discretion.

4. Page Trusts § 91.

The power vested in the beneficiaries of an express trust, to appoint a successor trustee upon the incapacity of the original trustee, is subject to the condition that it be exercised within a reasonable time.

5. Page Trusts § 91.

Upon the failure of certificate holders of a land trust issue to take any steps toward the appointment of a successor trustee until more than a year after the original trustee has been taken over for liquidation by the superintendent of banks, any one of the beneficiaries under the said trust may file a petition in the Common Pleas Court praying for the appointment of a successor trustee.

6. Page Trusts § 91.

In such case, a refusal of the court to permit the filing of answers by other certificate holders seeking to intervene for the purpose of asserting their right to make an independent appointment without interference by the court, is not error, and does not deprive such persons of any constitutional right.

Squire, Sanders & Dempsey, McKeehan, Merrick, Arter & Stewart and H. B. Howells, of Cleveland, for plaintiffs in error.

Horwitz, Kiefer, Gates & Harmel, and J. W. Eckelberry, of Cleveland, for defendants in error.

J. C. Reasner and S. V. McMahon, of Cleveland, *amicus curiæ*.

Levine, J.

In each of these five cases error is prosecuted to this court seeking a reversal of the order of the Common Pleas Court refusing to permit plaintiffs in error to intervene by filing their respective answers which they tendered to said court and which were refused. Error is likewise prosecuted to the order of

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the Common Pleas Court appointing successor trustees to the Guardian Trust Company. These five cases involve what is known among bankers and investment brokers as land trust issues. They are described in briefs of counsel as consisting of the purchase of a piece of real estate by a bank as trustee, and the payment therefor by the trustee with money provided by numerous investors who were induced to purchase fractional interests represented by land trust certificates.

The inducement to the purchase of these equitable interests by the public is the ability of the trustee to show that the real estate has already been leased to a corporation on a lease showing a rental sufficient to pay the investors six percent on their investment.

The trustee bank sells the certificates to members of the public who are attracted by the investment. There were five such land trust issues.

Five actions were brought in the Common Pleas Court by a holder of certificates of equitable interests in each of the five land trusts in respect to each of which the Guardian Trust Company was trustee. In each case the plaintiff alleged that she is bringing her action on behalf of herself as a holder of such certificates and all other holders of similar certificates. In each of these petitions the prayer seeks to have the Guardian Trust Company removed as trustee, and a new trustee appointed by the court. The National City Bank of Cleveland, The Central United National Bank of Cleveland and The Cleveland Trust Company and Beatrice W. Cowles, trustee under the last will and testament of John G. W. Cowles, deceased, made application to the court for leave to become parties defendant in each case, alleging that they are each holders of certificates of equitable interests in each of the five trusts. These applications were refused by the Common Pleas Court and exceptions were duly taken.

Error proceedings are prosecuted with a view to reverse the order of the Common Pleas Court refusing these parties the right to become parties defendant, and in appointing trustees without first permitting these certificate holders to set up their claimed rights as set forth in their tendered answers.

In support of the claim of error we are cited to the language of four of the indentures which are substantially the same and which contain a provision that in case of the resignation of the trustee a successor trustee may be appointed by a certain designated method. We shall quote from two of the declarations of trusts involved in these cases:

"1. The trustee, or any trustee, hereafter appointed, may resign and be discharged of the trust created by this instrument by giving four (4) weeks notice thereof to all the beneficiaries by registered letter directed to the addresses appearing on the books of the trustee, and by publication at least once a week for four (4) successive weeks in one newspaper at any time published in the city of Cleveland, Ohio and by due transfer of the trust estate as herein required.

"In case the said trustee, or any trustee hereinafter appointed, shall resign or otherwise become incapable of acting, a successor or successors may be appointed by the holders of a majority in interest of the beneficiaries, by an instrument or concurrent instruments, signed by them or their attorneys in fact duly authorized. Any trustee resigning or becoming incapable of acting shall resign and transfer the trust estate to its successor, and upon so doing and upon accounting for all funds which have previously come into its possession, such trustee shall be discharged from further liability.

"2. In the event that the trustee or any successor hereafter appointed shall desire to relinquish the trust evidenced by this agreement or that the holders of not less than three-fourths in interest of the certificates shall for any reason desire to change the trustee, the trustee or the holders of not less than three-fourths in interest of the certificates, as the case may be, shall give four weeks notice thereof to all the beneficiaries, either by registered letter sent to their last addresses furnished by them to the trustee, such notice to be deemed to commence with the mailing of said letter or by publication once a week for four weeks in one newspaper published and of general circulation in the city of Cleveland, Ohio. If the holders of a majority in interest of the certificates shall within two weeks after the expiration of the period of notice above provided, request the trustee in writing to convey the trust estate to a specified trustee who is willing to accept the trust, the trustee shall, upon the making of such conveyance and upon accounting for all funds which have previously come into its possession, be discharged from further liability. In the event of the failure or neglect of the holders of a majority in interest of the certificates to express their choice of a successor within the period above provided, the trustee may either choose a sucsessor believed by it to be responsible or may request the Common Pleas Court of Cuyahoga county to do so. Upon conveying the trust estate to a successor trustee appointed by either of the methods above provided and upon accounting for all funds which have previously come into its possession, the trustee shall be discharged from further liability."

The answer of the Guardian Trust Company admits all the allegations of the first, second, third, fourth and fifth paragraphs of the plaintiff's petition except the allegation in the fourth paragraph thereof that the Guardian Trust Company has become incapacitated to act as trustee in accordance with the terms and provisions of the agreement and declaration of trust mentioned in said petition, which said allegation defendant denies.

For further answer the superintendent of banks alleges in substance the provisions of the declaration of trusts as to the manner or method of appointing successor trustees and stating further that he desires and intends to resign and be discharged of the trust created by the agreement and declaration of trusts by giving his required notice of his resignation to all the beneficiaries of the trusts and by otherwise observing the requirements of the same with respect to the resignation of the trustee thereunder.

The substance of the superintendent's answer is that he intends to resign and to comply with the terms of the declarations as to the election or appointment of a successor trustee or trustees by following the provisions of the declarations of trusts above quoted.

The Guardian Trust Company and the superintendent of banks did not prosecute error to the order of the Common Pleas Court.

The interveners claim to be holders of substantial amounts of certificates of interest. In the answers which they tendered, they admit all the facts contained in the petition but allege that the declarations of trusts make provisions for the appointment of a successor trustee by certificate holders. The relief prayed for in the proposed answers is that the Guardian Trust Company be removed as trustee and that the certificate holders be permitted to choose the successor trustee in the manner provided in the declarations of trusts.

The plaintiff's petition prays that the court appoint the successor trustee. The interveners seek to have the successor trustee appointed by the holders of certificates in accordance with the provisions of the declarations of trusts.

It is claimed by the intervening parties that the action of the court in refusing them the right to file their answers is violative of Section 16 of the Bill of Rights of the Constitution of Ohio, in that they were prevented from "having their remedy by due course of law" which has been defined by the Supreme Court to mean that the parties litigant shall have a day in court.

A long line of cases is set forth by plaintiffs in error in support of the contention that the right of the plaintiffs in error to intervene was an absolute right as they claim an interest in the subject matter of the litigation and the refusal to permit the intervention therefore results in the denial of substantial rights.

The Ohio statute on the subject of intervention is Section 11255, General Code which reads:

"Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein."

There can be no doubt that if the parties seeking intervention showed ownership or a lien against the *res* which is the subject of litigation and they are without remedy elsewhere to protect their rights, the courts should not refuse leave to intervene.

Counsel for plaintiffs in error quote from Perry on Trusts, Section 287, as follows:

"The person who creates the trust may mould it into whatever form he pleases;

he may therefore determine in what manner, in what event and upon what condition the original trustees may retire and new trustees may be substituted. All this is fully within his power; and he can make any legal provisions which he may think proper for the continuation and succession of trustees during the continuance of the trust.

"And vacancies can not be filled in in any other way than that named by the grantor, unless in consequence of a statutory provision, or of a failure on the part of the remaining trustees to perform the duty of filling the vacancy, in which case equity will interfere. The power to appoint new trustees in place of the original ones can only be given by the author and creator of the trust."

There seems to be a modification of the rule herein enunciated. Quoting from In Re Estate of Beckwith v. Cooper, 258 Ill. App. 411, the court said:

"* * * where the creator of a trust has, by express terms, conferred the power of appointment of successor trustees upon another, it can be exercised in no other way, except by a court of competent jurisdiction to *prevent a failure of the trust or of its purposes.*"

Authorities are not wanting as to the inherent power of a court of equity over the appointment and removal of trustees. Pomeroy on Equity Jurisprudence Section 1086:

"The power of courts of equity over the removal and appointment of trustees, independently of any statutory authority, or any directions in the instrument of trust is well established. This power is confined to cases of actual express trusts * * *. A court of equity may remove a trustee on his own application * * * and it may and will remove a trustee who * * * has become insolvent, or is incapable through age or other infirmity of performing the trust duties."

It seems to us quite apparent that while a court of equity recognizes that the wishes of the creator of the trust as expressed in the trust instruments, are to be taken into consideration, yet such wishes may be outweighed by other motives, namely, the interests of all the beneficiaries and the effectual performance of the trusts.

Section 1087 Pomeroy on Equity Jurisprudence, states:

"Even where the power of appointment is conferred by the instrument of trust upon an individual, a court of equity may control its execution so as to prevent an abuse of discretion."

The record in these cases discloses that the very contention set forth in the proposed answers of plaintiffs in error, was fully urged in the answer of the liquidator of the Guardian Trust Company and that a reference was made to the provisions of the declaration of trusts which set forth the method of appointing a successor trustee. Upon the pleadings already filed the question was clearly before the court. The record discloses that the court made various suggestions, first, that a Master be appointed to canvass the wishes of all the certificate holders. The liquidator of the Guardian Trust Company opposed this suggestion. Next, the court invited all the parties participating, including counsel for plaintiffs in error, to agree upon a nominee for trustee or upon a plan for choosing a trustee. This plan was opposed by the parties and the court then offered to appoint one or another of the plaintiffs in error as co-trustee, with an individual to be selected, which met with a like refusal. It was then that the court chose successor trustees.

In theory, all of these plaintiffs in error were already parties to the suit by representation as the defendant in error brought the action in her own behalf and in behalf of all other certificate holders.

Counsel for these intervening parties not only were permitted to take part in the discussion but actually did take part in all of the discussions which took place.

There may be much potency to the suggestion that the provisions of the declaration of trust as to the appointment of successor trustees are merely permissive and not mandatory or exclusive.

In the above quoted provisions of the several indentures of trust we find the language:

"In case the said trustee * * * shall resign or otherwise incapable of acting, a successor may be appointed by the holders of a majority in interest * * *." And in the second trust instrument we find a similar provision.

It may well be urged that the language above cited does not intend to exclude or oust a court of equity of its jurisdiction to appoint a successor trustee but merely permits the certificate holders to make the appointment without affecting the inherent power of the court over trustees and trusts.

Assuming for the sake of argument that the language found in these several instruments of trusts are mandatory and exclusive, in their character, we are of the opinion that this power of appointment conferred upon the holders of certificates must be exercised within a reasonable time; that on failure to exercise the same within a reasonable time it becomes the duty of a court of equity, the guardian and protector of all trust funds, to make the appointment. More than a year elapsed since the superintendent of banks took charge of the business and property of the Guardian Trust Company. The Guardian Trust Company as such no longer had any officers or acting directors or trust committee with authority. The custodian of the trusts at the Guardian Trust Company became the superintendent of banks. He, however, is not the trustee of any of the trusts either by virtue of his office, superintendent of banks, or otherwise.

Immediately when the superintendent of banks seized the business and property of the Guardian Trust Company, the trustee became incompetent to act and the certificate holders became vested with the rights expressed in the declaration of trusts to choose by a majority vote a successor trustee. None of these certificate holders, including these plaintiffs in error, made any move as to any of the five trusts involved in this action, to exercise the power of appointment granted to the certificate holders. It seems to us that the defendant in error had no other remedy but to apply to a court of equity to take cognizance of the situation and to put a competent trustee in charge.

"Where the donees of the power of appointment fail to exercise it, equity will interpose itself and make the appointment." Hill on Trustees page 188. In Re John's Will, 80 Ore. 494.

It will be noted in this connection that the very declarations of trusts which provide for the method of selection of a successor trustee by a majority in interest of the certificate holders also provides that certificate holders should not have access to the names of other fellow certificate holders and which names were in the sole possession of the trustee bank. The record shows that the superintendent of banks maintained the policy of not permitting certificate holders to find out who the other certificate holders were.

Had the defendant in error chosen to notify all the certificate holders of the stringency of the situation and of the need for the selection of a successor trustee she could not have accomplished her purpose because of the policy of the superintendent of banks in not permitting certificate holders to find out who the others were.

We are of the opinion that this power vested in the majority of the holders in interest of land trust certificates is at least subject to the implied condition that such power shall be exercised within a reasonable time. That on failure to so exercise said power within a reasonable time, the attention of a court of equity may be directed to the situation and that such court may, under certain circumstances, appoint the successor trustee.

"The power of courts of equity over the removal and appointment of trustees independently of any statutory authority or any directions in the instrument of trust, is well established."

Pomeroy on Equity Jurisprudence, Section 1086.

It is quite true that wherever practicable the court should heed the wishes of the instrument of trust and of the parties beneficiary to said trust. However, when a long period of time has elapsed and none of the parties made any move to remedy a stringent situation, such as existed in this case, any one of the beneficiaries under said trust may assert himself by filing a petition in Common Pleas Court, invested as it is with equity power and pray for the appointment of a successor trustee.

The plea made by other holders of land trust certificates that they are now ready to act under the provisions of declaration of trust, and to select a successor trustee, by the method therein designated, comes, in our opinion, at a rather late period. Had they acted within a reasonable time there would have been perhaps no need for the court's intervention. The need for the court's intervention arose because of the failure under said instrument of trust to take the necessary action for the appointment of a successor trustee. The condition created by the liquidation of

the Guardian Trust Company, trustee of these five respective trusts, the seizure of all of these properties by the superintendent of banks of the state of Ohio, gave rise to a stringent situation which called for prompt action. The Common Pleas Court finding as it did that the other beneficiaries were dilatory in the exercise of their power, acted upon a paramount duty when it removed the Guardian Trust Company as trustee and when it appointed successor trustees.

Perhaps the only excuse the other certificate holders could offer for failing to act was that they encountered the same difficulty which defendant in error encountered, namely, the adherence to the policy of not permitting certificate holders to scan the list of other certificate holders in order to find out who they were and that therefore the exercise of the power conferred upon the certificate holders became practically impossible of performance.

Despite the inactivity of the interested parties, including these plaintiffs in error, the court permitted counsel for the plaintiffs in error to participate in all the discussions, made various suggestions as to the method of appointing a successor trustee with a view of abiding as far as possible by the wishes of other certificate holders. All of these suggestions made by the court were refused. The reason assigned for the refusal was the contention of plaintiffs in error that they have an exclusive contractual right under the indentures of trust to appoint a successor trustee by the method therein set forth and without interference even by the court.

If the plaintiffs in error are entirely correct in their contention, yet there must be attached to the exercise of that power contended for by them the implied condition that the same must be exercised within a reasonable time. A court of equity will not permit a trust to fail for want of a trustee. If those possessed of the power of appointment of a successor trustee fail to act within such reasonable time, a court of equity in order to protect the trust fund or trust properly must make the appointment.

The successor trustees appointed by the court are members of the Bar of very high standing. Their competency and integrity is conceded by all parties and therefore no question is raised as to the propriety of selecting the particular successor trustees.

Holding as we do to these views, we find no error in the order of the Common Pleas Court. Judgment is affirmed.

LEIGHLEY, P. J., concurs in judgment.

MCGILL, J., dissents.

SUPPLEMENTAL OPINION

There are fifteen cases on appeal, five of which were perfected by each of these three banks from the order overruling the motion for leave to intervene in each case below. These fifteen appeal cases are dismissed for the reason that no appeal lies from said order and this court is without jurisdiction to entertain same.

Also there are fifteen appeal cases, five of which were perfected by each of these banks from the final entry in each of the five cases below. These appeals are dismissed for the reason that said banks were not parties to the proceeding and for that reason this court is without jurisdiction to entertain same.

LEIGHLEY, P. J., and MCGILL, J., concur in judgment.

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48 Ohio App. 121.

Lehman v. City of Toledo et al.

Court of Appeals, Lucas County.

(Decided Feb. 26, 1934.)

Municipal Corporations — Deduction from salaries, to be repaid upon improvement of financial condition — Injunction against ordinance restoring such sum—Threat by finance director to refuse payment of salaries—Effect of, upon voluntary character of deductions.

1. *Injunction § 116.*
Where the employees of a city have severally agreed and acquiesced in a deduction from their salaries over a certain period of time, with the understanding that the deducted amount would be restored if sufficient revenue be later received, the subsequent payment to the employees of the amounts deducted under authority of an ordinance restoring such sum may be enjoined when the financial condition of the city is not improved.

For other cases, see same topic and number in Page's Ohio Digest, Lifetime Edition.

2. *Municipal Corporations § 810.*
The fact that the finance director refused to pay the salaries of any of the city employees unless all of them acquiesced in the salary deduction does not prevent such deduction from being voluntary, inasmuch as the city could not have compelled the employees to sign such agreement as a prerequisite to the payment of their salaries.

O. C. Clement, of Toledo, for plaintiff.

Ralph W. Doty, director of law, and Clarence A. Irwin, of Toledo, for defendants.

J. I. O'Connor and Samuel Kaplan, of Toledo, *amici curiæ*.

LLOYD, J.

This action is in this court on appeal from a judgment of the Court of Common Pleas dismissing the petition of Earl O. Lehman, the plaintiff. The plaintiff, who brings the action as a taxpayer, seeks to enjoin the payment of 10 per cent of the wages or salaries withheld from employees in accordance with an ordinance and an agreement thereafter executed and acquiesced in by the employees of the city. On April 17, 1933, the council of the city of Toledo passed the following ordinance:

"Section 1: That all of the officers and employees of the city of Toledo, except those working three days or less per week, and exclusive of the elective officers be, and are hereby required to donate to the general fund of the city treasury, for the period commencing April 1, 1933, and ending December 31, 1933, ten (10%) per cent of their compensation for such period, with the understanding that if sufficient revenue is received later on, the compensation shall be restored to regular basis.

"Section 2. That the elective officers of the city of Toledo be, and are hereby requested to make donations to the general fund of the city treasury ten (10%) per cent of their compensation for the period above mentioned.

"Section 3. That the heads of the various offices and departments of the city of Toledo be, and are hereby directed to secure agreements from their employees to the effect that they will comply herewith and the commissioner of accounts is hereby authorized to make deductions in accordance with provisions of this ordinance.

"Section 4. That the donations above mentioned shall be made during the period from April 1 to December 31, 1933, in eighteen installments."

Pursuant to the direction contained in Section 3 of the ordinance, the "heads of the various offices and departments" of the city secured agreements from the officers and employees of the city in form as follows:

"Donation Agreement.

"In accordance with the provisions of Ordinance 9604, I, the undersigned employee of the city of Toledo, for a valuable consideration, do hereby donate to the city of Toledo, for payment into the general fund, 10% of my compensation for services rendered during the period from April 1, 1933, to December 31, 1933, or until such time as the povisions of Ordinance 9604 shall be rescinded by the council of the city of Toledo in case this should occur prior to December 31, 1933, and I hereby authorize the commissioner of accounts to deduct said 10% from each check issued to me for compensation for services rendered during such period."

Conformably to the foregoing quoted ordinance and "donation agreement," the deductions were made semimonthly to and including the first half of December, 1933. For the months of April, May, and June, employees and officers of the city were paid in cash, but because of the financial condition of the city were not thereafter so paid, and on September 25th an ordinance was passed by the city council authorizing the director of finance to issue certificates of indebtedness, "For the purpose of evidencing that the particular employee in whose favor the certificate is drawn has a valid and legal claim against the City of Toledo for salary due in the amount and for the period indicated on the face of the certificate, and shall be acceptable for any and all bills due the city of Toledo except taxes."

This ordinance also provides: "In no case shall issuance of certificates of indebtedness be considered as discharging the city's liabilities to its employees for salaries due as evidenced by such certificates."

Pursuant to this authorization, certificates of indebtedness, commonly referred

to as "scrip," were issued in form as follows:

"Non-interest bearing
"Monthly payroll for No. MC 39803
period ending date issued
"City of Toledo,
"Certificate of Indebtedness.

"This certifies that ——, $—— has salary due from the city of Toledo for the period ending as above indicated in the amount of $——.

"Negotiable by endorsement only."

The certificates of indebtedness so issued were given to and accepted by the city employees. All of the amounts paid, after the passage of the ordinance of April 17th, and the execution by the employees of the "donation agreement," whether paid in cash or evidenced by "scrip," represented only 90 per cent of the amount of their wages or salaries. The "scrip" so issued and accepted for the period from July 1st to August 15th was subsequently redeemed by the city, but that covering the period from August 16th to November 30th, inclusive, has not been so redeemed. For the December 1st to December 15th period, the employees were paid in "Marshall Scrip," so called.

They were paid in full for the amounts due them from December 15th to the end of the year, the city council having passed an ordinance on December 11th purporting to repeal the ordinance of April 17th and to restore to all officers and employees of the city the theretofore deducted 10 per cent of their wages and salaries. Sections 2 and 3 of this ordinance are as follows:

"Section 2. That any and all agreements executed by such officers or employees under the provisions of Section 2 of said ordinance 9604 be, and the same are hereby, declared to be null and void and of no effect.

"Section 3. That the claims of any and all officers and employees of the city of Toledo to the extent of the 10% reduction in salaries required of them under the provisions of ordinance 9604 be and the same are hereby allowed * * *."

The evidence discloses that the budget covering the estimated cost of operating the various departments of the city for the year 1933 was based upon a prospective refund to the general fund by the employees of the city of 10 per cent. of their salaries, and shows also that the finances of the city, because of nonpayment of taxes and assessments, plus unusual and exceptional expenditures, were in a precarious and uncertain condition, which at the time of the trial of this action had not improved, but, on the contrary, had become increasingly worse.

It is admitted that the ordinance of April 17th could constitute no more than a request that the employees forego payment of 10 per cent of their salaries for the reasons and purposes therein stated, and the employees, we think it fair to say, knew that the effect of the ordinance necessarily was so limited, and if they did not actually so understand, the law itself declares it to be so. In the absence of fraud or deceit, one may not avoid the legal consequences of his acts by asserting that he did not know that he would become bound thereby. It is a matter of common knowledge that other political subdivisions of the state, as well as of the city, have requested a deduction by employees of a percentage of their salaries, and that the employees thus affected have acceded to the request, and having done so, they are not now in position to claim the amount so donated. The city, by its ordinance, could not require the donation to it by employees of any part of their wages or salaries, but when all of them severally agree to a uniform deduction, and thereafter, without protest, receive and accept their respective salaries on the basis of their agreement, as evidenced by cash and redeemed scrip to August 16, and by negotiable certificates of indebtedness from that date to December 16, they cannot now in law complain of that which each must be held to have voluntarily done. In any event, the controversy before us is between a taxpayer and the city, and not between the employees and the city; and surely the city is not in a position to claim that the employees shall be paid more than they have agreed to receive, and which, by their conduct, they have all consented to and acquiesced in. And, although it is contended "that two thousand or more present and former city employees are the real parties in interest," it may also be suggested that the plaintiff in error represents the taxpayers of the city, many of whom by reason of present conditions are unable to meet their obligations and are at least in no better, if as good, position financially as the employees.

It is contended that because the acting finance director refused to pay the salaries of any of the employees unless all of them signed the donation agreement, the signing thereof by the employees was involuntary, and also that there was no consideration therefor. Sufficient it is to say that none of the employees could have been compelled to sign such an agreement, and that the city could not have compelled the signing thereof as a prerequisite to the payment of their salaries. Each signed the agreement with full knowledge of the facts and of the financial condition of the city, and that in determining its budget for the year the city was relying thereon, and that the then mayor of the city had suggested and advocated the plan adopted.

The court appreciates the hardships which the present situation imposes more or less upon everybody, not only upon public officers and employees, but upon many others perhaps less fortunate. Like the rain that falls upon the just as well as the unjust, the law does not change to satisfy individual desires, but aims to provide a rule that shall operate uniformly and consistently upon all alike.

This court therefore finds on the issues joined in favor of the plaintiff, and a decree may be entered accordingly.

Decree for plaintiff.

Richards and Williams, JJ., concur.

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42 Ohio App. 133.

Jones v. Jones et al.*

Court of Appeals, Franklin County.

(Decided June 26, 1933.)

Wills—Express devise of fee simple cannot be cut down by another disconnected provision—Devise to daughter and her heirs upon reaching twenty-two years — Death without issue after reaching specified age —Fee not divested by virtue of disconnected provision—Fee simple passes in absence of evidence of contrary intent — Section 10660, General Code — Interpretation of words of inheritance.

1. Ohio Wills § 365.
A provision in a will devising certain property to one of the testator's children "and to her heirs when she shall arrive at the age of twenty-two (22) years" vests in such daughter a fee simple estate at the date of distribution.

2. Ohio Wills § 365.
The fact that such daughter died without issue after attaining the specified age and after the death of the testator does not operate to vest the fee in the other heirs of the testator by virtue of a subsequent item in the will which provided that should any of said heirs "die without issue, the share of the one dying shall go to the others, share and share alike, or their heirs," since the purpose and intent of the testator, disclosed by an examination of the entire will, was to grant the daughter a fee simple estate, the manifest intent of the testator, evidenced by such subsequent items, being to provide a disposition of the legacies and bequests in the event the legatee or devisee died before the time of distribution.

3. Ohio Wills § 364.
Under the provisions of Sections 10660, General Code (now Section 10504-72), in devises of real property an absolute fee simple title passes if nothing appears in the will showing a contrary intent. The use of words of inheritance in the devise is the expression of an intent that the devisee shall have a fee simple title.

4. Ohio Wills § 365.
Positive, express language creating a fee simple estate cannot be cut down by another disconnected provision of the will.

James I. Boulger and David Peiros, of Columbus, for plaintiff in error.

Frank M. Raymund and Hugh Huntington, of Columbus, for defendants in error.

Barnes, J.

The above entitled cause comes into this court on proceedings in error from the judgment of the Court of Common Pleas of Franklin county.

The parties in this court occupy the same relative positions held in the court

*Affirming, 30 N. P. (N.S.) 81.

Ohio For other cases, see same topic and number in Page's Ohio Digest, Lifetime Edition.

below, and very learned briefs are submitted by counsel for the respective parties.

The action is to quiet title of the plaintiff, Clarence M. Jones, in an undivided interest in certain property located in the city of Columbus, of the total value of over $100,000. Plaintiff's claim to the property arises out of an interpretation of the will of his father, Ellis O. Jones, I. The decision of the court below was against the plaintiff and in favor of the defendants. Defendants claim to have title to the property through the will of Laura E. J. Hanna, deceased. Laura Hanna was a daughter of Ellis O. Jones, I, deceased, and acquired her interest in the property through the will of her father.

The will of Ellis O. Jones, I, was executed September 5, 1894, and he died six days later, on September 11, 1894. At the time of his death he left a widow, Eugenia M. Jones, and four children, viz., Clarence M. Jones, aged 27 years on March 11, 1894; Raymond V. Jones, aged 25 years on November 16, 1894; Ellis O. Jones, II, aged 21 years on December 18, 1894, and Laura E. Jones, afterwards intermarried with one Hanna, aged 18 years on December 5, 1894.

Raymond V. Jones is now deceased, having died a number of year previous to the institution of the present proceeding. Laura E. J. Hanna, nee Jones, died June 7, 1930, testate, without issue, and leaving no widower. Under her will she devised all the premises involved to her brother Ellis O. Jones, II, and his son, Ellis O. Jones, III.

It is the claim of plaintiff, Clarence M. Jones, that Laura E. Hanna, nee Jones, held a defeasible fee in the premises, subject to be divested on condition that she die without issue, and that having died without issue the fee now vests by executory devise in the plaintiff, Clarence M. Jones, and Ellis O. Jones, II, share and share alike.

Defendants contend that the said Laura E. Hanna, nee Jones, held a fee simple title to the premises at the time of her death, and having devised such premises to the defendants the plaintiff has no interest therein.

The case is submitted on an agreed statement of facts, which contains, among other things, a copy of the will of Ellis O. Jones, I. The agreed statement of facts, including the will, is so familiar to counsel that it will not be necessary to quote in full from either, and we will content ourselves with general references to such parts as are germane and such quotations as may be necessary to render our conclusions understandable.

The determination of the question necessarily involves a construction of Item 20 of the will of Ellis O. Jones, I, which reads as follows:

"Twentieth: Should either of my said sons Clarence or Ellis Oliver, or my daughter, die without issue, the share of the one dying shall go to the others, share and share alike, or their heirs."

It is admitted in the agreed statement of facts that the language, "or my daughter," referred to Laura E. Hanna, nee Jones, the only surviving daughter of the testator Ellis O. Jones, I.

This language standing alone would unquestionably give to the three children a determinable fee subject to be divested by the death of either at any time without issue.

This announcement is very clearly set forth in the case of Briggs v. Hopkins et al, Exrs., 103 Ohio St., 321, 132 N. E., 843, the syllabus reading as follows:

"Where there is a devise or bequest to one coupled with the provision that if he die without issue such property shall go to another, the words 'die without issue' are to be interpreted as referring to the time of the death of the first taker, unless a contrary intention and purpose of the testator is clearly manifested."

A long list of cases are cited in the opinion, starting with Parish's Heirs v. Ferris, 6 Ohio St., 563, which show this rule to be thoroughly established.

The last announcement of the rule is to be found in the very recent case of Ohio National Bank, Gdn., v. Harris, 126 Ohio St., 360, 185 N. E., 532.

It will be noted that the rule is qualified by this language, "unless a contrary intention and purpose of the testator is clearly manifested."

This necessarily requires an examination of the entire will, to ascertain, if possible, the purpose and intent of the testator.

This leads us at once to the dispositive provisions of the will in favor of the three children named, being Items 6, 8, 9, 21 and 22, quoted in full:

"Sixth: I give and bequeath to my son, Clarence M. Jones, the sum of Thirty Thousand ($30,000) dollars, the same to be paid to him within two years from the date of my death, without interest."

"Eighth: I give, devise and bequeath to my son Ellis Oliver Jones, when he shall arrive at the age of twenty four years (24) the sum of ten thousand ($10,000) dollars, and when he arrives at the age of twenty six (26) years, the sum of ten thousand ($10,000) additional. And it is my will, and I so direct, that from the date of his majority, provided, however, I die before he reaches his majority, until the said two sums are paid to him respectively, he is to be paid the interest accruing from the said sums; and if I survive the date of his majority, then from the date of my death.

"Ninth: I give, devise and bequeath to my daughter, Laura E. Jones, and to her heirs when she shall arrive at the age of twenty two (22) years; my two brick store buildings, known as 229 and 231 North High Street, Columbus, Ohio, the same being a perpetual leasehold, and which I value at the sum of sixty thousand ($60,000) dollars. I also give, devise and bequeath to my said daughter the sum of ten thousand ($10,000) dollars in cash, the same to be paid to her when she shall reach the age of twenty-two (22) years, to be invested by her in improved real estate for her sole use and benefit forever."

"Twenty-first: It is my will and I so direct that when my daughter Laura arrives at the age of twenty-two (22) years, being the year 1898, and provided it is not less than one year after my death, a distribution shall be made of my estate, except as to my said son Raymond and my mother; first, by setting aside the sum of sixty thousand ($60,000) dollars in good interest paying securities, or good improved real estate, which ever my wife may prefer, the income of which to be hers for her sole use and benefit during her natural life, and to be controlled or managed by her or by her direction; this said sum of sixty thousand ($60,000) dollars to be in addition to that given her in previous sections of this will. And at the death of my wife, it is my will and I so direct, that what remains of said money and property so given her as aforesaid herein, shall be divided between my children, Clarence M. Jones, Ellis Oliver Jones and Laura E. Jones, and their heirs forever, share and share alike.

"Twenty-second: It is my will and I so direct that all the residue of my estate after paying the legacies and bequests heretofore made, be divided among my three children, Clarence M. Jones, Ellis Oliver Jones and Laura E. Jones, so that the share of each of my said three children in my estate shall be equal, except in this, that it is my intention that my son Clarence M. Jones shall have the sum of ten thousand ($10,000) dollars more than my son Ellis Oliver, in consideration of his services to me during my lifetime, and that my daughter, Laura, shall also receive the sum of ten thousand ($10,000) dollars more than my said son Ellis Oliver."

At this point it is proper to have in mind that so far as this case is concerned the real estate under Item 9, and Laura's interest in the residium, under Item 22, are the only properties involved in this action. The $10,000 cash referred to in Item 9 is not involved. The $60,000 worth of property referred to in Item 21 was divided after the death of the widow of Ellis O. Jones, I, and no part of the premises therein referred to is involved in this action. At this time it might be proper to note that following the death of the widow of Ellis O. Jones, I, the three children and devisees of the remainder had litigation in which the same question was under consideration as in the instant case. In that case Clarence M. Jones, the plaintiff in this case, and Ellis Oliver Jones, the defendant in this case, took directly opposite positions to that which they are now taking. The trial court in that case held to the view that the language used in Item 20, under the manifest intention and purpose of the testator, referred to the death, before his death, of the children named. The case was carried to the Court of Appeals, and before decision a settlement agreement was entered into and the case dismissed. It is urged in this case that since the court had under consideration the construction of this same clause of the will the question now becomes *res judicata* and the plaintiff is estopped to urge a contrary construction. In view of the

fact that that case dealt only with the property referred to in Item 21, the plaintiff would not be estopped under the principle of *res judicata*.

It will be noted that Items 20, 21 and 22, in creating the estates by executory devise or by remainder, or in residium, refer to the testator's three children Clarence M. Jones, Ellis Oliver Jones and Laura E. Jones. The testator had a fourth child, Raymond V. Jones, and the only bequest that was made to Raymond V. Jones is under Item 7, which is as follows:

"Seventh: It is my will and I so direct that my son Raymond V. Jones, shall receive from my estate, from the date of his majority, provided I die before he reaches his majority, and if not, then from the date of my death, until he reaches the age of twenty-six (26) years the sum of six hundred ($600) dollars per annum, the same to be paid to him in monthly installments of Fifty ($50) dollars each; and when my son Raymond shall reach the age of twenty-six (26) years, it is my will, and I so direct that he be paid, as soon after he reaches the age of twenty-six (26) years as my executors may find it convenient, the sum of five thousand ($5,000) dollars. And it is my will and I so direct, that from the age of twenty-six (26) years, until the time said Raymond reaches the age of twenty-eight (28) years, he shall receive the sum of eight hundred ($800) dollars per annum, to be paid to him by my executors in equal monthly installments; and when he shall reach the age of twenty-eight (28) years, it is my will and I so direct that he shall be paid the sum of five thousand ($5,000) dollars in cash; and from the age of twenty-eight (28) years until the time said son Raymond reaches the age of thirty (30) years, he shall be paid the sum of one thousand ($1,000) dollars per annum, the same to be paid to him in equal monthly installments by my said executors. And from the age of thirty (30) until my said son shall reach the age of thirty three (33) years, he shall receive the sum of twelve hundred ($1,200) dollars per year, the same to be paid to him in equal monthly installments. And it is my will, and I so direct, that when my said son reaches the age of thirty three (33) years or as soon thereafter as my executors find it convenient, that he shall be paid the sum of forty thousand ($40,000) dollars in cash, without interest, the same to be his forever."

Item 19 reads as follows:

"Nineteenth: Should my son Raymond die without issue, his share of my estate shall be divided equally between his brothers and sisters or their legal representatives, share and share alike."

Item 19, immediately preceding Item 20, becomes important as an aid in determining what the testator meant by the word "share" used in these two items. Counsel for plaintiff argue that the word "share" refers to property held in common and not to special devises such as Items 6, 7 and 8. If we should adopt this construction it would at once, as we view it, eliminate the real estate described in Item 9 and leave nothing but the residium under Item 22.

Furthermore, since Raymond was given nothing except under Item 7, Item 19 would have to be declared null and void because there would be no property held in common upon which it could operate. We think the word "share" as used in 19 and 20 refers primarily to the bequests and devises made under Items 6, 7, 8 and 9, and also include subsequent bequests as made under 21 and 22. The specific gifts of a piono to Laura, under Item 3, and the family clock and the writing desk to Clarence, under Item 4, and the gold watch and goldheaded cane under Item 5, can readily be distinguished from the other bequests and devises. These were special gifts as distinguished from specific bequests. Not intended in the nature of a share of the estate, but rather personal to the donee. They may be likened unto Christmas presents and birthday presents, which are intended to carry sentimental value, as distinguished from food, raiment and shelter, furnished by a parent unto a child under a legal duty. These matters are not material except as they afford the opportunity to distinguish the special legacies and bequests. Just as Item 19 in providing a disposition of Raymond's share if he should die without issue must necessarily, and does, refer to Item 7, just so Item 20 in its reference to "share" includes Items 6, 8 and 9, as well as the two items following: to-wit, Items 21 and 22. Items 6, 7 and 8 were gifts in money and totaled over $100,000.

"It has long been settled law in Ohio that limitations over of personal property, by way of executor bequest, are valid, and have like effect and operation as in the case of executory devises of realty." Martin v. Lapham, 38 Ohio St., 538; Briggs v. Hopkins et al, exrs., *supra*, at page 327.

Under this situation no different construction should be given to these various items of the will by reason of the fact that 6, 7 and 8 are gifts of money, whereas under 9 there is a gift of real estate of the value of $60,00, and a further gift of money in the sum of $10,000.

We note the similarity in language between Item 19 and Item 20. It was necessary for the testator to express his intent in two items by reason of the fact that Raymond under no circumstances was to receive anything by way of executory devise. In the event that he died without issue his share was to be divided between his brothers and sisters, or their legal representative, share and share alike. It will be noted that Raymond was to receive monthly payments until he arrived at thirty-three years of age, or the period of eight years following the death of the testator. After he arrived at thirty-three years he was to receive $40,000, "the sum to be his forever," that being the major portion of his share. In the interim the balance necessarily remained in the estate. The testator evidently desired to make provision for the disposition of this share in the event of the death of Raymond before it was paid to him. Surely the monthly payments of $50 up to $100 during this period of eight years would not be expected to be kept by Raymond so as to be available as an executor devise to his two brothers and one sister after he once received it. Such a construction might have involved an unsettled status of this fund for half a century, had he lived that long.

Counsel for plaintiff in error have urged very strongly that we are not construing Item 19, and of course this claim is correct. However, as we have heretofore indicated, we think it is an aid in arriving at the testamentary intent in Item 20.

Under Item 6 the legacy of $30,000 to Clarence Jones was payable to him within two years from the date of the death of the testator.

Under Item 8 the legacy to Ellis Oliver Jones of $20,000 was payable in two payments, $10,000 when he arrived at 24 years of age, and $10,000 when he arrived at 26 years of age. Ellis O. was nearly 21 years of age at the time of his father's death.

Under Item 9 the bequest to Laura E. Jones of the real estate valued at $60,000 was to go to her when she arrived at 22 years of age, and likewise she was to receive $10,000 in cash when she arrived at 22 years of age. Laura E. Jones at the time of the death of her father was eighteen years of age. Here again were legacies and bequests, the payment of which might be delayed pending the arrival of the age designated. In the interim the property remained in the estate. We think it was the manifest intent of the testator to provide a disposition of these legacies and bequests in the event the legatee or devisee died before the time of distribution.

The case of Fetterman v. Bingham, 115 Ohio St., 35, 152 N. E., 10, and particularly the opinion, has many observations that are applicable to the instant case. We take the following from page 42: "No bond, inventory, or appraisal was to be required * * *."

Again, on page 43, "No accounting or inventory or appraisal or bond being required * * *."

Also commencing at the bottom of page 45 and continuing on page 46:

"For the purpose of ascertaining the intention of the testator, standing in his position when he made the will, we cannot believe that if his daughter survived him, as she has for many years, and should have 'no natural heirs,' he intended that in her old age her estate should be a life estate only. Such an intention is inconsistent with the evident natural love, affection, solicitude, and regard that he had for his daughter, as well as the confidence that the will discloses that he had in her."

In this case Judge Day cites with approval the case of Colby v. Doty, 158 N. Y., 323, 325, 53 N. E., 35. In the New York case the provision of the will, as quoted, is very similar to parts of the will in the instant case. In that case the bequest was to be paid to the daughter when she arrived at the age of 21 years, if she

should then be living. A further clause in the will provided as follows:

"In the case of the death of my said daughter Electa without lawful issue of her own body living at the time of her death, then and in that case on her death so without child or children, I give, devise and bequeath the said property and estate hereby devised to my said daughter, as follows."

In that case it was held that the death of the daughter referred to was her death during minority, and that it was the intention of the testator to pass a fee to the daughter, subject to being divested by her death before attaining majority.

In passing we think it proper to make the observation that while it is clearly announced by the Supreme Court of Ohio that executory devises may apply to personal property, as well as real estate, yet there is a very apparent reason why we would expect a difference in testamentary language in dealing with these two different classes of property. In devising real estate in fee, subject to be divested and pass an executory devise to another, the conditions at once attach to the real estate and continue so long as the contingency exists, and no disposition of the real estate can be made by which the right of the testamentary devisee may be lost.

In a bequest of money, which the legatee receives unrestricted, it would at once appear to the testator, and particularly to his scrivener, that unless some provision were made to hold the fund in trust the probabilities would be that it would be difficult to locate or identify the property so as to make the money available as a testamentary devise.

These are conditions to take into consideration in construing the language of a will.

We now call attention to another reason why we think this will must be construed as giving a fee simple title to Laura E. Jones at the date of the distribution.

A part of Item 9 reads as follows:

"I give, devise and bequeath to my daughter, Laura E. Jones, and to her heirs when she shall arrive at the age of twenty-two (22) years; my two brick store buildings, known as 229 and 231 North High Street, Columbus, Ohio, the same being a perpetual leasehold, and which I value at the sum of sixty thousand ($60,000) dollars."

The part of this Item 9 to which we specially call attention are the words of inheritance "to my daughter, Laura E. Jones, *and to her heirs.*"

Until the abolishment of the rule in Shelley's case the same provisions were required in wills as in deeds in order to pass a fee simple title. Under the earlier rule the words "and heirs" were words of inheritance necessary in order to create a fee simple. Section 10580, General Code reads as follows:

"Every devise in a will of lands, tenements, or hereditaments, shall convey all the estate of the devisor therein, which he could lawfully devise, unless it clearly appears by the will that the devisor intended to convey a less estate."

In the case of Collins v. Collins, 40 Ohio St., 353, 364, we find the following:

"'It is a rule of the courts, in construing written instruments, that when an interest is given or an estate conveyed in one clause of the instrument in clear and decisive terms, such interest or estate can not be taken away or cut down by raising a doubt upon the extent and meaning and application of a subsequent clause, nor by inference therefrom, nor by any subsequent words that are not as clear and decisive as the words of the clause giving the interest or estate.'"

The question arises here whether or not we have two conflicting rules relative to language creating a fee simple estate and another clause creating a fee subject to be divested on the condition of dying without issue. Attention should be called to the fact that in every instance in which the Supreme Court of Ohio has ruled that the words "die without issue" mean death of the first taker at any time it has been in a case where no words of inheritance follow the gift to the first taker. The case of O'Malley v. O'Malley, Jr., 20 Ohio App., 279, 151 N. E., 795, extends the rule to cases where there are express words of inheritance in the gift to the first taker. It is also proper to give effect, if possible, to each and every word of the will if they aid in arriving at the intent of testator. This leads us to inquire as to why the testator used these words of inheritance in Item 9.

Under Section 10580, General Code, above quoted, all that was necessary to

create a fee simple title was to use the words, "to my daughter, Laura E. Jones." Surely if he had intended the language used in Item 20 to be applicable whenever Laura E. Jones died, he certainly would not have added, following her name, the words "and to her heirs." Under a bequest to A, if nothing appears in the will showing a contrary intent, an absolute fee simple title passes by reason of statutory law. In short, this means that where the testator has failed to express an intent the law determines it for him. But where a testator devises his property to A and to her heirs, he is thereby expressing an intent that he desires the devisee to have a fee simple title. The words, "and to her heirs," are words of inheritance and the testator is presumed to use them in accordance with their legal significance.

Also, when we examine the last paragraph of this Item 9 we find that the testator in his bequest to Laura E. Jones gives her $10,000 in cash to be invested by her in improved real estate, "for her sole use and benefit forever." No more positive language could possibly be used of an intent that Laura should hold absolutely this $10,000 and its investments. Certainly it should not be cut down to a defeasible estate under Item 20 of the will.

Under Item 21 of the will, which provides for $60,000 of property going to the three children after the death of their mother, the last paragraph of the will reads:

"And at the death of my wife, it is my will and I so direct, that what remains of said money and property so given her as aforesaid herein, shall be divided between my children, Clarence M. Jones, Ellis Oliver Jones and Laura E. Jones, *and their heirs forever, share and share alike.*" (Italics ours.)

The first part of this Item 21 is interesting because therein testator provides that the distribution of the estate is to be made when his daughter Laura arrived at the age of 22 years. This positive, express language creating a fee simple interest cannot be cut down by another disconnected provision of the will. We again call attention to the case of Fetterman v. Bingham, *supra*, at page 44:

"Further, the testator having created an absolute fee-simple title in his daughter Electa A. Bingham, subject to the conditions named therein, we fail to find language subsequently used in the will showing an intention to cut down this fee-simple title to a life estate. To do so we think would be a violation of a very old and well-established rule of the law of wills, to-wit, that where by clear and unequivocal terms an estate in fee simple is given in one item of a will, the same can not be cut down to a life estate by implication only, less clear than the intention to create the fee simple previously created."

The observation that we have thus far made in discussing Item 9 of the will applies with all its force to this Item 21.

In Item 22 we find a different situation, in that words of inheritance are not used by the testator, and therefore there is not present, as in the other clause, the expressed intent to create the fee and absolute title in the three children named. This item deals with the residium, and gives to each of his children, Clarence M. Jones, Ellis Oliver Jones and Laura E. Jones, respective shares. Whether it deals with personal property or real estate under the provisions of Section 10580, it would give an absolute estate unless cut down by the provisions of Item 20. If by any construction we conclude that it was the intent of the testator that Item 20 should apply only to Item 22, then we think that under the rule of judicial construction each of the heirs would only receive a defeasible fee in the remainder, subject to be divested on death without issue at any time. We have heretofore stated, and now repeat with all the positiveness at our command, that Item 20 refers primarily to Items 6, 8 and 9. Items 21 and 22 are included because of the fact that Item 20 is sufficiently comprehensive to include them. In construing Item 20 relative to Items 6, 8, 9 and 21, we have pointed out that in order to give application to all of the provisions of the will it is necessary to construe the words "die without issue" in Item 20 as meaning die without issue before the time of distribution or before Laura arrived at 22 years of age. The residium in Item 22 so far as time of distribution is concerned is necessarily referable to the provisions of Item 21, to-wit, when Laura arrived at the age of 22.

We know of no rule of construction

that would permit our saying that Item 20 had one meaning when it applies to Items 6, 8, 9 and 21, and a different meaning when it applies to 22.

We might make one further observation, in which attention is called to the exact language of Items 19 and 20.

Under Item 19 the testator says:

"Should my son Raymond die without issue, *his share of my estate* shall be divided equally between his brothers and sisters or their legal representatives share and share alike."

Under a strict grammatical construction the words "his share of my estate" would mean the interest coming to him and not the interest that he had received. After he had received it, it is no longer in the estate. The words "shall be divided" are evidently a direction for distribution should Raymond die before he receives his share.

Attention is also called to the language of Item 20:

"Should either of my said sons, Clarence or Ellis Oliver or my daughter die without issue the share of one dying shall go to the others share and share alike or their heirs."

This item differs from 19 in that the testator merely refers to share, and not share of my estate, as in Item 19. We think the words, "of my estate," are necessarily implied by reason of the fact that the two items must have similar construction.

The words "shall go" are a direction for distribution in the event of the death of either before they have received their interest. Under strict grammatical construction the words "shall go" would not refer to something that had gone.

In the case of Baker v. McGrew, 41 Ohio St., 113, a very similar question arose as to the construction of a will, and the Supreme Court in that case held that under the language used the words "die without issue" contemplated a contingency to occur prior to the distribution of the estate. The pertinent language of the will is as follows:

"In case of the death * * * without issue * * * then the * * * share coming to them * * * shall be given * * *."

Judge Nash, rendering the opinion of the court, states at page 118:

"The use of the words 'shall be given' are very significant. In the first instance Mrs. Hertzler devised, gave and bequeathed one sixth of the remainder of her estate to Catherine and Daniel Baker. Upon the death of the testatrix it was the duty of the testator to place the devisees, if of full age, in possession of the property, otherwise to hand it over to their guardian. The words 'shall be given' were evidently intended as a direction to the executor as to what to do, in case this could not be done. This contingency could not happen if the grandchildren survived the testatrix. It could only happen in case all the children of one or more of the daughters died before the death of Mrs. Hertzler.

"Giving the words of her will their ordinary and natural meaning, we conclude that the contingency contemplated could only arise in case the devisees should die prior to testatrix's death."

We are aware of the fact that in many wills construed by our Supreme Court containing similar language no reference has been made to a strict grammatical construction. In many of the cases the general rule has been followed that the words "die without issue" mean die at any time. However, where such constructions have been made, a strict grammatical construction would not modify the apparent intent or the general rule.

It is probably true that this is a very slight circumstance, but yet we think it is the natural language for the testator to use having the intent as we find it.

We think that the rulings of the trial court were correct, and we find no error in the proceedings of the court below. The judgment will be affirmed.

Judgment affirmed.

Hornbeck, P. J., concurs.

Kunkle, J., not concurring.

8 Ohio App. 186.

Bliss et al v. Hartnett.

Court of Appeals, Erie County.

(Decided October 6, 1933.)

Trial—Verdict set aside as excessive, when—Suggestions of counsel that defendant is insured—Charge to jury following Supreme Court decision later overruled.

1. 39 O Jur *Error § 386.*
A verdict will be set aside as excessive where the amount awarded is not warranted by the evidence and it is apparent that it was rendered under the influence of passion and prejudice resulting from the jury concluding from repeated suggestions by plaintiff's counsel that the defendant was insured.

2. 39 O Jur *Trial § 148.*
Where in his charge to the jury the trial judge follows the rule announced by the Supreme Court in a decision which is subsequently overruled, such charge, in consequence of the later decision, is erroneous and constitutes prejudicial error.

King, Flynn & Frohman, of Sandusky, for plaintiffs in error.

John F. McCrystal, of Sandusky, for defendant in error.

Lloyd, J.

Edward J. Hartnett brought an action in the Court of Common Pleas against C. B. Bliss and Henrietta I. Bliss to recover damages for alleged injuries claimed to have been sustained by him personally, and for damage to his automobile. At the close of the evidence offered in behalf of Hartnett the action was dismissed as to Henrietta I. Bliss, and the trial proceeded as to C. B. Bliss, resulting in a verdict and judgment against him for $1,000. He now seeks a reversal of that judgment.

Boalt street and Columbus avenue are municipal highways located in the city of Sandusky. The second amended petition of Hartnett alleges, and Bliss in his answer thereto admits, that these two streets intersect, and it is also an admitted fact that Columbus avenue is a main thoroughfare. In the afternoon of July 24, 1930, Hartnett, riding in and operating his automobile, was proceeding easterly on Boalt street, which is not a main thoroughfare, and Bliss was riding in and operating an automobile southerly on Columbus avenue. Each of them was alone, and through the negligence of one or both a collision occurred at the street intersection. We shall not attempt to detail the evidential facts further than to say that the facts in evidence warranted the submission of the issues to the jury, and that on the issue of contributory negligence the verdict and judgment are manifestly against the weight of the evidence.

In this case again arises the present much discussed and argued question as to how far a plaintiff may go in asking questions, either on *voir dire* or during the progress of the trial, as to the interest of any insurance company. Prospective jurors were not only individually asked the general question of interest or connection with any insurance company, but were also asked the specific question as to any connection with or interest in the Agricultural Insurance Company of Watertown, New York; and these questions could not fail to leave with the average mentally-endowed juror the emphasized impression that the Bliss automobile was protected by this particular insurance company.

There is nothing in the record of the instant case other than implications from the questions asked that any insurance company was interested in the result of the trial and therefore it seems to me that examining prospective jurors on this subject was improper, but since the verdict in the instant case is so excessive as to evidence, passion and prejudice in its rendition we shall forego discussing the question further.

The answer of Bliss, filed to the second amended petition of Hartnett, alleges that "the automobile driven by him was the property of the defendant, Henrietta I. Bliss." Whether it was or not, was of no importance, because at no time was it claimed that Bliss, who was the sole occupant thereof at the time in question, was using it for any purpose of, or upon any mission of, Mrs. Bliss. The second amended petition did not so allege, and nobody claimed any such fact. Bliss was called for cross-examination by Hartnett,

and was asked a number of questions as to the ownership of the automobile. The following appears in the bill of exceptions:

"Q. Have you had it insured?

"Mr. Flynn: I object.

"Court: Objection sustained.

"Mr. McCrystal: Note an exception. We expect to show if the witness were permitted to answer, that it was insured.

"Q. Now the further question, if it was insured, who paid for the insurance?

"Mr. Flynn: I object.

"Court: Objection sustained.

"Mr. McCrystal: Note an exception. We expect to show, if the witness were permitted to answer, that Dr. Bliss paid for the insurance."

These questions, of course, were asked in the presence of the jury, and could serve no useful purpose other than to tend at least to induce the belief that a verdict against Bliss would be paid by some insurance company—probably that on which so much stress was laid in the *voir dire* examination of the jury. And the offers to prove, made presumably in the presence of the jury, the bill of exceptions not indicating otherwise, could serve only to emphasize such assumption and belief. In examining a witness called by Bliss as to whom he had given a written statement before the trial as to the facts relating to the collision, counsel for Hartnett asked these questions:

"Q. Or some member of an insurance company?

"A. Her?

"Q. Yes? A. No, sir.

"Q. He was a stranger to you as far as you know, a stranger that came into town? A. As far as I know.

"Q. You didn't know him at all but you signed a statement for him? A. Yes, sir."

We are satisfied that these repeated references and intimations as to insurance companies left their imprint on the minds of the jurors, for by no stretch of a normal imagination could a verdict of $7,000 be warranted by the evidence adduced.

Hartnett was 47 years of age at the time of the collision, and was in the business of taking orders for men's clothing for "Richmond Brothers of Cleveland." He returned to work the latter part of October, 1930. He testified that he made $20, $30 or $60 a week, according to how you take the orders. Some weeks would be good and some bad. An automobile salesman fixed the damage to Hartnett's automobile at $255. The physician valued his services at from $50 to $60. Hartnett after the collision drove his car to his home, and two days later called a doctor for his injury, who, he said, "bandaged it up and told me to rub it and he put some stuff on it himself." The next day the doctor "fetched some splints and put them on." The injury, the physician testified, consisted of a fracture of the tibia, or small bone of the left leg. An x-ray was taken and the doctor testified that it showed the fractured bone to be in good position. Hartnett testified that he was in bed for about six days, after which he said, "I sat around the house in a big chair until I got some crutches," and then "I hobbled around on crutches for, I think, six weeks," and after that used a cane for about five weeks. Thereafter he used neither cane nor crutches, but testified that after walking his ankle and instep became painful and his leg tired. No one testified as to the injury being serious or of long duration, the only testimony on that subject being that of the attending physician who said "there might be some soreness and some weakness for a while in those muscles." It is therefore apparent that the character and nature of the injury to Hartnett, in conjunction with the damage to his automobile, expense for services of his physician, and his claimed loss of earnings while he was recovering, would not warrant a verdict of $7,000 in his favor.

In our judgment the verdict, as we have indicated, is excessive, appearing as it does to have been given under the influence of passion and prejudice, and the only possible reason therefor that we can discover in the record of the trial is that the jury concluded that an indemnity company was bound to pay the amount thereof. So, sometimes it happens that whatever the purpose or motive, the injection by *innuendo* into a trial of facts assumed as probably or possibly existing, but not in issue or in evidence, reacts like a boomerang to nullify the verdict.

In charging the jury as to the legal effect of the right of way statutes, the trial judge followed the rule announced by the Supreme Court in Heidle v. Baldwin, 118 Ohio St., 375, 161 N. E., 44, 58 A. L. R., 1186. Since the trial of the instant case in the Court of Common Pleas the Heidle-Baldwin decision has been disapproved and overruled by the Supreme Court, Morris v. Bloomgren, 127 Ohio St., 147, 187 N. E., 2, and in consequence thereof the charge on this subject, under this later decision, is erroneous and constitutes prejudicial error.

The judgment of the Court of Common Pleas is reversed and the cause remanded to that court for a new trial.

Judgment reversed and cause remanded.

RICHARDS and WILLIAMS, JJ., concur.

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34 Ohio App., 80.

DAILY v. DAILY.

Court of Appeals, Stark County.

(Decided October 18, 1933.)

Divorce — Proceeding for alimony alone — Limitation upon power of court—Extent and purpose of allowance—Section 11998, General Code.

1. [Page] *Divorce § 97.*
In proceeding for alimony alone, court possesses no equity power, but is controlled by statute regarding proceedings on petition for alimony alone (Section 11998, General Code).

2. [Page] *Divorce § 107.*
In suit for alimony only, alimony comprehends an allowance for purpose of maintenance and means of support during separation and not a division of property.

Leroy J. Contie, of Canton, for plaintiff in error.

T. H. Leahy, of Canton, for defendant in error.

SHERICK, P. J.

This action was originally commenced in the domestic relations branch of the Court of Common Pleas of Stark county. The plaintiff in error herein, Elmer J. Daily, was the plaintiff below, and the action was for divorce.

To the petition as filed, the defendant, M. Louella Daily, made answer, and by way of cross-petition prayed for alimony. At the trial of this cause, the petition was dismissed, and the cause proceeded to trial upon the cross-petition.

The matter is now before this court on error, and the plaintiff in error complains on some eight grounds of error, which we have examined. The third and fifth grounds of error assigned present the real question in this court, and we are of opinion that the other claimed errors, if errors they be, are not prejudicially so. We shall therefore limit our consideration to the third and fifth grounds, which are to the effect that plaintiff in error complains that the judgment of the court in making a division of the property and awarding money and property to the defendant in error, as alimony for her maintenance and support during separation, is contrary to law.

The trial court found that the causes of action alleged in the defendant's cross-petition were true and awarded alimony to the wife. It was ordered that the plaintiff in error pay to her the sum of $70 per month. In addition thereto it was ordered that the defendant was entitled to all her wearing apparel and all of the household furniture, and a Ford coupe. It was directed that the plaintiff execute a bill of sale of this coupe to his wife, and pay off a chattel mortgage on the car.

It appears from the record that the plaintiff had two cars, that the home in which the parties had been living was in the process of foreclosure, and that the husband had recently inherited, along with his brothers and sisters, an estate in remainder in two pieces of real estate. This, we take it, was the husband's sole substance.

The plaintiff in erorr asserts that the case of Durham v. Durham, 104 Ohio St. 7, 135 N. E. 280, is depositive of the question presented, and that upon this authority this court should reverse the judgment below. We are unable to completely agree with this view, but we do feel that the judgment below should be modified in part. The Supreme Court, in the Durham case, approved of its prior judgment in the case of Marleau v. Mar-

[Page] For other cases, see same topic and number in Page's Ohio Digest, Lifetime Edition.

leau, 95 Ohio St. 162, 115 N. E. 1009, wherein it was held: "A proceeding for alimony does not invoke the equity powers of the court, but is controlled by statute. The court is only authorized to exercise such power as the statute expressly gives, and such as is necessary to make its orders and decrees effective."

It is thereby settled in this state that in a proceeding for alimony alone a court possesses no equity power but is and must be, controlled by the statute only.

Section 11998, General Code, provides: "Upon satisfactory proof of any of the charges in the petition, the court shall make such order for the disposition, care and maintenance of the children of such marriage, if any, as is just, and give judgment in favor of the wife for such alimony out of her husband's property as is equitable, which may be allowed to her in real or personal property, or both, or in money, payable either in gross or by installments."

The Supreme Court further said in the Durham case, in construing this statute, that the definition of alimony, as contained in 1 Ruling Case Law, 864, was the definition and thought in the minds of the legislators in the enactment of this section. In other words, it was held that alimony, when applied to a suit for alimony alone, comprehends any such sums so allowed as and for the purpose of maintenance, nourishment, or means of support to the wife during separation.

It is recognized that, where alimony is granted in a cause wherein divorce has been decreed, the term "alimony" has an enlarged meaning, but, in considering this section, in the authority previously referred to, the court, at page 11 of 104 Ohio St., 135 N. E. 280, 281, points out that "the authority of the court is much more limited" in an action for alimony only.

And now considering the award made in this case, the court was right in awarding to the wife her own wearing apparel, for that was her property. The court might have been correct in its judgment in awarding all of the household property to the wife. However, we would here point out that the husband might have possessed certain heirlooms, or other personal property contained in the home, that would in no way aid the wife and child in their maintenance and support. We believe it to be the purpose of the statute to award to the wife, in cases of this character, such personal property belonging to the husband as would be conducive to the comfort and well-being of the wife and children. In view of the fact, however, that the record makes no mention of any such article or thing, we are in this instance unable to say that the court erred therein.

It appears to us from this record that the court did attempt to divide the husband's two automobiles by giving one to the wife, and ordering the husband to make a bill of sale to his wife for such car, and in his further order for the husband to satisfy the mortgage on the car given her. It is rather a division of the husband's property not contemplated by the section of the General Code referred to. In addition thereto, we hold the view that the automobile in question could in no way aid in the maintenance and support of the wife and child. It does not appear that by its use the wife was aiding herself; that is, helping to maintain herself and child. It was rather a source of expenditure rather than an asset.

It is therefore this court's judgment that the judgment of the trial court with reference to its orders in respect to the award of the Ford car, and the ordering of a bill of sale from the husband to the wife, and with reference to the further order for the husband to satisfy the chattel mortgage thereon, be modified in accordance with the views herein expressed, and that the judgment as modified be, and the same is hereby, affirmed.

Judgment modified, and affirmed as modified.

LEMERT and MONTGOMERY, JJ., concur.

30 N. P. (N. S.) 14.

William Kearney v. State Relief Commission et al.

Common Pleas Court, Trumbull County.

(Decided November 10, 1934.)

Mandamus—Liability of a municipality for relief of indigent residents—Purpose and effect of Senate Bill No. 60—Purpose and duties of State Relief Commission—Section 3476, General Code.

1. [Page] *Paupers § 2.*
Section 3476, General Code, imposing upon a municipality liability for the relief of its indigent residents, is not repealed, either directly or by implication, by the provisions of Senate Bill No. 60, approved February 28, 1933, which as an emergency measure, centralizes control in the administration of relief.

2. [Page] *Paupers § 2.*
The State Relief Commission created by Senate Bill No. 60, approved February 28, 1933, is not liable for the support of indigent residents of a municipality, but functions solely for the purpose of facilitating the administration of relief by municipalities; hence, an action brought by an indigent person to compel the granting to him of certain relief by the Commission is not maintainable.

Samuel Mark London, of Warren, for plaintiff.

Geo. W. Secrest, prosecuting attorney, and Paul Z. Hodge, asst. prosecuting attorney, of Warren, for defendant.

GRIFFITH, J.

Action was brought by William Kearney, in behalf of himself and his wife and six minor children.

He alleges in his petition that he and his wife and children are residents of the city of Niles; and that he, at the present time, is unable to provide the necessities of life for himself and dependents, for the reason that, during the past three years, he has been unemployed, and that he is without funds whatsoever to provide for his family. He says that he has furnished actual proof to defendants, the State Relief Commission, through its agents, Captain John R. Rea and Charles Loveless, of his poverty and immediate need for the necessities of life, informing them that on the 18th day of October, 1934, he has been without lights of any kind whatsoever, and that the electric light department of Niles city has refused to furnish him any electric light or power, due to his inability to pay for the same; and that, notwithstanding his notice to the defendants, he and his family have been in complete darkess since the 18th day of October last; and that the defendants have wilfully, wantonly and deliberately withheld the extending to this plaintiff and his family the proper food, clothing, light, and heat which are essential to their proper existence, and to maintain their peace, health and safety. He says that unless the defendants are ordered, by the court, to grant him and his family proper relief; that their peace, health and safety will be impaired, and that their health will gradually decline, and their physical bodies will become extinct, and that he himself will lose control of his mental faculties, and that he may, as a result have a crazed mind through no fault or design of his own, which may compel him to commit acts of violence upon the citizenry of Niles; and he prays that a mandatory order issue compelling the defendants to grant to him and his family the necessary light, heat, food and clothing.

This matter came on for hearing on Saturday, November 3rd, and from the evidence it appeared that the defendants had furnished some indigents in the city of Niles with electric light and power; but that they had refused, on the 18th of October, 1934, to extend to this plaintiff electric service, and had refused to pay his electric bill.

The evidence further disclosed that the plaintiff had been receiving the sum of $21.50 every fifteen days for groceries, milk, shoe repairs, and so forth, and that the plaintiff had received during the month, five to six pounds of beef, two sacks of flour, four sacks of cabbage, and some new shoes for one of his daughters.

Captain Rea, who is in charge of the relief work of Trumbull county, testified that he didn't consider electric service a necessity, and refused to provide funds for this plaintiff for the turning on of electric service to the house which the plaintiff and his wife and family occupy;

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but that he did stand ready and willing to provide him with two lamps, and provide him also with coal-oil for use in the same.

It appears from the evidence that the plaintiff has an electric washing machine, and electric sewing machine, and electric sweeper, and perhaps other electrical devices which are useles unless electrical service is provided.

The plaintiff complains that the food that he has received is insufficient, and of inferior quality, and that he can make no head-way by appealing to the agents of the Relief Commission.

This action is brought under the provisions of Section 3476, General Code of Ohio, which, in part, provides as follows: " * * * the proper officers of each city * * * shall afford at the expense of such * * * municipal corporation public support or relief to all persons therein who are in condition requiring it. It is the intent of this act that * * cities shall furnish relief in their homes to all persons needing temporary or partial relief who are residents of the * * city * *."

The action is also brought under the provisions of Senate Bill No. 60, which was approved by Governor White February 28, 1933, and which act provides, among other things, as follows:

"Sec. 1. There is hereby created a state relief commission to serve until March 1, * * * 1935. It shall consist of five members to be appointed by the governor, who shall be representative citizens, residents of this state. The members of such commission shall serve without compensation, but they shall be allowed their necessary expenses, incurred in carrying out their official duties. The commission is hereby authorized to employ and pay such assistants as it deems necessary to carry out its duties."

"Sec. 2. In order to carry out effectively its powers and duties the state relief commission may request and shall receive advice and expert assistance from the department of public welfare, the tax commission of Ohio, the bureau of inspection and supervision of public offices in the office of the auditor of state, the department of public works, the department of public health, the department of education, the department of highways, the department of industrial relation, the department of agriculture, the adjutant general's department, and any other state or local department or agency. It shall have access to the records of any state or local board or other agency pertaining to the functions of the state relief commission, and the cooperation and assistance of each and every official or employee of such boards or agencies. It may, in its discretion, cooperate with existing national, state or local unemployment relief commissions or agencies, and, if deemed advisable or expedient by it, coordinate and correlate its work with the work or projects of any such commission or agency."

The other sections it is unnecessary to refer to, other than to mention the fact that it is declared to be an emergency measure, which is necessary for the immediate preservation of the public peace, health and safety; and that the purpose of the legislation is to centralize control in the administration of relief.

It appears, therefore, that Section 3476 is in no wise repealed, either directly or by implication, and that the liability for relief to the indigents is a continuing obligation of the city.

The principal contention in the instant case revolves around the proposition of the State Relief Commission refusing to provide electric service to this plaintiff.

The plaintiff is asking to have this court order the State Relief Commission to provide electric service for him, in his home.

Is there a legal duty thrown upon the State Relief Commission to provide such service?

Whatever moral duty rests upon the commission, to aid the unfortunate in their distress, is a matter to be presented to the commission; but we are confronted with the legal obligation of the defendants to do that which the plaintiff seeks in this action. Does Section 3476, coupled up with Senate Bill No. 60, cast upon the defendants the statutory duty of providing electric service to this plaintiff?

The plaintiff can not recover unless by statutory authority a right of action is given.

It is undisputed that the plaintiff is in dire distress; that he is unemployed and in need of light in his home.

The defendants say that they stand ready and willing to furnish plaintiff with oil-burning lamps, and with oil, and also with equipment with which to wash and iron.

It is the opinion of the defendants that the furnishing of oil lamps is sufficient under the circumstances; that is their judgment as agents of the Relief Commission.

May this court substitute its own discretion for that of the discretion of these administrative officers in the exercise of their authority. For this court, under the circumstances, to undertake to determine the various needs of this plaintiff, and the sufficiency of the provisions allotted him, would open up a course of action that would require nothing less than that this court should serve as relief commissioner, to provide for the needs of all who are unfortunate, and in need of relief. Manifestly that leads to a course that is impossible of contemplation.

It may be noted further, upon careful reading of Senate Bill No. 60, that there is no provision in that bill which throws upon the relief commission the duty of supporting persons who require relief. Section 3476 provides that the officers of each city shall afford, at the expense of the city, relief to persons requiring it. That is where the mandatory expression of the legislature is to be found, and the relief commission is in the nature of a voluntary organization which steps in to aid and help in the administration of the relief without the mandatory voice of the legislature ordering it so to do.

Clearly then the action instituted in this case is not maintainable, for the reason the defendant relief commission is a creature of the legislature that is not bound nor liable as are the officers of the municipal corporation, for the support of its indigent. Apparently the object of the law, as embodied in Senate Bill No. 60, was to tide over an emergency in the aiding of municipalities in taking care of their relief problems; but it in no wise cast upon the relief commission the liability attendant to that of the municipalities as embodied in Section 3476, General Code.

For these reasons, the prayer of the petition is refused, and the writ denied; and exceptions saved to this plaintiff.

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33 N. P. (N. S.) 16.

In Re Elmer G. Vogt.

Common Pleas Court, Hamilton County.

(Decided November 10, 1934.)

Attorney and Client—Record of conviction cannot be contradicted collaterally—Disbarment following conviction of embezzlement—Disbarment during incarceration of attorney, when proper.

1. Page *Judgment § 166.*
The record of conviction of a crime, unmodified or unreversed, may not be contradicted or impeached by the defendant in any collateral proceeding.

2. Page *Attorneys § 11.*
Conviction of attorney on plea of guilty to indictment for embezzlement of client's property, held to require disbarment.

3. Page *Attorneys § 11.*
Incarceration of attorney in state penitentiary following conviction of embezzlement of client's property, held not to prevent disbarment on grounds of same transaction, where only defense to charge in disbarment proceedings was a denial.

BELL, J.

This proceeding came on for hearing upon written charges prepared and filed by Leonard H. Freiberg, Cornelius J. Petzhold and Lars R. Hammel, a committee heretofore appointed by the court to investigate, prepare, file and prosecute charges against the said Elmer G. Vogt, a member of the bar of Hamilton county.

Pursuant to such direction the committee filed the charges consisting of five separate and distinct transactions.

First: Charges embezzlement in the sum of $685.69, the property of Hazel T. Haines by the said Elmer G. Vogt while acting as the agent or attorney for the said Hazel T. Haines.

This charge also sets forth that on September 1, 1933, Elmer G. Vogt was indicted by the grand jury in cause No.

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38648, in this court, styled "the State of Ohio v. Elmer G. Vogt, indictment for embezzlement;" and it is further set forth that thereafter the said Vogt entered a plea of guilty to the said indictment.

Second: This charge is in connection with the conduct of Elmer G. Vogt while engaged as an attorney for one Lucy B. Copeland.

Third: Charges misconduct of Vogt in connection with the estate of Edward Kube, deceased.

Fourth: Charges embezzlement in connection with the handling of money of Maggie E. Weston.

Fifth: Charges misconduct in connection with property of Charles Gschwind.

These charges were filed on July 28, 1934, and copy was served upon the accused, who was then incarcerated in the Ohio Penitentiary, in accordance with law, and on September 20th there was filed a paper which was styled a defense consisting of six claimed separate defenses.

The first five of these claimed defenses have to do with the first charge, and the sixth claimed defense has to do with the remainder of the charges, that is, charges two, three, four and five.

At the time the matter came on for hearing it was disclosed to the court that Elmer G. Vogt was then incarcerated in the Ohio State Penitentiary and was not in court, and the question was raised by one member of the court as to whether or not it was proper, in law, to proceed with the hearing of the charges in the absence of the person charged, his absence being occasioned by his incarceration in the Penitentiary.

The evidence discloses that the transaction set forth in the first charge against Vogt was the same matter which was the subject of the indictment heretofore mentioned upon which Vogt entered a plea of guilty and was sentenced to the Penitentiary.

In the first defense of this proceeding Vogt denies that he was ever employed by Hazel T. Haines as her attorney, and denies the charge of embezzlement.

The second, third, fourth and fifth matters set forth as defenses are not defenses to the charge and cannot be so considered by the court.

The court is therefore confronted with this situation: in the criminal case the defendant Vogt was charged as the agent and attorney for Hazel T. Haines with the embezzlement of $685.69 and entered a plea of guilty thereto, and judgment was entered in that case; in this proceeding where he is again charged with the same transaction he denies both the embezzlement and the fact that he was attorney for Hazel T. Haines.

Would Elmer G. Vogt be permitted to offer any evidence, if personally present, which would challenge this first charge made against him which was the basis of the judgment which remains unmodified and unreversed?

It is well settled that a judgment of a court cannot be contradicted or impeached in any collateral proceeding. This principle has been clearly established as the law in this state.

In Harper v. The State, 106 Ohio St., 481, the court says:

"Such record, (of the conviction of a crime) unmodified or unreversed may neither be impeached or contradicted by the defendant or any other witness in his behalf, in a collateral proceeding."

It is therefore apparent that had Vogt been present in court at the time of the hearing of these charges, he could not have been permitted to present any evidence which tended to impeach or contradict the judgment of the court entered in case No. 38648, (State of Ohio v. Vogt), which was the transaction set forth in the first charge.

We have concluded, that the presence or absence of Vogt was immaterial in considering charge number one; whether or not his presence was prerequisite in considering the four other charges is unnecessary of decision in this case.

The crime of embezzlement to which Vogt entered a plea of guilty involves moral turpitude.

It is the judgment of the court that Elmer G. Vogt be disbarred upon the first charge set forth in the charges of the committee.

Charges two, three, four and five are neither considered nor decided.

DARBY and MORROW, JJ., concur.

28 N. P. (N. S.) 18.

James White v. Herman McClure.

Common Pleas Court, Hamilton County.

(Decided October 24, 1934.)

Garnishment—Exemption of seamen's wages—Seamen's Act of 1915 — Federal statutes not reenacted by codification of 1926.

1. [DIG] *Attachment & Garnishment § 59.*
By virtue of Section 12 of the Seamen's Act of 1915, the wages of seamen engaged in coastwise trade are exempt from attachment or arrestment from any court.

2. [DIG] *Statutes § 88.*
The 1926 codification of Federal statute law did not constitute a reenactment of any sections contained therein, but was a mere physical rearrangement of existing law.

Conrad Magrish, of Cincinnati, for plaintiff.

Francis A. Hoover, of Cincinnati, for The Cincinnati, Pomeroy and Charleston Packet Company, garnishee.

STRUBLE, J.

This cause is before the court on motion of The Cincinnati, Pomeroy & Charleston Packet Company, garnishee, to be dismissed as such, and for an order setting aside the order for the appearance of said garnishee for examination concerning wages due from the garnishee to the defendant, Herman McClure, an assistant engineer on a boat of said packet company engaged in traffic on the Ohio river.

For a better understanding of the matters discussed in this opinion, it is expedient to define the terms "seaman," "coastwise trade" and "vessel." The terms "seaman" and "vessel" have statutory definitions by virtue of United States Code, Title 6, Chapter 18, Section 713, which reads as follows:

"Definitions, schedule and tables.—In the construction of this chapter, every person having the command of any vessel belonging to any citizen of the United States shall be deemed to be the 'master' thereof; and every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a 'seaman'; and the term 'vessel' shall be understood to comprehend every description of vessel navigating on any sea or channel, lake or river, to which the provisions of this chapter may be applicable, and the term 'owner' shall be taken and understood to comprehend all the several persons, if more than one, to whom the vessel shall belong."

"Coastwise trade" is a term, the meaning of which is derived from Federal statutes, using the term without specifically defining it, and from decisions of the courts. For the purpose of this case, the meaning of the phrase can be stated to be: transportation by water between ports of the United States, including transportation upon navigable streams between river ports. See Gibbons v. Ogden, (Chief Justice Marshall), 22 U. S. (9 Wheat.) 1, at p. 214; Belden v. Chase, 150 U. S. 674; Ravesies v. United States, 37 Fed. 447; North River Steamboat Co. v. Livingston, 3 Cow (N. Y.) 713, at p. 747; Walker v. Blackwell, 1 Wend. (N. Y.) 557, at p. 560; San Francisco v. California Steam Nav. Co., 10 Cal. 505.

Having in mind the foregoing definitions, the defendant, McClure, must be considered a "seaman" employed on a "vessel" engaged in "coastwise trade," and, the question for determination is whether or not the wages of such seamen are exempt from attachment.

Early United States statutes controlling the question were: The Act of June 7, 1872, which became Chap. 322, 17 Stat. at L. 262; the Act of June 9, 1874, which became Chap. 260, 18 Stat. at L. 64-Comp. St. Section 8291.

These early acts were fully considered by the United States Supreme Court in the case of Inter-Island Steam Navigation Co. v. Byrne, 239 U. S. 459. However, these statutes and the decision just mentioned were superceded by the Seamen's Act of March 4, 1915, (U. S. Stat. at L., Vol. 38, Part 1, Page 1164, Chap. 153, Comp. St. Section 8320), Section 12 of which reads as follows:

"Section 12. That no wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court, and further payment of wages to a seaman or apprentice shall be valid in law notwithstanding any previous sale or assignment of wages or of any attachment, incumbrance, or arrestment thereon; and no assignment or

[DIG] For other cases, see same topic and number in Page's Ohio Digest, Lifetime Edition.

sale of wages or of salvage made prior to the accruing thereof shall bind the party making the same, except such allotments as are authorized by this title. This section shall apply to fishermen employed on fishing vessels as well as to seamen; provided, that nothing contained in this or any preceding section shall interfere with the order by any court regarding the payment by any seaman of any part of his wages for the support and maintenance of his wife and minor children. Section 4536 of the revised statutes of the United States is hereby repealed."

By this enactment of March 4, 1915, the earlier limitation, denying seamen engaged in coastwise trade the privilege of exemption from attachment, was removed, and since said enactment, the wages of seamen engaged in coastwise trade are not "subject to attachment or arrestment from any court." That this is the effect of the enactment of March 4, 1915, is established by the following authorities:

Burns v. Fred L. Davis Co., 271 Fed. 439, February 16, 1921, wherein the court said, in part:

"In 1915, Congress repealed Section 4536 of the revised statutes, and enacted in its stead Section 12 [38 Sta. at L. c. 153, Section 12, p. 1169 (Comp. St. Section 8325a).] * * *

"But the effect to be given to the language of Section 12, as compared with the equivalent language of Section 4536, is quite different, for the Act of June 9, 1874 [18 Stat. at L. c. 260, p. 64 (Comp. St. Section 8291)], made Section 4536 inapplicable to seamen employed on vessels—'engaged in the coastwise trade, except the coastwise trade between the Atlantic and Pacific coasts, or in the lake going trade touching at foreign ports or otherwise, or in the trade between the United States and the British North American possessions, or in any case where the seamen are by custom or agreement entitled to participate in the profits or result of a cruise, or voyage.'

"By the enactment of Section 12, which repealed Section 4536 of the revised statutes, the limitation placed upon the language of that section by the Act of June 9, 1874, has been removed."

In Inter-Island Steam Nav. Co. v. Byrne, 239 U. S. 459, the court said, at page 463:

"The particular point now presented was reserved in Wilder v. Inter-Island Steam Nav. Co., 211 U. S. 239. It has become of less importance since the act of March 4, 1915, Chap. 153, 38 Stat. at L. 1164, 1169, wherein the provisions of Section 61 of the act of 1872 were re-enacted."

Section 61 of the act of June 7, 1872, in part, is as follows:

"* * * that no wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court."

Counsel opposed to the motion claims that seamen engaged in the coastwise trade are not granted the benefit of exemption from garnishment and cites in support of that claim the case of Duggar v. Mobile Gulf Nav. Co., 140 So. 611. This is an Alabama case decided by the Supreme Court of Alabama and, in my judgment, is in direct conflict with the holdings of the Supreme Court of the United States. See—Wilder v. Inter-Island Steam Nav. Co., 211 U. S. 239 Inter-Island Steam Nav. Co. v. Byrne, 239 U. S. 459, cited above.

The Alabama court, in Duggar v. Mobile Gulf Nav. Co., cited above, places its opinion on the grounds that the 1926 codification of the United States Statutes re-enacted the act of March 4, 1915, Chap. 153, Sec. 12, 38 Stat. at L. 1169, which is Section 601 of the 1926 codification, and the act of June 9, 1874, Chap. 260, 18 Stat. at L. 64, which is Section 544 of the 1926 codification. The Alabama court reasoned that, if these two sections were "re-enacted" then Section 544 of the Code is a limitation upon Section 601. In the opinion of this court, the Alabama decision is unsound, its error resulting from the court's assumption that the 1926 codification of the Federal statutes constituted re-enactments of the sections contained therein. If this 1926 codification re-enacted the Federal statutes then Sections 544 and 601 would have become effective from the date of the codification as though they were sister sections of a new enactment and their prior effectiveness would have been immaterial and the restriction put upon Section 601 by Section 544 would have been logical. However, the 1926 codification of Federal statute law did not constitute a re-enactment of any sections contained therein. The codification was a mere physical rearrangement of existing law by appropriate titles, chapters and sections. This view is sustained by Section 2 of the act itself which reads, in part, as follows: (Section 2 Preamble U. S. Code 1926)—

"The matter set forth in the Code, evidenced as hereinafter in this section provided, shall establish *prima facie* the laws of the United States, general and permanent in their nature, in force on the 7th day of December, 1925; but nothing in this act shall be construed as repealing or amending any such law, or as enacting as new law any matter contained in the Code"—and by the following authorities, all of which passed specifically upon the effect of the 1926 codification of Federal statutes, in respect to repealing, amending or re-enacting the sections retained therein: Smiley v. Holm, 285 U. S. 355 (1932); Neill v. U. S., 41 Fed. (Sec. Ser.) 173 (1930); Ruff v. Gay, 3 F. Supp. 264 (1933); United States v. Melon, 4 F. Supp. 947 (1933); Flensburger Dampfercompagnie v. The United States, 73 Court of Claims 646, (1932); In Re Hill, 68 Court of Claims 740 (1930); U. S. v. McMurty, (1933) 5 Fed. Supp. 515.

Review of the last mentioned cases will convincingly establish the rule to be that announced by Chief Justice Hughes, in Smiley v. Holm, cited above, wherein the Chief Justice says:

"Inclusion of a statute in the United States Code does not operate as a re-enactment."

Therefore, since the Seamen's act of 1915 granted exemption from attachment to all seamen, including those engaged in coastwise trade; and, since the 1926 codification did not affect the operation of the 1915 enactment, the wages of all seamen are exempt from attachment or arrestment from any court. The motion of garnishee herein for dismissal is therefore granted.

New Cases Docketed in the Supreme Court

(Continued from Page 25)

tins & Lynch, Kenneth B. Cope, Canton; for defendant, Frank T. Bok, Charles S. Weintraub, Canton. Filed Nov. 15.

25092 Robert O. Adler et al vs Edward Hahn. Motion to certify. Cuyahoga county. Attorneys for plaintiff, Hartshorn, Thomas & Abele, Arnold M. Edelman, Cleveland; for defendant, Fred T. Robertson, Cleveland. Filed Nov. 7.

25093 Homer R. Crow vs State of Ohio. Motion for leave to file petition in error. Cuyahoga county. Attorneys for plaintiff, Harvey E. Elliott, L. R. Canfield, Cleveland; for defendant, Frank T. Cullitan, Margaret Lawrence, Cleveland. Filed Nov. 19.

25094 Jack Hills vs State of Ohio. Motion for leave to file petition in error. Summit county. Attorneys for plaintiff, A. J. Bianchi, Akron; for defendant, Ray B. Watters, Akron. Filed Nov. 20.

25095 Irving Goldberg vs James Jordon. Motion to certify. Mahoning county. Attorneys for plaintiff, Harrington, Huxley & Smith, Youngstown; for defendant, H. H. Wickham, Ralph R. Tombs, Youngstown. Filed Nov. 20.

DIGEST OF THIS NUMBER

(Continued from 2d page of Magazine)

§364. Under Section 10580, General Code, in devises of real property an absolute fee simple title passes if nothing appears in the will showing a contrary intent. Jones vs Jones. 1 O.O. 211.

WORKMEN'S COMPENSATION—

§77. Claimant is entitled to rehearing only when Commission's denial is based on finding that Commission had no jurisdiction of claim and not where denial is based on finding that claimant's earning capacity was not impaired. State ex rel Gerard vs Indus. Comm. 1 O.O. 101.

(Syl) Industrial Commission speaks only by its record. State ex rel Cundiff vs Indus. Comm. p. 24.

(Syl) Where record of official act of Commission shows that a case within its jurisdiction has been continued and, during pendency of such continuance, an application for modification of a prior award has been made, claimant is legally entitled to have commission hear and determine his application. Id.

Supreme Court Calendar.

Tuesday, November 27.
(General Docket)

24765 Theresa Sack vs A. R. Nunn & Son et al, Frank Leonetti, Otto G. Graeff, Cleveland; McKeehan, Merrick, Arter & Stewart, F. M. Horn, Cleveland.
(30 minutes to each side)

24760 Cleveland Athletic Assn. Co. et al vs Edith P. Bending. McKeehan, Merrick, Arter & Stewart, Klein & Diehm, Cleveland; Garfield, Cross, Daoust, Baldwin & Vrooman, Cleveland.
(30 minutes to each side)

24900 State ex rel Frank M. Shelton vs Board of Education of Springfield City School District. Martin & Corry, Springfield; M. E. Spencer, Cole, Bowman & Hodge, Springfield.
(30 minutes to each side)

Wednesday, November 28.
(General Docket)

24798 Elmer L. Bittmann vs Alice G. Bittmann. J. G. DePosset, Cincinnati; John W. Cowell, Cincinnati.
(30 minutes to each side)

24846 Akron-Wooster Coach Lines, Inc. vs Public Utilities Commission. Foust & Holden, Akron, D. H. Armstrong, Columbus; John W. Bricker, Donald C. Power, Columbus.
(30 minutes to each side)

24855 William V. Cooper vs J. H. Egbert et al. Ray B. Watters, Clyde B. McDonald, Akron; Brouse, Englebeck, McDowell & Bierce, Akron.

24856 William V. Cooper vs Frank Mull, et al. Same; Same.
(30 minutes to each side)

PSF: Corcoran

THE WHITE HOUSE
WASHINGTON

April 28, 1937

The President wants this given to Tom Corcoran.

MEMO FOR T. G. C.

The President said to find out who and where Judge Woolsey is. I find a Judge John M. Woolsey listed in Who's Who and he is in the U. S. District Court in New York.

BF

RECONSTRUCTION FINANCE CORPORATION

file please

Jacobson

May 27, 1937

MEMO RE JUDGE JOHN M. WOOLSEY

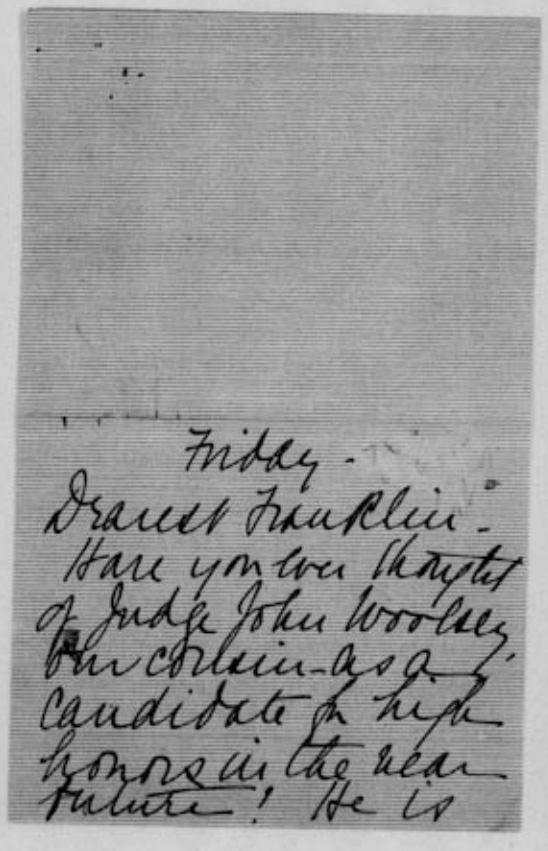
(1) A Federal judge — formerly very successful head of one of the best admiralty firms in New York.

(2) Considered to have good literary style, but is over-ruled by the CCA more than any other judge in the District.

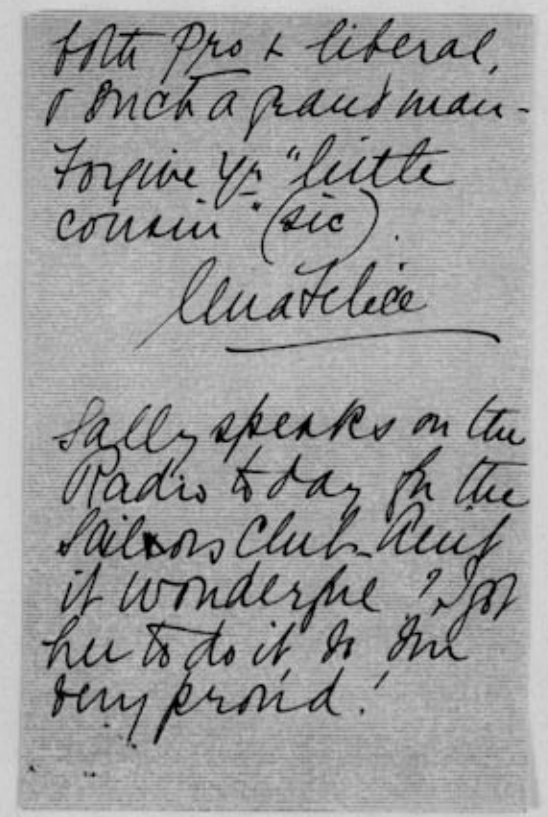
(3) Rather conservative liberal and a man of uneven abilities.

(4) In poor health at the present time.

T.G.C.



Friday -
Dearest Franklin -
Have you seen Chrystal
& Judge John Woolley
Van Colvin-as a
candidate for high
honors in the near
future! He is


both Pro & liberal,
& such a grand man -
Forgive Yr "little
cousin" (sic)
Alice Roosevelt

Sally speaks on the
Radio today for the
Sailors Club - Aren't
it wonderful? I'll
bet he to do it is one
very proud!

PSF: Corcoran

RECONSTRUCTION FINANCE CORPORATION

file

Paula:

I'd appreciate your calling me when you have had time to glance over these.

TGC

(M)

July 29, 1937

Executive
C. T.

THE WHITE HOUSE
WASHINGTON

June 15, 1937.

MEMORANDUM FOR

THOMAS G. CORCORAN

What do you make out of these?

F. D. R.

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

CLASS OF SERVICE

This is a full-rate Telegram or Cable-gram unless its de-ferred character is in-dicated by a suitable symbol above or pre-ceding the address.

WESTERN UNION

SYMBOLS

DL = Day Letter
Nld = Night Message
NL = Night Letter
LC = Deferred Cable
NLT = Cable Night Letter
Ship Radiogram

R. B. WHITE, PRESIDENT — NEWCOMB CARLTON, CHAIRMAN OF THE BOARD — J. C. WILLEVER, FIRST VICE-PRESIDENT

The filing time shown in the date line on telegrams and day letters is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination.

Received at 1938 JUN 5 PM 3 13

NBQ49 46 GOVT=SN WASHINGTON DC 5 1102A

HUGH A ODONNELL, THE COMMITTEE ON THE CONTITUTION=
HOTEL ASTOR=

HAVE PLEASURE IN ACCEPTING INVITATION TO SPEAK NEWYORKCITY LATTER PART THIS MONTH PLEASE ADVISE DETAILS STOP AM AT PRESENT CONFINED AT HOME DUE TO ILLNESS AND THEREFORE MUST ACCEPT INVITATION ON CONTINGENCY THAT I AM FULLY RECOVERED HOWEVER EXPECT TO BE AT OFFICE EARLY NEXT WEEK=
WILLIAM H KING.

WESTERN UNION GIFT ORDERS ARE APPROPRIATE GIFTS FOR ALL OCCASIONS

Charge to the account of _____ $ _____

1228 A

CLASS OF SERVICE DESIRED			
DOMESTIC		CABLE	
TELEGRAM		FULL RATE	
DAY LETTER		DEFERRED	
NIGHT MESSAGE		NIGHT LETTER	
NIGHT LETTER		SHIP RADIOGRAM	

Patrons should check class of service desired; otherwise message will be transmitted as a full-rate communication.

WESTERN UNION

CHECK

ACCT'G INFMN.

TIME FILED

R. H. WHITE, PRESIDENT — NEWCOMB CARLTON, CHAIRMAN OF THE BOARD — J. C. WILLEVER, FIRST VICE-PRESIDENT

Send the following message, subject to the terms on back hereof, which are hereby agreed to

HUGH A ODONNELL=ASTOR HOTEL= HT HOTEL ASTOR NY

JUN 8 1937

WILL BE PLEASE TO ATTEND CONSTITUTIONAL DINNER JUNE TWENTY NINTH AND AM GRATEFUL FOR HONOR CONFERRED UPON ME=

=PAT MCCARRAN

WESTERN UNION MESSENGERS ARE AVAILABLE FOR THE DELIVERY OF NOTES AND PACKAGES.

PSF: Coverman
TGG to Paula 7-29-37

ALL MESSAGES TAKEN BY THIS COMPANY ARE SUBJECT TO THE FOLLOWING TERMS:

To guard against mistakes or delays, the sender of a message should order it repeated, that is, telegraphed back to the originating office for comparison. For this, one-half the unrepeated message rate is charged in addition. Unless otherwise indicated on its face, this is an unrepeated message and paid for as such, in consideration whereof it is agreed between the sender of the message and this company as follows:

1. The company shall not be liable for mistakes or delays in the transmission or delivery, or for non-delivery, of any message received for transmission at the unrepeated-message rate beyond the sum of five hundred dollars, nor for mistakes or delays in the transmission or delivery, or for non-delivery, of any message received for transmission at the repeated-message rate beyond the sum of five thousand dollars, *unless specially valued*; nor in any case for delays arising from unavoidable interruption in the working of its lines; nor for errors in cipher or obscure messages.

2. In any event the company shall not be liable for damages for mistakes or delays in the transmission or delivery, or for the non-delivery, of any message, whether caused by the negligence of its servants or otherwise, beyond the sum of five thousand dollars, at which amount each message is deemed to be valued, unless a greater value is stated in writing by the sender thereof at the time the message is tendered for transmission, and unless the repeated-message rate is paid or agreed to be paid, and an additional charge equal to one-tenth of one percent of the amount by which such valuation shall exceed five thousand dollars.

3. The company is hereby made the agent of the sender, without liability, to forward this message over the lines of any other company when necessary to reach its destination.

4. Domestic messages and incoming cable messages will be delivered free within one-half mile of the company's office in towns of 5,000 population or less, and within one mile of such office in other cities or towns. Beyond these limits the company does not undertake to make delivery, but will, without liability, at the sender's request, as his agent and at his expense, endeavor to contract for him for such delivery at a reasonable price.

5. No responsibility attaches to this company concerning messages until the same are accepted at one of its transmitting offices; and if a message is sent to such office by one of the company's messengers, he acts for that purpose as the agent of the sender.

6. The company will not be liable for damages or statutory penalties in any case where the claim is not presented in writing within sixty days after the message is filed with the company for transmission.

7. It is agreed that in any action by the company to recover the tolls for any message or messages the prompt and correct transmission and delivery thereof shall be presumed, subject to rebuttal by competent evidence.

8. Special terms governing the transmission of messages according to their classes, as enumerated below, shall apply to messages in each of such respective classes in addition to all the foregoing terms.

9. No employee of the company is authorized to vary the foregoing.

THE WESTERN UNION TELEGRAPH COMPANY
INCORPORATED
R. B. WHITE, PRESIDENT

CLASSES OF SERVICE

TELEGRAMS

A full-rate expedited service.

NIGHT MESSAGES

Accepted up to 2:00 A.M. at reduced rates to be sent during the night and delivered not earlier than the morning of the ensuing business day.

Night Messages may at the option of the Telegraph Company be mailed at destination to the addressees, and the Company shall be deemed to have discharged its obligation in such cases with respect to delivery by mailing such night messages at destination, postage prepaid.

DAY LETTERS

A deferred day service at rates lower than the standard telegram rates as follows: One and one-half times the standard night letter rate for the transmission of 50 words or less and one-fifth of the initial rates for each additional 10 words or less.

SPECIAL TERMS APPLYING TO DAY LETTERS:

In further consideration of the reduced rate for this special Day Letter service, the following special terms in addition to those enumerated above are hereby agreed to:

A. Day Letters may be forwarded by the Telegraph Company as a deferred service and the transmission and delivery of such Day Letters is, in all respects, subordinate to the priority of transmission and delivery of regular telegrams.

B. This Day Letter is received subject to the express understanding and agreement that the Company does not undertake that a Day Letter shall be delivered on the day of its date absolutely, and at all events; but that the Company's obligation in this respect is subject to the condition that there shall remain sufficient time for the transmission and delivery of such Day Letter on the day of its date during regular office hours, subject to the priority of the transmission of regular telegrams under the conditions named above.

NIGHT LETTERS

Accepted up to 2:00 A.M. for delivery on the morning of the ensuing business day, at rates still lower than standard night message rates, as follows: The standard telegram rate for 10 words shall be charged for the transmission of 50 words or less, and one-fifth of such standard telegram rate for 10 words shall be charged for each additional 10 words or less.

SPECIAL TERMS APPLYING TO NIGHT LETTERS:

In further consideration of the reduced rates for this special Night Letter service, the following special terms in addition to those enumerated above are hereby agreed to:

Night Letters may at the option of the Telegraph Company be mailed at destination to the addressees, and the Company shall be deemed to have discharged its obligation in such cases with respect to delivery by mailing such Night Letters at destination, postage prepaid.

FULL RATE CABLES

An expedited service throughout. Code language permitted.

DEFERRED HALF-RATE CABLES

Half-rate messages are subject to being deferred in favor of full rate messages for not exceeding 24 hours. Must be written in plain language.

CABLE NIGHT LETTERS

An overnight service for plain language communications, at one-third the full rate, or less. Minimum of 25 words charged for. Subject to delivery at the convenience of the Company within 24 hours.

SHIP RADIOGRAMS

A service to and from ships at sea, in all parts of the world. Plain language or code language may be used.

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

CLASS OF SERVICE

This is a full-rate Telegram or Cablegram unless its deferred character is indicated by a suitable symbol above or preceding the address.

WESTERN UNION

R. B. WHITE, PRESIDENT — NEWCOMB CARLTON, CHAIRMAN OF THE BOARD — J. C. WILLEVER, FIRST VICE-PRESIDENT

SYMBOLS

DL = Day Letter
NM = Night Message
NL = Night Letter
LC = Deferred Cable
NLT = Cable Night Letter
Ship Radiogram

The filing time shown in the date line on telegrams and day letters is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination.

Received at

NBG37 16 GOVT=SN WASHINGTON DC 3 1059A JUN 5 PM 3 13

HUGH A ODONNELL=

HOTEL ASTOR=

I AM PLEASED TO ACCEPT INVITATION TO ADDRESS DINNER MEETING YOUR ORGANIZATION NEWYORKCITY JUNE TWENTY NINTH=

EDWARD R BURKE USS.

CONSTITUTION DINNER

HOTEL ASTOR TUESDAY, JUNE ~~26~~ 29, 1937

under the sponsorship of the

Committee on the Constitution

PSF Corcoran

"To coordinate the efforts of religious, patriotic and civic groups in defense of the Constitution and the Supreme Court of the United States."

Headquarters, Suite ~~350~~ 1000
Hotel Astor, New York, N. Y.

Mr. John Doe
Commodore Hotel
New York, N. Y.

Dear Mr. Doe:

America is facing a crisis over the Supreme Court issue. One distinguished Democrat said, "It is the greatest crisis since the Civil War" - it may prove so yet.

An equally grave aspect is the threat of reprisals against those United States Senators who have had the courage to resist the invasion of the Constitutional rights of the people, and who have acted in accordance with the dictates of conscience and their oath of office to support and maintain the Constitution of the United States.

Class has been arrayed against class until American Citizens have been afraid to raise their voices in protest, for fear of the opprobrium that might be attached to them such as "economic royalists" or other pet epithets.

Realizing that some agency must be set up, whereby citizens, regardless of partisanship, can be given an opportunity to express their desire to support and maintain Constitutional Government, financially or otherwise, some loyal citizens have organized the Committee on The Constitution so that all citizens may join under its banner to resist any further attempts to undermine Constitutional Government or to make the United States Supreme Court subservient to another Governmental branch.

The Constitution Dinner on the 29th of June is being given to create interest and raise funds for the above all important purpose. The support given this dinner will be a gauge as to how much the American people are really interested in their Constitutional welfare.

The enclosed telegram speaks for itself. Rights guaranteed us in the Constitution are in jeopardy. Will you join in this fight to preserve a precious heritage?

Believing that you are interested and wish to manifest your support of this movement, we are enclosing an invitation, together with reservation application, and trust that you will fill in the application indicating the number of tickets you wish to absorb, and forward to us by return mail.

May we again call your attention to the seriousness of this most vital issue, and ask that you give this matter your prompt attention.

Yours very truly,

Committee on The Constitution, Inc.

Hugh A. O'Donnell, President

DINNER COMMITTEE

☆

MAJOR JOHN V. BOUVIER,
President-General, Society of the Sons of the Revolution

GENERAL E. FRYE BARKER,
Governor-General, Colonial Sons and Daughters

ADMIRAL REGINALD R. BELKNAP,
U. S. N., retired

THOMAS F. BERKERY,
County Adjutant, American Legion

JAMES M. BLACKWELL,

EDWARD J. CONNOLLY,
President, Brooklyn Bar Association

JAMES V. DEMAREST,
Commander, Advertising Post, American Legion

MAJOR CHAS. A. DUBOIS,
Secretary, Sons of American Revolution

REGINALD FIELD,
Past Commander, 1st District, American Legion

ROSWELL O. FISH,
Secretary, Society of Second War with Great Britain

CHAS. T. GWYNNE

The very REV. MILO H. GATES,
Dean, Cathedral of St. John the Divine

JUDGE EDWIN L. GARVIN

DR. JOHN A. HARTWELL,
Director, N. Y. Academy of Medicine

GEO. M. HOLDEN,
National Commander, Society of the War of 1812

REV. J. HALL LONG,
President, Society of the Second War with Great Britain

CATHERINE R. B. MACKIE,
Chapter President, Daughters of the Revolution

REV. MALCOLM JAMES MACLEOD,
Pastor, Collegiate Church of St. Nicholas

HON. NEILSON OLCOTT,
Former Congressman from New York

FLORINE OSTENZI,
Executive Committee, American Legion, New York County

MRS. STANLEY LYMAN OTIS,
Regent, Daughters of the Revolution

JUDGE PETER B. OLNEY, JR.

REV. HAROLD PATTISON,
Pastor, Christ Church, Oyster Bay, N. Y.

LEEWELLYN G. ROSS,
Veterans of Foreign Wars

HON. HAROLD RIEGELMAN,
Former Chairman, New York Housing Administration

REV. EDGAR F. ROMIG,
Pastor, West End Collegiate Church

MONTGOMERY SCHUYLER,
President, Colonial Lords of Manors

MRS. PARLAN SEMPLE,
President-General, National Society of New England Women

JOHN J. SCHUSTER,
77th Division Association

REV. CHAS. D. TREXLER,
Pastor, St. James Lutheran Church

HON. CHAS. A. TUTTLE,
Former U. S. District Attorney

WM. T. VAN ALSTYNE,
President, Sons of the Revolution

MRS. ALICE C. WILLIAMS

MRS. FREDERICK WAKEMAN,
Past President, Federation of Women's Clubs

ALLEN ZOLL,
National Commander, American Patriots, Inc.

☆

FINANCE COMMITTEE

ROBERT P. LEVIS,
Leader, 11th Assembly District

HUGH A. O'DONNELL,
Papal Marquis

HON. THOS. I. SHERIDAN,
New York State Senator

TELEGRAM

The White House

Washington

1213pm

23 WU JM 23

Boston, Mass., Sept. 17, 1937.

The President:

My family joins with me in expressing our heartfelt thanks for your very kind letter that was read at my dinner last night.

Tommy.

file personal
PSF: Curran
(w)
PSF

PSF: Corcoran

COPY

ST. LOUIS STAR-TIMES

September 18, 1937

Mr. Thomas G. Corcoran
Washington, D.C.

Dear Tom:

This may be old stuff to you, but I have just read the full text of the Senate debate on Black of August 17, and get a definite impression from it that Burke wanted Black confirmed, having at that time enough information from Alabama to form the basis of the subsequent campaign, and thinking that it would be more effective with Black definitely on the court than if used to block his confirmation.

Note the tactics followed: Copeland made one of his typical blatherskite speeches on the Klan issue, to which nobody paid attention because it was rightly interpreted as a New York City campaign document. Burke then spoke, saying not one word about the Klan, but devoting himself to the Black-Hearst controversy. At the very conclusion of the debate, when Burke could no longer speak except on the time of other senators, he offered mild support to the motion to re-commit for study of the Klan charges, by saying that he had a statement from one Washington resident, and had been told by another, that they were present when Black was initiated into the Klan. Asked Tuesday when he got this information, he said Saturday, and that on Monday he had even tried to bring the matter before the Judiciary Committee. Challenged on this, he admitted that he had not mentioned the Klan to the committee, but had merely said there were matters that ought to be inquired into.

It is plain from this that Burke had material which would have forced re-commitment, if he had put the written statement into the Record and supported it with a speech demanding investigation, or that he could have forced an inquiry in the committee. His conduct shows that he wanted the issue to come up after confirmation. But would he have taken this course if he had not known that there was material for a big newspaper campaign? I think there is no doubt that the thing was handled on the theory that by confirming Black, and then starting a drive against him by proving his Ku Klux Klan membership, they could put the President in a spot from which he could not escape. And I am inclined to think that some newspaper publishers had a hand in the strategy at a very early date.

Get even a moderate share of the facts about this senatorial conspiracy, and the cabal will be hoist by its own petard, especially if it is shown, as I understand it can be, that Black did not deceive his colleagues.

You have no doubt heard the statement by Senator Borah, which he is making off the record to Newspapermen, that a group of senators sent a representative to Black and asked him if he belonged to the Klan; that he replied that he is not a member but gave a definite impression that he had been; and that the Senate Committee decided to forget the issue because they did not regard Black as a man with any religious or racial intolerance. Borah also said, I understand, that he would make a campaign defending Black if the President asked for his resignation. This information comes confidentially from Sam O'Neal.

Out here, Catholics are on edge about the Klan charges. Many resent the fact that our paper has not called for Black's resignation. I haven't heard of any concern among Jews, and I think Negroes are rather inclined to take it for granted that any southern judge is likely to be against them. What I'd like to see is a statement from Black showing an early break with the Klan on account of its intolerance, evidence that he did not deceive the Senate, an exposure of Burke and his accomplices, and then — when the occasion comes, a judicial opinion by Black upholding the constitutional rights of the Scottsboro Negroes. (Or a separate concurring opinion if Hughes won't let him speak for the court).

The President's speech, magnificent in what it said, was equally magnificent to my mind for its utter unconcern with the plot to destroy him.

With best regards,

(Irving Brant) Signed

PSF: Corcoran

TGC

Memorandum September 23, 1937

Bob Jackson told me today about the proposed executive order forbidding government departments to accept any competitive bids and citing a claiming instance of 40 identical bids for same supplies.

I should think it would be a waste of a great opportunity to release this order before the President's return and without building it up into a anti-monopoly issue which can be an additional excuse for an extra session and put the President in a position to voluntarily anticipating an issue which the rise of prices is going to force upon the attention of the administration anyway.

Merely forbidding of the acceptance of identical bids at this time and referring bids to the Department of Justice probably will interfere with the purchase of needed supplies by some departments and will put the Department of Justice on a terrible spot because as presently set up, the anti-trust division with its present personnel (possible under its present budget) simply cannot do anything about bids referred to them.

Wheeler, who has always taken the anti-monopoly issue for his own, will use this inability of the Department to act as an excuse for further attack by him on the efficiency of the Department and on the Attorney General.

It would seem possible to do this:

1. Hold the order until the President returns.

2. If there is to be a special session, include as reasons for the call as revealed by the trip across the country not only better income to the farmer (which ordinarily would mean higher prices to the consumer) and wage and hours law (which would mean higher prices to the consumer), but also a special appropriation for the Department of Justice to carry on a study of the revision of monopoly laws to determine how prices can be kept from going any higher. The 40 identical bid instance can be used to buttress this purpose as well as the noting throughout the country that prices have gone as the administration policy requires them to be, and now must be kept from going higher.

3. This plan as the additional value of putting a popular issue of stopping rising prices behind the bill for the special session, would make it impossible for many Congressmen and Senators, who would complain about the session, to do so.

The whole thing can be built up to something that will get the administration off the spot before other people put it on the spot with the issue of high prices. At any rate the possibility seems worthwhile waiting an executive order until the President's return.

by Tommy Corcoran.

J.F.

file PSF Creecian

November 22, 1937

MEMORANDUM TO MR. CORCORAN:

Here is the story I told you yesterday which you asked me to let you have in writing. I do not vouch for it as an authentic incident, but it a good story all the same:

Colonel Joseph Johnston, an ex-Confederate officer, when running for Governor of Alabama in about 1898 naturally looked for support among the soldiers who had fought under him. One of them, Jim Hatfield, through large family connections controlled about half the votes in one of the rural counties. Colonel Johnston approached Jim and asked for his support, but much to his surprise Jim replied, "Colonel, I aint a-gonna vote for you and aint none of my folks gonna vote for you."

The following conversation then took place:

Colonel Johnston: "Jim, I am very much surprised at your attitude. Don't you remember that after the Battle of Shiloh you were brought up for court martial for going in the wrong direction in a big hurry, and I defended you? I argued that you were a brave soldier but had been sick and hadn't had anything to eat for a long time, and as a result you were cleared instead of being shot for cowardice."

Jim: "Yessir, you did that."

Colonel Johnston: "Well, don't you remember that after the war was over you came home broke and I gave you a hundred and twenty acres off my plantation, let you have a pair of mules, and started you out farming?"

Jim: "Yessir, Colonel, you did that, too."

Colonel Johnston: "Well, don't you remember that after you got going pretty well you played the fool and borrowed a lot of money and mortgaged your home and were about to lose it in 1892 and I came to your rescue again and paid off the mortgage on your home?"

Jim: "Yessir, you did all them things, but you aint done nothing for me right lately."

THE WHITE HOUSE
WASHINGTON

PSF: Corcoran

December 8, 1937

Dear Tommy:

I send this to you with the suggestion that you speak to the President personally about it. Let me know if you do it?

With my best wishes to you,

Very sincerely,

James Roosevelt

James Roosevelt
Secretary to the President

Mr. Thomas G. Corcoran
Reconstruction Finance Corporation
Washington, D. C.

B. & G. GARMENT CO.

Chicago

I regret to inform you that Sidney Hillman is seriously ill of pneumonia. While he has passed the crisis, he has been in an oxygen tent, and no one is permitted to see him.

However, for your information, Sidney Hillman, in our early negotiations, directed that his counsel, Merle D. Vincent, assist us in every way possible. Mr. Vincent has just left my office and stated that that interest was still intense. You may say, therefore, to those interested that Sidney Hillman's counsel, speaking for Sidney Hillman, is tremendously interested in bringing about the release of Gisnet, because from the workers' standpoint they are exceedingly anxious that the supremacy of the dress goods industry of the Middle West be maintained in the Chicago area.

I sincerely hope, therefore, that the White House will request the Attorney General to re-submit his previous favorable recommendation to the President for reconsideration.

February 26, 1937

HONORABLE HOMER CUMMINGS
ATTORNEY GENERAL OF THE UNITED STATES

ON BEHALF OF CHICAGO APPAREL BUSINESS AND ORGANIZED LABOR WE APPEAL TO YOU PREVENT TRAGEDY UNEMPLOYMENT AFFECTING THOUSANDS IN CASE OF GISNET MINSKY AND BURR OPERATING AS B AND G GARMENT COMPANY STOP GOVERNMENT COLLECTED FULL TAX PENALTY AND INTEREST STOP THIS FIRM LED IN ABOLITION CHICAGO SWEAT SHOPS STABILIZED LABOR CONDITIONS MADE CHICAGO WESTERN CENTER DRESS INDUSTRY STOP JAIL SENTENCE MEANS CLOSING PLANTS DESTRUCTION OF CHICAGO AS BUYING MARKET SENDING TO JAIL WILL RESULT ABANDONMENT THREE FACTORIES MANAGEMENT EXTREMELY PERSONAL NO ONE TRAINED TAKE PLACE ANY ONE OF THESE MEN STOP ASSISTANT ATTORNEY GENERAL MORRIS FEELS HE CANNOT TAKE RESPONSIBILITY FOR MAKING RECOMMENDATION AFTER SENTENCE CONTRARY TO POLICY OF DEPARTMENT WE BELIEVE EXTRAORDINARY CIRCUMSTANCES JUSTIFY EXCEPTION TO POLICY IN THIS RESPECT STOP UNDERSIGNED REPRESENT JOINT APPEAL LABOR AND BUSINESS ASKING EITHER CLEMENCY SUSPENSION SENTENCE OR DEFINITE RECOMMENDATION FOR PROBATION

David Dubinsky, President, International Lady Garment Workers' Union

Sidney Hillman, President, Amalgamated Clothing Workers

Melvin D. Hildreth, Counsel for Chicago Association Dress Manufacturers.

M. D. Vincent, Washington Counsel International Lady Garment Workers' Union

L. W. Beman, Regional Director, National Labor Relations Board

Glenn G. Hayes, Chicago Wholesale Market Council

PSF: Corcoran (5)

January---1938

Note to Tom Corcoran from Clifton Durr, Justice Hugo Black's brother-in-law about Black wanting to see the President but doesn't think it wise to come before the opinion he is preparing is finished.

Attached is letter to Black from G. C. Brittain, treasurer Calhoun County, Anniston, Alabama.

SEE--Supreme Court folder-Drawer 2--1938

PSF: Tom Corcoran

January--1938

Message from Tom Corcoran

In re-Senator Pepper and Gov. Shultz.running for Senatorial nomination.

SEE--Senate folder-Drawer 2--1938

PSF: Corcoran

THE WHITE HOUSE
WASHINGTON

January 27, 1938.

MEMORANDA -- T. G. C.

Crump has sent a letter to the President.

Hillman is coming North from Florida, arriving after the United Mine Workers Convention, to make peace within the C.I.O. and between the C.I.O. and the A. F. of L. That means there will be real attempts at overtures in about a week. Dubinsky, under the control of the Lovestone-Martin group, not anxious for peace.

Burgess Meredith, the head of the new Actors organization in New York has written in about Eddie Dowling's brother. It might be well to keep a contact with Meredith.

Lewis gave this message to me. He had heard that Governor Allred of Texas was going to be boosted for the head of the Criminal Division of the Department of Justice. If anything happened to Brion McMahon, it is part of the Governor's purpose to have enforcement of the law against the Labor Unions in Texas. Allred is very violently C.I.O.

Lewis hopes nothing of this kind will be done.

I want to remind you of Charlie Michelson's talk with me that the New York situation is so desperate that it cannot wait for any further drift except as a very conscious strategy, and suggestion is that you and Jummy and Bob Jackson sit down together, Michelson not wanting to be in the room so that he can take orders as to what he is to do, without any personal part in the choice.

Sage Brush

PSF: Corcoran

File personal

New York City
April 14th 1938.

Mr. Thomas G. Corcoran
Rm. 1017, 1825 H St., NW
Washington, DC

Dear Mr. Corcoran:

Is the New Deal passing? Is Washington leaderless?

After several days in the Capital we are not happy about the look of things there. The more we looked and the more we heard the gloomier we became and, to end this, left days before we had planned to do so. It had been our purpose to learn whether there really was a program in hiding some place and, if we liked it, to slant our letters accordingly for the balance of the session.

With this in mind we talked with gentlemen of the Senate and of the House and of the press. We talked, too, with some of those unofficial, non-political occasional conferees of the President, the mere thought of whom causes our apoplectic contemporary, General (Outburst) Johnson, to bust his pants. Boy! Does he blow up? All that we got out of all this was a sense of alarmingly increasing confusion and uneasiness growing out of the continued absence of plan or leadership in a situation becoming more critical by the minute.

This state of things is not confined to the Capital. While we had found, at the beginning of our Western trip last November, an air of confidence contrasting sharply with the growing eastern gloom, increasing uneasiness appeared as the weeks passed and even staunch supporters of the Administration were beginning to waver, wondering why nothing was done as the depression deepened, why the New Deal legislation was being battered to a pulp, why the New Dealers had apparently bogged down before the opposition. Had the New Deal been abandoned or was there, after all, no program? What had happened to New Deal leadership?

With the events of last week much of this wavering has assuredly crystalized into loss of faith in an Administration and personality that, for a time, brought high hope to the plain millions. Last week, confused and with faith already weakened, those millions witnessed defeat on all fronts to the policies and the leadership that they had adopted as their own and overwhelmingly voted for less than eighteen months ago. The hardworking henchmen of the economic royalists and the "practical" politicians won all their points hands down. Finally, such mild and necessary legislation as the reorganization bill was permitted to go to a defeat engineered by special interests and cooperating, or gullible, congressmen, who employed preposterous misrepresentation, obviously for the main purpose of breaking the President rather than the bill.

The week went, lock, stock and barrel, to the Garner, Glass, Baruch conspirators, with apparently hardly a turn of the hand against them at the White House. Baruch and his share cropper boys (just produce the crops and they will take their speculative share) merely used the excess profits tax as a blind to kill or alter the capital gains tax, which eats up those speculative profits. Garner and Company are out to break the President for two principal reasons. First, to eliminate any possibility of his control of the next National Convention, so that they can themselves run the show. Second, (great-hearted friends of the working people that they are) to defeat wage and hour legislation at any cost so that the southern share

croppers will not be spoiled by bread and butter three times a day. These obnoxious specimens of the old time politico run true to form in that they are so obtuse that they fatuously believe that they can break the President just to the point at which they will not ruin themselves and the Democratic Party. Unless the President again assumes objective and aggressive leadership they will certainly do both.

But to all this the response of the White House has been a sweetly worded turning of the other cheek and the propitiatory offering of $4,000,000,000 worth of meat to fill the empty pork barrels of his opponents. Harry Hopkin's Social Worker's Program is proposed in full and railroads, industry and sick business in general, that any self-respecting and honest bank could not think of making a loan to, are to be made the beneficiaries of additional charitable billions.

Garner, Glass and their Mountain Boys swiftly approved this feast for the "profits first" lads. Nor are state, county and city politicians omitted from the banquet. Oh, yes, and there are the destitute unemployed. No, They have not been forgotten. By working for it, on a less than going wage standard, they will get half of a certain amount, the other half again going to none other than the profit first boys for materials. Four billions are to be spent precisely as more billions than this have already been spent, with the current depression the end result, and the same result is again assured - with added billions of public debt.

Garner and Company are going to take this manna gladly, but not with gratitute. They are going to take it to sharpen those Big Bad Wolf tusks, the better to bite the hand that feeds them. Now these birds, and their northern confreres of both parties, never have been New Dealers in fact, and the sooner they are included out, the better. Just give them enough rope and they will hang themselves, but they cannot be swerved from their New Deal busting by soft words and barrels of pork. There is only one way in which these Old Dealers can be prevented from either ruling, or ruining what they cannot rule. Only a definite plan, approved by the great masses of voters, and a vigorous leadership similarly approved can accomplish this.

There was a plan and there was such leadership. What has happened to these is a question that is now confusing and upsetting the whole nation. That leadership, this writer believes, can still be regained, but only by presenting a definite plan founded solely upon the greatest good for the greatest number, and drawing the issues so sharp and clear that there can be no evasion. There must be a socking with both fists from now until the mid-term elections are over. Force the separation of the black sheep from the white and expose them with no compromise. If they stand in the way of the best interests of the millions whose votes put them in there under the impression that they were New Dealers - off with their heads, and no nonsense about it. A large part of that democratic majority would be well lost. The balance would then be forced to fight against Republican opposition instead of among themselves.

The times and the people cry aloud for a real LEADER, and will not tolerate the grasping, exploitative control of a conniving bunch of political throw backs. Unless this leadership emerges, both the President and the Democratic Party face abysmal failure at the most critical time in the world's history. The lead can, and should, be taken upon the clearly drawn issues of a real wages-and-hours law with the essential price regulation, and the distribution of Federal emergency funds solely and directly to the destitute unemployed for whom they are designed, leaving business, as it has so long and stridently insisted, to look after itself.

Cordially,

Sage Brusby

86 Madison Ave., New York City

Constituent-at-Large

THE WHITE HOUSE
WASHINGTON

June 16, 1938.

MEMORANDUM FOR THE PRESIDENT

MONOPOLY APPOINTEES:

I heard yesterday from Bob McCormick, a usually reliable newspaperman, that he had talked with O'Mahoney about the Monopoly Investigation. O'Mahoney told him that he (O'Mahoney) had been trying to get control of the money away from the President and control of the whole committee for Garner. Garner's purpose was to put Bennett Clark on the committee to use the committee to wrap Bennett Clark with a "liberal issue" of anti-monopoly over the next year so that he would be available as a "liberal" for 1940. There would be an attempt to tie this up with the historic championship of anti-monopoly by Champ Clark, his father.

This would seem to make it important not only to pick the members of the Congressional Committee carefully but also even the members representing the Executive Departments.

THE WHITE HOUSE
WASHINGTON

-2-

There are three Departments on which it might be necessary to be particularly careful -- Federal Trade Commission, Commerce and Treasury.

(a) Federal Trade Commission -- the most cooperative man - most willing to go along in the Executive block and accept direction - would be young Freer, your own appointee. He has the additional advantage of being a Republican in name and, therefore, give the Executive appointees some bi-partisan flavor.

(b) From Commerce the appointee ought to be Patterson -- a fresh face -- who will not have the weaknesses and the accumulated distrusts of the Department that almost anyone else will bring to people in Justice, Securities Commission and Labor.

(c) From Treasury the appointee ought to be Oliphant, who is the only subordinate completely free, conscious or unconscious, from New York influences.

PSF: Corcoran

file
private
Tom Corcoran
1-V

THE WHITE HOUSE
WASHINGTON

Give this memorandum to the President when the group comes in on ~~Monday~~ Friday, June 24th, at 12.30 P.M.

THE WHITE HOUSE
WASHINGTON

24

June 17, 1935.

MEMORANDUM FOR

THE SECRETARY OF THE TREASURY
THE SECRETARY OF COMMERCE
THE ACTING SECRETARY OF LABOR
CHAIRMAN, FEDERAL TRADE COMMISSION
CHAIRMAN, SECURITIES & EXCHANGE COMMISSION
ASSISTANT ATTORNEY GENERAL ARNOLD

Before representatives are appointed to sit on the Monopoly Committee, under a Joint Resolution which I have just signed, I think we should have an informal meeting. Would you be good enough to come to my office at 12.30 P.M. on Friday, June twenty-fourth?

F. D. R.

PS F. Corcoran

THE WHITE HOUSE
WASHINGTON

June 24, 1938.

MEMO FOR THE PRESIDENT

Both Lewis and Hillman are entirely agreeable to the labor part of the speech.

PSF: Corcoran

file private

THE WHITE HOUSE
WASHINGTON

June 24, 1938.

MEMO FOR THE PRESIDENT

Lewis talked with Lamont this morning and told him just what he thought of him for his cut in wages and told him it was very harmful. Lewis said that if you wanted to perhaps you could call Lamont and add another word about it but Lewis is not asking you to do it but Lamont wants an excuse to come down and talk with you.

PSF: Corcoran

TELEGRAM

The White House
Washington

felt personal

46wumc 80

Chicago, July 7,1938.

COL.M.H.MCINTYRE.

Have consulted Chairman of our board and other directors and while they want to cooperate to the fullest extent and I think our record has shown we have always cooperated with every branch of the present administration. It is felt that it is impossible at the present time to spare the services of Mr.Nelson. Feel it would be detrimental to interests of this company and its stockholders. Also believe that for a short tenure it might not benefit interests of the government.

R.E.Wood,
Sears Roebuck & Co.

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

P.S.F. Corcoran

1201-S

CLASS OF SERVICE

This is a full-rate Telegram or Cablegram unless its deferred character is indicated by a suitable symbol above or preceding the address.

WESTERN UNION

(29)

R. B. WHITE, PRESIDENT — NEWCOMB CARLTON, CHAIRMAN OF THE BOARD — J. C. WILLEVER, FIRST VICE-PRESIDENT

SYMBOLS

DL = Day Letter
NM = Night Message
NL = Night Letter
LC = Deferred Cable
NLT = Cable Night Letter
Ship Radiogram

The filing time shown in the date line on telegrams and day letters is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination

Received at Louisville, Ky. 1938 JUL 8 PM 4 30

RXJA644 42 GOVT=THE WHITEHOUSE WASHINGTON DC 8 517P

MISS M A LEHAND, PERSONAL SECRETARY TO THE PRESIDENT=

ABOARD PRESIDENTIAL TRAIN LVILLE=

HILLMAN TELEPHONED ME HE HAD HEARD ROSENWAWD REFUSED TO PERMIT NELSON TO ACCEPT PLACE AS ADMINISTRATOR OF WAGE HOUR BILL DESPITE GENERAL WOODS APPROVAL STOP HILLMAN BEGS FOR OPPORTUNITY TO CONSULT BY TELEPHONE OR TELEGRAPH OR INTERMEDIARY BEFORE OTHER OFFERS ARE MADE=

TOM CORCORAN.

RY

ROSENWAWD.

file personal

PSF: Corcoran

July 9, 1938

MEMORANDUM TO MISS LEHAND:

Dear Missy:

Pursuant to instructions:

(1) I talked with Noble, Chairman of the new Aeronautics Board, and told him that--

(a) Garrison Norton was suggested for Secretary;

(b) John Stuart was suggested for Public Relations Counsel; and

(c) Bryce Claggett, McAdoo's son-in-law was suggested to fit into the situation somewhere as counsel to the Safety Board, or otherwise.

Noble was very frank about Claggett -- said:

(a) Noble would prefer, if it was permissible, to have a lawyer of the Commission's own choosing -- and of his own choosing -- whom Noble knew the way Kennedy had known John Burns;

(b) Noble had heard about Claggett's reputation in California as a political lawyer.

(c) Noble thought Claggett's appointment at this time in the key position of counsel to the Commission when so many "certificates of convenience and necessity" on which the very life of the airlines depended would largely be under counsel's hands, was like putting McAdoo in that position; and

(d) Noble thought that putting Claggett in that position would be construed in the industry as putting McAdoo in a position to shake down the transcontinental airlines.

I then suggested Guthrie, pursuant to my conversation with the President. Noble is meeting Guthrie on Monday or Tuesday and is calling the Board together for Thursday of this coming week. Meanwhile, all details of the budget and of space, etc., are being arranged between Noble and Hester.

(2) I delivered a message to Robert Bruere, Chairman of the new Maritime Mediation Board that Ferdinand Hoyt and Hampson Gary were between them to be General Counsel and Secretary of the Maritime Mediation Board -- whichever way Bruere could work it out.

(3) I delivered a message to Seavey, Chairman of the Power Commission that the President wished the Commission would wait until the President's return to give the President an opportunity to consult with the Chairman about the selection of a General Counsel to succeed Oswald Ryan.

(4) I delivered the same message to McNinch, who told me he was already half over the dam in appointing Dempsey, son of Congressmen Dempsey of New Mexico, but that he would try to hold the situation until the President returned.

T.G.C.

All very confidential
Please don't forget Murray's letter.

PSF: Corcoran

file personal

July 15, 1938.

MEMORANDUM to the President.

1) The enclosed memorandum from Philip Murray gives the workers' version of the most recent development in the steel wage situation.

2) At the conference with Kennedy, Lamont very clearly indicated that (a) no wage cuts, however arrived at, would go into effect until sometime in the Fall and after there had been a chance to see what the pickup in volume might be; (b) the steel companies would like immediately to reach an agreement with Philip Murray and Lewis as to a scale of wages which would be "economic" provided steel production did not turn upwards, and as to a date in the Fall at which such schedule of wages would be put into effect provided production had not reached a given point.

Ben and I indicated that we thought it was unfortunate to take any rigid position as to pay schedules and dates, and that the whole matter should be postponed until the Fall, then to be taken up in relation to the new circumstances which might be then existing.

The enclosed memorandum from Murray indicates that Lamont through Fairless is nibbling away again at Lamont's scheme.

3) The vital problem is to play for time. When the steel price cut was announced steel volume was at approximately 26% of capacity. Now, volume is at approximately 32% of capacity (even with uncertainties arising from the elimination of differentials - which is all to the advantage of U. S. Steel). If production during the next few months should get beyond 40% capacity it would be exceedingly difficult for the companies to justify a wage cut.

4) Lewis and Murray are taking a "tough" position to delay the giving of any notice under their contracts of a reconsideration of the wage scale.

We are keeping Harry Hopkins advised as to developments.

A situation may arise where some kind of intervention by the President may be desirable - either an anticipatory letter to Lamont before sailing saying the President hopes Lamont will not let the situation be precipitated while the President is away or a cable from the President after sailing asking that the situation be kept in status quo until the President returns.

Thos. G. Corcoran.

United Mine Workers of America

JOHN L. LEWIS
PRESIDENT

AFFILIATED
WITH THE C. I. O.

UNITED MINE WORKERS' BUILDING
Washington, D.C.

July 14, 1938

Mr. Thomas Corcoran
1615 New South Building
Department of Interior
Washington, D. C.

Dear Mr. Corcoran:

I am enclosing herewith a memorandum addressed to yourself and Mr. Cohen, which is an account of Mr. Lewis's, Mr. Pressman's, and my meeting with the representatives of the United States Steel Corporation.

Yours very truly,

Philip Murray

PM:BS

United Mine Workers of America

JOHN L. LEWIS
PRESIDENT

AFFILIATED
WITH THE C. I. O.

UNITED MINE WORKERS' BUILDING
Washington, D.C.

July 14, 1938

MEMORANDUM TO MESSRS. THOMAS CORCORAN AND BENJAMIN COHEN:

Yesterday, July 13, Mr. Benjamin Fairless, President of the United States Steel Corporation, Mr. William Beye, Vice President in Charge of Industrial Relations of the United States Steel Corporation, and Mr. Thomas Moses, Acting Vice President of the United States Steel Corporation, met with Mr. John L. Lewis, Mr. Philip Murray and Mr. Lee Pressman, at the Shoreham Hotel, at which time the representatives of the United States Steel presented to the representatives of the Steel Workers Organizing Committee a request for a reduction in wages.

Mr. Fairless explained that the price cut, which is now in effect in certain of the products and will be effective in all of their commodities October 1st, will average five dollars per ton. He, Mr. Fairless, explained that the losses incident to these cuts will be too large for them to carry. He stated that the necessity for the cuts was forced upon them, first, by their competitors, who were reducing prices on certain commodities; secondly, by the federal administration through its criminal and congressional investigations; and thirdly, by the practice of the federal government in awarding constantly favorable contracts

for Government supplies to concerns which were violating the National Labor Relations Act and constantly chiseling on the price structure.

Mr. Fairless continued to state that leaders of the Steel Workers Organizing Committee should work with them, the steel corporation, cooperatively in effectuating by agreement the wage cut, and that this should be done as expeditiously as possible. Fairless also expressed a belief that if it were not done by us, meaning the steel workers and the corporation, that in all likelihood it would be done by some of the independent steel companies who had no contractual relations with the Steel Workers Organizing Committee.

The C.I.O. representatives resisted the suggestions of Mr. Fairless and his associates and pointed out that a wage reduction in the steel industry would result in immediate demands for wage decreases in the automobile industry and all other major industries. The representative of the C.I.O. asserted that they could not undertake to engage in a move that would inevitably deflate the entire national wage structure and reduce the national income by some billions of dollars. Mr. Fairless admitted that if a wage reduction in the steel industry became effective all other industries would have to follow, and he asserted that in his estimation such a contingency was a desirable one. The C.I.O. representatives asserted that it was unlikely that independent steel companies would reduce wages, pointing out that the hearing called by the Department of Labor on July 25th for the fixation of prevailing wages in the steel industry governing Government contracts would prevent reductions in wages by all companies desiring to participate in Government business. At this point Fairless expressed the opinion that there ought to be uniformity in wage rates, but continued to express his desire for an immediate wage cut.

This present demand of the United States Steel Corporation runs to the question of the entire national wage policy of organized labor and the federal administration. It possesses implications that involve public policy and domestic security at a time when it is the consensus of opinion that improved volume of business is in sight, with an upward trend in all lines of activity, including steel, which for the current week has improved its production position from 24 points to 32.9. Unquestionably, when volume operation in the United States Steel plant reaches a figure slightly in excess of 40%, United States Steel Corporation will be operating in the black.

The conference lasted throughout a period of seven hours. It terminated with the statement from Mr. Fairless that no public action would be taken by the corporation on this question during the present week, and that before any formal action was taken, Messrs. Lewis, Murray and Pressman would be privately advised. In all likelihood, official and public notice might be given C.I.O. representatives for a formal conference by the beginning of next week.

PSF: Corcoran

TELEGRAM

The White House

Washington

Memo. for S.T.E., PK

WX 10-7-38
1025am

(1) Sidney pressing me for hope on that Chrysler situation I wired you about yesterday.

(2) Duchess of Atholl hoping she's going to be asked to Hyde Park for a command performance.

(3) Have spoken to Woodring, written a completely New Deal speech and told him of your insistence that he take it. Copy gone to you airmail.

(4) Re Railway Mediation. Suggestion made yesterday at R.F.C. that Labor leaders in a political spot among themselves cannot possibly consent to anything called reduction or deduction and save face. Proposal for compromise as follows: Present wage scale includes 10 per cent increase granted last year on basis of earnings over six months period from November to March. Mediation Board might therefore propose that this last increase be "suspended" not "reduced" or "deducted," until another six months period of gross earnings recurs equivalent to that existing before 10 per cent increase was granted. It was suggested that this could be sold to the roads.

For the President to read

F.D.R.

Corcoran.

Private PSF: Corcoran

THE WHITE HOUSE
WASHINGTON

Oct. 28, 1938.

MEMO FOR THE PRESIDENT from T. B. C. Douglas.

Paul Shields telephoned from New York and asked if I would please send the following message as quickly as possible:

Shields said Willkie and Carlisle put on a big show at a meeting of utilities yesterday about who is going to get the credit for the national defense power move. Willkie and Carlisle want to get the publicity for themselves as having been the persons who brought it about and Willkie in particular is trying to come up from behind in the picutre.

Shields belives that Groesbeck of Bond and Share, who is now the critical personage in Government power relations ought not to be pushed into the background in the matter, as Willkie and Carlisle are trying to do.

Shields also said that Willkie and Carlisle are going to try to get into the White House sometime today.

At the Press Conference Monty is going to ask the question about the national defense power meeting.

PSF: Corcoran

THE BOSTON HERALD
MORNING AND SUNDAY
BY THE BOSTON HERALD TRAVELER CORPORATION

Boston Traveler
EVENING
IN THE COMMONWEALTH OF MASSACHUSETTS

FRANK W. BUXTON
Editor

BOSTON MASSACHUSETTS

T. G. Corcoran

June twelve
1 9 3 9

PERSONAL

Dear Miss LeHand:

I have been asked by a common friend of uncommon judicial and non-judicial qualities to send you the enclosed editorials from The Boston Herald. I don't know the whereforeness of the request, but when a Justice of the Supreme Court, not speaking in his judicial status, craves a favor, it's not mine to reason why.

Macleish appt'd ?

Possibly your Chief will be interested in a mere Republican editor's comment on a little address which Thomas Corcoran made here Thursday night to ten hard-boiled companions at a dinner party. His words were the most eloquent, powerful and altogether impressive I have heard in a lifetime of listening to speeches, prepared and unprepared. His defense and justification of the President were thrilling -- and I ain't choosing my adjective promiscuously. I think that if Mr. Justice Frankfurter, who, himself, is not usually inarticulate or uneloquent, had spoken, even he would have suffered by comparison with his former student.

Sincerely,

F. W. Buxton

Miss Marguerite LeHand, Secretary to
His Excellency,
Franklin D. Roosevelt, President of the
United States

PSF: Corcoran
file personal

THE WHITE HOUSE
WASHINGTON

June 13, 1939.

MEMORANDUM FOR

THE PRESIDENT from Corcoran

1. A message from McNinch:
Since the Olds' announcement, Manly has been edging around the other Commissioners to arrange for their support to make him Chairman.

2. McNinch thinks it would be fatal to make Manly Chairman -- that it would perpetuate the present division within the Commission and would perpetuate the suspicion of the Commission that exists among the public power people.

3. McNinch renews his recommendation that Olds be made the Chairman because Manly through old friendships will play with Olds and the public power group (National Popular Government League -- Judson King, etc.) which is ferociously anti-Manly, Ickes, et al, will play also with Olds -- and a new man can cement the Commission together whereas an old partisan cannot.

4. McNinch suggests as a technique that you call Seavey, now Republican Acting Chairman, and Scott and later Manly, suggesting that you think it would best

harmonize all interests if Olds were made Chairman, complimenting Seavey on the job he has done as Acting Chairman and suggesting that you would like to have Seavey made permanent Vice-Chairman.

5. Under the terms of the Federal Power Commission Act, the Commission elects its own Chairman to serve throughout the length of his term. There is no Chairman at the present time. The election of Olds as Chairman now, at the beginning of a new five year term, will mean he will continue as Chairman to give the Commission continuity of policy over five years.

6. Mead Bill - Two dangerous things are happening to the Bill. Wagner, under uneasy pressure from the big New York banks, is suggesting, as head of the Committee on Banking and Currency, that the Bill be put over until next year. He has called Eccles for encouragement and Eccles, who hopes to supplement the Bill by an elaborate scheme of new credit facilities through the Federal Reserve, is encouraging Wagner to put the Bill over.

That means no help to small business until next session -- too late for political purposes -- and it means that the value of nearly a billion dollars, potential new money in the economic system before the crucial time of

of next Spring, is also lost.

Morgenthau has reported no objections to the Bill, provided the loans are held down to $25,000. At the present time the Bill provides for loans up to a million dollars -- that is to fill in the gap up to a million dollars, which is the lowest amount at which any underwriting banking house can afford to consider a public issue of securities. This margin between $25,000 and a million means the difference between being able to make loans to retail businesses and loans to small factories for new machinery and equipment -- the latter probably the soundest loans of all that can be made under the program. It would not seem wise to cut the size of the loans down merely to "haberdashery loans", and it loses it real value politically and economically to put the Bill off until next session where it will have no effect before election.

Telephoned in by T. G. Corcoran

THE WHITE HOUSE
WASHINGTON

June 20, 1939.

MEMORANDUM FOR

T. G. C.

I thought you might like to see the enclosed. When do you make your next public appearance? I should like an invitation.

Please return enclosure for our files when you have finished with it.

M. A. Le Hand
PRIVATE SECRETARY

(Enclosure)

Letter from Frank W. Buxton, Editor, The Boston Herald, Boston, Mass., 6/12/39 to Miss Lelland. Referring to Mr. Corcoran's address in Boston, Mass., last Thursday night. (Thomas G. Corcoran)

June 30, 1939.

Dear Mr. Buxton:-

Thank you ever so much for your awfully nice letter of the twelfth with which you sent editorials on MacLeish's appointment. I personally think it is a grand one and I feel confident that he will be confirmed within the next few days.

I am delighted to hear about Tom Corcoran's speech.

×1560

It was nice to hear from you again.

×160
×160-Endorsement MacLeish

Very sincerely yours,

M. A. Le Hand
PRIVATE SECRETARY

Frank W. Buxton, Esq., Editor,
The Boston Herald,
Boston,
Massachusetts.

×FF782

PSF: Corcoran

File forward (2)

THE WHITE HOUSE
WASHINGTON

June 23, 1939

MEMORANDUM FOR: The President.

This is McNinch's advice on how to handle the problem of making Olds Chairman of the Federal Power Commission - which McNinch thinks is the only possibility of making the Power Commission pull together.

"Call up - or better, call in - Seavey, the present Republican Vice-Chairman of the Commission who is acting as Chairman in the absence of a duly elected Chairman.

Under the terms of the statute the Chairman is elected by the Commission for the full length of his term. One of the best reasons for electing Olds Chairman is that he has the longest term to serve which will give him the longest term as Chairman.

Seavey might be complimented on the job which he, a Republican, has done as Vice-Chairman and given to understand that it is hoped he will remain as the minority leader, being continued as Vice-Chairman until his term expires next year.

Seavey's is the next term to expire and in view of the present political balance on the Commission, despite the fact he is a Republican, his place could be filled by a Democrat. Therefore, it might be wise to avoid definite commitments now to reappointment of Seavey at the end of his term next year, although he has given magnificent cooperation.

After complimenting Seavey on his work as Vice-Chairman and expressing the hope that he will continue

as Vice-Chairman, he could be asked if he won't go along with the election of Olds because of the pointing up of the work of the Commission toward the St. Lawrence project, and the fact that Olds through old acquaintance with Manly can properly knit the Commission together.

Word should be sent to Manly and to Scott through Seavey. For the sake of harmony on the Commission, it is hoped they will be willing to vote for Olds as Chairman -- also bringing in the argument about continuity of policy of making the man with the longest term Chairman. Scott is a bit touchy about receiving messages from anyone except directly from headquarters - from the White House. Possibly in addition to the message from Seavey, a message should be sent to Scott."

T. G. C.

PSF: fill Corcoran 2

Memo to the President
From Tom G. Corcoran ---July 1, 1939

Attaches speech of Senator Guffey
which he made over national hook-up
on July 3rd.

SEE: Senate folder --Drawer 2--1939

file preserved

PSF: Corcoran

THE WHITE HOUSE
WASHINGTON

July 13, 1939.

MEMORANDUM FOR

THE PRESIDENT

T. G. C. said John L. Lewis is perfectly furious about the McNutt appointment and is completely off the reservation. T. G. C. said he would not repeat what you actually said when Lewis' message was taken to you the day you saw McNutt.

Tommy suggests that perhaps you would like to send a note to John and say his message arrived after you had offered the post to McNutt, and that you are sure his fears are over-emphasized and you feel confident that everything will work out all right.

G.

PSF: Corcoran file personal Corcoran 2

THE WHITE HOUSE
WASHINGTON

July 14, 1939.

MEMORANDUM FOR

THE PRESIDENT

T. G. C. said that Chairman Raymond B. Stevens of the Tariff Commission had heard in his Commission that Henry Grady, who is a member of the Commission, was going to take Sayre's place in the State Department and that Grady had promised Waring, also in the Tariff Commission that he would get Grady's place. Stevens wants to protest ~~to~~ this because he says it will raise hell in the Commission and he asks that you do nothing about it until he has had a chance to talk with you.

PSF: Corcoran File Personal

TELEGRAM

The White House
Washington

THE WHITE HOUSE
JULY 23 1939.

Miss LeHand.

F.M. thought you would want this information before conference tomorrow.

On Friday all five Michigan congressmen polled for a draft president movement and accordingly F.M. called a meeting of the Wayne county committee, which is Detroit and all surviving Michigan Democratic office-holders, representing at least 40 per cent of Michigan Democratic vote. Committee adopted third term draft resolutions and appropriated funds to set up headquarters.

Little Flower called me to discuss Brooklyn district attorney matter of which he had heard. Urged that Brooklyn organization could not be held in line satisfactorily except as he put it "with a hangman in the house" and strongly urged new district attorney should not be a member of local organization or under local influence. He offered to help with pressures in any way you suggest.

Pepper has received his invitation to be key-noter at young Democratic convention.

Please remind MacLeish of his interest in south American Rhodes scholarships.

Sending this by telegraph because unable reach you by telephone last two days.

Tom.

1205am/d

PSF: Corcoran -

July 26, 1939
Memo to Pres from Gen. Watson

In re-rough draft of a memo prepared by Tommy Corcoran to show Harrington-W.P.A. was never shown him and got into Pres. basket by mistake.

Harrington does not approve of sentiments expressed therein-illegal and unwise.

See W.P.A. folder-Drawer 2-1939

PSF: Corcoran

Memo to President
From Tommy Corcoran
August 5, 1939

In re-Good Neighbor League and his discussion
with Stelzle at his request.

See-Good Neighbor folder-Drawer 2-1939

PSF: Corcoran

THE WHITE HOUSE
WASHINGTON

August 8, 1939.

MEMORANDUM FOR

THOMAS G. CORCORAN

Will you look this girl up and if she is any good speak to Fly about her without disclosing the source?

F. D. R.

Letter to Mrs. Roosevelt from Molly Dewson in re appointment for Earline White to the Federal Communications Commission.

PSF: Corcoran
file
personal

THE WHITE HOUSE
WASHINGTON

August 5, 1939

Memorandum For The President.

Re: Rural Electrification Administrator

Since this vacancy occurred while Congress was in session, unless a name is confirmed today no one filling the vacancy by a recess appointment will be able to draw pay until confirmed six months from now in January.

The REA situation does need a head - it is crumbling with Carmody gone on a lot of petty chiseling graft between copper and aluminum companies for materials - a situation on which the man whom you mentioned last night is an expert in handling.

It would be possible to send down a nomination today to the Agriculture Committee, which has jurisdiction of this confirmation and crack it through if the man you mentioned last night is your choice, since that choice is a South Carolinan and has always been on good terms with "Cotton" Ed, the Chairman of the Agriculture Committee.

It might be possible on the telephone to have Secretary Wallace call "Cotton" in, say that you want to submit the name of an old friend of "Cotton" Ed's and hope that it can be confirmed today. It would be perfectly possible to get this thing through in time since the man you have mentioned is also a friend of Wheeler' and of Norris, who could be reached by telegraph. McNinch might be able to help a lot with Wheeler in this situation.

Appended is the list of the members of the Agriculture Committee, which is in particularly good shape to carry out an emergency request.

T. G. C.

AGRICULTURE COMMITTEE

Ellison D. Smith, of South Carolina
Burton K. Wheeler, of Montana
Elmer Thomas, of Oklahoma
John H. Bankhead, 2d, of Alabama
William J. Bulow, of South Dakota
Hattie W. Caraway, of Arkansas
Carl A. Hatch, of New Mexico
Theodore G. Bilbo, of Mississippi
Lewis B. Schwellenbach, of Washington
Guy M. Gillette, of Iowa
Allen J. Ellender, of Louisiana
Sherman Minton, of Indiana
Scott W. Lucas, of Illinois
Tom Stewart, of Tennessee
George W. Norris, of Nebraska
Charles L. McNary, of Oregon
Arthur Capper, of Kansas
Lynn J. Frazier, of North Dakota
Henrik Shipstead, of Minnesota
Alexander Wiley, of Wisconsin

PSF: Corcoran T.C.

THE WHITE HOUSE
WASHINGTON

August 31, 1939.

MEMORANDUM FOR

THE PRESIDENT

1. Talk to Noble about Bickel and the way of getting him into a special position as promotor of Latin-American relations.

2. St. Lawrence -- The way to take care of Coyle temporarily is to give him the job of making the new report (Coyle is a consulting engineer) on the effects of the St. Lawrence Canal upon traffic over the railroads and on the river and on Montreal and New York City. Noble looking for a man.

I think Noble would some day like to be Administrator of a St. Lawrence Authority.

3. The newspaper -- the fact that it is a bonne chance -- the right young fellows -- the most successful in the publishing business are in it -- we are on the eve of a revolution in the newspaper craft, both because of technilogical processes, the new importance to the public of accurate news and the conviction

of the public as revealed in the last Fortune poll that the newspapers are not now giving the news.

T. G. C.

T.G.Corcoran said he did not know anything about the attached.

See-Jerome Frank-Gen corres-Drawer 2-39

PSF: Corcoran

CONFIDENTIAL MEMORANDUM

September 2, 1939

TO: The President

FROM: Jerome N. Frank

I want you to know that I had nothing, directly or indirectly, to do with the story by Alsop and Kintner concerning John Hancock, a copy of which is attached hereto. Kintner phoned me, the other day, for information on the subject, and I said I knew nothing whatsoever about it.

JNFrank:GRD

came to file Sept 25: 1939

File Personal

PSF: Concerns

MEMORANDUM RE R.F.C.

To do an effective job for you as a real agent in recovery, Schram will have to change the mental approach of the R.F.C. toward loans to industry as completely as Jones had to change it toward the banks at your direction, i.e. from loans on collateral to capital contributions through preferred stock and debentures.

Mr. Jones is completely and understandably concerned with not spoiling his already excellent record of collectability -- and the key personnel -- in many cases a hang-over from Meyer's day -- both in Washington and in the field loan agencies have the same primary concern about not spoiling the Corporation's record for history by taking risks.

Schram who came into the Corporation as a reorganizer of very risky drainage district loans is mentally ready to take risks.

He needs control of personnel to be sure that when necessary he can supplement the present banker-minded key personnel with risk-minded personnel.

The immediate problem lies in the director who will be appointed to take Mr. Jones' place on the Board.

This directorship is all-important because--

(a) the Chairman should have at least one man who will give him a supporting vote on all occasions and carry out his policies in the day-to-day operation of the Corporation while the Chairman may have to be away;

(b) of the remaining directors, Merriam is sick and very seldom in attendance; Henderson is unsure of himself outside the mining field and completely unwilling to take responsibility; and Klossner -- a Minnesota Republican -- although technically very competent as a bank examiner is a bank examiner promoted from within the Corporation's bank division, and constitutionally averse to loans to industry or loans of any kind which are not good conservative, traditional banking risks.

Mr. Jones wants to appoint Sam Husbands of Arkansas to the Board. Husbands is a former Arkansas bank examiner -- brought in by Harvey Couch. He is one of the most technically competent bank examiners in the Corporation's set-up and just as conservative as that kind of training implies. He does not want to stay with the Corporation any longer than is necessary to get one of the appointments to the presidency of a big bank, which Mr. Jones occasionally has available to control (like the appointment of Walter Cummings in Chicago). Specifically, Husbands wants to be made president of the Anglo-California (the Fleischhacker) Bank in San Francisco, which the Treasury has forced to reorganize and it is, I am given to understand from sources in the Corporation, assumed that Husbands will get that job in California if and when

Mr. Jones can arrange it. To appoint Husbands, therefore, will give Schram no assurance of consistent and interested support.

The man Schram wants is Alfred Hobson of Montana, Schram's present right-hand and for the past six years the Assistant Secretary of the Corporation.

Hobson is the same age as Husbands -- about 45 -- a Captain of Artillery in the A.E.F. Hobson is risk-minded. He is the General Manager of Electric Home & Farm Authority, of which Schram is President, and in the last three years has expanded his operations from practically zero to a point where he is now making loans on utility appliance paper at the rate of a million and a quarter a month -- while simultaneously acting as the de facto Secretary for the R.F.C. Hobson wants to remain in government service indefinitely -- he has a long knowledge of every department of the Corporation and with him Schram will be sure of complete and consistent backing at all times.

PSF: Corcoran 1GC
2

From T.G.C.

Articles by Jay Franklin on the Catholic Church, Coughlin, Mundelein etc.

See:Jay Franklin-Gen corres-Drawer 2-1939

PSF: Corcoran, T.G.C.

Memorandum from T.G.C.
For the President
Around Middle of August

Re-War Industries Board

1."Morgan dominated"--Dillon Read--Baruch

(a) Tommy's talk with Head of Dillon Read, James Forrestal.

(b) Ed McGrady's story that Baruch was sore as hell etc etc.

(c)Encloses article by Hugh Johnson for the President to note the "Morgan dominated"

2. Re-Sarnoff

See--Hugh Johnson-Gen corres-Drawer 2-1939

PSF: Corcoran & C.

THE WHITE HOUSE
WASHINGTON

September 28, 1939.

T. G. C. TELEPHONED:

Monsignor O'Grady of Washington spoke to him about an Allen Burns who, he understands, is to be made the head of a committee which comes in some way under the State Department and is known as "The ~~Committee~~ Americans ~~for the Preservation of Peace" or some such name~~. Mgr. Grady says that Burns and the whole group who expect to run this committee are anti-New Deal and he wanted you to know about it before the State Department made any decision about it, which he said they would do today or tomorrow.

Assn of Command Chiefs

Also T. G. C. was in touch with Sheil and he is going to prepare his remarks for him tonight and he understood that you would let him know if there was anything special you wanted him to say in this talk.

file personal PSF: Corcoran

THE WHITE HOUSE
WASHINGTON

November 21, 1939

MEMORANDUM FOR

THOMAS CORCORAN

The President has seen.

M. A. LeHAND
Private Secretary

Enclosure

Tele. to Tom. Corcoran 11/16/39
from Sen. Josh Lee, Enid, Okla.
"Word is being spread around tha t
McNutt is Presidents choice so many
of our best Democrats are joinging
his clubs something should be done
to offset it".

[redacted]AVID DUBINSKY

1-22-40

: Mr. Thomas Corcoran

I thought you might be interested in the attached.

D. M. Lilienthal

[redacted]RESS 42 E. 23d ST. ALgon. 4-0814-5

February 30, 1940

Missy:

I thought the President would be interested in seeing the two attached enclosures.

Tom Corcoran

PSF: Co-operation

Law Offices

JOHN O'CONNOR
2 Lafayette Street
New York City

January 17, 1940.

Mr. Daniel J. Tobin,
President of the Teamsters Union,
Amer. Federation of Labor Bldg.,
Washington, D.C.

One Big Union is the Worst Thing That Could Happen to Organized Labor.

Dear Mr. Tobin:

Reading your recent statement in the press, putting the blame on "a dozen labor leaders" for the failure of the A.F. of L. and the C.I.O. to get together, recalled to me the very pleasant association we have had, especially the days we spent together, at the invitation of President Roosevelt, on his 1936 New England campaign trip. I suppose we were asked to go along to have some influence on the "Irish vote", if there is one, which I believe not. Of course, that was two years before he "purged" me from Congress and the Chairmanship of the Rules Committee of the House of Representatives.

For a long time I have been of the positive opinion that to merge the A.F. of L. and the C.I.O. into one big national labor union of eight or ten million men or women would be disastrous to the best interest of the organized workers. I base my opinion on many years of service as an attorney to most of the larger labor organizations in New York City, including personal counsel to Mr. Samuel Gompers. In addition I have talked with many of your associates, representatives of A.F. of L. unions, and they share my view.

I do not ascribe unselfish motives to administrative heads or other politicians who are trying to force such a combination. I fear they vision this larger bloc as usable for their own purposes, political in nature, rather than improving the condition of the worker.

As between such a unified and controlled bloc, I would prefer many unions, divided into crafts or even some industries. The more unions, the better it is for the worker. Again, I say many of your associates entertain this view.

Under the craft system of organization the labor unions fared very well in this country and still do, despite the effort to force them to unite with the C.I.O. into one big voting group from which the politicians could solicit and accept huge political contributions.

Jurisdictional disputes are of minor importance. I have sat in many of them, and they can be readily adjusted through mediation.

The urge for one big union is one of the first steps in the program of a Dictator.

Get 'em all in one room and then you can turn on the tear gas.

If a dictator-minded political leader could add a bloc of ten million organized workers to the already existing twenty million decent people, now dependent on government relief, through W.P.A. or otherwise, the sailing would be clear for him.

I, therefore, sincerely trust that you "old timers" in the labor movement will not "fall for" this outside interference - disguised as solicitous - with the conduct of the organizations to which you have unselfishly given so much.

Please think it over, and with warm personal regards, I am

Sincerely yours,

(Signed) JOHN O'CONNOR

PSF: Corcoran

THE WHITE HOUSE
WASHINGTON

January 29, 1940.

MEMORANDUM FOR

T. G. C.

Will you run your eye over this material and talk with me about it?

F. D. R.

Letter to Mrs. Roosevelt from Gardner Jackson of Labor's Non-Partisan League, 1037 Earle Building, Washington, D. C., in re Walter S. Steele and the Dies Committee.

file personal

PSF: Corcoran

Corcoran

February 14, 1940

MEMORANDUM

Re: Thomas Morgan

I thought you might want this memorandum while you were on the Tuscaloosa.

Today I again saw, with Robert Hinckley, Chairman of the Civil Aeronautics Authority, the Thomas Morgan of whom I have earlier spoken to you.

He is the present Chairman of the Board of Pan-American Airways, whose special business is to coordinate the technical side of the operations with Trippe's promotional ability. He is also the President of the Sperry Company (gyroscopes, bomb sights). He started as a gob in the Navy thirty years ago experimenting with radio and met Sperry, in whose company he later rose when he was working on the experimental battleship "Delaware" in 1910.

He is a North Carolina Democrat and a New Dealer. As the crisis has mounted, he has more and indicated, according to Hinckley, his eagerness to help in the Navy -- particularly on the organization of coordinating scientific development with Navy practice.

If a new Assistant Secretaryship of the Navy should be created or otherwise open up, it is certain that he would be interested.

I am sending a copy of this memorandum to Secretary Edison.

Thomas G. Corcoran

STANDARD FORM No. 14A
APPROVED BY THE PRESIDENT
MARCH 10, 1926

TELEGRAM

OFFICIAL BUSINESS—GOVERNMENT RATES

PSF: Corcoran

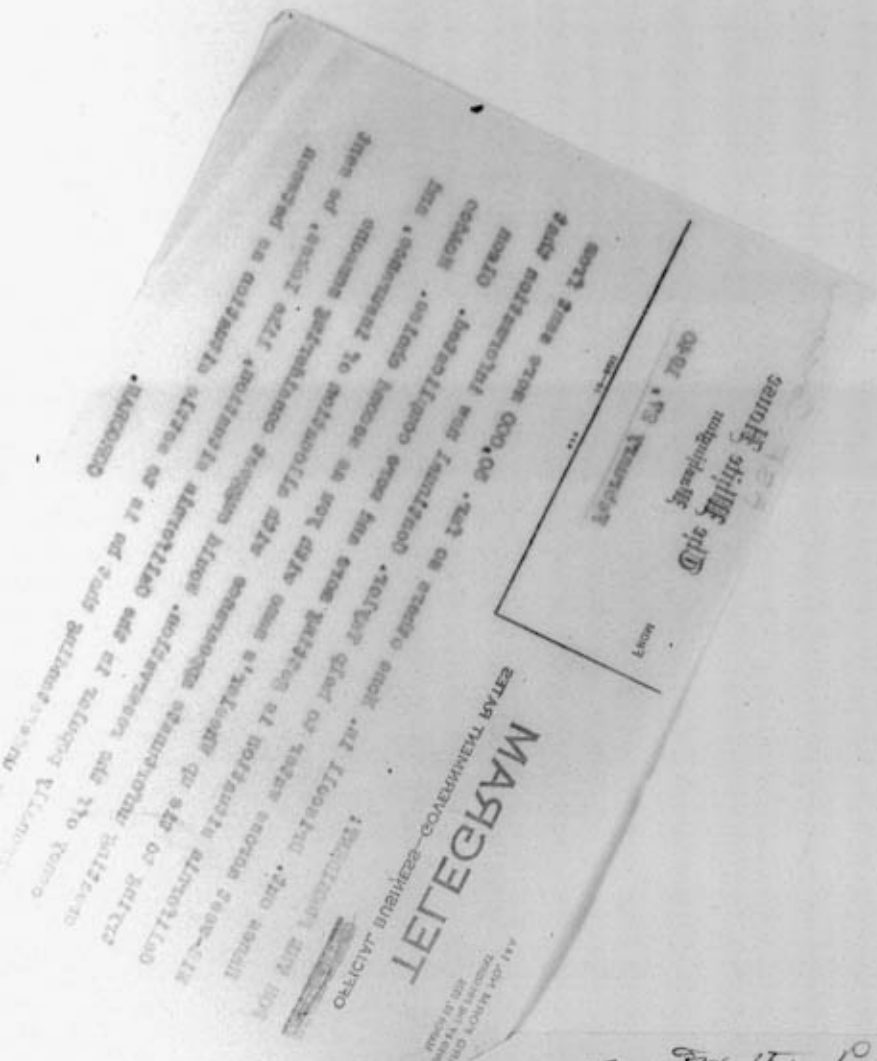
FROM The White House
Washington

February 27, 1940

FOR THE PRESIDENT:

Manes out. Driscoll in. None others so far. 50,000 more sent from Mid-west across water to help Taylor. Continual new information that California situation is getting more and more complicated. Olson trying to tie up Wheeler's name with you as second choice. McAdoo creating unfortunate appearance with allocation of insurance, and Downey off the reservation. Would suggest considering someone personally popular in the California situation, like Ickes, be sent out with understanding that he is to settle situation as between faction.

CORCORAN.


TELEGRAM

For the President PSF: Corcoran

Restricted

Continual new information that California situation is getting more and more complicated. Olson trying to tie up Wheeler's name with you as second choice. McAdoo creating unfortunate appearances with allocation of insurance, and Downey off the reservation. Would suggest considering someone personally popular in the California situation, like Ickes, be sent out with understanding that he is to settle situation as between faction. — Corcoran

Hanes out. Driscoll in. None others so far. 50,000 more sent from Mid-West across water to help Taylor.

Mr. Corcoran

file PSF: Corcoran Missy: See marked portion on page 3 TG Corcoran

COPY

May 1, 1940

Dear Mr. Scattergood:

Based on several privately conducted polls, general comment heard, and particularly with reference to the comparative standing in the community of those comprising the various delegations, these conclusions must be drawn:

1. That the Roosevelt ticket will be elected by a very substantial majority.

2. That the race for second place will be close as between the Patterson and Garner ticket with the odds favoring the Patterson ticket somewhat.

3. That, contrary to opinions heretofore, the Willis Allen (Ham and Eggs) ticket will run a poor fourth.

Following the primaries on May 7th, it is unlikely there will be anything of an organization nature remaining of either the Garner or Patterson groups, and it is expected there will be the usual scramble by the more politically alert persons on the other tickets to get on the party band wagon.

To stay in the party and in an effort to redeem themselves, such of the Garner people as William J. McNichols, a Roosevelt man in 1932; Earl Desmond, a northern assemblyman; Mrs. Clara White of Alhambra; William I Gilbert; William M. Byrne, of Los Angeles; Mrs. Esther J. Day of Los Angeles; and a few others who are not actually paid workers like Mrs. Esther Lee and Mrs. Margaret E. James, will probably volunteer their services in the presidential campaign.

The Willis Allen delegates, while registered as Democrats, are not known for their interest in the party affairs so much as for their fanatical zeal for a pension. It is doubtful whether men like Willis Allen, Roy G. Owens, Wm. R. Peeler, Will H. Kindig, Lawrence W. Allen, Raymond D. Frits, and others, could be induced to cooperate in any way that would not directly concern their pension program. While the Allen, or Ham and Egg, group has been militantly campaigning both via radio and with canvassers and house meetings, the response has been disappointing to the Allens, in whom former adherents have lost confidence.

The Patterson ticket is made up largely of a radical element with a few minor state office holders and about six or seven fairly rational persons whom I have attempted to identify on an accompanying sample ballot.

About half of the 48 persons named on the Patterson ballot probably will manage somehow to get into the campaign in the Fall. Of all the delegates running in the primary election, the Patterson people will be by far the most persistent and hardest to manage after the primary election is over. It will be the task of the Presidential campaign management to hold this radical element in check.

Governor Olson, right now, is openly attacking the radical support which Patterson is catering to. See attached newspaper clipping. Incidentally, Governor Olson is veering away from the radicals more and more, and apparently is acting on the advice of constructive counselors who, like yourself, would shun both the too conservative and too radical elements.

The Roosevelt delegatio represents, by long odds, the better elements of the Democratic party and with very few exceptions each name lends substantial progressive support which pretty thoroughly blankets the whole state. On the accompanying sample primary ballot, I have attempted to identify the delegates on this ticket. A few of them I have been unable to learn much about. Bill Lyons may be able to supplement my information.

As to the "attitude of mind reflecting the psychology of the present situation," there are but few indicators to rely on. Despite the badgering of the newspapers and their efforts to smoke out the President on the third term issue every appearance of Roosevelt's picture in the motion picture theatres brings out a lot of applause. There appears to be a feeling in the air that in these critical times the President can and should be re-elected if he consents to run. This is reflected in questions propounded in several individual polls taken by shows, cards, telephone and letters, that have come to my attention. Even some of those who are not favorable to the third term idea like John B. Elliott and Manchester Boddy are nevertheless doing what they can to promote the election of the instructed Roosevelt Olson delegation.

There has been a minimum of electioneering with no outstanding developments in the campaign. Roosevelt, Garner and Patterson bill boards have made their appearance but not in any great numbers. There have been surprisingly few radio broadcasts although I understand that Melvin Douglas, a Hollywood star and the President of the Motion Picture Democratic Club, who resigned his state appointment to do so, is preparing a last minute series of radio performances to help along the Roosevelt-Olson Ticket.

The Governor's Secretary, Walter Ballou, who returned to Sacramento last night, is all worked up over what he calls the failure of the campaign committee to match the efforts of Garner and Patterson, but I feel sure this is just a case of jitters on his part and an over-anxiety

to make a big splurge, in fact he was trying to arrange for the printing of a half million circulars.

Your inquiry about "what, if anything, may be done to improve those conditions (in California), in the sense of getting away from too much radicalism and too much conservatism," seems to me to call for more inquiries in various quarters that might be productive of worthwhile suggestions. There seems, right now, to be a great deal of concern in shipping circles over the sale of so many vessels (something like 45 to 50) to belligerents and something like a government sponsored maritime program might be one of the things which would be helpful. Another suggestion which I believe is credited to the President's wife is that some plan of settling the dust bowl refugees of the Central Valley on subsistence farms seems to have gotten quite a lot of favorable attention at the time but has now subsided. If some things along this line could be sponsored and publicised by the State's Congressional delegation, it seems to me they could be made very profitable in the forthcoming campaign.

Things seem to be almost dormant in Republican ranks in the State, and what little flurry was occasioned by Dewey's visit to Los Angeles and San Francisco seems to have died down.

I hope I have given you in this lengthy screed at least some of the information that you have asked for, and will be only too happy to supplement it with anything else you may want me to get.

Respectfully yours,

The Corporation is authorized, when requested by the Federal Loan Administrator, with the approval of the President, to organize a corporation or corporations for the purpose of aiding the Government of the United States in its National defense program, and to subscribe for the non-assessable stock thereof, and to make loans to any such corporation or to any other corporation organized to assist in, or necessary to, such program. Such loans may be made for the purpose of acquiring and carrying raw materials, for plant expansion and equipment, and for working capital, and may be made on such terms and conditions and with such maturities as the Corporation may determine.

PSF: Corcoran

Tcorcoran

May 26, 1940

Dear Missy:

Being really presumptuous about two things:

(1) Enclosed R.F.C. statute which comes up before the House Banking and Currency Committee tomorrow.

The R.F.C. has an uncommitted billion and a half free from restrictions of the Budget, the General Accounting Office and the Civil Service. This is the instrument you will eventually have to use to do a flexible job. I thought you would like to know how far it has gone so that you would consider that the President might not say anything in his speech tonight which would foreclose it and might want to say something which would encourage it.

(2) If the National Advisory Council is to include heads of other government agencies, Jerry Frank hopes you would agree with him that the Chairman of the S.E.C. should be included. Since the Council is to include advisers on "finance", it would be a severe blow to the prestige of the S.E.C. not to be included.

Duplicate to Harry.

Yours,

Tom Corcoran

Miss Marguerite LeHand
Secretary to The President

PSF: Corcoran, T.

1/8/41

For a combination of reasons Tom lacks mental health just now. He is, therefore, in great danger of making a wrong turning, with possibilities of vast harm to himself and of undoubted serious damage to the present national effort.

For, were Tom to leave Ben would also go. That is the last thing that Ben wants to do - to leave here - but Tom's leaving would operate as a coercion of Ben because of the latter's devotion to Tom.

The answer is absorption of Tom in a defined, adequate task, intimately related to the program for national defense. His energies and resourcefulness would therein have ample outlet and could produce material results of which few people are capable. Ben, on the other hand, is almost indispensable in a variety of ways, because of his extraordinary resourcefulness and imagination and his rare gifts of character. A dozen or more of the leading and best talents in the Administration give this estimate of Ben's present usefulness.

The key to the situation is to gain time by finding the square hole for Tom's square peg. That can be attained if he were to receive a letter, constituting an appropriate blend of affection and direction, from the Commander-in-Chief ordering him to stay here until the right outlet is found for him. In the meantime, however, Tom must be employed. But it ought not to be difficult to have him temporarily made a Special Assistant to the Attorney General. A command, showing affection that would compose his troubled soul, is the practical, constructive solution.

1/8/41

Mr. Rowe phoned to say that he talked to Miss LeHand about the matter of this morning and they decided not to bother to have you sign the memorandum. It has been given to the President in draft form and he is going ahead on your suggestion.

L. W.

PSF Box 141

PSF: Corcoran Memo 3

Jan 20, 1941

Dear Tommy:

From an experienced pater familias, welcome to the high rank of Fatherhood! I am delighted that the Corcoran line continues for at least another generation. If the young lady has only some of the loveliness of her mother and some of the fire of her father, she will be a great girl. Tell Peggy to take very special care of her; she will be held directly accountable to me. And incidentally, I am pleased you have followed the Roosevelt precedent by beginning your family with a girl.

I know you are troubled about your family responsibilities. But this is the most critical year in our country's history and you simply cannot leave me now. You must know that I understand fully how much your front-line fighting has put you "on the spot", and that you can no longer contribute effectively without portfolio. As our plans unfold, National Defense will have positions of rank and responsibilities where your great talents and powers will be desperately needed.

All this, as you will be the first to appreciate, takes time. And so, as your Commander-in-Chief, I instruct you to enroll within the next week as a Special Assistant to the Attorney General to await a definite assignment. I need intelligent, devoted and selfless men. You have been one of those few and must continue. Few men have been understanding of the forces of history against which we have contended and against which we must now rally more

powerfully and more astutely than ever. I have always thought you were one of those few. Today I need such men more than ever.

You have been fond of quoting Holmes as your great exemplar. Fundamentally, he was a great soldier in life and not merely on the battle field. Ask yourself how he would have answered this call.

Affectionately,
Franklin D. Roosevelt

Mr. Thomas Corcoran
3212 Garfield St. N.W.,
Washington, D.C.

PSF: Corcoran 3-41 "C"

THE WHITE HOUSE
WASHINGTON

April 14, 1941

MEMORANDUM FOR

THE PRESIDENT

Tommy Corcoran came in to urge that you phone Speaker Rayburn in connection with the Stock Exchange Bill. He mentioned three names in this connection - Rayburn, Wadsworth and Clarence Lea. He thinks that if you don't put your foot down before you go away the Stock Exchange Bill will go the way of the Walter-Logan Bill and that by doing it early in the game you will save a lot of grief.

Missy

PSF: Corcoran

THE WHITE HOUSE
WASHINGTON

File personal

May 23, 1941.

MEMORANDUM FOR

THE PRESIDENT

T. G. C. telephoned to say that he thinks you ought to have Leo Crowley in for a few minutes before you see Judge Healy and find out what he thinks you should say to Healy in regard to the Giannini case, which you asked Crowley to try to settle. T. G. C. thinks you ought to say something to Healy before you tell him you are going to re-nominate him for ~~xxx xxxxxxxxx~~ the SEC.

Jim Rowe has also talked to T about this and he says he has been thinking it over and that perhaps Healy may say to people that you told him to settle the case and, therefore, perhaps it would not be a wise thing. Jim is not sure that Healy is not right in this case.

Jim thinks if you would say to Healy instead that he could

THE WHITE HOUSE

WASHINGTON

save you a lot of headaches if he would cooperate with people a little more and thereby make it easier for you, who has to listen to all the SEC troubles, that this would do the trick and be more effective.

PSF: Corcoran
File personal
in FDR's file

3212 Garfield Street, N.W.
Washington, D. C.
June 22, 1941

Dear Missy:

I have just heard today that for the first time since you've been sick you can receive messages.

My first message is the sincere hope of Peggy and myself that you are fully recovered.

My second is this. I wish you would read the enclosed letter to the President and, if, in your judgment, it would not be embarrassing to him or to you arrange that it reach him.

It is of course the matter about which I talked with you on the telephone before you took sick.

It is not the kind of thing I would ever put in writing under normal circumstances, and I am sure you appreciate how difficult it is for me to make anything that constitutes a "request".

But if I am going to come back to try to help I ought to be honest in at least indicating where I'll be most enthusiastically effective in trying to help.

I would have liked to have discussed this orally, but I want to help him and you more than anything else and it has not seemed fair in the circumstances of the last two weeks to press either of you for a face-to-face appointment. Gracie did her best for me.

Both of these notes are written by Peggy and are therefore completely confidential.

Very sincerely,

Tom Corcoran

Miss Marguerite LeHand
The White House

PSF: Corcoran gen. Corres C 3-42

THE WHITE HOUSE
WASHINGTON

October 28, 1942

MEMO FOR GRACE

Tommy Corcoran called.

The regulations now require charitable corporations to give an account of what money they get, where they get it and what they do with it. The Catholics have asked for exemptions for hospitals, charitable organizations, schools, etc., and were promised they would get the exemption. Tommy has just received a tip from Helvering saying that he had cleared it and it is on Danny Bell's desk to be signed but they are going to try to hold it up until Morgenthau returns which means after election and it will be too late.

A call to Danny Bell in the morning will clear it as we cannot lose any time. Archbishop Spellman has just finished this lengthy conversation with Tommy asking for something to be done as he is sitting on a hot seat.

M.

Ben Cohen C.
3-43
Corcoran

THE WHITE HOUSE
WASHINGTON

July 28, 1943

MEMORANDUM FOR MISS TULLY:

Dear Grace:

For your information the President did not receive Ben Cohen as General Watson talked to General Craig at the President's suggestion, and found that this affair was finished night before last and that Howard Corcoran is to be accepted for limited service.

RB

THE WHITE HOUSE
WASHINGTON

July 28, 1942

2. Grace also advises that she thinks the President should see Ben Cohen tomorrow before he leaves, about 10.45, to get the attached settled, re Tommy Corcoran's brother.

RB

NO 3. Do you still want to see Ben Cohen regarding the case of Howard Corcoran? ——

THE WHITE HOUSE
WASHINGTON

July 22, 1943.

MEMORANDUM FOR

GENERAL WATSON:

I want to see Ben Cohen about this. Will you arrange a time?

F.D.R.

July 26

Office of the Attorney General
Washington, D.C.

July 21, 1943

Tom Corcoran's brother Howard (now the Acting District Attorney in New York until McNally takes over) was rejected by the Craig Board the other day for a commission in the Civil Government Division.

Howard is within 6 months of 38 and married. The Civil Government Division is therefore his only chance at his age to get overseas.

His application has been in for over a year but it seemed wise to hold it back until the Correa situation was worked out because Correa was only 34 and a bachelor. I feel that Howard should not suffer by having cooperated with the Correa situation.

The basis of the rejection is a technical medical disability, subject to waiver. Ross McIntyre carefully and personally reviewed for Tom the grounds of rejection and gave as Ross' opinion that the technical disqualification was not practically justified and that if the matter had come before the Navy he would have passed Howard.

General Somervell and Patterson as Acting Secretary of War looked into the matter and did waive the physical defect. But the Craig Board, despite the waiver, rejected the application on medical grounds.

I understand, however, that General Craig has indicated that he would be glad to receive any indication that you would like to have the decision reconsidered and would grant the commission under such circumstances.

PSF: Congressional Correspondence "C"
3-44

THE WHITE HOUSE
WASHINGTON

October 17, 1944.

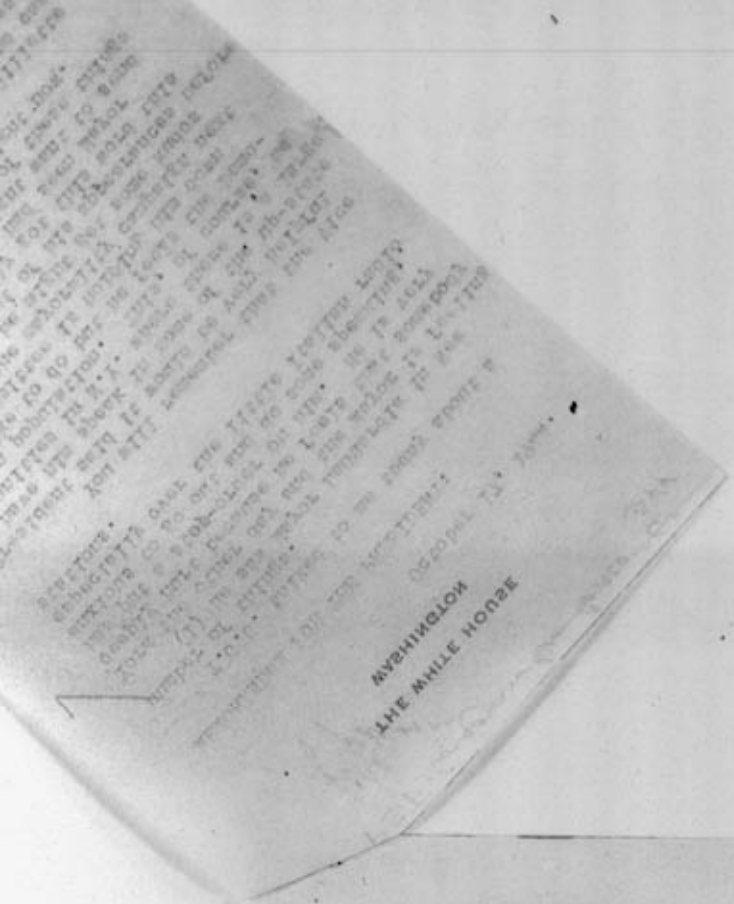
MEMORANDUM FOR THE PRESIDENT:

T.G.C. talked to me today about a number of things.

(1) He saw Mayor LaGuardia in New York the other day and the Mayor is feeling deeply hurt because he feels that somebody has put a stop-order on him. He is very anxious to go out and do some speaking, especially over the little Italian radio stations.

You will remember that the Vice President said it would be very helpful to have him speak in some of the up-state communities in N.Y. where there is a large Italian population. This, of course, he would like to do but he feels the Democratic Committee is holding him down because of the mayorality campaign next year for fear he might get some kudos and publicity out of his appearances before groups now. I only got this word this afternoon after you had seen Mayor LaGuardia, but you might want to send word to him to do some of these things which would be helpful right now.

(2) At the time Sen. Gillette decided to run again in Iowa and came in to see you I understand Dave Niles promised to raise about $15,000 for his campaign. Gillette's manager, Mr. Riley, called T.G.C. last week and said that they had received nothing. Tommy says he thinks



he can raise half of it but he feels as long as we promised the Senator that we would help him financially that the Committe ought to do something about it. Whom should we speak to about this?

(3) T.G.C. spoke to me also about Ernest Cuneo of NYC who has great influence with the Italians. He is also good at raising money and T.G.C. says he is in Washington and will be here tomorrow. He thinks it would be very worthwhile if he could come in for 5 minutes just to hhake your hand and have you smile at him.

(4) T.G.C. talked with Sen. LaFollette sometime ago and again after he made his recent statement. LaFollette told him he would not come out for Dewey. This T.G.Cl is positive of. However, he would not say he would come out for you but T.G.C. thinks if you would see him there is a possibility that he might declare for you. In any case he feels it would not do any harm as he is not for Dewey.

GGT

PSF: Corcoran - Ken Commerce

THE WHITE HOUSE
WASHINGTON

January 22, 1945.

MEMORANDUM FOR THE PRESIDENT:

Tommy Corcoran, whom you know was in R.F.C. for some few years, called to say that you can keep in mind that you have Hobby over there and that he and some of the old group like Fisher, etc. are willing to do whatever they can to help out. They know the set-up thoroughly and will be glad to do whatever they can to be helpful.

He says that the gentleman who is going out, as you probably know, placed many people in high places in banks, railroads, industry, etc. and it might be that he would pull out ten or twelve key men over at R.F.C. now and offer them big jobs outside of government. If this should happen, Tommy says, it would really create a terrific furore and would be bad. He just wants to let you know they are all ready to help, if needed.

GGT