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A BRIEF FOR THOMAS MORE, "TRAITOR"

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THE PITTSBURGH CONVENTION

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(Complete Contents on Page I)

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THE SEVENTH CONVENTION IS UNDER WAY

Preparations are under way to make the Seventh Annual Meeting of the National Association of the Polish-American Bar at New York one of the biggest and most enjoyable. Those who attended the meeting held in Pittsburgh need no assurance as to what they may expect in the World's Fair City of 1939.

The Meeting is scheduled for the 10, 11, and 12 of August, 1939, at the Pennsylvania Hotel. New York City has not only wonderful Convention facilities but also a variety of points of interest hardly equalled anywhere else in the country.

A BRIEF FOR THOMAS MORE, "TRAITOR"

Whatever be the complications and obscurities surrounding the celebrated case of Thomas More, the case itself is clear—and clearly one of murder, though it be called by the euphemism of execution. This is a positive and unflattering judgment of those entrusted with the conduct of his trial and condemnation; but it is one borne out by the facts. When all due allowance has been made for a reasonable variance of legal opinion concerning the law involved there is still something solid and substantial remaining to the favor of More. It is only on this something that the case can be built. Indeed, it is on this that the case *was* built—though what was realized from it was only a torturous and blundering legal murder.

It is but fair, however, to point out the reason for those complications and obscurities which make the case of More what it is historically. There was violence aplenty in the progress of his trial and condemnation; and though it is not justifiable, it is explainable. And before we mark the progress of the abuse heaped upon the man who suffered from the violence of law enacted, not for the common good, but for the furtherance of personal desires or, at the most, for the good of a dynasty, we must look for those explanations. This means attention to Henry and to the times, as well as to More and the charges placed against him. In fact, as will be seen presently, the case of More is based not so much upon what he did as upon what was done against him. And, to emphasize this, the review of the situation will entail more than will the review of the case as far as time and individual events are concerned. History offers few examples of a man so sorely tried for observing the law or for taking pains to stay out of trouble. That More could not evade, or even hope to evade, being eventually brought into things is due as much to the traditional conception of the union of things spiritual and temporal as to the circumstance in which More as an individual and official of the government found himself.

If there is one thing generally conceded, even by the unfriendly, to the Middle Ages it is the unity of medieval life and institutions. In all those things which transcended the purely racial and national, Europe was of one fabric; and that was the fabric of common Christianity—and not in any vague or poetic sense, but as creed regulated by dogma and expressing itself in the laws of individual and social life. It was something even more concrete than this. Belief that the first bishop of Christendom, from his residence in Rome, might punish wilful or dissenting secular rulers with dreaded excommunication or interdict is proof sufficient that this common Christianity was something definite and actual, and revealing itself in the working even of the civil courts. This historical fact, as well as the fact of the growing tension between Church and State, must be kept in mind if one is to understand what happened when More went on trial. If it explains nothing else, it explains the tenacity of More and the fidgetings of Henry.

Like the age and civilization of which he was a product, and the mode of philosophical thought to which he subscribed, More was all of

one piece. If one excepts his courtly gallantry—for which he never had a taste, incidentally—and his devotion to classical learning, he was plainly and simply a skilled judge; and this embraced two things which were taken for granted at the time and hardly given quarter today; common law (we had almost said common sense) and theology—the latter even in the rigid sense of dogma. It is beside the point to argue, as is generally done today, that theology has no place in jurisprudence. But it is very much to the point that, in sixteenth-century England, theology had a great deal to do with jurisprudence. And, in the interest of our thesis and truth, we emphatically point out that the difference between Sir Thomas More and Henry VIII lies, *not in More's belief in the regulating force of theology and the king's denial of it, but in More's judging the case in the light of the theology and the king's torturing the theology to suit his case.* Henry's reasons, speculations and scruples have been examined and reexamined not without indulgence. But there is hardly need of the same cautious or squeamish handling of the case of More—and this for the reason that it rests upon no personal interest of his own save that which would, had he availed himself of it, have favored the king's desire and his own safety; and upon the same law, civil and ecclesiastical, which had served Henry himself in less fretful times. By the first, personal interest, More was willing to be moved, but only if that interest were not opposed by something which neither he nor Henry could trifle with, namely, the law covering the case. He was willing to do much for his friend the king. That he *was* the king's friend, he amply proved. And when we here speak of friendship we are not taking the term in its highest and noblest sense, the finest proof of which More gave when he did not assent to the wishes of the king (considering them to be ruinous to the sovereign and the realm). What is even more telling in its effect, strangely enough, is the fact that More was a friend in a more intimate and casual respect. Our noble friends we can expect to abandon us when we abandon the truth and ideals by which they live and regulate their friendships; but those with whom we drink and laugh we somehow expect to slide over gracefully to our side. More was no long-faced singer of psalms. He was not even—what was many another martyr—a man with that zealous and militant devotion to the higher life which made him weep often and smile seldom. More was a wit—one might almost say a jester. And though Henry had no reason to question his integrity, to find his old friend definitely on the other side from him must have occasioned him no little chagrin. Henry must have been haunted at the end by the memory of the man with whom he had walked "by the space of an hour, holding his arm about his neck," the man of seriousness and sincerity who had endured for friendship's sake many a day at the king's court when he would rather have been in the king's courtroom. And there is something deeply pathetic about Henry's wild hope on one occasion, during More's last days in the Tower, when he hoped he had saved More's life by winning him over.

The history of the trial of Thomas More is, then, the history of the attempt of one man to "win another over." It is not the history of an orderly and dignified legal procedure. To look at the matter in this light is to appreciate the misery which More endured when, desirous to act solely from the dictate of conscience enlightened and moved by law and legitimate authority, he found himself tormented and torn by the solicitations of friends whom he would please if only he could. Once More had decided upon the course of action he was to follow he could hardly be

moved from silence except to express the suffering he knew in being unable to assent without imperiling truth and his own inward peace. He must have seen his own position as clear, since he went to the block rather than shift that position; but his awareness of confusion in legislation, something which could affright those less fully instructed and brave, made him appreciate, with great tolerance and pity, the position of those arrayed against him.

The constant contenton of the Church was that religion was not something *additional;* but that all man's moral acts, whether as individuals or as members of the body politic, were something about which she was to concern herself. She claimed further, (and with reason, if her first principle is accepted—as it then was), that, if she was responsible for these acts as guide, she had the right to give or withhold her consent to legislation affecting a man either as an individual or as a citizen. Still further, she demanded for herself that freedom of action and regard for her authority which would make possible the exercise of her ministry.

Now all this was conceded in the abstract by the temporal authority and upheld, save where it ran counter to the desire of sovereigns or—as must be said with respect for historical truth in some instances—where it appeared that the abuse of the right was on the part of the churchmen themselves. Churchmen enjoyed immunity, as befitting their sacred office; but it was too much to expect, even of the most saintly sovereign, that because that ecclesiastic was someone in orders he should enjoy benefice that was often merely a sinecure. More was not blind to the mistakes of the clergy, or to the possibility and even the actuality of clerical interference. But he clearly saw the underlying truth; and, when he chose to act, he acted logically and without passion.

Because of the intimate relationship between Church and State, and because the best legal minds could expectantly be recruited from the ranks of the clergy, custom found the Crown relying upon the Church to supply those who would fill the highest advisory office. It was such an office that Becket filled under Henry II,[1] and at a time when the intimate relationship between Church and State came close to severance. That that danger was averted is not due to any concessions on the part either of Henry or of Becket, but because the stage was not yet ready for the melodrama of the destruction of unity, as it was four hundred years later. Yet the break was to come; and it was to come through the circumstance of a quarrel between two rival powers. And when it did occur it involved all those elements which we have touched upon so far: conflict between Church and State, personal and dynastic claims, and the equivocal position of that man who happened to hold an office where his allegiance appeared divided between king and pope.

That Becket was a churchman—he was archibishop of Canterbury —and More not, is a negligible difference as far as law is concerned.

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[1]Henry II came to the throne in 1154, but not until after much political angling and confusion about the succession. It was only after much persuasion on Henry's part and on the part of ecclesiastics, that Becket (a layman) accepted the See of Canterbury when that See became vacant. His refusal at first had been firm. "I know your plans for the Church," he had said to Henry. "You will assert claims which I, if I were archbishop, must needs oppose." And oppose them he did. The breach between the two great friends widened into open warfare, and ended in the murder of Becket in his cathedral (29 Dec. 1170).

It only made more *obvious* Becket's allegiance to the Church. But we may venture to say that Becket had no better knowledge of the law even as it expressed the Church's rights. With the fall of Wolsey, who held both the office of archbishop and the office of chancellor, it appeared wiser to the Crown, now representing Henry VIII, to divorce the two offices; and had another than More been chosen chancellor, Henry's way might have been easier within the realm. He might have found one of those noble friends whom he might have sacrificed without pain to himself, or a casual one whom he would not have to sacrifice.

Why did More not have the wisdom to decline the office? The answer is not hard to find. More was wise, but not omniscient; and he cannot be supposed to have foreseen the extreme perversity of Henry. Further, More was not the man to run away from a difficulty. And still further, could he have expected to avoid all difficulties, even eventual execution, by refusing to accept the office? More was a man of consequence already. He was a close friend of the king, and he could expect Henry to be jealous of his favor and anxious for his approval whatever steps might be taken.

We have dwelt long on all this because we wish to make clear that much of consequence preceded the actual trial, or even involvement, of More; that the cause was farther back in the past than the reign of Henry VIII; at least, that the principles and precedents were, in the reasoning of More, rooted in the past or even in something outside of time. There was, in short, a situation before there was a case; and the progress of the trial shows that Henry had his eye more surely on what he wanted than on what he was entitled to.

When Henry came to the throne in 1509, at the age of eighteen, More was thirty-two years of age and had been a member of Parliament for some five years. Shortly after Henry's accession More was made under-sheriff of London. In 1515 he went on embassy to Flanders in the interests of London merchants who, with great confidence in More's ability and integrity, asked the king to allow him to represent them before Archduke Charles (later emperor) in a dispute with foreign merchants residing in London. Again, in 1517, he distinguished himself in business for the Crown in Calais, settling disputes over wrongs committed by both sides during the wars with France. To put it briefly, in these embassies and in other quarrels, the settlement of which required both ability and honesty, More rapidly rose in the favor of the people and the government.

"It appears that early in 1518 More became finally a courtier, or rather took office at court; he was probably not made a privy councillor until the summer of 1518. . . A word about the Privy Council is the time of Henry VIII will help the reader to realize More's position. The King's Great Court or Council had originally combined the administrative functions. A large portion of its judicial functions was separated from it, and constituted the three tribunals of the King's Bench, Common Pleas, and Exchequer. The king, however, still retained near him his chief ministers who formed the Privy Council."[2] Henry surely came,

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[2]T. E. Bridgett, *The Life and Writings of Sir Thomas More*, London: Burns and Oates, 1891. Bridgett saw no necessity to add, what is common historical knowledge about the Tudors, that the policy of Henry VII of consulting or relying on Parliament as little as possible was as dear to his son and successor.

then, to know More's capabilities: his learning, his skill and integrity as a judge, his friendship with Erasmus and, possibly, of those lectures on Augustine's *The City of God,* given in 1501, when More was not more than twenty-three years of age. Bridgett makes a significant distinction when he says "More became finally a courtier, *or rather took office at court;*" for More was not a courtier, as that term is commonly understood. He never clung to the world or to what the world could offer purely as its own. What, then, explains the intimacy between him and the king? The answer is to be found, in part, in what we have already said, namely, that More was a man who could make the best of the world at its worst—which is almost the definition of a jester; in the fact that Henry was not altogether unlike his councillor, even in an interest in things ecclesiastical—(Henry VIII, it will be remembered, was the first "Defender of the Faith" kings of England, having won that title for his "Defense of the Seven Sacraments"); and in the fact that Henry had not as yet conceived those passionate desires which would, in a contest with the reasonable order, betray his weakness and indicate in what notable and essential respect he was quite unlike his bosom friend. This is not to say that Henry had not already displayed himself as self-willed, but that he had not as yet been tested on the tremendous issue. Besides, and this is very much a point of importance to us in our thesis, while there was that common Christianity of which we have already spoken, there was still a debating ground on practical points of canon law, and Henry was not the first king to find ecclesiastics or lay jurists who could plead the case of the Crown without fearing to jeopardize their Faith or that of the governed.

We are harping on this theme because anyone reading an account of the trial of Thomas More will find it more a matter of personality than a matter of person—or, if a matter of person, hardly a matter of law. It was not a case of finding *the law* which condemns the man, but of finding *a law* which *would* condemn him. And that man, once loudly vocal in the condemnation or acquittal of his fellowmen under *the* law, was to remain annoyingly silent in a confusion of hastily cooked-up and patently vicious legislation.

Things were to move with grace until 1527. More was then, for four years, speaker in the House of Commons and confirmed in the king's favor. He was deciding cases in the name of his sovereign with indefatigable energy, great learning and exemplary fairness—and he was doing it without gifts or bribes, though he could always complain of his half-empty purse. But in that year Henry found himself so deeply enamored of the seductive Anne Boleyn that he could not put any of his fine theological knowledge to work for him in the control of his passion. Rather, that knowledge was to be employed in a scrupulous examination of Scripture and Christian Doctrine with the end to find his marriage to Catherine null and void. He had married, in 1509, the widow of his elder brother Arthur. That marriage had been validly contracted because a dispensation from the impediment had been secured from Pope Julius II. Clement VII was now the reigning pope and was to hear from Henry presently. Just now Henry was consulting his conscience and his local ecclesiastics to determine if Julius had not erred or presumed on his office when he granted the dispensation which made the marriage with Catherine possible. His inquiry was private; but Catherine was not ignorant of what he was doing; and when his inquiry

came to her knowledge it elicited from her only a solemn declaration that her marriage with Arthur had not been consummated.

This is not a brief for Henry. Neither is he on trial with us. And we make mention in detail of the steps he took in an effort to secure his divorce only to throw into relief the person and position of More, who was brought into it, and into something of even greater moment, before the whole sordid business was done. We will appreciate the extraordinary tact and patience of More and, in the end, his innocence, only if we watch closely the course of Henry's wayward legislation from 1527 ,the year which saw the birth of his determination to possess Anne Boleyn licitly, and 1535, the year of More's execution.

What, for example, must More have been thinking as a *lawyer*, to see Henry petition the pope for a decree of nullity and at the same time to ask that, should he become free to marry again, he be dispensed from any impediments of affinity that would stand in the way of his marriage to any woman, whether the affinity were contracted by lawful or unlawful connection! Or what must he have thought when Catherine was denied her plea to be heard in Rome? It would not require a celebrated jurist to see that there was justice in her demand. She could hardly expect an impartial decision from Henry's court; and she could justly claim, from her own rank prior to her marriage to Henry, and her relationship to Charles V, (her nephew), to be tried as something more than a subject of the English king. More had expressed his mind on the matter of the divorce, but not as a decision on the case. He had dealt gently and with reservation in an early expression given at the solicitation of the king; and the substance of his answer was that he had poor knowledge of the theological principle involved, that he must settle it *for his own conscience*, and that he would always be a true and loyal subject of the king. Beyond this, he stayed pretty well out of the matter until he was dragged into it,until a new kind of net was woven each time the last one failed to secure him. Throughout it will be seen that More remained as silent and detached as possible.

Yet More accepted the chancellorship on the fall of Wolsey in 1529. Why? To the answers already given, another may now be added: that events were transpiring which add another reasonable explanation of More's acceptance of the chancellorship.

Both the office of archbishop and that of chancellor had been combined in the person of Wolsey. On his removal they were divorced. More succeeded to the chancellorship, and was the first layman to do so. He might now hope to avoid the responsibility that was Wolsey's, for the matter of the divorce was primarily one of canon, not civil, law. Henry had selected as the eventual successor to Wolsey one who could be depended upon to labor for the Crown first. That man was Cranmer.[3]

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[3]Thomas Cranmer (1489-1556) Fellow of Jesuit College, Cambridge, 1510. Lost fellowship by marriage. When his wife died, took his Doctor of Divinity degree, in 1523, and was appointed lecturer in theology. Retired to Waltham Abbey during the sweating sickness afflicting Cambridge. Henry here met him and was won over to him by Cranmer's suggesting the University decision on the divorce. Rapidly rose in royal favor. Sent to Rome on divorce business, unsuccessfully. Later sent to the court of Charles V on same business. Married a second time while there; but, on being recalled by Henry to fill the See of Canterbury on the death of Arch. Warham, given necessary Bulls by Holy See. Consecrated on March 30, 1533.

The Bulls required for his consecration as bishop were secured from the pope—though it is said on authority that Cranmer declared in writing he would not consider as binding on him the oaths required of the Holy See. Again, what must the discreetly silent More have thought of such disregard for contract! Or of Cranmer's suggestion that the leading universities of Europe, exclusive of those in Charles' dominion, be consulted for a decision on the divorce!

Early in 1531 the Convocation of Canterbury were instructed to recognize the king as "Protector and Supreme Head of the Church of England." They still recognized something of the rights of the papacy, however, and some limit to their subservience to the king, and succeeded in inserting the qualifying clause, "so far as it is allowed by the law of Christ." As to More's reaction to this, Bridgett quotes Chapuys in saying, "There is no one that does not blame this usurpation, except those who have promoted it. The chancellor is so mortified at it that he is anxious above all things to resign his office." [4] It is one of the few instances in which we get a record of More's reaction to what is going on. To observers at least, the Christian and upright judge sees the logic of law and its decencies outraged. Yet he refrains from entering officially into the contest or formally expressing either approval or disapproval.

There could have been no renewal of his hopeful spirits when, in the succeeding year, after a subservient government came out with the declaration that Annates or first-fruits be no longer paid to the Holy See, the king reserved to himself the right to suspend the operation of the law—a plain threat to intimidate the papacy and sway the pope on the matter of the divorce.

The "Submission of the Clergy," in the same year, broke More's silence only in the sense that it broke his submission. By the submission, the clergy were to renounce all right of legislation except in dependence on the king. More had no choice now but to resign—the matter was coming too close to his own province. He "gave up the great seal into the king's hands in the garden of York Place, near Westminster, on May 16th, 1532. Champuys wrote on the 22nd: 'The chancellor has resigned, seeing that affairs were going badly and likely to be worse, and that if he retained his office he would likely be obliged to act against his conscience, or incur the king's displeasure, as he had already begun to do, *for refusing to take his part against the clergy.* His excuse was that his salary was too small, and that he was not equal to the work. Everyone is concerned, for there never was a better man in the office." [4]

Fortunately for himself, Henry found a See for Cranmer. Anne Boleyn was already *enciente* and, in anticipation of Cranmer's approval, he went through a marriage ceremony with her on January 25, 1533. Parliament had already forbidden appeals to Rome; and Cranmer, consecrated on April 15th, pronounced Henry's former marriage invalid and, on the 28th of the same month, declared the marriage with Anne valid. When Anne was crowned on the first day of June, More absented himself from the ceremony.

Thus far we have seen little of More. We have traced the history of Henry's legislation regarding the divorce not with the intention of

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[4]Bridgett: op. cit. p. 234 (Footnote) *Letters and Papers v.* 171.
[4]Bridgett: op. cit. p. 240 (Footnote) *Letters and Papers v. 1046.*

discrediting the king but for the purpose of showing how More restrained himself throughout, not rendering himself open to the charge that he had violated a law or obstructed justice. We have refrained from comment on the legality of Henry's acts or the validity of his enactments save where it appeared to us and, in our judgment, would appear to More a case of unlawful act, invalid contract or vicious legislation. Let us now see what More does when he can no longer remain silent and merely the keeper of his own conscience.

Late in 1533 a "book" or proclamation of nine articles was devised by the king's council in justification of his marriage. A pamphlet appeared in answer to the proclamation and More was suspected as its author. His nephew, William Rastell, a publisher, was summoned before the Council but denied knowledge of the publication. More stepped in and wrote a letter to Cromwell,[5] in which he declared, on his faith, that he had not written the pamphlet or entertained any thought of doing so. "I read the said book [that is, the proclamation] once over. and never more. But I am for once reading very far off from many things, whereof I would have meetly sure knowledge ere even I would make answer, though the matter and the book both concerned the poorest man in a town, and were of the simplest man's making too. For of many things which in that book be touched, in some I know not the law, and in some I know not the fact. And therefore, would I never be so childish, nor so play the proud, arrogant fool . . . as to presume to make an answer to the book concerning the matter whereof I never was sufficiently learned in the laws, nor fully instructed in the facts." [6]

Henry was plainly eager to secure a favorable opinion from More. It is understandable that he should still cherish the approval of his old friend. Besides, More's opinion would carry great weight. It would carry weight for three good reasons: More's approval would be the approval of the king's best friend; it would be the decision of a jurist of the first order; and it would be the decision of a man known, by his life, his speech and his celebrated utterances on religious themes, as a man of notable piety. More was to be dragged in somehow!

The affair of the "Maid (or Nun) of Kent" supplied an occasion. A religious with a reputation for sanctity and mystical insight delivered herself of some alarming pronouncements. She had had "visions" regarding the evils that would befall the realm as a consequence of Henry's defection. More, reasonably curious, visited her. He was willing to credit her with piety, but he was extremely cautious in his deductions. A Bill of Attainder was introduced in the House of Lords against the Maid and her friends. More was included.[7] Called before members of

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[5]Thomas Cromwell (1485-1540) Henry's great instrument in effecting the Reformation in England.

[6]Bridgett: op. cit. pp. 317-320. (Footnote) *English Works p. 1422.*

[7]"From documents lately published it appears that it was Cromwell who, without a vestige of evidence and in the face of evidence to the contrary, sought to include More in a matter from which he had with the utmost circumspection kept himself free. Father Hugh Rich, one of the accused Franciscans, stated in reply to interrogations: 'He confesseth that he hath shewed other revelations to Sir T. More, but none concerning the king, for he would not hear them.' This passage was struck through, and the name of More inserted by Cromwell himself among those to whom the revelations about the king were made known."*

—Bridgett; op. cit. p. 322.

**Letters and Papers vi. 1468.*

the Council he had something to say, namely that he had always plainly spoken his mind to his sovereign; that his sovereign had always received his plain speech gracefully, and never with an indication of molesting him further. Charged with having counseled the king to his defense of the Church and the papacy earlier, thus now giving the pope an instrument against Henry, More answered, " 'He [the king] right well knoweth that I was never procurer nor councellor of His Majesty thereto; but after it was finished, by His Grace's appointment and consent of the same, I was only a sorter out and placer of the principal matters therein contained'."[8] And he goes on to say that he rather cautioned Henry about his vigorous defense of the papacy, reminding him that since the pope was also a temporal prince and entertained alliances with temporal princes, the pope and he might come to a falling out. And thus the pope's authority should be more lightly touched. " 'Nay', quoth His Grace, 'that shall it not. We are so much bounden to the See of Rome that we cannot do too much honor to it'." [8]

This was hardly an answer to please Henry, however gallantly phrased. But, as yet a little fearful of More's prestige, he had his name removed from the Bill. When the Duke of Norwalk later reminded More that "indignatio principis mors est," More made answer: "Is that all, my lord? Then, in good faith, between your grace and me is but this, that I shall die today, and you tomorrow."

Norwalk was right. More was soon to feel the indignation of the king. On April 14, 1534, More was summoned to Lambeth to take the oath required by the Act of Succession, entailing the crown on the children of Anne Boleyn. (On September 7th of the preceding year she had given birth to Elizabeth). The oath was exacted of every person of lawful age. More was too good a lawyer to assent or deny where he could fence, and too devoted to truth and the good of his conscience to assent where he should deny, deny where he should assent, or evade on a grave and public matter. Driven to it, he refused the oath. He was given into the custody of the Abbot of Westminter; and four days later he was removed to the Tower. In November of the same year he was attained of misprision of treason.

More was a "traitor." He had served the king and was esteemed by that king as a learned, fair and good man—so long as the law by which he judged suited the king's ends. When More could no longer subscribe to legislation by a few mercenary churchmen or members of Parliament, as against the evidence of centuries—after all a matter of precedent, if nothing more—he withdrew officially. One can quite safely say he effaced himself personally. Even then his silence was interpreted as opposition. But the oath required by the Act of Succession was the net successfully thrown out to catch him. More was "of lawful age." The Act of Succession was just that—it had to do with the succession, and was therefore, in appearance at least, a matter civil. The time had come for More to face his judges and make answer. His answer this time sufficed for the Crown. It was not to the king's liking; but it brought More out into the open where Henry could respect the one scruple he still retained perhaps; not to judge More until he had exacted an answer on the grave issue. That he regretted the answer he received is more than likely. He still nourished the hope of retaining More on

[8]Bridgett: op. cit. p. 340.

his side. But since he himself was bent on pursuing the course he had chosen, if More would not follow then More must needs feel his displeasure—and not set a "bad" example in the realm.

In April, and again in May, of 1535, Cromwell visited More in person to demand his opinion of the statutes making Henry Supreme Head of the Church. More refused to give any answer beyond declaring himself a faithful subject of the king. In June, Rich, the solicitor-general, visited him and, in reporting their conversation, declared that More denied Parliament's power to confer ecclesiastical supremacy on Henry. Rich was taking something upon himself in making this report, as he was to learn when he faced More later. On July 1, More was indicted for high treason before a special committee. His experience before that committee offers a fine example of what a skilled and courageous man can do even when badgered by skilled judges with sinister aims. The indictment (in Latin) was enormous in its fabrications as well as in its length. More met the long, labored and ridiculous charges and the reasoning through which they were placed; and he met them with calmness and with deliberate and skilled answers. But he had his self-respect to maintain; and his accusers were now to find themselves the accused. When he had nothing more to lose, he finally spoke.[9] He branded Rich as a perjurer and discredited his reliability. He made the whole thing appear in its true light and for what it was—a farce parading in the name of legislation. He who had often and for long represented his king in the administration of justice, under law made neither by himself nor his king, now availed himself of the last opportunity to display his skill in declaring his unwillingness to approve, by consent, of abortive legislation that favored no one but the king and the things of the king. Yet the person of the sovereign he did not touch in his dignified denunciation. To the end he maintained that he loved his sovereign and served him first under God. Nor was this merely a pious utterance. More understood the principles underlying law. He knew more of theology than he had, in his humility, declared himself to know. He knew that even in the case of the reasonable dependence of the Church—or, if you will, churchmen—upon the State, it was plainly illogical and irregular to appoint occupants of Sees who would render favorable decisions contrary to higher ecclesiastical courts *on matters purely theological.* Such things were not law. They were not even common sense. So long as More could remain out of it he did. This is why, while we have devoted much time and space to the activities of the king from 1527 to 1533, we have given much less to the remaining two years, though these two deal with More's participation. Yet this review of the early period was necessary in defense of More. We have failed if we have not made clear that his innocence of the charge of treason is emphasized by his remaining wisely out of the conflict until he was driven into a position from which he could not escape, and in a manner that certainly did not wear the guise of the legal.

It may still be argued that, since More did not take the oath under the Act of Succession, he rendered himself liable to punishment under the law enacted. But if this argument is pressed it must be done in the fact of the questionable procedure by which the law was enacted. For

[9]We refer the reader to Bridgett (Chapter XXIII) for an interesting account of the trial, but one too long to be presented here.

ourselves, the matter is deeper and more ultimate than that. We distinguish, as did More *the lawyer*, between legitimate authority and caprice. There was no necessity, no justification, for Henry's "creation" of laws. His ends were selfish, and contrary to the recognized order and the common good; his enactments were usurpations; his methods were tyrannous; and he knew no consistency either in his speculations or in his practices. Must they not have seemed so to More? And yet, what had More done to merit the wrath of the king? As we have seen, until he was asked to take the oath required by the Act of Succession, he remained aloof. He fought neither against nor with the king throughout all the controversy concerning the divorce. When he spoke it was to give assurance of his loyalty and to discredit his own ability to judge in the case of the annulment. Much has been made of his expression in the House of Commons, on one occasion, of a royal decision on the divorce question plainly not in harmony with his later expressions. The occasion has been used to discredit More's orthodoxy, and we might use it to fortify our contention that he was loyal to the king. But in fact it has nothing to do with the case.[10] More's declaring the will of the king to the people has no more to do with the question of More's beliefs than has a judge's granting of a civil divorce in our courts to do with that judge's belief about the indissolubility of marriage.

More was simply the victim of all that went before him. But when it was demanded of him that he betray the truth as he saw it there was no longer any escape for him. The oath demanded by the Act of Succession was binding on More, not as a member of the government, but as an Englishman "of lawful age". A mere expression of loyalty would no longer do. Silence would be, and was, interpreted as treason.

Yet More's treason was, had Henry but known or confessed it, the greatest loyalty of the reign. The passion of Henry chose to call the reason of More blind, and his fidelity stubborn. There was only one possible outcome of this clash of minds, with the force on Henry's side. More was to be put out of the way. He was condemned to be hanged like a common criminal. The only mercy Henry could show at the last was to change the sentence to beheading, out of respect for More's dignity. But More still went to the block as a traitor. It remained for time and another court to immortalize his loyalty by declaring him Saint.

PAUL BRIENNE

[10]Yet the interested reader will find the mentioned instance in Bridgett: op. cit. p. 233.

THE AUTONOMOUS BAR OF POLAND

ADAM S. GREGORIUS
Member of the Baltimore Bar

Some States have adopted the principle of an integrated Bar, and yet have not completed a system without imperfections. Some other States are still considering the plan, gathering and comparing data, trying to arrive at a decision. For both groups a glance at the organization, powers and duties of a foreign integrated Bar may be of interest.

Poland is in the distinctive position of having had to unify a Bar which before the World War was divided in its allegiance between the Napoleonic code rooted in Russian Poland and the German and Austrian codes in the other two partitions of the country. How difficult this was may be inferred from the labors of the Codification Commission, appointed as one of the first acts of the reconstituted Poland in 1919.

The Bar of Poland became a self-governing corporate unit of the Government by Presidential decree published October 7th, 1932, in the official journal. Since then the formulas embodied in the plan of organization, some of native, some of foreign origin, were tried and tested, and a new plan was adopted by enactment of May 4th, 1938, which is now in force and supplants the decree of October 7th, 1932.

Many ideas under the new law will naturally appear as novelties to the American lawyer. The dominant ideas seem to be the maintenance of order and discipline, subordination to the interests of the State, and a high degree of integrity. The oath indicates this. "Conscious of the welfare of the Polish State, as also of the dignity of the profession of law, I solemnly promise to perform the duties of an advocate in conformity to law and justice, conscienciously and with zeal; to show due respect to constituted authority, and in my conduct to be governed by the principles of honor and honesty."

The Bar is given the power to prescribe the educational requirements and the training of applicants for the Bar, to fix the amount of fees, to indicate the district where one may practice, to appoint a successor for the clientele of a lawyer who is permitted to remove to another district, to arbitrate in disputes between lawyers and in disputes between a lawyer and a client, to limit the number of admissions in a given district or in the entire country, and of course to exercise disciplinary powers by reprimand, suspension or disbarment. At the present time, because of full quotas in all districts, the lists for new admissions are closed entirely in Poland for an indefinite time. The Bar also is given power and does maintain a relief and death benefit fund.

These powers, however, are not absolute. Appeals are provided, ultimately to the Chamber of Bar's Affairs, supreme authority in Warsaw, and beyond that, to the Minister of Justice.

On the other hand, the Bar may be required on request of Government authorities to furnish legal opinions and to prepare legislation. But as a political unit it is exempt from taxes on its property and from stamp dues on its official documents.

The judges in Poland are not members of the Bar. Theirs is a separate Governmental function and a separate profession. In fact, not all judges can become members of the Bar. The judges in the lower courts who desire to abandon their profession and become lawyers, must first serve an apprenticeship as "law applicants" in the law office of a "patron" for two years and

then take an advocate's examination. All law applicants, however, can practice law, representing their patron (a lawyer with not less than five years of practice) who is responsible for their acts.

To become an advocate in Poland is not an easy matter. After finishing an approved university law course, the candidate must become a "judicial applicant" by taking a position with or without pay as a clerk, referee or assistant judge in one of the courts for two years, to learn court procedure and application of the law, after which he takes an examination and becomes eligible for appointment as judge in one of the courts of inferior jurisdiction or in the judicial branch of the Government. If he prefers the Bar to the Bench, he arranges with the Bar Council in the district where he expects to practice law to spend the next two years with or without pay in the office of an advocate who has been approved as a fit patron. No patron may have more than two bar applicants in his office.

Exceptions, however, are provided. It is not necessary to have served a court apprenticeship or to take the judicial applicant's examination for law professors, judges of the Supreme Administrative Tribunal, or those who had held office for at least three years in some of the Government bureaus of a quasi-judicial character. It is not necessary to have had a patron or to take an advocate's examination for those who were for at least three years judges of civil or military courts, or who held positions for the same length of time in the Government's law offices where qualifications and practice were equivalent to the required two years apprenticeship in an advocate's office; nor for those who passed examinations for judges and acted for at least three years as referees in court cases.

The dignity of the profession, as demanded by its ethics and standards, is maintained by forbidding an advocate to engage in any commercial, industrial or financial enterprise while practicing law, or to practice law while holding a public office. He may be a director in a mutual savings fund, in a cooperative or in a non-profit enterprise, without salary. He may not be a notary public.

The organization of the Bar is quite simple, but it is also within rigid rules which impose duties upon its members. For instance, an attorney may not refuse to act as a member of his district Council, unless excused by the Supreme Council in Warsaw. He may not refuse to act as a member of the Disciplinary Court in his district, or upon any of its committees, unless excused by his District Bar Council.

The Bar is divided into territorial districts wherein a Court of Appeals, one for each district, has jurisdiction. The District Bar Council, the governing body for the district, is elected at annual meetings and is composed of twelve for each five hundred or less members. The Disciplinary Court, appointed by the Council, is also of twelve members, divided into four sections of three, each with full powers to hear and determine complaints. The Bar Examiners for the district consist of one judge of the Court of Appeals for that district, two lawyers appointed by the District Council and two by the Supreme Council in Warsaw. The District Bar Council controls the list of lawyers for that district, by weeding out the undesirable applicants for Bar examinations, or by limiting the number according to the needs in that particular district. An appeal lies to the Supreme Council, thence to the Chamber of Bar's Affairs, and finally to the Minister of Justice.

When an attorney is disbarred by the local Disciplinary Court, his district Council appoints a successor to take over his practice. The disbarred attorney's client may, however, employ another attorney.

The Supreme Bar Council has its headquarters in Warsaw and its members must reside there. It is composed of twelve lawyers appointed by the President of the Republic, three lawyers elected from each District, and six more elected by the Supreme Council itself. It appoints a Superior Disciplinary Court of five members to hear appeals from the District Disciplinary

Courts. Thence an appeal lies (but is seldom exercised) to the Chamber of Bar's Affairs. The Supreme Council has on file a record of all changes of lawyers as soon as they occur in each district, and a copy is also on file in the Ministry of Justice. One-third of its membership changes by election and appointment every year in rotation.

The Chamber of Bar's Affairs, the supreme authority in matters concerning the Bar, consists of twelve of the seventy judges of the Supreme Court of Poland and eight members of the Supreme Bar Council, a total of twenty divided into four sections of five each with full concurrent power. the ration to remain, however, three judges and two lawyers in each section. Its sessions are in chambers, not open to the public. Its decisions, however, are recorded and serve as binding precedents.

The Minister of Justice, as the head of both the judiciary and the Bar, although without power to alter the decisions, may exercise clemency. He is entrusted with the administration of the statute creating the autonomous Bar of Poland. He may exercise his executive power by closing the lists entirely to further admissions to the Bar in any district; he may for reasons of state dissolve the Supreme and the District Councils and thereby bring on new elections, or himself resign. This apparently is only in harmony with the European idea of representative government based upon popular confidence.

Sources—Prawo o Ustroju Adwokatury. Ustawa z dnia 4-go maja, 1938 roku.
Kwartalnik Prawa Prywatnego. Warszawa, Kwartal II, 1938 roku.

THE NORDIC LAW CLUB

On Friday, January 13th, 1939, the Nordic Law Club installed their new officers. Mr. John A. Nordstrand retired as president for 1938, and was succeeded by Mr. Daniel Anderson. The installation ceremony was conducted by George Anderson, first president of the organization, which was founded in 1931, and who was also President Emeritus. The new officers are:

Danel Anderson, President
Lionel Thorsness, First Vice-President
C. Hilding Anderson, Second Vice-Pres.
Martin Jerstrom, Third Vice-President
C. Edward Dahlin, Treasurer
Alex. O. Ramlose, Secretary

On Friday, December 2nd, 1938, The Nordic Law Club and friends of Judge Harry Olson, presented to the Municipal Court of Chicago a portrait of Judge Harry Olson which is now hanging in Room 913 of the Municipal Court, a court room wherein he presided as Chief Justice for many years. The presentation ceremony was conducted by John W. Ogren, Chairman of the committee. The presentation speech was made by the former Senator Deneen, and the acceptance speech was made by Judge John S. Sonsteby.

Judge Harry Olson was the organizer of the Municipal Court and was its first Chief Justice, having served in that capacity for twenty years. He is renowned for his organization of the Municipal Court, which has been used as a pattern by many other city courts. Judge Olson was the pioneer in the field of psychiatry as applied to crime problems, and was greatly interested in matters pertaining to juvenile delinquency and social service.

THE PITTSBURGH CONVENTION

The Polish - American National Bar Association held its Sixth Annual Convention in the city of Pittsburgh. The Allegheny County Bar Association welcomed the delegates through a special committee appointed for that purpose by the president.

At the opening of the Convention the delegates were addressed by Harold Obernauer, president of the Allegheny County Bar Association. Other speakers were M. S. Szymczak, member of the Federal Reserve Board in Washington, D. C., and Jan Pozaryski, Secretary of the Warsaw Bar Association in Poland.

During the convention, John M. Henry, member of the Pittsburgh Bar and author, read an interesting paper relating to the History of the United States Constitution.

The delegates agreed to work to the end that the different reforms commented on be made effective wherever applicable and to improve legal aid to clients unable to pay for legal services.

High Standards of Polish Bar Told By Delegate from Poland

In discussing the high standards maintained by the profession in his country, Mr. Pozaryski devoted his lecture mainly to the training of the Polish lawyer. He pointed out that the prospective lawyer must spend four years in a law school, after which time, without remuneration, he works for two years as a court secretary or clerk, in order to familiarize himself with court procedure. After this work has been completed, the prospective lawyer must pass an examination. Before he is permitted to practice, the student must spend three more years in the office of a sponsor, at the end of which time, he must take another examination.

When a lawyer is admitted to the bar, he must pay an admission fee of $20.00 and $4.00 a month as dues, with an additional $6.00 per month towards a fund for the widows and orphans. In case of death of one of the members, the Bar Association pays a certain sum of money to the widow.

Bar Associations

The bar associations have exclusive control of admissions as well as suspensions and disbarments. Mr. Pozaryski pointed out that in 1938 there were 7,717 members of the bar in Poland, where the population is thirty-three million. There were at that time 3,607 applicants to the bar; and according to Mr. Pozaryski, the bar association has closed the lists, the result of which is that no more admissions will be made for at least four years.

Lawyers and Judges

Every lawyer in Poland is identified by a distinctive badge, which he wears in the lapel of his coat. Lawyers and judges wear black robes in Court, with the further distinction that a lawyer wears a black sash; a judge, violet; a prosecutor in criminal cases, crimson; and a civil government attorney, blue. The judges in Poland are non-political and hold their office for life. The appointment is secured only after a competitive examination.

Delays Discouraged

Useless appeals to higher courts are discouraged. If, for instance, a lawyer appeals his case without cause or with the motive to delay the final disposition of the case, the

bar association has the right to disbar the attorney.

The Supreme Court is the highest tribunal; it consists of seventy-four judges, divided into various departments. However, the courts of Poland do not have the authority to declare an act of parliament unconstitutional.

AS WE SAW THEM AT THE PITTSBURGH CONVENTION

Warsaw, Poland:
Jan Pozaryski

Baltimore, Md.
Gregorius, Adam S.

Boston, Mass.
Roginski, Lola M. Mrs.
Wisniowski, Stanley W.

Brockton, Mass.
Kundzicz, Vitalis R.

Buffalo, N. Y.
Kaszubowski, Joseph S.
Lipowicz, Leonard R.
Matala, Joseph S.

Chicago, Ill.
Hon. S. Adamowski
Bubacz, S. Chas.
Czachorski, Fleming H.
Hon. Edmund K. Jarecki
Kilanowski, Mitchell
Lisack, Jos. L.
Midowicz, Casimir E.
Pallasch, Paul V.
Pulaski, Stanley R.
Wegrzyn, John S.
Zygmunt, Lawrence

Cleveland, Ohio.
Benkoski, Frank L.
Rev. Bernard Goladski
Kujawski, Helen F.
Kujawski, Leon A.
Matia, W. T.
Sawicki, Jos. F.

Detroit, Mich.
Dixon, Stanley J.
Harrington, Louis
Kulawski, Victor
Pietkiewicz, Zenon S.
Schemanske, Frank G.
Selwa, Frank
Waszak, Walter

E. Chicago, Ind.
Jaworski, Walter C.
Sambor, A. H.

Erie, Pa.
Mszanowski, Thomas S.
Nowak, Andrew J.

Gary, Ind.
Kuk, Frank J.
Roszkowski, John

Grand Rapids, Mich.
Zamierowski, Sigmund S.

Hamtramck, Mich.
Karwowinski, Henry

Hartford, Conn.
Sidor, Walter J.

New York, N. Y.
Czechlewski, Jos. F.
Machcinski, Stephen A.

Pittsburgh, Pa.
Bielski, A. J.
Gunther, Blair F.
Laska, Walter J.
Lucksha, Ralph
Pinkasiewicz, Jos. L.

Providence, R. I.
Pinkos, Frank F.

Toledo, Ohio
Grzezinski, Stanley A.
Robie, Jos. A.

Winona, Minn.
Bruski, S. D. J.

JUST LOOKING AROUND

There's one thing you have to say for a convention that you can't say about the courtroom, besides just the fact that everybody's supposed to be there for a good time. Though you can have a right smart time at court once in a while. You can just get up and wander around when you get tired of whatever's going on wherever you are. And when you get right down to it, though I ain't hankerin' to have anybody think I'm disloyal to the

profession, we ain't no beauty chorus. Well, what I'm gettin' around to say is that at the convention we held down in the old Quaker State I just sort o' got tired after a while lookin' at the legal aspect and wandered around. The doctors and dentists were meetin' and after a few sessions held by the lawyers I wandered off. I'd heard so many remarks about the mistakes made by lawyers I felt I wasn't hearin' anything I hadn't had enough of already.

The doctors were kind o' disappointin' too. I expected to see some right smart cutiin' up, or may be hear about the mistakes of the medical profession. That would'nt be exactly news. But I ain't never got onto all them highfalutin' terms, and there ain't nothin' half as interestin' as what you don't understand. But the doctors were smart. They preferred to let their mistakes rest in peace. After a while I just sat there doin' a bit o' ruminatin', and kind o' got to thinkin' if we lawyers couldn't write out prescriptions, like them doctors, after examinin' clients, and put it in a lot o' Latin words. One look at that and he'd probably pay us a fee right off just to save him.

Just in passin', it looked to me like there were more lawyers than doctors at that session. Kind o' wondered till they started showing them still movies about the **habeas corpus anatomie.** (Just working out one o' them experimental law prescriptions).

Never thought you could ever get me near a dentist, even sightseein'. But I favored them by droppin' in. Sort o' sneaked up on 'em, really. Ain't never got over that feelin' I had first time I went into old Doc. Wilkinski's office back home when I was a kid and he reached for that tooth with a pair of tweezers you could o' taken the hub cap off of a wagon wheel with. Kind o' glad I dropped in on that session o' dentists in Pittsburgh, though. They were right honest, admittin' chargin' their patients for painfully substitutin' imitations for the real thing. And talk about the lawyers, you should o' heard the blastin' and drillin' them dentists done.

One thing about these here conventions though, when you get to wonderin' how little work you really get done out of all that talk you can just start thinkin' that there ain't nothin' much better that a bit o' talk, come to think of it. Never know when you're goin' to run on to somebody smart enough and downright plain and solid to remember. And we had 'em there in Pittsburgh.

Kind o' glad to get along on to Pittsburg though, and the old home. There ain't nothin' like the feelin' you get walkin' up to the door and sayin' Well here I'm am ma. And there ain't no table in the world your feet feel so at home under. Guess it's just an old habit. And them hills o' Pittsburg. Funny, but I still look for Injuns right back of every next one the way I used to do when I was a kid.

Seems I'm just wadin' in sentiment now. Maybe it's thinkin' too about that trip I took through the Iron City with my old friend Blair Gunther. Only one thing worries me Blair. Seems to me that for a man that's been in these here parts so long your tongue still gets twisted up with a lot of them foreign words. If you don't mind my sayin' so. Anyhow I'll be lookin' for you at the next convention in New York City.

When I think that these delegates paid their own expenses I just feel like slapping them on the back and saying you must be a good lawyer to spend your own money to come here.

P.

TRIAL PRACTICE UNDER THE ILLINOIS CIVIL PRACTICE ACT

STEPHEN LOVE*

INTRODUCTORY

I. Civil Practice Act enacted June 23, 1933.

1. Section 94 provided that provisions of Act shall take effect Jan. 1, 1934.

A. That still left open the problem of its applicability to *pending litigation*; Supreme Court attempted to regulate by its Rule 1.

2. There have been amendments of sections 50 and 67 in 1935 and of sections 5, 6, 10, 14, 21, 67, 68 and 75 in July, 1937, when sec. 7a and sec. 86½ were also added.

II. What is meant by "practice."

1. In *Danoff* v. *Larson*, 368 Ill. 519, the court considered meaning of word "practice" and held it did not include provision as to manner of serving summons.

III. Applicability of C. P. A. to particular actions.

1. Applies to all civil proceedings both at law and in equity, unless a section otherwise expressly provides.

2. Originally, sec. 1 provided that the Act did not apply to attachment, replevin, garnishment, forcible detainer, ejectment, eminent domain, habeas corpus, mandamus, ne exeat, quo warranto, or other actions in which the procedure was regulated by special statutes.

3. Thereafter, in 1935, and again in 1937, the legislature amended the various statutes relating to the above actions so as to bring them into line with Civil Practice Act as far as possible. However, some special provisions still persist in these statutes, and these statutes should always be consulted.

4. Rule 2 of Supreme Court expressly provides that in reference to the actions listed in sec. 1 of the Act (which is the same list as appears in sub-section 2 of section 31), the provisions of the separate statutes shall control insofar as they regulate procedure in those actions, but otherwise the C. P. A. shall control.

A. If special statute is silent as to procedure, then C. P. A. applies: Wintersteen vs. National Cooperate Co., 361 Ill., 95.

5. As to matters not regulated by statute or rule of court, the common law practice obtains: section 1.

IV. Applicability of Civil Practice Act to particular courts.

1. It applies to Probate and County Courts.

A. Formerly so held, at least by inference, in *In re: Estate of Whipple*, 285 App. 491.

a. No regular pleadings required in presenting claims in Probate Court:

Albers v. *Holsman*, 289 App. 239.

B. Now 1937 amendment of sec. 103 of Administration Act so clearly provides.

2. Does not apply to appeals from justices of the peace.

North American Prov. Co. v. Kinman, 288 App. 414.
Seron v. Carlson, 280 App. 396.

3. The C. P. A. does not repeal or amend practice provisions of Municipal Court Act:

Ptacek v. Coleman, 364 Ill., 618.

V. Rules of Court.

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1. Rules of Supreme Court.
   - A. Originally, C. P. A. had schedule of rules attached to it.
   - B. Pursuant to the authority contained in sec. 3, the Supreme Court adopted a different schedule of rules at the December, 1933, term, and has amended these rules once at the June, 1935, term, and again at the October, 1937, term and June, 1938, term.
     - a. The 1933 Supreme Court rules supersede the schedule attached to the C. P. A.

       McNulty v. Hotel Sherman Co., 280 App. 325.
     - b. Rules operate prospectively only, and will not be given a retrospective interpretation so as to affect pending litigation:

       Rose v. *Meyer*, 370 Ill. 166
     - c. The rules now effective are those which were made effective as of August 1, 1938.
   - C. *Irrespective of statutory authority*, the Supreme Court has inherent power to promulgate rules for itself and to provide rules for, and review the rules of, the Appellate and other inferior courts of the State.

     People v. Callopy, 358 Ill., 11;
     People v. Coudrey, 360 Ill., 633;
     Ginsberg v. Ginsberg, 361 Ill., 499;
     Hallberg v. Goldblatt Bros., 363 Ill., 25.
     People v. L & L Indemnity Co., 295 App. 581.
     - a. The Supreme Court has even, in rule 27, provided that instructions in *criminal* cases must be in accord with section 67 of the C. P. A.
   - D. The rules adopted by the Supreme Court "have the force of law":

     Gyure v. *Sloan Valve Co.*, 367 Ill. 489.
   - E. They apply uniformly to practice in *nisi prius* courts of record except the Municipal Court of Chicago:

     Winning v. *Winning*, 366 Ill. 57.

2. Subject to their review by the Supreme Court, rules may be adopted by Appellate and other inferior courts to facilitate their business:
   - A. People v. Callopy, 358 Ill. II.
     - a. Trial courts may not adopt rules inconsistent with Supreme Court rules or C. P. A.: Winning v. Winning, 366 Ill. 57.
     - b. And power to "make rules regulating practice" does not include power to provide manner of serving summons:

       Danoff v. *Larson*, 368 Ill. 519.
   - B. Sec. 2 (2) of C. P. A.

3. Purpose of Supreme and Appelate Court rules is to facilitate the orderly disposition of the business of the courts and expedite prompt administration of justice:

   Bender v. Alton R. Co., 284 App., 419.

VI. Section 4 of the C. P. A. provides for its liberal construction.

1. But this does not contemplate a total or even partial disregard of the rules of the Supreme Court.

   Cullinan v. Cullinan, 285 App. 272.

2. Purpose of C. P. A. is to simplify and liberalize legal procedure, and without sacrificing uniformity, to subordinate form to substance.

   Kryl v. Zelezny, 8 N. E. (2nd) 223.

3. Highly technical interpretations of the C. P. A., are not favored.

   Schornick v. Prudential Ins., Co., 277 App. 36;
   Wainscott v. Penikoff, 287 App. 78.

VII. Material to be considered in connection with any procedural problem.

1. Civil Practice Act, with its 1935 and 1937 amendments.

2. Rules of Supreme Court, as adopted in December, 1933, and as amended in June, 1935, and October, 1937, and June, 1938.
   A. Present draft of 71 rules is made effective as of August 1, 1938, in lieu of all prior rules.
3. Rules of Appellate Court and other appropriate inferior courts.
4. Provisions of separate statutes relating to special actions.
5. Illinois Appellate and Supreme Court decisions construing the above.
6. Decisions of Illinois Supreme and Appellate Courts interpreting those provisions of former Practice Act which have been retained.
7. Decisions of other states interpreting provisions borrowed from those states.

SERVICE OF PROCESS

I. *Personal Service*

1. Manner of:
   A. By leaving a copy with defendant personally, or
   B. By leaving a copy at defendant's usual place of abode, with some member of family, at least 10 years of age, who is informed as to the contents of writ, and by following this by sheriff's mailing of another copy to such defendant.
   C. In case of corporation, by leaving a copy of summons with any officer or agent found in the county: section 17.
2. Effect of:
   A. Any judgment or decree may be set aside within 30 days from its entry "upon good cause shown by affidavit," upon reasonable terms: sec. 50, par. 7. Old rule as to finality of judgment after term is thus abolished.
   B. In addition to the foregoing, any error in the proceedings of the court which might have been corrected by a writ of error *coram nobis* at common law may now be corrected by a verified written motion within five years from final judgment: sec. 72. Also see rule 54 of Rules of Circuit and Superior Courts as to proper manner of proceeding.
      a. The errors correctable under this proceeding are errors of fact as to such matters which, if known to the court, would have prevented a judgment, such as infancy, death, insanity, mistake of clerk of court, etc.: Seither & Cherry Co. v. Board of Education. 283 App. 392.
3. By whom to be made (secs. 6 and 10):
   A. By sheriff or, if he is disqualified, by coroner.
   B. By any person authorized by court.
   C. Sheriff or coroner may make service outside of the county of his election.
4. If suit is properly commenced in one county, and defendant may be served anywhere within the state: sec. 10.
5. Summons (Rule 4).
   A. Must be made returnable to a first or third Monday not less than 20, nor more than 60 days away.
   B. Must be placed for service promptly upon issuance.
   C. May be served on or before return day.
   D. Must be returned within 5 days from service, and in no event later than first return day; failure to make the return, however, doe not invalidate the service.
   E. May contain notation that no personal decree or judgment is sought.

II. *Service by Publication.*

1. Appropriate in any civil action affecting property (real or personal) or status (marital, chiefly) within the jurisdiction of the court, or in any action at law to revive a judgment or decree: sec. 14.

A. Not sufficient to justify personal judgment or decree against nonresident.

2. Requires (a) an affidavit of non-residence, (b) publication once a week for three successive weeks (first publication being at least thirty days before default day) and (c) mailing of copy of notice, within ten days from first publication, to defendant's address as given in above affidavit: sec. 14 and 15.

3. Any final decree in chancery based on such service may be attacked by any defendant (or by his heirs, devisees or personal representatives) within 90 days after notice in writing of the decree or within 1 year if no such notice was given: sec. 50, par. 8.

III. *Personal Service Outside the State.*

1. May be made by delivery of summons and copy of complaint by any person over 21 and not a party to the action: sec. 16.

A. Fact of service established by affidavit of server: sec. 16.

2. No default entered before expiration of 30 days from such service.

3. Has same effect as service by publication.

4. Judgment entered on such service may be vacated only on such showing as would be sufficient to justify setting aside judgment on personal service within the State: sec. 16.

IV. *Appearance.*

1. Defendant shall appear on or before first return day named in summons, providing he has been served not less than 20 days prior thereto; if not then served, he shall appear on next return day: rule 5.

2. Must be in writing, by filing a pleading or motion in the cause: sec. 20.

V. *Venue:* Every action must be commenced in the county where

1. One or more defendants reside, or

2. In which the transaction, or some part thereof, occurred out of which the cause of action arose (sec. 7).

NON-SUITS AND DISMISSALS

I. *Two kinds of non-suits.*

1. Voluntary: On plaintiff's own motion.

2. Involuntary: On defendant's motion or court's motion.

A. This generally takes form of a dismissal for want of prosecution: Sehnert v. Schipper & Block, 168 App. 245.

a. If plaintiff fails to appear, defendant may (1) move to dismiss for want of prosecution, or (2) start to introduce evidence by way of a defense.

B. It should be distinguished from an involuntary dismissal under sec. 48, hereinafter considered.

II. Voluntary non-suit ((called voluntary dismissal): sec. 52.

1. *Before trial begins*, plaintiff may dismiss his action, or any part thereof, as to any defendant, without prejudice, upon notice to the defendant and payment of costs.

A. Having received notice, defendant may prevent non-suit by filing counterclaim.

2. *After trial begins*, he may dismiss, on the same terms, only

A. If defendant consents, or

B. Upon order of court on basis of verified petition setting forth good cause for dismissal, must comply with sec. 52.

C. T. & T. Co. v. *Cook County*, 279 App. 462.

III. If plaintiff suffers an involuntary non-suit in any action specified in the Limitation Statute, after the statute has already run, (i. e., if the statute runs while the suit is pending) he may start over again within 1 year (Ch. 83, sec. 25).

1. This applies only when statute has run at time of non-suit: *Heimberger* v. *Elliot Switch Co.*, 243 Ill. 448.
2. It does not apply to actions for wrongful death under Injuries Act: *Bishop v. Chicago Railway Company*, 303 Ill. 273.
3. If Statute of Limitations is raised as a defense, this one year grace should be set up by plaintiff's reply, which replaces old replication: *Goodpaster* v. *Chicago Milwaukee & Gary R. Co.*, 240 App. 267.

IV. Above types of non-suit should be distinguished from defendant's motion for an involuntary dismissal, pursuant to sec. 48, on the ground that one of the nine defects therein enumerated either (1) appears on the face of the complaint, or (2) is established by affidavits filed in support of the motion.

1. If adversary presents counter-affidavits, court may grant or deny motion, except that if questions of fact are raised, the court may (and in jury cases *must)* deny motion without prejudice.
2. If court does not pass upon above motion, these same defenses may again be set up by answer.
3. Failure to set up these defenses by motion does not preclude their presentation by way of answer.

SUMMARY JUDGMENTS

I. Plaintiff may, without reference to this summary practice, seek, by motion, a judgment in his favor on the basis of the defendant's answer.

II. He may also seek to obtain a summary judgment by proceeding under sec. 57 of the Act.

1. This may be invoked only if action is (a) upon contract, or (b) upon judgment or decree, or (c) to recover possession of land, or (d) to recover possession of specific chattel.
   A. It applies to action of forcible entry and detainer; Wainscott v. Penikoff, 287 App. 78.
2. Plaintiff must file an affidavit or affidavits, on the affiant's personal knowledge, setting forth with particularity the facts on which his cause of action is based, and amount due; attached thereto must be "sworn" or "certified" copies of all papers upon which he relies.
   A. This affidavit must comply with *rule 15.*
      a. If plaintiff's affidavit contains only conclusions of law and no sufficient allegations of fact, judgment will be denied, even though affidavit of merits is insufficient: *Prudential Ins. Co.* v. *Zorger,* 86 Fed. (2nd) 446.
   B. Sufficiency of plaintiff's affidavit and motion may be tested by defendant's motion to strike: Wainscott v. Penikoff, 287 App. 78; People v. Sancullins, 284 App. 463.
      a. Defendant's motion may be in the alternative, i. e., to deny the plaintiff's motion.
   C. Note difference between "certification" and "exemplification" under Act of Congress, which appears in Rev. Statutes immediately after chapter on Evidence and Depositions.
   D. Rule 21 of Circuit and Superior Court rules requires that both motion and supporting papers be served on defendant at least 10 days before hearing on motion, and that defendant file his counter papers within five days from that service.
3. If above affidavit is sufficient, then court may enter judgment in favor of plaintiff unless defendant shall, by an equally positive affidavit, complying with *rule 15,* show that he has sufficiently good defense on the merits to all or some of the plaintiff's claim.
   A. Burden is upon defendant to show that his affidavit discloses an issue of fact for the jury: Chicago Title & Trust Co. v. Cohen, 284 App. 181.

B. Under former Practice Act, purpose of affidavit was to apprise *plaintiff* of the nature of the defense; its purpose has been much extended; its object now is to enable *court* to ascertain whether there is issue of fact to be tried: Chicago Title & Trust Co. v. Cohen, 284 App. 181.

4. If affidavit of either party shows that some material facts are within the knowledge of a third person whose affidavit is unprocurable, then court may make such order under circumstances as may appear just: see *rule 15.*

III. If defense is only to part of claim, judgment may be entered for plaintiff as to the remainder, and execution may issue therefor, while action proceeds as to the other part: partial judgment.

IV. If defendant files counterclaim:

1. He may employ the summary judgment procedure to same extent as plaintiff may have done so: *rule 16.*
2. Even if he does not employ that procedure, yet if court is of opinion that there is merit in the counterclaim, then it may
   A. Reserve action until all issues are disposed of, or
   B. Enter judgment for plaintiff and stay execution until disposition of issues on counterclaim.
3. If counterclaim is for less than plaintiff's claim, summary judgment (on basis of above procedure) may be entered for plaintiff for the excess of his claim over the counterclaim.

DISCOVERY

I. In some types of complaint, as in (a) creditor's suits, or (b) suits to set aside conveyance, in aid of execution, the plaintiff may insert interrogatories in his complaint and demand that defendant answer them; this method of discovery still seems permissible: see rule 20.

II. But section 58 provides that wherever bill for discovery or interrogatories were formerly available the same discovery may now be had by motion; *in addition thereto,* discovery may take one of three forms:

1. *Deposition* of any party, or of any other person, may be taken.
2. *Admissions* may be requested from an adversary.
3. *Discovery of documents* in the present or former possession of any other party may be had.

III. *Depositions.*

1. Rule 19 provides that the deposition of any party or person may be taken, *before trial,* on written or oral interrogatories, in the manner provided for taking depositions in chancery.
   A. If the person whose deposition you are seeking *is* a party, then court will, on motion, simply order that "to submit to examination at a designated time and place."
   B. But if witness is not a party, have a notary public issue a subpoena to the witness, requiring appearance at a designated place and at a time which, from practical point of view, should be at least 7 days away.
   C. Serve subpoena and pay fee; fill out affidavit of service on back of subpoena.
   D. *After* subpoena is served, give all other parties, (if they are resident, 5 days', and if they reside out of county then 10 days') notice of the place and time of depositions: chap. 51, sec. 24.
   E. If witness fails to appear, file verified petition asking that court direct his appearance; only after he disobeys such an order may he be held for contempt.
      a. However, if statute on depositions is complied with, then the right to take depositions is not contingent upon court's discretion or motives of party:

Hill v. *Jeffery Co.*, 292 Ill. 490.

2. It is very advantageous to post oneself in this way, in advance of trial, as to testimony to be expected at trial.
   A. "It is to be hoped that hereafter most, if not all, of the facts will be adduced before actual trial begins":

      Ladd v. *Cochran*, 274 App. 427.

   B. "Sec. 58 of the C.P.A. ————, and other provisions of that Act, and the rules of the Supreme Court, furnish ample machinery for discovering *before trial* who was to blame.

      Aarseth v. *Stein*, 278 App. 16, at page 19.

3. Depositions may be taken before issue is joined:

   Kimball v. *Ryan*, 283 App. 456, at page 466.

4. Depositions may be of adverse party, *under section 60 of the Act*, which also applies to testimony at trial.
   A. That section provides that (1) any party, or (2) any person for whose immediate benefit an action is being prosecuted or defended, or (3) the officer, director or managing agent of a corporate party, may be examined at instance of adverse party "as if under cross-examination."
      a. Under this section, court may order party to suit to submit to cross-examination even without service of subpoena.
      b. Cross-examination *before trial* does not exhaust right to cross-examine at trial:

      Review Printing & Stationery Co. v. *McCoy*, 291 App. 524.

      c. It is not the purpose of this section to permit either side to elicit, by leading questions, extended information as to which witness is then prohibited from making any explanation:

      Combs v. *Younge*, 281 App. 339.

   B. It is necessary to state that witness is being called for cross-examination under section 60.
   C. After plaintiff has thus cross-examined, defendant may immediately be examined by his own counsel at least as to those matters which were touched on cross-examination.
   D. This section is based on Minnesota statute and is very similar to section 33 of the Municipal Court Act, which is based on a New York Act.

5. It is, therefore, almost always desirable to take the depositions of your adversary and his witnesses as soon after suit is filed as possible.

6. These depositions are not to be introduced except (a) where witness is deceased or out of jurisdiction at time of trial (b) as basis for impeachment.

IV. *Admissions from Adverse Party.*

1. Any party may exhibit to the other, proir to trial, any material paper and request written admission of its genuineness; if adversary fails to give such admission within four days, the requesting party may recover the expense, including counsel fees, of establishing the genuineness of the paper at the trial: rule 18.

2. Any party may request the other, in writing, not less than 10 days before trial, to admit any specific fact; if adversary fails to admit this fact within 4 days, the requesting party may recover the expense, including counsel fees, of establishing that fact, irrespective of ultimate result of trial: rule 18.
   A. This admission is to be used only for purposes of the instant trial and only for purposes of requesting party.

3. Any party may "seasonably" present any copy of public records to his adversary, by written notice, and such copy shall thereupon be admitted in evidence (if otherwise admissible) unless adversary points out its inaccuracy by affidavit filed and served within 10 days from such notice and not less than 4 days before trial: rule 18.

V. *Discovery of Documents.*

1. Upon motion of any party, "seasonably made," any other party shall be required, by order of court, to file a sworn list of all documents, photographs, books, accounts and papers, which are or have been in his possession, material to the merits of the cause: rule 17.
   - A. A good cause of action must first be stated in the complaint:
     Lewis v. *Continental Asso. Co.*, 289 App. 114.
   - B. The adverse party may still fail to include some of his documents on the ground that they are not material.
   - C. Also, this rule does not apply to memoranda, reports or documents prepared in preparation for trial, nor to communications between a party and his attorney.
   - D. The list must list all documents in two schedules.
2. Schedule 1.
   - A. All those documents which the party is willing to produce, together with name and address of person in whose possession they are.
   - B. When thus produced, they may be introduced without further proof of genuineness.
   - C. Demanding party may inspect and make copies of these documents at any convenient time, and upon refusal of the other party to permit such inspection or copy, (a) his suit may be dismissed, or (b) a portion or all of his pleading may be stricken, and a judgment may be rendered accordingly, or (c) any particular claim or defense may be barred, or (d) he may be punished for contempt.
   - D. If document listed in this schedule is later not produced upon "reasonable demand," it shall not be admissible at instance of refusing party unless court is satisfied that he is not responsible for refusal.
3. Schedule 2.
   - A. All those documents which the party is unwilling to produce, together with reason for refusal, and with name and address of person in whose possession they are.
   - B. Thereupon demanding party may seek an order to permit inspection and copy of such documents; if such an order is entered, and there is no compliance therewith, the consequence may be as in "2-C" above.
   - C. No document listed in this schedule shall be admissible at the instance of the listing party except upon leave of court.
4. A document required to be listed under this rule, but not listed, shall not be admissible at instance of the refusing party unless court is satisfied that failure to list was due to a *bona fide* and reasonable belief that document was not material.
5. Supplemental lists may be filed with respect to document discovered by a party who has already filed a list.
6. Without demanding a list of documents, any party may obtain order upon any other party to produce material documents, or *articles* of property, in his possession, for inspection, copying or photographing.
7. Also, upon verified application, any party may obtain an order requiring any other party to state, by affidavit, whether he has in his possession any specific document, and if not, when he parted with possession of it, and what has happened to it.
8. Upon the entry of any order under this rule 17, all proceedings shall be stayed until compliance therewith.

JURY TRIALS

I. How to obtain trial by jury in law cases.

1. Written demand must be filed with Clerk by the plaintiff at the time suit is commenced, or by the defendant at the time of filing his appearance: sec. 64.
2. Costs of $8 must be paid at time of making demand: chap. 53, sec. 51.

3. If plaintiff files and later waives jury demand, defendant may make his jury demand upon motion at the time of such waiver.
4. Right to jury trial is preserved, but if party wishes to retain the privilege, he must make the demand in accordance with the statute:

Harris v. *Juenger*, 289 App. 467.

II. Jury trials in equity.

1. Court may direct an issue to be tried by a jury whenever it shall be judged necessary: sec. 63.
   A. This applies to cases where submission to jury is not obligatory; the verdict of the jury in these cases is, therefore, not binding on the chancellor.
2. In will contests.
   A. All will contests shall be tried by a jury: chap. 148, sec. 7; such right may, however, be waived (*Lyman* v. *Kane*, 275 Ill. II), and a waiver may result from a failure to comply with sec. 64 above.
   B. In this connection it is interesting to note that rule 25 changes old practice and requires contestant, instead of proponent, to proceed first with his proof.
      a. This rule is valid as being a rule of *procedure: Ginsberg* v. *Ginsberg*, 361 Ill. 499.
      b. Contestant now also has the burden of proof on the whole case, as well as burden of proceeding with the proof: *Stephanian* v. *Asadourian*, 283 App. 495.
3. In divorce cases, when defendant denies plaintiff's charges, either party shall have right to have cause tried by jury: chap. 40, sec. 8.

III. In appeals from justice of the peace, probate court, or county court sitting as probate court, either party desiring trial by jury must file a written demand before trial, but in no event later than second return day following the filing of the transcript on appeal.

1. This is rule 24½, adopted June 18, 1935.
2. This overrides decision in *North American Prov. Co.* v. *Kinman*, 288 App. 414.

IV. Impanelling the jury.

1. Both in civil and criminal cases, jurors should be selected in panels of four.
   A. Chapter 78, sec. 21.
   B. *Collison* v. *Ill. Central R. R. Co.*, 239 Ill. 532.
2. Plaintiff should first select four jurors and then tender them to defendant, and when defendant has accepted them, plaintiff should proceed with next four. and so on.
3. If plaintiff tenders four jurors, and defendant excuses one, defendant should first examine an additional juror, and tender him to plaintiff for examination: *People* v.*Nylin*, 139 App. 500.

V. Examining the jury.

1. Examination should seek to elicit (a) capacity (b) bias or prejudice (c) experience.
   A. It is permissible to inquire of prospective jurors whether they are interested financially in the insurance company representing the defendant:

Smithers v. *Henriquez*, 368 Ill. 588.

2. Challenges may be
   A. For cause
   B. Peremptory.
3. In civil causes.
   A. Each "party" is entitled to five peremptory challenges: sec. 66. This "word" was used in former Practice Act, and referred to all the plaintiffs as a group or all the defendants as a group.
   B. If there is more than one plaintiff or more than one defendant, court

may allow three additional peremptory challenges to each additional plaintiff or defendant: sec. 66.

VI. Instructions to jury.

1. Originally, sec. 67 provided for the giving of instructions in a continuous and narrative form and not as a series of separate instructions.
2. Act of July 5, 1935, amended section 67 so as to restore former practice of giving separate instructions, in a series, in writing, the court marking them "given" or "refused."
   A. The 1937 amendment of this section made no material change.
   B. Parties may still agree on oral charge: rule 51 of Circuit and Superior Court rules.
3. In *criminal* cases, instructions shall be in accord with sec. 67 of the C.P.A.
   A. Rule 27 of the Supreme Court Rules.
   B. People v. Callopy, 358 Ill. 11.
4. Jury may take instructions and all exhibits, other than depositions, into jury room upon retiring: sec. 67.

VII. Special interrogatories and special verdicts.

1. Either party may submit to his adversary, prior to the commencement of arguments, written interrogatory upon any material fact, and court shall give same to jury; court may also give any interrogatory upon his own motion: sec. 65.
2. Court will then instruct jury that they must answer this interrogatory.
3. When special finding is inconsistent with general verdict, the former prevails and judgment is entered accordingly.
4. If plaintiff has malice allegation in complaint, he should prepare interrogatory on that issue.
5. Defendant ought to prepare interrogatory with respect to each of the several ultimate facts without which plaintiff has no cause of action.
6. If there are several counts in the complaint, *based on different demands*, the court shall, on demand of either party, direct jury to find a separate verdict on each: sec. 68.

VIII. Motion for directed verdict.

1. At end of plaintiff's case, the defendant may make a motion for a directed verdict; action thereon may be reserved to end of case; this is the established and former practice.
   A. This motion should be accompanied by an appropriate written instruction to be given the jury: *Fisher* v. *Wittler*, 285 App. 261.
2. But also at the end of entire case, action on the motion of *either* party for a directed verdict may be reserved until after verdict: sec. 68.
   A. There is no distinction between motion at end of plaintiff's case and motion at end of entire case:
      Capelle v. *C. & N. W. Ry. Co.*, 280 App. 471, 480.
   B. On motion for directed verdict, the only question is whether the evidence, with all reasonable inferences and intendments, might reasonably justify a verdict for plaintiff.
      Wedig v. *Kroger Grocery Co.*, 282 App. 370;
      Malewski v. *Mackiewich*, 282 App. 593.
   C. The C.P.A. has not altered or modified rule "B" above:
      Herbst v. Levy, 279 App. 353;
      Capelle v. *C. & N. W. Ry. Co.*, 280 App. 471;
      Fisher v. *Wittler*, 285 App. 261.
3. Thereafter, verdict must be recorded; thereupon court will listen to arguments on the motion and either (a) enter judgment on the verdict in favor of winner, or (b) grant loser a new trial, or (c) enter judgment for the loser, notwithstanding the verdict: rule 22.

A. This is a new practice because at common law a judgment notwithstanding the verdict could only be entered in favor of the plaintiff; under C.P.A. *either* party may have it:

Ill. Tuber Asso. v. *Springfield Bank*, 282 App. 14.25.
Capelle v. *C. & N. W. Ry. Co.*, 280 App. 471, 475.

B. In no event shall exceptions be necessary.

C. In fact, no exception need be taken to any order or ruling of any trial court: sec. 80.

4. Party against whom a verdict is entered may present to Appellate or Supreme Court the fact that trial court erred in (a) not directing verdict in his favor, or (b) not entering judgment notwithstanding verdict. The Appellate or Supreme Court may then either (a) enter judgment notwithstanding the verdict or (b) grant new trial.

5. *Party in whose favor* a verdict is entered may have review of a judgment against him notwithstanding the verdict. and the Appellate or Supreme Court may then take such action as noted in "4" above.

IX. Motion for judgment notwithstanding the verdict.

1. At common law this was only available to the plaintiff; under C.P.A.. *either* party may make it.

Ill. Tuber. Asso. v. *Springfield Bank*, 282 App. 14, 25.
Capelle v. *C. & N. W. Ry. Co.*, 280 App. 471.
McNeill v. *Harrison & Son*, 286 App. 120.

2. On this motion, court has no right to weigh the evidence; court is to be governed by same rules which apply to a motion to direct a verdict; the only issue is whether the motion for a directed verdict should have been allowed:

Farmer v. *Alton Bldg. & Loan Asso.*, 294 App. 206;
McNeill v. *Harrison*, 286 App. 120.
Malewski v. *Mackievich*, 282 App. 593.
Ill. Tuber. Asso. v. *Springfield Bank*, 282 App. 14.

3. Therefore, if court reserves action on defendant's motion for a directed verdict, and plaintiff obtains the verdict, the court may—if it thinks that it should have directed a verdict—render judgment for the defendant notwithstanding the verdict.

A. Better practice probably would be simply to grant the defendant a new trial:

Capelle v. *C. & N. W. Ry. Co.*, 280 App. 471, 480
Wolever v. *Curtiss Candy Co.*, *293* App. 586, 601.

4. On a motion for a directed verdict, the question is whether there is any evidence fairly tending to prove the plaintiff's case; the evidence, in its aspect most favorable to the plaintiff, together with all reasonable inferences therefrom, must be taken most strongly in favor of the plaintiff:

Wolever v. *Curtiss Candy Co.*, *293* App. 586;
Thomason v. *Chicago Motor Coach Co.*, 292 App. 104;
Fisher v. *Wittler*, 285 App. 261.

X. Motion for new trial.

1. Any party wishing to move for new trial, or in arrest of judgment, or for judgment notwithstanding verdict, must do so before final judgment, or within 10 days thereafter, and must specify grounds of his motion in writing: sec. 68.

2. An order granting a new trial is for the first time deemed a final and therefore appealable order: sec. 77.

A. But no appeal may be taken thereon except on leave granted by *reviewing* court, within 30 days after the entry of the order, on motion and notice to adverse party.

B. Appeal from the order granting a new trial is governed by Rule 30.

3. Under the C.P.A., as formerly, the application for new trial is addressed largely to sound judicial discretion.

Adamsen v. *Magnelia*, 280 App. 418.

4. Therefore, the action of the trial court in granting new trial will not be disturbed unless there is clear abuse of discretion:

Barthelman v. *Braune*, 278 App. 384.
Village v. *Clark*, 278 App. 269.

PERFECTION OF APPEAL

I. Right of appeal must be availed of in strict compliance with the statute:

Johnson v. *County*, 368 Ill. 160.

1. Right of appeal is purely statutory, and provisions of C. P. A. must be complied with or appeal will be dismissed:

Shaw v. *Davis*, 289 App. 447.

2. C. P. A. applies to review of all orders, judgments or decrees entered on or after January 1, 1934: Rule 1.

II. Every order, determination, decision, judgment or decree heretofore reviewable by writ of error, appeal or otherwise, shall hereafter be subject to review by "notice of appeal": sec. 74.

1. This review is designated an "appeal" but the old distinction between an appeal and a writ of error is abolished.

A. This method of review is open even to a person who is not a party to the record:

People v. *Kennedy*, 367 Ill. 236.

2. All distinctions between the common law record, the bill of exceptions and the certificate of evidence are also abolished: sec. 74 and

Monroe v. *Wear*, 276 App. 570.

A. The "trial court record" includes every writ, pleading, motion, order, affidavit and "all matters before the trial court," certified by the trial court to be part of the record: sec. 74.

3. An appeal constitutes a continuation of the proceeding in the court below: sec. 74.

A. But the lower court loses jurisdiction after notice of appeal is filed:

Lanquist v. *Grossman*, 282 App. 181.

4. The appeal is deemed perfected when notice of the appeal is filed in the *lower* court: sec. 76 and

People v. *Board of Education*, 283 App. 378.

A. The filing of the notice is jurisdictional:

Bank of Republic v. *Kaspar State Bank*, 369 Ill. 34.

5. The form and contents of the "notice of appeal" are set forth in rule 33.

A. While that rule requires a prayer for relief, the omission of the prayer is not fatal:

Bank of Republic v. *Kaspar State Bank*, 369 Ill. 34.

III. Manner and time of appeal.

1. If *immediate supersedeas* sought:

A. Notice of appeal must be filed in trial court clerk's office within *20* days from date of judgment or decree; within 5 days thereafter copy of notice must be served on adversary, and proof of such service must be filed in same office within 5 days from service. Manner of service is fixed by rule 34.

a. Notice of appeal must be filed in *trial* court:

Ohio St. Hotel v. *Lindheimer*, 368 Ill. 294, 298;
Shaw v. *Davis*, 289 App. 447.

B. In addition to the foregoing, a supersedeas bond must be filed in trial court within *30* days after entry of judgment, order or decree; trial court's approval of this bond, of the amount of the bond and of the security, must be obtained upon notice to the appellee: section 82.

a. Thereupon the notice of appeal operates as a supersedeas.

b. Within the aforesaid 30 days, the trial court may extend the time for the filing of the bond.

2. If *supersedeas* is sought *ONLY AFTER EXPIRATION OF ABOVE 30-DAY PERIOD:*

A. Notice of appeal must be filed in trial court within *90* days, instead of 20 days.

B. Written application must be made to the reviewing court, accompanied by a transcript of the record, an abstract of record, a brief, and a copy of the supersedeas bond, with proof of its service on the appellee: rule 37.

3. If *NO supersedeas* is sought:

A. Notice of appeal must be filed in trial court *within 90 days* from the entry of the order, decree, judgment or other determination complained of: sec. 76. Within 5 days thereafter, copy of notice must be served on adversary, and proof of such service must be filed in same office within 5 days from service; manner of service is fixed by rule 34.

a. It is not erroneous to serve copy of notice on adversary *prior* to filing original of notice in court:

Schafer v. *Robillard*, 370 Ill. 92.

b. Notice need not be served on a defaulted party:

People ex rel v. *Village*, 294 App. 362.

B. Leave to appeal *after* the 90-day period but within one year may be obtained in the *reviewing* court upon printed petition, accompanied by

a. Affidavit showing probable ground for reversal and showing facts to justify the delay,

b. Transcript of necessary portion of record and abstract of such record, and

c. Proof of service on the appellee (Rule 29).

4. *Irrespective* of the supersedeas, every appellant shall, within *10* days after filing of notice of appeal, file a *præcipe* with the clerk of the trial court, with proof of service thereof on appellee, in which *praecipe* he shall designate what portions of the trial court record shall be incorporated in the record on appeal: rule 36.

A. In the record may be incorporated, by order of court, or upon stipulation, the oiginal of the "report of proceedings at the trial," certified to by trial court, and consisting of a complete stenographic report, or a condensed statement, or the master's report, or an agreed statement of facts. This "report" must be filed in the trial court within *50* days from the date of the filing of the notice of appeal.

a. Failure to file praecipe is not fatal, especially where complete record is filed:

Toombs v. *Lewis*, 277 App. 84.

B. The entire record must be transmitted to the reviewing court within *60* days after filing of notice of appeal: rule 36.

a. If this is not done in apt time, the appeal may be dismissed:

People v. *L & L Ind. Co.*, 295 App. 581.

IV. Although legislature has attempted to bring "special procedure" statutes in line with the above, some special statutory provisions still persist, and those statutes must always be consulted.

V. Appeal from interlocutory order (sec. 78 and rule 31).

1. Appeal to Appellate Court is permitted from order:

A. Granting an injunction or overruling motion to dissolve same; or,

B. Enlarging scope of an injunctional order; or

C. Appointing a receiver;

D. Giving other or further powers or property to an existing receiver.

2. No notice of appeal is necessary:

   Central Cotton Assn. v. *International Workers*, 280 App. 168.

3. Appeal is commenced by filing cost bond in trial court, approved by its clerk or judge.
4. This must be done and record must be filed in the Appellate Court within *30* days from entry of the order appealed from.
   A. This means within 30 days from denial of motion to dissolve injunction and not from granting injunction:

      C. T. & T. Co. v. *Provol*, 282 App. 173.

5. Hearing on that appeal takes precedence over other matters, in the Appellate Court.
6. If appeal is dismissed, Appellate Court may tax attorney's fee, not exceeding $100, as part of costs.

VI. Procedure on appeal is governed by rules in effect at the time judgment was entered in the trial court.

Rose v. *Meyer*, 370 Ill. 166.

ASSOCIATION OF AMERICAN LAW SCHOOLS THIRTY-SIXTH ANNUAL MEETING

S. R. PULASKI

The Association of American Law Schools held their annual meeting in Chicago, on December 29, 30, and 31, 1938. The Association consists of a membership of ninety-one law schools. Over five-hundred educators from law schools all over the United States attended the meeting.

Object

In 1878 a group of Law Teachers met at Saratoga Springs, N. Y., to form a national legal society. In 1900 a resolution was adopted forming the Association of American Law Schools with an initial membership of twenty-seven schools. It has grown from twenty-seven member schools to ninety-one who now fulfill its drastic requirements for membership. The meeting serves as a forum, if not a battle field, for new ideas in legal philosophy and new concepts in legal pedagogy. The crowning achievement of the Association has been its securing of general acceptance by the profession of its standards for legal education.

The object at the time of its inception was "the improvement of legal education in AMERICA."

Officers for the Years 1938 and 1939

The officers for the year 1938 were: Herschel W. Arant, Dean of the Ohio State University College of Law, president; Wilbur H. Cherry, of the University of Minnesota College of Law, president-elect; and Harold Shepherd, of the University of Cincinnati College of Law, secretary-treasurer. Your editor was publicity director for the 1938 meeting, which was held at the Stevens Hotel.

President Herschel W. Arant, in the keynote speech of the Convention, urged the law school to assume its share of the responsibility to see that the whole duty of protecting the public from the unfit lawyer is not carried by the bar examiners. "We must attempt to discover and stop the unpromising student at the end of a reasonable trial period, and the judgment of one school as to a particular student's fitness should be accepted by other schools as all but conclusive." The school must also work sympathetically with all departments and agencies concerned with the law in attempting to discover what is best for the public interest through the lawyer and his profession. Mr. Arant does not advocate the teacher's "limiting himself to his classroom and the cloistered quiet of research or confining his contacts to those of his fellowmen to whom they concede an intellectual and moral parity." Professor Arant might also have enlarged upon this theme to point out the mistake of the law teacher's devotion to research to such a degree that he loses personal contact with the student or makes himself less easily apprehended by the student mind.

President Arant devoted his paper mainly to a contrast of the training of the young lawyer today with the training of yesterday. The principal part now played by the American law teacher, in our scheme of administration, he pointed out, was once played wholly by practicing lawyers and judges. But, as tim went on, the law became more complex and lawyers became too much

occupied with the demands of their practice to spare the time necessary for such teaching as they had once done, and to furnish that intimacy of relationship with prospective lawyers that had constituted the main virtue of the office system of instruction. The increasing number of applicants to be examined, also, soon made it impracticable for the courts in their own persons to examine all who sought admission to the Bar.

Many deplore the loses alleged to have resulted from the displacement of practicing lawyers as teachers in favor of lawyers in law schools. They recall the advantage to the aspiring young lawyer that was his in an earlier day when he read or studied under a single lawyer, copied legal documents for his preceptor and was generally at his elbow. Then the young lawyer came, naturally, to do things as he had seen his preceptor do them. And fortunate he was if this intimate relationship was with a lawyer of ability and high professional ideals. The young man of that day, then, who requested a license to practice, knew much more about law than the young man of today. He knew how to do things, if not so much about the why. So the Bar today commonly complains of the inability of the young lawyer to do many of the simple things the lawyer of yesterday could do.

Still President Arant is definitely of the opinion that "the law school of today does an immensely better job in training lawyers than any office ever did." He also doubts "whether there is a law office in the land today in which the young lawyer could get as adequate a training as he received in a good lawyer's office fifty years ago, unless some law-school-trained clerk had the job of training him especially delegated to him. The typewriter, the stenographer and specialization have robbed the modern law office of most of the capacity that the old office had to train a young man for general practice." Some schools attempt to make up for the loss of personal contact with the profession and the valuable training in practice by maintaining legal-aid clinics in which students handle cases for real clients, and practice courts with instruction in the drafting of legal instruments. But there is still a difficulty on this score since many, and not one, as formerly, must be watched and guided in this process.

As to the charge that the young man comes to the Bar without the appreciation of the ideals and traditions of the profession because of lack of contact with practicing lawyers and judges, President Arant is rather of the opinion that the tragedy now is that young lawyers enter a profession which appears so overcrowded that it is exceedingly difficult for them to *live* the idealism with which the law schools send them into the profession.

"How Fully Does the Lawyer Enjoy the Confidence of the Public?" asks Dean Everett Frazer

Dean Frazer began his address with the remark that he had modified his title, "Can the Bar Recover the Confidence of the Public?" to the "Bar and the Public" because the original was thought to have disagreeable implications. Did lawyers once have the confidence of the public, only to lose it? Is it that they never had it? Or possibly that they haven't lost it? "We can probably all agree," said Dean Frazer, "that we do not have it as fully as we should like."

The speaker quoted the late Newton D. Baker to the effect that in the early days when a public question of importance arose, the people flocked to the lawyer for counsel. One or two lawyers would make

addresses in the courthouse, or in a church, and the town flocked to get the wisest counsel available. Lawyers were assumed to be the guardians of whatever learning there was in those times. Not so now. The lawyer does not have that exalted and revered standing.

Professor Frazer took up some of the serious recurrent indictments of the profession: antiquated laws, antiquated procedure, the law's delay, failure to insure justice to the poor and the near poor, the expense of litigation, legal racketeering, and the lawyer's escape from official scrutiny in a period of investigation because he himself is generally in control of the investigating machinery. He recognizes the justice of complaints but believes that something is being done by the American Bar Association and related organizations to eradicte or mitigate the evils. Yet he wonders if "we are not devoting our energies to rules of law without sufficient consideration of the principles that underlie them?" The student of law must do more than study the law itself. He should inform himself of the philosophy, ethics, economics, sociology and psychology of the times. This is a big order; and Mr. Frazer seemed to be aware of the fact when, later in his address, he made recommendations regarding the curriculum and examinations. But to this reviewer a greater difficulty loomed large when Mr. Frazer defined law as "the expression of the life of a people" and expressed the belief that life molds the law, and not law the life. There is great truth in this; but we wonder if Dean Frazer sufficiently regarded the element of the objective and unchangeable in law. "Only one thing," he says, "is constant, namely, change." It is certainly true that we cannot get along with the same general expression of law that suited a less refined and complex civilization. But we must not lose sight of the fact that there is a definition of law as there is a definition of everything else; and that when we go deeply enough we go beyond change. Law is by nature a regulating force, and is intended to regulate life. Make all due allowance for different conceptions of law, and we must still keep law and life in the correct relationship to each other.

Besides, there are many who look with some alarm upon the growth of the curriculum and who wonder if there is not a dissipation of energy resulting from the student's attempt to grasp all that enters into the making of the law and its functioning. Our order today is a shifting order; there are many whims in our social life — studied in our psychology, sociology and economics; and if it is true that life molds the law, we must be on our guard against the whims.

Professor Frazer regrets that "lawyers seem to have put away political life and have united with business instead," that law schools "point students for a life as business advisors rather than for a life as professional statesmen." But this seems to us to be the natural result of what Mr. Frazer recognizes as natural, namely, that law and lawyers follow the trend of life and the times. The great field for the lawyer today is the field of business. We think Mr. Frazer is lamenting, really, the dearth of statesmen among our lawyers. And with this we heartily agree. More statesmen, yes; but not more politicians.

The speaker re-echoed the common complaint about the overcrowded profession, and remarked, with wit, that "if, as some say, lawyers live on trouble, we'll either have to increase the amount of trouble or reduce the number of lawyers. It semes that we are now increasing the trouble."

Professor Frazer prefers to reduce the number of lawyers by making more exacting the standards for admission to the Bar. With him, native ability comes first. "This can compensate for want of training, but no training can make up for the want of it. The bar examinations do not test the candidate's general education at all, and they do not test his natural ability to the extent that they should. Generally speaking, they test only the candidate's knowledge of rules of law. Many fail on their first attempt, but the records show that with cramming and repeated attempts, aided perhaps by sympathy for their situation, most candidates finally succeed in passing the examinations."

Dean Frazer suggests, and wisely, we think, that the student be required to register with the board of examiners before beginning the study of law, as is now done in Pennsylvania and one or two other states, and as is the rule in England and Canada; that the student be given examinations to determine his general ability. We are not so sure that his recommendation requiring evidence of moral character will be as productive or indicative. He himself seems to be of the opinion, as evidenced by his remarks at another point in his address, that the real test of character does not come until one has met with the reverses of adult life, with the choice between dishonesty and hunger. And the student has hardly reached this stage.

Mr. Frazer favors, in contradistiction to the English tradition, the American tradition of democracy in the profession of law, the tradition of the open door to men from any rank; but he wisely remarks that the democratic spirit is one thing and low standards another.

Other speakers of note were Honorable Joseph C. O'Mahoney, United States Senator from Wyoming; Robert L. Hale of Columbia university and Francis X. Welch, editor, Public Utilities Fortnightly, Washington, D. C.

Senator O'Mahoney gave a clear and spirited presentation of his position on the nature and regulation of corporations, pointing out some common and fundamental misconceptions and suggesting regulation of corporation activities at the same time with recognizing the contribution they make to our economic order. The corporation, he declared, is a necessary unit of our social life; it has served the public good where the individual could not have done so—spanning the great expanse of our nation with railroads and uniting the extremities of the land through a radio network. But the province of individual enterprise must not be restricted by any other power, since the individual is paramount and above kings, constitutions and corporations, and is the creator of these powers. It is the abuse of this fundamental truth which he finds at the bottom of the system disastrously affecting Europe. "Mussolini, Hitler and Stalin are corporate systems unrestricted," he declared. "They make us see that the creature is being made more powerful than the Creator."

The fight to be waged is not a fight against the growth of corporations, but against the growth of corporate power, a power which, if not restricted by proper legislation, becomes too great and damaging to the common good. "It never was my idea," he said, "that bigness of itself had any evil significance. My only theme is that these big corporations should never be allowed to become so powerful that they become as big as the political democracy under which we live." This is the real evil suggested by the term monopoly.

The Boston Tea Party, declared the Senator, was a gesture of defiance against a too-powerful corporation, the India Company. Even the English Parliament came to realize in time that the India Company had grown so powerful that the State could no longer exist as free unless that corporation was put out of existence. And Andrew Jackson's war against the banks was a war waged against corporate power, wielded by one man in a position, by that money power, to interfere in the functioning of the government.

As the individual must not be restricted in legitimate enterprise, neither must an individual state suffer because it does not have within it individuals or corporate units which can supply the financial power necessary to the promotion of the state's interests. Senator O'Mahoney cited the State of Texas, in this regard, as a state rich in resources but poor in the ability to function in business; and he made specific reference to one industry of that state which, though the state furnished capital, labor and raw material, was yet dependent on a Connecticut corporation for the necessary instrumentality supplied by the power of corporation. This concentration of money power in a few municipalities he deplored, as he pointed out that more than 33⅓ per cent of the nations money is concentrated in the cities of New York and Chicago.

To preserve our political democracy the modern system must be controlled. More than 60 per cent of Interstate Commerce is carried on by corporations in fields reserved for the Federal Government; and the corporations are not even under the control of the states which created them, since the states do not control interstate commerce. It is Senator O'Mahoney's belief that when production within the state is intended also for distribution outside of the state, care must be taken that a too careful regard for state rights does not jeopardize national interests.

Since the Interstate Commerce Act of 1887, declared the Senator, we have made necessary the growth of Federal control because we have been on the wrong track. He is willing to recognize the capable discretionary control of the present government. But he points out that discretion is something inconstant and variable. "There should be laid down clearly within the four corners of the law what is necessary so that we should not have to rely on discretionary bodies and boards."

Senator O'Mahoney cited some provisions of the Borah-O'Mahoney License Bill to make clear his contentions about corporation control and to allay fears that it was not another attempt to create a bureaucracy in Washington. The aim of that bill was, he said, to make directors of corporations really trustees, mindful of their trust and responsible to the stockholders. Because in practice they are not too often mindful of this trust we have had the Robbins-McKesson tragedy. He deplored, also, the activities of the great corporations seeking business with governments abroad, declaring that they were doing what the Constitution did not grant as a right to the individual states: to enter into agreement with foreign nations without the consent of the Federal Government.

To emphasize the relationship between the Constitution and business on a national scale Senator O'Mahoney declared that the Constitution was the work of the business fraternity, that business men of the thirteen states saw that a central-government control was necessary to give stability to business. This explanation, he added, covers our

system of United States Mail, and the National Bank Act of the Lincoln administration, when state currency was taxed out of existence in the interest of national, and wartime, needs. We hear no opposition now to that legislation, he said, though, at the time, many a voice was raised against it; and it is the Senator's prediction that if, there is enacted now the right kind of Federal control legislation, in twenty years we shall not hear a dissenting voice.

Reviewing the good of the corporation, Senator O'Mahoney said in conclusion that, while the individual can do damage to the common good, the corporation magnifies the evils of the individual "Srooge," and that if he operates from coast to coast he needs the control of that government which extends from coast to coast.

Others Express Views

Other views were presented by J. Warren Madden, chairman of the labor board; Chester T. Lane, general counsel of the Securities and Exchange commission; Elmer A. Smith, general counsel for the Illinois Central railroad; Ralph Horween, Chicago attorney, and Prof. Ray A. Brown of the University of Wisconsin law school.

Other Leaders Disagree

The speakers other than Senator O'Mahoney were in substantial agreement that the present social system presents regulatory problems too complicated to be dealt with by the simple rules of statutory law. It was Mr. Smith who said dictatorship is inevitable if administrative law cannot solve these problems and at the same time respect the rights of citizens.

He suggested the commerce commission as a model of fairness on which to pattern newer administrative tribunals. Only twice in its fifty-one years of existence, he said, has the Supreme court overruled the commission on the ground that it failed to give due process of law.

Defends Labor Board

Madden described the machinery of procedure used by the board. He said this is designed to assure both fairness and speedy determination of issues. He attacked as unfair the attempts of lawyers in the Ford and other cases, on appeals in the courts, to investigate the internal procedure of the board to determine whether the members had read the records on which they based their orders. The size of the records, and the number of cases handled, make this impossible, he said.

Dean Landis asserted that in dealing with administrative justice its critics compare it with a system of ideal justice in courts that they know does not exist. Judges, he said, also have their partisanships and prejudices, adding:

"You know very well that anybody who has had to plan a legal strategy embracing the whole country picks his judges and his courts."

It was because of the prejudices of courts, he asserted, that administrative tribunals were established by legislative bodies. It was the antagonism of the Grangers toward the courts that brought the interstate commerce commission into being a half century ago, he said.

"Partisanship is to be expected," he added. "The tribunals are there to carry out the provisions of specific legislation. A political party has the right to see that its policies are carried out in the field of administration just as they are carried out in the field of legislation.

T. V. A. Regulation

A consideration of the timely topic of the TVA suggested to Mr. Welch, editor of Public Utilities Fortnight-

ly, the subject of utility regulation and the possibility of complete socialization of all private utility enterprises. "Will we need regulation at all very much longer?" he asks. "Will we have anything left to regulate?" Answering the question, he declared that we shall have private ownership of utilities for many years, simply for the reason that the Government, even with the sum of twenty billion dollars—which represents the national debt when the New Deal came to power in 1933—it would not be able to buy even the three major industries of electric light, telephone and gas. And as evidence that individual municipalities would hardly enter the field of purchase under the leadership of a pro-public Federal policy, he cites the relatively modest response which these municipalities have made to the Federal policy of financial assistance in force since 1934.

"Since we might as well make up our minds for the indefinite future to live with a system of utility management dominated by private enterprise we must give our consideration to the matter of regulation."

"I think it could be fairly said that TVA operations have done a great deal to make the public generally power conscious. It has taken advantage of the backing of the Federal Treasury to cut rates in anticipation of increased consumption. While it is true private utilities do not have the resources to take such liberty of action, the new result has been in the interest of both the public and the industry by putting into actual practice what the electric rate engineers have long known, that electric rates can become almost unbelievably low if sufficient volume of consumption and favorable load factor can be developed. . In the absence of independent regulatory supervision, it is my considered judgment that there is a real danger that the management of publicly-owned systems may engage, for political motives, in irregularities which could be just as detrimental to the public interest as the abuses of private management (operating on a profit motive basis) prior to the era of commission regulation."

There were many other contributions by distinguished and able members, but limitation of space makes it impossible to report in detail.

AMERICAN BAR ASSOCIATION

On January 9, and 10, 1939, the House of Delegates met in Chicago, at the Edgewater Beach Hotel. On those same days five Section Councils held their meetings.

A recommendation was made by H. W. Arant, Chairman of the Committee on Professional Ethics and Grievances, and supported by the House of Delegates of the Association, to ask Congress to enact a law forbidding lawyers to solicit divorce business by mail.

Arant, Dean of the Ohio State University College of Law, severely criticized such solicitation which exists in several of the States.

HOW DO WE DO IT?

On several occasions we have been asked who pays for the publishing of the Polamerican Law Journal. The answer, of course, is that the members of the Organization have taken upon themselves the financial responsibilities of the Association and of the Journal.

A number of lawyers helped by subscribing for a period of from five to ten years, and paying in advance.

The editor takes this opportunity to thank Mr. R. J. Lucksha, Mr. Blair F. Gunther, Mr. Alexander J. Bielski, and Mr. Walter J. Laska, all of Pittsburgh; Judge Victor Kula, Mr. Lawrence Zygmunt, Master in Chancery Martin Gorski, Mr. Stephen Love, and Joseph L. Lisack, of Chicago; and Mr. Stanley Wisnioski, of Boston, for their generous financial support to the Polamerican Law Journal.

THE POLAMERICAN LAW JOURNAL

The most important action of the Pittsburgh Convention was the interest shown in the publishing of the Polamerican Law Journal.

No particular attempt was made to provide means for the collection of subscriptions to the Journal, the delegates feeling that a majority of the members would willingly and volutarily pay the small amount each year toward the support of the Law Journal.

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NATURAL LAW

JOHN M. HENRY
Member of the Pittsburgh Bar

In these days of tyranny by Totalitarian States and of flamboyant proclamations by militant dictators, we find no time more propitious than the present for a survey of the ideas of the founders of the American Republic.

> "So gladly from the songs of modern speech, men turn and see the stars and feel the free shrill wind, beyond the close of heavy flowers."

The modern doctrine that men are creatures subservient to a transcendental entity called the State, under various names and ideological symbols, is not in harmony with the basic conceptions advanced by the Framers of the plan of government in the United States, for which Kosciuszko fought and Pulaski died.

The era of the American Revolution was an age of culture and study of government, particularly in the American Colonies. In his speech on Conciliation before the British House of Commons, in March 1775, Edmund Burke told the members of that distinguished body that the Americans were keen students of the law, and that nearly as many copies of Blackstone's Commentaries were sold in America as in England. This is a striking fact when we recall that the English edition came out in 1765, whereas the American edition was not published until 1773.

Naturally the age was one of pamphlets written generally under a *nom de plume*. Among the many interesting disquisitions are two credited to the pen of Alexander Hamilton, entitled, "A FULL VINDICATION," written in December 1774; and "THE FARMER REFUTED," issued in February 1775. These are found in Volume I, of the Works of Hamilton by Lodge. Since they were issued prior to the outbreak of the Revolution, in them we may be privileged to look at the nature of the controversy then raging in the Colonies.

Lodge tells us: "About two months after the adjournment of the first Continental Congress, Dr. Seabury, afterward Bishop of Connecticut, published two pamphlets entitled 'Free Thoughts on the Proceedings of the Continental Congress' and 'Congress Canvassed by a Westchester Farmer'. The pamphlets were written with considerable skill and presented all the arguments in behalf of the Crown in an attractive and popular manner. They were not without effect and were of much use to the Tories, by whom they were freely circulated. Within a fortnight after the appearance of the second tract appeared 'A Full Vindication'. A reply to this was published, and then a month later came a still more elaborate pamphlet entitled 'The Farmer Refuted'. These two productions in the patriot interest excited much attention, were widely read, and were attributed to Jay. Few suspected that they would prove to be the work of a college boy, and all were amazed when the true author was known."

These pamphlets are adapted to the particular controversy of the time and are therefore quite lengthy, yet they contain many statements quite apropos to the present world situation, and a restatement of some of them may be refreshing and perhaps beneficial to those who might for the time be in doubt concerning the nature of American principles.

In the "Farmer Refuted," we read:

> "The first thing that presents itself is a wish, that 'I had, explicitly, declared to the public my ideas of the *natural rights* of mankind. Man, in a state of nature (you say), may be considered as

perfectly free from all restraint of *law* and *government;* and then, the weak must submit to the strong.'

(Works, I, p. 58.)

"I would recommend to your perusal, Grotius, Puffendorf, Locke, Montesquieu, and Burlemaqui. I might mention other excellent writers on this subject; but if you attend diligently to these, you will not require any others." *(ibid 59)*

"To grant that there is a Supreme Intelligence who rules the world and has established laws to regulate the actions of His creatures, and still to assert that man, in a state of nature, may be considered as perfectly free from all restraints of *law* and *government*, appears, to a common understanding, altogether irreconcilable.

"Good and wise men, in all ages, have embraced a very dissimilar theory. They have supposed that the Deity, from the relations we stand in to Himself and to each other, has constituted an eternal and immutable law, which is indispensably obligatory upon all mankind, prior to any human institution whatever.

"This is what is called the law of nature, 'which being coeval with mankind, and dictated by God himself, is, of course, superior in obligations to any other. It is binding over all the globe, in all countries, and at all times. No human laws are of any validity, if contrary to this; and such of them as are valid derive all their authority, mediately or immediately, from this original.—*Blackstone*'.

"Upon this law depends the natural rights of mankind: the Supreme Being gave existence to man, together with the means of preserving and beautifying that existence. He endowed him with rational faculties, by the help of which to discern and pursue such things as were consistent with his duty and interest; and invested him with an inviolable right to personal liberty and personal safety.

"Hence, in a state of nature, no man had any *moral* power to deprive another of his life, limbs, property, or liberty; nor the least authority to command or exact obedience from him, except that which arose from the ties of consanguinity.

"Hence, also, the origin of all civil government, justly established, must be a voluntary compact between the rulers and the ruled, and must be liable to such limitations as are necessary for the security of the *absolute rights* of the latter; for which original title can any man, or set of men, have to govern others, except their own consent? To usurp dominion over a people in their own despite,[*sic*] or to grasp at a more extensive power than they are willing to intrust, is to violate that law of nature which gives every man a right to his own personal liberty, and can therefore confer no obligation to obedience.

"'The principal aim of society is to protect individuals in the enjoyment of those absolute rights which were vested in them by the immutable laws of nature, but which could not be preserved in peace without that mutual assistance and intercourse which is gained by the institution of friendly and social communities. Hence it follows, that the first and primary end of human laws is to maintain and regulate these *absolute rights* of individuals'.—BLACKSTONE."

(Works, I, 60-61—(Italics by Hamilton).

The dispute between the pamphleteers was whether the English Parliament had the right to make laws for the Colonies. It seems to have been well understood among our Founding Fathers that one of the fundamental principles of the law of Nature is that a people are not bound by laws which they have had no part in making. Hamilton says:

"If we examine the pretensions of Parliament by this criterion, [the rules laid down in Blackstone], which is evidently a good one, we shall presently detect their injustice. First, they are subversive to our natural liberty, because an authority is assumed over us which we by no means assent to. And, secondly,

they divest us of that moral security for our lives and properties, which we are entitled to, and which is the primary end of society to bestow. For such security can never exist while we have no part in making the laws that are to bind us, and while it may be the interest of our uncontrolled legislators [English parliament] to oppress us as much as possible."

(Works, I, 61-62).

He then contends that the degree of subordination to the mother country by the Colonies:

"must be ascertained by the spirit of the constitution of the mother country, by the compacts for the purpose of colonizing, and more especially by the law of nature, and that supreme law of every society—its own happiness." *(p. 63)*

"We hold our lands in America by virtue of Charters from British monarchs, and are under no obligations to the Lords or Commons for them." *(p. 65).*

"The right of Parliament to legislate for us cannot be accounted for upon any reasonable grounds. *The constitution of Great Britain is very properly called a limited monarchy;* the people having reserved to themselves a share in the legislature, as a check upon the regal authority, to prevent its degenerating into despotism and tyranny. The very aim and intention of the democratical part, of the House of Commons, is to secure the rights of the people. Its very being depends upon those rights. Its whole power is derived from them, and must be terminated by them.

"It is the unalienable birthright of every Englishman, who can be considered as a *free agent*, to participate in framing the laws which are to bind him, either as to life or property. But as many inconveniences would result from the exercise of this right in person, it is appointed by the constitution that he shall delegate it to another. Hence he is to give his vote in the election of some person he chooses to confide in as his representative. This right no power on earth can divest him of. It was enjoyed by his ancestors time immemorial, recognized and established by Magna Charta and is essential to the existence of the constitution. Abolish this privilege, and the House of Commons is annihilated."

(Writings, I 66-67)

It is interesting to note that the "unalienable" rights of the citizen are to be guarded by his representative chosen by him. It is no less interesting to observe that the word "constitution" is understood to mean a plan or form of government. In view of the modern propaganda directed at representatives let us consider what Hamilton thought of their propensity to abuse their power. He said:

"But what was the use and design of this privilege [Representation in the Commons]? To secure his life and property from the attacks of exorbitant power. And in what manner is this done? By giving him the election of those who are to have the disposal and regulation of them, and whose interest is in every respect connected with his.

"The representative, in this case, is bound, by every possible tie, to consult the advantage of his constituents. Gratitude for the high and honorable trust reposed in him demands a return of attention and regard to the advancement of their happiness. Self-interest, that most powerful incentive of human actions, points and attracts toward the same object.

"The duration of the trust is not perpetual, but must expire in a few years, and if he is desirous of the future favor of his constituents, he must not abuse the present instance of it, but must pursue the end for which he enjoys it, otherwise he forfeits it and defeats his own purpose. Besides, if he consent to any laws hurtful to his constituents, he is bound by the same, and must partake of the disadvantage of them. His friends, relations, children, all whose ease and comfort are dear to him, will be in a like predicament. And should he concur in any flagrant acts of injustice or op-

pression, he will be within reach of popular vengeance; and this will restrain him within due bounds.

"To crown the whole, at the expiration of a few years, if their representatives have abused their trust, the people have it in their power to change them, and to elect others who may be more faithful and more attached to their interest.

"These securities, the most powerful that human affairs will admit of, have the people of Britain for the good deportment of their representatives toward them. They may have proved, at some times, and on some occasions, defective; but, upon the whole, they have been found sufficient.

"When we ascribe to the British House of Commons a jurisdiction over these colonies, the scene is entirely reversed. All these kinds of security immediately disappear; no ties of gratitude or interest remain. Interest, indeed, may operate to our prejudice. To oppress us may serve as a recommendation to their constituents, as well as an alleviation of their own incumbrances."

(Writings, I, pp. 67-68).

In passing it should be recorded that in the early numbers of the Federalist papers, written in 1787 and 1788, Hamilton held precisely the same doctrines above quoted. There was a guarded departure in No. 78 of the Federalist, which paper was attacked by the opposition, and then Hamilton recanted in No. 81 of the Federalist. Since the Federalist papers were addressed to the people of the State of New York urging ratification of the new Constitution, it should also be recorded that in that ratification convention, Hamilton preached precisely the same doctrine written by him in 1775 in the pamphlet entitled "The Farmer Refuted."

In the "Farmer Refuted," Hamilton goes into an extended analysis of the charters granted by the sovereigns of England to the Colonies, beginning with Queen Elizabeth and ending with William and Mary, to show that the Colonies were guaranteed self-government under plans of government modeled after the constitution of England. The Governor appointed by the King had the negative voice, or absolute negative over any law, but should he approve, the act must still be sent to the King and his Council for approval, and they could disapprove and prevent the act from becoming law; but that the Colonies were outside the realm of England and therefore not subject to the rules of action prescribed by the Lords or Commons. *Court control was not provided for and was never intended.* Although the Colonial charters each provided that the laws enacted by the Colonial Assemblies must not be repugnant to the laws of England, it was the King, first through his Royal Governor, then, by himself and his Council, to determine whether Colonial enactments were in harmony with or repugnant to the laws of England. In view of the claims we have heard in the recent judicial controversy in the United States, this is very interesting.

In considering the doctrines enunciated today in the powerful totalitarian states throughout the world, that the citizen is the pawn and plaything of the State, and that he has no rights that the State may be compelled to respect, we have a striking contrast to the system of government entertained by the Fathers of the American Constitution or plan of government. The doctrine of natural law held by the advanced thinkers of 1775 leaves no place for irresponsible dictatorship, where the people have no voice in choosing the representative; or for a totalitarian State in which there are no such things as inalienable rights outside the purview of government. Under the natural law theory, the protection of inalienable rights is the reason that governments are ordained and established.

It might also be asked whether under the doctrines of natural law and the sacred inalienable rights of individuals, artificial creatures called corporations, may be created by government and then permitted to destroy the liberty and welfare of the

individual, under the pretense that property rights, so-called, are above the economic welfare of the individual citizen.

We have heretofore cited the statement of Hamilton that the supreme law of every society is its own happiness. We should also note that in Federalist No. 45, James Madison, Father of the Constitution said:

> "The public good, the real welfare of the great body of the people, is the supreme object to be pursued; and that no form of government whatever has any other value than as it may be fitted for the attainment of this object. Were the plan of the Convention adverse to the public happiness, my voice would be, Reject the plan. Were the Union itself inconsistent with the public happiness, it would be, Abolish the Union." *Lodge edit., pp. 286-87).*

This is a day calling for a return to the Faith of our Fathers, a time when there should be a reexamination of ancient courses, and a rededication of the fundamental principles of American liberty and freedom, that men may hear, "like ocean on a western beach, the surge and thunder" of that Glorious Era.

IN MEMORIAM

Michael G. Kasper, a member of the Asssociation, died suddenly of a heart ailment on October 14, 1938. At the time of his death he was completing his first term as an Associate Judge of the Municipal Court of Chicago, and was candidate for re-election.

Judge Kasper was born in Jaslo, Poland, on August 13, 1887. He acquired his elementary and high school education in Poland, coming to America in 1907, when he was nineteen years of age. From 1912 to 1917, he was engaged in the retail drug business; and from 1917, until he was elected Associate Judge of the Municipal Court, he was engaged in the practice of law.

The Association has suffered a loss in the death of a man, who by his fine personal qualities and capacity for loyal friendship, endeared him to his associates. We record our sorrow at his untimely death and our gratitude for the rich blessing of his distinguished service to his profession as a member of the Polish-American Bar Association.

AMERICAN BAR ASSOCIATION COMMITTEE ANNOUNCES APPROVED LAW LISTS

The Committee set up rules and standards "as and for Law Lists in which lawyers may permit their names and professional cards to appear." Canon 43 was adopted, which is as follows:

> "It shall be improper for a lawyer to permit his name to be published after January 1, 1939, in a law list that is not approved by the American Bar Association."

The following law lists and directories have been provisionally approved:

AMERICAN ATTORNEYS DIRECTORY, Cincinnati.
AMERICAN BAR, Minneapolis.
AMERICAN COUNSEL ASSOCIATION, Boston.
AMERICAN LAWYERS ANNUAL, Cleveland.
AMERICAN LAWYERS QUARTERLY, Cleveland.
A. C. A. LIST, New York City.
ATTORNEYS LIST (U. S. F. & G.), Baltimore.
B. A. LAW LIST, Milwaukee.
BAR REGISTER, New York City.
BEST'S RECOMMENDED INSURANCE ATTORNEYS, New York City.
CAMPBELL'S LIST, New York City.
CLEARING HOUSE QUARTERLY, Minneapolis.
COLUMBIA LIST, New York City.
COMMERCIAL BAR, New York City.
C-R-C ATTORNEYS DIRECTORY, New York City.
THE EXPERT, St. Paul.
EYRE'S LAW LIST, New York City.
FORWARDERS LIST OF ATTORNEYS, Chicago.
HAYTHE GUIDE, New York City.
HINE'S INSURANCE COUNSEL, Chicago.
INSURANCE BAR, Chicago.
INTERNATIONAL LAWYERS LIST, New York City.
LAWYERS DIRECTORY, Cincinnati.
LAWYERS LIST, New York City.
MARTINDALE-HUBBELL LAW DIRECTORY, New York City.
MERCANTILE ADJUSTER, Chicago.
NATIONAL LIST, New York City.
RUSSELL LAW LIST, New York City.
STANDARD LEGAL DIRECTORY, New York City.
SULLIVAN'S CHICAGO LAW DIRECTORY, Chicago.
UNITED LAW LIST, New York City.
WILBER DIRECTORY OF ATTORNEYS AND BANKS, New York City.
WRIGHTS-HOLMES LAW LIST, New York City.
ZONE LAW LIST, St. Louis.

In addition to these American law lists, the following foreign lists were given similar conditional approval by the committee:

CANADIAN LAW LIST, Toronto.
CANADA LEGAL DIRECTORY, Toronto.
EMPIRE LAW LIST, London.
INTERNATIONAL LAW LIST, London.
KIME'S INTERNATIONAL LAW, London.
CANADA BONDED ATTORNEY, Toronto.

In connection with this matter, we wish to quote Opinoin 182, rendered on May 9, 1938, by the Committee on Professional Ethics and Grievances of the American Bar Association:

PROFESSIONAL CARDS—Canon 27, as now amended, does not permit the insertion of a professional card in any publication other than an approved law list or legal directory.

A member of the Association inquires whether it is proper, since the recent amendment to Canon 27, for a lawyer to publish a simple professional card in a local newspaper or in any publication other than an approved law list or legal directory.

The opinion of the Committee was stated by Mr. Brown, Messrs. McCracken, Phillips, Arant, Houghton, Jones and Miller concurring.

From the time of the adoption of the Canons in 1908 until amended in 1937, Canon 27 contained the following provision:

"The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not per se improper."

Prior to the amendment of 1937, this Committee held that the above provision of the Canon did not permit the insertion of the card in publications other than local newspapers irrespective of any local custom. It was than said (Opinion 24):

"Prior to the adoption of the Canon, it was a long standing custom in certain smaller communities for lawyers to publish their cards in local newspapers and that is the particular 'local custom'—and the only one—which it was intended the canon should sanction. As this sanction is an exception to a well established principle, the Committee does not believe it should be extended to other publications or other customs."

Also see Opinion 69.

In 1937, among other amendments, Canon 27 was rewritten. With respect to professional cards it was merely stated: "The customary use of simple professional cards is permissible." The succeeding two sentences contain rather detailed provisions concerning the material that may properly be published in an approved law list or legal directory.

The question here presented is whether the 1937 amendment of the Canon has changed the previously established rules with respect to the publication of a simple professional card. Though the question has caused some difficulty, the committee is of the opinion that the Canon does not now permit the insertion of a professional card in any publication other than an approved law list or legal directory. The customary use referred to in the Canon is only such use as has been recognized by general custom as distinguished from local custom. There is no general custom sanctioning publication anywhere save in a law list or legal directory. The omission of any reference to "publication" or "local custom" discloses an intent to withdraw the previous sanction of any local custom permitting such an obvious form of advertisement.

P.

WHAT TO DO UNTIL THE "DOCTOR COMES"

By CURRAN DeBruler*

On any one of these brisk winter mornings when you are shut up cozily in the sanctum sanctorum, dreaming dreams of having the Supreme Court reverse itself on the strength of your brilliant brief, you may be rudely brought to strange reality by the sudden materialization of an inventor, knocking at your office door.

Here Coke, Blackstone, and Ellenborough will avail you not. Here is no tort or bill in equity, no misdemeanor or felony—but, instead, an entirely different breed of cat.

And if the legal process is unusual, so almost certainly is the client: You will find him shrewd, suspicious and canny, ignorant of patent law, and bull-headed in demanding his "rights." He will probably start out by trying to be as much of a problem child as is humanly possible, and it is going to be your job to overcome distrust, dispel ignorance, and counsel the man to his own good.

The inventor, as a personality, will often be among the most interesting human problems that an attorney can encounter. This was emphasized to us recently by an associate of ours from Minnesota, who paid a call at our offices in Washington. Like all Scandinavians, he was possessed of a dry, flat humor, and in telling us some of his experiences, compared the inventor to a psychopathic case, and pursued the analogy in describing his method of "treatment." Here is his story:

Until the "doctor" in the person of your patent associate, arrives to take the case in hand, you must administer skillful and soothing first aid.

An innocent expression on the face is recommended at once. Ask the man to check all firearms, daggers, and brass knuckles with the little lady in the outer office, show him to an easy chair, and then sink slowly into your swivel chair—permitting a benign and paternal smile to glow across the face. That will help to convince him that you are not a crook, and that you have no intention of stealing his invention.

When you and the patient are both breathing freely, you will be ready to begin the treatment. The first thing to do is to call upon him for a full disclosure of his invention. It may be well to point out that, within reason, the more people he tells about his invention, the better, because he will have that many more witnesses if, after filing his patent application, an interference is declared in the Patent Office.

Impress upon him, then, at the outset that his first step is to provide you with a complete sketch (or model) and a written description, clearly setting forth what the invention is, what it is for and how it operates. Explain that every feature of the invention may be patentable, and that an incomplete disclosure may have the effect of depriving him of some of the patent protection to which he is really entitled.

So, we have the first step. Once you have the sketch and description on your desk you will be ready to administer certain prophylactic advice which will be necessary: Copyrighting the sketch and description will do no good. Tell him that. Trademarking the invention is not possible; a trade-mark must be in use in interstate commerce before it can be registered at the Patent Office, and a trademark registration covers only the mark—not the invention. Tell him that. Filing his sketch and description in the county court house will do no good. Tell him that. Having the sketch and description notarized will not add materially to its value. Tell him that. Just explain that the *date* of conception is important.

In other words, once he has given you his sketch and description, he is going to start beating up the bushes for some quick, simple, cheap and automatic protection without applying for a patent. So, to save time, trouble, and grief, hold him firmly by the ear and pour the following prescription into it: *The only legal protection available to an invention is the protection of a United States Patent.*

*Employee of Clarence A. O'Brien and Hyman Berman, Patent and Trademark Attorneys, Adams Building, 1335 F Street, N. W., Washington, D. C.

If you see that any of this dose is running out, seize him firmly by the ear again, and repeat until the eyes begin to open.

When the eyes have opened, the patient will ask in a feeble voice how to get a United States Patent and how much it is going to cost.

The answer to the first question is by filing a formal application for patent. The answer to the second is that you don't know.

Your next step is going to be to have your patent associate make a search in the pertinent records in the United States Patent Office, in order to determine the propriety of filing a patent application.

At this juncture the patient will begin to writhe and start running at the mouth: How good is my invention? How much is it worth? Why don't you know how much a patent will cost? Why have a search made when I *know* there has never been any invention like this before? When can I sell my invention? Where will I sell it? Why can't I sell it now? How can I get a patent without money?

The treatment for this phase will vary according to circumstances, and the best prescription (though drastic) is this: *There is absolutely NO use in trying to talk about any of those points until after the search has been made.* If the report is favorable, we can go into all of that at the proper time. If the report is unfavorable there will be no use in talking about it at all. The search *has* to be made before any intelligent discussion of the invention is feasible.

If the patient continues to writhe and run at the mouth, however, he may be told that the cost of a patent application can only be determined after the search has been made. The cost is not only contingent on the simplicity or complexity of the subject matter, but likewise on the amount of prosecution that can be foreseen by comparing the invention with the old patents that are brought to light in the search.

The question of commercial value is one that neither you nor anyone else can answer, and you should impress that point on the inventor. If he himself has faith in it, then he should go ahead. If not, he should drop it. In any event, you are not a crystal gazer, and you have no false whiskers or turban.

If the patient has no money, explain that this is not necessarily an insurmountable obstacle: If the search report is favorable, he will be in a formidable position to approach friends or local business men for financial backing. Hundreds of inventors every year assign an interest in their inventions in return for financial assistance. But, again, the search must be made first. There is no sense in trying to get backing until you know within reasonable limits whether or not the invention is patentable.

Finally, it is usually futile, and invariably dangerous, to offer an invention for sale to manufacturers before the patent application has been placed on file. Emphasize this point strongly, because much grief has been caused by ill-advised attempts to sell before filing. Compare the invention to a valuable puppy: You would not take the pup out to offer him for sale without first putting him on a leash . . . otherwise he might get away from you.

So, if the patient is breathing easily by this time, put the sketch and description in an envelope, mailing them to your patent associate. Tell the patient to go home and rest in absolute quiet for ten days, by which time the "doctor" will have the medicine ready, and the rest of the treatment can proceed.

The little lady at the front desk can return the man's artillery or other weapons, and you can go back to your Corpus Juris, or, if it be a nice day, to shooting paper clips out the window. The worst of it is all over.

—Legal Chatter.
November, 1938

LOCAL BAR ASSOCIATION NEWS

Chicago:

Election of new officers for 1939.

Stephen Love, President,

Maximilian J. St. George,
1st Vice-President.

William C. Jaskowiak,
2nd Vice-President.

Stephanie X. Blaszczynski,
3rd Vice-President.

Theodore Siniarski, Secretary.

Walter A. Witowski, Treasurer.

Joseph L. Lisack,
S. Charles Bubacz, } Governors.
Walter A. Kiolbasa,

A series of lectures have been arranged for the coming year. The first lecture course is being given by Stephen Love on the Illinois Civil Practice Act. About one hundred lawyers attended the first lecture held on Friday, January 13, 1939.

Stanislaw Dobrowolski from Krakow and Bogumil Korusiewicz from Warszaw visited the editorial office during the month of September. They were delegates to the World Youth Congress held in New York. These two young men are applicants to the Polish Bar.

Newly Eelected:

Victor A. Kula elected Associate Judge of the Municipal Court. He is a member of the Association.

E. P. Luczak was elected Associate Judge of the Municipal Court. He became a candidate for the vacancy created by the death of Judge Kasper.

Chicago Bar Honors Attorney.

Jan Pozaryski, a noted attorney from Warsaw, Poland, was an honored guest of the Polish-American Bar Association at a luncheon in the private dining rooms of the Chicago Bar Association.

Baltimore:

During the month of November a meeting was held with some of the members when the Editor visited Baltimore.

Adam S. Gregorius appointed associate editor for the January, 1939 issue. He has practiced Law in the city of Baltimore since 1901.

Washington, D. C.:

The Journal was introduced to our members in Washington for the first time when a meeting was held with Mr. Stanley Kapa and John S. Lachowicz during the Editor's visit to that City.

Stanley Kapa appointed associate editor for the January number.

Boston:

Stanley Wisnioski is now preparing a new directory of Polish-American lawyers in the United States. You may send him names and addresses.

Pittsburgh:

Mr. R. J. Lucksha, Mr. Blair Gunther and Mr. Walter Laska met with the Editor in regard to the Journal during the month of November. Cooperation equalled that of hospitality shown during the Convention. Mr. Alexander Bielski was out of the city, but he did his part upon his return.

Unauthorized Practice Action.

The Unauthorized Practice Committee of the Allegheny Bar Association filed an action to restrain the defendants, particularly Pittsburgh News Co., from selling or distributing the January Forum, or any future issue containing similar advertising within the territory controlled by the Pittsburgh News Co.

According to the members of the Bar Committee, the magazine carried an advertisement in its January issue, which recommended that readers who can afford to pay a good lawyer $100 to make a will do

so, but if they cannot afford a lawyer just now, to send $1 to the publisher of Forum for a booklet and a legal *will* form blank from which the purchaser need only select the will that suits him best, sign it and have it witnessed as instructed. As a final touch of reassurance the publisher guarantees "Satisfaction or your money back."

In the opinion of the members of the Committee, the advertisement is contrary to the act of July 12, 1935, which restricts the practice of law to attorneys.

No other comments for this column have been received.

A Letter.

ILLINOIS STATE BAR ASSOCIATION
Organized January 4, 1877
Office of the Secretary
R. Allan Stephens, Springfield, Illinois

August 22, 1938.

Mr. S. R. Pulaski,
160 North LaSalle Street,
Chicago, Illinois.

My dear Mr. Pulaski:

Hot weather and vacation time left me behind in my reading on Bar Association Journals. When I went to go through the file today I discovered a new one, The Polamerican Law Journal, Vol. I, No. I.

I want to take issue with you on a statement in your first paragraph. The field of law is not crowded with a large number of periodicals published every month as long as there is a fine one like yours coming out. You have a peculiar field which will in no way conflict with any other law journal. Your articles are fine, your set-up excellent, and I wish for you all kinds of prosperity and success.

I hope you will continue to keep us on your exchange list and if at any time we can be of assistance to you please call upon us.

Very truly yours,

R. Allan Stephens.

The Editors will be pleased to publish in this column such letters or comments as they deem to be of general interest to the association.

LEGAL JOURNALS RECEIVED FROM BAR ASSOCIATIONS IN POLAND

Semi-monthly

Gazeta Administracji ..... Warsaw
(Devoted to public law)
Notariat Hipoteka ..... Warsaw
(A legal journal on real property)
Polish Civil Procedure ..... Warsaw

Monthly

Nowa Palestra ..... Lwow
(A jornal devoted to law and lawyers)
Glos Adwokatow ..... Krakow
(Law and lawyers)
Review of Business Law ..... Warsaw
Tax Journal ..... Warsaw
Palestra ..... Warsaw
(Corporation Law)

Quarterly

Private Law
(A journal devoaed to the encouragement of legal education)
A Journal of Economics and Sociology
(Treats of government law and social order)
Law and Medicine
(Devoted to the study of medicine and criminology)
Review of Administrative Law
The Practice of Law
Bar Association of Warsaw.

Weekly

Weekly Journal of the Courts of Warsaw is available from 1937 to date.

Several very fine articles have been written in the Warsaw Journal by Mr. Stanislaw Konic, regarding the Polamerican Law Journal.

Yearly

Statutory Regulation of the Polish Lawyer ..... Warsaw

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