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### The Register Vol. 4, No. 4, 1921

Suffolk University Law School

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Suffolk University Law School, "The Register Vol. 4, No. 4, 1921" (1921). *Limited-run Student Newspapers*. 32.

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# SUFFOLK LAW SCHOOL REGISTER

Vol. 4

BOSTON, MASS., 1921

No. 4



COMMENCEMENT NUMBER



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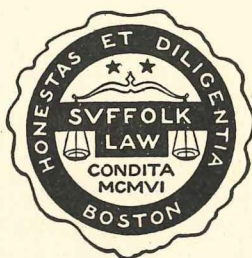
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# SUFFOLK LAW SCHOOL REGISTER



Published by the  
STUDENTS OF THE SUFFOLK LAW SCHOOL  
Dearne Street, Boston, Mass.

Thirty Cents a Copy



## “To the Seniors”

By J. H. DIGNAN, '22

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Only a short time remains before Suffolk Law School will send forth another body of men, who by four years of hard conscientious work and self-sacrifice have qualified themselves for admission to the Bar. Few there are who fully realize the extent of these sacrifices and fewer still have the courage to attempt it.

Some of them will enter upon the practice of law, while others will continue in the various lines of endeavor which they have pursued for the past four years. By these years of mental labor they have acquired an education that will be of inestimable value to them during life. It will make them better citizens of our country because of the knowledge gained, and will give them the courage to champion the cause of the weak and oppressed.

It would be unjust only to say, “they should receive credit,” because they deserve more than that, they are entitled to and should receive an honorable place as lawyers, business men and citizens. The road traversed by them has not been strewn with roses, but rather with obstacles of every kind, and in spite of this they have become victorious, arriving at the goal of their ambition.

Their success in life, while bringing to them what they justly deserve, will also reflect credit and honor upon the institution which made it possible, and which will continue its good work for the benefit of those who are to follow. Those of us whom you leave behind will regret the loss of your presence during the coming year, and the years that follow, but realizing that such changes are inevitable, we trust that this parting will only be the starting point of a great future, one that is full of prosperity and happiness.

That we have been associated with you for three years of school life, we do not regret, we rather feel that by our associations with you we have become more faithful students and better citizens.

Your fellow students wish you success in all your undertakings, and in departing you take with you the good will and best wishes of all your associates, in behalf of whom I bid you farewell.

# Alexander Hamilton

By DEAN GLEASON L. ARCHER

AMONG the eminently great men who joined in the task of moulding the disorganized colonies of the American Confederation into the great nation of which we are citizens today, perhaps none contributed more efficient service than Alexander Hamilton.

When the Constitution as it now exists had been drafted and the great battle to secure its adoption by the several states was fairly on, its most powerful champion was this same brilliant young lawyer, barely thirty years of age. In a series of essays, known to us as "The Federalist," the new Constitution was expounded to the people with singular clearness and with such convincing logic that it was ratified by states which might otherwise have rejected it and thus have defeated at the outset the plans for our Federal Union. The author of the majority of the essays comprising "The Federalist" was Alexander Hamilton.

The Constitution was ratified, and George Washington was elected President of a weak and impoverished nation. There was no adequate system of finance and the country was in desperate straits. A man was needed to formulate and put into effect a national system for the raising, management and collection of revenue. Great obstacles were to be overcome and, in fact, the task awaiting the first Secretary of the Treasury of the new nation was a colossal one. Here again Alexander Hamilton proved the man of the hour. In the words of Senator Lodge in his excellent history of Hamilton's life:

"Although early Spring (1789) saw the actual formation of the government of the United States, it was not until September second that the act was passed establishing the Treasury Department. All eyes were turned to Hamilton as the man to fill this great office. Washington had already decided upon him, and Robert Morris had singled him out as the statesman suited above all others for the trying position which he himself had filled under the confederacy."

With what distinguished success Hamilton filled this great office and called to life the dormant financial resources of the country is a matter of history. What he afterward accomplished in law and politics before his lamentable death in the duel with Aaron Burr in the very prime of his manhood history also has amply recorded.

But the question that concerns law students, whose lives are yet before them, when they contemplate the life of this great lawyer and statesman, is what sort of preparation did Alexander Hamilton have for his wonderful career?

Now preparation for one's career as a lawyer means far more than the time spent in the actual study of law. It really includes one's life to that date and the educational training through which one has passed. Space, however, will not permit more than the merest outline of Hamilton's life to his twenty-fifth year when he became a full-fledged lawyer.

He was born January 11, 1757, in the island of Nevis in the West Indies. "His mother," says Senator Lodge, "who apparently possessed an unusual degree of wit and beauty, died early. His father was unsuccessful in business, and Alexander, the only surviving child, fell to the care of maternal relations, among whom he picked up a rude, odd



and desultory sort of education, and by whom he was placed in a counting room before he was twelve years old. There at his clerkly desk we catch the first clear glimpse of the future statesman in the well-known letter addressed to his friend, Edward Stevens: 'I condemn the groveling condition of a clerk or the like,' he says, 'to which my fortune condemns me, and would willingly risk my life, though not my character, to exalt my station. I am confident, Ned, that my youth excludes me from any hopes of immediate preferment, nor do I desire it; but I mean to prepare the way for futurity.' "

These are brave words for a boy of thirteen, yet the purposeful character of the man had already manifested itself in the boy. His leisure hours were devoted to reading and study and to exercises in composition. With a blind faith in his future, but with no immediate hope of release from his island prison, young Hamilton went about his duties doing the thing at hand until the great opportunity presented itself. Yet the opportunity was of his own creation. His long and tireless efforts at composition enabled him to write so vivid a description of a terrific hurricane that devastated a neighboring island that certain relatives were so impressed by the lad's literary talent that they subscribed a fund for his education. So in his fifteenth year Alexander came to New York in quest of an education.

For a year he attended a grammar school, and for something over two years thereafter was a student in King's College until the American Revolution had dawned in real earnest and young Hamilton's school days were over. With all his natural impetuosity the young man had espoused the side of the colonists. His natural talents won him instant recognition. He became commander of a company of artillery and served with conspicuous bravery in the battle of Long Island. Through all the vicissitudes of Washington's army until March, 1777, young Hamilton so conducted himself that Washington on March 1st of that year appointed the youth of twenty to his official staff. For four years Hamilton continued to enjoy the favor of his chief and acted throughout as the latter's secretary.

When the war was over the young man turned his thoughts to the profession of law. There were no law schools in those days. The law itself was exceedingly meagre as compared with our own times. The fashion was that a student *read law* either in a lawyer's office or by himself, and Hamilton chose the latter method.

His law study is thus described by Gertrude Atherton in her charming story of Hamilton's life, "The Conqueror": "Then having made up his mind that there was no further work for him in the army, and that Britain was as tired of the war as the States, he announced his intention to study for the bar. His friends endeavored to dissuade him from a career whose preparation was so long and arduous, and reminded him of the public offices he could have for the asking. But Hamilton was acquainted with his capacity for annihilating work, and at this time he was not conscious of any immediate ambition but of keeping his wife in proper style and of founding a fortune for the education of his children.

He took a little house in the long street on the river front, and invited Troup to live with him. They studied together. . . . For four months even his wife and Troup had, save on Sundays, few words with



him on illegal matters. His brain excluded every memory, every interest. . . . All day and half the night he walked up and down his library, or his father-in-law's, reading, memorizing, muttering aloud. His friends vowed that he marched the length and width of the Confederacy. He never gave a more striking exhibition of his control of the powers of his intellect than this. The result was that at the end of four months he obtained a license to practice as an attorney and published a 'Manual on the Practice of Law,' which Troup tells us, 'served as an instructive grammar to future students, and became the groundwork of subsequent enlarged practical treatises.' It may be protested that these feats were impossible. I can only reply that they are historic facts."

"His preparation was hasty," says Senator Lodge, "and his knowledge, when he came to the bar, must have been exceedingly imperfect, but with his intensity of application and readiness of mind he had undoubtedly gathered in that short time a good deal of legal learning; and, what was far more to the purpose, it was not an undigested mass of information, but was thoroughly systematized and arranged. . . . As fast as he acquired his knowledge of law it fell into well-defined form and system, so that when he was admitted to the bar all he had learned was compactly stated and neatly arranged in a little manual which was found in manuscript by those who came after him, and which, we are told, did good service to others whose minds did not have a clarifying effect upon everything that was poured into them."

This in brief was Alexander Hamilton's preparation for the profession in which he speedily achieved distinction and from which he was called to the high and noble duties for his country to which reference has been made in the opening paragraphs of this article.

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## Our Dedication

ON the evening of Friday, April 8, there was held in our theatre the Dedication Exercises, celebrating the formal opening of Suffolk Law School. It would take many reams of paper upon which we could suitably inscribe the events of this wonderful night, but limited space compels us to set forth only briefly the most important occurrences.

Our good friend, Mr. Swift, a member of the Board of Trustees and of the Building Committee, acted as chairman. His words were greeted with round after round of applause. His introductions and many witticisms were the cause of much laughter from the audience which packed the house.

In the order given, the following men addressed the many friends who were present to pay tribute to the Dean and his Dream-Child which had grown out of its teens and had become a reality.

The Dean, excusing himself because of his lack of oratorical powers, read a theme covering the main events leading up to the completion of the building. Especially humorous was his tale of the contractor who swore in three languages and gesticulated in five. His tributes to his assistants, including Miss Catherine Claudia Caraher, his demure and sweet young secretary, who never flirts, not even "with the ladies' man of the school," was worth going many miles to hear.

Attorney-General J. Weston Allen, representing the Commonwealth  
(Continued on Page 7)



## SCHOOL NOTES

On Wednesday night, June 1st, will take place the tenth annual Commencement exercises of Portia Law School, at the Tremont Temple, twenty-five students to be graduated. The chairman of the evening will be Judge Robert O. Harris, president of the Portia Law School Board of Trustees, and recently appointed U. S. District Attorney for Boston. Frank V. Thompson, Superintendent of Boston Schools, will be the chief speaker of the evening.

The following members of the graduating class will also speak: Miss Helen T. Reagan, valedictorian; Miss Hazel Curnane, class will (Miss Curnane is the daughter of Daniel B. Curnane, a graduate of Suffolk Law School; her twin sister is a member of the Freshman Class at Portia); Elizabeth G. Barry, class poem; Miss Ramah S. Bowers, historian. Ruth D. Silver will write the class song.

Friday evening, May 20th, will be Portia night at the Pops, for which about 150 tickets have been sold.

A new addition has been made to the Faculty of Portia. Lee M. Friedman, Esq., will lecture on Bankruptcy. Mr. Friedman is a former law partner of James M. Swift, Esq., a member of the Suffolk Board of Trustees.

\* Boston's newest newspaper, *The Telegram*, is of special interest to men who attended Suffolk Law School in the days when Frederick W. Enwright was a student here. In addition to the Boston *Telegram*,

Mr. Enwright is proprietor of the Lynn *Telegram*, which he established some years ago. He was a hustler as a student and the speedy acquisition of legal knowledge has doubtless been of great value to him as a newspaper proprietor.

Abraham Lelyveld, '12, of Rockland, was a recent caller at the new school building. Mr. Lelyveld is using his legal lore in a business way and to such good purpose that he is one of the leading merchants in Rockland, Mass. He is president of the Merchants' Association of Rockland.

F. Leslie Viccaro, '17, who is now practicing law in Amesbury, Mass., visited the Dean's office last week. He was much enthused over the new building.

Joseph F. Rogers, '17, of Waltham, has not forgotten his Alma Mater, nor the new Suffolk Theatre. He and Mrs. Rogers have been regular attendants since the theatre opened. Here is a hint to other grads of "Suffolk." The net revenue of the new theatre goes into the school endowment fund.

The smiling face of George F. Hogan, '16, is always a welcome sight at "Suffolk." Mr. Hogan is an embodiment of optimism and "good will to men."

We note that Dave Lasker has a new job. Oh, my, yes! He's in charge of our fair lady ushers—looks after their health, pocket-books, dressing rooms, etc., etc.



(Continued from Page 5)

of Massachusetts, delivered a wonderful address, emphasizing the wonderful work of the Dean in establishing a school like Suffolk.

His Honor, Mayor Peters, spoke briefly, but his words meant a good deal to the students present, for it showed that the City of Boston, which he represented, held the Dean, the school and its students in high esteem.

Kenneth C. Dunlop, wearing his tortoise shell glasses, representing the Alumni, certainly put it over with a grand finesse which proved that the graduates of Suffolk were more than mere attorneys—they were orators.

Our own "Billie" Henchy, representing the Senior Class and the undergraduates, expressed the pleasure of the students in their possession of this wonderful building, and thanked the Dean for the school for what he has given us.

And then came "Dick" Kaplan, our genial editor, who, without flourishes and speaking directly and to the point, delivered the presentation address, in which he told of the fund which had been raised by the students and of the bulletin boards purchased for the school. He presented an order for the boards to the Dean. Round after round of tumultuous applause greeted him as he concluded his address.

Last, but not least, the greatest friend of Suffolk and "Daddy" of them all, Thomas J. Boynton, spoke. This should suffice for a description of Mr. Boynton, for we all know what and who he is, but to say the least, he was the joy of the evening. His surprise to the Dean was in the form of a purse of gold, given by the students, alumni, faculty, and "men on the job" who had worked under Dean Archer's direction in constructing the school building. He also presented to Mrs. Archer "from the men on the job" a five-pound box of chocolates and a beautiful basket of flowers.

All in all, it was an evening long to be remembered by all present. Those who missed the exercises certainly missed the grandest occasion of their lives.

The whole evening was a personification of the spirit that pervades the hearts of every student of Suffolk, *thanks to Dean Gleason L. Archer.*

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### GAVE THE GAME AWAY

In the court-house a man stood charged with stealing a watch from a fellow citizen. He stoutly denied the accusation, and brought a counter-charge against the accuser for assault and battery committed with a frying pan.

The judge was inclined to take a common-sense view of the matter, and regarding the prisoner, said:

"Why did you allow the prosecutor, who is a much smaller man than yourself, to assault you without resistance? Had you nothing in your hand to defend yourself?"

"Bedad, yer Honor," said Pat, "I had his watch, but what was that against his frying pan?"

### STRANGE!

A lawyer whose name was Strange was slowly dying, and as he lay there, looking up into the faces of his many friends, gathered around his bedside, he slowly and hesitatingly said: "My good friends, when I pass on to the great beyond and naught is left of me but my name, I want you to place on my tombstone the words, **HERE LIES AN HONEST LAWYER.**"

(Continued on Page 27)



## If We Only Understood

By RICHARD S. KAPLAN  
(To B---y)

COULD we but draw back the curtain  
That surrounds each other's lives,  
See the naked heart and spirit,  
Know what power the action gives,  
Often we would find it better,  
Purer than we judge we should;  
Oh, we'd love each other better  
If we only understood.

Oh, we judge each other harshly,  
Knowing not life's hidden force,  
Knowing not the fount of action  
That lies turbid at its source.  
Could we judge all deeds by motives,  
See the good and bad within,  
Often we would love the sinner  
All the while we'd loathe the sin.

Could we know the cares and trials  
And the efforts all in vain,  
And the bitter disappointments,  
Understand the loss and gain,  
Would the grim external roughness  
Be, I wonder, just the same,  
Or would we help where now we hinder,  
Would we pity where we blame?

Could we see the power working  
To o'erthrow integrity,  
We would judge each other's errors  
With more patient charity.  
Could we see among the evil  
All the golden grains of good,—  
Ah, we'd love each other better,  
If we only understood.

The REGISTER wishes to call one important fact to the attention of the students. Four numbers of the magazine have been issued. Every student should, at this time, possess a copy of each number, for the quizzes, problems and exams contained in the back of each number are invaluable as a review. If, however, there are some students who are not in possession of all the numbers, they may obtain a complete set, four numbers, from the librarian for 80 cents. Back numbers will be on sale until the close of school. We urge every student to make sure that he has all the numbers in his possession before he leaves the school at the close of this semester. Remember the price: 80 cents for the four numbers.

## Dean Archer's Page

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One of the proudest boasts of the American people is, and ever has been, that this is a government of laws and not of men. While usually applied to our government itself, in which our rulers have neither hereditary nor personal claim upon continuance in office; where the will of the whole people forms the basis of government, there is also a personal significance that touches the life of every citizen of the Republic. A government of laws and not of men means also that the individual will should always be subordinate to the composite will of all the people, as expressed in the laws of the land.

The duty of every citizen, if he would be a worthy member of society, is so to train himself that he may not overstep the rights of others. Too often we see men, and especially young men, conducting themselves as though their individual desires were the only guides of conduct.

To law students this principle of obedience to law is of special significance. It is something that needs thoughtful and continuous consideration. When we see in the classroom a man who annoys his classmates by thoughtless conduct; by whispering; by a refusal to treat serious matters seriously, we have the type of man who is injuring not only himself but others as well.

The man who must be scolded into obedience to rules and regulations is not the man, unless he reforms, who can hope for enduring success as a lawyer. But reformation is no swift change. A habit, whether mental or physical, lurks long in the path of him whom it has claimed in times past. Constant vigilance to avoid the old habit;

fresh courage to try anew in case of failure, are the means of salvation.

Men who hope to become leaders or advisers of men must prove themselves worthy to lead or to advise other men. They cannot teach obedience to, nor respect for law, unless in their own conduct there exists such obedience and respect.

In the little things of everyday life, whether in the classroom or in daily association with others, lies the only true and sure avenue of training for the great things that suddenly and unannounced come to elevate or overwhelm the individual.

The habit of respect for the rights of others must replace the habit of disrespect for such rights. The habit of obedience to laws or necessary regulations must replace the habit of thoughtless or wilful breach.

Thus the structure of character is builded, stone by stone, slowly, laboriously, but surely, until the day when all the world must recognize the worth of that which has been builded.

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Stude: "I fail to see anything wrong with that answer, Mr. Wyman."

Mr. Wyman: "That happened to be Question No. 1 in a recent bar exam. I doubt whether they would have gone any further on your paper if you had answered that way."

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Prof. York: "Pardon me, I thought you were looking on your book."

Stude: "No, sir,—just a maidenly blush and drooping of the head."



## SENIOR NOTES

Our student days, or rather nights, are fast drawing to a close. Commencement exercises are to be held on Thursday evening, May 26th. Four years seemed a long time when we entered upon our course, but in looking back what a short time it really was. *Tempus fugit.*

The members of this Senior Class are as fine a body of men as one could ever hope to be associated with, and after we have severed our relations as students and entered upon our legal careers, we will carry with us many recollections of our student days. The members of the Senior Class should become members of the Alumni, and we would then have the opportunity of having our reunions and talking over the days that have passed and recall many pleasing and amusing incidents of our student days. Students must not forget for a moment the duty of loyalty that we owe to Suffolk Law School and Dean Archer.

As we approach the finish of our student days we realize more fully the splendid work that the Dean has accomplished, and we are indeed thankful to him for affording us the opportunity of acquiring a thorough knowledge of the fundamentals of law. Without the sacrifices and the untiring energy of the Dean many of us would never have had the opportunity of seeing our life's ambition gratified. The members of the Senior Class are proud of Suffolk Law School, its Dean and the members of the faculty who have always labored tirelessly in our behalf in order that we might be successful.

We hope that this Senior Class will establish a record for Suffolk Law School in having the largest number of students successfully pass the next Bar examination. We have received a fine training in the law, and it now remains for us to apply the knowledge we have acquired.

The officers of the Senior Class are as follows: Hon. William H. Henchy, ex-Mayor of Woburn and at present head of the Legal Department of Internal Revenue, president; Doctor Pearlmutter, a practicing physician from Revere, vice-president; John E. Walsh, Associated Press correspondent, treasurer; Charles Hogan, contractor, secretary.

The Class Day officers are as follows: Walter Flint, valedictorian; Philip J. Gallagher, salutatorian; James H. Brennan, class orator; Dr. Vincent Saward, class historian; Frank J. Linehan, Jr., class prophet; John E. Mahoney, class wills; Richard C. Tighe, class presentation; Thomas S. Lawrence, class marshal; Louis Brown, flag officer.

Louie Glixman answered the following problem and received a P—because his answer, while well worded and to the point, showed a woeful lack of fundamental principles of law. Perhaps you may be more successful. The problem is as follows: According to the existing laws of Massachusetts, can a man marry his widow's sister? This is *not* a problem in domestic relations, nor does it involve the Einstein doctrine of relativity.

(Continued on Page 12)



## JUNIOR NOTES

To Mr. Duffy, Mr. Partridge and Mr. H. J. Archer, the Junior Class wishes to extend its heartfelt thanks for the friendly and personal interest they have shown in their lectures. For this reason, if for no other, the Suffolk Law School shall achieve greatness in the ranks of legal education. We are about to leave them, but in passing, this class wishes to be remembered as "the" class who shall never forget the kindness shown by each and every member of the faculty with whom we have been connected.

Tell us, Jake, do you know when a man is conclusively presumed to be dead? Ye gods and little fishes, Jake, find out.

The father of the class, Mr. Kerigan, will now give us a little fatherly advice. Speak up, Dad.

At last! At last! The feud, the deadly feud is o'er and peace, glorious peace, reigns supreme. The deadly feeling of enmity existing between our John V. Mahoney and Jimmie Dignan, pride of the Second Division, has been killed, never to be revived. We pray that the blessings of that beautiful bird of peace may forever hover over the heads of these two children.

Did you say bawling out? We must hand the paper fire-container to our dear friend, Stacey, for his ability to hand out a tres terrible bawl in a gentle fashion. The object of the bawling out certainly deserved it at the time, even though he did not mean what he said.

And now in passing, we say: "Farewell, McDevitt, Lord Mayor of all Ireland. May the good Lord have mercy on your soul."

It would be a mighty good idea if some of you boys would cease your habit of throwing butts over the stairs and hallways of the school. A hint to the wise is sufficient.

Congratulations, Gormley. How did you get that 100% in Partnership? The rest of the boys are most anxious to know your method.

Those of you who have not paid your class dues had better come across at once. Time is short and getting shorter. Remember, boys, the banquet is about to come off. The old dollar bill is needed badly. Nuf ced.

Evidently Brother Bartlett has succeeded in arousing the ire of his fellow-citizens in North Attleboro. Have you no defence, Bart?

If Beau Brummel could arise from his grave and enter the Junior Class room, he would soon drop dead once again from sheer envy. How could he possibly live if he looked upon our own Beau Brummel, the honorable Mr. Griffin, he with the golden locks and the sunny, diplomatic smile? Oh, Griff, old pal, we envy you.

Would you call the Freshman Class a Partnership, Corporation or a nuisance?

## THEATRE NOTES

The new Suffolk Theatre, which opened to the public April 11th, has made good. Opening day was a notable one. Mr. Enright's long service at the Boston Theatre had endorsed him to hosts of friends. Huge baskets of flowers came from all directions, together with best wishes for the new theatre and its manager.

The beauty of the new playhouse has drawn forth no end of praise. The audiences, while not very large at first, have been steadily increasing and are an unusually high type.

The policy of the Suffolk Theatre is to offer the best pictures obtainable. Two feature plays as well as comedies, scenics and news of the day are on each program.

Seniors! Juniors! Sophomores! Freshmen!

A few more days and school will close—to some of you—forever. As a fellow student, as a member of the graduating Senior Class and as Manager of the Suffolk Theatre, *your* theatre, I have but one request to make.

I ask that in leaving the school, you take with you the memory not only of your teachers, studies and friends, but the memory of the *Theatre*. During the summer many of you will seek places of amusement. There you will have an opportunity to patronize *your* theatre. Let the Suffolk Theatre be more than a memory to you. Patronize it—advertise it—eulogize it, as you should do, for after all the Suffolk Theatre is the finest of its kind in the city.

REMEMBER THE SUFFOLK THEATRE.

(Signed) JOHN J. ENRIGHT, '21,  
Manager.

Dave Lasker, assistant-manager extraordinaire, is right there when it comes to looking out for the welfare of the girl ushers, the cashier (so shy and beautiful) and the other dear girls who persist in making eyes at him. *And HE is a nearly-married man!* O-o-o-o Dave, how *do* you do it?

At this hour I am making an appeal to all the students of Suffolk Law School to rally 'round and support the school and the *Suffolk Theatre* as well. It is *your* duty to do all you can in spreading the news about *our* wonderful theatre. The success of the theatre depends on what *you* will do and what efforts you will make towards advertising it. I sincerely hope and trust that you will heed this appeal and that it shall not be in vain.

Are you *with* me or *against* me?  
YOUR ACTS SHALL COUNT  
AND NOT WORDS!

(Signed) DAVE LASKER, '21,  
Asst. Mgr.

Talking about beautiful Special Policemen, have you seen our own Special Officer?

(Continued from Page 10)

Of one record the Seniors are assured. That is the proud record of holding the high honor and notable distinction of being the "first" Senior Class to occupy and to be graduated from the new building of the Suffolk Law School. No Senior Class of the past nor of the future can win these laurels from the Class of 1921.



## FRESHMAN NOTES

W. S. Dolan's oratorical powers certainly are developing. Keep it up, boy, and you'll be a grand auctioneer.

Mr. Douglas: "Run up the window, please."

Reardon (in a mumble): "Do I look like a squirrel?"

1st Freshie: "What's the tallest building in Boston?"

2nd Freshie: "I don't know."

1st Freshie: "Why, the Ames' Building."

2nd Freshie: "That's nothing. I've seen a thousand stories in Story's Case Book and, moreover, the guy who reads those stories has higher Aimes."

Kirk, one of Uncle Sam's defenders and a member of the Freshman class, is back in "civies" again. He's just as good looking now as he was when he wore the olive drab.

Mr. Armstrong, the strong arm attendance clerk of this class, seldom finds it necessary to use strong arm methods in procuring admittance checks from the alleged fresh "Freshies."

Well, boys, we part in a few weeks for a little vacation. Remember that your acts during that vacation will reflect upon Suffolk. Do nothing, say nothing that will injure her golden reputation.

Prof. Baker: "What is an attractive nuisance?"

Experienced Class: "A woman."

Best Girl to Freshie: "I hear you are a student of theology."

Accommodating Freshie: "Why, yes, I study Conversion at Suffolk Law School."

Frank Carrella deserves much credit for the reputation he has made for the Santaug orchestra.

Dexter Cohan, a young lady wants to know if your affections are dexterous?

Oh, Can it! You can't Can Thomas Can of the Freshman Class.

The Pathfinders Club of the North End, of which Louis Bar-rasso is president, held a meeting on Sunday, April 3, at which our courageous editor-in-chief, accompanied by a beautiful and sweet little girl, confessed in the course of his address on "Crimes and Criminals" in a boastful way, "I sinned once." Oh, yes, Richard is a student of psychology. His girl will like him more now since he was so frank. Good luck to you, Dick.

Our class wishes to express its feeling of gratification for the hard and tireless work on the part of the Dean and faculty in our behalf during the past year. We appreciate their efforts and we feel certain that their tireless struggle in our behalf has been crowned by success as we have mastered the most valuable lesson in life—to study is to know, to know is to succeed. Study and you will succeed.

## SOPHOMORE NOTES

What did Gorman mean when he put that question about making a gift to a man, provided he didn't come back alive?

If you want to hear some birds of questions, drop in at the second session some evening. There's one youngster who evidently feels that it is more important for him to get a point of law firmly fixed in his non-receptive mind than for the class to get the regular lecture.

And now comes Joe Toland, winner of last year's Walsh Scholarship, with a young lady from Portia Law School on his arm at the opening exercises. He says there's nothing to it, but at the same time his looks belie his words.

Those who have passed up Prof. Staley's class in Public Speaking so far probably have no way of knowing what they're missing, but they ought to drop in some evening to look on, if nothing more. The poorest speakers, some of them failing in coherent expression, want the platform the longest—and Prof. Staley, in his efficient regard for the class as a whole, usually succeeds in choking them off.

Ryan finds the new chairs much more comfortable for an after-supper nap than the old ones at Mt. Vernon St.

It is with a feeling of regret that we pass up the history-making occurrence the night Mr. Leonard was out sick. From all accounts Ajax

defied the lightning—but not being there—and no official referee having been named—we take the opinion of the others—a draw was robbery on both sides.

Demosthenes will undoubtedly do himself and the occasion justice in describing the Dedication exercises, so the Class Editor closes this column for 1920-1921 with best wishes to the boys for the "FINALS."

LOUIS P. GARLAND.

*Editor's Note.*—I wish to extend my sincerest thanks to Mr. Garland, Class Editor for the Sophomore Class, for the splendid manner in which he has assisted me. No tribute is too great to apply to him. Here is a man who knows the meaning of class and school spirit and here is *the* man who will obtain the rewards when rewards are given. To the members of the Sophomore Class who rendered Mr. Garland any assistance in the preparation of his notes I also extend my heartiest thanks. May good fortune attend you all in the coming "FINALS."—*Editor.*

Boys, the finals are approaching. They are almost upon you. Have YOU made preparations to meet them? Are you POSITIVE that you will get 100 in every exam.? If not, get busy RIGHT NOW. Don't put it off until tomorrow for tomorrow never comes. Don't put off until tomorrow what you can easily do today.



# Editorial Page

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**RICHARD S. KAPLAN, Editor-in-Chief**

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**ASSISTANT BUSINESS MANAGER**

J. E. MAHONEY, '21

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Seniors! The race is run. A new race has begun.

Four years have you spent at Suffolk, four years filled with pleasant memories of the various events occurring here. Now you are about to depart from Suffolk—forever. But let us not say forever, for though *you* may leave, your hearts shall remain here.

You are about to leave to go out into the world with the greatest store of knowledge a man may possess, namely, that of a lawyer. You will encounter, as you pass over the road of life, many temptations. Many opportunities to act the part of a liar, a thief and a sneak shall present themselves to you. As you treat those opportunities so shall you be judged. Remember the motto of Suffolk, *Honestas et Diligentia!* To think right, to do right, to act right and to live honorably! Let this also be your motto. To live so that the whole world or part of it may be the gainer by your living, to fight and fight fairly, to work and work hard, to play and play fair, this should be your creed.

Suffolk will be judged by your future acts. Let no act, no word of yours ever reflect upon Suffolk except that it may reflect honor or glory upon the greatest school in the world—SUFFOLK.

It is the painful duty of the school to bid you farewell. So be it. The best of friends and comrades must part, but the paths of friends must eventually blend into each other. We bid you farewell, Seniors. May the fortunes and honors of life, bestowed upon those who live according to the dictates of the Almighty, be your lot. May you meet success with modesty and failure with fortitude and a smiling countenance. And trusting in God, every one of you shall achieve the great success you all seek.

Adieu!

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## TO OUR EXCHANGE EDITORS

The REGISTER wishes to express its sincere thanks to the *Golden Rod*, the *Item* and the *Mirror* for the interest they have shown in our magazine. Each of the above-mentioned magazines have furnished the members of our staff with many moments of laughter and pleasure. They are each and every one of them well put up, well edited and success



should attend the further publication of them. Good luck to you, *Golden Rod, Item and Mirror!*

Suffolk has achieved one of its objects. Today it stands at the peak of all evening law schools. And who is there who will dare say that it does not deserve its position? Ridiculed, oppressed and discouraged, Suffolk, with the aid of its captain, Dean Gleason L. Archer, has reached a position envied by all and equalled by none. Well may its former enemies look with eyes of surprise and astonishment at its present position. But even its enemies have become friends. And that is as it should be. We have proved our worth by the result of our efforts. We stand, an institution of learning, honored and esteemed by all. Our graduates have made and are making rapid strides of progress in the various fields of endeavor, outside the field of law. And there is good and sufficient reason for this success. No man can attend a school wherein, from the very first day that he enters, he is taught that honesty and diligence is the easiest and noblest way to success, without becoming imbued with the spirit of nobility and honesty. And gradually our men have absorbed this principle to such an extent that they live and breathe in the atmosphere of honesty and diligence. Small wonder, then, that Suffolk is *the* school of schools. And it shall continue to be *the* school, with the help of our honored and beloved Dean, Gleason L. Archer.

#### A WORD FROM THE EDITOR

In this, the last issue of the year, I feel impelled to say just a few words to the students of Suffolk.

From the very beginning of the year, when the REGISTER reappeared after an absence of two years, I found myself handicapped by a peculiar lack of co-operation. The task before me was a difficult one and from the very beginning I knew that I had a mountainous proposition confronting me. But I was not discouraged. I did my best, feeling sure that sooner or later the students would wake up and lend me their aid. My hopes were slow in being realized, but they were realized. How I could possibly have made a success of the REGISTER without your earnest and hearty co-operation I cannot even begin to imagine. It was due to the many friends I possess in this school who put their shoulders to the wheel and helped, materially, in the work of preparing and selling the magazine that the REGISTER has proved the success that it is today.

To the many friends who gave me this aid I give my sincerest thanks. I can never hope to repay them in any other way than in pledging my friendship to them for life. And friendship, when it is needed, is often far more valuable than all the gold in the world. In our profession, namely, the legal profession, friendship of the right kind plays a very important part. It sometimes goes a long way towards making a man. This friendship of mine my many friends and assistants may be assured of.

To those students who could not offer me their aid in any other way than by purchasing the magazine, I want to extend my thanks. They also played an all-important part in the success of this magazine.

To all the students of Suffolk I say, THANK YOU, ONE AND ALL



If I have erred, as no doubt I have, in saying things that hurt, pray forgive me for my errors. Jests have been written, but they were all in a spirit of jollity and good-fellowship. I have done my *best*. That is all a man can be expected to do. Whether I have succeeded or not I leave to the students to determine.

Again I want to thank the men of Suffolk for their aid and I wish you all a very pleasant vacation, after successful examinations.

May all the good fortune, health and success follow you, every one of you, in the course of your legal life.

RICHARD S. KAPLAN,  
Editor-in-Chief.

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### QUID RETRIBUAMUS? (WHAT RETURN SHALL WE MAKE?)

By C. J. LAMB, SPECIAL

Periodically, men of vision recognize the insistent urge of conscientious introspection. Men of renown have said that rational beings learn as well from an investigation of their mistakes and the causes thereof as they do from the acquisition of positive knowledge. From the experiences of others we can obtain thoughts for our mental digestion. The manufacturer and the merchant, at periodic intervals, examine the records of their businesses for the previous accounting periods, inventory the stock on hand and appraise its present and proximate future value. The professional man collects new decisions that alter or negative past procedure or nullify antecedent theories of medicine, surgery, chemistry and other kindred sciences. The educator must amend his fund of knowledge so that the whole may co-ordinate with modern research and recent discovery. The student, too, must retard his progress; and what time more appropriate than the period immediately preceding Commencement?

Commencement. With what feelings of joy and personal gratification does the Senior visualize the day when he will step forward to receive his degree,—a token of work well done and a goal attained. The Junior, the Sophomore, the Freshman,—each and every one—on that day can rejoice not only with the Senior but one with another. A year completed. Another rung on the ladder of accomplishment has been surmounted.

Let us suspend for awhile the expression of gratification which we would fain bestow upon ourselves, and, turning the light of understanding upon the persons and things that have made our deeds possible and our pursuit of knowledge fruitful, observe how we are illumined by the effects obtained.

Here is an institution, founded upon the solid hope and bright vision of a young attorney, which has weathered the gale of oppressive educational intolerance. In fifteen short but eventful years, observe what progress has been made despite the almost ineluctable obstacles that have been encountered. Today we are situated in a building the conveniences of which have exceeded our fondest imaginings. We are studying law under the supervision of lecturers who have few superiors as teachers and practitioners, as is evidenced by the high percentage of Suffolk graduates who have been admitted to the Bar in recent years. We are



subject to a system of study that entails the constant reiteration of firm principles of knowledge and the oft-repeated use of rules of law in order that our foundation will be set deep in the solid cement of exactitude. We are, therefore, enjoying advantages that are offered to students in the foremost law schools of the nation.

Should we not exult and give praise? But our exultation should abound not in temporary verbal utterances of approval, but rather in laudatory deeds that bespeak the deep-fetched joy we feel. An unknown author has said

“Count that day lost, whose low descending sun  
Sees at thy hand no worthy action done.”

What have we done for Suffolk? What are we going to do for her?

To the underclassmen on this occasion, we would urge a greater support to Suffolk Law School. Increase the effectiveness of your class society by becoming an active member of your organization. Grasp every opportunity to do all that you can to promote the mission of this wonderful institution and its founders through the instrumentality of class functions. Further than this, see that your class is engaged with other class organizations in promoting the general welfare of the school and its body of students. It might be found expedient to promote the formation of a Student's Council to supervise inter-class and intra-class activities of a social nature, and thus, by co-ordinating the efforts of many, achieve a resultant increase in efficiency.

Beyond the promotion and employment of class spirit, each student should utilize every opportunity available to make his personal ability of specific aid to some advancement of the welfare of the school and the men who make it. Let every man remember the words of Shakespeare in Macbeth, Act 3, Scene 1, lines 97-100:

“Every one  
According to the gift which bounteous nature  
Hath in him closed.”

for there are many opportunities for the eager and willing man of real Suffolk spirit to expend his share of ability in the propagation of our ideals.

And to the Seniors who are to leave us in a few short days, we extend a hearty greeting for their future success. May we not expect that they will see fit to exercise their privilege of friendly interest in all that affects Suffolk men and ideals? Your departure as undergraduates should not prevent your return as interested participants in our activities during the years to come. Show us that you too have appreciated and ever will acknowledge the debt of gratitude you owe to the men who made this school a reality to aspiring youth.

May each and every one of us at this Commencement take new heart and high resolve to do more and better work for Suffolk “Honesty and Diligence,” recalling the words of America's most renowned bard, Longfellow:

“Let us then be up and doing  
With a heart for any fate;  
Still achieving, still pursuing,  
Learn to labor and to wait.”



## ALUMNI NOTES

Walter V. McCarthy, '20 valedictorian extraordinaire, is located with Hayden & Amesbury of the Kimball Bldg. Mac will be remembered for his generous smile.

When it comes to delivering orations beyond par we must hand the celluloid stove lifter to Kenneth C. Dunlop. Those who failed to hear him at the dedication exercises certainly missed a treat. He was there, dress suit, smile and all.

Di Mento is gradually becoming a first-class lawyer. Every morning finds him at the Court House listening intently to the pros and cons of the cases being tried. Keep it up, Di Mento, the Supreme bench is waiting for you.

Leo J. Halloran is making good with a zest. As the Recorder at Suffolk he is becoming quite popular with all the classes. Willingness to explain errors, to show marks, and to give advice have given him a reputation to be envied by all. You're the goods, Leo. No wonder Uncle Sam made you an officer.

And speaking of Al Goldman, those who missed seeing him enter Suffolk on the day he received his notification of having passed the Bar exams. missed the greatest event of their lives. His smile alone was worth going many miles to see.

Greetings, honored Seniors of 1921! We greet you with open arms. May the Senior Classes to come enter the ranks of the Suffolk Law School Alumni with as much prestige as the Class of 1921.

Charles S. O'Connor, one of our old alumni, now a Boston School Committeeman, is being named as a probable candidate for Mayor to succeed Andrew J. Peters.

Jimmie Meagher, '19, is handling many cases before the Accident Industrial Board.

John Haley, '14, is now in Maine recuperating from a recent serious operation.

"Smiling" Eddie Morris, '19, and Chris Halligan, '19, are teamed up in a law partnership in Barrister's Hall.

Rumor reports that a former member of this school, namely, Al Goldman, '20, has become quite popular with the beautiful telephone operators in Center Harbor. Every evening, as the shades of night gradually descend upon the fairest of the fair, Al is to be found in the midst of a jovial group of smiling damsels softly warbling sweet lullabies. No wonder every day hears a new report of a love capture made by "singing" Al.

A discussion arose in the classroom during a recent lecture on public corporations involving the following facts: Mr. Jameson cited a case where a street railway had taken over a piece of land by eminent domain, taking the land in fee, and later the city took this same piece of land by right of eminent domain. What Mr. Jameson wanted to know was whether the city in taking this land by eminent domain took it in fee. Mr. York ruled that it did, but Louie Glixman contended that the attorney took the fee.



## TORTS QUIZ No. 5.

1. A small stream issued from a large spring on A's land a few rods from the boundary line of B's land and flowed thence across B's property to a river. B, wishing to secure for domestic purposes a much larger amount of water than the stream afforded, dug a very large well near the line and across the channel of the stream, intercepting all the flowing water, but this being insufficient for his needs, he dug the well many feet deeper where he tapped a porous stream connected with the source of A's spring and thus secured abundant water but caused A's spring to become almost dry. What remedy, if any, has A?

No remedy for intercepting the flow of the surface stream, because he was entitled to the use of all of it, since, first, he was using the water merely for domestic purposes; second, there was no lower riparian proprietor to be injuriously affected; and, third, the stream was so small that the use of all of it could not affect the rights of riparian proprietors upon the river into which it flowed. Archer, Sect. 128. He is probably free from liability also for tapping the lower stratum, because it was merely porous soil containing percolating water not flowing in any well-defined underground stream. But, of course, if B deliberately tapped the underground source of A's spring and the course was a well-defined stream the location of which could be reasonably determined under the circumstances of this case, the answer might be *contra*. See Archer on Torts.

2. W owned a horse which he mortgaged to C to secure the payment of a certain indebtedness. W failed to pay and C became entitled to the horse, which, however, he permitted to remain in the possession of W. X negligently injured the horse while the animal was still in W's possession. Both W and C sue X for trespass. Which, if either, can recover?

Both. C because he has a right of possession and W because he has actual possession. Either possession or right of possession is sufficient to maintain an action of trespass to personal property. Archer, Sect. 145. Wilsey, 17 Wendall, 91 K 248.

3. A, intending to bring suit against C, wished to obtain copies of certain documents which C had in his house; so A went there at a time when he knew C was not at home, and, as he had been on friendly terms with the

family, and in the habit of visiting them, he had no difficulty in obtaining entrance to the house, and in persuading Mrs. C to produce the desired papers, which he copied surreptitiously. C sued him in trespass. Can C maintain this action, either on the ground that A was a simple trespasser or a trespasser *ab initio*?

No. The conduct of A did not amount to a trespass after entrance and the entrance was obtained under a license from C's wife and not a license of law. Archer 132, Sect. 144, K 267.

4. S, an attorney, having for collection a promissory note signed by D, wrote to D requesting him to call at his office and pay the amount due. D went to the office and said he had come to pay the note which was shown to him, but a dispute soon arose as to the sum due, and he, having the paper in his hand, tore his name from it. S ordered him to leave the office, but he refused to do so at once. After some time, however, he left, taking the note with him and daring S to come outside and get a licking. S sued him as a trespasser *ab initio*. What decision?

Not a trespasser *ab initio* because he entered by express license. If his acts subsequent to entrance amounted to trespass of course he would be liable therefor. Archer, Sect. 144. Dumont v. Smith, 4 Denio 319, K 269.

5. The X Railroad Company transported certain freight billed to T. Jones at Hopedale, which by mistake was delivered to J. Jones of Westdale. T. Jones sues X for conversion. Can he recover?

Yes. By giving by the railroad of T. Jones' property to another amounts to a conversion of it. Archer, Sect. 146.

## CONTRACT QUIZ.

1. A writing, signed by A and B, contained the following statement: "This certifies that I, A, have sold to B," etc. B sues A for the non-performance of the agreement. A contends that the words "have sold" necessarily refer to an executed contract of sale. B proves that A has never sold the property to him and maintains that "have sold" should be construed to mean "have agreed to sell." How should the court construe the words?

In accordance with B's contention; otherwise the contract would be meaningless. Atwood v. Cobb, 16 Pick. 227.



2. Jones applied to H for a loan upon a mortgage to be given upon Jones' land and Jones signed an application in writing for the loan addressed to H by which he agreed, in consideration of the acceptance of his application, to pay to the counsel appointed by H the charges for examination of the title under this arrangement, but Jones refused to pay the counsel fee, although H had made the loan as agreed. X, the counsel, sues Jones for his services. Can he recover?

No. The written promise was made to H; was addressed to him and the consideration contemplated as an inducement of the promise was to move from him. A third party, who is a stranger to the consideration, may not sue upon a contract. *Williamson v. McGrath*, 180 Mass. 55.

3. (a) A was injured by the X railroad company. He assigns his claim to B, who sues the railroad thereon. Admitting that A had a good cause for action, can B recover?

No. Personal right cannot be assigned until reduced to judgment. *Stone v. Boston & Maine Railroad Company*, 73 Mass. 549.

(b) How would your answer differ if A had not assigned to B, but had gone into bankruptcy before bringing suit and his trustee in bankruptcy had brought the suit?

Same answer. Same reason. *Stone v. Boston & Maine Railroad Co.*, 73 Mass. 549.

4. A contracts with B to deliver to him three hundred bushels of corn in exchange for his horse. B fraudulently represents the horse sound. A assigned the contract to C, to whom B delivers the horse. C, however, claims an offset in damages owing to B's fraudulent representation. Should C's claim be allowed?

Yes. The assignee stands in the shoes of the assignor. Rights of the assignor growing out of the contract accrue to the assignee. And, on the other hand, the assignee takes subject to all defences which might have prevailed against the assignor.

5. The X water company contracts with the city of B to supply it with water for extinguishing fires. The water company commits a breach of its contract, as a result of which breach the house of C, a citizen of B, was destroyed by fire. C brings action against the water company. Decision.

For the water company. C has no redress against the water company because he is not a party to the contract. *Durnford v. Messiter*, 5 Maule and S. 446.

6. A enters into a contract with B for the purchase of B's farm. Payment is due to made in several installments,

and upon payment of the last one B is to deliver to A a deed of the farm. A refuses to pay the second installment when due and B sues for it. May B recover or must he wait until the expiration of the time set for the complete fulfillment of the contract?

B is entitled to recover. A's promise to pay each installment other than the last one is independent of the covenant to convey. Hence B may sue him for each installment, except the last one, without offering to convey the farm.

#### AGENCY QUIZ.

1. X made and delivered to Y a promissory note reading: "I promise to pay," etc., and signed it "X, Agent." He afterward tries to escape liability by showing that Y knew he was the agent of W. Can X be held?

Yes. X bound himself.

2. An agent who had oral authority to do so, conveyed his principal's land by deed. The principal refused to ratify the agent's act. What are the rights of the party who got the land through the agent's deed?

Can go into court of Equity. Deed will be considered as a simple writing and specific performance will be decreed. Principal will be compelled to give valid deed.

3. T leaves with G a horse to be kept through the winter. G, without authority, sells the same to P, taking in payment a cashier's check payable to his (G's) order. G, being indebted to T on other transactions, endorses and sends this check to T as payment on account of the pre-existing indebtedness. T so applies it, being in ignorance of the sale of the horse. After he learns what has been done, he demands the horse of P. P refuses to give up the horse unless T will return to him the check or its proceeds. T refuses and brings suit against P for conversion. Can he recover?

Yes. No ratification on the part of T.

4. A, as agent of D, was the manager of a hotel belonging to D. A bought of P groceries for the hotel. P charged the groceries to A, not knowing at the time of the sale that A was acting as the agent of D. P subsequently ascertained that A in making the purchase was in reality acting as agent for D. What rights has P?

To hold either A or D. Can make his election after discovery. Undisclosed principal.

5. Suppose, in the preceding case, that P, sometime after the sale and after he had discovered that A was acting for D in making the purchase, had taken A's note for the amount of



the bill. What right would P have then?

To hold A only. Had made his election by accepting the note knowing that there was a principal.

#### REAL PROPERTY QUIZ No. 5.

1. D, a tenant at will of a certain farm belonging to P, filled the barn with a large quantity of hay, grain, meal and fertilizers to such an unreasonable extent that the barn was overloaded and the scaffolds, roof timbers and supports were thereby broken down and the barn badly damaged. (a) Did this amount to waste for which D was liable to P? (b) For what kind of waste, if any, is such a tenant liable to his landlord?

(a) Yes. A tenant at will is liable for a positive unreasonable act resulting in damage to the landlord's property. *Chalmers v. Smith*, 152/561.

(b) A tenant at will is liable in trespass for voluntary waste. Lecture Notes, sec. 61.

2. A was seized in fee simple of a farm containing a clay pit, and also deposits of coal and black lead. The clay pit had been operated for several years by A's predecessor in title, but A had never used that portion of the farm for any purpose. A dug a considerable quantity of the coal during his lifetime, but the black lead deposit remained untouched. At A's death, is the widow dowable of any or all of these three deposits?

She is dowable of the clay and coal but not of the black lead. The clay pits had been opened and had not been devoted to any other purpose after the digging out of the clay had ceased. The coal deposits had also been opened, but the black lead mine had not been opened. A widow is not dowable of mining lands unless at the time of the death of her husband the mines have been opened. Lecture Notes, section 63.

3. A married woman, owning land in fee, conveys it. After the conveyance, she gives birth to a child and dies, her husband surviving. Has the husband any interest in the land so conveyed either at common law or by statute?

Yes, he has his right of curtesy both at common law and under the statute. At common law, it was not material whether the issue was born before or after the wife was seized of the land, provided she was seized of it at any time during coverture. *Comer v. Chamberlain*, 6 Allen 166. Lecture Notes, section 66. By statute, birth of issue is no longer made a requisite in order for curtesy to exist.

4. A, owning Blackacre, in fee simple, arranged for his wife to release her dower rights in the said land to

X, A furnishing the money paid by X to A's wife therefor. After A's death, his widow claimed dower in this land. Is she entitled?

Yes. The release signed by the wife was void at law. A release of dower to a stranger to the title is void and will not operate against the wife, even by way of estoppel. *Mason v. Mason*, 140/63. Lecture Notes, section 87.

5. A testatrix devised a certain farm to her daughter Mary in fee simple, but if Mary died without issue, then the farm to go to B and his heirs. Mary died without issue, leaving her husband surviving, who claims curtesy in the said farm. (a) Is he entitled? (b) How, if at all, would your answer differ as to such claim of curtesy if the farm had been devised to Mary in fee simple, but if Mary died without issue, then the farm to revert to the heirs of the testatrix?

(a) The husband of Mary is entitled to curtesy. If an estate is limited to a wife in fee with an executory devise or conditional limitation over to another, the husband's curtesy is preserved. (b) The husband of Mary is not entitled to curtesy. If the wife's estate is determined by a condition subsequent, the entry of the heirs of the testatrix would destroy the estate of Mary the wife, including the claim of curtesy of her husband. *Carter v. Couch*, 157 Ala. 470. 20 L. R. A. (N.S.) 858. Lecture Notes, page 48, section 67.

#### EQUITY QUIZ No. 5.

1. A had a second mortgage on a parcel of land. He foreclosed the mortgage and purchased the property. To protect his title it became necessary for him to take care of the first mortgage, which he did by paying it off. B, the maker, and C, the indorser of the first note, claimed that the payment and taking up of the note by A released them from their obligation to pay the same. How would equity regard the relative positions of the parties?

*Matison v. Marks*, 31 Mich. 422—Subrogation. When one person in order to protect his own interest is compelled to pay the debts of another to the joint creditor, he is subrogated to all the rights of the creditor towards the other whose debt he has assumed and in equity he becomes the assignee, and is entitled to resort to all suitable remedies to enforce payment. This right extends to others than sureties, but not to a volunteer. It applies to all who are under an obligation when protecting their own interests to discharge an obligation resting on another. In order to protect his title and prevent foreclosure it became necessary for A to pay the first mort-



gage and he then became subrogated to the rights of the first mortgage against B, the mortgagor and maker of the mortgage note, and C, the endorser, and could compel payment of the same.

2. The G fraternal order, upon the surrender of a benefit certificate issued by it to A, a member, making B, his relative, a beneficiary, issued to A in its place another certificate naming C as beneficiary. At A's death both B and C claimed the \$2000 amount of benefit. B alleged that C was not a relative, and hence not legally entitled to the benefit. C denied the allegation of illegality and claimed to have paid A's dues and assessments. What action would you advise the G order to take?

Golden Cross v. Merrick, 163 Mass. 364—Interpleader. When a person is in the custody of a fund to which there are two or more claimants to whom he is under no direct contract obligation, and there is some doubt as to whom the fund legally belongs he may file a bill of interpleader in equity compelling the contending parties to interplead that their right may be established. The Golden Cross should by a bill of interpleader in equity compel A and B to interplead and then pay the fund to the person whom the court designates as the owner.

3. A brought an action against B to recover money alleged to be due under a contract to build a steam engine on a boat, the amount of the claim being \$3000. B claims that a stipulation of the contract provided that the engine must be ready and completed on or before October 1st, under a forfeiture of \$100 per day, after the above date until it was completed. The engine was completed on February 1st following. How will the transaction be regarded?

Colwell v. Lawrence, 38 N. Y. 71—Penalties. When a stipulation in a contract provides for the payment of a certain sum of money upon the breach of any or all of its covenants, and the sum named is unreasonable and excessive, and is more than sufficient to compensate the injured party for the damages occasioned by the breach, equity will regard the sum named as a penalty to secure the performance of the contract, and not a sum assessed as liquidated damages, and will relieve from the excessive amount over the sum actually necessary to compensate for the injury inflicted by the breach. In this case the amount named of \$100 per day was excessive and clearly meant as a penalty and B could only be allowed the actual amount of damage caused by the delay.

4. A, a business man, and B, a lawyer, entered into an agreement to engage in business; A to have charge of the business affairs and B the legal matters, both without remuneration. A corporation was formed to carry on the business and B, without A's knowledge, received pay for certain legal services, and acquired additional shares of stock and dividends in the corporation. A learns of these profits four years later. Has A a remedy of any nature against B in equity?

Arnold v. Maxwell, 223 Mass. 49—Accounting. The fiduciary relation existing between partners imposes an obligation on each to disclose to the other any bargains affecting their joint interests, and any secret profits obtained by one is regarded in equity as being held by him in trust for the benefit of the partnership and the aggrieved party may by a bill in equity for an accounting compel the offending parties to convey the profits to the partnership. A by a bill for an accounting may compel B to disclose the amount received by him in the transactions and to convey it to the partnership.

5. A, who was a stockholder in the B Machine Co., a corporation organized under the laws of Maine, was compelled to pay a judgment against that corporation under a statute which provided that a stockholder who had not paid the full amount of his subscription was liable for the debts of the corporation to the extent of the unpaid balance. C, D and E, all residents of Massachusetts, also were stockholders who had not paid their full subscriptions. Can A get any relief in equity?

Putnam v. Misochi, 189 Mass. 421—Contribution. Under the maxim that equality is equity, when one joint obligor who is under an obligation to pay a common debt with other obligors, and he is compelled to pay the entire debt, he can maintain a bill in equity against the other joint obligors to compel them to contribute their respective shares. Since under the statute A, C, D and E were members of a common class and all were under the same liability, the application of the doctrine of contribution in equity would compel each to pay to A one-fourth of the entire sum paid by him in satisfaction of the judgment.

#### LANDLORD AND TENANT QUIZ.

1. A hired a barn of B, in which to store his automobile at a monthly rental of \$10. B also used the barn for ordinary farm purposes. A owes B three months' rent and B seeks your advice as to whether he can refuse to allow A to take out the machine until



the amount due is paid. What rule of law will govern your opinion?

If A is a tenant the landlord has no lien; if A is a lodger, he has; if a mere licensee, he has not.

2. The parties litigant were landlord and tenant. The landlord (plaintiff) let to defendant an unfurnished dwelling known as 334 W. 58 St. for one year from October, 1918, for \$2800, payable in equal monthly installments. The lease contained no covenants as to the condition of the premises or that the landlord would put or keep it in repair. Tenant went into possession and stayed until February, 1919, paying rent until January 15th. Assuming that the condition of the house was unsanitary, arising from defective plumbing unknown to either party at the time of letting, although easily ascertainable by either at the time, can the tenant be held for the balance of the year's rent if he moves out in February because of said unhealthful condition?

Yes; no implied warranty of condition by landlord except as to hidden defects, which this was not. Caveat emptor applies and tenant is liable for the rent. *Daly v. Wise*, 132 N. Y. 306.

3. In the above problem, suppose the house had been let as a furnished apartment, would your answer differ, and if so, how?

Tenant not liable here, as there is an implied warranty of reasonable fitness in leasing a "furnished" apartment. *Ingalls v. Hobbs*, 156/348.

4. A merchant leased by written lease a certain lot of land and the store thereon for a five-year term, the lease containing no covenants as to repairing or fire clause. The store was destroyed by fire without the fault of the tenant. The landlord declined to rebuild, whereupon the lessee refused to pay rent for the unexpired portion of the lease. May the lessor recover such rent?

Yes. Where there is no provision in the lease for rebuilding or abatement of rent in case of fire, the destruction of building thereby does not terminate tenant's liability to pay rent. 24 Cyc. 1345.

5. At the foot of a receipted bill of sale of a quantity of hay headed "P bought of H" was a memorandum signed by H, viz., "Left at stable on O St. where P takes possession, rent to begin October 1, 1890, for one year at \$150." P claims that this makes him a tenant for years, while H claims he is a licensee and must vacate on sale of the building. Which is correct?

P. As all the essentials of a valid lease are present—writing, signed by owner, premises described, definite du-

ration of term, lessee named, and rental fixed. *Eastman v. Perkins*, 111/30.

## DEEDS, MORTGAGES AND EASEMENTS QUIZ No. 1.

1. What are the words which are employed as words of grant in (1) Warranty Deed, (a) Old Form, (b) Statute Form; (2) Quitclaim Deed (a) Old Form, (b) Statute Form?

(1) (a) "Give, grant, bargain, sell and convey," (b) "Grant"; (2) (a) "Remise, release and forever quitclaim," (b) "Grant."

2. Discuss the Massachusetts theory of a mortgage as stated by Chief Justice Shaw in *Ewer v. Hobbs*, 5 Met. 1.

The first object of a mortgage is in the form of a conveyance in fee, to give to the mortgagee an effectual security. The next is to leave the mortgagor, and to purchasers, creditors and all others claiming through him, the full and entire control and ownership of the estate, subject only to the first purpose, that of securing the mortgage. Between mortgagor and mortgagee, the mortgage is to be regarded as a conveyance in fee, but in all other respects, until foreclosure, the mortgage is deemed to be a lien or charge, subject to which the estate may be conveyed, attached, and in other respects dealt with as the estate of the mortgagor.

3. A, owning Blackacre and Whiteacre, desires to convey a half interest in Blackacre to B so that A and B shall hold Blackacre as tenants in common, and A desires to convey a half interest in Whiteacre to C so that A and C shall hold Whiteacre as joint tenants. Can either or both such conveyances be accomplished by one deed? If so, how?

Yes, both. Of course A may convey a half interest in Blackacre to B so that A and B shall thereafter hold as tenants in common. A merely transfers a half interest to B and retains the other half interest. But in order to create a joint tenancy in such a case, the whole fee must go out and come back again to A and C as "joint tenants." In no other way can the right of survivorship be created. Such a conveyance could always be effected by one deed by employing a deed to uses (Example: A to X and his heirs to the use of A and C as joint tenants), and by Acts of 1918, c. 93, "Real estate including any interest therein, may be transferred by a person to himself jointly with another person or persons in the same manner in which it might be transferred by him to another person."

4. Jones, having owned and occupied a parcel of land for several years prior to 1880, was in that year dis-



seized by Brown, who thereafter remained in exclusive possession. In 1885 Jones, being sick and confined to his bed, sold all his right, title and interest to Franklin and executed and delivered to him a quitclaim deed of the parcel. Franklin having been denied possession by Brown brought a writ of entry against him in 1886. The court ruled that upon the facts as above stated the action could not be maintained. Was the ruling correct?

Yes. Prior to 1891 a disseizee could not, without entry and delivery of the deed of the land, convey any title which would be valid as against the disseizor and those claiming under him. *Joyce v. Dyer*, 189 Mass. 64. It is now provided by R. L., c. 127, sec. 6, re-enacting Stat. 1891, c. 354, that "a conveyance of land, if otherwise valid, shall, notwithstanding disseizin or adverse possession, be as effectual to transfer the title to land as if the grantor were actually seized and possessed of such land, and shall vest in the grantee the rights of entry and of action for the recovery of the land."

5. What language in the deeds in common use before the Short Forms Act of Jan. 1, 1913, rebutted any possibility of a resulting use to the grantor? What does Sec. 15 of the Short Forms Act provide in this regard?

The recital of a consideration paid by the grantee and the habendum to the grantee "to his own use and behoof forever." Sec. 15 of the Short Forms Act provides: "If no use is declared in a conveyance of real property, the same shall take effect as if it were expressed to be for the use of the grantee or devisee."

#### PARTNERSHIP QUIZ No. 1.

1. A railroad owning a certain hotel leased to X under a written agreement which provided that out of the net profits of keeping the house X should pay the railroad the yearly sum of \$500 for the use of the furniture and one-half the net proceeds arising from keeping said house as a hotel. The agreement provided further that X should keep an exact account of all receipts and expenses open at all times to the inspection of the railroad; that X should give his services and attention without charge; that X was to pay all bills; that X agreed to pay the rent aforesaid, and not to assign or sublet without the written consent of the railroad. Were X and the railroad partners?

It is no longer true that receiving one-half the profits, or one-half the net profits, arising from articles manufactured and sold, or resulting from business in which one furnishes the stock in trade and another performs the labor, necessarily creates a part-

nership. It is always competent to look at the particular circumstances of the case. This agreement did not constitute a partnership. *Holmes v. Old Colony R.R.*, 5 Gray 58.

2. Several persons, intending in good faith to form a corporation, took the steps which they believed to be sufficient to make them a corporation, but in fact through error they failed to accomplish their purpose to such an extent that they did not even become a corporation de facto. In the formation of this supposed corporation the parties contracted certain debts. Are they liable on these debts as partners?

No. They did not intend to become partners. Only those who authorized the acts or subsequently ratified them would be liable. This is the law in Massachusetts. See *Fay v. Noble*, 7 Cush. 188. Leading case.

3. P, a minor, entered into a partnership with D, an adult. The partnership was to last for one year. After six months P sued D to recover \$100 which he had contributed to the capital of the firm, and also for the services he rendered the firm during the six months. Can he recover and why?

No. Work was done for the firm and not for D alone. P cannot sue the firm because he would thereby be suing himself. He did not advance the money to D alone and therefore he cannot hold D liable for it in an action of law. *Page v. Morse*, 128 Mass. 99.

4. The New England Bantam and Pigeon Society was organized at Springfield, Mass., on April 4, 1878. The object of the society was to give public exhibitions of pigeons and bantams and the awarding of money premiums thereat, by judges selected for the purposes. At a meeting held on July 10, 1878, it was voted to hold an exhibition in Springfield on Dec. 10, 11, 12 and 13, 1878, and that the control and management of the same be referred to the Board of Directors. On July 31, 1878, the premium list was adopted by the vote of the society. A, a member, was not present at the meetings above mentioned. The society lost money and the debts were paid by all the members but A. He refused to pay his proportioned share. The other members bring a bill in equity to compel A to contribute, on the ground that it was a partnership. Is A liable as a partner?

Mere membership would not bind anybody for any further payment than the initiation fee and annual assessments; but, such members as participated in the vote to incur further expenses for an exhibition with premiums, or as assented to be bounded by such vote would be bound thereby.



This was not a partnership not organized for the purpose of profit. *Ray v. Powers*, 134 Mass. 22.

5. A agreed with B to furnish a yard for making bricks, and further agreed to put said yard in order. B agreed to furnish labor and materials for making the bricks. Bricks when made to be equally divided between them. Were A and B partners?

No. Partnership contemplates making contracts with third persons, here contract between A and B only. Partnership looks to a division of profits and not a division of the articles which would produce profits. *Lamont v. Fuller*, 133 Mass. 583.

### CONSTITUTIONAL LAW QUIZ

#### No. 2.

1. Discuss the constitutionality of the following classes of Federal taxes: (1) Six per cent on the assessed value of all motor vehicles in the United States. (2) One per cent on all sales of cosmetics, tobacco, tea, coffee, and drugs within the United States. (3) (a) Two and one-half per cent on the salaries of all Internal revenue employees whose salary exceeds \$1500 per year; (b) one per cent on the net income of all persons or corporations engaged in the business of supplying water power or water for domestic use anywhere in the United States.

(1) Invalid. This is a direct tax, which must be apportioned among the states according to population. Notes, pages 13 and 14. (2) Valid as an indirect tax being levied uniformly wherever the object of sale exists. Notes, page 13. (3) (a) Valid. The Federal government may tax its own employers, but would be invalid if applied to governmental officers of a state; (b) invalid, in so far as it applies to the business of supplying water for domestic use by municipal corporations or other governmental agencies of the state to its own inhabitants. In such case it would be a taxation of governmental functions of the state. *U. S. v. B. & O. R.R. Co.*, 17 Wallace 322. Notes, page 12.

2. (a) A manufacturer of soap products which he shipped in interstate channels and sold in many states, agreed with his wholesale and retail customers upon prices claimed by them to be fair and reasonable at which the same should be resold, and declined to sell his products to those who would not thus stipulate as to prices. Is this agreement a violation of any federal law? (b) Would your answer differ if defendant had required his customers to obligate themselves not to re-sell except at agreed prices?

(a) No. It does not appear that he and his customers bound themselves to enhance and maintain prices, except

in so far as he exercised his legal right to refuse to sell to persons who would not join in this agreement. He did not retain any interest in goods sold or restrain the vendee from selling at any price he chose or from giving the goods away if he wished, except by refusal to sell to him in the future. No monopoly was established. The manufacturer merely exercised his right to sell his goods to whom he chose and to refuse to sell to others. *U. S. v. Colgate Co.*, 250 U. S. 300. (b) Yes. This amounts to a conspiracy in restraint of interstate trade in violation of the Sherman Act. Notes, page 21.

3. The State of Washington imposed an inspection tax upon all gasoline, benzine, distillate, or other volatile product of petroleum intended for use or consumption in that state. The expense of administration of the law for a period of 10 years was \$80,000 and the receipts from the inspection taxes for the same period were \$336,000. An interstate shipper of oil brought action to enjoin the collection of the fee prescribed by this act, and assessed against his business in that state. What decision?

Law unconstitutional. Inspection taxes are valid only in so far as reasonably necessary to execute inspection laws. This was clearly an excessive tax. Notes, page 20. *Standard Oil Co. v. Graves*, 249 U. S. 389.

4. The charter of a city empowers it to regulate the price of gas. The local gas company, desiring to improve its plant and give better service, secured in writing an agreement with the city council that in consideration of such enlargement of the plant and improvement of the service the city would not change the price of gas for three years. The existing price was reasonable and the agreement was made in good faith. The company made the contemplated improvements in plant and service, but at the end of one year the council repealed the agreement and fixed by ordinance a lower price of gas. Discuss the validity of this ordinance.

Ordinance unconstitutional, as it impairs the obligation of the contract. 37 Ohio State, 48; Notes, pages 25-27. No such public exigency appears to warrant such action under the public power.

5. A city ordinance provides that immediately upon the death of a domestic animal and before it becomes a nuisance or dangerous to public health the carcass vests in a public contractor for the removal of such carcasses. Comment.

Ordinance unconstitutional. Not within police powers. Public health



is not endangered. *Richmond v. Car-churs*, 107 Va. 774. Notes, page 32.

### PUBLIC CORPORATIONS QUIZ.

1. The town of X lost its only physician through his death, and no other came to fill his place, to the great inconvenience of the citizens. As an inducement to have a physician settle there, the town at its annual town meeting unanimously voted to offer an abatement of taxes for five years and a bonus of \$500 to any physician who would come there and settle permanently. Y, a physician, accepted the offer and settled at X to practice. Can Y compel the town to fulfill its part of the contract.

No. The vote was illegal. Public money cannot be expended to aid a private enterprise, even though it benefits the inhabitants of the town and is unanimously approved by them. See *Lowell v. Boston*, 111 Mass. 454.

Doubted. Public money may be used to protect the public health. *H. J. A.*

2. In 1874 A laid out a street across his own land, which has been used by the public ever since, and is of such an appearance as to lead an ordinary observer to suppose that it is a public highway. Owing to a defect therein X was injured and sues the city. On these facts can he recover?

No, as it was not a public highway of the city, never having been accepted by the city. *Jones v. Boston*, 201 Mass. 267.

3. In the above problem how, if at all, would your answer differ if since 1880 the city had repaired and maintained said street but had never formally accepted it?

X could recover here, since the city is estopped by its acts of practical acceptance. *Barron v. Watertown*, 211 Mass. 46.

4. The city of G passed an ordinance appointing commissioners to grade its streets and providing therein that "grades so fixed shall forever thereafter be considered as true grades of such streets and shall be binding on the corporation and all other persons and be forever thereafter regarded in making improvements upon such streets." A owned lots on one of these streets which he improved extensively in accordance with the grade. Fifteen years thereafter the city passed another ordinance changing the grade of this street, and the commissioners

being about to shut off the street, A filed a bill in equity to restrain them. Can he succeed?

No. City cannot strip itself of its legislative or police power to fix grades at any time. *Gozler v. Georgetown*, 6 Wheaton 593.

5. A certain bridge which had been maintained by the county and towns within which it was situated became obsolete and dangerous. The legislature passed an act providing for the rebuilding of the bridge under certain specifications and placed the entire cost thereof arbitrarily on one of the towns, although the bridge was partly in another town and benefited the latter as much if not more than it did the first town. What rights has the first town?

None. The legislature may charge the entire cost of a public improvement on any of the political subdivisions of the state benefited. *Carter v. Bridge Prop's*, 104 Mass. 236.

Mr. Duffy, in Partnership: "Have you men taken Bankruptcy?"

Voice out of the Still and Silent Night: "We've taken it, all right, but we don't know a thing about it."

(That's what you get for sleeping in class, fella. )

(Continued from Page 7)

His friends asked him why he made such a peculiar request. Then with a smile on his face, he replied: "Why, because when people who pass my grave read this they will say, WHY, THAT'S STRANGE," and with that his soul went out to meet his Maker.

Freshie's Client: "My girl called me a dangerous wild animal because I kissed her. Can she legally shoot me?"

Attorney Freshman: "Yes, she may legally shoot—a kiss at you. My authorities upon this matter are innumerable lovers. See *Dick Kaplan v. —*."



## HAS CONGRESS POWER TO FIX FREIGHT RATES AND PASSENGER FARES ON TRANSPORTATION BETWEEN POINTS WITHIN A SINGLE STATE?

By J. H. STURTEVANT

The Constitution of the United States provides that "The Congress shall have power . . . to regulate commerce with foreign nations and among the several States, and with the Indian Tribes" (Article 1, Sec. 8, Par. 3), but by Amendment X provides that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, *are reserved* to the States respectively or to the people."

The individual States first undertook to regulate carriers by means of boards or commissions and some State legislatures inclined to fix maximum rates that might be charged by carriers. But when the Supreme Court decided in 1886 in the case of *Wabash, St. Louis & Pacific Railroad v. State of Illinois* (118 U. S. 557) that all state regulation must be confined to a carrier business that began and ended within a particular State and could not extend to a continuous transportation which railway companies conducted beyond such boundaries to some other state, without infringing upon the constitutional sovereignty of the United States, Congress immediately passed, the following year, 1887, a statute providing a commission to cover national jurisdiction.

Congress has power to prescribe rules by which commerce among the several States is to be governed and may employ appropriate means not forbidden by the Constitution, to carry same into effect (*I. C. C. v. Brimson* 154 U. S. 447).

The Legislature may delegate to an administrative body the execution in detail of the legislative power of regulation and did so by establishing the Interstate Commerce Commission (*I. C. C. v. C. N. O. & T. P. Ry. Co.* 167 U. S. 479).

Congress approved Feb. 4, 1887, "The Act to Regulate Commerce," which took effect April 5, 1887 (24 Statutes at Large 379), which created the Interstate Commerce Commission and gave it power over interstate transportation. Many amendments were passed enlarging the powers and duties of the Commission, the latest and present effective law being "The Interstate Commerce Act," approved Feb. 28, 1920 (41 Statutes at Large 474), and "The Transportation Act, 1920," approved same date (41 Statutes at Large 456).

The first intimation that state rates were in any way under control of the federal government came in 1913 when the Supreme Court, speaking through Mr. Justice Hughes, now Secretary of State and at one time a candidate for President, held in the "Minnesota Rate Cases" (230 U. S. 352) that it was the Interstate Commerce Commission and not the courts that should decide whether an undue advantage to any locality forbidden by the act to regulate commerce arose from the operation of an intrastate rate as compared with an interstate rate. Also that a State may not fix the state rate of an interstate carrier so low that the carrier's entire revenue from all its business in the state, both interstate and intrastate, after paying its expenses and taxes, amount to only 4% on the value of its property in the state.

The court in effect held that Congress could undertake the regu-



lation of rates within a state whenever in its judgment it was necessary to the regulation of commerce between the States and with foreign nations.

Then came the well-known Shreveport Case. The Interstate Commerce Commission ordered carriers to reduce to a specified amount their class rates from Shreveport, La., to certain Texas points on the ground that such interstate rates are unreasonable and unjustly discriminatory as compared with lower state rates from Dallas, Houston, and other cities within Texas to such Texas points. Carriers further ordered to grant at Shreveport certain concentration privileges relating to interstate cotton so long as similar privileges relating to state cotton are granted at Texas points. The Commission held that State Commerce was that wholly within a state and *not affecting* Interstate Commerce (23 I. C. C. 31). The Commerce Court (now abolished) held the Commission's order valid and on appeal to the Supreme Court the decree of the Commerce Court was affirmed and the Commission's order held valid. Mr. Justice Hughes also rendered the opinion in that case. (*Houston, East & West Texas Ry. Co. v. United States* 234 U. S. 342, June 8, 1914.)

The Court stated in part:

"The fact that carriers are instruments of intrastate commerce, as well as of interstate commerce, does not derogate from the complete and paramount authority of Congress over the latter or preclude the Federal power from being exerted to prevent the intrastate operations of such carriers from being made a means of injury to that which has been confided to Federal care. Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field."

In *I. C. R. R. Co. v. P. U. C. of Ill.* 245 U. S. 493, decided Jan. 14, 1918, it was held that Congress could and did vest the Interstate Commerce Commission with authority to remove an existing discrimination against interstate commerce by directing a change of an *intrastate* rate prescribed by State authority.

So far, it will be seen that state rates have been touched by the national authorities only when there has been a burden to some extent or by some means against interstate commerce.

On Aug. 29, 1916, Congress gave the President power in time of war to take possession and assume control of transportation systems (39 Stat. at Large 645) and by proclamation Dec. 26, 1917, the President exercised that power, placing all the important railroads under federal control and appointed Wm. G. McAdoo as Director General of Railroads.

On March 21, 1918, the "Federal Control Act" was approved (40 Stat. at Large 451), which gave the President power to initiate rates and fares, and his power was not in terms confined to interstate traffic. In June, 1918, the Director General increased rates and fares to an unprecedented degree.



Many state commissions denied jurisdiction of the Director General as to intrastate charges, but owing to the war did not usually care to embarrass the government by objecting. Several test cases were made, however, and in *Northern Pacific Railway Company v. North Dakota* 250 U. S. 135, decided June 2, 1919, it was held that the authority to make and enforce intrastate rates without regard to state actions must be deemed to have been included in the comprehensive powers given the President by the laws to take over and operate the railroad transportation systems as a war emergency measure.

Actual hostilities having ceased, Congress passed the "Transportation Act, 1920" (41 Stat. Large 456), providing for termination of federal control of railroads, etc., and on March 1, 1920, the roads again went back to private ownership and control, but under Sec. 208 of the Transportation Act it was provided that the rates in effect Feb. 29, 1920, were to remain until changed by State or Federal authority, but prior to Sept. 1, 1920, no rate or fare should be *reduced* unless approved by the Interstate Commerce Commission.

By the terms of the Interstate Commerce Act, Sec. 15-A (added Feb. 28, 1920), the Interstate Commerce Commission was required to make rates that would yield a fair return on the railroad property, and for two years from March 1, 1920, the Commission was to take  $5\frac{1}{2}\%$  as a fair return plus not to exceed  $\frac{1}{2}\%$  to cover improvements, etc.

The Commission in *Ex Parte 74 Increased Rates 1920*; 58 I. C. C. 220 authorized certain increases in fares and rates based on the value of the railroads used in the service of transportation, the increase varying in different parts of the country, owing to the fact that carriers were taken by groups.

Many state commissions refused to allow the railroads to increase their intrastate rates and fares, in some cases there being state statutes fixing state rates or fares. The Interstate Commerce Commission then issued orders to certain railroads to advance their state charges to equal those permitted for interstate traffic. If the state rates were to remain lower the earnings of the carriers on *all* their business would not give them the percentage of return on their value, as declared by Congress. (The *New York Rate Case* 59 I. C. C. 290.) (*Wisconsin Passenger Fares* 59 I. C. C. 391.)

The subject has now reached the U. S. Supreme Court in a test case, the *Wisconsin Passenger Fare* decision being used for the test. A brief was filed by attorneys-general and commissions of 42 states on Feb. 28th last.

Representatives of the Wisconsin Railroad Commission (the appellants) contend in their briefs about as follows: "(1) The question of whether rates, fares or charges fixed by a state authority conflict with rates, fares or charges fixed by a federal authority is a question of fact which must be determined ultimately by the court; (2) in making the order involved in this suit the Commission acted arbitrarily, in that it undertook to control rates, fares and charges which are purely intrastate; (3) the Commission construed erroneously the authority conferred upon it by the Interstate Commerce Act as amended by the Transportation Act, and (4) in making the order the Commission exercised authority



which Congress cannot exercise, or confer upon the Commission, without violating the Constitution of the United States.”

Attorney for the Interstate Commerce Commission answers the first contention and cites *T. & P. Railway v. I. C. C.* 162 U. S. 197; also *U. S. v. L. & N. Railway* 225 U. S. 314.

In answering the second contention he says that an examination of the law would show that Congress did not manifest any intention to interfere or authorize the Commission to interfere with rates, fares and charges for transportation of passengers or property in commerce which were “purely” intrastate, but states that the Commission found all fares and charges covered by the order in the Wisconsin case were unjustly discriminatory against interstate commerce.

In answering the third contention he states that the appellants overlooked the fact that where the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the state, that is entitled to prescribe the final and dominant rule.

In support of his answer to the fourth contention he cites the Shreveport case above referred to as authority, that the action of Congress and the Interstate Commerce Commission was not unconstitutional.

The decision of the Supreme Court will be awaited with interest.

In conclusion, in an attempt to answer the question as to whether Congress has power to fix rates between points in a single state, we have found:

1. That it can do so when the state rate is so low that it works a discrimination against interstate commerce.

2. That it can under its war power.

3. That it *cannot* when a rate is “purely” intrastate.

By a close study of the case as now before the court it seems to be the question: When can a rate be “purely” intrastate? If the Supreme Court upholds the Interstate Commerce Commission it would seem that there is no rate within a state but what has some influence on interstate commerce. Therefore, subject to federal regulation.



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