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The Spark Plug of the Constitution

of our profession, whether it be in regard to legislation or other matters affecting the Bar. The substantial unanimity with which the bar associations all over the country successfully opposed legislation recently proposed is more than a mere indication of the efficacy of their united action. And certainly when the Bar Association speaks with any degree of unanimity, their influence is strong. Therefore, I believe that membership in the Bar Association is not only a privilege but also a duty, and the purpose of your President in enumerating and naming the membership of Committees in this number is two-fold: first, that the members of the association may realize that they are active committees, with chairmen who welcome, at all times, suggestions and counsel from individual members pertinent to matters covered by each standing committee, and second, that each committee may have the benefit of the advice and counsel of the members of the association to the end that each committee may perform its duties more efficiently and intelligently and represent the best thought of our bar. In other words, each committee is not only intended to be, but is anxious to be a clearing house for ideas which will contribute to the fulfillment of the purposes of each committee, and the association and every member of this association is not only entitled to, but is urged to assist these committees by advice and suggestions, and finally you are urged to preserve this issue of Bar Briefs, because it contains a directory of all of the standing committees of your association.

THE SPARK PLUG OF THE CONSTITUTION

Recent events, recent trends in government have caused all citizens to give more thought and study to the Constitution of these United States than perhaps in any like period since its adoption.

There is a fast spreading opinion that we must be more familiar with this, our great instrument of Government; not only its words and phrases and the thought and purposes contained in it, but the history of the events that lead to the formulation of each clause. For several generations we have left to experts an understanding of the Constitution, which should have been as familiar to every school child as to them. Why not have a copy of the Constitution in every household in this broad land of ours, with simple words in explanation of the meaning of its every phrase, and the history of its development, which would not only make future citizens word perfect, but would impart real knowledge.

We must admit that very few of us have a working knowledge of its provisions, so that we can place our finger on any certain provisions or provision and say, "This is what makes it go; this is what makes it work". These were matters of common knowledge in the period immediately following the adoption of the Constitution. It is well to regain that familiarity; and for such consideration at this time I recommend the clause reading: "This constitution and the laws of the United States which shall be made in pursuance thereto and all treaties made, or which shall be made,

under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, nothing in the constitution or laws of any state to the contrary notwithstanding." These words are the spark plug of the Constitution — all else therein depends upon it, and without it the entire system created by its other parts becomes so impracticable as to fall of their own weight. Remove this clause and you have taken out the motor — you have no power to propel the vehicle. By these words the Constitution becomes more than a declaration of good intention dependent on the passing whim of the people, politicians or statesman; it becomes our fundamental law and "enforceable like any other law in courts." So you have, for the first time in history, courts by the simple processes of administering justice, in cases where private right or personal injury is involved, upholding the whole structure of the body politic, and the principles of the Constitution.

Here you have contained and plainly proclaimed the plank by which the whole American constitutional system becomes manifest; the theory of this our organization, that the people make the law; and that all acts of legislation must be in conformity with the law, "for the most telling word is not **Supreme**, but **Law**" — and thus the members of the constitutional convention were completing the historical progress of liberty that had been working for us since the meeting of the Barons with John Lackland at Runnymede. Here then you have the culmination of the long efforts of our ancestors to establish a government of **Law** and not of **Men**; to make all the government itself dependent on this, the fundamental law of the land.

Under the Constitution then, the new government was to act by its own laws, on its own citizens, and in addition the states were to be placed in a distinctly legal relationship, and were to be bound to recognize their duties as legal duties; the Constitution was to be the law of the land, enforceable in state courts, to be applied by state judges, to be appealed to by state citizens asking their own judges for justice. The adoption of this plan instead of one bestowing authority on the central authority to veto laws avoided untold friction.

The Constitution was likewise of course to bind the central government in all its branches as well, which could be restrained from the recognition of invalid laws or illegal official action by the Courts; and to carry out this purpose the federal judiciary was created; a separate and distinct department of the government, consisting of one supreme court and such inferior courts as Congress might establish, the judges to hold office during good behavior, the Court to have wide jurisdiction. It was made the power and the duty of the federal courts also to recognize the federal constitution as law, and thus with the state courts to preserve it, maintain the equilibrium of power between state and nation, and to enforce it, and while with the state courts it said that the Constitution was to be binding on state judges, with the federal courts it in addition provided that they were to have charge of cases "arising under this constitution", and whether in-

tended or not, certainly the constitution, by this clause, was proclaimed as law, and by force of logic this power was given — to declare of no effect an act of Congress contrary to the law of the land.

The delegates at Philadelphia knew this would be the effect of that declaration because state constitutions previously were regarded as law by their courts, and just at the time of their assembly in convention at Philadelphia, the superior court of North Carolina distinctly asserted that the legislature could not by passing any act "Repeal or alter the constitution, because if they could do this, they would at the same instant of time, destroy their own existence as a legislature, and dissolve the government thereby established."

There lies the answer aligned with the force of logic, they knew, and they did intend the Constitution to be indeed the "Supreme Law of the Land."

Nothing new, no novel or unfamiliar machinery was needed to put it in effect — no new and strange principle; just the familiar courts acting as courts have always acted in the distribution of justice to litigants, were to declare the law, and decide cases according to the well known principles of English and American jurisprudence; they were simply expected in all controversies to apply, when need be, **the Constitution as the supreme law of the land.**

OUR SUPREME COURT HOLDS

In Elsie Peterson, vs. R. H. Points and Emma Cudhie,

That in reviewing proceedings in the District Court upon a writ of certiorari, the Supreme Court will consider only those matters and objections presented to the court below.

That the District Court having acquired jurisdiction of a proceeding involving the extension of a period of redemption under Chapter 161, Session Laws of North Dakota for 1937, did not lose jurisdiction by continuing the hearing to a date more than twenty days from the service of the order to show cause.

That in a review upon certiorari, of proceedings in the District Court had pursuant to Chapter 161, Session Laws of North Dakota for 1937, the Supreme Court will determine whether there is any substantial competent evidence to sustain the findings of the trial court.

In William Froemke, vs. Otter Tail Power Company, a Corporation.

That when there is conflicting evidence on an issue vital to the case, the trial court must submit the question to the jury for its determination, and therefore commits no error in denying a motion to dismiss the action, or a motion for directed verdict, or a motion for judgment notwithstanding the verdict.

That evidence examined and it is determined the trial court did not abuse its discretion in denying a motion for a new trial.