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The Constitution and Modern Trends

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a new trial, which may be made either before or after entry of judgment. The Court points out that *Bank vs. Thompson*, 55 S. D. 631, goes so far to say that a motion for judgment notwithstanding, when coupled with a motion to set aside the judgment is not timely when made after the entry of judgment. Even if the motion for judgment notwithstanding, after judgment, be considered as a motion for new trial, then the only errors that can be considered are those stated in the motion, which, in effect, permits only a review of the court's ruling in denying the motion for directed verdict; and the evidence discloses that the defendant was not entitled to a directed verdict for the reason that substantial evidence had been introduced to establish a prima facie case. (N. B. Both parties, apparently, went astray in the procedural labyrinth, which suggests the thought, once more, that procedure might better be a matter of court rules than legislative enactment.)

THE CONSTITUTION AND MODERN TRENDS

"Slurring reference to our eighteenth century constitution suggests to the unthinking that it is obsolete, just as like reference to the capitalistic system suffices at a time like this to arouse the antagonism of many who would not willingly surrender the right to possess and enjoy the fruits of their own labor, which is all that capitalism means.

"The framers of the constitution did not gear our institutions to the stage coach. They foresaw vast changes on this continent. The scheme which they devised, the principles which they applied and the safeguards which they provided have become increasingly important at each stage of our national development and are today indispensable, unless we are to substitute the supremacy of the state for the supremacy of the people, arbitrary power for our democratic institutions.

"The truth is that there has never been another combination of circumstances so favorable to wise decisions in the organization of a government, uninfluenced by selfish and partisan considerations, as existed on the 25th of May, 1787, when the convention assembled at Philadelphia to frame a constitution. There has never been and is not likely to be gathered again such another assemblage of men under such a presiding officer as framed the document, which, until it became the vogue to scoff at experience, has been regarded in the words of Gladstone as "the most wonderful work ever struck off at a given time by the brain and purpose of man." The leading men of a period that produced statesmen and philosophers assembled at Philadelphia. The subject of government had been uppermost in their minds since Yorktown. They had studied the science of government and the history of government more deeply than any similar body of men that has ever been assembled. They were imbued with the august nature of their task. They visualized a country stretching across the continent and they undertook to frame a constitution which should be a charter of liberty for ages to come. It was not a code of laws to fit temporary conditions such as its critics would frame today. It provided a scheme of government based on fundamental principles as unchanging as human nature itself. It contained a plain and concise statement of the powers conferred without any attempt to define the means of exercising them, which were thus left entirely to time and circumstance." Excerpt from address delivered by Hon. Nathan L. Miller, of New York, before the American Bar Association.