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exactitude is not attainable in social legislation, that, accordingly, unless the individual right is gravely invaded the social interest must prevail, that the criterion of constitutionality must be found. It is difficult not to feel that Mr. Justice Holmes' long emphasis upon this attitude has humanized the jurisprudence of the United States.

"In the proud preface to Montesquieu's last work there are certain words than which none are more fitting to Mr. Justice Holmes' labors. 'When I have seen,' wrote Montesquieu, 'what so many great men in France, England and Germany have written before me, I have been lost in admiration, but without losing my courage; I, too, am a painter, I have said with Correggio.' That, as I think, has been the secret of Mr. Justice Holmes' preeminence in his time. It is not only that he has had the scholar's breadth of knowledge. It is not merely, either, that he has realized how the facts call the judge, and especially, perhaps, the American judge, to the tasks of statesmanship. Both these qualities he has had in full measure. But, above all, he has had the great artist's power of penetrating with the vision of genius to the essential, of making the bridge between the little fact of daily life and the sweeping generalization by which a state rises to the consciousness of its purpose. He has done it with singular felicity of expression, and with unvarying integrity of mind. We can only be humbly grateful in the presence of so rare and so distinguished an achievement."

REGULATION OF AGENTS' COMMISSIONS—FOURTEENTH AMENDMENT

By the narrow margin of five to four the Supreme Court of the U. S. has just determined the validity of a New Jersey statute forbidding fire insurance companies to allow any agent a commission in excess of a reasonable amount or to allow any local agent a commission in excess of that allowed to other agents on similar risks. The agreement between the company and the agent was for "the reasonable worth of the agent's services," which he contended was 25%. The defense was the statute and the fact that other local agents received 20%. Justice Brandeis, voicing the judgment of the majority, said: "The business of insurance is so far affected with a public interest that the State may regulate the rates; . . . and likewise the relations of those engaged in the business. . . The agent's compensation, being a percentage of the premium, bears a direct relation to the rate charged the insured. The percentage commonly allowed is so large that it is a vital element in the rate structure and may seriously affect the adequacy of the rate. Excessive commissions may result in an unreasonably high rate level or in impairment of the financial stability of the insurer. It was stated at the bar that the commission on some classes of insurance is as high as thirty-five per cent. Moreover, lack of a uniform scale of commissions allowed local agents for the same service may encourage unfair discrimination among policy holders by facilitating the forbidden practice of rebating. In the field of life insurance, such evils led long ago to legislative limitation of agents' commissions. The statute here questioned deals with a subject clearly within the scope of the police power. We are asked to declare it void on the ground that the specific method of regulation prescribed is unreasonable and hence deprives the plaintiff of due process of law. As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption

of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute. It does not appear upon the face of the statute, or from any facts of which the court must take judicial notice, that in New Jersey evils did not exist in the business of fire insurance for which this statutory provision was an appropriate remedy. The action of the legislature and of the highest court of the State indicates that such evils did exist. The record is barren of any allegation of fact tending to show unreasonableness."

The dissent was expressed by Justice Butler for himself and Justices Van Devanter, McReynolds and Sutherland: "Abstractly stated, the principal paid 'A' commissions at the rate of 20%; therefore, it has been held solely because of the Act nothing above 20% can be recovered by 'B', who claims under a contract fair on its face and not expressly inhibited, which definitely provides for reasonable compensation. It cannot rightly be said that the burden of establishing any underlying disputable fact rests upon the appellant before it can successfully challenge the validity of the questioned enactment. This is not a proceeding to enjoin enforcement of a statute because of alleged discrimination or other circumstance, the existence of which requires consideration of facts not known to the court. Opinions in cases of that character are not in point. The court below ruled, in effect, that without regard to any evidence which might be presented the complainant, although relying upon a contract fair upon its face, could recover nothing above the rate allowed to another agent—that the statute restricted the right to contract for services for reasonable compensation. And we must determine whether thus construed, and in the absence of any emergency, the statute necessarily conflicts with the Fourteenth Amendment. . . The public has no direct, immediate interest in the agency contract here set up. Its concern is with rates. Like any other expense item brokers' commissions may ultimately affect the rate charged for policies; but this is true of the wages of office boys, printers, bookkeepers, actuaries, officers; the price paid for pens, ink, or other supplies—indeed whatever expense may be incurred. Broadly speaking the funds of an insurance company come from premiums collected; and necessarily all disbursements are made therefrom and therefore in some sense may be said to affect the necessary rate of charge. . . Even if it be admitted that the power of the legislature to establish reasonable rates for insurance necessarily presupposes existence of the right to command or inhibit what is essential to the accomplishment of that end, certainly this implied right extends to nothing which does not clearly appear to be necessary for such purpose. The statute under review does not prescribe a schedule of rates or point out the basis for determination of reasonable rates; it leaves with each company the primary right and duty of deciding upon rates to be demanded. But it inhibits payment to any agent, irrespective of the worth of his services and without regard to any contract with him, of anything in excess of what may be actually paid to another agent. As construed, it declares that the smallest compensation voluntarily paid to any agent shall thereby become reasonable for every other agent. And it permits an agent who has been paid according to his agreement to recover more if he can show that some other agent has received greater compensation. The objections to the statute, no extraordinary conditions having been disclosed by the defendant, should be obvious. It goes far beyond the mere

regulation of the business of insurance and interferes directly with the right of insurers to control the conduct of their internal affairs; it restricts the right of both company and agent to make reasonable private agreements in respect of compensation for ordinary servires; and the restrictions have no immediate or necessary relation to the maintenance of insurance rates fair to the public."—*O'Gorman vs. Hartford Co.,* 51 *Sup. Ct. Rep.* 130.

CAN SUCH THINGS BE?

We reprint the following editorial from the American Bar Association Journal because we have known for a long time that lawyers were on the "sucker lists" of various concerns throughout the country; we've known it, because we were, apparently, listed as one of the "suckers":

"The lawyer when acting for a client examines every business proposition with especial care. He is particularly alive to suggestions of fraud. He does not pay much attention to the unsupported statements of strangers. He is from Missouri. Thus he waxes fat in practice and in public confidence and his clients rise up and call him blessed.

"The picture perhaps is not overdrawn with reference to the great majority of lawyers. But there are evidences not a few that when dealing with matters of mere personal concern the description does not fit. The complaints that are privately heard from time to time from lawyers who have been induced by smooth agents to subscribe to some fly-by-night 'law list', without the slightest assurance that it is even regarded as a reputable concern in its class, give evidence that undue credulity still flourishes in unsuspected quarters where the lawyer's sense of the guardianship of clients' interests is not summoned to his aid. The word 'sucker' has a most unpleasant and undignified sound, and, so far as we know, has not yet received a final and definite judicial construction. Hence, we do not use it in this connection, although the temptation to do so is naturally very strong.

"We are not speaking of those well known and long established legal directories, which perform a different function and serve a real need, but it is estimated that there are from 125 to 150 of these 'law lists' being operated in the country, of which quite a number are pure and unadulterated frauds. They flourish because the lawyer is taken in by the representations of the solicitor, which he apparently accepts at face value, without investigation, and does not take the trouble to look into the proposition until he has parted with his money and finds he has gotten nothing in return. Sometimes the solicitor bolsters his sales talk with a recommendation on a reproduction of a letterhead of some well known law firm, and the victim takes that—also without investigation as to whether the recommendation is genuine and the use of the letterhead authorized—as 'confirmation strong as proof of Holy Writ.'

"Here are the words of one who has recently looked into 'the ways that are dark and the tricks that are vain' of some of these fly-by-night law lists: 'A lawyer who would not buy a dime's worth of corporate stock without careful investigation will give up two hundred and fifty or three hundred or five hundred dollars to a man he never saw before on the strength of a lot of glib statements of what he will