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Dead-Lettering the Constitution

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DEAD-LETTERING THE CONSTITUTION

During the past year we have noted several articles and reported addresses in which reference was made to the second section of the 14th amendment to the Federal Constitution, which reads: "When the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State;" and the argument has been advanced that this does not bestow upon the individual the right to complain of a denial, but simply places a severe penalty upon the State, that of lowered representation in the House of Representatives.

Such is the argument, to support which, at least to the extent of showing the restricted meaning of the amendment, the language of Justice Fuller (*McPherson vs. Blacker*, 146 U. S. 1) is quoted, to-wit: "Whenever presidential electors are appointed by popular election, then the right to vote can not be denied or abridged by the State without invoking the penalty, and so of the right to vote for representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof. The right to vote intended to be protected refers to the right to vote as established by the laws and Constitution of the State. There is no color for the contention that under the amendments every male inhabitant of the State, being a citizen of the United States, has from the time of his majority a right to vote for presidential electors."

It is quite generally admitted that the enforcement of the penalty would require such far flung investigations that its effective enforcement would be impossible. Hence, it is forcefully argued, this provision is really a dead letter, and a State may freely violate the fundamental law in that respect, knowing that the penalty provision can not be invoked.

RECOMMENDATIONS STATE BAR ASSOCIATION

We here summarize briefly the recommendations of the State Bar Association at the 1928 annual meeting:

1. Passage of a law providing for a state constabulary. (See page 20 of the annual proceedings.)
2. Passage of legislation to give the Bar Association disciplinary powers over its members. (See pages 21 to 27 of the annual proceedings.)
3. Passage of legislation restoring capital punishment, or rather including cases other than those of murder in the penitentiary. (See pages 33, 43 and 143 of the annual proceedings.)
4. Passage of legislation providing for appointment of a Commissioner on Uniform State Laws. (See pages 55 and 176 of the annual proceedings.)
5. Passage of legislation redefining criminal conspiracy. (See page 142 of the annual proceedings.)
6. Passage of legislation creating crime of aggravated assault and battery. (See page 143 of the annual proceedings.)