



1928

## Recommendations State Bar Association/Referendum Result/ Placing the Blame

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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.

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### 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.)

7. Passage of legislation creating jury commissions. (See page 143 of the annual proceedings.)
8. Passage of legislation creating a Board of Criminal Identification. (See page 143 of the annual proceedings.)
9. Passage of legislation increasing requirements for admission to the Bar. (See pages 153 to 157 of the annual proceedings.)
10. Passage of legislation increasing salaries of judges. (See pages 44 and 166 of the annual proceedings.)

### REFERENDUM RESULT

The referendum for recommendations to the Supreme Court for the Bar Board appointment resulted as follows, according to the certificate of the special committee appointed by President Lewis:

Total votes cast .....	375
Blanks .....	1
Voted for two names .....	1
Voted for three names .....	15
O. B. Herigstad, Minot .....	34
W. A. McIntyre, Grand Forks .....	36
H. G. Nilles, Fargo .....	54
F. J. Traynor, Devils Lake .....	42
Aloys Wartner, Harvey .....	32
C. L. Young, Bismarck .....	145
L. J. Wehe, Bismarck .....	13
Register .....	1
Avery .....	1

An interesting sidelight is the fact that fifteen voted for three names and one voted for two, notwithstanding the notation on the ballot, "Vote for One Name."

The total vote this time represents 61 per cent of the membership, which exceeds the best previous record by about 20 per cent.

The ballots were canvassed by Messrs. Alfred Zuger, C. L. Foster and Thos. J. Burke, of Bismarck.

Mr. C. L. Young was subsequently reappointed by the Supreme Court.

### PLACING THE BLAME

The general public has become so accustomed to criticizing lawyers that no one waits to see the whites of our eyes any more before he begins to shoot. Just recently we noticed several broadsides leveled directly at our profession, the justification for which was the principle enunciated through what is known as the Baumes laws. Particular stress was laid upon the fact that a Michigan woman, mother of a large family, was sentenced to life imprisonment for a fourth violation of the liquor laws — the usual charge of "unnecessary technicalities" and "failure of justice," being replaced by "calloused justice" and "downright legal viciousness."

No thinking person wonders at the fact of a reaction. Ordinary people do not like to acquiesce in sentences of life imprisonment for violation of laws prohibiting liquor sales. But who or what is to blame? Is it the lawyer? Is it the judiciary? Is it the incorrectness of the Baumes law principle? Or is it something else? Our humble judgment is that the criticism should be leveled at the legislative zeal that makes felonies of minor offenses, and that notwithstanding the fact that there may be those who do not agree that selling liquor is a minor offense.