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Business with a Public Interest

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courts to protect themselves and the public against such acts. . . . A fraction of one per cent of the attorneys and, I believe, a very small percentage of the police, bring condemnation upon our system of law."

This is not the ranting of some Bolshevik, nor the vaporing of a social idealist, nor even the criticism of a disgruntled layman who has just lost a case. It comes from the President of a bar association of some standing in the country, who directs attention to the matter involved because, as he puts it, "The office of President opens one's eyes to many things which the average practicing lawyer gives no thought to," and because, "There is a real necessity for intimate study of and contact with the actual and practical administration of criminal law."

"Many of us," continues the statement, "have never attended a municipal court session, know nothing of the various departments, or the manner in which that court handles its criminal work. It is in connection with those courts, largely, that the general public gains its conception of law as administered in this country."

It must be conceded that anything which even remotely tends to the establishment of practices that convey to the public the thought that there is one law for the rich and another for the poor, is to be condemned —and not only condemned, but guarded against with all of the ingenuity, power and prestige of an organized Bar.

Most of the illustrative cases cited are found, as in this instance, to come from congested centers, and we have the boldness to suggest that the very large majority of them would not prove to be "typical examples" of conditions in our own commonwealth. Judged by the character of the complaints that have been made against North Dakota attorneys during the past five years, at any rate, our State is to be congratulated upon the rather high standards maintained by the profession. However, it is to be remembered that a Code is just a Code. It does not and can not enforce itself. Hence, a frequent reading and a sincere personal application of Rule XXII of our Code of Professional Ethics would not be amiss; at least, it should not be overlooked, if we expect to retain our position upon that high plane.

BUSINESS WITH A PUBLIC INTEREST

In the March, 1928, issue of Bar Briefs we reviewed some of the cases dealing with questions relating to business when affected with a public interest. The Supreme Court of the United States has, since *Tyson vs. Banton*, 47 *Sup. St.* 426, again dealt with the subject in *Williams vs. Standard Oil Co.*, *Adv. Op.* 141.

The case relates to a Tennessee statute regulating the price at which gasoline was to be sold in that State, and the Court says:

"By repeated decisions of this Court, beginning with *Munn vs. Illinois*, . . . that phrase, (affected with a public interest) however it may be characterized, has become the established test by which the legislative power to fix prices of commodities, use of property, or services must be measured. As applied in particular instances, its meaning may be considered both from an affirmative and a negative point of view. Affirmatively, it means that a business or property, in order to be affected with a public interest, must be such or be so employed as to justify the con-

clusion that it has been devoted to a public use and its use thereby in effect granted to the public. . . . Negatively, it does not mean that a business is affected with a public interest merely because it is large or because the public are warranted in having a feeling or concern in respect of its maintenance. . . . The meaning and application of the phrase are examined at length in the Tyson case, and we see no reason for restating what is there said.

"In support of the act under review it is urged that gasoline is of widespread use; that enormous quantities of it are sold in the State of Tennessee; and that it has become necessary and indispensable in carrying on commercial and other activities within the State. But we are here concerned with the character of the business, not with its size or the extent to which the commodity is used. Gasoline is one of the ordinary commodities of trade, differing, so far as the question here is affected, in no essential respect from a great variety of other articles commonly bought and sold by merchants and private dealers in the country. The decisions referred to above make it perfectly clear that the business of dealing in such articles, irrespective of its extent, does not come within the phrase 'affected with a public interest'."

HUMAN RIGHTS—PROPERTY RIGHTS

The phrases "human rights" and "property rights," always more or less in evidence, are receiving particular consideration just now by reason of the introduction of the Norris and Shipstead bills in Congress. One may assume, no doubt, that the inference intended to be drawn from the use of these two phrases is that there are two classes of rights, and that there is a peculiar difference between them.

Frankly, we do not know of any property that has rights. We do know of the right to pursue happiness; we know that, in exercising the right to pursue happiness, men make use of property; we know, also, that the right to make legitimate use of property is just as intimately associated with the human individual as the right to life or liberty.

A denial of the right to make legitimate use of property may not destroy the property, but what good is it to the individual if he is not permitted to use it? Are there really two classes of rights, then, except through the making of arbitrary distinctions, so as to justify the limitation of preventive remedies to one or the other?

WE APOLOGIZE

A practical "jokee" misplaced her fingers when the notice was sent to Mr. H. F. Horner of Fargo, advising him of his appointment as Vice-Chairman of the Committee on Citizenship, the designation reading, "Vice-Chairman for the First Congregational District." Mr. Horner claims to be a "howling Methodist," insists that we assume responsibility for the error, and demands that we give proper publicity to the correction. Fear of what may otherwise be in store for us causes us to make this public apology. As we are in the same category as Mr. Horner, however, we are not certain whether the apology should be to Mr. Horner or to the Congregational District, so we just apologize generally.