North Dakota Law Review

Volume 3 | Number 11 Article 7

1926

America and the World Court

North Dakota Law Review

Bar Briefs	425.00
1928 Annual Meeting	600.00
Legislative Committee	100.00
Miscellaneous Emergency	150.00
Dakota Law Review (Law School)	200.00
	$3725.00

Minot was selected as the place for holding the 1928 annual meeting, and the tentative dates fixed between September 1st and 15th.

AMERICA AND THE WORLD COURT

In our July issue we referred briefly to certain questions put to us by the American Foundation Maintaining the American Peace Award, and, by way of rejoinder to our item, we are asked: "Is it not true that the whole basis of international law is unanimity, and that this makes the situation rather different from that of national laws and national courts, since these laws are not set up by the unanimous consent of all citizens?"

We answer the foregoing by saying that this appears to us like making distinctions without a difference. We know of no private contracts without a meeting of the minds of the contracting parties, and meeting of the minds suggests "unanimity" to us; but we know, also, that the utmost of harmony and unanimity existing at the time the parties sign their respective names to a document may quickly change to very determined opposing convictions, so determined, indeed, that only the power behind the LAST COURT IN THE LAND can dispose of the issue. And, just as many a signer of a private document determines when and under what circumstances he will accept the second party's interpretations or fight it out to the last court—and the potential force and power back of it—so individual nations, no matter how freely or how often they submit their differences to a world court, will make the determination when the test comes, and, if the conclusion of the collective will of the individual nation is that the issue is grave enough, then the fact that there is no power to compel submission to the court's decision will have much to do with the determination of the question whether or not the individual nation abides by an adverse decision.

The Foundation also requests consideration of the following interpretations of the second part of the fifth reservation to U. S. participation in the World Court. The reservation reads: "Nor shall it (the Court), without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest."

It is claimed by members of The Foundation that the reasonable legal interpretation (see October Atlantic Monthly) is that this "authorizes the U. S. to oppose the giving of an advisory opinion by the Court in cases in which the U. S. is a party, and also in cases in which the U. S., while not a party, has a direct material interest, the Court being the judge as to the existence of the interest."

We feel constrained to take issue on that point. However desirable it may be to have the reservation in that form, it isn't in that form,

and we must agree with "a few influential members of the Senate" that the United States and not the World Court would, under the quoted phraseology, be the judge of the existence of the interest.

The mere fact that, under a given state of facts, such an interpretation might prove to be unreasonable, as giving the U. S. power to prevent an advisory opinion upon a question affecting two other nations directly and immediately—but apparently affecting the U. S. only potentially—would not justify changing the plain meaning of the words used. It appears to us that this "reasonable legal interpretation" suggested by The Foundation spells modification in the name of clarification.

ENGLAND'S 1927 MESSAGE

Lord Chief Justice Hewart of England, upon the occasion of his visit and welcome to the American Bar Association meeting last month, made a speech, a very good speech. We "lift" from it two short passages. They are pertinent and potent:

"The word democracy is now on everybody's lips, but perhaps you are often, as I am, inclined to wonder what meaning is intended by the good people who employ it. You might think sometimes, from the context in which the word appears, that it meant a patent medicine or a fancy religion or some misty idealism belonging to wonderland. It means, of course, nothing of the kind. Lawyers, at any rate, will not be disposed to contradict the statement that democracy is simply the name of a particular form of government; that is to say, that form of government under which the sovereign political power in a state is distributed among all the citizens of the state."

"Has there not been during recent years, and is there not now, a marked and increasing development of bureaucratic pretensions, the essence and the aims of which are to withdraw more and more matters and topics from the jurisdiction of the courts and to set them apart for purely official determination? . . In England, at any rate, nobody who has eyes to see can fail to discern this mischievous purpose, which exhibits itself in at least three ways. One is by statute to provide in express terms that the decision of certain questions belongs to this or that government department, that the departmental decision is to be final and binding upon all parties, and that that decision is not to be questioned in a court of law by proceedings in mandamus, certiorari, case stated, or otherwise. Another way is to confer upon government department power to make rules and regulations which, when they are made, are to have the force of a statute. And yet a third way is by statute to empower a government department to make orders for the removal of difficulties, as it is pleasantly called, and actually for that purpose even to modify the provisions of the statute itself."

ECONOMIC SURPLUS DISTRIBUTION

Dean Pound's address at the annual meeting is worth re-reading, and possibly, some pondering. While he may have repeated some things that he said in other years, as intimated by some who heard the Dean, he brought his material and his statements right up to date. We