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## Review of Important Decisions

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. . . A proper regard for the judgment of other men will often greatly aid us in forming our own. In many of the relations of life, it becomes a duty to yield and conform to the opinion of others, when it can be done without a sacrifice of conscientious convictions; more especially is this a duty, when we are called on to act with others, and when dissent on our part may defeat all action, and materially affect the rights and interests of third parties."

The statement of several succeeding Massachusetts court personnels to the effect that the instruction went "to the extreme limit," has been considered, apparently, as merely descriptive, even by the Federal Court, (*Allen vs. U. S.*, 164 U. S. 501), but is now being quoted in criticism by the newspapers and some members of the Bar.

## REVIEW OF IMPORTANT DECISIONS

By C. L. YOUNG

### *Gamble-Robinson Company v. Thoresen.*

The plaintiff, a domestic corporation, submitted to the defendant, as state tax commissioner, the report required by Chapter 305 of the Laws of 1923, upon the prescribed blank, and in addition to deducting from the value of its shares of stock the value of its real estate and the value of its personal property listed for taxation and taxed at the rate of the general property tax, it deducted the amount of moneys and credits owned by it, and as a result no corporate excess remained taxable against the corporation. Thereupon the tax commissioner served notice upon the plaintiff that he was certifying to the county auditor of the county in which the corporation has its principal place of business, as the corporate excess taxable against the corporation, the balance remaining after deducting from the value of its shares of stock the value of its real estate and of its personal property taxed at the rate of the general property tax. This suit was instituted to enjoin the tax commissioner from certifying such amount. HELD: That moneys and credits must be deducted from the value of the corporation's shares of stock along with the value of its real estate and its personal property taxed at the rate of the general property tax; that failure to make such deduction would amount to a violation of Section 176 of the state constitution requiring taxes upon the same class of property, including franchises, to be uniform, and that it would amount further to a denial to the plaintiff of equal protection of the laws contrary to the provisions of the Fourteenth Amendment to the Federal Constitution. The franchise of the corporation was held to be property within the meaning of Section 176 of the state constitution.

### *Power v. Williams.*

This is an action to recover the balance of the purchase price of land alleged to have been sold by plaintiff to the defendant. The jury after deliberation of more than twelve hours returned a verdict in favor of the plaintiff. Two jurors refused to concur in the verdict. The constitutionality of Chapter 333, Session Laws of 1923, authorizing the return of a verdict by ten jurors under certain conditions having been attacked, it is held that the Sixth and Seventh Amendments to the Constitution of the United States, securing trial by jury in civil and criminal cases, ex-

tended and applied to the Territory of Dakota; that by virtue thereof it was the settled law of the territory that in both civil and criminal cases the trial jury should consist of twelve men with the indispensable requirement of unanimity in the verdict; that Section Seven of the State Constitution, providing that the right of trial by jury shall be secured to all and remain inviolate, preserves the historical jury of twelve persons with all its essential incidents, including the unanimous concurrence of the twelve jurors in the verdict, and that Chapter 333 of the Laws of 1923, purporting to dispense with a unanimous verdict, is void.

**Baird, as Receiver, v. National Surety Company of New York.**

This is an action against the principal and surety on the official bond of the president and cashier of a bank to recover on account of alleged defalcations of these officers. It was referred by stipulation to a referee, who made findings of fact and conclusions of law. **HELD:** That such action is an action at law and not triable de novo; that the defendants may prove by a preponderance that the bank had assets other than those shown by its books; that books and records purporting on their face to be the books and records of a bank, and which upon the closing of the bank were found in the possession of the president and cashier by a deputy state examiner, who also identified them as books and records examined by him while the bank was open and transacting business, are admissible in evidence against the president and cashier in an action upon their bonds and against their surety; that where the president and cashier of a bank unlawfully acting and conniving together caused the insolvency of the bank, each is liable for the full amount of the loss; and that the court may in its discrimination permit a competent witness who has examined the books with reference to the points sought to be established to testify as to the result of his examination, or to present schedules verified by his testimony where the facts sought to be proved are of such character and the books are so voluminous that the examination of each item would be laborious.

### **OFF THE RECORD**

You will observe reference to this topic at several places in the program for the annual meeting. Just what "Off the Record" means no one outside the membership of the Fargo Bar in charge of the program knows. All the information that it has been possible to draw from the committee is that it will prove an entertainingly interesting diversion from the grinding routine of business. The ingenuity of some rather clever men has developed this into a worth while feature, and instead of getting your minds off the very important and vital business of the annual meeting, we are assured that it will prove a decided stimulant to the mental wear and tear usually occasioned by too much serious consideration. In other words, the "Off the Record" item will put "pep" and "punch" into the sessions.

### **WHAT WOULD THIS MEAN TO AMERICA?**

Agents of the Baldwin government of Great Britain are now in the United States, making an intensive study of the food supply, with particular reference to the benefits that might result from mass purchases