CURRENT LEGAL PERIODICALS

Independence of Judges: Should They be Used for Non-Judicial Work? 33 American Bar Association Journal: 792–796.

In 1660 Sir Matthew Hale, on his appointment as Chief Baron of Exchequer, said "I be wholly intent upon the business I am about, remitting all other cares and thoughts as unseasonable, and interruptions". More recently (in September 1945) the late Chief Justice Harlan F. Stone of the United States Supreme Court, in declining to accept the chairmanship of the Atomic Energy Commission, remarked that ". . . the duties of a Justice of the Supreme Court of the United States are difficult and exacting. Their adequate performance is in a very real sense a full-time job. I have accepted the office, and acceptance carries with it the obligation on my part to give whatever time and energy are needful for the performance of its functions."

Both are quoted with approval in the report of the U.S. Senate Committee on the Judiciary (dealt with in the above article), discussing the vexed question of the appointment of members of the judiciary to governmental boards, inquiries, etc. The Committee were definitely adverse to the practice, save perhaps in limited and extremely urgent circumstances. The question has recently been given attention in Canada and this article, setting forth as it does the views of the U.S. Senate on the point, is well worth attention.

To begin with, such appointments remove members of the Bench from their proper sphere of activity and increase the burden on the remaining judges. And, the Committee asks, how would the people regard a judiciary whose members were judges today, high public officials in the executive branch tomorrow, and judges again when this mission is ended? The report points out that on occasion judicial and executive functions may be improperly merged; non-judicial activities may produce dissension or criticism and may be destructive of the prestige and respect of the judiciary; and finally, a judge, on resumption of his regular duties, may conceivably be called upon to justify or defend what he has done in the performance of a non-judicial duty.

No legislation is recommended by the Senate Committee, who felt that the remedy lies in the good sense and discretion of the executive. The practice has apparently been much more common in the United States than here in Canada, but, for all

that, the article is interesting as providing fresh strength to the arguments of Canadians who view with disfavour the use of our judges on non-judicial work. (J. E. WILSON)

Movies, Press and Radio: Conference conducted by our Association. 33 American Bar Association Journal: 649-653, 740-741.

Who of us has not at one time or another clenched and unclenched his hands in the dark of a movie as, across the screen and through the sound track, reels a grotesque caricature of courtroom decorum and procedure? It is easy to assure one's companions after the performance that, of course, the scenes depicted may be true of American courts, but are certainly a long way from being any sort of portrayal of our own. In this article, it is made very clear that such travesties on the profession and institutions of law are no more to the liking of American lawyers than they are to us.

The article gives an account of a meeting held last June and attended by representatives of the movies, press, radio and the law, at which was discussed the extent to which judges, lawyers, prosecuting officials and the courts, and the processes of law and trials, are at times unfavourably portrayed, with the result that the standing of lawyers and the prestige of law and the courts are adversely affected.

It was pointed out that the law is not alone in feeling itself lowered in public esteem. And among the lively exchanges it was said, "Leading lawyers themselves do not know what goes on in court rooms; I have never seen anything so bad in screen courtroom scenes as I have in real ones; judges do violate the canons of legal ethics, and lawyers do fail to rid their profession of its shysters".

The whole article makes interesting reading, while excerpts from the comments made by the Production Code Administration (a branch of the Motion Picture Association of America Inc.), on scripts containing legal characters and episodes submitted for criticism are especially delightful. It is comforting, at any rate, to know that the American Bar Association is doing what it can to improve the "publicity" accorded the profession in the three media covered by the article. (J. E. WILSON)

Tort Actions against the Federal Government. Walter Gelhorn and C. Newton Schenck. 47 Columbia Law Review: 722–741.

Until August 2nd, 1946, "the United States was not (generally speaking) suable for the torts of its agents". For many years

the only relief available to those making claims against the Government was obtained by the enactment of special statutes. The Court of Claims was set up, first to advise Congress and, in 1863, to give judgments where claims were made under statutes or contracts or in cases of invasions of property rights. In 1887 a right was given by statute to sue the United States on all claims except those "sounding in tort".

From time to time Congress allowed suits to be brought for certain torts, "a tribute to the persuasiveness of lobbying rather than of principle". Also certain government corporations were made liable to suit in tort claims and in 1922 heads of departments were authorized to "certify to Congress" negligence claims not up to $1,000.00 for property damage. There was also the possibility of action against officials but "the personal tort liability of public employees" has long been considered as "of questionable social value".

Thousands of bills to provide for compensation to individuals with claims against the Government were introduced in Congress in 1943 and 1944 alone and over 200 statutes were passed to settle tort claims in those years. Far too much of the time of members of Congress was taken up every year in considering these claims. Finally the Federal Tort Claims Act was enacted under the topical heading, "More Efficient Use of Congressional Time".

Action against the United States is now permitted, with a number of exceptions, for claims on account of damage or loss caused by the negligence or wrongful act or omission of Government employees acting within the scope of their employment. It is submitted that the exception from the general liability of cases of agents' misconduct, such as claims arising out of assault, false arrest, libel and the like, might well be wiped out. Some claims for losses occasioned by non-tortious acts are perhaps properly excepted but it is suggested that the Government should assume liability where determinations of a government agent, rightly or mistakenly made, damage individuals, for example where the administration of a flood control programme destroys a farmer's crops.

The writers would develop the act by subjecting the government to liability "wherever in equity and good conscience payment should be made". Congress would retain ultimate control and could redefine the jurisdiction of the courts if necessary.

Escheats, Abandoned Property Acts, and their Revenue Aspects. Ray H. Garrison. 35 Kentucky Law Journal: 302–317.

In most of the states of the United States provision has been made for the transfer, either of ownership or of possession, of unclaimed property to the State.

Escheat occurred in England on the death of a holder of land without heirs or on his attainder for felony or petit treason and a person convicted of high treason forfeited his lands to the Crown. Lands of aliens might be claimed also by the Crown. Personal property passed to the Crown as *bona vacantia,* as realty now does under the Real Property Act of 1925.

All of the states have made provision for escheat on the death of an owner of property without heirs and without a will and in certain other cases, such as actual abandonment, holding by a corporation in violation of law, or passage by descent to alien heirs. However, some states also have passed legislation giving themselves title to dormant bank deposits, unclaimed funds deposited with utility companies, money paid into court for distribution, unclaimed dividends or the unclaimed corpus of trusts.

By another type of legislation states are permitted to take possession of property primarily for the owners' benefit if they appear and claim it. Banks were required to report and pay deposits in inactive accounts to the state by a Pennsylvania statute passed in 1872. At least thirty-five other states have enacted similar legislation as to various types of unclaimed property. The Kentucky acts are very comprehensive. A holder of unclaimed property is required there to report annually and listings are published in newspapers and by posting on court-house doors. If an owner does not make a claim by a certain date, his property is "taken into protective custody by the state". He then has a claim against the state until it has been judicially determined that the property has in fact been abandoned. Even then his right is extended for five years after judgment if there has been no actual notice to the owner. In a number of cases the constitutionality of such legislation has been considered and it has been generally upheld.

Revenue from escheats is no longer great, since few wealthy individuals die without known heirs. Fairly large sums have been received under the abandoned property acts but receipts are "unpredictable and erratic" and, because refunds may be necessary, "the state officials never know exactly how they stand". In New York more than $21.5 million was turned over to the state in the

first year after the statute came into effect. From the first year's operations under the Kentucky act $337,530.72 was retained by the state, belonging to some 50,000 persons. On the whole, benefits to the owners under the legislation must take precedence over revenue possibilities, but state governments find the many small balances obtained by them "financially worth the expense and time of procuring" them.

Judges: Their Selection and Tenure. Laurence M. Hyde. 22 New York University Law Quarterly Review: 389–400.

Independence of the judiciary was established in England only after the revolution of 1688 when the judges' commissions were made to read "during good behaviour" instead of "at the pleasure (*duranto bene placito*) of the king". The framers of the United States Constitution were familiar with the events leading to the revolution and had known colonial judges controlled by the King. Also they had seen in France the danger of control by "the legislative branch". For these reasons an appointive judiciary was established as an independent branch of the federal government and judges held office for life under the federal constitution and the constitutions of most of the states admitted before 1830. Now the appointive system prevails in only two states and only they have retained life tenure.

Several reasons are suggested for the change, among others "the wave of democratic fervour" which brought about the revolutions of 1830 and 1848 in Europe and "the pioneer idea that any man should be able to perform any task or fill any office without special training". Whatever the reasons, the effects have been greater timidity and a discouragement of independence. A judge must "be a politician to remain a judge". There is also a waste of judicial talent when judges are turned out before they have learned to do their best work.

There has been a tendency in recent years to lengthen terms and in some states judges no longer run on party tickets. Even so, voters cannot tell "by seeing a man's picture on a telephone pole" whether he possesses the "essential judicial qualities".

The American Bar Association has led in the struggle to improve the conditions of appointment to the bench. A plan was recommended by it, which would establish a judiciary appointed by the executive from a list named by another agency, with periodical votes by the people as to continuance in office. California has adopted certain features of this plan, Missouri has

put the complete plan into effect and other states are considering constitutional amendments to the same end.

In Missouri the Governor appoints from lists submitted by selection commissions. The commissions are composed of judges, as chairmen, lawyers elected by the bar and laymen appointed by the Governor, with staggered six-year terms, members not being eligible to succeed themselves. When a judge has served one year the people vote on the question "whether or not this judge shall have a full regular term", six years or twelve, as the case may be, and after each term he must be voted on again. There is no opponent and the only issue is his record. Members of the bar can now have the kind of judge they want. It is for them to inform the public as to the judges' qualifications and record when there is a vote.

This plan "utilizes the best features of both the appointive and elective systems but provides safeguards lacking in either of these systems".

G. A. JOHNSTON

Toronto

JUDGES APPOINTED SINCE SEPTEMBER 1st, 1947

THE HONOURABLE JOSIAH H. MACQUARRIE, K.C., of the City of Halifax, in the Province of Nova Scotia, Attorney General for Nova Scotia, to be a Judge of the Supreme Court of Nova Scotia.

VINCENT J. POTTIER, ESQUIRE, K.C., of the Town of Yarmouth, in the Province of Nova Scotia, to be Judge of the County Court of District Number One in the said Province.

THE HONOURABLE ANDREW KNOX DYSART, a Judge of the Court of King's Bench for Manitoba, to be a Judge of the Court of Appeal for Manitoba and ex officio a Judge of the Court of King's Bench for Manitoba.

ARNOLD M. CAMPBELL, ESQUIRE, K.C., of the City of Winnipeg, in the Province of Manitoba, to be a Judge of the Court of King's Bench for Manitoba.

THE HONOURABLE NORMAN WILLIAM WHITTAKER, K.C., of the City of Victoria, in the Province of British Columbia, to be a Judge of the Supreme Court of British Columbia.

HERBERT S. WOOD, ESQUIRE, K.C., of the City of Vancouver, in the Province of British Columbia, to be a Judge of the Supreme Court of British Columbia.

HECTOR PERRIER, ESQUIRE, K.C., of the City of Montreal, in the Province of Quebec, to be a Puisne Judge of the Superior Court for the District of Montreal, in the Province of Quebec.