

The Harvard Law School Record

VOL. 1, NO. 8

CAMBRIDGE, MASS., THURSDAY, SEPTEMBER 5, 1946

PRICE TEN CENTS

ALL MARKS NOW TO BE NUMERICAL

Dean Announces Other Policy Reversals In Gratings, Failures

At the end of this term, grades will be divulged to the student in numbers, Dean Griswold informed the RECORD yesterday, after a faculty vote to that effect.

This vote brings to successful completion a campaign by several faculty members and student groups to inform the student fully as to his performance.

As a consequence of the abolition of the principal rule, subsidiary securities, such as confidentiality of the grade card and disclosure of numerical grades to prospective employers only on condition that they hide it from the man, are also gone. However it will not be possible, for reasons of administrative efficiency, to disclose past numerical grades to the merely curious.

It was also announced that second termers who fail to do satisfactory work in the impending examinations will be given the opportunity to repeat the second term, instead of being dropped from the school. That the faculty vote on this issue extended the benevolent exception a single term only was emphasized, and no commitment as to continuation thereof after this October was made.

It is necessary to get 55 to pass a subject, to get a 58 average to pass in general, and a 59 average to pass in general if one course is failed. A man permitted to re-take his second term must get 2 points higher to continue in school after the repeated semester.

For third termers and up 57 is the general average required, with a 58 compulsory if one course grade falls below the waterline of 55.

No one will be dropped as a result of grades at the end of the third, fifth, or in the case of a seven term man, sixth, terms. However third year men have failed in the past occasionally, so it will be comforting to those men to learn that, since there are 3 terms in the third year for most, seven termers can fail one and a half courses without expulsion.

With the exception of the temporary amnesty for second termers this time, the old rule, fail two at once, fail more than two while you are here and you are out, still prevails.

The arrangement for second term men is a second trial of a policy adopted in June, and is still considered to be tentative, experimental, and subject to change in future years.

How to Get Yours

The Harvard Law School Yearbook will be distributed at Gannett House on Thursday and Friday, September 5, and 6, from 1 p.m. to 5 p.m.; and also on Saturday, September 7, from 9 a.m. until 1 p.m.

Since there are a small number of additional copies, any person desiring such a copy should leave his name with the Committee at Gannett House. The Yearbook for those students who have not enrolled for the summer term and who have not requested that the books be mailed to their home address will be held until their return in the fall.

Your co-operation by immediately picking up your copy will be greatly appreciated by the Committee.

AMES WINNERS



Charles W. Davis and James D. St. Clair, members of the Langdell Club, whose advocacy brought victory in the post-war informal Ames Competition last Thursday night. Counsel assisting on their brief were also members of the Langdell Club. The court abstained from giving an opinion on the merits because of the complexity of the question at issue.

LANGDELL CLUB WINS ARGUMENT

Advocacy Gives Slim Edge to St. Clair, Davis in Ames Final

In the presence of a near-capacity audience in the Langdell Courtroom last Thursday night the United States Circuit Court of Appeals for the Ames Circuit found for counsel representing the taxpayer in the case of *Commissioner v. Rocky*,—F.(2d)—(C.C.A. Ames, 1946). Presenting the oral argument for the victorious taxpayer were Charles W. Davis (Harvard '41) and James D. St. Clair (U. of Illinois '41). Of counsel on the brief were Thomas P. Ford (Notre Dame '40) and Lambert Turner, Jr. (Princeton '40). Arguing the case for the Commissioner were John Cancian (Harvard '42) and George Leighton (Howard '40). Of counsel on the Commissioner's brief were Herbert Berman (N.Y.U. '44) and Daniel Kraemer (Harvard '39). The Bench was presided over by Hon. Peter Woodbury, judge of the United States Circuit Court of Appeals for the First Circuit. The associate judges were the Hon. J. Edgar Murdock and the Hon. John W. Kern, both of the Tax Court of the United States.

The Court found that the briefs submitted by counsel were just about even. It was indicated that these particular judges were in favor of having the brief headings subdivided much more than at present is the practice in the jurisdiction of Ames. This is a conflict which the Board of Student Advisers will have to settle before the (Continued on page three)

LIGHT VOTE CAST IN TRIAL OPINION POLL

Student Voters Favor U. S. Intervention in Palestine

Response to the first question in the public opinion poll, "Should the U. S. Intervene in Palestine?" was too unsubstantial to be considered a representative segment of Law School opinion. From the returned ballots the voting was two to one for intervention.

Last week's ballots are still coming in but still are not in the numbers necessary to make the poll successful. The poll will be discontinued as a feature unless the response from readers is increased to a truly representative group. The purpose of the opinion poll was to complete and crystallize Law School opinion on international and domestic issues. Individual spokesmen continually are given publicity which is reflected throughout the nation as representative of the Law School. If the public opinion poll is utilized it can more accurately express the true Law School attitudes and views on these issues. The ballot is printed on page three in the upper right hand corner. Tear it out, mark it and send it in.

Four Major Veterans' Organizations Compete For Membership; Offer Varied Approaches to Problems

The veteran of World War II returning to civilian life is a more privileged citizen than before he became a GI: privileged through a complicated mass of benefits and priorities; privileged, too, because he is automatically eligible for membership in a great variety of veterans organizations. The list of these Societies for ex-Soldiers and -Sailors numbers in the hundreds, but way out front in the competition for the veteran's favor are the Big Four: American Legion, Veterans of Foreign Wars (VFW), American Veterans Committee (AVC), and American Veterans of World War II (Amvets).

It may be roughly estimated that about 15% of World War II veterans have already joined one or more of the major organizations. Many, in fact, have joined them all. Others, dictated by pocketbook—both the ability to pay dues and the advantages of "belonging"—or by conscience, have made their choice of one.

Many veterans shrug off the solicitations of ardent members with, "I'm not a joiner." Judging from the fact that the Legion never counted more than 27% of World I veterans as members, the vast majority of new veterans will never join any of the organizations.

The question which the puzzled veteran must ask himself is, "What is the true purpose of a veterans organization?"

The answer may be found on two levels, communal and national. The primary con-

Remember The Law Fiesta

Kendall House, the Law School's social center, will sponsor an all-Law School informal dance this Saturday, September 7, in Cowie Hall at the Harvard Business School.

Tickets, which are limited to 325 couples, are on sale during the noon hour in booths at Kendall House and Langdell Hall. The \$2-per-couple charge includes tax and door prizes. Music will be furnished by Ken Reeves and his ten-piece orchestra.

Proceeds will be used for the general purpose of improving Kendall House facilities.

BOARD PRESIDENTS



GOLDMAN

COFFIN

WIVES ISSUE NOMINATIONS

Polls Close September 12 For Additional Candidates

The Nominating Committee of the Harvard Law Wives announced nominations for new officers this week. Mrs. Jarvis Kellogg and Mrs. Joseph Logan will compete for the presidency; Mrs. John Siegmund and Mrs. Horace Kalik will run for the office of first vice president, which carries with it the chairmanship of Kendall House; Mrs. Richard Wolford and Mrs. Robert Cahall for second vice-president and program chairman; Mrs. Walter Morey and Mrs. Howard Abbott for third vice president and hospitality chairman; Mrs. Frank Jose and Mrs. Richard Bush for corresponding secretary; Mrs. William Wyse and Mrs. George Gillette for recording secretary; Mrs. Ralph Pryor and Mrs. Robert Yeomans for treasurer; Mrs. Charles Barrett and Mrs. Schuyler Hollingsworth for assistant treasurer; Mrs. Roger Taylor, Mrs. Robert Weary, Mrs. John Pemberton and Mrs. William Craig for directors.

The Committee will welcome additional nominations, which may be placed on the ballot by petition. Petitions must be signed by 15 members of the organization and filed by September 12 with the Nominating Committee chairman, Mrs. Harold Olsen, 30 Linnaean St., Cambridge 38.

Members of the Nominating Committee include Mrs. Lambert Turner, Mrs. Alan Schneider, Mrs. Robert Bingham and Mrs. Frederick Rogers.

Current president of the law wives' organization is Mrs. Charles W. Davis. First vice president's post is filled by Mrs. Robert Parkin. Second and third vice presidents are Mrs. Frederick Rogers and Mrs. Horace Kalik, respectively.

Chairman of Kendall House is Mrs. John Lawless, and Mrs. Howard Abbott is the Hospitality Chairman.

NEW BOARD OFFICERS SELECTED

Coffin Succeeds to Top Student Adviser Place In Election

Frank M. Coffin, '47, was elected by the Board of Student Advisers to succeed Albert L. Goldman as Chairman of the Board in an election held last week, it was announced on Monday. Other newly elected officers are: Treasurer, J. Frederick Hoffman; Chairman first year committee, Henry J. Smith, Jr.; Chairman first year facts committee, John J. Shea; Chairman second year committee, John J. Delaney; Chairman second year facts committee, William F. Quinn.

Student Board Officers are elected near the close of each term from a list prepared by the retiring Chairman of the Board and submitted to the Dean for approval. While the Dean is not bound by the recommendations of the retiring chairman and the results of the election, he rarely disapproves. This is in accordance with the desires of both the Board and the Dean to make the Student Advisers as autonomous a body as is possible in the interests of cooperative, competent management of the Ames Competition.

The election of Coffin as new Chairman brings to the top of the School's second most distinguished student group a graduate of Bates College in Lewiston, Maine, which is also Coffin's home town. Coffin graduated from Bates in 1940 and entered the Law School in the same year. He distinguished himself scholastically in his first year, but he was called to the Navy and served principally in the Pacific Theatre as an officer in the Supply Corps. He left the Navy after four years with the rank of Lieutenant.

Coffin's former position as Treasurer of the Board falls to J. Frederick Hoffman, '46, who lives in Rochester, Indiana, and graduated from the University of Michigan in 1944. Hoffman vacated the job now held on the Board by Henry J. Smith, of New York City and a graduate of Fordham. William F. Quinn retains his old position as second year facts chairman. Quinn comes from St. Louis and graduated from St. Louis University with a Bachelor's degree in 1940. John J. Delaney, '46, also retains his former position on the Board. He comes from Arlington, Mass., and graduated from Harvard in 1944. The only member of the new officer panel who was not a former officer is John J. Shea, '47, of Roxbury, Mass., A.B. Harvard, 1944.

According to Coffin, the work of the Board has been very heavy during this term due to the revival of the Ames Competition and the vast increase in the number of students. He anticipates no respite for the coming term. The thirty-hour week of extra curricular activity prescribed for all Board members proved to be inadequate on occasion during part of the term, and it may not be given.

Faculty Members Evaluate Veterans' Performance; Superior Class Work Not Equalled in Exam Grades

Questionnaires were recently sent to all faculty members asking that they summarize their observations of the student veteran at Harvard Law School. They were asked to discuss what was wrong with the class room discussion, exam writing, and studying techniques. Although the questions were very general, the answers were pointed, relevant and consistent.

Almost three terms have been completed at the Law School since the war ended. From the comments made by the faculty on the veteran student, the following conclusions may be tentatively set down:

1) The veteran student is more serious and mature than the pre-war variety. All faculty members who discussed this point were of this opinion.

2) The veteran student spends more time in study. This was unanimously agreed by all who gave comparisons.

3) Classroom discussion is unusually good, better than pre-war. None said that it was not as good as pre-war. One or two might be interpreted to have said that it was about the same. All others who gave opinions noted that it was better.

4) Examinations do not show the same general improvement. Increased efforts by apparently more capable individuals do not bring about the proportionate gains in the final learning. (Opinions of the faculty as to the relative merit of examinations range from "same" as pre-war to the conclusion that the June 1946 examinations were definitely "disappointing." None said that the June 1946 examinations were better.)

Thus it seems that a curious result has come about in the veteran student. He is older, more serious. "He has more practical experience." "He is exceptionally mature and alert." He is described as be-

ing more determined to do well. He studies harder than previously. Yet the ef-

forts are not rewarded by adequate returns—at least as far as examination papers seem to show. In general "examination writing is not as satisfactory as classroom discussion would lead one to hope."

What is wrong with the study methods? The student today may be working too much. A tendency "to press too hard" was noted. It is a plodding study . . . with too much reliance on treatises.

There are two outstanding characteristics of the second and third year students presently in the school with whom I have come in contact: 1. They are more faithful in their preparation of day to day work than the prewar students. 2. The fruit of their diligence is considerably less than might be hoped for. Many of them not only have much more definite limitations upon their knowledge of first year subjects than was commonly encountered before the war, but also, to a considerable extent they seem to have lost the instinct for elementary legal principles.

The examinations in June 1946 tended to show that people were reading their cases more uniformly than prewar classes were, but there was less independence of thought and less ability to put a problem in its proper relation to the law outside of the course. The statement of cases in class tends to be too lengthy, and to follow too closely the detailed form of expression used in the case without sufficient selection or recasting. In other words, the work is relatively plodding.

I think it is very fortunate that the veterans do seem to be working faithfully. You would think that a large portion of the veterans would have learned to loaf in the service whenever not under immediate pressure. On the contrary, they seem to have acquired a sense of responsibility which may well, in the long run, offset the handicaps I have described.

Professor McLaughlin accompanied his answer to the questionnaire with an extended letter, particularly valuable excerpts of which are listed below.

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It is doubtful however if defects that were noted in study techniques and approaches to law problems are the whole reason why examination papers were not better. Study techniques with their defects, coupled with the somewhat different (Continued on page four)

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Published weekly on Wednesdays for twelve weeks of each term by The Harvard Law School Record, Austin Hall, Cambridge 38, Massachusetts. Subscriptions price: \$2.00 per term mailed, \$6.00 per year mailed; student subscription, \$1.50 per term mailed, \$4.00 per year mailed; distributed at the Law School. Business and Editorial Offices, Austin Hall, Cambridge 38, Massachusetts. Telephone KIRKland 7600, extension 133.

Crimson Printing Company, 14 Plympton Street, Cambridge 38, Mass.

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Editorials

(This week the RECORD presents two conflicting views on the desirability of former officers retaining Reserve Commissions. The arrival of the time when ex-Army officers will soon be called upon to make the decision renders this question especially pertinent now.)

PRO

This editorial is addressed to those of you who hold Reserve Commissions in the Army, Navy, Marine Corps, or Coast Guard. Putting away the snide remarks of the sensational press, that commission is something to be proud of. It represents accomplishment and service, and marks the holder as a citizen who accepts his share of the national defense as a continuing responsibility.

The acceptance of that continuing responsibility, by men who have had the training of practical experience in an officer's job, is an indispensable part of the national defense, and is a civic duty of those qualified to meet it.

We obviously cannot maintain in peacetime the full military establishment of total mobilization, and most of us would prefer not to spend our lives in the military service. But if mobilization becomes necessary a trained reserve of officers is a *sine qua non* of a successful outcome. Next time we may not have the 26 months between Danzig and Pearl Harbor. By retaining his reserve commission, and taking the training offered in the reserve program of all four services, the lawyer-veteran keeps himself in partial readiness to serve again when the time comes.

It will doubtless be argued against the reserve program that such officers will be useless in an atomic war, and of course, no one can remain an up-to-date radar technician or submarine skipper by correspondence course and two weeks of active duty a year. But the contemplated Army of the Future has places for thousands of other officers, and toward preparation for such billets is the Reserve program directed. Continued activity in the reserve will doubtless make better officers than will abstention.

An argument that Reserve Officers now in the school drop their commissions is in effect an argument against the program. Lawyers provide a very sizable number of reserve officers, and by their training, leadership in the community, and experience in the practical conduct of difficult situations, are well fitted to serve. The argument that by giving up your reserve commission now, you may be able to get a higher one when and if the next war comes is cheaply opportunistic.

All sincere men of good will hope that we will not have another war, especially since the potentialities of destruction are now unlimited. The current outlook for peace is no more favorable than it was in 1920, and even a casual inspection of the news indicates that the materials for another conflict are being assembled. The expansion of the Soviet Union may be defensively motivated, but we should not place our plans for defense solely on a guess as to their pacific intentions. The question of national defense, and what the lawyer veteran can do in its maintenance is certainly not academic today.

If war comes in the foreseeable future, the younger reserve officers will doubtless be called back to active duty, in the ranks for which they are, at that time qualified. It is submitted that the officer who has fully participated in the reserve program will be better prepared to retain his commission and do his duty for his country than he who through short-sightedness or inertia declined the opportunity of service.

C.G.S.

SECOND THOUGHT—

Before signing up for a reserve commission, the ex-officer who is now a law student would do well to think twice, lest he allow himself to act for reasons which can only be described as selfish, short-sighted and pseudo-patriotic. Let him stop to ponder a moment on the nature of the next war, his part as an individual in it, and the likely set of circumstances leading up to another mass mobilization of the services.

What the Russians are doing on their northeastern border (to Sweden's dismay) and what we are doing in Arizona with the German V-weapons experts chart the kind of war we are in for next time. Hap Arnold didn't need Bill Mitchell's courage or foresight to say that a "push-button" war with rocket-powered and radar-controlled atomic missiles will be the actuality. The day of fixed fronts and large massed forces is gone forever.

That a large military organization will be necessary in case of war even so is plain, but an up-to-date registry for organizational purpose can be kept without requiring commitments as to training time nor as to early call-ups. Improving our regular services, continuing to promote our huge scientific research programs, and courageous public leadership in our communities—therein is ample sword and shield for our peacetime republic.

Much of this courageous leadership will come, as it has in the past, from the lawyer-veteran, who as a student at present can anticipate advancing several rungs on the leadership ladder. Reserve commissions that freeze a man to a particular branch and service overlook the fact that some men grow and change considerably.

But there is a better reason for abjuring reserve training programs, better than the fact that the nature of the next war will make part-time training on a mass scale pointless and better than the advisability of leaving yourself free to find the most effective place for your peculiar services. The best reason is related to how we can avoid another war completely.

Either we learn how to live in the same world with Russia

or we don't. The recent crackdown on comms and fellow-travelers in the Army and the State Department may foreshadow a red hunt of larger dimensions, which means that a good many right-thinking, conscientious public leaders will be assailed in the process. The man who searches for a *modus vivendi* for us and the Russians may hesitate to speak too forcibly in this regard if he holds a reserve commission, though actually there may be no danger of repercussions from his superiors in rank. The services' authority system, perforce though perhaps not in fact, may reach out to silence many a man who might have dispersed a few of the clouds now commencing to cover the cleared skies once more.

Instead of joining the reserve, the ex-officer-lawyer can do his part in assisting in this search for a *modus vivendi*, if indeed one does exist and God grant it does. If war does come again, his war experience and interim accomplishments should cinch a commission or a significant civilian role, with huge advantage of the man's own personal choice getting him into a position where he can do the most good—this assuming he is a man of good will.

C.O.P.

Letters to the Editor

To the Editor of the RECORD:

I have read all the issues of the RECORD up to date and I have withheld writing to see whether you could keep up the high standard with which you began. I am now satisfied that you will be able to do so.

The paper fills the great void which has hitherto prevented the graduates from keeping in close touch with the Law School.

It is not too much to hope that important benefits to the school may result from future publications of the RECORD.

I enclose my check for \$6 for one year.

RAYMOND S. WILKINS,
Supreme Judicial Court,
Boston, Massachusetts.

This is the concluding part of a letter which was started in last week's issue.

8. And there is always the possibility that you are crusading in the style of a Reformer to help the Southern Negro. A worthy motive, Mr. Editor, but your method is not effective. I dare say that along with the true demagogues one of the worst enemies the Southern Negro has is some of the unwanted and ill-timed help of many journalists in the North who do no more than point out individual injustices of the situation, and who seem to specialize in pointing out what is wrong, but never offer any constructive help. What is the remedy usually suggested by these enlightened penmen? Seldom do they get to the remedy, so eager are they to point out the faults, but the general idea they seem to advocate, insofar as they advocate any idea at all, is a general overnight sweeping change in which the South becomes what they would like to see as their community, or, if they have never looked in the mirror, what some of them actually think their community is like. Having solved all of their own problems and having so much excess energy to spend in solving the problems of the South, if they really want sincerely to help and the Negro is the one they want to help, I would like to suggest several ways that I think their endeavors would possibly do some concrete, constructive good, and not merely to fortify those working against the Negro with ammunition to use at the polls.

As you say, Negro children and Whites go to the same schools in Massachusetts, but there aren't a very large number of Negroes in Massachusetts. You certainly don't see many at Harvard. I believe that there are more foreign students at Harvard than there are American Negroes, and yet Cambridge is supposed to be the inspiration of much of the literature professing to solve the Negro problem in the South.

The economic condition of the Negroes is admittedly not good. Do you think it would be much better if Negroes were scattered throughout the forty-eight states instead of being concentrated largely in the South and a few industrial cities? Maybe that's the answer. If so, offer them good jobs in the North, and I'm sure there won't be any objections from any source.

I realize, Mr. Editor, that these few suggestions won't solve the problem. Perhaps they would help. But I am sure that criticism of the South generally by attributing to all Southerners the magnified faults of the worst elements in the South will accomplish nothing except ill will and the strengthening of deep prejudices that already exist in the hearts of a few, and making many who had no prejudices wonder if perhaps there isn't some basis for it after all. No one likes constant criticism. It makes us all mad to see the half truths and distortions that appear in the Soviet press and it doesn't make Southerners particularly happy to continually read step-sister tales in the Northern press.

Just one more point. I'm sure that many Southerners hated to see such men as Talmadge and Bilbo go back into office. Newspaper columnists assured us that outside interference had nothing to do with their elections. I feel differently. I was in Georgia in 1942 when Ellis Arnall defeated Talmadge to the surprise of the nation without outside help and largely through a campaign spearheaded by college students. This time, with more outside help than he could use, Arnall's man was beaten by that same Talmadge. Many people let their intense dislike of being told how to vote by the people of another state overcome their dislike of Talmadge. I don't think Mayor Curley would ever be defeated in Boston because the United Daughters of the Confederacy or Southern Columnists endorsed his opponent.

Perhaps I have read too much into your article, but talking to a number of other students, many of them from the North, has convinced me that I am not alone in thinking it ill-conceived. Many conditions in the South need remedying, but I rather imagine that they will be improved despite such articles as yours and not because of them.

JOHN MATHEWS, JR.



SEE VET. ORGANIZATION (PAGE 1)

Gallery

ROScoe POUND



officials in the Chinese Ministry of Justice. He already has a mastery of French, German, Italian, Spanish, Sanskrit, Greek, Hebrew, and some Russian.

His secretary, Miss Mary M. McCarthy, was secretary to Dean Thayer before she started working with him at the beginning of his deanship in 1916. He wrote letters to her several times this summer. His airplane was held up in Japan by a typhoon on his way over. He spoke at the Szechow Commencement and at the Harvard Club in Shanghai. Everyone was very kind. The Ministry of Justice had made a car and driver available for Mrs. Pound. He was in Nanking, had finished one preliminary report and was well along on a longer one. "He must be enjoying himself," Miss McCarthy said.

Chubby-faced, pink-cheeked and twinkle-eyed, Pound looks younger than he is. If he owns an overcoat, he keeps it hidden from his friends, for he never wears one. He does have a raincoat for wet weather. Dean Thayer and Prof. Joseph Warren shared his beliefs in the body's ability to adjust to cold temperatures. Prof. MacLaughlin currently practices this theory, but neither MacLaughlin nor any other professor is observed (by the maids) at work at 7 a.m., as is Pound on some occasions and only a half-hour later as a rule. He remains at his desk until nearly 6 p.m.

His memory is astounding. He often quotes the exact record of a case to which he makes a reference. His cheerfulness and sense of humor are as much a part of him as his bristling gray mustache, and he has a store of excellent, never off-color stories. Like Dean Thayer, he refuses to listen to anything obscene or profane. His Jurisprudence class last semester had only one complaint about the course: Pound read his lectures at a speed that would tax the skill of a good court reporter. Of course he was willing to stop at any point and explain. He never threw his weight around academically in the course and did not appear to resent listening to the student's views in disagreement. His examination, which could have been terribly difficult, was straightforward though by no means easy.

When Dean Griswold was born in 1904, Roscoe Pound was 34 years old and had just resigned as Commissioner of Appeals of the Nebraska Supreme Court to become Dean of the Nebraska Law School. He had practiced in Lincoln for 11 years and had taken an A.B. and a Ph.D. from the University of Nebraska, as well as spending a year (1889-1890) at the Harvard Law School. He had published articles on legal history, equity, jurisprudence, evidence, civil law, penal statutes, Roman law, procedure and legal education, as well as a casebook on procedure and his *Outline of Lectures on Jurisprudence*, which is now in the fifth edition.

Dean Thayer's first official act was to appoint him Story Professor of Law in 1910 at the urging of Beale and Williston.

Ames travelled to Chicago where Pound had become a professor at the University of Chicago following his resignation from the Nebraska deanship in 1907 and a professorship at Northwestern University. Six years later, when still one of the newest members of the faculty, he was appointed dean of the Law School. "Few jurists are more favorably known throughout the country and scarcely any American exponent of the law is better known abroad," said the *Harvard Graduate Magazine*. He wasn't "merely a lawyer or an expounder of the law, but a legal historian, philosopher, and practitioner all rolled into one."

For 20 years he was dean. Ten years ago he resigned to become University Professor. The administrative duties of the deanship deprived the world of the treatise on Equity only Pound could have written, in the opinion of one of the senior professors in the School. His door was—and is—always open for the students. Like Thayer, he often lent or gave away sums of money to students he believed deserving. The S.J.D. was developed as "bait" to attract graduate students who—in Pound's plan—were to go out to the law schools of the various states and raise scholarship and teaching standards. This plan was successful. When he retired, his admiring faculty presented him with a rosewood replica of Judge Story's desk, the original remaining in the Dean's office. His famous round desk, at which he could sit and have at his grasp some 300 volumes, is now in the Langdell Reading Room. On his desk today, besides a multitude of books are two porcelain figures, one of St. Ives and one of St. Thomas More, which with the late Professor Beale's picture, are the only adornment.

Like Brandeis, Pound is master of both the soft, delicate theoretical conception and the hard, rough fact. Llewellyn at Columbia credits him with being the force behind all the procedural changes in the last 30 years. The American Bar Association in 1940 awarded him a special medal for "conspicuous service to American Jurisprudence." He has been President of the National Probation Association since 1941. There is no space here to list either his services or his honors, much less his books. Two shelves in the treatise section of the stacks are jam-packed with Pound. A special 75th birthday volume in his honor will soon appear and contain articles by the leading scholars of jurisprudence. The Harvard Press in 1942 published a 193-page bibliography of his writings and writings about him. Up to 1940, the book reveals, he had published 773 articles, addresses and books. The *Law Review* has published 30 leading articles by Pound.

His *magnum opus* on Jurisprudence, a fraction of which has appeared in the *Review*, will be published within a year. Letters come in every day asking about it. Comprising his lectures in Jurisprudence, the forthcoming book has been revised by Pound six times, but almost all of it has never been printed before.

Always an ardent Republican, his liberal tendencies faded as he became convinced that the administrative tribunals were abusing their enlarged powers and, with respect to that aspect of government anyway, he is far to the right. "Weigh-

ing human conduct demands the trained reason and experience of judges," he has said. There is no hope, contrary to what Holmes thought about tort law, that law will ever be organized into a tightly rationalized body of precepts. Nor is it correct to think of law as the product of history. Law is "social engineering," Pound has insisted, and the social sciences must be considered as part of law.

Pound's thoughts are not always easy reading, wrote Cardozo in the *Law Review* once, but are all compact; not to be skimmed but to be marked and inwardly digested. "The fecundity of their learning," Cardozo put it, "is matched by the teeming wealth of their suggestion."

C. O. P.

Sub Judice

OF MEN AND A MULE****An admission in court is still hearsay.

In a recent case the Supreme Court of Georgia had before it a problem about a mule. And by happy happenstance the question concerning the mule became intertwined with a question about the hearsay rule. *Dunn v. Thigpen*, 38 S.E. 2d 595.

It was an action of trover to recover a black mare—mule which plaintiff sold to X by retention of title contract on March 14, 1944. This sale was not recorded until June 29, 1944. The defendant testified that he bought a mule from X during May, 1944, but it was a brown, or mouse-colored mule. According to the instructions of the court, the jury was authorized to find either that X sold a mule to defendant which was not the mule plaintiff sold to X, or that X sold plaintiff's mule to defendant before the sale of March 14, 1944 was recorded.

While plaintiff's counsel was arguing the case to the jury—apparently endeavoring to get the mules straight for the jurors—the defendant turned to the plaintiff and stated that he was sorry he had made a mistake in his testimony. It was in May, 1945 that he bought the mule from X and not May, 1944, as he had testified. There was judgment for the defendant and plaintiff moved for a new trial which was denied.

On appeal an affidavit of counsel was submitted in support of plaintiff's contention that defendant admitted he had erroneously testified. The court held that the statement of the attorney to the effect that plaintiff thought the case was closed at the time defendant made the admission was a conclusion and not admissible since it was hearsay.

THE LAWS OF WAR****War emergency legislation restricts tort liability

According to the Supreme Court of New York, the War Emergency Act, N. Y. Laws 1942, c. 445, sec. 40, amended by Laws 1942, c. 544 affords immunity from tort liability to a landlord who in good faith complies with its terms. *Field v. Manufacturers Trust Co.* 62 N.Y. S. 2d 716.

Plaintiff, a long-term tenant in defendant's apartment building, acted as an air-raid warden during a blackout in New York City in 1942. He was assigned a post on a projected roof outside a lobby window. After the lights were completely out, defendant's superintendent, who was a supervisory warden, instructed the plaintiff and other wardens to return to the apartment building. There was evidence tending to show that other wardens returned to the building safely. Plaintiff, however, stepped into an air shaft and fell to the yard ten feet or more below, sustaining serious injuries. Trial was had without a jury and plaintiff was awarded judgment for \$40,000. Defendant appealed.

In a 3-2 decision, the court held that the evidence showed that defendant was complying in good faith with the War Emergency Act which, under such circumstances, granted immunity from liability to any individual or corporation for injury to persons as a result of the activities under the Act. The court rejected the plaintiff's contention that defendant failed to warn him of the presence of the air shaft. Considering the length of time the plaintiff had lived in the apartment building, it was not unreasonable to assume that all the wardens assigned to duty on the roof were accustomed to the place. On the facts disclosed, the plaintiff was guilty of contributory negligence when he found himself in unfamiliar surroundings on the roof and yet continued to walk until he fell into the shaft. Judgment for plaintiff was reversed and complaint dismissed.

Off the Record

The current edition of the Congressional Directory, on p. 453, divides the present Justices of the Supreme Court of the United States into three classifications: (1) Those whose wives accompany them. (2) Those whose daughters accompany them, and (3) Those having other ladies with them. We are afraid to comment.

Our own Langdell correspondent reports that the members of this semester's graduating class all seem to be suffering from recurring stack fever. And if you could harness the energy from their nervous twitches, you could run a New York law firm on it for a month.

The Boston Herald (a daily newspaper) recently carried an idea about a State District judge who gave this advice to an Army Colonel who claimed another man was bothering his wife, "Take a 12 gauge shotgun and finish off the man in style." This worthy member of the bench then declared that the court had no intention of making itself look "ridiculous" by granting an injunction. We must say that this is a terrible state of affairs. Imagine using a 12 gauge shotgun! Any man with an ounce of sporting blood in him would use no more than a single shot carbine, or in extreme cases, an army rifle. We fear that this judge is lacking in judicial temperament. And where did this happen, Suh? We're mighty sorry that we can't tell you all. We just don't remember.

Our Own Legal Dictionary

Covenant: Usually found running with the land. Although not *ferae naturae* or *animus domesticus*, still very hard to trap or capture. Fur is valuable.

John Doe: Only gainful occupation is ejecting and bringing actions at law. Specialty is casual ejection. Formerly in partnership with Richard Roe, but since 1851, things have slackened off. Claims to be first man who ever casually lost something.

The other day we got a letter from a horse who is a friend of ours. He's quite saddened under the weight of things that have happened to him in the legal world. He's been inherited, bargained for, sold, warranted, stolen, converted, and although he particularly dislikes it, at times he's even been specifically enforced. Then, he claims that he has never been in a transaction in a sound condition and doesn't know why this is. His value is always either more or less than the contract price, but he doesn't remember which. The world, he says, has gone to the dogs.

The Witness Stand

The question: Do you think selective service should be retained?

1. Leonard E. Perry, New Bedford, Mass.
2nd Term Veteran

Yes, until we are assured that the UN will work as a security measure. It should be limited to those in the age group between high school and college inclusive. I should think a year of training would do the trick. Veterans as a class should be exempt since the only practical purpose is to give the individuals military training.

2. Gordon Bloom, Buffalo, N. Y.
2nd Term Veteran

Absolutely. The world is in a very unsettled state, and practically, many young men will be unable to get into college anyhow. A year of service is good for everyone. The best time would be when just out of high school but at least at the age of 18. At present professors and students in medical schools and possibly those in essential post-war construction should be exempted.

3. L. H. Pinsky, New York, N. Y.
6th Term Veteran

Yes. The present world situation explains why. Right now it seems as though it would be folly not to have a strong army ready in case of an emergency. I think it should be retained even to meet our share of the world police force anticipated by the UN, unless volunteers could fulfill our quota. Certain exemptions vital to our national economy should be allowed.

4. Richard Brown, Anderson, Indiana
2nd Term Veteran

Yes. I favor a year of military training for every student coming out of high school. By the time they are 20 they should have had a year of military training and be retained on inactive reserve along the lines of the National Guard. I like the speak softly and carry a big stick theory myself and this is one way of following it.

5. Robert Clark, Newtonville, Mass.
2nd Term Veteran

Yes if volunteers are insufficient to meet our military needs. However, I do not think they need as many men as claimed. It should be terminated when the world pressure eases and I don't think it is necessary once the UN sets up. I think one year of service should do it and there should not be any exemptions.

6. John Metzger, South Williamsport, Penn.
3rd Term Veteran

I'm for universal military training. War mongering ought not to be confused with the protection of our legitimate interests. Our commitments for world peace demand that we continue the draft to fulfill our obligations until such a time as the army chiefs say our needs can be met by volunteers. Our best plan to avoid continuing the draft indefinitely would be to insure that we have a highly organized reserve to take the field within 30 days.

7. Patrick D. McGee, Detroit, Michigan
3rd Term Veteran

I am in favor of continuing the draft as is. We might improve the existing law in the direction of better military training. Not because we have to worry about future wars, but for the reason that every young American should have a dash of military training in his education for his own benefit and for the benefit of the country at large. Democratic militarism shouldn't be confused with imperialistic militarism. The difference is so great that we ought not to condemn our military because of the deficiencies of the military in totalitarian states.

8. Robert J. Sullivan, Northampton, Mass.
3rd Term Veteran

No, for in the present state of development of modern warfare trained technicians are far more important than physically trained masses of men. A selective service act is, however, not necessarily war mongering. A year or two in the service is a valuable asset in many cases. An international police force is an organization which should be fully supported by us, whether by volunteer enlistments or by draft.

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Alumni Notes

Alumni are especially invited to forward contributions to this column to the RECORD office, Austin Hall, Cambridge (38), Mass.

LL.B. '00—Thomas Mellon 2d, a member of one of Pittsburgh's better known families and nephew of Andrew Mellon, Secretary of the Treasury in the Coolidge and Hoover administrations, died in Pittsburgh, August 18, 1946. Born in Pittsburgh, and a life-long resident of that city, Mr. Mellon had for many years devoted more time to historical research than to the practice of the law. He was especially interested in the discovery of rare historical documents, and donated much of his collection to western Pennsylvania historical societies.

During the past few months the following Harvard Law School graduates have completed service in the armed forces and have resumed practice with the firm of Goodwin, Procter & Hoar in Boston, Mass. Returning partners include Leonard Wheeler, Jr., LL.B. '25; Frank B. Wallis, LL.B. '28; Donald J. Hurley, LL.B. '31; Charles D. Post, LL.B. '34. Returning associates include Carl F. Schipper, Jr., LL.B. '29; Joseph F. Knowles, LL.B. '39; Fairman C. Cowan, LL.B. '40; Wilbur M. Jaquith, LL.B. '41.

Ex-'14—Simone R. Winch, for the past 25 years the business manager of the *Oregon Journal*, died in Portland, Oregon on August 24 after an illness of two months. Prior to attending Harvard Law School, he graduated from Princeton in 1911, and after leaving Harvard he entered newspaper work in 1914 as a member of the advertising department of the *Oregon Journal*. He was secretary of the American Newspaper Publishers' Association, president of the Northwest Newspaper Association, and first vice-president of the Pacific Coast Division, Bureau of Advertising. From 1942 until his death he was a member of the newspaper industry's advisory committee.

Ex-'19—Beaufort H. Jester emerged the winner and Governor-to-be of Texas in the run-off Democratic primaries held on August 24. He defeated former University of Texas president Homer P. Rainey. Jester has been a lawyer in a small city, as well as a farmer, and at present is Texas Railroad Commissioner.

Ex-'22—Frederick R. Coudert, Jr. was successful in obtaining the nomination for U. S. Representative from the seventeenth district in the primaries held recently in New York. Now a State Senator, Coudert has in the past been active in investigating Communism in the school system. In the campaign just completed he defeated the present U. S. Representative, Joseph C. Baldwin, by a margin of approximately five to one.

LL.B. '23—George H. Sibley has recently been named as pre-convention campaign manager for Maj. Gen. William J. Donovan who is seeking the Republican nomination for U. S. Senator from New York. Sibley has been a close friend and active supporter of Governor Thomas E. Dewey, and is a former president of the Association of New York State Young Republican Clubs.

LL.B. '28—Stuart M. Wright, dean of the Northeastern University School of Law for the past year and a member of the Northeastern faculty since 1940, died August 28 in Cambridge, Mass. He was graduated from Brown University in 1925, and on completion of his work at Harvard Law School he was admitted to practice in New York. Later he served as a secretary to the Pennsylvania Supreme Court. His interest in trust work resulted in his becoming a lecturer on trust administration at the American Institute of Banking, and in 1937 he was appointed trust officer of the First Mechanics National Bank of Trenton, N. J. During World War II, he served with the U. S. Army Air Forces.

LL.B. '29—Announcement has been made of the engagement of Emily M. Barclay to Russell W. Jackson. He is at present a member of the firm of Robinson & Henson in New York City.

LL.B. '31—The engagement of Helen E. MacDonald to William R. Covington of New York City has been announced.

Covington is currently practicing law in New York City.

LL.B. '40—Gerrit Conger began work in July for the Procurement Division, Treasury Department, in Washington, D. C.

LL.B. '40—Edward J. Duggan has been working in Boston, Mass., for Lyne, Woodworth & Everts since the beginning of the year.

ACHESON ACTS AS STATE SECRETARY

Alumnus Now Directs Strategy From Washington by Byrnes

Handling the current Yugoslav controversy and all other diplomatic negotiations from the Washington end is Dean G. Acheson, LL.B. '18, whose official title is Under Secretary of State when James F. Byrnes is in town, and whose title is Acting Secretary whenever Mr. Byrnes is off on one of his frequent international missions. That the job is far from simple in these days of fast-moving international "crises" is only too obvious; it is further complicated however by the problems of international origin, and to the Acting Secretary falls a large share of the burden of the post-war orientation and reorganization of the State Department procedures and policies, and the fundamentally important job of explaining the State Department and its mission to a nation newly-conscious of the dynamic and difficult problem of living in close proximity with the other nations of the world. The existing varieties and shades of opinion held by other government officials, politicians, and the man in the street, and the necessity for the State Department to obtain substantial support from these divergent groups requires the "number one number two man in Washington," as Acheson was recently called, to be all things to all people.

Acheson's training for this exacting position has been principally legal. After graduation from Harvard Law School, where he was Treasurer of the Law Review, he became private secretary to the late Associate Justice Louis D. Brandeis, and he held that position for two years. He then moved to the Washington law firm of Covington, Burling & Rublee where he remained from 1921 to 1933. Early in Roosevelt's first term he spent a short period as Under Secretary of the Treasury. This activity was cut short as a result of his differing with the President regarding the constitutionality of Roosevelt's action in directing the purchase of gold as a means of raising commodity prices in a deflated economy.

The clouds of war in Europe stirred him to forthright action, and he argued strongly as early as 1940 for effective aid to Britain, for the conveying of supplies, and against a negotiated peace with Germany. His stand on these matters brought him back into the Roosevelt administration, this time as Assistant Secretary of State, in 1941. During the past five years in that capacity Acheson has been in charge of different branches of the State Department, having handled economic affairs including work on lend-lease, congressional affairs, and the planning of international conferences.

Acheson made an unsuccessful attempt to return to private law practice in 1945, but at the strong urging of Secretary Byrnes and President Truman he remained in government service, with, however, the new title of Under Secretary, in which position he replaced Joseph C. Grew.

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Law School Annals

BIRTH OF THE CASE SYSTEM

The writer of this anecdote is a prominent Boston attorney and Secretary of the Harvard Law School Association

Present students in the Harvard Law School know that what is called the "case system" of teaching was invented and put into practice by Dean Langdell and developed by his great pupil and successor Dean Ames. Langdell's first lectures were delivered in the face of a sneering bar in Boston, New York, and elsewhere. Even the students boycotted his lectures. But among the six or seven students who attended from the outset was the late Judge Franklin Fessenden of the Superior Court of Massachusetts. (James Barr Ames, Francis Rawle of Philadelphia, James J. Myers of Cambridge, Edward Q. Keasby of New Jersey, and Austen G. Fox of New York were some of the others.) A few years before his death Judge Fessenden recounted to the writer an incident which even now may throw a little light on the origin of the case system.

Judge Fessenden said that when he first applied for admission, during Langdell's initial year as Dean, the Dean admitted him only after having tried to dissuade him from coming to the lectures. About three months after his admission, the new student received a notice to call at President Eliot's office. He could not imagine what the invitation was about but, of course, he went. President Eliot immediately got to the point: "I want to know what you think of Professor Langdell's lectures." Fessenden was flabbergasted that such a question should be posed to a first year student, but he swallowed his astonishment and said: "Well, Mr. President, I can go to Professor Washburn's lectures and hear him read a chapter from his book on real property. I can go to Professor Parson's lectures and hear him read a chapter from his book, but I learned to read before I came down here. When I go to Professor Langdell's lectures I get something that I cannot find in any book." That was the end of the interview. President Eliot said: "Thank you," and dismissed Fessenden.

Years later Fessenden came to know Eliot well and often stayed at his home at Northeast Harbor, but that old conversation was never mentioned. Nevertheless, Fessenden always wondered whether his words had not been a substantial prop during the storm that raged about Eliot's head because of his selection of Langdell as Dean of the School.

FRANK W. GRINNELL, LL.B. '28.

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Calendar

THE LEGAL WORLD

Changes in Requirements

No thesis will be required in the fall term for Prof. Katz' course in Administrative Law as previously announced in the catalogue.

Law Fiesta

The informal, all-Law School dance, featuring the music of Ken Reeves and his band, will be held Saturday, Sept. 7, at Cowie Hall, 8-12 p.m.

Yearbook

Copies of the 1945-46 Harvard Law School Yearbook will be distributed this week. The Yearbook office is in Gannett House.

Hughes Club Meeting

A meeting of members of the Hughes Law Club, of all terms, will be held in Kendall House, Thursday, Sept. 5, at 8 p.m.

Griswold Club Dance

Members and guests are invited to a dance Friday, Sept. 6, 4 to 6 p.m., at Kendall House.

February Graduates

Candidates for degrees in February are requested to contact Mr. Dimmitt as soon as possible.

THE UNIVERSITY WORLD

Dancing

Folk Dancing. Friday, September 6, 8:15 to 11:15 p.m. in Congregational Church, Garden and Mason Streets, Cambridge. Special instruction to beginners from 7:45 to 8:15. Refreshments, folk songs, and demonstrations by nationality groups.

Student Dance. Friday, September 6, 8 to 12 p.m., at Trinity Church, Copley Square. Free to all students.

Harvard Wives

Tea. Wednesday, September 4, 3:30 to 6:30 p.m., at Cambridge Y.W.C.A. Brief talks by Mrs. Hartlein and three Harvard Wives are scheduled. This is to be a joint tea with M.I.T. Wives. Admission 25c.

Bridge. Informal lessons given Wednesday, 8 to 10 p.m., at Cambridge Y.W.C.A.

Museums

Fogg Museum of Art. Summer exhibitions: French Painting since 1870 (lent by Mr. and Mrs. Maurice Wertheim); English art with a selection of Wedgwood ware; prints by Schongauer and Durer. Open Monday-Friday, 9 a.m. to 4 p.m., Saturdays 9 a.m. to 1 p.m. Closed Sundays.

THE OUTER WORLD

Plays

Boston Summer Theatre. Clarendon St. near Copley Square in New England Mutual Hall. Through Sept. 7, Grant Mitchell in "The Late George Apley." This is the last week.

Plymouth Theatre. Stuart St., near Tremont St., Boston. "Dear Ruth" will continue at least through Sept. 14.

Colonial Theatre. Boylston St., near Tremont St., Boston. "Life with Father" (censored version) through Sept. 7. For two weeks beginning Sept. 9, "Obsession" with Basil Rathbone and Eugene Leontovich.

Wilbur Theatre. Tremont St. at Stuart St., Boston. Zasu Pitts in "Cordelia" through Sept. 7.

Shubert Theatre. Tremont St., Boston, near the Hotel Bradford—through Sept. 21, Mae West in "Come On Up."

Boston Opera House. Huntington Ave., Boston. Beginning Tuesday, Sept. 10, "Song of Norway" based on the life and music of Grieg.

Music

The Isabella Stewart Gardner Museum has concerts at Fenway Court, 280 Fenway, Boston, every Sunday at 2 p.m. On Sept. 8, Ben Cutler, baritone, will be the performer.

Movies

University Theatre. Sept. 5 through Sept. 7, Jane Russell in "The Young

Before the Court of Ames

(Appearing here is the winning opinion submitted by a student judge in the spring term round of the Ames competition, and selected by a committee of the Board of Student Advisers, with the advice and consent of Professor Archibald Cox. Mr. Harry Trenin, the author, sitting as Chief Justice in the case, was presented with a copy of the Arthur M. Schlesinger's Age of Jackson as prize.)

James Daniels, Plaintiff vs. Arthur Daniels, Defendant

In March 1944 the plaintiff, James Daniels, and his family were living in this Commonwealth. For the previous six months he had been unemployed; state relief was the family's sole means of support.

On the 16th of that month, he received a letter from his older brother Arthur, the defendant. It alluded to the unhappy circumstances in which the plaintiff found himself and the distress they caused defendant; that Arthur was living alone and a small house on the farm where he was living had been vacant for several years.

"If you will break up your home in Langdell and come with your family and live here," the letter continued, "I will see that the house is yours at the end of two years."

Mention is made that the writer is no longer young. His health is failing. The opportunity of seeing other people rarely presents itself.

"Hence," he concluded, "the pleasure and convenience of having you nearby will amply repay me."

James and his family moved from Langdell. They established themselves in the house on Arthur's farm. The occupancy continued for about nine and one-half months. During the summer of 1944, plaintiff frequently spent evenings with defendant during the latter's illness.

On January 1, 1945 there was an abrupt end to this apparently satisfactory arrangement. The home occupied by plaintiff was rented to another. He was forced to vacate.

The two year period stipulated by Arthur in his letter was ended on March 16, 1946. Pointing to the promise made, plaintiff demanded that the house be deeded to him. The request met with refusal. Work was no longer scarce; James no longer needed the house, were the reasons given.

Alleging these facts, plaintiff seeks \$3,000 as damages.

The defendant having moved in this court for the dismissal of the complaint, we find ourselves bound to treat the allegations true. Indeed, we must go further. Every fair inference and favorable intentment possible to be drawn from the pleaded facts must be made in favor of the sufficiency of the allegations. *New Rochelle Co. v. Hinton*, 256 A.D. 724 (N.Y.).

One seeking redress is not to lightly turned aside and denied an opportunity to have the facts of his claim determined by a jury. In our considerations, plaintiff is entitled to the benefit of all the inferences fairly to be implied from the allegations made. *Sage v. Culver*, 147 N.Y. 241.

If under the complaint before us, evidence may be admitted which will prove a cause for action; if, in any aspect, upon the facts stated, the plaintiff is entitled to recover, he has earned the right to be put to his proof. *Dyer v. Broadway Central Bank*, 252 N.Y. 430.

The complaint must be judged in accordance with the commands of construction

Widow," and "Renegades." Sept. 8 through Sept. 19, "The Well-Groomed Bride" and "Suspense." Beginning Sept. 11, "Anna and the King of Siam" and "Hot Cargo."

Exeter St. Theatre. Sept. 5, 6 and 7, Ben Hecht's "Spectre of the Rose."

Baseball

The Braves play Brooklyn Sept. 4 (night), 5 and 6, the Phillies Sept. 7 (night) and 8, the Cubs Sept. 10 and 11, and the Pirates, Sept. 12, 13, and 14.

designed for our guidance. If after doing so, we can say with confidence that no reasonably-minded jury could determine from the evidence that may be produced in the trial that plaintiff had proved a cause for action, only then, can we grant the defendant the relief he seeks.

One must be ever mindful that the dispute before us has arisen between two brothers. An offer to kin in distress rightly may be read in a different light than when scrutinizing business communications addressed to strangers in the course of commercial dealings carried on at arm's length.

Much may be said in favor of the contention that Arthur in coming to the aid of his less fortunately situated brother did not intend to contract; that the transaction at hand was instituted under circumstances far removed from the thinking and action of the world of business. The mention of James' misfortune; the distress it caused the defendant, are considerations apart from those usually instigating action when profit is the dominating motive. References to old age and failing health are not commonplace in communications looking towards the consummation of binding agreements.

More often, it is probable that an offer so made may be catalogued as 'gratuitous,' *Kirksey v. Kirksey*, 8 Ala. 131, or as one "of no benefit to the promisor . . . merely for the purpose of enabling the promisee to receive a gift"—*Williston, Contracts* (1936) sec 112.

However, it cannot be categorically stated that under no circumstances can such an offer of assistance made to a brother in distress be such that it may serve as a promise of initiating a contract.

Mindful of the manner of approach which we are enjoined to employ, determinative weight must be given to the promise possible to be inferred from the assurance made to the plaintiff that, "I will see that the house is yours at the end of two years." One cannot say that a jury would have gone beyond the permissible bounds of outlining its sphere of discretion if it were to find that the quoted words rather than being a gratuitous promise, *Kirksey v. Kirksey*, *supra*, it may connote an inference of bargain and sale. *Forward v. Armstead*, *supra*.

It cannot be said, as a matter of law that both sentences taken together, are beyond all possibility consonant only with an offer not contemplating a contract; that they convey an offer only gratuitous in nature.

Conversely, one cannot say that there is no indication that defendant is not asking in return for the doing of an act regarded by him as consideration, or that such acts, so requested, are not of any benefit to himself. *Williston, Contracts* (1936) sec. 112.

It may be that in the latter considerations are less weighty in the balance than the factors pointing towards the making of an offer seeking the formation of a contract. But once the weighing of conflicting considerations denies this court the power to dismiss the complaints.

It is urged, however, that assuming the letter conveys an offer capable of supporting a contract, the allegations show that no binding contract could legally be created.

That the offer does not look toward the formation of a bilateral contract is quite evident. An act, not a promise is sought. The plaintiff "break up" his home, and . . . and live here" are the phrases employed. They ask for actions to be undertaken by the plaintiff, not promises to be made.

Unless a unilateral contract has been alleged, defendant's motion must be granted.

Within the framework of the complaint plaintiff may prove facts from which a jury may with justification infer that James' presence near his ailing brother was the consideration bargained for by the latter. More is here requested than the mere doing of a single act occupying but a moment of time, where the offeror may with impunity revoke the offer the instant before the complete performance of the requested act. *Peterson v. Patberg*, 248 N. Y. 86.

Rather is this a case where it may be

found that the rendering of a series of acts performed over a period which extended more than nine months in duration has been sought and secured. Once such action is commenced and carried on in reliance on the offer, substantial performance of the requirements of the offer having been accomplished, it may be found that making revocation permissible at that stage will be unjust to plaintiff. A contract may thus arise. *Brackenbury v. Hodgkin*, 116 Me. 399; *Los Angeles Traction Co. v. Wilshire*, 135 Cal. 654. Especially is such finding permissible where the rendition of the acts necessary for complete performance by the party seeking enforcement is rendered impossible by the actions of the party denying liability. *Brackenbury v. Hodgkin*, 116 Me. 399. If at the trial evidence is submitted to support the allegation that plaintiff was forced to vacate the house due to the act of defendant in renting it to another, it may serve as the basis for such a finding.

What the evidence will disclose is, at present, open only to conjecture. We must wait until the bare allegations of the complaint are given color and content by the spoken word of the parties. Then it may well be determined that plaintiff comes within the protection of those decisions holding that his performance of that requested of him insofar as it was completed will be considered sufficient to sustain recovery despite the absence of the complete performance originally stipulated.

Concededly, with all the evidence before it, a court may find that factors such as serve as a basis for the *Kirksey* and *Forward* cases are present and should serve as the framework of its decision. The fact that the possibility of an opposite ruling is present precludes granting the relief defendant seeks.

Our consideration must go still another step. A jury may find a letter of March 16, 1946 to be an offer to contract. However, the facts presented on the trial may not be such as to warrant a recovery on the grounds just stated. Such circumstance does not of necessity preclude a recovery by the plaintiff.

Facts justifying findings of expectation by Arthur that his brother should rely on his promise,—the doing of the acts requested of plaintiff insofar as he was able, and that injustice to him can be avoided only by the enforcement of defendant's promise are all conceivable if the allegations of the complaint are reinforced by evidence. With such findings present a verdict in favor of plaintiff would be sustained. *Allegheny College v. National Chautauqua Bank*, 246 N.Y. 369.

The so-called doctrine of promissory estoppel is not confined alone to the cases where charitable institutions seek aid against recalcitrant would-be benefactors. *Langer v. Superior Steel Corp.*, 105 Pa. Super. Ct. 599. *Restatement of Contracts*, sec. 90. The law should not be averse to accepting an outlook more consonant with our everyday concept of good conduct and our expectation that a promise made is not to be broken. To encompass a situation such as is now before us would not be stretching the doctrine too far. Principles of right conduct may well be given judicial force not only as they apply to one who seeks to repudiate his promise of benefaction to a charitable institution, but also in a case as this where a jury may find that a brother having procured action sought from another brother, has found it more profitable to break his promise. The dry doctrine of consideration may well give way in the latter as it already has in the former.

With all the evidence before it, a court may refuse to fit its judgment into the straight jacket of the form which derives most of its authority from its antiquity alone; the facts presented may impel it to fit its decision into the newer mold of the law formed by the judgments based on correct action rather than what has heretofore been parading under the guise of "correct law."

I dissent from the judgment of the court granting defendant's motion.

FACULTY VIEWS — Continued

qualities of the present student, did not interfere with a marked gain in the merit of classroom discussion.

Nor can loss of learning ability due to army experience be set up as the principal cause of disappointing examinations. If classroom discussion gives the impression that students are doing better, the same should follow in written work.

It may be that one other factor present in the situation today makes a difference in law training. More students are commuting and coming from longer distances. A greater percentage of students are married and consequently students do not mingle so much. There is therefore markedly less chance for out of class discussion, and much of this discussion has disappeared. Casual meetings at dinner, in the afternoons, or in the evenings, are less frequent than before the war. It may be that these spontaneous discussions, informal, unplanned are invaluable in training the lawyer. It is in these discussions that drift along from subject to subject that men have a chance to reason out over-all pictures of the law. It may be that the absence of these opportunities for discussion

VET ORGANIZATIONS—Continued

to be a veteran, for it is impossible to take a man out of normal, civilian life, inject him into abnormal military conditions, and then send him back to civilian life the same person. He is a new individual, no longer a civilian, but a veteran, a man with special problems and a unique position, a position accentuated on the one hand by his disabilities, and on the other by the advantages he enjoys over other civilians. It is the function of a veterans organization to protect the veteran and his rights, to see to it that the country does not neglect him, and in fact gives him everything coming to him because of his special position in the country for having defended it under arms.

Not completely disagreeing with this thesis, but certainly changing the emphasis of the nature of a veteran's role in civilian life, is the position taken by the American Veterans Committee, summarized succinctly by its catchwords, "Citizens first, veterans second."

AVC recognizes that the veteran has problems which are peculiar to him alone, but it believes that these are secondary to the interests of the community as a whole, and that therefore the veteran who has known war, has a special responsibility as a citizen to express his views on matters which touch upon the welfare of the community and the nation. All the veterans organizations are avowed pressure groups, with recognized lobbyists in Washington, but only AVC takes stands on questions of domestic and international policy, not immediately concerned with the veteran.

The query may now be made, "Why do the other groups not take the same position as AVC?" Part of the answer lies in the very obvious and practical matter of the impossibility of achieving any degree of unanimity among all members on issues of a controversial nature. AVC does not obtain such unanimity, but proceeds on the majority rule, and its Constitution, like those of the other organizations, forbids it or any of its chapters from supporting particular candidates for political office.

Another part of the answer is anticipated in the position of the Legion, VFW and Amvets stated above. Their emphasis, and perhaps correctly, is placed upon a veteran as such, a position which is infinitely more appealing to the greater number of veterans, and especially when applied to a problem such as the bonus. Although AVC itself has a considerable minority in favor of a bonus, it does not support such a grant to veterans.

The final choice among all the veterans organizations is the veteran's. He must decide, noting carefully the balance between them, for in the final analysis, the decision must necessarily rest upon the practical consideration of self-interest.

M. B. B.

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is what leads students to depend more on treatises and less on independent thinking.

It must be noted that if this last factor is a main cause of lower caliber examinations than would be expected, it need not follow that classroom discussion should also be poorer. Classroom discussion is on day to day work. Each case raises new points to the discerning eye. Added study, increased maturity, less self-consciousness, may all lead to a better initial attack on the problems encountered. Also the volume of the classroom discussion may be attributed to the very fact that the points have not been talked over with others. It may be that in past years students did not depend so much on classroom discussion to settle their difficulties and consequently left many interesting points to later discussion with their friends.

Perhaps if increased opportunities could somehow be presented to students for discussion of law questions, a marked improvement in their law training and consequently their examinations would result.

J. B.

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