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DEFECTS IN CODE

Tenure Saving Clause Not Deemed Sufficient.

MUNICIPAL OFFICES AFFECTED

The Sections Considered by a Member of the Bar.

REMEDIAL LEGISLATION

According to an attorney who has studied the situation closely the new code of law for the District of Columbia, which is to go into effect the 23rd of next January, would seem to legislate out of office certain local officials in addition to those heretofore enumerated in The Star. Further, it is practically conceded that under the present status of affairs no jurist can be had for service in any of the courts during the month of January, 1902. In support of his contentions the attorney referred to, in conversation with a Star reporter, made the following detailed statement:

Court Auditor and Coroner.

The present auditor of the Supreme Court of the District of Columbia holds his office by appointment of that court under the Maryland act of 1785. (Ch. 72, Sec. 17.) The code by section 1636 apparently repeals this Maryland act, in that it expressly repeals "all acts and parts of acts of the general assembly of the state of Maryland general and permanent in their nature." Section 65 of the code gives the Supreme Court of the District of Columbia the power to appoint an auditor. The auditor's tenure seems to close when the code becomes effective for want of a tenure saving clause therefrom. The present act relating to the appointment of the coroner of the District, with the exception, possibly, of two old English statutes said to be in force in the District, are apparently repealed by the code. As the provisions of the present acts relating to the coroner are fully replaced by the code from the repeal of the code, the exception by the code from the repeal of the code of "acts and parts of acts relating to the organization of the District government" or the powers and duties of the Commissioners of the District of Columbia, or their subordinates or employees, and generally all acts and parts of acts relating to municipal affairs, does not appear to save them from repeal. In view of the further provision of section 1636 of the code, that "all acts and parts of acts included in the foregoing exceptions, or in any of them, shall remain in force except in so far as the same are inconsistent with or are replaced by the provisions of this code." This general exception is engraved upon all of the pre-existing laws of the District of Columbia, and appears to neutralize the exception which would otherwise save the present acts relating to the coroner from repeal. The code fully provides for the appointment of a coroner, a deputy coroner, and their duties. While the present coroner is a municipal officer, yet, for the reasons above stated and the omission of a tenure saving clause therefrom, it seems that his tenure of office will cease when the code takes effect.

Surveyor and Commissioner of Deeds.

The present statutes make provision for the appointment of the surveyor of the District and prescribe his duties. These provisions "are replaced by the provisions of this code." It seems, therefore, that although the surveyor is a municipal officer, the exception by the code is, as to his office, also neutralized by the general exception engraved upon the specific exceptions in the repealing clause of the code, as noted with respect to the coroner. If this view be sound then it seems to follow that the tenure of office of the present surveyor

will cease when the code takes effect, by reason of the omission of a tenure saving clause therefrom.

By the act of June 7, 1878, the President is authorized to appoint as many commissioners of deeds throughout the United States as he may deem necessary, with power to take the acknowledgment of deeds for the conveyance of property within the District, administer oaths and take depositions in cases pending in the courts of the District in the manner prescribed by law; to whose acts, properly attested by their hands and seals of office, full faith and credit shall be given. The tenure of office of commissioners of deeds under this act is for the period of five years, removable at discretion. The code by sections 557 and 559 repeats these provisions of the act of June 7, 1878, but repeals that act itself, and, as there is no tenure saving clause in the repealing provisions of the code, it appears that the present commissioners of deeds will cease to hold their offices when the code becomes operative.

Warden of the Jail.

By section 1061, Revised Statutes, District of Columbia, the Supreme Court of the District has authority to appoint a suitable person to act as warden of the jail, and to remove such officer whenever, in the opinion of the court, the public interests may require his removal, and to fill all vacancies which may occur. Under the present law the warden holds office for the term of four years, unless sooner removed.

These provisions of the present law are repeated in sections 1187 and 1188 of the code, but by reason of the fact that the code contains no tenure saving clause in its repealing provisions, as the warden act under which the warden holds his office is repealed by the code, it seems that his tenure will cease when the code becomes operative.

Officers Affected.

To recapitulate, it now appears from the omission of a tenure saving clause in the code that the following officers are affected: The Police Court judges, clerk and deputy clerks, the marshal of the District, his assistants and messengers, the clerk of the Supreme Court of the District and his assistant clerks, the auditor of the Supreme Court of the District, the commissioner of the District, the District and his assistants or deputies, the coroner, the surveyor and his assistants, the notaries public, the warden of the jail, his subordinate officers, deputies, guards and employees, the surveyor and the present justice of the peace, and the present justice of the peace.

When the Revised Statutes of the United States, relating to the District of Columbia, were passed on June 22, 1874, it was provided by section 1296 as follows: "All acts of Congress passed prior to the 1st day of December, 1873, relating to the District of Columbia, and any portion of which is embraced in the foregoing revision, are hereby repealed, and the section applicable to this revision shall be in force hereafter; and this revision of the acts of Congress relating to the District of Columbia shall be subject to, and governed by, the provisions of chapter seventy-four of the Revised Statutes of the United States, entitled 'Repeal Provisions.'" Had it not been for the provision of this repeal provision of the Revised Statutes of the United States, the revision of 1874 would have prevented the same question as to its effect upon the tenures of the incumbents of the public offices therein provided for as is now presented by the code. Upon turning to chapter seventy-four of the Revised Statutes of the United States there will be found, among other things, the following express tenure saving clause: "Nor shall repeal in any manner affect the right to any office or change the term of tenure thereof." The incorporation of this provision of chapter seventy-four into the revision of 1874 prevented the repealing clause of that revision from affecting the public offices therein provided for, and so no question upon this subject arose.

Repeal Provisions of the Code.

Turning again to the repeal provisions of the code, it appears that section 1637 was drawn from section 5396 R. S. U. S., section 1639 from section 5501; section 1641 from section 5598, and section 1642 from section 5395. Section 1638 of the code was copied in part literally from section 5597 R. S. U. S.

A comparison of the two sections will clearly show the remarkable omission from the code of the tenure saving clause in section 5395.

Section 5597 R. S. U. S. reads as follows: "The repeal of the several acts embraced in the said revision shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal, but all rights and liabilities under said acts shall continue, and may be enforced in the same manner as if said repeal had not been made; nor shall said repeal, in any manner, affect the right to any office, or change the term of tenure thereof."

The repeal by the preceding section of the act of June 7, 1878, which is in force here, and is not fairly inconsistent with the code, if the incorporation in the code of the whole substance of that section, with the exception of the tenure saving clause, is not such a replacing of its provisions in the code as to repeal the whole section so far as the District of Columbia is concerned, then the tenure saving clause of section 5597, R. S. U. S., will remain in force in the District, and the present incumbents of the public offices will not be affected with respect to their official tenures or rights.

May Not Bear Supreme Test.

It will occur to one familiar with the rules of law governing the interpretation of statutes that the above thoughts are surrounded with grave difficulties, and may not bear the supreme test.

In a very recent case the Supreme Court of the United States compared the provisions of a certain section of the bankruptcy act of 1898 with a similar section of the act of 1867. The act of 1898 omitted certain words which appeared in the act of 1867. It was contended that the section of the act of 1898, in question, should be construed to mean the same as that in the act of 1867, notwithstanding the omission. The court very cogently remarked in its opinion that the condition of the act of 1898, was not "left out in words to be put back by construction."

Two other matters may be referred to in passing. The first is the great difference in the language of the act of 1898, and the act of 1867, in the nature of contract, is repealed, and the later act re-enacts the provisions of the former. The later act in its practical operation and effect will be considered a continuing rather than repealing the provisions of the former act. The objection, however, to the application of this rule to the code seems to be that the language of the code appears to be that the rule only applies to property rights, and not to rights to public offices. A public office is a public trust, and not the language of the code appears to be that the rule in it as will give it the protection of the federal Constitution. A state court once held this rule to be applicable to the tenure of a public office, and the same question as to its effect upon the tenures of the incumbents of the public offices therein provided for as is now presented by the code.

Section 1638 of the Code.

The saving by section 1638 of the code of "any act done or any right accrued" would prevent the present incumbents of being affected by the repealing provisions of the code, provided that this language may be construed to cover an "act done" or a "right accrued" to the particular office. The objection to this construction, as above pointed out, is that the language of the code appears to protect only property rights, and not tenures or rights to public offices, and this objection is strengthened by the fact that section 1638 of the code appears to be drawn from section 5597, Revised Statutes, United States, which section 5597 was literally drawn in part, contains the specific tenure saving clause above mentioned. It is fair to presume that if the language of the code, and the same language of the section from which it was drawn, did include the right to any office, the tenure saving clause would not have been added to section 5597, Revised Statutes, United States. Section 1840 of the code provides that nothing in the repealing clause contained shall be held to affect the operation or enforcement in the District of Columbia, among other things, of any general statute of the United States not locally inapplicable in the District of Columbia, except in so far as the same may be inconsistent

with, or be replaced by, some provision of the code. In the other portions of the repealing provisions of the code "acts or parts of acts" are generally mentioned. In this section 1640 the reference is to "any general statute," but no reference is made to a part of a general statute. Section 5397, R. S. U. S., is not locally inapplicable in the District of Columbia, but expressly applicable by section 1296, R. S. D. C., nor is it exactly inconsistent with the code. It is true, however, that, with the exception of the tenure saving clause of section 5597, the provisions of that section are replaced by the code. As section 5397, R. S. U. S., is not locally inapplicable in the District of Columbia, but is in force here, and is not fairly inconsistent with the code, if the incorporation in the code of the whole substance of that section, with the exception of the tenure saving clause, is not such a replacing of its provisions in the code as to repeal the whole section so far as the District of Columbia is concerned, then the tenure saving clause of section 5597, R. S. U. S., will remain in force in the District, and the present incumbents of the public offices will not be affected with respect to their official tenures or rights.

There are many most excellent provisions in the code. It will prove of great benefit in the future. Errors and omissions are to be expected. They can be corrected. The whole code has been an arduous labor of love of able jurists and lawyers, who are deserving of the warmest appreciation of the entire community for their gratuitous efforts in this respect. What has been stated as to certain questions to which the repealing clause may give rise has not been put forth in any spirit of hostile criticism or opposition to the code or its creators, but in the hope of assisting in the early correction of some doubtful matters of vital importance, so that no questions can be raised about them when the code takes effect on January 2, 1902.

Errors Can Be Corrected.

The repealing clause of a new law is always the most difficult and dangerous part of it to frame. That of the code may perhaps extend far beyond the mere matter of its suggested effect upon the rights or tenures of certain public offices. It should be carefully examined with respect to every matter arising under or affected by any of the present acts which the code repeals. There is no doubt that many very unexpected results will be produced, but they can be corrected from time to time when discovered. Yet, after all, as heretofore stated, the question is, not what was in the ticket, but what has actually been done and intended in law.

CURLEY'S SUCCESS ASSURED.

Laurel Republican Elected to Maryland House of Delegates.

Special Correspondence of The Evening Star. LAUREL, Md., November 9, 1901. The results of Tuesday's election come slowly in, and the election of Mr. James P. Curley of this town, republican candidate for the house of delegates, is practically assured. With the election of Mr. Frederick Dallam, also of Laurel, democratic candidate for the lower house, Laurel will be represented in that body by two members. This is the first time the town has had two members in the lower house since 1820, the late Albin M. Bond, republican, and Mr. Charles H. Stanley, democrat, being the members. At the time of Mr. Bond's election Laurel district (the tenth) was solidly democratic. He was the first republican elected from the tenth district, and the only republican elected on the ticket in Prince George's county that year. From the latest advices there will be contests in four districts of this county as the result of the action on the part of the election officers. It is stated on good authority that in the third, ninth, eleventh and sixteenth districts the cases will be taken to the courts. It is claimed by the republicans of these districts that they were unduly discriminated against in the matter of ballots rejected. Pennsylvania Count Complete. Complete returns from every county in the state of Pennsylvania have now been received. Many of the counties give the figures as officially computed by the courts. The total vote for the leading candidates for state treasurer and supreme court justice follows: State treasurer—Harris (rep.), 48,888; Coray (dem.), 28,139; Harris' plurality, 48,888. Justice of the supreme court—Potter (rep.), 431,449; Yerkes (dem.), 285,167; Potter's plurality, 48,552.

RELICS OF SAVAGERY

Collection Sent National Museum From Andaman Islands.

PEOPLE MUCH GIVEN TO ORNAMENT

Natives Wear Decorated Skulls About Their Necks

GIFT OF DR. W. L. ABBOTT

Standing in the corners or resting on a table in one of the office rooms of the National Museum are about a hundred relics of a recent journey to the Andaman Islands. Even a glance at them—spears with antique barbs like the Indian arrows found all over the United States, dingy baskets, decorated skulls and carefully bent bows—suffices to take one's fancy on a voyage to the tropics. The collection is now being catalogued. When that work is complete and the exhibit has been placed on view, it cannot fail to arouse decided interest in a group of small islands now practically unknown to the visitors of the museum.

The collection is the gift of Dr. W. L. Abbott, a distinguished American traveler whose generosity to the National Museum has been most pronounced. He is now at Singapore, and sent from that point the spears and other articles collected during his stay in the Andaman Islands. A very small number of similar specimens is already in the collection of the institution—a gift from the Royal Museum, Florence, Italy. But the trophies sent by Dr. Abbott are much more numerous and of much more manifest interest. It is probable Dr. Abbott gathered all the specimens sent the museum within the past year.

Inhabitants Either Savages or Con-

The Andaman Islands comprise two small groups in the eastern part of the Bay of Bengal, about on the same latitude as Manila, but far separated from the Philippines. The area of the islands is about 45,000 square miles. That of Pennsylvania is about 45,000 square miles. About 22,000 persons inhabit the group, of whom about 8,000 are natives. The latter represent the lowest stage of barbarism. They are said to bear resemblance to none of the races of the adjacent parts of Asia. Physically they are robust, vigorous and small, and in appearance bear a close resemblance to the negroes of Africa. They are still in a state of savagery. For many years the islands have been used as a penal colony for Hindu convicts, sent thither by Great Britain. One of these convicts, in February, 1872, sent to his vivid memory and resentment by murdering the Earl of Mayo—the governor general of India—while the latter was making a visit and tour of inspection. Port Blair, the chief settlement of the islands, is connected with Calcutta by a line of steamers.

From the costumes heaped on the table in the museum it must be pretty warm in the Andaman Islands. Everything worn by the natives seems to be designed for ornamental purposes only. There are numerous bracelets, anklets and waistbands, but there are no clothes, and the testimony of the museum officials is that none are to be found among the black people of the islands. There are several photographs to be seen in the volumes of the Smithsonian library of natives working boats, engaged in their religious rites or posing for their photographs, and none of the subjects are apparently conscious of their Eden-like nudity.

Each Given to Ornament.

The chief item of concern to the Andaman natives is manifestly the number of circular ornaments he can fasten on his body. With what the botanist calls "pandanus" leaves, but which are known fa-

miliarly as "screw-pine," he weaves or cures a long strip decorated by several of dry leaves. This strip is probably wound about him as he stands upright and then left in place until it wears out. The effect is something like a leather belt about the waist with half a dozen leaves dangling from it behind, like a butcher's fly brush. Similar circles are wound about his ankles and wrists and used as garters.

Skulls Worn About the Neck.

The last item of personal decoration found among the natives is the most remarkable of all. When a near relative dies there the survivor carefully cures some part of the skeleton of the deceased and wears it suspended from about his neck. Ordinarily the island fancy inclines to the skull bones, but the Andaman fashion is by no means rigorous. Dr. Abbott has seen the decoration is almost nothing but the jawbone or the skull with a few ribs and a generous fringe of small shells. Two or three baskets are included in the exhibition. They are long, brown contrivances, shaped somewhat like a pineapple cheese, open at the bottom. The witness on which the rattan is woven are ingenious and joined at the bottom of the basket, as though the maker had been constructing sieves. In comparison with the brilliant and effective color-schemes of the American Indians, the decoration is almost nothing.

The Andamanese basket-maker is very ingenious, and his work in dull red, observing roughly the "lozenge pattern" of the memory of the maker, is a masterpiece. In their warfare, fishing and hunting the natives adhere to the methods indicated in old atlases. The wild pigs are still speared, the turtles are still harpooned and the enemy is still repulsed with the bow and arrow. Even among the Andamanese the class the weapon of the Andamanese fighter is primitive. The spears are all iron-headed, the iron being obtained in some way from traders who anchor near the group. The harpoons are barbed and the iron head is fastened to the pike by a cord carefully sharpened but the great care is to preserve the head to the huntman should it work off while in the turtle's body. Many of the arrow heads are nails flattened and sharpened at the point. The bows are made of iron. Dr. Abbott's collection are mounted only with the root of some tropical tree hardened in the fire.

From the length of the spears and harpoons the natives must have strong arms. One of the former, for instance, is well over five feet long and rather heavy. To throw it fifty yards would be a considerable feat of strength, to say nothing of throwing it accurately.

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Funeral of E. J. Gray.

The remains of E. J. Gray were taken yesterday to Lisbon, Ohio, for interment. Funeral services under the direction of the Masons and the Mystic Shrine were held in the afternoon at Lee's Chapel.