

RECENT RULING IS DISCUSSED BY

West Virginia Bar, Official Organ of Lawyers of This State.

The April number of the West Virginia Bar has the following extremely interesting article on the Virginia debt case. The article is so illuminative and instructive that it deserves to be repeated and read in every section of the state. The Telegram is pleased to note that this able legal authority agrees with it that the opinion of the supreme court recently rendered has no legal effect and imposes no moral obligation upon the people of West Virginia.

The Bar says: We believe all lawyers will agree that the action of the United States supreme court in the debt controversy between Virginia is the most anomalous as to its procedure and result of any in the history of that court.

We believe it is a proceeding without precedent in any court unless it be the Hague court of international arbitration, to which it approaches some resemblance.

Having decided to entertain a suit in equity purporting to be instituted by one state against another state to adjudicate a monetary claim, it proceeds in the usual course to reach that result until the questions of law and fact have been fully heard, but make no decree.

Thereupon the court takes the attitude of a court of arbitration and deals with it from that standpoint, but makes no award, but rather refers it back to the parties themselves for arbitration with a covert threat that if they don't arbitrate they may have to litigate.

The questions of law which were argued against the plaintiff's contention and which were deemed so fundamental by the commission of able lawyers representing the defense, that they were unanimous in their judgment and absolutely confident in their expressed conviction, that the plaintiff's claim could not prevail in any court of law, were curiously brushed aside. The conceded fact that the plaintiff was without any interest in the case; that under the constitution she had no right there except as a state making a bona fide claim in her own right, yet had already cancelled all rights and obligations of her own and by the very act of instituting that suit, whether she won or lost, had cancelled all claim to any recovery in the suit; had in fact admitted that under her agreement West Virginia would thereafter owe her nothing, and that anything that might be recovered would go to her assignees.

This fundamental fact, this imposture, this abuse of a strict constitutional privilege, was also curiously brushed aside by the court, and although rendering no decree, award, or judgment, they seem to have reached a finality—or hope they have—while the position of the parties is left about as it was before the suit was instituted.

This anomalous result can be explained only by guessing at some things—for the opinion or disquisition which the court handed down does not vouchsafe any explanation.

We guess that if we had been behind the scenes, in the council chamber of the court when this case was being considered, we would have witnessed a divided court—a divided court, first on the matter of taking any jurisdiction of the case. We are sure that Chief Justice White entered a vigorous protest against taking jurisdiction in a case, and rendering a decree which the court could not enforce. He had already put himself on record, in the North Carolina case, against such a course. But he was not chief justice when the demurrer to the Virginia bill was being considered, and the then chief justice (Fuller) was of a contrary mind, and several members of the court were with Fuller then that have since passed with Fuller to another jurisdiction. New members have, since the demurrer, come in who are of the opinion perhaps to agree with the present chief justice that the case ought not to have been entertained in the first instance. Probably a majority are of that mind. But the case was on their hands. They must dispose of it in some fashion. A majority will not agree to join in a decree they can't enforce. What other course was open? It was probably urged that as the case had been very elaborately presented and very expensive to the parties, let us hand down an opinion indicating our judgment as to the equities of the case, without rendering any judgment or decree; leave it to the parties to arbitrate and compromise between themselves.

This explanation, to our mind, explains the anomalous action of the court. It was a compromise between members of the court, contending against any decree and those who were willing to render a decree.

And, as we have said, it leaves the parties to the suit in much the same position as it found them. If there is any point in the opinion that amounts to a decision, it is that the court finds that the constitution upon which West Virginia was admitted into the union by the national government was a contract fixing and defining the liability of this state and the ultimate terms and conditions upon which she became an independent state.

To this proposition West Virginia has never dissented and does not now dissent.

What then is the situation? If this first constitution defined the terms and conditions upon which we were admitted to the union it also furnished the terms upon which we were to settle with Virginia for any part of her debt. If the one is a contract binding upon us, the other is a part of the contract equally binding and furnishes the criterion upon which the liability of this state must be determined.

It only remains for the legislature to declare the attitude of the state in a little manifesto, something like this:

Whereas, By the recent decision of the United States supreme court it is decided that the constitution under which West Virginia was admitted into the union of states, constitutes a contract by which liability for a portion of the debt of the original state is fixed; and by the same instrument the mode of ascertaining the measure of that liability is likewise prescribed as a part of the contract, to-wit:

"Said new state shall take upon itself a just proportion of the public debt of the commonwealth of Virginia prior to the 1st day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government since any part of said debt was contracted; and deducting therefrom the moneys paid into the treasury of the commonwealth from the counties included within the said new state within the same period."

And, whereas, said new state has always been ready, willing and waiting to perform her obligations under and in accordance with the terms of said contract; and whereas, very soon after her admission into the union, she, in good faith prepared to carry out the terms of the said contract, by appointing commissioners to confer with representatives of the commonwealth in that behalf; and whereas Virginia failed and refused to receive, recognize, confer or co-operate with said commissioners of West Virginia, it is hereby declared that it is the sense of this legislature that any further movement toward a settlement of the liability between the two states must necessarily come from the state of Virginia.

PRESIDENT

(Continued from page 3.)

tration.

Public Acquiescence Expected. State control or regulation, to be effective, should when exercised, be accepted and acquiesced in by the public. If all the decisions not in exact accord with the desire or contentment of the public are condemned, if it is expected and required that all decisions be against utilities controlled, of politics and political effect are to govern decisions, if decisions go for nothing with, and are not respected by the public, failure and disappointment are bound to follow, self-respecting men will refuse to act, the standard of appointments will fall and state control and regulation will become a disgrace, and the evils which it was intended to correct will multiply.

State control of public utilities should not prevent progress, should be sufficiently unrestricted to encourage the introduction and demonstration of the value of any new or novel enterprise, and should also sufficiently reward for the initiative, enterprise, risk and imagination of the adventurers behind such enterprises. It should discriminate between the useful adventurers or promoters, pioneers in fact, and those pirates or sharks who, on the strength of other successes, extravagantly capitalize undeveloped ideas, and exchange the worthless securities for the savings of deluded and credulous investors.

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Leave your orders for cut flowers for Easter. We will have in abundance, **Roses, Violets, Orchids, Carnations, Beauties, Gardenias, Sweet Peas, Lillies, Tulips** and other stock. We have taken one grower's entire crop of choice select Carnations and will accept orders for Carnations at \$1.00 per dozen if placed before Thursday, April 13th. These will be \$1.50 per dozen on Easter. Now is your chance to get the best stock at a bargain

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