Prohibition Laws Conspiracy

Buyer of Liquor Held Not to Be Subject To Charge of Conspiracy to Transport

Criminal Liability Found to Be Lacking

Exemption Not to Be Circumvented by Legal Subterfuge, Court Holds

A sale of liquor involving such transportation as is necessary to effect the delivery of the liquor to the purchaser, under an agreement between the purchaser and the seller, does not subject the purchaser and seller to an indictment for conspiracy to commit the offense of transportation of liquor, it has been held by the Circuit Court of Appeals for the Third Circuit.

While the purchaser of liquor may be said to have induced the seller of the liquor to make the sale, it cannot be held, according to the opinion of the court, that the purchaser and seller, by the agreement to buy and sell, which necessitated transportation, entered into a conspiracy to commit either the offense of sale or transportation.

Transportation, it is explained, is a mere incident of the sale, and, being a necessary element of the sale, a conspiracy will not lie between buyer and seller to transport the liquor.

Judge Buffington dissented to the majority's conclusions, without opinion.

ALFRED E. NORRIS
v.
UNITED STATES OF AMERICA.
Circuit Court of Appeals, Third Circuit.
No. 4035.

Appeal from the District Court for the Eastern District of Pennsylvania.

Before BUFFINGTON and WOOLLEY, Circuit Judges, and THOMSON, District Judge.

Opinion of the Court

Oct. 3, 1929

THOMSON, District Judge.—Any confusion or uncertainty in this case, arises, not so much from difficulty in the legal question before the court, but from the manner in which the question is presented.

Demurrer to Charge Certain of Failure

To make this statement clear: If a demurrer had been filed by defendant to the first count in the indictment, it must necessarily have been overruled. This, because, the charge of conspiracy between Norris and Kerper to commit an offense against the United States, namely, to unlawfully transport liquors from Philadelphia to New York, was well laid, and a demurrer thereto, which for the purposes of the motion admits the facts, must necessarily fail. The crime being legally charged, the count is good, wholly aside from the question of the evidence necessary to sustain the charge.

In the same way, the case of United States v. Holte, 236 U. S. 140, illustrates the proposition. There a woman subjected to an unlawful interstate transportation under the white slave act, was indicted for conspiracy to commit the main offense with the person causing her to be transported. The indictment so charging was demurred to and the court below sustained the demurrer.

In doing so, the court, of course, assumed that the woman was not subject to indictment for the substantive offense, and that although the offense could not be committed without her, she was not a party to it but only the victim, and that therefore conspiracy to commit the offense could not lie against her.

In reversing this decision, Justice Holmes said:

"We do not have to consider what would be necessary to constitute the substantive crime under the act of 1910, or what evidence would be required to convict a woman under an indictment like this; but only to decide whether it is impossible for the transported woman to be guilty of a crime in conspiring as alleged."

In another portion of the opinion he said:

"So we think that it would be going too far to say that the defendant could not be guilty in this case."

The learned justice then gives a suppositious case by way of illustration, where an immoral woman should suggest and carry out a journey with a hope of blackmailing the man and should buy the railroad tickets or pay the fare, in which case she would be within the letter of the act of 1910, and no reason would be apparent in that case why the act should not be held to apply.

Justice Holmes concludes the opinion with these words:

"Therefore the decisions that it is impossible to turn the concurrence necessary to effect certain crimes such as bigamy or duelling into a conspiracy to commit them do not apply."

In other words, it is not impossible under an indictment well laid for conspiracy between the man and woman to violate the Mann Act, to assume a set of circumstances which, if established, would show a conspiracy to commit the unlawful interstate transportation.

Conspiracy Possible Between Buyer and Seller

So, in the case at bar the indictment as drawn legally charged the offense of conspiracy to transport between Norris and Kerper, and there would be no difficulty in conceiving a set of facts, which, if established, would sustain such an indictment, notwithstanding the conspiracy existed between the seller and the buyer.

Counsel for the Government and for the defendant recognizing this principle of pleading, agreed upon a stipulation of facts having the same force and effect as if the same were set forth in the indictment. Their clear purpose was, as frankly stated and repeated by the Government's counsel in their argument, to bring before the court for decision the single question whether a buyer and a seller of liquors, where transportation and delivery is made in pursuance of the sale, can be together indicted for a conspiracy to transport.

To limit the inquiry to this single question, Government's counsel waived the second count in the indictment, and it is therefore not before the court. In seeking to have this question decided, counsel were in a measure unfortunate in selecting this particular case. This, because it involves not a single sale, but many sales; because the seller was engaged in the business of sale and transportation of liquors in violation of the national prohibition law; because shipments were made by him in the name of fictitious consignors, and because the packages were falsely labeled as merchandise.

These facts have a tendency to confuse the issue, as from them certain inferences or conclusions might be drawn establishing, or tending to establish, an unlawful combination between the parties to transport the liquors so sold.

The learned judge conceded that the mere purchase of liquor is not an offense under the prohibition act, and that the purchaser cannot be convicted of aiding and abetting the sale; and he assumed, without deciding, that where there was nothing in the case but a simple sale the purchaser cannot be convicted of conspiracy with the seller to make the sale.

But with reference to conspiracy between buyer and seller to transport he says:

"The connection of the defendant Norris with the illegal transaction was decidedly more than 'that degree of cooperation which would not amount to a crime' referred to by Justice Holmes in United States v. Holte. Of course, mere knowledge that a crime is about to be committed by another does not make the inactive party a conspirator, nor will awareness, coupled with acquiescence, and possibly expressed approval and encouragement, have that result.

"But in respect to the transportation, Norris did far more than know and acquiesce. He also did more than merely let Kerper know that he was in the market for liquor.

"By his repeated orders for whisky, telephoned from New York to Philadelphia, he became a party to an agreement which required Kerper to transport the liquor, and he promised to pay him for doing it. Thus he not only solicited, but bound Kerper, by such obligation as the character of the transaction permitted, to commit the offense."

From this he concludes "that a conviction may be had of buyer and seller of liquor for conspiracy to transport liquor in a case where the agreement is that the delivery of the liquor sold is to be effected by transportation from the seller to the buyer."

It is thus clear from this broad legal conclusion, that the court treated the stipulated facts as raising the single question whether conspiracy can be maintained between seller and buyer, where delivery of the liquor is to be effected by transportation from the seller to the buyer. This is the precise question which the parties desired should be decided by this court.

In the stipulated facts, there is but one buyer and one seller. The transportation and delivery were made by the seller at his expense, the sale being initiated by the telephone order of the purchaser, and the liquors so purchased were for the consumption of the purchaser and his guests.

No Offense Committed By Purchase of Liquor

The second finding, which the court holds is sufficient evidence of such an agreement between seller and buyer, adds nothing to the conclusion reached in his first finding, namely, where a purchaser orders the liquors from a bootlegger located at a distance, followed by transportation, delivery and payment.

If these facts were intended by the court to support a conclusion which could not be drawn from the mere fact of purchase, followed by transportation and delivery from the seller, the purpose of the parties to obtain a decision on the real question would be frustrated.

Counsel for both parties conceded at the argument on this appeal that the learned trial judge in his opinion made a clear and precisely accurate statement of all the facts in these few words:

"Summarized, the stipulated facts are as follows: Norris was a banker and resided in New York; Kerper was a bootlegger and had his residence and base of operations in Philadelphia.

"From time to time, Norris by telephone ordered whiskey from Kerper in Philadelphia. Twelve different orders were given covering a period of over a year. Upon receiving each order Kerper sent the whiskey ordered by express from Philadelphia to Norris in New York, in packages disguised as, paint, ink, olive oil, etc.

"The liquor was paid for by Norris from time to time and was drunk by him and his guests. He did not sell or intend to sell any of it, nor did he take any part in its transportation other than as above stated."

We assume therefore, that the court did not intend in this recital of facts, to narrow the broad legal proposition which he announced in his first conclusion.

We will therefore consider and decide the interesting and very important question thus raised.

The conclusion which we have reached is based on the following considerations:

1st: It is conceded that under the Eighteenth Amendment, and the Volstead Act, passed to carry it into effect, the purchase of liquor is not made an offense. It follows that the purchase as such, does not subject the buyer to punishment.

This is perfectly clear from the act itself. Not only did Congress carefully exclude the purchaser from the penal provisions of the act as originally passed, but has taken no step to extend its provisions to the purchaser, in the ten years of legislation which have since intervened.

That the intention and purpose of Congress is in harmony with the act, as drawn, is thus made perfectly manifest.

2nd: While the seller of liquor, who delivers it to the purchaser, is liable under the law both for the sale and transportation, the purchaser to whom the goods are delivered is chargeable with neither the purchase nor the transportation. It thus appears that while the legislative department of the Government has deliberately and intentionally made the purchaser of liquor guiltless of any offense under the prohibition law, the Executive Department of the Government seeks here, by indirection, to make of the same fact, namely, the purchase, a crime subjecting the purchaser to a maximum fine of $10,000 and imprisonment for a term of two years.

Such a situation is scarcely conceivable, and yet that is the position of the Government.

3d. Concerning the crime of conspiracy, it is a well established principle that where an offense is such that a concert of action between two persons is logically necessary to the completion of the crime, that is to say, the crime cannot take place without concert, a charge of conspiracy against the two persons to commit that crime does not lie. This is the language of Judge Thompson in the case of United States v. Katz, 5 Fed. (2d) 527.

On appeal, the Supreme Court affirmed the soundness of this rule in United States v. Katz, 271 U. S. 354. Justice Stone, speaking for the court, said:

"The overt act charged in the indictment was the sale of whiskey by one defendant to another. This is an offense under the National prohibition act; but as the defendants in each case were only one buyer and one seller, and as the agreement of the parties was an essential element of the sale, an indictment of the buyer and seller for conspiracy to make the sale would have been of doubtful validity. (Citing a number of cases.)

"This embarrassment could be avoided in an indictment for a criminal conspiracy only if the buyer and seller were charged with conspiring to commit a substantive offense having an ingredient in addition to the sale, not requiring the agreement of two persons for its completion."

See also Vannata v. U. S., 288 Fed. 424, C. C. A., Second Circuit.

In La Rosa v. U. S., 15 Fed. (2d) 479, La Rosa was indicted with Martin and Belman for conspiring to sell, barter, transport, deliver, furnish, possess and manufacture intoxicating liquor. It appears that the only understanding La Rosa had with Martin and Belman was that he would buy certain whiskey from them and show them how to get it to his garage. The judgment of conviction for conspiracy was reversed on the appeal.

Notwithstanding, there was evidence in the case from which it could be fairly said that La Rosa aided and abetted the transportation, yet Judge Rose, speaking for the circuit court of appeals, declined to consider the question of conspiracy to transport, in effect holding that it was too unsubstantial to merit serious consideration.

In Becker v. U. S., 5 Fed. (2d) 45, there was a charge of conspiracy against several defendants to commit different offenses. Liquor was found in the cellar of one of the defendants, Birnbaum, which had been delivered there, and he contended that he was merely a buyer and that there was no proof that he was a conspirator with the others.

Speaking for a unanimous court, Judge Learned Hand said:

"We concede at once that merely as buyer he was not a party to the scheme in any criminal sense; that, on the contrary, the prosecution was bound to involve him in the plan as a whole in some other sense."

4th. In the case of seller and buyer, transportation by the seller is a mere incident in the sale, and necessary to its completion by delivery to the purchaser. It is an inherent feature, an essential element of the sale, which the seller had, on his part, to perform.

The sale necessarily involves an agreement, a concert of action, between buyer and seller to effect the purchase; and it could not, with any reason, be said, that a conspiracy would lie to do something whch was an essential element of the sale.

Finally: Under the authorities it cannot be held that the purchaser, as such, is guilty of aiding and abetting either the sale or the delivery; and the degree of cooperation necessary to constitute one a conspirator, must be such as to amount to more than the mere aiding and abetting in the commission of the offense.

Buyer of Liquor Does Not Aid in Sale

The degree of cooperation attaching to the purchaser is fully discussed in State v. Teahan, 50 Conn. 92. That opinion concludes with these words:

"The purchaser of liquor, by his offer to buy, induces the seller of the liquor to make the sale; but he cannot be said to assist him in it. The whole force, moral or physical, that went to the production of the crime as such, was the seller's."

In Lott v. United States, 205 Fed. 28, C. C. A. 9th Circuit, the court said:

"It is uniformly held that statutes prohibiting the sale of intoxicating liquors are directed against the selling only, and that the offense is committed only by the vendor or some one who aids him in selling, and the purchaser, and those who aid him in the purchase, are not guilty of aiding or abetting in the commission of the offense."

The essential requirement of conspiracy is clearly set forth by the Circuit Court of Appeals for the Second Circuit, in the case of Lucadamo v. U. S. 280 Fed. 653.

There the court shows that knowledge, acquiescence or approval of the act, is not sufficient. To constitute a conspiracy, the evidence must show an intentional participation in the attempt to commit the offense.

The lack of active cooperation between the seller and the buyer, generally speaking, is well stated in the case of State v. Teahan, 50 Conn., supra, in which the court says:

"We are satisfied that the purchaser is not an abettor of the offense within the meaning of the statute. The abetting intended by it is a positive act, in aid of the commission of the offense—a force, physical or moral, joined with that of the perpetrator in producing it.

"The abettor, within the meaning of the statute, must stand in the same relation to the crime as the criminal—approach it from the same direction, touch it at the same point. This is not the case with the purchaser of liquor.

"His approach to the crime is from the other side; he touches it at wholly another point. It is somewhat like the case of a man who provokes or challenges another to fight with him.

"If the other knocks him down, he has induced, but in no proper sense abetted, this act of violence. He has not contributed any force to its production. He touches the offense wholly on the other side.

"The purchaser of liquor, by his offer to buy, induces the seller of the liquor to make the sale; but he cannot be said to assist him in it. The whole force, moral or physical, that went to the production of the crime as such, was the seller's."

From the foregoing considerations we are of opinion that a sale of liquor involving such transportation as is necessary to effect the delivery to the purchaser, does not subject the purchaser and seller to an indictment for conspiracy to transport. The judgment is therefore reversed.

Buffington, J., dissents.

Decree Reverses Lower Tribunal

Purchaser Is Adjudged to Have Violated No Law in Transaction With Purveyor

ST. LOUIS POST-DISPATCH

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THE POST-DISPATCH PLATFORM

I know that my retirement will make no difference in its cardinal principles; that it will always fight for progress and reform, never tolerate injustice or corruption, always fight demagogues of all parties, never belong to any party, always oppose privileged classes and public plunderers, never lack sympathy with the poor, always remain devoted to the public welfare; never be satisfied with merely printing news; always be drastically independent; never be afraid to attack wrong; whether by predatory plutocracy or predatory poverty.

JOSEPH PULITZER.
April 10, 1907.

LETTERS FROM THE PEOPLE

Thinks Farmers Are Tricking the Government.

To the Editor of the Post-Dispatch:

THE high and mighty gods, who may be presumed to sit on gilded thrones somewhere in interstellar space, must occasionally be convulsed with mirth over man's puny efforts to hasten the millennium in a world where greed and selfishness are rampant. How nobly the farmers responded to the Farm Administration's desire to reduce the pig crop may be seen in the recent scramble for the premium price offered for hogs at the various markets. It is notable, however, that only a very small per cent of this influx was sows. There were offered pigs so small that many of them must ignominiously be converted into either tankage or fertilizer; this former to be used to produce bone and muscle on more pigs, whereas much of the latter will likely be used to fertilize a corn crop by means of which fat may be added to the bone and muscle produced by the tankage.

The thrifty farmers see in the efforts of the Farm Administration an advance in hog prices. They are not to be caught short on these lowly animals. Hence the retention of the sows, to which we may expect there will be added an unusually large number of newly bred gilts this fall, all of which, no doubt, will result in a larger pig crop in the near future than if the Government had made no effort to curtail the crop.

How nobly the farmers will respond to the Farm Administration's desire to curtail the wheat crop is not yet known. But we may expect that it will result in double or triple acreage planted by those who lack the patriotism to support the New Deal, thus perhaps more than nullifying the limitations placed on others who agree to reduce their crop.

It is reported that the cotton growers, who were reimbursed by the Government for destroying a part of their crop, have used (or are using) the greater part of this reimbursement for fertilizer to increase the yield of the crop left to them, from which is now expected a larger production than if there had been no destruction of the crop.

Coming events cast visible shadows before these events occur. Are the Farm Administrators' efforts to be futile? Are the results so far obtained straws in a mild wind that later may develop into a gale of colossal blunders?

Marceline, Mo. ARTHUR JOBSON.

Arthur Brisbane, in his column of Aug. 22, made a statement similar to the report this writer mentions, that the cotton growers were using the Government payments to buy fertilizer. A week later, Mr. Brisbane withdrew his charge, saying he had been advised that "they couldn't do it if they wanted to . . . because the Government hasn't yet given them their money."—Editor's note.

Prediction.

To the Editor of the Post-Dispatch:

HENRY is not going, he is coming. Watch his smoke!

THE COLONEL.

Birth of the Skyscraper.

To the Editor of the Post-Dispatch:

SO far as I am aware, no St. Louis publication has pointed out the remarkable tribute to the historic importance of the Wainwright Building, Seventh and Chestnut streets, contained on pages 85 and 86 in the book entitled "Modern Architecture, Being the Kahn Lectures for 1930, by Frank Lloyd Wright," published by the Princeton University Press, 1931. The tribute is as follows:

Our peculiar invention, the skyscraper, began on our soil when Louis Sullivan came through the door that connected my little cubicle with his room in the Auditorium Tower, pushed a drawing board with a stretch of manila paper upon it over onto my drafting table, and, without a word, went back into his own room and closed the door behind him. There it was, in delicately penciled elevation.

I stared at it and sensed what had happened. It was the Wainwright Building—and there was the very first human expression of a tall steel office building as architecture. It was tall and consistently so—a unit, where all before had been one cornice building on top of another cornice building. This was a greater achievement than the Papal Dome, I believe, because here was utility become beauty by sheer triumph of imaginative vision. Here out of chaos came one harmonious thing in service of human need where artist-ingenuity had struggled with discord in vain. Structural walls were vertical screens, the whole emphatically topped by a broad band of ornament fencing the top story, resting above the screens and thrown into shade by an extension of the roof-slab that said, emphatically, "finished." The extension of the slab had no business to say "finished," or anything else, so emphatically above the city streets, but that was a minor matter soon corrected.

The skyscraper as a piece of architecture had arrived. . . . The Wainwright Building has characterized all skyscrapers since, as St. Peter's characterized all domes, with this difference: there was synthetic architectural stuff in the Wainwright Building, it was in the line of organic architecture —St. Peter's was only grandiose sculpture.

TYRRELL WILLIAMS.

Lessons of the Missouri Insurance Mess

Even more tragic than the collapse of the Missouri State Life Insurance Co. would be Missouri's failure to profit by the lessons it teaches. It was an epidemic of insurance abuses that led to the celebrated Armstrong investigation in New York in 1906, which did much to stop insurance racketeering east of the Alleghanies. The Armstrong investigation, brilliantly conducted by Charles E. Hughes, had the outstanding effect of exposing the unholy alliances that had existed in the interlocking control or management of life insurance companies, banks, investment houses and other financial organizations. It was interlocking control that wrecked the Missouri State.

* * *

When the notorious Southern promoter, Rogers Caldwell, obtained control of Missouri State, a company in which policyholders had insured themselves for nearly a billion dollars was put on the trail to insolvency. Caldwell, with fingers in a thousand financial pies, wanted the Missouri State as a dumping ground for securities in other enterprises. He was not interested in insurance as a business, but as a treasury upon which he could draw for his financial schemes.

In 1930, the Caldwell type of leadership was clearly illustrated by a deal he caused the Missouri State's executive committee to pass. His investment house, Caldwell & Co., had borrowed a large sum of money from its own bank, the Nashville Trust Co., putting up as collateral Missouri State stock at a valuation of $75 per share. The bank examiners, pointing out that Missouri State stock had a current value of about $30, demanded payment of the loan or other collateral. To extricate himself from this difficulty, Caldwell proposed:

(1) That the Missouri State buy for $4,000,000 in cash $4,000,000 (face value) in securities from the Nashville Trust Co.; (2) that the Caldwell-controlled Inter-Southern Life Insurance Co. of Louisville, Ky., sell these securities for $4,000,000 in cash to the Nashville Trust Co.; (3) that the Inter-Southern then take for these securities Caldwell's 148,050 shares in Missouri State.

Why this ring-around-the-rosy? The joker was that, by shifting securities and cash in this manner among the various companies, Caldwell was able to get more cash than his collateral was worth. The Missouri State stock at a valuation of $75 was not acceptable to the bank examiners, so it was charged to the Inter-Southern. The $4,000,000 (face value) in securities to go to the Missouri State were, in reality, worth only about $2,000,000.

This proposal was made five days after the Missouri State had been examined by the Missouri Insurance Department and 12 other state departments, obviously in the hope that it would not be detected for a considerable period. Wind of it was wafted, however, to the Missouri department, which was able to stop the deal after it was half consummated. On the original proposal, Missouri State stood to lose a cool $2,000,000 but, due to the interruption, it lost from $500,000 to $1,100,000.

After collapse of the Caldwell bubble, the battleground for control of the Missouri State shifted to the Inter-Southern. M. J. Dorsey and associates, who controlled the Security Life of America at Chicago and the Northern States Life of Hammond, pledged their stock in these companies with Hallgarten & Co. of New York for a loan to buy the Inter-Southern. It was a typical example of insurance promotion by which stocks of various companies are interlocked, making it possible for promoters to widen their holdings with little or no investment of their own. The Dorsey combine's house of cards soon collapsed, carrying with it the Security Life, the Northern States Life and the Inter-Southern.

Next on the scene appeared Julius H. Barnes, Frank S. Cohen and A. M. Greenfield. They organized the Kentucky Home Life Insurance Co. and took over the Inter-Southern, with its Missouri State holdings, in a re-insurance deal. Greenfield put in $750,000; Barnes and Cohen, $250,000. Within a year, Greenfield sold out to the other two for $1,350,000, a cool profit of $600,000. Incidental in the purchase of the Kentucky Home Life was the necessity for a loan of $500,000 by the Barnes-Cohen group. This loan was the basis of an involved transaction.

The loan was obtained from the First National Bank of St. Louis, with the Mississippi Valley and Boatmen's banks participating. Collateral for the loan was stock of the Philadelphia Life, the United Life & Accident and the Kentucky Home Life, which the Missouri State directed be purchased for its account. Three of the directors of Missouri State—Messrs. Nardin, Nims and Watts—were also directors of the First National Bank. The net result of the transaction was that the Barnes-Cohen interests bought into the Missouri State Life with its own money.

* * *

We go at length into these transactions to show the need for divorcing the insurance business from other financial enterprises and from the situation by which one insurance company may invest in the securities of other insurance companies. The latter is specifically permitted by Missouri law. There is, of course, no good reason on the surface why one insurance company should not invest in the stock of another. As a matter of fact, several of the great fire insurance groups are organized on this basis. It is perfectly proper morally and perfectly practical from a business standpoint—within limitations.

The breach of morality and the ensuing business instability result when Company A owns stock in Company B and Company B, in turn, owns stock in Company A. This produces a pyramiding of assets. That is, the same dollar is counted once in the assets of Company A and, for the second time, in the resources of Company B. This is the reason the $500,000 loan which the Missouri State Life guaranteed, and the proceeds of which were used to purchase control of the Kentucky Home Life, was iniquitous, because the Kentucky Home Life owns about 29 per cent of the Missouri State's stock. A Federal Judge, Charles I. Dawson, of Louisville, Ky., former director of the company, went further, denouncing the loan as illegal, and resigned from the board when the company refused to rescind it.

If statutory law, to be on the safe side, had prohibited entirely the investment of an insurance company in the stocks of other insurance companies, it is reasonable to infer that the Missouri State would not have failed. Caldwell could not have forced the Inter-Southern to buy the stock of the Missouri State, nor could he have caused, as he did, the Missouri State to buy control of the Southwestern Life Insurance Co. of Dallas for $7,300,000. That stock has now been written down to approximately $4,500,000 and Missouri State has $1,600,000 still to pay on it.

Moreover, if this trafficking in insurance stocks had been forbidden, the publicity following the Caldwell and Dorsey deals would have been averted. This publicity, outlining the various interlocking transactions that had occurred, shook public confidence in Missouri State and caused a run by policyholders, who withdrew altogether, in the form of loans and cash surrender values, some $48,000,000 from the already shaky structure, further contributing to its eventual collapse. Those who criticise the public for succumbing to "hysteria" on such occasions overlook the fact that it is primarily the management which is responsible for such runs, and the public is merely attempting to salvage whatever of its own money is left after the higher-ups serve their own interests.

* * *

Another cause of the rotten mess in which the Missouri State finds itself is the whittling away of safeguards in Missouri's insurance laws by highly paid lobbyists, who have been writing these laws in the interest of unsound insurance practices. In most cases, the members of the Legislature are entirely unaware of what is happening and the Missouri Insurance Department, which should understand the significance, either does not do so or fails in its duty to policyholders of blocking unsound legislation.

We have in mind, for example, Section 5915, Revised Statutes of Missouri, 1929, passed by the Missouri Legislature in 1927. It permits the exchange of "any real estate acquired in foreclosure or in payment of debts in whole or in part for other real estate." It also amends another section in such a way as to force the Superintendent of Insurance to accept the "other real estate." These changes in the law permitted insurance companies to jump neatly from the frying pan into the fire.

Prior to 1927, insurance companies had seen the value of farms on which they held first mortgages dwindle in value to the point where they were required to take over the farms; the farms had become worth less than the amount of the first mortgage; the insurance companies, in attempting to operate the farms to protect their investment, pay their own interest charges and taxes, found themselves losing from 2 to 4 per cent. They then sought the foregoing changes in the law, permitting them to exchange such farm lands for equities or second mortgages in city real estate, chiefly apartment houses.

At the outset, this resulted in large profits, changing losses of from 2 to 4 per cent into gains of as much as 10 per cent. However, with the tremendous over-building of apartment houses and the advent of the depression, the companies found themselves in a worse position with apartment house second mortgages than they had been with the prime farm paper. Instead of being able to acquire them by outright ownership, as they had the farms, they were forced to protect, if they could, their equities, subject in many instances to liens on which it was difficult to meet requirements.

It is fundamental that insurance company funds should be invested in first liens, and, although the record in the case for a while seemed to justify the change in policy, the final consequence has been once more to prove that first liens should be the extent of insurance company investments in real property.

In this connection, it may be pointed out that the Legislature amended the life insurance mortgage law to provide that insurance companies might increase the amount of their loans on real estate from 50 per cent, the established figure for many years, to 66 2-3 per cent, which, of course, reduced the margin of safety when real estate values began to crash. The facts and figures of the depression, in which collapse of real estate has been one of the blackest spots, are more than sufficient to cause the Legislature to restore the 50 per cent proviso.

In any legislative program for insurance reform, careful consideration should be given to the enactment of a compulsory deposit law, in effect now in only a very few states. Such a law would force insurance companies to deposit their reserves with the Insurance Department. Our law at present makes this optional. One Missouri insurance company—with a national reputation for soundness and good management—deposits securities representing the legally-required amount of its capital, and its entire reserve, ranging in the neighborhood of $42,000,000, with the Missouri Insurance Department. Missouri State ceased this practice some years ago.

* * *

We have discussed what the Missouri Insurance Department referred to as the "frightful mismanagement" of the Missouri State and the need for legislative changes to curb insurance promotion and dangerous insurance practices. We have yet to refer to one of the most crying needs of Missouri, namely, an insurance department adequately captained and staffed, and capable of performing the exacting and intricate duties devolving upon it. In the national insurance field, the Missouri Insurance Department has a bad reputation. It has been accused—and we are referring to the administrations of the past 20 years—of everything from stupidity to incompetence.

For years the Insurance Department has had at its head no man who, previous to his appointment, had attained any real status in the insurance world. The superintendency has been a refuge for men who, perhaps, had some ax to grind or represented some particular branch of insurance, or simply wanted a job. The sincerity of some of the superintendents is unquestioned; likewise, their efforts at honest and capable administration. The trouble has lain in the lack of prior experience, courage and other qualifications needed to do the job well. In some cases, even assuming a superintendent to be all he should have been, the debris left by his predecessor was so mountainous as to overwhelm him. In the assistantships, with some exceptions, it has been a post-graduate school for young men who intended to learn, at public expense, the involved business of insurance, and then to go out into private practice with the prestige of public office behind them.

Obviously, a state department of such importance should be neither a refuge for unknown job hunters, nor a school for youths. It should command men of outstanding importance in the insurance world. It has been suggested as one solution that an insurance commission, with overlapping terms to insure continuity of policy, should be created, to consist of (1) an actuary who has been a member of the American Institute of Actuaries for at least 10 years (in itself a reasonable guarantee); (2) a lawyer who has been admitted to Missouri practice for at least 10 years; (3) a layman with 10 years' insurance experience.

Insurance examiners should be selected on a civil service basis, subject to removal only for cause and independent of the fortunes of political parties. The history of the International Life, Missouri State and other companies indicates the wisdom of a resident examiner in each company, if a compulsory deposit law is not enacted, the examiners to be transferred at frequent periods to prevent too long and too close association with insurance company officers.

It has been estimated by persons familiar with the Missouri insurance situation that it would take 15 years to give it a thoroughgoing renovation and to bring the State's standards up to those of other states, including changes in Missouri law and in supervision. Other insurance authorities say that Missouri's only legal need is enforcement of the law that those who steal must go to the penitentiary; and that the real remedy lies in human character.

In any event, we can go on no longer permitting the exploitation of Missouri companies, the purchase of cats and dogs with policyholders' money and all of the rottenness which now and then emerges when it can no longer be contained. We suggest to Gov. Park that the State needs a rousing investigation, similar to the Armstrong investigation in New York, to be conducted by a Missourian of outstanding ability, and to be followed by such legal and legislative action that will make Missouri respectable in the insurance world.

"GOING, GOING, ——"
—From the Philadelphia Evening Public Ledger.

An Economist Surveys the New Deal

Real prosperity, says banking authority, exists when whole population by honest work can earn enough to enjoy the ordinary comforts of life; if greed prevents employers from co-operating under the NRA, it will destroy itself; unsound banking and dishonest practices among security dealers made new statutes necessary.

Dr. Ivan Wright, Professor of Economics, University of Illinois, in Illinois Journal of Commerce.

THE Industrial Recovery Act seems a master idea of co-operation. The extent to which it will work depends entirely upon full and honest co-operation. If employers fail to co-operate and for their own greed seek excessive private profits instead of spreading employment and consumer income, they will destroy their own hope of prosperity and that of the country.

The Recovery Act is an experiment, and we are in such a state of economic chaos that we must experiment to get out. Therefore, this is one effort. We hope it succeeds. Its soundness depends on the honesty and co-operation of the captains of industry.

The Banking Act has certain features that may be regarded as unsound, but these are more or less temporary, provided recovery in general business comes along in due course. The guarantee of deposits would not be approved as a permanent measure of sound banking but as a temporary measure it restores confidence. Therefore, as a temporary measure it may be justified.

The divorcement of banks from security companies and otherwise stricter legal supervision of banks was justified. There was nothing sound in our old system of department store banking. Confidence was lost in banks because of the mismanagement of bank investments and the sale of worthless securities through banks to customers.

When banks carrying a national or state charter are worse offenders in selling the public bad securities than bucket-shops, any effort to correct this plundering of the people's savings is sound.

These remarks about banks may be applied to the Securities Act. The National Securities Act was brought on by the investment bankers, the so-called underwriting brokers, members of the leading stock exchanges, and the affiliate security companies of banks.

In recent years it is estimated that, through greed, ignorance, and plain dishonesty, the public has been sold more than 25 billion dollars' worth of worthless securities by these chartered and reputable companies, firms and corporations.

It is indeed sound and high time that the Government did something to protect the people against their own ignorance and against being the prey of these reputable dealers who so easily acquired the public confidence.

It is a severe criticism of our bankers, investment bankers, brokers and their associations that these groups did not correct this evil practice in this business. If we cannot depend upon the investment bankers and brokers to maintain a high-class business among themselves, the Government must step in or capitalism will fall. It is just possible that these two acts have done more to preserve capitalism in this country than any national legislation for a good many decades.

The foundations of capitalism are confidence, in thrift, savings, bank deposits, bonds, insurance and the like. Because of economic mismanagement, the American people had justly lost confidence in these fundamentals of capitalism. If these acts can restore confidence and build up a system deserving confidence, capitalism ought to sing the praises of this legislation.

It may be that these acts are too severe or they may have to be changed to meet conditions, but let us be ready to change them and make them fit the needs of our economic society. Then they will be sound.

Needless to say, few orthodox economists have any confidence in efforts to raise prices either by fixing prices or by manipulating the currency or by temporary agreements. Nor is there any confidence in spending the public's money to carry on unproductive enterprises that will not pay for themselves out of income.

The first essentials are a sound money, a price level built on supply and demand where there is freedom of competition, and the free exchange of goods between countries, so that each country can engage in producing goods that it can produce cheapest and buy those that it can purchase for less than it would cost to produce them in the buying country.

Real prosperity exists in that country that produces the largest amount of goods and services at the lowest cost prices, and so distributes those goods and services among the whole population until everyone has the ordinary comforts and luxuries of life and can earn enough at honest work to maintain this standard of living.

That is what we are seeking.

The American Bar on Trial

From the Detroit News.

THE lawyers of America make the laws; they predominate in the Legislatures. They enforce the laws; they man the courts, they do the pleading. Therefore, they are responsible not only for the laws, but for all the processes or legal procedure. Couple this with the fact that there is more crime in the United States than in any other civilized country on the globe, and what have you? Unanswerable proof that there is something rotten in our legal system, which it is the business of reputable lawyers to discover and to end.

Day after day, the public witnesses exhibitions which make it more and more cynical regarding lawyers and the law. A Judge releases two men found committing a felony, because, forsooth, their "constitutional rights" have been infringed. A poor man is caught, tried, convicted and sentenced in the course of a few days; a wealthy racketeer can escape conviction almost as long as he has money to pay his expensive counsel.

The poor man's jury is picked in five minutes. The lawyers for the rich criminal can spend days examining prospective jurors, in the hope that, by getting a jury of the most ignorant and incompetent talesmen available, they can defeat justice. Who but the lawyers have brought the jury system into contempt? Who but the lawyers have made so many of our courts suspect?

And what do the lawyers do about it? They have their bar associations, local, state, national. These associations have their committees on membership and procedure. Do these committees ever meet to discuss the conduct of specific attorneys? Seldom. Rather than take action, they shut their eyes to the honor of their profession.

Worse, they knowingly trail justice in the mud, and make our American form of it a hissing and a by-word in countries where the bar has had courage enough and pride enough to put the legal shyster and shark out of business; to make juries honest and efficient, and to keep the bench, especially the criminal bench, away from any suspicion of alliance with outlaws and enemies of the people.

There are plenty of honest, reputable lawyers in the legal profession of the United States. They know, or should know, where the trouble lies. They know, or should know, why there is more crime here than in Canada, and why it is so hard to punish criminals. They know, or should know, what are the faults in our procedure, why some of our courts are so much more interested in technicalities than in justice, and who the lawyers are who will move heaven and earth, by fair means or foul, to keep their guilty clients from trial if possible, and if they are brought to trial, to avoid penalty for them.

It is high time they did something about these things. The public is very, very tired of regarding the processes of justice as a form of game played by lawyers for reputation or profit. Justice is fundamental. It exists for the protection of the orderly life of the people. The answer lies with the lawyers themselves.

A BOUQUET FROM ILLINOIS.

From the Hillsboro (Ill.) Journal.

MOST editorials are long, ponderous, dull things. Only one or two city papers that we know of have sprightly editorial pages. The Post-Dispatch is the only one in the Middle West, in our opinion, which does. Mr. Hardy, at the Decatur Herald office, is an able journalist and the Herald has some definite policies. But only the Post-Dispatch keeps one forever reading its editorial page —and liking it.