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The Board of Editors wish to call the attention of all subscribers and readers of the AMERICAN LAW REGISTER to the change made in the department of Book Reviews. This department has been given a wider scope, which is evidenced by its title, "Current Legal Periodicals and Book Reviews."

DEPARTMENT NOTES.

AT THE INVITATION of the Trustees of the University, Hon. Mayer Sulzberger, President Judge of Court of Common Pleas, No. 2, of Philadelphia County, delivered an address before the students and alumni of the Law Department on the "Practice of the Criminal Law," which is printed in full in this number of the REGISTER. Immediately after the address a reception was tendered to Judge Sulzberger by the Society of the Alumni of the Department of Law in the rotunda of the Law School Build-

ing. A collation was served. Invitations to the reception were extended by the Society to all the members of the judiciary in Pennsylvania, New Jersey and Delaware and to the members of the Pennsylvania State Bar Association. About four hundred members of the Bar were present. Hon. William B. Hanna, the president of the Society, acted as chairman of the Reception Committee, which consisted of the following members: William Y. C. Anderson, John C. Bell, George Tucker Bispham, Francis H. Bohlen, Joseph H. Brinton, Francis Shunk Brown, John Douglass Brown, Reynolds D. Brown, John Cadwalader, Jr., Francis Chapman, Frederick Lewis Clark, Joseph S. Clark, Henry T. Dechert, Samuel Dickson, Hazard Dickson, John L. Evans, William C. Ferguson, Henry E. Garsed, John S. Gerhard, H. Laussat Geyelin, Charles F. Gummey, Meredith Hanna, Harry S. Hopper, George G. Horwitz, James Collins Jones, J. Levering Jones, Murdoch Kendrick, William Draper Lewis, Charles L. McKeehan, Howard W. Page, George Wharton Pepper, Samuel C. Perkins, Horace Pettit, Eli Kirk Price, Frank P. Prichard, J. Howard Rhoads, Joseph G. Rosengarten, Horace M. Rumsey, Fred J. Shoyer, Jacob Singer, Lewis B. Smith, William H. Staake, Wm. M. Stewart, Jr., John J. Sullivan, Joseph B. Townsend, Jr., Wm. J. Turner, Thomas R. White, Ira Jewell Williams, Sidney Young.

CONSTITUTIONALITY OF THE PENNSYLVANIA LIBEL LAW.—The constitutionality of the new libel act, just approved by the Governor of Pennsylvania, has been attacked on two grounds:

1. It is said to be contrary to certain provisions in the constitution of Pennsylvania guaranteeing the freedom of the press.

2. It is claimed to be special legislation, and for that reason obnoxious to the constitution.

(1.) The seventh section of the Pennsylvania Bill of Rights provides, "The printing press shall be free to every person who may undertake to examine the proceedings of the legislature or any branch of government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every man may freely speak, write and print on any subject, being responsible for the abuse of that liberty." The remainder of the section relates solely to criminal prosecutions for libel, and therefore has no bearing upon the law under discussion, which refers to civil suits for damages only.

The new act makes publishers and editors liable in damages for publishing alleged facts which are untrue, provided they have failed to use due diligence in ascertaining their truth or falsity. The only change is in making publishers liable for damage resulting from a negligent false statement, whether the

statement is libellous at common law or not. Whether damages can result as the natural and probable consequence of a non-libellous publication is a matter which has not been worked out, and which is not to be attempted here. But in any event the only new feature of the law is to create responsibility for a negligent act.

How is this an infringement of the constitution? The first clause quoted says the printing press shall be free and no law shall ever be made to restrain the right of the citizens to examine the proceedings of any branch of government. It is probable that this clause would make impossible a law intended to suppress any publication because of its comments upon public matters, and such was its undoubted purpose. It has been a part of our fundamental law since 1776, when such proceedings were not beyond the range of probabilities. But no one has ever heretofore contended that it meant to exempt a paper from civil responsibility for publishing falsehoods. The publication of falsehoods constitutes no necessary part of the examination of public matters. No stretch of the imagination can make it so. The clause protects publishers and editors in any proper non-libellous comments or opinions they may choose to express, but it goes no further.

As early as 1788 Mr. Chief Justice McKean in *Respublica* v. *Oswald,* 1 Dallas, 319, said:

"What then is the meaning of the Bill of Rights, and the constitution of Pennsylvania, when they declare, 'That the freedom of the press shall not be restrained,' and 'that the printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any part of the government?' However ingenuity may torture the expressions, there can be little doubt of the just sense of these sections: they give to every citizen a right of investigating the conduct of those who are entrusted with the public business; and they effectually preclude any attempt to fetter the press by the institution of a licenser. The same principles were settled in England, so far back as the reign of William the Third, and since that time, we all know, there has been the freest animadversion upon the conduct of the ministers of that nation. But is there anything in the language of the constitution (much less in its spirit and intention) which authorizes one man to impute crimes to another for which the law has provided the mode of trial, and the degree of punishment? Can it be presumed that the slanderous words, which, when spoken to a few individuals, would expose the speaker to punishment, become sacred, by the authority of the constitution, when delivered to the public through the more permanent and diffusive medium of the press? Or, will it be said, that the constitutional right to examine the proceedings of government extends to warrant an anticipation of the acts

of the legislature or the judgments of the court? and not only to authorize a candid commentary upon what has been done, but to permit every endeavor to bias and intimidate with respect to matters still in suspense? The futility of any attempt to establish a construction of this sort must be obvious to every intelligent mind. The true liberty of the press is amply secured by permitting every man to publish his opinions; but it is due to the peace and dignity of society to enquire into the motives of such publications, and to distinguish between those which are meant for use and reformation, and with an eye solely to the public good, and those which are intended merely to delude and defame. To the latter description, it is impossible that any good government should afford protection and impunity."

The second sentence quoted declares that the expression of thoughts and opinions is one of the invaluable rights of man. But the statement of an alleged fact is not the expression of either a thought or an opinion. To print a falsehood is not one of the invaluable rights of man. It is not a right at all. On the contrary, it has never been anything but a wrong. The last clause of the sentence is broader in its terms, guaranteeing the right to speak, write and print on any subject, but the one enjoying this liberty shall be responsible for its abuse. Mr. Justice Mercur in *Barr* v. *Moore,* 87 Pa. 385, 1878, says:

"The liberty of the press should at all times be justly guarded and protected; but so should the reputation of an individual against calumny. The right of each is too valuable to be encroached on by the other. Hence, another part of the section just cited declares 'the free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty.' Thus it appears this right or liberty is not one of unlimited license; but it is restrained by a legal responsibility."

The publisher being responsible for the "abuse" of his liberty, the only question is as to the meaning of "abuse." It must mean either one or two things: Either intemperate comment upon the truth, or the publication of that which is not true. Which of these is it more likely to mean? Surely the latter. Surely any editor would prefer to feel that he is unhampered in his comments, and is responsible only for the truth of that which he alleges than that he could be held responsible for his expressions of opinion only. If this qualification means the latter, and no one will pretend that it means the former, then the constitution has already sanctioned a law like the present. Judge Thayer is clearly of this opinion. He says in *Com.* v. *McClure,* 3 W. N. C. 58, 1876:

"The press, in making statements which reflect upon the personal character and integrity of individuals, are bound to exer-

cise the greatest care and diligence in ascertaining the truth of what they print before they print it. The neglect of that care and diligence is the negligence intended by the constitution. If they print false statements, injurious to the character of individuals, without having exercised such care and diligence, they are guilty of negligence, and are not protected by the constitution. They are, it is true, justified in acting upon reliable human testimony of credible persons, who allege they have knowledge of the facts whch they communicate. All the transactions of life are based upon such testimony. But they must be held to the highest degree of good faith and of care. If this were not so every man's reputation would be at their mercy, no matter how upright and stainless he might be. The constitution is a shield for the honest, careful, and conscientious press. It will not permit itself to be made a cover for malice, or for negligent or malicious slanders . . . ." There is the general declaration, in the first place, that the press shall be free, and that it shall be untrammelled; that nobody shall undertake to prescribe what a newspaper shall publish nor what it shall refrain from publishing; that there shall be no censorship of the press. There is, on the other hand, the counterbalance that they who do publish shall do it upon their responsibility. That responsibility is of a twofold kind.

"If they publish what is false, or if they publish even what is true upon an occasion which is not justified by law, or what is not a privileged publication, they do it upon their personal responsibility, and they may be sued for it in a civil court, or held to answer for it in a criminal court." It is for the legislature to decide whether they shall use all the rope given them by the constitution, as to which I express no opinion.

(2.) The second objection, which was the only one seriously argued by the opponents of the bill or replied to by its supporters, is curiously enough of no validity whatever. It is said that the law applies only to certain of the newspapers of the state excluding others, and hence is special legislation and unconstitutional.

There is a widespread idea that if a law is special, *i. e.*, does not apply to all individuals of a particular class, it is necessarily unconstitutional. Such is not the fact. The seventh section of Article II of the constitution prohibits special or local legislation upon a large number of subjects, including the most common subjects of legislation, but there is not one which by any twist of logic can be construed to include the subject matter of the present law. The inquiry, therefore, as to whether the law does apply to all the newspapers in the state is of no importance, for there is nothing in the constitution of Pennsylvania to prevent the legislature from passing a special law regulating the civil liability of the publishers or editors of newspapers if it sees fit to do so.

The eighth section of the same article provides that where a special or local law is passed publication must be made in the manner provided by law thirty days before the introduction of the bill. The courts, however, have construed this clause, as they have the one requiring three readings on separate days, as directory merely, and hence binding only on the conscience of the legislative body. It cannot, therefore, be inquired into after the passage of the act. *Perkins* v. *Phila.*, 156 Pa. 554, 1893.

Thomas Raeburn White.