Chicago-Kent Law Review

Volume 2 | Issue 7 Article 2

April 1924

Notes

Reuben M. Short

The Chicago-Kent Review

Published Monthly by

Chicago-Kent College of Law
10 N. Franklin Street, Chicago

William G. Wood.. ..Faculty Editor
Helmer Hansen .....Student Editor
D. C. Anderson...Business Manager

Associate Editors

Hermena Deiches Samuel Wallace
H. R. Langer Sidney Kaden
Max Hirsch W. N. Murphy
A. H. Watson

Contributions gratefully received

APRIL, 1924

THE TRANSCRIPT

is now in press. It will be placed in the hands of every student who has paid this semester's incidental fee. If you are not paid in full, better fix it up with Mr. Grover at once.

KENT BASEBALL TEAM VICTORIOUS.

The first game of the season was played on Saturday, April 26, when Kent vanquished the Chicago Bearcats with a score of 12 to 8, the game being played at Chicago and Keeler Avenues. The second game, scheduled for May 3 with the American College of Physical Education, was called off because of wet grounds. A twilight game with this school has been tentatively arranged for.

Following is the present Kent line-up:

Cawley, '24 Behrens, '27 J. F. Hartman, '27	1st B.
Lascelles, '26 Kargman, '26	2nd B.
Quinn, '25 Jacoby, '27	ss.
Bucher, '26	3rd B.
D. Neuman, '25 Rothstein, '24 Canning, '27	P
Paul Kaiser, '26	C.

About twenty men are out for fielders, and as soon as a real work-out can be had some fast fielding in the Kent gardens and at the bat may be anticipated. The team won its first game pitted against a fast west side team, and on wet grounds under adverse weather conditions, showing that we have the proper kind of material.

REUBEN M. SHORT.

The Dartmouth College Case

(The Trustees of Dartmouth College vs. Woodward, 4th Wheaton 518)

Webster's argument was printed in pamphlet form, widely circulated and generally approved. Livingston and Johnson apparently consulted Chancellor Kent sometime during that summer and he endorsed Webster's logic.

On the first day of the February 1819 term Marshall proceeded to read the judgment in favor of the College, five judges agreeing. After reciting the history of the College and describing its charter, Marshall considers one of the contentions of counsel for the University, that not every contract is covered by the clause of the constitution. He admits this and says, "the provision of the constitution never has been understood to embrace other contracts than those which respect property or some object of value, and confer rights which may be asserted in a court of justice." He holds that the College is possessed of such a right; that the trustees, although serving as such without pay, and without interest save as trustees, could assert this right.

He then discusses the question of education, the public interest in it, but denies that it is altogether in the hands of the government, or that donations for the purpose necessarily become public property, subject to the will of the legislature. Then comes his famous description of a corporation and its effects:

"Among the most important are immortality, and if the expression may be allowed, individuality; properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs, and to hold property without the perplexing intricacies, the hazardous and endless necessity, of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities, that corporations were invented, and are in use. By these means, a perpetual succession of individuals are capable of acting for the promotion of the particular object, like one immortal being. But this being does not share in the civil government of the country, unless that be the purpose for which it was created. Its immortality no more confers on it political power or a political character, than immortality would confer such power or character on a natural person. It is no more a static instrument than a natural person exercising the same powers would be. If, then, a natural person employed by individuals in the education of youth, or for the government of a seminary in which youth is educated, would not become a public officer, or be considered as a member of the civil government, how is it that this artificial being, created by law, for the purpose of being employed by the same individuals for the same purposes, should become a part of the civil government of the country? Is it because its existence, its capacities, its powers, are given by law? Because the government has given it the power to take and to hold property in a particular form, and for particular purposes, has the government a consequent right substantially to change that form, or to vary the purposes to which the property is to be applied? This principle has never been asserted or recognized, and is supported by no authority."

He then distinguishes between public and private corporations. He de-

fines the former as those and those only, which exercise political power and he makes the assertion, somewhat startling to modern ears, that a corporation, not exercising political power, can no more be controlled by the legislature, than a private individual, carrying on the same business. The modern assertion of the police power of the state over corporations, has rendered all this portion of the decision entirely obsolete. He then considers the question whether this charter is a contract.

"This is plainly a contract to which the donors, the trustees, and the crown (to whose rights and obligations New Hampshire succeeds), were the original parties. It is a contract made on a valuable consideration. It is a contract for the security and disposition of property. It is a contract, on the faith of which real and personal estate has been conveyed to the corporation. It is then a contract within the letter of the constitution, and within its spirit also, unless the fact that the property is invested by the donors in trustees for the promotion of religion and education, for the benefit of persons who are perpetually changing, though the objects remain the same, shall create a particular exception, taking this case out of the prohibition contained in the constitution.

But although a particular and a rare case may not, in itself, be of sufficient magnitude to induce a rule, yet it must be governed by the rule, when established, unless some plain and strong reason for excluding it can be given. It is not enough to say that this particular case was not in the mind of the convention when the article was framed, nor of the American people when it was adopted. It is necessary to go farther, and to say that, had this particular case been suggested, the language would have been so varied as to exclude it, or it would have been made a special exception. The case being within the words of the rule, must be within its operation likewise, unless there be something in the literal construction so obviously absurd, or mischievous, or repugnant to the general spirit of the instrument as to justify those who expound the constitution in making it an exception."

Story assented and wrote one of the best of his many opinions. Marshall, as usual, cited no authority. Story's opinion bristles with them and he uses one illustration, that unlike most illustrations, is as conclusive as an argument. He says:

"If a grant of land or franchises be made to A, in trust for special purposes, can the grant be revoked and a new grant thereof be made to A, B and C in trust for the same purposes, without violating the obligation of the first grant? If property be vested by grant in A and B, for the use of a college, or a hospital, of private foundation, is not the obligation of that grant impaired when the estate is taken from their exclusive management, and vested in them in common with ten other persons? If a power of appointment be given to A and B is it no violation of their right to annul the appointment, unless it is assented to by five other persons, and then confirmed by a distinct body? If a bank, or insurance company, by the terms of its charter be under the management of directors, elected by the stockholders, would not the rights acquired by the charter be impaired if the legislature should take the right of election from the stockholders, and appoint directors unconnected with the corporation? These questions carry their own answers along with them."

To measure the effect of this case one must consider the conditions of it. Public and private credit were at

a low ebb. Times were hard. Debts have been made a special exception. loomed large and many were the schemes for their direct or indirect repudiation. Legislatures were passing Stay Laws, Insolvent Acts and depreciating bank notes were destroying the obligation of pecuniary contracts. Marshall was a fanatic on the subject of plighted faith, whether public or private. To him a contract was a sacred thing and throughout his long career he sternly held to these views, going in many cases to extremes, from which the court later retired. Immediately following this decision, the states began either by their constitutions or legislative enactments, attaching conditions to the charters of every corporation, so that now almost universally a corporation charter may be amended or repealed. So the sacredness of a corporation charter has almost entirely disappeared. The growing police power of the states now regulates, over-regulates, every corporation, public or private, but the decision was of overwhelming importance to capital in protecting its investment, its security and freedom from political control of chartered companies. Much of the extraordinary financial development of the country for the ensuing half century is due to this great decision.

Our College

The following article was written by Wendell H. Shanner, '25, and first appeared in "The See Kay," published by the Chicago-Kent Chapter of Delta Chi.

We set it forth here as being particularly appropriate to mark the event of Chicago-Kent's move to its new and permanent home.

"It is perhaps invariably true that students, in referring to the period of their school's existence, date its history from the time of its formal organization, when as a matter of fact an educational institution like all other institutions, has its spiritual birth long before it comes into corporate existence. And quite frequently the circumstances surrounding, and out of which the primal flame is struck, constitute the most interesting part of the school's history. The truth of this statement clearly appears in the story of Chicago-Kent College of Law.

In the late seventies—at a time when nearly all lawyers received their legal training in law offices—Chicago entered upon that period of rapid growth so characteristic of cities which, from a commercial and industrial viewpoint, enjoy the advantages of a favorable location and as a very natural accompaniment of this development came an increase in legal work of such proportions that lawyers could no longer give the requisite amount of time to the training of their legal apprentices. In an effort to meet the difficulty which changed conditions had thus created, early in 1880, a number of lawyers held a meeting for the purpose of devising a scheme that would insure proper professional training for the students then studying in their offices.

It was suggested that Judge Thomas H. Moran, who at that time was on the Circuit Court bench, should meet in chambers, this group of students three nights each week. To this, the Judge assented, and after a brief trial of this plan, he found the task too laborious and requested Judge Bailey, who then sat on the Appellate bench, to share the responsibility by taking

the class every alternate week. The plan met with Judge Bailey's approval and so this method of instruction continued until 1886, when the class was organized as the Chicago Evening Law School. Space was rented in the old Methodist Church building at Clark and Washington Streets and here the classes were held until the incorporation of the Chicago College of Law in 1888. The next year, 1889, Judge Bailey, who was a member of the Board of Trustees of Lake Forest University, effected a working agreement between the two schools whereby the Chicago College of Law became the law college of that university.

The advantages of legal study in educational institutions soon became so apparent that an additional school known as the Kent College of Law was incorporated in 1892. The Supreme Court of Illinois very early extended encouragement to the law schools of this state by granting a license to practice law upon presentation of a certificate which could be obtained by two years' study in a college of law. But in 1899 rule 39 went into effect and by its terms required three years of high school work by way of pre-legal preparation and lengthened the time of legal training to three academic years. The natural consequence of this very decided increase in educational requirements for admission to the bar, was a very material reduction in the size of the student bodies of both the Chicago College of Law and the Kent College. The inevitable soon came to pass and in 1900 the two colleges amalgamated to form the Chicago-Kent College of Law. The united college continued to operate under the charters previously granted to the Chicago and Kent colleges until 1907, when the Chicago-Kent College of Law was incorporated as an educational institution not operated for profit.

The year 1904 really marks the crucial period in the development of the college, for at that time there was

adopted a financial and educational policy—the one which still exists and for which we are indebted to our present dean, Webster H. Burke—that has, in the course of twenty years, enabled the college to pay off an indebtedness of $30,000.00 and accumulate $200,000.00 in assets. Briefly the plan is this: The corps of instructors is recruited from the school's successful graduates who are either active practitioners or judges now sitting on the bench. The services of these men as members of the faculty are looked upon as the discharge of a duty which they owe to the school. And that this is the real and not merely the apparent situation will readily be appreciated not only from a consideration of the growth and success of the school, but also from a realization of the meagerness of salaries paid relative to the earning power and professional standing of the men to whom they are paid. Each instructor receives $10.00 for an evening's work of 2½ hours. This is at the rate of $4.00 per hour, an amount that perhaps is equalled if not exceeded by overtime pay of a number of the mechanical trades in the City of Chicago. And the compensation thus determined upon in 1904 has not been increased despite a nearly 50 per cent depreciation in the purchasing power of the dollar. This fact is significant in that it shows the indifference which the faculty displays in respect to compensation for teaching services. Clearly $20.00 per week—$10.00 a night for two nights each week—is no inducement to a judge, receiving a salary of $15,000.00 per year, to remain away from his family two nights each week and regardless of his own personal comfort spend 5 hours in the rather tense, nerve racking labor of teaching. The same may be said with equal truth of those attorneys who have large lucrative practices and yet devote 5 hours a week to work in an evening school.

Of the 7,000 practicing attorneys in the City of Chicago fully 3,000 are graduates of the Chicago-Kent. Of the judges in the Municipal, Circuit, Superior and Appellate benches but slightly less than 50 per cent are graduates of this college. Over 60 principal officers in the very largest banking institutions of this city are numbered among the alumni of the school. But it is not our intention here to dwell upon the achievements of our alumni, and we have enumerated the facts set out above for the purpose of conveying some idea of the service which the school has per-

formed for legal education in this city.

The college offers three different courses, or, more correctly, three different plans, of completing a single course. A student who attends five evenings each week graduates in three years. One attending four nights a week completes the work in four years, and if a student can attend only three evenings a week, the time required for graduation is five years. This flexible plan of instruction has been adopted because of the marked difference in time which students are able to devote to study. Clerks in law offices have practically as much time for preparation as do students in the universities, while many others, as for instance, those who hold responsible executive positions in commercial concerns, have much less time for study and must increase the period of their academic training. The school offers a graduate course of one year which it is believed is wholly unique. The class is organized after the plan of the university seminar and the time is devoted to a study of the fundamental contemporary legal problems. Exactly one-sixth of the time is devoted to a study of the historical phase of the problem and the remaining five-sixths is used in a thorough, comprehensive investigation of the problem's current phases, for it is with this that the practicing lawyer is principally concerned.

At the present time the college is located in its own building, a description of which will appear in a later issue. The Alumni Council is now engaged in an endowment drive for $200,000.00 which will make the school entirely independent of tuition. But this relates to the immediate future only, for before many years have elapsed the college feels certain the endowment will have grown into a half million dollar fund.

It is regrettable that this brief account of the history, purposes and ideals of our school must conclude without an extended account of the unstinted, disinterested and effective labor of those men who wrought so well in the building of a great professional college, but time and space preclude all but the most casual reference to that great lawyer and able dean, Edmund W. Burke, who gave so liberally of both his time and fortune to the end that the college might exert a potent influence in the furtherance of sound, thorough and progressive legal education in the United States.

To his son, Webster H. Burke, our present dean, has fallen the task of presiding over the destinies of the college during the period of its most rapid growth and at a time when the intensification of our industrial and commercial life demand an ever increasing proficiency at the bar. How well his great pride and love for the school together with his marked ability as a lawyer and educator fit him for this exacting task is strikingly demonstrated by such recent changes and developments as the new building, the junior college and the successful initiation of a large endowment campaign.

Is it any wonder that the students of the Chicago-Kent display a conspicuous loyalty to their college?"

BENCH AND BAR

The May number of the Review will contain an account of the founding of a new fraternity to be known as "Bench and Bar."

COUNT de MARCATION.

Judge Horner was explaining the keeping of accounts by chalking up the score on the barn door, and the later bringing in of such a "book" of account as evidence. And then up spake young Bass with the pertinent query, "Judge, supposing a brick wall had been used?" A nomination for the Order of the Fish is said to be contemplated by his classmates.

We understand that J. Burton Baggott, '25, is preparing a book to be entitled "Etiquette in the Automat."

Because of the April number of the Review having been delayed, the usual wit and humor of Count de Marcation will be incorporated in the May issue.

EXAMINATION SCHEDULE.

Second Semester, 1923-24.

May 28—First year, property I; second year, equity pleading; third year, suretyship.

May 29—First year, contracts II; second year, wills; third year, const. law.

May 30—Memorial Day.

June 2—First year, bailments; second year, partnership.

June 3—First year, agency; second year, trusts.

June 4—First year, domestic relations; second year, property III.

June 5—Commencement Day.

Where no examination is scheduled regular classes will be held.

Sec. III of second year will take all examinations at 6:30.

Class Notes

JUNIOR CLASS NOTES.

Because of the lateness of the season and a number of other social events scheduled for the very near future, the idea of a Junior affair has been tabled until this fall. And then of course it will be for us, some of us that is, a Senior affair. This decision was the outcome of the last class meeting, and is no doubt a very wise solution of the entertainment problem. We shall trust Brother Garner to guard closely the financial returns of our late gambol, the visual returns now being but memories of a throbbing moment.

Class notes for the Senior and Freshman classes will be incorporated in the May number of the Review, together with a resume of the year's work of each class.

Fraternity Notes

DELTA CHI.

For the information of our friends and alumni members we wish to announce a change of quarters to 112 North LaSalle Street. Our new rooms, both with respect to the location of Chicago-Kent and the distribution of our downtown members, enjoy the advantage of a more central and more accessible location. A long term lease makes possible a rehabilitation and refurnishing of our new quarters on a scale that we have never before ventured to undertake.

Oscar C. Strom, formerly with Baker, Holder and Schmidt, is now with the Hartford Insurance Company, while Luther M. Hansen, better known as "Smiley," has severed his connection wtih the Chicago Title and Trust Company and has entered the employ of Jacob Glos.

Brother Fred LaMar, who has been in the hospital for the past seven weeks, is again able to assume his duties with the Wabash. Though he still shows the effects of his long stay in the hospital he declares that he feels much better, and that he will soon be with the boys again. This comes as mighty good pre-examination news.

ALPHA SIGMA IOTA

The May number of the Review will contain an account of the founding and organization of the first chapter of Alpha Sigma Iota, one of the late additions to our number of fraternities.

SUMMER SCHOOL

We shall also publish in the May Review an account of the summer school to be held at Kent this summer.

Detroit College of Law *vs.* Chicago-Kent

A dual debate on the question "Re-olved, that the United States should ecome a member of the World Court nder the Harding plan" was held 'riday evening, May 2.

What is believed to be the first radio debate" was held at Station VTAS, Elgin, through the courtesy f its owner, Charles E. Erbstein, a ormer Kent student. Mr. Erbstein ery generously consented to the use f his station for the debate, and the ent affirmative team, Messrs. Stripe, 6, Huber, '26 and Hansen, '25, with homas E. Smullin, '25, as manager, et the Detroit team at WTAS.

Unfortunately the debate was not eard at 10 North Franklin Street by eason of some difficulty with the re-eiving set there, but telegrams from eighboring states were received evi-encing the efficiency of the broad-asting. The only unfortunate part f the debate was that Detroit won by two to one decision, by reason of perior oratory rather than force of rgument. The radio debate proved very interesting one, and credit ust be given to William M. James nd Thomas E. Smullin for their ef-orts in securing WTAS, together ith a vote of thanks to Mr. Erbstein r his generosity.

While the Kent affirmative team as thus talking to the ether at El-in, the Kent negative team was up-olding the negative side of the ques-on at Detroit, whither they had ourneyed the day before. The men who composed this negative team were Allen E. Hoban, '24, Leo Rice, '25 and Eli Langert, '26, with William M. James, '25 as coach and manager.

The debate at Detroit had not been very long under way before it became very apparent that it would be a hotly contested affair. The Detroit men relied chiefly on their oratory, while the Kent men concentrated on argument, thus giving very good illustrations of these two methods of attempting to win a debate. Keen interest was shown at all times by the crowd of over six hundred which filled the Y. M. C. A. Auditorium where the debate was held. The arguments of both sides brought forth repeated outbursts of applause, and this was especially true while the Kent men were speaking.

After an hour and forty-five minutes of debating, featured by some excellent oratory, clever witticisms, and substantial points of argument, the judges decided that the Detroit team was the winner by a two to one decision. Though the verdict of the judges was against our debaters. every student at Kent has reason to be proud of the showing made by the team. Every man on the team did his duty and did it well, as was evidenced by the hearty applause throughout the debate.

Extensive plans for debating this fall are now being formulated, and we have but to wait until that time to see Kent again victorious.