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Article 14

Constitutional Law--Judges--Quorum--Appeal and Error (In re Hudson County, 144 A. 169 (N.J. 1928))

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The Supreme Court claimed inherent power to receive a charge of contempt and enforce execution of its judgment.[1] The majority were of opinion that the Constitution limits the Governor's power to condonation of crimes and that while contempt is an offense it is not criminal in nature and hence beyond the scope of his authority.[2] The Chief Justice, supported by one other judge [3] declared that such conclusion was contrary to his conviction and wholly at variance with decisions of the United States Supreme Court.[4]

Since the framers of the Constitution expressly declared that the power extended to "all *offenses* except treason and impeachment," [5] the dissenting opinion merits careful consideration, if not approval.[6] The offense is one against the State [7] and in a system of government providing for three coördinate branches, the effect of nullifying a check or restraint used by one department upon another is to remove the shield intended for the individual's protection against a tyrannical exercise of power by one or the other of these departments.[8]

CONSTITUTIONAL LAW—JUDGES—QUORUM—APPEAL AND ERROR.—The county of Hudson, New Jersey, applied to the Supreme Court of the state for a judgment respecting the status of its citizens under an Election Law.[1] The matter being of great public importance all the members of the court heard the argument and that tribunal having rendered its decree [2] denying the application the county appealed, giving due notice of its intention to ask for a preference. *Held*, preference denied. *In re* Hudson County, 144 A. 169 (N. J. 1928).

The Supreme Court judges compose part of the Court of Errors and Appeals [3] and since all of them participated in determination of the hearing they are disqualified from taking part in the hearing of the appeal.[4] A constitutional quorum cannot, therefore, he assembled at this time and advancing the cause for argument

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[1] Garrigus v. State *ex rel.* Moreland, 93 Ind. 239; Dale v. State, 198 Ind. 110, 150 N. E. 781 (1926).
[2] Constitution, State of Indiana, Art 5, Sec. 17.
[3] Martin, *C. J.* and Gemmill, *J.*
[4] *Ex parte* Grossman, 267 U. S. 87, 45 Sup. Ct. 332, 69 L. ed. 1115 (1925).
[5] *Supra* Note 2.
[6] State *ex rel.* Shick v. U. S., 195 U. S. 65, 24 Sup. Ct. 826 (1904).
[7] Van Orden v. Sauvinet, 24 La. Ann. 119, 13 Am. Rep. 115 (1872).
[8] *Ibid.* at 121.

[1] A Supplement to an Act entitled An Act to Regulate Elections (Revision of 1920, passed May 5, 1920 [P. L. 1920, p. 615] and the amendments and supplements thereto, passed October 9, 1928 (P. L. c. 291).
[2] 143 A. 536 (Oct. 1928).
[3] Constitution, N. J., Art. 6, Sec. 2, Par. 1.
[4] *Ibid.* Par. 6. See also Gardner v. State, 21 N. J. Law, 557, 558 (1845).

would be futile. "Quorum" means a majority of all the persons described in the constitution,[5] not merely a majority of the "six judges" designated therein. Members of the court may be either lawyers or laymen and the Constitutional Convention has not expressed a desire or intention to have a balanced representation.[6] Disability does not extend to consideration of preliminary motions not involving the merits,[7] nor is the right of appeal given in the Constitution.[8] The Supreme Court has inherent power to sit *en banc* [9] but even if this be denied no objection was made by appellant, so it cannot now complain of such action.

CORPORATIONS—CONSTITUTIONAL LAW—CHARITABLE INSTITUTIONS.—RIGHT TO VOTE.—The management of the Mount Sinai Hospital [1] was intrusted to twelve trustees, so classified that the term of office of one-fourth of their number expired annually,[2] their positions being filled by vote of all the members. By act of the Legislature,[3] this election by popular vote was changed to selection by those trustees who continued to hold office. The constitutionality of this statute was challenged by two members of the corporation.[4] *Held,* the statute is constitutional. Matter of Mount Sinai Hospital, 250 N. Y. 103 (1928).

The right to vote is not *per se* a vested right [5] but the interest which a *stockholder* has by reason of his moneyed investment is,[6] and of this right, courts will not permit him to be deprived.[7] These two men simply paid annual dues, for the nonpayment of which they were liable to expulsion. They had no financial interest in the hospital. Extinguishment of their voting power was not, therefore, a deprivation of property without due process. The state has reserved to itself the right to amend, alter or repeal corporate charters.[8] The change is

[5] *Supra* Note 3 ("* * * the Chancellor, the justices of the Supreme Court, and six judges, or a major part of them").
[6] *Supra In re* Hudson County at 172.
[7] *Supra* Note 4, Gardner v. State; Engle v. Cromlin, 21 N. J. Law 561 (1845).
[8] Penna. R. R. Co. v. National Docks Ry. Co., 54 N. J. Eq. 647, 35A. 433 (1896). But see the concurring opinion of White, *J.*, in instant case at 176.
[9] *Supra* Note 6 at 173.

[1] Incorporated in 1852 under a general act (L. 1848, Ch. 319).
[2] Laws 1857, Ch. 651.
[3] Laws 1925, Ch. 17.
[4] U. S. Const., 14th Amend., Sec. 1.
[5] Matter of Morse, 247 N. Y. 290, 304, 160 N. E. 374 (1928); Metcalfe v. Union Trust Co., 181 N. Y. 39, 44, 73 N. E. 498 (1905).
[6] Lord v. Equitable Life Assur. Soc., 194 N. Y. 212, 87 N. E. 443 (1909); Davis v. Louisville G. & E. Co., 142 Atl. Rep. 654 (1928).
[7] *Ibid.*
[8] N. Y. Const., Art. VIII, Sec. 1; Pratt, Inc. v. City of New York, 183 N. Y. 151, 162, 75 N. E. 1119 (1905).