

RECALL DISCUSSED BY LAWYER

NOTHING GOOD FOUND IN IT BY LEGAL LIGHT.

Comprehensive Review of What Judicial Recall Really Means.—Famous "Declaration to the Mob".

By a constitutional amendment, passed by the people at an election held on the 1st day of June, 1908, it is provided that "every public officer in Oregon is subject, as herein provided, to recall by the legal voters of the state or of the electoral district from which he is elected," and the same amendment provides, among other things, that "such additional legislation as may aid the operation of this section shall be provided by the legislative assembly," etc., which leaves the question as to whether the amendment is self-executing or not one of doubt, in regard to which lawyers disagree.

The question which I desire to discuss in this article, is the propriety of having a law providing for the recall of judges, since that seems to have become a national question. Section 3, article 1, of the constitution of the United States provides, among other things, that the senate shall have sole power to try all impeachments, and that judgment in such cases shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

Section 6 of article VII of the state constitution of Oregon, provides that "public officers shall not be impeached, but incompetency, corruption, malfeasance or delinquency in office may be tried in the same manner as criminal offenses and judgment may be given of dismissal from office, and such further punishment as may have been prescribed by law."

Section 2043 of Lord's Oregon Laws provides, "If any officer of this state, or of any county, town or other municipal or public corporation therein, other than governor, justices of the supreme court, or members of the legislature, shall wilfully and knowingly charge, take or receive any fee or compensation, other than that authorized by law, for any official service or duty performed by such officer, or shall wilfully neglect or refuse to perform any duty or service pertaining to his office, with the intent to injure or defraud anyone, or the manifest hindrance or obstruction of public justice or business, whether said injury, hindrance or obstruction was particularly intended or not, such officer, upon conviction thereof shall be punished by imprisonment in the penitentiary not less than six months nor more than one year, or by imprisonment in the county jail not less than three months nor more than one year, or by a fine of not less than \$50.00 nor more than \$500.00, or by dismissal from office with or without either or any of such punishments."

Therefore, it is apparent that there

is already provided by law an adequate and sufficient punishment of any and all officers with the possible exception of judges of the supreme court and members of the legislative assembly, and which could be extended to them under the provisions of section 6 of article VII of the state constitution by an amendment of section 2043 of Lord's Oregon Laws, quoted above, making it applicable to all officers, and which would be just as effective as the recall, and in which the matter could be determined in a dignified manner, giving the accused an opportunity to be heard and to make a defense, of which privilege he is deprived under the recall method, and under which he is deprived of making any defense or of having any proper tribunal pass upon the question of his guilt or innocence, which would be tantamount to depriving a man of the right to a trial by jury.

"There have been times in the past, where there existed a crime that sapped the very foundation of the law—a crime that festered and gangrened in the God-defying action of those into whose hands for a time was committed the administration of public justice—a crime so baleful in its influence and consequences, so towering in its guilt, as to almost bury in insignificance every other offense—that crime was judicial murder." It existed when juries convicted persons of capital offenses in violation of law and in defiance of evidence, under direction of judges whose office it was to convict such persons as those to whom they owed their appointment desired convicted; wherein, if they failed, they were recalled by the power that had placed them upon the bench. If our judges are to be governed by public sentiment or the convulsions into which a community may be thrown when some crime has been committed, some unfortunate person has been suspected and a victim is demanded and the judge must see that he is convicted, or take the chances of the multitude recalling him, what would be the result? Judges of weak natures are apt to frame their instructions and shape their judicial conduct in such manner as to secure the conviction of the accused, although he may be innocent of the charge, rather than face the humiliation of being made subject to the recall at the hands of the excited multitude.

How natural it is for the press and the populace, when some crime has been committed and some unfortunate person has been suspected, without any foundation therefore in fact, to proclaim his guilt, and demand his conviction; and if the judge upon the bench must listen to and be governed by the public outcry and shape his judicial conduct accordingly, or face the indignation of the multitude, laboring under the excitement of the occasion, how many of them will say, like Lord Mansfield in his "Declaration to the Mob," while of the Court of King's Bench, "I will do my duty unawed. What am I to fear? That lying scandal from the press, which daily coins false facts and false motives; the lies of calumny carry no terror to me. I will not do that upon this occasion which my conscience tells me is wrong, to gain the huzzahs of thousands, or the daily praise of the papers which come from the press. I will not avoid doing that which I think is right, though it should draw upon me the

whole artillery of libels—all that falsehood and malice can invent, or the credulity of a deluded populace can swallow—the threats go farther than abuse—personal violence is denounced. I do not believe it, but I have set my mind at rest. The last end that comes to a man never comes too soon, if he fall in support of the law and liberty of his country. Such shock, too, might produce public good. It might awake the better part of the kingdom out of the lethargy which seems to have benumbed them, and bring the mad part back to their senses, as men intoxicated are sometimes stunned into sobriety. Once for all, let it be understood, that no endeavor of this kind will influence any man who at present sits here. If they had any effect, it would be contrary to their intent; leaning against their impression might give bias the other way. But I hope and know that I have fortitude enough to resist even this weakness. No libels, no threats, nothing that has happened and nothing that can happen, will weigh as a feather against allowing the defendant, upon this and every other question, not only the whole advantage he is entitled to from substantial law and justice but every benefit from the most critical nicety of form which any other defendant could claim under like circumstances."

We cannot but admire the integrity and courage of Lord Mansfield, in this "Declaration to the Mob," in reversing the outlawry in the Wilkes case, in 1766, but at the same time we shudder when we think what the result might have been had Lord Mansfield been a weakling, or had he been subject to the "judicial recall!"

How many Mansfields have we upon the bench today, and how many men are there with manly instincts who will desire to assume the bench, realizing that they must shape their judicial conduct to suit the whims and caprices of the public, rather than their own ideas and knowledge of the principles of law and justice, or face the humiliation of being recalled for alleged misconduct in office, with the attendant worry and expense of an additional campaign, and with possible defeat and want of vindication staring them in the face?

Again, why are men learned in the law of the land selected to sit in judgment in matters pertaining to legal jurisprudence? Why not select a farmer, mechanic, artisan, laborer or some other person who knows nothing about the science of law? If the index to a decision is to be the pulse of the public, why not have a doctor of medicine upon the bench? Being familiar with the matter of feeling pulses, he could ascertain the pulse of the public better, perhaps, than anyone else and would be as apt to know what the multitude wanted as the most learned lawyer. The judge is selected on account of his learning, experience and peculiar fitness to apply the law to the facts in any given case, but if the multitude are to determine the question for him, why not have the multitude stand up and take a vote on the question of whether or not you are to be executed.

Instead of having the blindfolded Goddess of Justice, emblematic of the principle that justice is to be meted out to all alike, even to the humblest and most obscure citizen, without reference to the question as to who they are or from whence they came, or what position they occupy in society, why not emblazon over the sanctum of our judges, the word "recall," that it might be a constant reminder to the court that his decision must be in accordance with public sentiment or the recall would be invoked against him?

There is another objection to the recall, which is that no one would know what the law was, since in one case, if public sentiment demanded it, the guarantees of the state and federal constitutions might be upheld and in another case of the same kind, because it was unpopular, the decision would be the other way, and this applies particularly to the proposition of the recall of judicial decisions.

If the popular will or the majority are to determine and decide case, decisions must of necessity always be in favor of the majority, in which cases what chance would the obscure man have, or the man who happened to be in the minority, so far as public sentiment was concerned, even though he be right. Might does not always make right. The majority are not always right; if they were we would have no reforms, as the agitators of reform are always in the minority at the beginning.

Again, politics would enter largely into the matter of the recall of judges; if the recall were invoked against a judge, a few enemies in his own party with the combined votes of the opposing political party would often be sufficient to unseat a judge, whether right or wrong. J. S. MEDLEY.

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TRIALS MET DURING RECENT REVOLUTION.

Letter Written by One Who Was on the Spot During the Uprising.

The following printed copy of an interesting letter written at Kutien, Fuhkien, China, by T. H. Cole, M. D., a missionary, has been received by Mrs. C. S. Hefty, being sent her by her daughter, who is also a missionary in the Orient:

A letter from our Treasurer in Foochow, dated Oct. 31st, '11 informed us that Acting-Consul Thompson had notified him to inform all missionaries not to go on itinerating tours and to be ready to be called in to Foochow at any time. The Consul had wired for a gunboat. That matters were rapidly coming to a crisis in Foochow.

A letter of Nov. 9th informs us that fighting began in Foochow that day at 4 a. m. The Manchus had set fire to a part of the city between themselves and U Hill on which the rebels had planted their battery.

A letter of the 10th, states that at 10 a. m. 800 Manchu troops surrendered. The rebels under General Sung had the upper hand but that the Tartar General

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The SENTINEL

had not been located. A band of the Manchus had got to Nan-tai island—this is three miles from the walled city but built up between—and had started fires, but thirteen of them were caught in one band, lead to the drill ground—just a couple of minutes away from where I am writing—and there summarily shot and afterwards their bodies slashed in a gruesome manner as a warning. A few smaller bands were also caught and they were too quickly disposed of. Foreigners were patrolling their own property and blue-jackets from the Torpedo Boat Destroyer Bainbridge were also on guard duty.

From that date until we arrived in Foochow, Sunday afternoon the 19th of Nov. we were in the dark as no mail came to us. We found out that an unauthorized person had ordered the mail of all our American missionaries to

be held. You may imagine what uneasiness this blunder caused us.

On Sunday the 12th, the English Mission in Kutien received a wire that had been brought by messenger from Cui-kau, the nearest telegraphic station, twenty-seven miles across the mountains and a day's journey. This ordered them into port. They were not pleased to leave the peace of Kutien, to go to Foochow, where the fighting was on and armed civilians with blue-jackets were on guard duty. On Tuesday night, the 14th of Nov. a special messenger from Foochow got to us with a letter signed by Lieut. Root in charge of the Military forces of the U. S. and Consul Thompson asking us to move in as soon as possible. We held a Mission meeting and as a result sent the messenger back to the Consul telling him that all was peaceful in our city and surrounding country, that there was sufficient soldiers to protect us and our property, that the citizens wished us to remain and said they felt more secure with our presence. We also sent a copy of a letter received from the Reform Society, the Society which stamped the opium traffic out of Kutien county. In view of the above statements we asked that he rescind his order for our return and allow us to stay until such time as we deemed it necessary for us to go out. Two days later a wire came, "If you remain American government cannot be responsible for loss of life women children should return to Foochow. Thompson." At 11:30 wife and I received the telegram and then started out for the W. F. M. S. compound about 3-4 mile away. The walk in the night along the city walls and by temples to the ladies was as a pleasure walk to us as we had not the slightest fear. We remained with the ladies planning for their school to be broken up at daylight, escorts found and arrangements made for baggage to be sent with them. Old men have to be found as escorts for those girls who have no brothers as it is not safe for an unescorted young woman to walk out.

After about an hour we walked home again and sorrowfully talked of the closing of the hospital and the Boys' School and the leaving of our home and work we have learned to love so much. From that time until Saturday morning Nov. 18th when I left in charge of the women and children for Foochow there was but little rest for wife and myself. It was pitiful to close the hospital because of so many patients

one of whom has his upper arm broken and chewed up by a tiger. Brother Williams remained to hold an important District Conference and he got in a few days later.

The Henrietta Schmidt Dispensary and the Jane Churchill Thompson Chapel of Wiley General Hospital were to have been dedicated the last week of November by Bishop Bashford. For five years I have been seeking the money to erect and for the past two years have spent much time in the erection and now they must await our return and the dedication will need to await a more fitting opportunity. It was with a tug at our hearts that we felt not knowing when we would be permitted to return. How thankful we are that there is no organized anti-foreign propaganda at this time. Our problem in getting out was that of transportation. We could not get enough burden bearers so left most of our things to follow that we had picked up. Our houses are left as they were with most of our things there and we hope they will be safe as it means our all. We picked up such things as we would need for a hurried trip. Our journey to Chi-kau was uneventful except that we made most excellent time on the trip. We had a late start. No chairman could be found in the city for one of the boys and myself. However I planned that Arthur and Douglas could alternate in walking and riding and thus use one chair, while I buckled up my belt for the walk. However one of my men went to the ward outside of the city and got six men who without their breakfast ran a mile to catch me and part of them had to chase three miles to catch the boys. I have never met with such a bit of kindness from chairmen before. I was glad because I was somewhat tired with the preparatory work. In the afternoon I passed from the rear to the front and hastened on into Cui-kau to hire boats for a night trip if possible so that the ladies could go on board immediately on arriving. Cui-kau had been the battle ground of a fight with the Kiang-si river men the week previous. At all street crossings gates had been erected as barriers. After long bargaining two captains consented to make the trip and with boats lashed together for fear of river pirates we started out into the night on the river. The revolver that had been in my pocket all day was placed under my pillow and with some bedding laid over the deck planks we went to sleep while

(Continued on page 6.)

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