



1898

EDITORIAL

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Recommended Citation

EDITORIAL, 7 Yale L.J. (1898).

Available at: <http://digitalcommons.law.yale.edu/ylj/vol7/iss9/4>

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YALE LAW JOURNAL

SUBSCRIPTION PRICE, \$2.50 A YEAR

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Published monthly during the Academic year, by students of the Yale Law School.
P. O. Address, Box 1341, New Haven, Conn.

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THE United States constitute a sort of laboratory of large and small democracies, political and municipal, in which it not only possible to try a good many valuable experiments but almost impossible not to try them. And there is hardly a problem in the organization of state or municipal government the solution of which has not been tried under conditions which make the experiment useful and memorable. It is thus with no little interest that the country watches the use of the referendum in California. That State is just now making an extremely interesting experiment in government, and one that promises to work very well. It is nothing less than dispensing with a constitution in the old sense and substituting two classes of laws—one of more importance and authority, adopted by the people; and the other of less, enacted by the legislature. This results from the fact that the new constitution, adopted in 1879, was really, as has so often been pointed out, not a constitution but a code of laws, regulating with minute detail many of the affairs of life. And as soon as the new government set to work under this constitution so soon the elaborate rules began to hinder it. The courts found many of the rules unconstitutional and relieved the Legislature of them. But nevertheless something more had to be done, and the only way to do it was by amending the constitution. This change required a majority vote of the people. So the people glided into the easy path of constitutional amendment and use of the referendum.

Since the present constitution was passed there have been introduced into the Legislature four hundred and eighty-six

amendments. Of these thirty-four have been submitted to the people, seventeen adopted, eleven rejected and seven are pending. And of the seventeen adopted it is safe to say fifteen at least effected an improvement on previous existing conditions. Of course this process of popular law making under constitutional forms has made more hazy the general knowledge of the actual state of the fundamental law, but there is growing up a body of law which is comprised in a manageable bulk and grounded on popular approval.

And now the City of San Francisco, by the election held on May 26th, has also adopted the referendum. Whenever a petition, signed by fifteen per cent of the voters of the last election, asks that an ordinance therein set forth shall be submitted to vote, the election commissioners must submit it at the next election. If the majority of those voting shall favor the adoption the ordinance shall become a law. The referendum also is provided in regard to ordinances involving the granting of all the more important franchises. Such ordinances are not valid until approved by a majority of the voters at the next ensuing election.

This new charter was carried by but a small majority and its opponents prophesy its speedy failure, and point to New Jersey as furnishing an illustration of the unsuitableness of the referendum for this country. However, it has worked well in the State of California and its further development in San Francisco will be closely followed by students of American municipal government.

* * *

THE Supreme Court of the United States has very recently reversed decisions which will effectually put a stop to much of the anti-oleomargarine legislation which has of late been enacted by States of the Union. The laws of Pennsylvania and of New Hampshire are declared unconstitutional and void. The former prohibits the introduction of this article into the State. The latter provides that when colored pink there shall be no prohibition. The Supreme Court, speaking through Mr. Justice Peckham, reverses the decision of the State courts, holding both laws in contravention of the Federal Constitution. The provision of the New Hampshire statute is rejected as being a mere evasion. By virtue of the Court's decision on the Pennsylvania statute oleomargarine cannot be denied admission to the State as an article of food. The article thus may be imported from any State and sold in any size or form of unbroken package. The prohibition of the State on oleomargarine manufactured within

the State still continues unimpaired, but manifestly this statute becomes ineffectual in its main purpose, that of excluding the article from the market.

The Supreme Court recognizes oleomargarine as an article of commerce, and a wholesome food and says: "A lawful article of commerce cannot be wholly excluded from importation into a State from another State where it is manufactured or grown. A State has power to regulate the introduction of any article, including a food product, so as to insure the purity of the article imported, but such police power does not include the total exclusion even of an article of food."

* * *

THE effect of war upon contracts with the Government for war material, food, etc., is a question that has received little consideration in the Courts. Because of its necessities, the urgent haste demanded in fulfilling the contract, and the right of the Government to be supplied before all others, if it so requires, the Courts should protect such contracts in every way. In *American Ordnance Co. v. Seabury Gun Co.*, recently decided by Judge Townsend in the United States Circuit Court for the District of Connecticut, a preliminary injunction for the infringement of a patent was denied for this reason. The defendants had a very large contract with the Government to furnish guns of a certain kind, which plaintiffs claimed were an infringement of their patent. Judge Townsend, in refusing the injunction, said: "I am not satisfied that the defendants' proposed construction will not infringe certain claims of the patent in suit. But as it is admitted the defendant is financially responsible, the motion will be denied on the ground that the defendant is under contract to furnish the guns in question to the Government of the United States within six weeks from the present time for use in time of war for coast defence and and under the presence of immediate and impending danger."

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MR. KNOX MADDOX has been elected Chairman, and Mr. C. H. Studinski, Treasurer, of the LAW JOURNAL for the coming year.