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# Constitutional Law - The Sanctity of the Legislative Act Is Superior to That of the Legislature Itself - What Amounts to an Effective Repeal?

Dicta Editorial Board

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And if he does not take the stand, by all means have him give you a note in his own handwriting, stating it is his view, as well as yours, that he should not testify and requesting you not to call him as a witness. If he has a wife, she should approve in writing this note. The advisability of such precaution was impressed upon me as a prosecutor in the '20's. In a serious case, involving the failure of a bank in Denver,* the defendant on trial did not take the stand. After his conviction, he charged his lawyers with many derelictions, among them, their refusal to let him testify. They were able and experienced trial lawyers. These lawyers presented to the District Court a letter signed by the defendant stating that his position was that he should not take the witness stand. Without that letter it might have been very embarrassing.

Frankly, I am afraid this last suggestion, always to take a letter from the defendant if he does not testify, is about all that may have been contributed by this discussion.

Whatever your decision, you never can be satisfied you were right or just lucky.

## CASE COMMENTS

CONSTITUTIONAL LAW—THE SANCTITY OF A LEGISLATIVE ACT IS SUPERIOR TO THAT OF THE LEGISLATURE ITSELF—WHAT AMOUNTS TO AN EFFECTIVE REPEAL?—Plaintiffs brought action to recover a judgment for treble damages allegedly due them by reason of the defendant's having collected interest on a loan in excess of that allowed under chapter 108 Session Laws of Colorado, 1913. The defendant demonstrated that chapter 157, Session Laws of Colorado, 1935, stated that the 1913 Act was repealed; that the compilers of the 1935 Colorado Statutes Annotated thereafter omitted the 1913 Act from their compilation; that the State Banking Commissioner discontinued enforcing the provisions of the 1913 Act in reliance of the 1935 Act; and that loan companies generally considered the 1913 Act repealed. On defendant's motion the case was dismissed with prejudice, and the plaintiffs appealed. On May 12, 1952, the Supreme Court of Colorado reversed the decision of the trial court, declaring that the 1913 Act had not been effectively repealed by the 1935 Act insofar as loans over $300 were concerned since the 1935 Act by its title was confined to loans of $300 or less. This despite the fact that the body of the 1935 Act "repealed" the former Act. (*Sullivan v. Siegal,* ..... Colo. ....., ..... P. .....) (1952.)

Speaking through Mr. Justice Alter, the court held that the

* Mandell v. People, 76 Colo. 296.

repealing clause of the 1935 Act was unconstitutional as violative of section 21, Article V of the Colorado Constitution. That section provides, "No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed." The court dismissed in summary fashion the argument based on the fact that the administrative official and the loan companies had considered the law repealed. In a similar summary fashion, and with some disdain, the court dismissed the argument that exclusion from a compilation of laws operated as a repeal of the law thus excluded, stated that such compilations were only *prima facie* the existing law. The court even expressed doubts as to the validity of the delegation of authority which might be necessary if such compilations were to be regarded on the higher plane and dignity of a basic and fundamental law.

A Case Comment is a beautifully expeditious kind of literary expression. It enables the writer to criticize, to laud, to prophesy or to simply communicate an impression. The writers of this comment have chosen the latter usage and have felt that the decision lends itself irresistibly to parody. We submit the following as a memorial to insure that the decision will rank among the great documents of American history.

## DENVER ADDRESS

One score and nineteen years ago, our legislators brought forth upon the statute books a new law, conceived of necessity, and dedicated to the proposition that interest on loans is subject to control. Now we are engaged in a great litigation, testing whether that statute or other statutes so conceived and so dedicated, do yet endure. We are met in the forum of that litigation. We have come to set aside in their final resting place those laws which, by their defective repealing attempts, permit that early law to live. It is altogether fitting and proper that we do this.

But, in a larger sense, we cannot legislate, we can-

## DECLARATION OF INTERDEPENDENCE

We hold these truths to be self-evident, that all laws are created by the Legislature, that they are endowed by their creators with certain unalienable rights, that among these are the Right to control the conduct of men, Freedom from interference by other branches of government and Persistence into perpetuity until effectively repealed. That to clarify and effectuate these laws, compilers and administrators are instituted among lawyers, deriving their just Powers from the Legislature, that whenever any act of desuetude of compilers or administrators becomes destructive of these Ends, it is the Duty of the courts to alter or abolish this improper Delegation and to reinstate the Law, laying its foundation on such Principles and organizing its Powers in

not repeal, we cannot alter the laws. Those brave legislators, living and dead, who struggled to do so have passed laws beyond our powed to add or detract. The state will little note, nor long remember what we say here, but in can never forget what they did here. It is for us, the court, rather to be dedicated to the unfinished work which those who enacted these laws have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us, that from this mass of conflicting law, we take as repealed only that which they have effectively repealed; that we here highly resolve that those who prize their Session Laws shall not have saved in vain; that this court shall declare the law, and that control of loan interest, by the legislature, and for the borrowers, shall not perish from future compilations of Colorado Law.

JAMES TILLY

such form as to them shall seem most likely to effect the Integrity of the courts. Prudence, indeed, will dictate that Laws long established should not be disregarded for light and transient causes; and accordingly all Jurisprudence has shown that Debtors are more disposed to suffer high Interest rates, while the evils are sufferable, than to right themselves by abolishing the forms of Usury to which they are extra-judicially accustomed. But when a long strain of abuses, usuries and usurpations pursuing invariably the same Unconstitutional object evinces a design to reduce the people under absolute Usury, it is their Right, it is their Duty to throw off the prerogatives of the compilers, administrators and money lenders, and to restore the old laws for their future interests.

We, therefore, the Justices of the Supreme Court of the State of Colorado, in court assembled, appealing to the Supreme Judge of the World for the rectitude of our Intentions, do, in the name and by the authority of the good people of the State of Colorado, solemnly publish and declare that insofar as it has not been effectively repealed, the Moneylenders' Act of 1913 is, and of right ought to be, a fully effective and all controlling law; that it abolishes all Allegiance to compilers, administrators and money lenders; and that all extra-legislative connection between them is and ought to be totally dissolved; that it has the full power to levy war on money lenders, conclude triple damage settlements, control usurious contracts and do all other acts and things which fully effective laws may of right Do.

GEORGE BARBARY