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THE FLORIDA SUPREME COURT AND THE GUBERNATORIAL ELECTION

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> *But no court sits to determine questions of law* in thesi. *There must be a litigation upon actual transactions between real parties, growing out of a controversy affecting legal or equitable rights as to person or property.*[1]

Dan McCarty was elected Governor of Florida for the four-year term ending January 8, 1957, but served only until his death on September 28, 1953, whereupon the powers and duties of the office devolved upon Charley Johns, President of the Senate, by virtue of the section of the Constitution providing in such case that[2]

> ". . . the powers and duties of Governor shall devolve upon the President of the Senate for the residue of the term . . . and in case of the . . . inability of the . . . President of the Senate, the powers and duties of the office shall devolve upon the Speaker of the House of Representatives. *But should there be a general election for members of the Legislature during such vacancy, an election for Governor to fill the same shall be had at the same time.*"

Thereafter Brailey Odham announced as a candidate for Governor in the 1954 elections to fill the vacancy, and filed the necessary qualifying papers with the Secretary of State, the official elected by the people of Florida to attend to the recording of the qualification of candidates in state elections. The Secretary of State must have assumed that a 1954 election for Governor was to be held pursuant to the Constitution or else he would not have accepted the papers filed by Mr. Odham.[3] The Attorney General, elected to represent the people and the State in the determination of any questions arising in

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[1]Marye v. Parsons, 114 U.S. 325, 330 (1884).

[2]FLA. CONST. Art. IV, §19 (italics supplied).

[3]*Cf.* Attorney General *ex rel.* Taylor v. Crawford, 95 Fla. 438, 116 So. 41 (1928).

such matters, apparently acquiesced in what had been done; at least he raised no objection as would have been his duty if the proposed election were improper.[4] Nor did acting Governor Johns raise any publicly reported objection.

Thus the machinery was set in motion for the holding of a gubernatorial election in 1954 with the apparent consent of all persons and officials directly concerned therewith. Nothing remained but for the political will of the voters to be expressed at the ballot box.

A citizen and taxpayer, Willard Ayres, interpreted the Constitution differently from those officials and candidates directly concerned with the matter. He read the Constitution to mean that the acting Governor should continue in office until 1957 and that no election for Governor should be held in 1954. Mr. Ayres therefore petitioned the Supreme Court to determine the meaning of the Constitution. His petition asked the Court to compel the Secretary of State to expunge the records of Mr. Odham's candidacy.

The Court "took jurisdiction" of the matter, and after argument delivered an opinion declaring that a gubernatorial election must be held in 1954.[5] By this action the Court in effect announces that, in addition to performing the judicial duties cast upon it by the Constitution, it will also undertake to answer questions propounded to it by any member of the public so long as the questions are deemed of "public importance" and are presented to the Court wrapped in the alluring cellophane of a mandamus proceeding.

This implied invitation extended to the public was shortly thereafter accepted. Another citizen, believing that another candidate was disqualified, petitioned for an opinion as to that question. The

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[4]State v. Gleason, 12 Fla. 190, 212 (1868):

"The Attorney General is the attorney and legal guardian of the people . . . . His duties pertain to the Executive Department of the State, and it is *his duty* to use means most effectual to the enforcement of the laws, and the protection of the people, whenever directed by the proper authority, or when occasion arises.

". . .

"The exercise of such discretion is in its nature a judicial act, from which there is no appeal, and over which the courts have no control."

See State *ex rel.* Davis v. Love, 99 Fla. 333, 339, 126 So. 374, 376 (1930). If the Attorney General is disabled by reason of interest or otherwise from acting in a matter, either he or the Governor may appoint another person to act in the place of the Attorney General, FLA. STAT. §16.02 (1953).

[5]State *ex rel.* Ayres v. Gray, 69 So.2d 187 (Fla. 1953).

Court obliged by hearing the petitioner and giving him an answer.[6]

The members of the Court were unquestionably actuated by virtuous motives in their endeavor to be of service to the people;[7] criticism of the Court's actions is offered in a spirit of reverence for a great judicial institution, which, as Justice Brewer said, is not "honored or helped by being spoken of as beyond criticism."[8] The late Viscount Bryce put the thought thus:[9]

> "It is true that virtue is compatible with the desire to extend the power and jurisdiction of the court . . . . As the respect of the bench for the bar tends to keep the judges in the straight path, so the respect and regard of the bar for the bench, a regard grounded on the sense of professional brotherhood, ensures the moral influence of the court in the country."

THE JUDICIARY AND POLITICAL QUESTIONS

In the long struggle of civilized people to achieve ordered liberty by constitutional division of the powers of government, a major problem has been the proper place and function of the judiciary in democratic society. Various degrees of difference have existed as to the meaning and purpose of the doctrine of judicial supremacy,[10] but jurists of all shades of belief have agreed that the courts must be confined to the exercise of strictly judicial power, that is, the power to hear and determine only the actual justiciable interests of adverse litigants in bona fide litigation. Excursions by courts into matters

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[6]State *ex rel.* West v. Gray, 70 So.2d 471 (Fla. 1954). *But cf.* Bryant v. Gray, 70 So.2d 581 (Fla. 1954), in which it was held that no justiciable issue was presented on which a declaratory decree could be rendered. The question as to whether a prospective candidate for governor, if elected to the two-year term in 1954, would be eligible for re-election to a full term was found to be too remote.

[7]*See* Bryant v. Gray, 70 So.2d 851, 854 (Fla. 1954) (dissenting opinion).

[8]Brewer, *Government by Injunction,* 15 NAT. CORP. REP. 849 (1898).

[9]1 BRYCE, THE AMERICAN COMMONWEALTH 289 (2d ed. Rev. 1908).

[10]See VANDERBILT, THE DOCTRINE OF SEPARATION OF POWERS 53 *et seq.* (1953); Clark, *The Supremacy of the Judiciary,* 17 HARV. L. REV. 1 (1903); *Finkelstein, Judicial Self-Limitation,* 37 HARV. L. REV. 338 (1924); Freund, *A Supreme Court in a Federation: Some Lessons from Legal History,* 53 COL. L. REV. 597 (1953); Irish, *Mr. Justice Douglas and Judicial Restraint,* 6 U. OF FLA. L. REV. 537 (1953); Thayer, *The Origin and Scope of the American Doctrine of Constitutional Law,* 7 HARV. L. REV. 129 (1893); Weston, *Political Questions,* 38 HARV. L. REV. 296 (1925).

of a purely political nature strike at the very foundation of our constitutional system.[11]

John W. Davis stated the idea with characteristic brevity: "But august as are the functions of the court, surely they do not go one step beyond the administration of justice to individual litigants."[12] James C. Carter, another great leader of the bar of an earlier generation, reverted to history in warning against the courts' taking jurisdiction in cases in which the question assumed other than a purely judicial form. In his opinion, nothing could be more unwise and dangerous or more foreign to the spirit of the Constitution than an attempt to baffle and defeat a popular determination by a judgment in a lawsuit. Every attempt to convert political into judicial questions had been futile, he believed, and the result had not added to the authority of the tribunal rendering the judgment.[13]

Florida jurists have lived up to this body of opinion. Thus, Mr. Justice Terrell, in his thoughtful essay on the judiciary, says:[14]

> ". . . they are powerless to act until someone directly affected approaches the bar or the court and complains in the manner defined by rule, that he has been unlawfully deprived of his property, his liberty, his right to contract, his right of trial by jury, that he has been discriminated against or that some other constitutional guaranty vouchsafed to him has been impaired or destroyed. . . .
>
> ". . .
>
> "The judiciary acts only through litigated cases, it has no authority to adjudicate abstract, assumed, or potential invasions of the law, neither will it consider questions of policy, morals or politics."

Mr. Chief Justice Roberts characterizes judges as arbiters, not advocates. He believes that as arbiters judges may not decide abstract questions of legal philosophy, but may exercise their judicial power only in the context of an actual controversy.[15]

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[11]See 3 BL. COMM. *23-25; HURST, THE GROWTH OF AMERICAN LAW 180-183; 1 BRYCE, THE AMERICAN COMMONWEALTH 280 *et seq.* (2d ed. Rev. 1908).

[12]Davis, *Present Day Problems,* 9 A.B.A.J. 553, 557 (1923).

[13]*Cf.* Pollock v. Farmers Loan & Trust Co., 157 U.S. 429, 531 (1895); 8 LEWIS, GREAT AMERICAN LAWYERS 35 (1909).

[14]Terrell, *The Judiciary In A Federal Republic,* THE FLORIDA HANDBOOK 327 (4th ed. 1953).

[15]Roberts, *The State Judicial System,* THE FLORIDA HANDBOOK 319 (4th ed. 1953).

The United States Supreme Court has spoken on both of the questions presented above. In a case in which that Court decided it had no power over the fixing of congressional districts, the Court branded the issue presented to "be of a peculiarly political nature and therefore not meet for judicial determination."[16] The Court reaffirmed its traditional aloofness to the determination of such issues because it believed that to involve the judiciary in the politics of the people is contrary to the democratic concept. Nor did the Court find an essentially political contest to be susceptible of judicial determination merely because it was dressed in the abstract phrases of the law.

Again that Court pointed out the importance of confining the judicial process to actual controversies between litigants with an actual immediate interest:[17]

> "Judicial adherence to the doctrine of the separation of powers preserves the courts for the decision of issues, between litigants, capable of effective determination. Judicial exposition upon political proposals is permissible only when necessary to decide definite issues between litigants. When the courts act continually within these constitutionally imposed boundaries of their power, their ability to perform their function as a balance for the people's protection against abuse of power by other branches of government remains unimpaired. Should the courts seek to expand their power so as to bring under their jurisdiction ill-defined controversies over constitutional issues, they would become the organ of political theories. Such abuse of judicial power would properly meet rebuke and restriction from other branches. By these mutual checks and balances by and between the branches of government, democracy undertakes to preserve

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[16]Colegrove v. Green, 328 U.S. 549, 552 (1946). *See* Ready v. Safeway Rock Co., 157 Fla. 27, 30, 24 So.2d 808, 809 (1946), and Sheldon v. Powell, 99 Fla. 782, 787, 128 So. 258, 261 (1930), advancing the idea that the "judicial power" of the Florida courts is of a different nature from the "judicial power" of the federal courts because the Florida Constitution does not use the words "cases" and "controversies" as does the Federal Constitution. These dicta make a play on words. The words "cases" and "controversies" are not used to describe the nature of judicial power, but to specify the limited fields of federal power in which the federal judicial power operates, U.S. CONST. Art. III, §2. See Note, 41 HARV. L. REV. 232 (1927). The term "judicial power" is by necessary implication limited to controversies; see Roberts, *The State Judicial System*, THE FLORIDA HANDBOOK 319 (4th ed. 1953).

[17]United Public Workers v. Mitchell, 330 U.S. 75, 90 (1947).

the liberties of the people from excessive concentrations of authority."

THE *Ayres* CASE

The members of the Florida Supreme Court tell us they were at first skeptical about their jurisdiction to entertain the petition of Mr. Ayres.[18] Nowhere in their opinion, however, do they attempt to explain away the obvious fact that Mr. Ayres presented nothing but an abstract inquiry into a matter which concerned Mr. Ayres in no peculiar or justiciable way at all. The Court did not face the fundamental problem that it was being asked to act beyond the scope of its constitutional judicial power. Instead, it confined the jurisdictional inquiry to a narrow discussion of practice and procedure in mandamus actions, concluding in effect that any citizen has standing, as a self-appointed representative of all the public, upon confirmation of such appointment by judicial grace,[19] to bring mandamus to compel a public official to undo what he has already done. The Court cites nothing to support this unusual view except a text writer,[20] *obiter dicta* in an old New York case,[21] and *obiter dicta* in some Florida cases.[22] The conclusion of the Court with respect to the questions of

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[18]State *ex rel.* Ayres v. Gray, 69 So.2d 187, 189 (Fla. 1953).

[19]The designation of parties who will represent the public or the state is not a judicial function, but rather a legislative or political one, see note 4 *supra; accord,* Pompano Horse Club v. State *ex rel.* Bryan, 93 Fla. 415, 111 So. 801 (1927) (citizen authorized by legislative act). Examples of legislative sanction for citizens to represent the state or public in certain specified situations are found in FLA. STAT. §64.11 (1953) (injunctions against nuisances); FLA. STAT. §138.06 (1953) (authorizing any five citizens to litigate with reference to the location of county seats).

[20]HIGH, EXTRAORDINARY LEGAL REMEDIES §431 (1874).

[21]People v. Halsey, 37 N.Y. 344, 346 (1867). This case involved action by a municipal official to compel the collection of taxes in which relator had an official interest; it contains dicta that a citizen might sue. Apparently these dicta were repudiated in a later decision of the same court holding that a citizen has no standing, absent peculiar interest, to sue with reference to public questions, Schieffelin v. Komfort, 212 N.Y. 520, 106 N.E. 675 (1914).

[22]Florida C. & P. R.R. v. State *ex rel.* Tavares, 31 Fla. 482, 504, 13 So. 103, 105 (1893) (action by a municipal corporation and its officers to enforce a contract with the respondent). In Florida Industrial Commission v. State *ex rel.* Orange State Oil Co., 155 Fla. 772, 775, 21 So.2d 599, 600 (1945), the relator was suing for a refund of money claimed due it. Board of Public Instruction v. State *ex rel.* Hunter, 150 Fla. 213, 218, 7 So.2d 105, 107 (1942); State *ex rel.* Scott v. Board of County Comm'rs, 17 Fla. 707, 714 (1880); and McConihe v. State *ex rel.* McMurray, 17 Fla.

mandamus practice are contrary to previous holdings of the Florida Supreme Court. For instance, in 1935, in *State* ex rel. *Crim v. Juvenal,*[23] the Court, en banc, unanimously held that a citizen could not bring mandamus merely to test a public constitutional question. The Court's opinion used language that is not open to equivocation:[24]

> "Even if [the legislative acts] . . . are each violative of [the Constitution] . . . as claimed by [the] relator, it is indispensable to relator's right to maintain such an attack . . . that he exhibit some special or particular right in himself other than such as attaches to him in his status as a resident citizen and taxpayer . . . .
>
> ". . .
>
> "The Courts have no power *per se* to inquire into the validity of public laws by proceedings brought directly for that purpose by one whose rights are not shown to be affected by the operation of such laws. . . .
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> "It is not the province of the judiciary to act as a general conservator of the Constitution as a restraint upon the powers or abuses of other branches of the government, even in cases where the Constitution appears to have been flagrantly violated. . . .
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> "In the present case relator sues to enforce no right peculiar to himself. To the Attorney General of the State is committed the authority to institute proceedings to call in question in the interest of the general public any questionable performance of official duty on the part of State or county officers alleged to be acting under statutes that are either inapplicable or unconstitutional."

Mandamus in Florida is a local adaptation of the prerogative writ

238, 271 (1879), were cases in which citizens were suing to obtain proper effectuation of their right of suffrage, a peculiar right established as justiciable in the great case of Ashby v. White, 2 Ld. Raym. 938, 92 Eng. Rep. 126 (1703). The purpose of the *Ayers* and *West* petitions was not to effectuate any right of the relators, but rather for the purpose of curtailing the right of suffrage of other people.

[23]118 Fla. 487, 159 So. 663 (1935); *accord,* State *ex rel.* Watson v. Gray, 48 So.2d 84 (Fla. 1950); State *ex rel.* Hanna v. Lee, 124 Fla. 588, 169 So. 220 (1936); State *ex rel.* Thompson v. Davis, 122 Fla. 425, 165 So. 379 (1936); State *ex rel.* Howarth v. Jordan, 105 Fla. 322, 140 So. 908 (1932); Nickelson v. State, 62 Fla. 243, 57 So. 194 (1911); Pennock v. State, 61 Fla. 383, 54 So. 1004 (1911).

[24]State *ex rel.* Crim v. Juvenal, 118 Fla. 487, 489, 159 So. 663, 664 (1935).

that originated in England,[25] and the English courts always held that the writ was available only to litigants with a specific individual grievance. For example, Lord Chief Justice Ellenborough held:[26]

> "There ought in all cases to be a specific legal right, as well as the want of a specific legal remedy, in order to found an application for a mandamus. But here nothing appears to shew that [relator] . . . has any legal right to what he claims, more than any other of His Majesty's subjects: therefore, however sorry we may feel for the disappointment of the individual who has consumed his time and substance in a fruitless pursuit, we cannot interfere."

American courts have also held that the relator in mandamus must show a peculiar interest in himself and cannot sue on behalf of the public.[27]

In the *Ayres* case the Court brushed aside the suggestion that mandamus was not proper to undo what had already been done; that is, the qualification of Odham by the Secretary of State.[28] But, here again we find the Court flying in the face of established authority. This point was dealt with by Lord Chief Justice Campbell as follows:[29]

> "The writ of mandamus is most beneficial: but we must keep its operation within legal bounds, and not grant it at the fancy of all mankind. We grant it when that has not been done which a statute orders to be done; but not for the purpose of undoing what has been done. . . . I cannot give countenance to

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[25]See Adams and Miller, *Origins and Current Florida Status of the Extraordinary Writs,* 4 U. OF FLA. L. REV. 421 (1951).

[26]The King v. The Archbishop of Canterbury, 8 East 213, 219, 103 Eng. Rep. 323, 326 (1807); *accord,* The King v. Merchant Tailors' Co., 2 B. & Ad. 115, 124, 109 Eng. Rep. 1086, 1089 (1831): "in all the cases where a mandamus had been granted, the application had been limited by some legitimate and particular object, in which the party had an interest."

[27]*E.g.,* Wellington, 16 Pick. 87 (Mass. 1834); Sanger v. County Comm'rs, 25 Me. 291 (1845); People v. Regents, 4 Mich. 98 (1856); Heffner v. Commonwealth, 28 Pa. St. 108 (1857).

[28]69 So.2d 187 at 191 (Fla. 1953).

[29]*Ex parte* Nash, 15 Q.B. 92, 95, 117 Eng. Rep. 393, 394 (1850); see Adams and Miller, *Origins and Current Florida Status of the Extraordinary Writs,* 4 U. OF FLA. L. REV. 421, 452 (1951): "mandamus does not take the form of commanding a public official not to do something . . . ."

> the practice of trying in this form questions whether an act professedly done in pursuance of a statute was really justified by the statute."

The view of Lord Campbell has been followed by practically all of the American courts, including the Florida Supreme Court.[30]

Policy and Justiciable Controversies

The holding of the Florida Court in the *Crim* case, and the holdings in the cases discussed previously, are no mere dialectics about dry procedural questions. They are manifestations of the feelings of great lawyers and judges that constitutional democracy demands that the courts stay out of purely political matters and confine their power to the adjudication of genuine lawsuits.[31] The Florida Court should have disposed of the *Ayres* and *West* petitions in the same way the great Mr. Justice Holmes threw out a similar one:[32]

> "But of course he could not maintain a bill for a mere declaration in the air. . . .
> "Apart from damages to the individual, relief from a great political wrong, if done, as alleged, by the people of a State and the State itself, must be given by them or by the legislative and political department of the government . . . ."

Even in declaratory judgment litigation, which affords the greatest possible latitude for the play of judicial power, courts are chary of going to the extreme represented by the *Ayres* and *West* cases. The Florida Court in such litigation has condemned the very sort of extension of jurisdiction that took place in the *Ayres* and *West* cases. In *Pensacola v. Johnson*,[33] a homestead owner sought a declaratory

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[30]State *ex rel.* Boone v. Gray, 125 Fla. 104, 169 So. 611 (1936).

[31]*E.g.*, Ashwander v. T.V.A., 297 U.S. 288 (1936); Stearns v. Wood, 236 U.S. 75 (1915); Keim v. United States, 177 U.S. 290 (1900); *see* Decatur v. Paulding, 14 Peters 497, 515 (U.S. 1840); The Cherokee Nation v. Georgia, 5 Peters 1, 50 (U.S. 1831).

[32]Giles v. Harris, 189 U.S. 475, 486 (1903).

[33]159 Fla. 566, 28 So.2d 905 (1947). For similar limitations of jurisdiction see Miami Water Works Local v. Miami, 157 Fla. 445, 26 So.2d 194 (1946); see May v. Holley, 59 So.2d 636, 639 (Fla. 1952). See also the excellent opinion of the Wisconsin Court, refusing to give a political opinion similar to that in the *Ayres* and *West*

decree as to whether his property could be taxed to pay bonds which were to be voted on in a forthcoming election. The Court answered: "Until the election shall have been held . . . there exists no justiciable issue for any court to determine . . . ."[34]

So-called "taxpayer's actions," remedies that stretch the concept of justiciable controversy to its utmost limits, have been repudiated in some jurisdictions.[35] Florida recognizes such activities but the Court has insisted that the taxpayer establish a real justiciable interest as a condition of his right to litigate. In the leading case of *Rickman v. Whitehurst* it was said:[36]

> "The right of the complainant to maintain this suit therefore would seem to depend upon the peculiar injury which may result to him . . . . The taxpayer's injury specially induced by the unlawful act is the basis of his equity, and unless it is alleged and proved, there can be no equitable relief. His position is not contradistinguished from that of all other taxpayers, or citizens who are not taxpayers, and therefore cannot invoke the aid of equity merely to prevent an unlawful corporate act however much the act may shame his sense of pride in the faithful observance by public officials of the obligations of their public duties."

Mr. Justice Frankfurter, in a concurring opinion, said:[37]

> "It is not our function, and it is beyond our power, to write legal essays or to give legal opinions, however solemnly requested and however great the national emergency. . . . The

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cases, La Follette v. Dammann, 220 Wis. 17, 264 N.W. 627 (1936).

[34]Pensacola v. Johnson, 159 Fla. 566, 569, 28 So.2d 905, 907 (1947).

[35]See VANDERBILT, THE DOCTRINE OF SEPARATION OF POWERS 135 (1953); Note, 50 HARV. L. REV. 1276 (1937).

[36]73 Fla. 152, 157, 74 So. 205, 207 (1917); *accord,* Briggs v. Willson, 60 So.2d 399 (1952); Bryan v. Miami, 56 So.2d 924 (Fla. 1951); The Metropolis Pub. Co. v. Miami, 100 Fla. 784, 129 So. 913 (1930). In Henry L. Doherty & Co. v. Joachim, 146 Fla. 50, 200 So. 238 (1941), the Court, at p. 54, 200 So. at 240, in declining jurisdiction, used language applicable to the *Ayers* and *West* cases: ". . . and there is nothing in what we have observed in this record to show a result to complainants different in kind from that to others in the same community, the neighbor next door or the man across the street."

[37]Coleman v. Miller, 307 U.S. 433, 462 (1939).

requisites of litigation are not satisfied when questions of constitutionality though conveyed through the outward forms of a conventional court proceeding do not bear special relation to a particular litigant. The scope and consequences of our doctrine of judicial review over executive and legislative action should make us observe fastidiously the bounds of the litigious process within which we are confined. No matter how seriously infringement of the Constitution may be called into question, this is not the tribunal for its challenge except by those who have some specialized interest of their own to vindicate, apart from a political concern which belongs to all."

In taking cognizance of the *Ayres* and *West* inquiries the Florida Court evidently acted upon what the great Wigmore called[38]

"the fallacious notion that every constitutional provision is 'per se' capable of being enforced through the Judiciary and must be safeguarded by the Judiciary because it can be in no other way. Yet there is certainly a large field of constitutional provision which does not come before the Judiciary for enforcement, and may remain unenforced without any possibility or [sic] judicial remedy."

The greatest living Judge, Learned Hand, has likewise exposed the fallacy condemned by Wigmore. Judge Hand said:[39]

". . . a society so riven that the spirit of moderation is gone, no court can save; . . . a society where that spirit flourishes, no court need save; . . . in a society which evades its responsibility by thrusting upon the courts the nurture of that spirit, that spirit in the end will perish."

Judge Hand has also observed that a judge called upon to pass on a question of constitutional law should have a bowing acquaintance with Rabelais.[40] The position of the litigants in the *Ayres* and *West*

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[38]4 WIGMORE, EVIDENCE §1350, p. 700 (3rd ed. 1940); *see* United States v. Butler, 297 U.S. 1, 78 (1936) (dissenting opinion); see Dodd, *Judicially Non-Enforcible Provisions of Constitutions*, 80 U. OF PA. L. REV. 54 (1931).

[39]HAND, THE SPIRIT OF LIBERTY 181 (Dillard ed. 1952).

[40]Hand, *Sources of Tolerance*, 79 U. OF PA. L. REV. 1 (1930).

cases bears strong resemblance to that of Rabelais' waggish character, Panurge, which is revealed in the following dialogue related by Rabelais:[41]

> "Besides all this, [said Panurge] I have lost a good deal in suits of law: And what lawsuits couldest thou have? (said I) Thou hast neither house nor lands. My friend, (said he) the Gentlewomen of this City had found out, by the instigation of the devil of hell, a manner of high-mounted bands, and neckerchiefs for women, which did so closely cover their bosomes . . . whereat the poor sad contemplative lovers were much discontented. Upon a faire Tuesday, I presented a Petition to the Court making myself a Party against the said Gentlewomen, and shewing the great interest that I pretended therein . . . . In summe, the Gentlewomen put in their defences, shewed the grounds they went upon, and constituted their Atturney for the prosecuting of the cause, but I pursued them so vigorously, that by a sentence of the Court it was decreed, those high neckclothes should be no longer worne, if they were not a little cleft and open before; but it cost me a good summe of money."

The importance of judges staying within their assigned tasks was brought vividly to light in the recent revelation as to the strong and hostile views of the late Chief Justice Stone against members of the judiciary taking part in the affairs of other departments of the government.[42] That great judge's animadversions were specifically directed against extrajudicial activities *off the bench,* but they were equally applicable to extrajudicial activities *on the bench.*

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[41]I THE WORKS OF MR. FRANCIS RABELAIS p. 249 (J. B. Lippincott Co. 1921).

[42]Mason, *Extra-Judicial Work For Judges: The Views of Chief Justice Stone,* 67 HARV. L. REV. 193 (1953); Solow, *The Integrity of the Supreme Court,* 49 FORTUNE 101 (Feb. 1954).