DUNNE

Judge, Mayor, Governor

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DECISION ON THE FREEDOM OF THE PRESS.

HISTORY OF THE CASE.

The Fortieth General Assembly of Illinois in 1897 passed several objectionable bills, one of which was to legalize the consolidation of all of the gas companies in Chicago except the Ogden Gas Company. Ten companies thus united formed a practical monopoly, which took the name of the Peoples Gas Light & Coke Company, one of the constituent companies. Little criticism, however, was made of this law until the fall of 1900. A mass meeting was held in Central Music Hall in October, 1900. Resolutions were adopted denouncing the act as harmful to public interests. A committee was appointed to request State's Attorney Charles S. Deneen to begin quo warranto proceedings against the Peoples Gas Light & Coke Company. After hearing arguments and considering briefs submitted by counsel for and against the Gas Company, State's Attorney Deneen took the matter under advisement until August 9, 1901. On that day he appeared before Judge Murray F. Tuley in the Circuit Court and obtained leave to file the information in the quo warranto proceedings. Counsel for the gas company went before Judge Elbridge Hanecy of the Circuit Court and moved to have the order entered by Judge Tuley vacated. Arguments on the motion were heard. State's Attorney Deneen was represented by Assistant State's Atorney Albert Barnes. Attorney Adolph Moses appeared to represent the people of the Central Music Hall mass meeting. Clarence S. Darrow of the firm of Altgeld, Darrow & Thompson, also appeared in the case, Attorneys Darrow and Moses appearing at the request of the State's Attorney. The motion was taken under advisement by Judge Hanecy on October 6. The motion was disposed of by Judge Hanecy on October 28 in a written opinion, in which he dismissed the petition and writ which had been filed on the order of Judge Tuley on the ground that the gas act was constitutional and no public rights were jeoparded by the trust formed under its terms. This opinion was read by Judge Hanecy in the forenoon. In the afternoon of that day Hearst's Chicago American printed a report of Judge Hanecy's opinion, in which the action of the court was

criticised as being prejudicial to public welfare. On October 31 Judge Haney cited on the charge of contempt of court because of the published criticism of his opinion, the following persons: William R. Hearst, proprietor of Hearst's Chicago American; S. S. Carvalho, general manager; Andrew M. Lawrence, president and managing editor of Hearst's Chicago American; H. S. Canfield, reporter for Hearst's Chicago American; John C. Hammond, assistant city editor, Hearst's Chicago American; Homer Davenport, rtist, Hearst's Chicago American; Clare A. Briggs, artist, Hearst's Chicago American, and Hearst's Chicago American, a corporation. In the complaint filed by Judge Haney he stated that the criticism was "intended to terrorize and intimidate this court in the performance and discharge of its duties" in connection with the motion in the quo warranto proceedings. Judge Haney held that the case was pending when the criticism was published because, although the opinion had been read disposing of the case, no "entry of any judgment or order disposing of said cause was entered by this court."

On November 1 Messrs. Carvalho, Lawrence, Canfield and Hammond appeared before Judge Haney, the others cited being not in the State. Pending a hearing of the charge, bond was exacted from S. S. Carvalho in the sum of $10,000, from A. M. Lawrence in the sum of $10,000, from H. S. Canfield in the sum of $5,000, and from John C. Hammond in the sum of $1,000. The hearing was set for November 4, on the rule to show cause why they should not be punished for contempt of court. The respondents appeared in court with the following counsel: Former Governor John P. Altgeld, Clarence S. Darrow, William Thompson, Samuel Alschuler, Adolf Kraus and Charles R. Holden. Judge Haney appointed Simeon P. Shope to prosecute the proceedings, giving as a reason therefor that the Attorney General was absent and not within the jurisdiction of the court and that the State's Attorney of Cook County was a party to the cause. In the answer filed by the respondents it was set up that there was no contempt, inasmuch as the case was ended before the criticism was published. Mr. Lawrence assumed all responsibility for the publication. Mr. Canfield admitted having written the article complained of. A motion was made by Mr. Altgeld for a change of venue on the ground that Judge Haney was not qualified to try the case because of his personal interest. This motion was denied. A request for a jury was also denied by Judge Haney. Arguments were heard November 4, and November 5 Judge Haney took the case under advisement and rendered his decision November 13. He ordered that forty days' imprisonment be imposed upon Mr. Lawrence and thirty days' imprisonment be imposed on Mr. Canfield. The charges

against S. S. Carvalho and John C. Hammond were dismissed. No action was taken with regard to the charges against William R. Hearst, Homer Davenport, Clare A. Briggs and Hearst's Chicago American, a corporation.

The respondents were immediately brought before Judge Edward F. Dunne of the Circuit Court on a writ of habeas corpus. They were released on bonds of $3,000 each pending a hearing. The hearing went over until November 15. It was contended by Mr. Shope that the petition for the writ was premature because the order for commitment by Judge Hanecy had not been entered. He averred that the relators had merely been taken into custody by the sheriff on an attachment. An examination of the book of the clerk of Judge Hanecy's court showed that a line had been erased, leaving no order of commitment. Judge Dunne dismissed the writ November 16 on the agreement that the relators return voluntarily to Judge Hanecy's court and answer to what might be ordered in the contempt case. The relators returned to Judge Hanecy's court and the order of commitment was then entered. As soon as the order of Judge Hanecy could be transcribed a petition for a writ of habeas corpus was presented to Judge Dunne, who issued the writ, and Mr. Lawrence and Mr. Canfield were taken before Judge Dunne again. They were released on bonds of $3,000 each and by agreement of counsel the hearing was set for November 25. The case was argued at length by Mr. Darrow and Mr. Alschuler for the relators and by Mr. Shope and Assistant State's Attorney Barnett for the respondent. The arguments closed December 3 with a brilliant speech by Clarence S. Darrow. The subject of constructive contempt was gone into more exhaustively than ever before in the legal history of Cook County. The opinion of Judge Dunne was handed down at 10 o'clock Saturday morning, December 7, 1901, in which he held that no contempt had been committed by the relators, who were thereupon discharged.

COMPLETE TEXT OF JUDGE DUNNE'S DECISION.

State of Illinois, County of Cook, ss.:

In the Criminal Court of Cook County.

The People ex rel. Andrew M. Lawrence and H. S. Canfield vs. E. J. Magerstadt, Sheriff of Cook County, Illinois.

Petition for habeas corpus.

Opinion by Edward F. Dunne, Judge.

The relators have been found guilty of contempt of court by the Hon. Elbridge Hanecy, judge of the Circuit Court of Cook County, Illinois, under the following circumstances as disclosed by the record in this cause:

On October 28, 1901, there was pending before Judge Haney a quo warranto proceeding entitled "The People ex rel. Charles S. Deneen vs. The Peoples Gas Light & Coke Company," and on that day the judge, shortly after the opening of morning session of court, read a written opinion disposing of the legal questions involved. Immediately after reading the opinion the judge, in open court, made use of the following language: "Order of August 9, 1901, is set aside and the petition for leave for filing information, etc., and the information are dismissed." Immediately following this declaration in open court the following colloquy took place between the judge and counsel in that case:

Mr. Moses: If the court please, the people reserve an exception and pray an appeal to the Supreme Court, and also want the court to fix a time to file a bill of exceptions.

The Court: I cannot allow you less than twenty days, can I?

Mr. Moses: Bill of exceptions—yes?

The Court: No. I think the statute provides that it shall not be less than twenty.

Mr. Moses: Only as to the bond.

The Court: I guess it is the same for each. I may have made errors before without your assistance, but I am not disposed to make them now with it. I can not give you less than twenty days.

Mr. Moses: As to the bill of exceptions—

The Court: You may file it in fifteen minutes, if you want to, so that giving you a longer time does not in any way injure you.

Mr. Moses: Then the order is twenty days?

The Court: Twenty days. The order of August 9, 1901, is set aside and the petition for leave to file and the information itself dismissed.

Mr. Meagher: If the court please, I will prepare a formal order and submit it to Brother Barnes.

The Court: You submit it to the other side. I wish you would give me a copy of your brief. I scratched that off hurriedly and I may wish to make some corrections.

On the same day, and after the foregoing proceedings had taken place in court, Hearst's Chicago American, a newspaper of this city, published a certain article which is set out in this record; and on the following day, the 29th inst., published another article and a cartoon upon Judge Haney, the latter of which is probably libelous. Both of the articles, if not libelous, were of such character as to have a clear tendency to intimidate, coerce, frighten and terrorize the judge, and to affect his judg-

ment IF ANY CASE WERE THEN UNDER CONSIDERATION BY HIM.

The relator, Canfield, in his answer filed before Judge Hanecy in the contempt proceedings, has admitted that he wrote the articles in question; and the relator, Lawrence, in his answer, admits that he was responsible for their publication. Both defendants in the proceedings before Judge Hanecy denied that they intended to influence, prejudice or terrorize the Court with reference to his decision in said cause, and aver that the "cause of The People ex rel. Charles S. Deneen, State's Attorney for Cook County, Illinois, vs. The Peoples Gas Light & Coke Company, was decided, adjudicated and determined on the morning of October 28, 1901, before the publication of any of the papers complained of, and that His Honor, Judge Hanecy, then and there, in open court and acting as judge of said court, did so dismiss said proceeding. That these respondents submit that this was a decision of the entire question pending before him, and was a complete determination of said question and ended the matter in controversy, so far as that court was concerned. That they are advised and so state the fact to be, that no motion for further argument, or for further consideration or modification of said decision was made, either by counsel in the case or by anybody else, but that on the contrary counsel for the State accepted said decision as final * * * and then and there prayed an appeal to the Supreme Court of the State."

No evidence was heard before Judge Hanecy, but the decision was based upon the information and answer, amended information and amended answer.

The statement as to what took place before Judge Hanecy in open court on October 28 appears both in the information and answer and is undisputed. It is also undisputed that the articles and cartoon in question were published after these proceedings had taken place in court.

Judge Hanecy, after considering the information and answer, as amended, and after hearing arguments of counsel at great length, found the defendants guilty of contempt of court in publishing said articles and cartoon and sentenced them to imprisonment in the county jail for thirty and forty days, respectively. The defendants were then taken into custody by the sheriff of Cook County, Illinois, under the final order of commitment.

At the time of the issuance of the writ of habeas corpus in this cause they were confined in the county jail in the custody of the sheriff of Cook County, and they now apply to this court to be released from said imprisonment.

It is contended by counsel for the relators that Judge Hanecy had no jurisdiction to enter the final order of commitment, and some sixteen different reasons or grounds are set up in the petition in support of their contention. Many of these grounds were abandoned upon argument, and it it is only necessary for this court to consider two.

First: Did Judge Hanecy acquire jurisdiction by the information filed before him? and,

Second: Had he jurisdiction to enter the final order therein?

Upon the hearing of a petition for habeas corpus, the court has no right to inquire into disputed questions of fact or mere errors of law committed. Only a court of review has this power.

Upon habeas corpus the court can only examine the record and ascertain whether, upon the face of the record, the committing court had jurisdiction to order the relators into imprisonment. If the committing court had not jurisdiction to enter such order, any court having the right to issue writs of habeas corpus will have the right to discharge the relators from such imprisonment, even though such imprisonment be for contempt of another court.

In ex parte George W. Thatcher, 2d Gilman, our own Supreme Court on a writ of habeas corpus, discharged the relator from imprisonment by the the County Commissioners' Court, for contempt of such latter court.

In Miskimins vs. Shaver, Sheriff, decided September 18, 1899, and published in the 58th Pac. Rep., page 411, the Supreme Court of Wyoming discharged a prisoner held for contempt of another court, holding that "where one imprisoned for contempt sues out a writ of habeas corpus, the court before whom such writ is returnable may examine into the acts constituting such contempt." The court held further, that if said acts did not in law constitute contempt, the court committing the prisoner acted without jurisdiction and the prisoner should be discharged.

In re Blush, was a case decided by the Court of Appeals of Kansas, March 17, 1897, published in the 58th Pac. Rep., page 147. The court in that case discharged the relator on an original habeas corpus proceeding, who was imprisoned for contempt of the District Court.

In Wyatt vs. The People, published in 28th Pac. Rep., 961, decided February 1, 1892, the Supreme Court of Colorado released in an original habeas corpus proceeding a relator who was fined for contempt of court alleged to have been committed in the Criminal Court of Arapahoe County.

In re Nichols, published in the 28th Pac. Rep., 1076, the Supreme Court of Kansas, on February 6, 1892, upon an original

writ of habeas corpus, discharged the relator who was imprisoned for an alleged contempt of the District Court of Kansas.

On July 2, 1890, the Supreme Court of Michigan released a relator upon habeas corpus from imprisonment for an alleged contempt of the Circuit Court of Wayne County.

The case is entitled "In re Woods," reported in the 45th Northwestern Reporter, page 1113.

The Supreme Court of Washington, on July 13 of the present year, released a relator in habeas corpus from imprisonment for an alleged contempt of a lower court.

In re Coulter, 56th Pac. Rep., 759.

Church on Habeas Corpus states the law as follows:

"Where acts alleged to be a contempt do not constitute a contempt for which one can be punished by fine or imprisonment, the court is without jurisdiction, and a judgment of conviction is not warranted by law, and the prisoner will be discharged on habeas corpus. Jurisdiction is not obtained by the mere assertion of it."

Church on Habeas Corpus, Sec. 323, Page 454, citing:

In re Dill, 32 Kan. 668;

Ex parte Grace, 12 Iowa, 208;

79 Am. Dec., 529;

Ex parte Summers, 5 Ired., 149;

In re Ayres, Scott and McCabe, 123 U. S., 443;

Cooper vs. The People, 13 Colo., 337;

Ex parte Gordon, 92 Calif., 478; and

Holman vs. Mayer, 34 Tex., 668.

Other authorities which hold that release from imprisonment upon a void process for contempt of court, may be had in habeas corpus, might be cited, but the doctrine is too well established to call for further citations upon this point. The Circuit, Criminal and Superior Courts of the State of Illinois have the same plenary jurisdiction in habeas corpus, as has the Supreme Court of the State.

This court has the undoubted right in habeas corpus proceedings to ascertain whether or not a coordinate court has jurisdiction to enter such a final order of commitment as was entered before Judge Hanecy.

Having disposed of the question of the jurisdiction of this court, let us consider the points raised by the relators:

It is first contended that Judge Hanecy never acquired jurisdiction in the contempt proceeding, because of the fact that the information upon which the same was based was not verified. The information was filed by the Hon. Simeon P. Shope, who was appointed by Judge Hanecy as Special State's Attorney for that

purpose, and the information is signed by him in his alleged official capacity and is unverified.

It is contended by the respondents that, inasmuch as the information is filed by a public official who had taken his oath of office, that the information need not be verified; that it was, in fact, verified by his oath of office.

The relators reply that he was never legally appointed to this position; that the only authority for the appointment of a special State's Attorney by a court is contained in the Revised Statutes of Illinois, section 6, chapter 14, upon Attorney Generals and State's Attorneys, which reads as follows:

"Whenever the Attorney General or State's Attorney is sick or absent, or unable to attend, or is interested in any cause or proceeding, civil or criminal, which it is or may be his duty to prosecute or defend, the court in which SUCH cause or proceeding is pending may appoint some competent attorney to prosecute or defend SUCH cause or proceeding; and the attorney so appointed shall have the same power and authority in relation to SUCH cause or proceeding as the Attorney General or State's Attorney would have had if present and attending to the same."

Section 5 of the same act declares:

"That the duties of each State's Attorney shall be:

"First—To commence and prosecute all actions, suits, indictments and prosecutions, civil and criminal, in any court of record in his county in which the people of the State or county may be concerned."

Relying on these two sections, it is claimed by the relators that it was the State's Attorney's duty to prosecute the contempt proceedings before Judge Hanecy, and that he was the only one who could do so unless the court, for some of the reasons expressed in section 6 of chapter 14, Revised Statutes of Illinois, appointed a special State's Attorney.

The order appointing Judge Shope reads as follows:

"It appearing to the court that the Attorney General of the State of Illinois is absent and not within the jurisdiction of this court, and that the State's Attorney of Cook County is a party to and interested in SAID CAUSE OF THE PEOPLE OF THE STATE OF ILLINOIS EX REL. CHARLES S. DENEEN, STATE'S ATTORNEY, VS. THE PEOPLES GAS LIGHT & COKE COMPANY, this court doth hereby appoint the Honorable Simeon P. Shope, attorney of the bar of this court, to institute and prosecute such petition, information or other proceeding as shall be proper to bring before the court in legal form the said matter of said scandalous publication, in order that the court may legally inquire into the matter of said publication, and as to the persons

who may be guilty thereof, to the end that such person may be dealt with according to law."

It will be noticed that in this order there is no finding that the State's Attorney of Cook County is interested in the contempt proceedings of the People vs. Hearst's Chicago American and others, the proceedings under which the relators were found guilty of contempt of court. The only finding of the court is that he was interested in an altogether different proceeding, to-wit: The People vs. the Peoples Gas Light & Coke Company.

This court is clearly of the opinion that the appointment of Judge Shope was not justified under the statute and was illegal and void.

Counsel for the relators have cited a long list of authorities to this court, some of which hold that even where an information is filed by a State's Attorney that it must be verified to give the court jurisdiction, and many more of which hold that no court can take jurisdiction of a proceeding for contempt alleged to have been committed outside of the presence of the court, unless the facts are brought to the notice of the court by a sworn information or sworn affidavit. Most of these cases declare that the affidavit or verification of the information is necessary to give jurisdiction in such cases and released parties found guilty of contempt because of the absence of this affidavit upon habeas corpus and upon error. Some of these cases were decided in states where the statute requires that such affidavits should be filed. Others of them are decided in states where there was no statute requiring such affidavit, but where the proceedings are had according to the practice of common law.

The following cases hold squarely, in the absence of the statute requiring the filing of an affidavit, that the absence of such affidavit is fatal, because the same is indispensable to give jurisdiction:

Freeman vs. City of Huron, 66 N. W. Rep., 928 (S. D.);

Wilson vs. Territory, 1 Wy., 155;

State vs. Blackwell, 10 S. Car., 155;

Wyatt vs. People, 17 Colo., 232;

State vs. Sweetland, 54 N. W. Rep., 415.

In the latter case there was a provision in the statute requiring the filing of an affidavit, but the decision declares that the statute is declaratory of the common law, and that the decision is based upon the common law as well as the statute.

In addition to the foregoing the following cases hold the affidavit jurisdictional, but they are all in states where the statute itself provides for the filing of the affidavit:

In re Blush, 48 Pac. Rep., 147;

In re Smith, 52 Kans., 13;

In re Wood, 45 N. W. Rep., 1113 (82 Mich.);
Ex parte Rockert, 126 Calif., 244;
In re Nichol, 26 Pac. Rep., 1076 (Kans.);
In re Coulter, 56 Pa. Rep., 759;
Thomas vs. The People, 14 Colo., 254;
Worland vs. State, 82 Ind., 49;
State vs. Kaiser, 203 Pa. Rep., 964 (Ore.);
State vs. Conn., 62 Pac. Rep., 269.

The authorities in the State of Illinois seem to hold to the same position.

In Oster vs. The People, decided October 24, 1901, the Supreme Court declares that "as a general rule attachment for contempt alleged to have been committed out of the presence of the court should be based upon an affidavit stating the facts constituting the alleged contempt." Citing 4th Ency. of Pleadings and Practice, 779.

In Chapin vs. The People, 57 Ill. App., 577, the Appellate Court holds as follows:

"When a contempt is committed out of the presence of the court the court has no power to proceed summarily against the offender without the filing of a written complaint or affidavit to set the machinery of the court in motion."

Moreover, the Constitution of this State declares, section 6 of article 2 of the Bill of Rights, that "no warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the 'persons' or things to be seized."

The authorities, however, are not uniform upon this question.

The Supreme Court of Massachusetts, in Telegram Newspaper Company vs. Commonwealth, held that when it comes in any manner to the knowledge of the court that articles are published in a newspaper circulated in the place where the court is held which are calculated to prevent a fair trial of the cause on trial before the court, the court, on its own motion, can institute proceedings for contempt.

In State vs. Gibson, a West Virginia case, reported in 10th Southeastern Reporter, on page 58, it was held "that neither the statute nor the common law makes it absolutely necessary that an affidavit should be filed on which to base such a rule (referring to a rule to show cause in contempt proceeding). Such a rule is usually properly based on affidavits, but I don't regard it as absolutely necessary in every case."

And so in State vs. Frew, 24 W. Va., it was held that where a contempt is not committed in open court the usual course is to issue a rule to show cause why an attachment should not issue,

though the attachment sometimes issues in the first instance. Such a rule is usually based in case of constructive contempt on affidavit or other sworn statement of the facts constituting the alleged contempt, but this is not always essential. The court may act on its own information or on the unsworn statement of a member of the bar in cases where the facts are clear and unmistakable, such as contemptuous publications in a newspaper.

In ex parte Wall, 107 U. S., 271, the court declares:

"It would, undoubtedly, have been more regular to have required the charge to be made by affidavit, and to have had a copy thereof served (with the rule) upon the petitioner. But the circumstances of the case as shown by the return of the Judge seems to us to have been sufficient to authorize the issuing of the rule without such affidavit."

And in ex parte Henry Petrie, 38 Ill., 498, it was held that "in a proceeding against a party by attachment for an alleged contempt for disobedience to an order of the court, it is not necessary that notice of the proceeding shall be given to the party before the attachment can properly issue."

In the case entitled in re Cheesman, 49 N. J. L., 142, the Supreme Court of that state declared:

"No doubt the ordinary course of practice in such cases in courts of law is that an affidavit of the facts should first be presented; * * * but the practice has not been uniform. Sometimes a rule to show cause has been allowed without an affidavit, on a mere suggestion; sometimes an attachment has been issued without a rule to show cause; sometimes punishment has been inflicted forthwith on the offender's confession when brought in by the writ, without interrogatories; and sometimes * * * the penalty has been imposed on the offender's admissions under the original rule, without either writ or interrogatories. So that these various steps are manifestly not jurisdictional, except to the extent of laying before the court matters which constitute a contempt, and affording to the party accused a fair opportunity of denying or confessing their truth."

The weight of authorities seems to incline to the contention of the relators that an affidavit is jurisdictional. But the law must be very clear and unmistakeable to justify a coordinate court in releasing a relator upon habeas corpus. As there is a conflict in the authorities, this court is not disposed to sustain the contention of the relators' counsel and release the prisoners upon this ground, although in the opinion of the court the authorities strongly preponderate in favor of the relators' contention.

It remains, then, to dispose of the question as to whether or not Judge Haney had jurisdiction to enter the final order of commit-

ment under which the relators in this cause are held by the sheriff of Cook County.

Under the common law it was contempt of court to slander or libel or speak disparagingly or disrespectfully of any judge of a superior court at any time. It was held that such conduct brought the administration of the law into disrepute and contempt. Such was the law in England up to within at least a few years before the American Revolution. Such has never been the law in the State of Illinois, nor in most of the states of the United States.

It is admitted by counsel for the respondents that any man in the State of Illinois may slander or libel or speak in a disparagingly or disrespectful way of a judge upon the bench in relation to the action of such judge in a lawsuit which has been disposed of and adjudicated by him without exposing the author of such slander or libel to proceedings in the nature of a contempt of court. The sole remedy of the judge as against the author of such libel or slander is the remedy which is given to every citizen of the State, to-wit, the right to sue civilly and to indict criminally.

Counsel for the respondents in conceding such to be the law show that they are familiar with all the decisions of our Supreme Court in relation to contempts of court.

In Stuart vs. The People, 3 Scam., 404, the court declared:

"Contempts are either direct, such as are offered to the court while sitting as such and in its presence, or constructive, being offered, not in its presence, but tending by their operation to obstruct and embarrass or prevent the due administration of justice. Into this vortex of constructive contempts have been drawn by the British courts many acts which have no tendency to obstruct the administration of justice, but rather to wound the feelings or offend the personal dignity of the judge, and fines imposed and imprisonment denounced so frequently and with so little question as to have ripened, in the estimation of many, into a common law principle; and it is urged that, inasmuch as the common law principle is in force here by legislative enactment, this principle is also in force. But we have said in several cases that such portions only of the common law as are applicable to our institutions and suited to the genius of our people can be regarded as in force. It has been modified by the prevalence of free principles and the general improvement of society, and whilst we admire it as a system, having no blind devotion for its errors and defects, we cannot but hope that in the progress of time it will receive many more improvements and be relieved from most of its blemishes. CONSTITUTIONAL PROVISIONS ARE MUCH SAFER GUARANTIES FOR CIVIL LIBERTY AND PERSONAL RIGHTS THAN THOSE OF THE COMMON LAW, however much they may be said to protect them.

"If a judge be libeled by the public press he and his assailants should be placed on equal grounds and their common arbiter should be a jury of the country; and if he has received an injury ample remuneration will be made.

"In restricting the power to punish for contempts, to the cases specified, more benefits will result than by enlarging it. It is at best an arbitrary power, and should only be exercised on the preservative and not on the vindicative principle. It is not a jewel of the court, to be admired and prized, but a rod rather, and most potent when rarely used.

"The whole case being presented to this court, in the same form and manner in which it was presented before the Circuit Court, we are satisfied that no contempt was committed of which that court could take jurisdiction and accordingly reverse the judgment."

This was said of a publication in a newspaper, during the trial of a case, which charged the court with directing the officers of the court to close the doors during the trial of Stone, to prevent all ingress and egress; and another publication, in the same paper, which declared that one individual said that "the weakness of His Honor's head would not permit of the noise and confusion of a crowd and a proper attention to the trial of the cause all at the same time."

This was the first case in which the question of the right of a court to punish for constructive contempt arose in this State. The last case is Storey vs. The People, 79 Ill., 45.

In this case the Chicago Times published certain libelous articles concerning the members of a grand jury which had returned three indictments against the editor of that paper, and the court, in commenting upon the question as to whether the editor was liable for contempt of court for making such publication, used the following language:

"The only question, therefore, is, assuming the article to be libelous, whether the publishing of a libel on a grand jury, or on any of the members thereof, because of an act ALREADY DONE, may be summarily punished as a contempt.

"We do not understand the articles as having a tendency directly to impede, embarrass or obstruct the grand jury in the discharge of any of its duties remaining to be discharged after the publications were made. * * * All that it would seem could be claimed is that the publication would cause disrespect to be entertained by the public for the grand jury, and for its action in the particular cases criticised, and thereby tend to that extent to bring odium upon the administration of the law. * * * It is not denied by counsel for the respondents that courts may punish, as for contempt, those who do any act directly tending to impede,

embarrass or obstruct the administration of the law; but they do deny that any publication, however disrespectful, when applied to jurymen in regard to the manner in which they have ALREADY DISCHARGED a duty, does or is calculated to impede, embarrass or obstruct the administration of the law.

"Authority may be found in the textbook and in English and American cases, holding a doctrine at variance with this position. Thus, for instance, Blackstone, says, in showing how contempt of court may be committed, 'it may be by speaking or writing contemptuously of the court or judges, acting in their judicial capacity; by printing false accounts (or even true ones, without proper permission) of causes then depending in judgment; and by anything, in short, that demonstrates a gross want of that regard and respect which, when courts of justice are deprived of their authority is entirely lost among the people.' But the law in relation to contempt has never been held, in any case decided by this court, to be so indefinitely broad as it is thus stated by Blackstone. Our Constitution and statutes certainly affect the question to some extent and it is only in determining precisely how far they do so that we have any difficulty."

The decision then proceeds to discuss the Stuart case, hereinbefore mentioned, and then continues:

"It was said in that case (the Stuart case), in speaking of the power to punish for contempt in case of mere libels upon the court having no direct tendency to interfere with the administration of the law: 'It does not seem necessary for the protection of courts in the exercise of their legitimate powers that this one, so liable to abuse, should also be conceded to them.' "

The court then goes on to discuss the case of The People vs. Wilson, 64 Ill., 195, in which the Supreme Court, by a bare majority of one, held the Chicago Journal liable for contempt of court for publishing a libelous article upon the Supreme Court itself relating to a case then pending and undetermined in that court.

In analyzing that case the Supreme Court, in the Storey case, declared (page 50) that "the decision turned upon the point, as will be seen by reference to the opinion of the Chief Justice, that the cause in reference to which the article was published was THEN PENDING before the court, UNDECIDED and that the article was CALCULATED to and was DESIGNED to influence the members of the court in deciding it."

Continuing, the Court declares:

"Courts, however, possess certain common-law powers, subject to modification that may have been imposed by our constitution and statutes, among which is included that of punishing for contempts.

"Differences of opinion have been entertained by members of this court at different times, in regard to the extent of such modi-

fications: AND WE FEEL CONSTRAINED, in giving expression to our views in the present case, TO DISAGREE TO SOME EXTENT WITH REMARKS MADE BY SOME OF THE MEMBERS COMPOSING THE MAJORITY OF THE COURT IN WILSON'S CASE, SUPRA.

"In our opinion IT IS NOT ADMISSIBLE, UNDER OUR CONSTITUTION, THAT A PUBLICATION, HOWEVER LIBELOUS, NOT DIRECTLY CALCULATED TO HINDER, OBSTRUCT OR DELAY COURTS in the exercise of their proper functions, SHALL BE TREATED AND PUNISHED, SUMMARILY, AS A CONTEMPT OF COURT. * * *

"In this State our Constitution guarantees 'that every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty; and in all trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense.'

"This language, plain and explicit as it is, cannot be held to have no application to courts, or those by whom they are conducted. The judiciary is elective, and the jurors, although appointed, are in general appointed by a board whose members are elected by popular vote. There is, therefore, the same responsibility, in theory, in the judicial department that exists in the legislative and executive departments to the people, for the diligent and faithful discharge of all duties enjoined on it; and the same necessity exists for public information with regard to the conduct and character of those entrusted to discharge those duties, in order that the elective franchise shall be intelligibly exercised, as obtains in regard to the other departments of the government."

"When it is conceded that the guaranty of this clause of the Constitution extends to words spoken or published in regard to judicial conduct and character, it would seem necessarily to follow that the defendant has the right to make a defense which can only be properly tried by a jury, and which the Judge of a court, especially if he is himself the subject of the publication, is unfitted to try."

"Entertaining these views, the judgment of the court below must be reversed, and the respondents discharged."

The law of the State of Illinois upon constructive contempt, as laid down in this decision, has never been changed, modified or disturbed from the date when the same was rendered down to the present time. It is in full force and effect today, as is conceded by counsel for the respondents. It follows, therefore, that if there was a proceeding PENDING before Judge Haney at the time of the publication of these articles, and the cartoon in question, the decision of which by Judge Haney would have been impeded, embarrassed or obstructed by the publication of the same, that it

was constructively a contempt of court, and that the relator should be remanded. If, on the other hand, there was no proceeding PENDING before Judge Haney, which the publication of these articles might affect, then, under the law as laid down in the Storey case, no contempt of court could have been committed by the publication of these articles, however libelous they may have been.

The question as to whether or not a cause or proceeding was PENDING before Judge Haney is a question of LAW and not of FACT. The facts as set out in the amended information and admitted and restated in the defendants' answers, are identical, verbatim et literatim.

Upon concluding the reading of his opinion, Judge Haney declared in open court "the order of August 9, 1901, is set aside and the petition for leave to file and the information are dismissed"; and again, "the order of August 9, 1901, and the petition for leave to file and the information itself dismissed."

Was this, or was this not a final order?

Counsel for the relators claim that this language was the final judgment of the court.

Counsel for the respondents admit that the language was used, but contend that because the clerk did not enter it of record the case was not finally disposed of.

The relators swear in their answers that they understood it to be the final order of the court, and they attach to their answer excerpts from publications made by the Chicago Daily News, the Chicago Post, the Chicago Journal, the Inter Ocean, the Tribune, the Chicago Herald, and the Chicago Chronicle, all published either on the 28th of October, 1901, or the 29th, which show that the reporters of these papers, as well as the reporters for the American, understood that it was a final disposition of the case.

Reporters of modern newspapers as a rule are a highly educated, intelligent class of men and women, as competent to judge of the meaning of the ordinary English language as the ordinary lawyer, and the nonlegal world—as evidenced by the conduct of the newspapers—certainly understood the language as a final disposition of the case so far as Judge Haney was concerned.

Let us examine the law books and see whether or not the law writers would call the use of such language, in open court, a final judgment.

Black on Judgments, vol 1, section 106, declares:

"The rendition of a judgment is the judicial act of the court in pronouncing the sentence of the law upon the facts in controversy as ascertained by the pleadings and the verdict. The ENTRY of a judgment is a ministerial act, which consists of spreading upon the record a statement of the final conclusion reached by the court in the matter. * * * In the nature of

things, a judgment must be RENDERED before it can be ENTERED. And not only that, but though the judgment be not entered at all, still it is none the less a judgment. The omission to enter it does not destroy it, nor does its vitality remain in abeyance until it is put upon the record. The entry may be supplied, perhaps after the lapse of years, by an order nunc pro tunc. * * * As is said by the Supreme Court of California: 'The enforcement of a judgment does not depend upon its ENTRY or docketing. These are merely ministerial acts, the first of which is required to be done for putting in motion the right of appeal from the judgment itself, or of limiting the time within which the right may be exercised, or in which the judgment may be enforced; and the other, for the purpose of creating a lien by the judgment upon the real property of the debtor. But neither is necessary for the issuance of an execution upon a judgment which has been duly rendered. Without docketing an entry execution may be issued on the judgment and land levied upon and sold, and the deed executed by the sheriff, in fulfillment of the sale, not only approves the sale, but also estops the defendant from controverting the title acquired by it.' ''

Freeman on Judgments, 2d Ed., Sec. 38, declares:

''Expressions occasionally find their way into reports and textbooks, indicating that the entry is essential to the existence and force of the judgment. These expressions have escaped from their authors when writing of matters OF EVIDENCE, and applying the general rule that in each case the best testimony which is capable of being produced must be received, to the exclusion of every means of proof less satisfactory and less authentic. The RENDITION OF a judgment is a judicial act; its ENTRY upon the record is merely ministerial. A judgment is not what is ENTERED, but what is ORDERED and CONSIDERED. The entry may express more or less than was directed by the court, or it may be neglected altogether. Yet in either of these cases is the judgment of the court any less its judgment than though it was accurately entered. In the very nature of things the act must be perfect before its history can be so. And the imperfection or neglect of its history fails to modify or obliterate the act.''

The distinction between the RENDITION of a judgment and its ENTRY is clearly pointed out by our Supreme Court in the case of Blatchford vs. Newberry, 100 Illinois, 484.

In discussing a provision of the statute which authorizes the Supreme Court in vacation to correct a judgment which might have been erroneously ENTERED by the clerk the court uses the following language:

"It will be observed that the power here assumed to be conferred upon the judges is not to grant rehearings, but when a judgment is found to have been erroneously entered up to change the same without ordering a rehearing. The words 'RENDERED' and 'ENTERED' are plainly used antithetically, and each in its distinctive correct legal sense, 'rendered' being used to indicate the giving of the judgment and 'entered' to indicate the act of placing the judgment RENDERED on record. In other words, enrolling or recording it. 'Erroneously ENTERING up a judgment' expresses only an error in the clerical act of placing it upon the record and implies that the judgment enrolled or recorded is not the judgment RENDERED or given" (pp. 489-490).

In Fontaine vs. Hudson, 93 Mo., 62, decided in 1887, and reported in the 5th Southwestern Reporter, 692, the court holds:

"That it is not essential to the validity of records of courts in this State that they should be signed by the judge, and that the party in whose favor any judgment is rendered may have execution in conformity therewith, that the right to the execution follows EO INSTANTE upon the RENDITION of the judgment. The RENDITION of the judgment is the judicial act upon which the execution rests. Its ENTRY upon the record is a mere ministerial act evidencing the judicial act, but not essential to its validity or giving to the judgment any additional force or efficacy. A valid judgment rendered will support and validate an execution issued in conformity therewith, although the formal record evidence of its rendition may not have been in existence at the time the execution issued."

The court in that case confirmed the title of a purchaser upon execution sale, although the judgment was not entered of record when execution issued.

In Los Angeles County Bank vs. Raynor, 61 Calif., 147, which was an action for the possession of land brought upon a sheriff's deed obtained under an execution which had been issued before the judgment was entered of record, the court sustained the title based upon said sheriff's deed. This is the case cited by Black in his work on judgments hereinbefore quoted.

In the case of Sieber et al., vs. Frink et al., 7th Colo., 151, the Supreme Court of that State declares:

"The pronouncing of a judgment is a judicial act; the entry of record is a ministerial duty. The judgment is complete when properly declared, though the mechanical act of recording the same has not been performed."

The Supreme Court of North Carolina, in 91 Am. Dec. 93, in the case of Davis vs. Shaver, declared:

"The entry is a memorial of what the judgment was. If there had been no entry at all, it would have been competent for his honor to have it entered NUNC PRO TUNC, upon his being satisfied that judgment was in fact delivered."

In Baker vs. Baker, reported in 8th N. W. Rep., 291, the court declares:

"The testimony is most clear, positive and conclusive that this order was actually made by the Probate Court, but through inadvertence was not signed. But we apprehend that the failure to sign did not defeat the order; that it took effect as the decision of the court, notwithstanding that omission. The judicial act performed was in deciding upon the application and announcing such decision. True, the County Court is a court of record, having a seal, and each judge of said court is required to keep a true and fair record of each order, sentence and judgment of the court. Properly, the order in question should have been entered of record. But the failure to do this, or to sign the order, did not have the effect to nullify or destroy the decision which was actually made."

In Schuster vs. Rader, 13 Colo. Rep., 334, the Supreme Court of that State declares:

"At common law the giving of judgment was a judicial act, to be performed only by the court sitting at stated time and places. * * * The judgment having been so pronounced in open court, the act of entering the same in the record by the clerk was purely ministerial and was not essential to the existence of the judgment so rendered, though the entry was necessary to preserve it, and as a matter of proof, was the best evidence of its existence. The judgment derived its force and effect from the fact that it had been so considered, adjudged and decreed by the court; and it became effective from the time of such adjudication and promulgation in open court, though the ministerial act of entering the same in the records of the court might be delayed."

In the case of Ward vs. White, 66 Ill., App., 156, the court declared:

"It appears that there was no entry by the clerk of the case in which judgment was rendered, on the docket of the court, or the trial calendar, or the judge's docket, or upon the clerk's docket, and there were no minutes of the judge upon his docket of the entry of the judgment or the finding of the court thereon.

"It is insisted that the Circuit Court obtained no jurisdiction of the case, to enter the judgment, for the reason that there was no 'note, minute or memorandum made by the judge,' or under

his direction, upon the docket of the term or upon the papers, files or some memorial paper found of record in the court."

Notwithstanding the court held that a judgment was actually rendered and that it was a valid judgment and declared:

"The court had power to pass on the case orally and order the clerk orally to enter the judgment and the duty of the clerk was to enter the judgment accordingly. * * * The clerk is a mere ministerial officer and enters only such orders and judgments as he is ordered by the court."

In the case of Metzger vs. Wooldridge, 183 Ill., 178, our Supreme Court uses the following language:

"It is true, as insisted by counsel for appellants, that a judgment is not necessarily what is entered by the clerk, but that which is ordered and considered by the court."

In the Encyclopedia of Pleadings and Practice, Vol. 18, page 429, on Judgments, the following language is used:

"The act, after the trial and final submission of a case, of pronouncing judgment in language which finally determines the rights of the parties to the action and leaves nothing more to be done except the entry of the judgment by the clerk, constitutes the rendition of a judgment. No particular form is required in the proceedings of a court to render them an order of judgment. It is sufficient if they are final. The RENDITION and the ENTRY of a judgment are entirely different things. The first is a purely judicial act of the court alone, and must be first in the order of time, while the entry is merely evidence that a judgment has been rendered, and is purely a ministerial act (pp. 429-430). In none of these citations, however, is the distinction between a judgment and the entry thereof more clearly drawn and distinguished than is done by the statutes of this state. Chapter 25 of the Revised Statutes relates to clerks of courts. Sec. 14 of this chapter reads as follows:

"They (the clerks) shall enter of record all judgments, decrees and orders of their respective courts before the final adjournment of the respective terms thereof, OR AS SOON THEREAFTER AS PRACTICABLE."

The following, Section 16, then provides, "that any clerk who fails to enter of record all * * * judgments and decrees of the court by or before the next succeeding regular term of the court shall be fined not exceeding $100."

It thus appears that by the statutes of this State that after the close of the term and when the court itself has lost all jurisdiction over the judgment rendered at that term that the clerk is permitted to enter up the judgments rendered by the judge at the term.

Could the distinction between the judgment itself and the entry thereof be more clearly pointed out?

As opposed to this mass of authorities as to what constitutes a judgment, counsel for respondents in the case at bar rely upon certain cases which will now be noticed and discussed.

Judson vs. Gage, 98 Fed. Rep., 542. In that case the judge noted upon his minute book as follows:

"Oct. 5 (517) Gage, Secretary of Treasury, vs. Judson. Award of $32,000 in favor of Judson, and United States is satisfied with award and asks report to be accepted, and discontinue as to others. Order discontinuance granted. Balance continued, October 7, and United States (Gage) vs. Judson; award approved and accepted; $32,000."

The judge who made these entries held "that these minutes were not in any sense the entries of a judgment. They are the mere memoranda of the judge as to the proceedings in court and as to the course to be pursued when the judgment file shall be presented."

The Circuit Court of Appeals expressly held in relation to this entry:

"The oral expression of the District Judge in regard to the propriety of the acceptance of the report is not a judgment until it has become a written order of court. Until then it has not taken the form of an authoritative decree, and is not operative. A JUDGMENT IN FORM WAS NOT ASKED FOR. The cause was continued to the next term of the court, when some one, apparently recognizing that the cause was not at an end, prepared a written judgment, which was signed by the judge, and which spoke from that term." In other words, there was no evidence of any sort of a judgment having IN FACT been rendered.

In the case of State vs. Tugwell, 19 Wash., Rep., 242, cited by counsel for respondents, the facts that appear of record were that on the 24th of February, 1898, a certain libelous article was published concerning the Supreme Court. On the 18th of February a majority of the court had rendered an OPINION. On the very date of the publication of the article a dissenting OPINION had been rendered by two of the judges. On February 28, 1898, a petition for the modification of the opinion by the majority of the court was filed, and on March 2, 1898, a majority opinion of the court was filed denying the last petition for modification of the opinion of reversal, and final JUDGMENT was entered on March 9, 1898.

In other words, when the libel was published which it was claimed was contempt of court the cause was still pending and

undetermined and the final order was not entered until thirteen days afterward.

Counsel for respondents also cite "Encyclopedia of Pleading and Practice," Vol. 8, which holds that a court may at any time before closing of term at which judgment is rendered grant a new trial or modify or correct his findings.

No one questions that this is law, but the fact that a court may modify or change or set aside a judgment during a term does not mean that a judgment already rendered is not in full force and effect until modified or set aside.

They also cite "Encyclopedia of Pleadings and Practice," Vol. 11, which declares that the DECISION or FINDING of a court, referee or committee does not constitute a judgment, but merely forms a basis upon which the judgment is subsequently to be rendered.

What relation this can have to the language used by Judge Hanecy this court is unable to discover.

They also cite the case of Fishback vs. The State, 131 Ind., 313, in which the court declares:

"But as to the pendency of the action, it may be said that its pendency does not terminate with the return of the verdict of the jury or the rendition of the judgment, but may be said to be pending while it remains in fieri, for after judgment the parties are still in court for certain purposes. A motion for a new trial may be made and a new trial granted without additional notice."

This may all be true, and is true, of any case until it is finally disposed of, but a final order or judgment rendered during the term remains a final order of judgment until it is set aside or modified.

In the case of Martin vs. Barnhardt, 39 Illinois, 9, it is simply held that an entry made on the clerk's docket, which reads as follows: "Judgment entered upon verdict for $3,000 and costs," is not an entry of a judgment.

The case of Edwards vs. Evans, 61 Ill., 493, is a case in which the court declared:

"From the record in this case there has never been a trial upon the merits, and we are now asked to affirm the judgment on account of the decision between the same parties in Evans vs. Edwards, 26 Ill., 279. * * * The supposed judgment at the June term, 1862, of the court below was no judgment. It was never entered upon the record. There was only a verdict and an order of the judge upon his docket."

In other words, there was no proof on the docket or otherwise that a judgment had in fact been rendered. This case is wholly irrelevant to the issues in the case at bar.

In Hanson vs. Schlesinger, 125 Ill., 230, the Court held, which is undoubtedly the law, that:

"During the term of a court all proceedings rest in the breast of the judge, and he can amend the record according to the facts within his own knowledge."

No one disputes this is the law, but what bearing or application can it have upon the question as to whether or not a judgment once rendered continues to be a judgment until changed or modified?

In the case of Stift vs. Kurtenback, 85 Ill. App., 38, the court holds to the same effect, to-wit: That they (the court) can amend, alter, change or modify its records at any time within the term.

These are the only authorities upon which counsel for respondents seem to rely with reference to the question as to whether or not the language used by Judge Hanecy on the 28th of October, 1901, amounted to a rendition of a judgment.

This language, as we have seen, was understood as a final order by all the representatives of newspapers present. It was also so understood by the attorneys of record in the case, for they at once preserved an exception and prayed an appeal. Does not the language used clearly indicate that the court entered a final order in the case?

The present tense is used. The orders to be set aside are designated and the information itself declared, in the present tense, to be dismissed. The court uses the language twice, on both occasions using the present tense, making complete disposition of the motion and complete disposition of the suit itself.

It is true that one of the counsel declared that he would prepare a formal order. In other words, an order putting in form the judgment rendered. Permission was not given to do even that. The court, in response to the suggestion, stated, "submit IT to the other side." No directions were given to the clerk not to enter on the record the judgment of the court, and it was his, the clerk's ministerial duty, to enter the decision as announced.

As this court understands the language, it was a plain, clear, concise and plenary disposition of the case.

But it is contended by counsel for the respondents, that even if it were a final order of the court, the court had a right to change it at any time during the term, and that it was therefore in fieri and pending.

They seem to rely almost solely upon the authority of Fishback vs. State, 131 Ind., 313, hereinbefore quoted.

The language of that opinion hereinbefore quoted was used in a case in which a newspaper had published a certain article reflecting upon the credit of a grand jury, and tending to bring them into disrepute and to embarrass and interrupt a legitimate investi-

gation by them as to the commission of a crime at any time during their session. As applied to the facts in that case it may have had some relevance, but if it be held that an individual or a newspaper cannot comment upon the decision of a court, at any time while a case is pending in court, even though the final order has been entered, without exposing the person so commenting to prosecution for contempt of court, it will amount to a suppression of free speech and of free press in relation to all judicial proceedings.

The concluding sentences of the Storey opinion, in which a sitting grand jury was libeled, practically abolishes the law of constructive contempt in the State of Illinois.

In speaking of the clause of the Illinois Constitution relating to free speech and a free press, the court declares:

"THIS LANGUAGE, PLAIN AND EXPLICIT AS IT IS, CANNOT BE HELD TO HAVE NO APPLICATION TO THE COURTS. * * *

"WHEN IT IS CONCEDED THAT THE GUARANTY OF THIS CLAUSE OF THE CONSTITUTION EXTENDS TO WORDS SPOKEN OR PUBLISHED IN REGARD TO JUDICIAL CONDUCT OR CHARACTER IT WOULD SEEM NECESSARILY TO FOLLOW THAT THE DEFENDANT (Storey) HAS A RIGHT TO MAKE A DEFENSE WHICH CAN ONLY BE PROPERLY DECIDED BY A JURY, AND WHICH THE JUDGE OF A COURT, ESPECIALLY IF HE IS HIMSELF THE SUBJECT OF THE PUBLICATION, IS UNFITTED TO TRY.

"Entertaining these views, the judgment of the court below must be reversed and the respondent discharged."

But even if any trace of the law of constructive contempt be left in the State of Illinois under the views enunciated by the Supreme Court in the Wilson case, which was decided three years before the Storey case by a bare majority of the court, after the respondent had failed and refused to offer any argument or submit any brief—the law of which has been assailed by Wharton in his great work on criminal law—such trace of the former law of constructive contempt is confined to words spoken or published concerning a judge before whom a case is PENDING.

What is the meaning of the word "pending," as used in the Wilson case and referred to in the Storey case?

Counsel for relators contend that a "pending" case means a case on trial or under consideration by the particular judge whose conduct is the subject of criticism. Counsel for respondents contend that it means a case which is in any way under the control of such judge, even after a final order has been entered by such judge therein. All cases are in that condition during the term.

Under the first construction a person or a newspaper could lawfully criticise a final order rendered by a judge or court immediately after its rendition, without committing contempt of court. Under the latter construction no man or newspaper could criticise a final order entered until the end of the term, which in the courts of Cook County lasts one month. In the case of the Supreme and Appellate Courts the terms last two and six months, respectively.

To give the word "pending" the first construction would be to render the constitutional provision that "Every person may freely speak, write or publish on all subjects, being responsible for the abuse of that liberty," effective and of benefit to the community.

To give the word the latter construction would make this provision of the Constitution a mere jumble of words without force or effect in the community, VERBA PRAETEREA NIL.

To give the word the former interpretation would enable the public to discuss living questions arising in the courts. To give it the latter would confine the public to the consideration of what is flat, stale and unprofitable.

The occupation of a journalist in connection with court proceedings would be gone. His place would be taken by the historian.

This court has no hesitation in giving the word the construction which is natural and not forced; which is reasonable and not unreasonable; which is in consonance with modern progress, and the letter and spirit of the Supreme law of the State and the Bill of Rights.

Giving the word this construction a "PENDING" CASE MEANS SIMPLY A CASE ON TRIAL BEFORE OR UNDER CONSIDERATION BY A CERTAIN JUDGE.

In the case under consideration the quo warranto proceedings before Judge Haney were "pending" while it was on trial before him or under consideration by him. When he rendered his opinion and then uttered the words:

"The order of August 9, 1901, is set aside and the petition for leave for filing information, etc., and the information are dismissed," he entered a final order and the cause was not "pending" before him. This order could have been set aside or modified by Judge Haney during the term, but nevertheless until it was so set aside or modified it was a final order.

NO MORE EFFECTIVE WAY CAN BE CONCEIVED OF SUPPRESSING FREE SPEECH AND FREE PRESS IN RELATION TO PROCEEDINGS IN COURT THAN BY THE COURTS SUSTAINING THIS EXTRAORDINARY CONTENTION ADVANCED BY COUNSEL FOR RESPONDENTS.

In the case under consideration three weeks elapsed between October 28, 1901, when Judge Haney's decision was rendered, and the end of the October term.

Under the contention of counsel for the respondents no adverse comment upon that case could have been made until three weeks after its rendition. This court cannot accept or put in force by legal construction such an extraordinary contention.

PUBLIC OFFICIALS, EXECUTIVE, LEGISLATIVE AND JUDICIAL, HAVE ALWAYS BEEN AND ALWAYS WILL BE SUBJECT TO CRITICISM BECAUSE OF THEIR OFFICIAL ACTS. IT IS ONE OF THE INCIDENTS AND BURDENS OF A PUBLIC LIFE.

If the criticism be just it will commend itself to the public and be effective for good. If it be unjust and unfair it will fail to injure the man assailed.

THERE IS NO GOOD REASON WHY A JUDGE SHOULD HAVE A DIFFERENT LAW APPLIED TO HIM THAN IS APPLIED TO A PRESIDENT, A GOVERNOR OR A MEMBER OF THE LEGISLATURE.

Editorial lawyers who gather their law from the circulation department or the counting room, have differed and will continue to differ with judges who obtain their law and inspiration from law books and legal precedents. But there is no good reason why, after the judge has given his exposition of the law and disposed of the case before him, SUCH AN EDITORIAL LAWYER may not decide the same case to suit himself. It is only when he forestalls the judge with his opinion, and endeavors in his paper to coerce, intimidate, terrorize, wheedle or cajole the judge into agreeing with his newspaper law, that his conduct by any possible construction of the Illinois decisions can become contempt of court.

It is not without some reluctance that I feel constrained to differ so radically with the able and honorable jurist whose order has committed the relators to jail, because of the undeserved assault upon him, and because of my respect and friendship for him. But such considerations must give way before the vital principle involved in the protection of free speech and a free press, a principle so important that it has been carefully and zealously guarded by the Constitution of our State and the Constitution of the United States and the well considered decisions of our own Supreme Court.

I am clearly of the opinion that the language used in open court by Judge Haney on October 28, 1901, amounted to a final order disposing of the case under consideration, and that being a final order, under the doctrine of "Contempts," as laid down

in this State by our Supreme Court in Storey vs. The People, that the relators had a right to comment and criticise that decision, even to the extent of libelling the honored and respected judge who rendered the opinion, without exposing themselves to prosecution for contempt of court.

Such being the views of the court, and the court being of the opinion that upon the undisputed facts in the case, the relators, under the authority of Storey vs. The People and the other authorities cited, did not commit a contempt of court, the relators must be discharged, and it is so ordered.