laws derive their force, as do all new ones consistent with it, not from this Amendment, but from power originally belonging to the States, preserved to them by the Tenth Amendment, and now relieved from the restriction heretofore arising out of the Federal Constitution. This is the *ratio decidendi* of our decision in *Vigliotti v. Pennsylvania* (April 10, 1922).

We have here two sovereignties, deriving power from different sources, capable of dealing with the same subject matter within the same territory. Each may, without interference by the other, enact laws to secure prohibition, with the limitation that no legislation can give validity to acts prohibited by the Amendment. Each government in determining what shall be an offense against its peace and dignity is exercising its own sovereignty, not that of the other.

It follows that an act denounced as a crime by both National and State sovereignties is an offense against the peace and dignity of both and may be punished by each. The Fifth Amendment, like all the other guaranties in the first eight amendments, applies only to proceedings by the Federal government, *Barron v. The City of Baltimore,* 7 Pet. 243., and the double jeopardy therein forbidden is a second prosecution under authority of the Federal Government after a first trial for the same offense under the same authority. Here the same act was an offense against the State of Washington, because a violation of its law, and also an offense against the United States under the National Prohibition Act. The defendants thus committed two different offenses by the same act, and a conviction by a court of Washington of the offense against that State is not a conviction of the different offense against the United States and so is not double jeopardy.

The learned Chief Justice adduced a number of decisions in which this view of the Fifth Amendment found support, and concluded his opinion as follows:

> If Congress sees fit to bar prosecution by the Federal courts for any act when punishment for violation of state prohibition has been imposed, it can, of course, do so by proper legislative provision; but it has not done so. If a State were to punish the manufacture, transportation and sale of intoxicating liquor by small or nominal fines, the race of offenders to the courts of that State to plead guilty and secure immunity from Federal prosecution for such acts would not make for respect for the Federal statute or for its deterrent effect. But it is not for us to discuss the wisdom of legislation, it is enough for us to hold that in the absence of special provision by Congress, conviction and punishment in a state court under a state law for making, transporting and selling intoxicating liquors is not a bar to a prosecution in a court of the United States under the Federal law for the same acts.

The case was argued by Solicitor General Beck for the United States and by Mr. John F. Dore for defendents in error.

SOME AMERICAN CAUSES CELEBRES

IV. HENRY FORD vs. THE TRIBUNE CO.

By WEYMOUTH KIRKLAND
*Of the Chicago, Illinois, Bar**

THE case of Henry Ford vs. The Tribune Company received great publicity during the trial, because of the prominence of the parties and the sensational nature of the evidence introduced. The plaintiff, one of the world's richest and best known men, had been dubbed an anarchist and an ignorant idealist by one of the largest and best known newspapers in the world. The fact that Henry Ford had sued the *Tribune* for a million dollars was sufficient to attract the widest attention to the case.

Then, too, public fancy was caught by the striking dissimilarity between the views of these parties upon national issues. Mr. Ford had long been an ardent exponent of the Bryan-Jordan School of Pacifism. *The Chicago Tribune,* from the time of Joseph Medill, had always been an advocate of national preparedness. *The Chicago Tribune* had praised Mr. Ford both in its editorials and news columns for his treatment of his employees, and, as Mr. Ford said, "It was on the rock of preparedness that we split." Mr. Ford believed that soldiers were murderers, and that those who argued for preparedness were war profiteers. *The Chicago Tribune* believed that those who sought to reduce the force of government in times of national stress were anarchists; for, without force in such times, government cannot exist.

Since the rendition of the famous six-cent verdict (which, under the Michigan Statutes, carried with it only six cents costs) the writer has received many requests for transcripts of the evidence relating to the high lights of the trial. Usually the request is limited to certain portions of the testimony—for instance, that relating to the Ford International Flag, or that relating to the Revolutionary War of 1812 incident, or where Mr. Ford thought Benedict Arnold was a writer, or that relating to Mr. Ford's refusal to read certain documents because of hay fever, or that relating to the depredations on the Mexican border, or that relating to the supposed *Tribune* interests in Mexico, etc., etc. I have received but two requests for the briefs submitted and for the instructions of the court. Although the public generally may be interested in the pyrotechnical display, the profession, I think, will be more interested in determining how the fireworks were constructed and how set off.

I have frequently heard it stated by lawyers that everything was tried at Mt. Clemens, excepting the issues of the case. It is my purpose to indicate how, under the conflicting theories of the plaintiff and the defendant, these broad issues were formed and were materialized.

The article sued upon was the following:

> FORD IS AN ANARCHIST
>
> Inquiry at the Henry Ford offices in Detroit discloses the fact that employes of Ford who are members of or recruits in the national guard will lose their places. No provision will be made for any one dependent upon them. Their wages will stop, their families may get along in any fashion possible, their positions will be filled, and if they come back safely and apply

*The attorneys appearing for the parties in this litigation were the following:

For Plaintiff: Alfred Lucking, A. J. Murphy, William Lucking and H. Helfman of Lucking, Murphy, Helfman, Lucking and Hanlon, of Detroit; O. A. Lungerhausen, J. A. Weeks and Neil A. Reid, of Mt. Clemens.

For Defendant, The Tribune Company: Elliott G. Stevenson, Thomas G. Long and George Stevenson of Stevenson, Carpenter, Butzel & Backus, of Detroit; Horace Kent Tenney of Tenney, Harding & Sherman, of Chicago; Weymouth Kirkland and Howard Ellis of McCormick, Kirkland Patterson & Fleming, of Chicago; W. T. Hosner and Warren S. Stone, of Mt. Clemens.

For Defendant, Solomon News Co.: Wm. Van Dyke and Carl M. Rix, of Detroit.

for their jobs again they will be on the same footing as any other applicants. This is the rule for Ford employes everywhere.

Information was refused as to the number of American soldiers unfortunate enough to have Henry Ford as an employer at this time, but at the Detroit recruiting offices it was said that about seventy-five men will pay this price for their services to their country.

Mr. Ford thus proves that he does not believe in service to the nation in the fashion a soldier must serve it. If his factory were on the southern and not the northern border we presume he would feel the same way. We do not know precisely what he would do if a Villa band decided that the Ford strong boxes were worth opening and that it would be pleasant to see the Ford factories burn. It is evident that it is possible for a millionaire just south of the Canadian border to be indifferent to what happens just north of the Mexican border.

If Ford allows this rule of his shops to stand he will reveal himself not as merely an ignorant idealist but as an anarchistic enemy of the nation which protects him in his wealth.

A man so ignorant as Henry Ford may not understand the fundamentals of the government under which he lives. That government is permitted to take Henry Ford himself and command his services as a soldier if necessary. It can tax his money for war purposes and will. It can compel him to devote himself to national purposes. The reason it did not take the person of Henry Ford years ago and put it in uniform is, first, that it has not had the common sense to make its theoretical universal service practical, and, second, because there have been young men to volunteer for the service which has protected Henry Ford, for which service he now penalizes them.

He takes the men who stand between him and service and punishes them for the service which protects him. The man is so incapable of thought that he cannot see the ignominy of his own performance.

The proper place for so deluded a human being is a region where no government exists except such as he furnishes, where no protection is afforded except such as he affords, where nothing stands between him and the rules of life except such defenses as he puts there.

Such a place, we think, might be found anywhere in the state of Chihuahua, Mexica. Anywhere in Mexico would be a good location for the Ford factories.

It was published in *The Chicago Tribune,* June 23, 1916. On September 7th of that year, suit for libel was started in the United States District Court at Chicago. The defendant filed pleas of justification and "fair" comment and a demurrer to these pleas was argued before Judge Landis in the early winter of 1917. While Judge Landis had his decision under consideration, the suit was dismissed and another started in the Circuit Court of Wayne County, Detroit, Michigan. Service was had upon traveling representatives of the Tribune Company and upon the Solomon News Company, which was joined as co-defendant.[2] Defendant moved that the service be quashed. The motion was overruled. The defendant also moved for a change of venue from Detroit on the ground of prejudice of the inhabitants in favor of the plaintiff. This motion was allowed and the case transferred to Judge James G. Tucker at Mt. Clemens, Michigan. The trial started May 17, 1919, and lasted until August 14, 1919. The defendant filed pleas of general issue, of justification, and of "fair" comment.

In order to understand the rulings on evidence it is necessary to keep clearly in mind the various ramifications of these pleas. Judge Tucker held that the plea of justification was not inconsistent with the plea of "fair" comment. He instructed the jury:

> Now, upon the question of fair comment, if you become satisfied that the charges of characterizations contained in the editorial in question are true in substance, that will end your consideration of the case, and your verdict will be for the defendant, no cause of action,—because the truth is a defense. If it is true, they had a right to say it.
>
> If you do not become satisfied that the characterization or charges in the editorial are true, you may then consider whether they constitute fair comment or not.

It was under these two pleas that probably the broadest issues ever formed in an American court were considered by the jury.

Under the plea of justification the first question to be determined was: "What imputation does the article cast on the plaintiff?" The plaintiff contended that the word "anarchist", as used in the editorial, meant one who unlawfully seeks to overthow the government; or, as Mr. Ford put it, a bomb thrower. The defendant contended that the word "anarchist", as used in the editorial, meant one who advocates a condition of affairs in which the force of government is so inefficient or inadequate that the government cannot properly perform its functions. The court finally ruled that, taking the editorial in its entirety, either interpretation was possible, and that it was for the jury to determine which interpretation should be applied to this particular case.

The defendant had the right, however, to prove that Mr. Ford was an anarchist in the sense for which it contended, because ultimately the jury might adopt the theory of the defendant as to the meaning of the word. Hence, all of Mr. Ford's utterances and acts having to do with preparedness or with the affairs of government were material. The Peace Ship, and what he said in connection with it; the International Flag, and the purpose for which it was to be used; Mr. Ford's view on the Mexican imbroglio and the World War; Mr. Ford's connection with the exemption of Edsel Ford; his munition making during the World war,—all of these matters became highly material. At the same time, Mr. Ford's treatment of his employes indicated his views on the economic structure of government and this evidence was introduced by the plaintiff to counteract the foregoing.

The defense was also permitted to show by expert witnesses that the views of well known anarchists were parallel to the views of Mr. Ford. On cross-examination, however, the bars were let down and the experts on both sides were practically permitted to give their definition of the word anarchist.

The charge that Mr. Ford was an ignorant idealist permitted proof of the plaintiff's knowledge of history, his ability to read, his knowledge of the Revolutionary War, and of Benedict Arnold, his understanding that a mobile army was a large army mobilized, his views on the Constitution of the United States, etc., etc. It also permitted the plaintiff to prove that Mr. Ford had great knowledge of automobiles and business. The line of inquiry regarding Mr. Ford's knowledge of various matters has seemed to overshadow all the others; but, as a matter of fact, it was comparatively unimportant from a legal viewpoint, for Mr. Ford on cross-examination practically admitted this imputation and said that his real objection was to the word anarchist.

But it was the defense of comment which caused the court room at Mt. Clemens to become the debating ground for such questions as the defense of the nation, the Mexican situation, our entry into the World War,

2. There was a directed verdict for the Solomon News Company inasmuch as it was a mere distributor of the newspaper, knowing nothing of the inclusion within its columns of the alleged libel.

etc. What could be the materiality of such matters? The defense contended, and the court finally held, that even though Mr. Ford was not proved to be an anarchist or an ignorant idealist in the sense attached by the jury to these words, nevertheless there might be a verdict for the defendant under the plea of comment. If these two imputations constituted comment or criticism of a public person honestly made by the defendant, based upon facts expressly or impliedly stated within the four corners of the editorial declared upon, and not an unreasonable or outrageous deduction from such facts, and if the defendant proved the facts expressly or impliedly stated to be true,—then the defense of comment was made out and there should be a verdict of not guilty. In other words, if the two major imputations were merely conclusions of the defendant drawn from premises expressly or impliedly stated in the editorial, and if such conclusions were reasonable and bona fide,—then the conclusions were excused because the conclusions added no new imputations to the premises. The indispensable element to the defense is proof that the premises or the facts upon which the comment is based should be proved true by the defendant.

The express facts upon which the two imputations were based are four: first, Ford employes, members of or recruits in the national guard, will lose their places; second, no provision will be made by Mr. Ford for their dependents; third, their positions will be filled by others; fourth, when they come back they will be on the same footing as other applicants for positions. The defendant showed that these four facts were stated by a Ford executive to a Detroit representative of various national newspapers, who sent the story to the defendant at Chicago. This executive and others denied the interview. The plaintiff in rebuttal proved that upon going to the border national guardsmen employed at the Ford plant were given buttons which would procure their reinstatement upon return. One of the four facts necessary for the defendant to prove in order to make out the defense of comment was therefore in doubt.

But the editorial was meaningless and the jury could not judge of the reasonableness of the comment unless certain implied or understood facts were put before them. For instance, "if they (i. e.: the national guardsmen) come back safely . . ." has reference to the sending of the national guard to the Mexican border. Again, "what happens just north of the Mexican border" indicates that something had been happening there and that the readers knew of such happening. But the jury might, at the time of the trial, have forgotten these things which were notorious at the time the editorial was published; the defendant, in order to prove that the basis of the comment was true, had the right to show to the jury just what had been happening north of the Mexican border. The same was true of other implied facts upon which these imputations were based.

The defendant contended that the implied facts were the following:

1. The national guard was called to the border.
2. That the Mexicans had committed many depredations just north of the border.
3. That Mexico was in a state of anarchy.
4. That the United States was in a state of utter unpreparedness, having regard to the dangers which were then threatening, namely, the Mexican trouble and the German submarine outrages.

The court, after careful consideration, ruled that the defense was entitled to prove these facts in order that it might argue to the jury that the imputations of anarchism and ignorance were conclusions drawn from the facts and were reasonably so drawn. The court, however, limited the amount of proof bearing upon the question of preparedness.

The subsidiary questions growing out of the offers of proof were many and important, but in general the scope of the inquiry adhered to the broad fundamentals I have outlined. With such sweeping issues, the Ford-Tribune case stands unique.

It was also necessary for the defense, under the plea of comment to prove that the comment was honestly made by the defendant without malice. The quo-animo of the principal officers of the defendant and of the employees who handled this particular story, the prior relations between the parties, the utterances of the defendant regarding the questions involved,—all were admissable. The defendant's proof consisted largely of testimony that the officers and employees of the defendant were actuated in publishing this editorial by a desire to deter other large employers from adopting Mr. Ford's attitude regarding the national guardsmen called to the border. The plaintiff attempted to prove that the editorials of the defendant were actuated by the "greedy-finance," motive of forcing intervention in Mexico in order to benefit certain relatives who had Mexican holdings. The court instructed the jury that there was not sufficient proof of this motive for the jury to consider it. The plaintiff also introduced in evidence the views of the *Chicago Tribune* regarding the German submarine war:—it being contended that the *Chicago Tribune* was Pro-German, seeking to involve the United States in quarrels with Mexico in order to distract attention from the German outrages. Hence, the defendant was permitted to show that its joint editors, Col. Robert R. McCormick and Capt. Joseph Medill Patterson, who were members of the National Guard, had gone to the Mexican border, had been on the active fighting front in Europe, and that their attitude and the attitude of the *Chicago Tribune* had always been pro-American. The court also held that there was not sufficient evidence of a pro-German motive to go to the jury.

I have frequently been asked to give my views on the famous six cent verdict. My opinion is probably no better than that of the next person. In my opinion, however, the jury felt that the word "anarchist" carried with it some connotation of unlawful acts to overthrow the government, and that Mr. Ford had not done such acts; that Mr. Ford was an ignorant idealist because he had assumed to educate our people on matters to which he had given no intelligent thought; that a verdict of not guilty would have been unjust to Mr. Ford, who was not vicious even though misled or mistaken; that a large verdict would have been unjust to The Tribune Company, which may have gone too far in dubbing Mr. Ford an anarchist, in the meaning finally attached to it, but which had merely sought to perform its duty in the manner it conceived as most beneficial to the public by pointing out the danger to the structure of government of views similar to those of Mr. Ford.

Both sides have claimed the palm: Mr. Ford, because he got the verdict. The Tribune Company, because six cents bears such a small proportion to one million dollars.