

NEWSPAPER COMMENTS.

Edgard Howard in the Columbus Telegram: The Bible case has, by effort of the Barnes managers, become a sure-enough issue in the state campaign. All right. Judge Sullivan's friends do not fear the issue. That decision was the unanimous judgment of all three members of the supreme court. That opinion was written by Judge Sullivan, and so, consequently, it has been spoken of as his decision. The question decided was a question of law, and no reputable lawyer in Nebraska, whether Catholic, Protestant, Jew or infidel, has ever publicly asserted that the decision was not sound. The decision has, for political effect, been bitterly assailed. The people who assail it are, as a rule, men who have neither read either the constitution of our state nor Judge Sullivan's opinion in this case—men wholly incompetent to pass upon a grave question of constitutional law. Ordinarily men would not act upon the judgment of such persons, nor give any attention to it in a law suit involving thirty cents. Those who have assailed the Bible decision are utterly unreasonable. They assume that the law of the land is just what they think it ought to be. They forget, or else never knew, that the constitution does not prohibit the reading of the Bible in the public schools, but does prohibit the giving of sectarian instruction. What the court decided was that the reading of certain portions of the Bible, such, for instance, as the account of the recreation, the Proverbs of Solomon, the Psalms of David, or the story of Ruth, is not sectarian instruction, whether the Catholic or Protestant version be used. The decision is sound law beyond all question, and it should not be condemned, discredited nor reversed at the polls. Judges should not be turned down because forsooth they refuse to make popular decisions. If they stand true to the constitution and their official oaths they should be sustained by the people.

Rev. John Williams in Omaha Bee: "It goes without saying that I would (upon the question involved in the Bible case) take the judgment of a trained jurist like Judge Sullivan in preference to ten thousand opinions of men like myself or John Rusff."

Omaha Examiner (Independent): You can bet on one thing. It is that Judge Barnes will never undertake to tell any one how he would have decided that Bible case had he been supreme judge. The same may be said of a good many people who are apparently frantic about the decision. Even those who are calling Judge Sullivan's decision a straddle don't say upon which side of it they would have landed if they had had to decide it without straddling.

COURT LANGUAGE IN NEBRASKA

How Far a Lawyer May Go in the Use of Anathemas.

Justice Sullivan of the supreme court of Nebraska is rapidly making a name for himself by his use of clean-cut, vigorous English. His latest effusion lays down the law of Nebraska as to how far a lawyer may go to influence a jury in the use of anathemas. It was in the case of an old man living in Omaha who charged William Reed, a saloon keeper, with the theft of \$250 from his person. The prosecuting attorney, in addressing the jury, declared: "I hope God will send down lightning from Heaven and consume me if the defendant is not guilty."

Complaint was made of the language, and Justice Sullivan ruled: "The fact that he avouched his faith in the justice of his cause by offering himself to ordeal comes under the heading of 'professional enthusiasm.' Not much importance should be attached to it. It is of no significance, but a mere rhetorical flourish. Calling spirits from the vasty deep or lightning from the sky is, in this materialistic age, a perfectly harmless diversion, for, however vehement the call may be, no answer is expected." Reed's conviction was affirmed.

THE BIBLE IN THE PUBLIC SCHOOLS

The decision of the Nebraska supreme court in what is known as the "Bible case" has become an issue in the campaign. This decision was the unanimous judgment of the court, but the reasons for it were formulated by the chief justice, and so it is commonly referred to as his decision. The question decided was a question of law, pure and simple. All lawyers, whether they be Catholic, Protestant, Jew or infidel, are, we believe, agreed that the case was correctly determined. But there are people who know nothing whatever about law, who have read neither the constitution nor the opinion, asserting on the street corners and in the press that the decision is wrong. They not only declare that the decision is wrong, but they want Judge Sullivan defeated for the part he had in rendering it. This matter is up to the voters. A vote against Judge Sullivan on this issue is a vote of censure upon the entire court. If judges stand true to the constitution and their official oaths they ought at least to escape condemnation by popular vote.

For the benefit of those who prefer to judge for themselves, the opinion is set out in full below.

JUDGE SULLIVAN'S OPINION IN THE BIBLE CASE.

"This case was decided at the last term, and is now before us on motion for a rehearing. In the brief filed in support of the motion, the distinguished counsel for respondents has with considerable ardor attacked, not only the decision, but what he supposed to be its implications. The questions discussed are important, and they have received our most serious consideration. We have again with great care gone over the arguments of counsel, and have again critically examined all of the adjudged cases bearing directly or indirectly upon the points in controversy. The decision of the supreme court of Michigan—a decision rendered by a divided bench—may perhaps be regarded as an authority in favor of one of the positions for which respondents contend, but opposed to that case are the unanimous judgments of the highest courts of Ohio and Wisconsin. Other cases cited in the briefs are based upon constitutional provisions essentially different from ours, and are therefore entitled to but little weight as precedents. The fact that there have been Bible reading and religious exercises in many of the public schools ever since the present constitution was adopted is cited as evidence of a contemporaneous and practical construction in favor of the practice; but, in our opinion, it is rather to be regarded as evidence of the temperate and tolerant spirit of our people, of the waning influence of doctrinal differences, and of a clearer and more general perception of the cardinal truth that, after all, Christianity is greater than creed. It has been the policy of some rulers (as, for instance, Catherine de Medici) to strengthen the throne by dividing the people; but in this country it has been the constant policy of government to unite the people, to bring them closer and closer together, to dissipate race and religious prejudices, and to fuse their sentiments and aspirations. One of the means to accomplish this end was to give all religious sects and systems a free field and no favors. So far as religion is concerned, the laissez faire theory of government has been given the widest possible scope. The suggestion that it is the duty of the government to teach religion has no basis whatever in the constitution or laws of this state, nor in the history of our people. The teaching of religion would mean teaching the system of faith and worship of one or more of the religious sects. It would mean sectarianism in the public schools, and to put sectarianism into the public schools would, according to the opinion prevailing when the constitution was ratified, be to put venom into the body politic. In section 4 of the bill of rights we find this language: 'Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the legislature to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.' There is no uncertainty as to the meaning of this clause; there is no room for construction; and where, as Judge Cooley has said, the meaning of an instrument is plainly declared by the instrument itself, courts are not at liberty to search elsewhere. The duty of the state with respect to religion—its whole duty—is 'to protect every religious denomination in the peaceable enjoy-

ment of its own mode of public worship.' This duty is not due alone to the different denominations of the Christian religion, but is due to every religious body, organization or society whose members are accustomed to come together for the purpose of worshiping the Supreme Being. The framers of the constitution, after expressing their gratitude to Almighty God for freedom, declared that the right of all persons to worship according to the dictates of their own consciences is a natural and inalienable right. This right of the relator has been infringed. Without his consent and over his protest his children have been compelled to attend divine worship and to participate in it. They have been obliged to give homage to God, not according to the dictates of their own consciences or the consciences of their parents, but according to the dictates of the conscience of the teacher. Undoubtedly the teacher is a sincere and well-meaning young woman, and was actuated by the purest and best motives; but, in discharging what she conceived to be an imperative duty to her Creator, she violated a right secured to the relator by the supreme law of the state. The regular morning exercises of the school consisted of a formal or improvised prayer, followed by the singing of gospel hymns, such as 'Jesus, Lover of My Soul' and 'When He Cometh.' In these exercises the pupils were compelled to join, and it was their custom, when prayer was offered, to rise from their seats and stand in an attitude of reverence.

"It is said that the relator's children were subjected to no compulsion, but that is not true. It was not only their right to attend the school, but, under the statute (section 1, subd. 16, c. 79, comp. st. 1901), it was their duty to attend that school, or some other. As the morning exercises were conducted during school hours, it is difficult to see how they could attend the school without attending worship. But in our view they were not only compelled to attend worship, but to participate in it. The school being in session, the right to command was vested in the teacher, and the duty of obedience imposed upon the pupils. Under such circumstances a request and a command have the same meaning. A request from one in authority is understood to be a mere euphemism. It is, in fact, a command in an inoffensive form. The teacher, in describing her manner of conducting the exercises, says that after reading from the bible she 'called upon' the pupils to rise, and that she 'had them rise from their seats and stand' while she offered prayer. When we take into account the fact that she was dealing with children, it can hardly be doubted that any pupils who joined unwillingly in the exercises joined under compulsion. Whether Mr. Freeman was reasonable or unreasonable in objecting to his children actively or passively participating in the simple religious service conducted by the teacher is altogether immaterial. Some men always have been unreasonable in such matters, and their right to continue to be unreasonable is guaranteed by the constitution, and characterized as a natural and inalienable right. The privilege of choosing when, where, and how he shall worship is given unconditionally to every one. He may freely choose his own prayers, songs and postures; and none of these may be lawfully imposed upon

him, either in the public schools or elsewhere, except possibly in the penal, reformatory, or other institutions where the state stands in loco parentis to the inmates.

"In order to make it entirely clear that the Bible was not read in the school as mere literature, and that the hymns were not sung as a vocal exercise, and that the prayers were not offered for the sake of their reflex influence, but that the several acts were acts of religious homage and were intended to be devotional, we quote from the testimony of the teacher:

Q. Now, you say this matter of reading the Bible and singing of hymns was talked over by Mr. Odell at the time he employed you? A. Yes, sir. Q. Did you talk about any other branches that you were going to teach at that time? A. I spoke about having new books, needing a new set of books. Q. Why was it that you and he thought it proper and necessary that these exercises should be conducted? A. One reason I spoke about it was because I had said at the beginning that I did not care to take the contract unless I had the privilege of having the exercises; I said I was in favor of doing all I could for the district, and was in favor of doing all I could to have a good school. Q. Why did you think these exercises so important? A. There was nothing, only I had always had them, and I knew they had done away with them. Q. And you couldn't open a school without them? A. Not according to my belief; no, sir. Q. According to your belief, then, these are very necessary as a part of the school exercises? A. I think it is important to have reading of the Bible and singing of songs in the school. Q. And then you think that the way you have of reading the Bible is very important? A. I think it is the book of all books. Q. For what purpose do you read it? A. For the benefit of myself and those with whom I come in contact. Q. In what particular way do you expect to benefit yourself and the children? A. I think there is a higher being that has something to do with our actions, and I know in many instances I have been directed to do things right, wherein if I hadn't trusted in him, my Savior, I would have been led away. Q. And you read that book as religious exercises because you think it is important for that purpose, don't you? A. I think it is. Q. Yes; and you read it because you think it is the word of God? A. Yes, sir; I do. Q. And you believe that sincerely? A. Yes, sir; I do. Q. And you select such parts to read as you think proper, don't you? A. Yes, sir; just as I think it would be best for the pupils and myself. Q. And whenever you see fit to read you read? A. Yes, sir. Q. And you read whatever you see fit to read? A. Yes, sir. Q. And did you read from the new testament and the old testament, both? A. Yes, sir. Q. And why do you consider it necessary to offer a prayer? A. I think we are taught to. Q. Yes; you think it is done as an act of worship—the whole thing? A. We think it is; yes, sir. Q. Intended to worship God? A. Yes, sir.

"It is said by Commissioner Ames that the morning exercises conducted by Miss Beecher constituted sectarian instruction. This conclusion is vigorously assailed, but, in our judgment, it is warranted by the evidence, and we adhere to it. The decision does not, however, go to the extent of entirely excluding the Bible from the public schools. It goes only to the extent of denying the right to use it for the purpose of imparting sectarian instruction. The pith of the opinion is in the syllabus, which declares that 'exercises by a teacher in a public school in a school building, in school hours, and in the presence of the pupils, consisting of the reading of passages from the Bible and in the singing of songs and hymns and offering prayer to the Deity, in accordance with the doctrines, beliefs, customs or usages of sectarian churches or religious organizations, are forbidden by the constitution of this state.' Certainly the Iliad may be read in the schools without inculcating a belief in the Olympic divinities, and the Koran may be read without teaching the Moslem faith. Why may not the Bible be also read without indoctrinating children in the creed or dogma of any sect? Its contents are largely historical and moral. Its language is unequalled in purity and elegance. Its style has never been surpassed. Among the classics of our literature it stands pre-eminent. It has been suggested that the English Bible is, in a special and limited sense, a sectarian book. To be sure, there are, according to the Catholic claim, vital points of difference with respect to faith and morals between it and the Douay version. In a Pennsylvania case cited by counsel for respondents, the author of the opinion says that he noted over fifty points of difference between the two versions—some of them important, and others trivial. These differences constitute the basis of some of the peculiarities of faith and practice that distinguish Catholicism from Protestantism, and make the adherents of each a distinct Christian sect. But the fact that the King James translation may be used to inculcate sectarian

doctrines affords no presumption that it will be so used. The law does not forbid the use of the Bible in either version in the public schools. It is not proscribed either by the constitution or the statutes, and the courts have no right to declare its use to be unlawful because it is possible or probable that those who are privileged to use it will misuse the privilege by attempting to propagate their own peculiar theological or ecclesiastical views and opinions. The point where the courts may rightfully intervene, and where they should intervene without hesitation, is where legitimate use has degenerated into abuse—where a teacher employed to give secular instruction has violated the constitution by becoming a sectarian propagandist. That sectarian instruction may be given by the frequent reading, without note or comment, of judiciously selected passages, is, of course, obvious. A modern philosopher—perhaps the greatest—has said that persistent iteration is the most effective means of forcing alien conceptions upon reluctant minds. Whether it is prudent or politic to permit Bible reading in the public schools is a question for the school authorities to determine, but whether the practice of Bible reading has taken the form of sectarian instruction in a particular case is a question for the courts to determine upon evidence. It cannot be presumed that the law has been violated. The alleged violation must in every instance be established by competent proof. The value of the common schools as disseminators of knowledge and social levellers is well understood and justly appreciated, and there is little likelihood that the people will ever permit their usefulness to be impaired by sectarian controversies. When we consider that this is the first case of its kind ever presented to this court for decision, we feel assured that neither teachers nor school boards have been much inclined to bring discord into the schools for the chance of securing by indoctrination a slight sectarian advantage. But if the fact were otherwise, it could not in any way affect our conclusion. The section of the constitution which provides that 'no sectarian instruction shall be allowed in any school or institution supported, in whole or in part, by public funds set apart for educational purposes,' cannot, under any canon of construction with which we are acquainted, be held to mean that neither the Bible, nor any part of it, from Genesis to the Revelation, may be read in the educational institutions fostered by the state. We do not wish to be understood as either countenancing or discountenancing the reading of the Bible in the public schools. Even where it is an irritant element, the question whether its legitimate use shall be continued or discontinued is an administrative, and not a judicial question. It belongs to the school authorities, not to the courts. The motion for a rehearing is overruled, and the judgment heretofore rendered is adhered to."

John Rush's Letter.

(Copy Letter.)

BIBLE IN THE PUBLIC SCHOOLS. Omaha, Sept. 13.—To the Editor of The Bee: We think that when Judge Sullivan's friends have had time to digest his decision in the "Bible case" they will conclude that it would have been better to let the matter alone. If they were his enemies, and were trying to show beyond doubt that he was a lightweight, superficial and inconsistent, they could not have done better than to publish his deliberately-written decision.

The respondents in the case thought correctly with the great majority of people of all classes and creeds, that the original decision of the court implied the exclusion of the Bible from the public schools. The judge says: "The fact that there have been Bible readings and recitations ever since the present constitution was adopted * * * is to be regarded as evidence of the temperate and tolerant spirit of our people, of the waning influence of doctrinal differences, and of a clearer and more general perception of the cardinal truth that, after all, Christianity is greater than creed." Not so, judge. It is to be regarded as an evidence of the ignorance and indifference of the people at large, and of the law-breaking practices of hypocrites. Christianity is greater than creed! Not so, judge. The effect is never greater than its cause. Besides, the term Christianity being abstract, implies the concrete, that is, creed, or it means nothing. The judge drags in Catherine de Medici as trying to strengthen the throne by dividing the people. We wonder if the judge thought of the sowers in Ireland, who tried to strengthen the throne in the same way, or of Cromwell and many other such heroes, who figure in history. For the sake of chance, the judge should have omitted the name of Catherine de Medici.

The judge thinks that possibly when a man is in a penal reformatory, other