

teaching, and, according to the decision of Judge Sullivan, is forbidden." Mr. Rush did not dispute this point. You are simply denying something which he never asserted. You are assuming something as existing in Mr. Rush's mind which was not there at all.

Mr. Mahoney then very lamely comments on Mr. Rush's criticism of Judge Sullivan's reference to the Pennsylvania case. "It should be remembered that Judge Sullivan was not called on to decide a theological question, nor was he called on in any way to make a pronouncement upon the number of differences in the two versions. He was simply calling attention to the fact that there are differences and used the reference to the Pennsylvania case to support his recital of that fact." What induced the judge, Mr. Mahoney, to refer to those points of difference if those points of difference are a matter of indifference in the view of the law? It is this dubious, double-tongued, Oracle-of-Delphi method of delivering his decision that has led to all this misunderstanding of the decision of the judge. One moment the judge is represented as taking a merely secular view of the Bible when he says the law does not exclude it from the schools; the next moment he says something, or is represented as saying something, which destroys that construction of his meaning altogether.

Mr. Rush makes the statement that those who advocate the reading of the Bible in the schools are and always have been "ardent and unscrupulous sectarians." Mr. Mahoney seems to think that Mr. Rush will have to bear the awful responsibility of this statement to the grave, and carry it alone. Mr. Mahoney himself then proceeds to make an assertion just as broad and sweeping. He says: "This is not the opinion of his fellow Catholics." How do you know, Mr. Mahoney? When did you make a poll of the Catholics on this question? Mr. Mahoney then says: "We know, too, that there are millions of ardent sectarians who are not unscrupulous." As Mr. Rush did not say that all ardent sectarians are unscrupulous, why did you commit this elegant piece of sophistry? Was it to prejudice Mr. Rush?

Mr. Mahoney again: "But Mr. Rush would proscribe the Bible altogether, because in the hands of a teacher who wishes to accomplish such a result it may be made the instrument of sectarian teaching. This reason might be urged against the teaching of history, English literature, etc. As the teaching of history, English literature, etc., is not forbidden by the constitution, as the teaching of religion is, you are about as sophisticated here as Judge Sullivan has proved himself to be. The Bible is professedly a religious book. It deals directly and necessarily with religion. A volume of history does not.

"Religious discussions have no legitimate place in American politics, and whoever injects them is assuming a grave responsibility and accepting chances of doing great wrong." This is one of those commonplace remarks that are often put in to fill up an article when argument runs short. Religion being the most vital and influential moral force that can affect man, and with which he has been concerned since the beginning of the world, it has, it does and it will enter into politics. This may sometimes be inconvenient for the selfish politician, but it cannot be helped. Mr. Mahoney knows well, as he is fresh from a case in point, who are doing the injecting business. He would, of course, leave it to be inferred or he would insinuate that Mr. Rush is one of the injectors. If the calling of attention to the miserable, unsatisfactory decision of a sophistical judge be injecting religion into politics, then certainly Mr. Rush is guilty of injecting. Mr. Mahoney makes a mistake when he argues that because the decision in question satisfied him and his counsel it ought to satisfy everybody else. It does not do so, as will appear later on.

"ALPHA."

Mahoney's Reply to Alpha.

Omaha, Neb., Sept. 18.—To the Editor of the World-Herald: The criticism of Judge Sullivan on account of the "Bible case," inaugurated by Mr. Rush, is now taken up by "Alpha." Whether it is to be completed by "Omega" remains to be seen. "Alpha's" chief objection to the opinion seems to be that it is not sufficiently clear. She says: "It would appear from Mr. Mahoney's letter in the World-Herald this morning that Judge Sullivan construed the state constitution as really excluding any religious use whatever of the Bible in the public schools. Judge Sullivan of course did not say this clearly and distinctly. He played on the word 'sectarian' and made it proper to infer that, according to the judge, there is a possible religious use of the Bible in the public schools which is not sectarian. If the judge did not mean this, he has his own indefiniteness and loquacity to blame for the misunderstanding. Mr. Mahoney is much clearer and more satisfactory on this point."

It would look as though "Alpha" had not read either Judge Sullivan's opinion or the constitution of this state. In the opinion Judge Sullivan says: "The teaching of religion would mean 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 schools would, according to the opinions prevailing here to put venom into the body politic."

How can anyone read this language of Judge Sullivan's and then say, as "Alpha" does, that he made it proper to infer that there is a possible religious use of the Bible in the public schools which is not sectarian. He left no room for such inference after he said that "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." If this language does not exclude a religious use of the Bible in the

public schools, it is not because of the judge's "indefiniteness and loquacity," but because of the incapacity of the English language to express a thought. But "Alpha" seems to think that the judge ought to have used the word "religious" instead of "sectarian." If this is a fault, the fault is not Judge Sullivan's; it was the fault of the convention that drafted the constitution of the state. Section 11 of article 8.0. our constitution reads: "No sectarian instruction shall be allowed in any school or institution supported in whole or in part by the public funds set apart for educational purposes; nor shall the state accept any grant, conveyance or bequest of money, lands or other property to be used for sectarian purposes." It is "sectarian instruction" that is forbidden by the constitution. Consequently, it was only "sectarian instruction" that the court had any authority to interfere with. Hence, the word "sectarian" was the correct and apt word to be used by the court, as that is the word found in the constitutional provision.

Referring to my statement that Judge Sullivan was not called on to make a pronouncement upon the number of differences between the Douay version and the King James version of the Bible, Alpha asks: "What induced the judge, Mr. Mahoney, to refer to those points of difference, if those points of difference are a matter of indifference in the view of law?" If "Alpha" were familiar with the arguments presented to the court, she would be aware of what induced the judge to mention the fact that there were differences, and were she familiar with the legal question involved, she would know that the fact of the existence of differences was material, while a statement of the number of differences would be wholly immaterial. At page four of the reply brief on behalf of the relator a single difference is called to attention of the court, and counsel then says: "This difference, to say nothing of many others, is construed by each party as vital to the eternal welfare of the believer." And from the fact that there exist differences, counsel argued that the use of one version in the manner in which it was shown to have been used in the case before the court, amounted to the enthroning in the public schools of the doctrine of a sect, or number of sects. But the brief presented did not attempt to determine the precise number and identity of points of difference, nor was such determination at all material to the decision. The fact that there are differences, be they few or many, makes the teaching of one version sectarian, and that was the point that the court was called on to decide.

But "Alpha" says: "One moment the judge is represented as taking a merely secular view of the Bible when he says the law does not exclude it from the schools; the next moment he says something, or is represented as saying something, which destroys that construction of his meaning altogether." It will be noted that "Alpha" fails to point out what the opinion says or is represented as saying "which destroys that construction of his meaning altogether." The opinion expressly says: "The teaching of religion would mean the teaching of the system of faith and worship of one or more of the religious sects. It would mean sectarianism in the public schools." It leaves no possible room for any interpretation, except that whenever the Bible is so used in the public schools as to teach religion, the constitutional prohibition is violated, and it is only such a use as may be made of the Koran or the Had, that is, a purely secular use, that is permitted. Besides, it should be remembered that this is not merely the opinion of Judge Sullivan; it is the decision of the entire court, consisting of Judges Sullivan, Holcomb and Sedgwick, none of whom dissented. The criticisms of the opinion are not based on legal considerations. They are speculative in character and attempt to plant themselves upon a purely ethical foundation. None of Judge Sullivan's critics have attempted to point out a single defect in his reasoning upon the legal question involved. They do not even pretend to believe that any of his conclusions of law are erroneous. Now it does not make a particle of difference what our opinions of a decision may be, from an ethical standpoint. The true test is always, "Is the decision a correct exposition of the law as it stands?" Not, "Is it such a statement of the law as we might desire?" One of the brightest things I ever heard of was said by an old lawyer: "Law is, or should be, an exact science. In law you start with a certain premise and you land upon an exact conclusion; but in ethics you start from nowhere and land in a rat hole." Since no one has attempted to point out any infirmity in Judge Sullivan's interpretation of the constitution as a legal proposition, all attack from the standpoint of what the law ought to be, or what the constitution ought to have provided, is illogical and unjust.

T. J. MAHONEY.

REPUBLICAN JUDGES ENDORSED BY DEMOCRATS.

The nine republican candidates for re-election to the district bench who have been endorsed, and are being supported by the democrats of Nebraska are:

George A. Day, Omaha.
Irving Baxter, Omaha.
Lee Estelle, Omaha.
Guy C. Read, Omaha.
Charles F. Dickinson, Omaha.
Paul Jessen, Nebraska City.
Edward P. Holmes, Lincoln.
Albert J. Cornish, Lincoln.
Lincoln Frost, Lincoln.

A NON-PARTISAN JUDICIARY

Republicans as well as Democrats bear testimony to Judge Sullivan's worth. All agree that his services on the bench have been entirely satisfactory. He was on the district bench six years and has been on the supreme bench nearly six years. He has been well tried and found faithful. Shall we exchange him for an untried man? In New York and Wisconsin a judge who has served his state worthily is retained on the bench whether the party with which he affiliates is the majority or minority party. Last year the people of New York re-elected to the court of appeals Judge Gray, a democrat, although the republican candidates were generally successful. This year Judge O'Brien was a candidate for re-election to the New York court of appeals. He is a democrat. The democratic convention nominated him and the republicans endorsed the nomination. Wisconsin has a republican majority of forty or fifty thousand. It has the best judiciary in the west. Its judges are chosen without regard to politics. At the present time three of the five judges of the supreme court of Wisconsin are democrats, two of them having been appointed by republican governors.

The people of Nebraska are becoming wiser. The man who used to boast of never having voted for a candidate of the opposite political faith is becoming extinct. And it will be very pleasant to forget him when he is gone. The ancient idiotic appeal to "stick to the ticket" and "vote 'er straight" has fatigued a patient world all too long. This year Nebraska democrats have endorsed, and are advocating the election, of nine republican candidates for the district bench.

The republican convention, however, did not endorse Judge Sullivan. There was much talk of doing it, but it was not done. And the only reason it was not done was that the chief justice is a democrat. No other reason was ever suggested. But the politicians can no longer control the voters. They will cast their own votes. And perhaps republican voters will conclude that if democrats can vote for nine republican candidates for the district bench, they can afford to vote for the democratic candidate for judge of the supreme court. There is no reason why they should not exhibit as much political sanity as the democrats, or as the republicans of New York and Wisconsin.

The Omaha Examiner (independent), speaking of partisan judges, says:

"Partisan judges are especially dangerous. No litigant knows when he is not going to get against another with a stouter political pull than he may have. The justice of a controversy cuts little figure in cases decided before partisan judges. Making the courts parts of political machinery is a subversion of justice that brings the courts and all connected with them into popular contempt. When a man is found on the bench who determinedly courts the ill will of political machinists by deciding controversies on their merits, he cannot be re-elected too often nor too unanimously. It is a pretty safe proposition to tie to that the judicial candidate whose election is opposed by the partisan political machinist is a good man for every one else to vote for, and vice versa."

WISCONSIN NON-PARTISAN JUDICIARY.

Colony George W. Bird, one of the leading lawyers of Wisconsin, in a letter to a friend in Nebraska and writing of the non-partisan judiciary, said: "Wisconsin long since adopted that policy in its election of judges. The results have been so entirely satisfactory that nothing could induce us to accept a change. It has secured judges of unusual learning and ability, and at the same time, and above all, it has inspired our people with the utmost confidence in their courts. In selecting judges here, inquiry is never made as to their politics, only as to their fitness. Under this system it not infrequently happens that democratic circuits choose republican judges and republican circuits democratic judges. At the present time, three of the five judges of our supreme court are democrats, although the state has 50,000 republican majority, and two of them were appointed by republican governors, and their appointments approved by subsequent popular elections. At times attempts have been made by interested ones to change the system—one political party or the other nominating its candidates—but such candidates have, in

every instance, been defeated by an overwhelming popular majority. Such instances only demonstrate how thoroughly satisfactory the non-partisan judicial system has proved in this state."

NEW YORK NON-PARTISAN JUDICIARY.

New York Tribune (republican), September 9, 1903:

The republican state committee has served both the party and the public well in nominating a candidate for the only state office to be voted on this fall. THE POLICY OF CONTINUING IN OFFICE A JUDGE OF DEMONSTRATED FITNESS REGARDLESS OF HIS PARTY AFFILIATIONS IS A GOOD ONE, and one in which the great body of the republican voters believe. Party managers have sometimes been loth to accept the popular view, and have found out that many of their own followers would refuse to support even an unimpeachable candidate against a faithful judge of the opposite party who was a candidate for re-election. The lesson is probably well learned by this time that the judiciary is to be kept out of politics.

Judge Denis O'Brien, who has been nominated by the republicans to succeed himself as associate judge of the court of appeals, well deserves the compliment that has been tendered to him. He has been a hard-working, fair-minded and competent judge, and some of his opinions in important cases have attracted attention for their straightforward common sense and hold on realities. After having been attorney general of the state he was elected to the court of appeals as a democrat, but he has had the respect of lawyers and litigants of both parties. As the democrats have nominated him for a second term, he is assured of a practically unanimous re-election.

Everything the New York Tribune says in favor of Judge O'Brien may be said in favor of Judge Sullivan.

The Nebraska voter need not rely upon the testimony of democrats and populists as to Judge Sullivan's qualifications. His record speaks for itself, and wherever one may go in all the state of Nebraska he will find that among men of all political parties there will be but one opinion expressed with respect to Judge Sullivan's

service on the bench; and that opinion is that Judge Sullivan has demonstrated, in a high degree, special qualifications for the office he now holds and to which, it is to be hoped, he will be re-elected.

EXPERIENCE AND ABILITY.

New York Herald (Independent).

Referring to the nomination by the republican as well as by the democratic party of Judge Denis O'Brien, the New York Herald says:

In nominating Judge Denis O'Brien for another term on the bench of the court of appeals the republican state committee has taken a wise course that will meet with general approval. As the democrats have taken similar action, this dual endorsement means the continued service in our highest state court of an upright judge of experience and ability.

While the precedent is not novel it is based on sound principle and should become an invariable rule. It takes the judiciary out of partisan politics and makes judicial worth the paramount title to service on the bench.

Judge O'Brien is to be congratulated on this mark of merited confidence, and the public is to be congratulated on the assurance of his continued service.

Everything that is here said in favor of Judge O'Brien may be said with equal truth of Judge John J. Sullivan.

Judge Sullivan is "an upright judge of experience and ability," and when the returns come in at the November election, it will be well for public interests if the people of Nebraska may be congratulated on the assurance of Judge Sullivan's continued service.

SOME REPUBLICAN ESTIMATES OF JUDGE SULLIVAN.

Governor Mickey, in his inaugural address, speaking of the three judges of the supreme court, said: "The court as now constituted is a credit to the state."

Hon. E. M. Bartlett, chairman of the republican campaign committee for the Fourth judicial district, in a recent letter to the Omaha Bee, said: "Judge Sullivan is an able judge and a credit to the state."

Bixby, in the Lincoln Journal (republican), has this to say of the chief justice:

A two-for-a-cent politician writes to find out why we don't "jump onto Judge J. J. Sullivan and give him hell?" The answer is easy, for two reasons: First, we have no occasion to abuse the judge, and, second, no disposition. He is a clean man and a just interpreter of the law. The color of his politics is not to our liking, but that is no reason for treating him with discourtesy.

The Fremont Tribune (republican), speaking of the probable action of the democratic and populist conventions, reached the conclusion that Judge Sullivan would be nominated, and added: "But when Judge Sullivan is nominated they will have named an excellent candidate. The Tribune is willing to say that much for their encouragement."

On another occasion the Fremont Tribune (republican) said:

"The suggestion has come, from popocratic sources, of course, that Chief Justice J. J. Sullivan be made a non-partisan nominee for the supreme court this fall. The Tribune has the highest admiration for Judge Sullivan. He possesses one of the keenest minds in Nebraska. He is clean-cut and incisive, and his opinions are real contributions to literature. His style is crisp and clear."

The Lincoln Evening News (republican), discussing the attitude of Nebraska republicans toward the suggestion of a non-partisan nomination for the supreme bench, said: "Under some circumstances it might be possible for the republicans to agree upon the retention of Judge Sullivan, whose clear head has won him respect and whose quaint and witty way of putting things has caused the lawyers to read his decisions with many chuckles of satisfaction."

So excellent has been Judge Sulli-