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"voluntary association," from determining qualifications for its members, and from thereby excluding unwanted persons on any basis whatever where the primary election was conducted by the party. In the *Classic* case, however, the right of all persons to vote in primary elections was said to be protected by the Constitution from abridgment by individual action where the primary in practical operation governs the final selection of officers, even though, apparently, it is not made by state law an "integral part" of the state election machinery.[14] It is certainly logical to conclude that a political party is no more free to deprive the negro of this constitutional right than is the corrupt vote counter.

The decision in the *Classic* case should be welcomed as a step forward toward insuring honest elections for congressional offices. It will permit extension of such present election laws as the Hatch Act,[15] the failure of which to embrace primary elections was due at least in part to fear that such a step would be held unconstitutional.[16] But it seems certain to provoke further litigation in the primary election field.

A. B. R.

IMPEACHMENT—JUDGES—MISCONDUCT IN PERSONAL CAPACITY—MISCONDUCT DURING PRIOR TERM—In a suit to determine whether or not a district judge should be suspended from office pending his impeachment proceedings for alleged malfeasance the defendant excepts to evidence of misconduct in his personal capacity and in a prior term. *Held,* a public official may be removed for (1) misconduct in his personal as well as official capacity and (2) misconduct in a prior term. *Stanley v. Jones,* 2 So. (2d) 45 (La. 1941).

Whether impeachment[1] proceedings are civil or criminal in

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14. See 61 S.Ct. at 1039, 85 L.Ed. at 875.

15. 53 Stat. 1147 (1939), 18 U.S.C.A. § 61 (Supp. 1940).

16. See United States v. Classic, 61 S.Ct. 1031, 1041, n. 5, 85 L.Ed. 867, 877, n. 5 (1941).

1. The word "impeachment" in its original sense—derived from the Latin *impedicare (pedica,* fetter, and *pes, pedem,* foot)—meant "to hinder" or "to prevent" but in parliamentary usage its meaning of an accusation or charge was acquired. Later, possibly in the sixteenth century, this word began to assume its present meaning, a proceeding to remove a public official upon an accusation of a crime or of some official misconduct or neglect. Yankwich, Impeachment of Civil Officers Under the Federal Constitution (1937) 26 Geo. L. J. 849; Ballentine's Law Dictionary (1931) 610.

nature is a mooted question,[2] but Louisiana jurisprudence treats such proceedings as civil,[3] probably on the theory that impeachment is designed to provide a speedy and adequate method of removing derelict and unscrupulous officers from positions in which they might do further harm to those who placed them in offices of trust. Influenced by this objective and by the consideration that the punishment of the offender is at most secondary, the Louisiana courts understandably take a view of the matter calculated to eliminate the delay and ineffectiveness which too often characterize criminal procedure.

Prior Louisiana cases had established that the misconduct which would warrant the removal of a public official had to be such as affected the performance of his duties as an officer and not merely his character as a private individual.[4] The *Jones* case, however, adopts a stricter construction of the phrase "gross misconduct" in Article IX of the Louisiana Constitution.[5] The decision, without reference to the earlier cases, permits removal for misconduct either in the officer's official or personal capacity. However, the later rule is probably the more logical since the language of the constitutional provision makes it clear that the gross misconduct and drunkeness referred to as grounds for removal relate to personal derelictions, since, unlike the other grounds for removal, they are not expressly confined to conduct in office.

A second issue presented was whether or not a public official might be removed for misconduct in a prior term. Although the decisions in other states conflict on this question,[6] Louisiana has

2. Criminal: Kilburn v. Law, 111 Cal. 237, 43 Pac. 615 (1896); Sharp v. Brown, 38 Idaho 136, 221 Pac. 139 (1923); State ex rel. Houston v. District Court, 61 Mont. 558, 202 Pac. 756 (1921). Civil: Gay v. District Court, 41 Nev. 330, 171 Pac. 156, 3 A.L.R. 224 (1918); State ex rel. Mitchell v. Medler, 17 N.M. 644, 131 Pac. 976, Ann. Cas. 1915B, 1141 (1913); State v. Scarth, 151 Okla. 178, 3 P. (2d) 446 (1931); Skeen v. Craig, 31 Utah 20, 86 Pac. 487 (1906). But see Burke v. Knox, 59 Utah 596, 208 Pac. 711 (1922).

3. Saint v. Irion, 165 La. 1035, 116 So. 549 (1928); Stanley v. Jones, 2 So. (2d) 45 (La. 1941).

4. State v. Kellam, 4 La. 494 (1832); State ex rel. Attorney-General v. Cheevers, 32 La. Ann. 941 (1880); State ex rel. Moore v. Reid, 129 La. 158, 55 So. 748 (1911); Coco v. Jones, 154 La. 124, 97 So. 337 (1923); Saint v. Irion, 165 La. 1035, 116 So. 549 (1928).

5. "All State and district officers, whether elected or appointed, shall be liable to impeachment for high crimes and misdemeanors in office, incompetency, corruption, favoritism, extortion, or oppression in office, or for gross misconduct, or habitual drunkenness." La. Const. of 1921, Art. IX, § 1.

6. Refusing to allow removal for offenses during a prior term: State ex rel. Attorney-General v. Hasty, 184 Ala. 121, 63 So. 559 (1913); Jacobs v. Parham, 175 Ark. 86, 298 S.W. 483 (1927); Thurston v. Clark, 107 Cal. 285, 40 Pac. 435 (1895); Board of Commissioners of Kingfisher County v. Schectler, 139

consistently held to the view which permits removal for misconduct in a prior term.[7] Some courts reason that by re-election the public has condoned the fault of the official, whether such shortcomings were known or not;[8] while other tribunals reach the dubious conclusion that permitting a public official to be removed for his misconduct in a prior term is depriving the citizenry of its sacred right of selecting its own officials;[9] and still other courts treat each term as a separate entity in itself, permitting removal only for acts done within the current term.[10] The most serious objection to the theory of condonation of past offenses lies in the ever present possibility that re-election may not constitute condonation either because the facts were not known or because the election was corrupt.[11] The explanation given for the contrary view, which permits removal for acts in a prior term, is based on the idea that such a proceeding has as its fundamental purpose the removal of a corrupt, incapable, or unworthy official, and that the commission of any of the acts which are grounds for removal the day before re-election just as effectively stamps him as an improper person to be entrusted with the duties and responsibilities of a public office as those which occur the day after.

The rules adopted in the *Jones* case provide a definite check against misconduct by public officials at all times since they throw open to investigation personal as well as official misconduct and refuse to recognize any distinction with respect to the time when the misconduct took place. Whether the court would carry the past misconduct inquiry even further remains to be seen. In other jurisdictions removal for prior misconduct in an entirely separate office has been denied,[12] and there seem to be

Okla. 52, 281 Pac. 222 (1929); In re Fudula, 297 Pa. 364, 147 Atl. 67 (1929); State ex rel. Rawlings v. Loomis, 29 S.W. 415 (Tex. Civ. App. 1895). But see In re Throop Borough School Directors, 298 Pa. 453, 148 Atl. 518 (1930). Contra: Tibbs v. City of Atlanta, 125 Ga. 18, 53 S.E. 811 (1906); State v. Welsh, 109 Iowa 19, 79 N.W. 369 (1899); Attorney-General v. Tufts, 239 Mass. 458, 131 N.E. 573 (1921); Territory v. Sanches, 14 N.M. 493, 94 Pac. 954 (1908); State ex rel. Timothy v. Howse, 134 Tenn. 67, 183 S.W. 510 (1916). See Hawkins v. Common Council, 192 Mich. 276, 158 N.W. 953 (1916). Compare State ex rel. Boynton v. Jackson, 139 Kan. 744, 33 P. (2d) 118, 119 (1934).

7. State ex rel. Billon v. Bourgeois, 45 La. Ann. 1350, 14 So. 28 (1893). See also State ex rel. Perez v. Whitaker, 116 La. 947, 41 So. 218 (1906). See State v. Lazarus, 39 La. Ann. 142, 163, 1 So. 361, 377 (1887).

8. State ex rel. Schulz v. Patton, 131 Mo. App. 628, 110 S.W. 636 (1908).

9. State v. Blake, 138 Okla. 241, 280 Pac. 833 (1929).

10. Jacobs v. Parham, 175 Ark. 86, 298 S.W. 483 (1927).

11. Such a hypothetical situation was fully developed in State ex rel. Timothy v. Howse, 134 Tenn. 67, 79, 80, 183 S.W. 510, 513 (1916).

12. Speed v. Common Council of City of Detroit, 98 Mich. 360, 57 N.W. 406 (1894).

no cases which have permitted removal for misconduct during an interregnum in office or for misconduct prior to having ever been elected.

G. R. J.

LIBEL—CREDIT AGENCIES—QUALIFIED PRIVILEGES—The nationwide growth of credit agencies has raised many difficult legal problems. Conspicuous among these are those arising in the field of defamation. There has been much conflict in the courts as to the privileges of defamation to be allowed such agencies in conducting their business. The English courts, together with those in a few American jurisdictions, have stated that the motive of profit destroys all privilege and hold such agencies to absolute liability for false communications.[1] The general American rule, however, has been to recognize the economic need for such organizations, and to accord them a privilege on certain occasions.[2] The Louisiana courts have not recently had occasion to pass on this problem. There is, however, an earlier case which may well become a landmark in our jurisprudence and which, therefore, merits consideration.

Defendant, a credit agency, made a general report to its subscribers that a suit was pending against S. Giacona and Son. The suit, in fact, was against S. Giacona and not against the plaintiff S. Giacona and Son, as erroneously reported. Plaintiff sued for damages showing that credit had been refused it because of defendant's report. *Held,* defendant was liable for compensatory damages for negligence in not checking the court record. *Giacona v. Bradstreet Company,* 48 La. Ann. 1191, 20 So. 706 (1896).

The syllabus prepared by the court states the rule prevalent in most jurisdictions that a publication of a credit agency issued to subscribers generally is not a privileged communication.[3] On

1. Pacific Packing Co. v. Bradstreet Co., 25 Idaho 696, 139 Pac. 1007 (1914); Macintosh v. Dun [1908] A.C. 390. Harper, A Treatise on the Law of Torts (1933) 539, § 249; Prosser, Law of Torts (1941) 835.

2. Cooley, A Treatise on the Law of Torts (4 ed. 1932) 558, § 159; Harper, loc. cit. supra note 1; Prosser, loc. cit. supra note 1.

3. Erber and Stickler v. R. J. Dun and Co., 12 Fed. 526 (C.C. Ark. 1882); Simons v. Petersberger, 181 Iowa 770, 165 N.W. 91 (1917); Pollasky v. Mincher, 81 Mich. 280, 46 N.W. 5 (1890); Hanschke v. Merchants Credit Bureau, 256 Mich. 272, 239 N.W. 318 (1932); Mitchell v. Bradstreet Co., 116 Mo. 226, 22 S.W. 358 (1893); King v. Patterson, 49 N.J. Law 417, 9 Atl. 705, 60 Am. Rep. 622 (1887); Sunderlin v. Bradstreet, 46 N.Y. 188, 7 Am. Rep. 322 (1871); Bradstreet Co. v. Gill, 72 Tex. 115, 9 S.W. 753, 2 L.R.A., 403 (1888).