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CHRISTIAN CITIZENSHIP CONFERENCE,

DEVOTED TO THE CONSIDERATION OF

POLITICAL LOYALTY TO THE LORD JESUS CHRIST,

HELD IN THE

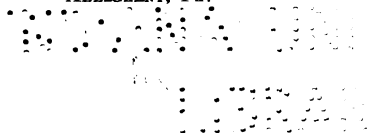
ALLEGHENY COVENANTER
CHURCH.

CORNER OF SANDUSKY AND NORTH DIAMOND STREETS.

MONDAY AND TUESDAY
FEBRUARY 24TH AND 25TH, 1902.

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PRESS OF JOHN C. PARK,
ALLEGHENY, PA.



The Relation the Voter Sustains to the Official Oath of His Representative .

Dr. J. W. Sproull, Allegheny, Pa.

Does he sustain any? Does the representative, when he qualifies, act simply for himself? Or does he act for the electors so that the oath which he takes, divested of the merely personal element, they too take?

Today in the City of New York Albert T. Patrick is on trial for the murder of William Marsh Rice. Able counsel is employed in his defense. Every effort, likely to prove successful, is being made to secure his acquittal. If found guilty, he will be taken back to his prison, to await sentence of death. Then, if the law be allowed to take its course, he will, before long, suffer the extreme penalty inflicted upon those found guilty of murder.

But Albert T. Patrick did not, himself, kill William Marsh Rice. The person who committed the deed, who administered the poison, was Charles F. Jones, the valet of Mr. Rice. He has made a full confession, giving in detail the horrible particulars and assigning the reason for the commission of the awful crime. If this confession be true, and it carries with it the evidence of probability, Jones poisoned Rice.

And yet Lawyer Patrick is placed on trial, charged with the act, and notwithstanding the determined efforts of his counsel, may be found guilty. Why is this? A man innocent of the act, to be put to death for the crime of one confessedly guilty.

There is a principle in law generally accepted as true, which applies to this case—"Qui per alium facit per se ipsum facere videtur"—He who does an act through the medium of another is considered as doing it himself. Jones, while admitting that he did the deed, claims that he was only a tool in the hands of Patrick, acting throughout for him. Whether or not the valet should suffer the extreme penalty of the law, will depend largely on the answer to the question relating to the influence exerted over him and his personal responsibility. But as to the infliction of the death penalty on Patrick, if he be guilty, as charged, there will be no difference of opinion. He it was that ad-

ministered the poison as really as though he had done it with his own hand, and he ought to die. "Respondet superior." Let the principal be held responsible.

Both parties admit the correctness of this maxim. Hence it is that the prosecution are putting forth every effort to prove that Patrick was the instigator and Jones the tool, while the counsel for the defense, although not willing to admit murder was committed, are doing all in their power to prove that Jones was no tool but a free agent and that all he did, including his confession, was deliberately done for a purpose. If it be proved that a murder was committed, the verdict will hinge on the one point, was Jones Patrick's agent, acting for him?

To what extent is this principle applicable? Universally and without restriction? In Broom's Legal Maxims (Pp. 816-866) are given numerous applications of it and also instances where it will not apply. Of course, one is responsible for the acts of another only so far as that other represents him or for the legitimate consequences of such acts. There may be modifying conditions. But, in general, the maxim is true—"Qui facit per alium, facit per se"—He who does an act by another does it himself.

The correctness of this principle will be seen, if we but consider the consequences that necessarily flow from its denial. Then all that would be necessary for one to be guilty of greatest crimes and yet be regarded by the law as innocent, would be for him to influence another by threats, bribes, persuasion or in some other way, to perform the overt acts. Such a theory, reduced to practice, would subvert the very foundations upon which society rests.

I have thus dwelt at length upon this principle, because it has direct application to the question—What relation does the voter sustain to the official oath of his representative?

Our government is not a pure democracy. All the people do not come together, as in a town meeting, to deliberate on and decide questions relating to the public welfare. Certain persons, to whom is accorded the right of suffrage, select, in the manner designated, one of their number to act for them, to represent them. The electors are not compelled to exercise the right of suffrage. They do so of their own free will, accepting the conditions required by the government,

Blackstone (Book I., Page 157) refers to the relation that exists between the representative and those he represents in the following language: While it is desirable that "legislative power" "should be exercised by the people in their aggregate or collective capacity," this would "be highly inconvenient" "in so large a state as ours." "It is, therefore, very wisely contrived that the people should do that by their representative which it is impracticable to perform in person." That is, he takes their place; they legislate through him.

One of the conditions required before a representative can enter upon the duties of his office is that he take an oath of loyalty to the government, swear to support the Constitution. The taking of this oath is not optional; it is obligatory, imposed by the authority of law. The government requires it as security for the preservation of the Constitution and the maintenance and execution of the established law. The representative takes the oath of office not as a mere personal act, but as representing a constituency, who, on account of their number, cannot themselves, directly take part in legislation, and so delegate one to act for them.

There may be a personal element in the oath, relating exclusively to the individual, and, with which, those, whom he represents, have nothing to do. But in every such oath there is an essential, a permanent element, which relates to allegiance to the government. That is always contained in it, whatever else is omitted.

That it is eminently proper that they who are actively engaged in the administration of the affairs of government should be its loyal friends and ready, when required, to take an oath to that effect, nay more, that, at stated times, they should be required to do so, all will admit. This question of loyalty, however, does not relate exclusively to the representative. It has to do with the electors. They, after all, are the persons that legislate. Allowing a reasonable liberty for the exercise of private judgment, they at the same time require their representative to carry out their views on all important issues. If he refuse to do so, they send another in his place. It is they who determine the policy of the government. It is necessary not only that there be a loyal representative, but also that there be, behind him, a loyal constituency. One disloyal representative can do but little harm, when an entire constituency is disloyal, revolution is in the air.

No government would allow any large body of voters to exercise the right of suffrage, who would declare their unwillingness to take the oath, which he, whom they elect to represent them, must take, ere he be allowed to enter upon the duties of his office, if made aware of their unwillingness. Such persons would be regarded as disloyal and in troublous times would suffer the consequences of disloyalty. The right "to tender the oath of allegiance to any person whom they suspect of disaffection" is not only "claimed by all governments," but when the emergency arises, is exercised. If it were at all practicable, it would be eminently proper that the electors be required to take at certain times the very same oath of loyalty as do their representatives and which, if they took a direct part in legislation, they, themselves, would be required to take. This would be a test of loyalty and any, who would refuse to take the oath, ought to be denied the right of suffrage.

However desirable such a test would be, it is impracticable. It is really not necessary. The same object is accomplished, on the theory that the representative, when he qualifies, represents the electors. "He goes with a commission in their name and, as their representative, takes for them, as well as for himself, the prescribed oath," on the basis of which he sits, deliberates and votes. The electors thus bind themselves by the oath he takes and so are equally and morally responsible with him. "Virtually, yet imperatively, they require him to swear the prescribed oath in their name," as otherwise he could not act for them. Such a view of the relation that exists between a voter and his representative dignifies the use of the elective franchise and greatly strengthens the government. It is in accordance with the principle, "what we do by another, we do ourselves."

The voter and his representative stand in exactly the same relation to the government. A member of "any association whose constitution is known and avowed involves an approbation and support of that constitution." Those who voluntarily unite in it must be held as approving and engaging to uphold it. Voters, accepting the prescribed conditions, casting their ballots for some one to act for them in governmental affairs, "formally avow themselves a constituent part of the society" and give their approval of the constitution under which they exercise the right of suffrage, and of their representative swearing to support it. In so doing they "homologate the known constitution and take upon themselves the responsibilities while they claim the privileges of members. They claim a right to take part in all the affairs of legislation and by their chosen representatives to sit, deliberate and vote in all matters that require attention."

Blackstone, treating of the oath (Book I, P. 368), argues that the "formal profession or oath of subjection is nothing more than a declaration in words of what was before implied in law, which occasions Sir Edward Coke very justly to observe that "all subjects are equally bound to their allegiance as if they had taken the oath--The taking of the corporal oath is but an outward declaration of the same." In accordance with this, it is maintained as a "principle of universal law that the natural born subject cannot by any act of his, no, not by swearing allegiance" to another government, "put off or discharge" his natural allegiance to the former; as Sir Michael Foster observes, "The well known maxim which the writers upon our law have adopted and applied to this; 'Nemo potest exuere patriam,' comprehendeth the whole doctrine of natural allegiance.'" If, then, one is a native of a country, the Constitution of whose government he cannot conscientiously swear to support, more than staying away from the polls is necessary that he free himself from the guilt incurred by occupying a position in which it is understood that he, really, if not formally, swears

to support it. In order to free itself from all complicity in the guilt of this nation on account of its refusal to recognize the claims of God, his Christ and his law, our church maintains a position of dissent and publicly testifies against the nation. If the position maintained by Blackstone be correct, and it is generally accepted, there is no escaping from the conclusion, that the person who votes for another to represent him in the government, by that act acknowledges himself to be bound by the oath of loyalty taken by his representative and which is regarded as already, resting upon him. The representative takes for him the formal oath.

The government acts on this principle. Residence, good conduct, etc., are not sufficient to entitle a foreigner to the right of suffrage. He is regarded as the subject of another government until he renounces allegiance to it and takes the oath of allegiance here. That a foreigner may become a citizen of the United States the essential condition is the taking of the oath of loyalty, in substance, the same as that taken by the representative. That admits him into the governing body and entitles him to the full rights of citizenship as long as he remains in the land of his adoption. He takes the oath of loyalty which the government regards as virtually taken by all, and which is the essential requirement in order to citizenship.

This then is the conclusion to which we come. The oath of office taken by a representative, divested of the merely personal element, and, regardless entirely of its character, whether proper or improper, is, virtually, taken by the electors. When being qualified, he represents them. Even if Jones is found guilty and dies the death of a murderer, Patrick, if the charges against him are proved, ought to die the same death. That which we do by another we do ourselves.