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Chancery Hearings in Open Court

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further provision declaring this power of attorney is to be irrevocable. Needless to say such a subscription paper ought to be very carefully drafted. Among other things it should make clear there is sufficient consideration supporting all promises of the subscriber, and also that the offer to the corporation is an option given it, supported by consideration moving from the promoter. The fourth suggested method of procedure probably cannot be advantageously combined in the same subscription paper with the other three even though the promoter were expressly named as trustee.

In conclusion one may say that any of the above suggested methods might lead to success, but the manner in which the Court of Appeals will look upon such an attempt will depend largely upon the degree to which the attorneys in charge are able to convince the court of the desirability of having a method by which the promoter of a corporation can bind the subscribers effectively.²² One might venture to hope that if a choice be made it will not be the beneficiary contract theory but rather one of the others. There seems no reason why there might not be such a thing as an irrevocable power of attorney to make a subscription contract with a corporation to be formed. Certainly a promoter may secure an option for the proposed corporation and it should be permitted to take advantage of such option.

—JAMES W. SIMONTON.

CHANCERY HEARINGS IN OPEN COURT.—At its meeting in Wheeling on October 7 the West Virginia Bar Association unanimously went on record as in favor of a proposed amendment to §26 of chapter 131 of the present Code. This section, as will be remembered, provides that chancery causes may, by leave of the court, and by agreement of counsel for the parties, be heard and determined in open court. The proposed amendment provides that hereafter they *may* be heard in open court by leave of the court on motion of *either* counsel or *shall* be so heard on the motion of counsel for all parties. In other words, whereas the present situation provides for a hearing in open court on con-

²² But the language of the court in *Windsor Hotel Co. v. Schenk*, *supra*, n. 4, is encouraging.

sent of all concerned—plaintiff, defendant and court—the proposed statute would require the consent of only two—plaintiff and court, defendant and court or plaintiff and defendant.

This proposed amendment is, in effect, a further “try-out” of open court hearings in chancery causes. The present statute was passed in 1917 but, as far as can be learned, has not resulted in many chancery hearings so conducted. West Virginia chancery practice still muddles through with the possibility of *Jarndyce v. Jarndyce* always before it. The delay in equity, once prevalent in England, is now prevalent right here. It has been eliminated to a large extent in English procedure and, with few exceptions, the chancery deposition is a thing of the dead past in most of our states. West Virginia is one of the few adhering to it, with the result that every plaintiff in chancery litigation is faced with the perils of very long delay and very great expense—the latter brought about by the fact that depositions before a notary public can be piled up *ad libitum* without any regard whatsoever to their relevancy or materiality.

This subject has been before the State Bar Association for a number of years. At the meeting in 1925 Mr. Kemble White presented it directly, along with a number of other changes in both practice and procedure. The Bar then likewise went unanimously on record as favoring this change, and asked that it be presented in concrete form at its next meeting. At the meeting in 1926, a bill was presented to the association *requiring* the hearing of all chancery cases in open court, except under very special circumstances. Attention was, to some extent, diverted from the consideration of this bill by reason of the fact that the association was then deliberating on the proposed bill giving to the Supreme Court the power to prescribe all rules of procedure. However, after considerable argument, the association referred the bill to the Committee on Judicial Administration and Legal Reform but recorded itself as opposed to the purpose of the bill.

At the Wheeling meeting this year the Committee reported the bill back, modifying it so as not to make these hearings compulsory but giving an opportunity to either party, with leave of the court, to have such a hearing, and

requiring the court to hear any such case if both parties so demanded. The avowed idea of the present bill is to give the proposed change a trial without forcing it in all cases.

The chief objection raised by the opponents of this change is that it will overwork the courts. To this the proponents answer that any court conscientiously reading the voluminous records now presented is required to do more work than would be required if the cases were heard before it with opportunity then and there to rule upon the evidence. There is another answer to this objection. If the chancery deposition is outmoded it should be abolished, no matter what the immediate result. If the state must take care of it by the appointment of additional judges, or if it may be taken care of by references to a master in certain cases, as was suggested at the 1926 meeting, those are matters of detail. It is not believed that any serious congestion will follow even if open hearings are made compulsory. Such congestion has not followed in other states.

The Bar Association has gone on record. This is hardly half the battle. If the association is in earnest, doubtless legislation will follow. The trial should be given. There can be very little doubt that it will prove satisfactory in more ways than one. It will eliminate most of the delay; it will very substantially decrease the cost; it will give to the court the opportunity of observing the witnesses on the stand; it will remove a strong deterrent to potential litigants, who, if they are intelligent, frequently refuse to prosecute matters in chancery unless their importance compels such prosecution.

This is only a step in advance but it is a step. It is to be hoped that it will lead to our complete emancipation from a form of procedure discarded over half a century ago by the courts which originated it.

—J. H. BRENNAN.

RECENT STATUTES ON RULE-MAKING POWER OF COURTS.—In 1925 two statutes of general interest to the bar were passed, one in Delaware and one in Washington. The Delaware Statute reads in part as follows:

“The Chief Justice and Associate Judges of the State