cial consciousness, a deepening sense of public responsibility—these abstract social attitudes and opinions may have a powerful effect on the subsequent decision. Such factors may not be immediately important, but a quarter of a century may prove them significant in the highest degree.

W. E. S., '33.

CONSTITUTIONAL LAW—WITNESSES—COMPULSION OVER ABSENT NATIONALS.—Harry M. Blackmer, a citizen of the United States, found it convenient to absent himself from the country when his testimony was wanted in the investigation of the Monmouth Oil Company leases, commonly known as the Teapot Dome Affair. He refused to answer letters rogatory issuing from the District Court of Wyoming to a Court in France. Subsequently, Congress passed a bill known as the Walsh Act, providing a method of compelling attendance of witnesses absent in a foreign country. 28 U. S. C. A. secs. 712-717. Blackmer was served with a subpoena by a United States consul in France but refused to return. He was subsequently cited for contempt and on failure to appear in that proceeding was fined $60,000. These measures were taken pursuant to and in accordance with the Walsh Act. Blackmer's attorneys contested the constitutionality of the statute. *Held*, that there was sufficient personal jurisdiction over the citizen domiciled in a foreign country to authorize service of an extraterritorial subpoena ordering him to appear and testify under penalty of a fine, which could be satisfied out of property sequestrated simultaneously with service of an order to show cause. *Blackmer v. United States* (Ct. of App. D. C. 1931) 49 F. (2d) 523. A review is now pending in the Supreme Court.

It is generally held that a court in one jurisdiction cannot compel attendance of a witness resident in another jurisdiction. *State v. Pagels* (1887) 92 Mo. 300, 4 S. W. 931; *Fidelity Trust and Casualty Co. v. Johnson* (1894) 72 Miss. 333; *State v. Murphy* (1896) 48 S. C. 1, 25 S. E. 43. A subpoena issued in one state and served in another is invalid. *State v. Huff* (1901) 161 Mo. 459, 61 S. W. 900. A court cannot compel attendance of a witness resident in a foreign country. *Tyre v. Wilkes* (1853) 10 U. C. Q. B. 639; *Patchin v. Davis* (1873) 18 U. C. Q. B. 46. Federal district courts compel attendance of witnesses resident outside their district, only when they reside within one hundred miles of the place of holding court. 28 U. S. C. A. sec. 654; *United States v. Stein* (D. C. E. D. Pa. 1929) 177 F. 479; *United States v. Southern Pacific* (D. C. Cal. 1916) 230 F. 270.

The legislatures of various states have sought means of compelling testimony of absent or nonresident witnesses, and have generally accomplished this by providing for the taking of depositions by commissioners. R. S. Mo. (1929) sec. 1754; R. S. Ill. (Cahill, 1929) sec. 26. The holding in the principal case seems to present a means whereby the attendance of absent witnesses may be enforced. New York has already passed a similar statute which is being tested in the present New York City municipal investigation. N. Y. C. P. A. sec. 406. However, the view has been urged that state statutes following the Federal statute would be void, as state powers unlike

those of the Federal government do not extend beyond its borders. (1929) B. U. L. REV. 143.

The Walsh Act and the holding of the Appeals Court of the District of Columbia are based on the theory that the United States possesses a species of jurisdiction over non-resident citizens. This jurisdiction is presumed because of the reciprocal obligations which a citizens owes his country while abroad, and the obligation of the state to protect him. *Minor v. Happerset* (1875) 21 U. S. 162; *Luria v. United States* (1913) 213 U. S. 9. This extraterritorial jurisdiction is not a new principle but has been used in previous cases. Certain criminal laws, designed to prevent acts injurious to the government and capable of perpetration in any locality, have been held to apply to citizens while in foreign countries. *United States v. Bowman* (1922) 260 U. S. 94. Also, Congress has been held to have power to levy an income tax on a citizen domiciled abroad and upon income from property situate abroad. *Cook v. Tait* (1924) 265 U. S. 47. The principle has been stated in the CONFLICT OF LAWS, RESTATEMENT (Am. L. Inst. 1930) P. F. D. No. 1, sec. 86: "A state which in the law of nations has standing as a nation can exercise through its courts jurisdiction over its nationals although they are not domiciled within the state."

As an additional basis for sustaining a species of jurisdiction over the person of absent citizens, reference is made in the opinion of the court to the ancient exercise of the King's prerogative writ of return. This writ when served on an absent subject compelled him to return to the kingdom at once. Upon failure to obey, the King could seize and hold his lands and upon his return, levy a fine against him. 1 BL. COMM.* 266; 4 BL. COMM.* 122. But there was no provision for a forfeiture of the fugitive's property. It was expressly recognized that the King could hold the lands and collect the rents and profits but could not transfer the land to another subject during the fugitive's absence, and the King could only proceed to enforce a penalty when the subject returned. *Bartue and Dutchess of Suffolk's Case* (1559) 73 Eng. Repr. 388; *Krowles v. Luce* (1579) 72 Eng. Repr. 473. The present law goes further than the ancient prerogative, in that it provides for, in effect, a forfeiture of the citizen's property while he is yet abroad.

In the principal case the court says, "He (Blackmer) knew, or should have known, that it is as much his duty to yield his testimony in the government's efforts to uncover fraud as it would be his duty to bear arms in defense of his country." The duty is thus made a paramount one, since the power of a national state to compel a citizen to bear arms in defense of his country is beyond question. *Jacobson v. Mass.* (1905) 197 U. S. 11.

That the decision is a necessary and salutary one cannot be gainsaid. Recent disclosures of scandal and corruption require a clear recognition of extraterritorial powers of compulsion over fugitive witnesses. No principle of jurisdiction is violated since the judgment was one *quasi in rem*, to be satisfied only out of property attached at the outset of the proceedings. There was no attempt to give it the effect of a judgment *in personam*. The statute therefore could not be attacked on the ground of due process in this

respect. *Pennoyer v. Neff* (1877) 95 U. S. 714. Nor was there any offense to the dignity or sovereignty of any foreign country, nor any attempt to exercise in that country any attribute of sovereignty, since the consul serving notice acted as a mere messenger whose function was to notify and not coerce.

For discussion of the case and problems raised see: note (1931) 40 YALE L. J. 1325; note (1931) MICH. L. REV. 137. For a discussion of the Walsh Act see note (1927) 27 COL. L. REV. 204. V. P. K., '33.

CORPORATIONS—ACCOUNTING PRACTICES—STATUTE IMPOSING INDIVIDUAL LIABILITY AS PENALTY.—The statutes of Massachusetts require that corporations submit each year a statement of their financial status, subscribed by the president, treasurer and a majority of the directors. Mass. Gen. Laws (1921) c. 156 secs. 36 and 47. If a false return is made, the subscribers can be held individually liable for the corporate debts. Mass. Gen. Laws (1921) *ibid.* The application of this unique law (peculiar to Massachusetts) is illustrated in the case of *United Oil Co., Inc. v. Eager Transportation Co. et al.* (Mass. 1930) 173 N. E. 692. The statement to be returned must include a balance sheet listing as specifically provided by Mass. Gen. Laws (1921) c. 156 sec. 47, assets such as machinery, furniture, and liabilities such as reserve and capital stock. The defendant corporation complied with the statute by listing as assets items including "autos, trucks and teams" and as liabilities "reserves." As there was no separate account for depreciation on "autos, trucks and teams," it was placed indiscriminately in "reserve." The court deemed the balance sheet false because there was no such differentiation and held the defendant individually liable on the plaintiff's debt claim, on the theory that persons who might deal with the company might be misled into believing that it had attachable assets worth $14,735, whereas less the depreciation, the "trucks" etc., were worth only $1,000.

This conclusion of the court seems rather difficult to sustain. The statute requires only a listing of "reserve" with which provision there was exact compliance, no provision being made requiring a separation of reserve for depreciation on each asset. Nor do the cases cited by the court support its finding. *Heard v. Pictorial Press* (1903) 182 Mass. 530, 65 N. W. 901, is a case in which the directors knowingly valued $10,000 in patent rights as worth $120,000. In the *Empire Laboratories, Inc. v. Golden Distributing Corporation* (1929) 266 Mass. 418, 164 N. E. 772, $47,000 in advances were listed as tangible merchandise. Both of the above cases clearly show fraudulent practices. Then, too, in the instant case the defendants were following an accepted accounting practice, regarded in making use of a general "reserve" account. To obtain the actual value of the assets, only the deduction of the reserve amount from the total depreciable asset is necessary. Admittedly, it would be more convenient to designate separately each reserve, but it is certainly not fraudulent nor deserving of penalty to use such a widely sanctioned method. J. G. G., '32.