of the Bankruptcy Act, was entitled to release from all his provable debts except in case of six specified classes of obligations. Negligent delay did not fall within any of the latter class, and since debt was provable, bankrupt was able to obtain relief. Res adjudicata was not considered by the court.

It is submitted that the prevailing law as announced in the principal case is arbitrary, technical, unfounded on reason or policy. Precluding a petitioner merely because of delay on the fiction of a judgment determining his rights has been an expedient way for the courts to dispose of the matter, without further examination into the nature of the bankruptcy law. The logic of the case of *In Re Glasberg*, supra, is unrefutable, for the statute expressly endows the bankrupt with the benefit of being relieved of all provable debts, except in certain cases of which delay is not one. At least, the court can exercise a discretion in granting a discharge in view of a conflict between Sections 14 and 17 of the Act. That such discretion should, in the usual case, be resolved in favor of the bankrupt rests upon a consideration of the purposes of bankruptcy legislation. Historically, of course, the law has been a device to be invoked for the protection of the creditors, and the idea of a discharge of obligations has been of relatively recent birth, making its first appearance in the legislation of Congress in 1841. Once implanted in the operation of the bankruptcy law, this feature has produced invaluable results, as a means of rehabilitating the luckless. Further evaluation seems superfluous, in view of the position of the Supreme Court of the United States where it declared, in *Local Loan Co. v. Hunt* (1934), 292 U. S. 234, as follows: "One of the primary purposes of the bankruptcy act is to relieve the honest debtor from the weight of oppressive indebtedness, and to permit him to start afresh, free from the obligations and responsibilities consequent upon business misfortunes. . . . *The various provisions (of discharge) were adopted in the light of that view and are to be construed when reasonably possible in harmony with it so as to effectuate the general purpose and policy of the act.*" Upon such a mandate, the courts of bankruptcy should feel impressed with the wisdom of a full reconsideration of the rule announced in the instant case.

W. C. K. '36.

CONSTITUTIONAL LAW — POLICE POWER — BILLBOARDS. — The following amendment became part of the Constitution of Massachusetts in 1918: "Advertising on public ways, in public places and on private property within public view may be regulated and restricted by law." Mass. Const. Amend. Art. 50. Under this provision the legislature conferred on the State Department of Public Works general jurisdiction over advertising signs on public ways "or on private property within public view of any highways, public park or reservation." Mass. Gen. Laws (1932) C. 93 secs. 29-33. The Department of Public Works issued regulations prohibiting the maintenance of billboards and other signs for outdoor advertising purposes without a permit and also prohibiting the issuance of permits for outdoor advertising within certain distances of public parks, reservations and highways.

Companies with over $5,000,000 invested in their plants, advertising devices, etc., sought an injunction restraining the enforcement of the regulations. Compliance with the orders would require them to remove or relocate 96% of their signs and billboards. *Held* Decree refused and the regulations upheld as constitutional. *General Outdoor Adv. Co. et al. v. Dep't. of Public Works* (1935) Mass. Sup. Jud. Ct., reported in *U. S. Law Week*, Jan. 22, 1935, p. 8.

The court gave as the primary basis of its decision the promotion of public safety under the police power. Aesthetic considerations were given as another ground, it being held that where regulations are justified by their primary and substantive purpose "considerations of taste and beauty may enter as auxiliary."

The court follows the well established rule that aesthetic considerations alone are not sufficient to justify legislation under the police power. Notes 34 L. R. A. (N. S.) 998 and L. R. A. 1917A, 1220. The rule is applicable to billboard regulation. *City of Passaic v. Patterson Bill Posting Co.* (1905) 72 N. J. L. 285, 62 Atl. 267; *Commonwealth v. Boston Adv. Co.* (1905) 188 Mass. 348, 74 N. E. 601; *People v. Murphy* (1900) 195 N. Y. 126, 88 N. E. 17; *Haller Sign Works v. Physical Culture Training School* (1911) 249 Ill. 436, 94 N. E. 920 comment (1932) 17 St. Louis Law Rev. 371. But the inclusion of aesthetic reasons will not invalidate a law sustainable on orthodox grounds. *Cusack Co. v. City of Chicago* (1915) 267 Ill. 344, 108 N. E. 340, aff. (1917) 242 U. S. 526; *St. Louis Poster Adv. Co. v. St. Louis* (1919) 249 U. S. 269. Aesthetic considerations, moreover, are held to be a valid justification for the exercise of the police power when other recognized grounds exist. *Ware v. City of Wichita* (1923) 113 Kan. 153, 214 Pac. 99. This is also the well recognized rule in Massachusetts, and thus the principal case is clearly with the weight of authority. *Atty. Gen'l. v. Williams* (1899) 174 Mass. 476, 55 N. E. 77; *Commonwealth v. Boston Adv. Co.*, supra; *Parker v. Commonwealth* (1901) 178 Mass. 199, 59 N. E. 634; *Welch v. Swasey* (1907) 193 Mass. 364, 79 N. E. 745; *Opinion of the Justices* (1920) 234 Mass. 597, 127 N. E. 525.

The decision in the principal case, like others involving billboards and zoning, in effect makes aesthetics the controlling factor but hides behind general statements as to public safety. No accidents were shown to have resulted from the "intrusion of public announcements" before the eyes of the public, yet the main basis of the decision was said to be public safety. Cf. *Schait v. Senior* (1922) 97 N. J. L. 390, 117 Atl. 517 ("a reasonable regulation touching public health, safety and general welfare"); *Opinion of The Justices*, supra, ("rational relation to the health and safety of the community"); *Ware v. City of Wichita*, supra ("a reasonable zoning ordinance with some pertinent relation to the health, safety, morals and general welfare of the community").

Though as yet no court has gone so far as to sustain a statute or ordinance as a valid exercise of the police power on the grounds of asethetics alone, several courts by way of dictum have indicated the tendency in that direction. *State v. New Orleans* (1923) 154 La. 271, 97 So. 440; *State v. Houghton* (1920) 144 Minn. 14, 176 N. W. 159; *State v. Harper* (1923) 182

Wis. 148, 196 N. W. 451. It would seem that the courts should abandon the sham to which they have resorted and expressly make aesthetics a ground for the exercise of the police power. Cf. Freund *Police Power* (1904) sec. 182, "It is conceded that the police power is adequate to restrain offensive noises and odors. A similar protection to the eye, it is conceived, would not establish a new principle, but carry a recognized principle to further applications."

A. J. G. '36.

CONSTITUTIONAL LAW—TRIAL BY JURY—ADDITUR—Plaintiff brought a personal injuries suit in a United States District Court; the jury returned a verdict in his favor for $500; the court ruled in favor of a new trial for inadequacy of damages unless defendant should consent to an increase to the sum of $1500. Defendant's consent resulted in an automatic denial of plaintiff's motion for a new trial. Plaintiff appealed to the Circuit Court of Appeals, whence certiorari to the Supreme Court. *Held* The action of the trial court was unconstitutional as a violation of Amendment VII of the United States Constitution providing that "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of the common law." *Dimick v. Schiedt* (1935) 55 S. Ct. 296, 79 L. Ed. 256.

The court premised its decision on the accepted interpretation of Amendment VII as embodying the common law as it existed at the time of the adoption of the constitutional provision. *United States v. Wonson* (1812) 28 Fed. Cas. 745, at 750; *Thompson v. Utah* (1898) 170 U. S. 343; *Capital Traction Co. v. Hof* (1899) 174 U. S. 1 at 8; *Patton v. United States* (1930) 281 U. S. 276. As far back as the Year Books English judges increased inadequate verdicts in cases of mayhem. 2 Bacon's Abridgment 611 (7th. ed.) The practice continued well into the eighteenth century. *Burton v. Baynes* (1733) Barnes notes 153, 94 Eng. Rep. 852; and see *Brown v. Seymour* (1742) 1 Wils. 5, 95 Eng. Rep. 461; *Beardmore v. Carrington* (1764) 2 Wils. 244, 95 Eng. Rep. 790. The court in the instant decision declared it could find no more recent case than *Burton v. Baynes*, supra, in which this power was actually exercised; it decided that by the end of the eighteenth century the judicial power thus to increase damages had become atrophied. Apparently the court's attention was not directed to *Armytage v. Haley* (1843) 4 Q. B. 917 in which the plaintiff brought an action on the case for negligence, recovered a nominal verdict and obtained a rule to show cause why a new trial should not be granted unless defendant would consent to an increase in damages. In any event, persistent dicta gave the practice of additur at least an umbrageous existence in the English courts until the beginning of the twentieth century. Judicial addition as well as remission from verdicts was finally outlawed by the leading case of *Watt v. Watt* (1905) A. C. 115.

The court was obliged to distinguish the present case from well established decisions upholding the power of the federal trial judge to deny a