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## Appeal and Error—Bill of Exceptions—Time of Filing

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## Comment on Recent Decisions

APPEAL AND ERROR—BILL OF EXCEPTIONS—TIME OF FILING.—Plaintiffs excepted to the action of the trial court in directing a compulsory reference of the cause. The referee was appointed April 10 during the March term, 1922, of the circuit court. Plaintiffs were allowed 10 days to file a term bill of exceptions. They did not file it until January 7, 1924. The final bill, filed more than two years later, did not include the same matter. *Held*, that term bills of exception may be filed at any time before appellant must serve the abstract of record for appeal. *Smith v. Ohio Millers' Mutual Life Insurance Company* (Mo., 1928), 6 S. W. (2d) 920.

The principal case depends upon the construction to be given to Section 1460, R. S. Mo. 1919. Prior to 1911 the statute provided, in effect, that a bill of exception "may be filed" during the term of the court at which it is taken, or within such time thereafter as the court may allow, or within the time the parties to the suit may in writing agree upon. This statute was held to apply to term bills as well as to final bills. *State ex rel. Lamport v. Robinson* (1914), 257 Mo. 584, 165 S. W. 997. In 1911, the above section was repealed and reenacted with the addition of the provision, among others, that bills of exception "may be filed" at any time before the appellant shall be required by the rules of the appellate courts to serve his abstract of the record. By virtue of this provision, it is held that it is not a necessary prerequisite to the right to file the bill of exceptions that the trial court should make an order, during the term at which exceptions are taken, granting leave to file the same thereafter, but such bill may be filed at any time before the appellant is required to serve his abstract of the record. *State ex inf. Carkling ex rel. Hendricks v. Sweaney* (1917), 270 Mo. 685, 195 S. W. 714; *Brockman v. United Railways Co. of St. Louis* (1917), 271 Mo. 696, 197 S. W. 337; *State v. Rogers* (1913), 253 Mo. 399, 161 S. W. 770; *Forsythe v. Shryack-Thom Grocery Co.* (1920), 283 Mo. 49, 223 S. W. 39; *Brown v. Tully* (1920), 220 S. W. 1012; *Jennings v. Cherry* (1923), 301 Mo. 321, 257 S. W. 438. The provision extends as well to cases wherein writs of error have been sued out as to cases on appeal. *State ex rel. Rosencar v. Hartmann* (1925), 218 Mo. 464 S. W.

The cases cited *supra* referred to final bills of exception although they did not expressly so limit the statute. The principal case holds that the provision added by the act of 1911 applies to term bills of exception also. It is a common-sense interpretation. As the case points out, it may have been desirable to limit with great strictness the time for filing bills of exception in a period when exceptions were written out in longhand and from memory; but at present, rulings on preliminary matters are noted on the court minutes, and the testimony is taken in shorthand and transcribed by the official court reporter. However, there is no express decision in the case to the effect that term bills are abolished, although the court says that "the reason for term bill no longer exists." After citing a number of decisions to the effect that term bills of exception are still required, the court con-

cludes with the following sentence: "We hold the appellant's term bill was filed in time. . . ." J. N., '29.

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CONSTITUTIONAL LAW—POLICE POWER—PRICE FIXING.—Acting pursuant to authority given to him in chapter 227, Laws of New Jersey, 1918, p. 822, the Commissioner of Labor of New Jersey refused to issue a license for an employment agency to the plaintiff, because the proposed fees of the agency were in his opinion exorbitant. Plaintiff, in an action against the commissioner, contended that the statute was unconstitutional in that it restricted the rights of individuals to contract, and contravened the fourteenth amendment of the United States Constitution. *Held*, that an employment agency is not a business affected with a public interest, and, therefore, that the prices of such a business cannot be fixed by the state. *Ribnic v. McBride* (1928), 72 L. Ed. 614, 48 S. Ct. 545.

The rule that prices may be fixed for a business "affected with a public interest" was first asserted in *Munn v. Illinois* (1876), 94 U. S. 113, 24 L. Ed. 77, and affirmed in *Block v. Hirsh* (1921), 256 U. S. 135, 65 L. Ed. 865, 41 S. Ct. 458; *Patterson v. The Eudora* (1902), 190 U. S. 169, 47 L. Ed. 1002, 23 S. Ct. 821; *Marcus Brown Holding Co. v. Feldman* (1921), 256 U. S. 170, 65 L. Ed. 877, 41 S. Ct. 465; *Schmidinger v. Chicago* (1912), 226 U. S. 578, 57 L. Ed. 364, 33 S. Ct. 182. Other cases also hold that whenever a combination of circumstances seriously curtails the regulative force of competition so that buyers or sellers are placed at such a disadvantage in the bargaining struggle that a legislature might anticipate serious consequences to the community as a whole, the legislature shall have power to regulate prices for the public good. In the case of *Tyson & Bros. United Theatre Ticket Offices v. Banton* (1926), 273 U. S. 418, 71 L. Ed. 718, 732, 47 S. Ct. 426, the court held that to come within this rule, the business must be such as to justify the conclusion that it has been devoted to a public use, and its use therefore granted to the public.

Mr. Justice Stone gave a dissenting opinion in the principal case in which he pointed out that the local conditions in New Jersey were such that by excessive fees and collaboration with the employers, the employment agencies had created a social problem that was really affected with a public interest. He distinguished the principal case from the *Tyson* case, because in the latter the ticket brokers deal in a luxury and sell only to the relatively few who choose to go to them, whereas employment agencies seriously affect the unemployed, whose welfare is important to the public, and who are, as a matter of fact, powerless to resist such extortion.

In parallel cases the United States Supreme Court, has, at different times, sustained regulations of prices where the legislature has fixed the charges which grain elevators might make, *Brass v. North Dakota* (1893), 153 U. S. 391, 38 L. Ed. 757, 14 S. Ct. 857; which insurance companies might make, *German Alliance Inc. Co. v. Lewis* (1913), 233 U. S. 389, 407, 58 L. Ed. 1011, 1020, 34 S. Ct. 612; which plaintiff's attorneys might make in workman's compensation cases, *Yeiser v. Dysash* (1924), 267 U. S. 540, 69 L. Ed. 775, 45 S. Ct. 399. G. N. B., '29.