

The Law's Delays

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EDITORIAL COMMENT

The Law's Delay

Criticism of the Courts through the medium of the press, the radio and other modern means of the dissemination of knowledge and opinion has become increasingly severe year by year and has become a real menace to the orderly and efficient administration of justice, because of the very fact that people have had their confidence in courts shaken to its foundations.

It is usually seen in assertions as to the technicalities of the law which enabled criminals to escape expiation for their crimes and needless continuances of lawsuits granted by the Court, without any real basis for it in law or equity, and the bench and bar has tried to remedy this condition. In fact, President Hoover in his inaugural address declared: "Reform, reorganization and strengthening of our whole judicial and enforcement system, both in civil and criminal sides, have been advocated for years by statesmen, judges and bar associations."

The solution of the problem, however, has not yet been reached, nor will it be reached with facility. Let the appropriation of a half million dollars to defray the expenses of the National Commission on Law Observance and Enforcement which was appointed by President Hoover, testify to that. And some of the results of the studies of this Commission have been far from satisfactory.

Moreover, there is a Federal Judicial Council whose primary function is to study defects in the administration of the Law and recommend remedies. Besides this Council, there are twenty states which have established councils patterned after it. In this group are found: California, Connecticut, Idaho, Illinois, Kansas, Kentucky, Maryland, Massachusetts, Michigan, New Jersey, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Virginia, Washington and Wisconsin.

Efforts are being made at the present time to establish similar councils in thirteen other states, but it seems, however, that we in America have not advanced beyond the questionnaire stage.

To elucidate this point more clearly, let it be said that few businesses could reach any degree of prosperity under the same antiquated lines of procedure along which the administration of justice now labors. Although in every other field of human endeavor, definite constructive progress has been made, the legal profession still stumbles along in its blind way.

The profession must re-establish itself in the public esteem. England has striven to do so by creating its Rules Committee and vesting it and the Lord Chancellor with authority to effect improvements in

the administration of justice where changing conditions make it necessary. We could do well to follow England along similar lines.

To particularize, let me cite Wisconsin as a leader in this respect. It has made the obtaining of continuances of cases by counsel extremely difficult in Circuit Court Rule XIX. This is the most meticulous affidavit for detail in the Wisconsin Statutes. Although the high percentage of cases are continued, it is easy to see the difficult position an attorney would be in, if the opposing attorney and the judge would unite in denying him a continuance. His sole weapon then is Rule XIX, requiring an affidavit which he must sign to show the merits of his case, and which has numerous prerequisites, among them that the attorney has been duly diligent in endeavoring to bring the case to trial. This affidavit is a mean trap for an attorney who cannot locate his witnesses, or must try another case at the same time this first case is called for trial, et cetera.

On appeal the only way a ruling of the trial Court can be reversed is where there has been an abuse of discretion by the trial court.

In *State ex Rel. Hallam v. Sally*, 134 Wis. 253, a motion for a continuance to secure an absent witness made after the close of the evidence taken on the trial was held to have been properly denied, because the affidavit in support thereof did not inform the Court as to what efforts had been made to obtain the attendance of the witness or what efforts had been made to prepare for trial in respect to the point in relation to which his testimony was desired.

Then, in *Miller v. State*, 139 Wis. 57, an application for a continuance under Circuit Court Rule XIX may be resisted by counter affidavits as to facts other than the materiality of evidence referred to in the moving affidavit, whether the absent witness will furnish the evidence as claimed and whether, if he does, it will be truthful.

The sentiment of the association of Circuit Judges of Wisconsin is divided in favor of permitting the trial judge to comment on the evidence in his charge to the jury, as is practiced in the Federal Courts. However, at the present time there is still this inconsistency between State and Federal practice and there is still much debate in the profession as to the merits of the two practices, and as to the constitutionality of permitting the trial judge in the State Court to comment upon the evidence in his charge to the jury.

At the present time, the Circuit Judges in Wisconsin are making a strong attempt to have a law passed by the legislature to permit District Attorneys to comment upon the refusal of the defendant to testify upon the trial for fear of his incriminating himself. There is much opposition to this view, however.

These various discrepancies in opinion of bench and bar are shown

to illustrate the need for concerted action in increasing the efficiency in handling lawsuits.

The question of speeding up the machinery of legal procedure is one that should provoke earnest contemplation among the profession and then action. We find the United States the leader in business efficiency, and there is no reason why we should not in the same manner try to make the administration of justice progress just as swiftly as commerce and industry.

C. F. Z.