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Proposed Legislation for Enforcement of Prohibition

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Under date of November 21st, 1929, the Commission on Law Observance and Enforcement made a preliminary report to the President on observance and enforcement of prohibition. Under subdivision (D) of that report, the Commission offered three methods to relieve the congestion in the Federal Courts:

"First, to increase the number of Federal judges; second, to create inferior Federal courts, or, as it has been put, Federal police courts for such cases; and third, to utilize the present machinery of the courts, meeting the causes of delay and congestion by a simpler procedure for petty cases."

The Commission in its report disapproves the adoption of the first two methods and suggests that "if it is possible to deal with this matter adequately with the existing machinery of the Federal system it should be done." To eliminate congestion in the existing court machinery the Commission suggests (1) a classification of the violations of the prohibition law, (2) prosecution of "casual or slight violations" upon complaint or information, and (3) prosecution of petty offenses before a Commissioner without jury.

Following the report of the Commission, bills were introduced in Congress to carry out the above suggestions. The bills introduced by Mr. Christopherson, a member of the Judiciary Committee of the House, are generally relied upon to carry out the proposals. HR 8913 and HR 8914 introduced on Jan. 21, 1930 are undoubtedly proposed to permit and provide for a prosecution of "casual or slight

violations" on complaint or information; and, HR 10341 and HR 10342 introduced on Feb. 27, 1930 are proposed to permit and provide a procedure for the trial of Petty offenses without jury.

HR 8913 proposes to amend Title 11 of the National Prohibition Act by inserting two new sections; Sections 29A and 29B. Sec. 29A reads as follows:

"For the purposes of prosecutions the following shall be deemed casual or slight violations: (1) Unlawful possession, (2) single sales of small quantities by persons not engaged in habitual violation of the law, (3) unlawful making of small quantities where no other person is employed, (4) assisting in making or transporting as a casual employee only, (5) transporting of small quantities by persons not habitually engaged in transportation of illicit liquors or habitually employed by habitual violators of the law."

Sec. 29B reads as follows:

"In case of casual or slight violations, as hereinbefore defined, the district attorney may prosecute upon complaint or information, and in such cases, when so prosecuted, the penalty for each offense shall be a fine of not to exceed $500 or confinement in jail, without hard labor, not to exceed six months, or both."

The purpose of this bill is apparent. It is to define what constitutes "slight or casual violations" as distinguished from "infamous" offenses so as to permit prosecutions upon complaint or information; and thus avoid the necessity of indictment by a grand jury. The Fifth Amendment of the U. S. Constitution provides that:

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury."

The authors of this bill undoubtedly justify their classification in the hope that in view of what was held in the case of *Ex Parte Wilson* (114 U. S. 417), the Supreme Court would sustain prosecutions upon complaint and information of the so-termed "casual or slight violations." In *Ex Parte Wilson,* the defendant was prosecuted upon information,

convicted and sentenced to pay the fine of $5,000 and to be imprisoned at hard labor for 15 years. Wilson petitioned for a writ of Habeas Corpus which was ordered to issue. Justice Gray who wrote the opinion gives a brief history of what constitutes "infamous crimes." He declared that the true test was, not the competency of the defendant if convicted to testify in another case, but *whether the punishment imposed was an infamous one.* In the course of the opinion Justice Gray referred to a statement of Judge Deady in *U. S. vs. Block* (4 Sawy 211) wherein a punishment by a fine of not more than $500 or imprisonment of not more than six months for a crime of introduction of distilled spirits into Alaska was not infamous. The reference of Justice Gray to this statement certainly cannot be construed as definitely settling that that punishment was the dividing line between infamous crimes and crimes not infamous. Justice Gray says: "What punishment shall be considered as infamous may be affected by the changes of public opinion from one age to another." He also says: "Nor do we accede to the proposition which has sometimes been maintained, that no crime is infamous, within the meaning of the Fifth Amendment, that has been so declared by Congress," taking the position that the purpose of the Fifth Amendment was "to limit the powers of the legislature." The Justice concludes the opinion limiting the decision to the facts of the case:

"Deciding nothing beyond what is required by the facts of the case before us, our judgment is that a crime punishable by imprisonment for a term of years at hard labor, is an infamous crime, within the meaning of the Fifth Amendment of the Constitution; and that the District Court, in holding the petitioner to answer for such a crime, and sentencing him to such imprisonment, without indictment or presentation by a grand jury, exceeded its jurisdiction, and he is therefore entitled to be discharged."

My conclusion is that in *Ex Parte Wilson,* there is no positive declaration that violations that subject a person to punishment to the extent fixed in HR 8913 may not be held to be infamous. What was said in that case as to that is mere *obiter.* True at the time of the adoption of our federal

Constitution, it was not the requirement of the common law, nor was it the practice, to prosecute all crimes by indictment. Many municipal police regulations and petty offenses were prosecuted upon complaint or information. The very wording of the Fifth Amendment limiting its application to "capital or otherwise infamous crimes" sustains this conclusion. But in view of later decisions, particularly *Wong Wing v. United States,* 163 U. S. 228, *United States v. Moreland,* 258 U. S. 433, and *Weeks v. United States,* 216 Fed. 292, may not the Supreme Court hold that the punishment permitted under this bill is infamous?

Granting that no constitutional difficulty can arise, and that prosecution of the specified acts in the bill may be upon complaint or information, in order to avoid confusion by adding a classification unknown to the constitution, would it not be better to stay within the terminology of the Fifth Amendment, and instead of referring to such violations as ment permitted under this bill is infamous?

That prosecution upon complaint or information is a simpler and more expeditious procedure is true. Because of this, in a large number of the states constitutions permit prosecutions of all crimes, felonies included, by information. This does not violate the Fifth Amendment, for that amendment as well as the others constituting the first ten were intended as restrains and limitations upon the powers of the federal government and not upon the powers of the states. In *Hurtado v. People* (110 U. S. 516) prosecutions upon information were held not to violate the "due process" clause of the Fourteenth Amendment.

Now what is the procedure proposed by HR 8914. The provisions of that bill are as follows:

"That in prosecutions by complaint or information for casual or slight violations of Title II of the National Prohibition Act, the accused shall plead to the complaint or information before the United States commissioner before whom he may be taken pursuant to section 595, title 18, United States Code. If he pleads guilty, the commissioner shall transmit the complaint and warrant to the clerk of the district court, with a report of the plea, and thereupon judg-

ment of conviction shall be rendered and sentence imposed by a judge of the court.

"Section 2. If the accused so prosecuted pleads not guilty, there shall be a hearing before the United States commissioner, who shall have the same powers with respect to summoning witnesses for prosecution and defense as those of a magistrate in a prosecution before him under the usual mode of process in the State, and the commissioner shall, as soon as practicable thereafter, transmit the complaint and warrant to the clerk of the district court, with a report of the plea and hearing and his finding and recommendations, and a judge of the court, on examination of the report and finding, may render judgment of conviction or acquittal as the case may be, and in case of conviction impose sentence.

"Section 3. In case conviction is recommended by the commissioner, the accused may within three days after filing of the commissioner's report, except to the report in writing and may also demand trial by jury. In case trial by jury is not so demanded it shall operate as a waiver of any right thereto.

"Section 4. In case the report of the commissioner is excepted to and trial by jury demanded the district attorney may elect whether to go to trial on the complaint or information or to submit the case to a grand jury; and in case the grand jury find an indictment, the prosecution shall then proceed upon such indictment."

HR 8914 proposes that in a prosecution on complaint or information if the accused pleads guilty before the Commissioner, the proceedings are to be transmitted to the Clerk of the district court for the rendering of judgment and sentense by the court. Section 2 in substance provides that in case of a plea of not guilty there is to be a hearing before the commissioner, and at the conclusion of said hearing the commissioner is to transmit the record to the clerk of the district court with his findings and recommendations and the judge "on the examination of the report and findings, may render judgment of conviction or acquittal as the case may be and, in case of conviction to impose sentence." Section 3 of the bill gives the accused the right to, within three

days after filing of the commissioner's report, except to the report and demand trial by jury. Section 4 provides that in case of exception to the report and demand for trial by jury, the district attorney may elect to go on trial on the complaint or information or submit the case to a grand jury.

If the authors of HR 8914 hope that by this bill they are simplifying procedure, they will meet with great disappointment. Although Section 2 of the bill refers to the proceeding before the commissioner as a hearing, it has all the attributes of a trial. The accused is arraigned and pleads to the information, witnesses are summoned and testimony offered for both sides, and undoubtedly arguments before the Commissioner will be quite in order. The hearing provided is not merely a preliminary hearing to *find probable cause* and bind over the accused for trial, but it is a full hearing to enable the commissioner to make *findings of guilty or not guilty.* With the exception of rendition of judgment and the imposing of sentence, every step in the so-called hearing is the same as in a trial before court without jury. If perchance the accused excepts to the findings and demands a jury trial, then we proceed with the trial; or submit the case to the grand jury for an indictment and then proceed with a trial. In other words, we start all over again. Let us enumerate the steps should the accused propose to take advantage of all his rights under this procedure:

First: Arraignment and plea before the commissioner;

Second: Hearing (trial) before the commissioner;

Third: Report of findings and recommendations to the Clerk of the district court;

Fourth: Exceptions and demand for a jury trial by the defendant;

Fifth: Regular trial in the district court upon complaint or information, or

Fifth: Summoning of grand jury and return of an indictment;

Sixth: Regular trial in the district court.

To summarize; under this bill there may be two trials, one by the commissioner and one by the court and jury. The accused may be arraigned twice and plead twice. There

may be double arguments; and double findings, one by the commissioner and one by the jury. In only one instance is duality eliminated and that is in the rendition of judgment and sentence. Certainly no one can claim that such a double procedure which every accused is liable to take advantage of, will expedite the prosecutions under the Prohibition Law. But, one of the greatest objections to the proposal is that *it does not eliminate a prosecution by indictment of the so-termed "slight or casual violations."* In other words, the proposed procedure in the bill will accomplish nothing in the way of simplifying and expediting the administration of Criminal Justice. (The validity of Sec. 2 of HR 8914 will be discussed later in connection with a similar provision in HR 10342.)

If it is the desire to simplify and expedite the prosecutions of "slight or casual violations" as defined in HR 8913 by providing for prosecution upon complaint or information rather than by indictment, why not adopt the procedure of states where such procedure has met with uniform success and universal approval; for example, California and Wisconsin.

What are the steps in the procedure upon information in those states?

First: Complaint before Justice, Magistrate or Commissioner.

Second: Issuance of warrant and arrest of the accused.

Third: A preliminary hearing *to find probable cause.* (This is not a trial; no plea is required, but should the accused desire to plead guilty he is taken forthwith to a judge for judgment and sentence).

Fourth: *If probable cause found* the prosecuting attorney files an information.

Fifth: Regular trial.

There is no reason why a similar procedure could not be provided for in United States practice for crimes not infamous. The preliminary hearing could be held before a U. S. Commissioner for the purpose of finding *Probable Cause,* and then information filed by the U. S. District Attorney and the trial to follow.

If by Section 4 of this bill which gives the district attorney power to elect,—(1) to go to trial upon the complaint, or (2) to submit the cases to the grand jury, it is the intention of the authors to hold the latter as a lever for bartering, and a threat to have the accused submit to a hearing and a finding of guilty by the commissioner, then it is the most dangerous and dastardly piece of legislation yet proposed. To permit greater opportunities for bartering between enforcement officers and the accused is to open the door to worse graft and corruption. To hold this as a threat against the accused in order to have him submit to a trial before the Commissioner in which constitutional guarantees are surrendered, is the institution of a persecution that violates every sense of English and American justice. We hear a lot about disrespect for the Constitution and the laws of this country. We encourage the study of the Constitution. We offer prizes for orations and odes on the Constitution. But, all these will avail nothing, if we persist in passing laws which no citizen can respect. It is this kind of legislation that breeds Bolshevism and disrespect for law.

One of the greatest objections to the Prohibition Law has been, that it leads to corruption and graft and the perversion of the enforcement personnel. If ever opportunities were offered for corruption and grafting, and for high-jacking and racketeering, and the prostitution of our judicial machinery, they are offered by this bill. The double and optional provisions of this bill afford a great opportunity for corruption and fraud.

True in many states and especially in large cities, a similar practice as is proposed in this bill and in HR 10342, prevails. But, with what result? It has been responsible for more corruption and graft of the city police and city courts than all other causes combined. There is, however, this difference between the two procedures. In the state practice the justice or magistrate *is a court,* and has jurisdiction both, (1) *to try Petty Offenses and Misdemeanors* and (2) to *hold a preliminary hearing.* In the practice proposed the U. S. Commissioner *is not a court* and jurisdiction *to try* cannot be conferred upon him. (This is discussed later). There is another difference. The U. S. Commissioners and

Federal Enforcement Officers are scattered over a larger area than local magistrates and city police. The U. S. Commissioners and Federal Enforcement Officers are responsible to a distant control, while local magistrates and city police are better known, under local surveillance, and responsible to a local public. Under such circumstances will anyone claim that this proposed 'pigly wigly' procedure will not result in more graft and corruption? I contend, that it will result in "corruption upon corruption"; that it will prostitute the administration of Criminal Justice in our Federal Courts; that it will degrade and disgrace the Federal Judiciary; and that it will breed more disrespect for the Constitution and laws of our country.

True also, in many jurisdictions of our country it is permissible, where the accused is indicted or informed against for an offense of several grades to accept a plea of guilty of a lesser degree of such offense, in order to save the expense of a protracted trial and a possible acquittal. But this is done in open court in the presence of all parties concerned. Even this practice has its dangers and has been criticised.

To expedite the administration of Criminal Justice, we must have *definiteness* and *certainty* in procedure, as well as in defining crimes and in fixing the punishment. The definitions of "casual or slight violations" and "Petty Offenses" in these bills are so indefinite that endless appeals and discussions in courts will result. The doubt and uncertain procedure provided for in these bills will not only promote more fraud and corruption but will produce greater congestion in the federal courts. In our pleadings, both in civil and criminal cases, we require that they be definite and certain. We require that the issues be single and definite. We condemn duplicity, misjoinder, and inconsistency. What for? For the expeditious settlement of controversies. Why not adopt these rules for our procedure and practice?

Now as to HR 10341 and HR 10342 introduced on February 27, 1930. Undoubtedly the purpose of these bills is to provide for the prosecution of petty offenses without a jury.

HR 10341 provides:

"All offenses which may be punished by death or imprisonment for a term exceeding one year shall be deemed felonies. All other offenses shall be deemed misdemeanors; Provided, That all offenses not involving moral turpitude, the penalty for which does not exceed confinement in a common jail, without hard labor for a period of six months, or a fine of not more than $500, or both, shall be deemed to be petty offenses; and all such petty offenses may be prosecuted before the United States commissioner, as may now or hereafter be provided by law, upon information or complaint."

The definitions proposed by the bill for felonies and misdemeanors are the usual definitions found in many of the state statutes. But it is the proviso of this bill defining petty offenses and providing for their prosecution which may cause delay in procedure and constitutional difficulty.

A study of the proviso leads to confusion rather than clarity. The proviso begins with using the term "offenses not involving moral turpitude." What is an offense involving or not involving "moral turpitude"? Will not an offense for which a person may be confined in jail for a period of six months or be fined $500 or both, be deemed an offense "involving moral turpitude?" Take the violation of the Prohibition Law itself. Does it not, to its ardent supporter, "involve moral turpitude"? If it is desired to make the enforcement of the law more certain and expeditious, is it not advisable that the definition of offenses "not involving moral turpitude" be made more definite, rather than leave this for judicial construction on appeal? An examination of the authorities will disclose that this *classification of crimes* into those "that involve moral turpitude" and those that do not, is rarely used in the field of Criminal Procedure, but is usually employed in civil actions and prosecutions in slander and libel cases to distinguish between what charges are *actionable per se* and what are not *actionable per se*. This classification has also been used in Disbarment Proceedings. The point as to what crimes involve moral turpitude and what do not is not definitely marked.

In Re Henry (Idaho), 99 Pac. 1054; *In Re Coffey* (Cal.), 56 Pac. 448; *Tilber v. Dauterman,* 26 Wis. 518.

(The validity of this proviso will be considered later in connection with HR 10342).

HR 10342 reads as follows:

"That all prosecutions for petty offenses shall be by complaint or information before the United States commissioner before whom the accused may be taken pursuant to section 595, title 18, United States Code.

"Section 2. When arraigned before the commissioner the accused may plead to the complaint or information, or he may elect to be tried in the United States district court. If the accused pleads and elects to go to trial before the commissioner such election shall be entered on the record and shall be considered as a waiver, on the part of the accused, of a trial by jury.

"Section 3. (provides for proceedings when the accused pleads guilty).

"Section 4. If the accused pleads not guilty and elects to be tried before the commissioner, the commissioner shall proceed to a hearing, and in such cases the commissioner shall have the same powers with respect to summoning witnesses for prosecution and defense as those of a magistrate in a prosecution before him under the usual mode of process in the State; and the commissioner shall, as soon as practicable thereafter, transmit the complaint and warrant to the clerk of the district court with a report of the plea and hearing and his finding and recommendations, and a judge of the court, on examination of the report and finding, may render judgment of conviction or acquittal, as the case may be, and in case of conviction impose sentence.

"Section 5. In the event the accused does not elect to be tried before the commissioner, then the commissioner shall proceed upon the complaint or information as a committing magistrate and if, from the evidence produced, he finds probable cause he shall bind the accused over for action by the federal court as is now or may hereafter be provided by law in such cases.

"Section 6. When the accused is arraigned before the commissioner he may, if he so desires, have three days in which to plead, and if he requests this time the commissioner shall fix a day certain for the hearing of such case, at which time the accused shall either plead to the complaint or information before the commissioner or state that he elects to be tried before the court, in which event the commissioner shall proceed with the hearing as a committing magistrate. During the time intervening between the first arraignment before the commissioner and the hearing the commissioner shall be authorized to admit the accused to bail as is now provided by law."

HR 10342 provides for the prosecution of petty offenses without jury. The procedure provided is practically the same as in HR 8914, except in this; that the author of the bill is a little bolder and calls the proceedings before the commissioner a "trial" instead of a "hearing." He terms it a "trial" even though the rendition of judgment and the imposing of sentence is left to the judge. What is this "hearing" in HR 8914 or "trial" in 10342 before the United States commissioner? Are not the proceedings in both of these bills trials pure and simple? The steps have all the earmarks of a trial. There are the arraignment, the plea, testimony for both sides, the arguments, the findings. The judgment and sentence are the only proceedings left to the judge. Will anyone contend that the rendition of judgment and the imposing of sentence of all the above steps, are the only ones that constitute the exercise of judicial power in a criminal prosecution? During all these proceedings, is not the accused entitled to presence in a court? I contend that the "hearing" provided in HR 8914 and the "trial" provided for in HR 10342 before the commissioner are regular trials. They are the exercise of the Judicial Power of Government. They are judicial proceedings as distinguished from quasi-judicial or auxiliary to a court.

The Judicial Power of Government can only be exercised by a court presided over by a judge or judges, and cannot be exercised by a commissioner. U. S. court commissioners are appointed by United States Courts. They are "subject to the orders and directions of the court appointing

them." In volume 28 of U. S. Code Annotated Sec. 451-720 in the notes on page 214-216 are given, the powers and duties of commissioners, with many citations. A few quotations from page 214 will suffice.

"They are an adjunct of the court, possessing independent, though subordinate, judicial powers of their own. *Grin v. Shine* (Cal. 1902) 23 S. Ct. 98, 101, 187, U. S. 181, 47 L. Ed. 130. But are neither judges nor courts, nor do they hold courts, though at sometimes acting in a quasi-judicial capacity, nor do they possess the powers of courts except in so far as the acts of Congress conferring certain authority and imposing certain duties on them specially confer the same. (Cases cited.)"

Since U. S. commissioners are neither judges nor courts, nor do they hold courts, how can they preside at a trial? It may be argued that as the accused consents to the "hearing" or "trial" before the commissioner, all objections to the jurisdiction of the commissioner are waived. Consent to a trial before a body that is not a court, will not make that body a court. Such proceeding is *coram non judice* and wholly void.

State v. Hall, 142 N. C. 710; *Shoults v. McPheeters,* 79 Ind. 373.

It may be contended that Congress has the power to vest in U. S. commissioners power to try these "casual or slight" violations and "petty offenses." Section I of Article III of the Constitution provides:

"The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior Courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office."

As U. S. commissioners are appointed by courts for four years, they cannot be turned into judges which must get their appointment from the President to hold office during good behaviour. It occurs to me, if we are to provide

for trials for petty offenses by other tribunals than the District Court, it is imperative that the "second method," the creation of Federal Police Courts will have to be adopted, although not recommended by the Commission on Observance and Enforcement of Prohibition.

The criticism above of HR 8914, as to the futility of expecting the procedure therein provided to eliminate congestion in the Federal Courts and to expedite the practice; and as to the dangers in the procedure by offering greater opportunities for the perversion and prostitution of the administration of Criminal Justice, is applicable to the procedure provided for in HR 10342.

Undoubtedly the purpose of HR 10342 is to provide for the prosecution of petty offenses without jury.

Section 2 of Article III of the Constitution provides:

"The trial of all crimes except in cases of impeachment, shall be by jury."

Article VI of the first ten Amendments provides:

"In all criminal prosecutions, the accused shall enjoy the rights to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed . . ."

The U. S. House of Representatives at one time had such a regard and reverence for Article VI that in its House Manual and Digest it had printed this article in bolder type than any other article of the Constitution. (This is not so in a recent issue.) As was the case of their representatives, the *right of trial by jury* is more revered by the American people than any other right guaranteed to them by the Constitution and Bill of Rights.

This age-worn institution, *The Trial by Jury,* is as dear and sacred to the hearts and minds of the American people today, as it was to the founders of our government. The love and devotion of the people for this institution is akin to the love of a mother for her child. They may criticize and chastise it but they will protect it unto death.

They may make it more serviceable and mould it to conform to modern ideals. They may reduce its numbers;

they may provide for a three-fourths or five-sixths verdict; they may provide for alternate jurors; they may simplify the manner of selection; but, they will never consent to strike it down, even if by so doing, the Prohibition Law would be enforced.

There is some doubt as to when the trial by jury originated, but whatever its origin, the petit jury as known at the time of our Independence and as it is known now is the result of a process of development. Its development is akin to the development of the common law itself. Forsyth in his history of Trial by Jury says, that the "rise of the jury system may be traced as a gradual and natural sequence from the modes of trial in use amongst the Anglo-Saxons and the Anglo-Normans before and after the Norman conquest." One of the earliest records of a regular jury trial is an action of ejectment between Edward I and the bishop of Winchester in 1290, seventy-five years after the Magna Charta. Needless to add, the verdict was for the king, for in the early practice the courts had absolute power to direct verdicts in criminal as well as civil cases. The directed verdict in Civil cases and the direction of an acquittal in Criminal cases are still with us, and jurors may still be punished for contempt if they disobey. However, we no more have a directed verdict of guilty. In the early practice, the jurors were threatened and cajoled into convicting the defendant, and if they disobeyed they were fined and imprisoned. It took years of struggle between the people and the Crown judges before the system of directing verdicts of conviction went into disuse. The most notable trials in this struggle were those of Sir Nicholas Throckmorton, 1554, William Penn and William Mead, 1670, Alice Lisle and Richard Baxter, 1685, and the Seven Protestant Bishops, 1688.

With the English explorations and settlement, the jury came to America. Although the Letters Patent and Charters of the early explorers and settlers do not expressly refer to trial by jury, they did contain provisions that, "to such as may inhabit the islands, countreys and territories,—they and every one of them shall enjoy all Liberties, Franchises and Immunities of free Denizens and natural subjects—as if they had been abiding and born within this, our King-

dome of England—" These provisions undoubtedly included the right of trial by jury.

One of the first references to a trial by jury in the American colonies, was in the legislature of the Plymouth Colony within the first five years of its history which reads as follows: "That all criminal facts, and also all manners of trespasses and debts between man and man, shall be tried by the verdict of twelve honest men, to be impaneled by authority in form of a jury, upon their oath." (1 Palfrey, New England 340) (63 Pac. 408). There can be no question that the trial by jury in America began with the early English settlements and has continued to the present day.

In the Declaration of Independence, July 4, 1776, one of the specified charges against George III was "For depriving us in many cases of trial by jury." At the time of the Declaration of Independence, the colonies adopted state constitutions and every such constitution provided that the "Trial by jury shall remain Inviolate," and that the accused in criminal prosecutions "hath a right to a speedy and public trial by an impartial jury." Article II of the Ordinance of 1787 for the government of the Northwest Territory provided: "The inhabitants of said territory shall always be entitled to the writs of habeas corpus and of the trial by jury." The constitution of every state admitted from 1798 to this day contains guarantees of a trial by jury. Not only has the right of trial by jury been guarded by the express language in ever Constitution, Bill of Rights and Basic Ordinance in this country, but it has followed the flag to its territories and has been adopted by many non-English speaking countries. Shall we strike down this guarantee by the limitations proposed in these two bills?

It is true that at the time of the adoption of our Constitution the trial of petty offenses was without jury. But the trial, summary as it may have been, was before a *court.* No matter how limited the jurisdiction of the tribunal was, it was nevertheless a *court.* As discussed before, U. S. Commissioners are not courts, and Congress has no power to turn them into courts. At that time, petty offenses were usually violations of municipal ordinances. Where, however, the offense under the ordinance was also a crime under

the general law of the state, even the trial of the violation of such ordinance had to be by jury. Brief excerpts from opinions of the courts, cannot justify the hope that the Supreme Court will hold that a crime defined by a Federal Statute for the violation of which a punishment may be six months imprisonment or $500 fine or both is a Petty offense.

In conclusion, let me summarize the points of this article:

FIRST: *There is doubt as to the constitutionality of these bills for the following reasons* (1) That the punishment provided for "casual or slight" violations in HR 8913 is infamous; (2) that the "Hearing" before commissioner in HR 8914 is a trial and commissioner is not a court and cannot be turned into court; (3) that "Petty Offenses" as defined in the proviso of HR 10341 are not petty offenses and cannot be tried without jury; (4) that as a commissioner is not a court; even petty offenses cannot be tried before him, as is provided in HR 10342.

SECOND: *That the proposed legislation will not relieve congestion;* because (1) doubt in its validity will promote delay; (2) Two trials are probable, one before commissioner and one before court and jury even for "casual or slight violations" as defined in HR 8913; (3) Indictment by grand jury is still probable for "casual or slight violations"; and (4) The trial by jury for Petty offenses is probable.

THIRD: *That the procedure proposed by HR* 8914 *and HR* 10342 *will promote fraud and will corrupt the enforcement personnel,* because it offers opportunities for compromising between such personnel and accused.

FOURTH: *That the proposed legislation will lower the respect of our citizens for our Federal Judiciary, and for the Constitution and laws of our country.*