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JOINDER OF CIVIL AND CRIMINAL RELIEF
IN INDIANA

Among the long enduring and still unsatisfied criticisms of the administration of justice, a leading place is held by complaints concerning delays, expense, and inconvenience. "When the lawyer refuses to act intelligently, unintelligent application of the legislative steamroller by the layman is the alternative."¹ Quasi-judicial powers, for individuals and administrative boards, have arisen as monuments to ineffective judicial processes. If members of the bar desire to retain the administration of justice within the confines of judicial tribunals, it behooves them to seek a remedy for excessive expense and delays within and not without the judicial system.

Today it is a postulate of common acceptance in the United States that offenses against society and offenses against private interests are litigated quite separately, and never in the same proceeding. When a certain act or transaction involves a violation of both public interests and private interests, a proceeding on behalf of society is had fairly promptly in the criminal courts; after considerable delay, the same incident is aired once more before the civil courts. No consideration is given to the great expense and delay suffered by the civil complainant, and the duplicate sacrifices of time and money extracted from disinterested witnesses. The criminal proceeding alone may require the attendance of witnesses for as many as three hearings,—grand jury, preliminary, and petit jury. Then months or years later they must appear again for a civil trial in which they relate once more the same story. All this time the private party who was injured by the criminal act bears the burden of his dam-

age, unrelieved, subject to the peril that life or memory may desert the witnesses. Furthermore, a considerable extra expense must be borne by the state, in staging the duplicate proceeding.

In most of continental Europe and in Latin American countries, under the civil law system, codes expressly provide that when any person is injured by a crime he may appear as a party in the criminal proceeding, make his claim for restitution or damages, and have an adjudication.

In England, joinder of civil and criminal relief was the regular and constant practice in Anglo-Saxon and Norman times. Partly under romano-canonical influences, but really more by accident than design, a general separation of civil and criminal trials took place in the 1300's and 1400's. In many instances, however, the typical English device of joinder continued, some to die out along with the actions to which they were attached and others to continue active down to the present day.

In the United States, English types of joint proceedings continued in varying forms in most of the states which had been colonies. The post-colonial states, including Indiana, arose and were organized under new influences, chiefly the jurisprudence of conceptions of the 1800's. It was conceived that perfect schemes of law could be evolved, placed in definite grooves and pigeon-holes, and there remain forever. Analysis was a fetish, a pioneer society was not crowded with litigation, so analysis used the logically nice scheme of wholly separate civil and criminal trials.

Are there any instances of mixed civil-criminal proceedings in Indiana? Let us examine the Indiana law, using as topic headings the cases of mixed relief which exist today in England.
PUNITIVE AND EXEMPLARY DAMAGES

Often the plaintiff in a civil suit is given as one item of damages, over and above his actual injury, a sum assessed as a punishment to the defendant and a warning to others. This is a common law device, and exists as such in Indiana without reduction to statutory form, except as part of some special statutes. Such punitive and exemplary sums are criminal in purpose; extra gain to the civil plaintiff is only incidental to the primary aim of relief to society. Therefore, if the defendant did not act maliciously or with wanton recklessness there is no need to punish him or warn others, and it is not proper in a civil trial to allow punitive damages. But where malice or wanton recklessness are proven, the award of punitive damages has been upheld in many decisions and several dicta. For example, in an action for breach of a guardian's bond punitive damages may be assessed against the guardian whose breach offends society, but not against the innocent sureties on the bond.

2 Morford v. Woodworth, 7 Ind. 83 (1855); Louisville, etc., Ry. Co. v. Shanks, 94 Ind. 598 (1883); Vandalia R. Co. v. Topping, 62 Ind. App. 657, 113 N. E. 421 (1916).

3 Guard v. Risk, 11 Ind. 156 (1858) (slander); Millison v. Hoch, 17 Ind. 227 (1861) (fraud in inducing sale); Jeffersonville R. Co. v. Rogers, 35 Ind. 116 (1871) ($1,000 for wrongful eviction from train); Zeigler v. Powell, 54 Ind. 173 (1876) (malicious prosecution); Farman v. Lauman, 73 Ind. 568 (1881) (false imprisonment); Lake Erie Co. v. Fix, 88 Ind. 38 (1882) (wrongful eviction from train); Citizens' R. Co. v. Willochy, 134 Ind. 563 (1893) (assault by servant of a corporation); Atkinson v. Van Cleave, 25 Ind. App. 508, 57 N. E. 731 (1900) (malicious prosecution); Harness v. Steele, 159 Ind. 286, 64 N. E. 875 (1902) (false imprisonment); Baltimore, etc., R. Co. v. Davis, 44 Ind. App. 375, 89 N. E. 403 (1909) (assault by servants of corporation); Indiana Union Co. v. Heller, 44 Ind. App. 385, 89 N. E. 419 (1909) (failure to pick up interurban car passenger); Wheatcraft v. Myers, 57 Ind. App. 371, 107 N. E. 81 (1914) (fraudulent inducement in sale); Indianapolis Bleaching Co. v. McMillan, 64 Ind. App. 268, 113 N. E. 1019 (1916) (assault by servants of corporation).

4 Anthony v. Gilbert, 4 Blackf. 348 (1837) (trespass); Moore v. Crose, 43 Ind. 30 (1873) (trespass); Meyer v. Bohning, 44 Ind. 238 (1873) (slander); Binford v. Young, 115 Ind. 174 (1888) (slander); American Sand Co. v. Spencer, 55 Ind. App. 523, 103 N. E. 426 (1913) (trespass).

5 Colburn v. State, ex rel., 47 Ind. 310 (1874) (dictum).

6 Peelle v. State, ex rel., 118 Ind. 512, 21 N. E. 288 (1888).
In most states, punitive damages in a civil action are not barred by the fact that the act of the defendant is a crime, punishable in a criminal proceeding. In Indiana, however, the criminal aspect of such damages has been deemed so strong, even though awarded in a civil action, that they are considered to constitute a criminal trial, and so are wholly barred if the acts which give rise to the civil action are punishable in a formal criminal proceeding. In the earlier Indiana cases, this rule was considered to be a limitation on the courts, based on the constitutional provision against double jeopardy. Then in 1877, in Koerner v. Oberly, the constitutional rule was held to make void an express legislative provision for punitive damages in a civil action when such action was based on a criminal act, even though no criminal proceeding had been filed and so no first jeopardy had occurred. This peculiar Indiana restriction disregards the fundamental purpose of punitive damages. They are designed to accomplish civil and criminal relief in one suit instead of two, saving the time and expense of parties, witnesses, and the public machinery of justice. They provide the punitive and exemplary elements in the

7 Decisions: Taber v. Huston, 5 Ind. 322 (1854) (assault); Struble v. Nodwift, 11 Ind. 64 (1858) (wrongful liquor sales to son); Butler v. Mercer, 14 Ind. 479 (1860) (malicious trespass); Nosaman v. Rickert, 18 Ind. 350 (1862) (trespass to person); Humphries v. Johnson, 20 Ind. 190 (1863) (trespass in a riot); Koerner v. Oberly, 56 Ind. 284 (1877) (wrongful liquor sales to husband); Stewart v. Maddox, 63 Ind. 51 (1878) (false imprisonment by 3 or more persons); Schafer v. Smith, 63 Ind. 226 (1878) (wrongful liquor sales to husband); Skufakiss v. Duray, 85 Ind. App. 426, 154 N. E. 289 (1926).

Dicta, where exemplary damages affirmed: Guard v. Risk, 11 Ind. 156 (1858) (slander); Millison v. Hoch, op. cit. supra note 3; Zeigler v. Powell, 54 Ind. 173 (1876) (malicious prosecution); Farman v. Lauman, op. cit. supra note 3; State, ex rel., v. Stevens, 103 Ind. 55, 2 N. E. 214 (1885) (illegal fee by official); Atkinson v. Van Cleave, op. cit. supra note 3 (malicious prosecution); Indianapolis Bleaching Co. v. McMillan, op. cit. supra note 3 (action against corporation for assault by its servants).

Dicta, in other cases: Meyer v. Bohlég, op. cit. supra note 4; Wolf v. Trinkle, 103 Ind. 355, 3 N. E. 110 (1885) (indecent assault); Wabash R. Co. v. Crumrine, 123 Ind. 89, 21 N. E. 904 (1889) (libel); Tracy v. Hacket, 19 Ind. App. 133, 49 N. E. 185 (1898); Anderson v. Evansville Assoc., 49 Ind. App. 403, 97 N. E. 445 (1911) (deceit).

8 56 Ind. 284 (1877).
frequent instances of petty social offenses which will never be made the object of formal criminal proceedings, even though subject to such prosecution. They are a substitute to avoid for minor offenders the stigma of a criminal trial, a result considered very valuable by modern penology.

In most of the Indiana decisions which have refused punitive damages when a crime is involved, no criminal action had been brought when the civil case came to trial, and the lapse of time indicated that none would be brought later. Therefore the courts frequently have permitted them in such cases under the guise of compensation for humiliation and mental suffering. In a case in which the servants of a corporation had committed a serious and malicious assault, the Supreme Court upheld an instruction under which punitive damages were assessed against the corporation, saying nothing about the fact that the act involved was a crime. In following this decision, the Appellate Court has explained the point on the ground that the defendant corporation is not liable, under Indiana law, to criminal prosecution for an assault and battery by its servants.

It is unfortunate that Indiana has restricted the usefulness of punitive and exemplary damages. Judges and prosecuting officers with a proper understanding of their purpose should be able to use them frequently as a substitute for a criminal trial. As it is, sometimes punishment is never imposed and sometimes it is accomplished only by the wastefulness of a second separate trial.

**Statutory Penalties**

There are many instances of deeds which offend the public but are not easily learned of by regular officials. An

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9 E. g., Lake Erie Co. v. Fix, 88 Ind. 381 (1882); Wolf v. Trinkle, 103 Ind. 355, 3 N. E. 110 (1885).
10 Citizens' R. Co. v. Willoeby, op. cit. supra note 3.
11 Baltimore, etc., R. Co. v. Davis, 44 Ind. App. 375, 89 N. E. 403 (1909); Indianapolis Bleaching Co. v. McMillan, op. cit. supra note 3.
ancient device to fill this gap has been to define an offense by statute and provide that the party aggrieved by the wrong may recover, beyond or in lieu of actual damages, a set penalty, in an action sometimes civil in form and sometimes filed by a public officer on relation. Such statutes appeared in England in the 14th and 15th centuries, and continued in the 16th and 17th centuries, scanty police organizations making necessary the encouragement of private prosecutions. England also produced a number of these statutes in the 19th century, many of them being still in force today. Well organized systems of police have partly removed the old reason for punishment through penalties, but new reasons have become visible. For one thing, petty offenses still are known in many instances only to the injured party, and the sureness of their punishment in England is due in no small degree to penalties assessed under a private prosecution. For another thing, modern court calendars are crowded, and time and money are saved for all concerned when private and public relief are tried and considered in a single action.

This penalty device, based on reasons closely akin to those behind punitive damages, has been put to very little use in Indiana. The law of this state was formed in the 1800's, when the rigid and rule-bound pigeon-holing of analytical and historical jurisprudence was in full sway. An orderly scheme of justice looked much neater with a clear separation of civil and criminal trials. An act of 1852 gave the aggrieved sender of a telegram a penalty, irrespective of actual damage, for improper delay by the telegraph company. This provision has been recognized as a combination of civil and criminal relief, as the plaintiff can recover his actual

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12 II Holdsworth, History of English Law, 452, 453.
proven damages and get the penalty as an additional sum, the former being civil relief and the latter punishment of an offense to the public. The Indiana Appellate Court, however, has voiced a hostility to such statutes, saying that where an act is made a crime by statute "a second enactment in the nature of a penal or qui tam statute should not be so construed as to bring the act constituting the crime or offense within the purview thereof, unless by express terms it is so provided."  

Another penalty statute was enacted in 1885, in protection of negroes discriminated against by denial of service in an inn, hotel or other place of public accommodation. Although little used, the statute is still in force. A judgment under it for a negro plaintiff was sustained in Fruchey v. Eagleson.

Another penalty statute which is still in force is aimed at extortion of illegal fees by public officials. The state, on the relation of the aggrieved individual, brings an action on the bond of the erring official, and the court awards the relator a penalty of five times the illegal fee collected.

Another Indiana statute prescribes that if a man marries a woman to avoid proceedings for seduction or bastardy, to which he is subject, and abandons her within two years, he is guilty of fraud and subject to a penalty of not less than $200. Some cases have stated that this statute is civil and

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16 See Western Union Co. v. Ferguson, 157 Ind. 37, 60 N. E. 679 (1901), voicing this view in affirming assessment of a penalty.
17 Western Union Co. v. Bierhaus, 8 Ind. App. 563, 36 N. E. 161 (1893), holding wrongful disclosure of contents of a telegram to be outside of the penalty statute.
20 15 Ind. App. 88, 43 N. E. 146 (1895).
remedial, as the penalty goes to the woman aggrieved.\textsuperscript{24} It is to be noted, however, that the action is brought in the name of the state and by the public prosecutor. Furthermore, the court must assess at least $200, even though the woman proves no damage at all.\textsuperscript{25} The statutory action, therefore, is obviously penal as well as remedial.

**PEACE RECOGNIZANCES**

A recognizance or bond, with or without sureties, has many uses, the commonest being as bail to insure the state that one charged with crime will appear. The protection of society alone is here involved.

A recognizance to keep the peace, however, is a definite combination of social and private protection. On complaint of a person in fear of wrongful injury to person or property, justices of the peace had an ancient common law power, bolstered by statutes, to arrest the offender, order him to provide a bond to keep the peace for a specified period, and jail him if such bond was not provided.\textsuperscript{26} The complaint was called "exhibiting articles of peace." The threatened wrong was a breach of the peace and so a crime, as well as a civil offense, so in the single proceeding private protection and preventive criminal justice were both accomplished.

Such recognizances to keep the peace appear early in the Indiana statutes, as a power of both circuit courts and justices of the peace.\textsuperscript{27} The statutory phrases were general, merely reciting the common law. By 1894 some details had been added; the justice issuing the recognizance was required to send the case to the circuit court for trial of the issue whether the complainant was reasonably in fear, the

\textsuperscript{24} Latshaw v. State, ex rel., 156 Ind. 194 (1901); State, ex rel., v. Lannoy, 30 Ind. App. 335, 65 N. E. 1052 (1903).

\textsuperscript{25} State, ex rel., v. Richeson, 36 Ind. App. 373, 75 N. E. 846 (1905).

\textsuperscript{26} See 4 Bl. Comm., c. 18; Stat. 34 Edw. III (1360) c. 1; Stat. 3 Hen. VII (1487) c. 3; Stat. 21 Jac. I (1623) c. 8, § 1.

\textsuperscript{27} See Ind. Rev. Laws of 1831, c. 22, § 4, and c. 54, § 1; Ind. Rev. Laws of 1838, c. 23, § 4, and c. 58, § 1.
action was required to be in the name of the state, and the recognizance was required to protect the peace of the public in general and the complainant in particular. With some formal additions of 1905, this statute has remained the same to the present day.

Peace recognizances on combined complaints by the state and a private relator have had considerable use, and while the details of the law were being worked out they produced many decisions in the higher courts. It has been held that the proceeding is sufficiently criminal to prevent costs under a statute assessing them against a losing civil plaintiff; to authorize use of criminal practice; to prevent appeal by the state; and to require the circuit court to put it on the criminal docket. On the other hand, the action has been held sufficiently civil to void the constitutional provision against double jeopardy; to prevent application of a statute giving circuit courts original jurisdiction in criminal matters; and to prevent application of the doctrine of reasonable doubt or the rule making juries judges of both law and

30 State v. Abrams, 4 Blackf. 440 (1837); Steelf v. State, ex rel., 4 Ind. 161 (1833); Conklin v. State, ex rel., 3 Ind. 438 (1857); State, ex rel., v. Bridegroom, 10 Ind. 170 (1858); Long v. State, ex rel., 10 Ind. 353 (1858); Collins v. State, ex rel., 11 Ind. 312 (1858); State, ex rel., v. Maners, 16 Ind. 175 (1861); State, ex rel., v. Long, 18 Ind. 438 (1862); Beckwith v. State, ex rel., 21 Ind. 225 (1863); Murray v. State, 26 Ind. 141 (1866); State v. Vankirk, 27 Ind. 121 (1866); Delooher v. State, 27 Ind. 521 (1867); State, ex rel., v. Sayer, 35 Ind. 379 (1871); State, ex rel., v. Steward, 48 Ind. 146 (1874); Fisher v. Hamilton, 49 Ind. 341 (1874); State v. Rudowsky, 65 Ind. 389 (1879); State v. Carey, 66 Ind. 72 (1879); State v. Cooper, 90 Ind. 575 (1883); Arnold v. State, 92 Ind. 187 (1883); Stone v. State, ex rel., 97 Ind. 345 (1884); Davis v. State, 138 Ind. 11, 37 N. E. 397 (1893); State v. Tow, 5 Ind. App. 261, 31 N. E. 1120 (1892).
31 State v. Abrams, 4 Blackf. 440 (1837).
32 State, ex rel., v. Maners, op. cit. supra note 30.
33 State, ex rel., v. Long, op. cit. supra note 30.
34 State v. Carey, op. cit. supra note 30.
36 State v. Cooper, op. cit. supra note 30.
fact in criminal trials. Of course the truth of the matter is that the proceeding is both civil and criminal, and the courts have found it necessary to work out a reasonable set of rules appropriate to such a joinder.

At common law peace recognizances were also used when the threatened crime had actually been committed and the offender convicted. To protect the public and the party aggrieved from a repetition of the offense, a peace bond might be required in addition to or in lieu of other punishment. This is now the law in Indiana, since 1905, where the offense is not punishable by death or confinement in the state's prison. This device is very useful where the criminal court grants probation, or punishes only by a fine. If the bond for public and private protection is not given, the court can put the offender safely in jail.

BASTARDY PROCEEDINGS

A very common instance of civil and criminal relief in a single trial is the bastardy proceeding. Although at early common law the father of a bastard child had no legal duties, it was soon realized that society was offended by the immoral act and that there ought to be a civil duty to support the child. These two ideas were combined in the Stat. 13 Eliz. (1576) c. 3, s. 2, and carried on in England by several subsequent enactments.

Bastardy statutes have existed for a long time in Indiana. The proceeding has two plaintiffs, the state and the relator. The Indiana courts have indulged in the general

39 Bastards, 7 C. J. 955, note 95.
40 The present law is contained in Ind. Ann. Stat. (Burns, 1926) §§ 1049-1070.
statement that the action is civil. It has been held, how-
ever, that the action is void if the prosecuting attorney was
not notified and the state was not a real party.\textsuperscript{41} It has
been held also that the relatrix is not the sole plaintiff,\textsuperscript{42}
nor even a civil plaintiff.\textsuperscript{43} The truth of the matter is that
fathering and non-support of a bastard child are offenses
against the state, to be expiated in a special manner, as well
as being the source of a civil duty.

\textbf{NON-SUPPORT PROCEEDINGS}

In a quite recent series of statutes, the Indiana legislature
has provided expressly for the use of criminal proceedings
to accomplish civil relief. These statutes involve non-sup-
port of a wife, children, or parent, and in purpose are closely
akin to bastardy proceedings.

By \textit{Acts of 1913}, p. 956, and \textit{Acts of 1915}, p. 654, wilful
neglect of a child under fourteen years of age, by a parent
charged with support, is a felony punishable by a sentence
of one to seven years. But after indictment and convic-
tion "the judge may suspend the sentence and, in the order
suspending the sentence, may require the defendant to pay,
weekly or otherwise, as the court may determine, to the
clerk of the court, for the support of the children, such
sum as the court may deem necessary."\textsuperscript{44} If the defendant
fails to pay as ordered, he may be arrested, and the suspen-
sion revoked or continued as a lever on behalf of civil re-
lief to the children. The criminal court may even go so
far as to order the defendant's debtor to make payments to

\begin{footnotes}
\footnotetext{41}{Gooding v. State, 39 Ind. App. 42, 78 N. E. 257 (1906).}
\footnotetext{42}{Dehler v. State, ex rel., 22 Ind. App. 383, 53 N. E. 850 (1899), under a
statute requiring infant sole plaintiffs to use a next friend.}
\footnotetext{43}{Ex parte Haase, 50 Ind. 149 (1875), under a statute requiring release of
a defendant jailed on civil process when costs of imprisonment are not paid
by plaintiff.}
\footnotetext{44}{\textbf{IND. ANN. STAT.} (Burns, 1926) § 2867.}
\end{footnotes}
the court out of the defendant's wages, earnings or income, performance of the order constituting payment to the defendant.  

By Acts of 1915, p. 139, failure of a husband to support a wife or child is made a misdemeanor. Before or after the criminal trial, the criminal court is empowered to require the defendant to give a bond assuring proper support, and on forfeiture under the bond the sum recovered by the state can be applied by the court to the support of the wife or children. If the defendant is imprisoned, the court may order that he be put to work on public works of the county, his earnings to go to the wife or children.

By Acts of 1921, p. 90, if a person who is of age, and able, fails to support his parents, he is guilty of a misdemeanor. The criminal court may suspend judgment, after conviction, on condition that such payments of support as the court shall direct will be paid.

By Acts of 1925, p. 287, when a man is imprisoned, after conviction of the crime of desertion of his wife or children, the trustees of the prison are required to give him productive work, and pay his wages to the clerk of the criminal court for the use of the wife or children.

All of these statutes are part of a new and frank legislative admission that there is nothing wrong, indeed that there is wisdom, in using criminal courts and criminal proceedings in aid of prompt civil relief. This embodies and regularizes an old practice of many local prosecuting attorneys, who have not hesitated to lend their time and pressure to aggrieved persons who have been injured by a crime.

JOINDER OF CIVIL AND CRIMINAL RELIEF

NUISANCES

Technically, public actions for public nuisances and private actions for private nuisances have been separated strictly in Indiana, as elsewhere. In many instances, however, a public nuisance is specially offensive and injurious to a private person. Instead of bearing the expense and delay of a civil suit, the private person sometimes instigates a criminal action by the state, a resultant abatement giving relief to him as well as to the public. No case has ever arisen in Indiana in which the private person expressly joined as plaintiff in the public action, seeking his damages. Such a joinder would certainly save the expense of two suits arising out of the very same facts, and failure to attempt it is a matter of habit rather than of any express legal prohibition. Might it be done successfully? It has been allowed in England by judicial decision, without the aid of any statute.

FORCIBLE ENTRY OR DETAINER

At common law, a criminal court trying a prosecution for forcible entry or detainer might order restoration of possession to the civil party. The Indiana statutes are silent on this matter, defining the criminal and civil actions in separate sections. The section concerning the civil action shows that force is necessary, so it rests on exactly the same facts and elements as constitute the crime. As a matter of fact, the criminal action is practically unused, for lack of complaints by the parties aggrieved; they have no reason

48 See Armfield v. State, 27 Ind. App. 488, 61 N. E. 693 (1901), containing a dictum that injury to a single individual will support an indictment for a statutory nuisance.

49 Attorney-General v. Logan (1891) L. R. 2 Q. B. 100. See also Caldwell v. Pagham Harbour Co. (1876) L. R. 2 Ch. D. 221.

50 IND. ANN. STAT. (Burns, 1926) § 2488 (crime), and § 9570 (civil action).
for instigating an action in which they can get nothing. The result is that commission of the crime goes practically unpunished.

**Restitution of Stolen Goods**

It was an ancient common law practice to order the return of stolen goods to the owner, on conviction of the thief in a criminal trial. This power of the criminal court has been developed by statutes, and continues in England down to the present day. Several of our American states use this device, but the Indiana statutes and decisions are silent about it and show no attempts at its use. There is no good reason why the wronged party should not be able to appear in the criminal trial, and, when a conviction proves him to be the true owner of goods gotten by larceny, robbery or false pretences, get a court order of restitution of such property as has been seized or is findable. Furthermore, if his property is not recovered, the court ought to be able to enter a judgment for damages in his favor, for the proof has been beyond a reasonable doubt and a second separate trial is a sheer waste of time and money.

**Some Recommendations**

The Indiana law on peace recognizances is in good shape, and the same is true of bastardy and non-support proceedings. In a single action, whether the form be civil or criminal, both public and private needs and interests are recognized and protected.

The restricted use of statutory penalties may perhaps be wise. They are very useful in securing prosecution of petty offenses, and have a real value in reaching first offenders without attaching the stigma of a criminal prosecution. This is their use in England, where second offenses are made more serious and are prosecuted criminally. On the other hand,
a penalty attached to a civil suit for damages might encourage trumped-up cases and malicious prosecutions. The remedy for this danger is to permit the court to give damages to the defendant against the plaintiff, without a cross-complaint, if the prosecution proves to be malicious, as is the rule in most civil law systems of continental Europe and Latin America. This question is worthy of serious consideration in connection with petty first offenders.

As to punitive damages, their effectiveness as a substitute for criminal prosecution is much weakened by the Indiana view that they cannot be given when the offense constitutes a crime. They usually arise in connection with cases wherein a penal sum will be sufficient punishment and warning, if no criminal prosecution has actually been started, and have the great advantage of assuring punishment without the waste and expense of a duplicate separate action.

The greatest weakness in Indiana law is in regard to nuisances, stolen goods, and civil injuries arising from criminal operations of public conveyances and motor vehicles. In every criminal trial on these matters, there is much to say in favor of allowing the party or parties aggrieved to appear and claim restitution or damages. Conversely, in civil trials on these matters the prosecuting attorney ought to be able to appear if he deems it necessary for the public interest.

Consider, also, the Indiana statute which prescribes a fine of from value to double value, in a criminal trial, against a hunter who negligently or maliciously injures animals or property. What of the owner of the property? He must seek redress in a separate civil action, long delayed and in most cases costing him more than he will get by way of damages and costs. Why not let him appear in the criminal
proceeding, and when the fine has been assessed let him receive out of it his damages?

Although we have ventured generalized recommendations, it is realized that there are many obstacles. We are not ignorant of questions raised by such things as trial by jury and rules of procedure. This article is a "trial balloon," as part of a long and interesting research which is still pending. In part it is a collection of unique materials for the bench and bar of Indiana, but in part it is an attempt to reach them for their suggestions and criticisms, drawn from cases or statutes or from their own experiences. Communications sent to the editor of the Notre Dame Lawyer will be received with appreciation.

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