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Editorial Comments

Geo N. Beamer

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EDITORIAL COMMENTS

CRIMINAL PROCEDURE IN THE UNITED STATES AND ENGLAND

Perhaps nothing in the field of American law has been the cause of as much adverse criticism as our criminal procedure. It's archaic and ineffective condition furnished food for every newspaper, journal and public address throughout the country. It's slowness and sluggishness of operation provides a loophole through which criminals are allowed to escape justice.

Have you ever watched a little child, playing with his picture blocks set out to build a house; and then become so engrossed in the pictures and figures on the blocks themselves that the house was forgotten? That very thing has happened in our courts. Our aim, our end was justice; but we have become so engrossed in the machinery to be used to effect that justice that we, too, have forgotten. There can be no other reason for a system of criminal procedure than that it serve to determine justly and guilt or innocence of one accused of crime. But in our courts we find the true purpose of procedure barricaded behind a net work of technicalities.

Most people have at some time in their lives attended a criminal trial but probably very few of them; unless they had some special interest in the case; ever learned the nature of the case being tried before them. Perhaps they thought it was because they were not versed in the law; but that is not the reason. The reason is that the true purpose of the trial is drowned in a sea of objections, contentions and the other technicalities of the procedure. This situation has been described by Chief Justice Taft of the United State Supreme Court. He says, "Our system of procedure in criminal cases has practically broken down under its own burden of technicalities and the administration of criminal law in practically all the states is a disgrace to our civilization".

With this sad picture in mind, let us look for a moment at the English Criminal Court. We can do not better than to observe the picture painted by one of the foremost authorities on proced-

ure in this country today; Professor Edson Sunderland of the University of Michigan. "As one sits in an English courtroom and watches the progress of a case," says Mr. Sunderland, "it does not seem that he is attending a professional performance. One hears no technical objection to the proceedings and very little technical language. The skill of counsel seems to be directed almost exclusively toward the result to be reached, and the details of the method by which the trial is conducted are given but secondary attention".

When we realize that the body of our law, including procedure, was taken from the common law of England, this discrepancy is hard to understand at first. But while England, finding her procedure inadequate, has cast aside its burdensome rules, and adopted a system fitted to our modern civilization, we have clung to that antiquated procedure as though it were a God given institution. Not only have we clung to it but we have increased its technicalities until now the justice which procedure was intended to produce has become secondary, while the primary feature of every criminal trial has become the procedure itself. President Hoover in his Inaugural Address said, "The system which court officers are called upon to administer is in many respects ill adapted to present day conditions. Its intricate and involved rules of procedure have become the refuge of both big and little criminals. There is a belief abroad that by invoking technicalities, subterfuge and delay the ends of justice may be thwarted by those who can pay the costs".

Thus it becomes apparent that something must be done. In America we have become masters of efficiency. We have learned to measure the success of institutions by the results which they produce. Measured by this criterion our procedure is a colossal failure for instead of producing justice it has hindered it.

In the criminal procedure of Great Britain these conditions do not exist. An American, upon the examination of the English system, can not help but marvel at the swift and efficient method in which justice is administered in the courts of that country. Instead of technicalities being glorified they are suppressed and center of attraction is the question of justice to be determined.

By way of comparing the two systems let us consider, briefly the way in which pleadings are handled in the American and in

the English courts. The object of pleadings is to secure a clear and distinct statement of the claims of each party. If this object is accomplished what does it matter that the indictment may have formal defects? Let us consider a few examples of how justice has miscarried in this country. In the case of *Bird v. State*, a Texas case, the indictment was held defective because the word against was spelled "ainst". In *State v. Lopez*, the indictment was thrown out because it concluded, "Against the peace and dignity of the Statute", when it should have been, "Against the peace and dignity of the state". In another case a man who was accused of burning a creamery was set free because the indictment charged him with having committed arson and arson was the burning of a dwelling house. In a recent West Virginia case an indictment, which contained three counts, was quashed because instead of each count concluding, "Against the peace and dignity of the state", that very important conclusion appeared only at the end of the last count. Is it any wonder that our courts and the legal profession generally is condemned by the layman who does not understand these technical errors? What bearing does any of these defects have upon the guilt or innocence of the accused? Absolutely none. True it is that many of our courts have minimized the importance of these technical errors but we still find them being given much more consideration than they deserve. In England such objections to the pleadings would not be allowed. Order 19, rule 26, of the English Rules of Criminal Procedure provides, that pleadings themselves are designed merely to give notice, and no technical objections can be raised to any pleadings on the ground of want of form. What could be more desirable. To show what results this rule has produced, Mews English Digest, which is an official digest of all cases tried in English courts, shows only eighty-five cases dealing with pleadings during the twenty-three years from 1898 to 1921. This is less than four cases a year in all of England and there probably is not a court in this country that does not turn out more than that number, dealing with the question of pleading, every month.

What is true, by way of comparison, in the matter of pleadings is true to a greater or lesser degree in all the other elements of procedure. The Criminal Courts of the United States seem

to be lost in the fog of their own procedure while the English Criminal Courts focus their attention on the question of justice to be determined and proceed directly toward that goal. After a comparison of the two systems we must conclude as did the late Herbert Hadley when he said, "I believe that a prompt and effective enforcement of the law would make us a comparatively law abiding people, and I believe that this contention is fully demonstrated by conditions in England, where social, economic and political conditions are far more conducive to crime than those which exist here. Can we not hope, therefore, to find in the rules of procedure used in England our most valuable suggestion for reform here?"

Geo. N. Beamer.