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BAR BULLETIN

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MORE LAW SCHOOLS IN CLASS B

The law schools of George Washington University and Georgetown University, both of Washington, D. C., Marquette University, Milwaukee, Wis., and Mercer University, Macon, Ga., have been placed in Class B by the Council on Legal Education and Admission to the Bar. They will meet American Bar Association standards in 1925.—X Am. Bar Assoc. Journal 156.

LEGAL EDUCATION

The following paragraph from the report of the committee on legal education at the December, 1923 meeting, of the Missouri Bar Association, is worthy of special attention:

Notwithstanding the belief of some to the contrary, we are of the opinion that the present generation of lawyers are granting no favor to on-coming members of the Bar or to the public in general by advocating or acquiescing in lax requirements for admission to the Bar. The law is much more complex today than it was a generation ago and all signs point to increasing complexity. The young man or young woman of today or tomorrow who may be misled, by reason of existing requirements for admission to the Bar, into the belief that the practice of law

under its present day complexities can be carried on with success by the untrained and undisciplined mind will be done a great injustice. They should be warned in time that they may properly prepare themselves in advance for a life of real success and usefulness in the field of law. The best warning that can be given along this line is, we believe, statutory enactment in conformity with the above mentioned recommendations.—Yearbook, Missouri Bar Association, 1923, p. 51.

REPORT OF SPECIAL COMMITTEE ON CRIMES, CRIMINAL LAW AND PROCEDURE.

This committee, designated as a Special Committee on Crimes, Criminal Law and Procedure, was appointed on March 10, 1924, and was charged with the duty of investigating and considering the growth and condition of crime and the criminal law and procedure in Missouri, and to recommend:

Whether it be advisable that an organized movement be undertaken for the purpose of correcting any deficiency that may exist in our criminal laws and in their administration, and

If such a movement be advisable, what part, if any, the Missouri Bar Association should take therein.

Your committee beg leave to report that we have not undertaken the duty to "investigate" the administration of the criminal law in Missouri for reasons which will hereinafter more fully appear, but have considered the subject in its broadest aspects from data available to us, pertaining to this matter, so far as it relates to the cities of St. Louis and Kansas City and in the state at large, and to other cities and states as well, and have reached the conclusion that a condition exists in this state, and especially in the larger cities, with respect to the handling of the problem of crime—the apprehension of violators of criminal laws, their prosecution, and failure to prosecute them after arrest, and their trial in court—which demands the serious and earnest consideration of all thoughtful citizens.

It is claimed by many students of the crime situation in this country that there has been a complete breakdown in the administration of our criminal laws. Without giving full approval to that statement, we believe that we speak conservatively when we say that there appears to be an alarming lack of efficiency and laxity on the part of many authorities in this state charged with the apprehension and prosecution of criminals from the time a crime is committed until the accused is brought to trial, and even thereafter; that under present criminal law in this state, and especially those laws pertaining to criminal procedure, persons charged with crimes have a much better chance of being acquitted, though guilty,

than of being convicted; that organized bands of criminals are committing crimes of violence today with a boldness and apparent contempt for the law that would have been thought impossible a few years ago; that vicious persons and denizens of the underworld in the large cities are encouraged to boldness in the perpetration of crime by the ease with which they can escape punishment; that human life is apparently held more cheaply in this present day than at any other time in the history of our state, other than during a state of war; that major crimes are increasing at an alarming rate and that security of person and property, guaranteed under the Constitution and laws, is in jeopardy. These things are of such common knowledge that it should require no reference to the multiplicity of specific instances which could be cited to establish their truth.

It does not appear that there is any serious deficiency in the substantive criminal laws of this state. Indeed, more acts of commission and omission are now crimes than ever before. Density of population and the complexities of the present-day civilization have seemed to cause the enactment of many laws of a prohibitive and regulatory nature which have thrown an ever-increasing burden of work upon constabulary and police as well as prosecuting and administrating officials and tribunals.

The scope of the work of this committee, however, must necessarily be limited to the major crimes, such as homicide, robbery, burglary and larceny and the like. The present substantive laws would seem to be adequate to meet the needs of society in that field.

Students of this subject, however, generally agree that our criminal procedural law should be revised to meet present-day conditions. Various specific changes have been suggested by different authorities, but nearly all agree that criminal procedure in this state has made it easy for the present day criminal to escape punishment, and that such laws, having been handed down to us largely from the common law of England and made for another day, should be amended in the interest of public security of life and property in this day.

While it may seem unnecessary to call these defects to the attention of lawyers, to nearly all of whom they are well known, yet your committee does not deem it untimely in this report, to mention a few of the more important of such provisions, all of which tend to the acquittal of the guilty and to hamper the state in their prosecution:

First—The defendant is entitled to be advised of the nature of the charge brought against him, and not only that, but the names and addresses of the witnesses upon which the information or indictment is founded must be indorsed thereon; while, on the other hand, the defendant does not have to state the nature of his defense, nor give the names of his witnesses, but merely pleads not guilty. Moreover, these informations and indictments are required to be couched in needlessly

formal and technical language, the failure to meet which only too often result in the discharge of an accused irrespective of the merits of the case.

Second—If there is a preliminary hearing the state must produce and examine its witnesses, and defendant and his counsel then learn just what their testimony is to be; but the defendant may or may not introduce testimony, as he pleases.

Third—The defendant may ask a change of venue to another county; but the state has no such right.

Fourth—The defendant may himself testify or not, as he pleases. If he has never been convicted before, he testifies at least to the extent of saying that he has never been in conflict with the criminal law before, and then with a little character testimony the court is required to tell the jury to consider his previous good character in determining his guilt or innocence. The state in its cross-examination is restricted to an examination as to matters brought out in direct-examination. And if the defendant chooses not to testify at all, the state is not permitted to even comment upon that fact.

Fifth—The court may grant a defendant a new trial, but if he is acquitted by the jury he is forever free, although it can be shown that the verdict was the result of a perjured testimony, or even of bribery and corruption.

Sixth—The defendant may always take an appeal, but, practically speaking, the state is denied this privilege, except as to rulings upon certain questions arising in the early stages of the case and before the jury have been impaneled.

In addition to the above there is a growing sentiment against the provisions of the law allowing so many challenges of jurors from the whole panel and the disproportionately large number of challenges to the defendant, as well as the requirement of a unanimous verdict in criminal cases as compared with the requirement in civil proceedings that nine of the twelve jurors may return a verdict.

We mention the foregoing features of our criminal law merely as an indication of how the accused is favored and to emphasize what appears to be the general view of the public and of students of this subject that there is room for much improvement therein.

So far as the trouble lies with the condition of the law itself, that will have to be met by legislation or even amendment of the Constitution.

To secure such constitutional changes and remedial legislation, it will be necessary, in the opinion of your committee, to bring to the attention of the public the seriounsess of the present situation and to create a sentiment which will result in such demand for amendment of our laws as will be heeded by the legislative branch of the government.

Poor work on the part of various public agencies having to do with the handling of the problem of crime, and the susceptibility of some of such agencies to political influence can only be overcome by an awakened public conscience in action. Your committee is satisfied that even in the present state of the law it is possible to secure a more efficient handling of the problem of crime, and the attitude of the public will be an mportant factor in bringing about improvement.

An aroused public conscience, a watchful eye of the public agencies having to deal with crime, a persistent insistence upon faithful and efficient service, together with a willingness on the part of the public to discharge its own function in the administration of the criminal law faithfully and fearlessly, must result in greatly improved conditions. The indifference of the public toward this matter is a large contributing factor to the present situation. It has either lapsed into a state of apathy, which simply views crime as an ever present and unavoidable evil, or has been stunned into a feeling that the problem is so serious and difficult that it is useless to attempt its solution. The remedy for the present condition lies largely in the hands of the people themselves. They can have a good and efficient administration of public affairs if they are willing to make the necessary efforts.

This subject covers such a wide field, dealing as it does with the very fundamentals of government, that it will at once be apparent that your committee is not equipped to make the kind of an investigation that should be made upon which to base specific recommendations for the improvement of present conditions. Such an investigation, we think, should be conducted by a capable staff of persons under the direction of a committee of citizens qualified to take the data procured by them, and after thoroughly considering the same, make specific recommendations as to steps which should be taken to strengthen our criminal laws, and to secure the most efficient administration thereof in the interest of public security.

Work of this character has been carried on in several states, notably in Cleveland, Ohio, where a complete survey of the administration of criminal justice was made under the auspices of the Cleveland Foundation by a staff of expert statisticians under men of recognized professional authority, the result of which has fully justified the expectations of the people of that community. Such an undertaking is one in which the general public is interested quite as much as the association. The evil results of laxity in the enforecment of criminal laws affect the people of the whole state alike, and it is belived that if the association should initiate the movement, which we feel it should do, that it would find immediate and enthusiastic support among the civic bodies and public-spirited citizens in this state.

Elsewhere, when such a work was in contemplation, the great civic organizations of the state have been asked to join in the formation of a permanent body made up of representatives from the various organizations and individuals interested in the public welfare, and we think that this plan could be effectively put in operation in this state. Such a body would be a tremendous force to put behind the movement and would insure its success. The organization thus formed could, through its component parts, exert a powerful influence in having the recommendations of the committee put into practical operation. As an indication of the magnitude of such a work, we cite the fact that in Cleveland the investigation cost $40,000. Some such sum as this could easily be raised in this state with very little effort, considering the beneficial results which are bound to accrue from such a research work by capable persons. An investigation of this sort should not be entered upon with any view of obtaining immediate results; it should be practical and thorough, wholly free from prejudicial features of any kind, including any sinister or unwarranted effort to benefit or injure any political party or candidate, but for the sole purpose of obtaining accurate and complete data and information upon which to base recommendations for legislative action and other remedial measures.

Such a work, well done, will be an invaluable contribution to the welfare of the people of our state, will reflect lasting credit upon all persons and organizations participating therein and should in the end produce results which will tend to remove the discontent with the manner in which the serious problem of crime has heretofore been handled in this state. The work of such an organization should not be considered as completed with the making of the survey referred to, but it should continue in existence, and after having created the public sentiment for better law observance and law enforcement, should aim by its work to keep alive and spread that sentiment. Real and lasting results cannot be achieved by sporadic efforts, but only by persistent and unremitting work, largely of an educational character. In a word, the problem requires a fuller realization on the part of the people of the state of the necessity of their discharging more fully and carefully their civic duties, and an appreciation of the fact that our public affairs will be conducted properly or otherwise according to the interest taken in them by the people themselves.

Therefore, we respectfully recommend to the president and executive committee of the Bar Association that such of the more influential civic organizations, public-spirited citizens and officials of this state be communicated with for the purpose of proposing the formation of such a permanent body as is hereinbefore referred to, and that if possible a meeting of the representatives of such bodies and of such

officials and individuals be held at an early date under the auspices of this association to effectuate that purpose.

Respectfully submitted,

ARTHUR V. LASHLY, Chairman.
HENRY M. BEARDSLEY,
J. HUGO GRIMM,
ALFRED N. GOSSETT,
A. T. DUMM,
Special Committee.

RESOLUTION OF EXECUTIVE COMMITTEE

Whereas, pursuant to action by the executive committee of the Missouri Bar Association, the president of said Association appointed a Special Committee on Crimes, Criminal Law and Procedure, to investigate and consider the growth and condition of crime and criminal law and procedure in Missouri, and to make report to the executive committee, and to recommend:

(a) Whether it be advisable that an organized movement be undertaken for the purpose of correcting any deficiencies that may exist in our criminal laws and in their administration; and,

(b) If such movement be advisable, what part, if any, the Missouri Bar Association should take therein; and,

Whereas, said special committee has filed its report with said executive committee and said report is now before this committee for its action thereon:

Therefore, be it resolved, by the executive committee of the Missouri Bar Association as follows, to wit:

1. That, for the earnest and intelligent attention and diligent effort that said special committee has devoted to the consideration of the aforesaid questions referred to it, all of which is evidenced by its report, said special committee has merited and should receive the gratitude and thanks of the Missouri Bar Association and the public.
2. That said report be received, the recommendations thereof be approved, and said special committee be continued, and, with such additional members of the Association as the president shall designate, represent said Association at the meeting of delegates hereinafter referred to if said meeting be called.

3. That, to the end that the recommendations of said report be carried out, the president cause copies of said report to be printed for distribution, and that he send copies of said report to the more important civic and commercial organizations, public spirited citizens and officials of the State, with the request that they give consideration to said report and advise (a) whether they approve it, and, if so (b) whether they will attend or send a delegate, or delegates, to represent them at a meeting called by the president of this Association.
4. That, if said civic and commercial organizations, citizens and officials generally approve said report and indicate their willingness to cooperate to make effective the recommendations thereof, then, and in that event, the president of the Missouri Bar Association shall call upon said citizens and officials to attend, and said civic and commercial organizations to send representatives to, a meeting to be held for the purpose of considering said report and taking such action with reference thereto as shall be decided upon by said meeting.

ESTATE BY THE ENTIRETY IN PERSONAL PROPERTY.

Estate by the entirety in real property is well established in Missouri. (1) Such estate in personal property is just as well determined by our decisions, but the application of the rules is perhaps more difficult.

The principles of an estate by the entirety are found in the following language from Garner v. Jones 52 Mo. 68, 71: "At common law a conveyance in fee to husband and wife, of real estate, created a tenancy by the entirety. Being but one person in law, they took the entire estate, neither of whom had any separate or joint interest but a unity or entirety, so if either died the estate continued in the survivor, as it had existed before, an undivided unity or entirety. There was no survivorship as in joint tenancies, but a continuance of the estate in the survivor as it originally stood. *The only change by death was in the person, not the estate.* Before the death they both constitute one person, holding the entire estate, and after the death of either the survivor remained as the only holder of the estate. This principle was introduced into this State as a part of the common law and it has not been altered by statute of conveyances." Missouri courts have consistently followed the principles of this case and this is shown by the cases hereinafter discussed. They

1. University of Missouri Bulletin, 26 Law Series, p. 46.

have not been repealed by statute (2), nor affected by the married woman's act of 1889 (3).

In Shields v. Stillman, 48 Mo. 82, the wife owned land, and leased same and for the rent took notes payable to herself and husband. It was held that said notes created an estate by the entirety, and that upon the death of the wife the husband was entitled to the whole estate by right of survivorship. It is to be noted that the court did not base its holdings on the right of the bushand to reduce to possession the wife's personal property, and also, that this case was decided prior to the married woman's act. It in effect overrules Polk v. Allen, 19 Mo. 467, decided in 1854, where it is said: "husband and wife cannot be joint tenants or tenants in common of chattel, and that a gift or bequest to husband and wife would vest the entire estate in the husband, and upon his death the property would go to his representatives". (4).

In Johnston v. Johnston, 173 Mo. 91, 73 S. W. 202, the court after reviewing the authorities said that estate by entirety in personal property may be created, but in making application refused to hold that an estate by the entirety was created in favor of the husband who survived the wife where it appeared that a note was taken in the name of the husband and wife and where the wife's money had made up the greater part of the consideration. The idea was that it is necessary to determine who furnished the money. This reasoning is wrong in principle and if followed would destroy estates by the entirety. The court pointed out that it was well settled that the fact that one of the parties advanced part or all of the consideration will not prevent an estate by the entirety from arising therefrom; that where a gift is made to husband and wife, or where they purchase property, the title is at least prima facie in said parties. Consideration in an estate by the entirety is not the fundamental element, for each tenant owns the whole of the estate (both are seized of the entirety, by all and not by half); that "neither husband nor wife has any interest in the property, to the exclusion of the other; *that each owns the whole while both live and at the death of either the other*

2. R. S. Mo. 1919, sections 2175 and 2273.
3. R. S. Mo. 1919, sections 7323 to 7328.
   Craig v. Bradley, 153 Mo. App. 586, 134 S. W. 1081; Frost v. Frost, 200 Mo. 474, 98 S. W. 527, 528; Otto Stifel's Union Brewing Co. v. Saxy, 273 Mo. 159, 201 S. W. 67; Johnston v. Johnston, 173 Mo. l. c. 144, 145, 73 S. W. 202, 96 A. S. R. 486.
4. Judge Becker in Rezabek v. Rezabek, 196 Mo. App. 673, 192 S. W. 107 says the Allen case is not law and that our courts have long since definitely held there can be an estate by entirety in personal property.

continues to own the whole". It will be seen from these principles that the survivor does not take by inheritance for there is no passing of title but simply a continuance of title.

In Lomax v. Lomax, 202 Mo. App. 365, 216 S. W. 575, the words creating the bequest were: "I will and bequeath to my brother D. A. Robinson and wife $5,000.00." She (Sarah) died some time after the will was executed but several years prior to the death of the testator, who never changed his will. The court said that an estate by the entirety would have been created had the wife lived, and that such an estate was intended and the testator is presumed to know the legal effect of such a bequest to husband and wife. (5).

In Rezabek v. Rezabek, 196 Mo. App. 673, 192 S. W. 107 it was held that a lease for ten years to husband and wife created an estate by the entirety; said lease contained a provision for renewal and at the expiration of the term the wife secured the lease to herself alone. The court adopted the referee's finding that even though the lease was taken in the wife's name, an estate by the entirety was nevertheless created. The main question of the case was, the lessees holding as tenants by the entirety, how shall the rents and profits be divided? The court following Hiles v. Fisher, 144 N. Y. l. c. 315, 39 N. E. 339 and Buttlar v. Rosenblath, 42 N. J. Eq. 651, 9 Atl. 695, 59 A. S. R. 52 held that each tenant was entitled to one-half of the rents and profits on the theory that husband and wife were joint tenants or tenants in common in the use of the property. (6) This reasoning is wrong in principle and is entirely out of harmony with our decisions. The Supreme Court of Missouri one year later in the Otto Stifel's Brewing case, *supra*, refused to follow the Fisher and Rosenblath cases, but adopted the Pennsylvania rule which holds that rents and profits arising from an estate by the entirety cannot be disposed of or changed except by joint act of husband and wife. Again the Missouri doctrine as to rents and profits in the Stifel case is reiterated Kingman v. Banks (Jefferies, Garnishee), 251 S. W. 449. The question was whether rents and profits of an estate by the entirety was subject to attachment for husband's debts. Held, wife not being a party, the husband's interest was not subject to attachment. I agree with the result in the Rezabek case but not with the reasoning. The court has the power to divide the rents and profits equally and can do so in the proper case because of necessity.

J. B. Steiner[7]

5. 40 Cyc. 1930, Jackson v. Roberts, 14 Gray (Mass.) 546, 550.
6. The Fisher and Rosenblath cases hold that the married woman's act made tenants by the entirety tenants in common with the right of survivorship.
7. Associate City Counsellor, St. Louis, Mo.—Ed.

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