University of Missouri Bulletin Law Series

Volume 25 *October 1922* Article 6

1922

Bar Bulletin

Follow this and additional works at: https://scholarship.law.missouri.edu/ls

Part of the Law Commons

Recommended Citation

Bar Bulletin, 25 Bulletin Law Series. (1922)

Available at: https://scholarship.law.missouri.edu/ls/vol25/iss1/6

This Bar Bulletin is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in University of Missouri Bulletin Law Series by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact bassettcw@missouri.edu.

BAR BULLETIN

Editor -- KENNETH C. SEARS
Associate Editor for Bar Association ---------------- W. O. THOMAS

OFFICIAL PUBLICATION OF THE MISSOURI BAR ASSOCIATION

Officers of Association

President -------------------------------- C. W. GERMAN, Kansas City
1st Vice-President ------------------------ JOHN C. CARR, Kansas City
2nd Vice-President ------------------ R. B. OLIVER, JR., Cape Girardeau
3rd Vice-President ------------------------ VINTON PIKE, St. Joseph
Treasurer -------------------------------- DELL D. DUTTON, Kansas City
Secretary -------------------------------- KENNETH C. SEARS, Columbia

ENGLISH LAW AND LAWYERS

When the practice of the law in England happens to come under the observation of an American lawyer the widely different customs and peculiarities of practice are almost certain to make him feel that he is dealing with a different system of law altogether instead of the old common law which, as we have always been told, came from England. But the reason for these customs and peculiarities is not hard to find. There was a king in England in 400 B. C. when Ezra and Nehemiah were building the walls of Jerusalem and Herodotus was wandering about in Egypt collecting material for his history. Some of the laws of England can be traced back to almost that date through the Saxon Conquest, the Norman Conquest, the Roman Conquest, through periods of Roman Catholic domination and Protestant domination down to the present time. One of these old laws is expressed in the earliest book in the phrase: "The husbandmen's plows shall have the privilege of sanctuary." If this means anything it must mean that the tools with which a man makes his living shall be exempt from execution. The earliest lawyers appear to have been monks, who attended the hearings of ecclesiastical courts, listened to the decisions in each case, and advised the knights and yeomen who came to them as to what would probably happen to them if their

cases went to court. Those were the days of trials by church dignitaries, trials by ordeal, and trials by combat. The king's court moved about with him wherever he went and causes were supposed to be decided by reference to some mystery or superstition. But somewhere in the thirteenth century the monks were ordered to leave legal affairs alone and a distinct class of lawyers spring up and with them a thin but persisting and continuous system of deciding matters by some use of reason and logic. These early lawyers lived together as a brotherhood or guild and there must have been weighty discussions of law, wholly unhampered by any principle of *stare decisis* in the inns of court, which were really *inns* in those days. The fact that these early lawyers did live together as a brotherhood is probably the explanation of the fact that the common law persisted. For many attempts were made to stamp it out and replace it by the civil law, or the Roman law. The purpose seemed to be that the civil law was wholly in Latin and nobody but the priests could read it. But after each attack the lawyers resumed their discussions of the English law and the civil law remained on the continent. So, the common law grew and developed, always changing but always retaining something of the earlier law through the time of the Plantaganets and the Stuarts and the Tudors and the domination of the Catholic and Protestant religions for centuries. "The common law of England" as someone said, "became the reflection of the history of England." When these facts are recalled to us and compared with the comparative brevity of our own legal history and we remember the peculiar tenacity of legal forms, we may fairly come to the conclusion that it would be rather surprising if the practice of the law of England did *not* retain some forms and customs which remind us of the middle ages and which would be very much out of place on this side of the water.

Perhaps the most striking peculiarity of the English practice from an American standpoint is the methodical and rigid division of the profession into two parts—barristers and solicitors. This division corresponds to our occasional informal divisions of lawyers into trial lawyers and office lawyers, but that idea only partially expresses it, for the gulf is enormously wider between a barrister and a solicitor. It begins with their education and a student must decide at the beginning of his course which he desires to be—barrister or solicitor. They attend different schools and pass examinations on different subjects. No one but a solicitor may file a cause of action, or draw certain papers, or handle ordinary office business. But when the case comes to trial no one but a barrister may try it in any of the courts of any importance in the kingdom. At the trial the barrister sits in the front row of seats and the

solicitor sits in the row behind him and hands him papers and makes suggestions; but the voice of the solicitor is never heard except in chancery chambers, the bankruptcy court of first instance, and a few minor tribunals. The judicial offices are open only to the barristers, while, on the other hand, there are a great many proctorships and receiverships open only to the solicitors. When a legal matter reaches the point of litigation the solicitor puts his client in touch with a barrister, but peculiar as it may seem, the solicitor and the barrister, are not permitted to enter into a partnership, and between these two classes of lawyers there is even a social distinction. A solicitor may entertain a barrister, but if a barrister should begin to pay much attention socially to a solicitor, he would be regarded as endeavoring to secure business on some other basis than his professional record. One of the charges against the notorious Jeffreys was that he "drank desperately with the solicitors," the objection being not to his drinking desperately, but to his entertaining the solicitors with too much enthusiasm. This social distinction between the two different branches does not seem to spring so much from a feeling that one class is better than the other as from the typical English desire that every man shall have an exact and more or less rigid definition of his business and his position.

The barrister is not an officer of the court. No court admits him to practice nor has any power to disbar him from his profession. The inns of court from which a barrister graduates, choose among their number who have been in the practice for more than ten years, a group called the "benchers" who admit barristers to bar, discipline them for infractions of professional ethics, and, if need be, disbar them. Nobody knows who gave the inns of court this power. There is no record of any court or any king or any Parliament ever granting such a power, but the inns of court have it and exercise it today. If a trial judge should become acquainted with actions on the part of the barrister which called for a disbarment proceeding, he would simply call the matter to the attention of the "benchers" of the particular inn from which the barrister had graduated, and they would make the necessary investigation. A barrister gets his business through solicitors and has no direct access to his clients with the single exception of cases in which he is retained in open court by a criminal in the dock. A solicitor on the other hand deals with his client's every-day affairs, is an officer of the court, and is answerable to the court for his behavior. Many of his charges are rigidly prescribed by law. For instance, the charge is six shillings eight pence for an interview and three shillings six pence for a letter. He may reach the most prominent positions—Lloyd George was a solicitor—but as a rule only the less important legal positions are open to him.

Every now and then there is a movement to combine these two branches either partially or entirely, as they are in this country, but, strange as it may seem, a clear majority of each branch has always been against any such combination. Each branch has its own halls, its own associations, its own monopoly of paying business, own class spirit, and the older men in each branch are pretty firmly set against making any change.

Any little picture of English practice would be incomplete without some description of the inns of court, which were the cradle of the common law and which are still the gate of admission to the profession of the barrister. To reach the inns one goes up Fleet Street—a typical busy, noisy, big city street—past the Law Courts Building, which is a big white stone structure five or six stories tall and which covers a very large amount of ground. There is a huge main hall in this building, numerous small branching halls, a restaurant, and court rooms everywhere, with the docket posted outside of each one. You see gowned and be-wigged barristers, hurrying to their devisions, occasionally the red-robed figure of a judge, and witnesses and litigants by the hundreds. If there is a notorious case in some particular court room, you will find it impossible to get in unless you arrive before breakfast but ordinarily there is plenty of room in the spectators' seats although their court rooms are generally smaller than ours. On up Fleet Street one turns to the left into Chancery Lane, and a few blocks up this narrow old-fashioned thoroughfare one reaches a park surrounded and scattered over by old-fashioned buildings—the inns of court. In the early days these inns were the residences of the Knights Templar, who existed for the purpose of protecting Pilgrims to Jerusalem, and with the avowed intention of renewing the crusades to take the Holy Land from the Saracens. They grew enormously wealthy and had temples and shrines over England and France; but a combination of church and state against them almost wiped them out of existence. One De Molay was one of the Knight Templars who was burned to death in France at this time. The Knights Hospitalers succeeded the Templars and in the thirteenth or fourteenth centuries they leased the inns to a group of lawyers, probably the first group of lawyers. But the place continued to have as turbulent a history as before. It was notoriously unsafe, and we are told in an earlier description that the beggars who used their crutches to lean on while they held out their caps during the day, used the same crutches for clubs at night, and most thoroughly robbed any stranger found alone in the neighborhood. An occasional watchman with a lantern or an occasional group of lawyers traveling together were likely to be the sole pedestrians through these lanes at night. In 1629 a royal messenger holding a warrant of ar-

rest found his man in Lincoln Inn's Garden, but refrained from attempting to arrest him there out of respect for the place. After the messenger had gone back into the street about thirty gentlemen of the inn, who felt that his mere presence for such a purpose had been an insult to their privilege "fetched him into the house, violently pumped him, shaved him and disgracefully used him." Francis Bacon lived and studied in the inns, and so did Jeremy Bentham, Sir Philip Sydney, Thomas Moore, Edward Burke and a host of other well-known legal and literary men. There have been various inns in the past, but now they have been narrowed down to four of the oldest ones: Lincoln's Inn, specializing in chancery practice; the Inner Temple, generally accused of being the "high brow" school, and mostly made up of students of Oxford and Cambridge; the Middle Temple, which is the most democratic of the inns; and Gray's Inn which is the smallest but with a most imposing list of graduates. The student who desires to be a barrister may take his law work at any of the colleges or universities or trade schools in any part of the kingdom which has a law department, but he must keep twelve terms at the inn before he can join the profession. There are four terms a year of three weeks each for a period of three years. These terms are called "dining terms" and the students are literally required to dine together at their inns during term times. The days are taken up with lectures by members of the law faculty and the evenings to getting acquainted with their fellow aspirants. Of course, most of the study is carried on outside of the term time, since the terms themselves cover only about twelve weeks a year. It is possible for a man to attend one of the English universities and at the same time "keep terms" at an inn. While he is "keeping terms" no attendance is counted in his favor unless he be present at grace both before and after meat, and it is possible that a man's table manner, or his ability to get along with his fellow students, might be so bad that the "benchers" would refuse to admit him to practice. But if he successfully keeps his terms, and passes the rigid examinations connected therewith, at the end of his course he repeats his pledge that he does not, and will not, directly or indirectly, act in the capacity of a

> "Solicitor, attorney at law, writer to the Signet, writer of the Scots courts, proctor, notary public, clerk to chancery parliamentary agent, agent in any court original or appellate, clerk to any justice of the peace, registrar or high baliff of any court, officially professed assistant or deputy receiver and liquidator in any bankruptcy or winding up act, chartered incorporated or professional accountant, land agent, surveyor, patent agent, consulting engineer, clerk o any judge, barrister, conveyancor, special pleader or equity draftsman, clerk of the peace or clerk to any officer in any

court of justice, and that he is neither engaged in trade, nor an undischarged bankrupt."

After having qualified himself in the opinion of the "benchers" and having purged himself of lesser ambitions by the pledge referred to, he becomes an utter barrister with a wig and gown and a right to practice if the soliciors see fit to bring him the business.

The solicitor's preparation seems more exacting than that of the barrister, but many students choose it in spite of that fact. The budding solicitor must serve as a clerk for five years under a practicing solicitor. This term is shortened for the graduate of certain accredited colleges, but I understand that a very great number of the attending solicitors spend the full five years practically as an apprentice. During his term as a clerk he takes the required examinations at one of the law society halls, which is his school and his parent in the profession, as an inn of court is for the barrister. If successful, he is admitted and enrolled and he takes out a certificate to practice. During the period of his clerkship he pays the solicitor under whom he studies an agreed sum for his tutelage. Two hundred and fifty pounds with the addition of a stamp tax is about the sum he may expect to be charged. During his clerkship he is not allowed to engage in any other employment, either in or out of office hours, and he is not allowed to practice or act as solicitor in his own right except with his employer's and the court's permission. The penalty for violation of this rule is the loss of credit for so much of his five years as have passed before the offense. A solicior's lot seems a harder one than that of the barrister, although there are a great many of what we would call "nice pieces of business" open to him which are not open to the barrister; but he has the great advantage of not being dependent upon another class of lawyers for his business, and free and untrammeled relations with his clients. Progress in the legal profession is much like it is in this country. The life is perhaps easier. It is quite common for a lawyer to begin his week-end at Friday noon and not get back to his office until eleven or twelve o'clock Monday morning. The profession is more difficult to enter. A student can hardly make his way for several years. The competition is perhaps not so keen, but nevertheless the work is thoroughly and soundly done. As a matter of fact, it seems to reach an almost machine-like exactness and correctness. There is one form of promotion open to a barrister that is not present in this country, and that is the grade K. C. or King's Counsel. A certain per cent of the bar is raised to this rank by the High Court of Appeal, at stated intervals. These men have certain rights of precedence and are recognized as seniors by other barristers in all litigation. I saw about twenty barristers made K. C's one morning in one of the court rooms in

the Law Courts Building on Fleet Street. The men who had been selected sat in the back part of the room, in wigs and gowns, knee breeches and silk stockings. As the judge on the bench called each man by name he would come forward inside the inner railing and take the seat which only a King's Counsel may occupy. As soon as he had taken his place the judge would inquire: "Mr. Smith, do you move?" Whereupon, Mr. Smith would arise, bow to the judge and to the assembled barristers in all parts of the room and retire without speaking a word. Apparently, the idea was that the court recognized Mr. Smith as having the right to submit motions or proceed with pleadings from the seat of a King's Counsel and from that time forward he *was* a King's Counsel. His gown from that time on is made of silk instead of stuff, and therefore becoming a King's Counsel is known as "taking the silk." Thereafter he cannot accept a brief as junior to a barrister who is not a K. C. nor even as a junior to a K. C. who has been appointed subsequently to himself. The whole legal profession for that matter is organized like an army. A man is always junior to those admitted before him.

After all the most surprising thing about English practice is that in spite of the wigs and the gowns, and the barristers and solicitors, the court procedure is almost identical with our own. You hear the same objections, the statement of principles, and the same rulings in almost the same words as you hear in the divisions of our circuit court. One thing which surprised me was the comparatively enormous number of libel and slander cases. It is quite a threat in England for one old lady to say to another: "You will get a letter from my solicitor," meaning that a slander or libel case is about to begin. Another surprise and a thing which I wish we could obtain, is the apparent seriousness of jury service. An Englishman seems to think it is an honor to serve on the jury. The jurymen carry on their part of the trial with intense earnestness. For some reason or other there is less litigation in England, in proportion to the population, than in this country. It may be because the solicitor who is handling a matter knows that a barrister, and not he, himself, will get the lion's share of the fee if the case goes to trial; it may be because of the inherent respect for law inbred in the English people; it may be because in England the loser pays the costs, which includes the fee of the lawyer of the successful litigant; or it may be that the Englishman regards a law suit in the same light as he would a major surgical operation, as something in which he risks everything and not to be undertaken except in the most serious circumstances; or it may be for some other reason. But it remains true that the litigation in our federal courts alone is about as great in proportion to population as the total English litigation except cases corresponding to our justice of the peace and police

court cases. That is, our state court litigation represents about the surplus of our litigation over that of the British Isles.

England has greatly simplified procedure and speeded up the administration of justice since Dickens wrote about Jarndyce v. Jarndyce, especially on the criminal side. For example, since 1915 the following would be sufficient indictment in England, at common law:

> The King vs. John Smith.
> John Smith is charged with the following offense:
> Statement of offense: murder.
> Particulars of offense: John Smith did on the 19th day of October, 1920, in the County of Essex, murder Caroline Smith.

The Court of Criminal Appeal may review a criminal case either as to conviction or sentence, and on any ground of law or fact it may quash the conviction or shorten or lengthen the sentence. In fact, it may do almost anything it pleases with the record, except to grant a new trial.

Another distinguishing mark of the profession on the other side of the water is easy to feel but hard to describe. There is a remarkable solidarity about it. Lawyers know each other, mix with all in the profession, visit together, think together, and act together. This is partly due to the fact that all the barristers pass through the inns of court and all the solicitors through the law societies halls and are therefore in a sense fellow alumni. But it is probably due much more to comparative smallness, both numerical and geographical. An English lawyer is likely to be startled by the idea that a lawyer in Missouri probably never gets in the same court room with a lawyer from California and that they probably never act together in any enterprise unless they both happen to attend the American Bar Association. Short distances have caused the gathering of the great bulk of the business in London and all of the barristers have tried cases in the same building on Fleet Street. When a layman wants legal advice it is about as easy for him to run down to London as it would be to go to any other town. As a result, out of a recent law list of about ten thousand barristers only three hundred and sixty-three were entered as of the provincial bar and fully a third of all the solicitors live in London. So, a sort of close knit fraternity is developed within the profession which must go far toward recompensing the members for the limitations under which they labor.

I realize that though I may have given some idea of the limitations of an English lawyer, I have failed wholly to give an adequate picture of his good points, or of the attractive side of his life and his pro-

fession. I found him to be human and cordial, almost always a student, and at the same time a man of considerable leisure. When everybody takes two or two and one-half days for a week end, no one seems to lose his business by it. He spends many of these week ends on the river or in the country, or up in Scotland, and he keeps in touch with his friends and sees them often. Though, as a class, he may be somewhat slow and antiquated he is also sound, thorough and reliable. As our former ambassador to Great Britain has said:

> "He is in very truth our brother. For the common law by which we live has its roots in English soil. The judges who interpret it on both sides of the water look to their distant colleagues for counsel and assistance, and the principles of liberty which it embodies are the rod and staff by which our peoples walk. Trained in the same school, professing the same great ideals, sharers of like obligations, immunities and privileges, there rests upon the legal profession in England and America a duty which is joint and not several, common and not divisible."

As members of a profession I take it we are interested, over and above the practical ways for settling this and that client's immediate problems, in the spirit and philosophy and development of the law. I am far from suggesting the English practice as a pattern for us. I can hardly imagine an American lawyer, or American clients for that matter, submitting to the limitations resulting from the division of the profession into barristers and solicitors, for instance. But sometimes it does us good to get out of ourselves and consider what other bodies of lawyers have done with much the same problems. The British Bar works under different conditions but with the same common law and largely the same purposes and ideals . An occasional examination of their methods and reforms, successes and failures, may well be of value to us in slow but steady development of the truth that, "wisdom is better than weapons of war."[1]

Kansas City, Missouri FRANK E. TYLER

1. After the armistice, Mr. Tyler, then a captain of infantry in the A. E. F., spent four months as a student in Lincoln's Inn.—Ed.

CERTIORARI IN THE SUPREME COURT OF MISSOURI

The article of Judge W. W. Graves, one of the Judges of the Missouri Supreme Court, appearing in Bar Bulletin, Law Series 24, is a most lucid and interesting *resumé* of this subject. From the standpoint of some of the practitioners, the change of front on the part of the court on the great question, did not accur too soon or too late. For years it was clear to many that the constitutional amendment of 1884, creating the Kansas City Court of Appeals and authorizing the legislature to create another, when need be, meant to place the duty on the Supreme Court of having the final determination of whether a decision of one of the Courts of Appeals was or was not, on a given point, harmonious with the holdings of other Courts of Appeals and with those of the Supreme Court.

It is well said by Judge Graves that one of the main objects of the amendment was "to keep these Court of Appeals in accord with each other in their decisions, and with the rulings of this court." (Law Series Bulletin 24, p. 6). It is stated more fully, and probably better, in Judge Graves' concurring opinion in *State ex rel* v. *Robertson* (264 Mo. 1. c. 672):

> "When the Constitution (both the original and the amended) is read as a whole, it is clear that the framers contemplated a judicial system, with *one* Supreme Court, at the head of that system. It is clear that they contemplated that as to all doctrines of both law and equity there should be one final arbiter, and that arbiter the body which they chose to designate as the Supreme Court. *It was never contemplated that one doctrine of law or equity should apply in certain appellate jurisdictions, and another and different doctrine in other appellate jurisdictions.* Throughout he entire document (both the original and amended) runs the idea of harmony in the law. Not only so, *but with this idea is the further one, that there has been vested in the Supreme Court the power to enforce harmony of decision,* in so far as they touch upon doctrines of law or equity. * * * Judges, like individuals, honestly differ and give different constructions to the same language at times, and discrepancies in announced doctrines will creep in unless there is a power (at the head) somewhere *to act as final arbiter.*" (Italics supplied.)

Therefore, does it not necessarily and logically follow that, whether such conflict of doctrine arises between a decision of a Court of Appeals and one of the Supreme Court or between one Court of Appeals and another, in either case, the province and duty devolves upon the "final ar-

biter" to exercise its superintending control, when duly applied for? Of the many instances of the grant of this writ by the Supreme Court, none has been grounded solely on a conflict of decision between two Courts of Appeals. True, it is incumbent upon any Court of Appeals, when it finds itself opposed to the doctrine held on the subject by another Court of Appeals, to certify the cause to the Supreme Court for determination. But does not certiorari, as used by the Supreme Court, leave it in such case to the Court of Appeals to decide, whether there is such a conflict, instead of that question being determined by the "final arbiter"? If perchance the Court of Appeals holds there is no such diversity of opinion between itself and another Court of Appeals, is not the defeated party thereby concluded, and without remedy by certiorari?

It would seem that Rule 34, which Judge Graves says in his article (p. 16) "applies specifically to applications for the writ of certiorari," *assumes* that conflict with some *Supreme Court* decision is the *only* ground contemplated as a basis for the writ. It says: "No writ of *certiorari* shall be granted to quash the judgment of a Court of Appeals on the ground that such court has failed or refused to follow the last controlling decision of the Supreme Court, unless" etc. Then, how about cases, if any, where the precise question has not been decided by the Supreme Court? What becomes, in such instances, of the case of contrariety of opinion only between two Courts of Appeal? What becomes of the doctrine that the Constitution never contemplated that there should be one rule of law prevalent in one appellate jurisdiction and a contrary rule in another? The rule does not recognize that there is or can be any writ of the sort granted, except for the one reason of the challenged opinion being in conflict with "a controlling decision of the Supreme Court." Practically, a vast majority of applications are denied by the court, and it must be assumed that they should be. It is worthy of reflection, however, that *the reason* for the Supreme Court's ruling in any case only appears, when the preliminary writ is actually granted and the case formally decided. In all others the parties and their counsel are left in total darkness as to the reason for the ruling.

It would seem that it should not be assumed and conclusively presumed by the rule that necessarily and in all possible cases, the Supreme Court has had prior occasion to rule specifically on the precise question involved. Certain it is, as has been said, in no published utterances of the Supreme Court has the writ been awarded on the ground that the decision of one Court of Appeals was contrary to that of another. Many are the instances where on closer examination the Supreme Court has quashed its own writ instead of quashing the attacked opinion of the Court of Appeals, and this for the rightly held reason that the challenged

opinion was not in conflict, as claimed, with the specified opinion or opinions of the Court of last resort. Hence, these remarks are submitted.

Kansas City, Missouri. R. A. BALL.

ADMISSION TO THE BAR—The American public has been far too prone to regard the practice of law as a privilege which should be open to any bright, ambitious young chap, rather than an official appointment on behalf of the state to those who from the state's point of view can best promote this branch of government.—Theodore Francis Greene, Vol. VIII Am. Bar. Assoc. Journal, page 421.

NATURE OF PRESUMPTION.—In construing circumstantial or presumptive evidence in respect to the corpus delicti, we should proceed upon the theory that defendant is presumed to be innocent, and that this presumption follows him, until the case is finally disposed of in court. —Railey, C., in *State* v. *Bowman* (1922) 243 S. W. l. c. 117.

It is true, as held in *Crook* v. *Tull,* 111 Mo. 283, 20 S. W. 8, the law creates a presumption that property purchased by the wife during coverture was paid for with the husband's money. But this is only a presumption, and such presumption disappears on the appearance of positive testimony as in the case at bar that the property was purchased by the wife with her own funds and accumulated earnings.—Arnold, J., in *Shepard* v. *People's Storage & Transfer Co.* (1922) 243 S. W. 196.

But I do insist that such a presumption (i. e. against suicide) cannot exist in the presence of evidence diametrically contradicting it. And it cannot make any difference whether the evidence which contradicts and refutes the bare presumption is direct or circumstantial. The moment explanatory evidence comes into the case the presumption dissolves into thin air and becomes as wholly non-existent as though it never had had existence.—Faris, J., dissenting in *Reynolds* v. *Casualty Co.* (1917) 274 Mo. l. c. 107.

In a criminal case the burden is on the state to convince of the existence of the essential ingredients of the particular crime. This burden does not shift. Consequently, it is unnecessary to state that a presumption of innocence is with the defendant throughout the trial. It is sufficient to say that the burden of convincing remains with the state.

In this way, it is believed, the attitude of the court in *State* v. *Bowman* may be reconciled with the other two declarations.

ADMINISTRATION OF JUSTICE.—Dependence upon action of Congress to effect reform to remove delays and to bring about speed in the administration of justice has not brought the best results, and some different mode should be tried. The failures of justice in this country, especially in the state courts, have been more largely due to the withholding of power from judges over proceedings before them than to any other cause; and yet judges have to bear the brunt of the criticism which is so general as to the results of present court action. The judges should be given the power commensurate with their responsibility. Their capacity to reform matters should be tried to see whether better results may not be attained. Federal judges doubtless have their faults, but they are not chiefly responsible for the present defect in the administration of justice in the Federal Courts. Let Congress give them an opportunity to show what can be done by vesting in them sufficient discretion for the purpose.—Mr. Chief Justice Taft before American Bar Association.

Resolution of American Bar Association

WHEREAS, one of the gravest duties confronting the judges and lawyers of America is an administration of justice that will command the respect and veneration of the people:

RESOLVED,—First: that Congress be and it is hereby respectfully petitioned to provide by suitable statutory law for the creation of a Commission, the personnel of which shall be appointed by the President and to be composed of two Justices of the Supreme Court, two Circuit Judges, two District Judges and three members of the Bar of high standing and qualified by learning and experience.

Such Commission shall prepare and recommend to Congress amendments to the present statutes and the Judicial Code, authorizing a unit administration of law and equity in one form of civil action.

Second: That such act shall provide for a permanent Commission, created in similar manner, with power to prepare a system of rules of procedure for adoption by the Supreme Court, with power to amend from time to time.

Such rules and their amendment, after approval by the Supreme Court, shall be submitted to Congress for its action and shall become effective in six months after such submission, if Congress shall take no action thereon.

COMMITTEE ON AMENDMENTS, JUDICIARY, AND PROCEDURE: Chairman Francis M. Curlee, St. Louis; Robert F. Walker, Jefferson City; Henry L. McCune, Kansas City; Boyle G. Clark, Columbia; Robert L. Ward, Caruthersville.

COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR: Chairman, J. J. Vineyard, Kansas City; Christy M. Farrar, St. Louis; Forrest C. Donnell, St. Louis; Lee Montgomery, Sedalia; E. D. Ellison, Kansas City.

COMMITTEE ON BAR ASSOCIATIONS: Chairman, J. Hugo Grimm, St. Louis. Maurice H. Winger, Kansas City; J. D. Hostetter, Bowling Green; George H. Hubbell, Trenton; Ernest A. Green, St. Louis.

COMMITTEE ON LEGAL PUBLICATIONS: Chairman, George H. English, Jr., Kansas City; Robert B. Fizzell, Kansas City; L. C. Lozier, Carrollton; Frank E. Tyler, Kansas City; Kenneth C. Sears, Columbia.

COMMITTEE ON GRIEVANCES AND LEGAL ETHICS: Chairman, Allen McReynolds, Carthage; William S. Bedal, St. Louis; R. B. Caldwell, Kansas City; M. D. Campbell, Kirksville; R. B. Oliver, Jr., Cape Girardeau.

COMMITTEE ON UNIFORM STATE LAWS: Chairman, Clifford Histed, Kansas City; James C. Jones, St. Louis; H. M. Langworthy, Kansas City; Elmer O. Jones, La Plata.

COMMITTEE ON LEGAL BIOGRAPHY: Chairman, Henry Lamm, Sedalia; W. W. Graves, Jefferson City; O. H. Dean, Kansas City; Wash Adams, Kansas City; Vinton Pike, St. Joseph.

COMMITTEE ON THE ILLEGAL PRACTICE OF LAW BY LAYMEN: Chairman, Harris E. Sprague, St. Louis; J. H. Hull, Platte City; R. E. Ball, Kansas City, S. W. Bates, Webb City; J. P. Swaim, Mountain View.

COMMITTEE ON JUDICIAL CANDIDATES: Chairman, Glendy B. Arnold, St. Louis; A. E. Spencer, Joplin; R. F. Lozier, Carrollton; N. T. Cave, Fulton; A. T. Dumm, Jefferson City; J. N. Blayney, St. Louis; Ingraham D. Hook, Kansas City; Perry Post Taylor, St. Louis.