The Efficient English System/Braatelien Suggests

North Dakota Law Review

THE EFFICIENT ENGLISH SYSTEM

We do not "point with pride," but we do suggest that the inferiority of American jurisprudence as compared with English justice does not appear as gross as frequently stated, in the light of the following expressions from Englishmen: "The barrister is a public nuisance"; "The law is a nasty beastly business." "My advice is never to go to law at all"; "Public warning, ruinous law costs a public scandal"; "In an action to obtain possession of a garage with a rental value of 10 pounds a year, the costs were 70 pounds"; "A claim for 27 pounds carried costs of 897 pounds"; "Costs for establishing the paterntiy of a child are said to have been 30,000 pounds"; "The expense of litigation is so terrible that it delays and destroys justice."

All this does not accord with the tales of English judicial virtue, of how technical rules of evidence are ignored, how proof is simplified, how efficiency inspires respect and admiration. May we not agree that "procedure for the settlement of disputes can not more remain static than any other branch of the life of the community but must be adapted and altered from time to time to meet changing conditions," and that the Bar, through its own organizations, must lead the way to better things. If economic institutions and legal systems of today inspire only criticism, it is the business of the Bar to point the way to such changes as will inspire respect. Why, for example, should we longer adhere to that outworn formula that the judgment of a trial judge should not be disturbed unless the weight of the evidence preponderates so strongly the other way that it may be said there is "nothing on which to hang the judgment"?

BRAATELIEN SUGGESTS

In a recent communication H. W. Braatelien, formerly practicing in this state but now of San Angelo, Texas, makes the following statement:

"Texas has several laws that differ from laws in other states that I have known. In Texas the homestead cannot be mortgaged except for purchase price, or for part of purchase price, and liens for improvements can only be imposed upon it by an instrument of consent signed by husband and wife. Whether or not such a law is a good one any one can answer. In the years gone by when governments, states, companies and individuals appear to have had an inclination towards borrowing a lot of money and mortgaging even the home for such borrowings, the question answers itself. Anyway those who have spoken about it have been unanimous in their opinion of the law. It is a part of the constitution as adopted in 1876. Under this law a city cannot levy a special assessment against a home. This accounts for the condition one finds in the cities of Texas. Paving is not continuous in some streets and the sidewalks have the same fault. Some home owners have refused to sign for street improvements and the city is helpless. Even this has proven beneficial. In some cities, where the mania for paving overcame discretion, homes are being lost on paving liens. However, this is only where the owners consented to such paving.

"Such a law in North Dakota during the last thirty years would not have been a bad thing to the writer's notion, and it would not be a bad idea to think of such a law now for the future generations."