



1929

## Simulation of Court Process

North Dakota Law Review

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its reason for going unpunished so frequently. Contempt for law and honest principles should be prosecuted, instead of being permitted to flourish and encumber our court procedure with prevarications, deliberate delays and needless expense. . . . The severity of sentences reacts upon the petit jury and adds a new responsibility to the juryman's task. As perjury is considered in the light of carrying a severe penalty, and alternative should be provided to prevent the 'neck or nothing' theory which goes with its prosecution. . . . The bill proposed provides this alternative: 'Any person, who in any action or proceeding. . . wilfully and knowingly testifies, declares, deposes or certifies falsely . . . any matter to be true which he knows to be false . . . is committing a crime, and it is time this fact was brought home to everybody who deliberately makes, or intends to make, a false statement under oath. . . . The bill should be given the support of every citizen . . . in the interests of justice, honesty and progress.'

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### TO OR FROM WORK

There have been some modifications of the rule that workmen are not in the course of their employment while going to and from work. A very recent decision of the Court of Appeals of New York, *Marks' Dependents vs. Gray*, 167 N. E. 181, deals with these modifications. The facts were: A workman, whose wife had gone to a nearby village to visit, promised to call for her at the end of his day's work. His employer received a call for some work at a house in the same village, a job requiring 15 to 20 minutes work. Learning that the employee was to make this trip, the employer requested him to take his tools and attend to the work. Nothing was said about pay, but the general expectation was that after-hour pay rates would govern. When about a mile from this village, the workman had an auto accident and was killed. The claim was for death as a result of an injury in the course of employment. HELD: The employment did not take the decedent to the village. The work to be performed was a mere incident of the trip and did not create the necessity for the traveling. "The journey would have gone forward though the business errand had been dropped and would have been cancelled on failure of the private purpose though the business errand was undone." Hence, the travel as well as the risk was a personal risk, and compensation can not be awarded.

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### SIMULATION OF COURT PROCESS

The practice of individuals and concerns in making use of forms which have all of the appearance of court process or orders is growing to an extent where legislative action is certainly warranted. We are advised by attorneys from various parts of this state that these individuals and concerns have country-wide connections, the claim being made that several of them represent more than a hundred forwarding agencies.

Other states, notably California, have taken action with respect to such vicious practices. Section 526 (new) of the California Penal Code provides that the delivery, with intent to obtain money or other thing of value, of any paper or document purporting to be the pro-

cess or order of a court, or designed or calculated by its makeup to lead the person receiving it to believe it to be the order or process of a court, when in fact the same is not the order or process of any court, shall be punishable as a misdemeanor; and another Section, 527, makes it a misdemeanor to sell, offer for sale, print, publish or distribute any form designed or calculated to be taken as, or used as, an order or process of any court when in fact such form is not to be the order or process of any court.

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### JURY VERDICTS

The following states have enacted legislation which does not require the concurrence of all members of the jury to arrive at a verdict in criminal cases involving misdemeanors: Idaho and Wisconsin, where five-sixth may render the verdict; Oklahoma and Texas, where three-fourths of the jurors may concur and bring in a verdict; and Mantana, which allows concurrence by two-thirds to carry the verdict. All other states require unanimous concurrence in misdemeanor cases, and all of the states make that requirement in felony cases.

In civil cases the following states have adopted some form of majority decision: Minnesota, Nebraska, South Dakota, Washington, and Wisconsin, five-sixth; Arizona, Connecticut, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Ohio, Oklahoma, Texas and Utah, three-fourths; Montana, two-thirds; and Iowa, seven-twelfths. The other twenty-nine, including North Dakota, require unanimous decisions.

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### APPRECIATION EXPRESSED

Attorney Hugo P. Remington of Lisbon writes in the following vein:

"If there is in the minds of any a doubt as to the Solomon-like wisdom of the justices of our Supreme Court, I would like to refer all doubters to the following recommendation which I received in a letter from a client today.

"I want to thank you for the copy of the decision you sent me in the case of myself vs. G. I assure you I have read the same with great care and interest, and I must say that the Supreme Court decided just the way I would have decided it if I were to decide it. The judges certainly done absolute justice in this case."

"In these days of captious criticism of courts and magistrates such an expression of confidence as this might not be amiss for publication in Bar Briefs."

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### WHAT PRICE ADVICE?

Paul Campbell, of Minot, is searching the books for an answer to the following question from a client, and sends it on to us, we presume, for the purpose of ascertaining what item of the fee schedule applies:

"i wood lik to now if a president of a Bank cold hold is president ship wen caut smugerlin cattel from canada."