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Comment on Facts

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Committee on amendment of juvenile court act—Judge Thos. H. Pugh, Chairman, Judge W. L. Nuessle, Judge W. J. Kneeshaw, Hon. Geo. F. Shafer.

Conference of Judges

The Conference of Judges, provided for under Section 9 of the Judicial Council Act, was held upon adjournment of the Council. At this conference the discussion centered upon the advisability and necessity of making changes in existing court rules.

COMMENT ON FACTS

The Judicial Council of the State of Massachusetts, acting favorably upon the proposal to repeal the law of that State which prevents a Judge from commenting upon the facts in jury trials, had this to say:

"A majority of the Council believes that as time goes on it is more and more important to honest, poor litigants who can not, or do not, have as shrewd, able and skillful lawyers as their opponents, that there should be a competent unmuzzled judge on the Bench, whose sole duty is to do his best to see that justice is done impartially. This is our understanding of the common law function of a Judge in accordance with the best traditions of the profession and of the public service.

"Jurymen are drafted from their private affairs, often at serious loss to themselves. If called upon to decide any important and difficult question outside of a court room, we believe that practical men would expect to hear what a trained man, specially employed to sit with them and listen to a case fairly, thought about it in order that they might consider his views before making up their own minds. We do not see why men should not have the same assistance inside of a court room. The question seems to us one upon which the judgment of the laymen of the community, who serve on juries, is likely to be as good, if not better, than that of lawyers.

"The right to jury trial, guaranteed by our constitution, contemplates a trial before citizens of the same vigorous intelligence as of old, who can be trusted to listen to the Judge's views if he feels that the case calls for a statement of them, and at the same time to follow his direction that they must make up their own minds and that it is their own judgment which is to govern. . . . We believe that the statute of 1860 (preventing comment) is a reflection upon the brains, courage and good sense of those of our people who are subject to jury duty, and that it should be repealed. It should not be left to partisan lawyers alone to deal with the facts, especially as the skill of one may greatly outweigh that of his opponent. The jury should have all the assistance in arriving at a just verdict which may be given them by the only trained and impartial mind participating in the trial."

The approval was not unanimous, however, Mr. Frederick W. Mansfield being quoted as follows:

"I am not impressed by the argument that under our present law the Judge is 'muzzled.' He has a right to comment on the testimony even now and as a practical matter it is usually a very dull Judge who can not, and does not, intimate to the jury what his opinion is of the evidence. But whether the Judge is muzzled or not under the present law, I very much fear if it is changed that the result will be to take the muzzle off the Judge and put it on the jury."