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Appeals in Criminal Cases

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16. On new trial defendant shall be subject to original charge, though first conviction was for lesser offense.

17. Before pardon or parole prosecuting officer shall have reasonable notice and opportunity to appear and be heard; public statement of reason shall be made five days before parole or pardon becomes effective.

18. Defendant shall remain in custody on appeal unless in opinion of Court there is reasonable ground for appeal; appellate court shall also have power to issue such certificate, on application.

19. (a) Plea of insanity shall be presented ten days before trial; (b) If defendant appears to the court, or is claimed, to be insane at time of trial he shall not be tried but confined in a proper institution; if later found sane, he shall be tried, without prejudice by lapse of time; (c) If insanity at time of commission of offense is claimed Judge shall call qualified experts, not exceeding three, and shall present names and addresses of experts to both sides, but this shall not preclude calling of other experts by either side; (d) If jury finds defendant was insane at time of an act or omission, but did the act or made the omission, it shall return a special verdict "that the accused did the act or made the omission but was not guilty of the crime charged by reason of his insanity"; (e) If such special verdict is found, the Court shall immediately order inquisition to determine if defendant is insane and a menace to public safety; if found sane he shall be discharged, if not, he shall be committed to proper institution.

20. No dismissal after indictment or information except on written statement of prosecutor, giving reasons; Court may refuse to dismiss or order further investigation, and may appoint special prosecutor.

APPEALS IN CRIMINAL CASES

A prominent practitioner in the northern part of the state, in a private letter to the Secretary, expressed himself with such force and clearness in regard to the recommendations of the Missouri Survey Committee (published last month) that his remarks are printed, notwithstanding the designated private nature of the communication. They relate to the portion of the report which advocated no reversal except when it appeared that there had been a miscarriage of justice, and are, in part, as follows:

"It would appear to me that if competent testimony offered by defendant is ruled out and incompetent testimony admitted and the jury misdirected on questions of law that, manifestly, there has been a miscarriage of justice. In other words, that the defendant has been deprived of a legal trial before a jury. If the appellate court is allowed to guess what the jury would have done if they had had before them competent testimony that was ruled out and had been properly instructed on the law of the case, the conviction rests not on the verdict of a jury but on pure guess of the members of the appellate court. A jury trial means, if it means anything, a trial before a jury free from erroneous

instructions on the law and all proper testimony admitted and improper rejected.

"The remedy for error of a trial court is not to place on an appellate court the burden of a trial de novo in a criminal case. A trial de novo in the appellate court deprives a defendant of his right to a jury trial. When the appellate court ceases to be a court of error and becomes one to determine whether or not, if the jury had been properly instructed in the law of the case and improper testimony ruled out and competent testimony admitted a verdict of guilty would nevertheless have been returned, it comes mighty close to a trial de novo in the appellate court. The remedy is (1) adequate salaries for trial judges; (2) nomination of candidates for the bench in judicial conventions; (3) sufficient judges to handle the work without undue haste."

JUDICIAL COUNCIL LEGISLATION

President McIntyre has announced the appointment of the following members of the Bar to confer with the Judges on the form of the bill to be presented to the Legislature for the establishment of a Judicial Council: C. L. Young, Bismarck, Chairman; A. W. Cupler, Fargo; W. F. Burnett, Fargo; W. H. Stutsman, Mandan; and Alfred Zuger, Bismarck.

Copies of all Judicial Council acts in force in other states are being distributed to the members of this committee and the Supreme and District Court Judges, and a joint meeting of the Committee and the Judges will be held at Bismarck on or about the 30th of November.

Chief Justice Christianson's plans for this meeting include the presence of Dr. Hickson, the Chicago expert to whom Judge Olson so frequently referred during his attendance at the annual meeting, which indicates quite clearly that whatever is done is going to be done with the view of covering the whole field of the administration of criminal justice.

LOCAL STATE COUNCILS

The Vice-President and members of the local council of the American Bar Association for the State of North Dakota have been announced as follows:

C. L. Young, vice-president and chairman, Bismarck;
John Knauf, Jamestown;
W. A. McIntyre, Grand Forks;
E. B. Goss, Minot;
L. R. Nostdal, Rugby.

WORKMEN'S COMPENSATION DECISIONS

A physician's testimony that disease might have resulted from the employment may be considered to corroborate other testimony, but is insufficient alone to warrant an award.—Madore vs. New Departure Mfg. Co., 134 Atl. 259 (Conn. July, 1926).