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Legislation

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agreement that they should adopt her, and rear, nurture and educate her, and that she was to be as their own child, and at their death to receive or be left all the property which they might own. She lived with them until they died, some ten years afterward, took their name, did not recognize or know her own father and mother in the true relation, but knew them as, and called them uncle and aunt, and knew and recognized her uncle and aunt as father and mother. The uncle and aunt died possessed of real estate in the city of Omaha, the title to which they did not, either by deed or will, transfer to the child. *Held,* that there was such a part performance of the contract by the parties thereto as entitled her to a decree giving her title to the property by way of specific performance of the contract." The child was never legally adopted. In support of the conclusion reached, the Nebraska court cited the following cases: *Van Dyne v. Vreeland;*[2] *Van Tine v. Van Tine;*[3] *Johnson v. Hubbell;*[4] *Wright v. Wright;*[5] *Shahan v. Swan;*[6] *Sutton v. Hayden;*[7] *Sharkey v. McDermott,*[8] from which last named case, the court quoted: " 'An agreement by a man and his wife to adopt a child, provide and care well for her, and leave her their property at their death, performed on the part of the child, is enforceable as to the property on their death'."

Since the decision in *Kofka v. Rosicky* the rule therein announced has been followed by the Nebraska court in the following cases: *Moline v. Carlson;*[9] *O'Connor v. Waters;*[10] and *Lacy v. Zeigler;*[11] and in many other cases. Of course, the proof to establish such an oral agreement must be clear and convincing. The degree of proof is the main point of difference in the decisions.

William M. Cain.

LEGISLATION

FIFTY-SEVENTH GENERAL ASSEMBLY IN ILLINOIS—"PUBLIC ENEMIES" ACT.—When the law-making body of Illinois convenes in its fifty-seventh general assembly this January at Springfield it will be confronted with the problem of legislating Illinois back to lawfulness. At first blush, this appears to be a herculean task, but, when one considers that proposals clearly indicating the needed reform are awaiting

2 11 N. J. Eq. 370 (1857), on rehearing 12 N. J. Eq. 142.
3 15 Atl. 249, 1 L. R. A. 155 (1888).
4 10 N. J. Eq. 332 (1855).
5 58 N. W. 54, 23 L. R. A. 196 (Mich. 1894).
6 48 Oh. St. 25 (1891).
7 62 Mo. 101 (1876).
8 91 Mo. 655, 4 S. W. 107, 60 Am. Rep. 270 (1882).
9 92 Neb. 419, 138 N. W. 721 (1912).
10 88 Neb. 224, 129 N. W. 261 (1911).
11 98 Neb. 380, 152 N. W. 792 (1915).

the advent of Illinois' Solons at the Capitol, it loses some of its difficult aspects. Substantial reform will be accomplished in Illinois if proposed bills only survive the legislative axe.

For the past six months in Illinois, more particularly in Cook County, there has been an unprecedented movement to improve both its civil and criminal law. Allowing for the ordinary interest in reform that the proximity of a legislative session stirs up, there remains a degree of agitation for reform that is singular. What is, perhaps, most significant about the present movement is that it truly reflects the dissatisfaction of the community with the codified law of Illinois.

From the volume of the appeal and the sources from which it springs, the desire for reform seems to be quite universal. Various committees have drawn up proposals for submission to the legislature and, in order to insure their acceptance, have secured influential representatives to sponsor them in the Assembly. The Illinois and Cook County Judicial Advisory Councils are pressing a plan to simplify criminal procedure. Members of the bench and bar graciously have lent their legal sagacity to the movement and have aided materially by drafting proposals in a manner consonant with constitutional law. By their united efforts these committees, judges, and lawyers have made the way to reform as clear as daylight.

Not every suggested bill merits the consideration of the legislators. Some, of course, will be deservingly relegated to the scrap-heap. But, for the most part, the measures having to do with reforming criminal law and procedure are worthy of consideration. Among the list of suggested bills can be found proposals for repeal from the statute books of noxious laws, and, on the other hand, there are proposals which seek the passage of legislation to cover conditions which have been shamefully neglected.

An example of the former type of proposal is the suggested bill for repeal of Illinois' Prohibition and Search and Seizure laws. Last November by more than a two to one majority the electorate of Illinois voted to repeal the Prohibition and Search and Seizure laws. The removal of these laws from the statutes will not only accord with the expressed desires of the people, but also will correctly reflect the anti-Volstead sentiment of that state. No one will deny that such a proposal should be adopted by the legislature, and there are a host of other bills ready for introduction which deserve similar action.

The other type of proposal referred to is that which seeks the passage of a law to cover conditions which are desperately in need of regulation. There are many such proposals ready for presentation to the legislature. One in particular warrants special mention. The notoriously despicable crime situation existing in Chicago occasioned its creation. The remedial effect it unmistakably will have justifies its passage as an emergency measure.

Reference is made to a proposed bill entitled, "An Act Against Public Enemies." The bill was drafted by James G. Condon, once an assistant state's attorney, and one who is well acquainted with the unsatisfactory condition of the Illinois criminal code. Passage of this act would put a law on the Illinois statute books to which the class of criminal recently stigmatized by the Chicago Crime Commission as "public enemies" would be amenable.

The present criminal code of Illinois is all inclusive in its enumeration of crimes, yet gangsters, commonly known to be calloused criminals, are daily flouting the law because they do not fall within its condemnation. Although publicly known to be arch-criminals, it is highly impractical to indict them since the evidence necessary to conviction cannot be adduced. Naturally enough the result is that these "public enemies" are left to ply their unlawful trade, distressing the people and discrediting the State of Illinois.

In Chicago an attempt has been made to supply this deficiency of the code by Municipal Judge Lyle. His plan was to bring "public enemies" within the definition of the vagrancy law in Illinois. This law [1] as set out in the criminal code is, technically speaking, broad enough to allow prosecution of "public enemies," and in a few instances, notably James "Fur" Sammons case, the state was able to secure conviction of this class of criminal under its terms.

The incongruity of prosecuting millionaire gangsters for vagrancy, however, was too striking to render this legal fiction (and it was nothing more) effective. Denominating one a vagrant who on a minute's notice could furnish, if necessary, a bail bond of one-hundred thousand

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[1] "All persons who are idle and dissolute, and who go about begging; all persons who use any juggling or other unlawful games or plays; runaways; pilferers; confidence men; common drunkards; common nightwalkers; lewd, wanton, and lascivious persons in speech or behavior; common railers and brawlers; persons who are habitually neglectful of their employment or their calling, and do not lawfully provide for the support of their families; and all persons who are idle or dissolute and who neglect all lawful business, and who habitually mis-spend their time by frequenting houses of ill-fame, gaming houses or tippling shops; all persons lodging in, or found in the night-time in out-houses, sheds, barns or unoccupied buildings or lodging in the open air, and not giving a good account of themselves; and all persons who are known to be thieves, burglars or pickpockets, either by their own confession or otherwise, or by having been convicted of larceny, burglary, or other crime against the laws of the State, punishable by imprisonment in the state prison, or in a house of correction of any city, and having no lawful means of support, are habitually found prowling around any steamboat landing, railroad depot, banking institution, broker's office, place of public amusement, auction room, store, shop or crowded thoroughfare, car or omnibus, or at any public gathering or assembly, or lounging about any court-room, private house of ill-fame, gambling house, or tippling shop, shall be deemed to be and they are declared to be vagabonds." Smith-Hurd Ill. Statutes Ch. 38, sec. 578.

dollars seemed to the people of Illinois altogether absurd, and, however much it comported to the letter, manifestly is opposed to the spirit of the vagrancy law. As a result conviction under the vagrancy statute only served to bring criticism upon the courts. Latterly, this attitude of the people has been reflected in the verdicts of juries impanelled to hear vagrancy cases.

Moreover, a recent decision [2] of the Supreme Court of Illinois, fixing five thousand dollars as a reasonable bail in vagrancy cases, took more teeth out of the vagrancy statute, at least, as related to "public enemies." Five thousand dollars, a paltry sum to even less successful gangsters, was readily advanced by associates of "public enemies" to put them at large. While a bail bond of one-hundred thousand might secure the appearance of gangsters for trial, the amount fixed by the Supreme Court of Illinois is wholly inadequate for that purpose. Few "public enemies" would give the forfeiture of five thousand dollars a second thought.

It is to furnish a solution for the problem of preventing justice from being thwarted by "public enemies," and to supply the deficiency of the criminal code of Illinois that James G. Condon has drafted his plan for presentation to the Assembly. That it will, if accepted by the legislature, accomplish its purpose is undeniable. A cursory glance at some of its provisions will remove any doubt as to its merit.

In substance the Act provides that any lawless and notorious character accustomed to live by rule of the gun shall be considered a public menace by merely appearing in the street. To assure its being upheld by the courts, however, a number of specific overt acts, such as, intimidation of witnesses, perjury, bail jumping, etc., are set out in the body of the Act. There is also an emergency clause attached to the proposed bill which will make it effective as soon as it is signed by the governor, provided, of course, that it is passed by the Legislature.

Under the provisions of the "Act Against Public Enemies," any notorious gangster who is guilty of any of the specific overt acts set out in its body, can be prosecuted for the crime of being a public enemy. The legislature may fix as severe a penalty for the crime of being a "public enemy" as it deems advisable. Under the Vagrancy statute the maximum penalty is imprisonment at hard labor for six months, or a fine of one hundred dollars ($100.00).[3] Further than that, such a statute would not be governed by the ruling of the

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[2] People ex rel Sammons v. Snow, Bailiff, et al., 173 N. E. 8 (1930).

[3] Smith-Hurd Ill. Statutes, Ch. 38, sec. 579.

Supreme Court of the state in *People ex rel Sammons v. Snow*,[4] and, therefore, a bail bond which would reasonably assure the appearance of the accused could be fixed. In fine, it is a logical way of preventing further thwarting of justice by the "public enemy." This type of law deserves a niche in the statutes of every state in the Union. It would unmistakably grace the criminal code of Illinois.

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PROPOSED LEGISLATION—INDIANA.—According to press reports, the Indiana State Bar Association recognized the deplorable inadequacies in the administration of justice in this state, and recommended two remedies. One was that the judges should be elected without reference to their political allegiance, and the other that the Supreme Court should be empowered to adopt rules of procedure. Experience shows that both these expedients have been futile. With a non-partisan judiciary, it is well nigh impossible to rid the bench of barnacles; and, though the Supreme Court be given plenary power to formulate rules of procedure, it will not do so, finding it easier to fall in with the existing rules with which most of the bar is familiar than to make new ones. What the legislature could do is to abolish the intermediate Court of Appeals, and provide for a Supreme Court Commission, appointing the present judges of the Appellate Court to be members of such commission, and then require the judges to sit in divisions. Experience has demonstrated the feasibility of that plan, and it can be put in operation without any constitutional amendment.

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PROPOSED LEGISLATION—NEBRASKA.—The Attorney General of Nebraska has announced that he has had bills drafted for introduction in the legislature making certain changes in the criminal procedure. These bills contemplate the following:

To give the prosecution the right to comment upon the failure of the defendant to testify in his own behalf.

To give the state an equal right with the defendant for a change of venue.

To make bail bonds a lien upon the surety's property.

That pleas of insanity be determined by the court, after being advised by experts of its own appointment as well as those presented by the state or the defense.

That no minor can plead guilty to any criminal offense without the advice of his parents or guardian.

It seems that the wisdom of some of these proposed changes may be approved, and of others questioned. As to the first, likely the defendant's silence, in the face of the state's evidence, is a sufficient com-

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[4] *Supra* note 2.