Michigan Law Review

Volume 7 | Issue 2

1908

Note and Comment

Harry B. Hutchins
University of Michigan Law School

Edson R. Sunderland
University of Michigan Law School

MICHIGAN LAW REVIEW

PUBLISHED MONTHLY DURING THE ACADEMIC YEAR, EXCLUSIVE OF OCTOBER, BY THE
LAW FACULTY OF THE UNIVERSITY OF MICHIGAN

SUBSCRIPTION PRICE, $2.50 PER YEAR. 35 CENTS PER NUMBER

NOTE AND COMMENT

WHAT IS THE PRACTICE OF MEDICINE?—For a reasonably full consideration of this question the reader is referred to 4 MICH. L. REV., pp. 373-379, and 5 MICH. L. REV., pp. 181-183. Since those notes were written, other cases upon the subject have appeared, one of which may well serve as a basis for additional comment, the case of *Bennett* v. *Ware,* decided by the Court of Appeals of Georgia, May 7, 1908, and reported in 61 S. E. Rep. 546.

Bennett brought suit against Ware for malicious prosecution and false imprisonment, basing his action upon the facts that he had been arrested upon a warrant sworn out by Ware, in which he was charged with practicing medicine without a license, in violation of the statutes of the state, and that he had been discharged upon the preliminary examination. In addition to the averment of his arrest, imprisonment and discharge and that his prosecution was malicious and without probable cause, the plaintiff alleged in his petition that, at the time of his arrest, he was engaged in the "profession of healing diseases without the use of medicine, commonly and better known as a 'magic healer;'" that he "heals the sick without the use of medicine in any form or manner whatever by placing his hands

upon that portion of the body that is affected by pain, that this gift or magic power is given him direct from the Lord." He alleged further that, while he made no charges for his services, he accepted such gratuitous offerings as those whom he treated might desire to make; that as a result of his arrest he not only suffered great humiliation, but lost two days' compensation in "gifts," amounting to $25 a day, and the necessary expense of hiring a lawyer to defend him; that in fact he "lost almost his entire practice." To the petition a demurrer was interposed, the basis of the demurrer being that the allegations of the petition showed that the plaintiff was in reality practicing medicine without having complied with the provisions of the statute regulating admission to practice. It was claimed, therefore, that there was probable cause for the arrest and prosecution.

An essential question to be decided was as to whether or not the facts set forth in the petition showed that the plaintiff was engaged in the practice of medicine, as that term is used and defined in the statutes of the state. The majority of the reviewing court found that they did not and that, therefore, they did not show that he was violating the law regulating the practice of medicine in the state, but that, notwithstanding this conclusion, plaintiff could not sustain his action for malicious prosecution and false imprisonment, because "the question of law involved was sufficiently in doubt, in its application to his practice, to fully warrant a legal investigation of the question," the court saying that the defendant in instituting the criminal prosecution "was fully justified by the existence of probable cause" and that his act was without malice and in behalf of the public.

The argument upon which the conclusion of the majority of the court that the plaintiff was not practicing medicine, was based, involved a construction of that part of the medical law of the state that undertakes to define the practice of medicine. "The words 'practice medicine' shall mean," says the statute, "to suggest, recommend, prescribe or direct, for the use of any person, any drug, medicine, appliance, apparatus, or other agency, whether material or not material, for the cure, relief, or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound, fracture, or other bodily injury or any deformity, after having received or with the intent of receiving therefor, either directly or indirectly, any bonus, gift, or compensation." 1 Codes of Georgia, 1895, § 1478. It is declared further in § 1490 that "any person shall be regarded as practicing medicine or surgery, within the meaning of this article, who shall prescribe for the sick or those in need of medicine or surgical aid, and shall charge or receive therefor money or other compensation, or consideration, directly or indirectly." The statutes of the state recognize only three systems or schools of medicine, in that they provide only for the qualification of practitioners according to the requirements of the regular, the homoeopathic and the eclectic schools respectively. 1 Codes of Georgia, 1895, § 1482. The plaintiff had not qualified as a practitioner of either of those schools.

The argument of the majority opinion is, first, that as the statutes provide

for the admission to practice of those only who have prepared themselves according to the principles of some one of the schools recognized in the statutes, the object of the statutes is to protect the public from inadequately trained practitioners of those schools; in other words, "that only those who propose to practice medicine by one of the schools or systems recognized by the statutes of this state are required to have a license." And, secondly, it is contended in this opinion that the plaintiff, expressly disclaiming, as he did, the use of medicine in any form whatever, in his treatment of disease, did not by his practice bring himself within the definition of the practice of medicine contained in the statute given above. The words "or other agency," in the statute, following the words "drug, medicine, appliance, apparatus," it is argued, must mean an agency of like nature; that the word "agency" must be limited by the associated words. And in answer to the claim that such limitation would be improper, in view of the qualifying words immediately following the word "agency," namely, "whether material or not material," the majority opinion argues that while "it may be conceded that the words 'material or not material' are sufficiently broad to include at least every human or natural agency," it cannot with reason be contended that it was the intention of the legislation by the use of these words to bring within the provisions of the statute an agency that operates entirely independent of drugs and medicines and particularly one that is claimed by those who apply it to be divine or supernatural. "It is true," says the opinion, "that faith on the part of the sick is a potent influence in all treatment of disease; but can it be said that faith is an agency? Are the sick who may be cured by magnetism, mesmerism, or hypnotism cured by any medical agency; or is an answer to prayer such an agency and the person who prays practicing medicine? We cannot believe that the legislature intended to include in the practice of medicine what may be called psycho-therapeutics, or any form of the treatment of the sick which makes faith the curative agent. * * * The word 'agency,' even as qualified by the words 'material or not material,' was intended by the legislature to mean a substance of the general character of a drug or medicine, or surgical apparatus or appliance, the obvious purpose being to protect society against the evils which might result from the use of drugs and medicines by the ignorant and unskillful." The majority opinion calls attention to the fact that the construction of the statute urged by the attorneys for the defendant would bring within the statute practitioners of osteopathy and the further fact that several courts of last resort have held statutes similar to the one under consideration not to include such practitioners, the basis of the holding being the argument that it is inconsistent and illogical to contend that a method of treatment that absolutely excludes medicine and surgery from its pathology should be within the provisions of a statute that purports to regulate the practice of medicine and surgery. The cases cited in the opinion certainly hold that osteopathic practitioners are not within the medical statutes of the states in which the cases arose, and the wording of those statutes, so far as they are descriptive of what should be regarded as the practice of medicine, is not essentially different

from the wording of that part of the statute under consideration that is descriptive of the same thing. The cases cited undoubtedly support the reasoning and conclusions of the majority opinion. Other cases that tend to support the doctrine of the opinion, but which are not cited therein, are the following: *State* v. *Lawson* (Del. 1907), 65 Atl. Rep. 593, in which it is held that treatment by hypnotism or massage is not within a statute declaring a person to be a physician within the meaning of the act "whose business it is for fee and reward to prescribe remedies," etc., etc.; *Kansas City* v. *Baird*, 92 Mo. App. 204, in which it is held that a person practicing christian science is not within a statute providing that one "shall be regarded as practicing medicine * * * who shall profess publicly to be a physician and to prescribe for the sick." See, also, *Evans* v. *State*, 9 Ohio Dec. (Sup. C. P.) 222, 6 Ohio N. P. 129; *Regina* v. *Stewart*, 17 Ont. 4; *State* v. *Herring*, 70 N. J. L. 34, 56 Atl. Rep. 670.

Opposed to the strict construction of the statute that we find in the majority opinion is the more liberal and, as it seems to the writer, the more reasonable and logical construction given to it by POWELL, J., in what is essentially a dissenting opinion. His argument is that the legislative intent must have been to protect the public, all of the public, not only from the ignorance and fraud of those who are attempting to practice without authority according to the methods of schools that are recognized by the law, but, also, of those who are attempting to practice without license according to any method or system or without method or system, because such intent is clearly indicated by the words of the statute that define what shall be regarded as practicing medicine. The qualifying words that immediately follow the word "agency" in the statute, namely, "whether material or not material," must have been introduced, according to Judge POWELL, with the distinct purpose of making the statute reach all possible kinds of practice. If the definition had omitted these words, he says, "then the word 'agency,' under the rule of construction denoted by the phrase *'nosciter a sociis,'* would be held to mean some agency of the same nature as drugs, medicines and appliances, all of which are material agencies; but with the palpable purpose of forbidding any such construction, the legislature added the words 'whether material or not material.' Since in the practice of medicine, as popularly understood, and as regulated by the statutes of most states, only material agencies are used, it becomes manifest that the object of our statute was to regulate not only the ordinary practice of medicine, as it is usually subjected to regulation, but also every imaginable practice by which human ingenuity should be likely to undertake to palliate or cure."

An argument in favor of a liberal construction of a law like the one under examination may be drawn from the fact that such laws are passed undoubtedly with the idea that they are to serve as a protection to all classes of people from ignorant pretenders, whatever may be the form of the pretense. Common observation ought to convince one that there is quite as much necessity for protection from the results of superstitious practices in connection with the treatment of disease as from the pretentious

claims and irregular practices of quacks whose remedies are material. That the tendency in the courts at the present time is toward a liberal construction of the medical statutes, whenever such construction is possible, is quite apparent. It has been held, for example, that osteopathy is the practice of medicine within the medical acts of Alabama, Nebraska and Illinois. See *Bragg* v. *State,* 134 Ala. 165, 32 South. Rep. 767; *Ligon* v. *State,* 145 Ala. 659, 39 South. Rep. 662; *Little* v. *State,* 60 Neb. 749; *People* v. *Gordon,* 194 Ill. 560. In Ohio, while the Supreme Court in the case of *State* v. *Liffring,* 61 Ohio St. 39, held that the practice of osteopathy was not within the medical statute then in force, which provided that one should be regarded as practicing medicine who should "for a fee prescribe, direct or recommend for the use of any person any drug or medicine, or other agency" for the treatment, cure or relief of disease, etc., the word "agency" being limited in its meaning by the associated words "drug or medicine," yet in the subsequent case of *State* v. *Gravett,* 65 Ohio St. 289, the same court held the practice of osteopathy to be within the amended medical statute which provided that one should be regarded as practicing medicine within the meaning of the act who prescribes or recommends for a fee for like use "any drug, medicine, appliance, application, operation or treatment, of whatever nature, for the cure or relief," etc., etc. For notes upon statutes regulating the practice of medicine, with particular reference to the practice of osteopathy, 1 MICH. L. REV., pp. 309-315; 2 MICH. L. REV. pp. 51-53. In *People* v. *Allcutt,* 117 N. Y. App. Div. 546 (affirmed 189 N. Y. 517, 81 N. E. Rep. 1171), it was held that one practicing what he called "mechano neural therapy," a non-medical system of practice, was within the law regulating the practice of medicine and surgery. See, also, *O'Neil* v. *State,* 115 Tenn. 427, 3 L. R. A. (N. S.) 762, and note in which reference will be found to several cases that indicate a tendency toward a liberal construction of the medical acts. Moreover, a reference to recent legislation upon the subject will reveal a decided tendency to use comprehensive and far-reaching terms in describing what shall be regarded as the practice of medicine.

H. B. H.

THE EXTENT OF THE LAND TO WHICH A MECHANICS' LIEN ATTACHES.—The statutes of the various states which define the scope and extent of mechanics' liens differ somewhat in respect to the quantity of land subject to such lien. Some arbitrarily limit it to a specified number of city lots or acres, but many statutes provide that the lien shall attach to the lot or land upon which the building or other improvement is situated, or to so much contiguous land as is necessary for the convenient use of the building. In most cases no difficulty arises in applying these provisions, but the terms are evidently loose and general, and it is frequently a very nice question how much contiguous land shall be subject to the lien.

A recent decision in Michigan has dealt with one of these difficult cases. Outside the city of Jackson there is a sand-hill, which was plotted into city lots by some ambitious promoter. Subsequently a company was formed to

manufacture brick from this sand. It bought some two hundred of these lots, lying in a single tract, and a factory was put up on three of them. The plan of the company was to take sand from the hill, make it into brick, and, when the hill had been sufficiently cut down, sell the lots for residence building sites. The plaintiff, whose material went into the factory building, sought to include in his lien all the lots upon which there was sand useful in the operation of the brick factory. The Circuit Court held that inasmuch as the factory could not operate without the sand and had been located there because of it, the lots which contained sand must be deemed part of the land upon which the factory stood for the purposes of the lien, and the lien was accordingly extended over about fifty-nine lots. But the Supreme Court held that the lien law was capable of no such comprehensive application to contiguous property, and limited the lien to the lots upon which the factory actually stood. *Adams* v. *Central City Granite Brick & Block Co.* (1908), — Mich. —, 117 N. W. 932.

This decision is in line with several other recent cases in other jurisdictions where similar attempts were made to embrace all the adjoining land used in connection with the business conducted in a certain building under a lien placed upon such building.

In *Colorado Iron Works* v. *Taylor,* 12 Col. App. 450, a mechanics' lien upon a mill was claimed to extend to certain contiguous lode mining claims owned by the mill-owners, for the development of which the mill had been erected. But under a statute which extended the lien to so much land as was necessary for the convenient use and occupation of the structure, the claim was rejected. In *Cowan* v. *Griffith,* 108 Cal. 226, it was sought to have a lien upon a hotel and saloon extended to a surrounding tract of land known as the "Fair Grounds," which was furnished with race-track, training-stables, grand-stand, corrals and similar improvements, and was used as a means for furnishing business for the hotel and saloon. But the action of the trial court in decreeing this extensive lien, under a statute similar to that of Colorado, above noted, was not sustained on appeal, although it appeared that the value of the hotel and saloon was largely dependent upon the operation of the adjoining attractions. In *Filston Farm Co.* v. *Henderson & Co.,* 106 Md. 335, a private school building stood upon a large tract of farming land, which land was used for the support and maintenance of the school. Without the land the school building would have been largely worthless. The statute permitted the lien to extend to so much adjacent land as might be necessary for the ordinary and useful purpose of the building. But it was held that a lien upon the building could not embrace the surrounding farm.

On the other hand, there are decisions, under similar statutes, in which a much more liberal view has been taken of the scope of such a lien. A recent case in New Mexico, *Stearns-Roger Manufacturing Co.* v. *Aztec Gold Min. & Mil. Co.* (1908), 93 Pac. 706, is almost identical in its facts with the Colorado case cited above, and the statute was the same as the Colorado statute, yet the court held that the mine was subject to the lien on the mill

because the mill was erected to reduce the ores taken from the mine and was dependent for its value upon the mining operations. This decision was based upon a similar case, under the same statute, decided by the Supreme Court of the United States, *Springer Land Association* v. *Ford*, 168 U. S. 513, where a lien for the construction of an irrigation ditch was extended not only to the strip of land sixty feet wide and twenty-six miles long which was actually occupied by the ditch, but also to all the land owned by the ditch company which the ditch was constructed to benefit.

The question involved, while an interesting and important one, seems to belong to that class in which no general rule is capable of formulation. Individual cases will receive special treatment according to their special facts. Logical analysis appears equally favorable to both constructions, and the above decisions give a wide enough range of precedents to suit the most exacting taste. E. R. S.

MAY A MURDERER ACQUIRE PROPERTY FROM HIS VICTIM BY DESCENT OR DEVISE?—The increasing frequency with which courts of last resort are being called upon to determine whether or not a murderer, or one claiming through him, is entitled to claim property coming either by devise or by reason of the statutes of descents from his victim affords students of our moral progress food for thought. Within the past twenty years nine such cases have been decided, while there seems to be no record of any case involving the precise question prior to 1888. But aside from the ethical question, there is, to lawyers, another most interesting question involved, namely, can the murderer, who has committed the crime for the purpose of possessing himself of the deceased's property, succeed thereto, whether by will or otherwise, the statutes of the state in which the question arises making no exceptions covering such cases?

It seems that the first of the reported cases is *Owens* v. *Owens*, 100 N. C. 240, 6 S. E. 794, decided by the Supreme Court of North Carolina in 1888. In that case a widow, who had murdered her husband, filed an application to have dower assigned her. The court, while expressing the most profound abhorrence and horror for the deed and the result which their interpretation of the law led to, concluded that since the terms of the statute were plain and unambiguous, leaving no room or excuse whatever for construction or for the incorporation of an exception not therein contained, the widow must be allowed her dower estate. The court also argued that by holding otherwise they would be subjecting the widow to an additional punishment by way of forfeiture, which would be contrary to their constitution. In 1890 the Nebraska Supreme Court considered the case of *Shellenberger* v. *Ransom*, 31 Neb. 61, 47 N. W. 700, 10 L. R. A. 810, 28 Am. St. Rep. 500, and decided that the plaintiffs, who claimed through a conveyance from a father who had murdered his daughter for the purpose of securing the title to the property so conveyed, were not entitled to the estate. In reaching its conclusion the court depended largely upon the case of *Riggs* v. *Palmer*,

infra. A rehearing was granted, however, and a second opinion rendered. This second opinion, reported in 41 Neb. 631, 59 N. W. 935, 25 L. R. A. 564, appears to be by a Supreme Court commission and not by the same court that delivered the first opinion. In this second opinion the commission repudiates the decision first handed down, for the reason, as it appears, that the case of *Riggs* v. *Palmer,* upon which the first opinion was based, was in turn based largely upon *New York Mutual Life Ins. Co.* v. *Armstrong,* 117 U. S. 599, which case, in the view taken by the commission, did not support the conclusion reached in *Riggs* v. *Palmer. In Carpenter's Estate,* 170 Pa. St. 203, 32 Atl. 637, 29 L. R. A. 145, 50 Am. St. Rep. 765, decided in 1895, the facts seemed to be that a son had been convicted of murdering his father, and at the same time his mother had been convicted of having been an accessory after the fact. The court held, Judge WILLIAMS dissenting, that they were not, for that reason, prevented from inheriting the property of the father and husband. The reasons for this decision seem to be the same as given by the North Carolina court in *Owens* v. *Owens,* supra. In 1895 the Supreme Court of Ohio in *Deem* v. *Milliken,* 53 Ohio St. 668, 44 N. E. 1134, affirming without opinion 6 Ohio C. C. Rep. 357, in 1904 the Iowa court in *Kuhn* v. *Kuhn,* 125 Iowa 449, 101 N. W. 151, and in 1906 the Kansas court in *McAllister* v. *Fair,* 72 Kan. 533, 84 Pac. 112, 4 MICH. L. REV. 653, arrived at the same conclusions for practically the same reasons.

On the other hand, in 1889 the Court of Appeals of New York, reversing a judgment of the General Term of the Supreme Court, held, Judges GRAY and DANFORTH dissenting, that a devisee, who had murdered his testator for the purpose of securing the property, would not be permitted to take. *Riggs* v. *Palmer,* 115 N. Y. 506, 22 N. E. 188, 5 L. R. A. 340, 12 Am. St. Rep. 819. The conclusion of the court is based upon an implied exception to the statute of wills, that since at common law no one could profit by his own fraud or wrong and the result otherwise would be so contrary to the very nature and fitness of things, it must be presumed that the legislature could not have meant such an unusual and unjust result to follow from the literal terms of the statute. Accordingly the court, in effect at least, held that no title had passed to the murderer. A few years later the doctrine of this case was considered in the course of the opinion in a case not exactly like it as to facts, and the court then attempted to explain their holding in *Riggs* v. *Palmer* by stating that they had not held that no title passed by virtue of the will, but that the real result of the case had been to hold that the murderer, while holding the legal title, held it as trustee *ex maleficio* for the benefit of the heirs. *Ellerson* v. *Westcott,* 148 N. Y. 148, 42 N. E. 540. In the opinion in *Riggs* v. *Palmer,* Judge EARL, speaking for the majority of the court, refers to *Owens* v. *Owens,* supra, then just recently decided, and expressly refuses to follow it. The cases which have been decided since *Riggs* v. *Palmer* contrary to its doctrine have either expressly refused to follow it or have distinguished it on the ground that the rule regarding devises and bequests under a will may well be different

from those cases in which the title descends by virtue of the statute alone. For instance, the Kansas court, in *McAllister* v. *Fair,* supra, says: "There is a manifest difference, however, between private grants, conveyances and contracts of individuals and a public act of the legislature." In *McKinnon* v. *Lundy,* 24 Ont. Rep. 132, afterward affirmed under name of *Lundy* v. *Lundy* (1894), 24 Can. Sup. Ct. 650, the court held that a devisee who feloniously caused the death of his testator was not entitled to take the property, and that it makes no difference that the claimant is convicted of manslaughter and not of murder. The first and apparently the only case which has squarely followed the principle of *Riggs* v. *Palmer* is *Perry* v. *Strawbridge,* 209 Mo. 621, 108 S. W. 641, decided in February, 1908, and commented upon in 7 MICH. L. REV. 71. In that case it seems a husband murdered his wife, later committing suicide; the case arose through a contest between the heirs of each claiming the estate of the murdered wife. The court, in an excellent opinion written by Judge GRAVES, an opinion admirable for its clearness and persuasive argument, held that though by the *statute* the heirs of the *husband* should take the estate, still the heirs of the *wife* should, under the facts presented, inherit. That at common law a murderer could not inherit from his victim or derive profit from his crime; that the statute of descents and distributions is largely a mere declaration of the common law; that to give the statute the force of vesting the title in the murderer would be to give it the effect of changing the common law; that statutes in derogation of the common law must be strictly construed and that these are such cases as the court should not ascribe to the legislature an intent to change the common law, the statute being not a specific enactment that murderers should inherit, but rather an intent to make the statute, so far as it goes, a mere declaration of the common law, leaving it in other respects with the same incidents and exceptions as existed and were by it recognized, seems to be the course of the argument of the court in reaching its conclusion. The court then cites a number of cases as illustrations of the fact that it is well settled doctrine that a court will often disregard the strict letter of the law, when to follow it literally would be to reach a result abhorrent to reason. Lack of space forbids our noting more in detail the cases cited for this purpose, for they seem to support the Missouri court. Among the cases so cited, however, are *Sams, etc.,* v. *Sams, Admr.,* 85 Ky. 396; *Church of the Holy Trinity* v. *United States,* 143 U. S. 457; *Venable* v. *Railroad,* 112 Mo. 103; *Chouteau* v. *Railroad,* 122 Mo. 375; *Keeney* v. *McVoy,* 206 Mo. 42.

The most recent case, however, is *Wellner* v. *Eckstein,* — Minn. —, 117 N. W. 830, decided September 25, 1908, in which the court considers whether a widow, who has murdered her husband for the purpose of securing his property, may inherit under the Minnesota statute of descents. Because a majority of the court were of the opinion that the case should be disposed of on another ground, the point was not definitely settled in the law of that state. Chief Justice START wrote an opinion, in which Judge BROWN concurred, expressing the view that the widow should

inherit because the terms of the statute were plain and unequivocal. Judge ELLIOTT wrote an opinion, in which Judge JAGGARD concurred, expressing the view that she should not inherit, or, if she does inherit, that she should be held a trustee *ex maleficio* for the benefit of the other heirs. Judge LEWIS, the fifth member of the court, does not express himself unqualifiedly, being of the opinion that the case should be disposed of on the other ground, but seems to lean toward the view taken by Judges ELLIOTT and JAGGARD. Judge ELLIOTT'S opinion is a forceful expression of the reasons why the court should hold the claimant a trustee *ex maleficio,* thus giving effect to the language of the statute and still, at the same time, preventing a profit from being derived from the crime. The opinion concludes: "In my judgment, the widow acquired the naked legal title to this real estate, subject to the power of a court of equity to deprive her of its beneficial use and require its conveyance as justice and equity demand," etc.

There seems to be no doubt that at the common law the rule was that a murderer could not succeed to the title to property left by his victim or derive benefit from his crime. This was the civil law rule. DOMAT, part 2, book 1, tit. 1, par. 3; CODE NAPOLEON, par. 727; MACKELDAY'S ROMAN LAW, 530, 550. That this was the rule at common law see *Box* v. *Lanier,* 112 Tenn. 393; WHARTON ON HOMICIDE, § 665 (3rd Ed.), and cases cited.

To hold that the murderer takes both the legal and equitable estates shocks the moral sense of everyone, and it is much to be desired that some way, consistent with legal or equitable principles, be found by which such result may be avoided. To our mind the opinion of Judge GRAVES in *Perry* v. *Strawbridge,* supra, concluding that no title passes, presents arguments almost unanswerable; but in case the court should not feel inclined to disregard what are apparently the plain and unambiguous terms of the statute by giving it the construction then adopted, there seems no good reason why the view expressed by Judge ELLIOTT in *Wellner* v. *Eckstein* should not be adopted, holding the murderer a trustee *ex maleficio.* Naturally the surest way of obviating all difficulty would be the enactment of statutes in the various states, as has already been done in a few. See 4 MICH. L. REV. 653. R. W. A.

ONE WAY TO PREVENT SOME OF THE "LAW'S DELAYS."—In view of discussions concerning "The Law's Delays" which have been had before several Bar Association meetings lately, the case of *In re McHugh,* 116 N. W. 459, decided by the Supreme Court of Michigan, is of interest. In this case two attorneys had been summoned by the trial court to answer a charge of contempt in failing to appear in court on the day set for the trial of one accused of murder whose defense they had undertaken, their failure to appear being alleged to be "for the purpose of obstructing the course of justice." After a hearing they were found guilty of contempt and each was fined two hundred and fifty dollars, one of them being sentenced, in addition, to imprisonment for thirty days. The Supreme Court affirmed the contempt proceedings of the trial court.

It was urged that the sentences were unwarrantably severe, but the appellate court held that the amount of punishment must be determined by the trial judge from the facts as they were placed before him, and that it was not in excess of that provided by law.

The respondents seem to have sought delay upon pretexts and, shortly before the time set for the murder trial, left the jurisdiction of the court, apparently feigning illness, for the shores of Canada, across the Detroit river. When the circumstances of the case are considered the punishment, while perhaps a little unusual, does not appear too harsh.

While delays are often unavoidable, unquestionably too many have been caused by a failure of counsel to realize that they are officers of the court; that they are admitted to practice and entitled to special privileges for the purpose of enabling them to assist, rather than to impede, the judiciary in the administration of justice; and that their duty is especially to avoid deceit and subterfuge in their dealings with the courts. The courts, on the other hand, having full power in such cases to prevent unreasonable delays, too often neglect to exercise it. Such cases as this afford a salutary example to both bench and bar.

As Mr. Cockran well said in his recent address before the Ohio Bar Association: "Delays will be ended when bench, bar, and community realize that to delay justice is but one shade less corrupt, criminal and debased than to sell justice."