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PRESS COMMENT UPON TRIALS

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DURING recent years the American press have indulged increasingly in comments upon issues which have fallen within the jurisdiction of the courts for trial. In so doing, in many instances, they have seriously impeded the administration of justice. The English courts have never tolerated such action, but in America, either through ignorance, fear, inertia or too great an adherence to the constitutional principle of liberty of speech, our judges have been overindulgent. The deplorable conditions of the Hauptmann trial are an example of how this laxity disgraces important trials with the aspect of a Gilbert and Sullivan comic opera.

A most interesting article was published upon this subject and the trial in the May number of the American Bar Association Journal. It was also discussed by a member of our own bar in Denver. That there is no privilege of the press to comment upon facts or persons connected with an issue at trial, or about to be tried, is well established in America as well as in England and should be well known. This is especially true in Colorado in view of the decisions of the Supreme Courts of Colorado and the United States in the Patterson case. But there are also decisions in many other states, some of which may be found in 13 Corpus Juris 34, clearly stating that any comment or conduct of such a nature as may tend to impede the proper administration of justice is contempt of the court which has jurisdiction of the matter.

It would seem that no necessity exists for discussing this well known rule. But a situation which arose recently in the Juvenile Court disclosed an ignorance of the law. And the history of criminal cases in Colorado and the comments thereon of the Denver press indicate that there is a striking need for education and reform by our courts.

In September an issue of dependency was tried in the Juvenile Court before a jury concerning the custody of the children of parents who had many times been the subject of unfavorable comment in the press. The petition had been filed upon July 8, 1935, and when a jury trial was demanded the court issued an order detaining the children pending the trial. During these proceedings, articles commenting rather freely upon the history of the family appeared in the press.

They might have been the cause of an action of contempt against publishers and reporters.

Because of these and former articles of like nature, the attorney for the father moved for change of venue on the ground that the entire city, the judge and the officers of the court were prejudiced. The motions were denied. Two jurors from the panel, however, were successfully challenged for cause, and several others admitted having read articles but denied prejudice.

During the first day of the trial, representatives of the press were present. It was certain the case would last several days and cost the city at least $300. In order to save expense the jury must be released at adjournments. The court therefore warned the reporters that no editorial comments or anything but factual statements would be permitted. The order was strictly complied with after the warning, but the reporters for both papers came into chambers and expressed astonishment at the ruling, inquiring upon what legal authority the order was founded. Both stated they knew of no such *statute* in Colorado.

In People vs. News-Times Publishing Co., 35 Colo. 254, the publisher, Patterson, was punished for criminal contempt for the publication of disparaging comment upon the decision of the Supreme Court justices in a case still pending upon a petition for rehearing. Upon pages 360 to 381 of the long opinion there is a discussion of authorities. The court quotes with approval from its decision in the case of Cooper vs. People, 13 Colo. 337, wherein the judge's character had been attacked in a publication in connection with a case pending, the following language:

"Parties have a constitutional right to have their causes tried fairly in court by an impartial tribunal uninfluenced by newspaper dictation or popular clamor. What would become of this right if the press may use language in reference to a pending cause calculated to intimidate or unduly influence and control judicial action? Days, and sometimes weeks, are spent in endeavoring to secure an impartial jury for the trial of a case; and when selected, it is encumbent upon the court to exercise the utmost care in excluding evidence of matters foreign to the issues involved, so that the minds of the jurors may not perchance be unduly biased or prejudiced in reference either to litigants or to the matters upon trial; but if an editor, a litigant, or those in sympathy with him, should be permitted through the medium of the press by promises, threats, invectives, sarcasm, or denunciation to influence the result of

the trial, all the care taken in the selection of the jury, as well as the precaution used to confine their attention at the trial solely to the issues involved, will have been expended in vain."

In the Patterson case, at pages 392 to 394, it was also decided that truth is no defense to the charge of contempt. Publications of such a nature may amount to contempt at any time after issuance of a warrant in a criminal case, or of a writ or the filing of a complaint or petition in a civil cause:

State vs. Howell, 80 Conn. 668, 69 Atl. 1057;
Globe News Co. vs. Com., 188 Mass. 449, 74 N. E. 682;
Rex vs. Parke, 2 K. B. 432.
But not after a cause is ended.
Patterson vs. Colorado, 205 U. S. 454;
Cooper vs. People, 13 Colo. 373;
But see Burdett vs. Com., 103 Va. 838, 846, 48 S. E. 878.

In Patterson vs. Colorado, 205 U. S. 454, at 462, Mr. Justice Holmes expressed the following opinion:

"A publication likely to reach the eyes of a jury, declaring a witness in a pending cause a perjurer, would be none the less a contempt that it was true. It would tend to obstruct the administration of justice, because even a correct conclusion is not to be reached or helped in that way, if our system of trials is to be maintained. The theory of our system is that conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print. When a case is finished, courts are subject to the same criticism as other people; but the propriety and necessity of preventing interference with the course of justice by premature statement, argument or intimdation hardly can be denied."

The purpose of this article is not to analyze and exhaust the law upon the subject; it is too clear to require more than these brief examples. But to the writer it has appeared that the freedom exercised by the press without restraint by our courts endangers the fairness of our trials, exposes the public to expense from potential mistrials and tends to bring our places of justice into contempt. There is no reason to suppose that, with proper warning and education from the courts, the press will not cooperate in doing away with this mischief. No one would wish to see the liberty of the press curtailed except in instances where it impairs a more important right.