Denver Law Review

Volume 6 | Issue 6 Article 3

July 2021

# In This Corner, Gentlemen -

Dicta Editorial Board

# DICTA

Vol. VI APRIL, 1929 No. 6

## "IN THIS CORNER, GENTLEMEN—"

SOMETIME ago Dicta received the following interesting suggestion from one of its "constant readers", to-wit, the following:

"For Dicta to be useful, it must be interesting; and to be interesting, it must be human and not shrink from controversial subjects or confine itself entirely to heavy and sometimes somewhat dull articles.

Its function is not only informative but to be a medium of entertainment, fellowship and stimulus as well.

Now there are many points of view on many subjects among the five hundred and more good minds in the Denver Bar.

Why not encourage them to use "Dicta" as a sort of open forum through which they can let off their steam and thus make it a magazine not of mere oppressive dignity but one of sprightly, snappy family interest?

For example, suppose some contributor thinks he has a panacea for the alleged crime wave, believes that short skirts are the root of all modern evil, fancies that the church temperance society is wrecking the government, or believes that the automobile ought to be abolished by constitutional amendment.

Any one of these things or a thousand and one others would provoke discussion and perhaps acrimonious argument. But what of it?

The more of it the merrier! It will wake us up and keep the dust and cobwebs out of our legal brains."

On pondering over the above communication, Dicta arrived at the following conclusions:

First: That the reference to five hundred or more good minds in the Denver Bar was perhaps over-enthusiastic, but there could be no doubt that at least that many points of view exist on any given topic, regardless of its nature.

Second: That the entire idea possessed great merit.

These conclusions had not long been reached when the opportunity for action arrived, in the form of the following letter to the editor:

"Dear Sir and Brother:

There comes a time in the life of every lawyer, when he must either blow off steam or run the risk of apoplexy, and as I have never experienced, and am not seeking to experience, apoplexy, I take the alternative.

Recently some of the judges of our courts of record have refused to enter Findings of Fact in divorce cases where it appeared that the parties had not been married for a year or more prior to the hearing, notwithstanding the plaintiff may have had, and proved, perfectly good grounds for divorce, and was entitled to findings under the statute. More recently, it was reported in the newspapers that one of our District Judges had announced that it was to be his policy to refuse to enter findings under such circumstances until the year had passed.

It may be that the judges are able to justify such proceedings in their own minds, as a matter of public policy, and it may be that their ideas about public policy are right, but, if the inquiry is not too impertinent, what of the law and of the oaths the judges have taken—to support and defend the constitution and faithfully perform their duties, which I conceive to be the impartial application of the law to the facts of a particular case. There is no mention of public policy in the oath, and I have searched the constitution and statutes in vain for a provision transferring the determination of the public policy of the state from the legislature to the courts. I have even pried the sheepskin from the covers of the statute books, and peered within the dark recesses, but "It ain't there, Brother". I did find, however, a provision in the constitution requiring the judges of the District Court to suggest to the judges of the Supreme Court, on or before July 1st of each year, such changes in the law as they may deem necessary or desirable, which Court in turn is required to transmit its suggestions to the legislature.

Under our divorce statute no writ of error will lie to review such a proceeding in the Supreme Court, and mandamus, involving as it does the element of discretion, is of doubtful value. There remain but two other avenues of relief. The lawyer, if he doesn't like it, can hire a band and have a parade. His client, if she is not satisfied, can drink the hemlock.

Perhaps other members of the bar may have something to suggest. I should like to have the matter discussed, editorially, with dignity and moderation or otherwise, in Dicta."

Such being the statement of the case, Dicta will now proceed to discuss the same "editorially, with dignity and moderation, or otherwise".

It is a sad and regretable fact that many of our public servants have, in these softer and decadent times, fallen away from that stern and rigid adherence to truth, the law and the facts, which, for example, caused the reporter of the first volume of our Colorado Reports, in his preface, to state, irrespective of policy, the stark facts, as follows:

"All dissenting opinions will be found in their connection, and *when the bench was not full, the fact is noted.*"

It is also true that a great deal of inconvenience and annoyance is caused to a sweet young thing by the discovery that the gentleman on the bench has made Mr. Kipling's "—the woman that God gave him isn't his to give away", bilateral, so to speak. It is also true, and perhaps not unfortunate that, in the popular mind at least, a successful divorce plea depends more on the weight of the plaintiff than upon the weight of the evidence.

However, perhaps one of the most potent reasons supporting the attitude of the courts now under discussion is the feeling that such an attitude may have a tendency to discourage too hasty and whimsical marriage. If the rumor spreads abroad that a marriage means a minimum of a year of connubial bliss, perhaps the result will be a beneficial retardation. Against this, however, is the counter-argument, of undoubted weight, that under modern conditions, although a young man may not have known a girl as long a time as would have been deemed a requisite in the older, gentler days, yet he will have seen much more of her.

Dicta has not delved deeply into the books on the point of the power of the court to control its actions by the imposition of standards set up by its own construction of public policy. There is no question, however, that the court is sworn to uphold the constitution and to impartially apply and determine the law, even though the application be personally distasteful. There is also considerable basis to argue that Sec. 5406 of C. L. 1921, as amended in S. L. 1925, page 237, makes it mandatory upon the court to make and sign written findings of fact and conclusions of law within forty-eight hours of the conclusion of the trial. However, public policy may often shift or change the meaning or application of an apparently plain provision—"A word is not a crystal * * * but the skin of a living thought". For example, every attorney who has taken his oath as such has sworn, among other things: "I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly *debatable* under the law of the land". And the courts are charged with the duty of disciplining in-

fractions. Yet what lawyer would not resent being stopped short in his oratory by the court, on the grounds that he had alleged that his position was so strong as to be *undebatable,* and thereby had violated his oath and become subject to discipline.

It is the function of public policy and judicial discretion to check weasel words from creating destruction. Life, liberty and the pursuit of happiness are sacred, and no court can lightly encroach upon these inalienable rights. But, of course, it all depends upon whose rights, or rather, upon a balance of everybody's rights. For every predatory divorcee, hastily released by a kindly court, some hitherto protected individual must count a portion of his constitutional guarantees of life, liberty and happiness (though not the pursuit) dissipated and imperiled to that extent. On the other hand, for every finding and decree denied, life, liberty and the legal pursuit are, to that extent, curtailed as to one, or maybe both, of the now embattled spouses.

As to the two avenues left upon the denial of the judicial signature and findings, namely, for the attorney to hire a band and have a parade and the client to drink the hemlock,—there again the situation is, alas!, clouded. You no longer may have a parade without sanction from the City Fathers. And even then, you must have union musicians or the labor forces will descend upon you. Nor can the good old hemlock be as easily drunk as in the olden, golden days. Alas, even what one drinks may involve questions of the construction of constitutional limitations and public policy.

All in all, Dicta feels the best remedy for the curbed and fiery feminine petitioner is to machine-gun her erring spouse, stand a murder trial, syndicate her reactions, and, upon acquittal, marry the man she wanted in the first place. This system is simple; it is definite; it is permanent; it is far more speedy than the usual divorce method; and it conclusively silences protest from the ex-defendant in divorce. No appeals are possible. The publicity and wide friendships built up by the murder trial, if well managed, will yield substantial returns in lucre and proposals. And so will come the dawn!

Dicta, however, is willing to hear further upon this point, if its subscribers are desirous thereof.