

COMMENT ON RECENT DECISIONS

ATTORNEYS—STATUTORY CONTINUANCE OF TRIALS WHERE ATTORNEY IS ATTENDING LEGISLATURE—[Missouri].—In *State ex rel. Union Electric Light and Power Co. v. Sevier, Circuit Judge*,¹ the Supreme Court of Missouri considered the right of a trial judge to dismiss a case because of the failure of the plaintiff's lawyers to appear, when the court knew that the plaintiff's chief counsel was a member of, and was attending, the 58th General Assembly of the State of Missouri, then in session. *Held*: affirming the decision of the trial court, that Section 938 of the Revised Statutes of Missouri,² which provides for a continuance where counsel is a member of the Missouri Legislature, does not provide for an automatic continuance, but requires affidavit and application.

Section 938 has been before the public recently in connection with the St. Louis election fraud cases, in which the defendants retained a member of the General Assembly as counsel and thus secured a continuance. As the statute now stands, the allowance of the continuance is mandatory upon the trial judge, the statute having been so construed in *State v. Clark*.³ Some statutory provision of this nature is salutary in view of the preponderance of lawyers in the Missouri Legislature. Many of these lawyer-members cannot live on their salaries as legislators without keeping up private legal practice. At the same time, if the legislature is to function efficiently they cannot be spared from the Capitol to attend trials. The present statute becomes undesirable only when the privilege is abused, as in cases in which the retention of a member of the General Assembly as counsel is resorted to solely for the purpose of obtaining delay.

At the current session of the General Assembly, a bill⁴ was introduced

1. 98 S. W. (2d) 980 (Mo., 1936).

2. "In all suits at law or in equity or in criminal cases pending in any court of this state at any time when the general assembly is in session, it shall be a sufficient cause for a continuance if it shall appear to the court, by affidavit, that any party applying for such continuance or any attorney . . . of such party is a member of either house of the general assembly, and in actual attendance on the session of the same, and the attendance of such party is necessary to a fair and proper trial or other proceeding in such suit; and on the filing of such affidavit *the court shall continue such suit . . . etc.*"

3. 214 Mo. App. 536, 262 S. W. 413 (1924).

4. House Bill No. 75, 59th General Assembly. The bill would retain the greater part of the present statute, but would add the provision "that where the member of the general assembly shall be attorney or counsel for the defendant, and where the plaintiff, or the State in criminal matters, shall file an affidavit alleging that the member of the general assembly was employed as attorney or counsel after the convening of the general assembly, or has not been properly retained, or that there are other or previous counsel of record in the pending matter fully in possession of the law and facts and able to proceed with the defense of the matter, and that the entry of appearance of the member of the general assembly is for the sole purpose of hindering and delaying the administration of justice, the court

for the repeal of Section 938 and for the substitution thereof of a new provision which would make it discretionary with the trial judge to grant a continuance. Under such a statute, the court could weigh all the circumstances of the particular case before passing upon the motion for a continuance. The value of this discretion, particularly in cases in which there is a suggestion of bad faith, is evident.

Although it is difficult to see how this bill might adversely affect honest lawyers, it was killed in the House Judiciary Committee, and a motion by its sponsor that it be placed on the House Calendar for perfection failed to pass.⁵ Apparently the chief objection urged to the bill was that it applied only to lawyers retained by defendants. This objection hardly explains the defeat of the entire measure, as the defect pointed out could have been cured by amendment either in committee or by the House.

B. W. T.

CONSTITUTIONAL LAW—CRIMINAL SYNDICALISM LAWS—DUE PROCESS OF LAW: FREEDOM OF SPEECH AND OF ASSEMBLY—[United States].—The enforcement of the now increasingly important criminal syndicalism laws, an outgrowth of post-war problems,¹ was given a setback by a recent decision of the United States Supreme Court.² The defendant was indicted for violation of the Criminal Syndicalism Law of Oregon.³ The indictment did not charge the defendant with advocating the doctrine of criminal vandalism, but did charge him with having assisted in the conduct of a meeting held under the auspices of the Communist Party, which party, it was proven, advocated the outlawed doctrine. The meeting, which had been called for the purpose of discussing the treatment accorded the maritime strikers, was conducted in an orderly manner, and the majority of those attending it were not members of the Communist Party. The state court affirmed the conviction.⁴ On appeal: *Reversed*. Chief Justice Hughes, delivering the opinion of the court, added to his already impressive pronouncements protecting freedom of speech and of the press,⁵ by holding that the act as

shall set a hearing on the affidavit, not earlier than 10 days after the filing of such affidavit by the plaintiff, and upon the presentation of substantial evidence supporting the said affidavit, the court may direct that the trial proceed."

5. St. Louis Post-Dispatch, Feb. 18, 1937.

1. Note, Criminal Syndicalism Statutes Before the Supreme Court (1928) 76 U. of Pa. L. Rev. 198.

2. *De Jonge v. State of Oregon*, 57 S. Ct. 255 (Jan. 4, 1937).

3. Oregon Code 1930, secs. 14-3, 110 to 14-3, 112, as amended by chap. 459, p. 868, secs. 1 to 3, Oregon Laws 1933. Section 14-3, 110 reads: "Criminal syndicalism hereby is defined to be the doctrine which advocates crime, physical violence, sabotage, or any unlawful acts or methods as a means of accomplishing or effecting industrial or political change or revolution."

4. *State v. De Jonge*, 152 Ore. 315, 51 P. (2d) 674 (1935).

5. See Chief Justice Hughes' opinions in the following cases: *Stromberg v. California*, 283 U. S. 359, 51 S. Ct. 532, 75 L. ed. 1117, 73 A. L. R. 1484