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Notes

NEED OF SIMPLIFIED FORM OF INDICTMENT

One of the reforms suggested by the Missouri Association for Criminal Justice was the substitution of a brief, simplified form of indictment for the long, cumbersome, involved common law indictment now used in this state. By way of illustrating what this reform would mean, had the legislature in its wisdom seen fit to adopt the suggestion, we are printing here in parallel columns the indictment in the famous murder case of *State v. Barrington*, as reported in the 198 Mo. 23, and

the indictment as it would have been had the form used in England, Texas, or Arkansas been in use in this state. It should be stated that we are using only one of five counts in the indictment as actually drawn, the one count embracing about 400 words and the complete indictment about 2000 words.

Indictment actually used.

INDICTMENT

State of Missouri, }
County of St. Louis, } ss.

In the Circuit Court of St. Louis County. September Term, 1903.

The Grand Jurors for the State of Missouri, now here in court, duly impaneled, sworn and charged to inquire within and for the body of the county of St. Louis and State of Missouri, aforesaid, upon their oath, present and charge that one Frederick Seymour Barrington on the 18th day of June, A.D. 1903, at the county of St. Louis and in the State of Missouri, in and upon one James P. McCann then and there being, feloniously, willfully, premeditatedly, deliberately, on purpose and of his malice aforethought, did make an assault; and with a dangerous and deadly weapon, to-wit, a revolving pistol then and there loaded with gunpowder and leaden balls, which he the said Frederick Seymour Barrington in his hand then and there had and held, at and against him the said James P. McCann, then and there feloniously, willfully, premeditatedly, deliberately, on purpose and of his malice aforethought, did shoot, strike and penetrate and wound him the said James P. McCann in and about the vital part of the body of him the said James P. McCann, in the head and body of him the said James P. McCann, giving to him the said James P. McCann, at the county of St. Louis aforesaid and State of Missouri, on the said 18th day of June,

1. Indictment, if the English form had been used.

STATEMENT OF OFFENSE

Murder

PARTICULARS OF OFFENSE

That Frederick Seymour Barrington on the 18th day of June, A.D. 1903, in the County of St. Louis, murdered James P. McCann.²

2. Indictment, if the Texas form had been used.

State of Missouri, }
County of St. Louis, } ss.

In the Circuit Court of St. Louis County. September Term, 1903.

In the name and by the authority of the State of Missouri: The grand jury of St. Louis County, State of Missouri, duly organized at the September Term, A.D. 1903, of the Circuit court of said county, in the said court at said term, do present that Frederick Seymour Barrington, on the 18th day of June, A.D. 1903, in said county and State, did with malice aforethought kill James P. McCann by shooting him with a gun, against the peace and dignity of the State.³

3. Indictment, if the Arkansas form had been used.

State of Missouri, }
County of St. Louis, } ss.

The Grand Jury of St. Louis County, in the name, and by the

²Reports of the AMERICAN BAR ASSOCIATION, 1923, p. 423.

³Revised Criminal Statutes of Texas, 1925; Code of Criminal Procedure, article 409. *Dwyer v. State*, 12 Tex. Crim. App. 535.

1903, with a dangerous and deadly weapon, to-wit, the revolving pistol aforesaid in and upon the head and body of him the said James P. McCann, divers and sundry mortal wounds he the said James P. McCann at the county of St. Louis and State of Missouri aforesaid, on the said 18th day of June, A.D. 1903, then and there of the mortal wounds aforesaid instantly died. And so the grand jurors upon their oath aforesaid, do say that the said Frederick Seymour Barrington, him the said James P. McCann, in the manner and by the means aforesaid, feloniously, willfully, deliberately, on purpose and of his malice aforethought did kill and murder, against the peace and dignity of the State.¹

authority of the State of Missouri, accuse Frederick Seymour Barrington of the crime of murder in the first degree, committed as follows:

The said Frederick Seymour Barrington on the 18th day of June, A.D. 1903, in the County of St. Louis, aforesaid, feloniously, willfully, deliberately, and of his malice aforethought, with premeditation, did kill and murder James P. McCann, with a pistol loaded with a leaden bullet, from the effects of which he died on June 18, 1903; against the peace and dignity of the State of Missouri.⁴

C. S. Potts.

PROBATE OF LOST WILLS IN MISSOURI

The fact that lost wills may be probated is clearly established. At an early date, ecclesiastical law took the position that the loss or destruction of a testament did not prevent its probate, if two witnesses could be found who saw and read the testament, remembered the contents, and deposed as to its tenor.¹ In the United States, the courts have allowed the probate of lost wills from early days.² In some states the matter is now regulated by statute.³

In Missouri there appears to be no statute referring expressly to the probate of lost wills, but from 1834 down to date, the probate of such wills has been allowed provided they can be sufficiently proved.⁴ The Missouri cases which have passed upon the question will be examined in this note. By lost wills here are meant wills which have been lost or destroyed before the testator's death but not revoked, and wills which have been lost or destroyed after the testator's death. In other words, the term "lost wills" includes those which have been burned or other-

¹ 198 Mo. 36-37.

⁴ THE MISSOURI CRIME SURVEY, p. 550.

² PAGE ON WILLS (2nd ed.), sec. 633, citing SWINBURN ON TESTAMENTS, part 6, sec. 14; see JARMAN ON WILLS, p. 124, n.

³ 40 Cyc. 1236; 28 R. C. L. 380; 1 PAGE ON WILLS (2nd ed.), p. 1057; 3 REDFIELD ON WILLS (2nd ed.), p. 15; SCHOUER ON WILLS, sec. 402; THORNTON ON THE LAW OF LOST WILLS. See also note in 34 A. L. R. 1304.

² WOERNER ON THE AMERICAN LAW OF ADMINISTRATION (3d ed.), p. 746.

⁴ Graham v. O'Fallon, (1834) 3 Mo. 507; Charles v. Charles, (1926) 313 Mo. 258, 281 S. W. 417. See also KELLEY'S MISSOURI PROBATE LAW AND PRACTICE (5th ed.), p. 59.