



1918

Laws Seldom Enforced

John M. Waugh

32nd Judicial District Circuit Court

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NOTES.

LAWS SELDOM ENFORCED.

John M. Waugh.*

This is a very broad subject. In fact I can not handle it or apply it to the State as a whole. I can only discuss it as it has been brought to my knowledge in my own district and those districts surrounding mine where I have had an opportunity to find out what laws are enforced and what laws are "Seldom Enforced." I presume that in different localities it, perhaps, differs as to those laws neglected and those that are strictly looked after by those in charge of "Law Enforcement."

*Grayson, Ky., Commonwealth's Attorney, Thirty-second Judicial District.

For fourteen years I have been assisting, as best I could, to enforce the laws of my State, found upon its statute books, and the other Commonwealth Attorneys are engaged in the same business. I'm sure that our experiences, in the main, have been the same. We have met with practically the same difficulties in our trials of criminal cases in our several districts, with practically the same obstacles to securing indictments, and securing convictions, but perhaps not the same obstruction at all times to the enforcing of any single law.

There are a few statutes, however, that are seldom enforced in our district. Some are not enforced for one reason and some for another. Until our country declared war on Germany, Section 4758 of our Statutes relating to "Vagrancy" was "Seldom Enforced." This was from sentimental reasons only. The citizen taking the position that if a person chose to lead an idle, vagrant life it was his business, but the sentiment has changed wonderfully in the last year, and I would hesitate to recommend the repeal of that statute.

Section 331a of the Statutes relating to the employment of children under a certain age in certain employments is another that is seldom enforced, but in my opinion should be looked after by all the Commonwealth's Attorneys in the State. There is no time in the life of our youth for obtaining an education like the age from 14 to 21 years of age, and it requires no argument in the light of "Moonlight School" agitation to convince one that our youth are in need of employing these years in study.

There is another statute that is "Seldom Enforced" in my district, and that is 1201a relating to "Carrying away property from the possession of a common carrier." During these times of stress in keeping warm and even before in my district there was much complaint by the railroads about carrying away coal from their cars in transit. Grand juries are slow to indict such offenders, the petit juries slow to convict, and almost impossible to get witnesses to volunteer information with respect to this offense. I can hardly explain a reason why this should be so. And can not suggest a remedy.

I feel that I get on common ground when I refer to Section 1155 of our Statutes relating to the crime of "Carnal Knowledge of a female under 16 years of age." Grand juries are ever ready to indict persons charged with this offense, but I am seldom able to convince petit juries that the minimum penalty under the statute is not too severe a punishment, especially where the prosecuting witness is not of the best character. Personally, I do not believe the punishment too severe, but for the sake of having more convictions under this statute, I believe that it should be amended, fixing the minimum penalty some lower.

Section 1246, I am told, is neglected by courts very nearly everywhere. This relates to cruel treatment of animals. In my judgment, this statute should receive more attention from those charged with the enforcement of the laws.

Another statute neglected very much in our part of the State and a statute seldom enforced is the one relating to the support of dependent children by parents. Our statutes, sections 328, 329, 326, and 327 and some others, enjoin strictly upon parents and those having children in charge the duty of supporting, caring for and educating them. If these statutes were better enforced, there would be fewer destitute, vagrant children and fewer young criminals running at large, and less use for a "Juvenile Court."

We try hard in our work to stop the violations of the Sabbath Day Laws. We have it well in hand except "Barbering" on Sunday. This law in my judgment should be amended so as to give the Circuit Courts of the State jurisdiction. It is so sadly neglected by the inferior courts, it makes it hard in many places to stop other violations of the law against work on that day.

There are very few statutes, other than the ones I have mentioned, that are neglected in the Eastern part of the State, that have come to my attention, and many of these are not neglected, but a strict enforcement hindered for some cause or other.

There are some statutes, however, that in my judgment this body should consider and make a strong effort to amend or have amended. I refer to the statutes relating to "Frauds in Elections." I have no personal grievance because I always beat my man, but these statutes are the hardest to enforce in my end of

the State of any that we have to deal with. They are not hard because of any sentiment averse to enforcing them or any neglect on the part of the courts or its officers, or any desire of juries to condone the offense, but because the law so hedges and so surrounds those who would commit these offenses that it is almost impossible to secure convictions under these statutes. It requires, without any apparent reason, two witnesses or one witness and strong corroborating circumstances to convict. This makes it almost impossible to secure convictions under this law, but if amended to take chances with any number of witness that may be secured like almost all other cases we would be able in a large degree to rid our State of these offenses, and we will not be able to do so as long as the law remains as it is.

Section 1177 of our Statutes is perhaps the most "Seldom Enforced" law in the State. This is the statute against "Subornation of Perjury." There is scarcely a case of much moment tried in our jurisdiction where there is not more or less of this crime committed, and I say it shamefacedly that our lawyers who defend criminals rely on their clients to furnish a defense in a large per cent of cases from suborned testimony. I am sure that there are others here that have had the same experiences, and know that it is true almost everywhere. I feel that we neglect, in a measure, to look into these matters as we ought, and that if we did we might reduce this crime materially. Our records are full of affidavits of defendants for a continuance and delay of cases without a scintilla of truth in them. We pass them by usually. This statute should be looked after.

While speaking of laws "Seldom Enforced" it might not be amiss to mention some other reasons why we are handicapped in the proper enforcement of the law, besides our own dereliction in neglecting some of our statutes. The matter of selecting our juries plays no little part in the failure of law enforcement. I believe in throwing every protection around those accused of crime to which they are entitled, but I believe the laws as they now stand in our State go further and in so doing give the criminal a shield behind which he can hide, and rob justice of her own.

What reason is there for giving the defendant fifteen peremptory challenges to a jury panel and the Commonwealth only five? Why give either side as many as fifteen challenges? What purpose does it serve? It simply serves to stand aside those who are best qualified to pass on the guilt or innocence of the accused in every instance. Why should the law not be amended giving each side five peremptory challenges and expedite trials, save cost to the State, and secure better juries. We ought to urge the Legislature of the State to take this matter up. I know that it has been up a number of times and failed to pass, but it is of enough moment to the State to do so again.

If I may speak of it, there seems to be another clog in the wheel that grinds out justice for our State, and that is a multitude of reversals by our Court of Appeals. I have the utmost respect for all our courts. Have been trying to obey them all my life and to induce others to obey and respect them, and I am sure, further, that I have the profoundest respect for our present court, but it seems that they must be hedged about, perhaps, by our statutes until it is almost impossible for a criminal case of any size record to stand, no matter how careful a trial court may be. If these reversals are from the fact that our laws stand in the way, I hope that our highest tribunal will recommend a revision of such laws as to the next Legislature, so that the State may be relieved of the vast expense of retrials, and in many instances criminals escaping justice. I wish no innocent man to suffer, but upon the other hand, I am just as strong in my opinion that no guilty man should escape the hand of the law, either on a technicality or otherwise.

I know that trial courts make errors, but I am firmly of the opinion that these errors should be patent that they are to the prejudice of the defendant before a reversal should be had upon them, and I have thought, sometimes, that our Court, out of a desire that no wrong be done, goes too far and is just a little bit too technical in its requirements of trial courts in criminal cases and that many times they reverse cases where there is no prejudice to defendant's case by the ruling complained of. It works a hardship on the defendant as well as the State to reverse the

case of a man when the evidence shows his guilt, because the trial court erred only in some technicality. We may be in fault as representatives of the State in not assisting the Attorney General more than we do and presenting these matters more clearly to the Court of Appeals. Whatever the reason, whether with us, the Attorney General or the courts, it will make for a better State and a better nation if we do our best to enforce all the laws of our State, and by enforcing them secure a repeal of the bad ones, if there are any such, and obedience to the good ones, of which there are very many.