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Civil Procedure—Continuances by Agreement a Matter of Right

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pianos, radios and vacuum cleaners. A most inclusive statute of this nature is found in Illinois, providing that it is a misdemeanor to alter, remove, deface, cover or destroy a manufacturer's serial number or any other manufacturer's number or identification mark upon any machine or other article of merchandise for the purpose of concealing or destroying the identity of the same. By a section immediately following, the same prohibition is applied to marks or brands on any domestic animal or fowl, with intent to steal or prevent identification by the true owner. The gravity of the offense, whether felony or misdemeanor, is determined by the value of the animal or fowl whose brand or mark was altered or destroyed. Ill. Rev. Stat. (Cahill, 1929) c. 38, secs. 433, 434. Legislation of this character is usually applied to the buying, possessing and selling of articles containing mutilated numbers as well as to the act of mutilation. It might be noted in passing that the articles affected by the serial number statutes are most often those sold under installment contracts. 14 A. B. A. J. 67-78.

But the Act here involved seems to be rather unusual in its requirements in an industry heretofore relatively free from statutory interference and not generally considered as one demanding special statutory regulation and protection. It may be that an increased poultry industry in the state has resulted in an increase of chicken theft to such an extent that legislation was deemed necessary to check the offenses. That view is supported by the fact that the same session of the Legislature enacted a provision declaring the theft of chickens and the purchase or receipt of chickens known to be stolen a grand larceny, with a maximum punishment of five years imprisonment, amending a prior act which applied only to such offenses in the nighttime, as do statutes in many states. Okla. Laws 1929, c. 20. Be that as it may, and regardless of the purpose underlying the legislature's action, it is an interesting question as to how the enactment will be received by the dealers and the sellers of domestic fowls, upon whom it imposes the duty of such minute and detailed recording.

C. V. E., '31.

CIVIL PROCEDURE—CONTINUANCES BY AGREEMENT A MATTER OF RIGHT.—It is fundamental that, in absence of statutes to the contrary, continuances are granted at the discretion of the court for cause shown. A new Missouri statute provides that civil actions must be continued whenever the parties thereto agree. Laws 1929, 137. Massachusetts and Iowa have similar statutes. The question raised by their passage is whether it is wise to make the courts powerless to conclude cases and clean off their dockets, and to allow lawyers to unreasonably put off hearings until their own pleasure is best served.

The general law of the matter is expressed in the following extract: "A case may be postponed by agreement of the parties acting for themselves, or through their attorneys, and with the consent of the court; but an agreement by the parties that a cause should be postponed does not operate as a postponement without the sanction of the court, and does not of itself bind the court." *Moulder v. Kempff* (1888) 115 Ind. 459, 17 N. E. 906. The only

variation of this principle arises where, in reliance on an agreement to continue, one party does not appear at the hearing. In such cases, it is usually held that the court should grant a continuance, and not allow the other party to proceed to his own advantage. *Handy v. McClellan* (1911) 156 Mo. A. 454, 137 S. W. 280; *McIver v. Greenpoint Moulding Co.* (1914) 84 Misc. 60, 145 N. Y. S. 1018. But these cases do not go nearly as far as the statute does, for in all there is a reason why the court should not proceed.

An interesting Texas case arose under a statute allowing continuances by agreement but not specifically making them a matter of right. The court declared, "While the statute provides, among other things, that a continuance may be granted 'by consent of the parties,' it is evidently the policy of the law that cases shall be promptly tried and disposed of, and the public, as well as the litigants, are concerned in this being done. In addition to the cost in time and money to witnesses and litigants, there must be added, necessarily, the costs of the attendance of another jury; and no other reason appearing for the one stated, we think it was well within the trial court's decision to overrule the agreement and require the cause to proceed." *Miller v. Burgess* (Tex. Civ. App. 1913) 154 S. W. 591. The case shows that courts are reluctant to relinquish control over litigation pending before them in favor of attorneys who may be personally benefited by needless delays.

If we consider the proposition from the historical side, we find that it is without a reasonable foundation. The use of the King's Court was a privilege, specially granted in each case; to allow the litigants to delay the course of justice set in motion, without showing cause therefor, was never considered. But the practice has gradually arisen of granting continuances where the parties agree without demanding a cause. This may be sound as a matter of judicial policy, but it is difficult to perceive what benefits will accrue by making it a matter of right. One of the aims of the Magna Charta was to provide swift justice. This was intended to benefit litigants and criminal offenders, but now, with dockets filled to overflowing, it might well be invoked for the benefit of the courts themselves. The statute, a new legislative interference with the power of the courts, will add to their already rising discontent with legislated rules of procedure; and this discontent may ultimately lead to the logical assertion by the courts that the legislative branch of the government has no constitutional power to regulate the judicial process.

J. A. G., '31.