

## CONSTITUTIONAL LAW

### RIGHT TO COUNSEL

Wilson, the appellant, was found guilty by a jury of the offense of receiving and concealing stolen goods of a value less than \$25. Wilson was defended by five different lawyers: first by the public defender; then by a lawyer whom he paid \$30 but who withdrew with the consent of the court after a surety had been released; then by an attorney who acted during the trial; then by the public defender who was again appointed as his attorney but who did nothing; and finally by his present lawyer who was appointed by the court and came into the case after a motion for a new trial, and who procured a bill of exceptions containing the evidence and instructions showing the prejudicial errors in the trial, although these were not set forth in the motion for a new trial. Important evidence obtained without a search warrant was admitted without objection and without any motion to suppress. An exhibit containing a label describing the goods as stolen when this was one of the facts to be proven was not objected to. Appellant was deprived of the right to have in court his "best witnesses." His attorney acquiesced in a bookkeeper's refusal to comply with the terms of a subpoena, and even criticized his own client. The judge flagrantly invaded the province of the jury by casting doubt upon the credibility of the appellant without any objection from his attorney. On appeal it was held, (A) that ". . . in a case involving an appellant's life or liberty we may not ignore prejudicial errors affecting his constitutional rights when, as here, they are clearly and adequately presented in appellant's brief with supporting bill of exceptions," even though they were not mentioned in the motion for new trial; and, (B) that the conviction must be reversed because appellant was (1) denied the right to counsel contrary, (a) to Art. 1, Sec. 13 of the Indiana Constitution, (b) to the Sixth Amendment to the Constitution of the United States, and (c) to the due process clause of the Fourteenth Amendment; and (2) denied the right to an impartial tribunal guaranteed by the Fourteenth Amendment to the United States Constitution. *Wilson v. State*, — Ind. —, 51 N.E. (2d) 848 (1943).

The court should be commended for its refusal to follow narrow procedural rules when injustice would thereby be done and the errors depriving the appellant of his constitutional rights were otherwise properly presented to the court.

The record showed that while the appellant had counsel appointed to assist him, the representation by counsel was ". . . equivalent to or worse than no representation . . ." Was this type of counsel sufficient to satisfy constitutional requirements? The court held it was not, and that the appellant was denied his rights under both the Indiana and the Federal Constitutions, because the guaranty of representation by counsel meant adequate and not merely perfunctory representation.

The court correctly decided that the constitutional guarantee of counsel had been violated. Our supreme court has consistently held that this guarantee requires a court, other than a justice of the peace

court, not only to appoint an attorney for a person unable to employ counsel but to appoint adequate counsel.<sup>1</sup>

If the court intended to say that the Sixth Amendment to the United States Constitution applied to this Indiana case, as it might be inferred that it did, this would be an erroneous statement, since the Sixth Amendment, as well as other provisions in the original federal bill of rights, applies only to the federal government and not to the state government.<sup>2</sup>

However, the due process clause of the Fourteenth Amendment does apply to the states and the United States Supreme Court has extended the due process clause so as to include most of the provisions of the original federal bill of rights<sup>3</sup> and it has extended it to include the right to counsel,<sup>4</sup> but in so doing it has taken the position that the due process clause does not compel a state to furnish counsel.<sup>5</sup> For this reason the court was wrong in saying that the action of the trial judge in appointing counsel violated the due process clause of the United States Constitution.

But the due process clause of the Fourteenth Amendment also guarantees an impartial tribunal<sup>6</sup> and it might be that in this case, as the court said, the judge acted so that his tribunal was not impartial, even though due process does not guarantee a jury trial (or at least that he did not give appellant an orderly course of procedure); and to this extent the court might correctly say that the trial was in violation of the Constitution of the United States.

## LEGISLATION

### THE PERRY-DECATUR BOUNDARY DISPUTE

In 1933 the Board of Commissioners of Marion County entered an order changing the boundary between Perry and Decatur Townships. The effect of this action was to locate valuable property of the Indianapolis Power & Light Co. within the limits of Perry Township which had formerly been in Decatur Township. In 1943 an

1. *State ex rel. White v. Hilgemann*, Judge, 218 Ind. 572, 34 N.E. (2d) 129 (1941); *Knox County Council v. State ex rel. McCormick*, 217 Ind. 493, 29 N.E. (2d) 405 (1940); *Sanchez v. State*, 199 Ind. 235, 247, 157 N.E. 1, 5 (1927). In a federal case the United States Supreme Court has held that the guaranty of counsel in the Sixth Amendment of the United States Constitution has the same meaning. *Glasser v. United States*, 315 U.S. 60 (1942). See also *People v. Blevins*, 251 Ill. 381, 96 N.E. 214 (1911).
2. *Betts v. Brady*, Warden, 316 U.S. 455 (1942); *Barren v. Mayer*, etc. of Baltimore, 7 Pet. 243 (1833); Willis, "Constitutional Law" (1935) 502, 562.
3. *Near v. Minnesota etc.*, 283 U.S. 697 (1931); Willis, "Constitutional Law" (1935) 655.
4. *Powell et al. v. Alabama*, 287 U.S. 45 (1932).
5. *Betts v. Brady*, Warden, 316 U.S. 455 (1942).
6. *Tumey v. Ohio*, 273 U.S. 510 (1927).
7. *Quercia v. United States*, 289 U.S. 466 (1933).