July 13, 1953

To Honorable Burton M. Cross, Governor of Maine
Re: Biddeford Municipal Court

This office has examined the four affidavits and the newspaper article referred to this office, which relate to the Biddeford Municipal Court, and we feel the following comments to be in order:

Affidavit #1 appears to be concerned with the refusal of the Judge of the B ddeford Municipal Court to issue a warrant against one Jeremiah Carroll for intoxication. As therein contained, the Judge said, "You see Walker." Walker was, at the time, recorder' of that court.

There is nothing repugnant in the refusal of a judge to issue a warrant. To the contrary, it is a very proper procedure for the recorder to issue warrants, as it does away with the much complained-of practice of the judge's finding probable cause for issuance of the warrant and later sitting in judgment on a case where he has already found probable cause.

The remaining affidavits relate, substantually, the same story as told in the first affidavit, with the further facts that:

1. Before issuing the warrant, the recorder called one Harold Carroll, attorney, and advised him he was issuing the warrant;
2. The accused was jailed and let out on bail;
3. The accused did not appear for trial;
4. The accused was represented by hisbrother;
5. A plea of nolo was filed;
6. The trial was continued for sentence.

1. We see nothing inherently wrong in the recorder's advising respondent's attorney that he was issuing a warrant against the re-- spondent, and especially so where the respondent and his attorney are brothers. (See page numbered three of affidavig #1, and page numbered three of affidavit #2.)

2. Intoxication is a bailable offence and the release of Carroll on bail was consistent with statutory procedure.

3, 4 and 5. The purpose of bail is to secure the appearance of the respondent at the trial. Failure to appear means the amount of the bail is forfeited. Howeverm appearance by attorney, who makes a plea on behalf of his client, is not improper, and is, in law, equivalent to appearance by the respondent. State v. Garland, 67 Me. 423. Chapter 135, Section 14, R.S. 1944.

6. Continuance for sentence, while not customary in an intoxication case, is so frequently done as not tobe cause for comment.

There is no question but that criminal trials should, as a rule,

be held in open court with members of the general public present. While this right is one reserved to the individual by our Constitution, it is also apublic right. (Williamson v. Lay, 86 Me. 80.)

A course of action pursued by a judge, whereby court sessions were customarily or frequently held behind closed doors would be just cause for executive consideration and possible reprimand.

It can be seen in Williamson v, Lay, supra, that courts have discretion, not however limitless, to cause spectators to be removed from the court house. While the affidavits and the newspaper editorial are dated over a year apart, there is nothing contained within them to show that the court abused its discretion in the manner in which it conducted its hearings, or that such conduct frequently occurred.

If, in the present case, the facts as related are true, that there was no public hearing without good cause, then there would be in our opinion a violation of a public policy of suchaa nature that a continued course of such practice should not be condoned.

It will be recalled that the attached papers, being returned herewith, were handed to this office with the statement that they were presented to you, not in the form of an official complaint, but as information.

We would advise you that inquiry has been made of this office if petitions seeking therremoval of the aforementioned judge had been received by us. Apparently there is talk about it.

While we do not believe the isolated instance contained in the material to be cause for removal from office, we would recommend that the judge involved be acquainted with the complaint and that he be requested to comply with the customary procedure of holding public hearings in criminal cases.

Alexander A. LaFleur
Attorney General

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