

common law to guide the court. And the common law of Ohio was *Deem v. Millikin* to which authority the court unfortunately felt bound. In view of the holding, we must agree with Dean Ames, Op. Cit. 6. 322, and say, "It is to be regretted that the courts of Nebraska, North Carolina, Ohio [referring to *Deem v. Millikin*] and Pennsylvania did not apply . . . the sound principle of equity that a murderer or other wrongdoer shall not enrich himself by his iniquity at the expense of an innocent person."

B. BERNARD WOLSON.

THE UNOFFICIALLY REPORTED CASE AS AUTHORITY

The important question, whether unofficially reported cases of the several courts of appeals should be recognized by and receive the official sanction of any court within the state, is raised once again in the recent case, *Central Greyhound Lines, Inc., v. State Automobile Mutual Life Ins. Co.*, 17 Abs. 419, Miami County, Second District of the Ohio Court of Appeals, decided June 12, 1934. In that case the judge stated, "The question presented is no longer an open one with us and was decided adversely to the claim of the defendant in the case of *North River Ins. Co. v. Redman*, 16 Abs. 516, Miami County, Second District of the Ohio Court of Appeals, decided December 15, 1933, unreported opinion by this court." This unofficially reported opinion was cited notwithstanding Section 1483, General Code, which provides that, "No case in the courts of appeals shall be reported for publication except such as may be selected by the several courts of appeals or by a majority of the judges thereof * * * Only such cases as are hereafter reported in accordance with the provisions of this section shall be recognized by and receive the official sanction of any court within the state."

Statements such as this by the judge have not been infrequent. The use of unofficially reported cases is a widespread and constantly recurring practice which has developed into a usage that is firmly imbedded in the tradition of both bench and bar. This practice naturally varies with the personnel of the various courts, but during a representative periods from January through June 1933, in the eighth appellate district alone, 77 opinions were written in which unofficial reported decisions were cited as authority in 12 instances.

Conceding the fact that unofficially reported decisions are often used, are they available to the average practitioner? In the sixth district, which includes Toledo, each case is digested and filed by the court reporter and is available for use at the court. Several law firms have private arrangements with the court reporter whereby they receive a copy of every decision handed down by the court and the digest service of the court reporter. A few law offices also receive a copy of all decisions from the court reporter in the eighth district. This necessarily involves great expense, which is of course an obstacle to the majority of practicing attorneys. The result is that opinions are accessible only to those financially able to pay for them.

In the second district, in which Columbus is located, a copy of every decision rendered is filed only by name and available only at the court house.

This arrangement was begun about 1929 and prior to that time there was no provision for filing the cases. The opinions not being readily accessible and extending back only to 1929, the chances are very slight that counsel will find an unreported case in point.

In the eighth district, in which Cleveland is located, a copy of every decision rendered is kept by the court, and the court reporter supplies them to several private law firms. A like service is extended to the Cleveland Law Library Association, a cooperative library with membership open to the public. Nevertheless, practical use of these decisions is greatly restricted because the cases are not digested. Consequently, although the opinions are accessible, to find a point of law necessitates digesting every case from the time of establishment of the court to date of search. Obviously, the amount of time, effort and knowledge required to use this system, greatly decreases its value.

It is true that numerous cases are reported by the Ohio Law Abstract, but the number is discretionary with its editor, and limited by the amount of space available for such purpose.

This situation has caused much criticism by attorneys. Opinion ranges from one extreme, namely that all cases should be officially reported and be recognized by and receive the official sanction of any court within the state, to the opposite, that Section 1483, General Code, should be followed literally. An intermediate path being pursued by one member of the bench is to follow Section 1483 literally, but when upon examination, the opinion of an unofficially reported decision expresses his viewpoint, he accepts that reasoning as the basis of his opinion and restates it therein.

An investigation into the background of Section 1483, General Code, reveals that about 1915 the attorneys of Ohio were protesting because duplicate unofficial reports of the court of appeals cases were being published by The Ohio Law Publishing Co. and the The Ohio Law Reporter Co. To have a complete set of appellate opinions it was necessary to buy the official reporter and both unofficial publications since no one was complete in itself. The comparatively large expense and the confusion resulting from having a triplicate reporting of these cases led The Ohio State Bar Association, in 1915, to appoint a special committee to devise a uniform system of reporting. A conference was had with the judges of the courts of appeals in September 1915, resulting in the amendment on September 21, of Rule XII of The Rules of Practice of the Court of Appeals of Ohio so as to read as follows: "No case shall be reported for publication except such as may be selected by the several Courts of Appeals, or by a majority of the Judges thereof. Whenever it has been thus decided to report a case for publication the syllabus thereof shall be prepared by the judge delivering the opinion, and approved by a majority of the members of the court; and the report may be per curiam, or if an opinion be reported, the same shall be written in as brief and concise form as may be consistent with a clear presentation of the law of the case. Opinions for permanent publication in book form shall be furnished to the official reporter of the Court of Appeals and to no other persons. Only such cases as are hereafter reported in accordance with this rule shall be recognized by and receive the official sanction of the Court of Appeals."

The amended rule XII had little effect and the unofficial reporting continued. This arrangement not having accomplished the purpose of the bar

association, the committee consequently accomplished a gentlemen's agreement with The Ohio Law Publishing Co. and The Ohio Law Reporter Co. They agreed to discontinue the publication of bound volumes of the opinions of the court of appeals so that the official publication would be the only bound volume edition. In return therefor, they were to publish in The Ohio Law Reporter and Weekly Law Bulletin, the opinions of the supreme court and courts of appeals, and manuscripts were to be furnished by the supreme court reporter without cost. This agreement required legislation in order to be workable, and accordingly a bill to amend Section 1483, 1488 and 1520 was passed. The aim of the bar association was well expressed in the report of the committee wherein they said, "Ohio must have only one set of Appellate Court Reports, officially edited and published on the same high standard as our respected Supreme Court Reports." The Ohio State Bar Association, Vol. 40, Report of the Special Committee on Uniform Systems of Reporting, p. 35 (1919). The aim of the bar association was, however, doomed to failure and resulted in the circumstances set forth above.

The problem of what to do with unofficially reported cases, however, should be viewed not alone from the lawyer's standpoint. From the point of view of the judges it merits serious consideration. Fundamentally it involves the doctrine of precedent, which is not a matter of judicial whim, but is an integral part of our judicial technique. We insist that the decisions of our courts be uniform, that, in the main, we shall be able to foretell the outcome of a given case by the decision or a similar set of fact in a former case before the same court. Also we know and expect that courts will lessen their labor by relying on previous decisions. If the judges do use and cite previously decided cases, they should be available. It would follow that the attorneys are justified in their criticism that the cases are not available to the average practitioner.

Whether it is possible to remedy the situation by legislation involves the question of legislative infringement upon the judicial power, a matter not within the scope of this note.

However it would appear (1) that the intended effect of the amended Section 1483 General Code is, that the official reports should be the only set of bound appellate court reports; (2) that this statute is not meant to modify whatever place precedent has in the deciding of cases; and (3) that some arrangement of filing and digesting appellate court decisions should be established in each of the nine appellate districts and that they should be readily accessible to the average attorney.

MAURICE A. YOUNG.

UNIQUE SERVICES AND THE STATUTE OF FRAUDS

The plaintiff entered into an oral agreement with Eugene Jones for the transfer of a lot in Bowling Green in consideration of care and services to be rendered by the plaintiff. The agreement was made in 1928 and the plaintiff performed all the services stipulated until Jones' death in 1932. In an action