

## Should Continue Case Until Lawyer Is Available

IN A DIVORCE proceeding, when the husband's attorney was required to attend criminal proceedings in federal court, it was an abuse of discretion for the trial court to refuse to continue the proceedings until the attorney was available, the Supreme Court of Texas held Sept. 18.

In *Dancy v. Daggett*, D-1069, the district court set a hearing on temporary orders in Leonard Charles Dancy's divorce action. Mr. Dancy's attorney then received notice of a hearing in federal court on a separate matter for the same date and filed a motion to reset the hearing in the divorce case. The district judge reset the case for the next day, but after being notified by the attorney's secretary and the federal court judge that the federal case had been continued and the attorney's attendance was still required, the state judge refused to postpone the hearing and awarded custody of Mr.

Dancy's children to his wife.

The court of appeals noted its strong disapproval of the trial court's actions, but it held that it did not have the discretion to find that the trial court had abused its discretion.

The high court stated that mandamus may issue to correct a clear abuse of discretion and that the trial court's actions violated local rules regarding conflicts in docket settings. The court stated that the trial court effectively had deprived Mr. Dancy of representation at the hearing and held that under those circumstances the trial court had abused its discretion by refusing to continue the proceedings until Mr. Dancy's counsel was available. The court held further that mandamus was an appropriate remedy under the facts of this case because the trial court's issuance of temporary orders was not subject to interlocutory appeal.