

1910

## Comment on Recent Decisions

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## COMMENT ON RECENT DECISIONS.

In *U. S. vs. Union Supply Co. U. S. Sup. Ct.*, Nov. 8, 1909, 30 Sup. 15, we see a notable sign of progress away from the theory of the strict construction of penal statutes. The blighting and anachronistic nature of this theory has already been forcefully exposed by Prof. Roscoe Pound, in his article entitled "Common Law and Legislation" (*Harvard Law Rev.*, 1908, xxi, 383). In this case, the court's opinion, by Mr. Justice Holmes, puts itself squarely on record for an improved future. The question of law was whether the word "persons" included corporations, in a penal statute providing for fine and imprisonment. The argument that a corporation cannot be imprisoned was held not to be a fatal objection; and the conclusion is thus driven home:

"If we free ourselves from the notion that criminal statutes must be construed by some artificial and conventional rule, the natural inference when a statute prescribes two independent penalties, is that it means to inflict them so far as it can; and that if one of them is impossible, it does not mean, on that account, to let the defendant escape."

This is a wholesome spirit to be followed.

In an ensuing decision, *U. S. vs. Mescall, U. S. Sup. Ct.*, Nov. 8, 1909, 30 Sup. 19, almost the same kind of question was decided in the same way, with opinion by Mr. Justice Brewer. In both these cases the indictment had been held invalid by the trial court. Thus, we see the Supreme Court taking the lead and warning trial judges to be more bold. If a few more Supreme Courts would serve such plain notice on trial courts, affairs would speedily begin to mend.

In *Caples vs. State*, Oklahoma Criminal Court of Appeals, Oct. 18, 1909, 104 Pac. 493, Chief Justice Furman voices with no uncertain sound the determination of his court to administer an enlightened criminal justice. The passage occurs in ruling on an indictment demurred to for lack of the phrase, "In the name and by the authority of the State of Oklahoma." In overruling the objection the Court said:

"We do not profess to be infallible, but to our minds it is clear that the purpose of this provision in the Constitution is to protect the people of this State from private prosecutions, which might degenerate into persecutions, and from prosecutions from any other foreign power save that of the State. And when the record clearly shows that the purpose of the Constitution has been accomplished, this Court will hold that is enough. The supreme purpose of this Court is to give the people of this State a just and harmonious system of criminal jurisprudence, founded on justice and supported by reason, freed from the mysticism of arbitrary technicalities, and this standard will control our decisions, it matters not what or how many other appellate courts may have decided to the contrary. \* \* \* It is our duty to construe the laws of Oklahoma regardless of the law in other states. Now that our criminal jurisprudence is in its formative period, we are determined to do all in our power to place it upon the broad and sure foundation of reason and justice, so that the innocent may find it to be a refuge of defense and protection, and that the guilty may be convicted, and taught that it is an exceedingly serious and dangerous thing to violate the laws

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of this State, whether they be rich and influential or poor and friendless. They all stand alike and upon an equality before this Court. If we place our criminal jurisprudence upon a technical basis, it would become the luxury of the rich, who can always hire able and skilled lawyers to invoke technicalities in their behalf, but what would become of the poor and friendless, who cannot secure these services? It is the poor and the friendless who cannot secure these services, and who need the strong arm of the law for their defense. By placing our system of criminal jurisprudence upon the basis of reason, justice becomes the right of the poor as well as the rich. We will give full consideration to all authorities which are supported by living principles, and will follow them when in harmony with our laws and the conditions existing in Oklahoma. But we must confess to want of respect for precedents which were found in the rubbish of Noah's Ark, and which have outlived their usefulness, if they ever had any. When the reason for a rule of law ceases, the rule should cease also. If this be revolution, then we are and will continue to be revolutionary. The information in this case is free from objections urged against it, and we approve the action of the trial Court in overruling the objections thereto."

J. H. W.