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# Judicial Decisions on Criminal Law and Procedure

# JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE.[1]

## RECENT CASES.[2]

### I. CONSTITUTIONAL LAW.

Loeb vs. Jennings, Ga., 67 S. E. 101. 1. *Cruel and Unusual Punishment.* Where duly authorized by the municipal charter and ordinances, a sentence by a recorder which requires the person convicted of a violation of a penal ordinance to work on the streets or other public works of a city is not void or illegal on the ground that it is violative of par. 9, sec. 1, art. 1, of the Constitution of this state (Civ. Code, 1895, sec. 5706), which declares that excessive fines shall not be imposed, nor cruel and unusual punishments inflicted. It cannot be said, in view of the character of the offense committed, that the fine of $500 which was imposed was so excessive as to be unconstitutional. The eighth amendment of the Constitution of the United States, which provides that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted" (Civ. Code, 1895, sec. 6021), refers to power exercised by the government of the United States, and not to those of the individual states 2. *Due Process of Law.* A sentence imposed on one convicted of violating a municipal ordinance, which required him to pay a fine and also to work on the streets or other public places of the city, was not violative of the provisions contained in the fourteenth amendment of the Constitution of the United States, that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, . . . nor deny to any person within its jurisdiction the equal protection of the laws." The provisions of the Constitution of this state that "no person shall be deprived of life, liberty or property, except by due process of law" (Const., art. 1, sec. 1, par. 3), does not guarantee a trial by jury to one charged with the violation of a valid municipal ordinance; but he may be summarily tried and convicted, without a jury, in a police court having jurisdiction to try petty offenses against the peace, good order and security of the municipality; and this is true, although, under such ordinance and the charter of the city, the offender is sentenced to pay a fine of $500 and also to work upon the streets or other public places of the city for 30 days. Such a trial without a jury, and the sentence so imposed, are not violative of the provision of the Constitution of the United States (Amend. 14) which declares: "Nor shall any state deprive any person of life, liberty or property without due process of law." 3. *Involuntary Servitude.* To punish such an offender by confining him at labor under municipal control is not obnoxious to the constitutional inhibition against involuntary servitude save as a punishment for crime after legal conviction therefor. Even if there were

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[1]Furnished by Professors C. H. Huberich and Chester G. Vernier.

[2]These cases have been digested from the advance sheets of the National Reporter system, published in the period from March 20 to May 10, 1910. By courtesy of the West Publishing Company of St. Paul free use has been made of the head notes in that edition of the reports.

some acts of misconduct shown on the part of persons in charge of those convicted of violating municipal ordinances, the evidence was not such as to render the conviction or sentence illegal, or show that it was error on the part of the judge presiding at the hearing upon the return of the writ of *habeas corpus* to decline to discharge the applicant, who has been so convicted, from custody.

II. FEDERAL CRIMINAL LAW.

United States vs. Martin, 176 Fed. 110. *Offenses Against United States.* There are no common law offenses against the United States, and the courts of the United States have only such jurisdiction as Congress has conferred on them to try and punish such acts as it shall have previously declared to be crimes and fixed the penalty therefor.

III. PUNISHMENT.

State vs. McKellar, S. C., 67 S. E. 314. *Concurrent Sentences.* Where several sentences are imposed for separate and distinct offenses after conviction thereof on separate indictments, or on several counts in the same indictment, the sentences run concurrently, unless the intention that one should begin at the expiration of the other is expressed.

State vs. Kirby, Miss., 51 So. 811. *Pardon.* Acts, 1908, c. 109, sec. 3, authorizing the board of supervisors to discharge a convict from jail, if unable to labor from bodily infirmity apparently permanent, violates Const. 1890, sec. 124, conferring on the governor the sole power to pardon in criminal and penal cases.

IV. JUVENILE COURTS.

State vs. Prater, La., 51 So. 647. *Sentence.* Act No. 83 of 1908, creating juvenile courts, and repealing all laws or parts of laws in conflict therewith, provided an exclusive method for the trial of juvenile delinquents, and conferred on the judge of the court broad discretion as to the place of punishment, not limited by section 17, declaring that, where the delinquency charged is an act which would, if committed by an adult, amount to a crime punishable at hard labor, the judge may commit the child to the State Reformatory; and hence the fact that there was no such institution in the state did not authorize the trial of a youth 17 years of age for burglary and larceny in the district court sitting for the ordinary trial of criminals, and, on conviction, a sentence to the penitentiary.

V. MERGER OF OFFENSES.

Sharp vs. State, Ga., 67 S. E. 699. The rule of the common law that a misdemeanor is always merged into a felony, when the two meet, has been abolished in Georgia.

VI. CONSENT.

State vs. Smith, N. C., 67 S. E. 508. *Entrapment.* It is no defense to a prosecution for an offense, not against an individual, but against the public, as an illegal sale of liquor, that the one buying it did so not for his own use, but with money furnished by the chief of police to make the purchase, with the view of having the seller indicted and convicted.

VII. MENTAL RESPONSIBILITY.

State vs. Coyle, S. C., 67 S. E. 24. 1. *Defense.* Insanity, resulting from a blow inflicted on accused by the other party in self-defense, during a difficulty brought on by accused, would not excuse him for afterward during the quarrel cutting such other party with intent to kill. 2. *Evidence.* In a prosecution for assault with intent to kill, in which accused claimed that he was insane when he cut the injured person, because of a blow on his head struck by the injured person, the barbarity of accused's conduct in repeatedly cutting and striking the injuring person was not evidence of irresponsible insanity.

VIII. PARTIES TO CRIME.

State vs. Wilson, N. J., 75 Atl. 776. *Misdemeanors.* If A directs a woman in an early stage of pregnancy—i. e., before the child is quick—to go to B to have a miscarriage produced, which is accomplished by B by the use of instruments, A may be indicted as a principal offender under section 119 of the crimes act (P. L., 1898, p. 827), and, upon proof of a concert of action between him and B, may be convicted under the rule that all concerned in a misdemeanor are guilty as principals.

State vs. Warady, N. J., 75 Atl. 977. *Principals and Accessories.* In an indictment for having feloniously, wilfully, maliciously and unlawfully incited, moved, procured, aided, abetted, counseled, hired and commanded A B to commit the crime of bigamy, it is not necessary to prove conviction of A B of having committed said crime; bigamy not being a felony under the law, and therefore one who aids in its commission being chargeable as principal.

IX. HOMICIDE.

State vs. Blackburn, Del., 75 Atl. 536. 1. *Nature and Classification.* Under an indictment for murder of the first degree, the jury may convict of murder of the first or second degree or of manslaughter. Homicide is the killing of any human being, and is either justifiable, excusable or felonious. The taking of human life is justifiable when done in the execution of public justice. The taking of human life is excusable, when committed either by misadventure or in self-defense. Homicide by misadventure, constituting excusable homicide, is the accidental killing of another where the slayer is doing a lawful act, unaccompanied by any criminally careless or reckless conduct. Homicide in self-defense occurs where one is assaulted on a sudden affray, and in defense of his person, where certain and immediate suffering will be the consequence of waiting for the assistance of the law and there is no other probable means of escape, he kills his assailant. Manslaughter is the unlawful killing of another without malice, either express or implied, and without premeditation, and is either voluntary or involuntary. Voluntary manslaughter occurs where one kills another in the heat of blood, and usually arises from fighting or from provocation. Involuntary manslaughter occurs where one in doing an unlawful act not felonious nor tending to great bodily harm, or in doing a lawful act without proper caution or requisite skill, undesignedly kills another. The malice essential to constitute murder is not restricted to spite or malevolence toward decedent, but means that general malignity or recklessness which proceeds from a heart devoid of a just sense of social duty and fatally bent on mischief, and is implied by law from every deliberate cruel act committed

by one person against another; and where the act from which death ensues appears prima facie to have been committed deliberately, the law presumes that it was done in malice, and accused must show that the offense is of a mitigated character and does not amount to murder. The crime of murder of the first degree is committed where the killing is with express malice aforethought, or in perpetrating or attempting to perpetrate any crime punishable by death. Murder of the second degree is committed where the killing is with malice aforethought implied by law, arising as an inference or conclusion of law from the facts found. Express malice, essential to constitute murder of the first degree, is proved by evidence of a deliberately formed design to kill another, and such design may be shown from the circumstances, such as the deliberate selection and use of a deadly weapon, a preconcerted hostile meeting, privily lying in wait, or any other circumstances evincing a deliberately formed design to kill. Murder in the second degree is proved where it is not satisfactorily shown by the evidence that the killing was done with a deliberately formed design to take life, or in perpetrating or in attempting to perpetrate any crime punishable by death, but the evidence shows that it was done suddenly and without excuse, and without provocation sufficient to reduce the homicide to manslaughter, or was done in perpetrating or attempting to perpetrate a felony not capitally punishable, or any unlawful act of violence from which the law raises the presumption of malice. 2. *Evidence.* Where, on a charge of murder, the fact of killing as charged is shown by the prosecution, unaccompanied by circumstances of justification, excuse, or mitigation, the law presumes that the homicide was committed with malice, and amounts to murder in the second degree, and the burden is on accused to disprove malice, and that the killing was either justifiable or excusable, or manslaughter. To justify a verdict of murder in the first degree, it must be shown that accused killed decedent with a deliberate purpose and formed design, which deliberate purpose and formed design may exist only for a moment. To justify a verdict of guilty or murder in either degree, the prosecution must prove beyond a reasonable doubt that decedent died on or about the date alleged, that his death was caused by the means and in the manner described in the indictment, and that accused committed the fatal act as alleged. Proof beyond a reasonable doubt does not mean that the guilt of accused or any other fact shall be established with the absolute certainty of a mathematical demonstration, but the facts must be proved to a moral certainty.

Fauntroy vs. State, Ala., 51 So., 931. *Self-Defense.* If defendant shot deceased under the bona fide belief that his life was in danger, and he had under all the circumstances reasonable cause to believe he was in imminent danger, it is immaterial whether there was such danger or not.

State vs. Jones, S. C., 67 S. E. 160. *Incitement to Suicide.* Before one who incites to suicide can be guilty of murder, a causal connection must exist between the incitement and the suicide, and the incitement must be an inducing cause of the crime, though not necessarily the sole cause, and where such connection is established, the inciter is responsible for the act, and is a murderer as if he had prevailed on a third person to commit the homicide.

State vs. Bethune, S. C., 67 S. E. 466. *Manslaughter.* No words, however opprobious, will constitute that legal provocation which is necessary to reduce a killing from murder to manslaughter.

State vs. Butler, Ia., 125 N. W. 196. *Self-defense.* Where accused on his

way at night from his home to a railroad station met prosecutor, a policeman, and asked what prosecutor had said about accused's place of business, and prosecutor provoked a quarrel by threatening an arrest of accused without cause, the prosecutor became the aggressor in attempting to carry out his threat, and accused was justified in defending himself.

Arnett vs. State, Ky., 125 S. W. 700. 1. *Voluntary Manslaughter.* An unlawful, wilful and felonious killing without malice, or in sudden fray, heat, and passion, and not in self-defense, constitutes voluntary manslaughter. 2. *Self-Defense; Defense of Another.* Where, when defendant killed deceased, he was engaged in willfully striking defendant's brother, not in decedent's necessary self-defense, with a weapon reasonably calculated to inflict death or great bodily harm, and from such striking defendant believed, and had reasonable ground to believe, that his brother was in imminent danger of suffering death or great bodily harm at deceased's hands, and defendant shot and killed deceased to avert such danger, he would not be guilty, provided he used no more force than he reasonably believed at the time was necessary for that purpose. 3. *Abandonment of Difficulty; Flight.* Where accused, though having begun a difficulty with deceased, who pursued him and struck him, or struck at him, with a weapon which was reasonably calculated to produce death or great bodily harm, and defendant had from this cause reasonable ground to believe, and did believe, that he was in immediate danger of suffering death or great bodily harm at deceased's hands, and to avert such danger he fired the shot which killed or contributed to the death of deceased, he would not be guilty.

X. RAPE.

State vs. Colombo, Del., 75 Atl. 616. 1. *Elements of Offense.* Rape is the carnal knowledge of a woman by force and against her will. The force may be either actual or presumptive; but, if carnal penetration of a female of the age of consent is relied on, the state must prove beyond a reasonable doubt that the penetration was consummated by force and against her will, or by putting her in fear and terror, before a conviction can be had. Formerly it was necessary to prove, not only actual penetration, but emissio semenis, in order to constitute carnal knowledge; but carnal knowledge is now deemed complete on proof of an actual penetravit. In a prosecution for rape, the proof must be at least sufficient to show some degree of entrance of the male organ within the labia pudendum of the female, in order to establish actual penetravit. 2. *Evidence.* In a prosecution for rape, the jury, in considering prosecutrix's testimony, should consider the time and place of the alleged assault; and outcries or resistance made by her, or the absence of outcries or resistance; the proximity of other people, if it appears that there were persons sufficiently near at the time to hear such outcries or resistance, if any; and also the time when and circumstances surrounding prosecutrix's complaint. Where, in a prosecution for rape, a physician testified that immediately after defendant's arrest he examined prosecutrix and found her hymen ruptured, and that it indicated partial or complete penetration, the state was entitled to prove by prosecutrix that accused was the only person who had ever had intercourse with her. Evidence of a physician that he examined prosecutrix two months after the alleged offense and discovered syphilis was admissible. Evidence as to the result of a physical examination of the private parts of accused by a physician six months after the alleged offense was too remote. Where the state claimed that defendant infected prosecutrix with syphilis, the fact

that evidence of the physical examination of defendant was excluded as too remote did not entitle defendant to the exclusion of evidence that from an earlier physical examination of prosecutrix she was found suffering from syphilis.

XI. INDICTMENT, TRIAL, EVIDENCE, APPEAL.

State vs. Jones, S. C., 67 S. E. 160. *Election.* Where the same offense is charged in different counts of the indictment, or where the several offenses charged in separate counts grow out of the same transaction, the court should not require the state to elect on which count accused shall be tried, but should require the jury to pass on the several counts separately; but, where the several offenses charged do not grow out of the same transaction, the proper practice is to require an election.

State vs. Anderson, La., 51 So. 846. 1. *Amendment.* An indictment, charging the commission of an offense as of date subsequent to that upon which the indictment was returned into court, may be amended on the trial. 2. *Bill of Exceptions.* Where, upon the face of the record, it appears that a sentence has been imposed which is unauthorized by law, such sentence will be set aside by this court on the appeal, though there be no bill of exception upon the subject or motion to that effect, and the case will be remanded to be further proceeded with according to law.

Hardy vs. State, Miss., 51 So. 460. 1. *Waiver.* An objection that an indictment is void because found by a grand jury which, according to the record, was not sworn, is not waived by pleading not guilty before filing a motion to quash, since permitting such motion is discretionary. 2. *Quashing.* Where it is discretionary to allow a motion to quash an indictment for the non-swearing of a grand jury after a plea of not guilty, the absence of a formal order allowing the motion to quash is waived by failure to object. That the indictment is void, because the minutes of the court do not show that the grand jury was sworn, may be raised for the first time by motion to quash in the court to which a change of venue has been had.

State vs. Sovern, Mo., 125 S. W. 769. 1. *Surplusage.* Under Rev. St. 1899, sec. 1847 (Ann. St. 1906, p. 1277), providing that one who shall on purpose and of malice aforethought shoot at, or stab another, or assault or beat another, with intent to kill, shall be punished, etc., an information charging assault with intent to kill need not allege the infliction of wounds, but such allegation, if made, may be treated as surplusage under section 2535 (p. 1509)—statute of jeofails—providing that no information shall be held invalid for any surplusage or repugnant allegations where there is sufficient matter alleged to indicate the crime. 2. *Amendment.* Since under Rev. St. 1899, sec. 1847 (Ann. St. 1906, p. 1277), an information charging assault with intent to kill need not allege the infliction of wounds, where the information wrongfully alleged the infliction by accused of wounds on himself, it was proper to permit it to be amended so as to substitute the name of the prosecuting witness for that of accused. 3. *Rearraignment.* Where the information was after arraignment amended in an immaterial matter, it was not necessary to rearraign accused under the amended information. 4. *Continuance.* The granting of continuances in criminal cases rests to some extent in the discretion of the trial court, and its action will not be interfered with on appeal unless the record shows that such discretion was improperly, unsoundly, or arbitrarily exercised.

Edwards vs. State, Tex., 125 S. W. 894. *Burden of Proof.* In a trial for assault with intent to murder, an instruction that, if from the acts or words of prosecutor there was created in the mind of accused a reasonable apprehension that she was in danger of losing her life or of suffering serious bodily harm, she had the right to defend herself from such danger viewed from her standpoint, etc., and that if accused committed the assault as a means of defense, believing that she was in danger of losing her life, etc., she should be acquitted, coupled with a charge that an accused is presumed to be innocent until his guilt is established beyond a reasonable doubt, was not erroneous, as shifting the burden of proof and requiring accused to establish affirmatively the facts constituting her defense.

People vs. Droste, Mich., 125 N. W. 87. 1. *Confrontation.* Depositions taken before a magistrate at the home of a witness who was about to be confined so as to be unable to go to court were admissible in a homicide case, their admission not abridging accused's constitutional right to be confronted by witnesses against him. 2. *Impeaching.* Where a state's witness denied making certain statements to another, who was thereafter called by accused to impeach her, the state's witness could thereafter state what she said to such other; an impeached witness being entitled to explain impeaching testimony. 3. *Striking Incompetent Evidence.* Error cannot be predicated upon the admission of incompetent evidence where it is stricken and the jury directed not to consider it; it being presumed that the jury considers only evidence left in the case by the court.

State vs. Jones, S. C., 67 S. E. 160. *Ruling.* Where the judge cautioned a witness to state only what she saw, if anything, and not what anyone told her, and the witness subsequently gave hearsay testimony, and there was no motion to strike it, the action of the judge in allowing the witness to testify from hearsay, and in failing to instruct the witness to refrain from making statements based on hearsay, was not erroneous. Where the court directed the jury to disregard certain testimony, unless its relevancy was subsequently shown to the court and admitted by it, the refusal to strike from the record such testimony was not erroneous.

Ex parte Nesson, S. D., 125 N. W. 124. *Self-incrimination.* Pen. Code, sec. 16, makes all persons capable of committing crimes except those therein specified. Section 325 defines rape as an act of sexual intercourse, first, where the female is under 18, etc. Held, that section 325 does not render a female under 18 incapable of committing a sexual crime, and hence, on the trial of the father of such a female for rape upon her, it was her constitutional right to refuse to answer whether her father had had sexual intercourse with her, for the reason that it would tend to convict her of incest, and she could not be denied such privilege on the theory that section 325 rendered her incapable of committing incest, and therefore her answer could not possibly incriminate her.

Ausmus vs. People, Colo., 107 Pac. 204. *Experts.* An expert is one having superior knowledge of a subject acquired by professional, scientific, or technical training or by practical experience, which gives him knowledge not had by persons generally, so as to enable him to aid the court or jury in determining the matters under consideration. Under Mill's Ann. St., sec. 4185, par. 11, providing that, when a written signature is required by law, it shall mean the person's proper handwriting or his proper mark, if he cannot write, and section 1746c, Mills' Ann. St. Rev. Supp., permitting comparison by witneses of a dis-

puted handwriting with any writing proved to the court's satisfaction to be genuine, and permitting the evidence of such witness to be submitted on the genuineness of the writing as well as in the absence of the statutes, the genuineness of an illiterate's signature by XX's and ++'s is the subject of expert testimony; the signer's mark by crosses having many peculiarities.

Elliott et al. vs. State, Tex., 125 S. W. 568. *Absence of Judge.* That the judge, after organizing the grand jury, left it deliberating on the finding of an indictment, and went to another county, is not ground for quashing the indictment, in the absence of a showing of injury.

State vs. Jones, S. C., 67 S. E. 160. *Coercion of Verdict.* Where the court in a homicide case kept the jury deliberating one night and the greater part of one day, and then charged them on the law and sent them back for further deliberation on being informed that the jury disagreed on the facts, and indicated to the jury the great necessity of reaching a verdict, and that mistrials ought not to occur because of the great expense involved, etc., the jury were not coerced into agreeing on a verdict.

State vs. Parker, N. C., 67 S. E. 35. *Sufficiency.* A verdict finding defendant "guilty of carrying a pistol in his suitcase" is not responsive to an indictment for carrying a concealed weapon, and will not support conviction thereunder.

State vs. Clark, S. C., 67 S. E. 300. *Variance.* A verdict finding accused guilty of "housebreaking" would not support a sentence; not finding accused guilty of a crime under Cr. Code 1902, sec. 145.

Jones vs. State, Tex., 125 S. W. 914. *Review.* In a prosecution of a negro for carrying a pistol, where three witnesses impeached the veracity of complaining witness and his wife, who testified, and one witness testified that accused's reputation was very good, and that he was one of the best negroes on the creek, and accused testified that he did not carry the pistol, argument of the county attorney that the jury would not turn accused loose because certain white men wanted him turned loose, that in nine-tenths of the cases defended in the county the juries were only asked to turn the defendants loose because some white man wanted them turned loose, and as long as they parade white men before the juries for that purpose counsel was going to tell the juries about it, was not ground for reversal, especially where there was no special charge requested to disregard the argument.

Wesoky vs. United States, 175 Fed. 333. *Harmless Error.* Where defendants were convicted on a number of counts, and the judgment was warranted by any one of several of such counts, error, if any, in admitting or excluding evidence relating to one count alone, is immaterial, and not ground for reversal.

Williams vs. State, Fla., 50 So. 749. *Assignment of Error.* A single assignment of error attacking a plurality of rulings of the trial court, whether upon the pleadings, the admission or rejection of evidence, or the granting or refusal of instructions to the jury, will be unavailing, unless all of such rulings grouped en masse are erroneous, and the determination by an appellate court that one of the rulings so attacked is correct disposes of the assignment.

State vs. Marren, Idaho, 107 Pac. 993. *Harmless Error.* Even though an instruction is erroneous and ordinarily the error would be material, yet if the circumstantial evidence of the defendant's guilt is satisfactory—that is, such as ordinarily produces moral certainty, or conviction in an unprejudiced mind—and

the result could not have been different had the instruction been omitted, the case will not be reversed because of such erroneous construction.

State vs. Keener, Mo., 125 S. W. 747. *Information—Sufficiency.* An information for felonious assault, which alleges that accused in and upon prosecutor "feloniously, on purpose and of his malice aforethought, did make an assault, and then and there on purpose, and of his malice aforethought, feloniously assault" and stab prosecutor with a knife with intent to murder, is sufficient as against the objection that the word "did" is omitted between the words "and" and "then" in the quoted phrase, for the word "did," used in immediate connection with the charge of assault, is carried in meaning into connection with the following clause.

Richards vs. United States, 175 Fed. 911. *Appeal and Error—Reversal.*—The overruling of a challenge to a juror for cause by defendants in a criminal case is not ground for reversal, even if erroneous, where the record shows that the juror did not serve, and does not disclose by whom he was excused. or that defendants exhausted their peremptory challenges.

State vs. Kinghom, Wash., 105 Pac. 234. *Trial—Want of Arraignment and Plea.* That a jury is impaneled and sworn to try the cause, and the state had begun the examination of prosecutrix before accused had been arraigned and pleaded not guilty, was not ground for discharging the jury and declaring a mistrial; the court being authorized to require that the accused be then arraigned and plead and proceed with the trial.

United States vs. Aurandt, N. Mex., 107 Pac. 1065. *Failure to Arraign and Plead.* If after the the trial is commenced it be discovered that there has been no arraignment or plea, it is the duty of the trial court to begin the trial anew.

State vs. Hammons, Mo., 126 S. W. 422. *Indictment—Sufficiency.* An indictment for burglary charging the ownership of the burglarized store in the estate of a person deceased was insufficient.

Warfield vs. State, Miss., 50 So. 561. *Trial—Presence of Accused.* The absence of accused, on trial for murder, during a part of the time of the impaneling of the jury is fatal error.

Brunaugh vs. State, Ind., 90 N. E. 1019. *Indictment and Information—Certainty.* Under the Code of Criminal Procedure the indictment need not be more certain than the complaint in a civil action: it only being necessary that the allegations be certain to a common intent.

Combast vs. Commonwealth, Ky., 125 S. W. 1092. *Indictment and Information—Allegations.* Under Crim. Code Proc., sec. 125, providing that an error in defendant's name shall not vitiate the indictment, after accusing defendant Combast of the offense of illegally selling spirituous liquors, continued that "said Burge" did unlawfully sell, etc., was not ground for demurrer or dismissal, since the error in accused's name may be corrected any time before execution under such section.

Woodall vs. State, Tex., 126 S. W. 591. *Verdict—Legality.* In a prosecution for false swearing, the district attorney wrote out a verdict and handed it to a juror, who signed it as foreman, and as thus signed it was read by the clerk. The jury did not retire or deliberate as to their verdict, nor did the member who thus signed the verdict speak to any other member in regard to signing it. That member had not been elected foreman nor was there any consultation among the jury as to the matter, though the judge, after the verdict was handed to the clerk,

asked the jury if they agreed to it, and they nodded their heads. Held, that the verdict was erroneous.

Harris vs. State, Tex., 126 S. W. 890. *Indictment and Information—Disjunctive Allegations.* An information alleging that defendant did unlawfully carry a pistol on or about his person is fatally defective in using the disjunctive "or" instead of the conjunctive "and."

State vs. Clark, Vt., 75 Atl. 534. *Indictment—Use of Word Feloniously.* P. S. 5983 declaring that offenses which may be punished by death or imprisonment in the state prison are felonies, and that other offenses are misdemeanors, affords no test for the requirements of pleading, and hence an indictment for adultery, though a felony under the statute, need not allege the act to be "feloniously" done, since by common law and by statute, intent is not an ingredient of the crime.