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Judicial Decisions on Criminal Law and Procedure

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE.

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CONSTITUTIONAL LAW.

In re Gregory, 31 Sup. Ct. Rep. 143. *Due Process of Law.* Liberty and property are not taken without due process of law, contrary to the U. S. Const., 5th Amend., by the provisions of D. C. Rev. Stat., Sec. 1177, making it a crime to engage in any manner in any gift enterprise business in the District.

Bailey v. State of Alabama, 31 Sup. Ct. Rep. 145. *Involuntary Servitude. Peonage.* So far as the refusal without just cause to perform labor called for in a written contract of employment under which the employe has obtained money which was not refunded, or property which was not paid for, is made *prima facie* evidence of an intent to defraud by Ala. Code 1896, Sec. 4730, as amended by Gen. Acts 1903, p. 345, and Gen. Acts 1907, p. 636, and therefore punishable as a criminal offense, such legislation offends against the prohibition of the 13th Amend. to the Federal Const., against involuntary servitude except as a punishment for crime, and against the provisions forbidding peonage, found in U. S. Rev. Stat., Secs. 1990, 5526, U. S. Comp. Stat. 1901, pp. 1266, 3715, enacted to secure the enforcement of such amendment, especially since, under the local practice, accused may not, for the purpose of rebutting the statutory presumption, testify as to his uncommunicated motives, purposes or intentions.

United States v. Westman, 182 Fed. 1017. *"White Slave" Traffic Act.* Act June 25, 1910, Ch. 395, 36 Stat. 825, known as the "White Slave Traffic Act," making it a criminal offense to knowingly transport or to procure the transportation of women from one state into another for immoral purposes, is not unconstitutional as an attempted infringement of the police powers of the states, and is within the powers conferred on Congress by the commerce clause of the Constitution.

Commonwealth v. Jordan, Mass., 93 N. E. 809. *Sufficiency of Statutory Form.* Since Rev. Laws, Ch. 218, Sec. 39, gives accused an absolute right to such particulars as it may be necessary for him to have in order to prepare his defense, his constitutional rights are fully protected; and hence such chapter, which prescribes a form of indictment for murder, without requiring a particular description of the manner in which and the means by which the crime was committed, does not violate Declaration of Rights, Art. 12, providing that no subject shall be held to answer for any crime, unless the same is fully and plainly, etc., ascribed to him, or Const. U. S., Amend. 5, providing that no person shall be deprived of life, etc., without due process of law, or Const. U. S., Amend. 14, prohibiting any state from depriving any person of life, etc., without due process of law, or denying to any person the equal protection of the laws, etc.

ERROR.

Petty v. State Tex., 129 S. W. 615. *Signing of Verdict.* The record of a conviction of larceny recited the names of the twelve members of the jury. The copy of the verdict in the record was signed as foreman with a name

not appearing in the jury list. This defect was not noticed on a motion for a new trial, nor by the bill of exceptions. Held, that it must be presumed that the name of the foreman was improperly copied in entering the verdict, rather than that the verdict was signed by someone not a member of the jury, or that there were thirteen men on the jury. The conviction was affirmed.

Goolsby v. State Tex., 129 S. W. 624. *Omission of Word.* A written charge stated that if the jury believed certain facts to be proved they should find the defendant guilty. The judge intended to write "not guilty." In reading the charge to the jury he supplied the "not," but the written charge was taken to the jury room. Held, though the omission of the word was accidental, as it changed the meaning of the charge in a manner highly injurious to the rights of the defendant, it was reversible error.

Wilson v. State Tex., 129 S. W. 613. *Failure to Charge.* On a trial for homicide the evidence for the state proved a murder, that for the defendant, an accidental killing. There was evidence that deceased, who was defendant's wife, was whipping their child when she was killed. There was no proof that defendant was provoked to passion by the whipping, but on the contrary he testified that he was not aware of it. The court instructed on murder and on accidental homicide, but did not instruct on voluntary manslaughter. On appeal it was argued that there was an inference of fact that the defendant was enraged by the whipping and shot his wife in a passion due to this provocation. Held, that while the defendant was not estopped from claiming the benefit of any evidence that the homicide was manslaughter by testifying that it was an accident, yet as the proof of killing in sudden passion upon provocation was so slight that no sensible jury would hang a question upon it, it was not reversible error to fail to charge upon manslaughter.

Pridemore v. State Tex., 129 S. W. 1112. *Admission of Evidence.* In a trial for incest the state proved a definite act of intercourse, and elected to stand upon the act. Evidence of intercourse on other occasions was also admitted. Held, reversible error, as the fact of intercourse on other occasions did not render the defendant's guilt in the particular instance more probable.

Jones v. State Miss., 52 So. 791. *Bias of Juror.* After a conviction of murder, a juror who had properly qualified on his *voir dire* examination was shown to have been biased against the defendant. Held, that as the constitution of the state guaranteed "a trial by an impartial jury," the conviction must be reversed, even though the evidence so overwhelmingly shows defendant's guilt that such a jury would not have reached any other conclusion. To hold otherwise would amount to this court determining guilt, which it has not the power to do under the constitution of the state. There is no such thing in our law as "harmless error," when the constitution is violated in the commission of such error.

Williams v. Commonwealth, Ky., 130 S. W. 807. *Finding of Verdict.* At a trial of a criminal case the jury returned the following verdict: "We, the jury, do agree and find the defendant $150.00 and six months in jail and work." On appeal it was claimed the verdict was fatally defective because the jury failed to find the defendant guilty. Held, while the verdict was informal, it should have been reformed before the jury was discharged. The defect was waived by permitting the jury to be discharged without objection, and without a motion to have them correct their verdict. To justify reversal it must affirmatively appear that the substantial rights of the accused had been prejudiced,

and as the verdict plainly showed that the jury had found him guilty, and his rights had not been substantially prejudiced, the verdict should be affirmed.

People v. Pisano, 127 N. Y. Supl. 204. *View of Premises.* In a criminal trial the court adjourned to meet at the place of the offense, where the session was resumed. No testimony was taken, and after the view was completed, the trial was adjourned, without returning to the court house. Held, that the action was irregular, but harmless error, since a view of the premises is no part of a trial.

Horn v. United States, 182 Fed. 721. *Invited Error.* Defendants were not entitled to rely for reversal on a plain mistake in the statement of facts in an instruction which obviously arose from a misstatement of facts in one of defendant's requests.

Hendrix v. U. S., 31 Sup. Ct. Rep. 193. *Affidavits of Jurors.* The trial court commits no error in denying a motion for a new trial in a criminal case, founded upon the affidavits of the jurors to the effect that they did not understand the legal effect of their verdict.

FORMER CONVICTION.

People v. Cuatt, 126 N. Y. Supl. 1114. *Validity.* A former conviction to be available as a defense must be a valid conviction, and a former conviction procured by fraud of accused does not bar a subsequent prosecution, notwithstanding Const., Art. 1, Sec. 6, providing that no person shall be twice put in jeopardy for the same offense, since legal jeopardy does not arise where the court has no jurisdiction of the offense because of the fraud of accused.

GRAND JURY.

State v. Codington, N. J., 78 Atl. 743. *Excusing Juror.* The court has power to excuse a grand juror on its own motion for sufficient cause, and may, in its discretion, refuse to state the reason for excusing him, though ordinarily it is better that such reason be publicly stated.

INDICTMENT AND INFORMATION.

U. S. v. Kissel, 31 Sup. Ct. Rep. 124. *Limitations.* A special plea of the statute of limitations is not good as against an indictment charging a conspiracy to restrain or monopolize trade, in violation of the Sherman Act of July 2, 1890, by improperly excluding a competitor from business, although the conspiracy is alleged to have been formed on a specified date, which was more than three years before the finding of the indictment, where such indictment, consistently with other facts, alleges that the conspiracy continued to the date of the presentment.

Sanders v. State, Tex., 129 S. W. 605. *Particularity Required.* Under a statute making it a crime to procure any female to visit or be at "any particular house, room or place," for the purpose of prostitution, an information charged that the defendant did procure a specified female "to be at a certain place, to wit, at the town of Dublin, in Erath County, Texas, for the purpose of prostitution." Held, as the gist of the offense is the soliciting or procuring or luring any particular female to be at any particular house or room or place for the purposes of prostitution, while the statute does not punish for prostitution, it is not necessary to set out the name of the man or men with whom the prostitution was to be committed. Nor was it necessary to state any particular house or

room in Dublin, as Dublin was a place, for the purposes inhibited, and hence an offense under the statute was fully alleged.

Naill v. State, Tex., 129 S. W. 630. *De Facto Office.* Defendant was convicted under an indictment charging bribery of a city official, "to wit, the duly appointed, and qualified, and acting assistant city attorney." The charter of the city provided for the appointment of a deputy city attorney. Held, the word "assistant" is a more comprehensive term than the word "deputy," including those sworn and those not sworn, while deputy implies only the sworn class. As the charter did not create the office of assistant city attorney, there was no such official de jure, or de facto, hence no executive, legislative, or judicial officer, within the meaning of the statute, was bribed. The conviction was reversed, and the prosecution ordered dismissed.

Murphy v. State, Tex., 129 S. W. 138. *Defects.* An indictment for violation of a statute prohibiting the illegal sale of intoxicating liquors charged that "defendant did then and there unlawfully, and not as permitted by law, engage in the pursuit and occupation and business of selling intoxicating liquors," without legal authority, and without procuring a license, after an election had resulted in favor of prohibition in the county. Held, the indictment was fatally defective for failing to allege the time and place of the sales, as well as the names of the parties to whom the sales were made. The conviction was reversed.

State v. Smith, Ia., 127 N. W. 988. *Sufficiency of.* The caption of an indictment alleged that the grand jury, "in the name and by the authority of the state of Iowa, accused malicious injury to the building and fixtures of the crime committed as follows." Then followed a charge that the defendant injured a designated building, "by the wilful breaking by the said defendant of the plate-glass window in the frame door of said building." Held, as the caption might have been wholly omitted without affecting the validity of the indictment, the error therein was immaterial. The statement in the charging part of the indictment was sufficient, though it did not allege the instrument with which the breaking was done, nor the particular circumstances under which the act was committed, because they were not necessary to constitute a complete offense.

State v. Brown, Wis., 127 N. W. 956. *Sufficiency of.* Under a statute providing for the punishment of any person "who should obtain" money under false pretenses, an indictment charged that the defendant "did induce said Marinette County to pay" him the sum of $18.80. Statutes provided that errors of form, not affecting the substantial rights of the party, should be disregarded. Held, the indictment was sufficient, as the language, in its usual acceptation, means that the county paid over to the defendant, and the defendant received and obtained from it, the sum stated, rather than that the defendant tempted, persuaded or convinced the county that it should pay the money, but that it had not been actually received. The court refused to follow Commonwealth v. Lannan, 1 Allen (Mass.) 590; State v. Phelan, 159 Mo. 122, 60 S. W. 71; Connor v. State, 29 Fla. 455, 10 S. 891, 30 Am. St. Reports 126; State v. Lewis, 26 Kan. 123; Kennedy v. State, 34 Ohio St. 310.

Grantham v. State, Tex., 129 S. W. 839. *Variance Between Allegation and Proof.* Defendant was convicted of burglary on an indictment charging that crime in a house occupied by six persons who were named. The evidence showed that the house was occupied by five of them and not by the sixth. Held, a fatal variance between the allegation and the proof. The conviction was reversed.

Lowe v. State, Tex., 129 S. W. 842. *Defects.* Defendant was convicted

of perjury on an indictment, which charged that in a prior suit it was material whether a certain fact took place at a specified house, and that the defendant falsely testified that the fact took place, but did not charge that he testified that it occurred at that house. Held, that as the indictment did not limit the testimony to the occurrences at the house specified, it was fatally defective. The conviction was reversed.

Clark v. State, Ala., 52 So. 893. *Variance Between Charge and Proof.* On an indictment charging that the defendant "did sell, barter, or exchange," intoxicating liquor, the evidence was that the defendant "loaned" a quart of whiskey, but that other whiskey was to be returned instead of the identical whiskey "loaned." Held, there was no variance between the charge and the proof. As the identical whiskey was not to be returned, it was a legal barter, and the statement of the witness that it was a loan was legally incorrect.

United States v. Westman, 182 Fed. 1017. *Duplicity.* A count in an indictment under act June 25, 1910, c. 395, 36 Stat. 825, for transporting from one state into another for immoral purposes, is not bad for duplicity, because it charges the transportation of two women at the same time for the same purposes.

INSTRUCTIONS.

Commonwealth v. Polichinus, Pa., 78 Atl. 382. *Right of Accused to Counsel.* Where, on trial for murder, the judge instructs the jury that they are not to consider the evidence in the light of arguments of counsel, it is a violation of Const., Art. 1, Sec. 9, providing that in all criminal cases the accused has a right to be heard by himself and counsel.

Commonwealth v. Pacito, Pa., 78 Atl. 828. *Necessity for Request.* When the instructions cover the general rules of law applicable to the case, the omission to charge upon a particular point not called to the court's attention is not error, and, where the court charged generally on insanity, failure to charge on delusional insanity, which was the specific form of mania relied on as a defense, was not error in the absence of a request.

People v. Arnold, Ill., 93 N. E. 786. *Credibility of Defendant.* While, the interest of defendant being different from that of any other witness, it is proper for an instruction to point him out and direct the jury to take into account his interest as affecting his credibility, the court has no more right to disparage or discredit his testimony than that of any other witness. So that the conclusion of such an instruction that, "you are not required to receive blindly the testimony of such accused person as true, but you are to consider whether it is true and made in good faith, or false and made only for the purpose of avoiding a conviction," is erroneous and prejudicial, as intimating that defendant's testimony might be merely fabricated for the purpose of avoiding a just conviction.

People v. Faulkner, Ill., 93 N. E. 741. *Record. Matters Presented.* Instructions cannot be reviewed on appeal, where the abstract, though containing a list of the instructions, fails to state on whose behalf the instructions were requested.

People v. Ambach, Ill., 93 N. E. 310. *Presumption of Innocence.* An instruction that accused was presumed to be innocent, "and that presumption remained until such time as the minds of the jury are convinced from the evidence that he is guilty. You are just to start out, and say, without regard to the indictment: 'Now, we have got to start out on the proposition that this man is

innocent. Now, has the state proved his guilt, and proved it beyond a reasonable doubt?' "—was erroneous, as permitting the jury to discard the presumption before they had agreed upon a verdict.

People v. Ambach, Ill., 93 N. E. 310. *Influence of Argument of Counsel.* An instruction that: "It is not what counsel say on either side. It is what you have heard from the witnesses. You will have to rely on your own recollection as to that. You are to decide it upon that. Counsel are here for a very high and important purpose, to assist the court and assist the jury; but you are not to make the mistake at any time of saying: 'Well, the lawyer said so and so. He believed that was so and so.' That is not to influence you. You are to be influenced alone by the law as the court has told you it is, and by the evidence in the case as you believe it to be. The court cannot interfere with you in that respect, and doesn't want to. Counsel have no right to interfere with you in your deciding what are the facts, or what is the truth of this matter. That is for you"—was erroneous, as practically telling the jury to disregard the argument of counsel.

People v. Lee., Ill., 93 N. E. 321. *Reasonable Doubt.* An instruction that "a reasonable doubt requires that there should be more than a mere possibility of the defendant's innocence. You must have, in order to justify acquittal, a reasonable doubt of the defendant's guilt growing out of the unsatisfactory nature of the evidence against him. This doubt must be such a one as would induce a reasonable man to say, 'I am not satisfied that the defendant is guilty' " —was erroneous, as the expression "the evidence against him" had a tendency to lead the jury to believe that they were to determine the question of reasonable doubt from a consideration of the state's evidence alone.

Commonwealth v. Maddocks, Mass., 93 N. E. 253. *Argument of Counsel.* The action of the court in charging that the counsel for accused in his argument to the jury, wherein he referred to accused's wife and family, and that they would be deeply affected by the conviction of accused, intended to divert the minds of the jury from the proper issues in the case, was error.

People v. Conrow, N. Y., 93 N. E. 943. *Good Character of Accused.* Where several witnesses testified to previous good character of accused, and they were not contradicted, an instruction that the jury were limited in the consideration of good character to cases where the questions of fact were closely balanced, and that good character should not create a reasonable doubt as to guilt unless otherwise the evidence was nearly balanced, and in refusing to charge that, in the exercise of sound judgment, the jury might give accused the benefit of the presumption of innocence arising from good character, no matter how conclusive the other testimony appeared to be, was reversible error.

SPECIFIC CRIMES.

U. S. v. Press Publishing Co., 31 Sup. Ct. Rep. 312. *Criminal Libel.* The circulation in the government reservations at West Point and in the Postoffice building in New York City of copies of a newspaper containing a criminal libel printed and published in such city, cannot be punished in the Federal courts under the act of July 7, 1898 (30 Stat. at L. 717, Chap. 576), Sec. 2, providing that offenses committed in places under the exclusive jurisdiction and control of the United States, when not expressly made criminal by any law of the United States, shall be punished in accordance with the laws of the state in which such places are situated, since the laws afford adequate punish-

ment for the offense, without resorting to the Federal courts, and their plain purpose is that there shall be but a single prosecution and conviction for a criminal libel.

Thorp v. State, Tex., 129 S. W. 607. *Seduction.* A statute provided that a prosecution for seduction should be dismissed at any time before the conviction of the defendant, if the defendant in good faith offered to marry the female so seduced, but that this provision should not apply to a defendant who was married at the time. At the time of a trial for seduction the defendant offered to marry the prosecutrix. In the interval between the seduction and the trial the prosecutrix had married a third person. In an appeal from the refusal of the trial court to dismiss the prosecution it was held that as it was impossible for the prosecutrix to accept the offer of marriage, the offer was not made in good faith. It does not expressly appear that the defendant knew that the prosecutrix had married, but the opinion seems to assume that he did know it.

People v. Gillette, N. Y., 93 N. E. 953. *Extortion.* Where an intended victim of extortion paid money in apparent pursuance of threats, but really to entrap accused, the offense is an attempt to commit, and not consummated, extortion.

State v. Walder, Ohio, 93 N. E. 531. *Sale of Malt Liquor.* It is unlawful to sell malt liquor to be used as a beverage in a county of this state, where the county local option law is in force, whether such malt liquor is in fact intoxicating or non-intoxicating. Such is the effect of section three of said enactment, which declares that the "phrase 'intoxicating liquor' as used in this act, shall be construed to mean any distilled, malt, vinous or any intoxicating liquor whatever."

People v. Moore, 127 N. Y. Supl. 98. *Prostitution.* The offense denounced by Penal Law, Sec. 2460, Subd. 4, punishing "every person who shall knowingly receive any money * * * for * * * procuring and placing in the custody of another, for immoral purposes, any woman, with or without her consent," is completed when one knowingly receives money on account of procuring and placing in the custody of prosecutor two women with their consent, for immoral purposes, though prosecutor merely laid a trap for accused, and did not intend to make use of the women for immoral purposes, and did not so make use of them; the word "knowingly" being limited to the receipt of money, to the procuring, and to the immoral purposes for which the women were procured.

United States v. Janke, 183 Fed. 277. *False Swearing.* A state court granted naturalization to a woman who had been dead over four years, and the certificate was issued by the clerk. No hearing was had nor evidence taken in open court, as required by Naturalization Act, June 29, 1906, Ch. 3592, Sec. 9, 34 Stat. 599 (U. S. Comp. St. Supp. 1909, p. 482); but affidavits in support of the petition were made out by the clerk, and subscribed and sworn to by defendants, the material statements of which were false. Defendants, however, did not understand the English language, and were not informed of the contents of the affidavits, but signed the same as directed by the clerk. Held, that they were not guilty of "knowingly" giving false testimony, made a crime by section 23 of the act.

Commonwealth v. Mixer, Mass., 93 N. E. 249. *Transportation of Intoxicating Liquor.* Rev. Laws, Ch. 100, Sec. 49; providing that intoxicating liquor, which

is to be transported for hire for delivery in a no-license city, shall be delivered to the carrier in packages marked by the names of the seller and of the purchaser, and with the kind of liquor therein contained, and delivery of such liquor by a carrier shall be deemed to be a sale by the person making such delivery, does not make intent an element of the offense; and a carrier or its servant may be convicted of illegally transporting intoxicating liquor, though it does not know and has no reason to surmise that there is intoxicating liquor in a package delivered for transportation by a seller, who failed to mark the package as required.

Leonard & Yeargain v. State, Ark., 129 S. W. 1098. *Sale of Intoxicating Liquors.* A statute provided for the seizure and destruction of intoxicating liquors "kept in any prohibited district, to be sold contrary to law." Liquors kept in a prohibited district in Arkansas, to be sold in Missouri in violation of the law of that state, were seized. Held, the intention to give extra-territorial extension to a statute would not be ascribed to the lawmakers unless the language employed afforded no escape from such construction. The statute is highly penal, and should be strictly construed. It applies to liquors kept for sale in Arkansas contrary to law, and not to sales to be made outside the state. The order for the destruction of the liquors was reversed.

TRIAL, EVIDENCE, DEFENSE.

Wilson v. State, Ind., 93 N. E. 609. *Evidence of Testimony of a Witness at Former Trial.* The reproduction of the testimony of a witness on a former trial where accused either cross-examined him or had an opportunity to do so, does not contravene Bill of Rights, Sec. 13, giving to accused the right to meet the witness face to face, where the witness has died or has become insane since the former trial, or is permanently or indefinitely absent from the state, and beyond the jurisdiction of the court.

Commonwealth v. Detweiler, Pa., 78 Atl. 271. *Conduct of Trial.* A verdict of guilty of murder will not be set aside because the district attorney allowed a woman to sit by his side at the trial, whom he supposed to be the wife of decedent, and addressed as such, where she had seen the killing and was in court as a witness for the state, though testimony that she was the wife of decedent was false.

United States v. Foster, 183 Fed. 626. *Expression of Opinion on the Facts.* It is the settled law that it is within the right of a federal judge to state his opinion on the facts to the jury in a criminal or civil case, with proper explanation that it has no binding effect; and it is proper for him to do so, giving his reasons therefor, where he has a decided opinion, and in his judgment the case is such that it will be helpful to the jury. Where he does so, it is the preferable practice to give his opinion after the case has been argued by counsel, rather than with the instructions on the law preceding the argument, and it is not objectionable, and sometimes preferable, to defer such statement until after the jury have considered the case, and give it only in case of their inability to agree.

State v. Griffow, Iowa, 127 N. W. 1009. *Improper Conduct of Spectators.* During a trial for larceny, on several occasions there was more or less levity over parts of the testimony. This was checked by the court in one or two instances, and the record failed to show that the defendant was prejudiced thereby. Held, a conviction would not be reversed because of improper conduct

on the part of spectators unless it be clearly shown that the defendant suffered some prejudice on account thereof. Conviction affirmed.

State v. Varnado, La., 52 So. 1006. *Failure of Accused to Testify.* In argument the prosecuting attorney said that the testimony of certain witnesses must be true, "because nobody had taken the stand to deny it." The defendant and several other witnesses had personal knowledge of the facts and should have testified to them. The trial judge offered to charge the jury that the failure of the accused to testify must not be considered for or against him, or to discharge the jury. Counsel for the defense objected to the discharge of the jury and the court then properly charged them as to the failure of the accused to testify.

On a Sunday the jury reported that they could not agree and "were hopelessly tied up." The judge ordered them to their room for further deliberation, and later on the same day they agreed, and a verdict was received by the court and ordered recorded, and the jury discharged.

Held, if the argument of the prosecutor was intended as a comment on the failure of the accused to testify, the prompt action of the court removed any possible effect prejudicial to the defendant. The accused, having refused any offer of a new jury and taken his chances of acquittal, cannot thereafter object.

The receiving and reporting of a verdict on a Sunday or other *dies non juridicus* is permissible.

Flores v. State, Tex., 129 S. W. 1111. *Failure of Accused to Testify.* In arguing a criminal case, the district attorney, after alluding to testimony as to admissions made by the defendant, added, "No one has taken the stand to deny this." No one but the defendant could have denied it, as he and the witnesses were the only persons present. The defendant had not testified in the suit. Held, the language was a reference to the failure of the defendant to testify, and hence under the statute the conviction should be reversed.

Davis v. State, Ark., 130 S. W. 547. *Failure of Accused to Testify.* In his argument to the jury, the prosecuting attorney, after alluding to an alleged admission made by the defendant, added, "and it is undisputed and undenied in this case and he cannot deny it." The defendant had not testified in his own behalf. Held, the remarks were but the opinion of the state's attorney as to the weight to be accorded to the testimony of the witnesses who swore to the admissions and could not fairly be held to refer to the fact that the defendant had not testified in the case. Hence they did not fall under the statute prohibiting references to such a failure to testify.

Commonwealth v. Detweiler, Pa., 78 Atl. 271. *Intoxication as a Defense.* Intoxication from the voluntary use of any drug, taken to gratify the appetite, is considered in law the same as intoxication from the voluntary use of liquor.

Henson v. Commonwealth, Ky., 129 S. W. 566. *Self Defense.* In a trial for murder, there was evidence for the defense that the deceased was attacking the defendant, and the defendant shot in self defense. The trial court admitted evidence that after the deceased had been advised by a physician that he must die, when he was gasping for breath, he said to his wife: "Ellen, I am going, but I wasn't doing a thing." Held, that under the circumstances the wound was manifestly the subject of the statement to his wife, and the statement was properly admitted as a dying declaration.

Commonwealth v. Ballon, Pa., 78 Atl. 831. *Confession of Alleged Ac-*

complice. Where, shortly after the accused's arrest for murder, a confession of an alleged confederate was read to him, and he did not deny the statements as to his own complicity therein, the confession may be read to the jury to support an inference of assent to the statements therein from silence.

Wilcoxin v. Commonwealth, Ky., 129 S. W. 309. *Insanity as a Defense.* At the trial of an indictment for murder, the defense was insanity. The trial court charged that the jury "must be satisfied from the evidence that the defendant was insane." Held, neither the word "satisfied," nor the words "preponderance of the evidence," should be used in an insanity instruction. But the jury should be told that if they believed from the evidence that at the time of the killing the defendant was of unsound mind, then they should acquit him.

Cromwell v. State, Tex., 129 S. W. 622. *Reasonable Doubt.* A written charge contained the following paragraph: "The defendant is presumed by law to be innocent until his guilt is established by legal and competent evidence to your satisfaction beyond a reasonable ——. This reasonable doubt extends to every phase of the case; and if you have a reasonable —— of the guilt of the defendant, you will give him the benefit of such doubt, and acquit him." Held, the conviction should not be reversed, as from the context the jury would readily supply the word "doubt" in the blanks.

State v. Stike, Mo., 129 S. W. 1024. *Sufficiency of Defense.* In a prosecution for the illegal sale of intoxicating liquor to a minor, where the proof was that the sale was made by defendant's barkeeper, while defendant was absent. Held, the fact that defendant had in good faith given instructions to his bartender not to sell intoxicating liquors, and that he was not present when the sales were made, and had no knowledge of them, was a defense to the charge.