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Judicial Decisions on Criminal Law and Procedure

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

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A QUESTION OF PENALTY IN THE UNITED STATES COURT FOR CHINA.

The United States of America v. Peter A. Grimes. Criminal action No. 87; original paper filed at Shanghai, March 9, 1914. Edward H. Murray, acting clerk of court.

Syllabus.

1. The jurisdiction of this court to try and sentence one charged with an offense defined by the common law or by the codes of the District of Columbia or Alaska is now well established.

2. The minimum penalty should not ordinarily be imposed for a second offense of the same character.

William S. Fleming, Esq., Special United States Attorney for the Government.

Stirling Fessenden, Esq., for the defendant.

Judgment and Sentence.

Lobingier, J.

The accused pleads guilty to an information charging him with forgery of a check for fifty dollars, Mexican currency. The offense charged was one at common law (19 Cyc. 1370) and is also such by the codes of the District of Columbia (Sec. 843) and Alaska (Sec. 76) which latter under the decision of the Court of Appeals (*Biddle v. U. S.,* 156 Fed. Rep. 579) and of this court (*U. S v. Grimsinger,* October 30, 1912) are applicable here. There is accordingly no question as to our jurisdiction and the procedure is settled by the decision of the Supreme Court in *Ross v. McIntyre,* 140 U. S. 453. The plea of guilty, therefore, leaves only the penalty to be considered.

Counsel for the accused asks for the minimum punishment because his client has pleaded guilty and by reason also of the comparitively small amount obtained by means of the forged check. These are considerations which would ordinarily have weight and, in the absence of countervailing circumstances, might justify the leniency sought.

It appears, however, from a showing made by counsel for the government upon the prisoner's first appearance for sentence, and admitted by the latter, that so late as August 10th last he was discharged from San Quentin Prison, California, after serving a sentence of one year for this identical offense under the name of John H. Rogers. As the crime to which he now pleads guilty was, according to the information, committed on December 6, it will be seen that he was repeating his former offense within four months of his discharge. Moreover, it even appears from the records of the Consular Court that the accused has been there convicted of, and has already served sentences of two and four weeks respectively for somewhat similar offenses (obtaining money under false pretenses) the first committed as early as October 4, 1913, and the second on December 9. Leaving out of account the fact that another information charging forgery on December 8 is pending against the accused, and by agreement of both counsel has been allowed to stand over (though this it seems may properly be considered in fixing the

penalty, *State v. Wise,* 32 Oreg. 280, 50 Pac. 800) it sufficiently appears from the admitted facts already reviewed that he is not only no novice in crime, but that a penalty such as is now suggested has had little or no deterrent effect upon him.

Now the deterrent effect of punishment is the element which should be most controlling in determinging its duration and severity. As expressed by the father of modern penology, Beccaria, "The end of punishment is nothing else than to prevent the repetition of crime." The present day theory of penalties, in other words, is preventive and not vindictive; but a penalty which leaves so little impression upon the offender that he repeats the offense within a few weeks cannot accurately be termed "preventive."

Indeed the fact that the accused is a second offender at all would seem to deprive him of the benefits of the minimum penalty. In the Codes of Civil Law countries, (*e. g.,* Spanish Penal Code, Art. 10 (17, 18)) that is an aggravating circumstance which automatically raises the penalty and in Anglo-American jurisdictions it is an element to be considered in exercising the court's discretion. As was well said by Chief Justice Clark in *State v. Wilson,* 121 N. C. 650, 28 S. E. Rep. 417:

> "Such matters ought justly and properly to be considered, as well as, on the other hand, a defendant's previous good character in lightening the sentence to be imposed. In England and some of the states of this country there is an "Habitual Criminals Act," which requires heavier sentences for such offenders. Whart. Cr. Pl. (9th Ed.) 934; 1 McLain, Cr. Law 28; *Moore v. Missouri,* 159 U. S. 673, 16. Sup. Ct. 179."

The minimum penalty provided for this offense by both of the codes above cited is imprisonment for one year but the maximum in the first is twenty years and ten in the second. And while in view of the decision of this court in *U. S. v. Grimsinger, supra,* these periods may not be controlling we are of the opinion, in the light of all the circumstances, that a term of three years would be the least that would serve to deter the accused or to affort a warning to others of like tendencies.

It has been suggested that the accused may be suffering from some form of criminal mania; but clearly this does not lessen the necessity of incarceration though it may require a special method of treatment during the period thereof and this is meanwhile recommended to the consideration of the prison authorities.

The defendant is accordingly sentenced to imprisonment for a term of three years to be served in the jail for American convicts in China at Shanghai, China, until provision is made by the government for his transfer to some prison in the United States; and it is directed that during the whole of said term he be employed at some useful labor. He is further adjudged to pay the costs of this prosecution.

By the Court, CHARLES S. LOBINGIER, Judge, Shanghai, China, March 9, 1914.

CONSPIRACY.

United States v. Foster, et al., 211 Fed. 205. *Conspiracy by postmaster to Defraud Government.* A conspiracy to secure for a postmaster a larger salary by purchasing at his office a large quantity of stamps for use outside the territory served by such office was not a conspiracy to defraud the United States, since as the statute makes the postmaster's salary dependent upon the gross receipts without excluding receipts from such sales, the postmaster was legally entitled

to the salary which it was the object of the alleged conspiracy to secure, and a conspiracy to obtain by improper methods what one is legally entitled to is not punishable as a conspiracy to defraud.

CONSTITUTIONAL LAW.

Garland v. State of Washington, 34 Sup. Ct. Reptr. 456. Necessity of arraignment and plea—"Due process of law."

A conviction upon a second and amended information after a prior conviction under the original information had been set aside and a new trial granted was not wanting in the due process of law guaranteed by U. S. Const., 14th Amend., because no arraignment or plea was had upon the second information, where, without raising that specific objection before trial, the accused has made certain objections to such information, and was put to a trial thereon before a jury in all respects as though he had entered a formal plea of not guilty.

In answer to the argument that the United States Supreme Court had held the contrary in *Crain v. United States,* 162 U. S. 625, the court, by Justice Day, said in part:

"Technical objections of this character were undoubtedly given much more weight formerly than they are now. Such rulings originated in that period of English history when the accused was entitled to few rights in the presentation of his defense, when he could not be represented by counsel, nor heard upon his own oath, and when the punishment of offenses, even of a trivial character, was of a severe and often of a shocking nature. Under that system the courts were disposed to require that the technical forms and methods of procedure should be fully complied with. But with improved methods of procedure and greater privileges to the accused, any reason for such strict adherence to the mere formalities of trial would seem to have passed away, and we think that the better opinion, when applied to such a situation as now confronts us, was expressed in the dissenting opinion of Mr. Justice Peckham, speaking for the minority of the court in the Crain case, when he said (page 649):

"'Here the defendant could not have been injured by an inadvertence of that nature. He ought to be held to have waived that which under the circumstances, would have been a wholly unimportant formality. A waiver ought to be conclusively implied where the parties had proceeded as if defendant had been duly arraigned, and a formal plea of not guilty had been interposed, and where there was no objection made on account of its absence until, as in this case, the record was brought to this court for review. It would be inconsistent with the due administration of justice to permit a defendant under such circumstances to lie by, say nothing as to such an objection, and then for the first time urge it in this court.'

"Holding this view, notwithstanding our reluctance to overrule former decisions of this court, we now are constrained to hold that the technical enforcement of formal rights in criminal procedure sustained in the Crain case is no longer required in the prosecution of offenses under present systems of law, and so far as that case is not in accord with the views herein expressed, it is necessarily overruled."

Riley v. Commonwealth of Massachusetts, 34 Sup. Ct. Reptr. 469. *Hours of Employment—Freedom of Contract.* The employment of women for more than ten hours in any one day, or more than 56 hours a week, in any manu-

facturing or mechanical establishment, may be forbidden as is done by Mass. Laws 1909, chap. 514, sec. 48, which makes the exception that a different apportionment of the hours may be made for the sole purpose of making a shorter day's work for one day of the week, without infringing the liberty of contract assured by the Fourteenth Amendment to the Federal Constitution.

Patsone v. Commonwealth of Pennsylvania, 34 Sup. Ct. Repr. 281. *Possession of Firearms by Aliens.* The legislative assumption that unnaturalized foreign-born residents are peculiarly a source of danger to wild life cannot be said to be so unwarranted as to invalidate, as denying the equal protection of the laws, the provisions of Pa. Laws 1909, No. 261, p. 466, prohibiting the killing of any wild bird or animal by any such foreign-born person except in defense of person or property, and "to that end" making it unlawful for any such person to own or be possessed of a shotgun or rifle.

DISTURBING A RELIGIOUS ASSEMBLAGE.

Brown v. State, Ga. App., 80 S. E. 26. *Self-Defense.* A statute prohibited the disturbance of a congregation of persons lawfully assembled for divine worship, either during the service or so long as any portion of the congregation remained upon the ground. The defendant was upon the church grounds during a protracted service searching the grounds for empty whiskey bottles. As the congregation dispersed one of the worshippers, "apparently in search of internal refreshment and comfort," asked the defendant if he "had any of that whiskey." The defendant objected to the intimation that he was engaged in the unlawful sale of liquor and threatened his questioner, creating quite a disturbance. The defense was that the accused was protecting himself against the imputation of crime. Held that while possibly one charged with crime of illegal liquor selling might be excused for resenting the words with a blow, this rule cannot be applied when the insult is offered at a time and a place when resentment would inevitably lead to the disturbance of a religious assemblage, even though this rule deprives the person insulted of his only opportunity for personal redress. The court distinguished this from an earlier case in which it held that one who was feloniously assaulted might defend himself even though to do so it was necessary to fire a pistol and in doing so a congregation was thereby disturbed.

DYING DECLARATIONS.

Reeves v. State, Miss., 64 So. 836. *Disqualified of Revengeful.* In making a dying declaration the deceased said that defendant murdered him and added, "I hope the people will not let Barney walk around and not do nothing to him after he have murdered me like he have." Held that the declaration shows that at the time it was made the declarent was laboring under such strong feeling of hatred and revenge against defendant as to remove all presumption of its trustworthiness. Hence it was error to admit it in evidence, and the conviction was reversed.

EMBEZZLEMENT BY ATTORNEY.

Price v. State, Okla. Cr. App., 137 Pac. 736 *Not Admitted to Bar.* Defendant was convicted of embezzlement under a statute providing for the punishment of attorneys who receive clients' money or property in the course of their professional employment and fail to pay it over. One defense was

that the defendant had never been legally admitted to the practice of law in the state. There was proof that he had been admitted to the bar of another state, and as a matter of fact he held himself out to the public as a lawyer and did practice law in Oklahoma, appearing as an attorney in a number of cases and accepting employment and receiving pay as an attorney in this case. The court said that while it was illegal to act as an attorney without being admitted to the bar, "the commission of one crime can never be pleaded as atonement for the commission of another crime * * * if Price was attorney enough to accept employment to collect this money he is attorney enough to be punished for embezzling it." The conviction was affirmed.

EXECUTION.

Ex parte Lujan, N. M., 137 Pac. 587. *After Void Stay.* September 25, 1908, the petitioner was sentenced to imprisonment at hard labor for two years. The judgment further ordered that if the petitioner should forthwith remove from the territory the committment should not issue so long as he remained absent. He left the territory but later returned and July 17, 1913, the court ordered a committment to issue because the condition of the stay-order had been violated. The petitioner was taken into custody and applied for a writ of *habeas corpus.* Held that the court had no power to stay the execution, as there was then no statutory authority for so doing; that a sentence is not satisfied until it has ben actually served, hence it was immaterial that a longer period of time than that covered by the sentence had elapsed since it was imposed. Hence the committment under the sentence was legal. The petitioner was remanded to custody.

FUGITIVE FROM JUSTICE.

Doren v. State., Ind., 104 N. E. 500. *Right of Fugitive to Prosecute an Appeal.* Where the defendant in a criminal case subsequent to his conviction absents himself from the custody of the state and from its jurisdiction and becomes a fugitive from justice, he cannot prosecute his appeal.

GAMING.

People v. Stein, 146 N. Y. Supp. 852. *Slot Vending Machine.* A machine for dispensing gum, whereby a player in return for a penny inserted in the slot receives one cent's worth of gum, and has a chance of receiving more gum or candy, depending on the channel in which the penny falls, is a gambling device which renders one who permits its operation in his place of business guilty of keeping a room to be used for gambling contrary to Penal Law, sec. 973, and who permits a boy under 16 to operate the machine guilty of permitting him to be in a situation likely to impair his morals under sec. 483.

HOMICIDE.

Commonwealth v. Exler, Pa., 89 Atl. 958. *Murder by Attempted Rape.* As used in act of March 31, 1860, sec. 74, providing that a homicide committed in the perpetration or attempt to perpetrate a rape shall constitute murder in the first degree, the word "rape" is used in its common law sense, and means unlawful carnal knowledge of a female without her consent, and does not include statutory rape denounced in Act May 19, 1887, and there could be no conviction under such statute for murder in an attempt to rape a girl over 10 years old, without evidence of want of consent.

INDICTMENT.

People v. Antoniello, 146 N. Y. Supp. 799. *Sufficiency.* An indictment, accusing defendant of the crime of murder in the first degree committed as follows, "the defendant, unlawfully, feloniously and of his malice aforethought struck deceased with a dirk, thereby inflicting injuries of which he died," does not state facts sufficient to charge the defendant with the crime of murder in the first degree as defined by Penal Laws, sec. 1044, since it fails to allege that the injury was inflicted with intent to cause death, and that intent can not be inferred from the fact that death ensued.

Castleberry v. State, Okla. Cr. Ap., 139 Pac. 132. *Date of Crime.* An indictment charged that the crime was committed "on the —— day of May, A. D., 1911." A statute provided that the precise time at which the offense was committed need not be stated in the indictment. Another section provided that the indictment should be sufficient if it showed that the offense was committed prior to the time of its filing, the offense was clearly and fully set forth in ordinary and concise language and was stated with such a degree of certainty that the court could pronounce judgment according to the right of the case. Held that as the time was not a material ingredient in the offense charged, the indictment was sufficient under the statute. The conviction was affirmed.

INSTRUCTIONS.

Lanier v. State, Ga., 80 S. E. 5. *Broader than Indictment.* Defendant was indicted for the murder of infant "by choking, strangling and by beating and striking said baby boy." The trial judge instructed the jury that it would make no difference to the guilt of defendant whether he or his wife actually struck the blow or choked or smothered the child. The court held that on this indictment the defendant could not be convicted on proof that the child was killed in any manner substantially different from that charged. That "to smother is to stifle, to suffocate by stopping the exterior air passages to the lungs; to strangle is to suffocate by a pressure or constriction of the throat." As the judge instructed the jury to convict if the child was smothered it was prejudicial error. The conviction was reversed solely upon this ground; two judges dissenting.

Remillard v. State, Okla. Cr. App., 137 Pac. 370. *Presumption of Innocence.* On a prosecution for the illegal sale of liquor the court instructed the jury "if you find from the evidence that he did not sell, or assist in the sale, or give or otherwise furnish, or assist in giving or otherwise furnish the said liquor to the said Glen Hall then you should acquit him." It was held that this charge was contrary to the presumption of innocence because it required the jury to believe from the evidence that he was innocent before they could acquit him, while they should acquit him in case of a reasonable doubt, although they might not find from the evidence that he did not furnish the liquor.

People v. Terrell, Ill., 104 N. E. 264. *Credibility of Witness.* In a criminal prosecution, an instruction that the credibility of witnesses is a question exclusively for the jury, and that they have the right to determine from all the surrounding circumstances appearing on the trial which witnesses are the most worthy of belief, is improper, for the expression "circumstances appearing on the trial" might be taken by the jury to refer not to the evidence

but to the conduct of the witnesses in the presence of the jury while they were not on the witness stand. But the case being clear, held that the giving of this instruction does not require a reversal of the judgment.

MURDER.

State v. Angelina, W. Va., 80 S. E. 141. *Cause of Death.* The defendant inflicted a mortal wound on deceased. Within a minute or a minute and a half thereafter deceased shot himself in the head inflicting a wound not necessarily fatal. In about twenty minutes from the first injury, deceased died. The trial judge instructed that "if his death was not the result of the self-inflicted wound but that, if it had any effect, only hastened his death, the result of said mortal wound," the defendant was guilty. Also that if the defendant inflicted a mortal wound he was guilty "provided the shot fired by him really contributed either mediately or immediately to the death" of deceased, even though deceased "would have died from other causes or would not have died from the shot fired by defendant had not other causes operated with it." The Appellate Court said "if after a mortal wound is inflicted by one person, another independent responsible agent in no way connected in causal relation with the first, intervenes and wrongfully inflicts another injury, the proximate cause of the homicide, the latter and not the former is guilty of murder * * * the rule is different where the agent so interposing is irresponsible." The court called attention to the inconsistency in the instruction which presupposes a mortal wound and says that the defendant would be guilty though the deceased would not have died from that wound had not other causes operated with it, and says that it is further open to the same objection that if there was a supervening responsible agency the defendant would not be guilty of murder. It suggests that "the proper theory of the state's instruction should have been a mortal wound by the defendant and that the self-inflicted injury by deceased, though it may have been the proximate cause of death, was not the act of an intervening responsible agent but of one rendered irresponsible by the wound inflicted by defendant and as the natural result of that wound the causing cause of the immediate death of deceased." The conviction was reversed because of these erroneous instructions.

The attention of the court does not seem to have been called to any prior cases involving this point, especially *People v. Lewis,* 124 Cal. 551, 57 Pac. 470, 45 L. R. A. 783. In this case the facts were almost the same as in the Angelina case, and the Supreme Court of California sustained the conviction upon the ground that the act of the deceased was a contributing cause to the death, though not the sole cause. It is well settled that the act of the deceased need not be the sole cause of death. Where a serious wound not necessarily fatal in itself, is followed by blood-poisoning, causing death, the courts are agreed that the man who inflicted the wound is criminally responsible for the death, for the reason stated by Lord Hale that he cannot apportion the blame. There is a tendency on the part of our courts, illustrated by the Appellate Court in this case, to overlook the principle that the defendant's act need not be the sole cause of death, where the intervening act of a guilty agent also contributes to that result. It is, of course, well settled that the person making the second attack is criminally liable if his act shortens the life of deceased. It should not follow, however, that the person making the first attack is immune from punishment, unless the second

injury was the sole cause of death. If each of two wounds inflicted by two persons acting independently hastens the death of the victim, there is no more legal or logical reason for exempting the first assailant from responsibility than for exempting the second. Their liability to punishment does not depend upon the chronological order in which they made the attack, but upon whether the act of each did or did not shorten the life of deceased. The trial court evidently had this principle in mind in giving the charge, and it is submitted that the theory upon which this court acted is correct, and that upon which the appellate court acted is not.

NON-SUPPORT OF MINOR CHILDREN.

State v. Bess, Utah, 137 Pac. 829. *Destitution.* The defendant's wife had obtained a divorce, with the custody of four minor children. During the next five months the defendant contributed only five dollars for the support of these children. With great difficulty their mother provided the commonest necessaries of life for herself and for them, by working in a knitting factory, sewing, and acting as a nurse. There was evidence that the defendant could have contributed more to their support. The defense was that the children were not in "destitution and necessitous circumstances" as required by the statute, because they were supported by their mother. Held that the fact that the children were provided for by charity bestowed by relatives, friends, or charitable institutions, would not protect the father from the punishment imposed by the statute for failure to support them. The cases of *Poole v. People,* 24 Colo. 510, 52 Pac. 1025, 65 American St. Rep. 245; *People v. Malsch,* 119 Mich. 112, 77 N. W. 638, 75 Am. St. Rep. 381; *State v. Witham,* 70 Wis. 473, 35 N. W. 934; *Burton v. Commonwealth,* 109 Va. 800, 63 S. E. 464; and *State v. Waller,* 90 Kan. 829, 136 Pac. 215 were cited and followed. The cases of *Baldwin v. State,* 118 Ga. 328, 45 S. E. 399; *Williams v. State,* 126 Ga. 637, 55 S. E. 480; *State v. Thornton,* 232 Mo. 298, 134 S. W. 519, 32 L. R. A. (N. S.) 841, were overruled.

PARDON.

United States v. Burdick et al., 211 Fed. 492. *Pardon Before Conviction to Permit Testimony.* The president has the power to grant a pardon, though the person pardoned has never been charged or convicted of the offense. Hence, where a witness declined to testify before the grand jury on the ground that his testimony might incriminate him, and the president issued an unconditional pardon, the witness was thereby deprived of the right to claim the privilege, without reference to whether he accepted the pardon or not.

SUFFICIENCY OF EVIDENCE.

Foster v. People, Colo., 139 Pac. 10. *Circumstantial Against Direct Evidence.* On a prosecution for larceny there was no direct evidence that the defendant stole the goods. There was evidence that he left the stolen property at a stable the morning after it was stolen, and that a roll of bedding found with the property belonged to the defendant. There was evidence in behalf of the defendant denying both of these statements and direct evidence to establish an alibi. The defendant was convicted. Held that the jury were judges of the credibility of the witnesses, and as there was sufficient substantial testimony to support the verdict it would not be disturbed on appeal.

TRIAL.

Rain v. State, Ariz., 137 Pac. 550. *Other persons in Jury Room.* The janitor and his assistant entered the jury room for the purpose of replenishing the supply of ice-water while the room was occupied by the jury and conversed with members of the jury. There was no evidence that this influenced their verdict. Held that the modern presumption is that jurors are honest and regardful of the obligations of their oaths, hence the burden is on any person charging dishonesty or corruption to produce evidence to support the charge. Without such evidence the verdict will not be set aside. The conviction was affirmed.

People v. Becker, N. Y., 104 N. E. 396. *Misconduct of Trial Judge.* During the trial of a capital case, the court continually imposed on accused's counsel, stated that he was becoming trivial, commanded him to sit down, told him that he knew better than to make objections, objected to his manner, which was in no way contumacious, refused to hear argument, unduly restricted the cross-examination of witnesses, and interposed objections of his own, and on one occasion, when accused's leading counsel pleaded weariness and asked that his associate might take his place in the cross-examination of a witness, the request was summarily denied, and on another occasion it was proposed as an apparent reason for denying counsel's request for an adjournment that the cross-examination be turned over to his associate. Every appeal to the court's discretion for an adjournment or for leave to re-open the examination of a witness to correct an inadvertent admission or utilize on cross-examination of a hostile witness newly acquired information or to call a witness who had been absent was denied, while applications of a similar character by the people were quite uniformily granted. At the close of the cross-examination of an important witness for the defense. accused's counsel requested permission to ask one question, but the court refused because "time is too precious." At the close of the examination of another witness, accused's counsel stated that he was too exhausted to conduct the cross-examination, to which the court replied, "Let us have no more about exhaustion, we have heard enough about that"; but after ascertaining that the district attorney had no more witnesses, and both counsel pleaded for an adjournment, the court adjourned. Held that the court was guilty of prejudicial misconduct which deprived accused of a fair trial.

STATUTE OF LIMITATION.

People v. Di Pasquale, 146 N. Y. Supp. 523. *Conviction of Lesser Degree.* In view of Code Cr. Proc. Sec. 4, requiring a crime to be prosecuted by indictment, Pen. Code, Sec. 610, providing that, on trial of an indictment, there may be a conviction of the crime charged therein, or of a lesser degree of it, or of an attempt to commit it or a lesser degree, is a rule of pleading, merely doing away with the necessity of charging in such an indictment the lesser degree or attempt, and does not permit conviction under such an indictment, of an attempt, where, when the indictment was found, the finding of an indictment for the attempt was barred by limitations.

TRIAL.

State v. Brand, Minn., 145 N. W. 39. *Improper Argument.* In an address to the jury the county attorney made statements which went beyond the limits

of legitimate argument. No objection was made or exception taken until the end of the argument. Objection was then made to twelve statements, some of which were justified by the evidence, and defendant requested a charge that the jury disregard these remarks. This request was properly refused because it was too broad. The court told the jury not to be governed by what counsel on one side or the other said had or had not been proved but were to determine the facts from the evidence before them. There was no doubt as to defendant's guilt. The court said that it was not apparent how the improper language could have affected the result, and as the trial court had not deemed it of sufficient importance to disturb the verdict it was not prejudicial error. The order denying a new trial was affirmed.

REFORM IN COURT SENTENCES.

Some time ago I wrote of a judge who sentenced a man to live and work on a farm until he should have paid the amount of his defalcation and made his remaining out of saloons and maintaining total abstinence the conditions of his probation.

I thoroughly believe in such a reform in sentences and think there should be more of this sensible method of dealing with defaulters, embezzlers, etc.

We read some time ago of a judge sentencing a man to support the widow of the man he murdered, and as the provocation and circumstances would fully permit of it the plan must commend itself to us as being very practical.

Now we have another California decision along this line that I feel is worthy of consideration. Judge White of the Superior Court of Los Angeles has sentenced a prize fighter and his trainer to three years in jail and the payment by each of a fine of $500.00 for assaulting a policeman on the street.

Judge White suspended sentence and granted probation to the men on condition that the $1,000.00 fines should be paid and that the prisoners while on probation should (1) not drink any intoxicants; (2) not engage in controversies; (3) not enter any saloons; (4) not go to places where they are likely to be tempted to break their probation; (5) that they should not stay out all night at any time within the term of their three years' probation. This seems rather drastic for prize fighters. If it provided also for them to work during the term of their probation it would commend itself as more sensible, and as a distinct improvement over a jail sentence.

WILLIAM I. DAY, Supt., California Prison Commission.