Journal of Criminal Law and Criminology

Volume 7 | Issue 4 Article 11

1917

Judicial Decisions on Criminal Law and Procedure

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

C. G. VERNIER, ELMER A. WILCOX, WILLIAM G. HALE.
FROM C. G. VERNIER.

BIGAMY.

Draughn v. State. Okl. 158 Pac. 890. *Second marriage following a common-law marriage.*

A common-law marriage in this state is valid, and if a party to such a marriage marries again, before the same has been dissolved by death or legal proceedings, he is guilty of bigamy.

CORPUS DELICTI.

White v. State. Ga. 89 S. E. 175. *Intoxicating Liquor; Proof; "Hypothesis."* (From the syllabus by the Court.)

"The circumstances in proof sufficiently established the corpus delicti. The utensils, with the accompanying paraphernalia, as well as the evidence of mash and beer and smoke, added to the unmistakable odor of whisky which had been spilled, taken in connection with the extreme seclusion of the spot, which by its signs presented many indicia of having been selected as a sylvan sanctuary of Bacchus, absolutely precludes the inference that so many circumstances of obvious import could have fortuitously occurred. Nor is it reasonable to suppose that the presence of the still was due to chance or accident, while it was in transportation, since it was found away from any road, and there is no evidence that such utensils are as yet transported by aeroplanes. When proof of the corpus delicti is dependent wholly upon circumstantial evidence, such evidence, of course, will be insufficient, if it suggests a theory which is as consistent with the presumption that no crime was in fact committed as with the inference that some act was done which was a violation of the law; but a hypothesis of guilt which is planted upon occular demonstration of certain signs, all of which point in the same direction, cannot be supplanted by a hypothesis of innocence which would not be suggested to ordinary intelligence, and which owes its existence entirely to a flight of fancy. * * * The corpus delicti was in this case fully established."

CONSTITUTIONAL LAW.

People v. Champion. Cal. 158 Pac. 501. *Validity of Statute requiring parent to support minor child.* Punishment of a divorced husband, under Pen. Code, sec. 270, denouncing the offense of willfully omitting to furnish food, clothing, etc., to his minor children, is not violative of his constitutional right to be exempt from imprisonment for debt in any civil action, under Const., art. 1, sec. 15, though in defendant's divorce suit an order for the payment of money by him to his wife, awarded custody of the children, for their support, was made by defendant's consent upon a stipulation.

DISBARMENT.

In re Hilton. Utah 158 Pac. 691. *Improper conduct of attorney.* Where an attorney, delivering a funeral oration over the body of an executed murderer, (Hillstrom), venomously attacked the Supreme Court which affirmed

the conviction, accusing the court of being improperly influenced by a powerful religious body in the state, charging the court with prejudice and unfairness and garbling the accounts of the trial and of proceedings before the pardon board, the attorney is guilty of professional misconduct which warrants his disbarment under Comp. Laws 1907, secs. 113, 120, respectively declaring that it is the duty of an attorney to support the Constitution and laws of the United States, to maintain the respect due courts, and employ for the purpose of maintaining causes confided to him only such means as are consistent with the truth, and that an attorney may be disbarred for any violation of his duties or for moral turpitude, for an attorney who so misrepresented the court, attempting to bring the high judicial office into disrespect, is guilty of moral turpitude.

EVIDENCE.

State v. Wiggins. N. C. 89 S. E. 58. *Trailing by Bloodhounds.* In a prosecution for murder by lying in ambush, testimony of the trailing of defendants by bloodhounds from a log behind which deceased said he had been shot, was admissible where the testimony of the owner and trainer of the dogs showed that they were of pure blood, of a stock characterized by acuteness of sense and power of discrimination, possessed of such qualifications, and trained in their exercise of tracking human beings.

FOOD.

U. S. v. Forty Barrels of Coca Cola. 36 Sup. Ct. Reptr. 573. *Misbranding —distinctive or descriptive name: Adulteration—"added Harmful Ingredient."* The name "Coca Cola" cannot be said as a matter of law to be distinctive rather than descriptive of a compound with coca and cola ingredients, so as to escape condemnation under the food and drugs act of June 30, 1906 (34 Stat. at L. 768, ch. 3915, Comp. Stat. 1913, sec. 8717), sec. 8, as misbranded in case of the absence of either coca or cola, on the theory that it was within the protection of the proviso in that section that an article of food shall not be deemed to be misbranded in the case of "mixtures or compounds which may be now or from time to time hereafter known as articles of food under their own distinctive names," if the distinctive name of another article is not used or imitated, and the name on the label or brand is accompanied with a statement of the place of production.

A poisonous or deleterious ingredient called for as a constituent by a secret formula for a food product sold under its own distinctive name may still be an added ingredient within the meaning of the provisions of the food and drugs act of June 30, 1906 (34 Stat. at L. 768, c. 3915, Comp. Stat. 1913, sec. 8717), condemning as adulterated any article of food that contains "any added poisonous or other added deleterious ingredient which may render such article injurious to health," and the provisos in sec. 8 that food mixtures or compounds "which may be now or from time to time hereafter known as articles of food under their own distinctive names" are to enjoy the stated immunity only in case they do "not contain any added poisonous or deleterious ingredients," and that nothing in the act shall be construed to require manufacturers of proprietary foods "which contain no unwholesome added ingredient" to disclose their trade formulas except as the provisions of the act may require to secure freedom from adulteration or misbranding.

INDICTMENT.

State v. Wingard. Wash. 158 Pac. 725. *Omission of charging word.* An information charging tampering with witnesses subpoenaed to testify in justice's court which did not contain the charging verb "did," or its equivalent, it being plain from the wording of the information that the word was omitted by mistake, the fact being discoverable only by a careful perusal, was not defective.

RAPE.

People v. Cavanaugh. Cal. 158 Pac. 1053. *Force and Threats—submission to officer.* Submission by the prosecutrix merely because she believed the accused to be an officer, and that he would arrest her if she refused, is insufficient to make out the crime of rape.

SEARCHES AND SEIZURES.

Brown v. State. Ga. 89 S. E. 342. *Evidence wrongfully obtained.* On the trial of a criminal case, relevant incriminatory evidence which was taken from the person of the accused by one who had illegally arrested him, and which was discovered by a search of the person of the accused while he was under such illegal arrest ,is admissible against him.

The admission against the accused of evidence so obtained does not contravene the constitutional provision that "no person shall be compelled to give testimony tending in any manner to criminate himself." Nor does it violate the constitutional prohibition of unreasonable searches and seizures.

TRIAL.

Bracey v. Commonwealth. Va. 89 S. E. 144. *Right to Confront Witnesses.* Const. 1902, sec. 8, providing that "in all criminal prosecutions a man hath the right to be confronted with the accusers and witnesses," is not violated by Byrd Law, Section 24 (Acts 1908, c. 189), providing that the certificate of the state chemist showing an analysis of a mixture supposed to contain alcohol, when signed and sworn to by him, "shall be evidence in all prosecutions under the revenue laws."

Also held that the belief of one accused of selling ardent spirits without a license as to the character of the beverage sold, or his intention to violate the law, is not material in determining his guilt.

TRIAL.

State v. Cluff. Utah 158 Pac. 701. *Improper Argument of Counsel.* Laws 1915, c. 113, providing that a judgment shall not be reversed for error not resulting in a miscarriage of justice, and that error shall not be presumed to have so resulted, but the court must be satisfied that it has that effect before reversing, held not to abolish the presumption that error depriving the accused of substantial rights is prejudicial.

TRIAL.

People v. Lawton. Colo. 158 Pac. 1099. *Necessity of Arraignment and Plea.* Where a defendant is tried, convicted, and sentenced for a criminal offense without arraignment and plea, the verdict on motion must be set aside and a new trial granted. Garrigues and Scott, JJ., dissenting.

TRIAL.

State v. Smith. N. J. 97 Atl. 780. *Allegation and Proof.* Where the indictment contains an averment of an illegal sale of liquors to persons unknown

to the grand jury, it is improper on the trial to admit the evidence as to sales made to them of persons who were subpoenaed to testify or testified before the grand jury, but are not named in the indictment. The judgment must be revised, and the record remitted for a new trial, but the defendant is not entitled to be discharged.

FROM WILLIAM G. HALE.

VERDICT.

People v. Edwards, 159 N. Y. Supp. 410. *Grades of offenses.*

An indictment against the defendant in two counts charged in the first count the crime of rape in the first degree and in the second count an assault with the intent to commit rape. Both counts were submitted to the jury, who returned a general verdict of "guilty." The court imposed the sentence provided for rape in the first degree. Held that "while the crimes charged in the indictment were of different grades of crime, and the penalties provided by the Penal Law were different in severity, that for attempted rape being less severe than that for rape in the first degree, yet the settled practice of the criminal law is for the court to pass judgment on the count charging the highest grade of offense."

DISORDERLY CONDUCT.

People v. Lukowsky, 159 N. Y. Supp. 599. *Insulting remarks.*

No remark however insulting, addressed by an arrested person to the police officer making the arrest (there being no evidence that the remark was made in a loud voice or public manner), can be deemed disorderly conduct tending to, or intended to provoke a breach of the peace. "The law does not contemplate that the officer would assault a person in his custody by reason of a remark addressed to him, yet in no other way could the remark tend to provoke a breach of the peace."

PAROLE BOARD ACT.

People v. Dean, 159 N. Y. Supp. 601.

(1) Constitutionality,—Laws 1915, C. 579, Sect. 4, providing in case of conviction of soliciting on the streets or public places for purpose of prostitution, where defendant has been convicted two or more times during the 24 months just previous, or three or more times previous to that conviction, that the court shall commit the offender for an indeterminate period not exceeding 2 years, is constitutional, notwithstanding the absence of an express provision for notice to the defendant of trial as a second offender.

(2) Proof of the prior offenses. The trial of the issue of a prior conviction may be had either in conjunction with the trial on the pending charge or in a separate proceeding, following the conviction of the defendant.

(3) Due process of law. The constitutional provision as to due process of law requires in any event that the defendant be duly notified of the trial of the issue of former convictions and be given an opportunity to litigate the issue raised thereby.

In this case the defendant was not notified of the issue of former convictions and hence was convicted without due process of law, but the error can be corrected by modifying the sentence imposed.

JURISDICTION.

People v. Hayman, 159 N. Y. Supp. 981.

The charter of the city of Rochester restricts the jurisdiction of the Police court to the trial of misdemeanors. The Penal Law of New York (Consol. Laws C. 40, Sect. 2) declares that a felony is a crime which is and may be punished by death or imprisonment in the state prison and any other crime is a misdemeanor. Held, that the grade of the offense is determined by the kind and extent of the punishment which may be inflicted, and not by the actual sentence.

EVIDENCE.

People v. Smith, 159 N. Y. Supp. 1073. *Related transactions.*

The defendant was convicted of the larceny of certain securities. The evidence showed that the accused, in the confidence of a rich woman 80 years old, retained possession of securities belonging to her after her death, and, upon action being brought by the executor to recover them, fled from the country. Admissions and untruthful statements were also proved. Held, (1) Evidence was sufficient to sustain the verdict of guilty. (2) Testimony of transactions relating to other securities was not so unrelated to the transaction in question as to be incompetent.

People v. Todoro, 160 N. Y. Supp. 352. *Rape. Other acts.*

In a prosecution for statutory rape, evidence of the accused's previous improper relations with the complaining witness is admissible for the purpose of corroboration.

JURISDICTION.

People v. Zimmer, 160 N. Y. Supp. 459. *Receiving stolen goods—Place of trial—County offense.*

The code of Cr. Proc. Sect. 134, providing that if a crime is committed in part in different counties, or the acts or effects occur in two or more counties, jurisdiction to try the offense is in either, does not justify the trial of a person in county A for knowingly receiving stolen goods in county B, merely because the goods were stolen in county A. Such offense is complete where the goods are knowingly received. The theft is not strictly an element of the defendant's crime but only a prerequisite which must be connected with the defendant by scienter.

ARREST.

Prople v. Ostrosky, 160 N. Y. Supp. 493. *Effect of illegal arrest.*

Jurisdiction over the person of a defendant is required when such defendant is arraigned upon a proper information, notwithstanding his arrest was illegal.

FORMER JEOPARDY.

Griffith v. State, 112 N. E. 1017 (Ohio).

Where it apeared that the state has procured the conviction of defendant for the embezzlement of money, he cannot be found guilty on a second indictment of obtaining the same or part of the same money by false pretenses.

HOMICIDE.

People v. Galbo, 112 N. E. 1041 (N. Y.)

(1) *Credibility of witnesses.* In a prosecution for murder, the finding of

the jury as to the credibility of witnesses is conclusive and will not be reviewed except where the penalty is death.

(2) *Possession of body.* The inference of guilt from the possession of the body of a murdered person is one of fact, not of law. The inference of guilt to be drawn alone from the possession of the body must be most favorable, to the defendant, and cannot be used to convict him of a higher crime than accessory after the fact.

INTOXICATING LIQUORS.

Town of Cortland v. Larson, 113 N. E. 51 (Ill). *Police Powers.*

Under charter power to "regulate, prohibit and license the selling of intoxicating liquors," a town cannot enact an ordinance prohibiting club members from receiving and keeping intoxicating liquors for their individual use in clubhouse lockers. The ordinance was not within the town's police power, for the orderly reception, keeping and use of intoxicating liquors by private individuals does not affect the public welfare or health; nor can such a clubhouse locker system be declared a nuisance.

CONSTITUTIONAL LAW.

People v. O'Brien, 113 N. E. 34 (Ill.). *Title of Act.*

Laws 1915, p. 374, enacted to amend "An Act to revise the law in relation to criminal jurisprudence" by adding an additional section known as section 57a1 and relating to inmates of houses of ill fame and solicitation to prostitution does not violate Const. Art. 4, Sec. 13, requiring the subject of the act to be expressed in its title; as it is not necessary that the title shall specifically and exactly express the subjects of the act or be an index of its details, but is sufficient if all the provisions of the act relate to one subject indicated in the title and are parts of it, incidental to it or reasonably connected with it.

FRAUDULENT USE OF MAILS.

Moffatt v. U. S., 232 Fed. 522. *Elements of offense.*

Criminal Code, Sec. 215, making it an offense to use the mails to promote a scheme to defraud, is not confined to cases where false representations are made as to existing facts, but includes as well schemes to defraud by means of representations and promises as to the future.

This case was based on methods used in selling the stock of an oil company.

Opinion of the Attorney-General Relative to Licenses for Private Hospitals.—The Massachusetts State Board of Insanity requested the opinion of the Attorney-General as to whether a physician with a license to conduct a private hospital in *one town* for the care and treatment of the insane, epileptic, feeble-minded, and persons addicted to the intemperate use of narcotics or stimulants, could establish a branch of said hospital in another town under the same license. The opinion of the Attorney-General is herewith presented:

You request my opinion as to whether the present license can be considered to cover the branch which it is desired to establish some 12 miles away, provided your Board assents.

St. 1914, c. 762, sect. 7, provides:

The Board shall have power to license private houses and hospitals for the care and treatment of the insane, epileptics, feeble-minded and persons addicted to the intemperate use of narcotics and stimulants, and may at any time revoke

such a license. No such license shall be granted unless the Board is satisfied that the person applying therefor is a duly qualified physician, as provided in section thirty-two of chapter five hundred and four of the acts of the year nineteen hundred and nine, and has had practical experience, in the care and treatment of such patients. Any person owning or maintaining such a hospital or private house on the sixteenth day of June in the year nineteen hundred and nine shall be entitled to maintain the same under the provisions of law in force at that time, except that every such hospital or house shall be subject to the visitation and supervision of the Board, its officers and agents. Any license granted heretofore under the provisions of section twenty-four of said chapter five hundred and four shall be valid, subject to revocation by the Board. Licenses hereafter granted shall expire with the last day of the calendar year in which they are issued, but may be renewed. The Board shall have power to fix reasonable fees for the said licenses and for renewals thereof. Whoever establishes or keeps such a hospital or private house without a license, unless otherwise authorized by law, shall forfeit a sum not exceeding five hundred dollars.

For several years, in enacting new statutes with reference to this subject, it has been the policy of the Legislature to permit institutions already lawfully in existence to continue to operate. The permission now in effect and quoted above is "to maintain the same." It would seem to need no citation or dictionary definition to determine that the opening of a new place 12 miles distant from a sanatorium already licensed goes much beyond the mere maintaining of the existing institution.

Accordingly, I am of the opinion that the license previously issued cannot be considered to cover this new enterprise, and that a new license therefor is necessary before it can be lawfully established and kept.