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# Judicial Decisions on Criminal Law and Procedure

# JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

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ASSAULT AND BATTERY.

*Singer* v. *State,* Ind., 142 N. E. 864. *Inference from intent from negligent driving of automobile.*

Where an auto driver drove his car at a speed of 50 miles an hour on a much used public highway, just at dusk, such conduct created a reasonable inference, in prosecution for assault and battery, that driver was acting with a reckless disregard for the safety of others, and with a willingness to inflict injury.

In a trial for assault and battery for driving a car in collision with a wagon, evidence held to show unlawful intent to commit the offense.

AUTOMOBILES.

*Commonwealth* v. *Pentz,* Mass., 143 N. E. 322. *Reckless driving: ascertainable standard of guilt.*

G. L. c. 90, sec. 24, making it an offense to operate an automobile so that the lives or safety of the public might be endangered, is not invalid as establishing no standard of conduct sufficiently definite to inform a person charged with its violation of the nature and extent of his offense.

CONFESSION.

*Omohundro* v. *Commonwealth,* Virginia, 121 S. E. 908. *Voluntary character of confession a question of fact for the trial court.*

Where the question whether the confession was a voluntary one is raised it is the function of the court to determine that matter as a question of fact and a finding of the trial court is entitled to the same weight and effect as is given to a finding of fact by a jury.

CRUELTY TO CHILDREN.

*Richardson* v. *State Board of Control,* N. J., 123 Atl. 720. *Legality of statute providing for summary punishment.*

If Act April 8, 1915 (P. L. p. 441; Comp. St. Supp. 1911-1915, p. 802, Sec. 9), providing that persons guilty of cruelty to children may be punished in a summary proceeding, is intended to provide for the punishment of an assault and battery, it is unconstitutional to that extent. Such crime being indictable at common law, and punishable by fine and imprisonment or both, cannot be punished in a summary proceeding.

DOUBLE JEOPARDY.

*State* v. *Rountree,* South Carolina, 121 S. E. 205.

To constitute a valid plea of "double jeopardy" the defendant must have been tried on a valid indictment and a jury impaneled in a court having juris-

diction, consequently where the defendant was tried in a magistrate's court for grand larceny and housebreaking and under the constitution the jurisdiction of such courts did not extend to felonies, the prior trial was a mere nullity and the defendant not put in jeopardy.

EXTRADITION.

*Cockburn* v. *Willman,* Sheriff, Missouri, 257 S. W. 458. *One leaving one state after indictment is a "fugitive from justice" regardless of purpose in leaving.*

The petitioner who had previously served in the U. S. Army was indicted in Iowa for obtaining money under false pretenses. Subsequently he applied to the Veteran's Bureau for permit to enter and to receive treatment in a government hospital for diabetes. The permit was granted and petitioner assigned to the government hospital at Jefferson Barracks in Missouri. While there undergoing treatment requisition was made by the governor of Iowa for his return. In habeas corpus proceedings it was contended for the petitioner that the circumstances under which he had left the State of Iowa negatived his being a "fugitive from justice." It was held, that the purpose in leaving one state after being indicted could not be considered and that one so leaving is a "fugitive from justice" within Const. U. S. Art. 4 S. 2 and U. S. Comp. St. 10126 relating to extradition, regardless of purpose.

FALSE PRETENSES.

*People* v. *Abbott,* Calif., D. C. A., 223 Pac. 77. *False pretense relating to intoxicating liquor in which property rights not recognized.*

In a prosecution for obtaining money by "false pretenses," in that defendant had sold to the prosecuting witness a number of barrels containing colored water upon representations that they contained whisky, held, that defendant could not avoid liability on the theory that there was no longer any property rights in the whisky, and that the prosecuting witness must be presumed to have known such fact and was not entitled to rely on the false representations, since such representations were of fact and not of law, and the basis of the charge being a misrepresentation of a material fact with knowledge thereof and intent to defraud.

*State* v. *Antoine,* La., 98 So. 861. *Obtaining money through promises to disclose hidden treasure, not within false pretense statute.*

Defendant represented that he could obtain a magic or mineral rod which would locate beneath the surface of the earth, hidden treasure; that he would produce the rod within 30 days and would then locate hidden treasures of great value and would divide the same with those parties, who upon the strength of the representations gave him money. Held, in sustaining a judgment maintaining a motion to quash the indictment that sec. 813 Rev. Sts. (the false pretense statute) was merely declaratory of the common law which required a false statement by the accused of a past event or an existing fact and excluded any representation in regard to a future transaction.

FALSE ADVERTISEMENT.

*Commonwealth v. Reilly,* Mass., 142 N. E. 915. *Validity of statute: ascertainable standard of guilt.*

G. L. c. 266, sec. 91, making it an offense to make representations or statements of fact which might "on reasonable investigation have been ascertained to be untrue" in advertisement, is not unconstitutional as failing to conform to the requirements of Constitution, Declaration of Rights, pt. 1, art. 12, requiring an ascertainable standard of guilt.

G. L. c. 266, sec. 91, making it a crime to misrepresent facts in advertisements, is a valid exercise of the police power and does not offend against any guaranty of the Constitution of the United States.

HOMICIDE.

*State* v. *Oxendine,* North Carolina, 122 S. E. 568. *Where one engaged in a fight with the defendant kills a bystander, defendant cannot be guilty of manslaughter.*

A provoked a fight with B in which both A and B used their pistols. In the course of the fight, B accidentally shot and killed C, a bystander. The trial court charged the jury that under such facts A would be guilty of manslaughter. Held, on appeal that the instruction was erroneous. The court quotes with approval from *Butler* v. *People,* 125 Ill. 641, "Where the criminal liability arises from the act of another, it must appear that the act was done in furtherance of the common design or in prosecution of the common purpose for which the parties were assembled or conspired together." Under the state of facts assumed by the instruction in the principal case it is quite evident that A and B were not acting in concert nor was the homicide committed in furtherance of a common design or purpose.

INDICTMENT.

*People* v. *Brown,* Ill., 143 N. E. 440. *Effect of plea of guilty to crime not charged in indictment.*

A defendant charged in an indictment with a crime cannot be lawfully convicted, whether on a trial or on his plea of guilty, of any crime not charged in the indictment.

A defendant charged with setting fire to a courthouse with the intent to burn and destroy it, in violation of Cr. Code, div. 1, sec. 16, as amended by laws 1919, p. 428, could not be given sentence of imprisonment in penitentiary for a term not less than 1 year or more than 20 years, prescribed by section 13, for willfully and maliciously causing a courthouse to be burned, though defendant entered a plea of "guilty to the crime of arson as charged in the indictment."

LARCENY.

*Commonwealth* v. *Novick,* Mass., 142 N. E. 771. *Partner: property of another.*

At common law a general partner could not be convicted of larceny or embezzlement for appropriating to his own use money which came into his possession by virtue of his being such partner and joint owner, because it was not "the property of another."

Under G. L. c. 266, Secs. 58, 59, an officer of a voluntary association or society who converts money which has come into his possession by virtue of his office is guilty of larceny, although he is a member of the organization and, as such, entitled to an interest in the property thereof, and it is immaterial whether or not members are civilly liable as co-partners; this applying to a society organized for the purpose of enabling its members to obtain loans from money raised by selling its capital shares, in view of G. L. c. 182, Sec. 1.

*People v. Barnes,* Ill., 143 N. E. 445. *Passenger riding in stolen automobile, having reason to know of the theft, not an accessory.*

Although passenger in stolen automobile had reasonable ground to suspect that driver had stolen the automobile when she entered the automobile and rode with driver, she could not be convicted of larceny of the automobile as a principal, on theory that she was an accessory before the fact, not having by affirmative act actually advised, encouraged, aided, or abetted the perpetration of the crime.

Aiding, abetting, or assisting are affirmative in their character, and it is not sufficient that there is a mere negatve acquiescence not in any way made known to the principal malefactor.

PROSECUTING ATTORNEYS.

*McCray* v. *State,* Texas, 257 S. W. 566. *Prosecuting attorney's statement as to leniency of juries in criminal cases, improper.*

Where the prosecuting attorney in a homicide case made the following statements to the jury, it was held, inter alia, reversible error: "The juries in Harrison County are inclined to be lenient in the trials of men for murder and have too often permitted their sympathy for defendants to influence them and as a result men who have committed unwarranted and unjustifiable murder have been set free by the verdict of the jury, and as a result life in Harrison County is cheaper than any other place in all this country; it is cheaper than a bale of cotton, cheaper than a mule, cheaper than dirt and even cheaper than a dog."

SENTENCE.

*Croswell* v. *People,* Colo., 223 Pac. 51. *Statute relating to minors construed.*

While criminal statutes must be strictly construed and any ambiguity resolved in defendant's favor, they should not be so construed as to destroy the evident intention of the legislature.

Under C. L. 1921, Sec. 7123, requiring that males over 16 and under 21 convicted of felony for the first time be sentenced to the state reformatory, unless convicted of "crimes involving the penalty of imprisonment for life," murder or voluntary manslaughter, in which case they shall be sentenced to the state penitentiary, such a person convicted of robbery with a gun, which is punishable under section 6718 by imprisonment in the penitentiary for life or not less than 10 years, may be sentenced to the penitentiary for such a term of years; life imprisonment being "involved" when such penalty "may" be inflicted.

SENTENCE.

*State* v. *Birbiglia*, La., 99 So. 462. *One failing to serve sentence through error may be made to do so, although term has expired.*

The defendant on *May 11th 1923*, after conviction of an offense, was sentenced to pay a fine of $100.00 and serve 30 days in prison. By error of the clerk the commitment read *in the alternative*. Defendant paid the fine and was subsequently released. On *Jan. 7th, 1924*, the error of the clerk was discovered, the district attorney applied for a new commitment and the defendant imprisoned. In habeas corpus proceedings held, that the defendant, upon discovery of the error could be compelled to serve the sentence through the term for which he should have served had then expired. The court recognizes a line of cases opposed to its own view which turn on the ground that an order of commitment made after the time of imprisonment named in the sentence has expired is void for want of jurisdiction, but concludes after an examination of the authorities that its own view is supported by the greater number of cases.

TRIAL.

*Commonwealth* v. *Trinkle*, Pa., 124 Atl. 191. *Effect of continuance of trial at home of witness.*

In a prosecution for murder, the court did not abuse its discretion in continuing the place of trial to the home of a material eyewitness at the county seat, such witness being too ill to be moved, which fact was not known until the case was called for trial at the courthouse and after the jury had been impaneled and some of the witnesses heard, all the formalities of the law in taking the testimony of such witness being observed, and all members of the court and such members of the public as were able to gain admission, being present, and such removal did not violate defendant's constitutional right to a fair and public trial; a "public trial" meaning a trial, other matters being equal, where there is no restriction as to admission, except the size of the room where the trial is conducted. And there is no statute which in terms states that a court must be held in the courthouse; Act of April 14, 1834, Secs. 58, 65, 66 (P. L. 352, 353; Pa. St. 1920, Secs. 18314, 17250, 17251), only creating an inference to the effect that the courthouse is the lawful place for trial.

In a murder prosecution, the removal of the trial to the home of a witness who was too ill to attend was not objectionable as tending to impress the jury with the truthfulness of the testimony of the witness, and the fact that the witness was surrounded by images and fixtures indicating her faith to be Roman Catholic, and that she held in her hand the crucifix and beads, and that there were members of the jury of the same faith who were more likely to be impressed with her testimony under these circumstances, did not constitute error; such being circumstances of a trial which cannot be obviated.

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Founded 1859

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