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Judicial Decisions of Criminal Law and Procedure

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

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ACCOMPLICE.

Pringle v. *State,* Okla., 239 Pac. 948. *Thief as accomplice of receiver of stolen goods.*

The receiving of stolen goods, knowing them to have been stolen, is a distinct crime from the original larceny thereof, and the thief, who stole the goods, is not an accomplice of one who thereafter receives the goods, knowing them to have been stolen. On a prosecution of a person for receiving stolen goods, the thief is a competent witness on behalf of the state, and his testimony requires no corroboration under our statute.

ATTEMPT.

People v. *Werblow,* N. Y., 148 N. E. 786. *Attempt in New York to commit crime outside state.*

In view of Penal Law, section 1930, subd. 3, expressly covering offense of one who remains in another state and incites commission of crime in this state, and of fact that no specific statute applies to inciting offense in this state which is committed elsewhere, indictment for grand larcency in obtaining money by false pretenses, alleging that one of accused within state exchanged cablegrams and messages to inform confederates of their part in scheme to defraud, which was carried out without state, was not sufficient to charge offense, it not amounting to an attempt, as defined by section 2, or coming under section 1930, subd. 1, subjecting to punishment person who commits in state any crime in whole or in part.

DOUBLE JEOPARDY.

Clominger v. *State, Texas,* 274 S. W. 596.

The indictment under which conviction occurred contained only one count, charging rape. The evidence developed two separate acts of intercourse with the female, who was under 18 years, the first in a garage, and the second in "Eagan's pasture." State statute, Acts 4th, called Session 1918, c. 50, 51, provided that to constitute statutory rape on a female between 15 and 18 years, she must be of previous chaste character. The state elected to stand, however, on the second act in "Eagan's pasture," and the trial court in its charge restricted the jury to the second act only. A conviction followed, which was set aside on appeal on the ground that at the time of the second act the female was not of previous chaste character, hence, no offense made out under the statute. The defendant was then tried on a second indictment for rape, the state relying on the first act. *Held,* defendant's plea of double jeopardy was properly overruled. "The indictment in the case first tried being so worded as to admit

proof of either of the offenses in question, and evidence of each of them having gone before the jury, a plea challenging the right of prosecution on the other indictment might have been tenable, if there had been a final judgment of acquittal or conviction and the record had been left in such condition as to render doubtful or questionable the particular transaction upon which the judgment was so based." The court then went on to say that the record in the instant case was in no such condition in view of the trial court's charge confining the jury to evidence of the second act.

EMBEZZLEMENT.

People v. *Goldman,* Ill., 148 N. E. 873. *Embezzlement by receiver: ejusdem generis.*

Cr. Code, section 81½, relating to embezzlement by administrators, executors, trustees, and others acting in any fiduciary capacity. *Held,* applicable, under rule of ejusdem generis, to punish receiver for embezzlement, since receivers are of same general character as those mentioned. Thompson, J., dissenting.

EVIDENCE.

State v. *Price* et al., Mo., 274 S. W. 500. *Loss of warrant under which evidence has been obtained.*

Evidence obtained under a search warrant which is subsequently lost is not rendered incompetent by the loss. The defendant may, it is true, be deprived of the opportunity to take advantage of any defects appearing on its face, but on his motion to suppress the evidence, full opportunity to inquire into the evidence upon which the warrant was based will be afforded.

HOMICIDE.

State v. *Sauter,* So. Dak., 205 N. W. 25. *Right to separate trial. Effect of change of counsel during course of trial.*

Defendant was tried jointly with others for murder. After the trial had begun, a disagreement between accused and his co-defendants as to story of the homicide previously agreed upon, caused defendant's counsel to withdraw from the case. *Held,* that withdrawal of counsel did not warrant a dismissal nor a separate trial, right to the latter having been waived by failure to demand it before entering on the trial.

People v. *Kuhn,* Mich., 205 N. W. 188. *"Motive" and "intent" distinguished. Former not essential fact in proof of murder.*

Defendant was convicted of murder by administering poison. So far as the evidence showed, the relations between deceased and defendant were agreeable and they were making Christmas time visits to deceased's mother and defendant's relatives. Failure to show a motive was relied upon as a defense. *Held,* motive was a relevant but not an essential fact. "The essential element of intent is not at all dependent upon motive; motive being merely the inducement for doing the act, but intent being the resolve to do it."

Egbert v. *State,* Neb., 205 N. W. 252. *Death resulting from accidental discharge of loaded gun intentionally pointed at another.*

The evidence supported a finding that although defendant had pointed a loaded gun at deceased it was accidentally discharged, resulting in death. *Held,* that conviction for manslaughter would be sustained. The mere intentional pointing of a loaded gun in a threatening manner constituted an assault, an unlawful act, and death resulting therefrom is manslaughter.

INDICTMENT AND INFORMATION.

State v. *Simmons,* W. Va., 129 S. E. 757. *When indictment following the language of the statute is insufficient.*

Where a statute makes it a criminal offense to devise a scheme to defraud and employs broad and comprehensive terms, descriptive merely of the general nature of the offense denounced, an indictment using the statutory phrases alone, is invalid for failure to narrate the particulars of the alleged scheme. Schemes to defraud are legion. Fraud itself is hydra-headed. When the accused is charged only with "a scheme to defraud" he knows not which head of the dragon to withstand.

INSANITY.

State v. *Schrader,* Wash., 238 Pac. 617. *Escape of insane prisoner; dismissal of appeal.*

Accused was confined to an insane asylum, after having been found guilty of murder, but subsequently escaped. He was returned to the state after a number of years and sentenced, but appealed on grounds of insanity at time of trial. *Held,* that the appeal should not be dismissed under the rule that the court will refuse to hear appeal, where accused has escaped and is not within jurisdiction.

LARCENY.

Sessions v. *State,* Texas, 274 S. W. 580. *Larceny of lost community property.*

The husband handed $140.00 in bills to his wife for safekeeping until such time as it could be deposited in a bank. The wife placed the bills in a little sack and pinned it to her dress. Later the dress with the money attached, but unknown to the wife, was sent to the defendant, a washerwoman, to be washed. The money was found by the defendant and hidden away. *Held,* (1) That ownership of stolen community property, of which the wife unwittingly surrendered actual possession to the defendant without the latter's knowledge until subsequent discovery, was properly alleged in the husband, who so far as the lost property was concerned, was in constructive possession. The facts are distinguishable from an earlier Texas case, *Miles* v. *State,* 103 S. W. 854, where the husband telephoned his wife to bring him a pocketbook and it was stolen from her car in which she left it a few minutes while stopping to do some shopping. In this case, ownership and possession were held properly alleged in the wife. (2) The intent to steal must have existed at the time

the money was discovered and taken. If the intent to appropriate it to defendant's use were subsequently formed, the taking could not constitute larceny.

MENTAL DEFECTIVES.

Smith v. *Command,* Probate Judge, Mich., 204 N. W. 140. *Validity of statute authorizing sterilization of mental defectives.*

The majority opinion upholds the validity of the Michigan Statute (Public Acts, 1923, No. 285), the purpose of which, as expressed in its title, is "to authorize the sterilization of mentally defective persons." That part of the statute held constitutional, provides that after a judicial hearing an order may issue from a court having jurisdiction for treatment or operation to render the defective incapable of procreation whenever it is found: (a) That the defective manifests sexual inclinations which make it probable that he will procreate children unless he is closely confined or rendered incapable of procreation; (b) that children procreated by the defective will have an inherited tendency toward feeble-mindedness; (c) that there is no probability that the condition of the defective will improve so that his or her children will not have the inherited tendency. At the outset, the statute is held to be a proper and reasonable exercise of the police power, biological science having determined as a fact that feeble-mindedness is hereditary. It is interesting in this connection to note the great reliance of the court upon the work and research of noted biologists. After referring to the findings of the English Royal Commission of 1904, and quoting from "The Trend of the Human Race," by Samuel J. Holmes, the court says: "From this and a great quantity of other evidence it definitely appears that science has demonstrated to a reasonable degree of certainty that feeble-mindedness is hereditary. This fact now well known with its alarming results presents a social and economic problem of grave importance." Constitutional prohibitions against cruel and unusual punishment are disposed of on the grounds (1) that the methods of sterilization provided for in the statute, treatment by X-rays, the operation of vasectomy on males and salpingectomy on females are not in themselves cruel, and (2) that the constitutional prohibitions are applicable only to punishment for crimes after conviction, whereas this statute is preventive and non-punitive in nature. The statute is likewise sustained against charges of violating the Equal Protection Clause, sufficient reason, in fact, appearing for the classification. The judicial hearing provided for in the statute and which must precede the order for the operation satisfies the procedural guaranties of due process. In this connection the court calls attention to the judicial hearing in the Michigan statute as differing from many of the ten other sterilization statutes enacted in other jurisdictions, in many of which the order is issued after administrative proceedings only.

The general attitude of the court toward legislation of this type is forward-looking, is to be commended and is absolutely essential if society is to benefit from modern discoveries in the fields of biology and criminology. "It is true that the right to beget children is a natural and constitutional right, but it is equally true that no citizen has any rights superior to the common welfare. . . . Measured by its injurious effect upon society, what right has any citizen or any class of citizens to beget children with an inherited tendency to crime, feeble-mindedness, idiocy or imbecility?" Again the court says, "The Michigan statute is not perfect. Undoubtedly, time and experience will bring changes in

many of its workable features. But it is expressive of a state policy apparently based on the growing belief that, due to the alarming increase in the number of degenerates, criminals, feeble-minded and insane, our race is facing the greatest peril of all time. Whether this belief is well founded is not for this court to say."

Section 7, subd. 2 of the act authorizing sterilization of mental defectives unable to support any children they might have and whose children would probably be public charges was *held* void as not applicable to all of the same classes.

A vigorous dissenting opinion was written by Wiest, J., in which Fellows and Bird, J.J., concurred.

PAROLE.

Ex parte Collins, Okla., 239 Pac. 693. *Revocation of conditional parole.*

Where a parole is granted a convict, which expressly provides that the governor may revoke the same for violation of any one or more of the conditions thereof, or "for any other cause by him deemed sufficient," *held,* that the governor may revoke such parole and order the convict remanded without notice to him, and without giving him an opportunity to be heard. And where a parole is granted and accepted, containing the condition that it may be revoked by the governor, the term "governor" will be construed as applying not to the officer, but to the office, and the power of that office may be legally exercised by the chief executive, whether or not in a strictly legal sense he be officially designated as governor.

SEARCHES AND SEIZURES.

Agnello v. *United States,* 46 Sup. Ct. 4. *Search of house without warrant as incident of lawful arrest.*

After arrest for conspiracy to violate Harrison Act, search without warrant of house of one of alleged conspirators, which was several blocks distant from house where arrest was made, held violative of Const. Amend. 4, and not justifiable, as incidental to lawful arrest. Belief, however well founded, that an article sought is concealed in a dwelling house, furnishes no justification for search of that place without a warrant, and this not withstanding facts unquestionably showing probable cause.

TRIAL.

State v. *Waite,* Wash., 238 Pac. 617. *Misconduct of judge.*

In prosecution for attempted robbery, with jury requesting information while deliberating whether they might make recommendations, act of judge in going to jury room, opening door, and entering or partly entering room where jury was, and speaking to them without consent of defendants, *held,* reversible error.