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Judicial Decisions on Criminal Law and Procedure

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JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

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AUTOMOBILES.

People v. Graves, Calif. App., 240 Pac. 1019. Act requiring stop after collision held in applicable to one ignorant of collision.

Provisions of Motor Vehicle Act, Sec. 141, requiring driver of automobile striking person to stop, render assistance, etc., do not apply to one ignorant of fact that automobile had struck another person.

Instruction that it is duty of driver of automobile striking person to stop, render assistance, etc., "in all cases," held not injurious to one charged with violation of Motor Vehicle Act, Sec. 141 requiring such acts, even if susceptible of construction as applying to driver who had no knowledge of having struck person, because court believes no jury would apply statute literally.

FALSE PRETENSES.

State v. Devot, Utah, 242 Pac. 395. Place of offense.

Where defendant in California sent a telegram to one in Utah under a false name, requesting that money be telegraphed to him, pursuant to which sendee deposited money in Utah office of telegraph company, requesting it to be sent to California, held, that telegraph company was thereby made agent of defendant to receive the money for him in Utah, and hence crime of obtaining money by fraud was committed in Utah, giving court of that state jurisdiction.

Straup, J., dissenting.

HOMICIDE.

Lawrence v. State, Ariz., 240 Pac. 863. Killing to resist unlawful arrest.

An instruction that, though accused was unlawfully arrested, he had no right to kill deceased officer, unless latter in making arrest by some act of his own put life of defendant in danger, and such acts by deceased warranted apprehension in defendant's mind as to his bodily safety, held to correctly state the law.

Commonwealth v. Cavalier, Pa., 131 Atl. 229. Conviction of 14 year old boy on confession upheld.

In prosecution of 14 year old boy for murder, confession made to police officer after questioning at great length, but not procured by improper means, held properly admitted.

That seven bullets fired from a rifle which required reloading before each shot were found in deceased's body is itself sufficient to establish intent to kill, deliberation, and premeditation.

Conviction for first degree murder *held* not invalid because of defendant's youth; he being less than 14 years and 6 months old, in view of common-law presumption that persons of the age of 14 have capacity to commit crime.

INTENT.

People v. Billardello, Ill., 149 N. E. 781. *Validity of statute punishing act done without culpable knowledge.*

Motor Vehicle Act, Sec. 35, as amended by Laws 1921, p. 574, making it a crime to have possession of motor vehicle, the original engine number of which has been destroyed or altered, *held* valid.

Fact that Motor Vehicle Act, Sec. 35, as amended by Laws 1921, p. 574, authorized one having possession of motor vehicle, the original engine number of which has, without his knowledge, been destroyed or altered, to have special engine number stamped on engine with permission of secretary of state *held* not to relieve possessor of motor vehicle of penalty, where engine number is destroyed or altered without his knowledge of consent.

Heard, J., dissenting.

MUNICIPAL ORDINANCES.

State v. Tucker, Wash., 242 Pac. 363. *Prosecution for same act under state law and municipal ordinance.*

Acquittal in prosecution under city ordinance is not bar to prosecution under statute for possession of intoxicating liquor, notwithstanding Const. art. 1, Sec. 9, prohibiting putting person twice in jeopardy.

It is generally held that act may be violation of both state law and municipal ordinance, and that acquittal or conviction for violation of one is not bar to subsequent prosecution for violation of other.

SENTENCE.

Ex parte Watts, Calif., 241 Pac. 886. *Effect of stay in capital case.*

Under amendment of 1874 to Pen. Code, Sec. 1243, providing that appeal from judgment of conviction stays execution in all capital cases, it is intended that taking of an appeal should automatically stay execution of death penalty alone without granting of certificate of probable cause under section 1243.

Under Pen. Code, Sec. 1243, providing that appeal from judgment of conviction stays execution in capital cases and in all other cases on filing of certificate of probable cause, such portion of punishment, on conviction of murder, as requires detention in state prison pending infliction of death penalty, is comprised within phrase "in all other cases" in section 1243 and is stayed only on issuance of certificate of probable cause.

Lawlor, J., dissenting.

Luff v. State, Ohio, 149 N. E. 384. *Indeterminate sentence law held inapplicable to offenses committed before indeterminate sentence law became effective.*

A sentence under an indeterminate sentence law, which may have the effect of increasing the minimum punishment beyond what might have been

inflicted under the original statute, which the amended statute supersedes, should be set aside, and the accused resentenced under the statute as it existed at the time of the commission of the offense.

A person convicted of a criminal offense has a right to be sentenced under the law as it existed at the time of the commission of the alleged offense, and is not required to submit to a sentence under the law as subsequently amended.

Marshall, C. J., and Matthias, J., dissenting.

Ex parte Washington, Okla., 241 Pac. 349. No appeal from resentence when accused not executed at date fixed.

Where an accused is convicted of a capital offense, and a sentence of death passed, if for any reason the judgment of death is not executed at the time fixed, and it remains in force, the court in which the conviction was had must order the defendant brought before it, and must make an order that the judgment of death be carried out, and such resentence is not a new judgment, but a mere fixing or resetting of the date of execution under the original judgment, and from such resentence no appeal will lie.

STATUTE OF LIMITATION.

Doble v. Superior Court, Calif., 241 Pac. 852. Effect of Statute of Limitation of making grade of crime depend on the judgment.

In a prosecution within the purview of Pen. Code, Sec. 17, providing that, when a crime is punishable either as a misdemeanor or a felony in discretion of trial court, it shall be deemed a misdemeanor after judgment imposing punishment other than imprisonment in state prison, *held*, charge stands as a felony charge for every purpose up until judgment; but if judgment is for misdemeanor, it does not have a retroactive effect as far as the statute of limitation against misdemeanors is concerned.

In a prosecution under Pen. Code, Sec. 182, for conspiracy to violate Corporate Securities Act, violation of which is either a felony or a misdemeanor, under section 14 of the act and within purview of Pen. Code, Sec. 17, relative to prosecution for offenses constituting either felonies or misdemeanor, *held*, court did not lose jurisdiction of case because of one-year statute of limitation on misdemeanors, Pen. Code, Sec. 801, for charge in such case, under section 17, stood as a felony until judgment, and judgment, if for a misdemeanor, would not be retroactive so far as statute of limitations was concerned.

TRIAL.

State v. Pattison, Wash., 241 Pac. 966. Effect of admitting evidence in improper order.

In a prosecution for possessing liquor, where testimony of officers concerning ownership of liquor was improperly received, but subsequent testimony of witness relative to ownership was offered for defendant, not to deny officers' statements, but to explain away incriminating evidence of material used in making liquor, *held* that improper testimony of officers became proper as impeaching such witness, and fact that it was received in chief rather than in rebuttal was not ground for reversal.

Mackintosh, Fullerton, and Parker, JJ., dissenting.

State v. Mosley, N. J., 131 Atl. 292. *No error to instruct that one sentenced for life, subject to parole after 15 years.*

An instruction to the jury that one of the elements to be considered in determining the defendant's punishment, if they should find him guilty of murder in the first degree, is that if they should by their verdict impose life imprisonment, it can be disregarded and set at naught by the court of pardons, and, also, that every convicted prisoner confined in the state prison for life, whose record of conduct shows that he has observed the rules of the institution, and who has served not less than fifteen years, may be released on parole, is not erroneous.

White, Kalisch, Black, Campbell, McGlennon, and Kays, JJ., dissenting.

People v. Munson, Ill., 150 N. E. 280. *Effect of participation in prosecution of an unlicensed State's attorney.*

Held, a conviction of robbery should be reversed on ground that indictment is void where it appeared, that a state's attorney, duly elected, but not licensed to practice law, participated in the grand jury investigation, was present and examined witnesses, helped prepare indictment and gave advice incident thereto.