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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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ALIENS

People v. Guzman, Calif. D. C. A., 279 Pac. 844. *Burden of proof of citizenship under fire-arm act.*

Code Civ. Proc. Sec. 1983, as added by St. 1927, p. 434, providing that in any action or proceeding by the state to enforce a law denying certain privileges or licenses to aliens, alleged alien shall have burden to establish fact that he was at time of exercising right or privilege a citizen or eligible to become such, provided the state has proved that he actually exercised right or privilege, *held* unconstitutional as applied to prosecution for possessing firearms by unnaturalized foreign-born person, under St. 1923, p. 696, since contrary to Const. art. 1, Sec. 13, guaranteeing that any defendant in criminal case cannot be compelled to be witness against himself.

CONSTITUTIONAL LAW

State v. Hudson, Okla., 279 Pac. 920. *Validity of statute empowering governor to employ counsel to conduct proceedings before grand jury.*

Section 6, Comp. St. 1921, empowering the Governor of the state to employ counsel to protect the rights or interests of the state in any action or proceeding, civil or criminal, and to conduct proceedings before grand juries, is not unconstitutional, and where an attorney is employed in a criminal matter under the provisions of this section, he may conduct an investigation by the grand jury.

HOMICIDE

State v. Diebold, Wash., 277 Pac. 394. *Homicide in perpetration of another crime.*

Defendant stole an automobile and while taking it away, without being pursued, struck and killed a person.

Held, that a conviction of second degree murder on the theory that the killing was committed in the perpetration of a felony, should be reversed, because the connection between the killing and the crime is not that contemplated by the statute.

Ives v. People, Colo., 278 Pac. 792. *Whether evidence wholly circumstantial under death penalty statute.*

Conviction for first degree murder committed during raid of house of which defendant was temporary occupant and in bedroom thereof, based on testimony

that defendant had pistol, with which officer was shot, in his possession and was seen to enter bedroom with it and hide under bed, and that officer was shot and killed in bedroom, and that defendant thereafter came out of room brandishing pistol, and stating that he had killed "coppers," was based on direct evidence, and not on circumstantial evidence alone, though no one actually saw defendant pull the trigger or hold the gun while shooting, and death penalty could therefore be imposed, notwithstanding C. L. Sec. 6665, which prevents death penalty in case of conviction on circumstantial evidence alone.

INTENT

Commonwealth v. Trippi, Mass., 167 N. E. 354. *Physical, not mental, age controls presumption of intent in children.*

Presumption that infant between ages of 7 and 14 is prima facie incapable of forming criminal intent refers to physical age of child, and does not extend to one beyond age of 14 years, though having mental age of 13.

Criminal responsibility does not depend on age of defendant, nor on question whether defendant's mind is above or below mind of normal man, but depends on question whether defendant knows difference between right and wrong, understands relation he bears to others, and has knowledge of nature of act.

JURY

People v. Garcia, Calif. D. C. A., 277 Pac. 747. *Waiver of jury in felony trial under 1927 constitutional amendment.*

Under Const. art. 1, Sec. 7, as amended in 1927, relating to waiver of trial by jury, and Pen. Code, Sec. 1042, in criminal actions involving charges of felony, the sovereignty represented by one of its regularly designated members as district attorney and the defendant may waive a trial by jury by expressing in open court their intention to that effect, and in such waiver defendant's counsel must join.

Defendant's failure to object to felony trial proceeding without a jury, held insufficient to constitute valid waiver of right to trial by jury under Const. art. 1, Sec. 7, as amended in 1927.

KIDNAPPING

State v. Metcalf, Ore., 278 Pac. 974. *"Forcible and fraudulent taking."*

Defendant, who took away child who was 13 years of age and under dominion and control of parents, was guilty of taking her forcibly and fraudulently within Or. L. Sec. 1927, defining child stealing, regardless of whether child consented to her abduction and whether she went voluntarily, since her taking was trespass against rights of parents and forcible and fraudulent as to them.

SENTENCE

People v. Carrow, Calif., 278 Pac. 857. *Extrajudicial admission by defendant of prior conviction as basis of increased sentence.*

Extrajudicial admission of accused that he had previously been convicted of felony is insufficient to warrant conviction and increased punishment, under Pen. Code, Secs. 667, 668, as second offender, despite Code Civ. Proc. Sec. 1844.

Pen. Code, Secs. 667, 668, greatly increasing term of imprisonment of persons convicted, who theretofore had been convicted of offenses punishable by imprisonment in state prison, and who have served time therefor in any penal institution, should not be applied, unless proper proof has been made by state.