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Police Science Legal Abstracts and Notes

POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Expert Qualifications

An interesting decision with regard to expert qualifications was rendered recently by the Supreme Court of Michigan, in *People v. Hawthorne,* 291 N. W. 205 (Mich., 1940). In thise case, involving a murder prosecution to which the defendant pleaded insanity, defense counsel attempted to introduce the testimony of a professor of psychology who was prepared to express an opinion with regard to the defendant's sanity. The trial court refused to permit the witness to testify because of the fact that he was not a physician and had never treated any insanity cases. Insanity was held to be a disease, therefore necessitating the attention of a physician.

In an appeal from a conviction in the lower court, counsel for the defendant alleged as error the ruling with regard to the testimony of the psychology professor. Counsel pointed out the fact that their witness was an authority in the field of psychology and had devoted considerable time and research to the study of abnormal psychology. They insisted that it was not necessary for the witness to have an M.D. degree in order to be able to ascertain whether or not the defendant was sane.

Although the defendant's conviction was affirmed (because of the weight of all the other evidence in the case), five of the nine justices held that the trial court was in error in ruling that it was necessary for the psychology professor to be an M.D. in order to testify as to the defendant's sanity. The judge who wrote the opinion to this effect said: "I do not think the law requires a rule so formal, and I do not think we further the cause of justice by insisting that only a medical man may competently advise on the subject of mental condition. * * * There is no magic in particular titles or degrees and, in our age of intense specific specialization, we might deny ourselves the use of the best knowledge available by a rule that would immutably fix the educational qualifications to a particular degree."

Power of Court to Order a Blood Grouping Test

The United States Court of Appeals for the District of Columbia recently held, in *Beach* v. *Beach* (decided June 28, 1940), that under Rule 35 of the Federal Rules of Civil Procedure, a federal court is empowered to compel a mother and her child to submit to blood grouping tests, where the paternity of the child is in question. The decision rested upon an interpretation of the word "condition" as used in Rule 35(a) which reads as follows: "In an action in which the mental and physical condition of a party is in controversy, the court in which the action is pending may order him to submit to a physical or mental examination by a physician." According to the majority opinion in this case, "the characteristics which are expressed in terms of blood grouping are part of a physical condition," and hence arises the power of the court to compel submission to such tests.

There was a dissent in the case upon the ground that the compulsory submission "to a physical examination constitutes an invasion of a substantive right," and consequently one beyond the scope of Rule 35, which is "subject to the limitation that it cannot abridge the substantive rights of a litigant." The dissenting justice was of the opinion that Rule 35 was insufficient to override the previous decision of the United States Supreme Court in *Union Pacific Ry. v. Botsford,* 141 U. S. 250 (1891), which held that the courts did not possess the power to compel a litigant in a personal injury case to submit to a physical examination.