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act should be amended to provide that any proceedings commenced under remedies other than direct appeal on the merits would preclude the new procedure. The res judicata effect of the new law should result in denying review by other means of collateral attack.

The new post-conviction proceeding is a new suit, civil in nature, entitling the prisoner to present substantial constitutional issues. This construction should enable the statute to be upheld in the face of claims that it is "an encroachment on the power of the Judiciary"[52] or a "wrongful infringement of the Appellate jurisdiction"[53] of the Illinois Supreme Court. As was said in a recent newspaper editorial, "Illinois cannot be content to let the legal merry-go-round whirl on."[54]

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Abstracts of Recent Cases

Implied Admissions of Guilt—Two recent cases illustrate the broad extension of the rule that silence in the face of an accusation will be an implied admission of guilt. In *People v. Wright,* 210 P. (2d) 263 (Cal. App. 1949), the defendant, when accused by the police of changing the license plates on his car so it would not be recognized as one used by a purse snatcher, denied ever touching the plates, then made up several false stories to explain how his fingerprints got on them. His conduct respecting other accusations was the same. This evasive conduct, although it all consisted of several forms of denial, was held to be an admission of the truth of the charges. Thus, the court did not just say that the accused's previous falsehoods were cause for disbelieving his present story, but by use of the admissions rule went further to say that these very assertions of innocence were admissions of guilt, which is quite a difference from saying that silence implies no denial. In *State v. Sawyer,* 230 N. C. 713, 55 S. E. (2d) 464 (1949), after an automobile accident a passenger of defendant's was questioned by police at the hospital in the presence of defendant, who was being treated also. Defendant did not deny certain damaging statements made by the passenger. This was accepted as an admission of the truth of these statements, apparently without any questioning as to the condition of the accused man at that time—e.g., whether a dazed man would be conscious of the statements or the need to deny them. This case particularly illustrates one of the major criticisms of the rule, for many people, particularly if they are dazed or in low spirits, will not hotly deny things said in their presence. (A discussion of this rule will be found in Vol. 38, p. 514 of this *Journal.*)

Ordinance Requiring One on Streets at Night to Disclose Lawful Purpose—An ordinance making it unlawful to roam the streets from 1:00 A.M. to 5:00 A.M. without having and disclosing a lawful purpose was upheld in *City of Portland v. Goodwin,* 210 P. (2d) 577 (Ore. 1949), against the usual constitutional attacks of indefiniteness, lack of due process, and making intent itself a crime. Such ordinances are becoming more common as a means of preventing crime, for much preventive work revolves around being able to require people to account for themselves

52 People ex rel. Stead v. Superior Court, 234 Ill. 186, 84 N.E. 875, 877 (1908).
53 *Ibid.*
54 Editorial page, Chicago Sun-Times, Dec. 13, 1949.

at odd hours of the night, even though the police may not have anything specific for which to suspect them. This is the same idea as that behind some of the statutes which make carrying of burglar tools a crime. The opponents of these measures point out that they tend to make the police officer a judge of what constitutes "lawful" purpose in each case. The instant case answered this by saying that any officer who arrests a person for violation must prove in court later the reasonableness, judged by an objective standard, of his arrest and that the person disclosed in fact an unlawful purpose. Some courts have taken the broader view that the state by its police power could ban all roaming of the streets at that hour, so a limited ban would not be overturned.

Pre-Trial Suppression of Involuntary Confession Denied—In *United States v. Tuzzo,* 18 L. W. 2279 (D. C. N. J. 1949), the federal district court refused to grant a pre-trial motion to suppress a confession which defendant alleged was unconstitutionally extorted from him. The court held that only evidence derived from illegal searches and seizures could be attacked prior to an attempt to present it at the trial. This ruling is contrary to that in *In Re Fried,* 161 F. (2d) 453 (C. A. 2d 1947), which permitted defendant to litigate the admissibility of a confession before the trial. The Supreme Court took certiorari because of a conflict among the circuits on this point, as revealed by the contrary holding in *Eastus v. Bradshaw,* 94 F. (2d) 788 (C. A. 5th 1938), but the question remained unsettled because the Government withdrew its appeal. 332 U. S. 807 (1948). The reasoning of the court in the *Tuzzo* case was that expansion of the searches rule to include confessions would open this same procedure to all evidence, with the result that the parties would be forced to litigate questions which might never arise at trial, and also which they might not yet be prepared to argue; moreover, the same attack would be launched later at the trial. The other view is that these confessions, like illegal searches or seizures, are something which the courts are trying to stamp out, and pre-trial suppression is one way of doing this very effectively. If the prosecution has no other evidence of any consequence, the defendant may be saved the further trouble of standing trial. (See Vol. 38, p. 509 of this *Journal.*)

Jurisdiction Over Crimes on Indian Reservations—In states with large Indian populations a question often arises of jurisdiction to prosecute a crime committed on the reservation by a non-Indian. Typical is *State ex rel. Olson v. Shoemaker,* 39 N. W. (2d) 524 (S. D. 1949), where a white man murdered another white man. The difficulty there was that originally in 1901 South Dakota had ceded jurisdiction over all crimes committed on this land to the United States, which had accepted it. Then the 1948 revision of the Criminal Code, which consolidated all the individual statutes as to each reservation into one, provided for federal jurisdiction only over crimes committed by Indians; but the state had never accepted back any jurisdiction, so defendant argued that it still lacked authority to prosecute him. The court held that a cession by the state of such territory is only until the particular power accepted by the federal government ceases to be exercised, even though not so stated in the act of the legislature, and so the relinquishment of power over non-Indians by Congress revested jurisdiction in the state without any need for acceptance by the state. This seems to be a fairly typical holding. The

general rule is that the federal courts have jurisdiction only if all the elements involved fall rigidly within the appropriate Act of Congress; thus, in one case federal purchase of land from white owners for use of Indians was held not to make an area federal territory because the Act contemplated cession by the state legislature. If no federal jurisdiction is found, then the state will be found to have power even if this must be implied in the absence of assertion by either unit of government, as in the present case. Thus, revision of reservation boundaries has been held to revest the state immediately. Up to now defendants have not been successful in getting themselves into a no-man's land.

Horse Racing Regulations Promulgated by State Racing Commissions—Whether a horse trainer can be suspended for violation of a racing commission rule against doping horses, in the absence of proof he himself doped the horses, was decided in the affirmative by *State ex rel. Morris v. West Virginia Racing Commission,* 55 S. E. (2d) 263 (W. Va. 1949). Several states have set up racing commissions to license trainers, jockeys, and other workers, to enact rules of conduct, and to revoke licenses for violation of these rules. The courts of Florida and Maryland have overthrown such commissions, either because of improper delegation of power or because of conflict with views as to the proper scope of intent in finding cause for suspension. West Virginia joins California and New York in allowing such requirements. The point that gives most trouble in these cases is the fact that the trainer of a horse is suspended if tests show presence of drugs in his horse, even though the trainer himself may not have known of this—the trainer becomes an insurer that his horse is in the required condition. The states upholding these laws felt this was a legitimate burden to put on him because of the necessity for regulation.

Strict Application of the Felony-Murder Rule—In *Commonwealth v. Almeida,* 362 Pa. 596, 68 A. (2d) 595 (1949), the defendant was convicted of first degree murder when a policeman (off duty at the time) was killed as defendant and his two accomplices were getting into their car to escape from the robbery of a store. Defendant argued that the felony-murder rule did not apply here because they had abandoned the crime, and also that the victim had been shot by other policemen arriving on the scene. However, the court reaffirmed its extreme position taken in *Commonwealth v. Moyer,* 357 Pa. 181, 53 A. (2d) 736 (1947), that it is immaterial by whom the fatal shot was fired, or that the accused had abandoned the crime, since the felony is considered the proximate cause of the death and defendant is guilty if he participated in this cause. The dissent in the *Almeida* case pointed out that the majority opinion had made this matter of cause a question of law, because the jury was asked to decide only whether defendant took part in the felony, while the judge decided whether that felony had indeed caused the death. This case is particularly valuable because of its exhaustive presentation and analysis of cases from all jurisdictions and of all views on the subject. (For further discussion of the felony-murder rule, see Vol. 36, pp. 391, 401 of this *Journal.*)
