

1950

## Criminal Law Case Notes and Comments: Abstracts of Recent Cases

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question McSwain on the stand, the citation for contempt was overruled. The case is, therefore, of little or no value as precedent because of the purely technical basis on which it was determined. It would seem that by merely taking what the court considered to be proper steps in questioning, the documents would have to be revealed. The tenor of McSwain's testimony indicates that this is hardly the interpretation which the FBI placed on the regulation. Yet, in order to regain an untrammelled privilege for departmental documents, it is only necessary for the Attorney General to withdraw the supplement.

The initial point in the case follows the line of decisions allowing a department head to determine the existence of privilege. With all deference to the department head, the litigant's interests ordinarily would not be given adequate consideration. Even with the waiver principle the rationale is unsatisfactory. In certain habeas corpus proceedings where evidence is crucial justice could well require that documents be made available. Similarly, in criminal actions in a state court, if the material were of primary importance the public interest might best be served by having the documents revealed. The issue should not depend on the fortuitous presence of a technical waiver.

The extent of public interest in preserving the secrecy of official documents varies with the differing functions of the various agencies. It is conceivable that the benefit in securing evidence in certain civil cases might outweigh the importance of keeping documents of some agencies secret. Additionally, where the government is prosecuting a case and the defendant seeks evidence which is material, but not crucial, it might be proper to refuse the documents without dismissing the prosecution. Such problems demand a rule with fairness and flexibility. These qualities can only be achieved by a restoration of the determination of privilege to the trial judge.

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#### Abstracts of Recent Cases

**The Constitutionality of a Post Conviction Law**—In the recent case of *People v. Dale*, 92 N.E. (2d) 761 (Ill. 1950), the Illinois Supreme Court had occasion to pass directly upon the constitutionality of the Illinois Post Conviction Act. The defendant had been convicted under the Illinois Habitual Criminal Act and was serving a sentence in the penitentiary. Alleging that he had been deprived of due process of law in the previous proceeding, he sought relief under the Post Conviction Act (Ill. Rev. Stat., 1949, chap. 38, §§826-832).

Briefly, the Act provides that any person imprisoned in the penitentiary may initiate proceedings in the court which tried and sentenced him to determine whether there had been a substantial denial of his right to due process of law, either under the Federal or Illinois Constitutions. In the instant case, the defendant filed a petition in the Criminal Court of Cook County, asserting that in the trial which led to his conviction he had been denied the right to summon witnesses in his defense. The state filed a motion to dismiss the petition on the ground that the Post Conviction Act was unconstitutional and the motion was sustained by the Criminal Court. Upon the defendant's appeal the Illinois Supreme Court found little difficulty in disposing of the various arguments made by the state. The most serious contention advanced by the State's Attorney against the Act's constitutionality was that it provided a rehearing on constitutional issues in

causes which had been finally adjudicated, thus giving power to a *nisi prius* court to set aside its own final judgments as well as those of the state Supreme Court. The Court, however, found no merit in this argument, stating that the new statutory remedy could not be utilized to obtain a hearing upon claims of denial of constitutional rights which had already been heard on their merits. "The question of the guilt or innocence of the petitioner will not be before the court on the post-conviction proceeding, but the inquiry will be limited to constitutional issues not previously adjudicated."

The State's Attorney also argued that the legislation was prohibited under the Illinois Constitution as class legislation in that it withheld the remedy from "classes of persons imprisoned in jails, reformatories and similar institutions and therefore its classification is unreasonable." To refute this argument it was pointed out that the state constitution afforded procedural safeguards to persons subject to penitentiary sentences not available to those charged with lesser crimes. Thus it was not unreasonable for the legislature to provide additional safeguards to those so singled out by the constitution without any necessity of also making such remedies available to minor offenders. The Court refused to countenance the argument that the protection of the Act did not extend to female felons imprisoned in the State Reformatory for Women or to convicted murderers who were awaiting execution in the Cook County jail. It held that the Act should be interpreted in the spirit in which it was written rather than on the basis of a technical reading of its exact letter.

A less important argument that prior to the Act there were adequate post-conviction remedies was summarily dismissed as presenting no constitutional issue. The Court pointed out that none of the extant remedies (*habeas corpus*, *coram nobis*, or *writ of error*) were replaced by the new statute, and the mere existence of these remedies did not prohibit the legislature from providing additional ones if it felt that they were either needed or desirable.

The well known principle that the power of a state legislature was plenary and need not be found in a constitutional provision was affirmed in this decision. (For a complete discussion of the Illinois Post Conviction Act, see Vol. 40, page 606 of this *Journal*.)

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**Admissibility of Admission by Silence of an Intoxicated Person; Admissibility of Dying Declaration Made Without Formalities**—Recently the Supreme Court of North Carolina, in *State v. Rich*, 58 S.E. (2d) 717 (N. C., 1950), re-examined two well-known rules of evidence. Both the principles of admission by silence and the admissibility of dying declarations were involved. Briefly, the facts were that the defendant "Shine" Rich was found guilty of murder in the second degree and appealed on grounds of improper admission of evidence. The evidence called into question arose under the following circumstances: a deputy sheriff was called to the home of the defendant and there found both the defendant and his wife, whom he had beaten, lying on their bed. Rich was apparently "well under the influence," but sufficiently alert to smoke and later rise and kiss the victim as she was carried away in an ambulance. The wife was in considerable pain and, in answer to the witness' question, replied that "Shine did it." This conversation was admitted into evidence, over objection, under the rule that one accused in his presence must be prepared to deny or be deemed to have admitted the accusation by his silence. The North Carolina Supreme Court refused to allow the defense's contention that the defendant's con-

dition was such as to prevent his rising to the occasion and denying the allegations of his wife. On the second point of appeal, admission of the dying declaration, the court found that the circumstances surrounding the declaration were sufficient to permit its admission even though there was no formality of a statement by the victim that she was in fear of immediate death. The holding was that, where there is evidence which would permit the trial judge to arrive at an opinion that the circumstances surrounding the declaration was such as to fulfill the traditional requirements, the declaration is admissible. The fact that there is also evidence tending to show that it was not a true dying declaration is not sufficient for a reviewing court to overturn the ruling. The rule applied seems very close to that utilized in upholding rulings of administrative agencies when there is some evidence to support a finding. A final ground of appeal was given little attention, the court holding that there was no error in a trial judge giving instructions which explained, in detail, the underlying reasons for admission of dying declarations. (For a general discussion regarding admissions by silence, see Volume 40 at page 615 of this *Journal*; and regarding dying declarations, see Volume 39 at page 646.)

**Necessity of Verdict, Complete as to Elements of the Crime, in Larceny Prosecution**—In *People v. Swinson*, 92 N.E. (2d) 758 (Ill., 1950), the grand jury had, by a single indictment consisting of one count, charged both defendants jointly with larceny of corn valued at \$147.00. The jury found each of the defendants guilty in the manner and form charged in the indictment, but the verdict failed to fix the value of the corn stolen. On appeal defendants contended that it was necessary that the verdict state the value of the corn taken to be in excess of \$15.00 in order to support a sentence fixed by statute for grand larceny. The People argued that since there was but one count in the indictment and that the verdict found the defendants guilty of a crime in the manner and form charged therein, the requirements of law were met. In reversing the conviction and sentence of the trial court the Illinois Supreme Court noted that the value of the property taken is a material fact necessary to establish the nature of the larceny charged since value is the criterion distinguishing the different degrees of the crime. Therefore, the value of such property must be found by the jury, on the basis of proof adduced at the trial, and included in its verdict. Because in the instant case the jury did not determine that the value of the corn taken was in excess of \$15.00, the defendants were guilty only of petit larceny. The statute does not provide a penitentiary sentence for this crime, therefore the sentence was in error. Further, both defendants had already served penitentiary sentences longer than the statutory maximum for the crime of petit larceny, consequently it was necessary to reverse the conviction without a remand.

**Admissibility of Uncommunicated Threats in Establishing Self-Defense**—In *Griffin v. United States* (D.C., 1950), the defendant had been found guilty of murder despite his claim of self-defense. It later developed, however, that a morgue attendant had found an open penknife in the trouser pocket of the deceased, and although the prosecutor had known this fact, the defendant had never been informed. The Supreme Court had remanded the case to the Circuit Court of the District of Columbia for the reason that the latter court had affirmed the conviction and sentence without stating any finding on this ground of appeal. On remand the Circuit Court of Appeals considered the questions before it to be: first, whether such uncommunicated threats were admissi-