Journal of Criminal Law and Criminology

Volume 42
Issue 2 *July-August*

Article 8

Summer 1951

Abstracts of Recent Cases

ABSTRACTS OF RECENT CASES

Habeas Corpus Employed to Release Individuals Kidnapped into State for Trial—*Mahon v. Justice,* 127 U.S. 700 (1887), and *Ker v. Illinois,* 119 U.S. 436 (1886), presumably had settled with finality that a federal right was not violated when an individual is illegally brought into a state to face criminal trial. Both cases had held that if the state court chose not to sustain objections to the manner in which jurisdiction had been obtained, a prisoner was remediless. In the recent case of *Collins v. Frisbie,* 19 U.S.L. WEEK 2575 (U.S. June 5, 1951), however, the Court of Appeals for the Sixth Circuit ruled that since these decisions predated the passage of the Federal Anti-Kidnapping Act they were no longer controlling. The court interpreted the Act to include both federal and state officers within its prohibitions and ordered a writ of *habeas corpus* to issue if the petitioner proved he was brought within the state's confines by force and violence.

Adjudication of Insanity Creates Presumption of Incompetence Until Destroyed by Subsequent Proceeding—In *People v. Samon,* 97 N.E.2d 778 (Ill. 1951), the petitioner filed a writ of *coram nobis* to set aside a conviction of armed robbery which resulted in a life sentence. The petition alleged that unbeknownst to the sentencing judge, six months prior to committment the prisoner had been adjudged insane by a California state court. The lower court granted a motion to dismiss the write for failure to state a cause of action and on the grounds that the issue was *res judicata* by virtue of an adverse decision in a *habeas corpus* petition filed in federal court. The supreme court remanded the case with instructions that it be heard on its merits, on the theory that the California court's judgment had created a presumption of insanity which continued until destroyed by a subsequent judicial proceeding. The court stated that the presumption exists only for a reasonable period but held that such time had not elapsed at the time of commitment. The plea of *res judicata* was rejected because in Illinois the proper proceeding for relief here is *coram nobis,* not *habeas corpus,* and therefore the former hearing although held in federal court is not a bar to this action.

Right to Confront Witnesses Waived by Deaf Defendant—The defendant appealed a conviction of murder on the grounds that he was not confronted by the witnesses used against him. His claim was predicated on the fact that he was deaf and thus could not hear the interrogatories directed to the state's witnesses nor their replies to them. The court in *Williams v. State,* 238 S.W.2d 534 (Tex. 1951), affirmed the conviction because of defense counsel's failure to suggest at the trial some available means of communicating the testimony and proceedings. A showing that such a suggestion was given but rejected by the trial court must be made to secure a reversal.

Counsel Can Except to Court's Improper Gestures Made While Charging Jury—At the trial of the recent case of *Butler v. U. S.,* 188 F. 2d 24 (D. C. Cir. 1951), the defendant's attorney unsuccessfully attempted to take exceptions to facial expressions and gesticulation made by the trial judge while instructing the jury. The trial judge's ruling was held reversible error, the Court of Appeals holding that counsel is entitled to record fully and accurately what has transpired.