

1952

## Abstracts of Recent Cases

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order of proof is unimportant as long as the corpus delicti is ultimately established independently of the confession.<sup>30</sup> Others insist that the corpus delicti be established first.<sup>31</sup> Dean Wigmore asserts what the majority cite as the best rule: the order of proof should be within the discretion of the trial judge.<sup>32</sup> If there is any strong basis for the corroboration rule, however, it appears that the better view would be to make the proof of the corpus delicti necessarily a primary requisite to allowing the confession in evidence. Unless this is done, it is extremely difficult to see how the judge or jury can consider whether the corpus delicti has been established without considering that the defendant has confessed.

The corpus delicti corroboration rule is also belittled by the method of handling judicial confessions. Wigmore indicates that a confession in court requires no corroboration as it amounts to a plea of guilty.<sup>33</sup> If an extra-judicial confession alone may not establish the corpus delicti, there is no logical explanation for allowing an uncorroborated judicial confession to suffice for conviction. The only reason supporting the distinction is the fact that the latter is believed to be trustworthy since made in the presence of the court. This again is no protection for the suicide of a pathological liar. If the rule requiring corroboration has any substance it should prevail where there is a judicial as well as an extra-judicial confession.

### Conclusion

There appears to be no justifiable reason for continued obedience to the rule that the corpus delicti must be established independently of a confession before the confession will be admitted in evidence. In the view of Dean Wigmore the requirement of corpus delicti corroboration should be disregarded. The corroboration would be left to the common intelligence of the judge and jury on the basis of any evidence which would induce confidence in the truth of the confession.<sup>34</sup> The state would still have the burden of convincing the jury that the confession was truthful. The proof of the loss or injury, the criminal means, and the identity of the perpetrator would still have to be proved beyond a reasonable doubt.

### Abstracts of Recent Cases

Doctrine of "Purgation by Oath" Overruled by Illinois Supreme Court—In *People v. Gholson*, 106 N.E. 2d 333 (Ill. 1952), the respondents, E. H. Gholson and his wife, Clara Gholson, were charged with indirect contempt of court. At the time Gholson, a chiropractor, was being tried by a jury on a criminal charge of violation of the Illinois Medical Practice Act, he and his wife distributed through the mails advertisements and periodicals

31. *Winslow v. State*, 76 Ala. 42 (1884); *People v. Wood*, 134 Cal. 301, 66 Pac. 372 (1901).

32. 7 WIGMORE §2073; *State v. Laliyer*, 4 Minn. 277, 285 (1860).

33. 7 WIGMORE §2071; *State v. Oerst*, 127 Kan. 412, 435, 273 Pac. 490, 501 (1929) ("It never has been and is not now the law, at least in this state, that the corpus delicti must be proven under a plea of guilty." Dissenting opinion). See also *People v. Ryan*, 82 Cal. 617, 23 Pac. 121 (1890) (where the court would not allow a former plea of guilty in evidence but was inclined to consider the plea in itself as conclusive enough to have justified a conviction.) *Contra*, *People v. Popoff*, 261 App. Div. 788, 27 N.Y.S.2d 825 (4th Dept. 1941) (a former plea of guilty can be offered in evidence, but there must be additional proof that a crime was committed). See also *People v. Steinmetz*, 240 N. Y. 411, 148 N.E. 597 (1925).

34. 7 WIGMORE §2072.

praising Gholson's life work and generally extolling the chiropractic profession and its progress. On the day of Gholson's trial a motor caravan of several hundred people, seemingly in sympathy with Gholson, appeared and all of these people attended the trial. Thereupon, a contempt petition was filed against Gholson and his wife charging them with deliberate and wrongful intent to influence the jury by the publication and circulation of advertisements, allegedly received and read by some of the jurors. The defendants were also charged with wrongful and unlawful intent to influence the court by organizing the motor caravan and the attendance of its members at the trial, which created some disturbance in the courtroom.

The defendants in their verified answer denied the alleged wrongful acts and contended that under the laws of Illinois, in cases of indirect or constructive contempt, the sworn answer of the alleged contemner fully denying the charge is conclusive and entitles him to a discharge. Under this doctrine of "purgation by oath," the only remedy is prosecution for perjury if the sworn answer is considered false.

The lower court accepted the doctrine of "purgation by oath," but found that the defendant's answers were insufficient. The Supreme Court maintained that if the doctrine were to be accepted, the answers were sufficient in themselves, but that the doctrine should no longer be accepted in Illinois. Justice Maxwell, writing the opinion for the court, reviewed the origin and the history of the doctrine and concluded that the reasons which gave rise to its birth are no longer existent, and therefore, announced that: "the doctrine of 'purgation by oath' will no longer be adhered to by this court (Illinois Supreme Court), and all previous decisions of this court upholding and applying that doctrine . . . are hereby expressly overruled."

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**Special Prosecutor Commits Error**—In *Thomas v. State*, 59 So. 2d 517 (Fla. 1952), the defendant was indicted for the killing of his wife by cutting and stabbing her with a knife. At the trial a practicing attorney, specially employed by the deceased's daughter to assist in the prosecution of the case, took the lead in cross-examining the defendant. He interrogated him about numerous other crimes, implying that the defendant had some connection with these crimes. During this time the special prosecutor had papers in his hand which he called "the record." He read from these papers and exhibited them to the jury. The defendant had no actual connection with many of the crimes referred to.

On appeal from a conviction of manslaughter, the appellant raised four questions of error. Paramount among these allegations of error was the appointment of the special prosecutor and his prejudicing the cause of the defendant.

The court held that the appointment of the special prosecutor did not constitute error, but that his "over-zealousness" in cross-examining the defendant about crimes committed by a person of the same name, was prejudicial, and therefore, reversible error.