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Abstracts of Recent Cases

state criminal trials have been deemed violations of due process.[37] But in determining questions of this nature, the Court has repeatedly stated that a state is free to regulate the procedure of its courts in accordance with its own conception of policy and fairness unless in so doing it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.[38] Applying this doctrine to the liberal rule here in question, it seems unlikely that the court will reverse the Illinois decision. In view of the many state decisions following the rule, one can hardly say that its application offends a principle of justice "rooted" in our society.

ABSTRACTS OF RECENT CASES

Thirty Day Imprisonment for Nonpayment of Fine Applicable to Period of Parole—When a poor convict, sentenced to be imprisoned and pay a fine has been confined in prison thirty days, solely for the nonpayment of such fine, he may make application to a United States commissioner to take a pauper's oath; and upon taking it, he is relieved of the fine and discharged. 18 U.S.C.A. §3569 (1948). The United States Board of Parole of the Department of Justice had for many years construed this section as permitting a paroled prisoner who was sentenced to both a prison term and a committed fine, to serve on parole the thirty additional days necessary to qualify him to take the poor convict's oath. In *United States v. Gottfried*, 197 F.2d 239 (2d Cir. 1952), the United States attorney challenged this construction and took the position that during the additional thirty days the poor convict must be actually "confined in prison." The court agreed with the Parole Board's construction. The court, construing the words "confined in prison" in connection with the Parole Act, held that the parole merely enlarged the confines of his prison but still left him within the legal custody and under the control of the Attorney General as if he were physically within the prison.

Irregularities in Selecting Grand Jury as a Ground for New Trial—In *Rudd v. State*, 107 N.E.2d 168 (Ind. 1952), the court held that non-compliance with statutes governing the selection and summoning of grand juries was sufficient ground for abating an indictment returned by the grand jury. The indictment was in three counts charging the defendant with murder in the second degree, voluntary manslaughter, and involuntary manslaughter. After the trial court overruled his plea in abatement, defendant entered a plea of not guilty to each of the three counts. At the trial defendant was found guilty of murder in the second degree. The issue on appeal was whether violations of several statutes prescribing the duties of the jury commissioner and the clerk harmed the defendant's substantial rights. IND. CODE ANN §4-3320 (Burns 1946 Replacement). There was no evidence of bad faith, fraud, or corruption in any of the acts or omissions of the clerk or either jury commissioner. The evidence showed noncompliance with

37. Powell v. Alabama, 287 U.S. 45 (1932) (failure to appoint counsel); In re Oliver, 333 U.S. 257 (1947) (secret trial in which judge acting as a "one-man grand jury" convicted defendant of contempt.)

38. Screws v. United States, 325 U.S. 91 (1945); Palko v. Connecticut, 302 U.S. 319 (1937); Snyder v. Massachusetts, 291 U.S. 97 (1934); Powell v. Alabama, 287 U.S. 45 (1932).

39. Note 5, *supra*.

statutes providing for keeping the jury box locked, the selection and placing of names in the jury box, the drawing of names for jury service, and the calling of such persons for jury service. The state claimed the acts or omissions in question were mere irregularities, and that, therefore, the trial court properly refused to abate the indictment. But the court reversed on the grounds that the indictment was objected to promptly and, more important, that since there was not a substantial compliance with the statutes on grand juries, the substantial rights of the defendant were harmed.

Congressman Receiving Political Contribution from Government Employee—In *Brehm v. United States,* 196 F.2d 769 (D.C. 1952), a Representative in Congress from Ohio was convicted of receiving a contribution for political purposes from one of his employees. 18 U.S.C.A. §602 (1948). Brehm presented three major contentions on appeal. His first contention was that the Government failed to prove that the contributions received were used in financing his own campaign for reelection. The court agreed that it would make a difference whether the money were used for his own political purposes or whether the money were used for the political purposes of the national committee or the state committee, but that the jury might reasonably have concluded that when he had received the money he had in mind his own campaign for reelection. Brehm's second contention was that before there could be a verdict of guilty the jury must find that the giver and the receiver both knew and understood that the contributions were made for the political purpose charged. The court denied this contention, pointing out that only the receiver's knowledge and understanding is important. The third point raised was that the court erred in admitting evidence of offenses not alleged in the indictment and which had no connection with the offense charged. The Government had been permitted to introduce evidence of similar contributions from other employees in previous years. The court pointed out that this evidence was admissible to establish a common scheme or purpose so associated with the offense charged that proof of one tends to prove the other, that both were connected to a single purpose. On all the evidence the conviction was sustained.

Arson: Prima Facie Case Coupled with Accused's Failure to Testify—In *State v. Nelson,* 90 A.2d 157 (Conn. 1952), the defendant's summer cottage was set on fire. The cottage was a one story building having a basement and an attic. The fire was clearly of an incendiary origin because it had been started in three places: the attic, the kitchen cupboard on the main floor, and the basement. In close proximity to these places were several open bottles of gasoline. The defendant had sole access to the cottage and he admitted to the police that although he had been at his cottage on the day of the fire he was not there when the fire started. However, he had been seen in the area at that approximate time. There was no evidence that the cottage had been broken into prior to the arrival of the firemen. The defendant offered no evidence and did not testify on his own behalf. In arriving at its conclusion that the defendant was guilty, the court stated that the evidence produced by the state was sufficient to suggest the need of some denial or explanation by the defendant himself. It indicated that the fire was incendiary, that he was on the scene at the time the fire started, that he had access to the interior and the fire could only be started by someone who had access without breaking in, that there was a possible motive in that the fire

would permit him to collect some ready money from his insurance. The court pointed out that these facts taken together made out a prima facie case and with this as background, it is entitled to draw an inference of guilt from the defendant's failure to testify. The court held that the prima facie case coupled with the inference of guilt from the defendant's failure to testify was proof beyond a reasonable doubt.

Illegal Practice of Law—In *Lowe v. Presley,* 71 S.E.2d 730 (Ga. 1952), the defendant, Presley, who was not an attorney-at-law, advised the plaintiff to plead guilty to an indictment for wilful evasion of Federal income taxes and, after sentence had been imposed, appeared for Lowe and made a motion to withdraw the plea of guilty. The court held this to be an unauthorized practice of law and subjected him to a fine of $500.00. GA. CODE ANN. §§9-402, 9-9903 (1931). Presley represented himself as being qualified to handle all phases necessary in the preparation, counseling, and the defense of the tax case with respect to all auditing work as well as all legal representation necessary. In fact, Presley was not qualified to represent anyone before the Treasury Department; he had no formal training as an accountant; he was not a certified public accountant; and he lacked any type of accounting experience sufficient to have qualified him to audit the plaintiff's accounts in order to defend the tax case and to advise the plaintiff as to the amount of tax he might owe. The court had no difficulty deciding that Presley's actions amounted to an unauthorized practice of law.

In *Hulse v. Criger,* 247 S.W.2d 855 (Miss. 1952), the problem becomes more difficult. Here a licensed real estate broker was charged with contempt of the authority of the court for the illegal practice of law. As a real estate broker, Criger had used the standardized forms of warranty deed, quit claim deed, trust deed, etc. He had also given advice as to legal rights of parties, effect of instruments, and validity of titles. It was contended that Criger charged for these services when not acting as the broker or as a party to the contract. The court phrased the issue of unlawful practice of law in terms of whether under the circumstances the preparation of deeds, leases, etc. were the primary business being carried on or whether it were ancillary to an essential part of another business. Bearing on this issue were questions of the simplicity or complexity of the forms, the nature and customs of the main business involved, and the convenience to the public. The court concluded that a real estate broker may use approved standardized forms in transactions in which he is acting as a broker, but that he may not give opinions or advice as to legal rights, nor may he use the forms in transactions where he is not acting as the broker, nor may he make a separate charge for completing any standardized forms. Criger was fined one dollar and ordered to stop the practice held to be improper.
