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Police Science Legal Abstracts and Notes

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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Acceptance of Illegal Payment Offered Pursuant to Previous Arrangement With Police Constitutes Bribery—An operator of a house of prostitution reported to police that he paid \$200 a month to defendant, a sergeant on the police force, to ignore the illicit enterprise. By prearrangement, concealed police officials observed defendant accept one of the payments. The jury found defendant guilty of violating a statute which declares that “whoever corruptly, directly or indirectly, gives any money or other bribe” to an officer, with intent to influence his acts in any matter which may be brought before him in his official capacity, is guilty of bribery, and “the officer so receiving . . . with intent or for the purpose or consideration aforesaid, shall be guilty of bribery. . . .” The Supreme Court of Illinois, in affirming, overruled a prior authority that such action could constitute only attempted bribery, because of the intent of the giver at the time of the transaction. *People v. Lyons*, 122 N.E.2d 809 (Ill. 1954). The court, relying on decisions under similar statutes in other states, held the guilt of an accused is measured only by his own intent, and that the motive of the other party is immaterial.

Search and Seizure Conducted Before Arrest is not Incident to Arrest—Police, suspecting defendant was engaged in selling moonshine whiskey, sent a representative to her home who was successful in purchasing a bottle. A police officer obtained a search warrant, went to the home of the defendant, and after reading the warrant discovered and confiscated a cache of whiskey concealed beneath the floor. Defendant was then arrested. The trial court ruled the search warrant to be invalid for undisclosed

reasons, but denied a motion to suppress the whiskey as evidence holding it incident to a lawful arrest. The Supreme Court of Florida reversed a conviction of unlawful possession and concealment of moonshine whiskey. *Melton v. State*, 75 So.2d 291 (Fla. 1954). Since the search warrant was invalid, no lawful arrest could be made pursuant to it. However, the court determined the arrest to be legal without a warrant since the arresting officer had reasonable grounds to believe that a felony was being committed in his presence. But the court also noted that the arrest was not made until after the search, and, therefore, the search and seizure was not incident to the arrest but rather the arrest was an incident to the search. It followed that the evidence was illegally seized and could not be used against the defendant.

State May Prosecute Prisoner Who is on Federal Probation—The Court of Appeals for the Seventh Circuit decided that a conviction of a state court is not invalid for the reason that there was an outstanding federal probation order against the prisoner at the time of his arrest by state authorities. A contention that the prisoner must be returned to the custody of the federal court which granted probation was rejected. *Spellman v. Murphy*, 23 U.S.L. Week (Dec. 13, 1954). The court refused to follow a contrary result in the Tenth Circuit and said, “A prisoner has no standing to choose between two sovereignties, each desiring his custody. The sentence was imposed only in the interest of the United States, not in any degree whatever as a benefit to the relator. He has been deprived of nothing to which he was entitled; if the United States has been so deprived, he may not vicariously assert its rights.”

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Right of Police to Take and Retain Fingerprints—Appellants, members of a union, were

arrested for a violation of a city ordinance while assembled in the vicinity of a plant against which a strike was in progress. They were fingerprinted and photographed by police over their objections. Subsequently, suit was filed to enjoin the forwarding of the fingerprints and photographs to the Department of Justice in Washington, D. C., and to require the return of these records. The appellate court affirmed the lower court's determination that the petition did not state a cause of action. *Poyer v. Boustead*, 122 N.E.2d 838 (Ill.App. 1954). The court, in holding that the police were within

their rights in fingerprinting appellants after arrest, rejected the contention that such a procedure violated the privilege against self-incrimination. Numerous decisions were cited to the effect that in the absence of statute the right to fingerprint exists after arrest but before conviction as an incident to the general police power. By statute, however, police were authorized to take fingerprints but required to return them if the defendant is found not guilty. Since there had not yet been a determination of the charge pending against defendants, no right to the fingerprints existed.