

1955

Abstracts of Recent Cases

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Abstracts of Recent Cases, 46 J. Crim. L. Criminology & Police Sci. 238 (1955-1956)

This Criminal Law is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

vides an example of superimposition. There, whenever the local coroner receives notice that a person has died under unusual or suspicious circumstances he is under a duty to summon one of the medical examiners from a centralized state crime laboratory which has proper facilities to make adequate tests.⁴² In addition to the economic waste such a plan entails, there is a serious question as to its legality, in view of the various decisions which hold that the duties of a constitutional officer as known at common law may not be diminished by statute.⁴³ However, even where constitutional obstructions exist, introduction of the substantial benefits of a medical examiner system is deemed so imperative that legislative modification of the coroner system is constantly attempted in the hope of being upheld.⁴⁴

EXAMINATIONS ACT § 6 (1954), alternative provision for cooperative action by coroners with the medical examiners where the state constitution prevents abolishment.

⁴² Ga. Acts 1953, c. 21 § 2.

⁴³ There have been few cases on this point. *People ex. rel. Walsh v. Bd. of Comm'rs of Cook County*, 397 Ill. 293, 74 N.E. 2d 503 (1948) held that a sheriff's power to select the janitorial staff for court buildings, incidental to his common law duty of being custodian, could not be transferred to the county board of commissioners by statute; *Fergus v. Russel*, 270 Ill. 304 (1915) refused to allow diminution of the common law duties of the attorney general.

CONCLUSION

The traditional coroner system as it exists in most places appears inadequate to perform the important task assigned to it. There is nothing to indicate that the coroner's duplication of judicial and police investigative functions is necessary. The medical functions all too frequently have been handled in a politically expedient manner. In most circumstances the result has been incompetence in every phase from initial determination of death to production of trial evidence from the autopsy. It is true that under the worst forms of the system a highly competent individual may be elected coroner and do a good job. However, only medical examiner legislation explicitly aimed at eradicating the evils of the coroner system can insure permanence to high standards of service.

⁴⁴ An example is Illinois where bills to overhaul the coroner system have recently been introduced in the General Assembly. They provide all coroners in the state with the services of medicolegal investigators, and create an advisory board on state-wide coroner practice. Coroner's inquests, however, would be retained as mandatory in homicide and suicide cases and optional in others. In every county except Cook (containing Chicago) the medico-legal investigator would be appointed by the Director of Public Health. The coroner would appoint in Cook County. 10 *Legislative Synopsis and Digest* 95 (1955).

ABSTRACTS OF RECENT CASES

Propriety of Prosecuting Attorney's Argument—Defendant was convicted of a mail fraud. On appeal he contended that the conduct of the government attorney, in the closing argument to the jury, was improper. The more important instances of which complaint was made were an appeal to the patriotism of the jury to protect the public, references to the purchasers as poor people and "suckers", statements of personal belief as to the defendant's guilt and incorrect statements of fact not justified by the evidence. The court, *Henderson v. United States*, 218 F.2d 14 (6th

Cir. 1955), rejected these contentions saying, "It is of course permissible for the district attorney to ask the jury for a conviction. . . . In doing so the district attorney has the right to summarize the evidence and urge upon the jury all reasonable inferences and deductions from the evidence. It is not misconduct on his part to *express* his individual belief in the guilt of the accused if such belief is based solely on the evidence introduced and the jury is not led to believe that there is other evidence, known to the prosecutor but not introduced, justifying that belief. . . . Where the nature of the

offense charged reasonably includes a consideration of the economic status of injured persons, as in a scheme to defraud, a defendant has no just cause to complain if that status is disclosed. . . . But it must be remembered that in the closing argument to a jury, the government attorney is an advocate, as is counsel for defense, and proper oratorical emphasis is denied to neither."

The dissent argued that a district attorney, as an important and respected official of law and government, should not express a personal opinion as to guilt since this "may well tip the scales in cases where, otherwise, the jury might conclude there was a reasonable doubt of guilt." For a comprehensive discussion of the whole problem of a prosecutor's summation see comment, 42 J. Crim. L. & Criminology 73 (1951).

Forcible Taking Under Honest Claim of Right Does Not Constitute Robbery—Defendant was employed at a monthly salary of \$180 with the provision that if he worked until Fall his wages would be \$200 a month. Defendant quit before Fall, but demanded pay at the rate of \$200, honestly believing it due. After the employer's refusal, he drew a gun and forced payment. The Supreme Court of Colorado affirmed the dismissal of a charge of aggravated robbery. *People v. Gallegos*, 274 P.2d 608 (Colo. 1954). The court recognized the doctrine that where property is taken under a bona fide claim of right the requisite intent to support a charge of robbery is lacking. This doctrine has generally been applied so that the forcible taking of specific property, or money to satisfy a liquidated debt, under a belief of right does not constitute robbery. A majority of courts, however, hold that such a taking to satisfy an unliquidated claim is robbery.

Where Facts Are Rationally Established Indictment Returned Solely on Basis of Hearsay Testimony Will Not Be Quashed—Upon the return of an indictment by a federal grand jury in a tax evasion case, the accused moved to quash on the ground that it was based solely on the hearsay testimony of accountants and tax experts. Judge Learned Hand wrote the opinion in which it was held that hearsay

evidence standing alone is sufficient to support an indictment if the facts contained therein are rationally established by the evidence. *United States v. Costello*, 23 U.S.L. Week 2532 (2d Cir. April 26, 1955). Judge Hand noted that the general rule, that indictments will not be dismissed solely because incompetent evidence was admitted at the inquest, has been disregarded on occasion where all the evidence is "incompetent". See *Brady v. United States*, 24 F.2d 376 (8th Cir. 1928). However, "if 'incompetent' is to cover all evidence, however rationally persuasive it may be, that would be excluded at a trial with great deference we cannot agree. . . . We should be the first to agree that, if it appeared that no evidence has been offered that rationally established the facts, the indictment ought to be quashed. . . ." Hearsay is not incompetent merely because it is so characterized; it may be as dependable as evidence admissible at the trial and in fact is relied upon in everyday business. Exclusion of hearsay is a privilege accorded an accused and a failure to invoke this privilege will result in its acceptance by the court. The primary objection to the admissibility of hearsay is that it denies the accused the right of cross-examination. This right is absent anyway at a unilateral investigation like an inquest in that the accused is normally not present so that objection does not here prevail.

Felony-Murder Rule Applied Where Arsonist's Accomplice Died of Accidental Burns Suffered While Arson Was Being Committed—The Pennsylvania Supreme Court has applied the felony-murder rule in a case where an accomplice of the accused died from burns accidentally received while committing the arson. *Commonwealth v. Bolish*, 23 U.S.L. Week 2532 (Pa. Sup. Ct. 1955) (conviction reversed on other grounds). Applying the common-law rule that a person in the act of committing a felony has the requisite legal malice to sustain a finding of guilty of first-degree murder, the court reviewed what it felt to be a number of analogous cases in which felons had been found guilty of murder in the first degree. The common denominator in these cases was that a person who participates

in certain types of felonies is guilty for all the acts of his confederates in furtherance of a common design. The court observed that an arsonist "is bound to know the perils and natural results" of his act and summarized its holding as follows: "If a person with legal malice commits an act or sets off a chain of events from which, in the common experience of mankind, the death of another is a natural and foreseeable result, that person is guilty of murder, if death results from that act or from

the events which it naturally produced. If the original malicious act was arson, rape, robbery, burglary or kidnapping, the original actor is guilty of murder in the first degree."

The question of whether an intervening or supervening act is sufficient to interrupt the normal chain of events is a matter of law for the court and its occurrence or non-occurrence a matter of fact for the jury. Here the court found as a matter of law that no intervening act had occurred.