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Judicial Decisions on Criminal Law and Procedure

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE.

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ACCOMPLICES.

Farley, State Excise Com'r, v. Bronx Bath and Hotel Co. et. al., 148 N. Y. Supp. 579. Special agents, who are confidential agents of the State Excise Commissioner and are required under Liquor Tax Law (Laws 1896, c. 112), Sec. 10, to investigate at his direction and to ascertain whether the law is being violated, are not accomplices, where, for the purpose of obtaining evidence, they purchased liquor on Sunday contrary to law, and so their testimony need not be corroborated. Dowling, J., dissenting.

CORPORATIONS.

Joplin Mercantile Co. v. United States, 213 Fed. 926. *Criminal liability for a felony.* A corporation may be indicted and convicted under Criminal Code, Sec. 37, for a conspiracy to commit an offense against the United States by carrying liquors into Indian Territory or introducing liquors into the Indian country, although under section 335 of the Criminal Code the offense is a felony.

EVIDENCE.

People v. Duffy, 105 N. E. 839, N. Y. *Admissibility of evidence of other crimes.* In a prosecution for accepting bribes for police protection, where the only direct evidence of the payment of the money was given by the one who paid it, he was an accomplice, and hence his testimony may be corroborated by evidence showing a regular system of payments to accused and his predecessor by the proprietors of illegal resorts, for police protection. Collin, J., dissenting.

EXTRADITION.

Ex parte Thaw, 214 Fed. 423. *Sufficiency of papers.* In order to have extradition there must be a person, a crime, and a flight, and, under a reasonable and a necessary construction of the constitutional provision, the person must be a responsible person: but naming the person who is charged will be supplemented by the presumption of responsibility and will be sufficient to establish the constitutional elements, unless the description of the person and the crime for which he is sought to be extradited involves something which reasonably overthrows the essential presumption of responsibility.

When the crime alleged in the papers as the ground for extradition is a conspiracy by the person charged and others for his escape from a custody based only upon a finding of his insanity and a commitment thereon, such a finding not only overthrows the presumption of responsibility but creates the presumption that insanity continued until the escape, and this throws the question of criminal responsibility into the field of uncertainty, and the burden of proving a recovery or a lucid interval, as the case may be, rests upon the person alleging the same.

GRAND JURY.

State v. Toth, 90 Atl. 1125, N. J. *As affected by legality of title of officer selecting it.* The legality of a grand jury does not depend at all upon

the validity or invalidity of the title of the officer by whom such body is selected or drawn. If the title of such officer is colorable, indictments found by a grand jury selected or drawn by him are as impregnable against attack as if its members had been selected or drawn by an officer whose title is unimpeachable.

INDICTMENT.

People v. Jones, 105 N. E. 744, Ill. *Sufficiency.* An indictment which alleges that accused attempted to break and enter in the night time the dwelling house of a female named with intent violently and against her will to ravish her is not sufficient to sustain a judgment of guilty: force being an essential element of the rape, and the words "violently" and "forcibly" not being synonymous.

INDICTMENT AND INFORMATION.

State v. Myer, Mo., 168 S. W. 717. *Name of injured party.* A statute provided that every person who should wilfully set fire to any shop or other building not a subject of arson in the first degree, but adjoining any inhabited dwelling house so that such dwelling house should be in danger, should be guilty of arson in the second degree. An information charged that the defendant did set fire to a store room "adjoining to a certain dwelling house of one E. M. Deming," whereby the dwelling house was endangered. After conviction the defendant contended that the information was fatally defective because it did not identify the owner of the store room. The Supreme Court of Missouri had previously held that in charging with arson in the first degree the ownership of the house must be alleged. Held, that in prosecutions under the above statute, such allegation was not necessary, as the gist of the offense consists in the danger to the persons occupying the adjoining building rather than the injury to the building set on fire. In actions at common law a trespass to the property was essential and the indictment must show that the defendant was not in possession, which was done by alleging ownership in another.

JURISDICTION.

People v. Arnstein, 105 N. E. 814, N. Y. *Locality of offense.* An indictment, which alleged that defendants, including A, entered into a conspiracy in the county of New York to fraudulently deal in copper stocks to obtain by false pretenses the property of persons to whom they should sell stocks, that in pursuance of the conspiracy defendants went to Massachusetts with intent to cheat and defraud the prosecutor, that they there made to him false representations, and in furtherance of the conspiracy three of the defendants, not including A, sent telegrams and letters to prosecutor from the city of New York confirming the false representations, and that subsequently in the state of Connecticut, defendants obtained from prosecutor, who relied on the false representations, a specified sum, is not maintainable against A, under Penal Law, sec. 1930, subdiv. 1, declaring that a person who commits within the state any crime in whole or in part is liable to punishment in this state. Willard Bartlett, C. J., and Hiscock and Miller, JJ., dissenting.

OBSCENITY.

People v. Tylkoff, 105 N. E. 835, N. Y. *"Commits an act."* Penal Law, sec. 43, declaring that any person who wilfully and wrongfully "commits" any act which openly outrages public decency, or for which no other punishment is

provided, is guilty of a misdemeanor, applies only to acts, and the utterance, before a large number, of slanderous words charging a female with unchastity is not a violation, particularly as such slanderous words do not constitute a crime. Hiscock and Hogan, JJ., dissenting.

PAROLE.

Ex parte Marcil, 213 Fed. 990. *Commutation for good behavior subsequent to breach of parole.* Under act of June 25, 1910, C. 387, sec. 6, providing that where a prisoner breaks his parole he shall serve the remainder of the sentence imposed upon him, a prisoner is not entitled to commutation for good behavior under the commutation law (Act of June 21, 1902) as amended April 27, 1906, during his confinement after being returned to prison for the breach of his parole.

PEONAGE.

United States v. Broughton, 213 Fed. 345. Code Ala. 1907, sec. 7632, provides that when a fine is assessed the court may allow defendant to confess judgment with good and sufficient sureties, and sec. 6846 declares that when this is done a convict may contract to render services for the surety in payment of the fine and costs, and if he does so, and refuses without sufficient excuse to perform the services, he must on conviction be fined not less than the amount of the damages which the party contracting with him has suffered by reason of his failure, or refusal, etc. Held, that sec. 6846, having been sustained by the highest state courts, was not in violation of Const. U. S. Amend. 13, prohibiting slavery or involuntary servitude except as a punishment for crime, the execution of the surety labor contract not operating to relieve the convict of his status as a prisoner, liable to perform the judgment for fine and costs, but merely to transfer his custody and services from the state to the surety; and hence his service for the latter does not constitute peonage.

PRINCIPAL AND AGENT.

Boos v. State, 105 N. E. 117, Ind. *Illegal sale of intoxicating liquor to a minor by an agent.* Under Burns Stat. 1914, sec. 2486, punishing, "whoever directly or indirectly" sells intoxicating liquor to minors, a licensed saloon keeper is not criminally liable for a sale made by a bartender to a minor, where the sale was made in the saloon keeper's absence, or without his knowledge, express or implied, or without any design to evade the statute.

SENTENCE.

Dutton v. State, 91 Atl. 417, Md. *Formalities in pronouncing.* It is not reversible error, even in a capital case, not to ask the prisoner if he has any reason why sentence should not be passed, unless it appears that he was or may have been injured by the omission, but the practice of inquiring any reason why sentence should not be passed is recommended in all cases in which either the death penalty or confinement in the penitentiary can be imposed.

SUSPENSION OF SENTENCE.

Belden v. Hugo, 91 Atl. 369, Conn. *Effect of revocation.* Under Pub. Acts 1905, c. 142, sec. 4, as amended by Pub. Acts 1911, c. 106, sec. 1, relative to the suspension of sentence, and Pub. Acts 1905, c. 142, sec. 5, relative to the revocation of such suspension, where sentence is suspended after being pronounced, the period during which a convicted person is in the custody of the probation officer is not a part of the term of his sentence, and, where the

suspension is revoked, the term of the sentence runs from the time of such revocation and not from the time of the commitment to the probation officer. Beach and Roraback, JJ., dissenting.

TRIAL.

Peterson v. United States, 213 Fed. 920. *Coercing verdict.* On a trial for receiving stolen cattle, where the jury retired on Friday afternoon, and after being out until 11 o'clock Saturday morning, reported that they had agreed as to one defendant but were unable to agree as to the other two defendants, it was error for the court after inquiring and ascertaining that the jury stood 7 to 5, to charge that the case should be finally disposed of as to all the defendants, that it was the second trial of the case, and that there was no reason to believe that a more intelligent or honest jury more likely to arrive at a verdict could be drawn on another trial, that justice demanded that the case be brought to an end, that the expense of the trials was very great, that the government had a right to a verdict without a further expenditure of time and money, and defendants, if guilty, a right to have that fact determined before they were bankrupt, and, if innocent, a right to be acquitted before their means were exhausted, that, if seven jurors were for an acquittal, the others should seriously inquire whether there were a reasonable doubt, and, if the seven were for conviction, whether there was a reasonable doubt, and that they should further consider the case; the court believing that they could honestly come to an agreement, especially where, in less than an hour, they returned a verdict acquitting one defendant and convicting the other.

State v. Schneiders, Mo. 168 S. W. 605. *Improper Argument.* A large part of the prosecuting attorney's argument consisted in denouncing the defendant as a perjurer, a suborner of perjury and a crook. There was no proof in the record that any of these charges were true. Objection was made to the argument but the trial court failed to rule upon the objections or to rebuke the prosecuting attorney. On appeal it was urged that this was error without prejudice as the defendant was very probably guilty. Held that the defendant was guaranteed by the constitution a fair and impartial trial according to the law of the land, whether innocent or guilty. The defendant did not have such a trial and hence was entitled to a reversal.

Reed v. State, Tex. Cr. App., 168 S. W. 541. *Instructions to jury panel.* The Texas statute requires that in all prosecutions for felony the court shall give his charge in writing, directly setting forth the law in the case. When the jury panel which was to try all cases for the week was tested as to qualifications, and sworn, the trial judge gave them oral instructions as to the general duties of jurors, including one upon the importance of agreement to prevent a mistrial. The defendant was apparently not in court but his attorney objected. Seven of the jurors who were thus instructed subsequently sat in the trial of the defendant. At the close of that trial the judge instructed the jury in writing as to the law applicable to that case. Held that the oral instructions given by the court were not a charge in that case; that the defendant was not entitled to a hung jury as a matter of law; and that if any juror had been improperly influenced by the oral instructions the defendant could have ascertained the fact on the *voir dire* and challenged the juror. The conviction was affirmed.