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Judicial Decisions on Criminal Law and Procedure

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE.

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ACCOMPLICE.

Blalock v. State, Texas, Crim. App., 176 S. W. 725. *Agreement to keep crime secret.* Defendant and one Ferguson quarreled and defendant struck Ferguson on the head with a large stick. Two others were present, but took no part in the fight. It was not then known that Ferguson was seriously injured. All four who were present agreed to "say nothing about it, so that the officers would not get hold of it." Ferguson subsequently died from the injury received. Held, that the agreement to conceal the fight did not make one of the by-standers an accomplice, hence his testimony did not require corroboration.

ALIENS.

Gegiow v. Uhl, Acting Comsr. of Immigration, 36 Sup. Ct. Reptr. 2. *Deportation because of overstocked labor market.* Alien immigrants cannot be deported under the Immigration Act of Feb. 20, 1907, Sec. 2, as amended by the Act of March 26, 1910, Sec. 1, as "persons likely to become a public charge," merely because the labor market in the city of their immediate destination is overstocked.

ASSAULT AND BATTERY.

State v. Selengut, R. I. 95 Atl. 503. *Defense of property against wrongful attachment.* The owner of property may not maintain his possession thereof by force against an officer attaching it as the property of another. (See note on this case in 29 Harvard Law Review 330.)

CARRIERS.

Vandalia R. Co. v. U. S. 226 Fed. 713. *Rebating.* Under the Elkins Law (Feb. 19, 1903) as preserved by amendment by act June 29, 1906, a railroad whose charter did not permit it to loan money, or to buy and sell coal lands, which, through a company it organized, contracted with a coal company to loan it a large amount upon notes bearing interest at 2%, and borrowed the amount upon its own notes, with interest payable at 4%, and to which the coal land was to be conveyed as security for the loan, and which at its own cost constructed tracks on the land and obtained the coal company's exclusive tonnage, a minimum being fixed for each year, and to which the coal company agreed to sell coal for its use at $1.20 per ton, subject to change according to the wage and mining scale, was guilty of an unlawful rebating, where the fact that the railroad had never had difficulty in getting coal at the market price, sometimes less than the agreed price, justified the jury in finding that such provision was a subterfuge and of no value.

CONSTITUTIONAL LAW.

Hankins v. State, Ark., 176 S. W. 691. *Awarding civil damages in a criminal prosecution.* A statute provided for the punishment of any person who should poison any of certain specified domestic animals, and directed that the jury should assess the amount of damage occasioned by such posioning, and the court should render judgment in favor of the party injured for three-fold the amount so assessed by the jury. Kirby's Digest, Sec. 1892. Held, that there was no constitutional prohibition against such procedure.

Truax v. Raich. 36 Sup. Ct. Reptr. 7. *Discrimination against alien employees.* Equity has jurisdiction to restrain the criminal prosecution of an employer under the Arizona Anti-Alien labor law of Dec. 14, 1914, at the instance of an alien employee who alleges that the act violates the Federal Constitution and that its enforcement will result in his immediate discharge from employment, although such employment may be one at will, rather than for a term.

The discrimination against aliens lawfully resident in the state which is produced by the provisions of the above act, that every employer of more than five workers at any time, "regardless of kind or class of work or sex of workers shall employ not less than 80% qualified electors or native born citizens of the United States or some subdivision thereof," renders the statute invalid under U. S. Const. 14th Amend., as denying the equal protection of the laws, and such statute can not be justified as an exercise of the power of the state to make reasonable classifications in legislating to promote the health, safety, morals, and welfare of those within its jurisdiction.

CONSTRUCTION OF STATUTE.

Commonwealth v. John T. Connor Co., Mass. 110 N. F. 301. *Regulation of the hours of woman's labor.* Under Stat. 1913, c. 758, providing that no woman shall be employed in laboring in any mercantile, mechanical establishment, telegraph office or telephone exchange more than ten hours in any one day, and that in no case shall the hours of labor exceed 54 in one week,—defendant grocery company which employed a woman as cashier in excess of the statutory hours of labor, it being her duty to sit in a "cage" having room for two persons and make change for customer's slips, also doing some bookkeeping, was guilty of a violation of the act, although the history of the words "in laboring" in such enactments would seem to qualify the word "employed" to exclude from the operation of the statute all employees not engaged in physical labor. The act of 1913 includes within the inhibition of the statute women in telegraph offices and telephone exchanges whose labor involves intellectual alertness, rather than manual labor.

FALSE PERSONATION.

U. S. v. Barnow, 36 Sup. Ct. Reptr. 19. *Non-existing office or employment.* A false representation as to some office or employment which has no legal or actual existence, as well as a false personation of a particular Federal officer or employee, or false pretense of holding an office or employment that actually exists in the Federal government, is comprehended by the provisions of the Federal Criminal Code, Sec. 32, for the punishment of one who, with intent to defraud, falsely assumes or pretends to be an officer or employee acting under the authority of the United States, or any department or any officer of the government thereof, and takes upon himself to act as such, or who, in such pretended character, demands or obtains anything of value from any person or from the United States or any department, or officer of the government.

GRAND JURY.

Latham v. U. S., 226 Fed. 420. *Presence of District Attorney's clerk in the Grand Jury room.* The presence of the clerk in the district attorney's office, who was an expert stenographer, and who at the district attorney's instance, took stenographic notes of the testimony of witnesses examined by the grand jury on which the indictment was found, although he took an oath before the clerk of the court to keep the proceedings secret, was a substantial violation of defendant's rights, and ground for quashing the indictment, although no prejudice therefrom was alleged or shown; act June 30, 1906, 34 Stat. 816, only authorizing certain persons, not including the district attorney's clerk and stenographer, to participate in grand jury proceedings.

INDICTMENT.

People v. Purcell, Ill., 109 N. F. 1007. *Charging attempt to steal personal property from the person, without alleging value.* Crim. Code Div. 2, Sec. 1, declares that whoever attempts to commit an offense prohibited by law, but fails or is prevented, where no express provision is made for the punishment of such attempt, shall be punished, when the offense attempted is a felony, by imprisonment in the penitentiary and in other cases by fine or imprisonment in the county jail. The theft of articles exceeding $15 is made grand larceny, which is a felony, while theft of property of a lesser sum is only a misdemeanor. An indictment charged that defendants attempted to steal the personal property of A, from his person, but they failed in the perpetration of the offense. There was no allegation as to the value of the property on A's person. Held that as the offense depended upon the value of the property, the indictment did not charge an offense.

INDICTMENT AND INFORMATION.

Commonwealth ex. rel. Stanton v. Francies, Warden, Pa., 95 Atl. 527.. *Constitutionality of statute dispensing with grand jury on plea of guilty.* Where defendant gave notice that he was ready to plead guilty pursuant to act of April 15, 1907, and signed a writing endorsed on the back of the indictment, waiving action by the grand jury and pleading guilty, and was thereafter sentenced, the proceeding was not violative of Const. art. 1, sec. 10, restricting the right to proceed criminally by information against any person for any indictable offense; a bill of indictment, based on charges contained in the transcript of the justice of the peace filed of record in the court imposing the sentence, not being a proceeding by information in the constitutional sense. As there used the term refers exclusively to practices such as were formerly used in England, whereby the accused was put on trial on information made by an officer, without further investigation. (See note approving case in 29 Harvard Law Review 326.)

JURISDICTION.

People v. International Nickel Co., 155 N. Y. Supp. 156. *Extraterritorial act taking effect within the state.* Penal Law (Consol. Law c. 40) Sec. 2, provides that a crime is an act or omission forbidden by law, and Sec. 1530 provides that a public nuisance is a crime against the order and economy of the state, consisting in unlawfully doing an act or omitting to perform a duty, which act or omission in any way renders a considerable number of persons insecure in life or property. Defendant was indicted for allowing noxious smokes to escape from its factory in New Jersey, which were wafted by the winds in and about the County of Richmond in this state,

rendering a considerable number of persons unsafe in life and the use of their property. Held, that as the indictment charged no act committed by defendant within the state, it charged no crime to give the court jurisdiction, although the results of defendant's acts in New Jersey were felt in New York, which acts if done in New York, would constitute a nuisance, since one can not be indicted for the effects or results of acts, irrespective of the acts themselves.

SENTENCE.

Ex parte Oliver, Okla., Cr. App., 149 Pac. 117. *Expiration of time, without imprisonment, is not satisfaction.* Defendant was convicted of violating the liquor laws and sentenced to six months' imprisonment and a fine of $500.00. It was orally agreed between the county judge, county attorney, sheriff, and the defendant, that he should leave the county. A commitment was issued, the defendant was not taken into custody, but left the county pursuant to the agreement, and no return was ever made on the commitment. Somewhat more than two years later he returned to the county and after he had been back nearly seven months, a new commitment was issued under which he was arrested and confined in jail. He brought habeas corpus to secure his release. Held, that the agreement on the part of the judge, county attorney and sheriff could not satisfy the judgment, as they do not have the pardoning power which is vested in the governor alone. As the defendant had not served any part of his sentence, and had not surrendered himself to serve it, his status before the arrest on the second commitment was that of an escaped convict. Hence the trial court was authorized to enforce its judgment by issuing the new commitment, and the imprisonment was legal. The writ of habeas corpus was denied.

PLEA.

Ex parte Williamson, Tex. Cr. App., 177 S. W. 89. *Made by minor's father.* A prosecution for fighting was brought in a justice court. The defendant was not arrested. His father learned that the case was pending, appeared before the justice, and agreed to pay $1.00 fine and costs, and entered a plea of guilty. The justice entered a judgment on the plea fining defendant $1.00 and costs. His father did not pay the amount, and the defendant was arrested and committed to jail in default of payment. The defendant had not authorized his father to act for him. He brought habeas corpus. Held, that the plea entered by the father was a nullity and a judgment based upon it invalid. The prisoner was illegally confined and was ordered discharged.

TRIAL.

Commonwealth v. Vitale, Pa., 95 Atl. 723. Trial of accessory.—*Evidence of conviction of principal.* On the trial of one as accessory before the fact, he having been indicted as principal for murder, it was error to admit in evidence the record of the trial of another as principal showing that he has been found guilty of murder in the first degree, where a motion for a new trial was pending, and no judgment had been entered on the verdict. Although judgment against the principal has since been entered and affirmed by this court, defendant is entitled to a reversal judgment.

U. S. v. Rockefeller, 226 Fed. 328. *Right to plead over after demurrer.* In a prosecution for conspiring to monopolize commerce, where defendant was per-

mitted to withdraw his plea of not guilty and interpose special pleas in bar, and demur to replications thereto, it was proper, upon over-ruling the demurrers, to allow defendant to plead over to the merits of the charge, although the offense was a misdemeanor (contrary to the English common law rule), the pleas in bar not necessarily importing an admission of guilt.

Latham v. U. S., 226 Fed. 420. *Remarks of prosecutor.* In a prosecution for devising a fradulent scheme for obtaining money etc., by means of the post office, by advertised medical treatment, where the issue was whether the scheme was devised with a fraudulent intent, and where only one witness testified that he had paid money to defendants, the district attorney's remark in closing, that, had the train not been late, he would have had another witness who would have testified that he had been defrauded, was prejudicial to defendant's right to a verdict on the testimony of witnesses and is ground for a reversal although, the court at once cautioned the jury not to consider the remark.

NEW TRIAL—GROUNDS—DENIAL OF CONTINUANCE—ABSENT WITNESS.

State v. Lebleu, et. al., Supreme Court of Louisiana. June 7, 1915. On Rehearing, October 18, 1915. Where, in a motion for continuance on account of the absence of a witness, a defendant, charged with larceny, alleged that he expected to prove by the witness a fact which, if established, would have been of vital importance, as constituting an alibi, and also that he had another witness by whom he might be able to prove the same fact, and, the continuance having been refused and the witness who was present having failed to testify as expected, the defendant was convicted, and thereafter moved for a new trial, but failed to attach to his motion the affidavit of the absent witness, to the effect that he would have testified as expected, and failed, upon the hearing of the motion, to produce such witness, or to account for his absence, the conviction will not be set aside, on account of the refusal of the trial court to grant the continuance; the presumption, in default of any explanation, being that the witness would not have testified as alleged in the motion for continuance, and hence that defendant suffered no prejudice from his absence.

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