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Judicial Decisions on Criminal Law and Procedure

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ASSAULT AND BATTERY.

State v. *Albertalli,* N. J., 112 Atl. 724. *Assault by negligence.*

In a prosecution for assault and battery with an automobile on the person of another, instruction that, if the jury found defendant was so running his car that a reasonably prudent man would not run his car in the same way, and that therefore the accident occurred, the jury had a right to infer defendant intended to commit the assault and battery committed on the complaining witness, held erroneous, as permitting the jury to find defendant guilty of the crime charged if the accident happened from the mere negligent running of his car.

BRIBERY.

Krichman v. *U. S.,* 41 Sup. Ct. Repr. 514. *Porter of railroad under government control as exercising official function.*

A baggage porter, in the employ of a railroad while it is under control of the Federal government, does not exercise an official function, so that giving him a bribe to induce him to deliver a trunk checked as baggage to one not the owner is not an offense, under Criminal Code, Sec. 39 (Comp. St. Sec. 10203), making it an offense to offer or give anything of value to a person acting on behalf of the United States in an official function to influence his action.

U. S. v. *Russell,* 41 Sup. Ct. Repr. 260. *"Endeavor" to bribe distinguished from attempt.*

Within Criminal Code, Sec. 135 (Comp. St. Sec. 10305), making it punishable to endeavor to influence a petit juror, the use of the word "endeavor" avoids the technical difficulties which would have been involved by using the word "attempt," and defendant, who visited the wife of a petit juror and conveyed to her an intimation that the juror would be paid for returning a verdict favorable to one accused of an offense, was guilty of the endeavor, though his acts had not progressed far enough to amount to an attempt, since, under the section, it is the endeavor that is punished, and not its success.

BURGLARY.

People v. *Descheneau,* Calif., 197 Pac. 126. *Entering warehouse with knowledge of manager as burglary.*

One who concealed himself in a trunk, and had a confederate store it in the vault of a warehouse, with intent to commit larceny, was guilty of burglary under Pen. Code, Sec. 459, even though a detective received information that he would be concealed in the trunk and communicated such information to the manager of the warehouse, and such manager assisted in putting the trunk in the vault, at which time it was opened by an officer.

COERCION.

State v. *Grossman,* N. J., 112 Atl. 892. *Presumption where wife maintains disorderly house.*

There is no presumption that a wife commits the crime of maintaining a bawdyhouse by coercion of her husband, even though living together with the husband, the reason for the exception to the general rule being that in the management and conduct of a household the wife takes the principal part, and the burden is upon her to show that her participation in the criminal offense was at command of her husband, or under his influence and coercion.

CONSTITUTIONAL LAW.

U. S. v. *Cohen Grocery Co.,* 41 Sup. Ct. Repr. 299. *Validity of Lever Act.*

Lever Act, Sec. 4 (Comp. St. 1918, Comp. St. Ann. Supp. 1919, Sec. 3115 ⅛ff), as re-enacted by Act Oct. 22, 1919, Sec. 2, making it unlawful to make any unjust or unreasonable rate or charge in dealing in necessaries, fixes no ascertainable standard of guilt, and does not adequately inform persons accused of violations thereof of the nature and cause of the accusation against them, and is void under Const. Amends. 5, 6.

Mr. Justice Pitney and Mr. Justice Brandeis concurring in result.

HOMICIDE.

Brown v. *U. S.,* 41 Sup. Ct. Repr. 501. *Duty to retreat before killing in self-defense.*

The failure of one killing another to retreat is a circumstance to be considered with all others in determining whether he went farther than he was justified in doing, but is not categorical proof of guilt, and it was error to charge that a party assaulted was always under the obligation to retreat so long as retreat was open to him provided he could do so without danger, and that unless retreat would have appeared to a man of reasonable prudence in defendant's position as involving danger he was not entitled to stand his ground, especially where defendant was at a place where he was called to be in the discharge of his duty in superintending excavation work.

INSANITY.

State v. *Schilling,* N. J., 112 Atl. 400. *Comparison with mentality of child as test.*

The responsibility of an adult charged with the commission of crime is not to be measured by a comparison of his mental ability with that of an infant of 12 years, or in any other way, the true test being whether he appreciated the nature and quality of his act, and that it was wrong, and if he was responsible without regard to other mental deficiencies.

State v. *Wade,* Conn., 113 Atl. 458. *Comparison with mentality of child as test.*

The comparison of the mentality of accused with that of a child is not a valuable criterion for measuring the responsibility of accused for his act.

JURISDICTION.

Smith v. *State,* Okla., 197 Pac. 712. *Constitutionality of statute authorizing prosecution of crime in county where not committed.*

Section 5613, Rev. Laws 1910, in so far as it authorizes a crime to be prosecuted and punished in a county in which the offense was not committed, when the crime was committed within 500 yards of the boundary line of the county, is unconstitutional and in conflict with Section 20, art. 2, of the Constitution.

LARCENY.

Sheffield v. *State,* Ga., 105 S. E. 376. *Larceny of lost property by inducing finder not to return it.*

Under Pen. Code 1910, Sec. 152, defining simple larceny, defendant could be convicted of larceny where, with full knowledge of the ownership of a lost pocketbook containing money, he induced the finder not to return it, but to lend a part of the money to him, and never returned any of the money to either the owner or the finder, and afterwards destroyed the pocketbook.

ROBBERY.

Arner v. *State,* Okla., 197 Pac. 710. *Illegally held intoxicants as subject of robbery.*

Section 3620, Revised Laws 1910, providing, "There shall be no property rights of any kind whatsoever in any liquors, vessels, appliances, fixtures, bars, furniture and implements, kept or used for the purpose of violating any provisions of this chapter" (prohibitory liquor laws), does not alter or change the inherent character of such articles as personal property.

Intoxicating liquor, possessing the inherent character of personal property, may be the subject-matter of robbery, irrespective of the purpose for which it is kept or used.

SEARCHES AND SEIZURES.

Gouled v. *U. S.,* 41 Sup. Ct. Repr. 261. *Secret search after entry secured through social acquaintance, or in the guise of a business call.*

The prohibition of Const. Amend. 4, against unreasonable searches and seizures, is violated when a representative of any branch or subdivision of the government gains entrance to the home or office of a person suspected of crime by stealth, through social acquaintance, or in the guise of a business call, and subsequently makes a secret search, in the absence of the suspected person, and seizes papers to be used in evidence against him.

The admission in evidence against a defendant of a paper secretly seized from his possession by a representative of the United States Government, in violation of Const. Amend. 4, is contrary to Const. Amend. 5, providing that no person shall in any criminal case be compelled to be a witness against himself.