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## Judicial Decisions on Criminal Law and Procedure

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# JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

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## DISORDERLY CONDUCT

*Ruthenbeck v. First Criminal Judicial Dist. Ct. of Bergen Co., N. J., 147 Atl. 625. What constitutes "abusive or offensive language."*

Saying to police officer, "You big muttonhead, do you think you are a czar around here?" was not an offense within ordinance forbidding the use of loud, profane, indecent, lewd, abusive, or offensive language, enacted in accordance with authority of Borough Act 1897, Section 28, as amended by P. L. 1900, p. 401 (1 Comp. St. 1910, p. 239); disorderly person, in the use of language, being indicated by Disorderly Person Act, Section 3 (2 Comp. St. 1910, p. 1927), as one indulging in and uttering loud and offensive or indecent language in public place.

## ESCAPE

*People v. Whipple, Calif. D. C. A., 279 Pac. 1008. Justification for escape.*

Defendant prosecuted for escape from a prison camp defended on the ground that insanitary conditions existing in the camp, together with brutal and inhuman treatment, was a justification. In affirming the judgment of conviction, the court of Houser, J. said in part:

"Although authority exists to the effect that, generally speaking, absolute necessity will excuse the commission of a criminal offense (*Chesapeake & O. R. Co. v. Commonwealth*, 119 Ky. 519, 84 S. W. 566; *Commonwealth v. Brooks*, 99 Mass. 434), so far as the crime of escaping from a jail is concerned, the authorities are in practical accord in holding that ordinary adverse circumstances will not preclude such a condition as will support a legal excuse for effecting an escape. In *1 Hale, P. C. 611 (1736)*, it is said that 'if a prison be fired by accident, and there be a necessity to break prison to save his life, this excuseth the felony.' The sole authority for such declaration of the common law is Coke's *Second Institutes*, 590, where, without the citation of either judicial or other authority in its support, the statement occurs that if 'a man imprisoned for petit larceny or for killing of a man *se defendendo*, or by misfortune, and break prison, it is no felony, because he shall not for the first offense subire *judicium vitae vel membri. Et sic de similibus.*' But whatever may be the common law with reference to escape, where either '*se defendendo*,' misfortune, or 'first offense' is or may be invoked as a defense to the accusation for which imprisonment has resulted, so far as the decisions by the courts of sister states are concerned, neither the insanitary condition of the jail (*State v. Davis*, 14 Nev. 439, 33 Am. Rep. 563), fear of violence from third persons (*Hinkle v. Commonwealth [Ky.]* 66 S. W. 816), nor unmerited punishment at the hands of the custodian (*Johnson v. State*, 122 Ga. 172, 50 S. E. 65) will present a situation which in the law may be accepted as an excuse for violation of the statute."

## EXTRADITION

*Ex parte McBride*, Calif. D. C. A., 281 Pac. 651. *Extradition of person on parole from another state because parole revoked.*

Where person on parole from Oregon committed within this state like offense for which he was sentenced, he became subject to extradition when state of Oregon revoked parole, making him fugitive from justice, under Const. U. S. art. 4, Section 2, relating to extradition, Pen. Code, Section 1548, dealing therewith, and Section 1203, relating to revocation of probation, and under Or. L. Sections 1586, 1589, providing for parole and revocation of parole.

## INFANTS

*Richardson v. Dunn*, Me., 146 Atl. 904. *Effect of failure to notify parents of arrested minor under Probation Statute.*

Under Rev. St. 1916, c. 137, Section 17, and Pub. Laws 1909, c. 263, Section 3, creating probation officer, and requiring notice of time and place of trial to parents in case minor is detained in jail or police station, failure to notify parents did not deprive court proceeding according to common law of jurisdiction of criminal offense, or make commitment of minor convicted of larceny unlawful, where record did not disclose when arrest was made, or conditions under which he was brought before court.

## JURY

*People v. Spinato*, Calif. D. C. A., 280 Pac. 691. *Waiver of jury.*

Under Const. art. 1, Section 7, relative to waiver of jury in criminal cases by consent of both parties expressed in open court, the failure of defendants to personally expressly waive jury required a reversal, regardless of stipulation between counsel and district attorney that trial without a jury be had, since, where the Constitution prescribes the method and form of such waiver, it cannot be otherwise accomplished.

## LARCENY

*State v. Cohen*, N. J., 147 Atl. 325. *Illegally possessed liquor as subject of larceny.*

Though alcohol is contraband, and under National Prohibition Act, tit. 2, Section 25 (27 USCA Section 39), no property rights exist in liquor illegally possessed, it can be the subject of larceny or of knowingly receiving stolen property.

## SELF-INCRIMINATION

*State v. Knight*, N. Mex., 279 Pac. 947. *Validity of statute requiring preservation of unmutilated hide of bovine animal.*

Section 549, Code 1915, which requires any person killing a bovine animal to preserve the hide unchanged and unmutilated for 30 days for inspection, does

not conflict with Section 15, art. 2, of New Mexico Constitution protecting against compulsory self-incrimination.

#### TRIAL

*Cassidy v. State, Ind.*, 168 N. E. 19. *Effect of inducing infant defendant to forego counsel.*

Where defendant 18 years old, charged with rape, was not advised as to his constitutional rights before he testified at request of trial judge, but was informed by trial judge after examination with reference to crime that court could appoint attorney for him but that attorney would do him no good, and defendant was induced to plead guilty by statements of judge and others, and evidence showed that defendant was of low intellectuality and did not enter plea of guilty understandingly or voluntarily, denial of motion for leave to withdraw plea of guilty and enter plea of not guilty and plea of insanity was abuse of discretion.

*State v. Finch, Kans.*, 280 Pac. 910. *Power of Attorney General to grant immunity against wishes of county attorney.*

F. informed the Attorney General of the illegal operation of an alcoholic still and was promised immunity from prosecution. Information of the still's operation was conveyed to the sheriff and county attorney, as a result of which B. was arrested and pleaded guilty, but in so doing, implicated F., claiming F. was a partner in operation of the still. F. was prosecuted by the county attorney over objection of the Attorney General, who moved to dismiss the action. *Held*, it was within the sound discretion of the Attorney General whether he would grant immunity to F. upon whose information B. was convicted, and that under the circumstances related in the opinion, the prosecution against F. should have been dismissed upon motion of the Attorney General.

*People v. Van Cleave, Calif.*, 280 Pac. 983. *Misconduct of Judge.*

In burglary prosecution, where court had cautioned witness not to talk with others during recess, and after recess it appeared that she had violated injunction, statements of judge in presence of jury that he saw her talking with defendant's wife and another *held* misconduct; he not being a witness in the case, and no necessity being apparent why he should be called as a witness.

*Patterson v. State, Okla.*, 280 Pac. 862. *Effect of imposing penalty smaller than fixed by law.*

Where the court, in its instructions, submits to the jury a smaller penalty for the offense than that prescribed by law, and where the defendant excepts to such instructions and objects to the giving of the same, and where a smaller penalty is assessed by the jury than that fixed by law, the cause will be reversed.

Edwards, P. J., dissenting.