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## Criminal Law

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MAURICE S. CULP

## CRIMINAL LAW

### *Substantive Crimes*

Ohio cases relating to substantive crimes dealt with embezzlement, false imprisonment, false pretenses and larceny by trick.

An embezzlement case, *Motors Insurance Corp. v. Robinson*,<sup>1</sup> considered the application of the rule that a demand upon the defendant is required in order to establish embezzlement. The court of appeals reaffirmed the principle that when money comes into the hands of the defendant lawfully, it is necessary for the state to prove that a demand for a return was made and refused.

A common pleas court<sup>2</sup> in an action for damages for false imprisonment interpreted Ohio General Code Section 11754 which exempts females from arrest on mesne or final process for any debt or claim arising upon a contract. The court by way of dictum declared that the exemption did not apply to arrest for contempt of court which resulted from the plaintiff's failure to appear for questioning as a judgment debtor.<sup>3</sup>

In construing Section 710-176 of the Ohio General Code in a prosecution predicated on the issuance of checks with intent to defraud, the court of appeals in *State v. Stemen*<sup>4</sup> stated that a reasonable expectation on the part of the drawer that the bank will honor his checks when presented for payment constitutes a good defense. The court in affirming the defendant's conviction held that where the drawer of the check in question had drawn checks previously with knowledge that they would clear the bank and deplete the account before the check in question could be presented for payment, an inference of "intent to defraud" arises.

The supreme court in *State v. Healy*<sup>5</sup> considered for the first time Ohio General Code Section 12447-1 which defines "larceny by trick." The court of appeals had construed the larceny by trick statute as a mere supplement

<sup>1</sup> 106 N.E.2d 581 (Ohio App. 1951), *appeal dismissed*, 157 Ohio St. 354, 105 N.E.2d 61 (1952) For a further discussion of the case see INSURANCE article, *infra*.

<sup>2</sup> *Morton v. Murphy Lumber & Hardware Co.*, 102 N.E.2d 744 (Summit Com. Pl. 1951)

<sup>3</sup> *Id.* at 745.

<sup>4</sup> 90 Ohio App. 309, 106 N.E.2d 662 (1951), *cert. denied*, 342 U.S. 949, 72 Sup. Ct. 564 (1952)

<sup>5</sup> 156 Ohio St. 229, 102 N.E.2d 233 (1951).

to the general larceny statute, and thus required that a specific intent on the part of the accused be shown as an element of the crime. In reversing the court of appeals, the supreme court held that proof of a general intent to do the proscribed act is sufficient under Section 12447-1. It declared that the statute defining the offense is silent on the question of intent and thereby indicated the legislative purpose to make proof of a specific intent unnecessary. This latter view seems derived from the design and purpose of the Section which is to protect the innocent from ingenious fraudulent schemes.

### *Jurisdictional Problems*

Of the cases considering jurisdictional problems, a great number have arisen by way of habeas corpus actions. In *State ex rel. Scott v. Alvis*<sup>6</sup> the supreme court held that a three judge trial court has jurisdiction, upon a plea of guilty by an accused charged with unlawfully and purposely killing another while in the perpetration of a robbery, to determine the degree of the offense and to sentence the accused, even though no written waiver of trial by jury is filed as provided for by Section 13442-4.

In *Harris v. Alvis*<sup>7</sup> a fifteen year old minor pleaded guilty in the court of common pleas to the crime of robbery. After he reached his majority, the defendant sought his release from the prison on the grounds that the original action should have been brought in juvenile court. The court of appeals stated that a minor had the right to have the action transferred to the juvenile court's jurisdiction. However, the court held that the juvenile court does not have exclusive jurisdiction over a criminal case in which a juvenile is defendant and by pleading guilty the minor had effected a valid waiver of his transfer right.

Another facet of the jurisdictional problem in criminal proceedings concerned the extent of the authority of a justice of the peace. A court of common pleas<sup>8</sup> declared that prosecution for statutory violations of orders and regulations of a county board of health was within the exclusive jurisdiction of the justice of the peace under Sections 4414, 4416 and 4418-10 of the Ohio General Code. However, the authority of the justice of the peace was successfully attacked in the case of *In re Lockhart*.<sup>9</sup> The supreme court held in a habeas corpus proceeding that under Section 13433-9 of the Ohio General Code where a person charged with a misdemeanor is brought before a justice of the peace on a complaint not made by the injured party and the defendant pleads guilty, the justice can only require the accused to

<sup>6</sup> 156 Ohio St. 387, 102 N.E.2d 845 (1951)

<sup>7</sup> 104 N.E.2d 182 (Ohio App. 1950)

<sup>8</sup> *State v. Gottfried*, 106 N.E.2d 675 (Seneca Com. Pl. 1952).

<sup>9</sup> 157 Ohio St. 192, 105 N.E.2d 35 (1952).

post bond to appear before the proper court. In such a situation, the justice does not have the statutory authority to render a judgment against the accused or to cause him to be imprisoned.

The well-settled rule that, although the writ of habeas corpus will be properly issued against a judgment or order which is wholly void, it cannot be used as a substitute for an appeal was followed in several 1952 decisions. Thus the writ was unsuccessful where there were alleged defects in the form of the indictment,<sup>10</sup> and also where there were allegations of error in the sentencing of the defendant.<sup>11</sup> Furthermore, it was not available as a substitute for an appeal from a finding that the defendant was a psychopathic offender.<sup>12</sup>

### Revocation of Parole

Three cases dealt with the problems growing out of the revocation of parole or probation. In *State ex rel. Newman v. Lowery*,<sup>13</sup> the petitioner sought an order to compel the Pardon and Parole Commission to reinstate its order granting a "parole to the petitioner to begin at a future date." Drawing on the analogy of the power of courts to set aside and vacate an order made during term, the court concluded that the commission, when it has made an order granting a parole effective at a future date, has the discretionary power to enter an order of rescission provided that it becomes effective prior to the actual release of a prisoner.

The court of appeals in *Lima v. Beer*<sup>14</sup> questioned the validity of a trial court's order revoking a suspension of sentence. In overruling the reincarceration order, the court referred to the broad power of the trial court in sentencing a person for a misdemeanor to remit or suspend the sentence upon such terms as it may impose. However, where the sentence was suspended and conditions were imposed, the defendant had a right to rely upon them, and there could be no revocation of the suspension except upon evidence of a violation of the conditions. Such proof of violation required a judicial inquiry upon the part of the court, and the defendant was entitled to a hearing, to know the name of his accuser and to be able to have a complete cross-examination of the witnesses against him.

In a similar case, the court of appeals in *State v. Nowak*<sup>15</sup> pointed out that the statutes of Ohio outline a detailed procedure for probation revocation, and therefore the defendant is not entitled to a formal trial although

<sup>10</sup> *In re Stewart*, 156 Ohio St. 521, 103 N.E.2d 551 (1952).

<sup>11</sup> *Weber v. Alvis*, 89 Ohio App. 533, 103 N.E.2d 42 (1951); *Giordano v. Amrine*, 92 Ohio App. 349, 104 N.E.2d 457 (1952)

<sup>12</sup> *Stewart v. Alvis*, 90 Ohio App. 377, 104 N.E.2d 596 (1950)

<sup>13</sup> 104 N.E.2d 590 (Ohio App. 1951)

<sup>14</sup> 90 Ohio App. 524, 107 N.E.2d 253 (1950)

<sup>15</sup> 91 Ohio App. 401, 108 N.E.2d 377 (1952).

he is entitled to a judicial inquiry in order to determine the grounds upon which the previous order of probation is to be vacated. This judicial inquiry contemplates a public hearing in open court after timely notice, the right of defendant to be present with counsel, the right to an opportunity to be heard and the right to submit evidence in his own behalf. The court found that in this specific case the law had been complied with and that there was no abuse of discretion.

### **Extradition**

The one reported decision, *In re Acton*,<sup>16</sup> dealing with extradition re-emphasizes several important propositions established by the Ohio courts. Thus, where the petitioner in a habeas corpus proceeding attacks the warrant of extradition, the issue before the court is whether the affidavit upon which extradition is sought charges the commission of an offense punishable in the demanding state. Also, the sufficiency of the affidavit for extradition is to be tested by the laws of the state; and evidence tendered by the petitioner to show a defense to the crime charged is not admissible since the court is not determining the defendant's culpability.

### **Municipal Law Enforcement**

*Toledo v. Schudel*<sup>17</sup> considered the statute of limitations applicable to the Toledo ordinance making it a misdemeanor to fail to pay the Toledo payroll tax. No statute of limitations had been created by the ordinance. The court of appeals held that the statute of limitations of the state applied, and, under Ohio General Code Sections 4562 and 12381, the action was barred.

### **Arrest**

The interpretation of Ohio General Code Section 13432-1 which establishes the right of an officer to arrest and detain a person found violating a municipal ordinance was raised in *State v. Marshall*.<sup>18</sup> A traffic violation allegedly occurred in the City of Piqua and the arrest took place in the City of Rossville. The court took the position that the arrest was proper since it was coupled with "fresh and immediate pursuit." In so holding, it stated that the statute places no territorial limitations upon peace officers, other than constables, as long as the arrest takes place within the State of Ohio.

### **Indictments**

The sufficiency of criminal indictments is always an important and sometimes a troublesome issue. In *Campfield v. State*<sup>19</sup> the court of ap-

<sup>16</sup> 90 Ohio App. 100, 103 N.E.2d 577 (1949).

<sup>17</sup> 90 Ohio App. 55, 103 N.E.2d 287 (1951).

<sup>18</sup> 105 N.E.2d 891 (Piqua Mun. Ct. 1952).

<sup>19</sup> 91 Ohio App. 74, 105 N.E.2d 661 (1950).

peals considered the question of whether the filing of a complete bill of particulars can cure an indictment which failed to charge any offense. It held that the indictment itself must charge the offense and, therefore, the bill of particulars was insufficient.

### *Admissibility of Evidence*

One of the leading cases on criminal law reported in 1952 is *State v. Yudick*<sup>20</sup> which considered the effect of the admission of evidence directed to a defective charge in an indictment. The court held that where the indictment contained several charges, one of which was defective, the trial court erred in admitting prejudicial evidence supporting the defective charge when such evidence was not competent as to the proper charges.

Another case involving the proceedings at trial, related to the method of treating incompetent evidence which has been presented to the jury. In *State v. Zidak*<sup>21</sup> the court of appeals determined that the trial court properly instructed the jury that testimony with regard to an unrelated previous crime be stricken from the record and be totally disregarded by them, and that this instruction was sufficient to cure the defect in the absence of a showing to the contrary.

An interesting question was presented in *State v. Hamm*<sup>22</sup> as to whether the accused can be cross-examined concerning a prior conviction under a city ordinance punishing an act which is also an offense under a state statute.<sup>23</sup> In construing Ohio General Code Section 13444-2 which authorizes the showing of a conviction for an offense for the purpose of affecting the credibility of the witness, the court of common pleas concluded that such evidence is competent where the ordinance punishes an act which is also proscribed as an offense under the state statutes.

A related problem confronted a court of appeals in *State v. Ross*.<sup>24</sup> Among other things, the court considered an exception to the rule that the state may not prove crimes not alleged in an indictment as aiding the proof of the crime charged. On the basis of general law and Ohio General Code Section 13444-19, the court stated that evidence of the prior crime may be permitted if it tends to prove: (1) motive; (2) intent; (3) absence of mistake or accident; (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the other; or (5) the identity of the person charged with

<sup>20</sup> 158 Ohio St. 23, 106 N.E.2d 769 (1952)

<sup>21</sup> 91 Ohio App. 464, 108 N.E.2d 834 (1951)

<sup>22</sup> 104 N.E.2d 88 (Hamilton Com. Pl. 1952)

<sup>23</sup> The offense was operating a motor vehicle while intoxicated. OHIO GEN. CODE § 6296-30.

<sup>24</sup> 92 Ohio App. 29, 108 N.E.2d 77 (1952).