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Evidence

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EVIDENCE

The case of *State v. Lawrence*¹ presents a lamentable instance of conduct unbecoming a trial judge. The defendant, a negro, was convicted of manslaughter. Without giving the slightest consideration to the guilt or innocence of the defendant, the Supreme Court properly reversed the judgment on the sole ground that the defendant was denied his constitutional right to a fair and impartial trial. Excerpts from the record indicate that, on several occasions, the court, sitting without a jury, bullied and intimidated witnesses for the defense, implied that the defendant was guilty of perjury and threatened him with jail if he did not answer questions in a manner satisfactory to the judge, who frequently undertook, on his own initiative, to examine and cross-examine witnesses for the defense, including the defendant himself. The whole proceeding was a sorry spectacle. With commendable restraint, the Supreme Court reproved the trial court. Judge Lamneck pointed out that a judge's official actions on the bench should be free from impropriety or even the appearance thereof, and that he must administer justice without prejudice and with patience and courtesy to all persons appearing before him.

In *State v. Clifford*² a reporter, photographer, and the city editor of a Cleveland newspaper were found guilty by the trial judge of contempt of court. They had deliberately disobeyed the order of the trial judge forbidding the taking of pictures of the accused during the arraignment or while the court was in session. Defendants claimed that the order violated the constitutional right of freedom of the press. In an excellent opinion, the court of appeals affirmed the judgment and held that when the court is in session it is under the complete control of the judge whose directions, reasonably necessary to maintain order and prevent unnecessary disturbance and distraction, must be obeyed. "A court in enforcing reasonable courtroom decorum is preserving the constitutional and inalienable right of a litigant to a fair trial and in preserving such right, the court does not interfere with the freedom of the press." It was pointed out that the rule is in force in all of the federal courts of the United States and is in accord with the Canons of Judicial Ethics of the American Bar Association. The Supreme Court of Ohio affirmed the judgment of the court of appeals.

Potter v. Baker,³ a personal injury case, concerns the admissibility of a statement of a bystander as a spontaneous exclamation exception to the hearsay rule. Judge Taft, in an excellent opinion, specifies the essential

¹ 162 Ohio State 412, 123 N.E.2d 271 (1954).

² 162 Ohio St. 370, 123 N.E.2d 8 (1954).

³ 162 Ohio St. 488, 124 N.E.2d 140 (1955).

circumstances and conditions under which such a statement may become admissible and points out that the trial judge is to decide those questions of fact which must be decided in order to determine whether such evidence comes within the scope of the exception, and, furthermore, that his decision should be sustained where it appears to be a reasonable one, even though the reviewing court, if sitting as a trial court, might have reached a different conclusion.

In *Burens v. Industrial Commission*,⁴ plaintiff's application for death benefits under the Workmen's Compensation Act had been disallowed. On appeal to the common pleas court, it appeared that the deceased was a painter and that after the lunch period he had resumed his work in the dinette of a house and later was found lying face down on the dinette floor. A physician pronounced him dead and certified as the cause of death "probable coronary thrombosis." Prior to his death the workman was suffering from a heart ailment. There was *no direct evidence* as to the events which led to his death. The jury returned a verdict for plaintiff, defendant's motion for a directed verdict having been overruled. The court of appeals affirmed the judgment.

One of the questions involved in the appeal to the Supreme Court was whether a jury question was presented. It was plaintiff's theory that the deceased sustained a fall in which he fractured his nose and cut his face, an injury that caused, by way of shock, the fatal coronary attack. Defendant's theory was that the deceased suffered a fatal heart attack and then fell, sustaining the injuries mentioned above. It appearing that either inference was reasonable, the trial judge submitted the case to the jury who were thus given a choice between two reasonable inferences. The Supreme Court held that defendant's motion for a directed verdict should have been sustained, reversed the judgment of the court of appeals and rendered final judgment for the defendant. In reaching this decision, the court held that plaintiff had not produced evidence which furnished a reasonable basis for sustaining her claim and that to permit a jury to make a choice between two irreconcilable inferences raised by the facts in evidence as to the existence of accidental injury is to substitute speculation and conjecture for proof. No jury question, therefore, was presented.

In *State v. Arnold*,⁵ it was held that where witnesses before the Ohio Un-American Activities Commission were granted absolute immunity against prosecution by the state, the fact that their answers might possibly or even reasonably result in federal or other jurisdictional prosecution, would not justify them in refusing to answer on the ground that they might incriminate themselves. This is the view generally taken by both state and

⁴ 162 Ohio St. 549, 124 N.E.2d 724 (1955).

⁵ 124 N.E.2d 473 (Ohio Com. Pl. 1954).