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# Criminal Procedure -- Present Insanity -- Determination of the Issue When Raised Before Trial

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actions, there is no reason why it should not be used in criminal actions where there is no other adequate remedy.<sup>28</sup> From the nature and purpose of the writ it could not be used by the supreme court, because the writ does not lie from a higher to a lower court,<sup>29</sup> but the supreme court under its supervisory powers could direct and empower the superior court to assume jurisdiction of the prior cause and to hear the petition for the writ. Such action on the part of the supreme court would be discretionary. Even so, if the court in its discretion declined to exercise its power to direct the superior court to hear the petition for the writ on the grounds that the application did not show substantial merit, the applicant would have had his constitutional claim passed upon by the highest state court.<sup>30</sup> On the other hand, if the supreme court should grant the application, the superior court would then be empowered to hear the petition for the writ of error *coram nobis*, and to pass upon the constitutional questions presented. From an adverse judgment on the petition, an appeal would lie to the supreme court. But in view of the opinion in *re Taylor*,<sup>31</sup> undoubtedly this procedure must be followed hereafter before the federal courts will entertain a petition for a writ of habeas corpus to review questions arising in North Carolina involving the denial of due process.<sup>32</sup>

EMERY B. DENNY, JR.

#### Criminal Procedure—Present Insanity—Determination of the Issue When Raised Before Trial

When the case of *State v. Sullivan*<sup>1</sup> was called for trial, the attorney for the defendant (charged with breaking and entering with intent to commit a felony) desired to enter the plea of incapacity to plead to the bill of indictment and submitted the issue of defendant's mental capacity as the only issue at that time. The court announced, however, that both that issue and the issue of guilt or innocence would be submitted to the jury at the same time. Defendant, through his counsel, objected to this ruling, excepted, and appealed. The Supreme Court held that the submission to the same jury of both issues at the same time was a matter

<sup>28</sup> N. C. GEN. STAT. §4-1 (1943); *cf.* *Jones v. Commonwealth*, 269 Ky. 779, 108 S. W. 2d 816 (1937) (*overruled* on another point, *Smith v. Buchanan*, 291 Ky. 44, 163 S. W. 2d 5 [1942], *modified* on other points, *Day v. Commonwealth*, 296 Ky. 483, 177 S. W. 2d 391 [1944]); *Carlson v. State*, 129 Neb. 84, 261 N. W. 339 (1935).

<sup>29</sup> *Roughton v. Brown*, 53 N. C. 393 (1861).

<sup>30</sup> *Taylor v. Alabama*, 68 Sup. Ct. 1415 (1947); *Hysler v. Florida*, 315 U. S. 411 (1941).

<sup>31</sup> 229 N. C. 297, 49 S. E. 2d 749 (1948).

<sup>32</sup> *Taylor v. Alabama*, 68 Sup. Ct. 1415 (1947); *Hedgebeth v. North Carolina*, 68 Sup. Ct. 1185 (1947); *Foster v. Illinois*, 332 U. S. 134 (1946); *Hysler v. Florida*, 315 U. S. 411 (1941).

<sup>1</sup> 229 N. C. 251, 49 S. E. 2d 458 (1948).

within the discretion of the trial court, and, such discretion not being abused here, error was not made to appear in the trial below.

In arriving at its decision, the court at once admitted that our only statutes on this question<sup>2</sup> do not prescribe the method by which the court shall determine the question of the ability of the defendant to plead to the indictment or make his defense.<sup>3</sup> Hence the matter of procedure would be governed by the common law.<sup>4</sup> The court then held the common law rule to be that the trial judge may, in his discretion, inquire into the facts himself, empanel a special jury for the purpose, or submit the issue of present insanity as an issue to the trial jury.<sup>5</sup>

In our modern world, the whole tempo of life has been accelerated. As a result, and because of improved psychiatric methods for detection of mental disorders, that incidents of mental disorder are being increasingly recognized is common knowledge. Therefore it is important that questions concerning incapacity to plead because of mental disorder or insanity<sup>6</sup> be handled correctly by the courts.

A re-examination of the question of how the issue of present insanity raised by a plea before trial<sup>7</sup> ought to be determined could and should bring about a solution different from that of the principal case. It is submitted that the better interpretation of the common law rule is that when the issue of present insanity is raised before trial and is to be determined, the trial shall not proceed until such issue has been inquired into, with or without a jury, and if the defendant be found to be mentally incompetent, the court should postpone the criminal proceedings until he has recovered his sanity.<sup>8</sup> Properly interpreted, it would seem

<sup>2</sup> N. C. GEN. STAT. §§122-83, 84 (1943).

<sup>3</sup> 229 N. C. 251, 254, 49 S. E. 2d 458, 460 (1948) ("But the General Assembly has prescribed no procedure . . . for the investigation by the court preliminarily to adjudicating the question as to whether accused is so mentally disordered as to be incapable of making a rational defense. . .").

<sup>4</sup> N. C. GEN. STAT. §4-1 (1943); *Hoke v. Greyhound Corp.*, 226 N. C. 332, 38 S. E. 2d 105 (1946).

<sup>5</sup> The court discussed six North Carolina cases bearing on the question of present insanity and held that the end result of them is to sustain the right of the trial court to submit the double issue to the trial jury: *State v. Godwin*, 216 N. C. 49, 3 S. E. 2d 347 (1938); *State v. Sandlin*, 156 N. C. 624, 72 S. E. 203 (1911); *State v. Khoury*, 149 N. C. 454, 62 S. E. 638 (1908); *State v. Haywood*, 94 N. C. 847 (1886); *State v. Vann*, 84 N. C. 722 (1880); *State v. Harris*, 53 N. C. 136 (1860).

<sup>6</sup> N. C. Laws 1945, c. 952 §§53, 54 amend N. C. GEN. STAT. §§122-83, 84 (1943) to strike out the word "insane" where it appears and replaces it with the words "mentally disordered," and likewise replaces "insanity" with "mental disorder."

<sup>7</sup> The plea of present insanity may be raised before trial, at any time during trial, or after conviction but before sentencing. This discussion is limited to the determination of the issue when raised before trial. For a general discussion of the subject, see Note, 142 A. L. R. 961 (1943); Parker, *The Determination of Insanity in Criminal Cases*, 26 CORN. L. REV. 375 (1941); WEIHOFEN, *INSANITY AS A DEFENSE IN CRIMINAL LAW* 333-395 (1933).

<sup>8</sup> 4 BL. COMM. \*25 ("Also, if a man in his sound memory commits a capital offence, and before arraignment for it, he becomes mad, he ought not to be

that under this rule the halting of the criminal proceeding is imperative, and the discretionary matter involved is in the method used for the determination of the issue of present mental capacity *while the criminal proceeding is suspended*.<sup>9</sup>

Furthermore, an examination of the North Carolina cases discussed in the principal case discloses that none of them dealt with the exact situation presented by that case.<sup>10</sup> Also, it is encouraging to note that the decision in the principal case was not unanimous.<sup>11</sup>

Perhaps the most forward-thinking and enlightened procedure developed for the handling of the issue under discussion has been devised in Massachusetts by its "Briggs Law"<sup>12</sup> which provides in substance for the routine psychiatric examination by the Department of Mental Diseases of all persons falling within certain legal categories.<sup>13</sup> This

arraigned for it; because he is not able to plead to it with that advice and caution that he ought. And if, after he has pleaded, the prisoner becomes mad, he shall not be tried; for how can he make his defence? . . . for peradventure, says the humanity of the English law, had the prisoner been of sound memory he might have alleged something in stay of judgment or execution." ); 3 Co. INSR. \*4; 1 HALE P. C. 34 (New ed. 1778); WEIHOFEN, *op. cit. supra* note 7, at 333.

<sup>9</sup> United States v. Harriman, 4 F. Supp. 186 (S. D. N. Y. 1933). ("That there should be an inquiry is clear beyond controversy. Not alone is this dictated by humane instincts, but as a matter of law it is the duty of the court to make it in some form. Indeed, it would be reversible error on the part of the court not to carry on such an investigation in advance of entering on a trial or placing the defendant on trial. What shall be the procedure is the problem. . . . The form of the procedure is within the discretion of the court." ); WEIHOFEN, *op. cit. supra* note 7, at 334; Jordan v. State, 124 Tenn. 81, 135 S. W. 327 (1911) (summarizes reasons usually given why mental disorder is held to necessitate the stopping of the criminal proceedings: "It would be inhumane, and to a certain extent a denial of the right of trial upon the merits, to require one who has been disabled by the act of God from intelligently making his defense to plead or be tried for his life or liberty. There may be circumstances in all cases of which the defendant alone has knowledge, which would prove his innocence, the advantage of which, if insane to such an extent that he did not appreciate the value of such facts, or the propriety of communicating them to counsel, he would be deprived." ).

<sup>10</sup> State v. Godwin, 216 N. C. 49, 3 S. E. 2d 347 (1938) (suggestion of present insanity made after conviction and before judgment); State v. Vann, 84 N. C. 722 (1880) (suggestion of present insanity made after conviction and before judgment); State v. Sandlin, 156 N. C. 624, 72 S. E. 203 (1911) (plea of present insanity not raised before trial); State v. Khoury, 149 N. C. 454, 62 S. E. 638 (1908) (issue was the right of defendant to withdraw plea of not guilty and enter plea of insanity); State v. Haywood, 94 N. C. 847 (1886) (language on propriety of issues of insanity and guilt or innocence being submitted at same time to same jury was dicta, error being found in other respects; but even in the dicta the court said that the issues ought to be separated); State v. Harris, 53 N. C. 136 (1860) (deaf mute).

<sup>11</sup> Barnhill, J., dissented without opinion. The writer is very strongly of the opinion that the reason for the dissent was because it was felt that the issue of present insanity should be tried first since that was the common law rule and North Carolina has no statutes changing the common law and the cases cited in the opinion are not precedents because not directly in point.

<sup>12</sup> MASS. GEN. LAWS c. 123, §100A (1932), called the "Briggs Law" after Dr. L. Vernon Briggs of Boston, a psychiatrist of note, who secured the enactment of the legislation.

<sup>13</sup> Routine mental examination is made whenever a person is indicted by a grand jury for a capital offense, or whenever a person, who is known to have been indicted for any other offense more than once or to have been previously

procedure has been highly praised.<sup>14</sup> If such a system were adopted in North Carolina, the "battle of the experts" would be abolished;<sup>15</sup> the problem of hearing and deciding psychiatric questions would be put in the hands of persons capable of understanding the intricacies of that science and its vernacular;<sup>16</sup> much time and expense in court would be saved for the accused and the prosecutor; certain classes of offenders would be examined as a matter of course; the examination would be made before trial; the examination would eliminate the special trial before judge and jury and the subjection of the accused to the morbid public eye in open court; it would eliminate to some extent the possibility of offenders still suffering from a mental defect being released into society; and it would provide for the early discovery of latent abnormality and for the partial deterrent of many who otherwise would continue in a life of crime.<sup>17</sup>

Under the present state of case law in North Carolina, it is to be hoped that a re-examination of the issue here discussed will bring about a determination by the court in line with the proper interpretation of the common law as outlined above. With or without this, attention should be given to the possibility of enacting into our statutes a law along the lines of the "Briggs Law" of Massachusetts whereby the question of insanity or mental disorder may be settled in all criminal cases<sup>18</sup> in a routine and scientific manner.

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convicted of a felony, is indicted by the grand jury or bound over for trial in the superior court. The examination is made without reference to any plea of insanity, contemplated or actual. WEIHOFEN, *op. cit. supra* note 7, at 405 (a "weakness of the act is that it applies only to certain types of offenders . . .").

<sup>14</sup> WEIHOFEN, *op. cit. supra* note 7, at 401-404. *Id.* at 401. ("The Massachusetts 'Briggs Law' is almost the only practicable recommendation looking to the sensible objective of sorting out the insane and irresponsible offenders before going through the time-and-money-wasting process of a criminal trial."); Overholser, *The Massachusetts Procedure Relative to the Sanity of Defendants in Criminal Cases*, 19 MINN. L. REV. 308 (1935); Comment, 30 MARQ. L. REV. 62 (1947); S. Glueck, *Psychiatric Examination of Persons Accused of Crime*, 36 YALE L. J. 632 (1927) (" . . . the most far-sighted piece of legislation yet passed on this subject."); Parker, *The Determination of Insanity in Criminal Cases*, 26 CORN. L. Q. 375, 425 (1941) (the routine examination feature of the Massachusetts law "must be commended because of its basic recognition that insane people, whether or not they are criminals, constitute medical, rather than legal, problems to be dealt with by hospitals and not courts.").

<sup>15</sup> Overholser, *The Mental State of Defendants in Criminal Trials—A Comparison of Some Colorado and Massachusetts Procedures*, 14 ROCKY MT. L. REV. 21, 27 (1942).

<sup>16</sup> Laub, *Insanity as a Defense to Homicide in Pennsylvania*, 20 TEMP. L. Q. 345, 352 (1947).

<sup>17</sup> See generally references note 14 *supra*.

<sup>18</sup> Comment, 30 MARQ. L. REV. 62, 68 (1947).