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ANTI-NARCOTIC ACT.

United States v. *Balint,* 42 Sup. Ct. Repr. 301. *Whether scienter required.*

Since Anti-Narcotic Act Dec. 17, 1914 (Comp. St. Secs. 6287g-6287q), is a taxing act, with the incidental purpose of minimizing the spread of addiction to the use of drugs, and section 2 of the act (Comp. St. Sec. 6287h) makes it unlawful to sell any of the drugs, except as therein specified, without expressly requiring knowledge by the seller of the character of the drug sold a person dealing in drugs is required to ascertain at his peril whether that which he sells comes within the statute, so that an indictment for violation of that section need not allege that defendants knew the character of the drugs sold.

The punishment of a person for an act in violation of law, when he is ignorant of the facts making it so, does not deny due process of law.

The common-law rule that scienter was a necessary element of every crime has been modified in respect to prosecutions under statutes, the purpose of which would be obstructed by such requirements, and whether it is an element of a statutory offense is a question of legislative intent.

ATTEMPT.

State v. *Addor,* N. Car. 110 S. E. 650.

Where defendants placed a bag of meal in a swamp, and nailed a coffee mill to a tree, and placed two empty barrels near the mill, and stated to sheriff that they intended to make some liquor if they could get a still, but had not obtained a still or made any liquor at the time of their arrest, there was no overt act which would warrant a conviction of an attempt to manufacture intoxicating liquors, under C. S. Sec. 4640.

Clark, C. J., dissenting.

ENTRAPMENT.

People v. *Tomasovich,* Calif. 206 Pac. 119.

Where officers were informed that accused was bootlegging, and went to his place out of the county and purchased whisky, to be delivered in the county on the following day, there was no improper enticement, and his conviction for the sale of whisky was not opposed to public policy, and court did not err in refusing to instruct concerning enticement.

EVIDENCE.

Commonwealth v. *Voleroso,* Pa., 116 Atl. 829. *Self-incrimination.*

In a prosecution for murder, the act of the commonwealth's attorney in calling upon defendant, in open court, and before the jury, to produce a letter forming a link in the chain of incriminating circumstances and in offering secondary evidence upon defendant's refusal to produce it, was violative of

defendant's privileges secured by Const., Art. 1, Sec. 9, providing that, in all criminal prosecutions, accused cannot be compelled to give evidence against himself.

HOMICIDE.

People v. *Manriquez,* Calif., 206 Pac. 63. *Unintended killing in commission of robbery.*

A homicide, committed in the perpetration of a robbery, was murder in the first degree, under Pen. Code, Sec. 189, notwithstanding defendant's claim that the pistol went off when his victim grabbed at it.

INDICTMENT.

U. S. v. *Moreland,* 42 Sup. Ct. Repr. 368. *"Infamous crime."*

Imprisonment at hard labor renders an offense punishable thereby infamous, regardless of the place of imprisonment, so that a prosecution for an offense which may be punished by an imprisonment in the workhouse of the District of Columbia at hard labor can only be instituted by presentment or indictment by the grand jury, under Const. U. S. Amend. 5.

Whether an offense is infamous depends on the punishment which may be imposed therefor, not on the punishment which was imposed; so that it was not error for the Court of Appeals of the District of Columbia to hold Act March 23, 1906, which permitted a fine or imprisonment at hard labor for refusal to support minor children, after prosecution in the juvenile court instituted by information and not by indictment, unconstitutional, and to direct the dismssal of the case, instead of sending it back for the imposition of a fine.

Mr. Justice Brandeis, Mr. Chief Justice Taft, and Mr. Justice Holmes dissenting.

JURISDICTION.

Ponzi v. *Fessenden,* 42 Sup. Ct. Repr. 309. *Jurisdiction of state court over federal convict.*

Where a federal District Court first took custody of a person and sentenced him to imprisonment, no state court could assume control of him until the end of his term without the consent of the United States.

Rev. St. Sec. 5539 (Comp. St. Sec. 10523), making federal convicts imprisoned in a state jail or penitentiary exclusively under the control of the officers in charge of the penitentiary does not deprive the Attorney General of power to consent that such convict may be removed from a state institution in the custody of a federal agent to be tried for another offense in the state court.

Where a federal convict is taken into a state court for trial during his prison term, there is no difficulty with respect to the execution of sentence imposed by a state court, which may be made to commence at the expiration of the term of his federal sentence.

The fact that a federal convict indicted in a state court must remain in custody of a federal agent during his trial in the state court does not deprive the state court of jurisdiction to try him, since he is present in the state court and can conduct his defense as effectively as if he were in custody of officers of that court.

PARENT AND CHILD.

Butler v. *Commonwealth,* Va., 110 S. E. 868. *Liability of husband to support children wrongfully taken from home by wife.*

In a prosecution, under Code 1919, Secs. 1936, 1937, for wilful neglect and refusal of defendant to support his wife and infant children, where his wife left him and took the children, without reasonable excuse, and defendant was willing to support them to the extent of his ability if they would live with him, he was not liable, regardless of failure to use legal process to regain possession of the children.

At common law, a father has the right to maintain his children in his own house, and cannot be compelled against his will to do so elsewhere, unless he has refused or failed to provide for them where he lives.

PAROLE.

State v. *Yates,* N. Car., 111 S. E. 337. *"Parole" construed as conditional pardon.*

Since neither Const., Art. 3, Sec. 6, nor the states (C. S., Secs. 7642-7644, 7749, 7752, et seq.), relatives to pardons, authorize a "parole," unless the word be construed as importing a conditional pardon, an order granting a parole must be interpreted as a pardon on condition that the recipient comply with the terms imposed.

If the conditions contained in a parole or conditional pardon be not illegal, immoral, or impossible of performance, the recipient, by accepting the pardon, accepts such conditions, a breach of which avoids the pardon and subjects him to rearrest and reincarceration to serve the balance of his unexpired term, though the time for which he was sentenced has expired; the essential part of the sentence being the punishment, and not the time when it shall begin or end.

SENTENCE.

State v. *Starwich,* Wash., 206 Pac. 29. *Validity of suspended sentence law.*

Laws 1921, p. 204, authorizing the trial judge to suspend sentence in certain cases, is not invalid as conflicting with Const., Art. 3, Sec. 9, providing that "the pardoning power shall be vested in the governor, under such regulations and restrictions as may be prescribed by law," and Section 11, providing that "the governor shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law," since the sentence is suspended by the court before it is put into effect, and the power of the parol board, of which the governor is a member, is exercised only after sentence has been put into operation.

TRIAL.

State v. *Lattimar,* W. Va., 111 S. E. 510. *Effect of effort to speed up a murder trial.*

Where a person has been arrested for an alleged crime, committed on the day of the arrest, and on the day following is indicted, tried, convicted, sentenced to hang, and immediately taken to the penitentiary for that purpose, and it appears that he has been given no time to prepare his defense,

was assigned counsel after he announced that he was ready for trial, and pleaded not guilty, and the judge certifies that he knew that feeling was running high against the accused in and about the courthouse, and that he had some fear of mob violence being inflicted upon the accused if a speedy trial was not had, and it appears that no witnesses were summoned for the defendant, no motion made for change of venue, improper evidence admitted on the trial without objection on the prisoner's part, and a feeble and perfunctory defense interposed, the appellate court will set aside the verdict and award the prisoner a new trial, because he has not been accorded a fair and impartial trial.

Melton v. *Commonwealth,* Va., 111 S. E. 291. *Correcting verdict after discharge of jury.*

Where the court told the jury after a verdict of guilty of rape that they were discharged, and the jurors thereupon returned to the jury room accompanied by the sheriff to claim attendance fees, but were thereafter recalled by the court upon discovery that the jury had made a mistake in fixing the penalty under Code 1919, Sec. 4414, and again retired and returned another verdict, such other verdict could not support a conviction, having been rendered after discharge.

So long as the whole jury are in the actual and visible presence of the court, and under its control, an inadvertent announcement of their discharge may be recalled as a matter still in the breast of the court, but, after they have left the court's presence, their functions as jurors have ended, and they cannot, either with or without the consent of the court, amend or alter their verdict.

Prentis, J., dissenting.