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Criminal Procedure - Indictment - Interruption of Prescription By Prior Indictment

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similar rulings in other areas of community life? The Negro plaintiffs in the present cases relied heavily upon the contention that the maintenance of separate public schools developed in Negro children an "inferiority complex." Is this a point of distinction in regard to cases alleging denial of equal protection to Negro adults? There is strong support for such an argument; however, it is difficult to say that the Court will not extend its views to encompass adults. The only certain conclusion that can be reached is that the "separate but equal" doctrine is still valid in regard to every type of state action not involving the public school system; exactly how long the weakened doctrine will withstand litigation in the future cannot be determined now.

Huntington Odom

CRIMINAL PROCEDURE—INDICTMENT—INTERRUPTION OF PRESCRIPTION BY PRIOR INDICTMENT

In January 1952 defendant was indicted for manslaughter. More than a year later, he was indicted again, this time for simple battery. In the second indictment, the state alleged that the charge was based on the facts forming the basis of "the indictment heretofore found," reciting the title and docket number of the prior indictment. Defendant entered a plea of prescription, which the trial court overruled. The Supreme Court granted writs of mandamus, prohibition and certiorari. *Held*, the indictment for simple battery did not negative prescription and was fatally defective in its failure to state what offense the prior indictment had charged or to show what disposition had been made of the prior indictment. *State v. Dooley*, 223 La. 980; 67 So.2d 558 (1953).

The pertinent provisions of Article 8 of the Code of Criminal Procedure allow the state a period of one year after receiving notice of the commission of a crime to file an indictment. If an indictment or information is filed within that period, prescription is interrupted.[1] Interpreting this provision, the Supreme Court has held that where the state seeks to negative prescription by

1. Article 8 further provides that if an indictment or information is filed, and the state fails to act on this indictment or information for three years in felony cases or two in others, then the district attorney must enter a nolle prosequi. See page 196 *et seq. supra.*

alleging that an indictment was filed before prescription ran, the state must go further and specially allege that such indictment or information was not quashed or dismissed more than one year before the filing of the present information or indictment.[2] The court applied that rule in the instant case and held that the second indictment did not negative prescription because it did not state "what offense the relator was . . . charged with [in first indictment] or what disposition had been made of the case."[3] Justice Hawthorne, dissenting, referred to his dissenting opinion in an earlier case, where he had expressed the view that, if a second indictment alleged the timely filing of a previous indictment, the defendant should have the burden of showing that the earlier indictment had been quashed, nolle prosequied, or otherwise disposed of more than a year prior to the filing of the second indictment.[4]

Finding the indictment defective made it unnecessary for the court in the instant case to consider the question whether or not an indictment for manslaughter interrupts the prescription of a prosecution for simple battery. This question would be determined by applying that part of Article 8 which allows the state a period of one year after the dismissal of an indictment to file another indictment "based on the same facts." Article 8 was derived from the common law, where the rule is that the new indictment must charge the same defendant and substantially the same offense.[5] This rule is strictly applied. Courts in other jurisdictions have held, for instance, that an indictment for "seducing under pretense of marriage" does not suspend prescription against a prosecution for "seduction under promise of marriage";[6] that a charge of operating a lottery does not suspend prescription of a charge of keeping a gaming table;[7] and that an indictment for betting at games played by four persons does not suspend prescription of an indictment for betting at games played by three persons.[8]

Under the common law rule, it does not seem that the indictment for manslaughter in the instant case would have interrupted

2. State v. Jones, 209 La. 394, 24 So.2d 627 (1945). In that case, an information filed in October 1936 charged the defendant with burglary committed in July 1931. It was alleged that an indictment for the crime had been filed in October 1931, but what happened to the 1931 indictment did not appear.
3. 223 La. 980, 983, 67 So.2d 558, 559 (1953).
4. State v. Jones, 209 La. 394, 402, 24 So.2d 627, 630 (1945).
5. Note, 90 A.L.R. 452, 461 (1934) collects the cases.
6. Ross v. People, 62 Colo. 193, 162 Pac. 152 (1916).
7. Buckalew v. State, 62 Ala. 334, 34 Am. Rep. 22 (1878).
8. Jester v. State, 14 Ark. 552 (1854).

prescription of the prosecution for simple battery. It is submitted that the result would probably be the same in Louisiana, since manslaughter and simple battery are distinct offenses belonging to different generic classes.[9] This position finds additional support in Article 386 of the Code of Criminal Procedure dealing with responsive verdicts, which provides that a verdict of simple battery is not responsive to an indictment charging manslaughter.[10]

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FAMILY LAW—ILLEGITIMATE CHILDREN—PROOF OF PATERNITY

Plaintiff sued to have the defendant declared the father of her illegitimate child and to obtain support of the child. Defendant admitted his intimacies with the plaintiff and also admitted that he had contributed to the support of the child. During the trial the plaintiff admitted that she had attempted intercourse with a man other than the defendant. The trial court found that the plaintiff was not a woman of dissolute manners and held that since the plaintiff had never had an unlawful connection with any man other than the defendant her oath was sufficient to establish the paternity of the child. On appeal, *held*, affirmed. The trial court was correct in giving judgment on the basis of the mother's oath, but should also have held that the defendant's support of the child, his admission that he might be the father, and his failure to deny paternity constituted an acknowledgment of paternity. *Rousseau v. Bartell*, 224 La. 601, 70 So.2d 394 (1954).

9. For a discussion of the "generic" classification of offenses, see Comment, 5 LOUISIANA LAW REVIEW 603, 604 (1944).

10. Art. 386, LA. CODE OF CRIM. PROC. (1928): "The only responsive verdicts which may be rendered, and upon which the judge shall charge the jury, where the indictment charges the following offenses are: . . . Manslaughter: Guilty as Charged. Not Guilty."

Different considerations are involved in the problem of former jeopardy. There a distinction is drawn between the situation where two separate crimes having some common characteristics arise out of the same series of acts, and where a single criminal act constitutes a violation of two or more statutes or articles of the Criminal Code. Former jeopardy principles should bar subsequent action under the latter circumstance but not the former. See *The Work of the Louisiana Supreme Court for the 1946-1947 Term—Criminal Law and Procedure*, 8 LOUISIANA LAW REVIEW 281, 290 (1948). In the instant case a prosecution or acquittal for manslaughter would definitely bar a prosecution for the battery.