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Venue for Criminal Trials in Louisiana

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These are but a few of the problems which have arisen from the codal provisions on legacies. Due to limitations of space, the writer has avoided any inquiry into such interesting questions as what constitutes conjoint legacies, what are the liabilities of the various types of legatees, et cetera.

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VENUE FOR CRIMINAL TRIALS IN LOUISIANA

The importance of the problem of determining the proper venue for the trial of criminal offenses has been recently brought to the foreground by the reversal of two important Louisiana cases solely on the ground that the trial had not been held in the proper forum.[1] The place where an offender should be tried is prescribed by the state constitution in practically all jurisdictions. Almost universally the rule is that the trial shall be held in the county or parish in which the offense was committed.[2] The difficulty is one of application. The various elements of a single crime often take place in different counties. In which of these counties is it proper to say the offense was committed? This is likely to be a question of policy.[3] The court may be influenced

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(1850). However, the Succession of Valentine, 12 La. Ann. 286 (1857), and Lawson v. Lawson, 12 La. Ann. 693 (1857), though not expressly overruling these cases did apply Article 1722, La. Civil Code of 1870, to universal legacies. Finally, the question seemed to be set at rest by Succession of Burnside, 35 La. Ann. 708 (1883), which expressly overruled these last cases insofar as they might conflict with the holding in the *Shane* case. Fortunately, the later cases have ignored the broad language of the *Shane* case and confined the decision strictly to the holding. Therefore, we must conclude that the application of the articles to the interpretation of legacies depends on the nature of the legacy and the particular article in question. Yet, certain of them, such as Article 1712, La. Civil Code of 1870, are undoubtedly applicable to any situation.

1. State v. Coenen, 194 La. 753, 194 So. 771 (1940); State v. Smith, 194 La. 1015, 195 So. 523 (1940). See also State v. Terzia, 194 La. 583, 194 So. 27 (1940) and State v. Todd, 194 La. 595, 194 So. 31 (1940).

2. It was a settled common law doctrine that jurors in one county were not competent to pass upon the guilt or innocence of a party in regard to a crime alleged to have been committed by him in another county. See Buckrice v. People, 110 Ill. 29 (1884), and authorities therein cited.

3. Levitt, Jurisdiction Over Crimes (1925) 16 J. Crim. L. and Criminology 316, 495, states the approaches as (1) the "territorial commission" theory, in which the locus of the crime fixes jurisdiction, (2) the "territorial security" theory which is concerned with the protection of a certain area from injurious consequences resulting from crime, and (3) the "cosmopolitan justice" theory based on the idea that acts detrimental to one territory will probably prove harmful to the rest.

by a desire to protect the inhabitants of a given community from the consequences of the crime in question. This may be termed the "territorial security" policy. Again, the court may feel that, with respect to certain more serious offenses, acts detrimental to one community will probably prove injurious to other communities. The result will be an extremely liberal interpretation of the concept of venue. Only occasionally does this idea predominate. In any case, however, the court must explain its decision in terms of the requirements of the constitution. It must purport to search for the county in which the crime was committed. The rest is a matter of judicial ingenuity.

The task of the court was simplified considerably under an early Louisiana statute,[4] which read as follows:

> "When any crime or misdemeanor . . . shall be begun in one parish and completed in another, it may be dealt with, inquired of, tried, determined and punished in either of the parishes in the same manner as if it had been actually and wholly committed therein."

At the time this act was adopted the Louisiana constitution required merely that the accused should have a speedy trial by an impartial jury of the vicinage.[5] Subsequent constitutions,[6] however, have adopted the rule, prevalent in other states, that all criminal trials shall take place in the "parish in which the crime shall have been committed." This constitutional provision controls today.[7] Notwithstanding this inhibition, the above statute was reenacted in the Revised Statutes of 1870.[8] It was held invalid in *State v. Moore*,[9] and since then the court has reaffirmed[10] the proposition that one who commits a crime can be tried only in the parish in which the offense was committed.[11] In order to gain some understanding of the interpretation accorded this re-

4. La. Act 121 of 1855, § 12.

5. La. Const. (1852) Art. 103.

6. La. Const. (1864) Art. 105; La. Const. (1868) Art. 6; La. Const. (1879) Art. 7; La. Const. (1898) Art. 9; La. Const. (1913) Art. 9.

7. La. Const. of 1921, Art. 1, § 9.

8. La. Rev. Stats. of 1870, § 988.

9. 140 La. 281, 72 So. 965 (1916). A complete discussion of this case is presented infra, pp. 228-229, under the crime of libel.

10. State v. Smith, 194 La. 1015, 195 So. 523 (1940). A complete discussion of this case will be found infra, p. 226, under the crime of embezzlement.

11. La. Const. of 1921, Art. I, § 9, contains the qualification "that the Legislature may provide for the venue and prosecution of offenses committed within one hundred feet of the boundary line of a parish." Art. 15, La. Code of Crim. Proc. of 1928, was accordingly enacted to carry this provision into effect.

quirement by the Louisiana courts it will be necessary to consider a few of the more important offenses separately.

LARCENY

The offense of larceny consists of a felonious taking and a carrying away.[12] It is generally regarded as consummated when the property has, by any act of the thief, been severed from the possession of the rightful owner. From this it would appear that the crime of larceny is committed only in that county in which the act of asportation takes place. However, under modern conditions of fluent transportation and organized crime, goods stolen in one community are reasonably certain to appear very soon in another community. Wherever the stolen goods are found, they constitute a continuous menace to the innocent buying public. For this reason the policy of territorial security demands that the thief should be tried wherever he is apprehended in possession of the stolen property. In order to meet the requirements of the usual venue provision, the courts have frequently adopted the fiction of "continuous asportation," i.e., each intrusion of the stolen goods into a new county is a continuation or renewal of the original taking.

In an early case[13] in which a gun was stolen in another state and brought here, the Louisiana court refused to use this device. Later, in a case in which property was taken in one parish and carried to another the supreme court held that the offense was committed in every parish into which the goods were taken.[14] The statute[15] discussed above, allowing a choice of venue where a crime was begun in one parish and completed in another was referred to by the court as strengthening its position. From a careful reading of the case, however, it is evident that the result would have been the same had there been no such statute.[16]

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12. Clark, Criminal Procedure (2 ed. 1918) 13.

13. State v. Reonnals, 14 La. Ann. 278 (1859). Defendant's conviction of breach of trust in East Feliciana Parish was reversed by the supreme court, the court saying: "It is to be supposed that when he left the borders of Mississippi with the gun, that the intention of stealing it had been already formed and perfected. If so, the accused cannot be tried in this state for a crime committed in Mississippi." See also State v. Kline, 109 La. 603, 33 So. 618 (1903). Hughes, Criminal Law (1901) 112, § 426, says: "There are many cases holding that a state, into which stolen goods are carried by a thief from another state, has no jurisdiction of larceny of the goods . . ." citing *State v. Reonnals* and many cases from other jurisdictions.

14. State v. McCoy, 42 La. Ann. 228, 7 So. 330 (1890). *State v. Reonnals* was not mentioned in this decision.

15. La. Rev. Stats. of 1870, § 988.

16. After reaching their conclusion that the offender could be tried in either parish and citing Wharton, Criminal Law, 7 ed., 928 et seq., and Ros-

OBTAINING PROPERTY BY FALSE PRETENSES

Since the gravamen of the crime of obtaining property by false pretenses consists in the actual obtaining of another's property, the majority view is that venue must be laid in the county in which the property was secured from the possession of the true owner.[17] This is true even though the false pretense may have been made elsewhere.[18] Thus in *State v. Roy*[19] the court found that the crime was committed in the parish where drafts were deposited and defendant given credit, although they were presented and honored in another. Recently, in *State v. Smith*,[20] this view was rejected as inapplicable to embezzlement. It was found that the conversion took place in the parish where a check was presented and paid, although it was cashed in another parish.

EMBEZZLEMENT

The essence of the offense of embezzlement is the wrongful assumption of ownership by one to whom the possession of property has been rightfully entrusted. The offense may thus be complete without disposal or expenditure of the property. Generally, although property is received in one parish, the embezzlement is regarded as having been committed in any parish in which the conversion occurred.[21] However, in some jurisdictions the prosecution may be had in any place into which or through which the property was taken.[22]

Louisiana cases enunciate the doctrine that the offense is complete and venue is to be laid at that place where the intent

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coe, Criminal Evidence, 644, the court apparently sought to add as makeweight at the end of their opinion the thought: ". . . besides, Sect. 988 of the R.S. distinctly provides. . . ." (State v. McCoy, 42 La. Ann. 228, 229, 7 So. 330, 331 (1890)).

17. State v. Simone, 149 La. 287, 88 So. 823 (1921); State v. Roy, 155 La. 238, 99 So. 205 (1924); Connor v. State, 29 Fla. 455, 10 So. 891 (1892); People v. Werblow, 241 N.Y. 55, 148 N.E. 786 (1925); Bates v. State, 124 Wis. 612, 103 N.W. 251, 4 Ann. Cas. 365 (1905).

18. However by statute in some jurisdictions the crime may be prosecuted in any county in which the false pretenses were made, although it may have been consummated in another county. See State v. Gibson, 132 Iowa 53, 106 N.W. 270 (1906); Commonwealth v. Friedman, 188 Mass. 308, 74 N.E. 464 (1905).

19. 155 La. 238, 99 So. 205 (1924).

20. 194 La. 1015, 195 So. 523 (1940).

21. State v. Sullivan, 49 La. Ann. 197, 21 So. 688, 62 Am. St. Rep. 644 (1896); State v. Nahoum, 172 La. 83, 133 So. 370 (1931); State v. Smith, 194 La. 1015, 195 So. 523 (1940); People v. Meseros, 16 Cal. App. 277, 116 Pac. 679 (1911); State v. Mispagel, 207 Mo. 557, 106 S.W. 513 (1907).

22. Beatty v. State, 82 Ind. 228 (1882); State v. Barnett, 15 Ore. 77, 14 Pac. 737 (1887); Cole v. State, 16 Tex. Cr. App. 461 (1884); Brown v. State, 23 Tex. Cr. App. 214, 4 S.W. 588 (1887); Pearce v. State, 50 Tex. Cr. App. 507, 98 S.W. 861 (1906).

and possession first coincide. Thus, it has been held that prosecution for embezzlement was properly brought in the parish in which a watch was obtained and where intention to appropriate it was conceived, even though the property was pawned in another parish.[23] In another case[24] the intention was formed in Mexico, but possession of the property was obtained later in New Orleans. The court treated the intention as a continuing one, and regarded the crime as being completed at the moment when possession was obtained. In the late case of *State v. Smith*,[25] the court found that the money in question was *obtained* at the drawee bank and not at the place where the check was cashed. There had been no conversion of the funds until the account was debited for the amount of the check.[26]

Abandonment and Nonsupport

The crime of failure to furnish support is committed at the place where the support is owed.[27] A conflict arises as to where this place is. In most states it is at the domicile of the one who is to be supported. In Louisiana, however, the place of the offense is at the domicile of the husband and father, the person owing the support.[28] The fact that the wife and children are compelled to go to another parish to secure support effects no change of venue.[29] Some doubt perhaps has been cast upon this last proposition by a statement of the court that no opinion would be expressed upon the possibility of prosecution if the wife should remove beyond the confines of the state.[30]

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23. State v. Sullivan, 49 La. Ann. 197, 21 So. 688, 62 Am. St. Rep. 644 (1896).

24. State v. Nahoum, 172 La. 83, 133 So. 370 (1931).

25. 194 La. 1015, 195 So. 523 (1940).

26. The court quoted from Clark and Marshall, Crimes (1940) 760, § 502: "The offense of embezzlement . . . is committed in the state or county in which the money or property is converted, and not necessarily where it is received. To constitute a conversion, however, there need be no disposal or expenditure of the money or property, but the offense is complete whenever a person who has been intrusted therewith forms an intent to convert it to his own use, and has possession with such intent."

27. 2 Beale, Conflict of Laws (1935) 1355, § 428.4.

28. State v. Baurens, 117 La. 136, 41 So. 442 (1906); State v. Fick, 140 La. 1063, 74 So. 554 (1917); State v. Smith, 145 La. 913, 83 So. 189 (1919); State v. Morel, 146 La. 6, 83 So. 318 (1919); State v. Hopkins, 171 La. 919, 132 So. 501 (1931); State v. Blache, 175 La. 718, 144 So. 430 (1932); State v. Borum, 188 La. 846, 178 So. 371 (1937).

29. State v. Baurens, 117 La. 136, 41 So. 442 (1906); State v. Fick, 140 La. 1063, 74 So. 554 (1917).

30. In State v. Morel, 146 La. 6, 8, 83 So. 318 (1919), the court said "whether he could be successfully prosecuted if she should remove beyond the confines of the state is a question upon which we express no opinion."

HOMICIDE

At early common law, an offender commencing an offense in one county and consummating it in another could not be tried at all. Since the concurrence of both the stroke and consequent death are necessary to complete the offense of murder, when these elements occurred in different counties, the offense was incomplete in either.[31] The necessity for some remedy was soon recognized in England, and a statute was enacted which established the venue in the county where death took place.[32] A subsequent statute[33] provided that where death resulted in England from a blow recived in a foreign country (or in a foreign country from a blow received in England) the offender could be tried in that part of England in which occurred either the death or blow.

Louisiana at first appeared to have adopted this latter view. In *State v. McCoy*[34] the mortal wound was inflicted in Louisiana and death later resulted in Mississippi. It was held that venue was properly laid in the Louisiana parish where the stroke was given. The court explained that the Louisiana legislature adopted the common law criminal system as it existed in 1805. This included the early English statute laying venue in the place of the fatal blow.

A later case holds that where "the mortal blow is given in one parish and the death takes place in another, the accused may be prosecuted in either. . . ."[35] The court subsequently refused to follow this case and held that the proper place for prosecution was in the parish where the blow was struck.[36] This appears to be the present view, especially since the recent holdings that an offense must be tried where committed. Under the weight of modern authority, in the absence of statutory law, the offense is committed where the blow is struck rather than in the place of death.[37] Certainly the security of the inhabitants of the territory

31. Clark, Criminal Procedure (1918) 10-12, § 3a. See also Ex parte McNeeley, 36 W.Va. 84, 14 S.E. 436, 32 Am. St. Rep. 831, 15 L.R.A. 226 (1892).

32. 2 & 3 Edw. VI, c. 24 (1548).

33. 2 Geo. II, c. 24 (1728).

34. 8 Rob. 545, 41 Am. Dec. 301 (1844). See also State v. Foster, 8 La. Ann. 290 (1853).

35. State v. Cummings, 5 La. Ann. 330 (1850). Although Section 988 of the Revised Statutes had not been enacted, this court held that venue lay *either* in the parish where the blow was inflicted or where the death occurred.

36. State v. Jones, 38 La. Ann. 792 (1886), citing La. Rev. Stats. of 1870, § 988. See also State v. Fields, 51 La. Ann. 1239, 26 So. 99 (1899).

37. State v. Stelly, 149 La. 1022, 1023, 90 So. 390, 390-391 (1922): "The question therefore presents itself: where was the offense committed? In our

in which the fatal assault was perpetrated is more severely invaded than that of those persons residing in the community where the death occurred.

The problem is in part regulated by the Louisiana Code of Criminal Procedure. Article 16 provides that where a mortal wound is inflicted on any navigable waters or land outside the limits of the state, and death occurs in a Louisiana parish, the offense may be prosecuted there. If Louisiana were still governed by the ancient common law rules, the provision undoubtedly would be constitutional. In the light of our present constitutional provisions, and the recent decisions construing them, the validity of the statute is perhaps questionable.

Accessorial Acts

The courts of Louisiana follow the majority rule requiring that an accessory before the fact must be tried in the parish where his acts were done.[38] The minority view, allowing trial at the place having jurisdiction of the principal, is based on the reasoning that the offense of the accomplice and the principal is the same.[39] This appears best since the accessorial acts are directed against the territory where the principal offense was committed.

Libel

The general rule is that where a libel is published in several jurisdictions, the offender may be punished in each.[40] Louisiana, however, has been freely criticized[41] for adopting a contrary view. In the leading case, *State v. Moore*,[42] libellous matter was printed in one parish and circulated in other parishes. Prosecution in one of the latter parishes was invalid under the constitutional restriction prohibiting trial in a parish other than the one

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view, it was committed in the parish where the wound was inflicted. While, to make the offense murder, death must have occurred as a result of the wound, yet the place where the death occurred is a mere circumstance, and is of no importance in determining the venue, under the article cited [Art. I, § 9], of the Constitution." See also State v. Champagne, 160 La. 47, 106 So. 670 (1925) and Hughes, Criminal Law (1901) 44, § 163.

38. State v. Kinchen, 126 La. 39, 44, 52 So. 185, 187 (1910): "It is well settled that the situs of the crime of accessory before the fact is the place where the acts of counseling and procuring were done." See also State v. Prudhomme, 171 La. 143, 129 So. 736 (1930).

39. Carlisle v. State, 21 S.W. 358 (Tex. Cr. App. 1893).

40. State v. Huston, 19 S.D. 644, 104 N.W. 451 (1905). Clark and Marshall, Crimes (4 ed. 1940) 686, § 513. See also Vicknair v. Daily States Pub. Co., 144 La. 809, 81 So. 324 (1919).

41. See I Marr, Criminal Jurisprudence of Louisiana (2 ed. 1923) 214, § 117. Note (1917) 26 Yale L. J. 308.

42. 140 La. 281, 72 So. 965 (1916).

in which the offense was committed. The court found that there was only one offense, and it was committed where the libel was printed. The Louisiana position appears to be sound in that it precludes numerous separate prosecutions for a single offensive act.

CONCLUSION

Undoubtedly there are definite benefits to be derived from laying the venue where the crime was committed.[43] Witnesses may be obtained with less inconvenience and expense; in many instances there may also be less likelihood of third degree prosecution practices. However, many crimes consist of a series of events happening in several different jurisdictions. Crimes quite often are committed on trains, boats, and other public conveyances, while in transit.[44] Others consist of a major act, the harmful consequences of which spread to other districts by subsequent acts. In these cases the courts are forced to rely on fictions and artificial reasoning in order that the prosecution shall be prompt and effective. Since one of the purposes of pun-

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43. State v. Lowe, 21 W.Va. 782 (1883):
"The object of the constitutional provision [that trials shall be in the county where the alleged offense was committed] is to protect accused against a spirit of oppression and tyranny on the part of the government, and against a spirit of violence and vindictiveness on the part of the people; and also to secure accused from being dragged to a trial at a distant part of the State, away from his friends, witnesses and neighborhood, and thus be subjected to the verdict of mere strangers, who may feel no sympathy, or who may cherish against him animosity or prejudice, and also to protect accused from injustice arising from his inability to procure proper witnesses and to save him from great expense." See also State v. Robinson, 14 Minn. 454 (1869).

44. Many states have enacted statutes seeking to make the route traversed by a railway train or other public conveyance a criminal district by providing that the court in any county through which the vehicle may pass during its trip or in the county where such voyage or trip shall terminate shall have jurisdiction of any offense committed upon the vehicle regardless of whether at the time the offense was committed the vehicle was in the county where the prosecution is sought to be had.

In a majority of cases these statutes have been held unconstitutional as violative of the constitutional guaranty of trial in the county where the offense was committed. People v. Brock, 149 Mich. 464, 112 N.W. 1116, 119 Am. St. Rep. 684 (1907); State v. Anderson, 191 Mo. 134, 90 S.W. 95 (1905); State v. Reese, 112 Wash. 507, 192 Pac. 934 (1920). See 9 Ann. Cas. 616n (1908). However it seems that the courts thus deciding are being over-zealous in their desire to protect accused because it is ordinarily a matter of no importance whether he be tried in one county or another where the offense is committed on a moving conveyance. Watt v. The People, 126 Ill. 9, 17, 18 N.E. 340, 343 (1888): "Those who are on the train are for the time being completely segregated from the communities through which they are rapidly passing, and there is ordinarily no circumstance which can make it more advantageous for a person accused of such crime to be tried in one county than another."

ishment is to protect the community most seriously affected by criminal conduct, a statutory redefinition of many of the more common crimes should be attempted, or the constitution should be broadened so as to provide a more flexible standard for the courts.

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