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privileged character. The question, then, upon final analysis is as to how far the illegally gained information must enter into the statement in order to make it unsusceptible of publication. This is a matter of social engineering. The court again must weigh the defendant's claim to make a free disclosure of the truth, against the law's interest in preserving ethical conduct. The conflicting interests involved are the same as those already considered. This time, however, they are weighed in the light of the particular facts before the court, and the balance is made upon a keener edge, namely, the edge of quantity.

There obviously can be no pat solution to this last problem suggested. All that legal theory can do is to afford a means of posing the problem and to offer a comfortable medium for expressing whatever conclusion the court may reach in a given controversy. To this end, nothing can be found more adaptable than the "substantial factor" formula: Was the employment of the illegally established stations a substantial factor in enabling the defendant to arrive at the conclusion which he made public? The "substantial factor" test may likely be used twice in the same controversy, for it may be necessary to inquire whether or not the defendant's statement was a substantial factor in producing the decline in market value of which the plaintiff complains. In the latter instance there is a genuine problem of causal sequence.[29]

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THE RESURRECTION AND CONSTITUTIONALITY OF A LIBERAL CRIMINAL VENUE PROVISION

Under the Louisiana constitution, the trial for a crime must take place in the parish where the offense was committed.[1] This provision presents no difficulty when an offense is completed within a single parish. However, modern crime has little or no respect for parish lines. An offense may be begun in one parish, partly executed in another, and completed in a third. In what *one* parish was the crime committed? In attempting to solve such legal riddles, the courts are often forced to rely on fiction and

29. Recovery was denied on this ground in Thomas v. Texas Co., 12 S. W. (2d) 597 (Tex. Civ. App. 1928).

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1. La. Const. of 1921, Art. I, § 9.

artificial reasoning. A few cases will serve to illustrate the confusion.

In *State v. Hart*[2] defendant was indicted in Lincoln Parish for obtaining money from Louisiana Polytechnic Institute by falsifying a building contract. Some of the payments on the contract were made to Hart in Lincoln Parish by checks which were drawn on local banks but were cashed elsewhere. The remainder of the contract price was paid by checks drawn on a Lincoln Parish Bank, but delivered outside that parish, and deposited in still another parish. In holding that the venue was proper, the court asserted that the crime was not complete until the checks were paid by the drawee bank. However, in a prior case[3] the court had stated unequivocally that the parish of the drawee bank was not the proper place of venue for the crime of obtaining money under false pretenses.

In *State v. Smith*[4] defendant was prosecuted in Orleans Parish for embezzlement. Smith drew a check on Louisiana State University's account in a Baton Rouge bank and delivered it to Hart in Baton Rouge. Hart cashed the check in New Orleans and divided the proceeds with Smith and his fellow conspirators. The court concluded that the trial must be held in East Baton Rouge Parish because it was there that defendant first had possession with the intent to convert to his own use. The court also stated that East Baton Rouge was the proper place for trial because the offense was not completed until payment by the drawee bank.

Eight attempts[5] were made during the 1939-1940 term of the supreme court to pass the case from parish to parish under similar complex factual situations. In four instances the efforts were successful. From this it can be readily appreciated that extreme difficulty is encountered by the court in seeking to put its finger on the one parish where the crime was committed. The administration of criminal law would be greatly facilitated by a statute authorizing trial in the parish where *any* element of an offense was committed, although the crime may have been continued or completed elsewhere. The object of such a statute is to relieve the state, in the prosecution of criminal actions, of much embarrassment and difficulty.

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2. 195 La. 184, 196 So. 62 (1940).
3. State v. Roy, 155 La. 238, 99 So. 205 (1924).
4. 194 La. 1015, 195 So. 523 (1940).
5. State v. Matheny, 194 La. 198, 193 So. 587 (1940); State v. Terzia, 194 La. 583, 194 So. 27 (1940); State v. Todd, 194 La. 595, 194 So. 31 (1940); State v. Coenen, 194 La. 753, 194 So. 771 (1940); State v. Smith, 194 La. 1015, 195 So.

The right to a trial by a jury of the parish in which the crime was committed is generally considered as a substantial legal right. This right was originally predicated upon the idea that the accused should be tried by his immediate neighbors who probably were personally acquainted with him and who would better understand the facts of the case. The difficulty of transporting witnesses was another practical consideration. Not only are these considerations considered unimportant today, but the nature of criminal offenses has changed. Originally crimes were nearly always local in nature. In modern times, however, different considerations come into play where an offense may be partly committed in several parishes under such circumstances that it cannot be definitely located in any one particular place. In such instances there is no substantial reason why the person accused of such crime should be tried in one parish rather than another. A strict venue rule, requiring the district attorney to choose the proper parish at his peril, serves only to provide an instrument whereby adroit defense lawyers further delay the already slow processes of the criminal trial.

Louisiana procedural statutes do include a liberal venue rule.[6] It was first enacted as Act 121 of 1855 providing

> "Where 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. . . . "

This statute was subsequently reenacted as Section 988 of the Revised Statutes of 1870.

The act further provided that where a crime was committed within one hundred yards of the boundary separating two parishes, it was triable in either. In 1905, the Louisiana Supreme Court in *State v. Montgomery*[7] held this latter portion of the act unconstitutional. In 1921, this constitutional objection was removed.[8]

Later, in *State v. Moore*,[9] a libel case, the Louisiana Supreme Court held Section 988 unconstitutional in its entirety. Justice

523 (1940); State v. Hart, 195 La. 184, 196 So. 62 (1940); State v. Weiss, 195 La. 206, 196 So. 69 (1940); State v. Leon C. Weiss, 195 La. 208, 196 So. 70 (1940).

6. La. Rev. Stats. of 1870, § 988.

7. 115 La. 155, 38 So. 949 (1905).

8. La. Const. of 1921, Art. I, §9.

9. 140 La. 281, 72 So. 965 (1916).

O'Niell declared that it contravened the requirement that all criminal trials must take place in the parish where the offense was committed.[10] In *State v. Smith*[11] the unconstitutionality of the act was re-asserted. However, shortly after the *Smith* case, the supreme court, after having been harassed by a member of complex venue problems, made the following statement by way of dictum:

> "It is possible that the court might hold,—if it were necessary to decide the question,—that this prosecution might have been brought in Vermilion parish under the provision in Section 988 of the Revised Statutes of 1870. . . . That statute, which was enacted originally as Section 12 of Act No. 121 of 1855, was declared unconstitutional, in the case of State v. Montgomery, 115 La. 155, 38 So. 949, but only in so far as the statute undertook to allow a prosecution to be had in a parish other than that in which the crime was committed, provided it was committed within 100 yards from the boundary line of the parish in which the prosecution is had. That constitutional objection has been removed by a provision in Section 9 of Article 1 of the Constitution of 1921, allowing a prosecution to be had in either parish where the crime was committed within 100 yards from a boundary between the two parishes. But we are not aware of any constitutional objection to the provision in Section 988 of the Revised Statutes with reference to a crime that was begun in one parish and completed in another."[12]

It is believed that this dictum indicates a more liberal attitude on the part of the court toward the section in question and toward other liberal venue provisions.

The courts of several other jurisdictions have upheld statutes similar to Section 988. In Indiana,[13] statutes have been sustained which allow a prosecution in either county, where the death blow

10. The Constitution of 1864, for the first time, contained a requirement that "all criminal trials shall take place in the parish in which the crime shall have been committed." La. Const. (1864) Art. CV. This provision has been carried forward into every constitution since that time.

11. 194 La. 1015, 195 So. 523 (1940).

12. State v. Hart, 195 La. 184, 204-205, 196 So. 62, 69 (1940).

In State v. Cason, 5 So. (2d) 121, 125 (Nov. 3, 1941), the court impliedly recognized the validity of La. Rev. Stats. of 1870, § 988: "The statute is without application to the crime charged against the relators. . . . On the contrary, the embezzlement was committed, if at all, by Cason wholly within the Parish of East Baton Rouge. . . ."

13. Ind. Const., Art. 2, § 13.

was struck in one county and death occurred in another;[14] and where several elements constituting the offense were committed in different counties.[15] The Indiana Supreme Court reasoned, "Since the thing that constituted the crime denounced was accomplished partly in each of the counties, the legislative enactment fixing the jurisdiction in either county does not offend against the constitutional provision."[16]

The State of Washington has a statute almost identical with Section 988.[17] In upholding its constitutionality, the supreme court asserted,

> "However, while there could be no crime of obtaining property by false pretenses in either element—a false representation, or the delivery of the property— was absent, the constitutional guaranty of a trial of the defendant in the county in which the crime is alleged to have been committed is satisfied when part of the acts constituting the crime are performed in the county in which the information is brought against the defendant."[18]

Florida upheld a like enactment under similar circumstances.[19]

In West Virginia, a prisoner escaped from a road gang in County *A*, and prosecution was brought in County *B* where the state penitentiary was located, upon the theory that he was constructively present at that place. In discussing the meaning of the West Virginia constitutional provision that all criminal trials must take place in the county in which the crime was committed,[20] the court declared,

> "The crime itself or some act or element entering into it must actually have taken place in the county where the venue is laid and the trial had. It is true that certain crimes may take

14. Peats v. State, 213 Ind. 560, 12 N.E. (2d) 270 (1938). Ind. Stat. Ann. (Burns, 1933) §9-211. Kentucky has also upheld the jurisdiction in either county where the wound was inflicted in one county and death ensued in another although the constitutionality of the statute permitting the action was not directly raised. See Martin v. Commonwealth, 269 Ky. 688, 108 S.W. (2d) 655 (1937); Arnett v. Commonwealth, 270 Ky. 335, 109 S.W. (2d) 795 (1937). Ky. Stat. Ann. (Carroll, 1936) § 1147.

15. Ind. Stat. Ann. (Burns, 1933) §9-207.

16. Peats v. State, 213 Ind. 560, 565, 12 N.E. (2d) 270, 273 (1938).

17. Wash. Rev. Stat. Ann. (Remington, 1932) §2013.

18. State v. Moore, 189 Wash. 680, 689, 66 P.(2d) 836, 840 (1937). See also State v. Knutson, 168 Wash. 633, 12 P.(2d) 923 (1932); State v. Dillon, 188 Wash. 265, 62 P. (2d) 38 (1936).

19. See Smith v. State, 42 Fla. 605, 28 So. 758 (1900), arising under Fla. Const., Art. I, § 11.

20. W. Va. Const., Art. III, § 14.

place and can be committed in more than one locality, in which case venue may be laid in all or any of such places."[21]

Wisconsin, with a constitutional provision similar to our own,[22] allowed the prosecution of a state bank commissioner in County *A* for failure to close a bank in County *B*.[23] The court reasoned that while it was his duty to proceed to *B* County and close the bank, the evil intent was initiated in County *A*. Such statutes, asserted the court, must be construed in so far as possible harmoniously with their policy and the common law. It will be noted that the constitutionality of the proceedings was not directly raised.

Oklahoma, also with a like constitutional provision,[24] has a very flexible venue law;[25] where "the acts or effects thereof, constituting or requisite to the offense, occur in two or more counties, the jurisdiction is in either county." In upholding this statute, the Oklahoma Supreme Court asserted, " 'Consequently, as at least some of the fraudulent acts and pretenses were made and performed in that county, it is clear that the offense was partly committed there, and the court had jurisdiction.' "[26]

The South Carolina Supreme Court has interpreted the constitutional provision of that state providing that the defendants in criminal trials must be charged in the "county where the offense was committed,"[27] as meaning that the offender must be tried in that county where the offense was deemed committed under the law as it existed at the time the constitutional provision was enacted, and it upheld a prior act[28] which had stipulated that where a death blow was struck in one county and the victim died in another defendant could be prosecuted in

21. State v. Dignan, 114 W. Va. 275, 278, 171 S.E. 527, 528 (1933). But, where a statute authorized the trial of an accessary after the fact in the county where the principal crime was committed, the West Virginia court held it unconstitutional, saying such an offense could not be said "to have occurred at the time and place of, the principal crime." State v. Overholt, 111 W. Va. 417, 162 S.E. 317 (1932). See State v. Ellison, 49 W. Va. 70, 38 S.E. 574 (1901); Weill v. Black, 76 W. Va. 685, 86 S.E. 666 (1915). But see an analogous statute punishing the receiver of stolen goods where the larceny was committed. Texas Code of Crim. Proc. (1925) Art. 200. See Mathis v. State, 133 Tex. Cr. 367, 111 S.W. (2d) 252 (1937); Giles v. State, 133 Tex. Cr. 454, 112 S.W. (2d) 473 (1938).

22. Wis. Const., Art. 1, § 7.

23. State ex rel. Schwenker v. District Court of Wilwaukee County, 206 Wis. 600, 240 N.W. 406 (1932), followed in 206 Wis. 609, 240 N.W. 410 (1932).

24. Okla. Const., Art. II, § 20.

25. Okla. Stat. Ann. (1936), tit. 22, § 124.

26. Troup v. State, 51 Okla. Cr. 438, 446, 2 P.(2d) 591, 594 (1931).

27. S.C. Const. of 1895, Art. VI, § 2.

28. S.C. Code (1932) § 1020.

either.[29] It will be noted that this approach might with equal ease be taken toward our Revised Statutes, Section 988, which antedates the constitutional provision in question.[30]

The Ohio court upheld a statute[31] providing that certain nuisances could be tried in any county whose inhabitants were aggrieved thereby, although the act comprising the nuisance took place elsewhere.[32] This act, said the court, does not offend the constitutional guaranty that all criminal trials must be held in the county where the offense was committed.[33] The Minnesota Supreme Court stated by way of dictum that prosecution under a statute forbidding price discrimination by purchasers of milk could be brought in either county in cases where the several sales in question took place in different counties.[34]

A Missouri statute was concerned with offenses committed on board of trains and vessels. It authorized a prosecution "in any county through which or part of which such vessel or railroad car shall be navigated or run in the course of the same voyage or trip, or in the county where such voyage or trip shall terminate."[35] The supreme court of the state held this act invalid. In the decision, however, it was manifest that no offense, or part of any offense actually occurred in the county where the indictment was brought.[36]

The United States Circuit Court of Appeals has upheld a statute similar to the Louisiana sections in question,[37] despite the specific requirement of the Sixth Amendment of the United States Constitution that the trial shall be held "in the state and district wherein the crime was committed." Defendant was charged in the Idaho district with having conspired in Butte, Montana, to unlawfully sell narcotics in both Montana and

29. State v. McCoomer, 79 S.C. 63, 60 S.E. 237 (1908).

30. Section 988 of the Revised Statutes of 1870 was first passed as Act 121 of 1855. The Constitution of 1864, Art. 105, for the first time contained the requirement that "all criminal trials shall take place in the parish where the crime was committed."

31. Ohio Gen. Code Ann. (Page, 1937) § 12659.

32. American Strawboard Co. v. State, 70 Ohio St. 140, 71 N.E. 284 (1904).

33. Ohio Const., Art. I, § 10.

34. State v. Fairmont Creamery Co., 162 Minn. 146, 202 N.W. 714, 42 A.L.R. 548 (1925), arising under Minn. Stat. (Mason, 1927) § 3507.

35. Mo. Rev. Stat. (1899) § 2413. Mo. Const., Art. II, § 22.

36. State v. Meyers, 191 Mo. 149, 90 S.W. 100 (1905).

37. 36 Stat. 1100 (1911) 28 U.S.C.A. § 103 (1927). It should be noted that the Sixth Amendment has no application to state action. Eilenbacker v. District Court of Plymouth County, 134 U.S. 31, 10 S.Ct. 424, 33 L.Ed. 801 (1890).

Idaho. He objected to the jurisdiction of the Idaho court. The federal court stated that "it is thoroughly settled as the law of conspiracy, that a conspirator may be prosecuted either at the place where the conspiracy is formed or where an overt act pursuant thereto is committed."[38] Application for a writ of certiorari was denied by the Supreme Court.[39] The circuit court applied Section 731 of the United States Revised Statutes, providing that when an offense against the United States is begun in one judicial district and completed in another, it may be tried and punished in either district "in the same manner as if it had been actually and wholly committed therein."[40]

Cases from other jurisdictions upholding statutes similar to Section 988 of the Revised Statutes have been set out in considerable detail. They point unmistakably to the conclusion that the dictum statement of Chief Justice O'Niell in *State v. Hart*[41] represents a usual and logical interpretation of the constitutional requirement that "all trials shall take place in the parish in which the offense was committed, unless the venue be changed." Any attempt to provide that a criminal trial may be held in a parish which is wholly unconnected with the commission of the offense is clearly unconstitutional. This does not mean, however, that it is impossible to permit a prosecution in any of several parishes, all of which have a substantial connection with the offense or an element thereof. Such liberalized venue procedure will prevent astute defense attorneys from "passing the buck" from parish to parish, while state's evidence gets cold and key witnesses forget. The answer to the problem in Louisiana is the retention and utilization of Revised Statutes, Section 988. In view of its importance, it is recommended that the substance of this provision be re-enacted as an amendment to Article 13 of the Code of Criminal Procedure.[42] A proper application of such a statute will do much to minimize the venue nightmare, which has plagued Louisiana district attorneys and courts.

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38. Grigg v. Bolton, 53 F.(2d) 158 (1931).
39. 52 S. Ct. 311, 285 U.S. 538, 76 L.Ed. 931 (1932).
40. 36 Stat. 1100 (1911), 28 U.S.C.A. § 103 (1927).
41. 195 La. 184, 196 So. 62 (1940).
42. All trials shall take place in the parish in which the offense shall have been committed unless the venue be changed; provided that where the several acts constituting a crime are committed in more than one parish, it may be tried in any parish where a substantial element of the crime was committed.