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Criminal Procedure - Habitual Offender Statute - Status of Foreign Convictions

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but they could not attack the separate estate of the wife[12] and the family would preserve at least part of its economic resources.

It is then submitted that while the community property system is out of "balance" as to the recovery of damages arising from personal injury actions, the supreme court by its decision in *Houghton v Hall*[13] has preserved the "balance" with regard to earnings arising from the separate business, trade, occupation, or industry of the spouses.

R. R. A.

CRIMINAL PROCEDURE—HABITUAL OFFENDER STATUTE—STATUS OF FOREIGN CONVICTIONS—Defendant was convicted of a felony. He was later charged by information as being a second offender, the prior crime having been petty larceny in the sum of $100 in the state of New York. That offense was a misdemeanor by the laws of New York, but it would have been a felony if it had been committed in Louisiana. Defendant then filed a motion to quash the indictment on the grounds that the habitual offender statute[1] was not applicable to his case. *Held,* that the word "crime" used in the Louisiana habitual offender statute should be interpreted to mean a felony and not to include a misdemeanor. Hence, the prior offense must have been a felony by the laws of the particular state in which it was committed in order to hold the accused as a multiple offender. Since the defendant was convicted of a misdemeanor in New York, the habitual offender statute is inapplicable and the motion to quash is sustained. *State v. Johnson,* 13 So. (2d) 268 (La. 1943).

One of the most difficult problems in administering the habitual criminal statutes has been to determine what effect should be given convictions in foreign states.[2] There are two views: the

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12. The community property is liable for the separate debts of the husband whether such debts were contracted either before or after the creation of the community. Glenn v. Elam, 3 La. Ann. 611 (1848); Davis v. Compton, 13 La. Ann. 396 (1858); Hawley v. Crescent City Bank, 26 La. Ann. 230 (1874); Succession of Moore, 42 La. Ann. 332, 7 So. 561 (1890). On the other hand, the community is not liable for the debts of the wife which are clearly her own, whether such debts were contracted before marriage or afterwards. Flogny v. Hatch, 12 Mart.(O.S.) 82 (La. 1822); Kennedy v. Bossiere, 16 La. Ann. 445 (1862); Jones v. Read, 1 La. Ann. 200 (1846). See Daggett, The Community Property System of Louisiana (1931) 48-51.

13. 177 La. 237, 148 So. 37 (1933).

1. La. Act 15 of 1928, repealed and re-enacted by La. Act 45 of 1942 [Dart's Crim. Stats. (1943) § 709].

2. The problem is ably discussed in Comment (1939) 2 LOUISIANA LAW REVIEW 177.

external and the limited internal.[3] The external view, which is followed by the majority of the states with habitual criminal legislation,[4] evaluates foreign convictions according to the law of the sister state. The limited internal view considers the foreign conviction in the light of local policy; in other words, it compares the conviction with local law and determines the effect therefrom.

Louisiana has heretofore followed the limited internal view. Another recent Louisiana case, *State v. Vaccaro*,[5] firmly established the criteria that to fall under the multiple offender law the former conviction in the foreign state must be for such an act as would have been a felony by Louisiana law had it been committed in this state. Construing the *Vaccaro* case and the principal case together, it is apparent that a double standard has been imposed—the prior offense must be both a felony under the Louisiana statutes and a felony under the laws of the foreign state. This is a unique position in American jurisprudence, but not necessarily incongruous.[6]

The Louisiana Supreme Court based its decision in the principal case upon the definition of the word "crime." The proper definition is the crux of the matter, for the statute reads "any person who. . ., after having been convicted under the laws of any other state. . . of a *crime* which, if committed within this state, would be a felony."[7] Thus the word "crime" in the statute must be first defined. Then it must be decided whether the foreign conviction is a "crime," by using the definition, before the offense can be tested as to whether it is a felony under Louisiana law. If it is not a "crime" then necessarily it cannot be considered a prior conviction.

The Louisiana Supreme Court bases its holding that "crime" is synonymous with "felony" and cannot include a misdemeanor upon two grounds. First, the word "crime" has never been precisely defined in Louisiana; and, secondly, the pertinent statutes themselves must be read and a meaning assigned that is consistent with the intent of the statute.[8]

3. A third view, the strict internal, has been omitted because it gives no effect to foreign convictions. A small minority follows this view. Ga. Code Ann. (Park, et al., 1936) tit. 27, § 2511; Minn. Stats. (Mason, 1927) § 10157.

4. See Comment (1939) 2 LOUISIANA LAW REVIEW 177 for a complete enumeration.

5. 200 La. 475, 8 So. (2d) 299 (1942). Also discussed in The Work of the Louisiana Supreme Court for the 1941-1942 Term (1943) 5 LOUISIANA LAW REVIEW 193, 258.

6. In examining the jurisprudence of states following the limited internal view, no case was found which presented a similar question.

7. La. Act 15 of 1928.

8. Ibid.

Although the term "crime" has never been specifically defined in this state as including both felonies and misdemeanors, the inference is unmistakable. *State v. Dickerson*[9] adequately stated, " 'A crime is an act or omission which is prohibited by law as injurious to the public and punished by the state.' "[10] In accord is *State v. Bischoff*[11] which says, "a crime may be defined to be an act or conduct for the commission of which a penalty is denounced by statute." It seems strange that the court could disregard these substantial definitions of the word "crime."[12]

Mr. Justice Ponder analyzes the language of the habitual offender statute very carefully and concludes that the legislature must have intended to limit the word "crime" to felonies. Various phrases are used in the statute, such as "such second offense," "subsequent felony," and "upon a third conviction for a felony," which, the court explains, cannot refer other than to a prior conviction for a *felony* under the laws of the foreign state. Nevertheless, if the court limits itself to construction of the language of the statute, the legislative intent would appear otherwise. The limited internal test is clearly laid down by the requirement that the crime must be one which "if committed in this state, would be a felony."[13] The language which follows in the statute naturally refers to a prior felony according to our Louisiana law, and not the law of the state of the crime.

However, the act[14] which provides for the proof of the foreign conviction stipulates that certificates from the chief officer of any state prison or penitentiary are prima facie evidence of the conviction. It contains no provision for the proving of a misdemeanor conviction. Thus, it appears that the foreign conviction must be for a felony in order for the district attorney to be able to present the necessary proof.

This practical consideration may have played a controlling role in the court's conclusion that the foreign conviction must be for an offense which was a felony by the law of the state in which the crime was committed.

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9. 139 La. 147, 152, 71 So. 347, 349 (1916).

10. An almost identical definition is given in State v. Heuchert, 42 La. Ann. 270, 7 So. 329 (1890).

11. 146 La. 748, 779, 84 So. 41, 52 (1920).

12. Art. 7, La. Crim. Code of 1942, which was passed subsequent to this decision, reads: "*A crime* is that conduct which is defined as criminal in this Code, or in other acts of the legislature, or in the constitution of this state."

13. La. Act 15 of 1928.

14. La. Act 16 of 1928 was enacted at the same time as the original habitual offender statute, La. Act 15 of 1928.