Criminal Procedure - Habitual Offender Statute - Status of Foreign Convictions

B. N. H.
but they could not attack the separate estate of the wife\textsuperscript{12} and
the family would preserve at least part of its economic resources.

It is then submitted that while the community property sys-

\textsuperscript{12.} The community property is liable for the separate debts of the hus-
band 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. 386 (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
(1882); Jones v. Read, 1 La. Ann. 200 (1846). See Daggett, The Community
Property System of Louisiana (1931) 48-51.

\textsuperscript{13.} 177 La. 237, 148 So. 37 (1935).

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 Act 15 of 1928, repealed and re-enacted by La.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 \textit{Louisiana Law
Review} 177.
external and the limited internal. The external view, which is followed by the majority of the states with habitual criminal legislation, 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, 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.

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.” 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.
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* adequately stated, "A crime is an act or omission which is prohibited by law as injurious to the public and punished by the state." In accord is *State v. Bischoff* 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."

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." 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 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.

B. N. H.

9. 139 La. 147, 152, 71 So. 347, 349 (1916).
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."
14. La. Act 16 of 1928 was enacted at the same time as the original habitual offender statute, La. Act 15 of 1928.