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# Present Insanity - Its Scope and Determination

Charest D. Thibaut

that case, a wife was forced to pay an inheritance tax on her half of the community, upon the death of her husband, under a California statute covering all property passing from any person who "may die seized or possessed of same." The Supreme Court held that a state did have the power to include the entire community in such a case without thereby violating the Fourteenth Amendment. There was some doubt, at the time this case was decided, as to whether or not the wife in California actually had a present vested interest in the community. The court, however, made it clear that its disposition of the case would have been the same under either situation.

Under the estate taxation principles laid down by the *Wiener* case, Louisiana and the other community property states will henceforth share the burden equally with the other states of the union. It will be noted, however, the principal case does not establish a precedent for income taxation,[29] as the previous income tax cases were not overruled. The court did not find it necessary to distinguish them. Legislation would be required, as matters stand, to effect a change in that field of taxation. In view of the fact that changes will very likely be presented for congressional approbation in the near future, the community property states may well weigh the merits of joining in an attempt to work out a fair statutory adjustment of the problem, rather than standing adamant in opposition to any change which would destroy the present income tax advantages of their people.

MARTHA E. KIRK

## PRESENT INSANITY — ITS SCOPE AND DETERMINATION

Under Article 261 of the Code of Criminal Procedure there are four special pleas open to an accused in a criminal trial in Louisiana. Included in these is the plea of insanity, which has two separate and distinct aspects: insanity at the time of the commission of the alleged crime and insanity at the time of the trial. The two have often been confused and, as a result, Louisiana jurisprudence on the subject presents a varied and conflict-

29. It is interesting to note that the Bureau of Internal Revenue has accorded income tax recognition to the Oklahoma mandatory community property law, which became effective July 27, 1945. The bureau specifically holds that income earned and received after that date is community income, and one-half may be reported by each spouse. Prentice-Hall, 1946 Fed. Tax. Serv. ¶ 76,087 (Jan. 18, 1946).

ing pattern. The picture has been somewhat clarified by Act 136 of 1932 and Act 261 of 1944 which amended Article 267 of the Code of Criminal Procedure.

Present insanity of an accused challenges the right of the state to proceed with the prosecution of the person thus afflicted, but it does not detract from the responsibility for the crime. In this regard, the plea is different from that of insanity at the time of the commission of the crime. The latter is a defense that relates to the guilt or innocence of the accused and must be passed on by a jury.[1] This discussion will be limited to the plea of present insanity, although an occasional reference to the plea of insanity at the time of the crime must be made for purposes of comparison.

The time and manner of raising the plea of insanity has been a much litigated question. In the early case of *State v Reed*[2] the supreme court, in reversing the decision of the trial judge, held that the absence of a special plea was not sufficient reason for refusing admission of testimony offered to prove the defendant's insanity at the time of the trial. Such evidence is admissible at any stage of the proceedings, even though there has been no special or formal plea. Not only is oral presentation of the plea of insanity adequate in the absence of a special plea, but the court may act upon its own observations of the defendant's condition. Regardless of the manner or time of presentation, the evidence must be considered and disposed of by the court. The method of disposal may be a submission of the question of present insanity to the jury along with the question of guilt or innocence, as suggested above.

In the later case of *State v. Charles,*[3] the trial judge had appointed a commission of five physicians to examine, determine, and report their findings on the present mental condition of the accused. The commission found that the defendant was sane, thus disposing of the plea of present insanity, and the case proceeded to trial. The supreme court held that such procedure was permissible[4] and that the trial judge might either follow this

1. La. Act 17 of 1928 (E.S.), later Arts. 268-273, La. Code of Crim. Proc. of 1928, provided for the trial of this plea by a commission. This procedure was declared unconstitutional in State v. Lange, 168 La. 958, 123 So. 639 (1929). Accord: State v. Strasburg, 60 Wash. 106, 110 Pac. 1020 (1910).

2. 41 La. Ann. 581, 7 So. 132 (1889).

3. 124 La. 744, 50 So. 699 (1909).

4. 124 La. 744, 746, 50 So. 699, 700, citing In re Chandler, 45 La. Ann. 696, 12 So. 884 (1893) and State ex rel. Armstrong v. Judge of Eighth Judicial District, 48 La. Ann. 503, 19 So. 475 (1896).

method or allow the trial to proceed and submit the question of present insanity to the jury.[5]

This informal method of procedure was repudiated in 1915 in *State v. McIntosh*.[6] In that case the supreme court rejected both the alternative methods of disposing of the plea of present insanity that had been held permissible in the *Reed* and *Charles* decisions. Justice O'Niell distinguished the plea of insanity at the time of the crime, which is a jury question, to be considered along with other evidence of guilt or innocence, and the plea of present insanity, which merely challenges the right of the state to proceed with the prosecution. The court concluded that if the plea of present insanity is filed before the trial by jury has commenced, it must be heard and decided by the judge alone before allowing the prosecution to proceed.[7] Compare, however, the case of *State v. Cropper*,[8] where, after all the evidence had been received and argument had begun, counsel for the accused urged present insanity and moved the court, on the evidence before it, to take the case from the jury and pass judgment declaring the accused insane and committing him to an insane asylum. The trial judge refused to take the case from the jury but submitted to them the question of present insanity along with the main issue of guilt or innocence. On appeal the supreme court held that at that stage of the trial it was not incumbent on the trial judge to stay the proceedings in order to enter upon an inquiry as to the present mental condition of the accused; but rather he might properly allow the trial to proceed, reserving his inquiry and judgment until after the verdict was returned on the main issue. On the other hand, however, the court clearly pointed out

5. State v. Charles, 124 La. 744, 746, 50 So. 699, 700 (1909), citing State v. Reed, 41 La. Ann. 581, 7 So. 132 (1889).

6. 136 La. 1000, 68 So. 104 (1915).

7. Apparently not all district judges were immediately conversant with the rule established by the *McIntosh* case. In 1917 in the case of State v. Lafosse, 142 La. 278, 76 So. 713 (1917) the defendant was tried on a plea of not guilty and acquitted on grounds of insanity and the judge ordered him committed to an insane asylum. While awaiting such confinement, the defendant contended that he had recovered his sanity and was therefore not subject to interdiction or confinement. The trial judge refused to hear evidence that the defendant was not sane and not dangerous to the community but held that the verdict of "not guilty because of insanity" put an end to the court's jurisdiction on the question of insanity subsequent to the commission of the crime and that therefore the question of present sanity or insanity should be determined by the authorities in charge of the state insane asylum. The supreme court in reversing held that the verdict does not dispose of present insanity and that under the statute (La. Rev. Stats. of 1870, § 993 [Art. 603, La. Code of Crim. Proc. of 1928]) the judge had authority to commit such a defendant to an asylum if he deemed it dangerous to the community for him to be at large but that the party so acquitted has the right to a hearing before the judge to determine whether sanity is recovered.

8. 153 La. 545, 96 So. 116 (1923).

that the question of present insanity of the accused must be passed on by the judge alone and not by the jury called to pass on guilt or innocence of the accused. After a verdict has been rendered, only the judge may pass on the question of present insanity. To this extent the *Cropper* case expressly reaffirmed the *McIntosh* decision and firmly established the rule that the judge alone decides the issue of present insanity.

Since the *Cropper* case the court has more fully developed the various ramifications of the rule. One example is the case of *State v. Brodes*,[9] where the court stated that while insanity at the time of the crime was tried by the jury with other questions of fact and was not reviewable on appeal, the plea of present insanity, being ruled on by the judge alone without jury intervention, was reviewable on appeal on both law and fact.

It is now well settled that the trial judge decides the question of present insanity,[10] but the correlative problems of *how* the judge determines the issue and the extent of his discretion on the matter have not been clarified. In 1927, before adoption of the Code of Criminal Procedure, in the case of *State v. Genna*[11] objection was made to the admission of the testimony of three experts concerning the present sanity of the accused on the grounds that the examination had been made upon a court order which had not been requested by the defendant, and that such procedure was tantamount to forcing the accused to give testimony against himself. The court held that it is the duty of the judge, relying upon the "humanity of the court," on suggestion of anyone, or even *ex mero motu*, if he has any doubt, to inform himself as to whether the accused is in mental condition to understand his position and present his defense. It found that the methods of procedure to these ends are entirely discretionary. The limitations on the judge's discretion in this matter can best be illustrated by a brief review of several subsequent cases. In *State v. Patterson*,[12] at a contradictory hearing, three experts on a court appointed commission declared the defendant insane. Only one lay witness stated that the accused was capable of answering questions put to him. At the end of the hearing the trial judge found the accused sane and tried him, stating that the pre-

9. 156 La. 428, 100 So. 610 (1924).

10. The most recent case in point, State v. Gunter, 23 So. (2d) 305 (La. 1945), decided under Art. 267, La. Code of Crim. Proc. of 1928, as amended by La. Act 136 of 1932 and La. Act 261 of 1944, cited the *McIntosh* and *Cropper* cases as authority for the proposition that the judge alone determines the issue of the accused's present mental condition.

11. 163 La. 701, 112 So. 655 (1927).

12. 176 La. 440, 146 So. 17 (1933).

sumption is that a man is sane until the contrary is proved by a fair preponderance of the evidence. The supreme court held that even though this may be true, the presumption is inapplicable when the lunacy commission finds and reports the defendant insane. It pointed out that the commission's report can be overcome only by proof and that in the present case the evidence was insufficient to do so. The court qualified this proposition by stating that while the opinions of experts are not conclusive, they are of great value; and the court cannot arbitrarily substitute its own contrary opinion therefor. Certainly there is no class of cases in which the use of expert testimony is so general and almost indispensable as that in which the issue is sanity or insanity.

Another illustration of the scope of the judge's discretionary power is shown by the case of *State v. Ridgway*,[13] wherein the judge refused to appoint experts to examine defendant. In this case the defendant's plea of insanity was accompanied by affidavits of his mother and aunt and were filed on the day of the trial. The supreme court held that the appointment of experts is a matter which is addressed to the sound discretion of the trial judge and that the mere assertion by the defendant of his insanity accompanied by affidavits does not necessarily establish a real question as to sanity. A reasonable ground to believe the defendant insane can arise in the mind of the trial judge only when information to that effect is furnished by a trustworthy source, such as the statements of creditable parties or the court's own observation.[14]

If the court has reasonable grounds to believe the defendant insane, he must order a hearing.[15] Such a hearing should be full and complete. The accused should be allowed to rebut the findings of the commission and to offer witnesses on his own behalf, if necessary.[16] However, if at the contradictory hearing, no evidence is offered by the defendant and no objection is made to the ruling of the trial judge on the issue of sanity, a failure to reserve a bill of exceptions to such ruling operates as a waiver or acquiescence under Article 510 of the Code of Criminal Procedure. The court in *State v. James*[17] ruled to this effect with the

13. 178 La. 606, 152 So. 306 (1933).

14. As stated in State v. Washington, 207 La. 849, 22 So. (2d) 193, 195 (1945), the doctrine of the *Ridgway* case has been followed and approved in the following cases: State v. McManus, 187 La. 9, 174 So. 91 (1937); State v. Messer, 194 La. 238, 193 So. 633 (1940) (discussed infra note 18); State v. Allen, 204 La. 513, 15 So. (2d) 870 (1943). See also State v. Gunter, 23 So. (2d) 305 (La. 1945).

15. 185 La. 308, 169 So. 417 (1936).

16. State v. Hebert, 186 La. 308, 172 So. 167 (1937).

17. 196 La. 459, 199 So. 391 (1940).

qualifying provision that under the circumstances prevailing in that case the trial judge correctly found the defendant sane and that there was no abuse of discretion, since all the testimony showed sanity.[18]

CHAREST D. THIBAUT.

## NAVIGABILITY AS APPLIED TO LAKES IN LOUISIANA

Louisiana's peculiar topographical structure including an abundance of bayous, creeks, swamps, and lowlands frequently covered by water has been, with the discovery of rich oil deposits under these waters, a source of frequent litigation in the past few decades. The jurisprudence on the legal questions involved has been most controversial. However, through diligent efforts on the part of the courts, legal doctrines derived in the more recent cases[1] would appear to solve many of the more crucial problems.

Since the drafters of our code omitted an express provision regarding lakes,[2] perhaps the most troublesome issue presented has been whether or not Articles 509 and 510 of the Civil Code apply to these bodies of water. An examination of the cases does not reveal to the student of the subject a clear definition of the word "lake." Any adequate treatment of the problems raised by these uncertainties must necessarily be concerned with the divergent rules applicable to navigable and non-navigable lakes.

### *Navigable Lakes*

Litigation on the question may arise by a claim on the part of a riparian owner to alluvion additions to the bed of a waterway when the waterline has receded. It may also arise through a claim by the state to an area which has been submerged by the waters of the lake.[3]

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18. In State v. Messer, 194 La. 238, 193 So. 633 (1940), the supreme court held that the judge did not abuse his discretion when he refused to allow the defendant to withdraw a not guilty plea and plead present insanity on the day of the second trial following a mistrial in the original trial when the judge was convinced by examination and observation of the defendant that he was presently sane and felt that the plea of present insanity was filed solely for purposes of delay.

1. State v. Aucoin, 206 La. 787, 20 So. (2d) 136 (1944); Transcontinental Petroleum Corp. v. Texas Co., 24 So. (2d) 248 (La. 1946).

2. Art. 558, French Civil Code, was omitted from the Louisiana Codes. The French article stated: "Alluvion does not take place in connection with lakes and ponds, of which the owner always retains the land covered by the water when it reaches the level of the outlet of the pond, even if the volume of water should decrease."

3. State v. Capdeville, 146 La. 94, 83 So. 421 (1919); State v. Bozeman, 156