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George W. Pugh

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IV. Adjective Law—Evidence

EVIDENCE

George W. Pugh*

A number of points of evidence were considered by the court during the last term. Only the most important will here be discussed.

SUFFICIENCY OF EVIDENCE

In a suit for divorce on the ground of adultery, plaintiff established that she observed her husband enter a hotel with a woman whom she did not know, and that about an hour and a half later, she saw him leave the hotel with the same woman. There was an absence of any testimony showing that the two had registered at the hotel or that they had occupied the same room. There was some evidence which might tend to show that the hotel was reputed to be a house of assignation, but there was none that the principal or essential business of the establishment was not that of conducting a hotel. The Supreme Court properly affirmed the lower court's dismissal of the suit. Plaintiff had failed to make a prima facie showing of adultery, and had not proved her case by a preponderance of the evidence.¹

REPUTATION

In *State v. Johnson*² several of the defendant's witnesses had testified to his "good character" in Evangeline Parish. The Supreme Court found that there was no error in the lower court's admission of rebuttal testimony to the effect that defendant had a bad reputation in and around Beaumont, Texas, where defendant had lived "for a time."³

RIGHT OF PRE-TRIAL INSPECTION OF DEFENDANT TO
DOCUMENTS IN HANDS OF PROSECUTION

In 1945 the court held in *State v. Dorsey*⁴ that a defendant's attorney is entitled to a pre-trial inspection of his client's alleged

* Assistant Professor of Law, Louisiana State University; Faculty Editor, LOUISIANA LAW REVIEW.

1. *Massa v. Thompson*, 220 La. 278, 56 So. 2d 422 (1952).

2. 220 La. 1075, 58 So. 2d 389 (1952).

3. Reversible error was found, however, in the admission of certain fatally prejudicial testimony.

4. 207 La. 928, 22 So. 2d 273 (1945).

written confession. In *State v. Haddad*⁵ the court reaffirmed its refusal to extend this rule. It denied that defense counsel had a right to a pre-trial inspection of written confessions of co-defendants, written statements of witnesses, or police reports in the hands of the sheriff, police department, or district attorney.

DIRECTED VERDICT IN LOUISIANA

In *State v. Haddad*⁶ the court stated that a motion for directed verdict is unauthorized under our law. It should be noted, however, that Act 447 of 1950⁷ provides for an instructed or directed verdict in criminal proceedings, but states that the denial of such a motion is not subject to review on appeal. In the opinion of the writer, a motion for a directed verdict is a very convenient and time-saving procedural device, and in his opinion, the Legislature should extend its availability to the sphere of Louisiana civil procedure.⁸

SCOPE OF CROSS-EXAMINATION

On rehearing in the *Haddad* case⁹ and after careful deliberation, the court set aside defendant's conviction, for it found that there had been an undue restriction upon the cross-examination of an alleged accomplice. Great latitude must be allowed in the cross-examination of an accomplice. Although it is seldom indeed that a trial judge will be reversed because of alleged errors committed with respect to his control of the scope of cross-examination, this is an instance in which an undue restriction might well result in a miscarriage of justice. In the writer's opinion, the Supreme Court's decision to set aside the conviction was altogether proper.

PRIVILEGE

Over the objection of defense counsel, the trial court had permitted the district attorney to cross-examine a defense witness as to testimony given by him before the grand jury. The Supreme Court held in *State v. Johnson*¹⁰ that no error had thereby been committed. The court stated that the objection evidently was

5. 221 La. 337, 59 So. 2d 411 (1951).

6. *Ibid.*

7. La. R.S. Supp. 1950, 15:402.1.

8. For the rule governing a motion for directed verdict in civil cases in federal court, see Rule 50, Federal Rules of Civil Procedure, discussed at length in Chapter 50 of Moore's Federal Practice (2 ed. 1951).

9. *State v. Haddad*, 221 La. 337, 59 So. 2d 411, 420 (1952).

10. 220 La. 170, 56 So. 2d 143 (1951).

based on a theory of privilege, but said that it knew of no rule prohibiting the use of such testimony for impeachment purposes.

ADMISSIONS AND CONFESSIONS

In *State v. Campbell*¹¹ the court again pointed out the distinction between an admission and a confession.¹² For the state to introduce a confession, it must first show that the statement in question was freely and voluntarily made.¹³ No such foundation is required for an admission not involving the existence of a criminal intent.¹⁴ Defendant was being prosecuted for attempting to burglarize a church. A police officer testified that defendant had told him that he had broken a window pane on the church property in order to see the caretaker, whom he had heard was a "queer." The court held that this statement was not a confession, but an acknowledgment of a fact tending to establish guilt, and required no preliminary showing of voluntariness.

*State v. Green*¹⁵ presents a shocking example of the methods sometimes employed by our legal authorities to extract confessions. Defendant's conviction of murder was set aside, for it had not been shown beyond a reasonable doubt that the confessions introduced had in no way been induced by the physical and mental coercion previously administered.

PRIVILEGE AGAINST SELF-INCRIMINATION

In *State v. Brown*¹⁶ the court restated the well-known proposition that the privilege against self-incrimination is the privilege of the witness and purely personal to himself. Although fully apprised of his rights, the witness in the instant case made no objection to answering the questions asked. The Supreme Court held that it was reversible error for the trial judge to order the witness not to reply and to relieve him from testifying.

ILLEGALLY OBTAINED EVIDENCE

The Supreme Court reaffirmed its position that illegally obtained evidence is admissible in the state courts of Louisiana.¹⁷ And the court held that this general rule was applicable to the

11. 219 La. 1040, 55 So. 2d 238 (1951).

12. See La. R.S. 1950, 15:449.

13. La. R.S. 1950, 15:451.

14. La. R.S. 1950, 15:454.

15. 60 So. 2d 208 (La. 1952). For a more detailed treatment of this case, see pp. 292-293.

16. 221 La. 394, 59 So. 2d 431 (1952).

17. *State v. Masticovo*, 221 La. 312, 59 So. 2d 403 (1952). For a further discussion of this case, see pp. 293-294.

circumstances of the instant case, even though here an agent of the Federal Bureau of Narcotics had accompanied the arresting officers, and here the conduct charged might also have violated a federal statute on the same subject. Illegally obtained evidence is inadmissible in federal court, and the facts of the instant case may reflect an attempt by federal authorities to circumvent this rule.

OPINION EVIDENCE

In *State v. Scott*¹⁸ the court held that no opinion was involved in the testimony of a deputy sheriff that certain tire tracks were identical with the tread of the tires on defendant's car. This was said to be a statement of fact within the officer's knowledge and not the expression of an opinion. With respect to similar testimony by another witness (also a deputy sheriff), the court stated that "[n]o special training is required of a witness to identify the tread of tires as the same exhibited by tire imprints observed on a road." The accuracy of the court's observations on this point may well be questioned.

OFFICIAL DOCUMENTS

In *Sinagra v. Illinois Central Railroad Company*¹⁹ the court gave a very broad interpretation to R.S. 13:3713, which deals with the proof of official records and other documents. The court conceded that the status of prima facie evidence accorded certain publications by that section is *apparently* limited to those published by the Government Printing Office in Washington, D.C. But consideration was given to the purpose of the section and to the fact that many governmental agencies and departments issue printed and mimeographed matter from their local offices. The court held that there was no error in the admission of copies of the Market News Service bulletin.

18. 60 So. 2d 71 (La. 1952).

19. 220 La. 205, 56 So. 2d 233 (1951).