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Abstracts of Recent Cases

A. G. H.
West Virginia University College of Law

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tors not usually considered in compensation cases. No one would advocate denying compensable claims; however, attempts to make all claims compensable regardless of how remotely connected with employment should be condemned.

J. J. P.

ABSTRACTS OF RECENT CASES

CONSTITUTIONAL LAW—DELEGATION OF POWER—SCHOOL BOARD TAX ON RECORDATION OF INSTRUMENTS.—The clerk of the county court refused to admit petitioners' deed to record, unless petitioners paid an additional fee which the clerk asserted was due by virtue of an ordinance adopted by the county board of education. The state legislature had delegated to the boards of education the power to impose by ordinance a recording fee for county school fund purposes. The state constitution gave the legislature the power to provide for the support of free schools and for raising funds therefor in each county, by authority of the people thereof. Petitioners applied for a writ of mandamus to require the clerk to record the deed. *Held,* mandamus granted. An act which delegates to county boards of education the power to impose taxes upon the recordation of instruments is unconstitutional under W. VA. CONST. art. 5, § 1, relating to separation of power, and art. 12, § 5, concerning the responsibility of the legislature for the support of free schools. *State ex rel. Winter v. Brown,* 103 S.E.2d 892 (W. Va. 1958).

In West Virginia the right of the legislature to delegate taxing power to school boards must be based upon a state constitutional provision. A board of education may exercise the taxing power only under a delegation by the legislature which does not contravene the constitution. The validity of this delegated taxing power of the boards of education was expressly made contingent upon a favorable majority vote of the people of the county. This decision, however, does not impair the power and authority of county boards of education to levy taxes for the support of free schools. For further discussion and cases see: 47 AM. JUR. *Schools* § 78 (1943); 51 AM. JUR. *Taxation* § 144 (1944); 11 AM. JUR. *Constitutional Law* § 223 (1937); Annot., 113 A.L.R. 1416 (1938). See also, *Warden v. County Court,* 116 W. Va. 695, 183 S.E. 39 (1935).

A. G. H.

CRIMINAL LAW—ENTRAPMENT—NARCOTICS CONVICTION VOIDED. —Petitioner met a government informer at a doctor's office where apparently both were receiving treatment for narcotics addiction. Informer requested petitioner to supply him with narcotics because he was not responding to treatment. After a number of requests, based on the informer's presumed suffering, petitioner obtained narcotics and sold them to the informer on several occasions. Informer reported the incidents to the narcotics bureau. On informer's evidence, petitioner was convicted of illegal sale of narcotics in a federal district court and his conviction was affirmed by the court of appeals, *United States v. Sherman,* 240 F.2d 949 (2d Cir. 1957). On certiorari, *held,* that the evidence established entrapment, necessitating reversal and dismissal of indictment. *Sherman v. United States,* 78 Sup. Ct. 819 (1958).

In so holding the Supreme Court adhered to well established principles by which the defense of entrapment had been firmly recognized in federal courts. The Court will not sustain a conviction procured by police methods through which criminal intent, originating in the minds of government officers, was implanted into the mind of an innocent person. The inducement of an innocent person to commit a crime, as means of obtaining evidence for prosecution therefor, constitutes an abuse of the function of law enforcement and a conviction so procured will not be permitted to stand. See, *Sorrells v. United States,* 287 U.S. 435 (1932). For further discussion and cases see, 15 AM. JUR. *Criminal Law* §§ 335, 336 (1938); Annot., 86 A.L.R. 263 (1933).

A. G. H.

WITNESSES—CROSS-EXAMINATION—WAIVER OF SELF-INCRIMINATION PRIVILEGE BY DEFENDANT WHO TESTIFIES IN HIS OWN BEHALF. —A suit for denaturalization was brought against petitioner. At the trial petitioner took the stand in her own behalf and stated that she had not engaged in any Communist activities for ten years prior to her naturalization. On cross-examination the government asked petitioner questions relating to her Communist activities which she refused to answer, claiming the privilege against self-incrimination. The district court ruled that petitioner had abandoned the privilege and directed her to answer. She persistently refused to answer and was sentenced to imprisonment for contempt of court. Conviction was affirmed by the court of appeals. *Brown v. United States,* 234

F.2d 140 (6th Cir. 1956). *Held,* that where a witness took the stand voluntarily and testified in her own behalf, she waived, on cross-examination, the privilege against self-incrimination concerning matters made relevant by her direct examination. *Brown v. United States,* 78 Sup. Ct. 622 (1958).

The majority of the Court in this five-to-four decision, as pointed out in the strong dissents, has in effect extended the rule of waiver in criminal proceedings to the trial of civil cases. The party has an opportunity at the outset to weigh advantages of his self-incriminating privilege against the benefit of testifying. When the witness testifies, however, the Court will not permit him to give testimony in his favor and, on cross-examination, invoke a constitutional privilege to avoid answering questions made relevant by his direct examination. The witness thus lays himself open to disclose all facts relevant to the matters in evidence by his own direct testimony. For further discussion and cases see: 58 AM. JUR. *Witnesses* §§ 94, 95 (1948); Annot., 147 A.L.R. 255 (1943); 8 WIGMORE, EVIDENCE § 2276 (3d ed. 1940).

A. G. H.

EVIDENCE—CRIMINAL LAW—WHEN NEWLY DISCOVERED EVIDENCE NOT BASIS FOR NEW TRIAL.—*X* and a companion, both intoxicated, became involved in an argument in a tavern in which *D* was a bartender. *D,* armed with a revolver, encountered *X* at the doorway of the tavern and fired a shot which killed *X*. *D* claimed he shot in self-defense when *X* brandished a knife. The knife which *D* claimed was brandished could not be found and its existence was not established by the testimony of witnesses. *D* was convicted of second degree murder. Later *D* learned that an eyewitness had removed the knife from the scene and *D,* in support of his motion for a new trial, filed affidavits setting forth facts as to newly-discovered evidence. The trial court denied *D*'s motion for a new trial. *Held,* that the newly discovered evidence relating to the knife was not sufficient to entitle *D* to a new trial since the admission of such evidence would not have produced a different result. *State v. Fraley,* 104 S.E.2d 265 (W. Va. 1958).

The court refused to depart from the well established principle that a new trial on the basis of after-discovered evidence is granted only under special circumstances. Under the record circumstances

existing in this case, the introduction of the weapon in evidence in a subsequent trial could not reasonably have supported a plea of self-defense which was obviously rejected by the trial jury. The rule pronounced by the West Virginia court is consistent with the prevailing view. Since "the new evidence is not such evidence as ought to produce an opposite result upon another trial, it is not sufficient to entitle the defendant to a new trial." See, *State v. Spradley*, 140 W. Va. 314, 84 S.E.2d 156 (1954). For a detailed discussion and cases see, 39 AM. JUR. *New Trial* § § 165, 166 (1942).

A. G. H.